

STATE OF CALIFORNIA  
 AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
McFARLAND ROSE PRODUCTION	)	
CO. ,	)	No. 75-RC-134-F
	)	
Employer,	)	
	)	2 ALRB No. 44
and	)	
	)	
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	DECISION ON CHALLENGED
	)	BALLOTS AND OBJECTIONS
Petitioner.	)	
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On November 28, 1975, a representation election was held among the employees of McFarland Rose Production Company ("employer"). The Tally of Ballots shows the following: United Farm Workers of America, AFL-CIO ("UFW") - 36, No Union - 11, Challenges - 63,<sup>1/</sup> Void Ballots - 1. Since the challenged ballots were sufficient in number to be determinative of the outcome of the election, the Regional Director conducted an investigation and, on December 10, 1975, filed his Report on Challenged Ballots. The employer filed partial exceptions to the Regional Director's report; the UFW filed no exceptions. On January 9, 1976, the Board directed the Regional Director to file a supplemental report with respect to the recommendations excepted to by the employer. That report was filed on January 28, 1976.

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<sup>1/</sup>The number of challenged ballots was incorrectly recorded on the Tally as 63. The correct number is 64.

Since no party excepted to the Regional Director's recommendation that the challenges to the ballots of the following three persons be sustained, we so rule: Nellie A. Pruneda, Gomecido Pedrosa and Jesus Vasquez.

The employer excepts to the Regional Director's recommendation that challenges to the ballots of thirty-nine (39) employees should be overruled. The thirty-nine employees in question all work in a grading and shipping shed located on the employer's premises. It is undisputed that thirty percent of the roses which are processed in the shed are raised by enterprises other than the employer's. The employer contends that under NLRB precedent the shed is a commercial shed and those employees who work in it are therefore not agricultural employees. The Regional Director, in concluding that the shed employees were agricultural relied in substantial part on a finding of interchange of employees between the fields and shed. In particular, the Regional Director found and the employer agrees that four shed employees worked for a few months in the employer's fields when the workload in the shed was low. The Regional Director also found on the basis of oral communication with twelve of the thirty-nine employees in the shed that approximately one-third of the shed employees also worked in the field for up to three months per season. The employer disputes this finding and alleges that only the four shed employees mentioned above ever worked in the fields.

Labor Code section 1156.2 provides that "the bargaining unit shall be all the agricultural employees of an employer." In determining which employees are agricultural employees, we are bound

to follow applicable precedents of the NLRB, the courts, and the U. S. Department of Labor. Mr. Artichoke, Inc. 2 ALRB No. 5 (1976), Labor Code § 1140.4(a) and (b). The NLRB holds packing sheds to be commercial sheds and shed employees to be nonagricultural employees where a significant portion of the produce packed in the shed is produced by enterprises other than the employer.<sup>2/</sup> Some interchange of employees between the fields and a packing shed which handles produce of enterprises other than the employer's does not render the shed noncommercial.<sup>3/</sup> Thus, we find that the thirty-nine packing shed employees, being employed in a commercial packing shed, are not agricultural employees. We sustain the challenges to their ballots.<sup>4/</sup>

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<sup>2/</sup>Carl Joseph Maggio, Inc., 2 ALRB No. 9 (1976); See, e.g., Garin Co., 148 NLRB 1499 (1964) - 15 percent of the produce packed was for another grower; Colorado River Farms, 99 NLRB 160 (1952) - 10 percent of the produce packed in the shed came from other employers.

<sup>3/</sup>In Garin Co., supra, the shed was found to be a commercial operation despite the fact that two or three of the packing shed employees worked in the fields each morning for a few hours before the shed opened. In Colorado River Farms, et al, supra, the NLRB found the Eaton Fruit (one of the employers in the consolidated case) packing shed to be commercial despite the fact that 30 percent of the shed employees performed field work when not engaged in packing shed operations.

<sup>4/</sup>The thirty-nine employees are: Juan Aguilar, Aurelio Ramirez, Romana Renteria, Rosemary Hernandez, Victor Garcia, Cecilia Saldivar, Griselda Gonzalez, Carolyn Poulton/ Bartola Ramirez, Manuel Villasenor, Alfredo H. Salgado, Ricardo Rodriguez, Frank Hernandez, Juana G. Gonzalez, Julian Perez, Rafael Gonzalez, Ophelia Diaz, Ofelia Mello, Bernice Hanson, Sebastian R. Topete, Elia Sosa, Elodia R. Lara, Lupe Guereca, Micaela H. Chapa, Esther Magdaleno, Rigoberto V. Serrano, Angelica Ybarra, Jesus Campos, Adelaide G. Alanis, Richard Heredia, Jerry Patterson, Anthony Alva, Donna Hokit, William H. Isaacs, Daniel J. Anderson, Mack Lois Murrell, Sally De La Rosa, Elivra Martinez Banuelos and Leslie H. White.

Since the number of challenged ballots remaining<sup>5/</sup> is not sufficient to affect the outcome of the election, we proceed to consider objections to the conduct of the election.

### Objections

On December 4, 1975, the employer filed objections to the conduct of the election on the following three grounds: (1) the Board failed to conduct a secret election because of the challenged ballot procedure used; (2) the UFW stacked the election by arranging for certain employees to be hired for the purpose of voting in the election only; and (3) nonagricultural employees were allowed to vote and were included in the bargaining unit. No hearing on these objections is necessary for the reasons discussed below.

The first objection alleges that the Board's standard challenge procedure, if applied in this case, will result in depriving voters who were subject to challenge of their right to secrecy of their ballots. Since the number of challenged ballots for which challenges were overruled is insufficient to affect the outcome of the election, those ballots will not be counted. Therefore, the secrecy of those ballots is not in issue. However, we note that the challenged ballot procedure objected to in this case is the same

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<sup>5/</sup> The Regional Director recommended that the challenges to the ballots of the following twenty-two (22) persons be overruled: Porforio Escobedo, Xavier Cortez Caberre, Augustina Renteria, Teresa Vega Medina, Consuelo Cervantez, Socorra Renteria, Amelia Balles, Margarita Robles, Josefina Cardenas, Robin Lynn Quijalvo, Manuela De Leon, Ofelia S. Sanchez, Anita Rodriguez, Yolanda De La Rosa, Maria T. Reyes, Mary Dano, Nellie Heredia, Claudine Hannah, Leonel Heredia, Robert Gallardo, Sally Balles, and Reyes Garcia, No party excepted to this recommendation.

procedure followed in all other cases: the ballot is marked by the voter, folded and placed in an envelope, and identifying information including the voter's name is written on the outside of the envelope. We are administratively informed that the procedure used in counting ballots for which challenges have been overruled is that the ballot is removed from the challenge envelope, and, while still folded, is mingled with other ballots. When all ballots are so mingled, they are then unfolded and counted. We are satisfied that such a procedure ensures that the secrecy of individual ballots is preserved. The use of this procedure, without evidence that the secrecy of ballots was impaired by deviation from the procedure, will not be ground for setting aside an election in those cases where challenged ballots are ultimately counted.

Objection number 2 is dismissed for failure to supply adequate supporting declarations. 8 Cal. Admin. Code § 20365(a) Interharvest, Inc., 1 ALRB No. 2 (1975).

The third objection relates to the same thirty-nine packing shed employees discussed above. Since we have concluded that the challenges to their ballots should be sustained because they are not agricultural employees, they are therefore also excluded from the bargaining unit. The fact that some employees who were subsequently found to be ineligible were permitted to cast challenged ballots

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cannot be found to be conduct interfering with election.<sup>6/</sup>he objection, insofar as it is urged as a ground for setting aside the election, is therefore dismissed.

The United Farm Workers of America, AFL-CIO, is certified as the collective bargaining representative of all agricultural employees of McFarland Rose Production Company.

Dated: March 2, 1976

Roger M. Mahony

James Susie

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Lloyd Chapman

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<sup>6/</sup>cf. Hemet Wholesale, 2 ALRB No. 24 (1976); California Coastal Farms, 2 ALRB No. 26 (1976).