Watsonville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CARL DOBLER AND SONS, Employer, and WESTERN CONFERENCE OF TEAMSTERS, LOCAL 890, Petitioner, and INDEPENDENT UNION OF AGRICULTURAL WORKERS, Incumbent Union, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervening Union.	Case No. 84-RC-15-SAL 11 ALRB No. 37

DECISION AND ORDER SETTING ASIDE ELECTION

On October 15, 1984-, the Western Conference *of* Teamsters, Local 890 (Teamsters) petitioned for a rival union election among all the agricultural employees of Carl Dobler and Sons (Employer). The employees had been represented by the Independent Union of Agricultural Workers (IUAW) since 1978. On October 17, 1984, the United Farm Workers of America, AFL-CIO (UFW) petitioned to intervene in the rival union election. On October 19, 1984, an election was conducted with the following result:

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Teamsters.	207
UFW.	31
IUAW	9
No Union	58
Total.	305[1/]

Only the UFW filed objections to the election. On December 31, 1984, the Acting Executive Secretary of the Agricultural Labor Relations Board (ALRB or Board) set the following election objections for hearing:

(1) Whether the Employer submitted an incomplete and insufficient employee list.

(2) Whether the Petitioner, the Western Conference of Teamsters, Local 890, (hereinafter referred to as Teamsters) and the IUAW created the impression that they were alter egos by conduct including but not limited to: campaigning together on each others behalf and presenting interchangeable representatives to the employees.

(3) Whether the Employer permitted the Petitioner, the Teamsters, to collect authorization cards on company property during work hours, disrupting work to obtain cards and stopping work to solicit cards and conduct an organizational meeting.

(4) Whether the IUAW, the Incumbent Union, abused its access rights to engage in contract administration and/or to take post-certification access by collecting authorization cards for the Petitioner during work hours.

(5) Whether the Employer denied the UFW access.

(6) Whether the Employer's foremen and supervisors engaged in illegal surveillance of employees.

(7) Whether a supervisor threatened employees with loss of employment for signing authorization cards for the United Farm Workers.

[1/] There were 370 names on the list of eligible employees.

(8) In reference to each one of the above-listed seven objections: if so, whether such conduct affected the results of the election.

A hearing was held before Investigative Hearing Examiner (IHE) Arie Schoorl on February 25, 26, 27, 28 and March 1, 1985. The IHE issued his Recommended Decision on the Election Objections attached hereto on June 28, 1985. Timely exceptions to the IHE's Recommended Decision were filed by the UFW and the Employer, supported by briefs.

The Board has considered the Recommended Decision of the IHE in light of the exceptions and supporting briefs and has decided to adopt his rulings, findings and conclusions only to the extent consistent herewith and to set aside the election.[2/]

The Alter Ego Issue

The IHE recommended the election be set aside based solely on evidence adduced in support of the UFWs second objection, which he found established that the Teamsters had "misrepresented to the employees that a vote for the Teamsters would be, in effect, the only way to continue the IUAW representation, even though it would be under the banner of the Teamsters and that Martha Cano, the President of the IUAW, was in favor of such a Teamster vote." Although no party objected to the IHE's findings or conclusions on this point, a de novo review of the record discloses that representations made to workers were, in fact, substantially accurate, at least at the time they were made.

[2/] The Teamsters' Motion to Withdraw Petition, submitted on July 23, 1985, was denied by the Board on October 28, 1985.

The IUAW, certified to represent the Dobler employees in 1978, had signed a contract with the Employer scheduled to expire in November of 1984. In August 1984, Martha Cano, President of the IUAW, was incarcerated in Arizona on charges of shooting the IUAW Vice-President. Teamster Business Agent Sam Rivera visited Cano in jail shortly after her arrest, and Cano asked him to run the IUAW for her. Shortly thereafter, she granted power of attorney to Teamster Senior Business Agent Roy Mendoza and authorized Mendoza and Rivera to hire themselves and several others as IUAW "consultants." In early September, Mendoza decided the Teamsters would organize the Dobler employees. Teamster business agents were designated as IUAW "consultants" and were instructed to wage an election campaign for the Teamsters.

In testimony which was not mentioned by the IHE, Rivera claimed that Cano summoned him and Mendoza to Arizona when she learned that the Teamsters were actually seeking certification at IUAW ranches. When Mendoza told her to trust him ("I know what I'm doing. Don't worry about it."), she said, "Well, if I'm going to let you guys run it [IUAW], then I need to know where I'm going to stand." She then drafted a letter which she and Mendoza both signed, and she gave it to Mendoza. Rivera claims without contradiction that it was a financial arrangement by which Cano would continue on payroll during a "transition" period.

After the election, friction between Rivera and Mendoza resulted in Mendoza removing Rivera from his paid Teamster

position. Only at that point did Rivera begin seriously to resist the Teamster takeover at Dobler.

In his finding of misrepresentation, the IHE relied on Rivera's testimony that Cano told him she had chosen him to be president because she knew he would not raid the IUAW. However, it is apparent from Rivera's later testimony that Cano ultimately -- and before the Dobler election -- acquiesced in the raid, fully authorizing the Teamster takeover. Therefore, we find that the agents' pre-election representation to workers that Cano supported the Teamsters in the election were substantially accurate.

That Teamster and IUAW agents created an impression that the unions were alter egos does not in itself constitute grounds for setting aside the election. This is especially true where the impression accurately reflects the realities of the moment. Mendoza and Rivera literally maintained alter egos as Teamster and IUAW officials, and there is no indication that employees were deceived into believing that the unions were independent.

Incomplete Employee List

In early October 1984, the UFW filed a Notice of Intent to Take Access and Organize at the Employer's premises. The UFW thereby activated the Employer's obligation, under Board Regulation section 20910(c),[3/] to turn over, within 5 days, a list of current employees and their addresses and to allow the

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[3/] (8 Cal. Admin. Code section 20910(c).)

union to take work site access under Board Regulation section 20900. The Employer turned over a list of names and addresses, and UFW organizers spent the following week attempting, usually unsuccessfully, to visit employees at their homes and taking work site access, often in full view of supervisors. Union organizers testified that the majority of employees on the list whom they attempted to visit either no longer worked at Dobler or no longer lived at the address listed. Approximately one week after the UFW received the defective list, the Teamsters filed a rival union petition. Two days later, the UFW presented the necessary 30 percent showing of interest to intervene. That evening, a Wednesday, UFW organizers complained, at the pre-election conference, that the list was defective. They sought, unsuccessfully, to persuade Board agents to hold the election on the following Monday instead of Friday because of the defective list. The Employer openly conceded that the list was a seniority — rather than a current payroll -- list. The next morning the Employer supplied the UFW with a payroll eligibility list which proved to be less defective than the seniority list.[4/] Twenty-four hours later, the election was held.

The IHE found that, due to the Employer's negligence, the UFW had only a "grossly inadequate" employee list. He also found that due to the UFW's status as the only one of the three

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[4/] One organizer testified that out of a list of 25 names and addresses on the part of the eligibility list assigned to him, 7 addresses were defective.

unions on the ballot that had no other access to employee names and addresses, the "communications so essential to the election process did not take place" and that the defective list "prejudice[d] against the employees making a free and intelligent choice among the various alternatives." However, having already decided to recommend setting the election aside on the "alter ego" objection, the IHE declined to decide whether, in and of itself, the list deficiency was sufficient to set aside the election.

We find that, despite the wide margin of the Teamsters' victory, [5/] the defective pre-petition list must invalidate the instant election. As Arturo Mendez, the head UFW organizer, testified, the seniority list was outdated and replete with names of ex-employees and non-current or non-existent addresses. Mendez testified that the inadequate list delayed UFW organizers in acquiring the 30 percent showing of interest needed to intervene, which in turn delayed the UFW's receipt of the Excelsior list[6/] of eligible voters. Mendez noted that many Dobler employees were on layoff and that crews were working sporadically at the time of the election campaign and thus could -not always be contacted at the work site. He estimated without contradiction that the inaccurate pre-petition list prevented UFW organizers from communicating "probably with the majority of the work force on any kind of basis, where we had an opportunity to really

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[5/] To change the results of this election, 78 out of 370 eligible voters would have had to have voted for the UFW instead of the Teamsters.

[6/] (Excelsior Underwear, Inc. (1966) 156 NLRB 1236 [61 LRRM 1217].)

explain what the Union [UFW] was all about." The testimony of the other UFW organizers substantiates Mendez' claim and compels us to conclude that the defective pre-petition list presented a major impediment to organizing which deprived a substantial number of eligible voters of communication with UFW organizers. Once such a substantial impediment has been established, the burden is on the employer to explain its submission of the defective list. (See Yoder Brothers, Inc. (1976) 2 ALRB No. 4.) The instant employer made no attempt -- either at hearing or at the pre-election conference -- to explain the error.[7/] Accordingly, we must set the election aside because of the defective pre-petition list.

Access Abuse

IUAW Business Agent Margaret Grijalva testified that she took access during work time at least six times with other Teamster/IUAW agents to campaign for the Teamsters. Uncontradicted evidence was also adduced that Roy Mendoza also campaigned for the Teamsters during work hours for at least 20 minutes on one occasion. Employees testified to numerous other occasions on which IUAW agents campaigned for the Teamsters, although it was not always clear whether the access occurred during work time or organizational access time.

[7/] If the list deficiencies are shown to have resulted from employee resistance or misrepresentation -- as opposed to employer bad faith or negligence in presenting, preparing, or maintaining a current list, we would dismiss the objection. Compare National Silver Company (1946) 71 NLRB 594 [19 LRRM 1028], where the National Labor Relations Board declined to set aside an election although 21 employees did not receive notice by mail because incorrect addresses were given to the Regional Director.

Although incidents of access abuse will not in themselves constitute grounds to set aside an election (see Frudden Enterprises (1981) 7 ALRB No. 22), the use of IUAW post-certification access to campaign for the Teamsters must be viewed in the context of the deficient employee list and the other advantages which the Teamsters were able to achieve over the UFW by virtue of their close relationship with the IUAW. Although we find that the Mendoza incident falls short of proving Employer assistance, and therefore adopt the IHE's recommended dismissal of Objection No. 3,[8/] we view Mendoza's campaigning during access in combination with the other incidents of abuse of access about which Margaret Grijalva and others testified, as having created an unfair advantage for the Teamsters over the UFW. And when these access abuses are in turn considered in conjunction with the impediment to UFW home access occasioned

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[8/] In Royal Packing Company (1979) 5 ALRB No. 31, supervisors twice permitted Teamster organizers to replace employees on a lettuce wrap machine in order to free them to solicit authorization signatures from other employees. The Board found the employer had violated section 1153(b) and (a) of the Agricultural Labor Relations Act by permitting the Teamsters to organize during work time under the aegis of a pre-ALRA contract access provision. The Board found that the employer "by affording [the incumbent] more and better opportunities for access to its employees at the work site than it afforded [the intervenors] ... clearly demonstrated to employees [its] assistance to and cooperation with one of the two competing unions in its organization activities." (Slip Op., pp. 4-5.) Unlike the situation in Royal Packing, the evidence adduced in the instant case establishes only a single incident of work time campaigning in the presence of a supervisor by a union representative who was -- arguably, at least -- permissibly present on the employer's premises.

by the defective employee list,[9/] we find alternative and additional grounds to set aside this election.[10/]

ORDER

By authority of Labor Code section 1156.3, the Agricultural Labor Relations Board hereby orders that the election heretofore conducted in this matter be, and it hereby is, set aside and that the Petition for Certification be, and it hereby is, dismissed.

Dated: December 27, 1985

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

[9/] We concur with the IHE's finding that the alleged threat by Ramon Diaz, even if it occurred as alleged by Maria Torres, was an isolated event, apparently unnoticed by the other workers in the vicinity. We rely on other evidence for which Torres is not the source in setting this election aside. Therefore, the Employer's exceptions to the IHE's finding that Maria Torres was a credible witness can have no impact on our decision to set aside the election. In addition, we accept the IHE's demeanor-based credibility resolution in favor of Maria Torres, the Employer having failed to demonstrate that a clear preponderance of the relevant evidence discredits her. (Adam Dairy dba Rancho Dos Rios (1978) 4- ALRB No. 24. See also Standard Drywall Products, Inc. (1950) 91 NLRB 544. [26 LRRM 1531].)

[10/] Member Carrillo would order the instant election re-run upon motion of one of the labor organizations participating in the original election. (See Tenneco Farming Co. (1977) 3 ALRB No. 20.) In his view, a re-run may well be the only way to provide the employees with the opportunity freely to exercise their choice when a rival union election has been set aside due to misconduct by the incumbent and/or employer. If the incumbent signs a contract with the employer before the Board sets the election aside or a new rival union petition can be filed, the employees may arguably be barred for up to 3 years from decertifying the incumbent or seeking representation by a union which committed no misconduct in the original election.

MEMBER WALDIE, Concurring:

Although I am reluctant to overturn rival union elections solely because of an inadequate eligibility list provided by the employer (see my dissent in Silva Harvesting Inc. (1985) 11 ALRB No. 12), I am persuaded to do so here for reasons consistent with my refusal to do so in Silva, supra.

As I stated in my dissent in Silva, supra, 11 ALRB No. 12, I would not overturn rival union elections where the election results in 1) a low no-union vote, 2) a pro-union vote closely divided between the rivals, and 3) no evidence of employer bad faith or negligence in compiling the deficient employee list.

The facts in this case are precisely the reverse of those in Silva, and thus persuade me to vote with the majority in this case. In Silva, the no-union vote was a mere 2% of the total; here it is 19%. In Silva, the pro-union vote was divided virtually in half (53%-47%) between the rivals; here, one union received 83% of the pro-union vote while the union which received the deficient list

from the employer picked up only 12%. Lastly, the employer here offered no explanation for the seriously deficient employee list whereas in Silva, the employer informed the Regional Director of the list's problems and offered to take steps to correct them.

For these reasons, I agree with the decision to overturn this rival union election.

Dated: December 21, 1985

JEROME R. WALDIE, Member

CHAIRPERSON JAMES-MASSENGALE and MEMBER MCCARTHY, dissenting in part.

Labor Code section 1152 is clear in its mandate that "[e]mployees shall have the right ... to bargain collectively through representatives of their own choosing . . . and shall also have the right to refrain from any or all such activities . . . ." To that end, the Agricultural Labor Relations Board (ALRB) is charged with the responsibility of monitoring the election process in order to protect employee free choice in determining whether or not they desire to select a collective bargaining representative. We believe that misrepresentations made by the Teamsters substantially affected employee free choice in the designation of a collective bargaining representative here by effectively precluding the voters from selecting the IUAW and we would therefore affirm the Investigative Hearing Examiner (IHE) and sustain Objection 2 as an independent ground for setting aside

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the election.[1/]

Contrary to the majority opinion, we are satisfied that the evidence amply supports the conclusion that, during the periods of access abuse, the Teamster representatives, who were authorized by IUAW President Martha Cano "to administer the affairs of the IUAW," deliberately misrepresented the status of the IUAW to the workers by stating that the IUAW was "finished" and "dying," and that the workers should therefore support and vote for Local 890, Teamsters. The clear message of the misrepresentations was that a vote for the IUAW was futile. Such repeated misrepresentations, in the unusual circumstances of this case where the Teamster officials also functioned as "IUAW consultants," were particularly deceptive and, in our opinion, affected the free choice of the voters. Voters could reasonably be expected to rely upon the statements of the Teamster consultants and accept them as valid, rather than consider those remarks as mere partisan campaign propaganda. Martha Cano's August 28 and October 11 communications to the ALRB and the IUAW office, respectively, clearly reveal her intention of naming the Teamster officials to "conduct the affairs" of the IUAW in her absence due to her personal problems. There is no authorization by her, either explicit or implicit, that the

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[1/] As the IHE properly noted, even under the current law of the National Labor Relations Board (NLRB) dealing with misrepresentations, in the Midland National Life Insurance Co. (1982) 263 NLRB NO. 24 decision, that board will continue to set aside elections not on the basis of the substance of the representations made but the deceptive manner in which they are made. While that board would limit such exception to forged documents, it is no less deceptive here where the workers would reasonably be expected to rely upon the statements of those authorized to handle the affairs of the IUAW.

officials she appointed had the power to terminate the IUAW or to inform the workers that the Union was ceasing to exist. Therefore, we would find that the statements made to the workers were a misrepresentation which the employees could not properly evaluate.

The record does not support, in our view, the strained conclusion of the majority that Martha Cano, in meeting with Mendoza and Rivera in Arizona after learning of the Teamsters' action at Major Farms, "acquiesced" in further Teamster raids on IUAW represented units. The remarks in the record relied on by the majority in support of their finding of acquiescence are ambiguous and fail to show such approval. The fact that Cano summoned the Teamster representatives to Arizona, after learning of the Teamster involvement at another ranch, undermines a finding that she acquiesced in a raid of her union. At that meeting, Cano worked out a financial arrangement with Teamster representatives whereby she would continue to be compensated in her role as president and/or consultant, the logical inference being that she would be compensated for her continued role as an IUAW official. Such a financial arrangement belies the majority's finding that she agreed to Mendoza's raid on the IUAW for the benefit of the Teamsters.

The majority's reliance upon shreds of ambiguous statements to find acquiescence and therefore to conclude that the Teamsters' remarks to the employees were not misrepresentations of the status of the IUAW ignores the facts and serves only to mask the Teamsters' deliberate design to mislead the workers and effectively preclude their free choice in the election. Based

upon the misrepresentations, as well as the list deficiency and the access abuse violations in this case, we would set the election aside and dismiss the petition.

Dated: December 27, 1985

JYRL JAMES-MASSENGALE, Chairperson

JOHN P. MCCARTHY, Member

CASE SUMMARY

CARL DOBLER AND SONS

11 ALRB No. 37
Case No. 84-RC-15-SAL

IHE Decision

The IHE recommended setting aside this rival union election due to what he characterized as a "misrepresentation" on the part of agents of the incumbent union (IUAW) that the President of the IUAW, recently incarcerated for shooting death of the IUAW vice president, was in favor of a Teamster victory. The IHE also declined to decide whether any of the other objections, filed by the UFW, constituted grounds, in themselves, to set the election aside. He did find, however, that the Employer's unexplained submission of a "grossly inadequate" seniority list instead of a current pre-petition payroll list was negligent and "prejudiced" the UFW and that "the communications so essential to the election process did not take place."

Board Decision

The Board ordered the election set aside on the basis of the inadequate list and found that the list, in combination with the Teamsters' improper use of IUAW post-certification access to gain a campaign advantage over the intervening union, the UFW, constituted alternative grounds to set the election aside. The Board also adopted the IHE's recommendation to dismiss objections relating to supervisor threats and surveillance and Employer assistance to Teamsters and denial of access to UFW. However, the Board rejected the IHE's finding that IUAW agents misrepresented the desires of the IUAW President, finding instead that the IUAW President "acquiesced" to the Teamster's raid on the IUAW. Member Carrillo noted that he would have ordered the election re-run to preclude the establishment of a contract bar. Member Waldie concurred with the majority's decision, distinguishing the effect of the inadequate list on this rival union election from that in Silva Harvesting, Inc. (1985) 11 ALRB No. 12. Chairperson James-Massengale and Member McCarthy filed a partial dissent finding that the Teamster agents' representations to the employees that the IUAW was "finished" and "dying" were misrepresentations of the status of the incumbent union and deprived eligible voters of their right to freely chose among the labor organizations on the ballot by effectively precluding the voters from selecting the IUAW and that the misrepresentations thereby affected the results of the election. They also reject the majority's finding that the IUAW President acquiesced to the Teamster raids on IUAW, finding the remarks in the record relied on by the majority to be "ambiguous".

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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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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

Agricultural Labor Relations Board
JUN 28 1985
RECEIVED
Exec. Secretary

Case No. 84-RC-15-SAL

In the Matter of:

CARL DOBLER AND SONS,

Employer,

and

WESTERN CONFERENCE OF TEAMSTERS, LOCAL 890,

Petitioner,

and

INDEPENDENT UNION OF AGRICULTURAL WORKERS,

Incumbent Union,

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Intervening Union.

Appearances:

Terrence R. O'Connor, Esq.
Grower-Shipper Vegetable Association
for the Employer

Stanley Ziegler, Esq.
for the Petitioner

Carole E. Seliger, Esq.
for the Incumbent Union

Chris A. Schneider
for the Intervening Union

Before: Arie Schoorl
Investigative Hearing Examiner

DECISION OF THE INVESTIGATIVE HEARING EXAMINER

STATEMENT OF THE CASE

ARIE SCHOORL, Investigative Hearing Examiner: This case was heard by me on February 25, 26, 27, 28 and March 1, 1985 in Watsonville. The four parties participated fully in the hearing. Post-hearing briefs[1/] were submitted by each of the parties with the exception of the Petitioner.

In 1978 the Independent Union of Agricultural Workers (hereinafter referred to as the IUAW) became the certified bargaining representative of the Employer's agricultural workers. On October 15, 1984, a petition for certification/rival union petition was filed by the Western Conference of Teamsters, Local 890 (hereinafter referred to as the Teamsters), pursuant to section 1156.7 of the Agricultural Labor Relations Act (ALRA or Act).[2/] The United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW), filed a petition to intervene on October 17. The Board conducted an election on October 19. The tally of the ballots shows the following results:

Teamsters	207
UFW	31
IUAW	9
No Union	58

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1. Intervenor moved to strike Employer's post-hearing brief on the grounds that it failed to include a Table of Authorities. Subsequently Employer filed a Table of Authorities and explained it was not included in the post hearing brief due to inadvertence. Since Intervenor did not establish any prejudice, I deny its motion to strike Employer's post hearing brief.

2. All dates hereinafter refer to 1983 unless otherwise specified and all statutory citations are to the ALRA unless otherwise specified.

The Intervening Union filed timely objections to the elections pursuant to Labor Code section 1156.3(c). The Executive Secretary dismissed 18 objections and set the following objections for hearing:

1. Whether the employer submitted an incomplete and deficient employee list.

2. Whether the Petitioner, the Western Conference of Teamsters, Local 890 (hereinafter referred to as Teamsters) and the IUAW created the impression they were alter egos by conduct including but not limited to: campaigning together on each other's behalf and in presenting interchangeable representatives to the employees.

3. Whether the Employer permitted the Petitioner, the Teamsters, to collect authorization cards on company property during work hours, disrupting work to obtain cards and stopping work to solicit cards and to conduct an organizational meeting.

4. Whether the IUAW, the Incumbent Union, abused its access rights to engage in contract administration and/or to take post-certification access by collecting authorization cards for the Petitioner during work hours.

5. Whether the Employer denied the UFW access.

6. Whether the Employer's foremen and supervisors engaged in illegal surveillance of employees.

7. Whether a supervisor threatened employees with loss of employment for signing authorization cards for the United Farm Workers.

8. In reference to each one of the above-listed 7

objections; if so, whether such conduct affected the results of the election.

Upon the entire record and evaluation of the witnesses, and after consideration of the post-hearing briefs, I make the following findings of fact and conclusions of law:

I. JURISDICTION

None of the parties challenged the Board's jusisdiction in this matter. Accordingly, I find Carl Dobler and Sons to be an employer within the meaning of Labor Code section 1140.4(c), and that the Western Conference of Teamsters, Local 890, Independent Union of Agricultural Workers and the United Farm Workers to be labor organizations within the meaning of Labor Code section 1140.4(f) and that a representation election was conducted within the meaning of Labor Code section 1156.3.

II. BACKGROUND

Carl Dobler and Sons is an agricultural employer with farming operations in Monterey, Santa Cruz and San Benito counties. The IUAW has represented Carl Dobler and Sons (Employer) employees since 1978. The Employer and the IUAW had signed a collective bargaining agreement which was effective until November 1984.

III. EMPLOYER ALLEGEDLY SUBMITTED INCOMPLETE AND DEFICIENT EMPLOYEE LISTS

A. Facts

In early October Intervenor commenced its campaign to organize the Dobler agricultural employees. According to the credible testimony of employee Maria Torres, its organizers visited

the Dobler fields and conversed with Dobler employees frequently.[3] On

October 5 the UFW filed a Notice of Intent to Organize and on October 10 received a list of the employees' names and addresses.

Jose Mordilla, a UFW organizer, utilized the list when he attempted to visit four employees and have them sign authorization cards. Three addresses were correct but the fourth one was not since no employee lived at the listed address.

David Vega, a UFW member[4] using the same list, endeavored to contact seven employees in the early afternoon. He learned that two employees had moved,[5] two were working and were not at home and three employees had addresses listed that did not exist.[6]

Adolfo Telles, another UFW member[7] utilizing the list, attempted to contact four employees and at each address the current occupants informed him that the individuals that he was seeking did not reside there.

Ramiro Perez, a UFW organizer, credibly testified that he attempted to visit every member of a lettuce crew[8] at their

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3. "Not too far from every day" were her exact words.

4. Presently works at Monterey Mushroom but was unemployed on the day he tried to contact Dobler employees.

5. One of them 18 months ago.

6. There were no numbers on the street that corresponded with the numbers on the list.

7. Presently working at Monterey Mushroom but was unemployed the day he tried to contact Dobler employees.

8. Each lettuce crew consisted of 50-55 workers. See page 30.

residences but encountered difficulties, i.e., the majority of the crew members did not reside at the listed addresses and some of the addresses were not existent.

At the pre-election conference, held on October 17, at 2:00 p.m. the UFW election coordinator, Arturo Mendoza, pointed out that the Notice of Intent to Organize (hereinafter referred to as NO) list was defective. Dobler replied that it was a seniority list.

Mendoza testified that he did not protest about the NO list until the pre-election conference because he and the other UFW organizers had assumed that the list was an up-to-date payroll list not a seniority list and perhaps numerous employees had moved.

The UFW received the payroll list (of eligible voters) the next morning, October 18, twenty-four hours before the election.

Mendoza testified that there were employees who no longer lived at the addresses listed on the new list and that the UFW representatives wasted much time endeavoring to locate them. Geraldo Puente, a UFW representative, tried to visit 25 eligible voters later that day and discovered that 5 of the listed addresses were non-existent. Three of the listed addresses were box numbers.

The election was held the next morning, just four days after the Teamsters filed the Petition for Certification.

B. Analysis and Conclusion

Labor Code section 1157.3 imposes a duty on agricultural employers to "maintain accurate and current payroll lists containing the names and addresses of all their employees". California Administrative Code section 20910(c) provides for an employer to provide an employee list in respect to a Notice of

Intent to Organize and section 20310(a)(2) provides for an employer to provide a similar list in respect to a Petition for Certification.

The details of the obligation in respect to the two lists are set out in Section 20310(a)(2): A complete and accurate list of the complete and full names, current street addresses, and job classifications of all agricultural employees, including employees hired through a labor contractor, in the bargaining unit sought by the petitioner in the payroll period immediately preceding the filing of the petition. The employee list shall also include the names, current street addresses, and job classifications of persons working for the employer as part of a family or other group for which the name of only one group member appears on the payroll . . . ."

The objections, set for hearing by the Executive Secretary, allege that the Employer failed to comply with these two sections by submitting a seniority list rather than a payroll list in respect to Intervenor's notice of intent to organize and by providing an inadequate eligibility list for the election which contained a substantial number of inaccurate or nonexistent addresses.

It has been clearly established by the record evidence that the seniority list supplied by the Employer instead of the payroll list was grossly inadequate as it was so deficient that its utility was substantially impaired. Two organizers Mordilla and Perez and two UFW member volunteers, utilizing the HO list, attempted to visit approximately 115 employees' homes and found that the majority of the employees did not currently reside at the addresses listed.

In respect to the second list, delivered to the UFW 24 hours before the election, the record is not so complete. The UFW coordinator Mendoza described in general terms the deficiencies of the RC list, i.e., that there were employees who no longer resided at the listed addresses and the UFW organizers wasted much time endeavoring to locate them. The UFW called only one witness Geraldo Puente who testified as to particular deficiencies with the list, i.e., three addresses were post office box numbers and five addresses were non-existent out of 25 addresses.

So at best the UFW had one day at its disposition to utilize a somewhat defective payroll list since the one they had utilized for 7 days (October 10-17) was a defective seniority list.

The Board in Silva Harvesting (1984) 11 ALRB No. 12 determined that in cases involving defective eligibility lists, it would apply an outcome-determinative standard, under which an election would be set aside only if the deficiencies in the list tend to interfere with the employees' free choice to the extent that the election could have been affected. However, in the same case the Board stated that it had noted in Yoder (1976) 2 ALRB No. 4 that an election would not be set aside for an insubstantial failure to comply in the absence of gross negligence or bad faith on the part of the employer.

Although the employer was not guilty of bad faith, it was certainly guilty of some degree of negligence. It is difficult to determine such degree as there was no evidence presented to explain the reason it submitted a seniority list rather than an up-to-date payroll list.

In the absence of proof of gross negligence, I must use the Board's criteria of "outcome determinative" in resolving the question of whether, the deficient lists should be grounds for setting aside the election.

The Teamsters union won the election by more than an ample margin: Teamsters 207, UFW 31, IUAW 9 and no union 58. Of course, there are other factors that have allegedly affected the outcome of the election, the misrepresentation by the Teamsters, the IUAW abuse of its access rights, etc. If there had been no other factors affecting the outcome of the election, the results might have been considerably closer and the deficient lists then could have been outcome-determinative.

Therefore, despite the substantial margin of victory by the Teamsters, I must consider whether the deficient employee lists constitute a factor that affected the outcome of the election.

The fact situation presented by this case is unique. The employer supplied a seniority list rather than *a.* payroll list in response to the UFW[1]s Notice of Intent to Organize. The rival unions, both the IUAW and the Teamsters, had access to the names and addresses of the employees since the beginning of the election campaign as the IUAW was the bargaining representative and the Teamsters enjoyed the same access due to their business agents serving as IUAW officers and/or business agents.

These additional factors are persuasive that the communciations so essential to the election process did not take place. Certainly, an imbalance existed in such communciations. Two unions could take daily access during both regulation access time

and work time while the third union, the UFW, could only take access during the regular access times. Two unions had access to the addresses of the employees during the entire election campaign while the third union, the UFW, had severely limited access to the employees' addresses until the final day and somewhat impaired access the final day.

It is true that the UFW was able to take virtually maximum advantage of its election access rights.[9/] However, the Board has held that visits to the employees' homes are very important since the union organizers are able to explain the advantages of union representation in a tranquil atmosphere and answer in detail any questions the employees have.[10/]

Even if the eligibility list were accurate in respect to a substantial majority of the employees, it still would not provide the UFW with a realistic opportunity to visit the employees in their homes and explain to them the advantages of having the UFW as their bargaining agent. Twenty-four (24) hours does not suffice for such an endeavor. The Board in Jack T. Baillie (1979) 5 ALRB No. 72 determined that three days was an adequate time.[11/]

Whether this failure to provide a somewhat adequate list[12/]

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9. Maria Torres, a UFW witness, admitted that the UFW organizers visited the Dobler crews in the fields 2 or 3 times almost every day. Employer's witnesses confirmed this fact.

10. Home visits are private, so they are not subject to the same time restraints as work visits. Henry Moreno (1977) 3 ALRB No. 40.

11. However, the Board made no comment on the sufficiency of one or two days.

12. There was sufficient evidence to indicate that the eligibility list was not without some defects.

until the day before the election was by itself prejudicial enough to set aside the election, I need not decide due to the presence of other outcome determinative factors. However, I find that it was a factor that did prejudice against the employees making a free and intelligent choice among the various alternatives.

IV. THE ALLEGED ALTER EGO STATUS OF THE TEAMSTERS AND THE IUAW, THE ALLEGED ABUSE OF ACCESS BY THE IUAW, AND THE ALLEGED ASSISTANCE BY THE EMPLOYER TO ASSIST THE TEAMSTER UNION IN THEIR ORGANIZATION EFFORTS

In August 1984 Martha Cano, president of the Independent Union of Agricultural Workers (IUAW) was arrested and jailed on felony charges in Yuma, Arizona. Soon afterwards, Sam Rivera, a Teamster business agent, visited her in jail and the two discussed the future of the IUAW. Cano explained that she would be unable to continue with her administrative duties with the IUAW and would like some *of* the Teamster business agents to run the union, make sure everything was done right and take care of the staff. She confided in Rivera that she would name him president of the IUAW because he was the only one that wouldn't let the IUAW be raided. On August 28, 1984, Cano sent a telegram to Roy Mendoza, senior business agent of Western Conference of Teamsters (Teamsters) Local 890 located in Salinas, California, in which she granted him power of attorney and authorization to administer the affairs of the IUAW.

A few days later Roy Mendoza and Sam Rivera traveled to the Yuma, Arizona, jail and conferred with Cano.[13/] The latter authorized Mendoza and Rivera to hire themselves and other

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13. Later on during the same month, Mendoza and Rivera visited Cano again in the Yuma jail.

individuals as consultants for the IUAW.[14/]

Upon returning to Salinas, Mendoza took over the administration of the IUAW and informed Rivera that he, Mendoza, outranked him, Rivera, as a consultant for the IUAW since he was the senior business agent in Local 890. Although Rivera would periodically criticize Mendoza in regards to certain courses of action decided upon by Mendoza, he acquiesced to Mendoza's authority until the first part of November.[15/] Mendoza proceeded to name Peter Maturino, Robert Castro, Ana Fernandez (none of the three obtained a leave of absence for the Teamsters and continued on its payroll) IUAW consultants and Margaret Grijalva and Froilan Medina.[16/]

In early September Mendoza decided that the Teamsters would organize the Dobler employees,[17/] who heretofore had been represented by the IUAW and had a collective bargaining agreement in effect until November 1984. Mendoza designated Robert Castro, as a IUAW consultant, to be in charge of the election campaign. Both Mendoza and Castro gave instructions to Medina, and Grijalva

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14. Including additional Teamster business agents, Pete Maturino, Robert Castro and Ana Fernandez. It was also agreed that Cano would serve as a consultant for the Union until her trial commenced.

15. The reasons why Rivera acquiesced to Mendoza's authority will be discussed infra.

16. The latter had been a business agent of the IUAW since June 1984.

17. Rivera credibly testified that the Teamster business agents, who were acting as consultants for the IUAW, decided to dismantle the IUAW and begin a campaign to replace the latter union with Teamster Local 890.

in respect to their organizing activities.

In early September, Robert Chavez accompanied by another organizer[18/] visited the field where a Filipino crew was harvesting.

Chavez explained to Marcello Jose, a crew member, that Martha Cano was unable to return to California and administer the IUAW contract with the employer, so with her authorization he, who was a Teamster representative, was now visiting the crews as an IUAW representative. Chavez informed him that the IUAW was dying and that the crew members should be in favor of the Teamsters. Jose observed Chavez converse with and distribute authorization cards to his fellow crew members.

Rolando Bose, another crew member, confirmed Jose's testimony that Chavez had visited the crew in early September and had informed the members about Cano, the moribund condition of the Union, and how they should choose the Teamsters to represent them in the future. Jose credibly testified that four crew members, Rolando Bose, Catalino Arre, Arsenio Dususin and F. Cabot had expressed their confusion about the IUAW and the Teamsters. The five crew members were under the impression that the IUAW was representing them but just before the election the impression changed so that they thought the Teamsters were representing them. Bose also observed IUAW representatives in the Dobler's fields distributing Teamster literature and authorization cards to crew members.

Mendoza arranged for a IUAW-sponsored meeting of Dobler employees to discuss the upcoming negotiations for a new collective

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18. There is no evidence as to the organizer's identity.

bargaining contract with the Employer. The meeting was held on September 26, 1984, at the Teamster's hall in Salinas.[19/] Mendoza utilized flyers to announce the meeting, typed and prepared by Margaret Grijalva, a IUAW business agent.

Mendoza, who was the only speaker at the meeting, introduced himself and announced that he was taking over the IUAW. He explained to the Dobler employees, in attendance, that Martha Cano, the IUAW president, had given him power of attorney as she was unable to reenter California and thus could not service the collective contract with Dobler. Mendoza added that he would be in charge of negotiations, upcoming in November, and also any problems the members might have. He introduced Froilan Medina and Margaret Grijalva as IUAW business agents, and Ana Fernandez and Robert Castro as IUAW consultants. Sam Rivera had not been notified of the details of the meeting but he entered the hall by chance while it was in progress. He credibly testified that after two minutes Mendoza noticed his presence and indicated to him with a facial expression to leave the hall. Rivera immediately complied.

Mendoza informed the employees in attendance that if any one of them had a problem to come to the IUAW office and if no one were there to go to the Teamster's office.

The employees asked questions about Martha Cano and piece rates. There was no evidence presented to indicate whether the

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19. Sam Rivera expressed to Mendoza his desire to have a general meeting of all the members of the IUAW (the Union was the bargaining representative for the agricultural employees of 2 or 3 other employers which represented 60% of the Union membership, about 600 members) but Mendoza overruled him.

union officials answered these questions.

During September and October, Froilan Medina, Johnnie Macias[20/] and Margaret Grijalva, IUAW business agents, under instructions from Mendoza and Castro, visited the Dobler fields during the regular access time and also during work time and non-noon breaks, and distributed literature[21/] advocating a vote for the Teamsters and gathered numerous employee signatures on Teamster authorization cards. Grijalva credibly testified that she visited the fields during work time as a IUAW business agent but on behalf of the Teamsters three times with Froilan Medina and three times with Johnnie Macias during work time.[22/] Grijalva added that although the foremen could observe her taking access and conversing with the employees, she believed the foremen were unable to observe the nature of the materials distributed. Pablo Tijeda credibly testified that he observed Froilan Medina and other IUAW representatives in the Dobler fields on three or four occasions.[23/]

Sam Rivera, Pete Maturino and Froilan Medina, as IUAW business agents and/or consultants organized a committee, composed of representatives from each of the Dobler crews. Following

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20. Ray Mendoza employed Johnnie Macias as a IUAW business agent at the beginning of October.

21. Flyers typed, printed, etc., by Margaret Grijalva, Sam Rivera, Pete Maturino and Froilan Medina.

22. Grijalva, Medina and Macias informed the Dobler workers that Margaret Cano could not come to California, that she had given power of attorney to Ray Mendoza and that they (the IUAW representatives) wanted the workers to vote for the Teamsters because it was a stronger union and they would receive better benefits.

23. He saw Grijalva accompany Medina the first time.

instructions from the aforementioned IUAW representatives, committee members distributed Teamster leaflets to their respective crews in the fields.

During the same period of time, Sam Rivera, who was a consultant for the IUAW and later its (acting and later its actual) president and simultaneously a Teamster 890 business agent visited Dobler fields on three occasions and gathered signatures for Teamster authorization cards. However, he either conversed with the employees on the edge of the fields or took access during regular organization access times.[24/]

Grijalva credibly testified that Froilan Medina, Johnnie Macias and she, as IUAW business agents, continued to contact Dobler employees in the fields on behalf of the Teamsters.

Sam Rivera protested to Mendoza about the practice of the IUAW business agents visiting Dobler employees during work time. Mendoza replied that it was none of Rivera's business. Moreover, Rivera insisted that the Teamsters not try to organize "companies" that were IUAW. Mendoza replied that he was the boss, as senior Teamster business agent, and would recommend termination of Rivera's employment with the Teamsters if Rivera continued such opposition to his decisions.

Rivera informed Froilan Medina that the IUAW business agents should not visit the fields and collect Teamster authorization cards during work times. Medina replied that he had to do it because Mendoza had said once Carl Dobler was done that he,

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24. Rivera testified that he contacted the Dobler employees as a Teamster business agent not as a IUAW official.

Medina, would be placed on the Teamster payroll.

On Monday morning, before the election petition was filed, Roy Mendoza and two unidentified individuals visited a crew in a Dobler field during work time. They informed the crew members that the IUAW was "all finished" and that they should vote for the Teamsters. The crew foreman, Ramon Diaz, was present. Mendoza and the two individuals conversed with the crew for twenty minutes and then left the field at the break.

On *a* Saturday morning, before the filing of the election petition, Froilan Medina and two Teamster representatives[25/] conversed with the crew members, distributed pro-Teamster literature and gathered signatures for authorization cards. The visit lasted thirty minutes but the record evidence is not clear whether the visit took place during work time, noon time or a non-noon time break.[26/]

On October 12 Cano designated the following individuals to be acting officers of the IUAW: Sam Rivera, president; Roy Mendoza, secretary-treasure; Peter Maturino, 1st vice-president; Robert Castro, 5th vice-president; Froilan Medina, vice-president or trustee; Margaret Grijalva, vice-president or trustee.[27/]

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25. According to Pablo Tejeda's credible testimony, the crew members commented that the two individuals accompanying Medina were Teamsters. (The state of mind of the crew members is relevant. Therefore, such testimony is a state of mind exception to the hearsay rule.)

26. Tejeda testified that he did not know whether Medina and the Teamsters entered the fields with the foreman's permission.

27. Cano sent a telegram to the IUAW offices in Salinas, in which she designated the individuals and their respective offices. In the same telegram she expressed her intention to resume her position as president of the IUAW in the future.

Mendoza arranged a Teamster-sponsored meeting of the Dobler employees which was held on October 16 in Watsonville. Sam Rivera (who was wearing a Teamster's jacket with his name on it) Roy Mendoza and Pete Maturino were in charge of the meeting. Johnnie Macias, Froilan Medina, Ana Fernandez, Pete Maturino and perhaps Robert Chavez were also in attendance.

Mendoza introduced Margaret Grijalva, who was wearing a Teamster's jacket as working for the IUAW. Rivera mentioned that if the Teamsters won the election, everything would work out all right.

Some of the Dobler employees present asked why the Teamsters and IUAW representatives were there together. They also asked why should they vote for the Teamsters. Rivera and Mendoza responded and gave reasons why they should vote for the Teamsters but they gave no reasons why they should vote for the IUAW. Nobody gave any answer to a question of what would happen to the IUAW.

The pre-election conference was held on October 17 and Froilan Medina, Johnnie Macias, and Margaret Grijalva represented the IUAW. The election was held on October 19 and the results were as follows: Teamster's 207, UFW 31, IUAW 9, No Union 58. On October 22 Cano notified the IUAW officers that she had converted their offices from acting to actual status.

On the day of the election, Sam Rivera traveled to Yuma, Arizona, due to a family emergency. During the five-day period posterior to the election, he telephoned the IUAW office in Salinas but was unable to secure from any of the IUAW representatives answering the telephone a "straight answer" about filing objections to the election until he conversed with Grijalva, the afternoon of

the fifth day. She informed him that Mendoza had decided that the IUAW would not file any objections to the election.

During the month of October Mendoza informed Rivera that since the latter was always objecting to Mendoza's decisions that he was considering firing him from his Teamsters' post. On November 14 Mendoza informed Rivera that he was no longer working for the Teamsters

During November Rivera remained in Yuma due to illness in his family. Grijalva advised Rivera by telephone that Mendoza continued to administer the IUAW affairs with irregularities.[28/] Grijalva suggested to Rivera that he take some corrective action. Rivera returned to Salinas the weekend of November 16, changed the locks on the IUAW offices, sent letters to the Teamster business agents that were working for the IUAW and informed them that they had been discharged. Monday morning he went to the IUAW office and took over the direction of the Union. He retained Grijalva and hired two new business agents. Rivera continued to act as president of the IUAW and direct its affairs up to and including the week of the hearing.

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28. Previous to this communciation Rivera had signed pay checks (for the IUAW consultants and business agents) that Mendoza had sent to him in Yuma.

a. Analysis and Conclusion

1. The Alleged Alter Ego Status of The Teamsters and the IUAW

The Executive Secretary set Objection 28 for hearing to the extent that the Petitioner (the Teamsters) and the Incumbent Union (the IUAW) created the impression that they were "alter egos" by conduct including but not limited to; campaigning together on each other's behalf and presenting interchangeable representatives to the employees and if so whether such conduct interfered with the voters' ability to freely and intelligently choose among the ballot choices.

It appears from the record that the Teamsters and the IUAW representatives created the impression that the two unions were 'alter egos in that they misrepresented to the employees that a vote for the Teamsters would be, in effect, the only way to continue the IUAW representation even though it would be under the banner of the Teamsters and that Martha Cano, the president of the IUAW, was in favor of such a Teamster vote.[29/]

Ray Mendoza and Robert Chavez actually informed the employees that the IUAW was "finished" and "dying" respectively, that Cano had authorized them to administer the IUAW affairs and that the employees should vote for the Teamsters. Margaret Grijalva, Froilan Medina and Johnnie Macias, informed the employees

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29. Although the IUAW officers (who were Teamster business agents at the same time) may not have said so in so many words, the general impression they engendered was that Martha Cano had appointed the Teamster business agents to assure the continuation of the administration of the IUAW affairs and the only way for them, the Teamster business agents, to do so would be under the auspices of the Teamsters' union so it was necessary for the employees to vote for the Teamsters.

that Martha Cano could not come to California and that she had granted authority to Roy Mendoza to administer the IUAW affairs and that they should vote for the Teamsters.

Moreover, just the fact that the IUAW officers and business agents were campaigning for the Teamsters (leaving aside their comments about the status of the IUAW and its president) would be interpreted by the employees as a Cano endorsement for the Teamster's union in the upcoming elections. It is only natural that the employees would assume that the IUAW representatives were acting in accord with the directions of the union's president. There is no evidence in the record to indicate that they knew or had reason to know otherwise.

The record evidence indicates that the employees had every reason to believe that Martha Cano, the IUAW president, had authorized the Teamster representatives to take over the direction of the IUAW:

(a) The September 27 IUAW-sponsored meeting at which Roy Mendoza, a teamster Local 890 business agent, announced that Martha Cano had authorized him to take over the IUAW affairs and if they had any problems with the Dobler contract to consult him either at the IUAW or Teamster offices.

(b) Mendoza’s introduction of certain Teamster business agents as IUAW business agents or consultants at this same meeting.

(c) Froilan Medina's (the IUAW business agent, who had been serving the Dobler contract for over 2 months) collaboration (as a subordinate) with Mendoza and Robert Chavez, at the meeting and later in the fields.

(d) The unvaried message to the Dobler employees by Grijalva, Media and Macias that they were IUAW representatives but were working under the aegis of the Teamster business agent Mendoza who had taken over the direction of the IUAW.

(e) Robert Castro who identified himself as a Teamster to the Filipino workers but informed them he had been authorized by Martha Cano, the IUAW president, to contact them.

It then follows that the employees believed that whatever the Teamster business agents, who were acting as IUAW officers and business agents, told them was with the approval of the IUAW president, Martha Cano.

However the record evidence clearly shows that Cano only authorized the Teamster business agents to take over the direction of the IUAW, not its destruction. In Cano's mailgram, in which she authorized Roy Mendoza to take over the administration of the IUAW there is no mention of the Teamster's union replacing the IUAW. Moreover, in the telegram of October 12, Cano mentioned her intention to resume the presidency of the IUAW in the future. Rivera confirmed Cano's intention to keep the IUAW functioning as a separate entity in his testimony that Cano confided in him that the reason she had designated him president was because she trusted that he would not raid the IUAW.[30/] Now to the question of whether

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30. Although Rivera's testimony was uncorroborated, he testified in a candid straightforward manner and appeared to make a sincere effort to recall the details of his conversations with Martha Cano. Furthermore Petitioner failed to call Ray Mendoza, or any other witness for that matter, to refute Rivera's testimony about Martha Cano's wishes for the future of the IUAW. There was no

(Footnote continued------)

such a misrepresentation is of such a nature to warrant setting aside the election.

In Paul Bertuccio & Bertuccio Farms (1978) 4 ALRB No. 91, the Board stated that it did not have to decide whether Hollywood Ceramic (1962) 140 NLRB 221 or the NLRB's later announcement in Shopping Kart Food Market, Inc. (1977) 228 NLRB No. 190 should be applied in the agricultural context since no misrepresentation had been clearly established nor had there been a showing that the party, which was the object of such misrepresentation, lacked an opportunity to reply to the alleged misrepresentation.

However, in the instant case, there is uncontroverted evidence that a misrepresentation occurred. The question is whether it was of such a degree of gravity to set the election aside. Consequently, it is warranted to refer to NLRB precedent.

In Hollywood Ceramics, supra, and General Knit of California (1978) 239 NLRB 619, 99 LRRM 1687, the Board held that an election would be set aside when a misrepresentation or similar campaign trickery, deliberate or not, which involves substantial departure from the truth, and occurring at a time which prevents effective rebuttal by the opposition, may reasonably be expected to have a significant effect on the election.

The NLRB in Midland National Life Insurance Co. (1982)

(Footnote 30 continued------)

indication from Petitioner's counsel that Mendoza was unavailable as a witness. Moreover Cano's messages in the 2 mailqrams do not indicate that she was amenable to the Teamsters replacing the IUAW in representing the Dobler employees.

263 NLRB No. 24, 110 LRRM 1489, overruled General Knit and Hollywood Ceramics and returned to the general rule of Shopping Kart. The Board in Shopping Kart and Midland held that it would no longer set aside elections solely because of misleading campaign statements or misrepresentations of fact. It based its ruling on the belief that employees are in a better position than the Board to judge the veracity of campaign statements. "We believe that Board rules in this area must be based on the view of employees as mature individuals who are capable of recognizing campaign propaganda for what it is and discounting it." The Board went on to state that it would still intervene in cases where a party has used forged documents which render the voters unable to recognize propaganda for what it is. In order words, as the Board stated, it would set an election aside not on the basis of the substance of the representation but the deceptive manner in which it was made.

In the instant case, the representations by the IUAW representatives, who were either Teamster business agents acting as IUAW officers or IUAW business agents acting under instructions of the former, were that Martha Cano favored the Teamsters' union over the IUAW in the elections. Such representations were more than just mere propaganda claims by one of the parties.

If the Teamster representatives, as such, made statements that Cano was in favor of the Teamsters over her own union in the election, it would have been easy for the voters to evaluate such statements for what they were, and discount them as mere campaign progaganda by one of the parties' spokemen, the Teamster representatives.

However, in "the instant case the Teamsters business agents conveyed their pro-Teamster progaganda to the voters through the IUAW representatives, that is, conveyed it in a deceptive manner. Since the voters were made to believe the propaganda was coming from the IUAW they were unable to evaluate the statement for what it was, Teamster propaganda.

In effect, it was Teamster propaganda masquerading as an IUAW, the incumbent union's, recommendation. It was not the substance of the statement "Martha Cano wants you to vote for the Teamsters" but the deceptive manner in which it was made that rendered the employees unable to recognize it for what it was.

It could be argued that the employees should have been skeptical about the IUAW representatives advocating a vote so that their union would be replaced by another. However, the impression the IUAW representatives gave to the voters was not unequivocal. There were a variety of factors that would lead the voters to believe that the IUAW and the Teamsters were interchangeable and the only way the voters could keep the IUAW or a close facsimile functioning was to vote for the Teamsters. The factors were: Teamster business agents working as IUAW officers and business agents, IUAW business agents wearing Teamster jackets, IUAW representatives and Teamster business agents seen by the employees accompanying each other to the meetings and the fields, the interchangeable use of the IUAW and Teamster offices if an employee wanted to see Roy Mendoza, etc.

It is true that the Board is reluctant to set aside elections because in the California agricultural setting it may

signify a serious delay in the employees' expression of free choice since generally another election cannot be held until the next peak season which may not occur until the following year.

However, in the the instant case the misspresentation has distorted the election campaign delineations to the point where it may be said the uninhibited desires of the employees with respect to election choices cannot be determined. In a similar fact situation current NLRB law would warrant the setting aside of the election.[31/]

In Midland the Board mentioned with approval the language in a pre-Hollywood Ceramics NLRB case, United Aircraft Corporation 103 NLRB 102 (1953) which read in effect: where it appears that employees are deceived as to the source of campaign propaganda by trickery or fraud, and they cannot therefore recognize nor evaluate propaganda for what it is, the board will set aside the election. That language describes with accuracy the fact situation in the instant case.

Since I have found that the employees have been deceived, by fraud, as to the source of the propaganda in question, and their unhibited desires with respect to election choices cannot be determined, I recommend that the election be set aside.

2. The Alleged Abuse of Access by the IUAW

The Executive Secretary set Objection 18 for hearing, that is, whether the IUAW abused its access rights to engage in contract administration and/or to take post-hearing access by conduct including but not limited to: collecting authorization

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31. Labor Code section 1148: "The board shall follow applicable precedents of the National Labor Relations Board."

cards for the Petitioner and campaigning for the Petitioner during work hours, and if so, whether such conduct affected the results of the election.

The record evidence clearly demonstrates that IUAW business agents, Grijalva, Medina and Macias took post-certification access to campaign/collect authorization cards for the Petitioner during work hours. Grijalva credibly testified and I find that she, Medina and Macias, (Grijalva three times with Medina and three times with Macias) entered the Employer's property during working hours and campaigned for and gathered authorization cards for the Teamsters. Rivera's credible testimony confirms the fact that Medina did take post-certification access to campaign for the Teamsters as Medina in effect admitted to Rivera that he had done so in response to Rivera's warning not to do so.

There is further credible evidence that on one occasion Ray Mendoza entered Employer's field during work time and remained 20 minutes campaigning for the Teamsters.

The evidence is not clear with respect to the frequency of the abuse of its access rights by the IUAW. Grijalva testified that she frequently observed Medina and Macias return at odd hours from Dobler fields with numerous Teamster authoriztion cards signed. However, they could have gathered such signatures during the regulation access hours. So Grijalva's testimony does not provide reliable evidence as to the frequency of the access abuse.

Although the factor of the IUAW's abuse of access by itself would not constitute grounds for setting aside an election, I find it to be another factor to support such ruling.

3. The Alleged Assistance by the Employer to Assist The Teamster Union in its Organization Efforts

The Executive Secretary set objections 1, 2 and 6 for hearing, that is, whether the Employer assisted the Petitioner (the Teamsters) in its organization efforts by: permitting the Petitioner to collect authorization cards on company property during working hours, disrupting work to obtain cards and stopping work to solicit cards and to conduct an organizational meeting.

There exists record evidence in respect to the first question but none in respect to the latter ones.

The first question is whether "the Employer asisted the Teamsters in their organizational efforts to collect authorization cards on company property during work hours." It is true that at least one Teamster business agent (the other organizer was not identified) visited one of the Employer's Filipino crews in the fields.

In early September, Robert Chavez, a Teamster's business agent and IUAW vice-president and election coordinator, visited one of the Employer's Filipino crews and introduced himself to the members as a IUAW representative. There is no evidence whether he visited the crew during work hours or during organizational access time.

Even if Chavez and the other organizer had visited the crew during work time, there is no evidence that the foreman knew that Chavez was a Teamster representative.

The UFW argues that an objective standard should be applied and the fact that the Employer did not know that Chavez was a Teamster business agent is irrelevant, the important aspect is that

the employees thought that the Employer favored the Teamsters because the foreman was permitting a Teamster representative to talk to them during work time about elections of a new bargaining representative. That might have some validity if there were proof that Chavez and the other organizer, if he were a Teamster, took access during the worktime but there was no such evidence.

The record evidence clearly established that IUAW business agents, Margaret Grijalva, Froilan Medina and Johnnie Macias, visited the crews in the Employer's fields during work time. However, the evidence is sparse in respect to whether the Employer's foremen and supervisors were aware that the business agents were campaigning for the Teamsters or merely servicing the collective agreement. Grijalva credibly testified that although the foremen could observe their taking of access and conversing with the employees, she believes that the foremen were unable to observe the nature of the materials distributed.

In view of the lack of evidence in respect to the Employer's supervisor's knowledge and Grijalvas's direct testimony on the question, I recommend that Objections 1, 2 and 6 be dismissed.

IV. THE ALLEGED EMPLOYER'S DENIAL OF ACCESS TO THE UFW

A. Facts

On October 4, four UFW organizers visited one of the Employer's fields to talk to the harvest workers of two lettuce crews about the elections. They duly identified themselves to the harvest supervisor, Dennis Parker, who requested that they not enter the field as it was in a muddy condition and he did not want them to

injure themselves or damage the lettuce. The organizers did not express any objections and complied with Parker's request.

The four UFW organizers conversed with some of the approximately 100 crew members as they congregated around a lunch wagon that was parked in an adjacent public road. They also conversed with some employees in the field who had responded to their request to come to the edge of the field. However, there were a few employees who remained inside the field.

On October 17, 1984, Juan Cervantes and Roman,[32/] UFW organizers visited a spinach harvesting crew a few minutes before work began at 7:00 a.m. Some women crew members informed them that they would have their lunch period at 9:00 a.m. Cervantes and Roman returned a few minutes before nine and took access on the hour.

Cervantes talked to a woman crew member who was partaking of some food. Carl Dobler, a managing partner, approached him and asked him whether he planned to stay. Cervantes replied that he understood that since the employees had not been working past noon during the last 2 or 3 days previous, the 9:00 am. break should be considered the lunch period. Dobler responded that if the organizers remained that would be trespass so he would call the sheriff and have the organizers expelled.

Within 3 to 4 minutes, Dobler returned accompanied by Stephen Highfill, a labor consultant, and Don Alien a supervisor. Highfill shouted at the organizers that they had no right to be

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32. There is no indication in the record whether "Roman[1] was a given or last name.

taking access and that they should leave. Roman commented to Cervantes that they should leave so that there would be only one crazy person not two.

The deputy sheriff arrived at that moment and Cervantes and Roman explained to him that it was the noon break, their reasons for believing so and therefore they had the right to access. The deputy sheriff said that the ALRB should decide that question and that they should leave the Employer's premises. Highfill translated the conversation to the crew members and guffawed raucously.

The organizers left and each one went his separate way. Cervantes testified that he did not return and take access to the spinach crew. Dobler testified that at approximately 10:00 a.m. he learned that the spinach crew would continue to harvest after 12:00 noon so there would be a lunch period and noontime access. Dobler added that he noticed two UFW organizers sitting in a parked car near the fields. He stopped and informed them that there would be noontime access. The organizers thanked him cordially. Later Dobler observed the same organizers at noontime taking access to the spinach field. Cervantes testified that he had taken access three times previously that week. Foreman Ruben Lopez testified that UFW organizers had taken access several times during the weeks next preceding the ALRB election.

B. Analysis and Conclusion

The Executive Secretary set Objections 4 and 5 for hearing, that is, whether the Employer interfered with the UFW's access rights. In respect to the UFW's access to the lettuce fields supervisor Dennis Parker requested the union organizers not to take

access because of the muddy conditions of the field-and the latter complied. So in effect the Employer did not deny the union organizers access.

It is difficult to see how such a request and compliance adversely affected the UFW in their organizing efforts that day since they were able to converse with 95% of 110 harvest employees. The fact probably explains why they readily complied with Parker's request. 104 employees[33/] is more than enough for four organizers to talk to during a thirty minute period. I find that there was no denial of access.

I also find that the Employer did not unlawfully deny access to Juan Cervantes and his fellow UFW organizer Roman. There is uncontroverted testimony that there was a lunch period for the spinach crew that same day and the UFW organizers took access (not Juan Cervantes though as he credibly testified he had not) at that time. Carl Dobler, Jr., credibly testified that he saw the same organizers[34/] taking access to the spinach crew at noon time. It was very likely that he saw and recognized Roman[35/] and just assumed the other one was Cervantes.

In view of the foregoing, I recommend that Objections 4 and

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33. Of the 110 employees in the two spinach crews all but approximately 6 either congregated on the road in the vicinity of the lunch wagon or came over to the edge of the field at the request of the UFW organizers.

34. Cervantes testified that he and Roman went separate ways after the 9:00 a.m. attempt to take access to the spinach crew.

35. Roman did not testify as a witness, and there was no evidence other than Dobler's as to whether he took noontime access to the spinach crew or not.

5 be dismissed.

V. ALLEGED EMPLOYER'S SURVEILLANCE OF EMPLOYEES

A. Facts

On October 4, UFW organizers attempted to enter the fields at the noon break but at the request of supervisor Dennis Parker they remained on the public road and conversed with the harvesters of the two lettuce crews who had congregated around a lunch truck parked on the same public road. Jose Quinteros, a foreman of one of the lettuce crews, testified that he was present during the time the UFW organizers were talking to crew members. He candidly admitted that he had nothing else to do so he watched the crew members and union organizers conversing during the entire 30 minute lunch period. However, he did not take any notes.

On October 17, Jose Mordilla, a UFW organizer, visited a crew in an Employer's parking lot at approximately 6:45 just before work. He spoke to a Filipino worker about the UFW and the elections and the latter signed an authoriztion card. While Mordilla was conversing with the aforementioned Filipino worker, Don Alien, the Employer's supervisor arrived in his motor vehicle and parked near them. After the Filipino signed the authorization card, Alien went to talk to the foreman of the Filipino worker's crew.

Mordilla approached another Filipino worker and began to converse with him. The Filipino worker, who had signed the card, walked over and requested Mordilla to return the card he had just signed. Mordilla complied. The worker grabbed the card and tore it up in the presence of 20 fellow workers, his foreman and Alien.

At the same time in the same parking lot, Milagros Thomas,

another UFW organizer, arrived to converse with and ask workers to sign authorization cards. She noticed that supervisor, Don Alien, was parked in the pickup truck and the side window rolled down.[36/] She approached a crew member who was standing 20 feet away from the Alien vehicle and talked to him approximately 10 minutes. During the entire ten minutes she noticed, as she glanced over her shoulder, that Alien was looking at her and the crew member. Alien took no notes. While she conversed with the worker there were approximately 5 to 10 other crew members in the same vicinity but they did not block Alien's view of Thomas and the crew member.

On October 5, 1985, Javier, a UFW organizer visited a pepper-harvesting crew during the noon time break. He conversed with crew members, for a period of 15 minutes and 6 of them, including Maria Torres, signed authorization cards. During the entire 15 minutes the crew's foreman Ramon Diaz was observing Javier and the crew members from a vantage point 30 feet away.

B. Analysis and Conclusion

The Executive Secretary set for hearing Objection 6, 7, 12 and 13, that is, whether the Employer though its supervisor and foremen engaged in surveillance of employees during the UFW's organizing activities.

In Tomooka Brothers (1976) 2 ALRB No. 52, the Board held that:

> The burden is on the parties alleging illegal surveillance to present evidence to warrant the conclusion that the employer was present at a time when the union organizers are attempting to talk to the workers for the purpose of surveillance.

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36. Thomas testified that he was already there when she commenced to speak with the worker.

A finding of illegal surveillance must be based on more than a demonstration that the supervisor was present in the area where he was entitled to be during the time the organizers are endeavoring to converse with workers in the same area.

Milagros Thomas, a UFW organizer testified that while she conversed with a crew member in the parking lot that supervisor, Don Alien was watching her and the crew members. According to her testimony, Alien was seated in his pickup truck 20 feet distant and every time she glanced over her shoulder toward him that she observed him looking in her direction.

However, she also testified that he was already parked in that particular location when she initiated her conversation with the worker.

However, more is needed than a supervisor's nearby presence in a place where he was before the union organizer began her conversation with the worker and that he was looking in the general direction of the two while they conversed to establish that he was parked there' for the purpose of surveillance.

If it were otherwise, he would be obliged to move away from a place where he has a right to be.

Of course in the event a union organizer and a worker move away from a supervisor or a foreman and then the latter follows them, it would amount to a factor from which intentional surveillance could be inferred.

Accordingly, I find that Don Alien did not engage in illegal surveillance of Milagros Thomas and an unidentified employee.

The UFW argues that Don Alien, supervisor, illegally engaged in surveillance of Jose Mordilla, a UFW organizer and the Filipino crew member, who tore up the authorization card, on the same morning.

The UFW has presented evidence from which it argues, an inference can be made that such surveillance took place.

However, even assuming that such facts are true, no such inference can be made. There is evidence that the supervisor, who was in the vicinity when the Felipino signed the card, later talked to the foreman. But there is no evidence that either he or the foreman later talked to the worker. The fact that the worker tore up his authroization card does not indicate that he did so due to the pressure of surveillance by or conversation with superiors.

There could be various explanations for the worker's conduct such as a mistaken belief as to which union's authorization card he had signed, etc. Consequently, I find that neither the foreman nor the supervisor engaged in any illegal surveillance in respect to the incident of the authorization card being torn up.

The UFW asserts that Employers' supervisors engaged in additional surveillance incidents but presented sparse evidence to support such assertions.

Maria Torres testified that foreman Ramon Diaz observed her and other crew members sign authorization cards at a vantage point of 30 feet distant. This occurred during the noon break and there was no evidence whether Diaz was already present at such vantage point before the union organizer and the employees began to converse about the signing of the authorization cards or moved to such

vantage point afterwards. There is an absence of evidence from which it could be inferred that he intentionally stationed himself at a place from where to engage in surveillance of the union organizer and the workers. Accordingly, I find that Ramon Diaz did not engage in illegal surveillance on this occasion.

Jose Quinteros, a. foreman, readily admitted in his testimony, that he observed the union organizers converse with employees during the entire noon break (thirty minutes) while the employees were congregated about a lunch wagon, partaking of the noon repast. However, there is no evidence to indicate that he had no right to be where he was situated or that he moved to that location after the organizers made contact with the employees. Furthermore, his frank admittance of having observed the workers during the "entire noon period" because he had nothing else to do indicates that he was not observing for the purpose of surveillance. Also, it is clear from the record that he did not take notes.

Accordingly, I find that Jose Quinteros did not engage in illegal surveillance on this occasions.

In view of the foregoing, I recommend that Objections 6, 7, 12 and 13 be dismissed.

VI. ALLEGED THREAT OF LOSS OF EMPLOYMENT BY FOREMAN BECAUSE EMPLOYEES SIGNED UFW AUTHORIZATION CARDS

A. Facts

On October 5, 1985 Javier, a UFW organizer, visited a crew during the lunch break. He conversed with crew members for a period for 15 minutes and six of them including Maria Torres signed authorization cards.

At the end of the noon break, the crew began to reenter the field and walk back to the machines. Ramon Diaz instructed the workers to quickly move back to work. Maria Torres testified that he said it in such a way to indicate that he was upset. Upon reaching the machines, Diaz commented, "All of those who have signed up for Chavez will be out of a job." Respondent called three of the Diaz crew members and the three testified that they had not heard Diaz make any such remarks.

I found Maria Torres to be an excellent witness. She answered each question with candor and thoughtfulness. Moreover, she readily admitted facts adverse to the UFW: that the UFW organizers visited the fields "not far off" every day and that at the two meetings of Dobler employees, sponsored by the IUAW, no one said anything about voting for the Teamsters. Meanwhile, the testimony of the three employees to the contrary is not persuasive. Employer's attorney never reminded them in his question that the foreman's remark was made at the end of a lunch period on a particular day as the employees were returning to work. The foreman could have made the remark outside their hearing range at that time. The three could have very well been the last ones to return to the machines and Diaz made his remark outside their hearing range.

B. Analysis and Conclusion

It is axiomatic that employer threats of reprisals for supporting or assisting a labor organization are unlawful and can serve as grounds for setting aside an election. Hanson Farms, 2 ALRB No. 61 (1976); Coachella Imperial Distributors, 5 ALRB No. 73 (1979).

In the instant case the foreman Ramon Diaz threatened those employees who signed UFW authorization cards with loss of employment. Such comments can easly intimidate workers and could affect the results of the election. However this is an isolated case and it is the only incident that reflects an anti-UFW bias on the part of the Employer. Furthermore there is no evidence that it had further diffusion among the remainder of the workers. Consequently I will not consider it in my deliberations to recommend the setting aside of the election.

VII. CONCLUSION AND RECOMMENDATION

A final conclusion is warranted herein, that is, whether the conduct alleged and found to have occurred, evaluated in its entirety, inhibited a free and intelligible choice by employees of Carl Dobler & Sons.

I have concluded that the election process was seriously flawed by the Petitioner's misrepresentations to such an extent that such misrepresentation, by itself, warrants setting the election aside.

I have also concluded that the deficient Notice of Intention to Organize and the Employee election lists affected the results of the election to a certain extent. I also have concluded the Incumbent Union's abuse of its rights of access in favor of the Teamsters affected the results of the election. Although I refrain from deciding whether the deficient lists or the abuse of access, jointly or separately, would constitute grounds to set aside the election, they serve to support my conclusion that their cumulative effect added to the effect of the misrepresentation warrant the

setting aside of the election.

Based on the finding of facts, analysis and conclusions herein, I recommend that the election be set aside and the Petition for Certification be dismissed.

DATED: June 28, 1985

Respectfully submitted,

ARIE SCHOORL
Investigative Hearing Examiner