STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
J. J. CROSETTI CO., INC.,	)	No. 75-RC-13-M
Employer,	)	
	)	2 ALRB No. 1
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
Petitioner,	)	
and	)	
WESTERN CONFERENCE OF TEAMSTERS, AGRICULTURAL DIVISION, IBT, AND AFFILIATED LOCALS: GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION LOCAL 890 AND TRUCKER DRIVERS, WAREHOUSEMEN AND HELPERS UNION LOCAL 898,	)	
Intervenor.	)	

On September 2, 1975, the United Farm Workers of America, AFL-CIO, ("UFW") filed a Petition for Certification seeking an election among all agricultural employees of the employer excluding packing shed and cooler employees. The Western Conference of Teamsters, Agricultural Division, I.B.T., intervened on behalf of itself and its affiliated locals, and also filed *a* cross-petition seeking inclusion of Crosetti employees within a multi-employer unit consisting of workers of 156 employers who had previously given powers of attorney to the Employers' Negotiating Committee.

The Salinas regional director determined that the multi-employer unit was inappropriate and ordered the election held solely among workers of the individual employers, including J. J. Crosetti. The Crosetti election was conducted on September 10, 1975. The ballots in this election, along with others, were impounded pursuant to

Board order pending determination of the multi-employer bargaining unit issue in Eugene Acosta, et al., 1 ALRB No. 1 (1975). When the Board on September 17, 1975 concluded that single employer units were appropriate, it ordered the impounded ballots counted forthwith. That tally, conducted the evening of September 17, was as follows: UFW 142, Teamsters 49, "no union" 3, challenged ballots 27, void ballots 9.

Objections to the election were filed by the employer, the Western Conference of Teamsters, and General Teamsters, Warehousemen and Helpers Union Local 890 and Truck Drivers, Warehousemen and Helpers Union Local 890 ("Local 890"). The Western Conference's objections were dismissed.[1/] Consequently, we consider herein only the objections of the employer and Local 890. As discussed, we find each without merit.

The first of the employer's five objections relates to the multi-employer issue and is identical to objections rejected by the Board in other cases. It is urged that the proper bargaining unit was the multi-employer unit, rather than solely the employees of J. J. Crosetti. The Board has previously considered this issue at length, and rejected that contention, Eugene Acosta, et al., supra, 1 ALRB No. 1.

[1/]The Western Conference's objections were initially dismissed for failure to file supporting declarations. Upon a request for reconsideration and a review of the record, the Board ordered the hearing reopened for the taking of evidence on these objections. On the date set, however, the Teamsters appeared without witnesses and asked for a continuance. That request was denied, and no evidence was taken on the Teamsters' objections. Consequently, they are dismissed.

Two additional employer objections are directed to the fact that at the pre-election conference, the parties were informed that the election would be held on September 8, 1975, the sixth day after the filing of the petition, but that the date was changed and it was ultimately held on September 10, the eighth day. The employer contends that an election on the eighth day violates the statute's mandate that elections be held within seven days of the filing of a petition [Labor Code, § 1156.3(a)] , and that some workers may have been misled by the change in dates and may have failed to vote.

The evidence is uncontradicted. The pre-election conference was held on September 6. At that meeting, attended by all parties, there was extensive discussion concerning whether the election would be held September 8. The UFW protested, in part because some 115 of the 285 eligible employees were on lay-off status, and would not be working on the day of the election. However, the employer stated that it could contact those workers to inform them of the voting. Additionally, the Board agent asked the employer to arrange for announcements on local radio stations as an additional means to get out the word, which was done before the end of the conference. When the parties left the conference, the election was set for September 8.

An hour later, Joseph Gerber, Jr., the employer representative who had attended the conference, received a telephone call from a Board agent, telling him that the election had been reset for September 10, 1975. The Board agent explained that the rescheduling had been ordered by Jerrold Schaefer, the Deputy General Counsel of the ALRB, who was in Salinas to advise the regional

office during the hectic early days of the Board's existence. Mr. Gerber testified that he did not call the radio station to cancel or make new arrangements for announcing the election and was not sure whether another Crosetti employee had done so. The election was held September 10, with 230 of the estimated 285 eligible employees voting. The 115 laid-off employees had been recalled the previous day.

The fact that the election was held on the eighth day after the filing of the petition is not of itself reason to set the election aside, in the absence of a showing of prejudice. Klein Ranch, 1 ALRB No. 18 (1975). The purpose of the seven-day provision in the Act is to maximize voter participation. The only evidence of change between the sixth and eighth days in the number of eligible employees actually working is that 115 additional eligible employees had returned to work. To that extent, the statutory purpose of ensuring a large voter turn-out was not frustrated but enhanced.

There is no evidence that any employees were in fact confused or deterred from voting by the change in election schedule. The actual voter participation of over 80 percent was in line with and perhaps higher than the average for other elections conducted during the same period. And the number of workers who did not vote is low in comparison both to the number of workers who were facilitated in voting by the date change and to the margin of the UFW's victory on the tally. Accordingly, we find these objections without merit.

The employer's next objection is that the Direction and Notice of Election was misleading because it described the eligible voters as agricultural employees of the employer (excluding packing shed and cooler employees) who were employed "during the payroll period ending August *27,* 1975." Crosetti truck drivers are on a different payroll from the field workers, which did not end August 27. Consequently truck drivers who saw the Direction and Notice of Election might have believed that they were ineligible to vote, even though, the employer contends, the truck drivers are agricultural employees.

The facts do not support this argument that the truck drivers were confused by the Direction and Notice of Election. The parties stipulated that the record might be augmented to include the official eligibility list, used by Board agents conducting the Crosetti election to check off which voters cast ballots. That list classified all employees by job category. Examination of that list indicates that of the 13 employees included within the general category of truck driver (e.g., truck drivers, folders, and stitcher drivers) only four did not vote, a number far too small to affect the election's outcome.[2/]

[2/]The list indicates that votes were cast by seven of the eight truck drivers, one of the two stitcher drivers, and neither of the two folders.

Finally, the employer argues that on the evening of September 17, when the Board ordered the ballots counted, the employer received too little notice of the tally, and consequently, was not able to have a representative present. The evidence was as follows: Joseph Gerber, the company representative, testified that at 7:20 p.m. on September 17, he was informed by Martin Kulish, a shed foreman for Crosetti, that he had received a telephone call from an unidentified ALRB agent ten minutes earlier, stating that the Crosetti ballots would be counted at 7:30 p.m. that night in Salinas 18 miles away. Because he was in Watsonville and believed that he could not reach Salinas by 7:30 p.m., Gerber telephoned Richard Allen, the employer's attorney, to inform him of the situation. Gerber did not call the ALRB to seek a delay.

Allen called Andrew Church, counsel for the Grower-Shipper Association, around 7:40 p.m. at the Townehouse Motel in Salinas, where the ballots were going to be counted, and asked Church to object to any tally of the Crosetti ballots unless Allen and other employer observers could be present. After being informed by Church that the actual counting had not begun, Allen made no attempt to have an employer representative attend the tally.

Gerald Goldman, a UFW attorney, testified that the Crosetti ballots were not actually counted until 11:00 p.m. Both the UFW and the Teamsters had several observers present during the counting. Francisco Pinada, a Crosetti worker who served as a UFW observer in the election, testified that until opened that evening, the ballot box was "just as it had been" when it was

sealed after the election on September 10. Since the integrity of the ballot box and the propriety of the ballot count have been substantiated, and it appears that the employer did not make a determined effort to have its observers present for the tally, we overrule this objection. West Coast Farms, 1 ALRB No. 15 (1975), J. R. Norton, Co., 1 ALRB No. 11 (1975).

In contrast to the employer, Local 890 asserts that the election should be set aside because the truck drivers were wrongfully included in the bargaining unit. As in Interharvest, 1 ALRB No. 2 (1975) and J. R. Norton, Co., 1 ALRB No. 11 (1975), Local 890 claims that the truck drivers, stitcher drivers and folders should have been excluded (1) because they are within the coverage of the NLRA and consequently are not "agricultural employees", and (2) even if they are agricultural employees, they have a separate history of collective bargaining and *a* separate community of interest.

We follow our reasoning in Interharvest and J. R. Norton, Co. In those cases, we stated that, as to the NLRA contention, since the number of truck drivers, stitcher drivers, and folders who voted was insufficient to affect the outcome of the election, it is appropriate to certify the UFW as bargaining representative for a unit consisting of all agricultural employees, excluding packing shed workers.[3/] We leave the status of employees in these

[3/]Although the Direction and Notice of Election described the unit as all agricultural employees of the employer excluding packing shed and cooler employees, the employer states that it has no cooler employees, a point not disputed by the UFW. The certification should reflect the employer's actual employment situation, and should not simply parrot an erroneous unit description taken from the Direction and Notice of Election.

disputed categories to be determined by the NLRB in proceedings currently proceeding before it or, if prompt clarification is not forthcoming from the NLRB, through proceedings for clarification or modification of the certification before this Board. As to the second ground for objection, we adhere to our holding that the Board lacks jurisdiction to exclude agricultural workers based on bargaining history or community of interest, in view of the mandate in section 1145.2 of the Labor Code.

The UFW is certified as the collecting bargaining representative of all agricultural employees of the employer excluding packing shed workers.

Certification issued.

Dated: January 6, 1976

Roger M. Mahony, Chairman

LeRoy Chatfield, Member

Joseph R. Grodin, Member

Joe C. Ortega, Member

Board Member Richard Johnsen did not participate in this decision.