

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO COMPANY, INC./)	
GEORGE B. LAGORIO FARMS,)	
)	
Respondents,)	Case No. 87-CE-1-D(F)
)	
and)	
)	
UNITED FARM WORKERS OF)	15 ALRB No. 7
AMERICA, AFL-CIO,)	
)	
Charging Party.)	

DECISION AND ORDER REVOKING CERTIFICATION

The instant matter arises from a technical refusal to bargain. Charging Party United Farm Workers of America, AFL-CIO (Union or UFW) filed a petition for certification as exclusive bargaining representative of all the agricultural employees of Respondents Ace Tomato Company, Inc./George B. Lagorio Farms (Ace or Respondents) on August 16, 1983. The Agricultural Labor Relations Board (ALRB or Board) conducted a secret ballot election among Respondents' employees on August 23, 1983, the results of which were as follows:

UFW	315
No Union	42
Unresolved Challenged Ballots.....	<u>256</u>
Total.....	613

A hearing on Respondents' objections to the conduct of the election was held before Investigative Hearing Examiner (IHE)

Robert LeProhn on May 14-15, 1985, in Stockton, California.¹ IHE LeProhn issued a recommended decision on November 18, 1985, in which he dismissed Ace's election objections in their entirety. The Board affirmed the IHE's decision and certified the Union as the exclusive bargaining agent of Respondents' employees in Ace Tomato Company, Inc./George B. Lagorio Farms (1986) 12 ALRB No. 20, with a vigorous dissent by Member Carrillo.

Thereafter on November 21, 1986, one month after the Board's decision, the Union requested that Respondents commence bargaining for the execution of a collective bargaining agreement. On December 10, 1986, Ace informed the Union by letter that it would refuse to bargain with the Union in order to test the propriety of the Board's certification decision. On January 2, 1987, the Union filed unfair labor practice charge 87-CE-1-D(F) alleging that Ace's refusal to bargain was in violation of Labor Code section 1153(e).²

A complaint issued on July 20, 1987. Respondents filed their answer on July 30, 1987, and on May 20, 1988, the parties waived an evidentiary hearing, and submitted this matter directly

¹The Executive Secretary set the following objections for hearing: (1) whether the alleged mass chanting by employee adherents of the Union and the alleged attack on labor consultant Steven Highfill during the polling tended to affect the results of the election; (2) whether Board agents instructed waiting employees that they should vote for the Union, and if so, whether such conduct tended to affect the results of the election; and (3) whether violent attacks occurred prior to the election by striking workers against nonstriking workers, and by workers against labor consultants Roydan Ayala and Alfonso Agraz and if so, whether such conduct tended to affect the results of the election.

²All statutory references are to the California Labor Code unless otherwise indicated.

to the Board for its decision on stipulated facts. For the reasons stated below we will dismiss the complaint herein, and vacate our certification issued in Ace Tomato Company, Inc./George B. Lagorio Farms (1986) 12 ALRB No. 20 (Ace).

Reconsideration of Facts Supporting a Finding of the Existence of an Atmosphere of Fear and Coercion or Reprisal Rendering a Free Choice by Employees Impossible

Respondents contend that our decision in this case is controlled by our previous decision in T. Ito & Sons Farms (1985) 11 ALRB No. 36 (Ito). We agree. In Ito, a technical refusal to bargain case procedurally identical to this one, we reconsidered our decision in the representation case reported at T. Ito & Sons Farms (1983) 9 ALRB No. 56. Following precedent of the National Labor Relations Board (NLRB or national board) found in Sub-Zero Freezer Co., Inc. (1984) 271 NLRB 47 [116 LRRM 1281], we re-examined the employer's objections and found that the existence of a pervasive atmosphere of fear and coercion or reprisal created by widespread threats and accompanying acts of property damage warranted the vacating of our previously issued certification and dismissal of refusal to bargain charges. We observed that, whereas mere threats of violence might be sufficient to establish an atmosphere of fear and coercion, such an atmosphere was "readily established" in the presence of actual violence. (Ito, supra, at p. 11, fn. 11.)

We find that such actual violence occurred in this case. In so finding, we do not need to disturb the factual findings made by the IHE and adopted by the Board previously. We disagree, however, with the Board's statements in 12 ALRB No. 20 that

characterize the violence that occurred in the instant case as a insufficient, as a matter of law, to create the atmosphere of fear and coercion or reprisal which warrants setting aside an election.³ These incidents of actual, as opposed to merely threatened, violence occurred on the day of the election itself and within the three days leading up to the election. They were thus clearly not isolated events separated from the voting process by a passage of time sufficient to dissipate any coercive impact. (Cf. Cross Baking Co. v. NLRB (1st Cir. 1971) 453 F.2d 1346

[78 LRRM 3059] passage of two months following discharge of pro-union employee who assaulted anti-union employee without further incident of violence prevents finding of coercive atmosphere; and cf. Joseph Gubser Co. (1981) 7 ALRB No. 33 and Exeter Packers, Inc. (1983) 9 ALRB No. 76 field rushing incidents which occurred three weeks prior to election and which involved rock, dirt clod and tomato throwing and some personal injury and property damage, too remote to sustain finding of coercive atmosphere.)

Nor do we find these incidents of actual violence to be insubstantial. In Owens-Corning Fiberglass Corp. (1969)

³Specifically we disavow the Board's previous statements that (1) "the degree of physical force involved in the August 20 incidents (throwing dirt clods and tomatoes and rocking the labor consultant's car) does not appear to be of the minimum level found sufficient in NLRB and other ALRB cases to justify setting aside elections" (Ace, supra, at p. 8), and (2) "the conduct [surrounding consultant Highfill's car by 35-70 workers at the Drais Ranch polling site who pelted the car with tomatoes and clods and rocked and pounded the car with their fists] did not... represent a level of violence likely to have had any coercive effect on voters." (Id. at p. 11.)

179 NLRB 219 [72 LRRM 1289], the national board found threats to anti-union employees by pro-union employees, unaccompanied by actual physical violence, too insubstantial to create a coercive atmosphere where anti-union employees had shown themselves able to deal with such conduct. The instant case is far different. On August 20, 1983, three days before the balloting, Respondents' consultants Agraz and Ayala drove to a work site on Drais Road, off Highway 4 in Manteca, to address the members of a large crew working there. Before Ayala, who attempted to speak first, could address Respondents' employees, some 20-30 percent of the 200-300 employees began shouting insults and obscenities, and started to approach their car. After Ayala was shouted down by the Union's supporters, Agraz also tried to be heard. He also was shouted down, and was advised by Ayala to get into the car and roll up the windows. Thereupon the Union's supporters bombarded the car with tomatoes and hard dirt clods, surrounded it while pounding on it with their fists, and rocked the car as if intending to overturn it.⁴ Only after the violence subsided were the consultants able to exit from the work site.

That same day consultants Steven Highfill and Jose Ibarra attempted to speak with crews harvesting tomatoes at Respondents' Turner Ranch site. When Highfill and Ibarra entered the field, there were some three or four crews at work, each crew containing 40-50 persons. While Highfill and Ibarra were making contact with the first crew they encountered, they observed persons entering

⁴Agraz testified that at least one Union adherent actively solicited such an act, stating to his companions, "Let's turn the car over."

the field 200-300 yards away from them in a southerly direction. One of these individuals was addressing the crews with a bullhorn. As these individuals made their way through the field, Highfill observed the crews stop working and begin to congregate in the southwest corner of the field. When the intruders reached the crew with whom Highfill and Ibarra had been speaking, they repeated their message to stop working and attend the Union meeting in the field. When some members of the crew continued to work, they were struck by hard dirt clods and unripe tomatoes, some of which were up to four inches in diameter, thrown by the Union's supporters who had entered the field and by some of those who had been picking when the fields were entered. Some of those struck with clods and/or tomatoes cried out in pain, and directed unspecified comments to those who had attacked them.

Nevertheless, the attempts at coercion were successful, and all work ceased. At least 150 persons observed this assault.

On the day of the election, consultant Highfill drove a car containing himself and two other consultants to the Drais Ranch polling site. Under the terms of the pre-election conference the voting was to have been completed by 10 a.m., but when Highfill's car entered the site shortly after 10 a.m., the voting was still in progress. Directed by the Board agent in charge to leave the polling area immediately, Highfill attempted to turn his car around after discovering he could not drive through the other end of the site. Stopped once again by the Board's agent, the car was this time surrounded by some 70 Union adherents who attacked the car with hard dirt clods and unripe

tomatoes. Some 30-35 UFW supporters began to rock the car while pounding on it with their fists. Although the Board's agent directed the Union's supporters to cease their assault, the violent conduct did not entirely end until Highfill's car was clear of the polling site.

The attempted intimidation of consultants Ayala and Agraz and the physical assault on their car, as witnessed by 200-300 employees, occurred three days prior to the election. On that same day the attempted intimidation of and assault on 45-50 non-striking workers by Union adherents was witnessed by another 150 workers. On the day of the election itself, the attack on consultant Highfill's car was witnessed by another 55-70 employees waiting to vote. As one federal Court of Appeals has observed:

Men judge what others will do on given occasions by their prior actions, and, less reliably, doubtless, by their statements about their intended future actions. So they assess what kind of folk they are dealing with and how those folk are likely to react if crossed. Even the implicit threat of a club or pistol on the hip, without more, may be sufficient to influence significantly the conduct of those who are cast in company with the bearer.

(Hickory Springs Manufacturing Co. v. NLRB (5th Cir. 1981)
645 F.2d 506, 510 [107 LRRM 2902].

Here, the case is even clearer, as we see conduct far beyond mere implicit threats. The Union adherents' violent conduct graphically demonstrated to any anti-Union employees what they could expect if they "crossed" the pro-Union employees. We find, in agreement with the court in Hickory Springs, supra, that such conduct is, as a matter of law, capable of creating an atmosphere of fear and coercion or reprisal in which free

exercise of employee choice is effectively rendered impossible.

In dismissing the unfair labor practice charges and setting aside our prior certification, we are mindful above all of our duty to establish norms that strongly discourage labor relations violence. (Sequatchie Valley Coal Corp. (1986)

281 NLRB No. 108 [123 LRRM 1185], Chairman Dotson, concurring.) The result we reach here we find to be compelled, and fully justified, by our prior decision in Ito, supra. Simply stated, this Board will not tolerate violence in connection with its elections. Events such as occurred here will mandate our refusal to certify such elections.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that the complaint in this matter be, and hereby is, dismissed in its entirety, and that the certification issued in Ace Tomato Company, Inc./George B. Lagorio Farms (1986) 12 ALRB No. 20 be, and hereby is, vacated.

Dated: August 2, 1989

BEN DAVIDIAN, CHAIRMAN⁵

GREGORY L. GONOT, Member
IVONNE

RAMOS RICHARDSON, Member

JIM ELLIS, Member

⁵ The signatures of Board Members in all Board Decisions appear with the signature of the Chairman first (if participating), followed by the signatures of the participating Board Members in order of their seniority.

CASE SUMMARY

Ace Tomato Company, Inc./
George B. Lagorio Farms,
(UFW)

15 ALRB No. 7
87-CE-1-D (F)

Background

On August 16, 1983, Charging Party United Farm Workers of America, AFL-CIO (UFW or Union) filed a petition for certification as the exclusive collective bargaining agent of all the agricultural employees of Ace Tomato Company, Inc./George B. Lagorio Farms (Ace or Respondents). At an election conducted by the Agricultural Labor Relations Board (ALRB or Board) on August 23, 1983, the Union prevailed. Challenged ballots were not outcome determinative. After a hearing held on May 14 and 15, 1985, on Respondents' objections alleging violence by Union supporters that created an atmosphere of fear and coercion or reprisal sufficient to render employee free choice impossible, as well as Board agent bias and conduct by Union supporters at a polling site that reasonably tended to interfere with employee free choice, the Investigative Hearing Examiner (IHE) issued a decision that recommended the dismissal of all Respondents' objections. The Board upheld the IHE's decision and certified the Union as the collective bargaining agent of all Respondents' agricultural employees in Ace Tomato Company, Inc./George B. Lagorio Farms (1986) 12 ALRB No. 20, Member Carrillo dissenting. Thereafter, Respondents engaged in a technical refusal to bargain to test the propriety of the Board's certification decision, and the matter was presented directly to the Board on a stipulated record.

Board Decision

The Board reconsidered its prior certification decision as permitted under T. Ito & Sons Farms (1985) 11 ALRB No. 36 (Ito). In Ito the Board decided that it would reconsider matters previously litigated in representation proceedings in subsequent technical refusal to bargain cases when the record upon reconsideration demonstrated the presence of an atmosphere of fear and coercion or reprisal sufficient to render employee free choice impossible. The Board observed in Ito, that while widespread threats of beatings and reporting to the U.S. Immigration and Naturalization Service could create such an atmosphere, where actual violence was present, such an atmosphere was readily established. Here the Board found such an atmosphere was created by the violent attempts to intimidate Respondents' labor consultants three days before the election when they were trapped in their car while it was bombarded with hard dirt clods and unripe tomatoes and was rocked by pro-Union employees with the possibility of overturning it, by the violent coercion of employees on the same day who were struck by clods and tomatoes thrown by Union organizers and adherents as witnessed by 150 employees in an attempt to force them to cease work and attend a

Union meeting, and by the violent assault on a consultant's car at a polling site on the day of the election when it was surrounded by Union adherents who again bombarded the car with hard clods and unripe tomatoes, and rocked the car with the consultants inside while pounding on it with their fists. Since these incidents of actual violence were not isolated or insubstantial, they created the prohibited atmosphere of fear and coercion or reprisal that renders employee free choice impossible. Noting that its duty is to formulate norms that strongly discourage labor relations violence, the Board dismissed the unfair labor practice complaint, vacated its prior certification order and stated that it would not tolerate violence in connection with representation elections.

* * * *

This Case Summary is furnished for information only and is not the official statement of the case, or of the ALRB.