

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

M. V. PISTA & CO.,)	
)	
Employer)	No. 75-RC-187-M
)	
and)	DECISION ON CHALLENGED
)	BALLOTS
UNITED FARM WORKERS OF AMERICA, AFL-CIO,)	
)	2 ALRB NO. 8
Petitioner.)	
)	
)	
)	

On October 17, 1975, an election was conducted among the agricultural employees of M. V. Pista and Company. The Tally of Ballots duly served upon the parties indicated the following results: 13 for no labor organization; 3 for Petitioner; 1 void and 17 challenged ballots. Of the 17 challenges made at the election, eight were made by the Board agent, three by the employer and six by the Petitioner. On December 3, 1975, the Salinas Acting Regional Director issued a Report on Challenged Ballots to which the Petitioner has taken exception.

EMPLOYER CHALLENGES

While the employer did not file exceptions to this report, it did file an "Answer" -in which it made some minor technical clarifications with respect to the report's findings and a "Response to Appeal by United Farm Workers of Regional Director's Recommendations." In the absence of exceptions, therefore, we adopt the regional director's recommendation with respect to the three challenges made by the employer, and they

are hereby overruled. Accordingly, we hereby order that the ballots of Filiberto Armas, Luis F. Fregoso and Guillermo Vigil Sonia be opened and counted.

BOARD CHALLENGES

1. This group of challenges pertains to the ballots of eight persons challenged by the Board agent on the grounds that their names did not appear on the eligibility list. Upon conducting an investigation, the regional director has determined the following with respect to seven of these challenged persons: (1) that they were employed in the appropriate unit during the applicable payroll period, and (2) that their names were omitted because they were being paid on a family unit basis. In its answer, wherein the employer concedes to these findings, it states the following with respect to the Pontagarca family:

The employees worked on a piece-rate basis; they were paid a specified rate per bin of apples picked from the trees or windfalls picked up from the ground; the payroll check for the number of bins picked by the family unit was issued to Adelaide Jose Pontagarca at the direction of the family unit.

Accordingly, the regional director concludes that the challenges to these seven voter's ballots be overruled. In the absence of exceptions,^{1/} we hereby adopt this recommendation and order the regional director to open and count the ballots of the following workers: Filomena M. Avila, Antonio Pontagarca, Joao Pontagarca, Nazare Pontagarca, Catarina Brasil, Alberto Borba and Jesus Contreras.

^{1/} Despite the fact that no one has objected to the inclusion of these ballots in the Tally, nor to the exclusion of the voter's

(fn. cont. on p. 3)

2. With respect to the other challenged voter (Salvador Sanchez), whose name did not appear on the eligibility list, the regional director reports that his name was inadvertently omitted by the employer and that therefore, the challenge to his ballot should be overruled. In his answer, the employer agrees with "the regional director's findings and recommendation but then states -that the reason Mr. Sanchez' name was not on the eligibility list is because he .was first hired on October 12, 1975, and the eligible payroll period ended on October 7, 1975. If this were accurate, of course, Mr. Sanchez would not have been an eligible voter.

Given the above contradictions and the regional director's silence with respect to how he reached his conclusion that the name was merely "inadvertently omitted", we shall at this time withhold any final determination with respect to this ballot.

(fn.1 cont.)

names from the eligibility list, we take this opportunity to note that the names of those employees, who for purposes of mutual convenience, do not appear on the payroll list must be included on the eligibility list pursuant to Title 8, Cal. Admin. Code §20310(d)(2).

PETITIONER CHALLENGES

I. The Petitioner challenged the ballot of Joe Reis on the grounds that he was a supervisor within the meaning of §1140.4(j) of the Act:

The term "supervisor" means any individual having the authority, in the interest of - the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

The regional director reports that Mr. Reis is a tractor driver and that although he is used to translate orders, both in Spanish and Portuguese, he does not perform any supervisory functions.

The UFW excepts to these findings and urges that since there can be no input into this investigation by the workers -- since most of them have since left the area -- a more thorough investigation of this worker's status be undertaken by the Board. The UFW has submitted no new evidence, however, which compels us to disagree with the regional director's determination that Mr. Reis is not a supervisor within the meaning of Section 1140.4 (j) of the Act.^{2/} We, therefore, adopt the regional director's recommendation and herein order that the challenge to his ballot be overruled.

^{2/} We are aware that 8 Cal. Admin. Code §20365(f) provides no guidance with regards to what an exception to a report on challenges must contain. As a result of this, parties have filed what are in essence general denials rather than the explicit exceptions which §20365 (f) should be interpreted as requiring. In order to

(fn. cont. on p. 5)

2. The ballots of Peter S. Knego, Adelaide Jose Pontagarca, Manuel D. Alvernas, Jose T. Avila and Anotonio A. Brasil were challenged by the UFW on the grounds that their employment was arranged primarily for the purpose of voting in violation of Section 1156.4 of the Act:

It shall be an unfair labor practice for an employer or labor organization, or their agents, willfully to arrange for persons to become employees for the primary purpose of voting in elections.

In his report, the regional director has listed the two factors disclosed by his investigation which have prompted him to conclude that all five workers were not hired in violation of Section 1154.6: (1) the date on which the worker was first hired (which in all cases was prior to or during the applicable payroll period); and (2) the fact that the five men were agricultural workers.^{3/}

Based on this, the report recommends that these challenges be overruled.

Included in the UFW exception are two group declarations executed during the week prior to the election and signed by 15 M. V. Pista employees. In these declarations the employees state that: (1) during the time they have worked for this employer, they have never observed more than 30-35 workers;

(fn. 2 cont.)

comply with this regulation, the Board will henceforth require that exceptions to the regional director's report set forth the issues, facts, rules of law where applicable, and conclusions drawn therefrom in order that the Board be provided with a complete and workable record.

^{3/} In its answer the employer states that the regional director is in error in concluding that these men are permanent agricultural employees since in fact they are seasonal employees.

(2) although the company claims to have hired 12 new workers, they have absolutely no idea what kind of work they could possibly do; and, (3) it seems strange that the company would hire new workers when the season is coming to an end.

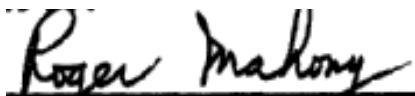
The regional director's report does not address itself to these specific allegations.

In view of the above, we find the regional director's findings with respect to these challenges not dispositive and therefore, pending further investigation, make no final disposition.

CONCLUSION

The regional director is hereby ordered to open and count the 11 ballots for which the challenges have herein been overruled, and to issue a new tally. If the tally indicates that 50 percent of the votes have been cast for "no labor organization," such choice shall be certified; if it indicates that the remaining six challenges are determinative, the regional director should conduct a further investigation as to these ballots.


Dated: January 14, 1976.



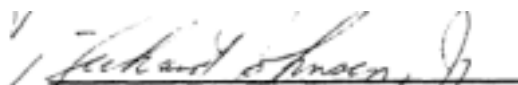
Roger M Mahony, Chairman



Joe C. Ortega



Joseph R. Grodin



Richard Johnsen, Jr.



Le Roy Chatfield