BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the matter of HERBERT BUCK RANCHES, INC. Employer , and Western Conference of Teamsters Petitioner, and United Farm Workers of America, AFL-CIO Objecting Party	No. 75-RC-12-S 1 ALRB No. 6

The question presented to this Board for the first time is whether a labor organization not on the ballot has standing to raise post-election objections to a representation election pursuant to §1156. 3 (c) of the Labor Code. Further, the Board must determine, if standing is found to exist, whether it is limited to any class of §1156. 3 (c) objections or if such standing permits a non-intervening labor organization to raise any class of objection permitted under §1156. 3 (c) .

On September 11, 1975 the Western Conference of Teamsters and affiliated locals (hereafter Teamsters) filed a Petition of Certification pursuant to §1156.3 of the Labor Code for a repre-sentational election to be held among the agricultural employees of Herbert Buck Ranches, Inc. No collective bargaining agreement was

in effect with any labor organization. On September 19, 1975, a representation election was held. [1/] The employer timely filed a petition of objections to certification pursuant to §1156.3(c). [2/] The United Farm Workers of America, AFL-CIO (hereafter UFW) also filed a petition of objections which alleged that: (a) the Petition for Certification was erroneous in its assertion of current peak employment and that an election should not have been conducted; and (b) improper conduct on the day of the election disenfranchised voters, thereby affecting the results of the election. The UFW had not filed a petition seeking to intervene prior to the election and did not appear on the ballot.

A hearing on objections was scheduled for October 14, 1975 on the issue of whether the current level of employment was not less than fifty per cent of the employer's peak agricultural employment when the Petition for Certification was filed, and whether a union not appearing on the ballot has standing to litigate objections under §1156.3(c). At the hearing the parties agreed that factual evidence on the issues would not be presented until a determination was made whether the UFW had standing to participate in the objections proceeding. Attorneys for the employer and both unions presented oral

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[1/] The results of the election were as follows: Teamsters = 25 votes; No Union = 10 votes; Void = 2; Challenged = 22. Upon investigation and report of the Regional Director the challenges to the challenged ballots were sustained.

[2/] The employer's petition alleged that the Petition for Certification was erroneous and that the number of agricultural employed employees at the time of filing was less than 50% of the employers peak agricultural employment for the current calendar year.

argument on the standing questions and the Employer and UFW submitted post-hearing briefs on this issue.

I. Standing Under the ALRA

Section 1156.3(c) reads in pertinent part: "Within five days after an election, any person may file with the Board a signed petition asserting that the allegations made in the petition filed pursuant to subdivision (a) were incorrect, [3/] that the Board improperly determined the geographical scope of the bargaining unit or objecting to the conduct of the election or conduct affecting the results of the election." (Emphasis added)

This section thus refers to the right of "any person" to file an objection. The term person is specifically defined as:

> "...one or more individuals, corporations, partnerships, associations, legal representatives, trustees in bankruptcy, receivers or any other legal entity, employer or labor organization having an interest in the outcome of a proceeding under this part." (Emphasis added) Labor Code §1140.4(d)

A determination of standing in the instant case must be based on an understanding of what is meant by the term "interest in the outcome of a proceeding". The UFW urges the most expansive view

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[3/] Subdivision (a) allegations include an assertion that the employer is at a level of peak agricultural employment in the payroll period immediately preceding the filing of the petition.

of the notion of "interest", i.e., that to effect the Act's purpose of self-organization for workers without fear and coercion through fair secret ballot elections, [4/] the term "person" in §1156.3(c) should be read without limitation. It is urged that the Board find that the act of filing post-elections objections of any kind is a sufficient indication of "interest in the outcome" of an election to give standing under 1156.3 (c). It is suggested that this is what is intended by the use of so general a term as "any person"; that the legislature was concerned with the integrity of the election process and wanted to permit any interested person to vindicate that process. The validity of the objections, not who raises them is what the focus of §1156.3(c) must be.

Opposing this interpretation both the Teamsters and the employer urge that the ALRA is not designed to allow persons who are not on the ballot and possess no direct interest in the outcome of the election to delay the certification process by filing §1156.3(c) objections. To accept a contrary view would result, they suggest, in opening a Pandora's box whereby persons with a general or merely peripheral interest could frustrate the intent of the Act and the electoral wishes of the workers. The law is designed, they argue, to hold elections quickly, to certify results and let collective bargaining begin. This requires that only those who have demonstrated a sufficient showing of interest before the election, either as petitioners or intervenors, can qualify as persons with "an interest in the outcome of a proceeding" to raise §1156.3(c) objections. In

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[4/] Sections 1152, 1153 et seq. 1154 et seq. of Act,

contrast to the UFW position that any person without limitation may raise §1156.3(c) objections, the Teamsters and the employer would find only those who have qualified for a ballot position possess a sufficient interest in the outcome to raise post-election objections.

II. In the instant case the union filing objections under §1156.3(c) had not been a party on the ballot. In this respect its position is similar to that of a party-intervenor seeking to interject itself into a law suit in which it was not initially named. California has followed an increasingly expanded view of the concept of standing.[5/]

Standards for such intervention are set forth in Code Civ. Proc. §387. That provision provides "At any time before trial, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action of proceeding." Interest in the matter has been defined as interest of such "a direct and immediate

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[5/]California Election Code §20021 allows any elector to contest an election on grounds that illegal votes were cast.

Code Civ. Proc. §256(a) permits any taxpayer to enjoin a public official from acting illegally, with standing based solely on their status as taxpayers. Blair v. Pitchess 5 Cal 3d 258, 268 (1971)

Code Civ. Proc. §1086 confers standing on a "party beneficially interested" to bring an action for writ of mandate compelling a public official to perform his duty. Where the duty is to the public generally, any citizen qualifies as a "party beneficially interested", with sufficient standing to bring the action. Diaz v. Quitoriano (1968) 268 Cal App 2d 807, 811.

character that (the) intervenor will either gain or lose by direct legal operation and effect of the judgement."[6/] Accepting that a justiciable interest must be a direct and immediate one, we are charged with determining "interest" in the agricultural labor field in order to determine the difficult standing question presented by this case.[7/]

We start from a position that rejects the extremes of absoluteness in the arguments advanced by both parties. The Agricultural Labor Relations Act was enacted after decades of struggle and rancor between workers and employers and between rival labor organizations. It was against this background of conflict and with these goals in mind that the Act was passed. The Act was intended to bring peace to the industry by guaranteeing both "justice" and "stability", a sense both of "fair play" and "certainty". Section 1. Agricultural Labor Relations Act. It would be a rejection of the letter and spirit of the Act to deny recourse to a party aggrieved by the very conduct which the Act seeks to prevent.[8/] A

[6/] Bechtal v. Axelrod (1942) 20 CA 2d 390; Schwartz v. Schwartz (1953) 119 CA 2d 102.

[7/] This task is not always an easy one. As Justice Cardozo stated, "Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had none the less a real and ascertainable ,pre. existence in the legislator's mind. The process is . . . often something more." Cardozo, The Nature of the Judicial Process (1921) 14.

The Doctrine of Heydon's Case provides classic guidance in our search for the legislature's intent. " . . . the office of all the Judges is always to make such construction as shall suppress the mischief; and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. Heydon's Case 3 Coke 7a, 76 Eng. Rep. 637 (Court Exchequer 1584)

right without a remedy would deny the "justice and fair play" that are the law's goal. On the other hand, if any person could, by merely filing post-election objections under §1156.3(c), acquire a sufficient justiciable "interest" to tie up the certification process, "stability" and "certainty" would fall victims to the caprice of any litigious intermeddler.

III. In determining the standing of a party to raise post-election challenges it is necessary to distinguish among the various types of objections that may be raised in a §1156.3(c) proceeding. Those objections may be grouped into three categories:

a. objections to allegations made in the Petition for Certification pursuant to §1156.3(a) (i.e., peak; no prior representational election in the last 12 months; no currently certified labor organization as bargaining representatives; and no bar by an existing collective bargaining agreement);

b. objections to the improper determination of the geographical scope of the bargaining unit;

c. objections to conduct of the election or conduct affecting the results of the election.

The instant case poses the standing question in relation to categories (a) and (c) above, and we reach only those areas in this opinion.

Category (a) refers to those allegations in a Petition for Certification which must be present for the Board to find "that a

bona fide question of representation exists." The requirement that a peak employment period exist at the time that the Petition is filed is central to the Act's scheme of maximizing the franchise. See §1156.4. It is a prerequisite that must be met before a proper representative election can be conducted. See §1115.3(a). To require that a party be on the ballot in order to object to an election conducted in the absence of peak season would pose requirements that the law does not intend, and permit results that the law is designed to prevent. If only a party on the ballot could raise an objection based on peak, a labor organization would be forced to expend resources and energy to qualify for a ballot position, and participate in an election process, that it contends is a nullity. The law does not and this Board will not impose the obligation to participate in empty acts.

Neither can a party be forced to rely on other parties to vindicate its rights. If a union declines to participate in an election, contending that the election is defective for lack of peak, it cannot be required to rely on those who participated in the election to litigate that question. To reach a contrary finding might permit collusion between some of the parties, whereby they agree that an election be held in the absence of the proper jurisdictional prerequisites, and foreclose review of that election by limiting standing to just those who participated improperly in it. One of the Act's purposes is to eliminate collusion between employers and unions, [9/] and to maximize to the fullest the scope for employees'

[9/] §1153 et. seq.

enjoinment of rights granted under this law. [10/]To effect the purpose of the Act and lessen the evils it was designed to remedy, a union not on the ballot must be allowed to contend that a representation petition was filed and an election held when a peak season did not exist. Therefore, the UFW has standing here to raise and litigate its "peak season objection" pursuant to §1156.3(c) .

This holding is limited to the facts of this case, and specifically to peak of season objections as in this case.

It is distinguishable, for example, from our holding in the matter of Interharvest 1 ALRB No. 2 (1975). In that case, a question of the appropriateness of the Board determined unit was raised by a union which was an intervenor. The Board held that the union was unable to demonstrate that they were or could have been adversely affected by the unit determination. Similarly the election's outcome could not have been affected by that determination. Therefore, the Board refused to consider that question. It should be noted that with respect to unit determination unlike seasonal peak requirement, the Board has substantial discretion within the limits imposed by statutory policy.

IV. Objections to the conduct of the election and conduct affecting the results of the election are separable allegations. The objection of the UFW in this case is directed to the conduct of the election itself. The objection contends that conduct on the day of

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10/ §1156.4

the election had the effect of disenfranchising a number of voters. The UFW contends that it is the organizational means by which individual employees express their dissatisfaction with improper election day conduct. But the UFW has brought this action in its own name, and it is its separate organizational interests that must determine their standing to litigate this objection. Assuming that the conduct complained of took place, no direct and immediate interest of the UFW has been injured to give it the requisite standing to seek §1156.3 (c) relief. If these employees had voted, the UFW which was not on the ballot could not have been directly affected. Election day conduct which may shift votes for or against parties on the ballot is not of sufficient direct and immediate interest to permit one who is not on the ballot, or otherwise involved in the election, as a voter, to have standing to raise an objection under §1156.3 (c). Accordingly, the UFW, having not been on the ballot, does not have standing to raise objections alleging that persons were not allowed to vote on election day.

Conclusion

This case is remanded for a continuation of the hearing already commenced with regard to the issue of whether there was peak. UFW objections as to election day conduct are hereby dismissed.

Dated: November 21, 1975

Roger M. Mahony, Chairman

LeRoy Chatfield

Joseph R. Grodin

Richard Johnsen, Jr

Joe C. Ortega