

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

McCoy's Poultry Services, Inc.,)	
)	
Employer,)	No. 77-RC-2-S
)	
and)	3 ALRB No. 61
)	
BUTCHERS' UNION, LOCAL 115)	PARTIAL DECISION ON
AFL-CIO,)	CHALLENGED BALLOTS
)	
Petitioner.)	
)	

This decision has been delegated to a three-member panel. Labor Code Section 1146.

On May 6, 1977, an election was held at McCoy's Poultry Services, Inc. The tally of ballots showed the following results:

Butchers' Union Local 115	13
No Union	11
Void	0
Challenged Ballots	9 ^{1/}

Since the number of challenged ballots is sufficient to determine the outcome of the election, the regional director conducted an investigation. The regional director denied the employer's post-election request to withdraw five of eight challenges, and issued a report on June 10, 1977. The employer filed timely exceptions to the regional director's report.

The regional director recommended that the Board

^{1/} The Board agent challenged one person because his name was not on the eligibility list. The employer challenged eight prospective voters on the ground that they were supervisors.

agent's challenge to Joe Policarpo's ballot be overruled (Schedule A). No party excepted to this recommendation, and we accept it.

The employer excepted to the regional director's findings for all eight remaining ballots. No material factual dispute was raised for six of the eight challenged ballots.² Accordingly, we support the regional director's recommendation that challenges to these six ballots be overruled. Sam Andrews' Sons, 2 ALRB No. 28 (1976).

The employer submitted separate exceptions to the two remaining challenged ballots (Schedule C). The regional director recommended that a challenge to the ballot of John Trwilligar be sustained, finding him to be a supervisor. This finding was contradicted by a declaration from Trwilligar outlining his duties and powers at McCoy's. These duties included no independent decision-making authority. Since a material factual dispute has been raised, we shall not determine at this time whether Trwilligar is a supervisor within the meaning of the Act.

The regional director found that Jack Chaney is not a supervisor. This finding was sufficiently controverted by declarations from Chaney and the employer to raise a material factual dispute. Accordingly, the question of Chaney's supervisory status will not be resolved at this time.

²Linda Catenacci, Tim Farley, Daniel Johnson, Glen McCurdy, Herschel Stephens, and Mark Winston.

CONCLUSION

We order the regional director to open and count the ballots of Joe Policarpo, Linda Catenacci, Tim Parley, Daniel Johnson, Glen McCurdy, Herschel Stephens, and Mark Winston (Schedules A and B). If the tally indicates that the ballots of Jack Chaney and John Trwilligar (Schedule C) are determinative of the outcome of the election, the question of their supervisory status shall be set for hearing.

Dated: July 28, 1977

RICHARD JOHNSEN, JR., Member

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

SCHEDULE A

Challenges Overruled - No Exceptions Filed

Joe Policarpo

SCHEDULE B

Challenges Overruled

Linda Catenacci

Tim Parley

Daniel Johnson

Glen McCurdy

Herschel Stephens

Mark Winston

SCHEDULE C

Challenges Not Resolved

Jack Chaney

John Trwilligar