

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

MEL-PAK VINEYARDS, INC.,)	
)	
Employer,)	Case No. 77-RC-12-C
)	
and)	
)	
UNITED FARM WORKERS OF)	5 ALRB No. 32
AMERICA, AFL-CIO,)	
)	
Petitioner,)	
)	
and)	
)	
INTERNATIONAL UNION OF)	
AGRICULTURAL WORKERS,)	
)	
Intervenor,)	
)	
and)	
)	
INDEPENDENT UNION OF)	
AGRICULTURAL WORKERS,)	
)	
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 in this matter by the United Farm Workers of America, AFL-CIO (UFW) on June 17, 1977, the International Union of Agricultural Workers (International) and the Independent Union of Agricultural Workers (Independent) each filed a petition to intervene in the representation proceeding.

On June 23, 1977, a representation election was

conducted among the agricultural employees of Mel-Pak Vineyards, Inc., the Employer. The Tally of Ballots showed the following results:

UFW	142
International	85
Independent	3
No Union	55
Challenged Ballots.....	<u>5</u>
Total	290
Void Ballots.....	3

As the number of challenged ballots was sufficient to determine the outcome of the election, the Acting Regional Director conducted an investigation and issued a Report on Challenged Ballots on June 25, 1977, and a Supplemental Report on March 13, 1979. The Regional Director recommended that the challenges to the ballots of Leopoldo Equihua and Irma Valencia be overruled, that the challenges to the ballots of Armando Madrigal and Beatriz M. de Bautista be sustained, and deferred the resolution of the challenge to the ballot of Rosa Lopez pending the outcome of an unfair labor practice charge based on her termination. The UFW and the Employer filed timely exceptions to both the original and Supplemental Reports on Challenged Ballots.

Armando Madrigal

The Regional Director recommended that the challenge to the ballot of Armando Madrigal be sustained, as Madrigal did not work for the Employer at any time during the eligibility period, June 10 through June 16, 1977. As no exceptions have been filed

with respect to this recommendation of the Regional Director, the challenge to the ballot of Armando Madrigal is hereby sustained.

Rosa Lopez

Rosa Lopez worked for the Employer until she was discharged on June 7, 1977. She did not work for the Employer during the eligibility period, and her name did not appear on the eligibility list. Lopez' termination was the subject of an unfair labor practice charge filed by the UFW, in which the UFW alleged that Lopez had been discharged in violation of Section 1153 (c) and (a) of the Agricultural Labor Relations Act. As we concluded in Mel-Pak Vineyards, Inc., 5 ALRB No. 13 (1979), that Lopez was discharged for cause, the challenge to her ballot is hereby sustained.

Leopoldo Equihua

Leopoldo Equihua's name did not appear on the eligibility list submitted by the Employer. However, the Regional Director's investigation revealed that the Employer's payroll records show that Equihua worked for the Employer from June 10, 1977, through the end of the harvest on July 9, 1977. Payroll checks were issued to Equihua for the periods ending June 15, 1977, and June 22, 1977, and the Employer provided cancelled paychecks which were signed by Equihua. We find that Equihua worked for the Employer during the eligibility period, and we therefore adopt the Regional Director's recommendation and hereby overrule the challenge to his ballot.

Irma Valencia

Irma Valencia's last day of work for the Employer was

June 3, 1977, at which time she stopped working to have a baby, which was delivered on June 7, 1977. Valencia did not work during the eligibility period and her name did not appear on the eligibility list. She had started working for the Employer in 1974, and worked each year thereafter during the thinning and harvest seasons. The Employer's crew forewoman, Maggie Meza, usually called Valencia a few days before work started. Valencia's husband, mother and other relatives work for the Employer.

The Employer states that it does not have a maternity leave policy, or any policy whereby its employees can take time off for sickness or personal reasons and expect reemployment at the termination of their absence. The Employer also argues that, before Valencia left, she did not arrange with her supervisor or anyone else to be absent from work. Further investigation or hearing is required to determine the nature of Valencia's employment with Mel-Pak and the facts surrounding her pregnancy-related absence. Rod McLellan, Inc., 3 ALRB No. 6 (1977); Roberts Farms, Inc., 5 ALRB No. 22 (1979). In these circumstances, the challenge to her ballot will not be resolved unless and until it proves to be outcome-determinative. Beatriz M. de Bautista

This employee had worked for the Employer beginning in the summer of 1969. On April 16, 1973, an economic strike commenced at Mel-Pak. The Employer's payroll records show that De Bautista continued to work until about May 18, 1973, at which time she joined and participated in the strike.

The Regional Director recommended sustaining the

challenge to Ms. De Bautista's ballot on two grounds: (1) that she was not an economic striker because she did not join the strike at its inception; and (2) that economic strikers are ineligible to vote in Agricultural Labor Relations Board elections conducted more than eighteen months after the effective date of the Act. Two recent cases require us to reject the Regional Director's reasons for recommending that this challenge be sustained.

In Roberts Farms, Inc., 5 ALRB No. 22 (1979), we held that an employee who works for the struck employer during the early part of a strike may subsequently acquire economic-striker status by joining and participating in the strike. Therefore, Ms. De Bautista is not deprived of status as an economic striker merely because she joined the strike approximately one month after it began.

In Coachella Imperial Distributors, 5 ALRB No. 18 (1979), we held that the eighteen-month limitation on the special enfranchisement of pre-Act economic strikers was tolled during those months within the eighteen-month period during which the Board was without funds to conduct elections. The election herein was conducted in June of 1977, within the statutory eighteen-month period, as adjusted to allow for the period of the Board's inactivity. See Karahadian & Sons, Inc., 5 ALRB No. 19 (1979).

We cannot, however, make a final determination of the challenge to this ballot on the basis of the record before us. The Regional Director's investigation revealed that at some time after the commencement of the strike, De Bautista attempted on two

occasions to return to her job with the Employer. Further investigation will be necessary to determine whether De Bautista abandoned her interest in the strike by reapplying for work with the Employer. Therefore, the challenge to her ballot will not be resolved unless and until it proves to be outcome-determinative.

The Regional Director is hereby directed to open and count the ballot of Leopoldo Equihua (Schedule A, attached) and to thereafter prepare and serve upon the parties an Amended Tally of Ballots. If, upon consideration of the number of challenges sustained herein (Schedule B, attached) and the number of unresolved challenges (Schedule C, attached), 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 or her findings and recommendations.

After the ballot listed in Schedule A is opened, a runoff election may be necessary. The Employer argues that a runoff election would be inappropriate in this case because of the amount of time that has passed since the original election. We considered this problem in Jack T. Baillie Co., Inc., 4 ALRB No. 47 (1978), and held that, where a long period of time has passed since the original election and there is a likelihood of substantial turnover in unit personnel during that period, a runoff election using a current eligibility payroll period would provide the

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opportunity for a more representative vote. This procedure is appropriate in the present case if a runoff election is required.

Dated: May 3, 1979

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. MCCARTHY, Member

SCHEDULE A - CHALLENGES OVERRULED

1. Leopoldo Equihua

SCHEDULE B - CHALLENGES SUSTAINED - NO EXCEPTIONS

1. Armando Madrigal
2. Rosa Lopez

SCHEDULE C - CHALLENGES UNRESOLVED

1. Irma Valencia
2. Beatriz M. de Bautista

CASE SUMMARY

Mel-Pak Vineyards, Inc. (UFW)

5 ALRB No. 32

Case No. 77-RC-12-C

REGIONAL DIRECTOR'S REPORTS

A representation election was conducted on June 23, 1977, among the agricultural employees of Mel-Pak Vineyards, Inc., the Employer herein.

As there were five challenged ballots, which were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and thereafter issued a Report on Challenged Ballots, followed by a Supplemental Report on Challenged Ballots. The Regional Director recommended that the challenges to two ballots be sustained, that the challenges to two other ballots be overruled, and that the resolution of the fifth challenge be deferred pending the outcome of an unfair labor practice charge based on the employee's termination. The UFW and the Employer each timely filed exceptions to the original Report and the Supplemental Report on Challenged Ballots.

BOARD DECISION

As to the first two challenges, the Board affirmed the Regional Director's recommendation that the first be sustained, as no exceptions had been filed with respect to this recommendation. The Board also sustained the challenge to the second ballot because of its conclusion in a related unfair labor practice case, Mel-Pak Vineyards, Inc., 5 ALRB No. 13 (1979), that the voter had been terminated for cause before the eligibility period. The Board affirmed the Regional Director's recommendation that the challenge to the third ballot be overruled, although his name did not appear on the eligibility list, based on the evidence that the employee had in fact worked for the Employer during the eligibility period. The Board deferred resolution of the two remaining challenges unless and until they prove to be outcome-determinative. The Board ordered the Regional Director to open and count the one overruled challenged ballot and to issue an Amended Tally of Ballots. If the election remains unresolved due to the remaining two challenges, the Board ordered the Regional Director to investigate and prepare a Second Supplemental Report on Challenged Ballots. If a runoff election becomes necessary, the eligibility will be limited to employees employed during the payroll period preceding the date of issuance of the notice of the runoff election.

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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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