

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
)
WEST FOODS, INC.,) No. 75-RC-1-M
)
Employer) 1 ALRB No. 12
)
and)
)
UNITED FARM WORKERS OF AMERICA,)
)
AFL-CIO,)
)
Petitioner)
)
and)
)
TEAMSTERS LOCAL NO. 186,)
)
Intervenor)
)

Following a representation election pursuant to a petition for certification filed by the United Farm Workers of America, AFL-CIO, the intervening Western Conference of Teamsters moved to set aside said election on the basis of certain acts of alleged misconduct by the employer, the UFW and the Agricultural Labor Relations Board.¹

¹On September 2, 1975, the UFW filed a certification petition pursuant to Labor Code Section 1156.3(a) requesting a representation election among all agricultural employees who are employed by West Foods, Inc. in Ventura County. A subsequent motion to intervene in the election was filed by Chauffers, Teamsters and Helpers, Local 186, affiliated with the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America. A total of 184 employees participated in the election held at the employer's plant on Monday, September 8, 1975, the results of which gave the UFW 136 votes, Teamsters 39, and No Union 9. No voided or challenged ballots were cast. On September 12, 1975, the Teamsters filed a Labor Code Section 1156.3(c) petition objecting to conduct affecting the results of the election.

The Teamsters cited five specific acts or omissions alleged to have affected the results of the election and which allegations were set for oral argument at a hearing with all parties appearing.

It is the Board's considered opinion that the testimony and legal arguments presented on the issues involved do not constitute evidence of material wrongdoing sufficient to warrant a setting aside of this election. Accordingly, the Board orders that the UFW be certified as the collective bargaining representative for all the agricultural employees of West Foods, Inc. who are employed in Ventura County, California.

The five issues listed in the objections petition go to the adequacy of the Notice of Election to employees and the Notice of Location of Polling Place and Time of Election; whether the polling place opened late; whether the Union used an improper observer and whether an alleged threat affected the outcome of the election.

Following a determination that a bona fide question of representation exists, Labor Code Section 1156.3(a)(4) requires the Board:

. . . to direct secret ballot elections upon due notice to all interested parties and within a maximum of seven days of the filing of the petition.

The Regional Director of the Salinas office of the Agricultural Labor Relations Board issued the official direction and notice

of election to the parties at the pre-election conference on Friday, September 5. The notice called for an election at the southeast corner of the West Foods plant between the hours of 9:00 AM and 2:00 PM on Monday, September 8, 1975. Said document is part of the official file of the ALRB.

Section 20310(g) of the Emergency Regulations adopted pursuant to the Agricultural Labor Relations Act² states in pertinent part:

. . .the Board or its agent will seek the cooperation of all parties in the dissemination to potential voters, of official Board notices of the filing of the petition and official Board notices of the direction of an election, where appropriate.

West Foods Manager James D. McCoey testified that while no Board issued notices were posted on company property, the employer voluntarily posted two unofficial notices on the Saturday preceding the Monday election and that each contained the time and place of election. Additionally, McCoey stated that he, along with two or three other company officials, circulated leaflets to about 80 to 100 employees on behalf of the employer's campaign. This effort was coupled with "numerous personal contacts" with employees. The record of the hearing also indicates that both unions distributed literature beginning Friday evening.

²Labor Code Section 1140 et seq.

The Board is committed to the widest possible dissemination of election information. Of the approximately 203 eligible voters, 184 cast ballots³ which indicates that the election was noticed by a substantial number of employees. We find that the question of adequacy of notice does not in the circumstances before us warrant a setting aside of this election.

Representatives of the UFW and the Teamsters stipulated that the polls opened approximately thirty minutes later than scheduled. In the absence of evidence demonstrating that voters were disenfranchised as a result of the delayed opening, we do not reach the conclusion urged upon us that such conduct affected the results of the election.

Next, the Teamsters contest Board approval of the UFW's choice of an election observer on the ground that the designee was an ineligible supervisor rather than an employee as required by the Act. Because the Teamsters failed to timely object to the designation prior to the election,⁴ they have waived their right to do so at this time.

³Eligibility estimate taken from the official tally of ballots issued to the parties upon the completion of the election.

⁴Section 20350(b) provides that "Any party objecting to the observers designated by another party must register the objection and the reasons therefore with the Board agent supervising the election prior to the commencement of the election. Failure to so register such objections will be construed as a waiver of the right to contest the conduct or results of the election on such grounds."

According to the evidence presented at the hearing it was not established that the observer in question was supervisor within the meaning of the Act.⁵

The final issue concerns petitioners' allegation of a UFW threat of reprisal against a West Foods management employee.⁶ Dolores Cortez stated at the hearing that he is "the supervisor of all the workers" and described an incident four days prior to the election during which a UFW organizer addressed him with a pejorative term in the presence of about 35 to 40 employees and then declared that "we are going to send Dolores Cortez and McCoey (employer's manager) off".

No witness recalled hearing an explicit threat of violence. The father of Dolores Cortez, who is a non-supervisory employee, took offense at the statement, and told the organizer that if he had something to say against Dolores to say it, but there was no further conversation since the lunch break was ending. The organizer, Jesus Vilegas, denied making a threat.


⁵Emergency Regulation Section 20350(b) provides that "Such observers must be non-supervisory employees of the employer". At hearing, Mr. McCoey testified that the UFW designated observer has no authority to hire or fire, his "sole mission is to train new pickers". It was also revealed that the observer was a member of the existing bargaining unit encompassing West Food employees and that he was not paid at the same rate as other company supervisor.

⁶In the petition as originally filed, the Teamsters alleged "Threats of reprisal against the employer by the UFW". At hearing, the parties stipulated to changing this allegation to read "Threats of reprisal against employees" in order to clarify the issue and to have it conform with the offered evidence.

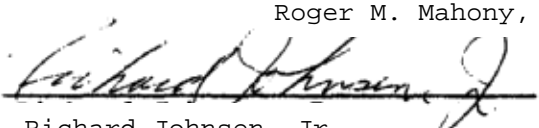
While the words which the organizer used were no doubt offensive to some, we do not view them in this context as constituting a threat of violence or other unlawful conduct. Cf. Retail Store Union (I. Posner, Inc.), 57 NLRB 615 (1961). Accordingly, they do not warrant setting this election aside.

Certification issued.


Dated: November 25, 1975



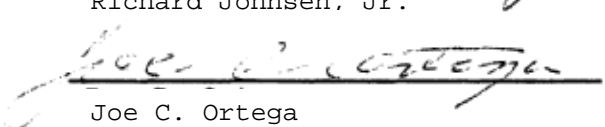
Roger M. Mahony, Chairman¹



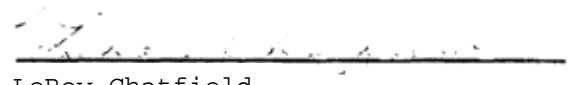
Richard Johnsen, Jr.



Joseph R. Grodin



Joe C. Ortega



LeRoy Chatfield