

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

V. V. ZANINOVICH,)	
)	
Employer,)	No. 75-RC-61-F
)	
and)	
)	1 ALRB NO. 24
)	
WESTERN CONFERENCE OF)	
TEAMSTERS, AGRICULTURAL)	
DIVISION, INTERNATIONAL)	
)	
BROTHERHOOD OF TEAMSTERS,)	
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Interested Party.)	
_____)	

I. STATEMENT OF THE CASE

On September 15, 1975 the Western Conference of Teamsters, Agricultural Division, International Brotherhood of Teamsters ("Teamsters") filed a Petition for Certification with the Board. Pursuant thereto a preelection conference was held on September 17, 1975 and an ALRB-conducted secret ballot election was held on Thursday, September 18, 1975.^{1/}

II. THE FACTS

The evidence in this case consists of testimony of two witnesses who testified on behalf of the UFW and various

^{1/}The tally of ballots at the election indicated the following election results in a unit of all the employer's agricultural employees and where the UFW did not appear on the ballot: approximate number of eligible voters 18; Teamsters 16; "No Union" 1; Challenged or void ballots 0.

documents introduced as exhibits. The Board agent involved was not called. The employer and the Teamsters did not put on any witnesses but both cross-examined the UFW witnesses and presented various motions and arguments. Sister Jeanine Reynolds, a volunteer in the UFW legal staff testified that on September 15, 1975 she made several attempts to contact the ALRB Fresno Regional Office prior to 4:00 p.m., in an effort to ascertain whether any petitions or motions had been filed that day. She stated this was part of her regular duties for the UFW. At 4:00 p.m. on that day, after a frustrating number of calls during which she was continually rebuffed, Sister Reynolds was told that no petitions had been filed to that point in time.

The following day, September 16, 1975, Sister Reynolds made her first call to the Regional Office at 12 o'clock and was informed that on the day previous, the Teamsters had filed two Petitions for Certification; one being for V. V. Zaninovich, the employer in this matter, and the other for Melco.^{2/} Maddock testified that he learned of the filing by 1:00 p.m.

On Wednesday, September 17, 1975, at 8:30 a.m., Board agent Josie Maez called Ben Maddock, the UFW Director in Delano, California, and informed him that if the UFW wished

^{2/}Submitted as evidence in this matter is a photocopy of the Petition for Certification submitted to the Fresno ALRB Office by the Teamsters. The date stamp on this Petition shows that it was received on September 15, 1975, at 4:00 p.m. sharp.

to intervene in the V. V. Zaninovich election, it would be required to submit authorization cards for 20 percent of the work force at said ranch. He testified that he was not told how many cards were required but only that he needed 20 percent showing of interest and that the Teamsters had filed on 18 workers. There is no testimony on whether the Board agent had received the employer's eligibility list or whether a formal determination had been made about the number of eligible voters. At this time, Ms. Maez also informed the UPW Director, Ben Maddock, that the preelection conference would be held at 2:00 p.m. that same afternoon at the employer's office near Earlimart, California. Mr. Maddock objected to this on the basis that it would be held before the employer's list of employees on the payroll was required to be filed at 4:00 p.m. on September 17. See, 8 Cal. Admin. Code § 20310(e). One hour later at approximately 9:15 a.m., Mr. Maddock joined in a phone conversation between Ms. Maez and Mr. Tom Dalzell, a UPW legal staff member. At this time, Mr. Maddock again asked Ms. Maez that the preelection conference be set back 24 hours as doing so would "give us more time to intervene." Mr. Maddock pointed out that in another petition (Melco) filed at the same time as V. V. Zaninovich, Ms. Maez had agreed to set back a preelection conference 24 hours. At the end of the conversation, the UFW legal assistant asked the Board agent if they could assume the conference would be set back, whereupon the Board agent responded that yes, they could so

assume. At 10:00 a.m. , Ms. Maez placed yet another call to the UFW office and informed someone there that the conference would be held as originally scheduled. When Mr. Maddock got this message, he called the ALRB office, but was told that Ms. Maez was not in. His call was not returned.

That afternoon when Mr. Maddock arrived at the conference at 2:20 p.m. , he was informed by the Board agent that the conference was over, that the UFW was not on the ballot and that the election was set for 7:00 a.m. the next morning.

Mr. Maddock testified that when he was told the preelection conference was over he said:

"If I try to intervene now, you know, it's less than 24 hours before the election, which would have meant I would have had to intervene at 7 o'clock on the 17th which was approximately 8 hours, maybe 7 or 8 hours before the preelection conference.

The whole election would be taking place 60 hours, less than 60 hours from the time the petition was filed.

There was no time to intervene."

The only response he got from the Board agent was that he had been ordered to speed the elections through.

Mr. Maddock testified that he had the necessary authorization cards--four--with him at the conference. Mr. Maddock asked if he should intervene at that time but did not offer the cards because the Board agent didn't give him a chance.

On further cross-examination and examination by the Hearing Officer, Mr. Maddock testified that he informed the Board agent at 8:30 a.m. the morning of the 17th that the UFW intended to intervene.^{3/} During that conversation, Ms. Maez told Mr. Maddock it would require 20% of 18 workers to satisfy his expressed intention to intervene.

The record does not indicate why Mr. Maddock was 20 minutes late for the preelection conference. However, Mr. Maddock could not have known the conference would be over in 20 minutes. The union agent testified that it had been his experience that all preelection conferences he was familiar with, 35 to 38, no preelection conference took less than one half hour, even where there was no intervening union. No specific reason was given as to why Mr. Maddock was 20 minutes late, nor why the conference was concluded within that time.

^{3/}Part of the testimony is as follows (by employer's counsel): Just to clarify one last point, is it a fact that the United Farm Workers did not attempt to intervene in that election until they arrived at 2:20 approximately on the 17th?

A. No, I think we had told them how long it was. I am sure that I told them we were going to intervene. We did not go to Fresno, we went to the preelection conference.

EXAMINATION: By the Hearing Officer:

Q. You mean you told the ALRB you were going to intervene?

A. I am sure I mentioned that we were going to—they always ask you "Do you intend to intervene?"

Q. When did that first conversation take place in which you said you believe you are going to intervene?

A. I am sure it took place in the morning.

Q. What day is that?

A. On the 17th.

III. ANALYSIS AND CONCLUSIONS

Throughout these proceedings both the employer and the Teamsters have objected that since the UPW was not a party to the election itself, it has no standing to object to the election pursuant to Labor Code Section 1156.3 (c). Thus, at the outset, we must determine whether the UFW can appropriately petition this Board for relief.

Section 1156.3 (c) provides that: "Within five days after an election, any person may file with the Board a signed petition . . . objecting to the conduct of the election or conduct affecting the results of the election." (Emphasis added). Section 1140.4(d) defines a "person" as "one or more individuals, corporations, partnerships, associations, legal representatives, trustees in bankruptcy, receivers, or any other legal entity, employer, or labor organization having an interest in the outcome of a proceeding under this part." (Emphasis added).

In the matter of Herbert Buck Ranches, 1 ALRB No. 6, (1975), the Board dealt with the issue of whether a labor organization not on the ballot has standing to raise post-election objections. We held that in order "to effect the purposes of the Act and lessen the evils it was designed to remedy, a union not on the ballot must be allowed to contend that a representation petition was filed and an election held when a peak season did not exist."^{4/}

^{4/}ibid, at p.9

Here, we find that the UFW, as an agricultural labor union had an interest in getting its name on the ballot. Labor unions are "persons" as defined in the Act and whereas here the alleged misconduct complained of is responsible for keeping a union off the ballot, that union has sufficient interest in the proceedings to petition this Board pursuant to Section 1156.3(c). To hold otherwise would be to contravene our reasoning in the Herbert Buck Ranches, Inc., 1 ALRB No. 2, case and the spirit and letter of "the law. If we held otherwise, a union improperly excluded from the ballot would be left without a forum in which to seek redress. Therefore, the UFW has standing here to petition this Board for relief pursuant to Section 1156.3(c).

Having determined that the UFW has standing, we must determine whether the Board agent's conduct affected the results of the election to such a degree that it must now be set aside. We find that it did.

The Petition for Certification was filed on September 15, 1975 at 4:00 p.m. and the UFW actually learned of the filing at about noon on the 16th. At 8:30 a.m. on the 17th, prior to the expiration of the 48 hour period for the employer to submit his employee list, the ALRB notified the UFW that if it wanted to intervene, it would need four authorization cards. In another conversation about one hour later the UFW informed the ALRB agent that it did indeed intend to intervene and requested that the preelection conference be postponed for 24 hours to allow time for intervention. After initially agreeing to the requested postponement, the Board agent by a later telephone call notified

the UFW that the preelection conference would be held as originally scheduled at 2:00 p.m. that same day. The UFW agent arrived at that conference at 2:20 p.m. and was told that it was too late to intervene.^{5/}

We believe the facts in this case compel the finding: (1) that Board agents abused their discretion by scheduling the election and preelection conference at such time as to prevent intervention by a party which had notified the agent of its intent to intervene, which used due diligence and reasonable efforts to intervene, and which could have in fact intervened but for the overly hasty scheduling of the election by the Board agents, and (2) that such denial of opportunity to intervene denied the workers full freedom to designate representatives of their own choosing.

The Board agents have discretion to set an election within a maximum of seven days of the filing of the petition. Given that maximum and the number of elections Board agents had to conduct, it is understandable that they had to speed up the election; but "speed" by itself, is not the goal of the ALRA nor the policy of this Board. If speed, as in this case, results in less than full participation in the electoral process of all parties, then it is misplaced. If in fact, as the testimony indicates, at least four workers out of 18

^{5/}Labor Code Section 1156 (a)(3) requires that cards for intervention be presented "at least 24 hours prior to the election" (Emphasis added); see also 8 Cal. Admin. Code § 20325

had indicated they wanted to have the UFW as a possible choice on the ballot, then speeding up the electoral process so as to prevent such a choice defeats the purpose of the ALRA.

The NLRB has recognized that workers' rights to select their representative at the ballot box may not be defeated by rigid application of administrative rules even when a union failed to exercise due diligence to get on the ballot. In Sampsel Time Control, Inc., 80 NLRB No. 188 (1948), it said:

The argument of the Employer that the Intervenor, by failure to exercise due diligence, has forfeited any claim to appear on the ballot is not persuasive, however, when weighed against the right of the employees to select a bargaining agent.

In this case the potential intervenor exercised due diligence to make a timely intervention, and in fact was prepared to present sufficient showing of interest to intervene at the hastily scheduled preelection conference. Because the UFW agent was 20 minutes late, he was presented with a fait accompli the election was scheduled and the UFW 'could not intervene. The right of employees to full freedom to choose their representative cannot be treated so lightly. Under normal circumstances, the Board will not disturb Board agent's exercise of discretion in setting the time of elections. We are compelled to do so here because the Board agent's emphasis on speed in setting the election resulted in depriving workers of an opportunity to select among bargaining agents, and the purpose of the Act was therefore frustrated.

The short time between the filing of the Petition for Certification and the election placed a difficult burden on the potential intervenor. The intervenor was required to procure and present authorization cards within an even shorter time than is normally available. Ordinarily, elections are held on the sixth or seventh day following filing of a petition and not, as here, on the morning of the fourth day, less than 60 hours after the petition was filed. Here, where the Board agent spoke to UPW representatives and was advised that UFW wanted to participate in the preelection conference and to intervene, the Board agent abused his discretion by not rescheduling the election within the seven-day period to make intervention possible. Wherever possible, Board agents should exercise their discretion in a way which permits voters to choose from as many alternatives as possible. Since the Board agent's action here effectively prevented the UFW from being on the ballot, we conclude that a new election must be held in which the workers will have an opportunity to make a choice among those unions which have the statutorily required employee support as expressed by authorization cards. Since we overturn the election, we do not reach the issue of whether the Board agent here acted improperly in scheduling the election without consulting the UFW.

We, therefore/ hold and hereby order that this election be set aside.

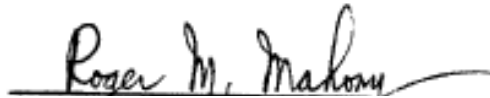
Dated: December 22, 1975



LeRoy Chatfield, Member



Joe C. Ortega, Member



Roger M. Mahony, Chairman

Members GRODIN and JOHNSEN, dissenting:

Where there is clear and convincing evidence that a union, despite due diligence, was effectively prevented from intervening in an election because of board agent conduct in violation of applicable regulations or principles of fundamental fairness, we would agree that the election should be set aside. We do not find such evidence here.

The factual context in which the events occurred is relevant in this case. The first day on which election petitions were received for filing under the ALRA was September 2, 1975. In this case, the Teamster petition, filed on September 15, was the 61st petition received by the Fresno regional office.

That regional office was thus receiving an average of six petitions per working day, with respect to each of which it was required to investigate for compliance with statutory requirements and, if the requirements were found to have been met, to conduct a pre-election conference and an election, all within a period of 7 days. These time strictures create substantial pressures, both for the agency and for the parties.

That the UFW did not learn of the filing of the Teamster petition until the day after it was filed was due to an accident of timing, and not attributable to any fault on the part of a board agent.^{1/}

That the pre-election conference was scheduled for 2:00 p.m. two days after the filing of the petition by the Teamsters does not appear to have been unreasonable, in view of the demands on staff resources confronting the agency at the time and the small number of employees involved in the unit.^{2/} In any event, there is no evidence in the record that the UFW was prejudiced either by the fact that due to its own procedures it did not learn of the filing until the following day or by the

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^{1/}UFW witness Sister Reynolds, testified that she normally called the regional office at 5:00 p.m. to determine whether any petitions for elections had been filed. On September 15, she called for the last time at 4:00 p.m., apparently at the precise moment the petition was being filed by the Teamsters in the regional office. There is no suggestion in the record that the person she talked to at the regional office knew or was in a position to know of that contemporaneous event.

^{2/}An intervening union would have been required to obtain only four cards.

time scheduling of the pre-election conference, since it asserts that by the time of the pre-election conference it had in fact obtained the number of authorization cards which entitled it to intervene.^{3/}

The real question, then, is whether the board agent abused his discretion in setting the election for the morning after the pre-election conference.

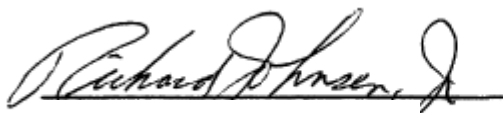
If the UFW representative had appeared in time for the pre-election conference and informed the board agent that he had the necessary cards, it clearly would have been an abuse of discretion to set the election at a time which would preclude intervention. If the UFW representative had called the board agent and informed him that he had the necessary cards but would be late for the pre-election conference, or perhaps even if the UFW representative had previously informed the board agent that he would be present at the pre-election conference, it might well have been an abuse of discretion for the board agent to schedule the election without waiting a reasonable period for the UFW agent to arrive. Finally, if the UFW representative had stated to the board agent, upon arriving after the pre-election conference was over, that he had obtained the necessary cards, it is arguable that the board agent should have reconsidered his decision to schedule the election for the following day.

^{3/}When asked during the objections hearing whether he had gathered the authorization cards, the UFW representative stated, "We gathered the approximate number that we needed." The hearing officer said, "That's four?", and the witness replied, "Yes."

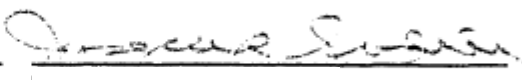
None of these events occurred. The regional office was not informed that the UFW would be represented at the pre-election conference.^{4/} No one called to say that a UFW representative was on his way, or that the necessary number of cards had been obtained. When a UFW representative arrived twenty minutes late and found the meeting over^{5/} he offered no explanation for his late arrival,^{6/} nor did he mention that he had any authorization cards in his possession nor request postponement of the election on that ground.^{7/}

On the basis of the testimony presented at the hearing we are unable to find an abuse of discretion on the part of the board agent in the setting of this election. Accordingly we dissent from the majority opinion and would vote to certify the election.

Dated: December 22, 1975.



RICHARD JOHNSEN, JR.



JOSEPH GRODIN

^{4/}The following colloquy between the hearing officer and the UFW witness appears in the transcript: "Q. You mean you told the ALRB you were going to intervene? A. I am sure I mentioned that we were going to--they always ask you 'Do you intend to intervene.'" While there was considerable discussion over the UFO's request for postponement of the pre-election conference, the record contains no evidence that the regional office or any board agent knew that the UFW intended to be present at the conference once that request for postponement was denied.

^{5/}There are no evidence in the record to suggest that the brief duration of the meeting was the product of any conspiracy to exclude the UFW from attendance or intervention. Given the small number of employees involved, the meeting was understandably brief.

^{6/}Likewise, no explanation was offered at the hearing. There is thus no evidence that the representative's late arrival was attributable to a last-minute effort to obtain the necessary cards.

^{7/}Hearing officer: "Q. Did you at this point inform him that you had some authorization cards with you?" UFW representative: "A. No, I did not." "Q. Did you offer to prove your intervention?" "A. No."