

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD
OF THE STATE OF CALIFORNIA

CERTIFIED EGGS, INC.,)	
)	
Employer,)	No. 75-RC-25-M
)	
and)	1 ALRB No. 5
)	
GENERAL TEAMSTERS, WAREHOUSEMEN AND)	
HELPERS, LOCAL 890,)	
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Intervenor and)	
Objector.)	

On September 4, 1975, a petition for certification was filed by the General Teamsters, Warehousemen and Helpers, Local 890 (hereinafter, "Teamsters"), seeking to represent all agricultural employees of the employer in the Gilroy area. A Direction and Notice of Election issued, directing an election in a unit composed of all agricultural employees of the employer's processing and field operations. An election was conducted on September 11, 1975 at three different locations. Of approximately 45 eligible voters, 26 workers voted for the Teamsters, 11 for the United Farm Workers of America, AFL-CIO (hereinafter, "UFW"); no workers voted for "no union".

The UFW filed an objection petition pursuant to section 1156.3 (c) of the Labor Code. The sole issue raised was the company's denial of access to UFW organizers on September 10, 1975, the night

before the election.

The facts are undisputed. In the week before the September 11th election, pursuant to the employer's orders, the UFW was permitted to enter the company's premises to speak with workers on numerous occasions. UFW organizers visited at least twice on September 8, talking with several workers in the company lunchroom and at other locations. On September 9, UFW organizers spoke with workers during lunch, and later with a truck driver. September 10, the day before the election, the union's organizers again spoke during a lunch break. Later in the day, when an organizer returned to talk to workers as they left, he stumbled upon a meeting of workers being held in the back of the plant. He walked in and asked the president of the company, Reginald Keddie, if he could address the gathered workers. Mr. Keddie gave permission, and the UFW representative spoke to the massed employees.

That evening Mr. Keddie was watching a 6 p.m. newscast when he learned that earlier in the day, a Fresno County Superior Court judge had enjoined this Board from enforcing its access rule, 8 Cal. Admin. Code § 20900. That rule provides that the rights of employees under section 1152 of the Labor Code include a limited right by union organizers to enter the premises of an employer for the purposes of organizing. The rule was adopted by the Board on August 29, 1975. However, on September 10, 1975, the Fresno and Tulare County Superior Courts enjoined the Board from enforcing the regulation. Those injunctions have since been stayed by the California Supreme Court.

As a result of the newscast, Mr. Keddie instructed his

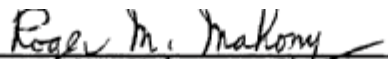
supervisor to deny access to any organizers who attempted to enter the company property that evening to speak with employees on the swing shift. Accordingly, several UFW organizers were turned away when they sought to talk to employees during the 8 p.m. meal break. By all accounts, at most seven employees were on that shift that night, of whom two customarily went home to eat.

The UFW contends that this single denial of access constitutes conduct affecting the results of the election [Labor Code, § 1156.3(c)], and urges us to overturn the election on this basis. We decline to do so. While we unequivocally reaffirm the importance of unions' right to communicate with workers as a key ingredient of a fair election process, we do not think that, under all the circumstances of this case, this isolated denial of access after several days during which UFW organizers spoke frequently with workers on the employer's premises, warrants setting this election aside.


The objections filed under section 1156.3(c) of the Labor Code are dismissed. The General Teamsters, Warehousemen and Helpers, Local 890 is certified as the representative of all agricultural employees of the employer's processing and field operations.

Certification issued.

Dated: November 19, 1975.



Roger M. Mahony, Chairman



Joseph R. Grodin



Richard Johnsen, Jr



Joe C. Ortega

Member CHATFIELD, concurring:

I concur in the decision of the majority to certify the election. However, absent the unusual circumstances of this case, an employer's denial of the right of union organizers to speak to his employees during times specified in this Board's access rule would constitute grounds for setting aside the election.

In this case, workers were able to meet with union organizers at the work place on numerous occasions before the election, including on the day of the election. The employer acted in good faith in attempting to comply with the Board's access rule. Few workers would have been reached on the final evening. Significantly, there is no evidence that the employer's denial of access discriminated against one of the two unions on the ballot.

Concurring Opinion
1 ALRB No. 5

The policy of the Agricultural Labor Relations Act "to encourage and protect the right of agricultural employees to . . . designation of representatives of their own choosing"¹ cannot be effected unless unions are able to communicate with workers at their place of work. The nature of the agricultural industry, the characteristics of the work force, and the special requirements of the Act make the traditional means by which unions have reached workers insufficient in the agricultural context.

Because of the structure of agricultural employment in California, workers often cannot be identified and located by a union except at the work place. Workers move from place to place as the crop matures and cannot be located at a stable address. Within the same growing area, labor contractors move workers between different employers without advance notice and often on a daily basis. A worker paid at the end of one day may have no assurance that he will work for the same employer the next day. Therefore, a worker often does not know the name of his employer. Workers who live in employer-provided housing may never be accessible to union organizers unless the organizer comes to the work place. Aside from the difficulties of locating and identifying workers of an employer, the physical presence of the union which seeks to represent workers in their relationship with the employer is necessary to balance the influence the employer has over employees through his control of their means

¹Labour Code § 1140.2.

of livelihood.

The necessity to balance the influence of the parties to the election is especially important when an existing collective bargaining agreement permits one union access to workers, even though that union did not represent the workers as the result of an election.²

Aside from the structure of the work, the characteristics of farm workers make it difficult to communicate with them outside of the work place. Most farm workers do not speak English. Most have had limited formal education. During the peak employment season, they have little spare time. As a result, farm workers are outside the reach of the public media. Many farm workers are immigrants. They fear that public contact with union organizers in the communities in which they live will make them vulnerable to questioning by authorities. For these reasons, workers not already committed to the union are not likely to attend meetings or make their home locations accessible to unions. Although no worker should be forced in any way to speak to union representatives, a union that cannot first contact a worker at work will have no opportunity to recruit new supporters.

²After the effective date of the Act, August 28, 1975, an employer is not permitted to recognize, bargain with, or sign a collective-bargaining agreement with any labor organization not certified through an election proceeding. Labor Code §1153 (f). However, the Legislature, in enacting Senate Bill 1, stated that collective bargaining agreements between agricultural employees and labor organizations representing the employees of such employers would, if otherwise lawful, remain in effect until certification of an election by this Board. Senate Bill 1, §1.5.

Even where, as in this case, the employer does not rely on a migratory work force, the need for union representatives to contact workers at the work place remains compelling.

Finally, the Act imposes technical requirements that make it impractical for a union to take the time to locate workers outside the workplace. An election must be held during the peak employment season.³ A union which delays in filing a petition for certification until it has had a chance to track down the workers may be precluded from filing a petition until the next year when different workers are present. Once a petition is filed, a union has maximum *of* seven days to campaign, and sometimes less.⁴ A union seeking to obtain authorization cards on which to base an intervention petition has even less time in which to reach workers.⁵ With these short time periods, a union that cannot contact workers at the work place cannot, as a practical matter, contact them at all.

Access by union representatives to workers at the work place is an essential ingredient in protecting the rights of agricultural employees guaranteed by the Act to full freedom of association, self-organization and designation or representatives of their own choosing.⁶ Voters who have no

³Labor Code § 1156.4.

⁴Labor Code § 1156.3(a) (4) . . .

⁵Labor Code § 1156.3 (b) .

⁶Labor Code § 1140.2.

exposure to the alternative choices on the ballot cannot make an informed decision. For this reason, it is in the rare case that denial of access is not misconduct affecting the results of the election.⁷

DATED: November 19, 1975.

A handwritten signature in cursive script, appearing to read "LeRoy Chatfield".

LeRoy Chatfield

⁷Labor Code § 1156.3(c)