

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

WHITE RIVER FARMS,)	
Employer,)	Case No. 75-RC-79-F
)	
and)	4 ALRB No. 43
)	
UNITED FARM WORKERS)	
)	
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	
)	

DECISION AND ORDER SETTING ASIDE ELECTION

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW), an election by secret ballot was conducted on October 6, 1975 among the agricultural employees of the Employer. A summary prepared by Board Agents after the voting indicated that 307 persons voted and that all ballots were challenged.

In these circumstances as the outcome of the election could not be determined without resolving most of the challenges, the Regional Director conducted an investigation and issued his Report on Challenged Ballots on March 10, 1978. Thereafter the Employer filed exceptions to 138 of the Regional Director's recommendations along with a brief in support of its exceptions. The Employer also submitted several documents, supporting some

of its factual contentions. However, numerous factual contentions made in the exceptions brief were not supported by declarations or other documentary evidence, as required by 8 Cal. Admin. Code Section 20363 (b).

The Regional Director's Report is incomplete in certain material aspects. For example, there were some 108 challenges in the "economic striker" category and the Regional Director recommended that 86 of those challenges be overruled. However, no finding was made as to the specific date on which the strike began or even a finding that an economic strike did in fact occur. The Report simply notes that "the petitioner alleged that a strike over economic issues commenced on or about August 28, 1972." The lack of specificity as to the commencement date is critical in view of the 36-month limitation on economic striker eligibility in Labor Code Section 1157.

The Report fails to account for the total number of votes cast or the number of challenges in each category. It indicates that a summary sheet prepared by Board Agents after the balloting shows 307 votes cast, all of which were challenged, but states that that figure "appears to be incorrect" . The Report deals with 305 challenges, but the Director refers to a ten-page "challenge list," attached to his Report as Appendix B, an examination of which reveals the names of only 266 voters. Moreover, there are sixteen voters named in Appendix B who are not dealt with in the body of the Report and 56 voters dealt with in the body of the Report whose names do not appear in Appendix B.

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On the present record we are unable to resolve any of the challenges. Moreover, in view of the fact that about thirty-three months have passed since the election, we believe it would prove extremely difficult or impossible to locate the large number of employee-witnesses who would have to be contacted in the event of either a remand to the Regional Director for further investigation or the direction of an evidentiary hearing on these challenges and the pending objections petition. In the unique circumstances of this case, where all 307 ballots have been challenged, reinvestigation of all issues and/or a full evidentiary hearing so long after the election may in all probability consume many more months with no certainty that a resolution of all issues could be achieved.

In this sui generis situation, we conclude that the purposes of the Act will be best served by setting aside the election and dismissing the representation petition herein, without prejudice to the right of the petitioner, or any other qualified party, to file a new representation petition, if it wishes to do so. Anton Caratan & Sons, 2 ALRB No. 62 (1976). Moreover, in view of the unique circumstances herein, our conclusions and order are limited to the facts presented in this matter.

In order that our decision herein may not work a hardship on employees who voted as economic strikers in the election held on October 6, 1975, any election conducted within 12 months after the date of this Decision will be treated as a re-run of this election, and any employee of the Employer who

can establish eligibility as an economic striker as of October 6, 1975 and who voted a challenged ballot during the 1975 election will retain eligibility status in the re-run. Other than this exception for economic strikers, the eligibility list for any election conducted among the Employer's employees within the next 12 months will comprise the current employees pursuant to normal eligibility rules.

ORDER

It is hereby ordered that the election in this matter be, and it hereby is, set aside and that the petition herein be, and it hereby is, dismissed.

DATED: July 11, 1978

GERALD A. BROWN, Chairman

ROBERT B. HDTCHINSON, Member

HERBERT A. PERRY, Member

CASE SUMMARY

White River Farms

4 ALRB No. 43

Case No. 75-RC-79-F

CHALLENGED BALLOT DECISION

An election was conducted on October 6, 1975. Board Agent's list indicated 307 ballots were cast. All ballots were challenged.

REGIONAL DIRECTOR'S REPORT

The report indicated that the bulk of the challenges were in categories labeled "Not bona fide employee of the employer," "Not on the list," and "Economic striker." The report recommended disposition of a majority of the ballots.

BOARD DECISION

The Board rejected the Regional Director's report finding it incomplete in certain material respects. Finding that it was unable to resolve any challenges on the record before it and, in consideration of the fact that the election was already 33 months old, the Board concluded that the purposes of the Act would best be served by dismissing the petition without prejudice to the right of qualified petitioners to file a new one. Because many persons claimed economic striker status at the time of the election the Board ordered that in any re-run election conducted within 12 months of its decision those persons voting as economic strikers in the 1975 election may be eligible to vote if other requirements of establishing economic striker status are met.

This summary is furnished for information only and is not an official statement of the Board.