

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

MR. ARTICHOKE,)	
)	
Employer,)	Case No. 79-RD-1-SAL
)	
and)	
)	
GUADALUPE OJEDA,)	6 ALRB No. 6
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Certified Bargaining)	
Representative.)	
_____)	

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 Decertification filed in this matter by employees of Mr. Artichoke, the Employer herein, on April 26, 1979, a decertification election was conducted among the agricultural employees of the Employer on May 3, 1979. The Tally of Ballots served upon the parties on May 3 showed the following results:

No Union	6
United Farm Workers of America, AFL-CIO	3
Challenged Ballots	5
Total	14

The ballots of four voters, Edilberto Garza, Luis Damian Lopez, Guadalupe Ojeda, and Antonio Caballero Sifuentes were challenged by the United Farm Workers of America, AFL-CIO (UFW), on the grounds that they are supervisors within the meaning of Labor Code Section 1140.4(j) and thus are not eligible to vote. The ballot of another voter, Miguel De Anda, was challenged by the Employer on the same grounds.

As the number of challenged ballots was sufficient to determine the outcome of the election, the Regional Director conducted an investigation and issued a Report on Challenged Ballots on July 23, 1979. The Regional Director's Report on Challenged Ballots was based on an examination of the Employer's payroll records and interviews with various employees including the five whose ballots were challenged.

The Regional Director recommended that the challenges to the ballots of Guadalupe Ojeda, Antonio Caballero Sifuentes, and Miguel De Anda be overruled, that the challenge to the ballot of Edilberto Garza be sustained, and that resolution of the challenge to the ballot of Luis Damian Lopez be deferred pending the outcome of further investigation if that ballot should become outcome-determinative.

The UFW filed timely exceptions to the Regional Director's failure to find that Ojeda, Sifuentes, and Lopez are supervisors. The Employer filed a response in which it urged adoption of the Regional Director's Report and recommendations in their entirety.

In the absence of exceptions by any party as to the

ballots of Garza and De Anda, we adopt the Regional Director's recommendations and hereby sustain the challenge to Garza 's ballot and overrule the challenge to De Anda's ballot.

As neither party has submitted sufficient evidence for us to determine whether the challenge to the ballot of Luis Damian Lopez should be sustained or overruled, we accept the recommendation of the Regional Director as to the ballot and will not resolve the challenge to it at this time.

As to the two remaining ballots, the UFW's exceptions, brief, and supporting declarations do not persuade us that the findings or recommendations of the Regional Director were incorrect. Accordingly, we hereby overrule the challenges to the Ojeda and Sifuentes ballots.

The Regional Director is hereby directed to open and count the ballots of Miguel De Anda, Guadalupe Ojeda, and Antonio Caballero Sifuentes, and thereafter prepare and serve upon the parties a revised tally of ballots. If, upon issuance of the revised tally of ballots, the election remains unresolved, the Regional Director shall conduct such further investigation as is necessary to resolve the. challenge to the Lopez ballot and prepare a Supplemental Challenged Ballot Report setting forth his findings and recommendations.

If the revised tally of ballots establishes that a majority of the valid votes was cast for -No Union, the Executive Secretary of the Board shall decertify the UFW as the collective

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bargaining representative of the agricultural employees of the Employer herein.

Dated: January 25, 1980

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Mr. Artichoke (UFW)

6 ALRB No. 6

Case No. 79-RD-1-SAL

REGIONAL DIRECTOR'S REPORT

Following a Petition for Decertification filed by certain employees of Mr. Artichoke, an election was held on May 3, 1979. The tally of ballots showed: No Union 6; United Farm Workers of America (AFL-CIO)-3; Challenged Ballots 5. 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. The Regional Director recommended that three of the challenges be overruled, that one challenge be sustained, and that resolution of one challenge be deferred pending further investigation if that ballot should become outcome-determinative.

BOARD DECISION

In the absence of exceptions by any party, the Board adopted pro forma the Regional Director's recommendation that the challenge to one of the ballots be sustained and that the challenge to another of the ballots be overruled and the ballot be opened and counted. Finding that the UFW's exceptions to the Regional Director's Report, its brief, and its supporting declarations did not raise a material factual dispute as to the non-supervisory status of two of the employees whose ballots were challenged, the Board overruled those challenges and ordered that the ballots be opened and counted. The Board ordered that, if the election remains unresolved after a revised tally of ballots, the Regional Director conduct such further investigation as is necessary to resolve the remaining ballot challenge and issue a supplementary report on challenged ballots.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.