

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

|                                 |   |                |
|---------------------------------|---|----------------|
| UNITED CELERY GROWERS, INC.,    | ) |                |
|                                 | ) |                |
| Employer                        | ) | No. 75-RC-78-M |
|                                 | ) |                |
| and                             | ) | 2 ALRB No. 46  |
|                                 | ) |                |
| UNITED FARM WORKERS OF AMERICA, | ) |                |
| AFL-CIO,                        | ) |                |
|                                 | ) |                |
| Petitioner                      | ) |                |
|                                 | ) |                |

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On September 18, 1975, elections were held among the agricultural employees of the employer in two separate units. Voting unit number one encompassed the employer's Oxnard (Ventura County) farm and voting unit number two covered its Lompoc (Santa Barbara County) farm. We have previously certified the Oxnard election in United Celery Growers, 2 ALR3 No. 27 (February 2, 1976). This decision deals with the Lompoc (Santa Barbara County) election. Pursuant to Labor Code Section 1146, the Board has delegated its power in connection with this case to a three-member panel.

OBJECTIONS

On September 23, 1975, the employer filed two objections to the conduct of the elections, one, not in issue in this case, relating to the conduct of the Oxnard election and one relating to the conduct of the Lompoc election. On January 21, 1976, the Board issued an order requiring the employer to SHOW CAUSE why the objection to the Lompoc election should not be dismissed, by submission of declarations satisfying the requirements of Interharvest, 1 ALRB No. 2, fn. 1, no later than January 28, 1976.

The employer did not respond to the Order to Show Cause; accordingly, its objection is dismissed. There are no other objections to this election.

#### CHALLENGED BALLOTS

The Tally of Ballots in the Lompoc election showed that of 63 eligible voters, 27 cast votes for the United Farm Workers of America, AFL-CIO (UFW), 19 for No Labor Organization, and there were 10 challenged ballots, a sufficient number to be determinative of the outcome of the election. On September 24, 1975, an amended Tally of Ballots was issued in the Lompoc election showing 27 votes for the UFW and 28 votes for No Labor Organization.<sup>1/</sup>The amended Tally was the result of a unilateral resolution of challenged ballots by the Board agent who conducted the election.<sup>2/</sup>The UFW appealed from the unilateral resolution of challenged ballots and on January 6, 1976, the Board ordered the amended Tally of Ballots issued on September 24, 1975 rescinded and directed the Regional Director to conduct an appropriate investigation of the challenged ballots in the Lompoc election and to issue a report thereon or set the matter for hearing.

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<sup>1/</sup> One challenged ballot, that of Fedro G. Lozopia, was resolved by agreement of the parties that the challenge be sustained. See the discussion in the text infra, regarding the confusion surrounding this ballot.

<sup>2/</sup> The Board agent apparently made the determination of challenges pursuant to Section 20350(d) of the Regulations, 8 Cal. Admin. Code 20350 (d). However, that section provides for Board agent resolution of challenged ballots prior to the Tally of Ballots and requires that the Board agent provide a written record of his or her ruling and the reasons for it. In this case, the resolution was made after the initial Tally of Ballots and no written report of the resolution was made.

On February 6, 1976, the Regional Director issued his Report on Challenged Ballots recommending that four challenges be overruled, four sustained, and making no recommendation with respect to two challenged ballots. We adopt the recommendations of the Regional Director in part and overrule them in part as follows:

(1) The Regional Director recommended that challenges to the ballots of Pablo Puentes, Mario Arce R. , Alejandro Mequita, and Delia Duran be overruled. No exceptions were filed to these recommendations and we accordingly affirm them.

(2) The Regional Director recommended that the ballots of Merced Bueno, Jesus Perez, Manuel Sanchez and Elvio Castillo be sustained because the last day of their employment prior to the election was August 31, 1975, and the eligibility period for the election was the week ending September 10, 1975. The Notice and Direction of Election specifies that the eligibility period shall be the week ending September 10, 1975. The employer asserts, and notations in the Regional Office working file confirm, however, that the employer's payroll for field workers runs from Sunday to Saturday.<sup>3</sup>Therefore the eligibility period would be the payroll period immediately preceding the September 11, 1975, filing of the representation petition, i. e. , August 31, 1975, to September 6, 1975. Since the Regional Director finds, and no party excepts to the finding, that the four employees in question worked doing

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<sup>3</sup>File notes also indicate that the payroll period for the employer's shed employees runs from Thursday to Wednesday. Therefore, for shed employees, the appropriate payroll period to determine eligibility would be the week ending September 10, 1975.

field work for the employer on August 31, 1975, we conclude that they are eligible to vote and overrule the challenges to their ballots.

( 3 ) The Regional Director declined to make any recommendation with respect to the resolution of the challenged ballot of Pedro G. Lozopia <sup>4</sup>because he found he had insufficient information to resolve the challenge. Review of the file indicates, however, that the challenged ballot of Pedro G. Lozopia was resolved by agreement of all the parties that Lozopia was ineligible. The agreement was reached subsequent to the initial tally and prior to the amended tally. The still-sealed challenged ballot envelope bears a notation of the resolution which is initialed by the Board agent and both parties. Thus, the amended tally reflects the counting of only the remaining 9 challenged ballots. In his Report on Challenged Ballots, the Regional Director apparently overlooked the agreement of the parties with respect to this challenged ballot when he concluded that he did not have sufficient information to resolve the challenge. The employer's exceptions to ..the Report are in accord with the agreed-upon resolution. We conclude that the challenge to the ballot of Pedro G. Lozopia should be sustained in accord with the agreement of the parties.

( 4 ) The Regional Director also declined to make any recommendation, with respect to the resolution of the challenged

<sup>4</sup>This name is misspelled in the Regional Director's Report on Challenged Ballots as Cedro G. Lozopia rather than Pedro G. Lozopia, which is the name on the challenged ballot envelope.

ballot of Lionso Cevallos. The eligibility list, however, carries the name of Leonso Cevayos and that name was not checked off as having voted in the election. The employer urges in his exceptions that Leonso Cevayos represents a misspelling of Lionso Cevallos and that Lionso Cevallos is indeed an eligible voter. We take note that the Spanish pronunciation of the two spellings is very similar and conclude that Leonso Cevayos is a misspelling of Lionso Cevallos. Accordingly we conclude that Lionso Cevallos is an eligible voter and overrule the challenge to his ballot.

In summary, we conclude that the challenge to the ballot of Pedro G. Lozopia shall be sustained and the challenges to the other nine ballots shall be overruled. The nine ballots have already been opened and counted prior to the issuance of the amended tally of ballots and all nine votes were for the "No Labor Organization" choice. We therefore find that the results of the election are as follows:

UFW: 27, No Labor Organization: 28.

Total valid votes after resolution of all challenges: 55.

We hereby certify that "No Labor Organization" received a majority of the valid votes cast in this election.

Dated: September 15, 1976

Roger M. Mahony, Member

Richard Johnsen, Jr., Member

Ronald L. Ruiz, Member