

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ANDERSON VINEYARDS, INC.,)	
)	
Employer,)	Case No. 98-RC-3-SAL
)	
and)	24 ALRB No. 5
)	(November 24, 1998)
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Petitioner.)	
)	

DECISION AFFIRMING DISMISSAL OF ELECTION OBJECTIONS AND
CERTIFICATION OF REPRESENTATIVE

This case is before the Agricultural Labor Relations Board (ALRB or Board) on Anderson Vineyards, Inc.'s (Employer) Request for Review of the Executive Secretary's order (attached hereto) dismissing the Employer's election objections in their entirety. An election was conducted among Anderson Vineyards' agricultural employees on September 21, 1998, resulting in a tally 37 votes for the petitioner, United Farm Workers of America, AFL-CIO (UFW), and 18 votes for No Union. There were no challenged ballots. On September 28, 1998, the Employer timely filed objections to the election. By order dated October 8, 1998, the Executive Secretary dismissed the objections for failure to provide sufficient declaratory support to establish a prima facie case which, if true, would warrant the setting aside of the election. On October 19, 1998, the Employer timely filed its request for review of the dismissal.

The Beard has reviewed the Executive Secretary's order in light of the request for review and supporting argument and hereby affirms the dismissal of the Employer's election objections for the reasons stated in the attached order. However, one argument contained in the request for review-warrants further comment.

The Employer's central claim is that the Executive Secretary erred in not applying National Labor Relations Board (NLRB) precedent governing last minute electioneering in the polling area. The seminal case in that regard is *Milchem, Inc.* (1968) 170 NLRB 362, wherein' the NLRB adopted a general rule that prolonged conversations in the polling area between voters and representatives of a party will be grounds for setting aside an election without inquiry into the nature of the conversations. The *Milchem* rule is the logical outgrowth of the NLRB's "laboratory conditions" standard for election misconduct, which requires that elections take place "under conditions as nearly as ideal as possible." (*General Shoe Corp.* (1948) 77 NLRB 124'.) While the NLRB no longer applies this standard as strictly as it once did, this Board has consistently declined to follow the "laboratory conditions" standard. (See, e.g., *Sakata Ranches* (1979) 5 ALRB No. 56.) This is based largely on the fact that the peak requirement under the Agricultural Labor Relations Act (ALRA) does not allow the luxury of easily or quickly conducting rerun elections, as is commonplace in the industrial sector. Consequently, this Board will set aside elections only where it

is found that employees could not express a free and uncoerced choice in the election. (Id., at p. 3.) In *Pleasant Valley Vegetable Co-op* (1982) 8 ALRB No. 82, as here, the employer urged us to adopt the strict *Milchem* rule in order to invalidate the election on the grounds of electioneering while employees were preparing to vote. In rejecting the per se rule, we said, "[W]e are convinced that a mechanistic application of *Milchem* combined with a myopic disregard of the surrounding circumstances would not effectuate the purposes of the Act we administer."¹ (Id., at p. 18.) We believe Pleasant Valley was correct in that regard.² Consequently, the Executive Secretary properly declined to apply the per se *Milchem* rule herein and instead focussed on whether the electioneering as alleged would have interfered with free

¹Member McDonald would caution against any per se rule which could serve effectively to deprive the Board of the ability to examine all the circumstances in any given case in order to determine whether the conduct impaired the ability of Board agents to conduct a proper election.

²It should be noted, however, that the question in *Pleasant Valley* was whether one employee had engaged in permissible electioneering in or near the polling area. The Board case found that the employee was not a party, or an agent of a party, and therefore correctly applied the third party standard, i.e., whether the conduct was "so coercive or disruptive" as to render free choice impossible. The Board erred, however, in indicating that the third party standard is appropriate whenever the issue concerns polling area electioneering by either parties or nonparties. (See *Pleasant Valley Vegetable' Co-op* (1986) 12 ALRB No. 31, p. 2, fn. 1.) In the instant case, the only conduct alleged is that of a party to the election and therefore the appropriate standard is whether the conduct was such that, by an objective standard, it would reasonably tend to interfere with the employee free choice, regardless of where the conduct occurred.

choice.³ He reasonably concluded that the shouting of pro-union slogans, the content of which, where specified, was innocuous, would not have tended to affect free choice in the election.

CERTIFICATION OF REPRESENTATIVE

As the Executive Secretary's order dismissing the Employer's election objections in their entirety has been affirmed, we therefore order that the results of the election conducted on September 21, 1998 be upheld and that the United Farm Workers of America, AFL-CIO, be certified as the exclusive

³Chairman Stoker believes that the majority fails to recognize the applicability of the *Milchem* rule as determined by the Board in *Sakata Ranches*. It is true the Board in *Sakata* chose not to apply the NLRB's "laboratory conditions" standard. However, *Sakata* and all other Board decisions which chose not to apply the *Milchem* rule did so on the basis, as noted by the majority in their opinion, that "the peak requirement under the ALRA does not allow the luxury of easily or quickly conducting rerun elections, as is commonplace in the industrial sector." Therefore, to the extent a party demonstrates that peak is not a problem for holding subsequent elections, why should the *Milchem* rule not be considered for applicability to an ALRA election? Significantly the ALRB is to follow NLRB precedent unless statutorily precluded or unless there is a compelling reason articulated justifying deviation from such precedent. In the case at hand, the applicability of *Milchem* is not directed by statute. Consequently, if the only "compelling" reason stated by the majority in their decision or past boards to not apply the *Milchem* rule pertains to peak and the inability to hold "rerun" elections, where such a condition does not exist, why should NLRB precedent not be applied. I believe in limited circumstances, i.e. where peak is not an issue in regards to holding subsequent elections, consideration should be given toward applying the *Milchem* rule. As those circumstances were not placed in evidence and are not before the Board, I concur in the outcome determined by the majority.

collective bargaining representative of all agricultural employees of Anderson Vineyards, Inc. in the State of California.

DATED: November 24, 1998

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

GRACE TRUJILLO DANIEL, Member

MARY E. McDONALD, Member

CASE SUMMARY

Anderson Vineyards, Inc.
(UFW)

24 ALRB No. 5
Case No. 98-RC-3-SAL

Background

An election was conducted among Anderson Vineyards' (Employer) agricultural employees on September 21, 1998, resulting in a tally 37 votes for the petitioner, United Farm Workers of America, AFL-CIO (UFW), and 18 votes for No Union. On September 28, 1998, the Employer timely filed objections to the election. By order dated October 8, 1998, the Executive Secretary dismissed the objections for failure to provide sufficient declaratory support to establish a prima facie case which, if true, would warrant the setting aside of the election. On October 19, 1998, the Employer timely filed a request for review.

The Executive Secretary's Order Dismissing the Objections

The Executive Secretary dismissed allegations involving electioneering by UFW agents at or near the entrance to the polling area both before the election and after balloting began. The Executive Secretary relied on Board precedent holding that campaigning in or near the polling area prior to the actual balloting is not a sufficient ground for setting aside an election. (See, e.g., *United Celery Growers* (1976) 2 ALRB No. 27; *O. P. Murphy & Sons* (1977) 3 ALRB No. 26.), as well as precedent holding that the Board will not set aside an election due to campaigning at or near the polling place on a "per se" basis, but will instead examine whether the conduct was so coercive or disruptive as to interfere with free choice in the election to the extent that it might have affected the outcome of the election. (*Superior Farming Company* (1977) 3 ALRB No. 35; *Sakata Ranches* (1979) 5 ALRB No. 56; *Pleasant Valley Vegetable Co-op* (1982) 8 ALRB No. 82.) Since the supporting declarations reflect only that the electioneering consisted of "shouting pro-union slogans" and shouting "viva la huelga, " "si se puede," and "vote for the union," the Executive Secretary concluded that this did not constitute coercive or disruptive conduct that, would affect free choice. Related allegations that the UFW electioneering delayed the pre-election conference and that Board agents failed to stop the electioneering were dismissed because their validity was dependent upon the merits of electioneering allegations.

An allegation of threats made to employees by UFW agents was dismissed because the supporting declarations failed to reflect the content of the threats, the identity of those making the threats, or the identity of those who heard the threats and, therefore, failed to meet the requirements of the Board's regulations on the content of election objections. (Cal. Code Regs. § 20365, subdivs. (c)(2)(B), (c)(2)(O.)) The Executive

Secretary dismissed an allegation that the UFW breached the preelection agreement to have employees vote one crew at a time for failure to indicate how such conduct could have affected employee free choice in the election.

Board Decision

The Board found that the Executive Secretary had properly declined to apply the per se *Milchem* rule herein (*Milchem, Inc.* (1968) 170 NLRB 362) , and instead focussed on whether the electioneering as alleged would have interfered with free choice. The Board found that the Executive Secretary had reasonably concluded that the shouting of pro-union slogans, the content of which, where specified, was innocuous, would not have tended to affect free choice in the election. The Board affirmed the Executive Secretary's order dismissing the election objections in their entirety and certified the UFW as the exclusive bargaining representative.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

ANDERSON VINEYARDS, INC.,

Employer,

and,

UNITED FARM WORKERS OF AMERICA
AFL-CIO,

Petitioner

Case No. 98-RC-3-SAL

NOTICE OF DISMISSAL
OF ELECTION OBJECTIONS;
NOTICE OF OPPORTUNITY TO
FILE REQUEST FOR REVIEW

PLEASE TAKE NOTICE that, pursuant to California Labor Code section 1156.3(c), the election objections filed by Anderson Vineyards, Inc. (Employer) are hereby dismissed for failure to provide sufficient declaratory support to establish a prima facie case which, if true, would warrant the setting aside of the election.¹ The reasons for the dismissal of each objection are as follows:²

¹The election was conducted on September 21, 1998. The tally of ballots reflects 27 votes for the petitioner, United Farm Workers of America, AFL-CIO (UFW), and 18 votes for No Union. There were no challenged ballots.

²The Employer recently filed an unfair, labor practice charge alleging that, within the last six months, agents of the UFW have restrained and coerced agricultural employees of the Employer. As of the date of this Order, the declarations accompanying the charge identify only conduct occurring after the election. Consequently, the processing of the election objections may proceed without awaiting the outcome of the General Counsel's investigation of the charge.
(*Mann Packing Company, Inc.* (1989) (15 ALRB No. 11.))

1 In Objection No. 1 it is alleged that UFW representatives
2 destroyed the conditions necessary for a valid election by refusing to
3 participate in the pre-election conference and briefing of observers
4 scheduled for 6:00 to 6:30 a.m. on the day of the election, and
5 instead remaining in the employee parking lot shouting at employees
6 and threatening adverse consequences if the Employer prevailed in the
7 election. The accompanying Declarations indicate that UFW
9 representatives did participate in the pre-election conference, therefore
10 it is unclear whether the allegation is that the conference was improperly
11 delayed or that not all of the UFW representatives took part as
12 expected. In any event, it has not been shown how such behavior could have
13 affected employee free choice in the election, or that such conduct affected
14 the conduct of the election. With regard to accompanying and threads in
15 parking lot at that time, the declarations reflected no specific content of
16 the communication and instead simply state the UFW representatives were
17 "shouting pro-union slogans." Without specifics of the contents of any
18 slogans or threats it cannot be concluded was coercive or threatening.³
19 Moreover, accompanying in or near the polling area.

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21 ³ Regulation 20365, subdivision (c)(2)(B) requires, in pertinent part,
22 that "the details of each occurrence and the manner in which it is alleged
23 to have affected or could have affected the outcome of the election shall be
24 set forth with particularity. (Tit. 8, Cal. Code Regs., sec. 20365,
25 subdiv. (c)(2)(B).) This same regulation also provides that "the facts
26 stated in each declaration shall be within the personal knowledge of the
27 declarant." (*Ibid.*) The only reference to threats in the supporting
28 declarations reveals neither the content of the threats nor the identity of
29 those hearing the threats firsthand or of those allegedly making the
30 threats.

1 settling aside an election. (See, e.g., *United. Calsry Growers* 3; (1976) 2
2 ALRB No- 27; *O. P. Murphy & Sons* (1977) 3 ALR3 No. 26.)

3 Objections No. 2, No. 4, and No. 6 allege that a Board agent destroyed
4 the conditions necessary for a valid election by allowing UFW representatives to
5 engage in the conduct complained of. As the supporting declarations are
6 insufficient to support a prima facie showing of conduct by UFW
7 representatives that would warrant the setting aside of the election,
9 these objections must also fail

10 Objection No. 3 alleges that, after voting began, UFW organizers
11 refused to leave the entrance to the polling area and continued to shout at
12 assembled employees on their way to vote. The declarations indicate that, as
13 the voting was set to begin, and after management and union personnel were
14 instructed to leave the premises, two UFW organizers stopped their vehicle at
15 the entrance to the polling area and began shouting "viva la huelga, " "si se
16 puede, " and "vote for the union." At the time, 20-30 voters were assembled
17 between two and seven feet away. The declarations also indicate that the
18 organizers then proceeded to the designated parking lot just outside the
19 Polling area, where the shouting of slogans continued.

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21 The Board will not set aside an election due to campaigning at or near
22 the polling place on a "per se" basis, but will instead examine whether the
23 conduct was so coercive or disruptive as to
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1
2 examine whether the conduct was so coercive or disruptive as to interfere
3 with, free choice in the election to the extent that it might have affected
4 the outcome of the election. (Superior
5 *5-Fanning Company* (1977) 3 ALRB No. 35; *Sakata Ranches* (1979) 5 ALRB 6'no.
6 56; *Pleasant Valley Vegetable Co-op* (1982) 8 ALRB No. 82.) The 7 mere
7 shouting of pro-UFW slogans as alleged in Objection No. 3 does not
9 constitute coercive or disruptive conduct that would affect free
10 choice.

11 Objection No. 5, in addition to repeating the allegations
12 of the shouting of slogans at the entrance to the voting area discussed
13 above, alleges that UFW organizers breached a pre-election agreement to
14 have employees vote one crew at a time and instead told all employees
15 to come in and vote at the same time.⁴ This objection is dismissed for
16 failure to indicate how such conduct could have affected employee free
17 choice in the election. While the Board will carefully scrutinize alleged
18 violations of election agreements in order to safeguard against prejudice
19 to the fairness of the election, the standard utilized is whether the
20 violation affected employee free choice. (*D'Arrigo Bros, of California*
21 (1977) 3 ALRB No. 37.)

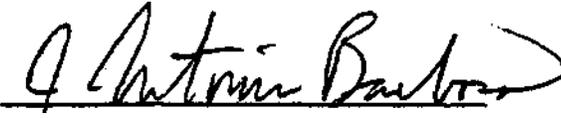
22 Objections No. 7 and No. 8 simply assert that the conduct

23 ⁴Added to the previous allegation of shouting of slogans is the
24 assertion that such I conduct created a chaotic, circus-like atmosphere.
25 However, the declarations fail to provide I evidence of such an atmosphere
26 and, thus, fail to meet the specificity requirements of the Board's
27 regulations. (Tit. 8, Cal. Code Regs., sec. 20365, subdiv. (c)(2)(B).)

1 alleged in Objections No.1 through. No.6 warrants setting aside
2 the election. For the reasons set forth above, these two
3 objections also must be dismissed.

4 PLEASE TAKE FURTHER NOTICE that pursuant to California Code of
5 Regulations, Title 8, section 20393 (a), the Employer may file a request
6 for review with the Board within five (5) days of date of this order. The
7 five-day filing period is calculated in accordance with California Code of
8 Regulations, Title 8,
9 section 20170. Accordingly, the request for review is due on October
10 19, 1998.
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12 DATED: October 8, 1998

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15 J. ANTONIO BARBOSA
16 Executive Secretary, ALRB
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State of California
AGRICULTURAL LABOR RELATIONS BOARD
Estado de California
CONSEJO DE RELACIONES DE TRABAJADORES AGICOLAS

ANDERSON VINEYARDS, INC.,

 Employe

r, and

UNITED FARM WORKERS OF AMERICA, AFL-
 CIO, Petitioner.

Case No. 98-RC-3-SAL

Caso Num. (24 ALRB No. 5)

CERTIFICATION OF REPRESENTATIVE
CERTIFICACION DEL REPRESENTANTE

An election having been conducted in the above matter under the supervision of the Agricultural Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no petition filed pursuant to Section 1156.3(c) remaining outstanding;

Habiendose conducido una eleccion en el asunto arriba citado bajo la supervision del Consejo de Relaciones de Trabajadores Agricolas' de acuerdo con las Reglas y Regulaciones del Consejo; y apareciendo por la Cuenta de Votos que se ha seleccionado un representante de negociacion colectiva; y que no se ha registrado (archivado) una peticion de acuerdo con la Seccion 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 establecida en el suscribiente por el Consejo de Relaciones de Trabajadores Agricolas, por LA PRESENTE SE CERTIFICA que la mayoria de las balotas validas han sido depositadas en favor de

UNITED FARM WORKERS OF AMERICA, AFL-CIO

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 Seccion 1156 del Acto de Relaciones de Trabajadores Agricolas, dicha organizacion de trabajadores es el representante exclusive de todos los trabajadores en la unidad a que se refiere, y se ha determinado que es apropiada con el fin de llevar a cabo negociacion colectiva con respecto al salario, las horas de trabajo, y otras condiciones de empleo.

All the agricultural employees of Anderson Vineyards, Inc. in the State of California
UNIT:

UNIDAD:

Signed at Scamentro, California

On the 24th day of November, 1998

Firmado on _____

En el _____ dia de _____ 19__

ALRB 49

On behalf of
AGRICULTURAL LABOR RELATIONS BOARD

De parte del
CONSEJO DE RELACIONES DE TRABAJADORES AGRICOLAS



JOSEPH A. WENDER, JR., Acting Executive Secretary