

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

D. M. STEELE, dba)	
VALLEY VINEYARDS,)	
)	Case No. 75-RC-35-F
Employer,)	
)	
and)	
)	5 ALRB No. 11
WESTERN CONFERENCE OF)	
TEAMSTERS, AGRICULTURAL)	
DIVISION, AND ITS)	
AFFILIATED LOCALS,)	
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Intervenor.)	
_____)	

DECISION ON CHALLENGED BALLOTS

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 Western Conference of Teamsters, Agricultural Division, and its Affiliated Locals (Teamsters), and in accordance with a notice of election issued by the Regional Director of the Fresno Region, a representation election was held on September 12, 1975, among the Employer's agricultural employees. The official tally of ballots showed the following results:

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Teamsters	71
UFW	57
No Union	5
Challenged Ballots	46
Void Ballots	<u>1</u>
Total	179

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 December 9, 1975, in which he recommended that 21 of the challenges be overruled and that the remaining 25 challenges be sustained. All three parties filed exceptions.

The Regional Director subsequently discovered the existence of sworn declarations provided by 11 voters who had been listed in his original report as having failed to make themselves available for interview during the Regional Director's investigation of challenged ballots. After considering these workers' claims of voting eligibility in light of their declarations, the Regional Director issued a supplemental report on challenged ballots on February 3, 1976. The Regional Director's recommendations, as derived from the combined reports, are that 25 of the challenges be overruled and that the remaining 21 challenges be sustained. Exceptions to the supplemental report were filed by the Employer and by the Intervenor, United Farm Workers of America, AFL-CIO (UFW).

No exceptions were taken to the Regional Director's recommendation that the challenges to the ballots of eight

persons not voting as economic strikers be overruled. Accordingly, we adopt his recommendation as to these challenges, and hereby overrule the challenges to the ballots of Martha Contreras, Rosa Maria Contreras, Salvador Contreras Corcoles, Teresita R. Christie, Maria Elena Manzo, Lionel Lechuga, Juan Nodora, and Juliana Nodora. See Appendix A, attached hereto.

In determining the eligibility of challenged voters claiming economic striker status, we apply the principles set forth in George Lucas & Sons, 3 ALRB No. 5 (1977), and Franzia Bros. Winery, 4 ALRB No. 100 (1978). The voters whose ballots are in question claim to have been participants in a strike involving the Employer's operations which began on or about July 29, 1973.

Four of the alleged economic strikers worked for the Employer during the month of July and executed declarations wherein they claim to have been laid off and to have been told that they would be recalled when work became available. All were employed on a seasonal basis by the Employer for one or two years and claim that they joined the strike at the time it began, engaged in activities in furtherance of the strike, and engaged in no conduct inconsistent with striker status. The Employer has raised no factual dispute, contending only that due process requires that the challenging party be afforded a hearing and that Section 1157 does not grant eligibility to persons who were on layoff during the appropriate payroll period. We find that these employees, because of their temporary layoff status, had "a stake in the election,"

Franzia, supra, at p. 22, and that, Like the Franzia harvest workers, they should "not be denied a voice in the eventual resolution of the election merely because they were not working during one of the named payroll periods". Id. We therefore adopt the Regional Director's recommendation and hereby overrule the challenges to the ballots of Dolores Rincon Flores, Rosa Elena Lazcano, Romualdo Pacheco Lazcano, and Maria B. Olivera. See Appendix A.

The Regional Director found that 13 alleged economic strikers appeared on the Employer's payroll during the payroll period encompassing the commencement of the strike and executed declarations in which they stated that they did not abandon their interest in their employment at the time of the strike, that they engaged in activities in furtherance of the strike, and that they have not sought or accepted work from the Employer or engaged in other activities inconsistent with their claim that they are still on strike against the Employer. The Employer disputes the finding that these workers appear on the payroll for the period encompassing the commencement of the strike, but has submitted no declarations or other evidence in support of its position and has therefore failed to raise a factual dispute as to the correctness of the Regional Director's finding or recommendation. Sam Andrews' Sons, 2 ALRB No. 28 (1976). Accordingly, we adopt the Regional Director's recommendation and hereby overrule the challenges to the ballots of Phillip P. Agosto, Lubina Avalos Ahumada, Margarita Alejandro, Henry Arevalo, Juan Gonzales Cervantes, Elvira C. Delgado, Esperidon S.

Figuracion, Aurora L. Gil, Josie Covarrubios Moreno, Jose Piedad Moreno, Esteban H. Nuno, Amelia Gonzales Olmos, and Jose Lopez Olmos. See Appendix A.

Seven alleged economic strikers were not employees of the Employer at the time of the strike. At least five of them were not employed by the Employer at any time during the month of July, 1973. There were no exceptions to the Regional Director's recommendation that the challenges to the ballots of these individuals be sustained. Therefore, we adopt his recommendation and hereby sustain the challenges to the ballots of Alvina Gil Felix, Ramon Gil, Faustino Cervantes Tapia, Cedilia Camacho Beltran, Margarita Cruz Kates, Hector Luis Hernandez Rivera, and Cipriano Solis Martinez. See Appendix B, attached hereto.

Four alleged economic strikers did not appear on the Employer's payroll on or about July 29, 1973. Although the Regional Director's reports do not indicate the extent of his investigation into the eligibility of these voters, he apparently failed to discover sufficient evidence to establish their eligibility. In view of the Intervenor's failure to submit evidence showing the eligibility of these voters, and because the length of time which has elapsed since the election makes the usefulness of any further investigation unlikely, we adopt the Regional Director's recommendation and hereby sustain the challenges to the ballots of Yolanda Covarrubios Hernandez, Mary Covarrubios Martinez, Leonor Rernandez Lorigo, and Helena Cruz Hernandez. See Appendix B.

Six alleged economic strikers were apparently on the Employer's payroll on or about July 29, 1973, but none of them was available for the Regional Director's investigation and for that reason he recommended that the challenges to their ballots be sustained. If in fact these workers joined the strike, they may be presumed eligible voters, George Lucas & Sons, supra, but the Regional Director's reports do not provide any facts to support a finding that these workers actually joined the strike. We therefore make no ruling as to their eligibility at this time and we hereby remand these matters to the Regional Director, for further inquiry into the issue of whether Mary Ellen Gutierrez, Imelda Rosello Moreno, Tammy Covarrubios, Maria Luisa Cedillo, Anna C. Buitron, and Castulo A. Buitron actually joined the strike, see Mid-State Horticulture Co., 4 ALRB No. 101 (1978), if the revised tally of ballots resulting from this Decision shows that their ballots are outcome-determinative. See Appendix C.

Two alleged economic strikers, who were employed by the Employer during the month of July, 1973, are now holding full-time, year-round jobs elsewhere. The Regional Director recommended that the challenges to their ballots be sustained on the ground that they had abandoned their interest in their struck seasonal jobs. The Intervenor excepted to this recommendation on the grounds that mere acceptance of other employment does not establish a striker's abandonment of intent to return to work for the struck employer. We find the Intervenor's contention to be supported by applicable precedent under the

National Labor Relations Act. See Pacific Tile & Porcelain Co., 137 NLRB 1358, 50 LRRM 1394 (1962). Accordingly, the challenges to the ballots of Jessie Bustos Holguin and Nancy Padilla Rivas are hereby overruled. See Appendix A.

One alleged economic striker executed a declaration in which he stated that he had applied or reapplied for work with the Employer after the initiation of the strike. No exceptions were taken to the Regional Director's recommendation that the challenge to the ballot of this individual be sustained. Accordingly, we adopt his recommendation as to this challenge, and hereby sustain the challenge to the ballot of Jose Pablo R. Serrano. See Appendix B.

One alleged economic striker, Josefina Suarez Cardenas, is listed at the outset of the Regional Director's original report as being among the 38 alleged economic strikers, but is not referred to thereafter in either report. A ruling on her eligibility will not be made unless the revised tally of ballots resulting from this Decision shows that her ballot is outcome-determinative. See Appendix C.

It is hereby ordered that the Regional Director open and count the ballots of the voters listed in Appendix A, attached hereto, and issue to the parties an amended tally of ballots.

Objections to the Election

There are several pending objections to the election in which the foregoing challenged ballots were cast. As these objections may be rendered moot by the revised tally of ballots

resulting from this Decision, we do not rule on the objections at this time.

Dated: February 14, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

APPENDIX A

Challenges to the ballots of these persons are overruled:

Martha Contreras

Jessie Bustos Holguin

Rosa Maria Contreras

Nancy Padilla Rivas

Salvador Contreras Corcoles

Teresita R. Criste

Maria Elena Manzo

Lionel Lechuga

Juan Nodora

Juliana Nodora

Dolores Rincon Flores

Rosa Elena Lazcano

Romualdo Pacheco Lazcano

Maria B. Olivera

Phillip P. Agosto

Lubina Avalos Ahumada

Margarita Alejandro

Henry Arevalo

Juan Gonzales Cervantes

Elvira C. Delgado

Esperidon S. Figuracion

Aurora L. Gil

Josie Covarrubios Moreno

Jose Piedad Moreno

Esteban H. Nuno

Amelia Gonzales Olmos

Jose Lopez Olmos

APPENDIX B

Challenges to the ballots of these persons are sustained:

Alvina Gil Felix

Ramon Gil

Faustino Cervantes Tapia

Cedilia Camacho Beltran

Margarita Cruz Kates

Hector Luis Hernandez Rivera

Cipriano Solis Martinez

Yolanda Covarrubios Hernandez

Mary Covarrubios Martinez

Leonor Hernandez Lorigo

Helena Cruz Hernandez

Jose Pablo R. Serrano

APPENDIX C

No ruling at this time on the challenge to the ballots of these persons:

Mary Ellen Gutierrez

Imelda Rosello Moreno

Tammy Covarrubios

Maria Luisa Cedillo

Anna C. Buitron

Castulo A. Buitron

Josefina Suarez Cardenas

CASE SUMMARY

D. M. Steele, dba
Valley Vineyards (WCT) (UFW)

Case No. 75-RC-35-F
5 ALRB No. 11

REGIONAL DIRECTOR'S REPORT

In September, 1975, an election was conducted among the employees of D. M. Steele (Valley Vineyards). Forty-six of the ballots cast were challenged. The Regional Director conducted an investigation and issued a report on challenged ballots and also a supplemental report. Most of the challenges dealt with the eligibility of alleged economic strikers under the terms of the second paragraph of Section 1157. The Regional Director recommended that 25 of the challenges be overruled and the remaining 21 be sustained:

1. Eight persons not voting as economic strikers. No identification, not in appropriate unit, or not in appropriate pay period. Recommendation: sustain challenges.

2. Four alleged economic strikers. On temporary layoff. Recommendation: overrule challenges.

3. Thirteen alleged economic strikers. Appeared on payroll during period encompassing commencement of strike (July 29, 1973). Did nothing inconsistent with claim of economic striker status. Recommendation: overrule challenges.

4. Eleven alleged economic strikers. Not employees of Employer at commencement of strike. Recommendation: sustain challenges.

5. Six alleged economic strikers. On Employer's payroll at commencement of strike, but not available for investigation. Recommendation: sustain challenges.

6. Two alleged economic strikers. Employed by Employer during month of July, 1973, but now hold full-time year-round jobs elsewhere, indicating abandonment of interest in struck job. Recommendation: sustain challenges.

7. One alleged economic striker. Applied or reapplied for work with Employer after initiation of strike. Recommendation: sustain challenge.

8. One alleged economic striker. No recommendation [through inadvertence].

BOARD DECISION

Categories below correspond with categories for Regional Director's Report.

1. The Board adopted the Regional Director's recommendation as to the eight persons not voting as economic strikers.

2. No factual dispute raised by Employer. Because of their temporary layoff status, these employees had a stake in the election and should not be denied a voice in the election merely because they were not working during one of the named payroll periods. *Franzia Bros. Winery*, 4 ALRB No. 100 (1978). Regional Director's recommendation adopted.

3. No factual dispute raised by Employer. Regional Director's recommendation adopted.

4. Regional Director's reports do not indicate extent of his investigation into eligibility of four of the 11 voters, but recommendation adopted because of Intervenor's failure to submit evidence showing eligibility and because of length of time since election. Recommendation also adopted as to the remaining seven voters.

5. These voters can be presumed eligible if they actually joined the strike, *George Lucas & Sons*, 3 ALRB No. 5 (1977). No ruling made as to their eligibility at this time, as Regional Director's reports do not provide facts to support finding that these workers actually joined the strike. Ballots remanded for further inquiry by Regional Director if ballots prove to be outcome-determinative .

6. Mere acceptance of other employment does not establish striker's abandonment of interest in struck job. *Pacific Tile & Porcelain Co.*, 137 NLRB 1358, 50 LRRM 1394 (1962). Challenges to ballots overruled.

7. Recommendation adopted.

8. Ruling on eligibility not to be made unless ballot is outcome-determinative.

The Board did not rule on pending objections to the election, as they may be rendered moot by revised tally of ballots resulting from this Decision. Ballots as to which challenges were overruled are ordered opened and counted.

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

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