STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of CHULA VISTA FARMS, INC., Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner	)	No. 75-RC-l-R 1 ALRB No. 23

On September 9, 1975 292 agricultural employees of Chula Vista Farms, Inc. participated in a certification election in which the petitioning United Farm Workers of America, AFL-CIO (hereafter "UFW") received 275 votes. There were five void ballots and the remaining 12 votes were cast for the "No Union" designation.

The employer filed a timely petition pursuant to Section 1156.3(c)[1] in which it objected to the election.

Two allegations were set for an evidentiary hearing before the Agricultural Labor Relations Board to determine if the alleged acts constituted conduct sufficient to overturn this election; (1) the wearing of UFW campaign buttons by official election observers while in the polling area during the election; and (2) the presence in the polling area of a person sympathetic to the UFW who conducted himself so as to appear to be an election

[1]All references are to the Labor Code unless otherwise indicated.

official. The employer claims that Board agents allowed such conduct to occur.

Three additional allegations were dismissed for procedural defects: (1) while ballots offered a symbol indicating a "No Union" preference, they did not provide voting employees with a symbol representative of the employer; (2) on three occasions, prior to and after the effective date of the Agricultural Labor Relations Act, UFW agents trespassed on the employer's property in order to solicit employee support and (3) the California Department of Employment referred farm workers to the UFW office for assistance in completing financial application forms and that the UFW took advantage of this means to identify employees and solicit from them authorization cards for the certification election.

At the commencement of the hearing, the employer moved to amend the Notice of Hearing to include the three dismissed allegations as described above. The hearing officer denied employer's motion as to the matter of employee authorization cards but took under submission the request pertaining to the two remaining dismissals.

Additionally, the employer sought inclusion of a new claim in which it alleged that a UFW sponsored leaflet containing material misrepresentations of fact had been distributed to Chula Vista employees. The leaflet contained a promised waiver of initiation fees in contravention of provisions in the UFW constitution. This request was also denied by the hearing officer.

Although the Board is not obligated to review the

four matters as described above, we take cognizance of the fact that identical issues were considered in Samuel S. Vener Company, 1 ALRB No. 10 (1975).

In Vener, supra, the Board determined that the "No Union" symbol consisting of the word "No" with a diagonal slash and contained within a circle is an internationally recognized symbol meaning "No" and would be familiar to voters, particularly those from other nations. The symbol had been adopted pursuant to a public hearing on August 28, 1975. As to the allegedly unlawful trespass violations, it was the Board's position in Vener that the peaceful conduct was not shown to have had a continuing effect on the outcome of the election. The facts in Vener are similar to those in this matter in which UFW organizers entered the employer's property during the employees' lunch periods to solicit employee support for the certification election. The matter of solicitation of authorization cards with the assistance of Department of Employment referrals is, again, similar to the claim made in Vener where it was found that there was no showing of conduct affecting the election. The claimed misrepresentations in Vener arose out of a UFW leaflet identical to that which was distributed to employees in this matter. There it was found that the employer showed only that the UFW constitution requires an initiation fee, a provision which apparently has not been enforced. Accordingly, we find that Vener is dispositive of the identical issues alleged and dismissed herein.

Two issues remain to be considered. The first is

whether the wearing of UFW buttons by official election observers constitutes conduct sufficient to set aside an election in which the union prevailed by a margin of 263 votes.

There is some conflict in the testimony as to how many buttons could be seen by the employees as they were preparing to vote. The employer's supervisor, Sam Kusaka, testified that there were four UFW observers, at least two of whom wore buttons which were visible to voters. Mr. Valentin de los Santos Vargas testified that the button on his shirt was not visible under his coat. Mr. Francisco Grijalva Miranda, whose button was visible, testified that he wore his button on his shirt and did not put on a coat until the election was over. Both men said that no one indicated to them that the wearing of campaign insignia in the polling area may not have been proper.

Section 20350(b) of the Board's regulations, 8 Cal. Admin. Code, provides that:

> Each party may be represented by pre-designated observers of its own choosing. Such observers must be non-supervisory employees of the employer. Observers so designated may not wear or display any written or printed campaign material or otherwise engage in any campaign activities on behalf of any party while acting as observers.

The National Labor Relations Board has a similar prohibition, but has found that violations of the rule, standing alone, will not necessarily void an election.

Section 1148 directs this Board to follow applicable precedents of the National Labor Relations Act. The NLRB has

long held that the mere wearing of buttons or other insignia in the polling area by union observers bearing the name of their union is not prejudicial to the fair conduct of an election. In one instance, union observers continued to wear their buttons in defiance of an explicit request by the Board's agent to remove them and in violation of NLRB rules and regulations. This conduct by the union's observers was not found to be grounds for upsetting the election. Electric Wheel Co., Division of the Firestone Tire and Rubber Co., 120 NLRB 1644 (1958). The NLRB has reasoned that the identity of election observers and their special interest in the outcome of the election is generally well-known to the employees. Western Electric Co., Inc., 87 NLRB 183 (1949).

The wearing of campaign insignia by observers while in the polling area should have received immediate and remedial action by the Board's agents. Nevertheless, the wearing of buttons is just one factor to be considered in the determination of whether certain conduct is so prejudicial to the fair conduct of an election so as to warrant setting it aside. Under the facts and circumstances of this case, we do not find this conduct sufficient to have affected the results of the election.

The employer's final objection concerns the conduct of Manual Tec Dominquez, an employee who was neither an observer nor officially connected with the election in any way except as an eligible voter with the unit.

Mr. Kusaka testified that he observed Mr. Tec's activities from the vantage point of a hill some600 to 800

feet away from the polling area. With the aid of binoculars, Mr. Kusaka could see that Mr. Tec was wearing what appeared to be a UFW button, that he would speak to each employee waiting to vote, and that he would then usher each of them to and about the polling area. Mr. Kusaka observed this conduct for approximately 30 minutes and added that he saw Mr. Tec stand alongside the cardtable on which the ballot box had been positioned and that at one point, for a period of about five minutes, he stood with one foot on the table as employees placed their ballots in the ballot box.

It is true, as the employer claims, that elections have been set aside by the National Labor Relations Board when parties to the election have conversed with potential voters in the polling area or with employees who were waiting in line to vote. Milchem, 170 NLRB 362 (1968) . But, Mr. Tec was not a party to this election within the meaning of the Milchem rule as he was neither an official of the union nor a representative of the employer.

In the absence of any evidence of prejudice to the employer by Mr. Tec's conduct, we cannot find that his activities constituted conduct which would warrant a setting aside of this election.

Although there has never been a rule requiring absolute silence among voters waiting to vote, Dumas Brothers Manufacturing Co. , Inc. , 205 NLRB 148 (ALJD) , the extent of Mr. Tec's total activity should have been corrected by Board agents in charge of the election. While it is not sufficient to note that the

Petition for Certification in this matter was the first request for a representation election filed with the Riverside Regional Office or that 292 farm workers balloted in less than three hours - many of whom were voting for the first time in any election - they are factors which entered into our deliberations.

Prescribed election procedures may not always be followed with the precision which this Board requires. The question in such cases is "whether the manner in which the election was conducted raises a reasonable doubt as to the fairness and validity of the election." Polymers, Inc., 174 NLRB 282, enforced 414 F. 2d 000 (C.A.2, 1969), cert. denied 396 U.S. 1010 (1970).

Our finding does not sanction Mr. Tec's reported conduct or the failure of the Board's agents to correct it at the time. Nor does it imply in any way that this Board will decline to act forcefully when presented with a record of activity which it determines may have interfered with employee's free choice in a representation election.

Certification ordered.

Dated: December 16, 1975.

Richard Johnsen, Jr.

LeRoy Chatfield

Joe C. Ortega

Roger M. Mahony, Chairman

Member Grodin concurring:

I concur separately in order to express what I take to be an otherwise inarticulated premise underlying this decision and perhaps other decisions of the Board. Labor Code Section 1156.3(c) provides that if the Board finds that "the election was not conducted properly", or that "misconduct affecting the results of the election occurred", then the Board "may refuse to certify the election"; but that "[u]nless the Board determines that there are sufficient grounds to refuse to do so, it shall certify the election".

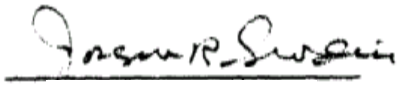
I view the statutory language as establishing a strong presumption in favor of certification. That does not mean that the Board should hesitate to set an election aside where there has been misconduct of such a nature as to raise serious question whether the results properly reflect the uncoerced wishes of the workers, or where setting the election aside may be the most appropriate means of deterring particularly egregious misconduct

in the future. The statutory language does, however, invoke consideration of the practical difficulties inherent in conducting new elections in the agricultural context.

When the National Labor Relations Board decides to conduct a rerun election, that can usually be done quickly, and with essentially the same electorate present. Under the ALRA, it may not be possible to conduct a rerun election until the next harvest season, which may be as long as a year away; and in most situations the electorate will have changed substantially before a new election can be held. This reality has bearing both upon the propriety of setting an election aside where the margin of votes is substantial in relation to the asserted misconduct, and upon the efficacy of setting an election aside for prophylactic reasons. I do not suggest that the Board should take evidence or engage in unsupported speculation regarding the subjective impact of particular misconduct. I do suggest that the statute requires that we approach each case with a rule of reason.

In this case, while the wearing of union insignia by observers was in violation of Board regulations and the conduct of Mr. Tec in and about the polling area was improper, it is simply not reasonable to suppose that this conduct affected the results of an election in which 275 of the 287 ballots were cast for a single choice. Moreover, the circumstances are not such as to warrant setting the election aside as a prophylactic measure. On these grounds I join in the result.

Dated: December 16, 1975



Joseph R. Grodin