

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

SALINAS MARKETING COOPERATIVE,	)	
et al. ,	)	
	)	
Employer,	)	75-RC-65-M
	)	
and	)	1 ALRB No. 26
	)	
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
INTERNATIONAL BROTHERHOOD OF	)	
TEAMSTERS, CHAUFFEURS,	)	
WAREHOUSEMEN AND HELPERS OF	)	
AMERICA,	)	
	)	
Intervenor.	)	
	)	

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The United Farm Workers of America, AFL-CIO ( " UFW " ) and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ( " Teamsters " ) were petitioners and intervenors, respectively, in a Petition for Certification filed by the UFW. A majority of the ballots were cast for the UFW.<sup>1/</sup> Petitions of objections under Labor Code section 1156.3 ( c ) were filed by the employer, General Teamsters, Warehousemen and Helpers Union 890, Truck Drivers, Warehousemen and Helpers Union Local 898 and the Western Conference of Teamsters. The Board dismissed certain objections and limited the hearing on the objections to the following issues:

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<sup>1/</sup>Result of the tally of the ballots: UFW - 107; Teamsters - 40; No Union - 14; Void Ballots - 6; Challenged Ballots - 7.

1. Whether the mechanics and cooks were improperly included in the proposed bargaining unit;
2. Whether the Petition for Certification is barred by an existing collective bargaining agreement;
3. Whether the Board agent was involved in misconduct at the time of the pre-election conference;
4. Whether the presence of UFW organizers at or near the polling place constituted misconduct sufficient to affect the outcome of the election; and
5. Whether the Board Agent was guilty of misconduct in failing to give the employer proper notice of the time of the counting of the ballots and in failing to transport the ballot box to the Board vault.

We consider the objections in the order listed.

1. Cooks and Mechanics in the Unit

The employer claims that four cooks and two mechanics were improperly included in the unit. The only objection asserted is that they are not agricultural employees within the meaning of the Act and were included by the Board Agent at the election conference over the protest of all the parties.<sup>2/</sup>

The duties of the cooks and mechanics are not in dispute. The former reside and work at the labor camp owned by the employer at Sun Street in the City of Salinas. They prepare the food served in the camp to the agricultural employees<sup>3/</sup> and one of the cooks

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<sup>2/</sup>The UFW evidently abandoned its original objections to the inclusion of these two classifications since it argued for their inclusion of the hearing on the objections.

<sup>3/</sup>There is no evidence that these employees include persons employed by anyone other than Salinas Marketing Cooperative, et al.

delivers food to the workers in the fields. The mechanics, who rarely do their work in the fields, service all; the employer's vehicles and harvesting equipment including equipment in the packing shed.

Labor Code section 1140.4 (b) defines an "agricultural employee" as "one engaged in agriculture, as such term is defined in subdivision (a): Section 1140 (a) defines "agriculture" in part as follows:

The term `agriculture' includes farming in all its branches, and among other things, includes the cultivation and tillage of soil ... and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations . . . . (Emphasis added.)

It is clear that mechanics whose duties involve the service and repair of the employer's farm equipment are agricultural employees. In Luce & Co., 98 NLRB No. 166 (1952) the National Labor Relations Board was faced with that very question. The NLRB stated:

Although the shop employees in the performance of their duties at the shop, do not work on a farm, we find that the duties of the shop employees involved a practice performed by the employer as an incident to its farming operations, and that such duties fall within the definition of agriculture.<sup>4/</sup>

We now find also that the cooks perform work for the employer which is incidental to the farming operations within the meaning of the Act and were hence properly included in the unit. The definition of employee under the ALRA is identical to that referred to in Section 3(b) of the Fair Labor Standards Act, 29 U.S.C., 201 et seq.

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<sup>4/</sup>See also, Eastern Sugar Associates, 99 NLRB No. 121 (1952)

In the official interpretative bulletin of the Wage and Hours Division of the Department of Labor, the Department's interpretation specifically refers to cooks as agricultural employees when the cooks perform work " . . . [f]or the sole purpose of feeding persons engaged exclusively in agriculture on that farm." 29 CFR 780.158 (b).

## 2. Contract Bar

The employer claims that 16 of his employees included in the proposed bargaining unit are covered by a three-year (1973-1976) contract between the Teamsters and a multi-employer association of which the employer is a member. Since Labor Code section 1156.7 (a)<sup>5/</sup> provides that a contract signed before the effective date of the Act shall not bar a petition for certification, we dismiss the objection.<sup>6/</sup>

## 3. Alleged Board Agent Misconduct at Pre-election Conference

The claim is made that the Board Agent wore a belt buckle which allegedly resembled the UFW insignia - the thunderbird. In fact, the testimony indicated that the buckle was not a facsimile of the stylized UFW symbol but resembled the American eagle. Moreover, it was clear that only the parties and their representatives were present at the conference and no other employees saw the buckle. The objection is without merit.

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<sup>5/</sup>1156.7. (a) No collective-bargaining agreement executed prior to the effective date of this chapter shall bar a petition for an election.

<sup>6/</sup>The further objection, as to these employees, that they have a separate bargaining history and community of interest is covered separately below.

4. Presence of a UFW Organizer Near the Polls

The testimony offered in support of this objection does not reveal misconduct requiring the setting aside of the election. A UFW organizer, Arturo Rodriguez, was present at all three sites where the polling took place, but he never intruded into any of the designated polling areas and was as far as 150 yards away from the polling place at one site. There was no evidence that he did any electioneering while the voting was in process. Therefore, we dismiss the objection. See Green Valley Produce Cooperative, 1 ALRB No. 8 (1975); Southwestern Electric Service Co., 90 NLRB No. 155 (1950).

5. Failure to give Employer Proper Notice of Time when Ballots Would be Counted

The ballots of this election and others were counted on September 18, 1975 at the Towne House Hotel in Salinas. The attorney for the employer learned that the counting of the ballots was to take place that evening so he was present at the time, although he was not officially notified by the Board Agent. The attorney was urged by a UFW representative to join with him and watch the tally of the ballots. He declined.

There is not the slightest suggestion that the ballot box was in any way tampered with or that the tally was in any way irregular. On the contrary, the evidence was clear that, when the box was unsealed, the signatures on the tapes were intact. The integrity of the box was thus never questioned. We dismiss the objection. See Green Valley Produce Cooperative, 1 ALRB No. 8 (1975); J. R. Norton, Co., 1 ALRB No. 11 (1975).

In addition to the issues considered at the October 8 hearing, Teamsters Locals 890 and 898 objected to the inclusion of

truck drivers and related classifications in the bargaining unit on two grounds: (1) that they come within the coverage of the National Labor Relations Act and are therefore not "agricultural employees" within the meaning of the ALRA; and (2) that even if they are agricultural employees, they should be excluded because of their separate history of collective bargaining and separate community of interest, asserting that inclusion would violate the employees' constitutional and contractual rights. Those objections were separately scheduled for hearing on October 7, before the full Board, along with other cases raising similar issues.

The Board considered similar objections in Interharvest, Inc., 1 ALRB No. 2. There, the Board concluded as to the first ground for objection that, since the number of employees in the disputed classifications was insufficient to affect the outcome of the election, it would be appropriate to certify the UFW as bargaining representative for a unit consisting of all "agricultural employees". We left the status of employees in disputed classifications to be determined by the National Labor Relations Board in proceedings currently pending before that agency or, if prompt clarification is not forthcoming from the NLRB, then through proceedings for clarification or modification of the certification before this Board. As to the second ground for objection, we held in Interharvest, Inc., supra, that the Board had no jurisdiction to exclude agricultural employees on the basis of the arguments presented in view of the mandate contained in Labor Code Section 1156.2.

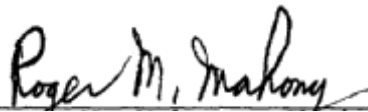
We adopt the reasoning applied in Interharvest to the present case. The number of employees in the disputed classifications (16) is not sufficient to affect the outcome of the election. Unlike

Interharvest, however, the Regional Director's Direction and Notice of Election in this case specifically included "truck drivers, stitchers, and folders". In order to preserve the rights of the parties as to that issue, the unit to be certified will be defined as "all agricultural employees of the employer, excluding packing shed employees" and we leave the appropriate characterization of this classification in dispute to future determination by the NLRB or this agency.

Finally, the employer's objection that the Regional Director should have directed an election in a multi-employer bargaining unit was properly dismissed by the Board on the basis of our decision in Eugene Acosta, et al., 1 ALRB No. 1.

Certification issued.

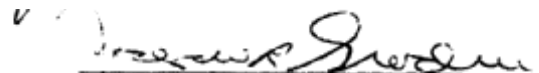
Dated: December 23, 1975




Roger M. Mahony, Chairman



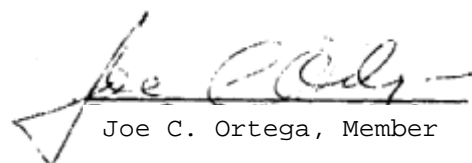
LeRoy Chatfield, Member



Joseph Grodin, Member



Richard Johnsen, Member



Joe C. Ortega, Member