Ripon, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

FRANZIA BROS. WINERY, Employer, and WESTERN CONFERENCE OF TEAMSTERS, Petitioner, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor.	Case No. 75-RC-22-S 4 ALRB No. 100

PARTIAL DECISION ON CHALLENGED BALLOTS

Following a Petition for Certification filed by Western Conference of Teamsters (WCT), an election by secret ballot was conducted on September 30, 1975, among the agricultural employees of the Employer.

The Tally of Ballots furnished to the parties at that time showed the following results;

Teamsters	86
UFW	57
No Union	3
Void	4
Challenged Ballots	92
Total	242

As the challenged ballots were sufficient in number to

determine the outcome of the election, the Regional Director conducted an investigation on February 6, 1976, and issued a preliminary report thereon, to which all parties excepted. At the Board's request, the Regional Director issued a supplementary report on March 4, 1977, to which the United Farm Workers of America, AFL-CIO (UFW) and the Employer excepted.

By order dated May 26, 1977, the Board served upon all parties copies of the declarations obtained by the Regional Director in his investigation of the challenged ballots. The parties have been accorded the opportunity to submit to the Board all relevant evidence, points and authorities, and arguments bearing on the issues raised by the challenged ballots, in order to assist the Board in its determination of the eligibility of the challenged voters.

The 92 challenged ballots will be considered in three categories, as follows:

1. Six not on eligibility list;
2. Five alleged supervisors; and
3. Eighty-one alleged economic strikers.

I

PERSONS NOT ON THE ELIGIBILITY LIST

Board agents challenged six voters whose names were not on the eligibility list. As the representation petition was filed on September 23, 1975, the applicable payroll period for eligibility was September 16-22, 1975.

As a result of his investigation, the Regional Director determined that three employees in this group did in fact work

during the applicable payroll period, and recommended in his supplementary report that the challenges be overruled. No exceptions were filed as to this recommendation. Accordingly, the challenges to the ballots of these three persons are hereby overruled and their ballots will be opened and counted. See Appendix I, Schedule A.

Two other employees in this group state in their declarations that they did not work during the applicable payroll period, a fact confirmed by the Employer's payroll records. The Regional Director recommended in his supplementary report that these challenges be sustained. No exceptions were filed to this recommendation. Accordingly, the challenges to their ballots are hereby sustained. See Appendix II, Schedule B.

The sixth employee did not make himself available during the Board's investigation, and his name does not appear on the applicable payroll records. The Regional Director made no recommendation concerning the challenge to his ballot and no exceptions were filed. Since there is no evidence of this person's eligibility, the challenge is sustained. See Appendix II, Schedule C.

II

ALLEGED SUPERVISORS

The UFW challenged the ballots of Ismael Carrillo, Victor Melendrez, Librado Rangel, Javier Rodriguez and Roberto Taberna, contending that they are supervisors within the meaning of Labor Code Section 1140.4(f). The Regional Director recommended that these five challenges be overruled, as the individuals possess none of the statutory indicia of supervisory status. He found that the

Employer, employs two supervisors who give orders to these five individuals, who in turn act as conduits of such orders between the supervisors and the workers. Each of the five is the "lead man" for his crew and is paid a higher wage than the crew members.

The UFW maintains that because the supervisors do not appear to have direct personal contact with the employees, the lead men, who are responsible for the performance of their crews, use independent judgment to effectively recommend discharges, transfers and work assignments. Although the declaration of Virgilia E, Fontanilla, Alejandria Gorospe, Rodrigo Fontanilla and Johnny Gorospe, dated January 28, 1977, states that "[the alleged supervisors] never worked with their own hands, all they did was give us orders", there is no evidence to support the allegation that the lead men had or exercised any statutory supervisory authority. Accordingly, the challenges to their ballots are hereby overruled and their ballots will be opened and counted. See Appendix I, Schedule D.

III

ECONOMIC STRIKERS

A. Employer's Generalized Exceptions

The Employer excepts to the Regional Director's Supplementary Report on essentially nine grounds. Seven of these are generalized exceptions addressed to all or some of the economic strikers without specifying the strikers by name, and for

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convenience will be considered first.[1/]

1. Denial of due process

The first exception claims a denial of due process in two respects: (1) an allegation of collusion between the ALRB and the UFW, and (2) a denial of the opportunity to cross-examine the employees who cast challenged ballots. No evidence was submitted to support the allegation of collusion between the ALRB and the UFW, and the exception is found to be without merit.

A mere denial that evidence is true is insufficient to raise a factual dispute, George Lucas and Sons, 3 ALRB No. 5 (1977), and in the absence of a factual dispute, we have determined that a hearing (including examination and cross-examination of witnesses) is not required. Sam Andrews' Sons, 2 ALRB No. 28 (1976). As we find no factual dispute herein, there is no need to cross-examine the challenged voters and the lack of an opportunity to cross-examine in these circumstances does not constitute a denial of due process.

2. Alleged defects in the declarations taken by Board agents during investigation of the challenged ballots

The Employer raises six objections concerning the declarations obtained by Board agents during the challenged ballots investigation. Four of these objections are without foundation. All of the declarations were sworn to under penalty of perjury and

[1/] The other two exceptions (that there are no declarations of 14 persons whose ballots the Regional Director recommended opening and counting, and that the previous exceptions to the preliminary report are renewed! are dealt with infra in the disposition of the challenges to the ballots of the individuals involved.

signed by the affiant; Board Agents also signed all but four of the declarations; all pages are numbered and sworn to; and no documents are referred to in any of the declarations.

The fifth objection, that the Employer was not afforded the opportunity to voir dire the individuals concerned with the preparation and execution of the declarations, is without merit. The Board is entitled to rely on the adequacy of the Regional Director's investigation absent specific evidence that the information furnished is untrue.

The sixth objection is that many of the declarations used a mimeographed form which contained allegedly misleading questions and conclusory statements. Although 14 declarations used a "form", none of the factual allegations therein have been disputed. The information solicited by the form includes employee identification, work history at Franzia, strike activities and work history after the strike commenced. The use of the form herein is comparable to the use of interrogatories in civil practice and in no way detracts from the validity or adequacy of the responses elicited thereby,[2/]

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[2/]The two cases to which the Employer refers the Board, Fuller v. Goodyear Tire & Rubber Company, 7 Cal. App. 3d 690 (4th Dist.1970} and Tri-State Mfg. Co. v. Superior Court, 224 Cal. App. 2d 442 (2d Dist. 1964) are inapposite. In Fuller, the declarations of expert witnesses were held insufficient to support a motion for summary judgment in a personal injury action because they relied only upon conclusions and opinions rather than material factual allegations for which the declarant could be charged with perjury should they prove false. All statements made in the 14 declarations herein, however, are factual and the declarants could be

(fn. cont. on p. 7)

especially, as here, where no evidence has been submitted contradicting the truth of the statements contained therein.

3. Alleged inaccuracies in translation

The Employer relies on the declaration of Jesse Aguirre in support of its contention that the translations of the declarations are unreliable and thus might not reflect the true meaning of the declarants. Mr. Aguirre states that, based upon his fluency in both Spanish and English, it was apparent to him that many of the declarations were taken by individuals having a minimal command of the written Spanish language as the declarations are "replete with grammatical, syntax and other irregularities which render them virtually unintelligible." Some of the declarations written in Spanish are in the hand of the farmworkers themselves. Mr. Aguirre does not cite any passages of the declarations which are "virtually unintelligible", nor does he cite any passages of the English translations supplied by the Board's interpreter, Dr. Steve Kemiji, as being inaccurate representations of the declarations. Accordingly, this exception is found to be without merit.

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(fn. 2 cont.)

charged with perjury should they prove false. The Employer, however, has not disputed any of the statements.

The court in Tri-State Mfg. Co. quashed substituted service of process upon the plaintiff since the summons and service had been based upon the affidavit of the defendant and cross-complainants' attorney which was unverified and did not state facts within his personal knowledge. Clearly the statements made in the declarations in this matter are within the personal knowledge of the declarants and were sworn to under penalty of perjury, and are therefore completely acceptable.

4. Authentication of declarations

The Employer maintains that it cannot be shown that the declarations were executed by the individuals whose statements they purport to represent. In support of this contention, the Employer relies on the declaration of Lynn Reyes, which had been submitted in support of the Employer's earlier motion for a hearing. Ms. Reyes states that 14 signatures on declarations do not match company records. We note that each of the 14 declarations was signed by the declarant in the presence of a Board agent. Each declaration was signed by the declarant farm worker under penalty of perjury. Under these circumstances, Ms. Reyes' declaration alone is insufficient to sustain the exception.

5. There is no basis for determining that the alleged economic strikers have engaged in activities inconsistent with their continuing status as economic strikers

The Employer alleges that most of the alleged economic strikers have permanently moved away from the Employer's facility and that several have accepted permanent positions elsewhere. In George Lucas and Sons, supra, we indicated our general reliance upon the rationale and evidentiary presumptions and burdens set forth in Pacific Tile and Porcelain Co., 137 NLRB 1358, 50 LRRM 1394 (1962), as applied to questions of economic striker voting eligibility under Section 1157, paragraph 2 of our Act. The Regional Director's report recognizes this precedent and follows it.

Once an economic striker has established that he or she was on the employer's payroll during an applicable payroll period and that he or she joined the strike, it is the burden of the party

challenging the voter to prove affirmatively that the striker has abandoned his or her interest in the struck job. The Employer's generalized contentions regarding unnamed strikers who have allegedly abandoned the strike do not present any material factual issues which would require a hearing. Absent such a showing, we are entitled to rely, as we do, upon the Regional Director's report. D'Arrigo Bros. of California, Reedley District No. 3, 3 ALRB No. 34 (1977).

The Employer further maintains that the Regional Director's Supplementary Report which issued March 4, 1977, is inadequate because it relied upon declarations executed in 1975, rather than a second investigation in 1977. In our view, a second investigation would have added nothing of substance to the data obtained in 1975 which provided adequate factual information to make such a determination.

6. Jurisdictional strike rather than economic strike

The Employer contends that the strike which commenced July 12, 1973, was Jurisdictional rather than economic. The Employer and the UFW had been parties to a collective bargaining agreement which expired on April 18, 1973. Thereafter, the employees continued to work as the terms and conditions of the contract nominally remained in effect and negotiations had not resulted in a new contract.

According to the declarations of various employees, working conditions had deteriorated and the discharge or layoff of women employees on July 9, 1973, further polarized the parties and

helped precipitate the strike, which began on the morning of July 12, 1973. On the same day, the Employer sent a letter to the UFW stating that as the Teamsters had notified the Employer that they represented the majority of its employees, the UFW's negotiating session scheduled for July 13, 1973, was being cancelled. The UFW replied by letter dated July 13, 1973, demanding that the Employer continue bargaining with the UFW. The Teamsters did not submit an authorization petition until the harvest season of 1973, which began in August, well after the beginning of the strike.

The Employer claims that the strike was jurisdictional within the meaning of the California Jurisdictional Strike Act and that the strikers did not possess the ties and commitment to employment with the Employer which would be prerequisite to voting eligibility in the September 30, 1975, election under Section 1157 of our Act. We have previously concluded that for the purpose of determining voter eligibility under the second paragraph of Section 1157, all pre-Act strikes are conclusively presumed to be economic strikes. Julius Goldman's Egg City, 3 ALRB No. 76 (1977).

7. Abandonment of strike prior to the election

We find no merit in the Employer's exception to the Regional Director's failure to find that the strike had been abandoned prior to the date of the filing of the petition for certification. The presence or absence of pickets is not an essential feature of a strike. Rather, it is the withholding of labor from the employer which is decisive. D'Arrigo Bros. (Reedley), supra. As we stated in D'Arrigo,

> The absence of an offer by the union to return to work and the absence of a notice to the employer of the strike's termination, combined with the fact that the union sought to be certified when the ALRA became law and the appearance of substantial numbers of strikers to vote in an election conducted more than two years after the commencement of the strike all support [the finding that the strike has not been abandoned]. (at page 8.)

B. Challenges Overruled

1. Voters as to whom no specific exceptions were filed

The Regional Director found that the 34 challenged voters in Schedule E had worked during the payroll period immediately preceding the strike, that they ceased working at the time of the strike because of the strike, that they participated in strike-related activities, and that they had not engaged in conduct evidencing abandonment of their strike status. The Employer has submitted no specific exceptions with respect to most of these persons.[3/] We hereby overrule the challenges to their ballots and order that their ballots be opened and counted. See Appendix I, Schedule E.

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[3/]The Employer excepted with respect to four voters (Ayala, Leoz, R. A. Lopez and Magana) in this group on the ground that it had not been served with their declarations. The records of the Executive Secretary reveal that the declarations were in the packet of seventy-four declarations served on the parties, although under names slightly different from the names the Employer lists, viz.: the declaration of "Vicente Cardenas" was served under the name of "Vicente Cardenas Ayala"; the declaration of "Leos Elidia Ibakra" was served under the name of "Elidia Leoz"; the declaration of "Rodolfo L. Arceo" was served under the name of "Rodolfo Arceo Lopez"; and the declaration of "Roberto Magana Acevedo" was served under the name of "Roberto Magana".

2. Voters who allegedly worked after the strike commenced____

The Employer specifically excepted to the Regional Director's recommendation to open and count the ballots of Adolfo Lopez Estrada and Erasmo Murillo, on the ground that they worked after the strike commenced.

Both Adolfo Lopez Estrada and Erasmo Murillo state that they went out on strike July 12, 1973, picketed, have not returned to work for the Employer and have since held various farm labor jobs at comparable wages. The Regional Director confirmed from payroll records that Estrada started working for the Employer in April, did not work on July 11, but worked 11 hours on July 12 before striking. Mr. Murillo was a steady employee of the Employer; his last day on the job was July 12, when he worked 11 hours.

The Employer has submitted no evidence that either of these employees worked after the date the strike commenced. We therefore overrule the challenges to their ballots and order that their ballots be opened and counted. See Appendix I, Schedule F.

3. Voter on an excused absence from work whom the Employer alleges quit prior to the strike_____

The Regional Director determined from payroll records that Manuel Valdovinos had been a harvest worker for the Employer since 1970, and that in 1973 he started working in June. He claims to have asked permission for a few days off to fix his car two days prior to the strike. During these days off, the strike began, and rather than return to work, he joined the picket line. He has

never returned to work for the Employer but has continued to work as a farm laborer for other employers.

Payroll records indicate that Valdovinos last worked on July 10, 1973. The Employer contends that he quit of his own accord on that date, but has submitted no evidence to support its contention.

As a mere denial is insufficient to raise a factual issue, Sam Andrews' Sons, supra, the challenge to this ballot is hereby overruled. See Appendix I, Schedule G.

4. Employees laid off or discharged on July 9, 1973

The payroll period utilized by the Regional Director for determining economic striker eligibility was July 10-16, 1973. The strike commenced July 12, 1973. We find the applicable payroll period, that "immediately preceding ... the commencement of the strike", to be July 3-9, 1973. Accordingly, there are ten employees on the July 3-9 payroll whose votes should be opened and counted.[4/] According to the Regional Director's supplementary report, these ten employees were all laid off or discharged on July 9, 1973.[5/] The Regional Director sustained the challenges as

[4/]We note that all other economic strikers appear on both the July 3-9, 1973, and July 10-16, 1973, payrolls.

[5/]All ten employees submitted declarations indicating that they had been laid off. The Employer claimed that the seven women had been fired for cause. By order of the Board on May 26, 1977, copies of all declarations obtained by the Regional Director were served on all the parties and the parties were given an opportunity to submit any relevant evidence on issues raised by the challenged ballots. The Employer offered no evidence in support of his claim that these women were discharged for cause.

to seven of these persons,[6/] all women, on the grounds that they did not work during the payroll period he considered applicable, had no objective expectation of reemployment because they stated in their declarations that they had been replaced by male workers, and that they therefore did not meet the criteria for economic striker status.

The Regional Director made no recommendation as to the three other employees also laid off July 9, 1973, who, because they were unaware of whether they had been replaced by other persons, were uncertain as to whether they had any expectation of being rehired.[7/]

The UFW excepts to the Regional Director's recommendations, noting first that the Regional Director utilized the incorrect payroll period. Even though we agree that these voters were employed during the correct, payroll period, the other criterion, joining the strike, must be met to establish economic striker status. George Lucas and Sons, supra. The declarations of these ten voters reveal that all of them joined in the picketing and strike activities the day the strike commenced; none has returned to work for the Employer or has done anything inconsistent with their claim of economic striker status.

All of the employees in this group except Ramirez Lopez

[6/]The seven employees are: Maria Guadalupe Arceo, Maria Socorro Gonzalez De Salcedo, Maria De Lourdes Garcia, Sara Garcia Lopez, Esther Prado Valencia, (Maria) Christina Serrano and Teresa Villalvazo.

[7/]The three employees are: Heriberto Acevedo, Fidelia Cardenas and Paul Ramirez Lopez.

have worked at various farm labor jobs for comparable or lower wages since the strike. Lopez has since worked with the UFW and various social service agencies under a federal program earning $2.10 an hour, less than he earned while working for the Employer. He states that he wants to return to the fields. A claim that a striker has procured employment elsewhere, even if at higher wages, would not, by itself, overcome the presumption of his continuing eligibility under the analysis of Pacific Tile which we adopted in D'Arrigo Bros. (Reedley), supra. Accordingly, the challenges to these ballots are hereby overruled and the ballots will be opened and counted. See Appendix I, Schedule H.

5. Harvest workers

The issues herein require us to interpret the provisions of the second paragraph of Section 1157[8/] of the Act. The basic question is whether the second paragraph of Section 1157 allows the Board to afford voting rights to pre-Act economic strikers who meet the 36-month and 18-month time limitations therein, but who were

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[8/] The second paragraph of Section 1157 provides:

> In the case of elections conducted within 18 months of the effective date of this part which involve labor disputes which commenced prior to such effective date, the Board shall have the jurisdiction to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect to the eligibility of economic strikers who were paid for work performed or for paid vacation during the payroll period immediately preceding the expiration of a collective-bargaining agreement or the commencement of a strike; provided, however, that in no event shall the Board afford eligibility to any such striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part.

not paid for work performed, and were not on paid vacation, during the "... payroll period immediately preceding the expiration of a collective bargaining agreement or the commencement of a strike."

The Regional Director recommended sustaining the challenges to the ballots of nine voters[9/] who claimed to be seasonal harvest employees of the Employer. The work history of these nine voters shows that they had prior service with the Employer during its grape harvest, which runs usually from August through October.[10/] Because of their seasonal work patterns, they were not working for the Employer when the strike began or when the collective bargaining agreement between the striking union and the Employer expired in 1973. On that basis the Regional Director recommended that the challenges to their ballots be sustained.

The declaration of each of the nine employees states that when he or she arrived to work for the Employer at the customary harvest time in the 1973 season, the strike was in progress. Each of them chose to join the picket line instead of working. None of them has worked for the Employer since the termination of the 1972

[9/]The nine voters are: Federico Serrano Espinoza, Jesus Serrano Espinoza, Jose Salcedo Estrada, Abraham Serrano Maravilla, Jose Serrano Maravilla, Jesus Serrano Salcedo, Maria Guadalupe Serrano Salcedo, Abraham E. Serrano, and M. Dolores Salcedo Serrano.

[10/]All nine of these employees worked during the 1972 harvest, which means that they had performed work for the Employer within the 36 months preceding the enactment of the ALRA. Moreover, two of them had worked for the Employer during every harvest since 1968 (Jesus Serrano Espinoza and Abraham E. Serrano); four had worked every harvest since 1969 (Federico Serrano Espinoza, Jose Serrano Maravilla, Jesus Serrano Salcedo, and Mr. Dolores Salcedo Serrano); and three had worked only the 1972 harvest (Jose Salcedo Estrada, Abraham Serrano Maravilla, and Maria Guadalupe Serrano Salcedo).

harvest and all of them have been employed at various farm labor jobs since the strike began.

The second paragraph of Section 1157 requires the Board "... to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect to the [voting] eligibility of economic strikers ...."

While there is a paucity of legislative history, most of the statute was patterned after the NLRA. Where this statute departs from the federal pattern, the reason is usually easier to discern. The second paragraph of Section 1157 has no counterpart in the NLRA, and it is manifestly clear that the legislature had in mind the wholesale shift in agricultural labor agreements throughout the State in 1273 and the conflicts arising therefrom when it adopted the special provisions concerning economic strikers. The statute does not define many of the terms used, but our dissenting colleagues would limit eligibility to those on one of the payrolls mentioned without giving any real meaning to the 36-month proviso. This would disenfranchise many harvest workers who come only at harvest time year after year. Many of the UFW contracts expired in April of 1973 and many of the strikes began subsequent to that date but before the usual beginning of harvest work. Our records reflect in this case and in many others that harvest workers who were never on April or June payrolls came to work in 1973 at their customary time and joined the strike in progress. We cannot believe that it was the intent of the legislature in adopting very special provisions for economic strikers in California agriculture as of 1975 to exclude this substantial number of agricultural

workers.

The canons of construction are not technical rules of law, but are "axioms of experience"; and while differing approaches are emphasized in different cases, well established principles accepted by the Supreme Courts of the United States and of the State of California are clearly contrary to the restrictive approach taken by our dissenting colleagues. Of course, the words used in the statute are the starting point, but to be faithful to the intent of the legislation requires placing the words in the context of the "history of the events they summarize"', the objectives of the statute and of the relation of one provision to others. As observed by Learned Hand in Cabell v. Markham, 148 F.2d 737, 739 (2d Cir. 1945), "But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."[11/]

Our dissenting colleagues assert that some words are "plain-meaning, unambiguous" and "clear" and then speculate about the legislature's balancing of the rights of strikers and current employees. We do not find the use of certain payroll periods, as well as the 36-month limitation in Section 1157, to be so beyond dispute; nor do the four authors of the bill. In connection with

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[11/]Enforced as Markham v. Cabell, 326 U.S. 404. For statutory construction, also see Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S 177, Universal Camera Corp. v. NLRB, 340 U.S 474, Lynch v. Overholsen, 369.U.S. 705, U.S. v. American Trucking Assn., 310. U.S. 534, Re Haines, 195 Cal. 605, and Steilberg v. Lackner and cases cited therein, 69 Cal. App. 3d 780 (1977).

another case, each of the four authors of the bill which became law sent communications to then Chairman Roger Mahony, which were served on all the parties, about the meaning of Section 1157. Senator Dunlap's letter of December 29, 1975, said:

> I don't believe it was legislative intent that technical precedents of a national law which involved non-agricultural labor should defeat the purpose of the California Agricultural Labor. Relations Act. It is possible, of course, that the Board might still look to NLRA precedents in making determinations relative to this Act if such precedents are not inconsistent with State legislative intent as expressed therein.
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> Basically, I believe the Board should construe the Act liberally in determining a proper definition for "economic strikers" relative to strikes prior to the Act. The second paragraph of Section 1157 of the CALRA was intended to allow participation by anyone who had a legitimate interest in the general Gallo employee situation.

Senator Zenovich's mailgram, dated September 17, 1975, insisted that "NLRB precedents controlled the question of voting eligibility of economic strikers." Assemblyman Alatorre's telegram of October 15, 1975, said:

> The National Labor Relations Board precedents are not to apply to the question of economic strikers voting eligibility in strike situations existing prior to the effective date of the Agricultural Labor Relations Act.
>
> The second paragraph of Section 1157 of the Agricultural Labor Relations Act provides that the farm workers whose names appear on either of the two particular payroll dates listed in the language of the legislation would be permitted to vote and have their ballots counted in a farm labor representation election. All that they need to do is vote, and declare that they went on strike. Section 1157 further provides that the Agricultural Labor Relations Board is to give special consideration and the right to vote to those economic strikers who fall within the 36-month proviso although they do not appear on either payroll list mentioned specifically.

Assemblyman Berman's telegram was dated October 2, 1975, and included this statement:

> The second paragraph of Section 1157 was specifically included to permit the Board to deviate from National Labor Relations Board precedents regarding economic strikers involved in labor disputes pre-existing the Act. This is in contrast to the first paragraph of that section.

While post enactment statements of the authors of legislation are generally not acceptable in California courts as proof of legislative intent, much of the discussion in the dissent about such comment misses the point. These statements are not quoted in proof of legislative intent, but merely to show that the four co-authors at a time close to the adoption of the statute had differences of opinion about Section 1157. As such, they speak for themselves.[12/] Quite apart from these statements, we find that the use of the 36-month provision renders the reference to payrolls less than crystal clear. Looking at the same statute, legislative history, code provisions, and court cases as the dissenters, we find the interpretation here adopted to be compelled in order to give effect to the words used by the legislature.

The dissenting opinion refers to the testimony of then Secretary of Agriculture and Services Rose Bird before the Senate Industrial Relations Committee on May 21, 1975. At that same session, Ms. Bird also testified as follows:

[12/]Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247 (1972), and In re Marriage of Bouquet, 16 Cal. 3d 583 (1976), cited by the dissent, like most of the others, found statements of legislators to be admissible but limited as to weight. See also Chapter 15 of K. C. Davis, Administrative Law Text, 291-317 (3rd ed. 1972).

> There axe limitations; there's a 36-month, limitation and who can vote in individuals who predate this effective Act. We are not talking about packing people on month, after month, after month; we're talking about one farm within 18 months where you have one petition for an election, the board determining who predates this Act can vote on that farm, and all I'm. saying is, is that in this bill and throughout this bill, the Legislature has delegated to the board some responsibilities. Somewhere along the line we have to have some faith that they can work this out, and I suggest this is one of the areas where you've got to allow the board to work out who comes under the definition of an economic striker and who does not. Otherwise, we will be here ten years from now trying to determine who, in the past 36 months, should have been allowed to vote on these farms (page 31).

The dissent argues that the use of the word "jurisdiction" in relation to our authority "to adopt fair, equitable and appropriate eligibility rules" limits us to a definition of eligible voters that does not look to whether they are persons whom this paragraph is designed to enfranchise, but only to examine whether they fall into one of two named payroll periods that have no bearing on the issue of who is and who is not an economic striker. We disagree. The "jurisdiction" we are given in such a circumstance is to adopt reasonable rules for enfranchising pre-Act economic strikers, not to limit ourselves to an examination of pre-strike or pre-expiration of collective bargaining agreement "payroll periods".

We believe the legislative intent and objectives can be effectuated only by enfranchising the economic strikers whose stake in the outcome of the representation election was evidenced by their withholding of their services from the time of the first fall harvest after the commencement of the economic action in 1973 until the time of the representation election herein, two years

later, in 1975, We believe that the legislature clearly intended that those who had such a stake in the election were not to be denied a voice in the eventual resolution of the election merely because they were not working during one of the named payroll periods.

The voting eligibility of these nine economic strikers will not be impaired because they did not join the strike at its inception. It is sufficient that they joined and supported the strike during the pre-election period and continued to do *so* up to the time of the election. To the extent that Marlin Brothers, 3 ALRB No, 17 (1977), limits the status of economic strikers to persons who join the strike at its inception, it is hereby overruled.

The challenges to these nine ballots are hereby overruled. The ballots will be opened and counted. See Appendix I, Schedule I.

6. Voters appearing on the payroll immediately preceding the expiration of the collective bargaining agreement who also went out on strike

Two workers, Jose T. Puga and Miguel Prado Valencia, appeared on the Employer's payroll immediately preceding the termination of the collective bargaining agreement on April 18, 1973. Each declared that he joined in the strike activities beginning July 12, 1973.

Jose T. Puga states that he worked at pruning for the Employer from November 1971 to February of 1972. He started again in the next pruning season in November of 1972 and worked steadily

until the beginning of May 1973, when he was told by Bruno that there was no more work for him. No explanation was given him as to why he was being laid off or terminated, and he has never returned to work for the Employer since that time. Mr. Puga joined the picket line July 12, 1973, receiving strike benefits. Since that time he has worked at various farm labor jobs.

Miguel Prado Valencia worked for the Employer from August 1968 through April 1973, at which time he quit because the UFW's contract had expired and the Employer had not signed a new contract. He started picketing July 12, 1973, and received strike benefits. He has never returned to work for Franzia, but has worked for various farm labor contractors since that time.

Both of these employees had a work history at Franzia which established their community of interest and concern with the economic strikers who were paid during the payroll period immediately preceding the strike. Both worked during the payroll period immediately preceding the expiration of the contract, a period specifically mentioned in Section 1157 as establishing economic striker status. Both supported the strike and have continued to withhold their labor.

On the basis of the above, the challenges to the ballots of these two employees are hereby overruled and their ballots will be opened and counted. See Appendix I, Schedule J.

C. Challenges Sustained

1. Voters not on applicable payrolls to establish presumption of economic striker status who were unavailable during the Board's investigation

The three employees named below were not on the Employer's

payroll for the period immediately preceding the beginning of the strike nor on the one immediately preceding the expiration of the collective bargaining agreement. They failed to make themselves available for the Board's investigation of their alleged economic striker status and hence no declarations from them are available. The Employer's payroll records indicate that Eladio Angulo worked from January 1973 to March 1973, when he allegedly retired. The payroll record of Ana Catalina Fabian De Vargas indicates that she worked from May 23, 1973, to June 11, 1973, when she quit of her own accord. Records for Marta Elena Arceo Estrada show that she worked one week in April and one week in May of 1973.

In these circumstances, the challenges to their ballots are hereby sustained. D'Arrigo Bros. (Reedley}, supra. See Appendix II, Schedule K.

2. Voters not on applicable payrolls to establish presumption of economic striker status who quit prior to the strike

The employees named below did not appear on the Employer's payroll during either of the applicable payroll periods and indicated in their declarations that they had quit of their own accord prior to the eligibility periods.

Jose Cortez Simon states that he had not worked for the Employer since January or February of 1971. Paragraph 2 of Section 1157 states that a striker may not be considered eligible to vote if he or she has not rendered personal services for the employer within 36 months preceding the passage of the Act, or since August 28, 1972.

Edelmira Serrano Salcedo worked for the Employer from

August 30 to October 5, 1972, and again from April 25 to May 23 of 1973 when she admittedly left on her own account.

Maria Elena Salcedo states that she harvested grapes at Franzia in 1972. In 1973, she began working in April and left at the end of June to have a child. When she returned from having her baby, the strike was in progress, so she joined the strike, picketing several days a week for three months. She has never returned to work at Franzia, and has not worked since her baby was born, because, as she stated, "I have my child." The records of the Employer substantiate that she worked from August 16, 1972, to October 5, 1972, from April 25, 1973, to May 9, 1973, and also during the week of June 11, 1973. While her absence for reasons of maternity would not necessarily disqualify her from successfully asserting economic striker status, voluntarily remaining out of the labor force thereafter necessitates the finding that the challenge to her ballot should be, and it hereby is, sustained.

On the basis of the above, the challenges to the ballots listed in Schedule L are hereby sustained. See Appendix II, Schedule L.

3. Voters with no payroll records who were unavailable for the Board's investigation

The two employees listed below did not make themselves available for the Board's investigation and, as the Regional Director found no payroll records for them, he made no recommendation regarding their ballots. The UFW excepted, contending that these voters signed a declaration when they voted at the election attesting to their status as economic strikers and should therefore

be presumed to be economic strikers in accordance with, the presumptions established by George Lucas and Sons supra.

In D'Arrigo Bros. (Reedley), supra, we considered a similar issue, involving employees whose names did not appear on the statutory pre-strike payroll and who did not appear at the post-election investigation to substantiate their economic striker status. The presumptions found in George Lucas and Sons, supra, and Pacific Tile and Porcelain Co., supra, were held inapplicable to individuals not appearing on the applicable payroll and whose unavailability precluded a proper investigation of their claim to enjoyment of this special statutory provision. As we noted in D'Arrigo,

> If the election process is to be viable it must be based upon as prompt a fixing of the results as is possible under all the circumstances. This election, now over one and one-half years old, must not be allowed to languish any longer in a state of incompletion.

In view of their unavailability during the investigation and the fact that their names are not on the Employer's pre-strike payroll, the challenges to the ballots of these two employees are hereby sustained. See Appendix II, Schedule M.

D. Challenges Remanded if Outcome-Determinative

1. Voters on the payroll immediately preceding the strike but unavailable for the Board's investigation

The nine employees listed below were found by the Regional Director to have been working during the applicable payroll period, but did not present themselves for the Board's investigation. The Employer has excepted to the Regional Director's recommendation that the challenges to their ballots be overruled,

contending that it was not served with copies of their declarations. Mere nonappearance during the investigation is insufficient to disqualify a voter who is on the Employer's payroll for the applicable period used to presumptively establish voting eligibility. Because the Regional Director made no other findings with respect to these ballots, we are unable to resolve these challenges at the present time. Accordingly, we shall remand the matter for additional investigation if it becomes necessary to determine their eligibility. See Appendix III, Schedule N.

2. Voters with discrepancies between their payroll records and their declarations

With respect to the five employees named below, there are discrepancies between their payroll records and their declarations.

Ana Maria Puentes states that she worked at Franzia from May 25, 1973, to July 9, 1973, when she was fired for "union cause" and allegedly told that the Employer did not want women employees. She participated in the strike and received strike benefits. Since the strike she has worked at the Tri-Valley cannery as a seasonal employee and at walnut picking a few days a year. The Regional Director found no payroll records for her and made no recommendation concerning the challenge to her ballot.

Elva Serrano states that she worked for the Employer as a harvest worker every season from 1968 through 1972. According to payroll records, she worked the grape harvests for 1968 through 1972 and also worked from April 25 through May 23, 1973. The Regional Director found that she had quit and sustained the

challenge to her ballot. She stated in her declaration of November 13, 1975, given to a Board agent, that in 1973 she worked from "about the 5th of May" until "at the end of June I stopped work. They didn't fire me."

The UFW submitted *a* declaration from Ms. Serrano dated February 18, 1976, in support of its exceptions to the Regional Director's preliminary report on challenged ballots. In this declaration, she stated that she started to work at Franzia in May of 1973 and that

> sometime in the next four months, the company fired a large number of women workers. One of these workers that was fired was my friend Christina Serrano. I used to ride with Christina to work at Franzia every day .... When Christina was fired from Franzia, I did not have a ride to work any longer ... I never quit work from Franzia, and I was never fired. I was deprived of my ride to work when the company fired Christina Serrano, but I never told the company I had quit.

As Ms. Christina Serrano was discharged on July 9, 1973, this would seem to imply that Ms. Elva Serrano also stopped working on that day, in contradiction to the Employer's payroll records and her previous declaration made to a Board agent.

Porfirio Espinoza Serrano states in her declaration that she worked for the Employer for seven years. In 1973, she started working in April and continued until she went on strike July 12, 1973. She has never returned to work at Franzia, but has worked for various contractors doing farm labor at lower wages than she had earned at Franzia. The payroll records indicate that she worked from April 18, 1973, to June 25, 1973, and from August 16, 1972, until October 5, 1972, The Regional Director made no recommendation with respect to the challenge to her ballot.

Teodoro Simon Diaz states that he worked as a seasonal pruner from 1968 to 1973. In 1973, after finishing pruning, he was kept on as a steady tractor driver. As he worked nights, he went out on strike July 13, 1973. He was on the picket line and received strike benefits. He has never returned to work at Franzia, but has worked at other farm labor jobs since.

The Regional Director found that Diaz worked on July 12 for nine hours, did not work on the 13th, and worked on the 14th for nine hours before joining the strike. The Employer specifically excepted to the Regional Director's recommendation to overrule the challenge to Mr. Diaz' ballot, but relies only on the findings of the Regional Director and presents no other evidence.

Jorge Zaragoza Cardenas stated in his declaration that the last day he worked for the Employer was during the first part of July 1973. He does not remember the date the strike began, nor whether he was actually working on that day, but he began picketing when the strike started. He has not worked for Franzia since, but has worked at various farm labor jobs with other contractors. He wants to return to Franzia. Cardenas filled out one of the "form" declarations, in which he stated that he reapplied for work at Franzia on three occasions after the election, but does not recall the dates of these applications. He denied in his declaration that he had ever asked the Employer to put his name on a list for future employment.

The difference between reapplying and being put on a list for future employment might have cause some confusion. There are no payroll records available for Mr. Cardenas, and the Regional

Director made no recommendation concerning the disposition of his ballot.

As there is no evidence before the Board to explain the discrepancies involving these employees, we do not resolve the challenges to their ballots at this time, but will remand the matter in the event those ballots prove outcome-determinative, so that the Regional Director may conduct such further investigation as may be necessary to clarify these conflicts. D'Arrigo Bros. (Reedley), supra. See Appendix III, Schedule O.

Dated: December 14, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

APPENDIX I

OPEN AND COUNT

(66 Ballots)

Schedule A:

1. Raul Cardenas
2. Filiberto Mora Morales
3. Luis Morales

Schedule D:

1. Ismael Carrillo
2. Victor Melendrez
3. Javier Rodriguez
4. Librado Rangel
5. Roberto Taberna

Schedule E:

1. Luciano Magana Acevedo
2. Luis Magana Acevedo
3. Vicente Cardenas Ayala
4. Feliciano Campa
5. Jesus Simon Cortez
6. Elfego Covarrubias Perez
7. Gustavo Covarrubias
8. Jose Roraulo Covarrubias
9. Julio Covarrubias
10. Maria Refugio Covarrubias
11. Marino Covarrubias
12. Luciano Magana Diaz
13. Josefina Prado Estrada
14. Marta Elena Cardenas
15. Francisco Garcia
16. Leonila Grandes Lopez
17. Luisa M. Gutierrez
18. Elidia Leoz
19. Jose Lopez Meza
20. Rodolfo Arceo Lopez
21. Manuel Madrigal Rueda
22. Roberto Magana (Acevedo)
23. Jose Ramos Medrano
24. Maria Valencia Prado
25. Miguel Lopez Prado
26. Socorro Prado Valencia
27. Hilario C. Puentes
28. Raul Salcedo (Tapia)
29. Jesus Valencia Sandoval
30. Jose Valencia Sandoval
31. Eugenio Diaz Simon

32. Cruz Valencia (Valencia)
33. Jesus Gonzalez Villalobos
34. Raul Villalvazo

Schedule F:

1. Adolfo Lopez Estrada
2. Erasmo Murillo

Schedule G:

1. Manuel Valdovinos

Schedule H:

1. Heriberto Acevedo
2. Maria Guadalupe Arceo
3. Fidelia Cardenas (Valencia)
4. Maria Socorro Gonzalez De Salcedo
5. Maria De Lourdes Garcia
6. Paul Ramirez Lopez
7. Sara Garcia Lopez
8. Esther Prado Valencia
9. (Maria) Christina Serrano
10. Teresa Villalvazo

Schedule I:

1. Federico Serrano Espinoza
2. Jesus Serrano Espinoza
3. Jose Salcedo Estrada
4. Abraham Serrano Maravilla
5. Jose Serrano Maravilla
6. Jesus Serrano Salcedo
7. Maria Guadalupe Serrano Salcedo
8. Abraham E. Serrano
9. M. Dolores Salcedo Serrano

Schedule J:

1. Jose T. Puga
2. Miguel Prado Valencia

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APPENDIX II

SUSTAIN CHALLENGES

(11 Ballots)

Schedule B:

1. Johnny S. Gorospe
2. Dionicio Tabanqcura

Schedule C:

1. Jose Nava

Schedule K:

1. Eladio Angulo
2. Ana Catalina Fabian De Vargas
3. Marta Elena Arceo Estrada

Schedule L:

1. Jose Cortez Simon
2. Edelmira Serrano Salcedo
3. Maria Elena Salcedo

Schedule M:

1. Jose Luis Estrada Salcedo
2. Genaro Lopez Vargas

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APPENDIX III

REMAND IF OUTCOME DETERMINATIVE

(14 Ballots)

Schedule N:

1. Jesus J. Magana Acevedo
2. Manual Lopez Aguilar
3. Rodolfo Arceo Estrada
4. Antonio Ceja Gonzalez
5. Juan Mendez Guerra
6. Rodolfo Perez Martinez
7. Jose Luis Mendez
8. Ernesto Lopez Meza
9. Jesus Soto Villalvazo

Schedule O:

1. Jorge Zaragoza Cardenas
2. Ana Maria Puentes
3. Elva Serrano
4. Porfirio Espinoza Serrano
5. Teodoro Simon Diaz

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Member HUTCHINSON, dissenting in part:

I dissent from that portion of the majority opinion dealing with the eligibility of "harvest workers" claiming economic striker status.

At issue is the interpretation of the second paragraph of Section 1157 of the Labor Code. That section, in pertinent part provides:

> ...the board shall have the jurisdiction to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect to the eligibility of economic strikers who were paid for work performed or for paid vacation during the payroll period immediately proceeding the expiration of a collective-bargaining agreement or the commencement of a strike; provided, however, that in no event shall the board afford eligibility to any such striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part. (Emphasis added)

The clear meaning of the statutory language limits the Board's jurisdiction to consideration of eligibility rules for certain, not all, economic strikers. They must, at least, be on

one of the described, payrolls and have performed services within three years of the date of the Act in order to be subject to whatever additional rules the Board may adopt.

The majority position on this issue fails to give any effect to the limitations expressed with respect to designated payroll periods.

Cases declaring principles of statutory construction are legion. All are remarkably consistent in the expression of the basic concept that "there is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." U.S. v. American Trucking Ass'n., 310 U.S. 534, 543 (1940).

The California Supreme Court has declared that a literal application of statutory language is required unless "it is opposed to the intention of the legislature apparent by the statute, and ... the words are sufficiently flexible to admit of some other construction." Friends of Mammoth v. Board of Supervisors, 8 Cal. 3rd 247, 259 (1972) (Emphasis added.).

Thus the majority position cannot be supported unless the statutory language requiring payment for services or vacation during one of two described payroll periods is both repugnant to legislative intent and ambiguous enough to reasonably permit more than one interpretation. Neither is the case.

Initially it should be noted that the intent of the legislature cannot be deciphered by reference to a single sentence or paragraph in the Act. The entire Act must be considered as a whole and each section or subsection examined in relation to

other provisions.

California Code of Civil Procedure, Section 1858 requires:

> In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.(Emphasis added)

The majority's analysis of legislative intent is inadequate in light of these principles. The majority takes the position that the legislature[1/] "clearly intended" that economic strikers not on either of the designated payrolls be considered as eligible voters. But the result achieved is absolutely irreconcilable with the result required by the

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[1/] It is relevant to note that the provision at issue here is not the creation of the legislature. It was, rather, the product of negotiation and compromise among the representatives of the parties affected by the Act. The legislature adopted verbatim the language agreed upon by those parties.

The only legislative history available to us on this point is the transcript of the hearings before the Senate Industrial Relations Committee on May 21, 1975. One of the witnesses appearing before the committee was Ms. Rose Bird, then Secretary of Agriculture and Services who, in response to a proposed amendment by Senator Stull to delete the second paragraph of Section 1157, had this to say:

> May I also point out that this was worked out, as the rest of the bill was, in conjunction with all parties who are involved. This is a compromise. We have never claimed that this is perfect. I do feel, however, that in this one section, that we have attempted to place guidelines before the Board so that something can be done in terms of a resolution as to which one of these individuals (pre-Act economic strikers)...should be able to vote. And all I'm suggesting is that the agreement on the part of all of the individuals was that the bill would remain intact. It is a compromise. (Emphasis added) Public Hearing Senate Industrial Relations Committee, May 21, 1975 at p. 37.

language that same body chose to adopt. The majority position can only be supported by concluding that the legislature engaged in idle verbosity in referring to the designated payroll periods as a limitation of economic striker eligibility. Such a conclusion is illogical on its face. Furthermore, it is contrary to the indications we have as to legislative intent (See footnote 2, infra) and inconsistent with the other legislative goals evident from consideration of the Act as a whole, as required by CCP Section 1858.

The second paragraph of Section 1157 has no counterpart in the National Labor Relations Act and was obviously designed to provide special recognition to the rights of many farmworkers who participated in the numerous strikes that occurred in late 1972 and 1973. It is also obvious that the rights of those workers had to be balanced with the rights of current employees in the election process.

Because agriculture is a seasonal occupation, it is impossible to insure that all employees will participate in any given election. It is necessary, therefore, to select some artificial, yet reasonable, standard for determining voter eligibility. For current employees the legislature chose the Employer's payroll for the period immediately preceding the filing of a petition. Labor Code Section 1157. Thus, it is possible that almost half of the current workers who have an interest in the outcome of any election may be ineligible to vote by the fortuitous event of not being on the payroll for the period immediately preceding the filing of the petition. Because

of the potential competing interests of current employees with economic strikers, the legislature clearly sought to strike a balance by imposing similar limitations on the eligibility of economic strikers.

To be sure, all workers employed by an Employer during the calendar year have equal interest in an election. But it is unfair to ignore a statutory limitation applicable to economic strikers while enforcing an identical limitation applicable to current employees.

That the legislature chose plain-meaning, unambiguous terms to express its wishes cannot logically be disputed. The use of the word "jurisdiction" in the second paragraph of Section 1157 makes it clear that the legislature intended to limit the Board's powers.[2/] Indeed, the majority opinion makes no attempt

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[2/]Reference is again made to the proceedings before the Senate Industrial Relations Committee on May 21, 1975. After Senator Stull proposed an amendment deleting all of the second paragraph of Section 1157 the following transpired:

> SENATOR PRESLEY: Question of Ms. Bird. Should Senator Stull's amendment be adopted, how would we determine who is going to vote or what would be the net result as you would interpret it?
>
> ROSE BIRD: I think what would happen is the board, would have no guidelines then and then it would be totally in the discretion of the board...If you take (the second paragraph of 1157) out of this, you will have no indication to the board at all as to what the legislature wants, with no limitations at all.
>
> At least with the language that you have in here, you have

(fn. cont. on p.40)

to argue that the words are "sufficiently flexible to admit of some other construction." Friends of Mammoth v. Board of Supervisors, supra.

Instead, the majority relies upon certain letters and telegrams sent to the Chairman of the ALRB by individual legislators for the proposition that the legislative intent is subject to legitimate dispute. Apart from their invalidity as appropriate tools of statutory construction, the use of such communications in the present case raises serious procedural questions.

It is not clear why the telegrams were originally sent to Chairman Mahony, but they next appeared as attachments to the post-hearing brief of the UFW in the case of E & J Gallo Winery, 75-RC-6-F, which also involved the interpretation of the second paragraph of Section 1157.

The communications are mere expressions of "beliefs"

(fn. 2 cont.)

> indicated to the board quite clearly that you only want them to allow and consider economic strikers within 36-months before the effective date of the Act, and only those where there is a petition that had been filed within 18 months, then it has to be fair, equitable, and appropriate in terms of eligibility rules and that they have to make a determination in each case as to whether or not it ought to be on individuals who are paid for work performed or paid vacation during a payroll period immediately preceding the expiration of a collective bargaining agreement or the commencement of a strike. You have limitations placed in here by the Legislature that indicate and give guidance to the board. Without that language in there, you have no guidance whatsoever, and the board can make any determination it wants. (Emphasis added)

Throughout the testimony relevant to this section it is pointed out that the Board has discretion to use either one or both of the designated payroll periods. Nowhere is it suggested that eligibility can be granted to those persons on neither.

and/or "opinions;" are not sworn to and themselves bear no indication that they were then served on any party to proceedings before the Board.

Government Code Section 11515 places certain restrictions on administrative agencies with respect to matters which may be officially noticed. First, notice may be taken "of any fact which may be judicially noticed by the courts of this state." Secondly, the parties present at the hearing "shall be informed of the matters to be noticed...[and] shall be given a reasonable opportunity... to refute the officially noticed matters..."

In Bragg v. City of Auburn, 253 Cal. App. 2d 50 (1967), the court had the following comment upon a closely analagous situation:

> The declaration is substantively and procedurally unacceptable. The statement of an individual legislator as to his intention, motive, or opinion is inadmissible, (citations) Mr. Mills' declaration was neither offered nor received as evidence in the trial court. Its contents were ineligible for judicial notice and may not be force-fed into litigation by metamorphosing it into a document 'filed' ex parte... outside the arena of adversary trial, nor may it be bootstrapped into cognizability by designating it as part of the [record] on appeal. (See Evid. Code §§ 140, 310, subd. (a)). Id. at 54.

Substantively, California courts have uniformly disregarded post-enactment expressions of legislative intent, of the type relied upon by the majority herein, for any purpose connected with statutory construction. Ex Parte Goodrich, 160 Cal. 410, 170 P.451 (1911), In Re Lavine, 2 Cal. 2d 324, 41 P.2d 161 (1955), Friends of Mammoth v. Board of Supervisors, 8 Cal. 2d 247 (1972), In Re Marriage of Bouquet, 16 Cal. 3d 583 (1976), Rich v.

State Board of Optometry, 235 Cal. App. 2d 591 (1965), Wheat v. Hall, 32 Cal. App. 3d 928 (1973), and McGlothlen v. Department of Motor Vehicles, 71 Cal. App. 3d 1005 (1977).

In McGlothlen v. Department of Motor Vehicles, supra, one of the parties attached to its brief a letter from the author of the legislation under consideration. The court noted:

> It is questionable whether that letter has any probative effect or may be resorted to in any way to determine the interpretation or basis for enactment. (Emphasis added) 71 Cal. App. 3d at 1015

In Friends of Mammoth v. Board of Supervisors, supra, the Supreme Court had before it two sworn declarations of legislators which, like the communications cited in the majority opinion, were contradictory. The Supreme Court noted:

> That two legislators report contradictory legislative intent fortifies judicial reticence to rely on statements made by individual members of the legislature as an expression of the intent of the entire body (citations). 8 Cal. 3d at 258.

Unlike post-enactment expressions of individual legislators, the testimony and arguments given before legislative committees during the pendency of proposed legislation are recognized as valuable extrinsic aids in construing statutory language. Contrast the statements of belief and opinion contained in the communications cited by the majority with the testimony of Secretary Bird before the Senate Industrial Relations Committee:

> ...[w]ho should be able to vote, whether its only the people at the commencement of the strike, whether it's only those that are involved in the termination of the contract when there is a labor dispute that is involved, because that's one of the requirements under that second paragraph. (Emphasis added) pg. 30

One commentator recently noted an obvious pitfall[3/] associated with post-enactment pronouncements of individual legislators:

> ...if a legislator is to be allowed to testify concerning his own opinions--a dubious proposition at best--the court should be careful to ascertain his precise role in writing, introducing, and securing passage of the bill. After all, not every legislator actually writes each bill he introduces. Often, the original idea for legislation and even its initial draft comes from others: lobbyists, local governmental bodies, state agencies, the Governor, and many more. As to bills thus born, the legislative 'author' may know very little. He may well have only an imperfect understanding of the reason for the bill and no better insight into the meaning of its words than the court itself. Smith, Legislative Intent; In Search of the Holy Grail, 53 State Bar Journal, No. 5, 294, 299 (1978).

The above comments are most appropriate in the present case in light of the unique evolution of the statutory language at issue as evidenced by the testimony before the committee noted in footnote 1, supra.

To be sure there are equities which weigh in favor of finding the harvest workers herein eligible to vote. It is equally certain that the Legislature found counter-balancing equities and chose precise language to express its resolution of the competing interests involved. A majority of this Board chooses to ignore the Legislature's directive, relying exclusively

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[3/]There are other potential dangers inherent in the use of out-of-court, post-enactment, declarations of legislative intent. Permitting a "one-man amendment" is one. Wheat v. Hall, 32 Cal. App. 3d 928, 939 (1973). Another is the uncertainty concerning the true authorship of out-of-court statements. In Ballard v. Anderson, 4 Cal. 3d 873 (1971), the court was faced with two letters. One was purportedly sent by the Senator who co-authored a bill and the other was from the same Senator stating that his administrative assistant had written the first letter without the Senator's knowledge or approval.

on untrustworthy documents and strained readings of general pronouncements on the canons of construction. In so doing, they arrogate to themselves a power which, under all the prevailing statutory and case authority, they do not have.

Dated: December 14, 1978

ROBERT B. HUTCHINSON, Member

* * *

Member McCARTHY, dissenting:

I join in the dissenting opinion of Member Hutchinson.

Dated: December 14, 1978

JOHN P. McCARTHY, Member

CASE SUMMARY

Franzia Bros. Winery (WCT) 4 ALRB No. 100
Case No. 75-RC-22-S

CHALLENGED BALLOT DECISION

Following the filing of a Petition for Certification by the Western Conference of Teamsters (WCT), an election by secret ballot was conducted on September 30, 1975, among the agricultural employees of Franzia Bros. Winery (Employer). The Tally of Ballots showed 86 votes for WCT, 57 for the UFW, 3 for no union, and 4 void ballots. There were also 92 challenged ballots, sufficient in number to determine the outcome of the election.

REGIONAL DIRECTOR'S REPORT

After an investigation, the Regional Director issued a preliminary and supplemental report on challenged ballots, and the parties filed exceptions thereto.

BOARD DECISION

In its Partial Decision on Challenged Ballots, the Board, affirming the Regional Director's recommendation, decided to overrule three challenges, and to sustain two challenges, to the ballots of voters whose names did not appear on the eligibility list. The Board sustained a challenge to the ballot of a voter who did not make himself available during the challenged-ballots investigation. The Board affirmed the Regional Director's recommendation and overruled challenges to the ballots of five voters who were alleged to be supervisors, as it found no evidence that they exercised any statutory supervisory authority.

The Board found that the correct payroll period for determining economic-striker eligibility was July 3-9, 1973, rather than July 10-16, the period used by the Regional Director. Accordingly, the Board overruled challenges to the ballots of a group of workers laid off on July 9, whom it found had joined the strike at its commencement.

The Board overruled challenges to the ballots of nine harvest workers who were neither paid for work performed nor on paid vacation during the pre-strike eligibility period. It found that each of the workers had a history of harvest employment with the Employer and that each joined the strike upon his or her return to work for the Employer during the 1973 harvest season. The Board held that it was not the intent of the legislature, in adopting Section 1157 of the Act, to

exclude a substantial number of regular harvest workers who had not yet begun to work, but who joined the strikes in progress. The Board held that its jurisdiction to adopt rules enfranchising pre-Act strikers is not limited by the mention in the Act of specific payroll periods. The Board overruled Marlin Bros., 3 ALRB No. 17 (1977), to the extent that it limits eligibility to economic strikers who join a strike at its inception.

The Board overruled challenges to the ballots of two voters whose names appeared on the payroll period immediately preceding the termination of the collective bargaining agreement on April 18, 1973, and who joined the strike on July 12. It sustained challenges to the ballots of the following economic strikers: those who were neither on the payroll for the period immediately preceding the termination of the collective bargaining agreement nor on the payroll for the period immediately preceding the beginning of the strike and who failed to make themselves available for Board investigation; those who indicated that they quit before the strike began; those as to whom there were no payroll records and who were unavailable during the Regional Director's investigation. The Board remanded for further investigation, should they prove to be outcome-determinative, challenges to the ballots of the following economic strikers: those who were on the payroll immediately preceding the strike and were unavailable during the Regional Director's investigation; those as to whom there were discrepancies between their payroll records and their declarations.

DISSENTING OPINION

Members Hutchinson and McCarthy, dissenting in part, would have held that Section 1157, paragraph 2, limits the Board's jurisdiction to establishing eligibility rules for only those economic strikers who were on the payroll preceding the ccmmencement of a strike or the payroll preceding the expiration of a collective bargaining agreement. They would therefore have found that the harvest workers who joined the strike after its inception were ineligible to vote.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *