

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD  
OF THE STATE OF CALIFORNIA

HATANAKA & OTA CO. ,	)	
	)	
Employer,	)	No. 75-RC-1-S
	)	
and	)	1 ALRB No. 7
	)	
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Petitioner.	)	
	)	

On September 9, 1975 an election was held on the employer's premises on a Petition for Certification filed by the United Farm Workers of America (UFW). The tally of the ballots showed a total of 310 votes cast as follows: No union - 70; UFW - 60; 1 void ballot and 180 challenged ballots. Of these 180, 147 were cast by alleged economic strikers and 33 were challenged for other reasons. The results of the tally of these challenged ballots, therefore, will affect the outcome of the election.

Both parties filed timely petitions for review under Labor Code Section 1156.3 (c) requesting that the election be set aside alleging, in part, improper conduct on the part of the Board agent in the following respects:

1. The polls were opened approximately one hour later than originally scheduled, thereby disenfranchising a significant number of eligible voters, and

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<sup>1</sup>On October 7, 1971, UFW filed a document entitled "Petition for Partial Repeat of Election" requesting a special election among the economic strikers only. This procedure is not provided for in the Act or the regulations. This opinion will nevertheless, dispose of this "Petition" as well.

2. Board agents did not adhere to proper challenged ballot procedures, by failing to maintain a separate identity to each of the challenged ballots.

We set this matter for hearing on a special law and motion calendar requesting the parties to appear to show cause why the election should not be set aside on the grounds set forth above. The parties were permitted to file briefs in support of their positions.

No one disputes that, for reasons which are unclear to us, the Board agents opened the polls approximately one hour later than the time designated in the Direction and Notice of Election. Of the 392 eligible voters, (including the 180 who were challenged), 310 voted. Thus, as a result, all agree that some employees were disenfranchised. We cannot speculate as to the actual number of employees who did not vote because of the delay in the opening of the polls. It is sufficient to note that the number could affect the outcome of the election.

The National Labor Relations Board uniformly sets an election aside where, as here, there is affirmative evidence in the record that some eligible voters were disenfranchised. Piper Industries, Inc., 212 NLRB No. 66 (1974); Alterman-Big Apple Inc., 116 NLRB 1078 (1956), Repeal Brass Manufacturing Co., 109 NLRB 4 (1954) .

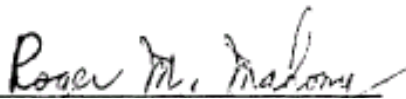
Neither is there any question that the challenged ballots were deposited in one large envelope so that, after a proper hearing to determine how many are economic strikers, no one can now identify the ballot of a particular voter. Clearly, the results of the voting by the economic strikers will affect the outcome of the election.

At the hearing, the UFW representative urged us to arrive at some solution or to devise some method by which these ballots may be counted. No practical suggestions were offered by the parties and we find that these ballots cannot be counted.

We share the distress of those who claim that their energy and effort went for naught. We surely do not fault the parties or their representatives for the irreparable conduct of the Board agent. We remind the parties that this was the first election conducted in Sacramento under the Act. We can only try to correct occasional irregularities which may occur under a new administrative agency functioning, at times, under pressing circumstances .

Since the election must be set aside, we have not reached the merits of the other objections raised in the petitions. We will entertain any new petitions for representation which will meet the requirements of the Act.

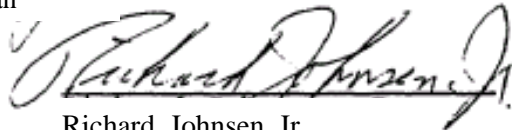
Dated: November 21, 1975.



Roger M. Mahony, Chairman



LeRoy Chatfield



Richard Johnsen, Jr.