

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

THE HESS COLLECTION WINERY,)	
Employer,)	Case No. 99-RC-1-SAL
and)	25 ALRB No. 2
UNITED FOOD AND COMMERCIAL)	(May 12, 1999)
WORKERS LOCAL 1096, FRESH)	
FRUIT & VEGETABLE WORKERS,)	
AFL-CIO-CLC,)	
<u>Petitioner</u>)	

DECISION AFFIRMING DISMISSAL OF ELECTION OBJECTIONS
AND CERTIFICATION OF REPRESENTATIVE

This case is before the Agricultural Labor Relations Board (ALRB or Board) on The Hess Collection Winery's (Employer or Hess) 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 Hess's agricultural employees on March 29, 1999, resulting in a tally of 63 votes for the petitioning union, United Food and Commercial Workers Local 1096, Fresh Fruit & Vegetable Workers, AFL-CIO-CLC (UFCW or Union) and 2 votes for No Union. There were no challenged ballots. On April 5, 1999, the Employer timely filed objections to the election. By order dated April 8, 1999, 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 April 19, 1999, the Employer timely filed its request for review of the dismissal.

The Board has reviewed the Executive Secretary's order in light of the request for review and supporting arguments and hereby affirms the dismissal of the Employer's election objections for the reasons stated in the attached order.

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 March 29, 1999, be upheld and that the United Food and Commercial Workers Local 1096, Fresh Fruit & Vegetable Workers, AFL-CIO-CLC, be certified as the exclusive collective bargaining representative of all agricultural employees of The Hess Collection Winery in the State of California.

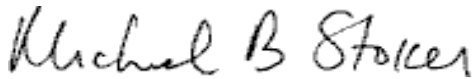
DATED: May 12, 1999



GENEVIEVE A. SHIROMA, Chair



IVONNE RAMOS RICHARDSON, Member



MICHAEL B. STOKER, Member



GLORIA A. BARRIOS, Member



HERBERT O. MASON, Member

CASE SUMMARY

The Hess Collection Winery
(UFCW)

25 ALRB No. 2
Case No. 99-RC-1-SAL

Background

An election was conducted among The Hess Collection Winery's (Employer) agricultural employees on March 29, 1999, resulting in a tally of 63 votes for the petitioner, United Food and Commercial Workers Local 1096, Fresh Fruit & Vegetable Workers, AFL-CIO-CLC (Union), and 2 votes for No Union. On April 5, 1999, the Employer timely filed objections to the election. By order dated April 8, 1999, 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 April 19, 1999, the Employer timely filed a request for review.

Executive Secretary's Order Dismissing the Objections

The Executive Secretary dismissed the objection that the bargaining unit should have been limited to Napa County employees as agreed to by the parties, rather than including all of the Employer's employees in the State of California. The Executive Secretary relied on the statutory requirement for statewide bargaining units except in some cases where an employer has agricultural employees in at least two noncontiguous geographical areas (Labor Code section 1156.2), a factor not alleged by the Employer.

The Executive Secretary dismissed the objections that two of the Employer's supervisors entered the voting area on the day of the election and used their power and influence as supervisors unlawfully to induce and coerce employees to support and vote for the Union. The Executive Secretary found that the declarations failed to support the allegations that the supervisors showed improper support for the Union or acted as agents of the Union or caused employees to believe they were acting on behalf of the Employer in supporting the Union. He also found that the declarations failed to establish that the supervisors made any coercive statements or gestures, and that their mere presence in the polling area for approximately five minutes was insufficient to establish coercion; moreover, since they had contact with only 20 to 30 voters, the conduct could not have been outcome determinative since the margin of the Union's victory was sixty-one votes.

The Executive Secretary dismissed the objection alleging that Board agents committed misconduct by allowing the two supervisors to come into the voting area and speak to several of the 20 or 30 employees waiting in line to vote. The Executive Secretary dismissed this objection on grounds that there was no showing that the supervisors' presence in the voting area was coercive, that their conduct could not have affected an outcome determinative number of voters, and that once the Board agents discovered that the two men were supervisors, they were told they could not vote.

The Executive Secretary dismissed the objection that the concerted conduct of the Board, its agents, the Union, and its agents and supporters, interfered with the fair operation of the election. The Executive Secretary reiterated that the only arguable misconduct alleged in the Employer's declarations, the appearance of the two supervisors in the polling area, could not have been outcome determinative.

The Executive Secretary dismissed the objection that the UFCW is not a labor organization under the Agricultural Labor Relations Act (ALRA) because it also represents nonagricultural employees under the jurisdiction of the National Labor Relations Board. The Executive Secretary dismissed this objection on the grounds that there is no provision under the ALRA or any other law that prohibits a labor organization from representing both agricultural and nonagricultural employees.

Board Decision

The Board found that the Executive Secretary had properly dismissed the Employer's election objections for failure to state a prima facie case. The Board affirmed the Executive Secretary's order dismissing the election objections in their entirety and certified the UFCW 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.

* * *

1 the appropriate unit or units. Section 20365, subdivision (c)
2 (1) of the Agricultural Labor Relations Board's regulations¹
3 requires that a party objecting to an election on the grounds
4 that the Regional Director improperly determined the
5 geographical scope of the unit include a detailed statement of
6 facts and law relied upon.

7 Here, the objections do not contain a detailed
8 statement of facts and law, nor is there any assertion in the
9 objections that there are employees in two or more
10 noncontiguous geographical areas. Absent facts reflecting
11 that assertion, the Board is required by Labor Code section
12 1156.2 to designate a statewide unit. The only fact alleged
13 in support of the objection is that the parties agreed on a
14 unit encompassing only Napa County. The Board cannot be bound
15 by an agreement of the parties that contravenes the command of
16 Labor Code section 1156.2. (R.C. Walter & Sons (1976) 2 ALRB
17 No. 14.)

18 Objections No. 2 and No. 3, in which it is alleged
19 that Vineyard Managers Alfonso Elena and Efrain Ponce, in
20 their capacities as supervisors and/or as agents of the Union,
21 unlawfully induced and coerced the employees to support
22 Petitioner and vote for it in the election, are dismissed for
23 failure to provide declaratory support for the allegations.²
24

25 ¹The Board's regulations are codified at Title 8, California Code of
26 Regulations, section 20100, et seq.

27 ²Section 20365, subdivisions (c)(2) and (c)(2)(B), of the
Board's regulations require that objections be supported by

1 Specifically, it is alleged that Elena and Ponce were
2 instrumental in the Petitioner's election campaign and coerced
3 voters waiting in line to vote by appearing in the voting area
4 and attempting to vote. It is also alleged that the two men
5 spoke with several of those waiting in line to vote, though
6 the content of the conversation is unknown.

7
8 Supervisory support for the union will invalidate a
9 union's majority only when the supervisors' activities:

10 (1) cause the employees to believe the
11 supervisors are acting on behalf of the
12 employer and that the employer favors the
13 union; or (2) led the employees to
14 support the union because they fear
15 future
16 retaliation by the supervisors.

17 (*Wright Memorial Hospital v. NLRB* (8th Cir. 1985) 771 F.2d
18 400; *Bright's Nursery* (1984) 10 ALRB No. 18; *Lonoak Farms, et*
19 *al.* (1991) 17 ALRB No. 19). Moreover, the Board will not set
20 aside an election due to electioneering at or near the polling
21 place on a "per se" basis, but will instead examine whether
22 the conduct would tend to effect free choice to the extent
23 that it might have affected the outcome of the election.
24 (*Anderson Vineyards, Inc.* (1998) 24 ALRB No. 5.)

25 Here, the declarations fail to contain any facts
26 concerning the period prior to the election that reflect any
27 improper support by Elena and Ponce for Petitioner, nor any
28 facts reflecting that the two men ever acted as agents of

29 declarations containing facts within the personal knowledge
30 of the declarants which, if uncontroverted or unexplained,
31 would constitute sufficient grounds for refusing to certify
32 the election.

1 Petitioner.³ Nor are there facts alleged which would reflect
2 that the employees would believe that Elena and Ponce's
3 support for the union was at the behest of the Employer.
4 Rather, the central allegation is that Elena and Ponce,
5 knowing that they were ineligible to vote, nevertheless
6 attempted to vote in order to show their solidarity with
7 Petitioner and to emphasize their authority over the
8 employees. However, the declarations do not contain any facts
9 reflecting that Elena and Ponce made any coercive statements
10 or gestures, and their mere presence in the polling area for
11 approximately five minutes is insufficient in itself to
12 establish coercion. More importantly, under the facts as
13 alleged, a maximum of thirty voters could have been affected
14 by the two supervisors' conduct. As the margin of victory was
15 sixty-one votes, the conduct could not have been outcome
16 determinative.

17 Objection No. 4, in which it is alleged that Board
18 agents interfered with the election process by allowing Elena
19 and Ponce in the polling area, is dismissed for the reasons
20 stated above. In addition, the declarations reflect that once
21 the Board agents discovered that Elena and Ponce were
22 supervisors, they were told they could not vote and the two
23 men were in the polling area for a total of "at least five
24

25 ³The declarations contain only general statements that Elena
26 and Ponce were strong supporters of Petitioner, which is not
27 sufficient to establish an agency relationship. (See, e.g.,
D'Arrigo Bros. (1977) 3 ALRB No. 37.)

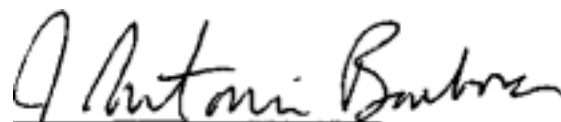
1 minutes." No Board agent misconduct is reflected by such
2 facts.

3
4 Objection No. 5, in which it is alleged that the
5 cumulative effect of the conduct alleged in prior objections
6 requires the setting aside of the election, is dismissed for
7 the reasons stated above with regard to the prior objections.
8 As discussed above, the only arguable misconduct supported by
9 the declarations, the appearance of Elena and Ponce in the
10 polling area, could not have been outcome determinative.

11 In Objection No. 6 it is alleged that the Union is
12 not a labor organization within the meaning of the
13 Agricultural Labor Relations Act (ALRA) because it already
14 represents nonagricultural employees under the jurisdiction of
15 the National Labor Relations Board. This objection is
16 dismissed because there is no provision under the ALRA or any
17 other law which prohibits a labor organization from
18 representing both agricultural and nonagricultural employees.

19 PLEASE TAKE FURTHER NOTICE that, pursuant to section
20 20393, subdivision (a) of the Board's regulations, the
21 Employer may file with the Board a request for review of the
22 dismissal of its election objections. The request for review
23 is due on April 19, 1999.

24 DATED: April 8, 1999

25 
26

Hess Collection STATE OF CALIFORNIA
99-RC-1-SAL AGRICULTURAL LABOR RELATIONS BOARD

PROOF OF SERVICE BY MAIL
(10133, 201.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 915 Capitol Mall, 3rd Floor, Sacramento, California 95814.

On April 8, 1999 I served the within NOTICE OF ORDER_____

DISMISSING ELECTION OBJECTIONS; NOTICE OF OPPORTUNITY TO FILE
REQUEST FOR REVIEW_____

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

FAXED/CERTIFIED MAIL

Randolph C. Roeder
LITTLER MENDELSON
650 California St, 20th Fir.
San Francisco, CA 94108-2693
FAX **415/743-6589**

Jacinto Roy Mendoza
UNITED FOOD & COMMERCIAL WORKERS
Local 1096
P.O. BOX 5519
Salinas, CA 93915
FAX 831/422-7997

Freddie Capuyan
SALINAS ALRB REGIONAL OFFICE
1880 N. Main St., #200
Salinas, CA 93906
FAX 831/443-3225

HAND-DELIVERED

PAUL RICHARDSON
General Counsel

Executed on April 8, 1999 at Sacramento, California. I certify (or declare), under penalty of perjury that the foregoing is true and correct.


BARBARA LUNDGREN

State of California
AGRICULTURAL LABOR RELATIONS BOARD

Estado de California
CONSEJO DE RELACIONES DE TRABAJADORES AGRICOLAS

THE HESS COLLECTION WINERY,

Employer,

and

UNITED FOOD AND COMMERCIAL WORKERS LOCAL 1096,
SH FRUIT & VEGETABLE WORKERS, AFL-CIO-CLC,

Petitioner.

Case No. 99-RC-1-SAL

Caso Num. (25 ALRB No. 2)

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 petition de acuerdo con la Section 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 mayori'a de las balotas validas han sido depositadas en favor de

**UNITED FOOD AND COMMERCIAL WORKERS LOCAL 1096, FRESH FRUIT & VEGETABLE
WORKERS, AFL-CIO-CLC**

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 Section 1156 del Acto de Relaciones de Trabajadores Agricolas, dicha organization de trabajadores es el representante exclusivo de todos los trabajadores en la unidad aqui'mplicada, 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 emp/eo.

**All the agricultural employees of the Hess Collection Winery in the State of
UNIT: California**

UNIDAD:

Signed at Sacramento, California

On behalf of

On the 12th day of May 1999

AGRICULTURAL LABOR RELATIONS BOARD

Firmado en _____

De parte del

En el _____ dia de _____ 19 _____

CONSEJO DE RELACIONES DE TRABAJADORES AGRICOLAS

ALRB 49



J. ANTONIO BARBOSA