

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

DESSERT SEED COMPANY, INC. ,)	
)	
Employer ,)	
)	
and)	
)	
INTERNATIONAL BROTHERHOOD OF)	No. 75-RC-19-R
TEAMSTERS, CHAUFFEURS, WAREHOUSE-)	
MEN AND HELPERS OF AMERICA, LOCAL)	2 ALRB No. 53
UNION No. 898 ,)	
)	
Petitioner ,)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Intervenor .)	

On September 26, 1975, a Petition for Certification was filed by the Western Conference of Teamsters, Agricultural Division, IBT and its affiliated locals ("Teamsters") , seeking to represent the agricultural employees of the employer, Dessert Seed Company, Inc. The United Farm Workers of America, AFL-CIO, ("UFW") intervened. An election was held on October 3, 1975, resulting in a Teamster victory.^{1/}

The employer timely filed objections to the election alleging (1) that between September 24, 1975, and October 3, 1975, Teamster representatives came onto the employer's premises during

^{1/}The Tally of Ballots showed the following: Teamsters - 36 , UFW - 5, "No Labor Organization" - 28. There were no challenged ballots.

working hours, stopped the employees from working, conversed with them and passed out literature, in violation of the Board's access rule (8 California Administrative Code Section 20900); and (2) that the Teamsters representatives distributed to the employees copies of its current contract with other growers and promised that if the Teamsters won the representation election, the employer would be required to sign the same contract, and that this promise constituted a misrepresentation.^{2/}

ACCESS

The Board's access rule, 8 California Administrative Code Section 20900, permits a limited number of union organizers to enter an employer's property for one hour before work, one hour after work, and during the work-day for a one-hour period which encompasses the established lunch time, or if there is none, the time when employees are actually taking their lunch break, whenever that occurs during

^{2/} The employer also objected to the election on the grounds that Teamster representatives made certain promises to employees to the effect that if the Teamsters union won the representation election, the Teamsters would cause the employer to provide transportation for the employees from the border to the place of employment and that the Teamsters would cause the employer to pay wages to its employees from the commencement of the transportation. No evidence was introduced in support of this objection. Accordingly, it is dismissed.

In addition to the objections to this election presented by the employer, the Western Conference of Teamsters filed a motion to disqualify then Board Member LeRoy Chatfield and then Chairman Roger Mahony from participating in the hearing and disposition of the present matter. Mr. Chatfield is no longer a member of the Board. The motion to disqualify Member Mahony is based on the allegation that Member Mahony, in speaking with a Teamster attorney about a demonstration that had taken place at Board headquarters in which Teamster members had physically assaulted Board Members Chatfield and Mahony and had damaged property, told the attorney that he "better talk to [his] Teamsters goons and keep them away from him." Member Mahony denies making such a comment. In any event, the remark, even if made, was related to a specific situation and does not demonstrate prejudice to the Teamsters in general or to Teamsters in this case. Therefore, the motion is denied.

the day. See K. K. Ito Farms, 2 ALRB No. 51 (1976).

The employer objected to the election arguing that the presence of the Teamster's representatives on the company premises outside the times permitted by the access rule, together with the statements and promises they made, affected the results of the election by implying to some employees of the employer that the Teamsters were powerful enough to defy the law and the employer and that, therefore, the employees should vote for the Teamsters. In the alternative, the employer argued that such Teamster presence implied that the employer approved of the Teamsters union and that if the employees did not vote for the Teamsters, they would incur the disfavor of the employer, jeopardizing their jobs.

The evidence with respect to the alleged access regulation violations by Teamster organizers is as follows:

The first incident occurred on approximately September 24. A Dessert Seed crew foreman testified that he saw Teamster organizer Enriquez come into the field where his crew was working at about one hour before the lunch break and stop the crew from working and talk to them. The foreman did not attempt to stop Enriquez or ask him to leave. Enriquez testified that he did indeed come to the field that day because "The people wanted to talk to me about the wages, the increase the company had promised them, and I went to find out if it was true." Enriquez testified that he greeted the crew foreman before starting to talk to the workers, that the crew foreman was present while he talked, and that the crew foreman did not ask him to stop talking to the

workers or to leave. He further testified that he came during the workday rather than at the lunch hour because he had other appointments at the lunch hour. He remained in the field approximately 20 minutes.

Mark Dessert, son of the employer, testified that, on a date sometime between September 25 and October 3, the day of the election, he saw Enriquez on the employer's property at about 8:00 a.m. talking with two irrigators, one of whom had stopped work. Because it was after work had started and before the scheduled lunch break, Dessert testified that he approached Enriquez, reminded him of the access rule limitations and requested that he leave. Dessert testified that Enriquez and he talked for a short time; then Dessert left and returned five minutes later to find Enriquez still on the property. Enriquez testified that he was on the property at that date and time, that he was speaking to two men, one of whom was an irrigator for the employer and the other a person not employed by the employer who was visiting the irrigator, that Dessert approached him and asked him to leave, that he immediately left the two men and got into his car, that he sat in his car briefly preparing his daily report, and that he was in his car away from the worker when Dessert returned five minutes later.

On approximately September 29, Enriquez and Teamster organizer Herrera entered a Dessert Seed field in the early afternoon after the lunch period was over. Enriquez testified that his purpose in entering the field was to obtain from the workers a copy of a company-sponsored flyer that had been circulating around the ranch during the day. A Dessert Seed Farm

manager and a farm foreman testified that they saw the two Teamster organizers in the field, stopping the crews from working and conversing with them, that they approached the organizers, that the farm manager reminded them that they were trespassing on the employer's property beyond the lunch period and asked them to leave, and that they left immediately. Enriquez testified that he and Herrera attempted to enter the field, that they were met about a quarter of the way in by the farm manager and farm foreman, that the farm manager told them to leave because if they let the Teamsters on, they would have to let the UFW on, and that they immediately left without talking to any workers.^{3/}

Other incidents of alleged improper access for which there was no rebuttal testimony by Enriquez other than a general denial that the organizers were on the property outside the lunch hour on occasions other than those he testified to, were as follows: Mark Dessert testified that on September 25, he saw the two organizers on the property at about 10:30 a . m . , that he told them to leave because they were outside the access rule limitations, and that they did not reply but just kept on talking to the workers until they left about five minutes later. The plant and equipment manager testified that, two days before the election, he encountered Herrera and Enriquez in the company

^{3/} The farm foreman testified that about one-half hour before this incident (at about 1:00 p . m .) he had encountered the same two Teamster organizers in the employer's onion shed. At the time, one crew was not working or was just beginning to resume work. The organizers asked if it was time for the employees to resume working. The foreman told them it was and they left. Enriquez testified that before leaving they asked the foreman where the field crew was and the foreman told them what field the crew was in. They then went to the field.

onion processing shed at 1:30 p.m., one hour after the lunch hour ended. He testified that he told the organizers that it was past the lunch hour and insisted that they leave, which they did immediately. Finally, Mark Dessert testified that on the day before the election, he saw the two men at the onion shed at 8:00 a.m. stopping the women from working and talking to them. Dessert did not speak to the organizers and no one asked them to leave. Thus the evidence demonstrates that on six occasions in the nine days immediately preceding the election, Teamster organizers entered the employer's property at times not permitted by the Board's access regulation. On four of those occasions ^{4/}

^{4/} On two other occasions, the crew foreman in one case and the employer's son in another, saw organizers improperly on the property but made no request that they leave. The access regulation prescribes a minimum right of access by union organizers to an employer's property. Nothing in the rule prevents an employer from agreeing to or acquiescing in additional access by union organizers. To the extent that supervisory personnel of the employer are present during incidents of access outside the limitations of the access regulation and do not protest such "excess access", the circumstances may justify the conclusion that they have acquiesced in that conduct and thus may stop the employer from relying on such "excess access" as grounds for setting aside a subsequent election. In this case, the two incidents of access not challenged by the supervisory personnel occurred on September 24, the first day access occurred, and on October 2, the day before the election and after the Teamster organizers had been told four times to leave the employer's premises during working hours. We conclude that the first instance might well be a case of acquiescence in "excess access", although the latter incident can less clearly be excused as an instance of acquiescence since the organizers were on notice by that time that the employer was willing to grant only such access to its property as was required by the access regulation.

We note also that an employer's acquiescence in "excess access" by one union does not shield that conduct from being grounds for setting aside an election where a losing union demonstrates that additional access was acquiesced in by the employer on a discriminatory basis. It is a clear violation of the access regulation to refuse to one union the mandatory minimum access that is enjoyed by another. It is equally clearly discriminatory to grant one union additional access while

(fn. cont. on page 7)

various supervisory personnel of the employer told the organizers to leave because it was not the lunch hour and they had no right to be present during the working day at times other than the lunch hour. On two of the occasions, the organizers did not get to speak to workers at all.

We note that this is not a case in which we can find that the opposing union was disadvantaged by such "excess access" since it appears that UFW engaged in very little organizational activity among the employees of this employer, never protested the Teamsters' "excess access", and never demanded and were never denied equal access. Furthermore, given the fact that there were six incidents of "excess access" shown, in two of which supervisory personnel stood by and gave at least the appearance of acquiescing in the organizers' presence and in at least three of the other occasions the organizers stopped talking to workers immediately upon being asked to do so by supervisory personnel, we cannot say that the actions of the organizers were of such character as to affect employees' free choice of a collective bargaining representative. K. K. Ito Farms, 2 ALRB No. 51 (1976).

As we said in K. K. Ito Farms, supra, we strongly condemn the failure of the union to abide by the access regulation in good faith. Nevertheless, it is inappropriate for this Board per se to refuse to certify an election because of failure of the

(fn. 4 cont.)

denying such additional access to another union. This type of discriminatory access would be strong grounds for setting aside an election. In this case, as discussed infra, there is no evidence of discriminatory granting of additional access.

winning party to abide by one of the regulations of the Board absent sufficient evidence to convince us that the misconduct affected the outcome of the election. Where, as in this case, employees have participated in a free and fair election of a collective bargaining representative, we will not deprive employees of the right to proceed to collective bargaining through their chosen representative by refusing to certify an election because of misconduct which we cannot fairly conclude affected the results of the election. Accordingly, the objection is dismissed.

MISREPRESENTATIONS

The facts concerning the alleged misrepresentations by the Teamsters are as follows: A Dessert Seed crew foreman testified that he was present when Herrera and Enriquez distributed to the employees copies of Teamster contracts. On direct examination the foreman testified that the Teamsters told the workers that things would get better if the Teamster union came in, that the contract which they were handing out was the current contract under which the union operated and that if the Teamsters won the election, the employer would have to accept that contract. On cross-examination, the foreman conceded that he personally only heard the statement about "things would get better" and did not hear any statement directly about the contract.

Enriquez testified that, although he distributed copies of the current Teamsters contract to the workers, he spoke to the employees only about the general benefits the Teamsters union affords its members, and he stated to them only that if the Teamsters won the election, they would negotiate a contract with the employer. He denied making any specific

promises to the employees.^{5/} On this record, particularly the contradictory testimony of the company foreman, we find no misrepresentation. Accordingly, the objection is dismissed.

The Western Conference of Teamsters, Agricultural Division, IBT and its Locals 166, 186, 274, 542, 630, 865, 890, 898, and 1973, is certified as the exclusive representative of all the agricultural employees of the employer.

Dated: October 29, 1976

Gerald A. Brown, Chairman

Roger M. Mahony, Member

Ronald L. Ruiz, Member

5/ If, as the Teamsters representative involved testified, he distributed copies of a current Teamsters contract to the workers and stated only that if the Teamsters won the election they would negotiate a contract with the employer, there was clearly no misrepresentation. This is nothing more than a campaign promise. During election campaigns, a union naturally attempts to convince the workers that it will bargain for desirable benefits on their behalf if it wins the election. Such statements are only promises of what the union will attempt to accomplish in the future and do not constitute misrepresentations.

MEMBER HUTCHINSON, Concurring:

I concur in the result reached by the majority because I conclude that the conduct of the Teamster organizers did not materially affect the outcome of the election and, in addition thereto, was not violent nor intolerably disruptive of the employer's operations.

An examination of each alleged incident of "excess access" reveals that, for the most part, the organizers cooperated with the employer by leaving when requested to do so. However, looking at the conduct as a whole and the pattern it followed, it is also clear that the organizers were paying little attention to the limitations imposed by the "access rule" and were deliberately pressing the situation even after the employer had voiced his

objections and made it clear that access would be permitted only in accordance with those limitations.

I, like the majority, am strongly disinclined to set aside the results of an otherwise fair election. To do so would impose a severe penalty primarily on those individuals for whom the benefit of an election is intended rather than the perpetrators of the wrongdoing. But unlike the majority, I would retain the option to set an election aside because of deliberate and flagrant, (albeit not outcome determinative) abuses of the rules and regulations of this agency.

What troubles me about the majority opinion is that it can be read as an open invitation to labor organizations to disregard the limitations of the access rule so long as they are careful not to cross the line which delineates conduct which affects the results of an election and that which does not. Where that line is in each case is at best pure speculation. It is the speculative nature of determining whether or not the Teamsters' actions in this case led to the two vote margin that leads me to respectfully disagree with my dissenting colleague as well. In theory, and, it seems to me in practice as well, particularly flagrant abuse of the access limitations may be sanctioned by this Board because the outcome of the election may not be directly affected. The fault with this approach is that there are, currently, no effective alternative methods of deterring such conduct.

The conduct objected to here went far beyond that dealt with in Samuel S. Vener Co. , 1 ALRB No. 10(1975) and John V. Borchard Farms, 2 ALRB No. 16 (1976) and, in my view, comes very close to the maximum level of tolerance. Absent other effective means of "fitting the punishment to the crime," this Board must retain the option to set an election aside as the only effective way of deterring future misconduct. Relinquishing that option may well encourage future confrontations and hostilities over the permissible limits of access. Such a result is repugnant to the stated intent of the Act: ". . . to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state." Section 1, Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975.

Finally, I note that while the responsibility to effectuate the policies and purposes of the Act lies primarily with this Board, that responsibility is not exclusively reposed here. If we are to avoid the undesirable consequences of setting an election aside because of non-outcome determinative violations of the access rule, then it is incumbent upon labor organizations and employers to accept their share of that responsibility by conforming their conduct to the spirit as well as the letter of the law.

Dated: October 29 , 1976

Robert B. Hutchinson, Member

MEMBER JOHNSEN, Dissenting:

I respectfully dissent from the majority opinion on the grounds that the Teamsters union willfully and flagrantly violated the limitations on access provided for in the Board's access regulation (8 California Administrative Code Section 20900) and that such action was sufficient to have affected the outcome of the election. A mere reduction of two votes in the total received by the Teamsters would have necessitated a runoff election to determine if the majority of workers desired a collective bargaining representative.

Unlike the circumstances which permitted the Board to certify elections in Samuel S. Vener Company, 1 ALRB No. 10 (1975) and John V. Borchard Farms, 2 ALRB No. 16 (1976), the facts here reveal substantial violations of the access rule by a union. The employer repeatedly informed the Teamster organizers that they were on his property in violation of the access regulation. Yet they continued to come onto the property at times clearly not permitted by that regulation. As late as the day before the

election the organizers had to be asked to leave the property on four separate occasions.

It is apparent that the open defiance of ALRB regulations and the repeated and futile requests made by the employer gave the impression to the workers that the union did not have to obey the law and was free to impose its will upon employers as well as employees. This could not help but interfere with the workers' ability to freely choose a collective bargaining representative.

The majority opinion agrees that the union exceeded the limitations of the access regulation, but it concludes that the misconduct was not sufficient to affect the results of the election. Given the narrowness of the margin of victory, and the egregious nature of the union's misconduct, the conclusion reached by the majority seems to be dubious at best. I would overturn the election.
Dated: October 29, 1976.

Richard Johnsen, Jr., Member