

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
YAMADA BROS. ,)	No. 75-RC-26-S
)	
Employer,)	1 ALRB No. 13
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO)	
)	
Petitioner)	
)	

The United Farm Workers received the majority of votes in an election for certification held among the employer's agricultural employees on October 2, 1975.¹

The employer objected to the conduct of the election and to preelection conduct by the UFW. We find the objections to be without merit and certify the results of the election.

1. Presence of union organizers on employer ' s property.

The employer objects to the presence of United Farm Workers organizers on his property during the lunch period on the day of the election. There is no substantial evidence that the union organizers exceeded their minimum right to

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¹The official tally of ballots showed that, out of approximately 100 eligible voters, 66 voted for the UFW and 27 for no labor organization. There were no challenged ballots.

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access to workers on the employer's property under this Board's access rule, 8 Cal Admin. Code § 20900.² Rather, the employer objects to access on the day of the election and introduced evidence that the Board agent told him at the preelection conference that on the day of the election, there should be no union organizers on his property except for a period of 30 minutes before the election and during the counting of the ballots after the election.

In elections conducted under the National Labor Relations Act, employers and unions are forbidden from making speeches to massed assemblies of employees within 24 hours before the scheduled time for an election. Peerless Plywood Company, 107 NLRB 427. It may be that this "captive audience" rule is not appropriate under our Act, where unions are not required to intervene until 24 hours prior to the election and the time and place of an election may not be announced with more than 24 hours notice. We need not reach this question here. The organizers did not speak to the workers on company time, but during the lunch break. They spoke to individual employees and not to a massed assembly. The Board agents apparently relied on the parties to inform the workers of the

²Four or five union organizers entered the fields to talk to workers on the six tomato harvesting machines that were operating in the fields at the time. There were 15 to 18 workers on each machine. The organizers entered the field around 12:30 and left by 1:15. The lunch hour normally ends at 1:00. The employer testified that some workers were supposed to be greasing the machines at the time and talking with organizers interfered with their work. These workers could take lunch later in the afternoon. The flexibility of the lunch hour bolsters the union's claim that its representatives were present only during the employees' lunch period.

time and place of the election, and so the union representatives contacted the employees at work. We find nothing objectionable in their conduct.

2. Presentation of written notice to employer. The employer did not receive an official written notice and direction of election until a few minutes before the polls opened. However, he attended the preelection conference where the time and place of the election was announced. The election was held as announced and the employer was present when the polls opened. According to the official tally, 93 out of 100 potential voters voted, and so the workers knew when and where the election was to be held. The objection is without merit.

3. "Campaigning" during the election by the union. During the election a group of union representatives was stationed at the intersection of a private road and the public highway approximately two and one-half or three miles from the polling place. They could not be seen from the polling area. One of the cars of the union representatives had a UFW bumper sticker and someone flew a UFW flag. One or two cars carrying workers on the way to the polls stopped to talk to Jan Peterson, one of the UFW people stationed near the road. Six or seven cars stopped to talk to her after leaving the polls. Even if this activity could be considered electioneering, it occurred outside of the polling area and therefore, is not objectionable. Herota Brothers, 1 ALRB 3 (1975).

4. Denial of employer's choice of an observer. At the preelection conference, the employer nominated Claudio Vargas

as one of his two observers. The UFW representative, Jan Peterson, objected on the ground that Vargas was a supervisor.³ The Board agent overruled the objection at the time, but later in the afternoon notified both Peterson and the employer's attorney that Vargas could not serve as an observer. The employer appointed an observer to replace Vargas and each party had two observers at the election.

Testimony at the hearing indicated that Vargas was a supervisor, as defined by Labor Code § 1140.4(j) . He has the responsibility to direct employees on the mechanical tomato harvesting machines. He does not himself work on the machine and receives a salary, while the workers he directs are paid by the hour. The employer did not list Vargas as an eligible voter on the employee list supplied to the Board.

The Board agent in charge of an election is responsible for determining the qualifications of observers. Ordinarily, his decision will not be disturbed. In this case the Board agent's determination that Vargas was a supervisor was supported by evidence introduced at the hearing.

5. Objection to ballot format. The ballots used in this election as in other elections contained a black eagle symbol for the UFW and the Board's "no union" symbol, a circle with a diagonal slash from upper left to lower right through it, with the word "no" centered in the circle. 8 Cal, Administrative Code § 21000. The employer claimed that the

³An observer must be a nonsupervisory employee of the employer. 8 Cal Admin. Code § 20350 (b) .

ballot was confusing because "people who voted for UFW made a real nice mark in the ballot. And the people that voted no, well they made a real small mark." No voter testified that he was confused. The objection is without merit.


Samuel S. Vener Company, 1 ALRB 10 (1975).

We certify the election. Certification issued.

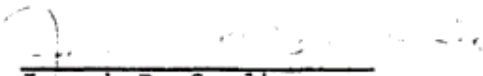
DATED: November 28 , 1975.



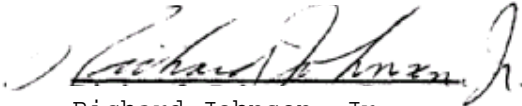
Roger M. Mahony, Chairman



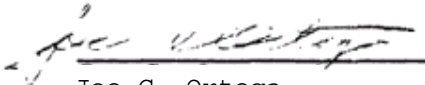
LeRoy Chatfield



Joseph R. Grodin



Richard Johnsen, Jr.



Joe C. Ortega