

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
SAM ANDREWS' SONS,)	NO. 75-RC-131-F
)	
Employer,)	
)	2 ALRB No. 28
and)	PARTIAL DECISION ON
)	CHALLENGED BALLOTS
)	
WESTERN CONFERENCE OF)	
TEAMSTERS, AGRICULTURAL)	
DIVISION, AND ITS)	
AFFILIATED LOCALS,)	
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Intervenor.)	

On November 20, 1975, an election was conducted among the agricultural employees of Sam Andrews' Sons. The Tally of Ballots served on the parties indicated the following results:

Votes Cast for Petitioner	142
Votes Cast for Intervenor	134
Votes Cast for No Labor Organization	2
Void Ballots	4
Challenged Ballots	10

Since the challenged ballots are outcome determinative in this election, the Regional Director of the Fresno Regional Office issued a Report on Challenged Ballots on December 9, 1975, which recommended sustaining the challenges to four ballots and overruling the challenges to the remaining six. The employer and the United Farm Workers of America, AFL-CIO ("UFW") submitted exceptions to this report; none were filed by the Teamsters.

At the outset, the employer contends that the UFW, by allegedly mailing its exceptions in an envelope dated December 18, 1975, exceeded the five-day period for filing and serving exceptions to the Regional Director's report. The Fresno Regional Office inadvertently served the report on the Salinas UFW office, instead of the Calexico office which was the UFW's legal representative of record in this proceeding. The report was then forwarded to the Calexico office and received on December 15, 1975. According to its proof of service, the UFW mailed its exceptions on December 17, 1975 to the appropriate parties. These facts indicate that the UFW mailed its exceptions within five days following receipt of the Regional Director's report on challenged ballots. Accordingly, the UFW exceptions are considered herein.

Neither party filing exceptions objected to the Regional Director's recommendation to sustain the challenge to the ballot of Andres Delgaillo and overrule the challenge to the ballot of Fidel Mendoza. Accordingly, the Regional Director's recommendation with respect to these two ballots is affirmed.

UFW Exceptions

1. Exceptions were filed by the UFW with respect to two workers—Mr. Lauriano Galutira and Mr. Danilo Rabara--neither of whom presented any identification when they appeared to vote, nor were they recognized by any observer. The Regional Director's report indicates that each worker, in a sworn affidavit taken at the time they cast their challenged ballots, declared that he worked for the employer during the eligibility week. Examination of the employer's payroll records indicated that individuals by

these names worked for three hours during the first day of the pertinent payroll period. On November 25, 1975, each worker was interviewed in the field, where he signed his name in the presence of his labor contractor and the Board agent; in addition, Mr. Galutira showed the Board agent a social security card matching the number on the eligibility list. Neither signature, however, matched that found on the respective affidavit taken on election day. Accordingly, the Regional Director recommended the challenges to these ballots be sustained. The UFW through its exceptions requests a hearing in each case, based on different reasoning.

With regard to Mr. Galutira, the UFW argues that the Regional Director's investigation failed to determine whether Galutira had voted, and that he "arbitrarily disregarded certain conclusionary evidence." The UFW has presented no evidence in support of that contention; accordingly, it has failed to raise a substantial and material factual issue sufficient to give rise to a hearing. In the absence of specific assertions substantiated by such evidence, the Board is entitled to rely on the report of the Regional Director. The hearing is therefore denied and the challenge to the ballot is sustained.

The UFW, in the case of Mr. Rabara's ballot, argues that the investigation did not "solicit pertinent information" from individuals, other than a contractor, regarding the identity of Rabara. This argument fails to take into account the crucial fact that the signature taken at the challenge table did not match that of the affidavit of Mr. Rabara obtained during the Regional Director's investigation. Clearly, talking to more individuals would not be as helpful as what the Board agent has already done

in this instance: talking with Mr. Rabara himself and obtaining his signature for comparison purposes. The ballot challenge is, therefore, sustained.

2. The ballots of Reynaldo Arjona, David Gordon Herren and Vidal de los Santos were also challenged on the ground that their names did not appear on the eligibility list. Reynaldo Arjona was not on the eligibility list; he presented no identification and was not recognized by any observer. He declared in an affidavit that he was employed by Boya Land Company while working on Sam Andrews' Sons' property. Investigation disclosed that Arjona worked 31 hours during the eligibility week for Boya Land Company, a labor contractor employed by Kern Delta Cooperative Gin, to collect previously picked cotton from the employer's ranch.

The UFW requests that the status of Sam Andrews' Sons, Kern Delta, and Boya Land Company as employer and contractor, where applicable, be determined through an evidentiary hearing. However, on the basis of the Regional Director's report, uncontroverted by any evidence from the UFW, it is clear that Mr. Arjona was neither an employee of Sam Andrews' Sons nor an employee of any labor contractor employed by Sam Andrews' Sons during the pertinent eligibility period. Therefore, the challenge to the ballot is sustained.

When Mr. Herren appeared to vote, he presented a valid California driver's license with a photograph as identification and he was recognized by the company observer. In his sworn affidavit Herren declared that he worked for Sam Andrews' Sons during the eligibility period, under labor contractor

Frank del Pappa. This was confirmed by the Board agent's examination of pay records. During further investigation, the company payroll clerk stated that she erroneously omitted Mr. Herren's name from the eligibility list.

The UFW requests a hearing with regard to whether Mr. Herren can be said to have in fact worked for the employer during the eligibility period, and, if such was the case, the extent to which his position was supervisory. The UFW has again failed to provide any contrary evidence as to Mr. Herren's employer or as to his status as an "agricultural employee" under Labor Code Section 1140.4 (b). The Regional Director's finding that the challenge be overruled is, therefore, sustained.

At the election Vidal de los Santos presented a valid California driver's license with a photograph and was recognized by a company observer. In his sworn declaration he states that he worked during the eligibility week for the employer as an equipment maintenance man. This was confirmed by payroll records. In recommending that the challenge be overruled, the Regional Director found that this worker serviced agricultural equipment exclusively, and was thus part of the integrated agricultural enterprise.

The UFW admitted that there was no evidence contrary to the Regional Director's finding. Nevertheless, it excepted on the ground that no evidence was solicited from the UFW during the investigation. The argument, is specious at best. The Regional Director's investigation does not hinge on whether information was solicited from the UFW. Indeed, the UFW was given the opportunity by avenue of exception to bring forth precisely such evidence;

however, it chose not to do so. The Regional Director's recommendation stands.

3. Robert Fernandez, whose name was on the eligibility list, was challenged on the basis that he was a supervisor. Payroll records for the weeks ending November 5, 12, and 19, 1975 indicate Fernandez was paid the same rate as other workers in the crew. In his affidavit, Fernandez stated that he has no supervisory status, as signified by the fact he did the same work as the crew; he occasionally acts as a translator, and he has no authority to hire or fire. Investigation by the Regional Director disclosed no evidence to the contrary.

The UFW contends that Mr. Fernandez¹ rate of pay is not determinative of the supervisory question. This exception ignores the totality of the significant and uncontradicted findings discussed above which establish his nonsupervisory status. The Regional Director's overruling of the challenge is sustained.

Employer's Exceptions

The employer filed exceptions with respect to the last two challenged ballots. In the first case, Urbano Gutierrez, whose name was on the eligibility list, voted a regular ballot. He returned shortly after casting his ballot, stating that he had signed his name to the ballot and desired to correct this by recasting his ballot. He was then permitted to vote a challenged ballot. It was apparently agreed by all parties at the post-election conference that the Board agent would replace the signed ballot with the recast ballot when he found the ballot during the tally. However, when it was found the original ballot had been signed in

such a manner that the agent was precluded from showing the parties the signed ballot without disclosing how Mr. Gutierrez voted. Under these circumstances, the employer objected to the substitution. The Regional Director recommended that the challenged, recast ballot be substituted for the signed ballot, and that the challenge itself be overruled. The employer, referring to the void nature of the signed ballot, argues that there is no provision in the Board's regulations authorizing an employee to file a second ballot after having cast a void one. The employer consequently asks that the recast ballot not be counted.

Under these circumstances, we find that it was permissible for Mr. Gutierrez to cast a challenged ballot which could be substituted for his void ballot when it was discovered during the tally. Upon verification by the Regional Director that the void ballot in question bears Mr. Gutierrez' signature, the Gutierrez challenged ballot shall be counted.

Maria Guadalupe Rodriquez through her affidavit declared that she believed she was eligible to vote, at that time informing the Board agent she had been on worker's compensation during the pertinent eligibility week. The employer states that this worker is not an eligible voter because she was not "at work" during the eligibility period. Employer then states that because she is an hourly employee, rather than a salaried employee, Ms. Rodriquez is not an employee when she is not actually at work. Further, counsel states that the regulations do not provide that such an hourly employee not actually at work during the eligibility period is eligible to vote. There is no information as to when

Ms. Rodriguez's injury occurred, the extent of her injury, or the probability of her returning to work for the employer should she recover. Despite the absence of this information the Regional Director recommends overruling the challenge.

In light of the need for further investigation as to Ms. Rodriguez' worker's compensation status, we decline at this time to resolve that challenge. Should her ballot at a later date prove to be outcome determinative, the Regional Director is ordered to conduct such further investigation as he deems necessary to resolve that challenge.

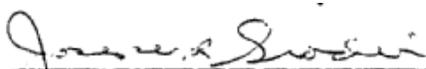
Conclusion

It is hereby ordered that the Regional Director count the challenged ballots of Fidel Mendoza, David Gordon Herren, Vidal de los Santos/ and Robert Fernandez. Upon verification of the signature on the Gutierrez ballot, the Regional Director shall count the challenged ballot of Urbano Gutierrez and issue an amended tally.

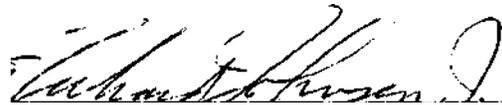
Dated: February 4, 1976



Roger M. Mahony



Joseph R. Grodin



Richard Johnsen, Jr.