Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

INLAND AND WESTERN RANCHES, Employer, and GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 890, Petitioner,[1/] and INDEPENDENT UNION OF AGRICULTURAL WORKERS, Incumbent Union, and UNITED FARMS WORKERS OF AMERICA, AFL-CIO, Intervenor.	)	Case Nos. 84-RC-16-SAL 84-RC-17-SAL 11 ALRB No. 39

DECISION AND CERTIFICATION OF REPRESENTATIVE

On October 24, 1984,[2/] the General Teamsters, Warehousemen and Helpers Union, Local 890 (Teamsters or Local 890) filed a petition for certification in case number 84-RC-16-SAL, seeking a representation election among all the agricultural employees of Western Ranches. The following day the Teamsters filed a petition for certification in case number 84-RC-17-SAL, seeking an election in a unit consisting of all

[1/] The IHE's decision does not accurately describe the name of the Petitioner as shown here.

[2/] All dates refer to 1984, unless otherwise noted.

the agricultural employees of Inland Ranch. The two petitions were thereafter consolidated by the Regional Director for reasons including the prior certification of the Independent Union of Agricultural Workers (IUAW or Independent), dated May 29, 1979, as the exclusive bargaining representative of the agricultural employees of the Employer.

On October 26, the United Farm Workers of America, AFL-CIO (UFW) filed a petition for intervention in this election. An election was conducted on October 30, and the Teamsters, UFW and IUAW were on the ballot as choices for collective bargaining representative. The official Tally of Ballots showed the following results:

Teamsters, Local 890	64
UFW	29
IUAW	2
No Union	1
Unresolved Challenged Ballots	1
Total	97

Only the UFW filed objections to the election alleging improper conduct by the Employer as well as by the other labor organizations. On January 11, 1985, the Acting Executive Secretary for the Agricultural Labor Relations Board (ALRB or Board) set the following objections for hearing:

1. Whether Inland and Western Ranches coercively campaigned against the UFW by:

(a). threatening workers that the UFW would attempt to have undocumented workers deported if it were elected;

(b). threatening workers that it would close the ranch if the UFW were elected;

(c). threatening that it would fire workers if the UFW were elected;

(d). promising to bargain favorably or promptly if the Teamsters were elected while threatening to take a hard bargaining stance if the UFW were elected;

and, if such conduct took place, whether it tended to affect the outcome of the election.

2. Whether the IUAW and the Teamsters used the contract administration or post-certification access rights of the IUAW in order to campaign on Petitioner's behalf and, if so, whether such conduct tended' to affect the outcome of the election.

3. Whether the Employer impermissibly surveilled the employees who signed UFW authorization cards and, if so, whether such conduct tended to affect the outcome of the election.

4.. Whether the Teamsters and/or the IUAW gave workers the impression that the Employer had entered into preelection discussions with the Teamsters regarding resolution of employee grievances and, if such conduct took place, whether it tended to affect the outcome of the election.

5. Whether the Teamsters and the IUAW created the impression that they are "alter egos" of each other rather than rival unions and, if so, whether this tended to interfere with the voters' ability to freely choose among the ballot choices.

A hearing on the objections was held before Investigative Hearing Examiner (IHE) Matthew Goldberg commencing on March 25, 1985. The IHE issued his recommended Decision on

the election objections, attached hereto, on August 5, 1985.[3/]

Timely exceptions to the IHE's Decision were filed by the UFW and the IUAW, supported by briefs. The Teamsters filed a Brief in Answer to the Exceptions, with its post-hearing brief attached.

The Board[4/] has considered the recommended Decision of the IHE in light of the exceptions and briefs of the parties and has decided to adopt his rulings,[5/] findings and conclusions as modified herein and certify the Teamsters, Local 890 as the bargaining representative of the Employer's agricultural employees.

Background

The record discloses that most of the factual background which gives rise to the objections in this-rival union case, is the same as that in Carl Dobler and Sons (1985) 11 ALRB No. 37 (Dobler).[6/] In August of 1984, Martha Cano, then president of the IUAW, was incarcerated for the shooting death of her common-law husband, Oscar Gonzalez, who was also vice-president

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[3/] Objections 1(b) and (d) were stricken by mutual agreement of the parties. Objection 3 was dismissed by the IHE, upon motion of the Employer, based on a lack of proof.

[4/] The signatures of Board members in all Board decisions appear with the signature of the chairperson first (if participating), followed by the signatures of the participating Board members in order of their seniority.

[5/] The IHE properly denied the Teamsters' motion to exclude evidence adduced by the IUAW on the UFW's objections. Board Regulation section 20370(b) provides that "any party" can "call, examine, and cross-examine witnesses" in the Board's investigative hearings.

[6/] The UFW requested that the Board consider this case simultaneously with Dobler.

of the IUAW. As described in Dobler, Cano granted power of attorney to, and later officially named as IUAW first vice-president, Teamsters Local 890 Senior Business Agent Jacinto Roy Mendoza. She appointed another Local 890 business agent, Sam Rivera, as acting president, and both men retained their payrolled positions with Local 890. Mendoza's controlling position in Local 890, then, put him in de facto control of the IUAW.

Pursuant to Cano's authorization, Mendoza appointed various officials of Local 890, including Robert Chavez, Margaret Grijalva, Johnny Macias and others, to act as "consultants" in the handling of the IUAW's business. These individuals later received $100 per week for their "consultant" duties in addition to their compensation from the Teamsters. It was the conduct of these "dual capacity" individuals, who were active in the election campaign of the Employer's agricultural employees, and who took access to the Employer's fields to campaign for the Teamsters at Mendoza's direction, which forms the basis for the major part of the objections set for hearing.

Objections l(a) and (c) [7/]

The IHE concluded that the evidence presented in support of Objection l(a) consisted of a company leaflet distributed during the campaign which purported to inform the workers of the actions of Cesar Chavez and the UFW with regard to undocumented workers. The IHE correctly found that the leaflet

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[7/] The IHE incorrectly referred to l(e) rather than l(c).

"constituted no more than *a* legitimate expression of views, arguments, or opinions" permissible under section 1155 of the Act which, as such, were not objectionable.

Although the UFW excepted to the IHE's findings regarding the leaflet, it set forth no reasons or arguments why those findings were not correct. Because our review of the leaflet satisfies us that it was permissible campaign propaganda, this objection is dismissed for the reasons stated by the IHE.

The evidence presented in support of Objection l(c) related to remarks of the Employer's owner, Luis Del Fino, to worker Maurillo Chavez in the presence of worker Juan Nunez. All three individuals testified at the hearing, and we adopt the IHE's conclusion that Chavez's testimony did not, in essence, rebut Del Fine's and Nunez's fuller account of the remarks. At bottom, the record fails to disclose that Del Fino threatened any Employer action against the workers, but rather made reference to the possible impact of the UFW's purported hiring hall procedures on the workers' continued employment.[8/] We find, in accord with the IHE, that such statements were permissible campaign propaganda.

The UFW, in its exceptions, takes issue with the IHE's finding that "any coercive or intimidating aspect" of Del Fine's remarks was eliminated when the remarks are considered in the context of the reference to the UFW's hiring hall procedure.

[8/] Del Fino stated he told Nunez that "if we went UFW ... he could possibly lose his job ... because of the procedure of the hiring hall they have ...."

The UFW contends that the IHE incorrectly assumes that the hiring and leave of absence policy would be beyond Del Fine's control if the UFW won the election. Further, Del Fine's threat of loss of work "came on the heels" of his statement that he "knew" that Chavez and Nunez had signed cards for the UFW. The argument continues that these statements, "objectively viewed," could "very well lead the workers to the conclusion" that they would lose their work because they signed for the UFW.

For several reasons, we are not persuaded by the UFW's arguments. First, the fact that the Employer may well have a part in the determination of hiring and leave policy does not detract from our conclusion that the references to the hiring hall procedure were legitimate campaign propaganda which the workers were in a position to evaluate. Secondly, on cross-examination, Maurillo Chavez clarified his earlier testimony by affirming that Del Fino said he knew that the workers had signed cards for the Chavez union -- not that Del Fino knew whether or not Maurillo Chavez or Nunez had personally signed cards.[9/]

In sum, we agree with the IHE that the evidence does not support this objection and, accordingly, it is dismissed.[10/]

[9/] Further, in accord with the IHE, even viewing Del Fine's remarks in their worst light, the fact that they were made to only two employees renders them, in our view, isolated, and they would not have tended to affect the outcome of the election.

[10/] Inasmuch as this same evidence was presented in support of the surveillance allegation in Objection 3, which was dismissed by the IHE, that dismissal is hereby affirmed since the evidence does not support the allegation of misconduct.

Objections 2 and 5 [11]

The record fully supports the IHE's findings that representatives of Petitioner, also designated as "IUAW consultants," took access to the Employer's properties on various occasions during work time to urge employees, pursuant to Mendoza's direction, to support the Teamsters in the election. Further, in doing so, these representatives told the workers that their certified bargaining agent, the IUAW, was going to cease to exist. No campaign was carried out on behalf of that incumbent union. The IHE properly cited the testimony of the various employee witnesses that Robert Chavez, Margaret Grijalva and other representatives took access three or four times prior to the election to pass out literature and buttons, and otherwise to campaign for the Teamsters. Some of the worktime visits lasted a half hour or more.[12]

The IHE found that evidence that Petitioner's representatives appeared at the premises during work time and campaigned on behalf of the Teamsters was not refuted. He found that, although, "technically," the campaign vists "were in

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[11] These objections are treated together as the evidence presented in support of them related to the conduct of the Petitioner's representatives, functioning in their dual capacity, when they took access to the Employer's property.

[12] For example, employee Becerra testified that on one occasion when the representatives were on the work site, the employees stopped working in order to talk for about half an hour. "They were telling us to vote for the Teamsters. We couldn't stop [talking] because they were getting us involved in it ...."

violation of the access rule," they did not coerce workers[13/] or "disrupt" work, and that representatives' abuse of the access rule does not constitute grounds to set aside the election. Further, the IHE stated that the record did not establish that the Teamsters representatives gained access by asserting or relying upon "post-certification" or "contract administration" rights and that the record did not show that the UFW sought to gain access during nonwork times to gain equal exposure. The IHE found that although the access rule was violated here, "there was no proof that the Teamsters availed themselves of access in the name of the certified union."[14/]

Although we find substantial evidence on this record that the Teamsters employed IUAW worktime access for its campaign, and although we found similar abuses of the access rule to be objectionable conduct in Dobler, we nevertheless decline to set aside the instant election. Here, unlike in Dobler, because the Teamsters conduct did not occur in the context of a defective employee list, there is no evidence that the UFW was prejudiced in its efforts to communicate with this employer's workers.

Our dissenting colleagues reiterate the position stated in their dissent in Dobler, that the Teamsters/IUAW agents' campaign representations invalidate the election. However, the

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[13/] Citing to Cano's grant of authority to Mendoza to run the IUAW, the IHE rejected the suggestion that the Teamsters/IUAW agents ' campaign statements that the IUAW was going to cease to exist constituted "misrepresentations."

[14/] The IHE miscited the Board's Decision in Royal Packing (1979) 5 ALRB No. 31.

evidence adduced in Dobler indicated that IUAW President Martha Cano acquiesced in Mendoza's plan to organize and raid the IUAW membership for Local 890. Mendoza's unrebutted testimony in the instant case – that Cano had stated a preference for a Teamsters vote in order to avoid a UFW election victory -- provides further support for our finding in Dobler that Teamsters/IUAW agents did not misrepresent the facts when they told workers that Cano supported the Teamsters and that the IUAW was dying. Therefore, we dismiss the objections relating to the agents' campaign statements to the effect that the IUAW would cease to exist.

Objection 4

The IHE found that Teamsters' representatives who acted as IUAW consultants "entered pre-election discussions of employee grievances at least with employees, if not with the employer itself." Chavez admitted that he met with workers '"many times" to discuss their grievances. Further, a wage reopener was negotiated with the Employer which the employees were advised not to accept. The IHE further found unrebutted a statement attributed to Teamsters representative/IUAW consultant Macias to the effect that grievances had been discussed with the Employer. The IHE found no evidence to support the objection alleging that the Employer discussed grievances with the Teamsters agents in the name of the Teamsters. Rather, Macias' remark indicated that these matters were discussed with IUAW agents under the aegis of the IUAW. The IHE recommended dismissing the objection. The UFW, in its limited exception to this ruling,

claims that the testimony showed that the Employer had agreed to take care of the workers' problems through the Teamsters Union and that Macias urged the workers to vote for the union which could solve their problems. The UFW contends that such conduct "created the impression" of pre-election discussions, as alleged. The record testimony of Perez, however, is consistent with the finding of the IHE, rather than the exceptions of the UFW. Accordingly, Objection 4 is dismissed.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the general Teamsters, Warehousemen and Helpers Union, Local 890, and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all agricultural employees of Inland and Western Ranches, in the State of California, for purposes of collective bargaining as defined in section 1155.2(a) concerning employees' wages, hours and working conditions.

Dated: December 31, 1985

JEROME R. WALDIE, Member

PATRICK W. HENNING, Member

JORGE CARRILLO, Member

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

We would sustain Objections 2 and 5 and set aside the election. Under Title 8, California Administrative Code, section 20900(b), violations of access

> by a labor organizer or organization . . . may constitute grounds for setting aside an election where the Board determines . . . that such conduct affected the results of the election.

Although this Board has been reluctant to set aside elections on this basis, we believe that the repeated access violations by Teamsters officials during employees' working hours, coupled with the evidence of misrepresentations to the employees which is detailed below, affected the voters' free choice and, therefore, the results of the election. Accordingly, the election should be set aside and the petition dismissed.

The evidence is unrefuted that on several occasions officials of Teamsters, Local 890 took access to the Employer's

properties during work times, and campaigned and otherwise urged employee support for the Teamsters. The testimony of several employee witnesses is uncontroverted that on at least three or four occasions representatives of the Teamsters, functioning in a dual role as "IUAW consultants," spoke to the employees, during working time for at least a half an hour in an attempt to convince them to support the Teamsters. Contrary to the IHE's findings, some of these employees stopped work to engage in the conversations initiated by the representatives. There was repeated testimony that during these visits the representatives told the employees that the IUAW had ceased or would cease to exist, and that on different occasions they passed out Teamsters buttons, literature and a petition urging Teamsters support. Thus, there is clear evidence of repeated abuse of the access rule for organizational purposes, in violation of section 20900(B] of the Board's Regulations.

Further, because of the unusual circumstances in this case where the Teamsters, Local 890 officials functioned in a dual role as "IUAW consultants" while at the same time being on the payroll of Teamsters, Local 890[1/] the repeated violations of the Board's access rules, during which they misrepresented the status of the IUAW while at the same time urging Teamsters support, clearly affected voter free choice in the

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[1/] See Carl Dobler & Sons. (1985) 11 ALRB No. 37, recently issued, where the Teamsters, Local 890 officials acted in a similar dual capacity, and where access abuse was one of the bases upon which the election was set aside. We would have also found misrepresentations there as a further ground for dismissing that petition.

election.

Contrary to the majority's conclusion, our review of the evidence discloses that IUAW President Martha Cano, because of her serious personal problems, enlisted the aid of Teamsters Local 890 officials Rivera, Mendoza and others, to "continue the affairs" of the IUAW, including administering the outstanding collective bargaining contracts of that union. We do not agree with the IHE's conclusion that Martha Cano's appointment of the Teamsters officials to assist her in conducting the affairs of the IUAW somehow empowered them to inform the represented employees that their union had ceased to exist. Nor does the evidence show that she had acquiesced to the Teamsters raid.[2/]

The record establishes that the "IUAW consultants" named by Mendoza to service the employer's workers initially attempted to perform that function, i.e., visit the employees, listen to their problems, and show them how to fill out grievance forms. However, it is abundantly clear that shortly thereafter, and prior to the election, Mendoza instructed his subordinate representatives to convince the workers to support the Teamsters, Local 890 and to tell them that the IUAW was no longer going to exist.[3/] This instruction was apparently faithfully carried

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[2/]Viewing the appointments as creating an agency relationship, any acts by the agents to the detriment of the IUAW could not be authorized. (Cal.Jur.3d, Agency, § 93.)

[3/]Our review of the record evidence supports the conclusion that Mendoza's decision to gain the workers' support for the Teamsters was triggered by the UFW's intervention and not by

(fn. 3 cont. on p. 15.)

out, as the testimony clearly shows that the employees were told by the "IUAW consultants" that the IUAW had ceased to exist, or was going to cease to exist, and that the employees should vote for the Teamsters in the election. Such statements coming from the mouths of "IUAW consultants," who ostensibly were to assist the IUAW-represented workers, would likely be accepted by the voters as true and not be considered as partisan campaign propaganda which they could evaluate. In our opinion, the evidence supports the conclusion that employees were deliberately deceived by these misrepresentations as to the true status of their union and that such statements affected the outcome of the election because the employees believed a vote for the IUAW would be futile.

Accordingly, we would find that such conduct affected the employees' free choice in the election and, that such conduct coupled with the access violations, is sufficient to set aside the election in this case.[4/]

Dated: December 31, 1985
JYRL JAMES-MASSENGALE, Chairperson.
JOHN P. McCARTHY, Member

(fn. 3 cont.)

a true evaluation of the IUAW's status. Teamster representative Pete Maturino's testimony, as well as other evidence, expressly supports this conclusion.

[4/]Although this Board has not yet determined whether it will follow the NLRB's decision in Midland Life Insurance Co. (1982) 263 NLRB 127, [110 LRRM 1-489], noted by the IHE, under that decision the national board would still set aside elections in the case of "deceptive" misrepresentations. Although the reference in that case is to forgeries which employees would be unable to evaluate, we see a parallel here where the workers would not question the validity of the statements made by the "IUAW consultants" who ostensibly were representing their interests.

CASE SUMMARY

INLAND AND WESTERN RANCHES
(Teamsters, Local 890, IUAW, UFW)

11 ALRB No. 39
Case Nos. 84-RC-16-SAL
84-RC-17-SAL

IHE's DECISION

Following a hearing on various election objections filed by the Intervenor, the UFW, the IHE recommended that the objections be dismissed in their entirety and that Teamsters, Local 890 be certified as the collective bargaining representative of the Employer's agricultural workers. The workers were previously represented by the IUAW, which had been certified in May 1979 and which also appeared on the ballot. The UFW's objections alleged improper conduct by the Employer as well as by the other unions in the case.

The IHE found that the Employer's leaflet regarding the purported position of the UFW towards undocumented workers was permissible campaign propaganda and that certain remarks of Respondent's owner in the presence of two workers constituted neither a threat of Employer action nor evidence of surveillance, nor did it create the impression that the Employer had entered into pre-election discussions with the Teamsters regarding resolution of employee grievances.

The main objections appeared to be based on the allegations that representatives of the incumbent IUAW and the petitioning Teamsters used the IUAW's post-certification access rights to campaign on behalf of the Teamsters and that an impression was created that the two unions were "alter egos" rather than rival unions, interfering with employees' free choice in the election.

After carefully reviewing the evidence, the IHE found that although there were "technical" violations of the access rules by the Teamsters, such conduct did not "disrupt" work, and that the access violations were "far less serious" than those occurring in Ranch No. 1 (1970) 5 ALRB No. 1 and Frudden Enterprises (1981) 7 ALRB No. 22, which the Board did not find objectionable.

The IHE further found that although the Teamsters representatives were also functioning as "IUAW consultants" at the behest of IUAW President Cano during the period of her personal problems, those representatives campaigned for the Teamsters and thus indicated to the workers that the unions were in fact competing with each other, rather than indicating merger or that the Teamsters would "inherit" the IUAW certification. The IHE also failed to find any basis for the contention that the Teamsters' representation to the workers that the IUAW was going to cease to exist was a misrepresentation. He found that the statements made "were not inaccurate," as the decision had been made by those authorized by Cano not to continue the IUAW's existence.

He also found that the statements made were "not a substantial departure from the truth" and thus not objectionable even if a misrepresentation had been alleged. Nor would such conduct be objectionable were the Board to adopt the NLRB's Midland National Life Insurance Co. (1982) 263 NLRB 127 rule, where that board would only intervene in "deceptive" misrepresentations which the employees would be unable to evaluate.

BOARD DECISION

The Board majority adopted the IHE's recommendations to dismiss the UFW's objections in their entirety. In doing so, the Board agreed that the evidence did not support the allegation that the leaflet distributed by the Employer threatened workers with Employer action. Rather, the leaflet as well as remarks by the Employer's owner to two workers were considered to be permissible campaign propaganda. The IHE's dismissal of Objection 3, based on alleged surveillance, was affirmed as lacking in evidentiary support, as was Objection 4, which alleged that an impression was created by the rival IUAW and Teamsters' unions that the Employer had entered into pre-election discussions concerning resolution of employees' grievances with the Teamsters.

An important issue raised by the Objections (2 and 5) was whether the Teamsters officials, also functioning as "IUAW Consultants," (as authorized by the latter union's president due to her personal problems) violated the access rules in order to campaign for the Teamsters and, if so, whether such conduct tended to affect the outcome of the election. The majority agreed with the IHE that although there were instances of abuse of the access rule during work time by these officials, such conduct was not disruptive of employees' work and did not warrant setting aside the election. Further, they found- that statements by Teamsters officials/IUAW agents that the IUAW was going to cease to exist were not misrepresentations because the officials were authorized by IUAW President Cano to handle the affairs of the IUAW. In addition, citing to its findings in Carl Dobler and Sons (1985) 11 ALRB No. 37, as well as testimony of Teamster Mendoza, the Board found that Cano had acquiesced in the Teamsters' campaign in order to avoid a decertification or UFW victory. Therefore, the statements that the IUAW was going to cease to exist were deemed not to be substantially inaccurate and consequently did not interfere with employee free choice.

DISSENT

Chairperson James-Massengale and Member McCarthy, dissenting in part, would set aside the election and dismiss the petition based upon the evidence regarding Objections 2 and 5. They would find that the repeated access abuse by the Teamster/"IUAW consultants" during work time, coupled with the statements to the workers that their union (IUAW) had ceased to exist, constituted deceptive misrepresentations of the true status of

the IUAW. They would set aside the election based on such conduct, finding that it precluded employee free choice because a vote for the IUAW would appear to the workers to be futile. The dissenters would find that the employees would be unable to evaluate the remarks since they were voiced by the "IUAW consultants" upon whom the employees would reasonably have relied under the circumstances.

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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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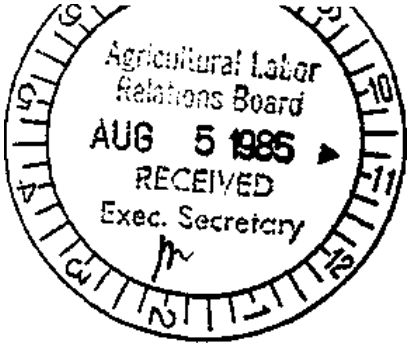

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

INLAND AND WESTERN RANCHES, Employer, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 890, Incumbent Union, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor.	)	Case Nos. 84-RC-16-SAL 84-RC-17-SAL

Appearances:

Terrence P. O'Connor, Esq.
for the Employer

Franklin Silver, Esq.
of Beeson, Tayer, Silbert, Rosenthal & Leff, Inc.
for the General Teamsters, Warehousemen, and Helpers Union

Carole E. Seliger, Esq.
for the Independent Union of Agricultural Workers

Chris Schneider
for the United Farm Workers of America, AFL-CIO

Before: MATTHEW GOLDBERG
Administrative Law Judge

DECISION OF THE INVESTIGATIVE HEARING EXAMINER

I. STATEMENT OF THE CASE

On October 24, 1984,[1] the General Teamsters, Warehousemen, and Helpers Union, Local 890 (hereafter variously referred to. as "Teamsters," "Local 890," or "petitioner"), filed a petition for certification in case number 84-RC-16-SAL seeking a representation election to be held among all the agricultural employees of Western Ranches. The following day the Teamsters filed a petition for certification in case number 84-RC-17-SAL, seeking an election in a unit consisting of all the agricultural employees of Inland Ranch. On October 30, the Regional Director for the Salinas region of the Agricultural Labor Relations Board consolidated the two petitions, citing as his rationale "input from the parties," two prior Board cases involving these entities (Louis Del Fino Co. (1977) 3 ALRB No. 2 and Inland and Western Ranches (1979) 5 ALRB No. 42), and the collective bargaining history of the two concerns.[2]

The aforesaid collective bargaining history included a certification, dated May 29, 1979, of the Independent Union of Agricultural Workers (hereafter referred to as the "incumbent" or "IUAW") as the exclusive bargaining representative of the agricultural employees of

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[1]All dates refer to 1984 unless otherwise noted.

[2]Hereafter Inland Ranch and Western Ranch will be referred to collectively as the "employer" or the "company."

the employer. On October 26, the United Farm Workers of America, AFL-CIO (hereafter referred to as the "intervenor" or "UFW"), filed a Petition for Intervention in this election.

The election involving the employer's agricultural employees was held on October 30. The Teamsters, UFW, and the IUAW all were named on the ballots as choices for collective bargaining representative. The Tally of Ballots revealed the following result:

Votes Cast For:	Tally
Teamsters Local 890	64
UFW	29
IUAW	2
No Union	1
Unresolved Challenged Ballots	1
Total	97

On November 5, the UFW filed its Objections to Conduct of the Election and Petition to Set Election Aside. By order dated January 11, 1985, the Acting Executive Secretary for the Board noticed the following objections to be set for hearing:

1. Whether Inland and Western Ranches (Employer) coercively campaigned against the UFW by:

   a. threatening workers that the UFW would attempt to have undocumented workers deported if it were elected;

   b. threatening workers that it would close the ranch if the UFW were elected;

c. threatening that it would fire workers if the UFW were elected;

d. promising to bargain favorably or promptly if the Teamsters were elected while threatening to take a hard bargaining stance if the UFW were elected;

and, if such conduct took place, whether it tended to affect the outcome of the election.

2. Whether the Independent Union of Agricultural Workers (Independents or Incumbent Union) and the Teamsters used the contract administration or post-certification access rights of the Incumbent Union in order to campaign on Petitioner's behalf and, if so, whether such conduct tended to affect the outcome of the election.

3. Whether the Employer impermissibly surveilled the employees who signed UFW authorization cards and, if so, whether such conduct tended to affect the outcome of the election.

4. Whether the Teamsters and/or the Independents gave workers the impression that the Employer had entered into pre-election discussions with the Teamsters regarding resolution of employee grievances and, if such conduct took place, whether it tended to affect the outcome of the election. (Objection No. 12.)

5. Whether the Teamsters and the Independents created the impression that they are "alter egos" of each other rather than rival unions and, if so, whether this

tended to interfere with the voters' ability to freely choose among the ballot choices.[3]

Commencing March 25, 1985, a hearing was held before me in Salinas, California. All parties appeared through their respective representatives, and were afforded full opportunity to provide testimonial and documentary evidence, to examine and cross-examine witnesses, and to submit oral argument and post-hearing briefs. Based upon the entire record in the case, including my observation of the demeanor of each witness as he/she testified and, having read and considered the briefs submitted following the close of the hearing, I make the following:

II. FINDINGS OF FACT

A. Jurisdiction

1. The employer is and was at all times material an agricultural employer within the meaning of section 1140.4(c) of the Act.

2. The Teamsters, IUAW, and UFW are each labor organizations within the meaning of section 1140.4(f) of the Act. [4]

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[3]Objections l(b) and l(d) were stricken by mutual agreement following the presentation of the intervenor's proof. Objection 3 was also dismissed, upon motion of the employer, owing to a lack of proof.

[4]These findings are based primarily on the taking of administrative notice as per Evidence Code section 451, and on the fact that no party contested the labor organization or agricultural employer status as set forth.

B. Objections 2 and 5

1. The Evidence Presented

In August of 1984, Martha Cano, then president of the IUAW, was imprisoned for the shooting death of her common-law-husband, Oscar Gonzalez. Gonzalez was also vice-president of the IUAW. After consulting with Sam Rivera, then a business agent for Teamsters Local 890, it was decided by Cano that certain Local 890 representatives should take over the affairs of the Independent Union and administer its existing contracts. By mailgram dated August 28, 1984, Cano granted Roy Mendoza, senior business agent for Local 890, "full power to execute and conduct the affairs of the Independent Union." [5]

Mendoza subsequently appointed several officials of Local 890 to act as "consultants" in the handling of the Independent Union's business. These individuals included Robert Chavez, Margaret Valdez Grijalva, Johnny Macias, Froilan and Arturo Medina, Sam Rivera, and Pete Maturino.

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[5] At some point during this period, Cano sent a letter to the employer's workers telling them of the "tragic problem in [her] personal life, [a] problem that will . . . cause the Independent Union to suffer . . . ." She noted that she was "still in charge of the Union" and that she would "continue to do the best of my ability to perform the duties which my position has granted me and obligated me to perform." Cano indicated that she intended to "keep the Union going," and that she named Roy Mendoza as her representative, telling workers to contact him if they had a problem, and further stating that "if you are not satisfied with the results, then call me . . . ."

While acting in this consultant capacity, the aforementioned people remained in the employ of Teamster Local 890.

By mailgram dated October 11, 1984, Cano appointed a number of the aforesaid individuals to act as officers of the Independent Union: Samuel Rivera, acting President; Roy Mendoza, acting Secretary-Treasurer; First Vice President, Pete Maturino; Third Vice President Marguerite Valdez; Fifth Vice President, Robert Chavez; First Trustee, Froilan Medina. Mendoza, Chavez, Medina and Grijalva were directly involved in matters concerning the employer's workers. They operated in dual capacities as IUAW and Local 890 representatives until November 16, when Sam Rivera, who became president of the Independent Union, terminated their relationship with that union.[6]

It was during this period that Local 890 petitioned for an election to be held among the employer's workers. Chavez, Macias and Grijalva actively campaigned on behalf of the Teamsters. They had been instructed to do so by Roy Mendoza, who further told them to inform workers that the IUAW was no longer going to exist. No campaign was

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[6]Rivera, after becoming president, disassociated himself from Local 890. Grijalva became Vice President of the IUAW, and similarly ceased her employment relationship with the Teamsters.

[7]Chavez was placed in charge of the business agents who were involved with the employer. His duties in this particular capacity included instructing these agents how to properly fill out and process grievances.

conducted on behalf of the Independent Union during the pendency of the election proceedings.

Mendoza stated that the decision to file the Teamster petition was made after the UFW began organizing the employer's workers. He had considered the possibility of a merger or affiliation between the Independent Union and the Teamsters, and had been given the opportunity to run the Independent Union himself. However, Mendoza determined that these actions would not be feasible because of problems that existed with the Independent Union's record-keeping and a their finances.[8] Further, the Teamster-IUAW consultants reported back to him that workers had been dissatisfied with their representation by the IUAW. In short, Mendoza concluded that the IUAW's position in the election campaign was untenable.[9]

On September 18, a meeting was conducted among the employer's workers, ostensibly under the auspices of the Independent Union. [10] The purpose of the meeting, as stated

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[8]Mendoza testified that he had met with Martha Cano and discussed these matters with her. He stated that Cano did not ask him to campaign for the IUAW, but merely wanted him to represent that union in contract negotiations. Mendoza added that Cano expressed the wish that the people would be represented by a union and that she preferred that the representative be the Teamsters, not the UFW.

[9]Mendoza discussed these matters with Pete Maturino and Sam Rivera.

[10]The meeting announcement was printed on IUAW stationery and was written in the name of that union.

on the announcement, was to discuss wage negotiations. The meeting was held at the Teamsters Union hall. Testimony as to what transpired there was somewhat incomplete. Accounts provided by witnesses were not so much in conflict as they were separate pieces of the same puzzle.

Robert Chavez, when called to testify by the UFW, stated that there was one such meeting at which he was present. Other Teamster representatives/IUAW consultants who were there included Froilan Medina, Johnny Macias, and Margaret Grijalva. Chavez stated that Johnny Macias opened the meeting[11] and while Chavez said that he, Chavez, spoke to workers at that time, he did not recall whether he spoke to them "from the platform" or whether he had individual discussions with workers on the floor of the hall.

When called subsequently as a witness for the Teamsters, Chavez stated that he was "sitting among the workers," talking to small groups of two or three. Chavez said that he was getting reacquainted with these workers, some of whom he had known in prior years when the Teamsters had represented them. According to this witness, "mostly what . . . was discussed at that meeting was the situation with Martha Cano. We had a lot of questions as to what was going to happen because of the contract being expired and

[11]Chavez later testified that Macias introduced himself as the "representative for the Independent Union."

Martha Cano being away." [12] Chavez noted further that the workers "were upset . . . they were not satisfied with the Independent Union. They hadn't heard anything as to what was going on in negotiations." Chavez advised the workers to contact Margaret Grijalva if they had any problems. Another matter which was discussed at the meeting included a pending grievance involving the bus pick-up site.

Maurillo Chavez, one of the employer's workers, stated that he attended two "IUAW" meetings at the Teamsters Hall. The first was conducted by Roy Mendoza, while the second was run by Robert Chavez. At both meetings salary negotiations were the major topic of discussions.

Robert Chavez testified that he took access to the employer's property many times. He attempted to differentiate between those occasions when he campaigned for the Teamsters, passing out Teamster literature and authorization cards during permissible election access hours, and those occasions when he took access for the purposes of dealing with IUAW matters such as grievances. In these latter situations, Chavez denied that he distributed Teamster literature or urged the workers to vote for the Teamsters.

[12] Roy Mendoza testified similarly that the purpose of the meeting was to explain to the workers what was happening to the IUAW.

By contrast, several worker witnesses stated that Chavez campaigned on behalf of the Teamsters during work hours, not just those times normally reserved for election access.[13] Maurillo Chavez stated that on one occasion Robert Chavez urged the people to vote for the Teamsters and appeared at the work site about 1:30 or 2:00 p.m.[14] Worker Edwardo Becerra similarly testified that Robert Chavez and Margaret Grijalva visited his crew on one occasion after their morning break, and spoke to them about voting for the Teamsters for about twenty or thirty minutes. However, the crew kept on working while Chavez and Grijalva campaigned. Becerra said the two visited with his crew a total of about four times, passing out literature, buttons and a petition on various occasions.[15] Likewise, Manuel Gonzalez stated that his work crew was visited by Chavez and Grijalva on one occasion and by Grijalva and Johnny Macias on three others. At least three of these visits took place during work times. Nonetheless, Gonzalez stated that the campaigning did not disrupt work, as the crew kept on working while the organizers were talking with them. Worker

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[13]I.e., one-half hour before work or during the lunch break.

[14]The workers had taken their lunch break at noon.

[15]The second time they visited, according to Becerra, was also after the morning break. A supervisor was present in the vicinity, but was with a different group of workers.

Rafael Alvarez also testified that his crew was visited on four occasions by Grijalva and Johnny Macias campaigning for the Teamsters. Alvarez did not state, however, when the visits took place.[16] Becerra, Gonzalez, and Robert Alvarez also noted that they and their co-workers were told by the Teamster representatives that the IUAW was not going to continue to exist.

2. Analysis and Conclusions

The foregoing factual recitation represents the sum total of evidence offered in support of exceptions two and five, i.e., whether the Teamsters and the IUAW used the latter's contract administration or post-certification access rights to campaign on behalf of the Teamsters and whether this tended to affect the outcome of the election; and whether the Teamsters and the IUAW created the impression that they are "alter egos" of one another rather than rival unions, and if so, whether this tended to interfere with the voter's ability to freely choose among the ballot choices.

A presumption arises in favor of certifying the results of an election. (D'Arrigo Bros, of California (1977) 3 ALRE No. 37; Ranch No. 1 (1979) 5 ALRB No. 1; California Lettuce Co. (1979) 5 ALRB No. 24; ALRA section

[16]Whether Alvarez and Gonzalez were testifying about the same or different incidents was unclear from the record, i.e., it was not established whether the two worked in the same or different crews.

1156.3(c).) Generally speaking, the party objecting to certifying the results of an election has the burden of proving that specific misconduct tended to affect employee free choice to the extent that it had an ultimate impact on the results of that election. (See, e.g., Bright's Nursery (1984) 10 ALRB No. 18; J. Oberti, Inc. (1984) 10 ALRB No. 50.) This standard has been referred to, in abbreviated fashion, as the "outcome-determinative" test.

Petitioner did not seek to refute evidence that its representatives appeared at the employer's premises during work time, or times not normally designated for election access, and campaigned on behalf of the Teamsters. [17] Technically, therefore, the campaign visits were in violation of the access rule. Despite the appearance of organizers during work times, however, the evidence demonstrates that-the campaigning did not "disrupt" work, as witnesses testified fairly consistently that they kept on working while the benefits of Teamster affiliation were being extolled. Furthermore, the record does not establish that Teamster representatives gained access by asserting or relying upon "post-certification" or "contract administration" rights.[18] More importantly, the record

[17]Statements of Robert Chavez to the contrary notwithstanding.

[18] No testimony was received concerning whether the representatives asked company personnel whether they might

(Footnote Continued)

contains no reference to any attempts by the UFW to gain access during non-work times, arguably to gain equal amounts of exposure. There is likewise no evidence of such efforts being rebuffed.

In Ranch No. 1 (1979) 5 ALRB No. 1, the Board stated that in order for access rule violations by organizers to provide a basis for overturning an election, evidence must: be presented "to indicate that these violations were of such character as to create an intimidating or coercive impact on the employees' free choice of collective bargaining representative." In that case, the Board found that six separate access rule violations (i.e., six instances of "excess access," either by way of larger than permissible numbers of organizers being present or campaigning beyond permissible access time limits) did not have a coercive or intimidating effect on employee free choice.

In Frudden Enterprises (1981) 7 ALRB No. 22, seven separate campaigning incidents were found by the IHE to have involved access rule violations. Of these, four were determined to be "disruptive" of work. Two involved actual physical confrontations between organizers and company personnel. The incidents took place in the context of a strike, in an atmosphere which might be termed highly

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(Footnote Continued)
take access or whether they simply appeared at the various work sites.

charged. Yet even these "disruptive" circumstances were deemed not to have a coercive or intimidating effect on employee free choice. As the IHE in that case wrote:

> Although such conduct is prohibited by the access rule and puts workers in a difficult position by inducing them to turn from their work in the presence of supervisors who have directed the organizers to leave, it is equally likely that this conduct would cause resentment of the organizers' interference with work or anxiety of the supervisor's reaction to the employee turning from work as that it would inspire fear of the union. To conclude that fear is the notable reaction is highly speculative. (Id., IHED 54.)

The violations of the access rule here were generally non-disruptive and of a far less serious nature than those found in Frudden Produce. It is therefore concluded that they did not have a coercive or intimidating effect on employee ability to freely choose a bargaining representative, and thus did not have an effect on the outcome of the election.

The Board has noted in Royal Packing (1982) 8 ALRB No. 57, at p. 4, n. 3, that "in order to avoid discriminatory access, or the appearance of such during a rival union campaign, we find that a certified union is entitled only to organizational access pursuant to 8 Cal. Admin. Code section 20900 whenever a rival union files a Notice of Intent to Take Access (NA) or an election petition

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[19]Notably, evidence in this case demonstrated that a supervisor was present on only one of the access violations established herein.

is filed, whichever is first." In this case, where the rule was violated, there was no proof that the Teamsters availed themselves of access in the name of the certified union, or IUAW, or that the employer granted access rights to persons campaigning for the Teamsters on the basis that they were on the property to administer the IUAW contract.

The specific language of Objection 5 refers to the "creat[ing] of the impression that the [Teamsters and Independents] are "alter egos' of each other[20] rather than rival unions." Gaining access to the employer's property in the name of one union, while at the same time advancing the cause of another union, would certainly go far in establishing an inference that workers could reasonably believe that the two unions were one and the same. Yet, the proof falls far short of providing the basis for such an inference. Apart from the fact that several of the same individuals became responsible for processing IUAW grievances, and spoke under the auspices of the IUAW at a meeting held at the Teamster union hall, which might foster

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[20]The term "alter ego" is most commonly used in an employer context. In John Elmore (1982) 8 ALRB No. 20, the Board noted that the term "is reserved for those situations in which a successor entity is: ... "merely a disguised continuance of the old employer. (Citations.) Such cases involve a mere technical change in the ownership or management. [Citation.] (Emphasis added)[1] .... The determination in all such cases is whether the new employing entity is in actuality the original one in a new form." (Id., pp. 4 and 6.) In short, the "alter ego" terminology would apply to an entity different in name only from its predecessor.

some impression of merged identities, the evidence indicates that workers were directly advised that their former collective bargaining representative was going to cease to exist, and that they should vote for the Teamsters. Such statements, indicate that the unions were in fact competing with one another. Notably missing from the testimony were statements to the effect that workers were told that the unions would actually merge, or that the IUAW president recommended that the Teamsters "inherit" the IUAW certification.

In reality what had taken place was that the personal and legal difficulties experienced by the leaders of the IUAW created a vacuum. Workers represented by that union and employed under its contracts still in effect were undoubtedly confused and somewhat apprehensive about its fate, especially after receiving a letter from Martha Cano outlining her difficulties. The Teamsters Union seized this opportunity to fill the vacuum and organize the employer's workers on its own behalf, and were given a considerable advantage in doing so by its representatives being granted the authority to conduct the IUAW's affairs. This is not to say, however, that the Teamsters used the IUAW power base or worker support for that union, such as it was, to garner votes for the Teamsters, thus inhibiting their "free choice" of a bargaining representative. To the contrary, Teamster representatives noted that workers expressed dissatisfaction with the IUAW. The Teamsters consequently sought to

differentiate and distance themselves from the IUAW, rather than foster the notion that the Teamsters were going to assume the IUAW's role at that union's behest.[21]

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[21]The IUAW argues that the election should be set aside on the basis that the Teamsters materially misrepresented to the employer's workers that the IUAW was going to cease to exist. This argument must fail for a number of reasons. No such objection was filed with the Executive Secretary after the close of the election, as is required under Regulation section 20365(a). Nor was this particular issue set for hearing, as required under Regulation section 20365(g). Therefore, it should not be considered on purely procedural grounds.

Notwithstanding these determinations, the so-called "misrepresentation" is neither factually nor legally sufficient to overturn the election. The statement was made by individuals responsible for managing the IUAW's business. Pursuant to that responsibility, it was they who determined that the IUAW would "cease to exist," or at minimum, not carry on a campaign. Thus, for all intents and purposes, the statements that they made were not inaccurate, as the decision had been made by those authorized to make it, not to continue the IUAW's existence. That subsequent events demonstrated that dissenters from the Teamster's decision (i.e., Sam Rivera) would maintain the viability of the IUAW does not detract from the accuracy of the statement at the time it was made.

Secondly, a party may not rely on its own misconduct as a basis to set an election aside (Regs. section 20365(c)(5); Pacific Farms (1977) 5 ALRB No. 75). Agents for the IUAW made the statements in question. The IUAW now urges that these individuals overstepped their prerogatives as agents by engaging in an act which was a fraud upon their principal (Civil Code section 2306 states that "an agent can never have authority either actual or ostensible, to do an act which is ... a fraud upon the principal") and therefore their conduct should not be imparted to that union. As per the above, however, such statements were not inaccurate or a "fraud" at the time, since those charged with the responsibility of running the IUAW had the authority to decide its future, at least vis-a-vis the Inland and Western employees, which in the judgment of the IUAW agents could not continue to represent them.

(Footnote Continued)

For all the foregoing reasons, it is recommended

(Footnote Continued)

Lastly, the reliance by the IUAW on the rule regarding campaign misrepresentation in Hollywood Ceramics Company, Inc. (1962) 140 NLRB 221, does not reflect the current state of the law under National Labor Relations Board precedent, or even under ALRB case law. That rule essentially stands for the proposition that an election may be set aside where there has been a misrepresentation "which involves a substantial departure from the truth at a time which prevents the other party . . . from making an effective reply." I have found that the statement in question was not a "substantial departure from the truth." Additionally, insufficient evidence was presented as to the exact time when the statements were made. However, they were made throughout the campaign, from which it might be inferred that there were opportunities presented for the effected party to rebut or refute them. Notwithstanding these evidentiary difficulties in providing a factual basis for bringing the rule into play, this Board has adopted a modified Hollywood Ceramics rule, since that rule was grounded upon the National Board's "laboratory conditions" model for election conduct which is not followed in the agricultural setting. Rather, it is only where an election misrepresentation prevents employees from expressing "a free and uncoerced choice of a collective bargaining representative "as per D'Arrigo Bros, of California (1977) 3 ALRB No. 37 that this Board will set an election aside based on a misrepresentation of fact. (Sakata Ranches (1979) 5 ALRB No. 56); see also Triple E Produce (1983) 35 Cal.3d 42.)

Furthermore, Hollywood Ceramics has in fact been overturned by the National Board in Midland National Life Insurance Co. (1982) 263 NLRB 127. In that case, the National Board held that:

> We will no longer probe into the truth or falsity of the parties' campaign statements and that we will not set elections aside on the basis of misleading campaign statements. We will, however, intervene in cases where a party has used forged documents which render the voters unable to recognize propaganda for what it is. Thus, we will set an election aside not because of the substance of the representation, but because of the deceptive manner in -which it was made, a manner which renders employees unable to evaluate

(Footnote Continued)

that Objections 2 and 5 be dismissed.

C. Objection la; Threatening workers that the UFW would attempt to have undocumented workers deported if it were elected.

The evidence presented on this objection consisted of a company leaflet distributed during the campaign. A copy of that leaflet, and its English translation, are attached as Appendices 2a and 2b and incorporated by reference.

In brief, the leaflet tells of Cesar Chavez complaining to President Reagan that the Immigration Department was letting undocumented workers into the country, that these workers were taking jobs away from residents, and that the President should see to it that undocumented workers from Mexico "should be returned . . . immediately." It "reminds" workers that the UFW demonstrated against undocumented workers at the Immigration Department, patrolled the border stopping those without papers, and that Chavez "called the immigration on us." The leaflet refers to the UFW protecting "the locals more than . . . the illegals." As a consequence, "if the union comes

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(Footnote Continued)

> manner which renders employees unable to evaluate the forgery for what it is. . . . [W]e will continue to protect against other campaign conduct, such as threats, promises, or the like, which interferes with employee free choice."

Consequently, were this Board to adopt the Midland rule, the making of the misrepresentation claimed here, in and of itself, would not result in setting this election aside.

to this company -- will it be possible to retain our jobs? I don't think so being that there is a lot of people without jobs waiting for work at the Union hall." Lastly, the leaflet reiterates that the UFW has called the immigration service, and that workers should "protect" themselves by voting "No Union."

A.L.R.A. section 1155 permits employees to freely express their views on unionization as long as that expression does not contain "any threat of reprisal or force, or promise of benefit." This Board has consistently followed the N.L.R.A. precedent regarding employer campaign speech found in N.L.R.B. v. Gissel Packing Co. (1969) 395 U.S. 575, which interprets the NLRA counterpart to section 1155. (See, e.g., Akitomo Nursery (1977) 3 ALRB No. 73; Abatti Farms (1979) 5 ALRB No. 34, aff'd in part (1980) 107 C.A.3d 317; Mission Packing Co. (1982) 8 ALRB No. 14; Steak-Mate, Inc. (1983) 9 ALRB No. 11. In Gissel, the U.S. Supreme Court stated that an employer has a qualified right to "make a prediction as to the precise effects he believes unionization will have on the company." However,

> the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrate probable consequences beyond his control ... If there is any implication that the employer may or may not take action solely on his own initiative for reasons unrelated to economic necessity and known only to him, the statement is no longer a prediction but a threat of retaliation based on misrepresentation and coercion .... (395 U.S. 618, 619, emphasis supplied.)

Clearly, the statements in the company leaflet regarding purported UFW positions on immigration matters referred to consequences "beyond [the employer's] control" which might eventuate, should that union be selected as bargaining agent. The leaflet contains no threat of an employer response to a possible UFW victory. There is no implication that should the UFW prevail in the election the employer might or might not "take action solely on his own initiative for reasons unrelated to economic necessity." Rather, the employer merely stated its opinion that given the UFW's alleged stance on undocumented workers, it would not be in the best interests of these workers to vote for that union. The leaflet constituted no more than a legitimate expression of "views, arguments, or opinions" permissible under section 1155 of the Act, and therefore cannot serve as a basis for objectionable election conduct.[22]

It is therefore recommended that this objection be dismissed.

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[22]Even, if the acts and statements attributed to the UFW and its leadership were inaccurate, under Midland National Insurance Co., supra, the would not constitute objectionable conduct. They were clearly presented in such a manner as to enable workers to "recognize propaganda for what is." (See also, Sam Andrews' Sons (1978) 4 ALRB No. 59.)

D. Objection (e): Threats to Fire Workers if the UFW Were Elected

Worker Maurillo Chavez testified that in early October, 1984, he had a conversation with one of the employer's owner's, Luis del Fino. Del Fino told Chavez, according to the worker, that "he knew that we had signed some cards for the Chavez union," and that "we were about to lose work."

Juan Nunez was present during the aforementioned conversation. Testifying on behalf of the employer, Nunez provided a fuller account, placing del Fine's statement more appropriately in the context in which it was uttered. Nunez stated that Chavez and del Fino were discussing a wage increase currently being negotiated. Del Fino also commented on the upcoming representation election. According to Nunez, del Fino "said as far as he was concerned he didn't want any union but then it was up to us whether we wanted a union or not." Del Fino further stated that "it is probable you will not be getting the job after the Chavez union comes in ... because we have never been working under any union that has a dispatching hall .... [Y]ou know very well your ignorance about all these [sic], you go to Mexico and come back and we always give you back your job without any problems. And what he was telling also and making reference about -that if Chavez was doing the hiring we may not get our jobs back and they would not consider our seniority."

Testimony provided by Luis Del Fino himself essentially corroborates that of Nunez. Del Fino denied telling Chavez or Nunez that they would be fired if the UFW came in, or likewise threatening any other workers with discharge in that event. Del Fino did state that he told Nunez, a truck driver for the company, that "if we went UFWA . .' . he could probably lose his job . . . . [b]ecause of the procedure of the hiring hall they have. They usually take a leave of absence and . . . go to Mexico. And on their return, . . . normally they'll ask for extensions and stuff like that. And I figured eventually, within a couple of years, with the high pay they receive,[23] that . . . whomever is in the hiring hall would put probably some of their relatives or friends in their position."

Chavez' testimony did not, in essence, rebut that of either Del Fino or Nunez. The fact that they provided a more complete account of the alleged objectionable remarks tends to lend greater credence to their testimony. When the "threat" of job loss is viewed in the total context of del Fine's opinion about the possible impact of being employed under the UFW hiring hall system, its coercive and/or intimidating aspect is more or less eliminated. Once again, the employer merely made a prediction about the possible

[23]Nunez, as a truck driver and Chavez, as a trailer puller, apparently received a higher wage than the pickers and the irrigators.

deleterious consequences of a UFW victory which were "beyond [his] control." Del Fino made no reference to any steps he might take regarding the loss of work. He expressed his belief that favoritism at the hiring hall might override considerations of seniority and past leaves of absence preference, resulting in the loss of their jobs. Under the Gissel standard discussed above, his statements are permissible campaign propaganda. [24](See also, Sam Andrews' Sons, supra.)

It is therefore recommended that this objection be dismissed.

E. Objection 4: Pre-Election Discussions of Employee Grievances Between the Employer and the Teamsters

Despite the representation in the Teamsters' brief that "the UFW presented no evidence in support of this objection," from the evidence it should not be subject to dispute that Teamster representatives, who "volunteered" to work for the IUAW, entered pre-election discussions of employee grievances, at least with employees, if not with the employer itself. Robert Chavez noted that as an IUAW "consultant" his duties were to assist in the filling out of

[24]As pointed out in the Teamster's brief, even viewing del Fine's in their worst possible (i.e., coercive), light, the fact that they were made to only two employees indicates that, as isolated remarks, they could not tend to affect the outcome of the election. (Cf., Triple E Produce (1980) 6 ALRB No. 46; Jack or Marion Radovich (1976) 2 ALRB No. 12.)

grievances and ascertain whether they had merit. He admitted he met with workers "many times" to discuss their grievances. The duties of his boss, Roy Mendoza, involved instructing IUAW business agents as to how to file grievances. He and Teamster Business agent Sam Rivera negotiated a wage re-opener with the employer and advised company workers not to accept their offer. Lastly, according to the meeting announcement and the testimony of Maurillo Chavez, the wage issue was discussed by Teamster representatives at the IUAW meetings held at the Teamsters' hall. Robert Chavez stated that at one of these meetings, a grievance involving the bus pick-up point was discussed.

Worker Ramiro Perez, called by the UFW, stated that on the morning of the election Teamster representative/IUAW consultant Johnny Macias told "most of the workers from the company . . . that now we take care of all your grievances and your problems. And we already talked this over with the company but the ones that will settle all of these would be the Teamsters." Neither Macias nor any other witness was called to rebut Perez[1] testimony.

Thus, it is clear that Teamster representatives, at least as IUAW "consultants," discussed grievances and a wage increase with workers and discussed this wage increase with the employer prior to the election. However, the conduct alleged as objectionable is the giving of the impression that the employer discussed grievances with the Teamsters Union. No evidence was presented that

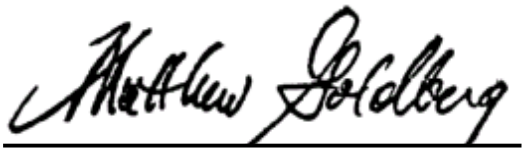
negotiations took place or grievances were processed in the name of the Teamsters. Nor was there any testimony as to whether anything had been resolved prior to the election.[25] Macias' remark indicates that these matters were handled under the aegis of the IUAW, but it would be the Teamsters who would "settle them." This is only the natural result of a Teamster victory in the election.

As it has not been shown that the misconduct alleged did in fact occur, it is recommended that this objection be dismissed.

CONCLUSION

It is recommended that the Intervenor's Objections be dismissed in their entirety, and the International Brotherhood of Teamsters, Local 890, be certified as the exclusive collective bargaining representative of all of the employer's workers.

Dated: August 5, 1985



MATTHEW GOLDBRKG
Investigative Hearing Examiner

[25]Such evidence, if preferred, might indicate that the employer negotiated with a non-certified union. It would by inference show favoritism for that union by manifesting that the employer could and would negotiate with it. Unlawful assistance to a particular union has been utilized as a basis for setting aside the results of an election. (Security Farms (1977) 3 ALRB No. 81; George Lucas & Sons 4 ALRB No. 86.)