

STATE OF CALIFORNIA  
 AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
KERN VALLEY FARMS,	)	No. 75-RC-99-F
Employer,	)	
and	)	3 ALRB -No. 4
	)	
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
Petitioner.	)	
	)	
	)	

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This case comes before the Board for a determination of challenged ballots. Pursuant to our authority under Labor Code Section 1146,<sup>1/</sup> it has been delegated to a three-member panel of the Board.

On October 10, 1975, a petition for certification under Section 1156. 3 (a) was filed by the United Farm Workers of America, AFL-CIO, hereinafter UFW, requesting an election among the agricultural employees of Kern Valley Farms in Kern County, California.

An election was held on October 17, 1975. The tally of ballots served upon the parties showed the following results:

DFW	28
No Union	25
Challenged Ballots	4 <sup>2/</sup>

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<sup>1/</sup>All references, unless otherwise indicated, are to the California Labor Code.

<sup>2/</sup>The UFW challenged four prospective voters. Three persons were challenged on the ground that they were "relatives" of a supervisor. One person was challenged as being a supervisor.

Because the challenged ballots are determinative of the outcome of the election, the regional director of the Fresno regional office conducted an investigation, and issued a report on challenged ballots dated January 21, 1976, in which he recommended overruling the four challenges. The UFW filed timely exceptions to the regional director's report on challenged ballots.

#### I. RELATIVES OF A SUPERVISOR

The ballots of Peacido Rodriguez, Rafael Rodriguez, and Jorge L. Rodriguez were challenged because they are related to Julian Rodriguez, Jr., a Kern Valley Farm supervisor. The regional director found that these persons worked under the supervision of Julian Rodriguez, Jr., and performed duties consisting of driving farm equipment or working in the farm shops. The regional director found no evidence which would establish that the men possessed supervisory authority.

The UFW cites Hickory Farms of Ohio, 180 NLRB 755, 756, as a basis for excluding relatives of a supervisor from the unit because they possess "a special status closely related to management". The UFW has not provided evidence in this case which would show that these three challenged voters possess such "a special status". Therefore, we uphold the regional director's finding that the ballots of Peacido Rodriguez, Rafael Rodriguez, and Jorge L. Rodriguez should be counted.

#### II. SUPERVISOR

The UFW challenged Augustina Rodriguez on the ground that she is a supervisor. The regional director's investigation consisted solely of evidence obtained from the employer. The UFW was unable to supply any information as to the status of

Ms. Rodriguez at the time of the investigation. The employer contends that she is employed as a "timekeeper", and that she has no authority to hire, fire, discipline, or effectively recommend such action. In its exceptions petition, the UFW presented declarations from three persons who allege facts indicating that they were supervised by Ms. Rodriguez. Specifically, they assert Ms. Rodriguez: (1) hired and fired persons, and (2) gave orders and told the workers what to do and how to do it. These declarations raise a material factual dispute; see Sam Andrews' Sons, 2 ALRB No. 28 (1976). Thus if Ms. Rodriguez' ballot is outcome determinative, the question of her status as a supervisor shall be set for hearing.

#### CONCLUSION

The ballots of Peacido Rodriguez, Rafael Rodriguez, and Jorge L. Rodriguez shall be opened and counted. If the tally indicates that the ballot of Augustine Rodriguez is determinative of the outcome of the election, the question of her supervisory status shall be set for hearing.

Dated: February 1, 1977

Gerald A. Brown, Chairman

Robert B. Hutchinson, Member

Ronald L. Ruiz, Member