

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

J & L FARMS,)	
)	
Employer,)	Case No. 79-RC-4-SAL
)	
and)	6 ALRB No. 19
)	
)	
UNITED FARM WORKERS)	
)	
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
_____)	

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 April 3, 1979, a representation election by secret ballot was conducted on April 10, 1979, among the agricultural employees of J & L Farms (Employer) at its Las Palomas Ranch in Soledad, California.

The official tally of ballots furnished to the parties after the election showed the following results:

UFW	66
No Union	68
Challenged Ballots	<u>6</u>
Total	140

As the challenged ballots were sufficient in number to determine the outcome of the election, the Acting Regional Director for the Salinas Region conducted an investigation and, on

October 12, 1979, issued her report on challenged ballots, in which she recommended that the challenge to the ballot of Juan M. Gonzales be sustained, that the challenges to the ballots of Juan Mojica Valles, Rosalinda Luna, and Bertha Gutierrez be overruled, and that determination as to the challenges to the ballots of Filiberto Chavez and Narciso Canales be deferred until resolution of pending unfair labor practice charges. Thereafter, the Employer excepted only to the Acting Regional Director's recommendation that the challenge to the ballot of Juan M. Gonzales be sustained, and timely filed a brief in support of its exception. No exceptions to the report were filed by the UFW.

The Board has considered the report of the Acting Regional Director, and the exception and brief of the Employer, and has decided to adopt the recommendations of the Acting Regional Director as set forth in her report.

Gonzales was challenged by Board agents because his name did not appear on either of two eligibility lists applicable to the election: labor contractor Felipe Arce's payroll for the period ending March 28 and J & L Farms' payroll for the period ending April 1, 1979. The Acting Regional Director found that Gonzales had worked for the Employer through Arce, that he left that employment voluntarily on March 1, 1979, signed a release form to that effect, thereafter went to work for a different employer, and performed no services for the Employer herein during the eligibility period. Gonzales was subsequently rehired by Arce on March 29, 1979, one day following the close of the applicable payroll period for voting eligibility.

In its exceptions, the Employer disputes the Regional Director's factual finding that Gonzales terminated his employment and contends that Gonzales was simply on a leave of absence. To support its claim, the Employer submitted a declaration by a partner of J & L Farms stating that, after a personal examination of the payroll records, "it is my understanding" that Gonzales requested and was granted a leave of absence. This statement was supported neither by documentary evidence nor by a declaration of any person(s) involved in granting the alleged leave of absence. ALRB Regulation 20363(b) requires parties to file declarations and other documentary evidence in support of their exceptions to a Regional Director's report on challenged ballots. We find that the declaration in this case does not constitute evidence sufficient to raise a material factual dispute which would warrant further investigation or hearing. See Sam Andrews' Sons, 2 ALRB No. 28 (1976). In the absence of such evidence supporting the Employer's assertion, the Board is entitled to rely on the Acting Regional Director's finding that Gonzales voluntarily resigned on March 1, 1979. Accordingly, the challenge to the ballot of Juan M. Gonzales is hereby sustained.

A determination as to the challenges to the ballots of Filiberto Chavez and Narciso Canales is hereby deferred pending the resolution of issues raised by the complaint in a related unfair labor practice proceeding as to whether they were discriminatorily laid off on December 22, 1978. A resolution of those two challenges will be made in the event they prove to be outcome-determinative, after a Board decision is issued in the related

matter, Case No. 78-CE-167-M.

The Regional Director is hereby ordered to open and count the ballots of Juan Mojica Valles, Rosalinda Luna, and Bertha Gutierrez, as to which the challenges are hereby overruled, and to issue a revised tally of ballots to the parties.

Dated: April 24, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

J & L Farms (UFW)

6 ALRB No. 19

79-RC-4-SAL

The Board resolved the issues with respect to four of six challenged ballots cast in a representation election on April 10, 1979, upholding the Acting Regional Director's recommendation to sustain one of the challenges (Gonzales) and to overrule three others (Valles, Luna, and Gutierrez). The two remaining challenged ballots were cast by two former employees (Chavez and Canales) who alleged that they had been unlawfully discharged prior to the election and filed unfair labor practice charges. In the event the ballots of Chavez and/or Canales prove outcome-determinative when a revised tally of ballots is issued after opening and counting the ballots of Valles, Luna, and Gutierrez, a final determination will be deferred pending issuance of the Board's decision in the related unfair labor practice proceeding.

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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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