

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD
OF THE STATE OF CALIFORNIA

GREEN VALLEY PRODUCE COOPERATIVE)	
)	
Employer,)	
)	No. 75-RC-9-M
and)	
)	1 ALRB No. 8
UNITED FARM WORKERS OF AMERICA, AFL-CIO)	
)	
Petitioner,)	
)	
and)	
)	
WESTERN CONFERENCE OF TEAMSTERS, Agricultural Division (and af- filiated locals); GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS, UNION LOCAL 890; TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION LOCAL 898)	
)	
Intervenors and Objectors.)	
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Based on a Petition for Certification filed by the United Farm Workers of America (UFW), the Regional Director issued a Direction and Notice of Election for a unit described as "all agricultural employees, including truck drivers, stitchers and folders."

Following an election held on September 8, 1975, the tally of ballots showed a total of 115 votes cast as follows: UFW - 83, Teamsters - 19, No Union - 5, Challenged - 5, and 3 void ballot.

Timely Petitions of Objections pursuant to Labor Code Section 1156.3(c) were filed by the employer, Western Conference of Teamsters Agricultural Division and affiliated locals (Western Conference) and General Teamsters, Warehousemen and Helpers Union Local 890 and Truck Drivers, Warehousemen and Helpers Union Locals 898 (Local 890 and 898). The Western Conference and Local 890

and 898 raised issues which were excluded from the hearing and with respect to which reference is made hereafter.

At the hearing held on October 8, 1975, the employer argued that the election should be set aside on the following grounds: ^{1/}

1. Presence of a UFW representative in the polling area;
2. Improper conduct on the part of the Board agent in refusing to permit the Teamsters to have observers at the election; and
3. Failure by the Board agent to notify the employer's observers of the date and time when ballots would be counted. ^{2/}

For the reasons indicated below, we dismiss the objections and certify the UFW as the exclusive representative of the employees designated in this opinion.

1. Presence of the UFW representatives in the polling area.

There is no dispute that the voting booths and tables set up by the Board agent in the empty garage were approximately 75 yards from a public road. The voting area was designated by the agent as that area between the booths and certain artichoke trailers parked

^{1/} The Teamsters were not present at the hearing, having notified the Administrative Law Officer that they would not appear.

^{2/} The employer did, in fact, submit timely declarations in support of this objection. The issue was, therefore, heard, although originally dismissed by the Board.

there for that purpose, about 35 yards away. One witness, a newspaper reporter, testified that Cesar Chavez, President of the UFW, standing on the public road when voting began, urged others to move away from a direct view of the polling booths, and moved to another position where workers could not see him.

The employer's main objection was that another UFW representative, Marshal Ganz, was in the polling area while the voting was in progress. The general manager of the employer was the only one who made this claim, testifying that he saw Ganz there briefly. However, there was no testimony how long Ganz was there nor that the employer protested this alleged impropriety to the Board agent. See Southwestern Elective Service Co., 90 NLRB No. 155 (1950).

Ganz denied that he was in the voting area, either before or during the election. He admitted that he talked to the workers in the field before the election but that during the election he walked around the public road about 75 yards from the polling table. Ganz's testimony was corroborated by another witness. We find that he was not in the voting area when the voting began. Further, there is no evidence that Ganz or Chavez was engaged in electioneering or attempted in any way to interfere with the orderly processes of the voting. See Mutual Distributing Co., 83 NLRB 463 (1949).

2. Board agent's refusal to permit Teamster observers on the day of the election.

The UFW, the employer and the Teamsters were all present at the preelection conference and only the latter did not designate their observers. The parties agreed that the Teamsters would be permitted to appoint their observers but that no later than 6:30 a.m.,

on election day, one-half hour prior to the opening of the polls. This restriction was designed to give the parties an opportunity to raise any possible challenges to the designated observers.^{3/}

Teamster agents arrived at 6:45 a.m. on the day of the election and the Board agent refused to permit the Teamster to appoint any observers on the ground that they came to late. The employer now argues that if the Teamsters had been permitted to designate observers they might have recognized other UFW agents in the polling area. We reject this argument.

Although the Teamsters raised this objection in their petition, they chose not to appear at the hearing and offer evidence in support of their objection. Indeed, there is no evidence in the record that, on the morning of the election, the Teamsters had any observers who were ready to assume their duties.

The employer's observers were present on election day and no claim is made that they were in any way prevented from performing their tasks. We fail to see how the employer had any standing to raise this objection which the Teamsters chose not to pursue at the hearing. Neither did the employer ever protest the Board agent's conduct on the day of the election.

^{3/}Section 20350 (b) of the Emergency Regulations of the ALRB provides in pertinent part:

"Each party may be represented by pre-designated observers of its own choosing.... The Board agent has the discretion to determine the number of observers which each party may have. Any party objecting to the observers designated by another party must register the objection and the reasons there for with the Board agent supervising the election prior to the commencement of the election... ."

3. Failure to give the employer (and his observers) timely notice of the date and time of the ballot counting.

The counting of the ballots in this election and others took place on September 17. Robert Smith, General Manager of the employer, testified that he first heard from some source (not from the Board agent) at 7:00 p.m. that ballots would be counted that evening. He first went to the Board Office in Salinas then to the room in the Towne House Hotel where ballot counting was in progress. Ten minutes after he arrived someone announced that the Green Valley Produce ballots would be counted. A UFW representative urged Mr. Smith to come forward and watch the tallying. He declined.

Although it was unfortunate that neither the employer nor his observers were properly notified of the time set for the tallying of the ballots, the fact remains that the General Manager was there and no one claimed or claims now that there was any irregularity in the ballot count. See Republic Aviation Corp., 81 NLRB 1361 (1949) and Peter Paul Inc., 99 NLRB 386 (1952).

4. Certain objections filed by the employer were dismissed and were not properly issued before the Administrative Law Officer. These included objections based on constitutional grounds or involve challenges to the Board's regulations, all not proper subjects for consideration by the Board.

In addition to the issues considered at the October 8 hearing, Teamsters Locals 890 and 898 objected to the inclusion of truck drivers and related classifications in the bargaining unit on two grounds: (1) that they come within the coverage of the National

Labor Relations Act and are therefore not "agricultural employees" within the meaning of the ALRA; and (2) that even if they are agricultural employees, they should be excluded because of their separate history of collective bargaining and separate community of interests, asserting that inclusion would violate the employees' constitutional and contractual rights. Those objections were separately scheduled for hearing on October 7, before the full Board, along with other cases raising similar issues.

The Board considered similar objections in Interharvest, Inc.¹ ALRB No. 2. There, the Board concluded as to the first ground for objection that, since the number of employees in the disputed classifications was insufficient to affect the outcome of the election, it would be appropriate to certify the UFW as bargaining representative for a unit consisting of all "agricultural employees". We left the status of employees in disputed classifications to be determined by the National Labor Relations Board in proceedings currently pending before that agency or, if prompt, clarification is not forthcoming from the NLRB, then through proceedings for clarification or modification of the certification before this Board. As to the second ground for objection, we held in Interharvest, Inc., supra, that the Board had no jurisdiction to exclude agricultural employees on the basis of the arguments presented in view of the mandate contained in Labor Code Section 1156.2.

We adopt the reasoning applied in Interharvest to the instant case. Agency records of which the Board takes official notice reflect that, based on information supplied by the employer, the

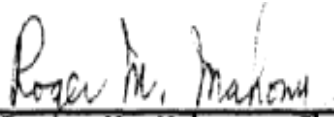
¹ ALRB No. 8

number of truck drivers eligible to vote was 17, of whom 13 voted, a number insufficient to affect the outcome of the election. Unlike Interharvest, however, the Regional Director's Direction and Notice of Election in this case specifically included "truck drivers, stitchers, and folders". In order to preserve the rights of the parties as to that issue, the unit to be certified will be defined as "all agricultural employees of the Employer" and we leave the appropriate characterization of this classification in dispute to future determination by the NLRB or this agency.

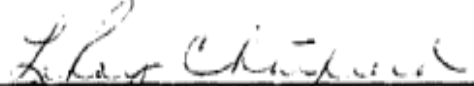
Finally, the employer's objection that the Regional Director should have directed an election in a multi-employer bargaining unit was properly dismissed by the Board on the basis of our decision in Eugene Acosta, et al, 1 ALRB No. 1.

Certification issued.


Dated: November 21, 1975

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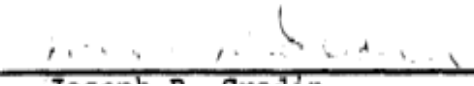
Roger M. Mahony, Chairman



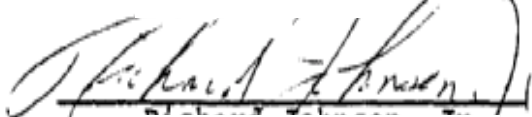
Leroy Chatfield



Joe C. Ortega



Joseph R. Grodin



Richard Johnson, Jr.