

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SALINAS GREENHOUSE CO. ,)	
)	
Employer,)	No. 75-RC-222-M
)	
and)	2 ALRB No. 21
)	
UNITED FARM WORKERS OF AMERICA,)	PARTIAL DECISION ON
AFL-CIO,)	CHALLENGED BALLOTS
)	
Petitioner.)	
)	

In an election conducted on October 31, 1975, in Salinas, the United Farm Workers of America, AFL-CIO ("UFW") received 41 votes and "no union" received 38 votes. Eighteen ballots were challenged. Since the challenged ballots affected the outcome of the election, the regional director conducted an investigation, and on November 25, 1975, filed his Report on Challenged Ballots. Both parties filed exceptions to the report. In addition, the International Farmers Association for Education, a nonprofit organization, filed a statement in opposition to the employer's exceptions to the report of the regional director. We have considered the report of the regional director, the exceptions and briefs, and rule as follows:

1. Neither party excepted to the regional director's recommendation to sustain the challenges to the votes of Arcadio Ortiz, Gonzalo Rodriguez, Benigno O. DeGuzman, Guadalupe Lozano, Berto Pereda, Esequiel Gonzales, and Kiyuki Uchida. Accordingly, these seven challenges are sustained.

2. Neither party excepted to the regional director's recommendation to overrule the challenges to the votes of Robert Gardea, Jesus Ornelas, Santiago M. Gutierrez, and Jesus Raiquoza. Accordingly, these four challenges are overruled.

3. The UFW challenged the ballot of Tatsuo Ueda on the ground that he is a supervisor. The regional director found that he was not a supervisor. The regional director recommended that the challenge be sustained, however, because Ueda "is an independent contractor working independent of supervision" and he "does not have a community of interest with agricultural employees."

Ueda is an agricultural researcher. He has a college degree in Floricultural and Ornamental Horticulture and his duties consist of experimenting and testing floricultural products and techniques. He is paid a salary for full-time work.

The UFW cites cases decided under the National Labor Relations Act in which the NLRB excludes professional, laboratory and technical employees from bargaining units of production employees. These are inapplicable. Section 9(b) of the National Labor Relations Act directs the NLRB to decide the unit appropriate for purposes of collective bargaining. We, on the other hand, are directed by statute to conduct elections in a bargaining unit of "all the agricultural employees of an employer" unless those employees are employed in two or more noncontiguous geographical areas. Labor Code § 1156.2. Hence, in determining whether Ueda's vote should be counted, we may consider only whether he is an agricultural employee. We do not consider whether he otherwise has a community of interest with other employees.

The UFW's contention that Ueda "occupies a special position in the company in the eyes of the employees" is not sufficient basis from which to conclude he is a supervisor and ineligible on that ground. Taking as true the facts stated by both parties on Ueda's status, we find that he is not an independent contractor, but an employee. The challenge is overruled.

4. The UFW challenged the ballot of Minoru Yoneda, claiming that he was a supervisor. The regional director found that he was not a supervisor, but a maintenance repairman, and this conclusion was not challenged. His duties as a maintenance repairman qualify him as an agricultural employee and a member of the bargaining unit. However, the regional director recommended that the challenge be sustained anyway because Yoneda is the "owner's brother-in-law and as such enjoys a special relationship with the employer."

As in the case of the ballot of voter Ueda, NLRB decisions on the appropriateness of including employees with unit are inapplicable. Regulation § 20350(b)(3) states as ground for challenge that a prospective voter "is employed by his or her parent, child, or spouse, or is the parent, child, or spouse of a substantial stockholder in a closely held corporation." The regulation does not exclude other relatives, nor is "special relationship to the employer" a proper ground for challenge. The challenge is overruled.

5. Chong-Sam Lee, Cha-Am-Byun, Ken Wake, and Yoshiro Takahashe are spending one year with the employer through the auspices of the International Farmers Association for

Education ("IFAE") a nonprofit organization whose stated purpose is to acquaint young farmers from foreign countries with United States farming methods. The four voted under challenge and the regional director recommended that the challenges be sustained. The employer excepted to the recommendation of the regional director and the UFW and the IFAE filed briefs in support of the recommendation of the regional director. The employer filed an answering brief.

The IFAE solicits applications from potential participants through foreign sponsors, arranges for their transportation to the United States, and arranges for them to secure J-1 visas under the Mutual Educational and Cultural Exchange Act of 1961 (22 USCA § 2451 et seq.) The "trainees", who are aged 20 to 35, are placed with a "host farmer" for a period of one year.

The trainees do the same work as the employees but some of the terms of their employment are governed by a "host Farmer Agreement" between the employer and IFAE. This agreement provides that the employer pay to the IFAE a monthly sum for each trainee. The sum goes into IFAE general operating funds. The host farmer is required to supply comfortable housing, preferably with his family, the cost of which he is entitled to deduct from the sum paid IFAE. IFAE pays each student a stipend. It is not intended that the employer supplement this sum, though he is not forbidden from doing so. The average work month is required not to exceed 220 hours and it is suggested that one day a week be free of work. In addition to the work experience, the trainees

attend field trips and seminars arranged by IFAE and are required to prepare reports of individual study projects. The host farmer pays worker's compensation, but IFAE pays health and accident insurance. The host farmer is instructed to provide not only on-the-farm training, but "to acquaint the trainee with American culture and social life as well". The agreement may be terminated by mutual agreement of the host farmer and IFAE.

The question for decision is whether the four trainees are employees. We hold that they are not. The trainees are in the United States as part of their education. They are not working for a salary and they are not working for job advancement with the employer. The program encourages employers to explain farming methods to the trainees, to expose them to United States cultural and social mores, and to treat them as members of his or her family. The grower does not control the amount of the stipend. The IFAE chooses host farmers on the basis of what would provide a useful educational experience for the trainees and theoretically, trainees would not be referred to hosts where previous trainees had not had acceptable educational experiences. Although the host farmer directs the work of the trainee, he does so as a teacher, not as an employer.

The employer, in urging that the votes of the trainees be counted, claims that the regional director improperly considered the trainees' immigration status and their status as students. We agree with the employer that in determining whether voters are employees, the Board should not and will not consider their immigration status or whether or not they are foreign citizens.

Scott Paper Co. , 180 NLRB No. 115, enforced 440 F 2d 625 (1st Cir. 1971). We also agree with the employer that the fact that a worker is a student does not disqualify him or her from voting, as long as the worker is otherwise an agricultural employee. Cromwell Printery, Inc. , 172 NLRB No. 212 (1968). Here, however, the trainees are not like students who also work, but rather their work is a form of education. The trainees stay with the employer only so long as they remain in the IFAE program.

The employer also claims that the IFAE functions in the capacity of a labor contractor, and hence any "employees" of IFAE would be employees of the employer for the purposes of the ALRA. Labor Code § 1140.4 (c) .

Labor Code Section 1682(b) defines a labor contractor to include anyone "who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person" ^{1/}

^{1/}Section 1682(b) reads as follows:

"Farm labor contractor" designates any person who, for a fee, employs workers to render personal services in connection with the production of any farm products, to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks , counts, weighs, or otherwise directs or measures their work; or disburses wage payments to such persons.

The U.S. Internal Revenue Service has granted tax-exempt status to the IFAE on the ground that it is a nonprofit educational association, and the California Franchise Board has exempted it from taxation on a showing that the organization is operated exclusively as a charitable and educational organization. The status of IFAE as a nonprofit educational and charitable corporation is inconsistent with the claim that IFAE is a labor contractor because IFAE does not "employ workers to render personal services" for a grower, but rather, it enlists the charity of growers in order to give the trainees an educational and cultural experience. If, as the employer claims, the trainees actually perform routine work with little instructive value for minimum wages, that is an abuse of the program and not an argument for converting trainees into employees.

Accordingly, we sustain the challenges to the votes of Chong Sam Lee, Cha-Am-Byun, Yoshiro Takahashi, and Ken Wake.

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6. The employer challenged the vote of Frank Huerta, claiming that he was a supervisor and that he was not working for the employer as of the day of the election. The Board also challenged Huerta's vote because the employer did not put his name on the eligibility list.

Huerta left his job at Salinas Greenhouse a few days before the election, but is not ineligible to vote on that ground. Labor Code Section 1157 states that "all agricultural employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition of such an election shall be eligible to vote." Huerta worked during the applicable payroll period. There is no requirement that employees be employed by the employer on the day of the election.

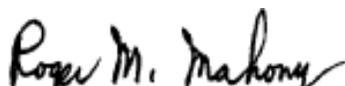
The regional director concluded that Huerta was not a supervisor. The employer disputes this conclusion with unsworn statements claiming to show that Huerta's responsibilities during the time he was employed, made him a supervisor, and the UFW supports the conclusion of the regional director with unsworn statements which the UFW claims show that Huerta was not a supervisor. While these proceedings have been pending, a consolidated hearing has been held on complaints of unfair labor practices and objections to the representation election, and testimony elicited during that hearing relates to the issue of Huerta's status. In view of the conflicting information and the lack of a complete record, we decline at this time to resolve the challenge and will do so at a later date only if a resolution

of that ballot will be determinative of the outcome of the election.

CONCLUSION

It is hereby ordered that the regional director count the challenged ballots cast by Robert Gardea, Jesus Ornelas, Santiago M. Gutierrez, Jesus Raiquoza, Tatsuo Ueda, and Minoru Yoneda, and issue an amended tally.

Dated: January 23, 1976



Roger M. Mahony, Chairman

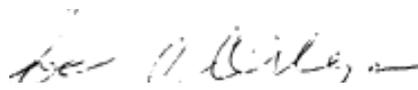
LeRoy Chatfield, Member



Joseph R. Grodin, Member



Richard Johnsen, Jr. , Member



Joe C. "Ortega, Member