

STATE OF CALIFORNIA  
 AGRICULTURAL LABOR RELATIONS BOARD

KITAYAMA BROTHERS NURSERY/	)	
GREENLEAF WHOLESALE FLORIST, INC.	)	
	)	
Employer,	)	No. 76-RC-8-S
	)	
and	)	4 ALRB No. 8
	)	
UNITED FARM WORKERS OF	)	
AMERICA AFL-CIO,	)	
	)	
Petitioner.	)	
_____	)	

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.

In accordance with a Direction and Notice of Election issued on January 28, 1976 by the Acting Regional Director of the Salinas Region, an election by secret ballot was conducted on January 30, 1976. Employees from both Kitayama Brothers Nursery and Greenleaf Wholesale Florists, Inc., participated. Following the election, the Tally of Ballots was served upon the parties indicating the results below:

UFW.. . . . .	79
No Union.. . . . .	78
Challenged Ballots. . . . .	37
Void Ballots. . . . .	1

Inasmuch as the number of challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation, and based thereon issued a

Report on Challenged Ballots on July 7, 1977. Each of the parties excepted to portions of the aforesaid Report.

With respect to the Regional Director's recommendations to which no exceptions were filed, pursuant to 8 Cal. Admin. Code Section 20363(b) (1976) such recommendations are final. Therefore, the challenges to the ballots of 16 employees of Greenleaf Wholesale Florist, Inc., (Nos. 1 through 16 on Appendix A, attached) are sustained in view of the Regional Director's finding that they are not agricultural employees as defined in the Act. The challenge to the ballot of Josephina Huerta is also sustained in view of his finding that she is a statutory supervisor. The challenges to the ballots of Anita Bramasco, Hiroko Kimotsuki and the 13 crew leaders, listed in Appendix B, attached, are overruled for the reasons expressed in the Regional Director's Report on Challenged Ballots.

The Regional Director recommended that the challenges to the ballots of Okage Shiyou, Amano Osman and Moguel Guillermo be overruled. The UFW has timely excepted to this determination on the grounds that each of the above-mentioned persons was working with Kitayama Brothers Nursery under the auspices of the International Farmers Association for Education (IFAE). In Salinas Greenhouse Co., 2 ALRB No. 21 (1976) we considered whether "IFAE" trainees should be afforded employee status under the Act. The Board engaged in a detailed analysis and ultimately determined that the "IFAE" students should not be construed as employees within the definition contained in Labor Code Section 1140.4(b). Although the Regional Director apparently urges reversal of that decision, he has failed to set forth any

substantive matter which was not thoroughly evaluated at the time we first considered this question. Accordingly, we affirm our decision in Salinas Greenhouse Co. , supra, with respect to this issue and we hereby sustain the challenges to these three ballots.

Refugio Delao's name did not appear on the eligibility list and, for that reason her ballot was challenged by the Board Agent. The Employer excepted to the Regional Director's recommendation that this challenge be overruled and the ballot counted. Based upon our consideration of the 'entire record and our analysis in Rod McLellan, 3 ALRB No. 6 (1977), it does not appear that Refugio Delao would have performed work for the company during the eligibility period but for an absence due to illness. Therefore, the challenge to the ballot of Refugio Delao is sustained.

As Jose Elizondo was discharged by the Employer prior to the eligibility period, his name did not appear on the eligibility list. His discharge is the subject of an unfair labor practice charge (Case No. 75-CE-54-S) presently under investigation. Accordingly, we shall defer resolution of the challenge to this ballot pending issuance of an Amended Tally of Ballots indicating that his ballot is outcome determinative.

It is hereby ordered that the Regional Director open and count the ballots of the voters listed in Appendix B, attached hereto, and issue to the parties an Amended Tally of Ballots.

Dated: February 21, 1978

ROBERT B. HUTCHINSON, Member

RONALD L. RUIZ, Member

HERBERT A, PERRY, Member

3.

APPENDIX A

The challenges to the ballots of the following workers are sustained.

- |                            |                       |
|----------------------------|-----------------------|
| 1. Mark Akimoto            | 12. Patrick Leddy     |
| 2. Ramona Padilla          | 13. Alien Tsurui      |
| 3. Sergio Alvarez          | 14. Roberto Gutierrez |
| 4. Juan Guzman             | 15. Fred Seel         |
| 5. Antonio Padilla         | 16. Pam Gould         |
| 6. Francisco Duarte        | 17. Okage Shizuo      |
| 7. Julian Padilla          | 18. Arnano Osman      |
| 8. An Floramar Butalid     | 19. Moguel Gullerrao  |
| 9. Arturo Guzman           | 20. Refugio Delao     |
| 10. Valeria Padilla Parias | 21. Josephina Huerta  |
| 11. Roy Tsuruda            |                       |

APPENDIX B

The challenges to the ballots of the following workers are overruled and we direct that their votes be counted.

- |                      |                      |
|----------------------|----------------------|
| 1. Anita Bramsco     | 9. Vicente Paciente  |
| 2. Ricardo Brotarlo  | 10. Raquel Rodriguez |
| 3. David Caalaman    | 11. Rodolfo Rosero   |
| 4. Alfredo Cabanayan | 12. Amelia Sanchez   |
| 5. Roberto De Vera   | 13. Angelina Sanchez |
| 6. Lena Martinez     | 14. Miguel Valdriz   |
| 7. Felipe Orallo     | 15. Hiroko Kimotsuki |
| 8. Mario Pacho       |                      |