

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
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ADMIRAL PACKING CO.)	No. 75-RC-103-M
)	
Employer,)	
)	1 ALRB No. 20
and)	
)	
United Farm Workers of)	
)	
America, AFL-CIO,)	
)	
Petitioner,)	
)	
and)	
)	
Western Conference of)	
)	
Teamsters Agricultural)	
)	
Division, IBT,)	
)	
Interven r.)	

STATEMENT OF FACTS

A Petition for Certification was filed by the United Farm Workers of America, AFL-CIO (UFW) on September 12, 1975. The pre-election conference was held on September 18, 1975, and an election held on September 19, 1975, among all the agricultural employees of the employer in the state. The UFW received a majority of the votes cast. ^{1/} Both the Western Conference of Teamsters (Teamsters) and the employer filed petitions of objections to certification pursuant to §1156.3(c) of the Labor Code.

^{1/}The Tally of Ballots indicates the results of the election as follows: UFW = 58; Teamsters = 15; No Union = 34; Challenged Ballots = 7; Void Ballots = 3.

The Teamsters failed to appear at the hearing held on objections, and their objections were appropriately dismissed. At the opening of the hearing, counsel for the employer abandoned certain of the objections raised in its petition and these objections were likewise dismissed.^{2/}

The employer's petition of objection further objected to an election being conducted for its employees on the basis that such an election was barred by an existing collective bargaining agreement between the employer and Western Conference of Teamsters. The UFW stipulated that such a contract was in existence at the time of the election herein. It would appear that the allegation is not a proper ground for objection upon which evidence should be received, in light of Section 1156.7(a) of the Labor Code which provides "no collective bargaining agreement executed prior to the effective date of this chapter shall bar a petition for election." The objection is without merit.

The issues on which evidence was taken at the hearing and upon which resolution is needed are as follows:

1. That the election was not conducted properly in that insufficient notice of the election was given.

^{2/} The notice of the objections hearing indicated that among the issues to be considered on the basis of the employer's objection petition was whether the shed workers and produce drivers of the employer are agricultural employees within the meaning of Labor Code §§1140.4(a) and (b). In fact, these issues were not raised by the employer's petition. At the hearing however, the employer and the UFW stipulated that the employer's packing shed is located off the farm, and should be excluded from the bargaining unit as a noncontiguous geographical area. Since the packing shed employees did not vote in the election, since they were not working at the time, and since the stipulation does not appear inconsistent

2. Misconduct occurred which affected the results of the election in that: (a) the election was scheduled for 8:30 AM, but agents of the ALRB did not arrive at the polling area until 9:00 AM; and (b) the UFW had non-employee organizers talking to voters near the polls.

For the reasons discussed below we find the objections to be without merit and certify the results of the election. Issues and Opinion:

I. Was the election not conducted properly in that there was insufficient notice of the election?

Prior to the pre-election conference for the Admiral Packing Company, Mrs. Georgia Sarmiento, the Admiral payroll clerk, received from the Regional Office, the Direction and Notice of Election. At the time the Notice was received, there had been no determination made concerning the precise time and place of the election. Thus, while the Direction and Notice of Election indicated that the election would be held on the morning of September 19, 1975, the Notice indicated that the exact time and place of the election would be announced later. This Direction and Notice of Election was received in the morning of September 18, 1975, the day before the scheduled election. A pre-election conference was scheduled for 3:00 PM in the afternoon

2/ (cont'd)
with the purposes of the Act, Interharvest, Inc., 1 ALRB No. 2, (1975) the stipulation will be accepted and the unit amended accordingly. No evidence or argument was introduced with respect to produce drivers except as regards their coverage under a separate agreement, an issue discussed in the body of this opinion.

of September 18, 1975. Prior to the convening of the pre-election conference the employer attached to the employees' checks copies of the Direction and Notice of Election. These checks were then distributed the morning of September 18, 1975, before the pre-election conference was held. The employer contends that the distribution of the Direction and Notice of Election the day before the election without an exact specification as to the time and place of the election under circumstances where the workers would not have been assembled or otherwise available for the company to pass out further notice as to the precise time and place of the election resulted in the employees not receiving sufficient notice of the election, requiring that the election be set aside.

The evidence at the hearing revealed that the employer's normal pay day was on Friday, and that it was a very unusual occurrence to have the pay checks distributed to Admiral employees on Thursday. The agents of the employer were aware that the exact time and place of the election was to be determined at the pre-election conference set for 3:00 PM on September 18, 1975. The employer, in an unusual departure from its normal procedure, distributed the Direction and Notices of Election on Thursday morning before the exact information could be determined. We note that in spite of this distribution of the Direction and Notice of Election without the exact time and place of election being specified, the election tally reveals that the workers knew when and where this election was to be held. ^{3/}Out of 128 eligible

^{3/}

The Petition for Certification indicates that there were approximately 135 eligible voters; however, Mrs. Sarmiento,

voters 117 participated in the selection of their bargaining representative. Their voice will be respected. The objection is denied. See also the Yamada Bros., 1 ALRB No. 13 (1975); West Foods, Inc./ 1 ALRB No. 12 (1975); Yamano Bros. Farms Inc., 1 ALRB No. 9 (1975).

II. Was there misconduct affecting the results of the election?

A) Is the late opening of the polls grounds to set aside this election?

At the pre-election conference the ALRB agent determined that the polls would be located at two different ranches, the Poster Ranch and Pryor Ranch. The agents asked that all observers arrive at the Foster Ranch at 8:30 AM so that balloting would begin at 9:00 AM. The Board agents arrived at the Foster Ranch sometime between 9 and 9:15 AM and the polls were not open until some minutes later. While there was testimony that a number of workers had assembled in and near the polling area in anticipation of the polls opening, the record is devoid of any indication that any workers left the polling area because of the late opening of the polls or that the tardy opening resulted in the disenfranchisement of any workers. In the absence of such a showing, we find that such conduct did not affect the results of the election. A similar conclusion was reached by the NLRB in Utica-Herbrand Tool 145 NLRB No. 165 (1964). In that case the Board agent opened the

3/ (Cont'd)

the employers payroll clerk, indicated that to the best of her knowledge there were 128 eligible voters. Of this number 117 cast ballots in the Admiral election.

morning balloting ten minutes late. The Board held that such delay did not constitute improper election conduct where "No evidence was presented nor was any adduced, which would indicate that anyone was deprived of the right to vote because of the short delay in opening the polls." The objection is denied. See also, West Foods, Inc., 1 ALRB No. 12 (1975); Eisner Grocery Co., 116 NLRB No. 103 (1965); O. K. Van and Storage Co., 122 NLRB No. 95 (1958).

B) Was there misconduct affecting the results of the election resulting from UFW organizers talking to voters near the polls?

Prior to the arrival of the ALRB agents, a number of Admiral employees were waiting in the general area where the polling was to take place. During this time a UFW organizer, Mr. Carlos Lugo, a former employee of the employer, was talking to the employees. The evidence indicates that prior to the opening of the polls the UFW organizer assisted Board agents in setting up the polling place. Prior to the opening of the polls, Mr. Lugo and organizers for the Teamsters union, who were also present in the polling area before the balloting commenced, were asked to move their cars so that they would not be in the vision of the voting employees. Mr. Lugo drove his car west on Foster Road until he turned left and parked near the loading ramp located west of the polling area. While the polls were open, Mr. Lugo stood near the equipment and tractor shed located west of the polling area where he engaged a number of Admiral employees in conversation before they went to vote. The record fails to reveal

whether the union organizer was visible from the polling area. The employer's witnesses, who testified that they saw Mr. Lugo talking with employees, placed his location outside the immediate polling area. The question presented is twofold: (a) whether the conduct of the UFW organizer in talking to employees in the general area where the polling was to take place prior to the opening of the polls, and (b) subsequent to opening of the polls conversing with employees outside the immediate area of the polling area was improper electioneering conduct requiring the overturning of the results of this election. In Lincoln Land Moving and Storage, 197 NLRB No. 160 (1972), the NLRB held that where a conversation between the union representative and a prospective voter took place right next to a voting booth a few minutes before the polls opened, this was not conduct which interfered with the representation election. The rule of Milchem, Inc., 170 NLRB No. 46 (1968), was held inapplicable to conduct occurring in a polling area before the polls were open. Therefore, the presence of Mr. Lugo in the polling area prior to opening of the polls was not conduct requiring the overturning of this election. As to conversations held between Mr. Lugo and prospective voters while the polls were open, such conduct occurred outside of the polling area and therefore is not objectionable conduct requiring the setting aside of this election. See

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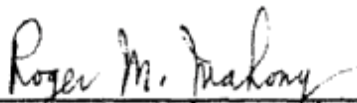
Herota Bros., 1 ALRB No. 3 (1975); Yamada Bros., 1 ALRB No. 13
(1975); Yamano Bros. Farms Inc., 1 ARLB No. 9 (1975).

CONCLUSION

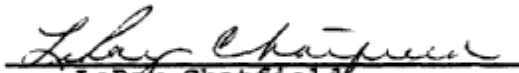
Based on the foregoing/ no grounds exist for the over-
turning of this election and we hereby certify the UFW as
bargaining representative.

Certification issued.

Dated: December 11, 1975



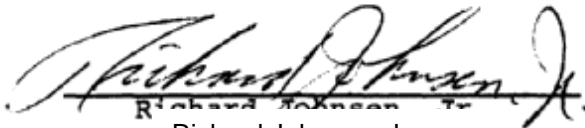
Roger M. Mahony, Chairman



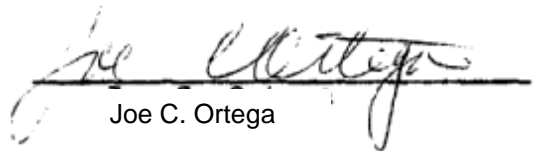
LeRov Chatfield



Joseph R. Grodin



Richard Johnsen, Jr.



Joe C. Ortega