

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

PANDOL AND SONS,	)	
	)	
Employer,	)	
	)	No. 75-RC-86-F
and	)	
	)	DECISION ON CHALLENGED
UNITED FARM WORKERS OF AMERICA,	)	BALLOTS
AFL-CIO,	)	
	)	3 ALRB No. 72
Petitioner,	)	
and	)	
	)	
WESTERN CONFERENCE OF TEAMSTERS,	)	
	)	
Intervenor.	)	
	)	

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On October 9, 1975, an election was conducted at Pandol & Sons. Since challenged ballots determined the outcome, the regional director issued a challenged ballot report on December 5, 1975, and a revised report on December 12, 1975. He did not investigate challenges to eight economic strikers. Pursuant to an executive secretary order dated March 8, 1977, the regional director subsequently investigated the challenges to economic striker ballots, and issued a report on their status dated July 20, 1977. Timely exceptions were filed to both the 1976 and 1977 reports. The employer's exceptions to the 1977 report raise material issues of fact which would require further investigation or hearing. We find it unnecessary to resolve all of these challenges, however, as it is apparent at this point that no party can achieve a majority of valid ballots cast and a re-run election will be necessary.

### THE 1976 REPORTS

Based on the uncontested recommendations in the regional director's revised 1976 report, a revised tally of ballots was prepared on January 28, 1977. The results were as follows:

UPW	158
WCT	31
No union	138
Challenged ballots	14 <sup>1/</sup>

The regional director noted that Joaquina L. Delgado deposited an empty challenged ballot envelope in the ballot box, and recommended that no further action be taken with respect to her ballot. The employer contends that we should sustain the challenge since her name does not appear on its payroll records for the appropriate period. On this record Delgado did not cast a valid ballot, and we are unwilling to speculate about why the envelope was empty. We note that sustaining the challenge and voiding the ballot have identical effects in this instance: that is, that Delgado's vote is subtracted from the roster of outstanding challenges.

### THE 1977 REPORT ON STRIKER CHALLENGES

The regional director recommended sustaining challenges to two strikers and overruling challenges to six strikers. The

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<sup>1/</sup> The revised report incorrectly listed 15 outstanding challenged ballots. The name of Milicac Dinka improperly appears on the challenge list in both the original and revised reports. Dinka was challenged as not on the eligibility list, but the challenge was resolved prior to the original tally of ballots when her name was located on the list. Her ballot was counted as a regular ballot at that time.

employer excepted to the recommendation that the six strikers be overruled. No party excepted to the recommendation that two challenges be sustained. Accordingly, we may subtract those two challenges from the roster of outstanding challenges.

#### RESULTS

With resolution of the ballots of Delgado and two economic strikers, the tally of ballots stands as follows:

UPW	158
WCT	31
No union	138
Challenged ballots	11

Thus, the total number of valid ballots cast in this election will range from 327 to 338, depending on how many of the remaining challenged ballots are sustained. It is apparent at this point that it is not possible for any party to receive a majority of valid ballots cast, no matter how these challenges are resolved. In the normal case, this would necessitate a run-off election with the UFW and No Union appearing as choices on the ballot. 8 Cal. Admin. Code 20375 (a). However, as the election in this case occurred in 1975 prior to the funding crisis which resulted in temporary cessation of the Board's operations, a run-off conducted under the current regulations would not serve the purposes and policies of the Act, for the reasons set forth in our decision in Tenneco Farming Company, 3 ALRB No. 20 (1977). As in Tenneco, supra, we deem it appropriate that the representation question in this matter

be resolved by means of a re-run election which would supplant any further proceedings in this case.<sup>2/</sup>

The following conditions shall apply to the election:

1. The re-run election shall be initiated upon motion of the UFW. Such motion shall be served, filed and processed as provided in 8 Cal. Admin. Code 20300 et seq., except that the UFW shall not be required to submit proof of showing of interest.

2. Any labor organization shall be permitted to intervene pursuant to the requirements of 8 Cal. Admin. Code 20325.

3. The re-run shall take place in the calendar year 1977. If no re-run takes place during this period, proceedings in the case shall be closed.

4. As the re-run stems from an election conducted within 18 months of the effective date of the ALRA, economic strikers eligible to vote in the initial election shall retain their eligibility for the re-run election. See Tenneco Farming Company, supra.

Dated: August 30, 1977

GERALD A. BROWN, Chairman

ROBERT HUTCHINSON, Member

RICHARD JOHNSEN, Jr., Member

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<sup>2/</sup>We note that there are outstanding objections to the original election filed by the WCT. These objections all relate to the conduct of the original election in 1975. Since no purpose would be served by further processing of these objections, and we perceive no prejudice to any party which would result from their dismissal, they are hereby dismissed.