

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROBERTS FARMS, INC.,)	
)	
Employer,)	Case No. 75-RC-118-F
)	
and)	
)	
UNITED FARM WORKERS OF)	5 ALRB No. 22
AMERICA, AFL-CIO,)	
)	
Petitioner,)	
)	
and)	
)	
WESTERN CONFERENCE OF)	
TEAMSTERS, AGRICULTURAL)	
DIVISION, IBT, AND ITS)	
AFFILIATED LOCALS 116, 136,)	
274, 542, 630, 865, 890, 898)	
and 1973,)	
)	
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 proceeding to a three-member panel.

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW) on October 27, 1975, an election by secret ballot was conducted on November 3, 1975 among the agricultural employees of Roberts Farms, Inc. (Employer) at its DiGiorgio Ranch in DiGiorgio, California.

The tally of ballots furnished to the parties at that time showed the following results:

Teamsters	104
UFW	93
No Union	13
Void Ballots	7
Challenged Ballots	151

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director for the Fresno Region conducted an investigation and, on July 21, 1977, issued a report on challenged ballots. Thereafter, the Employer and the UFW each filed exceptions with a supporting brief.

The Board has considered the challenges, the record, and the Regional Director's report on challenged ballots in light of the exceptions and briefs of the parties, and has decided to affirm the findings and conclusions of the Regional Director, as modified herein.

The ballots of 39 nonstriking employees were challenged by Board Agents or the UFW for various reasons. As no party has excepted to the Regional Director's recommendation to overrule the challenges to 28 of these ballots (Schedule A, Nos. 1 through 28) and to sustain the challenges to five others (Schedule B, Nos. 1 through 5), we adopt, pro forma, his recommendations as to these 33 challenges.^{1/}

With respect to the six remaining nonstriking employees,

^{1/}We do not necessarily, in all instances, adopt the Regional Director's reasoning or interpretation of the prevailing rules governing the eligibility of nonstriking voters.

the Regional Director recommended that the challenges to their ballots not be resolved at this time. The names of these employees did not appear on the Employer's eligibility list and the Regional Director's investigation into their status disclosed nothing more than the absence of their names from the Employer's payroll records for the pay period immediately preceding the filing of the petition for certification. In view of these circumstances, and noting that the passing of three years makes the usefulness of any further investigation doubtful, we hereby sustain the challenges to the ballots of Jose R. Torres, Baltazar Valencia, Noel Zuniga, Scott Charles Burning, Luis Hernandez and Eleuteria A. Carrillo (Schedule B, Nos. 6 through 11).

Economic Strikers

One hundred and twelve voters who claimed economic-striker status, on the basis of having joined a strike against the Employer which began on or about April 20, 1973, were permitted to vote challenged ballots. The Regional Director recommended that the challenges to 43^{2/} of these ballots be overruled and that the challenges to another 65 ballots^{3/} be sustained. He recommended that the four remaining challenges in this category (Schedule C, Nos. 1 through 4) not be resolved unless and until they prove to be outcome-determinative. We

^{2/}The Regional Director erroneously assumed there were 44 employees in this group, but the actual number is 43, as the name of Francisca M. Rangel appeared twice on the list.

^{3/}As Margarita Mendoza Chavez' name appeared twice on the list, the Regional Director assumed that there were 66 ballots in this group.

adopt his recommendations, except as to the challenged ballots of Concepcion T. Gamboa and Judith Loya Vitervo; we adopt his recommendation as to the challenged ballot of Manual Cerda Melgoza, but for different reasons. (See Schedule A, Nos. 29 through 70; Schedule B, Nos. 12 through 75; and Schedule C, Nos. 5 and 6.)

The Regional Director recommended that we sustain the challenge to Gamboa's ballot, finding that he was not an employee prior to the strike and lacked a reasonable expectation of employment. Gamboa's name last appeared on the Employer's payroll on March 6, 1973, nearly six weeks before the strike began. However, the UFW has submitted a declaration in which Gamboa described the nature of his work with the Employer herein as of April, 1973, and stated that when the strike commenced he stopped working and joined the picket line. As Gamboa's declaration raises a factual issue requiring further investigation or hearing, the challenge to his ballot will not be resolved unless and until it proves to be outcome-determinative.

We find merit in the Employer's exception to the Regional Director's recommendation that the challenge to the ballot of Vitervo be overruled and adopt its suggestion that resolution of this challenge be deferred for further investigation or hearing. Vitervo indicated that she would return to work for the Employer upon expiration of her maternity leave, whereas the Employer insists that it did not have a maternity-leave policy at that time. As a factual issue, requiring further investigation or hearing, is raised by these allegations, the challenge to her

ballot will not be resolved unless and until it proves to be outcome-determinative.

The Regional Director recommended overruling the challenge to Melgoza's ballot despite the fact that he worked for the Employer during the first three weeks of the strike and then joined the strike. The Regional Director reasoned that Melgoza's economic needs justified his failure to join the strike at its inception. Without regard to the economic situation of the individual, we no longer disqualify employees who join economic strikes after the strike's commencement. In Franzia Bros. Winery, 4 ALRB No. 100 (1978), which overruled our previous holding in Marlin Brothers, 3 ALRB No. 17 (1977), we stated: "It is sufficient that [the employees] joined and supported the strike during the pre-election period and continued to do so up to the time of the election." An employee may work for the struck employer during the early period of a strike and subsequently acquire economic-striker status by joining and participating in the strike. As this was the situation in Melgoza's case, the challenge to his ballot is hereby overruled.

The UFW excepted to the Regional Director's recommendations concerning two of the four challenges which the Regional Director recommended be held in abeyance. These two employees, Guadalupe Rangel and Jesus Serna, declared that they worked until the strike commenced, although their names did not appear on the pre-strike payroll and Employer records indicate that their employment had ceased some weeks earlier. The UFW submitted additional declarations in which other employees attested to

Rangel's and Serna's employment immediately preceding the strike. It is the UFW's contention that the Board now has sufficient facts to support a presumption of eligibility which has not been overcome by the Employer. We find that the declarations provide an inadequate basis for resolving this conflict. Under these circumstances, we shall determine the validity of these challenged ballots (by further investigation or hearing) only if they become outcome-determinative. McCoy's Poultry Services, Inc., 3 ALRB No. 61 (1977); Sunnyside Nurseries, Inc., 2 ALRB No. 3 (1976). Accordingly, the Regional Director's finding is affirmed.

For the reasons discussed below, the Employer's remaining exceptions with respect to the Regional Director's recommendations as to striker challenges are rejected.

The Employer contends, first, that certain strikers forfeited their striker status prior to the election by accepting employment with other growers whose bargaining agreement with the Teamsters was identical to the UFW contract in force during their tenure with the Employer. It is proposed that these strikers therefore did not object to conditions of employment at the Employer's operation but participated in a general strike solely to assist the UFW in countering a growing Teamster influence in the area and regaining lost contracts.

The Employer, in effect, implies that the strikers whose ballots are in dispute merely sought to obtain its recognition of the UFW. In Julius Goldman's Egg City, 3 ALRB No. 76 (1977), we concluded that, for the purposes of eligibility, all pre-Act strikes are conclusively presumed to be economic

strikes. As the strike herein commenced prior to the effective date of the Act, Goldman's, supra, is controlling. Thus, the decisive elements are that these strikers withheld their labor from the Employer and maintained their interest in the strike. D'Arrigo Bros, of California, Reedley District No. 3, 3 ALRB No. 34 (1977). Moreover, it has been held that the presumption of continued interest in the struck job will not be overcome by a showing that the striker subsequently engaged in other farm work for a different employer. Marlin Brothers, supra; D'Arrigo Bros, of California, supra.

Secondly, the Employer specifically excepts to the Regional Director's overruling of six striker challenges, contending that these ballots were cast by six voters^{4/} who accepted reemployment with the Employer at various times between January 12 and April 18 of 1977, thereby abandoning their interest in the strike. This exception also lacks merit. A prerequisite to the right of economic strikers to vote is that they be on strike at the time the election was conducted, which, in this case, was on November 3, 1975. The Martin Brothers Container & Timber Products Corp., 127 NLRB 1086, 46 LRRM 1157 (1960); Lawrence Vineyards Farming Corporation, 3 ALRB No. 9 (1977). As the ballots in dispute were cast by strikers who were found by the Regional Director to have been on strike against the Employer as of the date of the election, their

^{4/} Esperanza Bravo Martinez, Josefina E. Gonzalez, Esperanza Guzman Rangel, Francisca M. Rangel, Amelia Vargas Rivera, and Rogelio S. Rodriguez.

subsequent abandonment of the strike by accepting reemployment with the Employer after the election could not retroactively affect their eligibility.

Next, the Employer alleges that the Regional Director failed to set forth detailed findings as to the status of certain strikers and, further, that it is not clear whether the investigation extended beyond declarations given by the challenged voters at the time they cast their ballots. Accordingly, the Board is urged to remand for further investigation or hearing the challenges to the ballots of the 38 employees listed in Sections 6(B)(2) and 6(B)(3) of the Regional Director's report, in accordance with our prior decisions in George Lucas & Sons, 3 ALRB No. 5 (1977), and Cossa & Sons, 3 ALRB No. 12 (1977). In Cossa, we remanded to the Regional Director because his initial report was unclear concerning the scope of the post-election investigation conducted and, in Lucas, we instructed the Regional Director to provide information for each individual with respect to participation in, and nonabandonment of, the strike. We have examined the disputed challenges herein in light of our rulings in Cossa and Lucas and find that the Regional Director has set forth facts sufficient to support his recommendations.

The Regional Director found that the names of the 31 strikers listed in Section 6(B)(2) of his report appeared on the Employer's payroll records "during the period encompassing the outset of the strike," that they did not appear on subsequent payrolls prior to the election and that, according to their

sworn declarations, they abandoned their employment in support of the strike, engaged in activities in furtherance of the strike, and did not thereafter engage in activities inconsistent with continued striker status.

As to the seven strikers listed in Section 6(B)(3) of his report, the Regional Director ruled that their affidavits indicate that none of them returned to work for the Employer after April, 1973, and, further, that they abandoned their employment in support of the strike (within the first week of the strike) and engaged in activities in furtherance of the strike.

We agree with the Employer only to the extent that it is not clear whether the Regional Director's investigation included a post-election examination of the Employer's payroll records to determine whether any of the seven Section 6(B)(3) strikers returned to work for the Employer between the commencement of the strike and the election. This Board has previously adopted the standards set forth in Pacific Tile & Porcelain, 137 NLRB 1358, 50 LRRM 1394 (1962); Lawrence Vineyards Farming Corporation, supra. Accordingly, in determining the eligibility of economic strikers, we shall presume that the striker has retained interest in the struck job, and the party challenging that presumption has the burden of rebutting the presumption by objective evidence to the contrary. Although the Employer is the best source of information as to whether any of these strikers accepted reemployment with the Employer prior to the election, and thereby abandoned their interest in the strike,

the Employer has not submitted any evidence which would tend to disqualify these voters or to indicate that there are material factual issues in dispute which would require further investigation or hearing.

As its final objection, the Employer contends that the 38 voters described immediately above would not have had jobs subsequent to the start of the strike because of a substantial change in the nature and scope of its operations. An employer may successfully challenge a ballot on this basis only if it can demonstrate that the positions which would have been filled by the economic strikers were permanently eliminated prior to the election. It is not enough that business conditions render it unlikely that the economic strikers would have been rehired. Globe Molded Plastics Co., 200 NLRB 377, 81 LRRM 1433 (1972); Gulf States Paper Corp., 219 NLRB 806, 90 LRRM 1049 (1975).

Respondent has alleged only a general decline in the acreage under cultivation, not the elimination of entire job categories. Furthermore, the material furnished by Respondent emphasized the decline in acreage under cultivation between the election in 1975 and the present season, rather than the period from the commencement of the strike to the date of the election. We find, therefore, that Respondent has failed to establish that the positions of any of these economic strikers were eliminated prior to the election, and the challenges to the ballots of the 38 voters are hereby overruled.

The Regional Director is hereby directed to open and count the ballots of the voters named in Schedule A attached

hereto, and thereafter to issue and serve upon all parties an amended tally of ballots. If the amended tally of ballots indicates that no ballot choice has received a majority^{5/} of the valid votes cast in the election, the Regional Director is hereby directed to conduct further investigation concerning the voting eligibility of the six challenged employees named in the attached Schedule C, and thereafter to submit to the Board and the parties a report and recommendations with respect to each of the said challenged ballots.

Upon a determination that one of the ballot choices has received a majority of the valid votes cast, the Board's Executive Secretary shall consider setting for hearing objections to the election which were timely filed pursuant to Labor Code Section 1156.3 (c).

Dated: March 23, 1979

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

^{5/}As of the date of issuance of this Decision, and in accordance with our conclusions herein, the number of valid votes cast in the election is 286 (368 ballots cast, minus the seven ballots which were declared void during the tally of ballots immediately following the election, and minus the 75 challenged ballots sustained in this Decision). On this basis, 144 votes will constitute a majority of the valid votes cast. This figure is subject to change should further investigation make it necessary to sustain the challenges to any of the ballots listed in Schedule C, as, e.g., upon a determination that any of those ballots were cast by ineligible voters.

MEMBER McCARTHY, Dissenting in Part:

Manuel Cerda Melgoza failed to meet threshold eligibility requirements as his name did not appear on the statutory pre-strike payroll and there was no showing that his absence from the country during the relevant period constituted a paid vacation within the meaning of Labor Code Section 1157. I would sustain the challenge to his ballot consistent with my dissent in Franzia Bros. Winery, 4 ALRB No. 100 (1978).

Dated: March 23, 1979

JOHN P. McCARTHY, Member

SCHEDULE A

CHALLENGES OVERRULED — BALLOTS TO BE OPENED AND COUNTED

- | | |
|-----------------------------|---------------------------------------|
| 1. Ebrado Alvarez | <u>ECONOMIC STRIKERS</u> |
| 2. Ismael Berrospe | |
| 3. Ignacio Berrospe | 29. Francisco Aguilar |
| 4. Julian Delgado Cepeda | 30. Julian Arce Benavides |
| 5. Jesse Jones | 31. Julia R. Arisiaga |
| 6. Guadalupe Mendoza Montes | 32. Stella Bonilla De Avila |
| 7. Salvador Mendoza | 33. Francisco Ayala |
| 8. Faustino Ponce Ponce | 34. Refugia Barren |
| 9. Felix Lugo Quinones | 35. Esperanza Bravo Martinez |
| 10. Mohamed Ali Rajah | 36. Ruben Cardenas |
| 11. Nicomedes Velasquez | 37. Flora Chavez Oronia |
| 12. Rodolfo F. Acosta | 38. Martina Contreras |
| 13. Joseph Argain | 39. Maximina Coronado de la Cruz |
| 14. Angela Boren | 40. Maria Duarte Diaz |
| 15. Grady Ross Delaney | 41. Carolina Garcia |
| 16. Gary Marvin English | 42. Felipe B. Garcia |
| 17. Floyd Edward Ethridge | 43. Marcelina Pena Garcia |
| 18. Barney Jaime | 44. Josefina E. Gonzalez |
| 19. Carolina Jaime | 45. Rosendo Ramos Gonzalez |
| 20. Eron Lopez | 46. Jaime Ortiz Jacques |
| 21. Fidencio Martinez | 47. Jose Guillermo Loya |
| 22. Wily Angelo Simms | 48. Rosa Maria Galundo Mancha (Gomez) |
| 23. Cecil Treat | 49. Stella M. Mancha |
| 24. Nelson Vega Velos | 50. Margarito Orozco |
| 25. Irma Corral | 51. Rafael Perez |
| 26. Rodolfo Benavides | 52. Dionicio Falcon Rangel |
| 27. Irene Alice Martinez | 53. Esperanza Guzman Rangel |
| 28. Consuelo Rodriguez | 54. Francisca M. Rangel 6/ |
| | 55. Demetria Reyna |
| | 56. Amelia Vargas Rivera |
| | 57. Juan Rivera |
| | 58. Concepcion Basalova Rocha |
| | 59. Raul Rodriguez |
| | 60. Rogelio S. Rodriguez |
| | 61. Ruben Rodriguez |
| | 62. Catalina Resales |
| | 63. Alicia Torres Sanchez |
| | 64. Mario Serna Pena |
| | 65. Reyna Serna |
| | 66. Concepcion Soto |
| | 67. Maria Guadalupe Torres |
| | 68. Josie Velasquez Eschevaria |
| | 69. Epifanio Guillen Velos |
| | 70. Manuel Cerda Melgoza |

^{6/}This name appeared twice on the original roster of ballots submitted by the Regional Director.

SCHEDULE B

CHALLENGES SUSTAINED – BALLOTS NOT TO BE OPENED OR COUNTED

- | | |
|-----------------------------|--------------------------------|
| 1. Victor Cruz | 38. Mary Gonzalez |
| 2. Rosalia Ramos | 39. Mingo Martinez Gonzalez |
| 3. Francisco Lopez Carrillo | 40. Guadalupe Hinojosa |
| 4. Derham A. Mohamed | 41. Joe Eladio Landeros, Jr. |
| 5. Robert Earl Sweat | 42. Joe Edalio Landeros, Sr. |
| 6. Jose R. Torres | 43. Epifanio de Leon |
| 7. Baltazar Valencia | 44. Rosario E. Madrigal |
| 8. Noel Zuniga | 45. Heriberto Maldonado Madera |
| 9. Scott Charles Durning | 46. Andrea Mancha |
| 10. Luis Hernandez | 47. Gina M. Marquez |
| 11. Eleuteria A. Carillo | 48. Lois Ramirez Martinez |
- ECONOMIC STRIKERS
- | | |
|--|-------------------------------------|
| 12. Ernestina Aceves | 52. Josefina Ortiz |
| 13. Jose Jesus Lopez Alcala | 53. Maria Luisa Perales |
| 14. Jose Luis Alcala | 54. Alfonso Z. Rea |
| 15. Paustino Alfaro Segoviano | 55. Carmen Rivera |
| 16. Arntando de Avila | 56. Jesus Rivera Rivera |
| 17. Maria Z. Barela | 57. Rafaela Rodriguez de los Santos |
| 18. Mary Ann Benaventes | 58. Adelita Ruiz |
| 19. Gloria Benavente | 59. Alberto A. Ruiz |
| 20. Eduviges Borrero Lugo | 60. Arturo Ruiz |
| 21. Juana Francisca Borrero | 61. Guadalupe Ruiz |
| 22. Americo Caguias | 62. Jose Lino Ruiz |
| 23. Alfonso Lopez Cardiel | 63. Patricia Ruiz |
| 24. Margarita Mendoza Chavez ^{7/} | 64. Rosalia Ruiz |
| 25. Concepcion Lopez Chipres | 65. Bernardina Ledesma Sanchez |
| 26. Salvador C. Chipres | 66. Jose Martin Sanchez |
| 27. Francisco Cruz | 67. Ramon Sanchez |
| 28. Gilbert Cruz Aceves | 68. Margarita Serna Sanchez |
| 29. Flora Farias | 69. Conrado Hernandez Sosa |
| 30. Jose Garcia | 70. Cristila Toscano |
| 31. Jose Luis Garcia M. | 71. Odelia Toscano Alcala |
| 32. Miroslava Garcia de Garcia | 72. Josefina H. Valles |
| 33. Castela Gonzales | 73. Jesus Vega |
| 34. Felicitas D. Gonzalez | 74. Domingo Velasquez |
| 35. Fidela Perez Gonzalez | 75. Gilberto C. Velo |
| 36. Ines Gonzalez Garcia | |
| 37. Janie Orta Gonzalez (Soldana) | |

^{7/}This name appeared twice on the original roster of ballots submitted by the Regional Director.

SCHEDULE C

CHALLENGED BALLOTS TO BE HELD IN ABEYANCE – BALLOTS NOT TO BE OPENED OR
COUNTED AT THIS TIME

1. Carmen Garcia
2. Guadalupe Rangel
3. Herminia Vargas de Rodriguez
4. Jesus Serna
5. Concepcion T. Gamboa
6. Judith Loya Vitervo

CASE SUMMARY

Roberts Farms, Inc.
(UFW) (WCT)

Case No. 75-RC-118-F
5 ALRB No. 22

REGIONAL DIRECTOR'S REPORT

An election was held among the agricultural employees of Roberts Farms, Inc. at its DiGiorgio Ranch in November, 1975. The tally of ballots showed: Teamsters-104 votes; UFW-93; No Union-13; Challenged Ballots-151; and Void Ballots-7. As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director conducted an investigation and thereafter issued a report on challenged ballots. Of the 151 challenged ballots, 39 were cast by nonstriking voters and the remaining 112 were cast by economic strikers.

REGIONAL DIRECTOR'S RECOMMENDATIONS

Nonstriker challenges. The Regional Director recommended that 28 of the challenges be overruled, that five challenges be sustained, and that resolution of the challenges to the remaining six ballots be deferred.

Economic striker challenges. The Regional Director recommended that the Board overrule 43 challenges, sustain 65 others, and defer resolution of the four remaining challenges until such time as they should prove to be outcome-determinative.

BOARD DECISION

Nonstriker challenges. In the absence of exceptions by any party to any of the Regional Director's findings in this category, the Board adopted all but six of his recommendations pro forma. Six ballots were cast by voters whose names did not appear on the eligibility list and could not be located during the course of the post-election investigation into challenged ballots. The Board rejected the Regional Director's recommendation that these ballots be held pending further investigation, noting that the passing of three years makes the usefulness of any further investigation doubtful, and sustained the challenges.

Economic striker challenges. The Board adopted the Regional Director's recommendations except in two instances. The Regional Director found that the name of one of the challenged voters last appeared on the Employer's payroll nearly six weeks before the strike began and ruled that he was not an employee during the statutory eligibility period. However, the UFW excepted to his recommendation that the challenge be sustained and submitted a declaration in which the voter attested to his having worked for the Employer at the start of the strike. As the declaration raised a factual issue requiring further investigation or hearing, the Board decided to defer resolution of the challenge until such time as it becomes outcome-determinative.

The Board reached the same conclusion with respect to a challenged ballot which the Regional Director recommended overruling on the grounds that the voter was absent on maternity leave during the eligibility period but retained her employee status. The Employer excepted to this finding on the grounds that it did not at the time have a maternity policy. The Board rules that this ballot be held in abeyance pending further investigation should it become outcome-determinative.

The Board directed the Regional Director to open and count 75 ballots as to which challenges were overruled, and to issue and serve upon the parties an amended tally of ballots.

* * *

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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