Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROYAL PACKING COMPANY, Employer, and GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 890, Petitioner.	)	Case No. 94-RC-4-SAL 20 ALRB No. 14 (August 22, 1994)

DECISION AFFIRMING DISMISSAL OF ELECTION OBJECTIONS AND CERTIFICATION OF REPRESENTATIVE

On June 29, 1994, Petitioner General Teamsters, Warehousemen and Helpers Union, Local 890 (Local 890) filed a petition for certification seeking to represent all of the agricultural employees of Royal Packing Company (Employer) in the State of California. An election was conducted on July 7, 1994. Due to the Employer's contention that some of the employees who would be allowed to vote were nonagricultural employees not within the jurisdiction of the Agricultural Labor Relations Board (ALRB or Board), the voters were divided into three groups and the votes for each group were segregated and tallied separately.[1] The three groups were defined by the Regional Director as Category A-employees whose agricultural status is

[1]As a result of this procedure, disputed issues as to the eligibility of certain categories of voters were left to the Board's election objection procedure, rather than to the challenged ballot procedure. As revealed in the ensuing analysis, in these circumstances, the segregation of ballots has facilitated the Board's determination of the validity of the election.

unchallenged, Category B-employees who performed some cutting (severing of the crop) but whose agricultural status is challenged by the Employer, and Category C-employees who did no cutting and whose status is challenged by the Employer. The tally of ballots showed the following results for each category:

Category A:

Teamsters Local 890. . . .	120
No Union	39
Void Ballots	2
	161

Category B:

Teamsters Local 890. . . .	117
No Union	5
Void Ballots	3
	125

Category C:

Teamsters Local 890. . . .	70
No Union	2
Void Ballots	1
	73

Aggregate Vote:

Teamsters Local 890. . . .	307
No Union	46
Void Ballots	6
Unresolved Challenged Ballots . .	11
	370

The Employer timely filed objections to the election, which were dismissed by order of the Executive Secretary on August 4, 1994 for failure to submit declaratory support adequate to establish a prima facie case that, if true, would warrant the setting aside of the election. The Employer then timely filed with the Board a Request for Review of the Executive Secretary's order dismissing the election objections. The Employer urges the

Board to set all of the election objections for hearing. The objections include claims that an outcome determinative number of nonagricultural employees were allowed to vote, as well as claims that misconduct by Local 890 and by Board agents interfered with employee free choice. The Board has carefully reviewed the record, including the Request for Review, and affirms the dismissal of the Employer's election objections. The objections alleging that nonagricultural employees were improperly allowed to vote are dismissed for the reasons explained below. The remaining objections are dismissed for the reasons stated in the Executive Secretary's August 4, 1994 Notice of Dismissal of Election Objections (attached hereto) .

DISCUSSION

The Employer first asserts that the election must be set aside because the overwhelming majority of voters in the election were not agricultural employees within the jurisdiction of this Board. However, the Employer does not explain why this is so, since the inclusion of nonagricultural employees among those allowed to vote would not prevent certification of the election if it may be determined that a majority of voters who are agricultural voted in favor of Local 890.[2] The Employer does, however, go on to allege that this cannot be determined

[2]Issues as to the composition of the bargaining unit that are left unresolved at the time of certification may be raised through the filing of a unit clarification petition. (Cal. Code Regs., tit. 8, § 20385.)

without an evidentiary hearing. As explained below, no hearing is necessary to make this determination.

The wide margin of victory for Local 890 in all three categories is such that any combination thereof would result in a clear majority for union representation. Indeed, even if the total number of no union votes from Categories B and C, as well as the 11 challenged ballots, are added to the No Union total in Category A, the margin of victory would be 120 to 57. Since the parties agreed prior to the election that all those in Category A are agricultural employees, that should definitively demonstrate that a majority of agricultural employees did, in fact, vote in favor of Local 890.

Nevertheless, in addition to its assertion that all of the voters in Categories B and C are nonagricultural, the Employer asserts that it mistakenly agreed prior to the election that 81 cutter-baggers working on lettuce wrap machine crews are agricultural employees and, therefore, belonged in Category A. Consequently, the Employer claims that, if those 81 individuals were removed from the vote total in favor of Local 890, the ballot count would be even at 39. Moreover, states the Employer, the 11 unresolved challenged ballots would further cloud the vote totals.

Because the record before the Board is sufficient to conclude that the 81 cutter-baggers are agricultural employees subject to the Board's jurisdiction, their votes may be included in the totals for Category A and, as explained above, the vote

total for that Category is sufficient to establish that Local 890 received a majority of votes cast by agricultural employees.

The Employer admits that the cutter-baggers are engaged in primary agriculture when they are actually severing the crop from the ground, but asserts that the remainder of their work, which consists of trimming the heads of lettuce and placing them in plastic bags, is nonagricultural. This latter claim is based on the fact that the Employer harvests and packs not only crops it grows itself, but also crops grown by independent growers. Since the cutter-baggers spend a substantial amount of their time performing tasks which are purportedly nonagricultural, the Employer asserts that these employees are solely under the jurisdiction of the National Labor Relations Board (NLRB). In so claiming, the Employer misrepresents the import of pertinent NLRB precedent.

Where employees are engaged in both agricultural and nonagricultural work, this is termed a "mixed work" situation. In such situations, the NLRB will assert jurisdiction over the nonagricultural work, if substantial, but in no case will it assert jurisdiction over agricultural work. (Olaa *Sugar Co.* (1957) 118 NLRB 1442 [40 LRRM 1400]; Camsco *Produce Co.* (1990) 297 NLRB 905, 908, fn. 18 [133 LRRM 1225].) In the present case, since the Employer admits that the cutter-baggers spend a substantial amount of their time engaged in primary agriculture, which even the Employer recognizes as indisputably under this Board's jurisdiction, the Board may properly assert jurisdiction

over at least that portion of the cutter-baggers' work. Thus, such employees are properly within the ALRB bargaining unit and their votes must be included in the tally.[3]

CERTIFICATION

For the reasons stated above, the Board hereby affirms the Executive Secretary's August 4, 1994 dismissal of the Employer's election objections. Therefore, the results of the election conducted on July 7, 1994 are upheld and the General Teamsters, Warehousemen and Helpers Union, Local 890 is certified as the exclusive bargaining representative of all of Royal Packing Company's agricultural employees in the State of California.

DATED: August 22, 1994

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

[3]Any disagreements between the parties as to the unit status of the employees in Categories B and C may be presented to the Board via a unit clarification petition.

CASE SUMMARY

ROYAL PACKING COMPANY
(General Teamsters, Warehousemen and Helpers Union, Local 890)

20 ALRB No. 14
Case No. 94-RC-4-SAL

Background

On July 7, 1994, an election was conducted among all of the agricultural employees of Royal Packing Company (Employer) in California. Due to the Employer's contention that some of the employees who would be allowed to vote were not agricultural employees within the jurisdiction of the Agricultural Labor Relations Board (ALRB or Board), the voters were divided into three groups and the votes for each group were segregated and tallied separately. The petitioning union, General Teamsters, Warehousemen and Helpers Union, Local 890 (Local 890) , received a majority of votes in each of the three groups. The Employer timely filed objections to the election, which included claims that an outcome determinative number of nonagricultural employees were allowed to vote, as well as claims that misconduct by Local 890 and by Board agents interfered with employee free choice. The objections were dismissed by order of the Executive Secretary on August 4, 1994 for failure to submit declaratory support adequate to establish a prima facie case that, if true, would warrant the setting aside of the election. The Employer then timely filed with the Board a Request for Review of the Executive Secretary's order dismissing the election objections.

Board Decision

The Board affirmed the objections alleging misconduct by Local 890 and Board agents for the reasons stated in the Executive Secretary's order dismissing the objections. The Board dismissed the objections based on the nonagricultural status of various groups of voters based on the fact that the margin of victory for Local 890 among those employees who were admittedly engaged in at least a substantial amount of agricultural work was such that all of the No Union votes and unresolved challenged ballots, even if aggregated from the entire electorate, could not change the result among the admittedly agricultural employees. Consequently, the Board could find conclusively that Local 890 received a majority of votes cast by agricultural employees.

* * *

State of California
AGRICULTURAL LABOR RELATIONS BOARD
Estado de California
CQNSEJO OE RELACIONES OE TRABAJADORES AGRICOLAS

ROYAL PACKING COMPANY,

Employer,

and

GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS ONION, LOCAL 890,

Petitioner.

CERTIFICATION OF REPRESENTATIVE
CERTIFICATION DEL REPRESENTANTE

An election having been conducted in the above matter under the supervision of in accordance with the Rules and Regulations of the Board; and it appearing from' bargaining representative has been selected; and no petition filed pursuant to Section 1158 3(c) remaining outstanding

Habiendose conducido una election en el asunto arriba citado ba/'o la supervision del Consejo de Relaciones de Trabajadores Agncolas de acuerdo con las Reglas y Reguladones del Consejo; y apareciendo por la Cuenta de Votos que se ha salecdonado un representante de negodacion colectiva; y que no se ha registrado (archivado) una petition de acuerdo con la Saccion 1156.3(c) que queda pendiente;

Pursuant to the authority vested in the undersigned by the Agricultural Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for

De acuerdo con la autoridad establedda en el suscribiente por el Consejo de Relaciones de Trabajadores Agricolas, por LA PRESENTS SE CERT!PICA que la mayoria de las balotas validas han sido depositadas en favor de

General Teamsters, Warehousemen and Helpers Union, Local 890

and that, pursuant to Section 1156 of the Agricultural Labor Relations Act, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

y que, de acuerdo con la Secdon 1156 del Acto de Relaciones de Trabajadores Agricolas, dicha organization de trabajadores as el representante exc/ust'vo de todos los trabajadores en la unidadaqui"impiicada, y sa ha daterminado que esapropiada con el fin de llavar a cabo negodacion colectiva con respecto al salario, las horas de trabajo, y otras condidones de empieo.

All the agricultural employees of the Employer in the State of Califon

UNIT:
UNIDAD:

Signed at Sacramento, California On

the 22nd day of August 19 94

Ffrmado en _____

En el _____ *Dia de* _____ *19*

On behalf of
AGRICULTURAL LABOR RELATIONS BOARD

De parts del
CONSEJO DEJtELACIONES DE TRABAJADORES AGRICOLAS

Antonio Barbosa

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: ROYAL PACKING COMPANY, Employer, and GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 890, Petitioner.	Case No. 94-RC-4-SAL NOTICE OF DISMISSAL OF ELECTION OBJECTIONS; AND NOTICE OF OPPORTUNITY TO FILE REQUEST FOR REVIEW

PLEASE TAKE NOTICE THAT, suant to California Labor Code section 1156.3(c) and Title 8, Calif .a Code of Regulations section 20365, the election objections filed by Royal Packing Company (Employer or Royal) are hereby DISMISSED, as discussed below, for failure to submit declaratory support adequate to establish a prima facie case which, if true, would establish conduct interfering with employee free choice and warrant the setting aside of the election.

APPROPRIATE BARGAINING UNIT (Objection Nos. 1 and 2.)

' The Employer contends that the election herein should be set aside because the Regional Director improperly designated a bargaining unit comprised of 353 allegedly non-agricultural employees and 116 concededly agricultural employees and that the number of non-agricultural employees was sufficient in number to affect the results of the election. For the reasons discussed below, the objection is dismissed as without merit.

The Employer asserts that it harvests lettuce on its

own land (1,800 acres) as well as lettuce grown by "independent growers" (1,270 acres), in the Salinas Valley. The harvesting work force consists of three ground (hand harvest) crews and three machine harvest crews. Each ground crew has 12 or 13 cutters, nine packers, four closers, two water boys, two wind-rowers, two cajeros (boxers) and two loaders. The machine crews consist of 10 packers, 2 carton makers, and 11 cutter-baggers and 2 extras.'

The only employees in these crews the Employer admits are agricultural are the 39 cutters in the ground crews. Thus, in order to preserve the Employer's contention regarding the allegedly non-agricultural status of the remaining employees, the Regional Director divided the electorate into three groups. The first group consisted of all employees the parties agreed were agricultural: irrigators, tractor drivers and hoe and thin employees (A List) . The second group consisted of all employees on both ground and machine crews who regularly engaged in cutting, i.e., severing of crops from the ground, and included baggers and cutter-packers as well (B List) . The last group consisted of all employees who engaged in harvest tasks other than cutting (C List).

The tally of ballots cast at the July 7, 1994 election showed the following results for each group: A List:

Teamsters Local 890.	120
No Union	39
Void Ballots	_2
	161

B List:

Teamsters Local 890. . . .	117
No Union	5
Void Ballots.	3
	124

C List:

Teamsters Local 890	70
No Union	2
Void Ballots	1
	73

Aggregate Vote:

Teamsters Local 890. . . .	307
No Union	46
Unresolved Challenged Ballots . .	11
Total	364

There were six void ballots

The Employer contends that under Produce Magic. Inc. (Produce Macric) (1993) 311 NLRB 1277 [144 LRRM 1001], when the 39 cutters from the ground crews are counted as agricultural workers, there remain 81 harvest crew members who are non-agricultural because they spend a substantial amount of their time doing work other than severing produce from the ground, and that the ballots they cast were sufficient in number to affect the outcome of the vote of the agricultural employees. The Employer further contends that all employees on the C List, consisting of non-cutting harvest crew members, also are non-agricultural within the meaning of Produce Magic.[1]

[1] While the National Labor Relations Board (NLRB or national board), in Produce Magic, followed an earlier assertion of jurisdiction as set forth in Olaa Sugar (1957) 114 NLRB 1442 [40 LRRM 1400] , it did so only with regard to the non-agricultural portion of the Produce Magic operations. Here, however, even on that land where the Employer was hot the grower, the ground crew cutters devoted their entire work time

Under Produce Magic, the 39 ground crew cutters are clearly agricultural employees and eligible to vote. Combining the minimum of 31 Teamster votes (B List) they cast with the 120 Teamster votes from undisputedly eligible agricultural employees (A List), an overwhelming majority of votes has been cast for Petitioner in the unit as posited by the Employer, or even in the broader possible unit comprised of employees on the A and B Lists. Therefore, if the 81 employees the Employer contends are non-agricultural had all voted for the No Union choice, their ballots would not be sufficient in number to affect the results of the election either among the B List voters or the election overall. Virtually any combination of ballots that can be constructed here results in a majority vote for the Petitioner.

A review of the Employer's Objections in light of the proffered evidence and arguments reveals no basis for finding that non-agricultural employees were allowed to vote or, alternatively, that even if non-agricultural employees were permitted to cast ballots, those ballots would prove outcome determinative. Therefore, inclusion of employees other than those on the A List, as well as the ground crew cutters, would

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to concededly agricultural duties under the Produce Magic analysis. Thus, even under Produce Magic, which the Employer urges us to follow, both cutter-packers and field packing employees were engaged in agriculture during the fifty-six percent of the time they were working on the Employer's own land. Therefore, every employee in the voting categories addressed in the Employer's Statement of Facts spends substantial time performing admittedly agricultural duties, and thus they continued to be agricultural employees within the meaning of the Agricultural Labor relations Act (ALRA or Act) .]

not, on that basis, be grounds for invalidating the election.[2]

For the reasons set forth above, the Employer's challenge to the scope of the bargaining unit, on the grounds that it is comprised of an outcome determinative number of non-agricultural employees, should be, and it hereby is, dismissed.

The Employer submits an alternative or additional argument in support of its challenge to our jurisdiction which does not change the conclusion above, but which warrants discussion. Royal contends that the present assertion of jurisdiction under the ALRA has been precluded by a 1977 ruling that it was one of several employers whom the NLRB expressly found to be non-agricultural. (Employer-Members of Grower-Shipper Vegetable Association (Employer-Members) (1977) 230 NLRB 1011 [96 LRRM 1054].) Reliance on Employer - Members is misplaced as the NLRB limited the unit described therein to all employees who worked on motorized vehicles used to haul produce from fields to packing sheds or vacuum coolers, as follows:

> All "truck drivers," including drivers, driver-stitchers, stitchers, and folders engaged in hauling produce between the fields and packinghouses, vacuum coolers, and railroad cars, and drivers of support or auxiliary equipment...

[2] A petition seeking clarification of an existing bargaining unit in order to resolve questions of unit composition which were left unresolved at the time of the certification or were raised by changed circumstances since certification may be filed by a labor organization or by an employer where no question concerning representation exists. (8 Gal. Code of Regs, section 20385.)

excluding all agricultural employees, all other employees, guards and supervisors as defined in the Act. (230 NLRB 1011, 1016.)

Where, however, as here, no employees are involved in the hauling of produce, the NLRB's decision in Employer-Members is distinguishable and thus lends no support to the Employer's argument that the employees are non-agricultural. Moreover, with specific regard to Royal's operations in particular, the NLRB found, in the same case, that Royal's loading-hauling employees, were non-agricultural because Royal grew only 20 percent of the crops the Company handled. In so ruling, the NLRB adopted a presumption that Royal's employees work on the Employer's land and the land of independent growers in the same percentage as the overall percentage of Royal's operations as a whole, because the record provided no evidence on this issue. As the NLRB explained:

> Although the applicability of the exemption for agricultural laborers depends upon the nature of the work performed by the individual employees for their own Employer, there is no evidence with respect to their individual assignments. Nothing in the record, however, suggests that the proportion of work performed by the individual employees with respect to the crops of the independent growers is different from that of their Employers and it is reasonable, in the circumstances, to assume it to be the same.
>
> (Employer-Members. supra. at p. 1015.)

As in Employer-Members. the record herein contains no evidence of specific work load distribution. Therefore, the presumption of equal distribution of work assignments, invoked

and relied on by the NLRB in Produce Magic to find the field packing crews to be non-agricultural, would appear to be applicable here, and would at least place an initial burden on the Employer to attempt to show that the present situation differs from that which was before the NLRB. The Employer has presented no evidence which would demonstrate that the amount of work assigned to its own harvest crews, versus work assigned to the crops of other growers, varies from the overall ratio. Accordingly, the Employer's alternative argument provides no independent basis for setting aside the election.

CONDUCT INTERFERING WITH EMPLOYEE FREE CHOICE Union Access (Objection No. 3a.)

The Employer asserts that the Union engaged in misconduct affecting the results of the election when it took unauthorized access to the Employer's property on two occasions prior to the election.

Declaratory support discloses that approximately eight days prior to the election, a Teamster agent arrived prior to the start of work. He spoke to machine crew employees until a bus load of other employees arrived. He then approached the latter, apparently as they disembarked from the bus, but prior to starting work. He spoke to them for about five minutes and gave them a batch of authorization cards. Another declarant states that he observed Union organizers "take access at Sanborn Road as the people were getting ready to leave on the bus. " There is no evidence that the access, during either incident,

took place on the Employer's property, or that it occurred during work, or that it interfered with the Employer's operations. Moreover, the Employer does not claim that the Union took excess access or, while taking access, that it threatened employees or coerced them in any other manner, thereby compromising their ability to freely choose whether or not to be represented by a bargaining agent. Thus, as there is no prima facie showing of conduct which, by an objective standard, would tend to affect the outcome of the election, the objection is dismissed as without merit. (See, e.g., inland and Western Ranches (1985) 11 ALRB No. 39; Frudden Enterprises, Inc. (1981) 7 ALRB No. 22.)

Misleading Campaign Statement Regarding Job Loss (Objection No . 3b.)

Two days prior to the election, the Union circulated a flyer which the Employer has characterized as serving to threaten farming employees with a loss of their jobs should they fail to vote for the Union. The leaflet referred to the Employer's already-announced intent to lay off its harvest crews and replace them with employees provided by a custom harvester. The leaflet described the impending layoff as unjust and called on the Employer to either cancel the planned layoff or assign the work to an entity with which the Union had a contract and then require that entity to hire the Royal employees slated for layoff. The leaflet also stated that Royal had begun to use labor contractors for part of the hoeing and thinning operation,

and that, in time, such work might all be done by labor contractors. The leaflet's reference to the use of labor contractors in the thin and hoe operation constitutes campaign propaganda that is typically generated by parties in contested election matters. It is the type of campaign statement that employees are capable of recognizing as campaign propaganda and assessing its truthfulness. Moreover, under the standard set forth in Midland National Life Insurance Co. (1982) 263 NLRB 127 133 [110 LRRM 1489] , the Board no longer probes into the truth or falsity of the parties' campaign statements, and will not set elections aside on the basis of misleading campaign statements.[3]

Board Agent Misconduct (Objection No. 4a and b.)

As noted previously, it was the early position of the Employer that certain of its employees were not engaged in agriculture within the meaning of the ALRA. In order to preserve the argument for post-election resolution, Board agents agreed to permit employees whose status was in dispute to vote, but only by the challenged ballot procedure which requires the agents to take each challenged voter aside in order to interview him or her concerning such matters as their job duties or classifications, prepare an affidavit accordingly, and then seal

[3] The Employer also alleged that the Union told several crew members that the Employer would be using Vasquez Labor Contractors to take their work away. (See Declaration of Frank Arviso, lines 17-21.) This allegation was not considered by the Executive Secretary as the facts stated in Arviso's declaration were not within the personal knowledge of the declarant. (8 Cal. Code of Regs., section 20365(c) (2) (B) .)

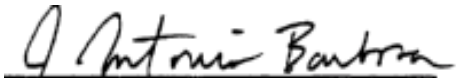
their marked ballot in a separate envelope. The Employer contends that, in the process described above, the Board agents asked potential voters "confusing and inconsistent questions about their job classifications" and displayed a bias against the Employer. The single declarant on this issue stated that Board agents sometimes asked potential voters whether they cut or pack and that once, when an employee asked them why they were inquiring about the nature of his job, he was told that "Royal Packing says if you are not a cutter, you are not a campesino [agricultural employee]." The same declarant expressed a purely subjective belief that the answer would have angered any employee who might have heard the exchange. The Employer contends that fifty voters were waiting to vote when the question was answered, but the declaration is silent as to whether it was even likely that any, or at least an outcome determinative number, of the potential voters might have been within earshot. While the declarant also stated that the answer would have angered any employee who might have heard the exchange, the test for the Board is whether the conduct, when measured by an objective standard, was such that it would tend to interfere with employee free choice. The Employer has failed to present a prima facie case that the Board agents asked employees confusing and inconsistent questions about their job classifications or that the Board agents exhibited a bias by the nature of the response to a question from a potential voter, or that the response in any way interfered with the manner in which that or

any other employee may have cast his or her ballot.

Accordingly, the objection is dismissed.

PLEASE TAKE FURTHER NOTICE that pursuant to California Code of Regulations, Title 8, section 20303 (a) , the Employer may file a request for review with the Agricultural Labor Relations Board within five (5) days of this Order. The five-day period is calculated in accordance with the provisions of California Code of Regulations, Title 8, section 20170. Accordingly, the request for review is due on August 11, 1994.

DATED: August 4, 1994



J. ANTONIO BARBOSA Executive Secretary, ALRB