

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PHELAN & TAYLOR PRODUCE COMPANY,	)	
	)	
Employer,	)	Case No. 78-RC-1-SM
	)	
and	)	
	)	
INTERNATIONAL UNION OF	)	4 ALRB No. 57
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.

Following a Petition for Certification filed by the International Union of Agricultural Workers (IUAW) , and in accordance with a Notice of Election issued by the Regional Director of the Salinas Region, an election was held on June 19, 1978. The official Tally of Ballots showed the following results:

IUAW . . . . .	33
UFW . . . . .	21
No Union . . . . .	11
Challenged Ballots . . . . .	<u>8</u>
Total . . . . .	.73

Inasmuch as the number of challenged ballots is sufficient to determine the outcome of the election, the Regional Director conducted an investigation and issued a Report on Challenged Ballots on June 29, 1978, in which he recommended that seven of the challenges be sustained and one overruled. Neither the IUAW nor the Employer filed exceptions.<sup>1/</sup>

The UFW excepted to only one of the recommendations of the Regional Director: that the challenge to the ballot of Marciano Arias Moran be sustained. The Regional Director reported that Mr. Arias did not want to be interviewed by a Board agent and that, according to the labor contractor, Mr. Arias did not work during the eligibility period. The UFW stated its belief that Mr. Arias worked during that period but did not make himself available for interview because of his illegal status, but the UFW submitted no declarations to support its position, either from Mr. Arias or anyone else who worked for the Employer during the eligibility period. In the absence of such evidence, we will adopt the Regional Director's recommendations. Sam Andrews' Sons, 2 ALRB No. 28 (1976).

#### ORDER

Accordingly, we order that the challenge to the ballot of Augustina Gamboa be overruled, that her ballot be opened and counted, that the other seven challenges be sustained, and that an Amended Tally of Ballots reflecting the new count be immediately

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<sup>1/</sup> On July 20, 1978, the IUAW filed a motion by telegram waiving its right to a possible victory based on the one vote which the Regional Director recommended be counted and asking that a runoff election be conducted. The motion is denied.

issued by the Regional Director and served upon the parties.

If the Amended Tally of Ballots shows that no choice has received a majority of the valid votes cast, we order that a runoff election be held pursuant to 8 Cal. Admin. Code Section 20375 (as amended April 13, 1978) between the IUAW and the UFW. The eligibility list shall consist of all persons eligible to vote in the original election.

Dated: August 18, 1978

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. MCCARTHY, Member

CASE SUMMARY

Phelan & Taylor Produce Company

4 ALRB No. 57

Case No. 78-RC-1-SM

CHALLENGED BALLOT DECISION

An election was held on June 19, 1978. The eight challenged ballots were sufficient to determine whether a runoff will be necessary.

REGIONAL DIRECTOR'S REPORT

The Regional Director issued a report recommending that one challenge be overruled and that the other seven be sustained. The only exception was filed by the intervenor, the UFW.

BOARD DECISION

The Board affirmed the recommendations of the Regional Director inasmuch as the exception filed by the UFW was not accompanied by evidence requiring a hearing. An amended tally was ordered and in the event it does not resolve the election, a runoff between the UFW and the IUAW was ordered.

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