

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SAM BARBIC,)	
)	
Employer)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	No. 75-RC-44-F
AFL-CIO,)	
)	
Petitioner)	1 ALRB No. 25
)	
and)	
)	
WESTERN CONFERENCE OF TEAMSTERS,)	
)	
Intervenor)	
)	

On September 8, 1975, the United Farm Workers of America, AFL-CIO (" UFW ") filed a Petition for Certification, and the Western Conference of Teamsters, Agricultural Division, I. B. T. ("Teamsters") intervened. An election was held on September 15, 1975 and the UFW received a majority of votes.¹ The Teamsters timely filed an objections petition (Labor Code Section 1156. 3 (c)) . Three objections were set for evidentiary hearings on October 14, 1975:²(1) that a UFW representative was in and about the voting area during voting; (2) a supervisor was

¹The official tally of ballots showed that, of approximately 55 eligible voters, 32 voted for UFW, 5 for Teamsters, and 18 for no union. There were no void or unresolved challenged ballots.

²The notice of hearing on objections was served upon Lyle Berg of Teamsters Local 890 in Salinas despite the fact that the Teamsters intervention petition listed the Western Conference as the intervenor,

in the voting area during voting; and (3) that the Board Agent failed to supervise the voting area. Since the third objection encompasses the first two and is supported by the same evidence, it will not be discussed separately.

I. UFW organizer in polling area during election.

The first basis for objection was that a UFW organizer was in and about the polling area during the election. The evidence presented was that the polling took place between two barracks in a labor camp which was surrounded by a fence. Approximately 50 feet from the polling site there was an entrance to the camp through an open area in the fence. Throughout the polling period, as UFW organizer stood at the opening in the fence, from which he was in view of voters.

fn. 2 cont.

gave its Los Angeles address, and listed Teamsters Local 1973 in Delano as the intervenor's representative to contact. At the hearing, Robert Rinker appeared as representative of the Western Conference and objected to the conduct of the hearing because of lack of notice. It is unclear from the record when the Western Conference and/or Local 1973 learned of the scheduled hearing, although it is clear that their indirect knowledge was that the hearing would be held on October 14, the correct day, in Delano. Because of the confusion regarding location, the hearing officer postponed the hearing from 1:30 p.m. to 3:00 p.m. to allow time for Rinker to get his papers and witnesses from Delano. Just prior to the commencement of hearing, Rinker informed the hearing officer that neither the Western Conference nor Local 1973 had been notified of the hearing by the Board. The hearing officer asked whether, in light of the lack of notice, Rinker wanted to proceed with the hearing or wanted it postponed. He agreed to proceed with the hearing and in fact did participate in the hearing and present a witness who testified in support of all three Teamster objections. On October 15, the Board received a telegram from Local 1973 objecting to the fact that the hearing had been held and asking that Local 1973 be given time to make an appearance for the record. In light of the fact that the Western Conference was the named intervenor and that a Western Conference representative appeared at the hearing, rejected an offer of postponement, and agreed to proceed with with and participate in the hearing, we decline to reopen the hearing or overturn the election because of failure of proper notice. One who appears in an administrative proceeding without notice to which he is entitled by law cannot be heard to complain of alleged insufficiency of notice. *Farmers & Merchants Bank v. Board of Equalization*, 97 Cal. 318, 325 (1893) *Deluca v. Board of Supervisors of Los Angeles County*, 134 C.A. 2d. 606 (1955).

The Board Agent holding the election had not set physical boundaries for a restricted polling area but had instructed all party representatives to remain "outside his sight and sound." Signs designating the polling area were placed both at the location of the voting tables and booth between the barracks and also at the entrance to the camp through the opening in the gate. It is undisputed that the UFW organizer did not waive or yell to voters, and did not speak to any voters entering or leaving the camp.

Thus, it is unclear whether the UFW organizer's physical location should be considered within the restricted polling area due to the Board Agent's vague designation of the restricted area. However, it is quite clear that he was not stationed in the immediate voting area, that he did not engage in electioneering, and he did not nor attempt in any way to interfere with the orderly process of voting. We decline to overturn an election based upon the mere presence of a UFW organizer at, perhaps, the border of the polling area and 50 feet from the actual location of voting. See, Green Valley Produce Cooperative, 1 ALRB No. 8 (1975).

II. Supervisor in voting area during election; Board Agent failure to supervise voting area.

The Teamsters also objected to the conduct of the election on the grounds that a foreman was in the voting area during voting and the Board Agent failed to supervise the polling area. The same evidence was presented in support of both objections and consisted of testimony by Mr. Maturino, a Teamster organizer.

Maturino stated that just prior to the commencement of polling, the Board Agent announced that all party representatives should leave the area. As Maturino started to leave, he noticed that Abel Silva, allegedly a supervisor, was not making any move to leave. Maturino brought this to the attention of the Board Agent; the Board Agent told Silva to leave and he did. Maturino went outside the fence surrounding the camp and sat in his car. He observed that Silva stood at the gate for a few minutes and then went back inside the camp. Maturino did not see him again.


Ascuncion Gonzalez, an employee, testified that Silva came into the voting area, voted without challenge, and remained in the voting area for two to two and one-half hours, standing alone and not speaking to any voters. He testified that Silva is not a foreman, that he does many different kinds of jobs, whatever Barbie instructs him to do. Silva does not hire or fire employees and never instructs other employees in their work. He has on occasion passed on to the other employees instructions from Barbie on when they should take a lunch break.

Thus the evidence indicates that Silva was not a supervisor within the meaning of Labor Code § 1140.4 (j) but instead was an eligible voter. Indeed he voted in the election without challenge. While it is true that the presence of even an eligible voter in the voting area for an extended period after voting, as occurred here, is improper and should not have been permitted by the Board Agent, we decline to overturn the election based on


such conduct where the voter did nothing to interfere with the election³ and did not even speak with any other voters.

Certification issued.

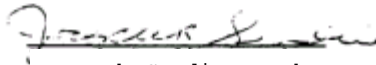
Dated: December 22, 1975




Roger Mahony, Chairman




LeRoy Chatfield, Member



Joseph Grodin, Member



Richard Johnsen, Jr., Member



Joe c. Ortega, Member

³See, Chula Vista Farms, Inc., 1 ALRB No. 23 (1975)