BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of:	)	
	)	
WEST COAST FARMS,	)	No. 75-RC-12-M
	)	
Employer,	)	1 ALRB No. 15
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
WESTERN CONFERENCE OF TEAMSTERS, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and LOCAL UNIONS 116, 186, 274, 542 630 865, 890, 898 and 1973; GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION LOCAL 890 AND TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL 898 affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of America.	)	

On September 2, 1975, the United Farm Workers of America, AFL-CIO hereafter "UFW") filed a petition for certification with the regional office of the Agricultural Labor Relations Board in Salinas seeking to be designated under Section 1156.3 of the Labor Code[1] as the bargaining representative for all of the agricultural employees of the employer in the Pajaro and Salinas Valleys. The UFW petition excluded from the

[1]Unless otherwise indicated, all statutory references are to the California Labor Code.

proposed bargaining unit noncontiguous packing sheds and vacuum coolers in addition to mechanics or maintenance employees represented by the International Association of Machinists, AFL-CIO. Following the filing of the UFW certification petition the Teamsters intervened. On September 5, the regional director issued a Notice and Direction of Election for a bargaining unit comprised of all the agricultural employees of the employer "excluding packing shed and cooler plant employees." The election in this unit was conducted on September 8, 1975.

The ballots in this election, along with others were impounded pursuant to Board order pending determination of the multi-employer bargaining unit issue in Eugene Acosta, et. al., 1 ALRB No. 1 (1975). When the Board on the afternoon of September 17, 1975 determined that single employer units were appropriate it ordered the impounded ballots be counted forthwith. Pursuant to this directive, the impounded ballots for approximately 30 separate certification elections were counted in 50 has during the late evening of September 17 and the early morning hours of September 18, The tally for the West Coast Farms election was 188 votes for the UFW, 84 votes for the Teamsters, 4 votes for no union, 14 challenged ballots and 8 void ballots.

Thereafter, the employer, the Western Conference of Teamsters and its local affiliates (hereafter "Western Conference") and General Teamsters, Warehousemen and Helpers Union Local 890 and Truck Drivers, Warehousemen and Helpers Local 898 affiliated with the International Brotherhood of Teamsters, Warehousemen and

Helpers of America (hereafter "Local 890") filed timely objection petitions under Section 1156.3(c) requesting the Board to set this election aside. A number of the allegations advanced in the objection petitions filed by the employer and the Western Conference have been previously dismissed by the Board on procedural grounds.

An evidentiary hearing on the four remaining objections raised by the employer and the Western Conference was conducted on October 8, 1975 in Salinas. The first of these objections advanced by the employer related to the alleged improper determination of the single employer bargaining unit by the regional director. It was the employer's contention that the appropriate bargaining unit was comprised of all those employers who had given powers of attorney to the Employer's Negotiating Committee, rather than a bargaining unit consisting solely of the agricultural employees of West Coast Farms. The Board has previously considered the identical issue at length and, on the basis of its decision in Eugene Acosta et al., 1 ALRB No. 1 (1975), the Board holds the single employer bargaining unit to be appropriate al. dismisses this objection.

Next, the employer and the Western Conference filed similar objections alleging that the Board improperly excluded the packing shed employees from the bargaining unit. From the testimony presented during the October *8* hearing, it was undisputed that the packing shed in question is located approximately a mile to a mile and one-half from the employer's nearest field and the scope of the shed's operation is limited to packing

celery produced solely by the employer. Furthermore, Mitchell Resetar, Jr., a general partner of the employer testified that only 14 or 15 persons were employed in the shed, a number clearly insufficient to affect the outcome of this election.

Since the employer's objection presented the first opportunity for the Board to consider the application of Section 1156.2[2] in relation to the Act's legislative history which indicates that the Board has discretion to consider off-the-farm processing, packing and cooling operations as distinct noncontiguous geographical areas,[3] the Board determined that this issue warranted fuller argument by the parties and any other interested persons. Accordingly, a special hearing was scheduled before the Board for December 1, 1975. However, prior to this hearing the employer withdrew its objection to the exclusion of the packing shed employees from the bargaining unit.

With the withdrawal of the employer's objection on this issue, only the Western Conference's objection to the exclusion of the packing shed employees remained, this placing this objection in an identical posture to that previously.

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[2]That section provides in part: "If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the Board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted.

[3]See Statement of Intent published in Senate Journal, Third Extraordinary Session, May 26, 1975, which provides: It is the intent of AB 1533 and SB 813, that the Board, in exercising its discretion to determine bargaining units in noncontiguous geographic areas, may consider processing, packing and cooling operations which are not conducted on a farm as constituting employment in a separate or noncontiguous geographic area for the purpose of Section 1156.2.

considered by the Board in Interharvest, 1 ALRB No. 2 (1975). Since the number of disputed employees is insufficient to affect the outcome of the election and, in the absence of other factors either to provide the Western Conference with a substantial interest in the outcome of this issue or to establish that it was adversely affected by the regional director's determination of the bargaining unit, the Western Conference lacks interest to object to that determination.[4] See Interharvest, supra at 6-7, Sections 1156.3(c) and 1140.4(d) of the Labor Code.

The employer's third objection to the election which was based on the allegation that the Board agent improperly refused to allow the employer's observer to challenge voters whose only identification was a social security card was withdrawn during the course of the hearing when it became evident by the observer's testimony that he was not in fact precluded from challenging such voters by the Board agent.

The employer's final objection to the conduct of the election arises from the alleged failure by the Board Agents to give the employer reasonable notice of the tallying of ballots on the evening of September 17, thereby preventing the employer from having its observers present when the ballots were counted.

Following the Board's order on the afternoon of September 17 that the ballots for the single employer units,

[4]The Western Conference did not appear either at the hearing on October 8 or the special hearing on December 1, 1975, and submitted no written position directly related to the packing shed issue in this case. Since only the UFW attended the December hearing, we consider it inappropriate to attempt explication of guidelines on the packing shed issue here.

which had been impounded pending determination of the multi-employer bargaining unit question, be counted forthwith, the Salinas regional office followed the Board's directive literally. Unfortunately in several instances, the regional office provided extremely short notice to the parties that the ballots would be counted that night.

Under the facts of the case now before the Board, it appears that a Board agent called Mrs. Elizabeth Resetar, the wife of Louis Resetar, one of the employer's general partners, in Watsonville at approximately 7:15 PM on the evening of September 17 and informed her that the ballots cast in the West Coast Farms' election would be counted at 7:30 PM in Salinas nearly twenty miles away. Mrs. Resetar informed the Board agent that her husband was not at home but she would give him the message as soon as he arrived. When her husband arrived home about ten minutes later, she gave him the message. He then called Mitchell Resetar, Jr., who was also a general partner of the employer, and informed him that the ballots were going to be counted in Salinas at 7:30 PM and that he was not going to Salinas since he would not be able to get there in time.

Mitchell Resetar, Jr., called Richard Alien, counsel for the employer around 7:25 PM and informed him of the situation.[5] Alien then called Andrew Church, counsel for the Grower-Shipper Association, around 7:45 at the Townehouse Motel in Salinas where the ballots were going to be counted and asked

[5]It should be noted that after he called Alien, Mitchell Resetar, Jr., testified that he made no effort to attend the tally but rather, stayed home for the remainder of the evening.

Church to voice a protest to the Board agents regarding the counting of the West Coast Farms' ballots without the employer or the employer's observer being present. After apparently being informed by Church that the actual counting had not yet started, Allen made no attempt to have either the employer or the employer's representative attend the tally. Thus, from the record it appears to the Board that despite the short notice, the employer did not make a determined effort to have its observers present for the tally. See also, J. R. Norton, Co., 1 ALRB No. 11 (1975).

It is obviously desirable that all parties receive adequate notice of the tally of ballots in all cases, and be given an opportunity to have an observer present. Where there is any semblance of impropriety in the ballot count, or any substantial possibility for the occurence of impropriety, failure to give such notice may well require setting the election aside. Here, however, the integrity of the sealed ballot box and the propriety of the ballot count itself have both been Sustantiated. Accordingly, the employer's objection concerning the failure by the Board agents to give the employer adequate notice of the tallying of the ballots is dismissed.

In addition to the objections raised by the employer and the Western Conference/ Local 890 requested the Board to set aside the election on the following grounds:

> "Truck drivers, stitchers, folders, hijo [sic] operators, and mechanical harvesting machine operators were wrongfully included in the unit in that historically they have a history of separate collective bargaining

> and do not share a community of interest of other agricultural employees. Further, by including them in the overall unit their contractual rights have been violated."

Since similar objections were filed in a number of other cases by Local 890, this issue was noticed for a consolidated hearing before the Board on October 7, 1975, and Local 890 was requested to file with the Board, prior to the hearing, a memorandum setting forth in detail the factual and legal contentions upon which it intended to rely.

In response to this request Local 890 filed a memorandum applicable to this and a number of other cases, including Interharvest[6] objecting to the inclusion of truck drivers and related classification in the bargaining unit on two grounds: (1) that they come within the coverage of the National Labor Relations Act and are, therefore, not "agricultural employees" within the meaning of the ALRA; and (2) that even if they are agricultural employees, they should be excluded because of their separate history of collective bargaining and separate community of interest, asserting that inclusion would violate the employees' constitutional and contractual rights.

The Board considered similar objections in Interharvest supra. There, the Board concluded as to the first ground for objection that, since the number of employees in the disputed classifications was insufficient to affect the outcome of the election, it would be appropriate to certify the UFW as bargaining

[6]1 ALRB No. 2 (1975)

representative for a unit consisting of all "agricultural employees." We left the status of employees in disputed classifications to be determined by the National Labor Relations Board proceedings currently pending before that agency or, if prompt clarification is not forthcoming from the NLRB, then through proceedings for clarification or modification of the certification before this Board. As to the second ground for objection, we held in Interharvest, supra, that the Board had no jurisdiction to exclude agricultural employees on the basis of the arguments presented in view of the mandate contained in Labor Code Section 1145.2.

During the hearing on this issue, it became apparent that the underlying factual consideration was indistinguishable from that presented to the Board in the Interharvest case when the parties agreed that the number of disputed employees in the truck driver classifications was insufficient to affect the outcome of the election. When this similarity is coupled with the fact that the Board had previously considering in the Interharvest decision, supra, the identical legal arguments once again advanced by Local 890, the Board finds the Interharvest holding dispositive of the truck driver issue. Accordingly, the United Farm Workers of America, AFL-CIO is certified as the bargaining representative of all the agricultural employees of the employer, excluding those employees employed in noncontiguous vacuum coolers and packing sheds and we leave

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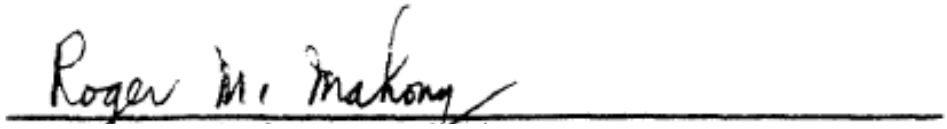
the appropriate characterization of the classification in dispute to future determination by the NLRB or this agency

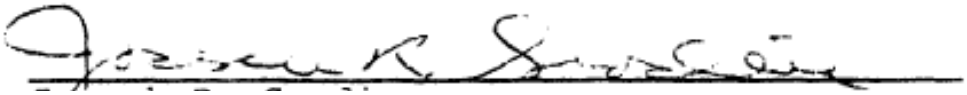
Certification issued.

Dated: December 4, 1975.



Roger M. Mahony, Chairman

LeRoy Chatfield



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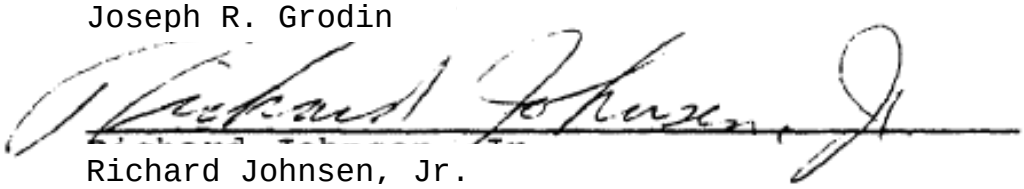

Richard Johnsen, Jr.

Joe C. Ortega