

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

ORTEGA BROTHERS FARMS,	)	
	)	
Employer,	)	No. 75-RC-32-S
	)	
and	)	3 ALRB No. 41
	)	
UNITED FARMWORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Petitioner	)	
	)	

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On October 6, 1975, an election was conducted at Ortega Brothers. The results were as follows:

UFW	35
No Union	34
Challenged Ballots	1
Void Ballots	2

Since the one challenged ballot was sufficient to affect the outcome of the election, the regional director filed a report and the Board ordered a hearing .

The employee in question, Jesus Gonzales, is a year-round resident of the labor camp which exclusively serves Ortega Brothers' employees and their families. He has done odd jobs around the camp and in the fields since 1967. He lives rent free and receives irregular cash payments . Since Mr. Gonzales was not paid by check, his name did not appear on the payroll. Thus when the Ortega Brothers accountant prepared the eligibility list, he did not include Gonzales' name. The employer then gave the list a "cursory review" and failed to correct the error. The UFW asserts that the employer was questioned at the pre-election conference about the accuracy

of the list and made no corrections at that time. When Gonzales appeared to vote, he was challenged by the Board agent because he was not on the eligibility list.

The UFW argues that the employer should be estopped from affirming Gonzales<sup>1</sup> employee status. It cites Pyper Construction, 177 NLRB 707 (1969), for the proposition that an employee whose name does not appear on the eligibility list agreed to by the employer and the union is not eligible to vote in the election. Pyper is not applicable here because it involved a "consent" election with a specific written agreement between the parties that the eligibility list was complete and accurate, and would be final and binding upon the parties. There was no such agreement here.

The ALO determined that estoppel was not appropriate. We agree. We see no reason why the employer's inadvertent omission of a voter's name should act to disenfranchise that voter. It is not the rights of the employer or the union which are at issue, but those of the employee. If the eligibility list is so inaccurate that it impairs the union's ability to communicate with workers, the election will be set aside, but the omission of a single name cannot be considered such an impairment.

#### CONCLUSION

The challenge to voter Jesus Gonzales is overruled and the regional director is ordered to open and count the ballot.

Dated: May 16, 1977

Gerald A. Brown, Chairman

Richard Johnsen, Jr., Member

Ronald Ruiz, Member