

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

COACHELLA IMPERIAL DISTRIBUTORS,)	
Employer,)	Case No. 77-RC-17-C
and)	5 ALRB No. 18
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Petitioner,)	
)	
and)	
)	
INDEPENDENT UNION OF AGRICULTURAL)	
WORKERS,)	
)	
Intervenor.)	
)	

DECISION ON CHALLENGED BALLOTS

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW) on June 22, 1977, a representation election was conducted on June 29, 1977, among the agricultural employees of Coachella Imperial Distributors (Employer) . The tally of ballots showed the following results :

UFW.	112
IUAW.	9
No Union	136
Void Ballot	1
Challenged Ballots	149

As the number of challenged ballots was sufficient to determine the outcome of the election, the Regional Director

conducted an investigation and issued his Report on Challenged Ballots on August 12, 1977. The Employer and the UFW filed timely exceptions to portions of that Report.

Not on eligibility list/Not in Unit

Although individuals in these two categories were challenged under separate sections of the regulations,^{1/} the question concerning the eligibility of the individuals in both categories is whether or not they worked for the Employer during the eligibility period for this election. There were a total of ninety-three challenges in these two categories. The Regional Director recommended that 21 of these challenges be overruled, and that 70 challenges be sustained. He made no recommendation as to two individuals in this category. The Employer filed no exceptions to these recommendations. The UFW excepted generally to the Regional Director's reliance on the Employer's payroll records as a basis for establishing eligibility, and excepted specifically to the Regional Director's recommendations concerning 11 of these challenges.

In support of its general objection to the Regional Director's reliance on the Employer's payroll records, the UFW recited a history of changes in the Employer's payroll practices in the weeks surrounding the election, and the Employer's practice of "carrying" employees on its payroll during weeks when they do not work. As a result of the complexities of the Employer's bookkeeping practices, the UFW

^{1/8} Cal. Admin. Code 20355(a)(2) and (8).

argues, possibilities arise for the improper manipulation of such records to affect eligibility. However, it neither specifies what such possibilities might be nor offers specific evidence that the records are unreliable. The practices described do not per se render the Employer's records unreliable. Moreover, the Regional Director's Report indicates that the Regional Director was aware of them during his investigation. We do not therefore find that the UFW's general exception raises a factual issue as to the reliability of these records.

The Regional Director recommended overruling the challenges to the ballots of Jaime Baltazar, Elvira Baltazar and Joaquin Rivera, Jr. Each of these voters was credited in the Employer's payroll records with hours worked during the eligibility period. In support of its challenges to all three voters, the UFW submitted declarations of organizers stating that these persons had not been observed working during the eligibility period. We agree with the Regional Director's assessment that the Employer's payroll records corroborating the voters' challenge declarations are more reliable evidence than the declaration of another person such as an organizer, who may or may not have been in a position to recognize the voters in question and to observe them at work or otherwise be aware of their whereabouts. Additional declarations submitted by the UFW in support of its exceptions contain more specific facts indicating that the declarants knew these voters, were in a position to have observed them

during the eligibility period, and did not observe them until after the eligibility period. Such evidence should be pursued by appropriate investigation where submitted to the Regional Director in the course of the challenged ballot investigation. However, since none of the declarants indicates specifically that they were in a position to know that the voters were not at work on the dates set forth in the Report on which the Employer's records credit them with hours, the declarations do not raise a material factual dispute as to these voters' eligibility. Accordingly, we hereby adopt the Regional Director's recommendation that the challenges to the ballots of Elvira Baltazar, Jamie Baltazar, and Joaquin Rivera, Jr., be overruled. See Schedule A.

The UFW's exceptions with respect to the challenges to the ballots of Hector Vega (Vargas) and Rosalba Vega, Alfonso Alili, and Alejandro de la Cruz concern the application of the rule in Rod McLellan Company, 3 ALRB No. 6, that employees who are on unpaid sick leave or holiday during the eligibility period may under appropriate circumstances be eligible to vote. The UFW argued that the eligibility of Hector and Rosalba Vega should be determined by the status of their mother, Maria Vega. The Regional Director found that Maria Vega had worked for the Employer for four previous seasons, but began work after the eligibility period due to illness. No party excepted to his recommendation that the challenge to her ballot be overruled pursuant to Rod McLellan, supra. The UFW submitted declarations from both

children and their mother indicating that Hector and Rosalba are minors who are dependent on their mother for transportation to work and who worked with her during previous seasons as well as during the 1977 season. We do not at this time decide whether the McLellan rule is applicable under these circumstances. However, if it is necessary to resolve these challenges, the Regional Director will be directed to investigate whether or not Hector and Rosalba Vega would have performed work for the Employer but for the illness of their mother.

The Regional Director recommended overruling the challenge to the ballot of Alfonso Alili. His report indicated that Alili had been a regular employee of the Employer in previous years, that he currently lived at the Employer's labor camp, and that he did not work in 1977 due to health problems. The UFW excepted to his recommendation and submitted a declaration which stated that: Alili is 80 years old; he is retired and lives on a pension; he lives in the camp throughout the year, even when there is no work at the Employer's operations; when there is work available, he rarely works; he has stated that he is sick and suffering as the result of an operation and planned to return to the Philippines in December 1977. We conclude that the declaration submitted by the UFW raises a factual issue. Neither the evidence from the UFW nor the Regional Director's report is sufficient for us to determine whether Alili is a retired pensioner who no longer works, and is therefore ineligible,

or a regular employee who works at least on a part-time basis, and may therefore be eligible, but for his absence due to health problems. See Quigley Industries, Inc., 180 NLRB 489 (1969); see also, Rod McLellan, supra. Therefore, we will not resolve the challenge to the ballot of Alfonso Alili at this time.

The Regional Director recommended overruling the challenge to the ballot of Alejandro de la Cruz, who was challenged by the Board Agent because he did not appear on the eligibility list and by the UFW as an alleged-supervisor. In his challenge declaration, taken at the time of the election, de la Cruz stated that he did not work at all during the eligibility week due to illness. However, the Employer's payroll records indicate that he worked for two hours during that week. Concerning his alleged supervisory status, the UFW submitted declarations from two employees, one of which indicates that de la Cruz had in previous years supervised his own crew for the Employer but that he worked with his wife as a picker during 1977 for reasons of health. The UFW further excepted to the Regional Director's failure to resolve the conflicting evidence as to whether he worked during the eligibility period week, or to establish his eligibility pursuant to the McLellan rule. Since it is not clear from the Regional Director's report whether the basis of his recommendation is that de la Cruz actually worked during the eligibility week or that he would have worked but for illness, and in view of the conflict between the voter's

own statement that he did not work and the Employer's records, we will remand this challenge for further investigation if it becomes necessary. Such investigation shall include a determination of de la Cruz' alleged supervisory status, and the duration and permanency of any change in supervisory status which occurred as a result of his health.

Pursuant to the above discussion, we hereby reject the Regional Director's recommendations that the challenges to the ballots of Hector and Rosalba Vega be sustained and the challenges to the ballots of Alfonso Alili and Alejandro de la Cruz be overruled, but do not resolve these challenges on this record. See Schedule C.

The Regional Director recommended overruling the challenge to the ballot of the CID camp cook, Ambrosio Orgue, on the basis that the Employer's records showed that he was paid for work incidental to agriculture, during the eligibility week. The UFW excepted to this recommendation and submitted a declaration stating that the CID camp is owned and operated partly by labor contractor Ross Cariaga, and that employees living there may work for other employers when, not working for CID, and further that the camp houses employees who work in the Employer's allegedly commercial packing shed.

In light of this evidence, it appears that the Regional Director's report does not contain sufficient information to establish that Mr. Orgue is an agricultural employee within the meaning of Labor Code Section 1140.4(b). See Joe Maggio, Inc., 4 ALRB No. 65, and see also 29 CFR

Section 780.158(b).^{2/} Accordingly, we reject his recommendation and do not resolve this challenge at this time. See Schedule C.

The Regional Director made no recommendation concerning the challenge to the ballot of Sergio Rojas. The UFW excepted, arguing that the challenge should be sustained on the basis of the information in the Report. We agree. Rojas stated in his challenge declaration that he "believed" he worked during the eligibility period, but he could not be located during the challenged ballot investigation. He does not appear on the Employer's payroll records during the month of June; and foreperson Lucinda Rosales stated that he came to work in her crew in the Thompson harvest, which began after the eligibility period for this election. In the absence of any facts corroborating the voter's belief that he worked during the eligibility week, there is adequate basis for sustaining this challenge in the Employer's payroll records and foreperson Rosales' corroborating statement. We therefore reject the Regional Director's recommendation that this challenge remain unresolved, and hereby direct that it be sustained. See Schedule B.

The UFW excepted to the Regional Director's failure to make a recommendation concerning the challenge to the

^{2/}This section of the Department of Labor's interpretive guidelines for the FLSA states that a "cook camp" operated for the "sole purpose of feeding persons engaged exclusively in agriculture" on the farm in question may fall within the "secondary" definition of agriculture.

ballot of Armando Vargas. The evidence in support of Vargas' eligibility consists of declarations from the voter and his brother Martin stating that Armando worked during the eligibility period under the letter's name and social security number. The Regional Director checked these statements against Martin Vargas' payroll records for the relevant period. Because those records did not indicate that Martin was paid for the work of more than one person, he concluded that the challenge could not be resolved on the basis of the information available to him. We agree. While the Employer's bare assertion that it pays employees under their own names is at best weak evidence that it does so, in general or in this particular instance, neither are the uncorroborated statements of the voter and his brother a sufficient basis for finding that Armando Vargas worked under Martin's name during the eligibility period. (See Valdora Produce Company, 3 ALRB No. 8.) Accordingly, we hereby adopt the Regional Director's recommendation that this challenge remain unresolved. See Schedule C.

The Regional Director recommended that the challenge to the ballot of Nick P.(Nicanor) Manuel be overruled, on the basis that his failure to appear on the eligibility list resulted solely from the use of two separate lists at different election sites. The UFW excepted, contending that Manuel is a supervisor and that the Regional Director should have investigated his employment status. The UFW submitted declarations stating in effect that Manuel's employment duties

include collecting and transmitting records of hours worked for his foreman. These declarations do not raise a factual issue. Working as a foreman's assistant does not constitute supervisory status absent evidence that the assistant possesses statutory supervisory authority. See Rod McLellan Co., 3 ALRB No. 6 (1977). Moreover, an alleged inadequacy in the Regional Director's report, which does not raise a material factual issue, is not itself grounds for exception. George Lucas & Sons, 3 ALRB No. 5(1977). Accordingly, we hereby adopt the Regional Director's recommendation, overrule the challenge to Nick P. Manuel ' s ballot, and order that his ballot be opened and counted. See Schedule A.

Supervisors

The UFW excepted to the Regional Director ' s recommendation that the challenge to the ballot of Sonia Diaz be overruled. The Employer excepted to his recommendation that the challenges to the ballots of Betty Tabita, Felipa Contreras, and Graciela M. Garcia be sustained. All four of these voters apparently worked as checkers during the eligibility period. During the challenged ballot investigation the Employer provided the following description of checkers' duties : checkers keep records of attendance, hours worked, and boxes picked by individuals, by crew totals, and by field; they do not substitute for the crew supervisor when the latter is absent or review the quality of work in progress; they do not have the power to hire, fire or exercise other supervisory

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functions enumerated in Labor Code Section 1140.4(j);^{3/} they are paid on a daily rather than an hourly or piece-rate basis. The Regional Director apparently concluded that these facts by themselves do not establish statutory supervisory authority and proceeded to consider whether each voter had ever exercised such authority in any instance. He concluded that Graciela M. Garcia and Betty Tabita were supervisors based on these voters' own general statements that each had or had exercised the power to hire and fire. These voters' own conclusions as to their authority, uncorroborated by any evidence that they had or exercised such authority, are not a sufficient basis for finding them to be supervisors. In addition, the statements of Garcia and of Sonia Diaz that both had authority to assign rows raise questions concerning the significance of this authority which cannot be resolved on the basis of this report. Since the question of the supervisory status of these checkers involves both the need for further "clarification as to whether responsibility for assigning rows involves the exercise of supervisory authority, and the question as to whether particular individuals had

^{3/}Section 1140.4(j) reads as follows:

The term "supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

effective authority to hire notwithstanding the job classification assigned them by the Employer, we conclude that these four challenges cannot be resolved on this record. Accordingly, we reject the Regional Director's recommendations that the challenge to the ballot of Sonia Diaz be overruled and the challenges to the ballots of Betty Tabita, Graciela M. Garcia, and Felipa Contreras be sustained,^{4/} but we do not at this time resolve these challenges. See Schedule C.

The Regional Director recommended that the challenge to the ballot of Leo Tabita be sustained. He found that during the eligibility week, Tabita was working as an assistant to Foreman Lupe Diaz and as a picker. The Employer stated that Tabita had his own crew during 1977 at times both before and after the election herein, and did not have his own crew at the time of the election only because there were not enough workers to necessitate an additional crew. The Report recommends sustaining this challenge "based on Tabita's history of being a foreman for CID, his current duties at the time of the election, and the fact that he was given a crew to supervise after the election."

The Employer argues that Tabita's case falls within the "seasonal supervisor" rule in Great Western Sugar Company,

^{4/}We note that the Regional Director's report recites evidence of three instances in which Contreras hired or recalled employees. However, we think it will promote consistency in the treatment of the borderline supervisory status of employees such as checkers to include her in any further investigation and report on this subject.

137 NLRB 551, 50 LRRM 1186 (1962). In that case, the NLRB held that seasonal supervisors should be included in the bargaining unit with respect to their rank-and-file duties. It is readily distinguishable from Mr. Tabita's case, however, in that it involved individuals who held full-time supervisory positions for three or four months of the year and performed only rank-and-file functions for the other eight or nine months of the year. The NLRB reasoned that the functions being performed and the corresponding periods of the year were so "sharply demarcated" that inclusion of the- individuals in the bargaining unit with respect to their rank-and-file duties was a practical adjustment to the realities of the situation.^{5/} No such demarcation exists in the situation here. The Regional Director's findings demonstrate that although Tabita spent most of his time working as a picker during the eligibility week, he also performed other functions during that period. In addition, the Regional Director's findings indicate that Tabita performed supervisory functions during previous seasons and was assigned a crew with supervisory powers after the election. On the basis of all the facts herein, we adopt

^{5/}The NLRB stated:

It is precisely because the functions and responsibilities of part-time supervisors are not so sharply differentiated, but are more closely and regularly intermingled with those of rank-and-file employees, that we would reach a contrary result in that situation.

137 NLRB 551, 554 n. 8 (1962).

the Regional Director's recommendation and hereby sustain the challenge to the ballot of Leo Tabita. See Schedule B.

Economic Strikers

The Regional Director recommended that the challenges to the ballots of forty-seven pre-Act economic strikers be sustained on the ground that the statute on its face bars their eligibility because the election was conducted more than 18 months after the effective date of the Act. The UFW filed exceptions to this conclusion.^{6/}

Labor Code Section 1157 provides in relevant part:

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.

The UFW argues that the 18-month time limit should be tolled for the period during which pre-Act economic strikers could not exercise the right to vote in Board elections granted to them

^{6/}The identical issue is raised in Karahadian & Sons, Inc., 5 ALRB No. 19, decided today. In Karahadian the Employer, anticipating the UFW's exceptions, included arguments in support of the Regional Director's recommendation in its exceptions brief. It contends that the Act provides a clear 18-month limit on the authority of the Board to find pre-Act economic strikers eligible to vote in Board elections; that the Board has no authority to extend that time limit; and that any change in the time limit would have to be by legislative amendment.

by this section because of the hiatus in Board operations in 1976 caused by a lack of operating funds. For the reasons discussed below, we are persuaded that the 18-month limitation on eligibility of these pre-Act economic strikers should be tolled.

The issue presented here is not whether there is some statutory authority giving the Board the power to extend the 18-month time limit. Rather, the question before us is a procedural one, namely whether or not the 18-month limit was properly tolled by intervening circumstances. Nor does this question turn on the classification of this particular limitation as "substantive" or "procedural".^{7/} Both California and federal courts have embraced the position that substantive limitations may be tolled under substantially the same circumstances as will suffice to toll procedural ones. Estate of Caravas (1952), 40 Cal. 2d 33, 42; 250 P.2d 593; Burnett v. New York Central Railroad Co. (1965), 380 US 424; see generally Witkin, supra, Section 233. In Burnett, supra, the United States Supreme Court held that "the basic inquiry is whether congressional purpose is effectuated by tolling the statute of limitations in given circumstances". Likewise, we must assess the question before us here by asking whether the

^{7/}The UFW argues that the 18-month limitation is "procedural", because it does not relate to the establishment of the Board's jurisdiction over economic strikers and is an arbitrary time period having no reference to particular historical circumstances. We conclude that this provision is substantive, in that it creates a special benefit available over a limited period of time and only to a certain class of persons. See Roberts V. Title Ins. Co. (1936), 6 Cal. 2d 373, and see generally Witkin On California Procedure, 2d Ed., Vol. 2, pp. 1088-92, § 230 and § 232. However, as noted above, this classification does not determine the issue before us.

legislature's purposes in conferring the franchise on certain pre-Act economic strikers and in limiting its exercise to an 18-month period are effectuated by tolling the limitation under the particular circumstances herein.

The Agricultural Labor Relations Act (ALRA) was enacted to "bring certainty and a sense of fair play" between labor and management in California's fields. Section 1 of the ALRA. The Act accomplishes this end primarily by providing a forum for orderly resolution of disputes as to questions concerning representation and unfair labor practices, and by fostering the collective bargaining process. The portion of Section 1157 with which we are concerned here permits employees involved in the strikes which immediately preceded the enactment of this legislation to participate in the peaceful resolution of those strikes through the election process. This much, we think, is apparent when the reference in Section 1 of the Act to the "presently unstable and volatile condition in the state" is read in conjunction with the statutory term limiting this special right to those employees participating in strikes occurring within three years preceding the ALRA's effective date.

We consider the purpose of limiting the exercise of this right to the first 18 months of the Act's existence to be analogous to the purpose of the 12-month limit on the right to vote of post-Act economic strikers also found in Section 1157. In both cases, the legislature has balanced the continuing interests of strikers in the issues to be determined in the election against the interests of their replacements in those same issues, and against the need to

achieve a final resolution of questions concerning representation. See Wahl Clipper Corporation,, 195 NLRB 634, 79 LRRM 1433 (1972), interpreting the 12-month limit on economic striker eligibility in Section 9(d)(3) of the NLRA. There is no legislative history to explain why the California legislature attached an 18-month limit to the eligibility of pre-Act strikers, rather than adopting the 12-month limit as was done for post-Act strikers. However, it is clear that the legislature intended at least to afford one opportunity throughout the state for pre-Act strikers to participate in elections at their struck employers.

The effective date of the ALRA was August 28, 1975, and the 18-month limitation expired on February 28, 1977. Between those two dates, the Board accepted petitions for certification and conducted elections during the months of September, October, and November in its first period of operation, and in both its first and second periods of operation during the months of December, January, and February. Within the 18-month period, no petitions were accepted or processed during the months of March through August 1976. Because many agricultural employers experience peak employment primarily or exclusively during those months, the direct effect of the hiatus in the Board's operations was to nullify or substantially limit the special grant of eligibility to pre-Act economic strikers in such cases.

We conclude that the limitation on this special enfranchisement of pre-Act strikers is appropriately tolled during those months within the 18-month period during which the Board was

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without funds to conduct elections.^{8/} We reach this conclusion based upon the historic importance of this Act as a means of resolving the labor disputes which preceded its enactment, and because we believe that the provision in Section 1157 for the participation of pre-Act strikers in secret-ballot elections at their struck employers is central to the peace-making function of the Act. As an additional consideration, we note that to proceed otherwise would have the effect of exempting one entire region of the state, which was one of several centers of bitter pre-Act strikes, from this provision of the Act. Elections in which pre-Act strikers participated were conducted in both the Salinas and San Joaquin Valleys, and we see no basis for believing that the resolution of old disputes pursuant to the secret-ballot election process is any less important to future development of peaceful labor relations in the Coachella Valley.

Finally, we conclude that tolling this limitation does no violence to the legislative balance struck as to the interests of current employees versus economic strikers. That balance is

^{8/}The Board's regional offices were closed by order of the Governor on February 6, 1976, in an effort to cut the Board's operating expenses. Approximately March 1976, the Board's funds were substantially exhausted and the agency ceased operations. The Board resumed some operations in August 1976, with an appropriation which was passed as part of the regular state budget, but delayed the opening of its regional offices until December 1, 1976, in order to review and revise its regulations and operating procedures.

The only elections in which this tolling question has arisen were conducted during June of 1977. These elections are, in addition to the instant case: Mel-Pak, 77-RC-12-D, Henry Moreno, Inc., 77-RC-14-C, Harry Carian, 77-RC-15-C, and Karahadian & Sons, Inc., 77-RC-13-C.

measured by the legislative imposition in Section 1157 of a limit of 54 months from the date of commencement of the earliest pre-Act strike to the date of the latest post-Act election in which strikers could vote. The election in this case was held approximately 50 months from the commencement of the strike against this Employer in April 1973.

Other Challenges

The Regional Director recommended overruling the challenges to the ballots of the first 18 voters listed in Schedule A. As no party excepted, we hereby accept this recommendation and overrule these challenges.

The Regional Director recommended sustaining the challenges to the first 68 voters listed in Schedule B. As no party excepted, we accept this recommendation and sustain these challenges.

The Regional Director is hereby directed to open and count the ballots of the voters named in Schedule A. An amended tally shall thereafter be prepared and served upon the parties. If, upon consideration of the number of challenges sustained herein (Schedule B) and the number of unresolved challenges (Schedule C, including economic strikers), the election remains unresolved, the Regional Director shall conduct such further investigation as is necessary to resolve the challenges listed in Schedule C herein, and shall prepare a Supplemental Challenged Ballot Report setting forth his findings and recommendations, including findings and recommendations as to the individual eligibility of the economic

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strikers pursuant to George Lucas & Sons, 3 ALRB No. 5 (1977}, and Franzia Bros. Winery, 4 ALRB No. 100 (1978).

Dated: March 16, 1979

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

SCHEDULE A - CHALLENGES OVERRULED - NO EXCEPTIONS

1. Guadalupe Avila
2. Benito Crisustomo
3. Jose Orozco Plancarte
4. Angelina Urena
5. Lidia Zendejas
6. Eva Zendejas
7. Socorro Zendejas
8. Maria R. Vega
9. Elva Garcia
10. Noe Garza
11. Fidel Gonzalez
12. Maria Lujan
13. Ramiro Morfin
14. Violeta Valenzuela
15. Juan Valenzuela
16. Wilfred. O. Cariaga
17. Carmen Levario
18. Norma Rosales

OTHER CHALLENGES OVERRULED

1. Nick P. Manuel
2. Elvira Baltazar
3. Jaime Baltazar
4. Joaquin Rivera, Jr.

SCHEDULE B - CHALLENGES SUSTAINED - NO EXCEPTIONS

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| 1. Natalie Aguinaldo | 27. Pablo Ordonez |
| 2. Miguel Alvarez | 28. Fidel R. Rivera |
| 3. Luz Maria Armendariz | 29. Martin Lucatero Rivera |
| 4. Guadalupe Baez | 30. Bias Rodriguez, Jr. |
| 5. Socorro Baez | 31. Jose Luis Rodriguez |
| 6. Ester Baltazar | 32. Julia Ayala Rodriguez |
| 7. George Baltazar | 33. Luis Rojas |
| 8. Juan E. Baltazar, Jr. | 34. Yolanda Rubalcaba |
| 9. Graciano Becerra R. | 35. Hector Salas |
| 10. Silvestre Castrejon | 36. Elsa Sanchez |
| 11. Maria Vasquez de Celaya | 37. Maria Sanchez |
| 12. Gloria Becerra Flores | 38. Paula Gonzalez de Sanchez |
| 13. Maria Gallardo | 39. Josefina E. Servin |
| 14. Ramiro Gallardo | 40. Maria Serenia Servin |
| 15. Reynalda de Gallardo | 41. Rosa Ramirez de Servin |
| 16. Francisca A. Garcia | 42. Jesus Valenzuela |
| 17. Maria Elena Garcia | 43. Carlos Vieyra |
| 18. Cruz Espericueta Gonzalez | 44. Gustavo Eliseo Vieyra |
| 19. Pablo Gonzalez, Jr. | 45. Rosa Vieyra |
| 20. Viola Gutierrez | 46. Miguel Villalobos, Jr. |
| 21. Rose Marie Guzman | 47. Lupe Armendariz |
| 22. Hilario Lopez | 48. Manuel Armendariz |
| 23. Elsa Guerra Maldonado | 49. Rafflela Armendariz |
| 24. Guadalupe Maldonado | 50. Maurilio Ramirez Arredondo |
| 25. Guillermina de Merancio | 51. Lourdes Baez Avila |
| 26. Jose Gonzalez Ochoa | 52. Josefa Garza de Barajas |

SCHEDULE B (Page 2)

53. Julio Dadofalso
54. Joe Guerra Gomez
55. Olga Gomez
56. Rolando Gonzalez
57. Camila R. Guzman
58. Daniel Garcia Jimenez
59. Francisco Lucatero
60. Jose Lucatero
61. Lupe Marin
62. Connie Montanez
63. Paula Olmedo
64. Blanca Perea
65. Galacio Ramos
66. Maria Luisa Valenzuela
67. Glorio Vieyra
68. Sara Diaz Pimental

OTHER CHALLENGES SUSTAINED

1. Leo Tabita
2. Sergio Rojas

SCHEDULE C - CHALLENGES UNRESOLVED

1. Alfonso Alili
2. Alejandro de la Cruz
3. Ambrosio Orque
4. Hector Vega (Vargas)
5. Rosalba Vega
6. Armando Vargas
7. Sonia Diaz
8. Betty Tabita
9. Felipa Contreras
10. Graciela M. Garcia
11. 47 Economic Strikers, listed in the Regional Director's Report, Part 5.(A).

CASE SUMMARY

Coachella Imperial Distributors

Case No. 77-RC-17-C

5 ALRB No. 18

REGIONAL DIRECTOR'S REPORT

On June 29, 1977, a representation election was conducted among the agricultural employees of the Employer. The tally of ballots showed: UFW-112 votes; IUAW-9; No union-136; challenged ballots-149; void ballots-1. As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation pursuant to 8 Cal. Admin. Code 20363, and thereafter issued his Report on Challenged Ballots. The challenged ballots fell into five categories: not on eligibility list; not in unit; no identification; alleged supervisor; and pre-Act economic striker. The Regional Director recommended that 26 challenges be overruled, 84 sustained, and that two challenges not be resolved without further investigation. He further recommended that the challenges to the ballots of 47 pre-Act economic strikers be sustained, as the election took place after the expiration of the 18-month limit on their eligibility, as set forth in Labor Code Section 1157. The Employer and the Petitioner (UFW) filed timely exceptions to the Regional Director's Report.

BOARD DECISION

No party excepted to the Regional Director's recommendations concerning 86 of the challenges. Accordingly, the Board adopted his recommendations that 18 of these challenges be overruled and that the other 68 be sustained. With respect to the remaining challenges, the Board directed that four be overruled, two sustained, and that 10 not be resolved without further investigation.

The Board further held that the 18-month limitation in Section 1157 had been tolled by the hiatus in the Board's first year of operations due to lack of funds, and that the 47 economic strikers were therefore not barred from eligibility by the terms of the statute. The Board did not resolve these challenges because the Regional Director's Report had not included findings concerning the eligibility of individual strikers, pursuant to George Lucas & Sons, 3 ALRB No. 5 (1977).

The Board directed that the Regional Director open and count the ballots as to which challenges had been overruled, prepare an amended tally and serve it on the parties. In the event that the election is not resolved by the amended tally, the Regional Director was directed to conduct such further investigation as is necessary and prepare a Supplemental Report concerning the 63 challenges not resolved by the Board's Decision.

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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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