

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

TOM BURATOVICH AND SONS,)	
)	
Employer,)	No. 75-RC-49-F
)	
and)	2 ALRB No. 11
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	

The UFW petitioned the ALRB to set aside an election conducted on September 15, 1975, among the employees of Buratovich and Sons in Dinuba, California.

The tally showed 9 votes for the UFW, 17 for no union and 35 challenged ballots. Subsequently the regional director sustained the challenges on the grounds that the packing shed was commercial and not covered by the ALRA.^{1/}

We deny the UFW objections and certify the results of the election.

UFW OBJECTIONS

I. Employer's Anti-Union Campaign. The UFW maintains that an anti-union campaign among the shed workers affected the vote of the field workers.

The record shows:

a. the shed was closed during the week preceding the election,

^{1/}The UFW petitioned to represent only the field workers while employer sought to include the shed workers as the appropriate unit. The regional director permitted the shed workers to vote challenged ballots pending his post-election report. NO exceptions to the Regional Director's Report were filed.

b. the employer made available to the shed workers on the day of the election an anti-union "memo" urging them to vote for "No Union,"

c. the shed supervisor had strong anti-union feelings,

d. some shed workers had strong anti-union feelings,

e. some shed workers felt they were being pressured by the supervisor to vote against the union,

f. no evidence to support the claim that whatever anti-union campaign there might have been in the shed was carried over or connected to the field workers (two miles away) either prior to the election or on the day of the election,

g. no evidence from the field workers that they were intimidated by anything that happened in the shed.

On this record we conclude that the field workers were not influenced by any employer anti-union campaign that might have been waged among the shed workers.

II. Employer's denial of access

The UFW maintains that they were refused permission to talk to the shed workers on the day of the election.

The record shows:

a. that during the preelection conference on the Saturday before the Monday afternoon election, the employer refused to give permission to the UFW for access to the shed workers,

b. the UFW made no effort on Monday to exercise their right of access to the shed workers,

c. no evidence that the UFW was ever denied access to the field workers.

On this record we conclude that the UFW was not denied access to the field workers.

III. Employer's payroll list defective

The UFW maintains that the employer's list failed to include 25 percent of the employee's addresses. The evidence fails to support this allegation.

The record shows:

a. some of the names had an initial for the first name,
b. some of the addresses had P. O. Boxes,
c. no evidence as to the number of incomplete or whether the incomplete addresses belonged to shed or field workers.

On this record we conclude that the evidence does not support the UFW allegation.

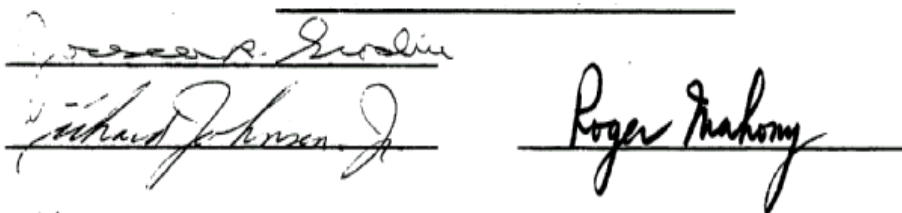
We do not find that the employer failed to exercise due diligence,^{2/} or acted in bad faith in supplying the list of names and addresses.

Further, we cannot ascertain the effect, if any, on the Union's efforts to communicate with the field workers.

Based on the above, we hereby certify the results of the election.

Certification ordered.

Dated: January 19, 1976.

The image shows three handwritten signatures, each written over a horizontal line. The first signature is mostly illegible but appears to be 'James A. ...'. The second signature is 'Richard Johnson, Jr.'. The third signature is 'Roger Mahony'.

^{2/}See Yoder Brothers, Inc., 2 ALRB No. 4 (1976).

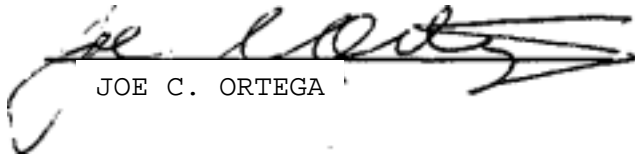
Member, J. ORTEGA, concurring:

I am unable to sign the majority opinion in this case for the reasons stated in my dissent in Yoder Brothers, Inc., 2 ALRB No. 4 (1976). As I stated in that case, I do not believe the test on the completeness of the employee list should be based on the employer's subjective due diligence or bad faith in supplying the list of names and addresses. Rather the test should be based on the prejudicial effect, if any, that the defective list had on the union's ability to communicate with potential voters.

I concur in the results, because, as the majority states, there is no evidence on the record of what effect the

defective list had on the union's effort. Further, the record is incomplete as to the extent of the defects on the list. Since the objecting union failed to establish those facts, we therefore must concur in certifying this election.

Dated: January 19, 1976


JOE C. ORTEGA