

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

WALLER FLOWER SEED COMPANY)	
)	
Employer,)	75-RC-37-M
)	
and)	
)	1 ALRB No. 27
UNITED FARM WORKERS OF AMERICA)	
AFL-CIO,)	
)	
Petitioner.)	
)	

A Petition for Certification was filed on September 8, 1975, by the United Farm Workers of America, AFL-CIO ("UFW") in the Salinas regional office of the Agricultural Labor Relations Board. The election was held on September 17, 1975, nine days later. ^{1/}The employer objects to certification of the election on the ground that it was conducted beyond the seven-day time limit imposed by Labor Code section 1156.3 (a) (4).

We have previously dealt with the question of whether the holding of an election beyond the seven-day period deprives this Board of jurisdiction to hold such an election, and we held that it does not. Klein Ranch, 1 ALRB No. 18 (1975).

^{1/}The election tally was as follows: UFW - 26, Teamsters - 8, No Union - 1. There were four unresolved challenged ballots and no void ballots.

In Klein and subsequent cases we focused our attention on the prejudice actually suffered by any of the parties to the election and the impact on the election itself which resulted from the failure to set the election for a date within seven days of the filing of the Petition for Certification. There is no evidence in this record establishing any prejudice to the parties involved in this election. As to the impact of the delay on the election itself,²the only evidence introduced was testimony to the effect that two employees did not vote as a result of the delay. One of these employees was ill on the day of the election. The other employee had left for school two days prior to the election.³Apart from these two employees, there is no evidence that any other eligible voters would have voted had the election been held on the seventh day but did not vote on election day. We find, therefore, no adverse impact on the election since the number of voters who were even arguably disenfranchised by the delay could not have affected the election outcome.

In Klein, we also indicated that Board Agents would be made available in the future to explain the reason(s) for the delay in cases where the election was held beyond the seventh day. In the present case, the acting regional director of the Salinas regional office testified at the hearing as to the workload of that office during the first three weeks of September. It was not possible to hold the election on Monday, the seventh day, because

² There were 49 eligible voters of whom 35 cast valid ballots.

³ The school was 30 miles from the company so this employee could still have voted although it would have been less convenient for him to do so.

(1) one of the Board Agents responsible for the election was entering the hospital on that day, (2) the ballots could not be printed in the Ventura office (ballots had to be printed in the Salinas office since there was no printing equipment in Ventura), and (3) the file on this case had not reached the Ventura office by Monday. The election was not held on Tuesday, the eighth day, because it was Mexican Independence Day, and the Board had instructed regional directors not to hold elections on that day unless all of the parties involved in the election agreed to that date.

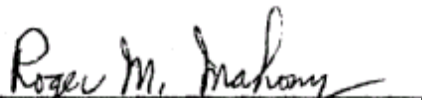
Thus, the sheer volume of the workload described by the regional director coupled with the limited staff and facilities available, strongly suggest to us that the failure to hold the election within the seven-day period was justified. In addition, we note that the delay in holding this election was in no way attributable to any conduct of the parties to the election. On the contrary, the UPW had repeatedly urged the Board Agent to set the election within the seven-day period, but due to the circumstances noted above, it was not possible to do so.

We conclude, therefore, that where, as here, the election is justifiably delayed, and there is no prejudice to any of the parties or adverse impact on the election itself, the holding of

the election on the ninth day does not/ by itself, warrant setting the election aside.

The election is certified.

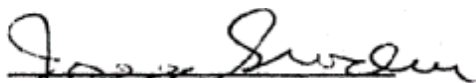
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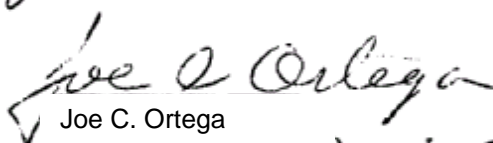
Roger M. Mahony, Chairman



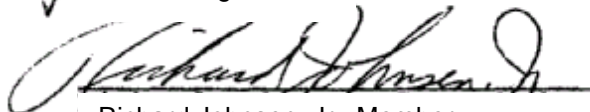
LeRoy Chatfield, Member



Joseph Grodin, Member



Joe C. Ortega



Richard Johnsen, Jr., Member