

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

V. B. ZANINOVICH & SONS,)	
)	
Employer,)	75-RC-11-F
)	
and)	
)	1 ALRB No. 22
WESTERN CONFERENCE OF TEAMSTERS,)	
AGRICULTURAL DIVISION, IBT.,)	
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Intervenor)	
)	

Following a certification election held on September 10, 1975 in which the Western Conference of Teamsters ("Teamsters") obtained a majority of the votes cast¹, the United Farm Workers of America, AFL-CIO ("UFW") as intervenor filed a timely Petition to Review and Set Aside Election pursuant to Labor Code section 1156.3 (c) on the following grounds:

- " 1 . Supervisors and immediate family of the grower were present at the polling place during the voting.
- "2. The employer promulgated and enforced an invalid no-solicitation rule.
- " 3 . The employer enforced in a discriminatory manner such no-solicitation rule.
- " 4 . The employer and his agents engaged in surveillance of employees engaged in protected activity.

¹The results of the election were as follows: Teamsters - 253; UFW - 68; No Union - 11; Void ballots - 0; Challenged ballots - 11.

" 5 . The employer displayed favortism towards the Teamsters and aided and abetted the Teamsters in their organizational campaign."

For the reason stated herein, we dismiss the objections and certify the election.

1. With respect to the alleged presence of supervisors at the polling place, during the voting, the only testimony offered was that Beatriz and Manuel Mendez, whom the UFW witness identified as "foremen", entered the designated polling area in violation of the Board Agent's order that the area was "quarantined". This witness, Abby Flores, added that these two were in the polling area because they came to vote. Our records do, indeed, disclose that they were on the list of eligible voters and did vote without challenge by the UFW. Their presence in the polling area, therefore, was entirely proper.

More significant is the objection to the conduct of V. J. Zaninovich, the employer's supervisor, in the polling area while the voting was in progress. The testimony is conflicting.

The parties agree that Mr. Zaninovich was standing near an area containing farm equipment (within the general location designated as a polling area) about 75 yards from the welding shop where the voting booths were set up. Ms. Flores, a UFW witness, testified that she was standing near the public road approximately 100 yards from the welding shop² or 175 yards from the equipment area.³ She stated that she saw Mr. Zaninovich

²The actual distances were estimated by the employer's witness and not challenged by the UFW.

³From a practical standpoint we believe that the "designated polling area" should not include working areas which the employer will have occasion to use in the normal course of his business.

talk to one individual in a "Panama hat". She also observed him talking to other voters, "as they were getting off the trucks" although she could not hear what he said. She estimated that he talked to 10 or 15 persons and that he was in the equipment area for approximately 15 - 20 minutes.

Mr. Zaninovich denied, in substance, the allegations made by the UFW witness. He testified that after the polls were opened, he learned that a disc had broken on one of the tractors. He proceeded to the equipment area where he met the tractor driver and instructed him how to make the proper replacement. In fact, although he was visible to the employees waiting to vote about 75 - 100 yards from him, he couldn't identify anyone because their backs were to him.

Based on the entire record of the testimony on this issue, we find that Mr. Zaninovich had a conversation only with the tractor driver for the stated purpose.

As we indicated in Toste Farms, Inc., 1 ALRB No. 16 (1975) we are concerned that once the polls have opened, employees should be permitted to cast their votes in an atmosphere free of interference by the parties. In this case, we find that Mr. Zaninovich did not conduct any conversations with prospective voters waiting in line to vote and although technically in the "polling area" was there for a permissible business reason.

2. With respect to objections 2 and 3, the UFW did not prove that the employer promulgated and enforced an invalid no-solicitation rule nor that the alleged no-solicitation rule was enforced in a discriminatory manner.

Presumably the reference to the no-solicitation rule involves a denial of the right of access under our access regulation section 20900 and the alleged violation of the access rule by the employer. On the two occasions when access was allegedly denied, UFW organizers were on the premises when the employees were working and not during the scheduled lunch break. In one instance the union's personnel continued to talk to the workers, in spite of the employer's request to leave, and then left peaceably. In the other, the organizers were repeatedly asked by the employer to leave and upon their refusal, taken into custody only after the request was again made in the sheriff's presence. There is no evidence that the employer maintained or implemented a rule which was in conflict with our regulations.

3. The alleged discriminatory application of the so-called no-solicitation rule and the claim that the employer favored the Teamsters and aided their organization campaign are interrelated. Intervenor's witness testified, in substance, that on the day of the election while driving by the employer's field at 15 miles per hour, he observed six alleged Teamster organizers talking to a group of 25 or 30 field workers at 10:30 a.m. in the presence of a supervisor.

This witness was, however, not able to identify the "organizers" as Teamsters. He came to that conclusion only because he recognized two of the cars in the field as "Teamster" cars and identified them as a blue large car and another "small one".

Nor could he otherwise identify the alleged supervisor except to surmise that he was a supervisor from his "clothes and everything".

This objection, therefore is not sustained by the evidence and is hereby dismissed.

4. Finally, the intervenor claims that the employer was engaged in surveillance of employees engaged in protected activity. A UFW witness testified that one day she and two other organizers arrived on the employer's premises at 12 noon, presumably during a scheduled lunch break and attempted to talk to the field workers. A supervisor intermittently shouted at her and the workers and made it difficult for her to engage the workers in conversation. She observed similar conduct with respect to the other organizers.

She stated that the supervisor was in a truck and when she saw him coming, "I would go into a row and try to find a worker I could talk to". Although their activities were hampered they were not prevented from pursuing their organizing work. In fact they were ready to leave after 20 minutes, when a busload of workers arrived from the labor camp so they remained an additional 20 minutes on the property in order to continue their work. They were, thus, on the premises for forty minutes ignoring the occasional protestations of the supervisor while conducting their activities.


The supervisor was not present for the purpose of keeping watch on employees in relation to their union activity, and there

is no substantial evidence that workers interpreted his presence as being for that purpose.⁴

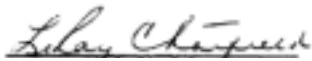
For the reasons indicated, we dismiss the objections and certify the election.

Certification issued.

Dated: December 16, 1975




Roger M. Mahony, Chairman

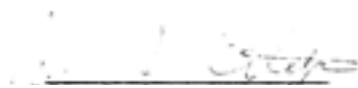


LeRoy Chatfield

Joseph Grodin, Member



Richard Johnsen, Member



Joe C. Ortega, Member

⁴Rather, he was present because he (erroneously) believed the organizers had no right to be there, and he was attempting to induce them to leave. Workers have the right, during the periods of access permitted by section 20900 of the Emergency Regulations, to communicate with organizers free of both surveillance and interference from the employer or his supervisors. What the supervisor did in attempting to interfere with the legitimate activities of union organizers was therefore wrong. It was not of such proportion, however, as to warrant setting the election aside.