

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

DEBRUM-KNUDSEN DAIRY,	)	
	)	
Employer,	)	Case No. 81-RC-1-F
	)	
and	)	
	)	
DAIRY EMPLOYEES UNION LOCAL NO. 17,	)	7 ALRB No. 34
CHRISTIAN LABOR ASSOCIATION,	)	
	)	
Petitioner.	)	
	)	
	)	

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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.

On June 23, 1981, the Dairy Employees Union Local No. 17, Christian Labor Association (CLA) , filed a Petition for Certification as representative of the employees of Debrum-Knudsen Dairy, the Employer herein. On June 30, 1981, a representation election was conducted among the agricultural employees of the Employer. The official Tally of Ballots served upon the parties revealed the following results:

CLA .....	2
No Union .....	2
Unresolved challenged ballot ....	<u>1</u>
Total .....	5

The Employer's observer challenged the ballot of Alberto Furtado on the grounds that Furtado was not employed by the Employer at the time of the election, did not share a

community of interest with the remaining unit employees, and was employed for the primary purpose of voting pursuant to a willful arrangement by the CLA.

As the single challenged ballot was sufficient to determine the outcome of the election, the Regional Director conducted an investigation and issued a Report on Challenged Ballots on August 12, 1981. The Regional Director's investigation revealed that the applicable payroll period for determining voter eligibility in the election was June 1 to June 15, 1981. Furtado was hired by the Employer on May 16, 1981 and worked until June 21, 1981 as a relief milker in the dairy, earning a total of \$280.00. On June 21, 1981, Furtado quit his job and was later employed by a non-agricultural employer. At the election, both the CLA's observer and the Employer's observer recognized Furtado, and noted that his name appeared on the list of eligible voters submitted by the Employer. The Regional Director discovered no evidence to support the Employer's claim that the CLA willfully arranged Furtado's employment for the primary purpose of having him vote in the election. The Regional Director recommended that the challenge to Furtado's ballot be overruled and that his ballot be opened and counted.

The Employer timely filed exceptions to the Regional Director's recommendation and a brief in support thereof. In its exceptions, the Employer argued that only employees who are employed by the employer at the time of the balloting should be eligible to vote. This argument is without merit. Cal. Labor Code section 1157 defines eligible voters as "all agricultural

employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition." Cal. Labor Code section 1140.4(b) defines an agricultural employee as "one engaged in agriculture." According to the Employer's argument, Furtado, who worked during the relevant payroll period but quit before the election, should not be considered eligible to vote.

Contrary to the Employer's argument, we held in Giannini & Del Chiaro Co. (July 17, 1980) 6 ALRB No. 38, that the fact that an employee was employed during the eligibility period and thereafter quit or went on strike at some time before the election did not constitute a legitimate basis for challenging his or her eligibility to vote. In enacting a representation election scheme which provides for the expeditious resolution of representation questions,<sup>1/</sup> the Legislature acknowledged the rapid turnover among agricultural workers. Even during the short period between the day the petition for certification is filed and the day of the election, employees may quit, move on to other jobs, or be laid off because the harvest or other season is ending. Labor needs increase quickly at the beginning of a harvest and often decline equally as quickly when the harvest ends. In section 1157 of the Act, the Legislature defined voter eligibility with reference to the payroll period preceding the filing of the petition for

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<sup>1/</sup> Section 1156.3 (a) of the Act requires that elections be held within seven days of the filing of the representation petition. Section 1156.3 (a) also provides that, if a majority of the employees are engaged in a strike when the petition for certification is filed, the Board shall attempt to hold an election within 48 hours of the filing of the petition.

certification. Requiring that workers be employed on the day of the election in order to be eligible to vote would in effect change the statutory requirement and could result in the disenfranchisement of a substantial number of employees. Such a result would clearly be contrary to the goals of the Act, which seeks to maximize enfranchisement of workers.<sup>2/</sup> Neither the Act nor the Board's regulations requires that an employee be employed by the employer on the day of the election in order to be eligible to vote. We find no reason to reconsider our position in Giannini & Del Chiaro Co., supra, 6 ALRB No. 38, concerning employees who work during the relevant payroll period but quit before the election.

The Employer also argues that, because Furtado worked less than 10 days as a part-time relief milker and then voluntarily terminated his employment and obtained new employment with no intention of returning to work for the Employer, he had no valid interest in the future wages, hours and working conditions at the Employer's dairy and therefore shares no "community of interest" with the remaining unit employees. We reject this argument as well.

Although "community of interest" is a major factor in determining the appropriate unit in NLRB cases,<sup>3/</sup> it is not a

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<sup>2/</sup> See Cal. Labor Code section 1156.4, which prohibits this Board from processing a representation petition unless during the payroll period for eligibility the employer is at least at 50 percent of its peak agricultural employment for the current calendar year, in order "to provide the fullest scope for employees' enjoyment of the rights included in [the Act]."

<sup>3/</sup>Swift & Company (1961) 129 NLRB 1391 [47 LRRM 1195].

relevant factor in determining voting eligibility of either NLRB or ALRB employees who have been employed in the appropriate unit during their respective eligibility periods. As Furtado clearly met all of the requirements for voting eligibility set forth in section 1157 of the Act, the matter of whether he was an agricultural employee on the election day is neither material nor relevant.

The Employer does not dispute the fact that Furtado worked as an agricultural employee of the Employer during the relevant payroll period. Furtado was therefore eligible to vote in the election, and we hereby overrule the challenge to his ballot. The Regional Director is hereby directed to open and count the ballot of Alberto Furtado, and thereafter to prepare and serve upon the parties a revised Tally of Ballots.

Dated: October 19, 1981

JOHN P. MCCARTHY, Member

ALFRED E. SONG, Member

JEROME R. WALDIE, Member

CASE SUMMARY

Debrum-Knudsen Dairy

7 ALRB No. 34

Case No. 81-RC-1-F

REGIONAL DIRECTOR'S CHALLENGED BALLOT REPORT

At the election, the Employer's observer challenged the ballot of an employee on the grounds that he was not employed by the Employer at the time of the election, did not share a community of interest with the remaining bargaining-unit employees, and had been employed for the primary purpose of voting pursuant to a willful arrangement by the union. The Regional Director's investigation revealed that the employee worked as a part-time relief milker in the Employer's dairy during the payroll period preceding the filing of the representation petition and then quit before the election. The Regional Director discovered no evidence to support the Employer's claim that the union willfully arranged the employee's employment for the primary purpose of voting in the election. The Regional Director recommended that the challenge be overruled and that the employee's ballot be opened and counted.

BOARD DECISION

The Board upheld the Regional Director's recommendation, based on its holding in Giannini & Del Chairo Co. (July 17, 1980) 6 ALRB No. 38, that the fact that an employee was employed during the eligibility period and thereafter quit or went on strike at some time before the election did not constitute a legitimate basis for challenging his or her eligibility to vote. Since the employee worked as an agricultural employee of the Employer during the relevant payroll period, the Board found him eligible to vote, and ordered the Regional Director to open and count his ballot and to prepare and issue a revised Tally of Ballots.

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