

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD
OF THE STATE OF CALIFORNIA

YAMANO BROS. FARMS, INC. ,)
)
 Employer,) No. 75-RC-7-R
)
and)
) 1 ALRB No. 9
)
UNITED FARMS WORKERS OF AMERICA)
AFL-CIO,)
)
 Petitioner.)
)
)

On September 5, 1975, a Petition for Certification was filed by the United Farm Workers of America, AFL-CIO, (" U F W ") , seeking an election among the employees of Yamano Brothers Farms , Inc. A pre-election conference was held at 1:00 p.m. on Wednesday, September 10, at which time it was determined by the Board agents that the election would take place the following morning, September 11, beginning at 7:00 a.m. Following the election the vote was tallied as follows: No labor organization - 45, UFW - 58, void ballots -2, unresolved challenged ballots - 4. According to the employer, there were 108 workers eligible to vote.

The employer filed objections to the election pursuant to Labor Code section 1156. 3 (c) raising three issues: (1) that the employer was not given due notice of the time for the election in that it was not informed until the pre-election conference that the election would take place the following morning, (2) that the UFW was given notice of the time for the election prior to the pre-election conference, and (3) that union representatives campaigned in close proximity to one of the two polling places. At the hearing upon these objections, the employer stipulated that the union had not

in fact been informed of the time for the election prior to the pre-election conference. Thus, only the first and the third issues remain before the Board for consideration.

With respect to the first issue, the employer argues that the statutory requirement that elections will be conducted upon due notice to all interested parties was not met.¹ The contention appears to be twofold: that there was no time to inform the workers of the time for the election, since they had completed work for the day by the time the pre-election conference ended, and that the employer was deprived of a full opportunity to campaign among its workers. The first aspect of this argument is disposed of by the simple fact that an extremely high percentage of workers, at least 103 out of 108, did in fact vote in the election. The factual circumstances surrounding the second aspect of the argument are somewhat more involved.

Jim Yamano, president of the employer and one of three Yamano brothers who attended the pre-election conference on behalf of the employer, testified that he had been advised by his attorney prior to the pre-election conference that the election would be held on Friday, September 12. There was no testimony as to the circumstances under which this date was communicated to the attorney nor the degree of certainty that was attached to the date at the time.

¹The relevant portion of Labor Code Section 1156.3(a), which deals with the requirements for Petitions for Certification, states: "Upon receipt of such signed petition, the Board shall immediately investigate such petition, and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition."

At the pre-election conference, all parties were advised by the Board agent that there would be no Board personnel available to conduct the election on Friday and that the only possible day to hold the election would be Thursday.² The employer objected to the election being held on Thursday and suggested that it at least be delayed until after working hours on Thursday. Due to demands on Board personnel, however, it was determined that the election would begin at 7:00 a.m.

The pre-election conference was held at the offices of the employer's attorney. At this conference, Jim Yamano was given two or three copies of the Direction and Notice of Election to post at the polling places. Guadalupe Ayala Sanchez, an employee of Yamano Brothers who acted as an election observer on behalf of the union, was given approximately one hundred copies of the Notice for distribution to the workers. All copies of the notice were made on the photocopying machine at the attorney's office. No representative of the employer requested any additional copies of the Notice in order to distribute them to the workers independently.

Mr. Sanchez was given a ride back to the farm with Bill Yamano, and they arrived there as the workers were finishing their work but before they had left for the day. Mr. Sanchez distributed the Notices, but Bill Yamano took no part in contacting the workers. According to Sanchez, he was able to distribute the

²It would not have been possible to hold the election later than Friday without running outside the seven-day time limit imposed by Labor Code Section 1156.3(a) and Emergency Regulation Section 20400.5 (a).

Notices to all the workers, and this is borne out by the very large turnout of voters in the election. Jim Yamano returned to the farm shortly after his brother and Sanchez, by which time the majority of the workers had left for the day, and posted his copies of the Notices at the polling places.

The employer argues that since the Notices were distributed by Mr. Sanchez, the union was given a final, Board-sanctioned opportunity to electioneer before the election. It is clear, however, that Bill Yamano, at least, had the same opportunity to contact the workers before they left for the day as did Sanchez. Several workers testified that on the same day as the pre-election conference a member or members of the Yamano family went to the fields and distributed campaign literature urging the workers to reject the union. Furthermore, the record is clear that Sanchez was an employee of Yamano Brothers and held no official position with the UFW.

The Act establishes a seven-day time limit after the filing of a Petition for Certification for the holding of elections. Labor Code § 1156.3(a). This time limit, as well as the peak of season requirement of section 1156.4, is necessitated by the seasonal nature of agriculture and is designed to assure maximum participation of affected workers in the election process. All parties are equally on notice of the time demands inherent in the Act and must make reasonable accommodations for the holding of elections within the time limit. A normal function of the pre-election conference is to determine a satisfactory method of employee notification, given the fact that this must often be accomplished within a very short period of time. The practice of Board agents conducting

such conferences is to attempt to work out the fairest possible procedure under the circumstances. There is no evidence that there was any deviation from this practice in the matter before us. The Notices were copied at the conference, and the employer had the opportunity to suggest appropriate means of distribution but made no such suggestion. It does not appear, therefore, that the distribution of Notices by Mr. Sanchez was improper.

The employer does not contend that the Petition for Certification was not served timely. Thus, the only notice lacking until the pre-election conference was of the specific time for the election. Under all of the facts presented, we cannot find that the employer was prejudiced by the late notice of the time for the election. We conclude, therefore, that the employer was given due notice under the circumstances and the election should not be set aside on the ground urged.

The other issue before us involves alleged electioneering in proximity to one of the two polling area. The election began shortly after 7:00 a.m. at the employer's packing shed. After the workers in that area had finished voting, the voting booths were transported to a second designated area next to an onion field. Shortly after the Board agents and the observers for both sides arrived at the second area and before the booths were fully re-assembled, Tony Bollero, an observer for the employer, noticed two UFW organizers in the field talking with the workers at a distance of some 150 yards from the polling area. Mr. Bollero brought this to the attention of the Board agents who told the organizers to

leave the area. All witnesses who testified on this matter agreed that the organizers immediately left and were not in the area at the time that the preparation of the polls was completed and the workers were called to vote.

We find that the facts do not constitute objectionable electioneering. The conversation between the union representatives and voters took place well outside the polling area, and the organizers left immediately upon being instructed to do so. See, Harold W. Moore & Son, 173 NLRB No. 191 (1968). In addition, the conversation took place before the polls opened in the second designated area. See, Lincoln Land & Storage, 197 NLRB No. 160 (1972). The effect that such conduct might have had on the election would appear to be negligible and does not warrant the setting aside of the election.

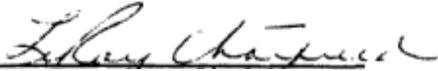
For the foregoing reasons the employer's petition to set aside the election is denied, and certification of the election is issued.

Certification issued.

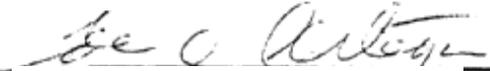
Dated: November 24, 1975.



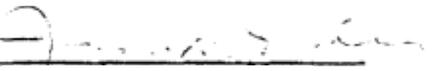
1 Roger M. Mahony, Chairman



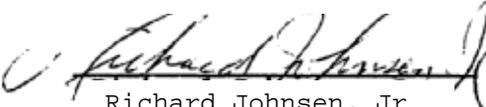
LeRoy Chatfield



Joe C. Ortega



Joseph R. Grodin



Richard Johnsen, Jr.