

Exeter, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

EXETER PACKERS, INC.,)	
)	
Employer)	Case No. 82-RC-7-SAL
)	
and)	
)	
UNITED FARM WORKERS OF)	8 ALRB No. 95
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
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ERRATUM

The Decision on Challenged Ballots in the above-captioned case, which issued on December 23, 1982, contained the incorrect case number. The correct case number, noted in the above caption, is 82-RC-7-SAL.

Dated: January 18, 1983

ALFRED H. SONG, Chairman

JOHN P. MCCARTHY, Member

JEROME R. WALDIE, Member

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

EXETER PACKERS, INC.,)	
)	
Employer,)	Case No. 81-RC-1-F
)	
and)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	8 ALRB No. 95
)	
Petitioner.)	

DECISION ON CHALLENGED BALLOTS

On September 30, 1982, the United Farm Workers of America, AFL-CIO (UFW), filed a Petition for Certification as representative of the agricultural employees of Exeter Packers, Inc. (Exeter). On October 7, 1982, a representation election was conducted pursuant to provisions of Labor Code section 1156. 3 (a) among Exeter's agricultural employees, and the official Tally of Ballots showed the following results:

UFW	74
No Union	51
Unresolved Challenged Ballots . .	<u>43</u>
Total	168

At the election, 43 persons voted challenged ballots. Agents of the Agricultural Labor Relations Board (Board) challenged 41 voters because their names did not appear on the eligibility list. Another voter was challenged by the Board agents (because his name did not appear on the eligibility list) and by the UFW (contending that he was a supervisor), and one other voter was

challenged by the UFW as a supervisor.

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and issued the attached Report on Challenged Ballots on November 8, 1982. The Regional Director's Report recommended that 38 of the challenges be overruled and that those ballots be opened and counted, as his investigation revealed that the employees who cast those ballots were eligible to vote because they worked for Exeter during the eligibility period.^{1/} The Regional Director also recommended that two of the challenges be sustained because those two voters did not work for Exeter during the eligibility period, and that the remaining three challenges, which required further investigation, not be resolved unless and until they prove to be outcome-determinative. Exeter timely filed exceptions to the Regional Director's Report, and a supporting brief.^{2/}

Pursuant to the provisions of Labor Code section 1146, the Board has delegated its authority in this matter to a three-member panel.

The Board has considered the Regional Director's Report in light of the exceptions and brief, and has decided to adopt the Regional Director's recommendations.

We note, however, that the Regional Director recommended

^{1/}As discussed infra, Exeter argues that it is not the employer of any of the employees who voted in the election.

^{2/}Exeter did not except to the Regional Director's recommendation that two of the challenges be sustained, and we therefore sustain those challenges. (See Schedule A, attached.)

that the ballots of 38 voters be opened and counted because those 38 voters worked for Manuel Mireles during the eligibility period. The employees who voted nonchallenged ballots at the election appeared on Manuel Mireles' employee list for the relevant payroll period. After the election, Exeter timely filed post-election objections, contending, inter alia, that it was not the agricultural employer of the employees who voted in the election, but that Manuel Mireles, a custom harvester, was. Pursuant to Labor Code section 1156.3(c), that objection was set for hearing and has not yet been resolved. Therefore, the opening of the 38 challenged ballots may determine whether the UFW received a majority of the ballots opened, but will not resolve the issue of whether the employees who voted were agricultural employees of Exeter Packing, Inc. or of Manuel Mireles. That issue will be decided, if necessary, in a hearing on Exeter's post-election objections. If the UFW fails to receive a majority vote after the 38 ballots are counted and after any appropriate further investigation of the three remaining challenges, there will be no necessity for a hearing.

Accordingly, we hereby sustain the challenges to the ballots of Ismael Vargas and Gonzalo Raya Perez (Schedule A, attached).. The Regional Director is hereby directed to open and count the ballots of the 38 employees whose names appear on Schedule B, attached, and thereafter to prepare and serve upon the parties a revised Tally of Ballots. If the election remains unresolved, the Regional Director shall conduct such further investigation as is necessary to resolve the challenges listed in

Schedule C, attached, and shall prepare a Supplemental Challenged Ballot Report setting forth his or her findings and recommendations

Dated: December 23, 1982

JOHN P. McCARTHY, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

SCHEDULE A - CHALLENGES SUSTAINED

Gonzalo Raya Perez

Ismael Vargas

SCHEDULE B - CHALLENGES OVERRULED

Francisco Acosta

Irma Martinez

Roberto Anaya

Jose Efren Garcia Maya

Tomas Guerrero Arreola

Elena Mireles

Jesus Avila

Roselina Monroy

Teresita Ayala

Marco Mora

Juan M. Ayala-Romero

Jesus Morales

Maria A. Becerra

Manuel G. Mosqueda

Gloria Ibarra Bernal

Maria C. Orosco

Yolanda G. De Trujillo

Adela Ortega

Maria Trinidad Aldaco De Vaca

Ramon Aguirre Ortega

Antonio Dominguez-Pina

Seferino Ortiz

Luis Sanchez Figueros

Miguel Angel Garcia Pacas

Evangelina Garcia

Ramon Pacheco

Jose Haro Garcia

Francisco Arrayga Placencia

Gloria Godinez

Ramon Serrano

Mariano Gonzales Juan

Martha Barren Trujillo

Linares Nicolas

Jose C. Vaca

Manriquez Enrique

Maria Vaca

Martinez

Jesus Vasquez

SCHEDULE C - UNRESOLVED CHALLENGES

Quirio Elias Martinez

Francisco Rosas

Valle Bernabe Vasquez

CASE SUMMARY

Exeter Packers, Inc.
(UFW)

8 ALRB No. 95
Case No. 82-RC-7-SAL

REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS

The Regional Director conducted an investigation of 43 challenged ballots cast in a representation election among the Employer's agricultural employees. The Regional Director recommended that 38 of the challenges be overruled because the employees who cast those ballots worked for the Employer during the eligibility period and were therefore eligible to vote. The Regional Director also recommended that two of the challenges be sustained because those two voters did not work for the Employer during the eligibility period, and that the remaining three challenges, which required further investigation, not be resolved unless and until they proved to be outcome-determinative.

BOARD DECISION

The Board adopted the Regional Director's recommendations, and directed him to open and count the 38 challenged ballots. The Board noted, however, that the opening of the 38 challenged ballots might determine whether the Union received a majority of the ballots opened, but would not resolve the issue of whether the employees who voted were the agricultural employees of the Employer, or of an individual who the Employer claimed was a custom harvester. That issue was to be decided, if necessary, in a hearing on the Employer's post-election objections.

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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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