

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

COSSA & SONS,)
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 Employer,)
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 and) No. 75-RC-170-M
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) 3 ALRB No. 12
 TEAMSTERS LOCAL 865,)
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 Petitioner,)
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 and)
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 UNITED FARM WORKERS OF AMERICA,)
 AFL-CIO,)
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 Intervenor.)
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This decision has been delegated to a three member panel of the Board. Labor Code Section 1146.

On October 9, 1975, an election was held at Cossa & Sons. The tally of ballots showed the following results:

Teamsters	0
UFW	5
No Union	0
Void	0
Challenged Ballots	8

Since the challenged ballots determine the outcome of the election, the Regional Director of Salinas Regional Office issued a Report on Challenged Ballots on November 29, 1975. The Report recommended sustaining the challenge to one ballot and overruling the challenges

to the remaining seven.^{1/} Teamster Local 865 and the UFW filed timely exceptions.

The only exception filed by Teamster Local 865 claims that the challenged ballots were already counted before it had an opportunity to review the Regional Director's report. A search of the record, however, reveals no evidence that the challenged ballots were counted or otherwise improperly dealt with. Therefore, the exception is dismissed.

The UFW excepts to the Regional Director's finding and conclusion that Manuel Cortez was not employed in the appropriate unit during the applicable payroll period and thus was not eligible to vote. The exception presents no additional evidence, but claims that the Regional Director erred in his conclusion. The claim of error is based on the assertion that the Regional Director failed to consider allegedly uncontradicted declarations of the labor contractor and Cortez stating that Cortez was employed during the payroll period. The Regional Director's report refers only to the labor contractor's declaration and goes on to indicate that neither the employer nor the labor contractor were able to substantiate Cortez's employment.

As we held in Sam Andrews' Sons, 2 ALRB No. 28 (1976) , the Board is entitled to rely on the report of a Regional Director where the parties fail to raise a material factual dispute which would warrant further investigation or hearing. Here, the record discloses a clear material factual dispute. The Regional Director's Report is unclear as to the scope of the investigation conducted.

^{1/} The seven overruled challenged ballots belong to Edwardo Rodriguez, Cipriano Salinas, Jesse Garcia, Ray Galindo, David Romero, Chris Limon, and Ray Serna.

We order the Regional Director to open and count the ballots of the seven voters whose challenges are overruled. If, after a new tally is issued, the remaining challenge to the Cortez ballot is determinative, the Regional Director is ordered to conduct a further investigation in accordance herewith.

Dated: February 16 , 1977

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RICHARD JOHNSEN, JR. , Member