

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	
	)	
Molera Agricultural Group,	)	
	)	
Employer,	)	75-RC-15-M
	)	
and	)	1 ALRB No. 4
	)	
United Farm Workers of America,	)	
ALF-CIO,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
General Teamsters, Warehousemen	)	
and Helpers Union Local 890, et al.	)	
	)	
Intervenor.	)	
	)	
_____	)	

STATEMENT OF FACTS

On September 2, 1975 a PETITION FOR CERTIFICATION was filed pursuant to Section 1156.3 of the Agricultural Labor Relations Act of 1975 by the United Farm Workers of America seeking certification to represent all employees of the employer in the Castroville area "excluding packing shed and any coolers which in this case are non contiguous. Additionally, excluding any mechanics and maintenance employees who are represented by the International Association of Machinists, AFL-CIO." The petition for certification named the

"Molera Packing Company" as the employer. A pre-election conference was held on this matter on September 3, 1975. Subsequent to the pre-election conference a DIRECTION AND NOTICE OF ELECTION was issued on September 4, 1975. The direction of election named as the employer the "Molera Agricultural Group" and the unit described was "all agricultural employees of Molera Agricultural Group excluding packing shed employees." A representational election was held on Friday, September 5, 1975 from 6:15 PM to 7:00 PM. The tally of ballots for this election was issued on September 17, 1975 naming as the employer the "Molera Agricultural Group". The tally of ballots indicated 15 votes cast for the United Farm Workers of America (herein after called UFW); no votes for the Western Conference of Teamsters, Warehousemen and Helpers Union Local 890 (herein after called Teamsters); and no votes cast for no labor organization. The UFW thus received the total number of all valid ballots cast. On September 16, 1975 the employer filed a PETITION OF OBJECTION and on September 22, 1975 the Teamsters filed two PETITIONS OF OBJECTION. The Agricultural Labor Relations Board directed that a joint hearing be held on both the employer and Teamsters objections. The objections on which the hearing was conducted and the issues presented to the Agricultural Labor Relations Board by this case are:

1. The employer contends that the change of

the identity of the employer at the pre-election conference from "Molera Packing Company", which is an employer of packing shed employees, to "Molera Agricultural Group", which is an employer of field workers, without the filing of a new petition for certification or an amended petition for certification, and no new showing of interest presented, deprives the Agricultural Labor Relations Board of jurisdiction to hold an election for the employees of the Molera Agricultural Group. The employer contends that such change resulted in an election being conducted for entirely different employer and an entirely different group of employees than those named in the original petition for certification.

2. The objection of the General Conference of Teamsters are that:
  - a. Packing shed employees were improperly excluded from voting in this election;
  - b. The United Farm Workers improperly campaigned at the polls;
  - c. The United Farm Workers harassed employees in the exercise of their voting rights, and;
  - d. Board agents improperly permitted reporters and photographers at the election site.

A hearing was held on October 8, 1975 in Salinas, California before Hearing Officer James R. Webster, and all parties were represented.

#### LEGAL ANALYSIS AND CONCLUSIONS

Turning first to the objection of the employer, the Board must determine whether the amendment of the petition

for certification at the pre-election conference, and the substitution of "Molera Agricultural Group" for the previous listed "Molera Packing Company" as the name of the employer was improper, resulted in the substitution of an entirely new employer and set of employees, and thereby divested this Board of jurisdiction to conduct an election among the employees of the Molera Agricultural Group. We find that as a matter of law it did not.

The original petition for certification filed by the United Farm Workers in this case named "Molera Packing Company" as the employer of agricultural employees for whom an election was sought. As required by Section 1156.3(a) of the California Labor Code (hereinafter "Act") such petition was accompanied by authorization cards signed by a majority of the currently employed agricultural employees of the employer. Upon the service and filing of the petition, and pursuant to its obligations under Emergency Regulations Section 20310(d), the employer filed with the Board's agent information including its full and correct legal name, and a list of all employees in the bargaining unit sought to be represented by the petitioner. Section 1156.3 directs that upon the receipt of such a petition for certification, the Board or its agent "shall immediately investigate such petition". The

record shows that upon investigation the Board agent assigned to the instant case determined that the authorization cards signed by the workers and submitted by the petitioner under the name of the "Molera Packing Company", in fact worked for the "Molera Agricultural Group". The record indicates that the "Molera Packing Company is the entity which employs only packing shed employees, which were specifically excluded in the petition for certification from the unit in which an election was sought. The workers who signed authorization cards worked for the "Molera Agricultural Group", the employer of the agricultural field workers in the unit for whom an election was sought.<sup>1/</sup> As a result of this investigation upon the oral application of the UFW the Board agent amended the petition to name the Molera Agricultural Group as employer without requiring the union to file a formal amendment. Thereupon, the Board agent turned over a list provided to the Board by the employer of all employees of the Molera Agricultural Group.

While the employer objects to the name substitution without a new petition being filed or formal written amendment filed the record is devoid of any factual showing that the employer was in any way prejudiced by such amendment.

---

<sup>1/</sup>

The petition of the UFW named the employer's product as artichokes and estimated a work force of 17 workers. The information provided the Board agent by the employer indicated Molera Agricultural Group listed its crop as artichokes and a work force of 16. One of the field workers testified that his paycheck had the name Molera Packing Co. on it to which was additionally stamped "Molera Agricultural Group."

It is clear from the record in this case that the Board agent acted not only within the scope of his authority, but quite properly under the circumstances of this case. Such action is similar to National Labor Relations Board policy in similar situations--both as to case law and operating procedures. In Mallory and Company, Inc., 89 NLRB 121, 26 LRRM 1079 (1950) the National Labor Relations Board held that amendments to the employers petition which do not impair the position of a party at the pre-election hearing may be made by the employer at such hearing. In Swalley Printing Company and/or Accurate Forms Printing Corporation, (NLRB No. 10RC-5156) 50 LRRM 1116 (1962) similar objections to those posed in this case were raised by the employer. In Swalley the employer objected that (a) amendments to the proceedings were not the proceeding that were originally intended; and (b) the petitioner should be required, because of the petition's amendment as to the name of the employer, to procure a new showing of interest. In that case the Hearing Officer had granted an oral motion by the petitioner to correct the name of the employer. The Regional Director sustained the action of the Hearing Officer in granting the oral amendment and a representation election was directed. <sup>2/</sup>

---

<sup>2/</sup> See also, §101.18 of Statement of Procedure of NLRB; NLRB Rules and Regulations Series 8 §102.65.

Based on the legal authority of the Board agent and the absence of any evidence by the employer that it was prejudiced by the action of the Board agent, the Board finds that the amendment of the petition for certification was proper and that the employer's objection to certification on that basis is without merit.

We turn now to a consideration of the objections raised by the General Conference of Teamsters, Warehousemen and Helpers Union Local 890 et al. No evidence was introduced at the hearing by the Teamsters as to their allegations regarding improper UFW campaigning at the polls or harassment of workers, and, accordingly those allegations are hereby dismissed. Regarding the allegation that press photographers were improperly photographing and thus interfering with employees casting their ballots during this election, the record is at best inconclusive. The Molera election was the very first representational election held under the new Agricultural Labor Relations Act. It is therefore hardly surprising that representatives of the press would be on hand for this historic occasion. The uncontroverted facts reveal that at all times during the balloting, members of the press, and press photographers remained outside of the barricades erected to fence off the voting area and that the Teamster's own witness placed the press photographer in question about a 100 feet from the

boundry erected by the barricades. The voting was conducted in a shed whose approximate dimensions were between 30 to 50 feet by 75 feet and the voting booths were in the rear of the shed. While the shed in which the voting was conducted had an open door, the voting booths were equipped with cloth curtains that closed when a voter went into the booth to cast a ballot. The record is unclear whether or not press photographers took any photographs during the actual casting of the ballots. If a photographer had photographed the shed in which the voting took place at such a distance, while a voter was hidden from the view behind the cloth curtain of a voting booth, such conduct could not have affected the outcome of this election. See this Board's decision in Herota Bros.\_\_ALRB\_\_(1975). This holding is in accord with similar determinations by the N.L.R.B. Harold W. Moore, NLRB 191, 70 LRRM 1002 (1968). In the matter before the Board the conduct if it occurred at all took place 100 feet from election area by a person who was not an agent of any party. There was no testimony that any voter saw the photographer. We find that such action did not affect the outcome of this election.

The final issue raised by the Teamster objections concerns the exclusion, of packing shed workers, employed by the Molera Packing Co. Testimony indicates that the Board agent determined that the packing shed employees were



employed by a different corporate entity and that the packing shed was involved in packing Molera produce only 25% of the time and thus the packing shed was a commercial operation subject to the National Labor Relations Board's jurisdiction, and not within the purview of California's Agricultural Labor Relations Act. Cf. D'Arrigo 68 LLRM 1013. The UFW produced testimony in support of the Board agent's determination.<sup>3/</sup> A field worker testified that trucks delivering artichokes from other companies made regular deliveries to the packing sheds here in question.

The Teamsters introduced no evidence at the hearing to indicate that the employees working in the shed were "agricultural workers" as defined by the California Agricultural Labor Relations Act.<sup>4/</sup> On this record we find that the exclusion of the packing shed from the unit was appropriate.

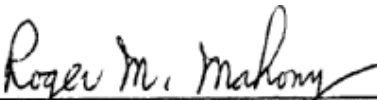
Based on the foregoing it is the determination of this Board that the petitions of objections affecting the outcome of the election are without sufficient legal support and that the result of this, the first election to be held under California's new Agricultural Labor Relations Act should be and is hereby certified.

---

<sup>3/</sup>Testimony on this point was provided by Mr. Vidal Oseguera who worked for the Company for ten years. It is appropriate to note by way of historical footnote that Mr. Oseguera was the first agricultural worker in the State of California to vote under the new law.

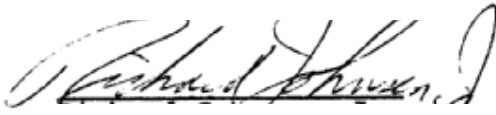
<sup>4/</sup>Labor Code Section 1156.2

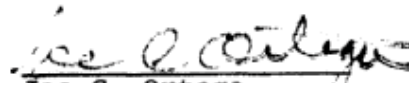
Certification issued.

  
\_\_\_\_\_  
Roger M. Mahony, Chairman

  
\_\_\_\_\_  
LeRoy Chatfield

\_\_\_\_\_  
Joseph R. Grodin

  
\_\_\_\_\_  
Richard Johnsen, Jr.

  
\_\_\_\_\_  
Joe C. Ortega

Dated: October 28, 1975