BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

OF THE STATE OF CALIFORNIA

INTERHARVEST, INC., Employer, 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 Interveners and Objectors.	)	No. 75-RC-8-M 1 ALRB No. 2

This matter comes before the Board on Petitions filed by the Western Conference of Teamsters and its local affiliates (hereafter "Western Conference") and by 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") under section 1156.3(c) of the Labor Code. These petitions raise several objections to the appropriateness of the bargaining unit as

determined by the regional director in this case and, additionally, raise objections to certain specific conduct by the United Farm Workers of America, AFL-CIO (hereafter "UFW") which allegedly affected the results of this election.

On September 2, 1975, the UFW filed a petition for certification with the regional office of the Agricultural Labor Relations Board in Salinas seeking to be designated under the provisions of the California Agricultural Labor Relations Act ("Act") as the bargaining representative for all agricultural employees of the employer in the Salinas Valley "excluding coolers and packing sheds which in this case are noncontinguous". Following the filing of the UFW petition for certification, the Teamsters intervened. On September 8, 1975, the regional director issued a Direction and Notice of Election for a bargaining unit comprised of "all agricultural employees of the employer in the State of California but excluding workers at vacuum cooler plant and packing shed at John and Abbott Streets in Salinas, California". The election was conducted on September 9, 1975, and the ballots were counted on the following day. The final tally showed 1167 votes for the UFW, 28 votes for the Teamsters and 18 votes for no union. These objections followed. A hearing was held before the Board in Sacramento on October 8, 1975 during which the employer, the Western Conference, the UFW, and Fresh Fruit and Vegetable Workers Local 78-B were represented.

As the basis for its objection under section 1156.3 (c) of the Labor Code to conduct by the UFW which allegedly affected the results of the election, the Western Conference relies upon two specific incidents, neither of which the Board finds sufficient to set aside this election.[1]

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[1]At the-hearing on these objections an initial question was raised by the UFW concerning the sufficiency of the declaration submitted to the Board in support of the Western Conference objections regarding conduct affecting the results of the election.

This declaration recited the basic facts underlying the Western Conference objections and was sworn under penalty of perjury. Thus, to this extent, the declaration conformed with the standard requirements for declarations accepted by California courts. See CCP, section 2015.5. The declaration, however, was not signed by Jacinto Roy Mendoza, the purported declarant, but rather, was signed for him by another individual. When objection was raised to the sufficiency of the declaration, Mr. Mendoza stated that he had prepared and signed the original declaration by hand, but that his secretary had later typed the declaration and submitted it to the parties in the form described above. Although a copy of the original declaration was never served on the UFW, counsel for UFW was willing to accept Mr. Mendoza's representations as to his signature, and the hearing proceeded to the merits of the objections.

Since the Board's requirement of supporting declarations has resulted in recurrent problems of a similar nature to those present in this matter, we take this opportunity to clarify this requirement. Section 20365 (a) of the Emergency Regulations promulgated by the Board states as follows:

> "A party filing a petition under section 1156.3 (c) of the Labor Code objecting to the conduct of the election or conduct affecting the results of the election shall file with the petition declarations or other evidence establishing a prima facie case in support of the allegations of said petition. The failure to supply such evidence in support of the petition at the time of the filing of the petition shall result in the immediate dismissal of the petition or any part thereof which is not supported by such evidence. A party filing such a petition shall immediately serve a copy of the petition on all other parties."

(fn. cont. on p. 4)

(fn. 1 cont.)

This regulation serves a dual purpose. First, it allows the Board to screen objections to determine if there is a factual basis for them, so that certification of a bargaining representative will not be unduly delayed by the filing of objections which cannot be substantiated by the objecting party. This screening is appropriate due to the seasonal nature of agriculture, which makes especially significant the prompt determination of election results.

Second, the declarations serve the purpose of informing the other party of the specific conduct which will be considered in a full evidentiary hearing, so that the opposing party can adequately prepare its case. It is necessary that the initial papers provide this notice since objections are not subject to detailed, prehearing discovery.

In order to comply with regulation 20365(a), the Board requires that declarations supporting objections to conduct of the election or conduct affecting the results of the election be sworn and signed under penalty of perjury, and that they contain only factual, evidentiary matter as opposed to general conclusions or argument.

The declaration shall contain the observations of the declarant. If any statement is made upon information and belief, the declarations should specify the source and basis for the declarant's belief. Documents and exhibits offered in support of the petition should be identified and authenticated by declaration. Although the declarations need not be overly detailed, they must be sufficient to apprise the Board and the opposing party of the specific nature of the objections and to provide factual basis for the allegations. Any objections to conduct not supported by such declarations are subject to total or partial dismissal as stated in the regulation.

In filing objections, parties have sometimes been reluctant to serve the supporting declarations on the opposing party because it has been feared that the declarant would be subjected to intimidation or harassment. We recognize that such fears may at times be justified, and, therefore, we do not require that declarations be served on the opposing party. Where the declarations are not served, however, we do require that papers informing the opposing party of the specific nature of the objections be served on that party. This could be accomplished by serving copies of the declarations with the names of the declarants deleted, or by drafting the petition itself in sufficient detail to allow the opposing party to secure its own witnesses and otherwise prepare itself to counter the objections at an evidentiary hearing.

(fn. cont. on p. 5)

First, the Western Conference argues that a crowd of approximately 150 - 200 persons prevented its representatives from making a preelection inspection of the election site at the Camp del Toro labor camp immediately prior to the commencement of the election. We do not think that the evidence warrants setting aside the election on this ground. Western Conference witness Jacinto Mendoza testified that the traffic congestion and the crowd in front of the camp entrance prevented them from driving their automobile to the election site. However, the Teamster organizers did not leave their car, or make any attempt at access to the camp on foot. Although Mendoza testified that someone in the crowd shouted, "Here comes the Teamsters; don't let them in," this testimony was disputed. Additionally, it appears that the vast majority of persons in the crowd were simply workers waiting to vote; there was no evidence that the crowd was intent on preventing Teamster access. This evidence, when coupled with other Western Conference testimony that the Teamsters made no effort to have observers at any of the nine other Interharvest election sites throughout the state, is an insufficient basis to set aside this election.

Second, the Western Conference contends that two UFW attorneys touched the ballot box as the ballots were being

(fn. 1 cont.)

When such a declaration has not been served upon the opposing party and, after the declarant has testified on direct examination during the evidentiary hearing on the objections, the opposing party may then move for the production of the declaration if it relates to the subject matter as to which the witness has testified. See Emergency Regulation Section 20600.2(c).

counted by Board agents. Although this conduct was denied during the hearing by Jerome Cohen, one of the UFW attorneys who allegedly touched the ballot box, the Board finds that even if true, this conduct alone does not warrant setting aside the election. Other than the bare testimony by Mr. Mendoza that two persons touched the ballot box, there was no evidence as to any impropriety affecting the integrity or validity of the ballot count. See Polymers, Inc., 174 NLRB 282 (1968), enforced 414 F.2d 999 (2d Cir. 1969), cert, denied 396 U.S. 1010 (1970).

Next, the Western Conference objected to the appropriateness of the bargaining unit based on the regional director's exclusion of the Interharvest employees at the vacuum cooler plant and packing shed located at John and Abbott Streets in Salinas. Initially, it must be noted that during the October 8 hearing on this issue, all parties agreed that the number of employees in the excluded facility numbered approximately 100 to 120. When this relatively small number of employees is compared to the 1039 vote margin by which the Teamsters were defeated in the Interharvest election, it becomes obvious that the number of excluded employees is insufficient to affect the outcome of the election.

Furthermore, during the course of the hearing, it became apparent that there were no other factors involved to provide the Western Conference with a substantial interest in the outcome of this issue. Under these circumstances, and in the absence of evidence to show that the Teamsters were adversely

affected by the regional director's determination of the bargaining unit, the Western Conference lacks interest to object to that determination. See Labor Code sections 1156.3 (c), 1140.4(d).

Regarding the apparent inclusion in the bargaining unit of similarly situated employees at a packing shed located at John and Sanborn Streets in Salinas, the Board takes notice that both the employer and UFW, which was the prevailing union in the certification election, agreed when the petition for certification was filed that the appropriate bargaining unit should not include the employees of noncontiguous vacuum coolers or packing sheds. Since it appeared that such an agreement relating to these employees was not contrary to the purposes of the Act,[2] the regional director approved the agreement. However, due to a clerical error when the Direction and Notice of Election was prepared by the Salinas regional office, the employees at the John and Sanborn Streets packing shed were inadvertently included in the bargaining unit. With this agreement between the affected parties and, under the limited circumstances of this case, the Board will recognize the agreement to exclude employees of noncontiguous vacuum coolers and packing sheds from the bargaining unit, and modify the unit accordingly.

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[2]The two packing sheds in question are located off the employer's farm and the legislative history of which this Board takes official notice supports the position the Board may regard such off-the-farm packing sheds as constituting a separate and noncontiguous geographical area. See Statement of Intent published in Senate Journal, Third Extraordinary Session May 26, 1975.

Finally, Local 890 filed a timely petition under Section 1156.3(c) of the Labor Code[3] objecting to the election on the grounds that

> "the Agricultural Labor Relations Board incorrectly included the truck drivers as referred to and defined in the Truck Driver's Contract attached as Exhibit "A",[4] in the unit with'field labor'. We contend that they should be considered a separate unit of their own . . . ."

In support of this contention, Local 890 made two arguments. First, it contended that the truck drivers are covered under the National Labor Relations Act. A representative of Local 890 submitted a copy of a petition filed with the NLRB seeking an election among truck drivers of employer members of the Grower-Shipper Vegetable Association of Central California. The petition lists 34 employer members, including Interharvest. The Local 890 spokesman argued that under the

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[3]The Teamsters have a collective bargaining agreement which covers the driver classifications in dispute here, and hence is a labor organization having an interest in the outcome of this issue. Thus, it is a "person" entitled to file a petition under Labor Code sections 1156.3(a), 1140.4(d).

[4]Section 2 of the Truck Driver's Contract with the employer defines truck drivers in the following terms: The term "truck driver" shall include only those employees engaging in driving equipment hauling produce between the fields and the packing house, between the fields and vacuum cooler, and between the fields and railroad cars, including driver-stitcher, folder and gluer operations on trucks or trailers, drivers of all types of mechanical harvesting machines, mechanical loaders, field bugs and silver kings used exclusively in harvesting operations, and water wagons regularly used to supply water for vegetable packing machines. Cull haulers . . . drivers of trucks or any equipment used to haul or supply any material, glued boxes or any other types of containers and packing material to or from the field, used in the harvest of any commodity shall be covered by the terms of this agreement.

doctrine of federal preemption, this Board could make no determination concerning these employees until the NLRB has declined to assume jurisdiction over them.

In response to this argument, the UFW and the employer advocated certifying the results as to "all agricultural employees" and then, in a subsequent proceeding, determining whether the truck drivers were such employees.

The election was conducted in a unit which, on its face, includes no employees other than "agricultural employees" within the meaning of Labor Code section 1140.4(b) . It appears from information confirmed at the hearing that there were only 60 to 70 employees in the truck driver classifications currently employed in Salinas, a number not sufficient to have affected the outcome of the election. Moreover, it appears that the employees in the disputed classifications were not included on the employer's eligibility list and did not participate in the election. Under these circumstances, it would defeat the purposes of the Act to delay certification further.

We appreciate that clarification of the status of the truck drivers and related classifications is a matter of concern to all parties. In view of the fact that this matter is actively pending before the NLRB, we have decided not to conduct an evidentiary hearing at this time. If prompt clarification is not forthcoming from the NLRB, this Board will entertain a motion by any party for clarification or modification of the certification.

Local 890's second argument ran essentially as follows: Even if the truck drivers are agricultural employees within this Board's jurisdiction, they have a history of separate collective bargaining, and their inclusion in a unit with field workers would deprive the truck drivers of significant contractual and constitutional benefits. We think this argument must be addressed to the Legislature or to the courts. Labor Code section 1156.2 provides that the bargaining unit shall be "all the agricultural employees of an employer," and allows for the exercise of Board discretion to determine the unit only where the employees work in two or more "non-contiguous geographical areas." No contention was made that the truck drivers are so employed. Consequently, if they are agricultural employees, the Board is compelled to include them in the unit.

The objections filed under section 1156.3(c) of the Labor Code are dismissed. The United Farm Workers of America, AFL-CIO is certified as the representative of all agricultural employees of the employer in the State of California, excluding those employees employed in noncontiguous vacuum coolers and packing sheds.

Certification issued.

Dated: October 15, 1975.

Roger M. Mahony, Chairman

LeRoy Chatfield

Joseph R. Grodin

Richard Johnsen, Jr.

Joe C. Ortega