

STATE OF CALIFORNIA  
 AGRICULTURAL LABOR RELATIONS BOARD

JACK T. BAILLIE COMPANY, INC.,	)	
	)	
Employer,	)	Case No. 77-RC-14-M
	)	
and	)	
	)	
INDEPENDENT UNION OF	)	4 ALRB No. 47
AGRICULTURAL WORKERS,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	
Intervenor.	)	
	)	
	)	

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DECISION AND ORDER

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.

In accordance with a Direction and Notice of Election issued on October 28, 1977, by the Regional Director of the Salinas Region, an election was conducted on October 31, 1977. The official Tally of Ballots showed the following results:

IUAW .....	67
UFW .....	64
No Union .....	5
Challenged Ballots .....	<u>13</u>
Total .....	149

Inasmuch as the number of challenged ballots was

sufficient to determine the outcome of the election, the Regional Director conducted an investigation and issued a Report on Challenged Ballots on January 3, 1978. Neither the UFW nor the IUAW filed exceptions; the Employer excepted to only two of the recommendations in the Regional Director's Report with respect to disposition of the challenges.

As those recommendations not excepted to could have been sufficient to resolve the election, an amended Tally of Ballots was issued showing the following results:

IUAW .....	69
UFW .....	65
No Union .....	5
Unresolved Challenged Ballots.	<u>2</u>
Total .....	141

The Regional Director recommended that the challenge to the ballot of Maria P. Sanchez be sustained, as he found that she is a supervisor. The Employer did not except to the finding that Sanchez is a supervisor but excepted on the basis that she was originally challenged as not being included on the eligibility list. The Employer contends in effect that the Board may not adopt the Regional Director's recommendation that Sanchez be disqualified on one basis when she was originally challenged on another.

We find the Employer's contention unpersuasive. A challenge on any ground satisfies the requirement of 8 Cal. Admin. Code Section 20355 (b) (1976) that challenges must be asserted before the vote or will be considered waived. Once a challenge is made on a particular basis, the subsequent investigation may establish an

entirely different reason for sustaining the challenge; but if the voter is found to be ineligible for any reason, the challenge must be sustained. In an earlier challenged-ballot case, this Board sustained the recommendation of the Regional Director in the face of an exception based on the fact the excepting party was not solicited for evidence during the investigation. It was found the party "was given the opportunity by avenue of exception to bring forth precisely such evidence." Sam Andrews' Sons, 2 ALRB No. 28 (1976). As the Employer herein did not except to the finding that Maria P. Sanchez was a supervisor and has offered no evidence to the contrary, there is no need for an evidentiary hearing, and we hereby sustain the challenge to her ballot.

As the challenge to the ballot of Sanchez has been sustained, it is not necessary to resolve the challenge to the remaining challenged ballot since it could not resolve the election. As no party has received the necessary majority of 71 votes, we shall direct the Regional Director to conduct a runoff election between the IUAW and the UFW.

Our regulations are silent as to what payroll period for eligibility is to be used in a runoff election taking place several months after the original election. See 8 Cal. Admin. Code Section 20375 (as amended, April 1978). In NLRB runoff elections, the same eligibility period and list used in the first election are generally used in a subsequent runoff election. However, exceptions have been made where a substantial period of time has passed since the first election; in such cases, the national Board has set the eligibility period as the payroll period immediately preceding

the date of issuance of the notice of the runoff election. The Interlake Steamship Co., 174 NLRB 308, 72 LRRM 1008 (1969); Caribe General Electric, Inc., 175 NLRB 773, 71 LRRM 1061 (1969). The appellate courts have recognized that the NLRB's discretion extends to determining the eligibility periods for voting in elections. Cone Brothers Contracting Co. v. NLRB, 235 F.2d 37, 38 LRRM 2318 (5th Cir.), cert. denied, 352 U.S. 916, 39 LRRM 2094 (1956), NLRB v. Wackenhut Corp., 471 F.2d 761, 81 LRRM 2973 (6th Cir. 1972).

Because of the long period of time which has passed since the October 1977 election and in view of the likelihood of substantial turnover in unit personnel since the original election, we have determined that use of a current eligibility payroll period will provide the opportunity for a more representative vote.

ORDER

It is hereby ordered that, after consultation with the parties, the Regional Director shall conduct a runoff election between the IUAW and the UFW at a time when the Employer is at 50 percent or more of peak employment. Eligible to vote in the election shall be those employees appearing on the Employer's payroll list for the period immediately preceding the date of issuance of the notice of the runoff election.

Dated: July 17, 1978

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Jack T. Baillie Company, Inc. 4 ALRB No. 47  
Case No. 77-RC-14-M

CHALLENGED BALLOT DECISION

An election was conducted on October 31, 1977. The 13 challenged ballots were sufficient to determine the outcome of the election.

REGIONAL DIRECTOR'S REPORT

The report was issued on January 3, 1978. Exception was taken by the Employer to two of the recommendations. An amended tally was issued reflecting the recommendations not excepted to.

BOARD DECISION

The amended tally did not resolve the election. The Board affirmed one of the Regional Director's two recommendations excepted to by the Employer. A challenge which is sustained on a different basis from which it was originally made does not deny due process since any party has a right to take exception to the Regional Director's recommendations. The remaining ballot could not be determinative, and a runoff election was ordered between the two unions originally on the ballot. Eligibility shall be limited to those persons employed during the payroll preceding the date of issuance of the notice of the runoff election.

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