

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

FRANZ IA BROTHERS WINERY,	)	
	)	
Employer,	)	Case No. 75-RC-22-S
	)	
and	)	
	)	
WESTERN CONFERENCE OF	)	7 ALRB No. 14
TEAMSTERS,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	
Intervenor.	)	
	)	

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DECISION AND ORDER

Following a Petition for Certification filed by Western Conference of Teamsters (WCT) and a Petition for Intervention filed by United Farm Workers of America, AFL-CIO (UFW), an election by secret ballot was conducted on September 30, 1975, among the agricultural employees of Franzia Brothers Winery (Employer).

The official Tally of Ballots furnished to the parties at that time showed the following results:

WCT .....	86
UFW .....	57
No Union .....	3
Void Ballots .....	4
Challenged Ballots .....	<u>92</u>
Total .....	242

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and issued a preliminary report on challenged ballots on February 6, 1976. The Regional Director issued his first Supplemental Report on Challenged Ballots on March 4, 1977.

On December 14, 1978, the Board issued a Partial Decision on Challenged Ballots, Franzia Brothers Winery, 4 ALRB No. 100, wherein it sustained the challenges to 11 ballots, overruled the challenges to 66 ballots, and made no recommendation as to the remaining 14 challenged ballots. The Amended Tally of Ballots issued on March 6, 1979, and showed the following results:

UFW .....	117
WCT .....	92
No Union .....	3
Void Ballots .....	4
Unresolved Challenged Ballots. .	<u>15<sup>1/</sup></u>
Total .....	231

On March 15, 1979, the Employer filed a Motion for Stay of Certification contending that ballots cast by five individuals whose names did not appear on the list of ballots to be counted attached to the Board's Partial Decision on Challenged Ballots, Franzia Brothers Winery, supra, 4 ALRB No. 100, were improperly counted.

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<sup>1/</sup> While the Amended Tally of Ballots lists 15 unresolved challenged ballots, the Board found that only 14 challenged ballots were still unresolved.

On April 16, 1979, the United Farm Workers filed a Request to Investigate and Resolve Remaining Challenged Ballots. The UFW, anticipating that the Employer would resort to appellate litigation of the Board's Decision, requested the Board to investigate the remaining 14 unresolved challenged ballots to "establish to a certainty whether the UFW received an absolute majority of the votes" cast in the September 30, 1975, election. (UFW's Request, p. 4.)

By order dated May 30, 1979, the Board granted the Employer's Motion for Stay of Certification and the UFW's Request to Investigate and Resolve Remaining Challenged Ballots. The Regional Director was ordered to investigate and report on the identity of the following contested ballots:

Names Appearing on the Envelopes  
of Previously Counted Challenged  
Ballots \_\_\_\_\_

1. Rodolfo Arceo Estrada, Sr.
2. Raul Soto Vildlavazo
3. Feliciano Campa Carlos
4. Marta Cardenas Estrada
5. Manuel Valdovinos Menza

Names on ALRB List of Ballots to  
Be Counted (4 ALRB No. 100) \_\_\_\_\_

- Rodolfo Arceo Lopez E(20)<sup>2/</sup>
- Raul Villalvazo E(34)
- Feliciano Campa E(4)
- Marta Elena Cardenas E(14)
- Manuel Valdovinos G(1)

In addition, the Regional Director was ordered to investigate and report on the 14 unresolved challenged ballots (4 ALRB No. 100, Appendix III).

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|----------------------------|--------------------------|
| 1. Jesus J. Magana Acevedo | 3. Rodolfo Arceo Estrada |
| 2. Manuel Lopez Aguilar    | 4. Antonio Ceja Gonzalez |

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<sup>2/</sup>The capital letter refers to the schedule in the Board's Decision; the number refers to the number in that schedule.

5. Juan Mendez Guerra
6. Rodolfo Perez Martinez
7. Jose Luis Mendez
8. Ernesto Lopez Meza
9. Jesus Soto Villalvazo
10. Jorge Zaragoza Cardenas
11. Ana Maria Puentes
12. Elva Serrano
13. Porfirio Espinoza Serrano
14. Teodoro Simon Diaz

Thereafter, the Regional Director conducted an investigation as to the challenged ballots listed above. On April 17, 1981, the Regional Director issued his second Supplemental Report on Challenged Ballots. Thereafter, the Employer filed exceptions to the Regional Director's Report along with a supporting brief and the UFW filed a reply brief.

The Regional Director's Report is incomplete in several material aspects. For example, based on the Report, we cannot conclusively determine whether the five employees whose challenged ballots were previously counted are the same employees whose names appear on the ALRB list.

On the present record, we are unable to resolve any of the remaining challenges. Moreover, in view of the fact that about five years and nine months have passed since the election, we believe it would be extremely difficult or impossible to locate the employee-witnesses who would have to be located and interviewed in the event that we should remand the challenged ballots to the Regional Director for further investigation. In any event, such a remand would cause further delay in reaching a long-overdue final determination.

The entire tenor of our Act is geared to a speedy resolution of questions concerning employee representation. See,

e.g., ALRA section 1156.3(a)(4). The Act not merely contemplates, but it in fact mandates, that the process of certification following an election be pursued with dispatch and with all due diligence. This clear legislative intent was undeniably contravened in the instant case.

The handling of this case has been characterized by negligence, incompetence and ineptitude. The resulting unreasonable delays are inexcusable. The interested parties, and the employees, have been denied due process and it is indeed regrettable that no practical redress is available to them. The ultimate responsibility, of course, lies with the General Counsel and the Board. General Counsel, and the Board, are obligated to forthwith institute a comprehensive reexamination of their respective policies, practices, and procedures. A repetition of this regrettable situation cannot be tolerated.

One of this Board's most important responsibilities is to insure that elections are properly conducted and that truly representative results are obtained. E. G. Corda Ranches (June 2, 1978) 4 ALRB No. 35. This unfortunately is impossible of attainment under the circumstances. We therefore regretfully conclude that the purposes of the Act will be best served by setting aside the election and dismissing the representation petition herein, without prejudice to the right of any qualified party to file a new representation petition. See, White River Farms (July 11, 1978) 4 ALRB No. 43; Anton Caratan and Sons (Dec. 14, 1976) 2 ALRB No. 62. In view of the unique circumstances herein, our conclusions and order are limited to the facts of this

case.

ORDER

It is hereby ordered that the election in this matter be, and it hereby is, set aside and that the petition be, and it hereby is, dismissed.

Dated: June 26, 1981

RONALD L. RUIZ, Acting Chairman

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

ALFRED H. SONG, Member

CASE SUMMARY

Franzia Brothers Winery (WCT/UFW)

7 ALRB No. 14

Case No. 75-RC-22-S

Following issuance of an Amended Tally of Ballots as to a representation election held on September 30, 1975, the Board received the Regional Director's Supplemental Report on Challenged Ballots. The Board concluded that it was unable to resolve any of the remaining determinative challenges as the Regional Director's Report was incomplete in several material aspects. Acknowledging that the handling of the case had been inadequate, the Board concluded that the inexcusable delays present in this case prevented the attainment of truly representative election results. Accordingly, the Board set aside the election and dismissed the representation petition.

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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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