

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. 61
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 proceeding to a three-member panel.

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) , a representation election was conducted on June 23, 1977, among the agricultural employees of Mel-Pak Vineyards, Inc. (Employer). In addition to the UFW, two intervenors, the International Union of Agricultural Workers (International) and the Independent Union of Agricultural Workers (Independent), were also on the ballot. The Tally of

Ballots furnished to the parties after the election showed the following results:

UFW	142
International	85
No Union	55
Independent	3
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 Challenged Ballots on March 13, 1979. On May 3, 1979, the Board issued its Decision on Challenged Ballots^{1/} as follows:

Schedule A -- Challenge Overruled
Leopoldo Eguihua

Schedule B -- Challenges Sustained (No Exceptions)
Armando Madrigal Rosa Lopez

Schedule C -- Challenges Unresolved (Further Investigation)
Irma Valencia
Beatriz Meneces de Bautista

After opening the ballot listed in Schedule A on May 9, 1979, the Amended Tally of Ballots showed the following results:

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^{1/} Mel-Pak Vineyards, Inc., 5 ALRB No. 32 (1979)

UFW	143
International	85
No Union	55
Independent	3
Challenged Ballots	<u>2</u>
Total	288
Void Ballots	3

Thereafter, the Regional Director further investigated Irma Valencia's and Beatriz Meneces de Bautista's eligibility to vote. On May 30, 1979, the Regional Director issued his second supplemental Report on Challenged Ballots, in which he recommended overruling the challenge to Irma Valencia's ballot, and sustaining the challenge to the ballot of Beatriz M. de Bautista. The Employer timely filed an exception to the recommendation as to Mrs. Valencia's ballot, and the Petitioner timely filed an exception to the recommendation as to Ms. M. de Bautista's ballot. After considering the full record and the parties' exceptions and briefs, the Board has decided to adopt the recommendations of the Regional Director.

1. Irma Valencia

This voter was challenged by the Employer on the basis that she was not employed during the eligibility period. The Board deferred resolution of her ballot in Mel-Pak Vineyards, Inc., 5 ALRB No. 32, until it had more information regarding the Employer's policy on maternity leaves, and information regarding employee turnover in Mrs. Meza's crew.

The Employer's exception argues that Mrs. Valencia quit

her job, and that it has never had a sick-leave or pregnancy-leave policy such as discussed in Rod McLellan Co., 3 ALRB No. 6 (1977) . In its exception, the Employer argues that the Regional Director's second supplemental Report does not address the issues remanded for investigation. We disagree.

Our holding in Rod McLellan regarding unpaid sick-leave or vacation-leave does not necessarily require a formal granting of a leave of absence. We will consider such factors as whether the Employer had knowledge of the employee's reason for being absent and expressly or tacitly approved the absence. An employee's work history is a fact to be considered in determining whether the absent worker may reasonably be expected to return to work with the company, and thus retains his or her employee status.

The investigation reveals that the Employer has no explicit policy on leaves of absence; decisions to grant leaves, along with decisions to hire or discharge employees, are left entirely to supervisors and foremen, including Mrs. Meza. It is clear from the record that on June 7, 1977, Mrs. Valencia notified Mrs. Meza that she was starting labor, and Mrs. Meza permitted her to be absent for that reason. Mrs. Meza's declaration indicated that her policy regarding workers who have been absent is to reinstate them as needed.

It is clear that Mrs. Valencia would have been working for Mel-Pak Vineyards during the relevant payroll period had she not been absent because of her child's birth. Mrs. Meza's policy of rehiring workers as jobs became available indicates the existence of an informal or de facto leave policy in Mrs. Meza's crew. In view

of that policy and Mrs. Valencia's work history,^{2/} we find that she retained her employee status during the period of her absence for reasons of maternity. Accordingly, we adopt the recommendation of the Regional Director and hereby overrule the challenge to Mrs. Valencia's ballot.

2. Beatriz Meneces de Bautista

In our previous Decision in this matter, we directed the Regional Director to provide information concerning this voter's reapplication for employment with the Employer between the commencement of the strike and the election. In the ensuing investigation, Ms. de Bautista explained that she reapplied for work, with no expectation of success, solely to satisfy a friend Maria Romero, who repeatedly urged her to attempt to obtain work at Mel-Pak. Romero stated, however, that it was common knowledge that Ms. de Bautista would not be rehired because of her union activities.

An economic striker is presumed to maintain his or her interest in the strike. A party wishing to rebut this presumption must come forward with objective evidence establishing that the striker has abandoned that interest. George Lucas & Sons, 3 ALRB No. 5 (1977); Pacific Tile and Porcelain Company, 137 NLRB 1358 50 LRRM 1394 (1962). Although reapplication for work with the

^{2/}We note that Mrs. Valencia had worked during the thinning and harvesting seasons for Mel-Pak Vineyards since 1974. Twenty days after her child's birth, Mrs. Valencia sought to return to her job. Her supervisor told her there were no openings at that time, but failed to recall her thereafter. In August 1977, Mrs. Valencia was one of the individuals the Employer agreed to rehire for the 1978 season pursuant to a settlement agreement it entered into with the UFW.

struck employer is not, in and of itself, sufficient to rebut the presumption, it is a factor which must be explained in order for the voter to maintain eligibility. Marlin Brothers, 3 ALRB No. 17 (1977).

We find Ms. de Bautista's reason for reapplying for employment with the Employer to be insufficient for retaining eligibility. Generally, the reason for reapplying must be of a more serious nature than merely responding to the urging of a friend. See, for example, Pacific Tile and Porcelain Company, supra, where the NLRB found that a voter's desire to protect his or her eligibility for unemployment benefits could be sufficient. Furthermore, it is unclear why Romero would have continually urged Ms. de Bautista to reapply if she believed that such reapplication would be futile. For these reasons, we conclude that Ms. de Bautista abandoned her interest in the strike and, accordingly, we adopt the Regional Director's recommendation and hereby sustain the challenge to her ballot.

Accordingly, we hereby direct the Regional Director to open and Count the ballot of Irma Valencia and to issue and serve on the parties a revised Tally of Ballots. If the revised Tally of Ballots does not result in a majority vote, the Regional Director shall direct that a run-off election be held between the UFW and the International, using a current eligibility payroll period to assure

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a representative electorate. Mel-Pak, supra; Jack T. Baillie Co., Inc.,
4 ALRB No. 47 (1978).

Dated: October 15, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

CASE SUMMARY

Mel-Pak Vineyards, Inc. (UFW)

5 ALRB No. 61

Case No. 77-RC-12-C

REGIONAL DIRECTOR'S REPORT

A representation election was conducted on June 23, 1977, among the agricultural employees of Mel-Pak Vineyards, Inc., the Employer herein. As the five challenged ballots were sufficient to determine the outcome, the Regional Director conducted an investigation and issued two successive reports on challenged ballots. In a previous Decision, 5 ALRB No. 32 (1979), the Board resolved three of the challenges and remanded two others, the challenges to the ballots of Irma Valencia and Beatriz M. de Bautista, for further investigation. In his third Report on Challenged Ballots, the Regional Director recommended overruling the challenge to Mrs. Valencia's ballot and sustaining the challenge to Mrs. de Bautista's ballot. The Employer timely excepted to the recommendation as to Mrs. Valencia's ballot, and the UFW timely filed an exception to the recommendation as to Mrs. de Bautista's ballot.

BOARD DECISION

The Board adopted the Regional Director's recommendations, finding that Mrs. Valencia's name did not appear on the eligibility payroll because she was on an informal pregnancy leave and was thus an eligible voter, whereas Mrs. de Bautista was held to have abandoned the strike by twice applying for reinstatement during the strike and before the election, thus losing her economic-striker status and voting eligibility. The Board held that if the new Amended Tally of Ballots requires a run-off election, a current eligibility payroll period shall be used.

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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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