

In the Matter of EDINBURG CITRUS ASSOCIATION and TEXAS FRUIT & VEGETABLE WORKERS UNION LOCAL 35, UCAPAWA-CIO

Case No. 16-R-858

SUPPLEMENTAL DECISION

AND

DIRECTION

August 11, 1944

On April 12, 1944, the National Labor Relations Board issued its Decision and Direction of Election in the above-entitled proceeding.<sup>1</sup> Pursuant thereto an election by secret ballot was conducted on April 26, 1944, under the direction and supervision of the Regional Director for the Sixteenth Region (Fort Worth, Texas). Upon the conclusion of the election a Tally of Ballots was furnished the parties, showing the following results:

Approximate number of eligible voters.....	124
Valid votes counted.....	74
Votes cast for Texas Fruit & Vegetable Workers Union, Local 35, UCAPAWA-CIO.....	38
Votes cast against participating union.....	36
Challenged ballots.....	8
Void ballots.....	0

Since the challenged ballots were sufficient to affect the election results, the Regional Director investigated their validity and reported thereon in his Report on Challenged Ballots, a copy of which was duly served on the parties. No exceptions to the Report have been filed.

The Regional Director recommended that the challenges to 6 of the 8 ballots be sustained, since the voters who cast them were ineligible, having left the employ of the Company prior to the election or having been employed subsequent to the date used to determine eligibility to vote. We agree with the Regional Director and find that Helen Messinger, Manuel Martinez, Claudio Guarjardo, Caceras Lasaro, Frank Seroto, and A. J. Noodard were ineligible to vote and their ballots are therefore declared invalid.

<sup>1</sup> 55 N. L. R. B. 1242.

57 N. L. R. B.; No. 196.

The remaining two employees who were challenged, Opal Spurlock and Burnell McElhaney, had been discharged on February 19, 1944, and at the time of the election their discharge was the subject of unfair labor practice charges in Case No. 16-C-1046. Since the Board has determined, after a hearing in the latter case,<sup>2</sup> that Spurlock and McElhaney were discriminatorily discharged by the Company and has ordered them reinstated, it follows that they were employees entitled to vote. Their ballots are accordingly declared valid and we shall direct that they be opened and counted.

### DIRECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Edinburg Citrus Association, Edinburg, Texas, the Regional Director for the Sixteenth Region shall, pursuant to the Rules and Regulations of the Board and subject to Article III, Sections 10 and 11 thereof, within ten (10) days from the date of this Direction, open and count the ballots of Opal Spurlock and Burnell McElhaney, and thereafter prepare and serve on the parties to this proceeding a Report embodying therein his findings and recommendations as to the results of the ballot.

CHAIRMAN MILLIS took no part in the consideration of the above Supplemental Decision and Direction.

<sup>2</sup> *Matter of Edinburg Citrus Association*, 57 N. L. R. B. 1145