STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACK OR MARION RADOVICH, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner, and WESTERN CONFERENCE OF TEAMSTERS, AGRICULTURAL DIVISION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Intervenor.	No. 75-RC-46-F 2 ALRB No. 12

In an election in Delano on September 12, 1975, the United Farm Workers of America, AFL-CIO ("UFW") received a majority of the votes.[1/] The employer urges us to set aside the election because it claims certain alleged misrepresentations and promises of benefits by the UFW constitute misconduct affecting the results of the election.

The employer also urges that other objections relating to the adequacy of the UFW's showing of interest and adequacy of the notice of election were improperly dismissed. We decline to set aside the election and certify the results.

[1/] The UFW received 83 votes. The Western Conference of Teamsters intervened and received 17 votes. There were 46 votes for no union, 1 void ballot and 2 unresolved challenges.

1. Misrepresentations. Jacinto Santiago, an eligible voter, testified that three or four days before the election, in response to his comment that he was going to vote for "no union", a UFW organizer told him that "if the rancher won, they were going to pay $1.45 an hour." Seven other workers were present. Santiago left the discussion immediately after the remark was made, while the others stayed to have further discussions with the organizer. Santiago said that he had never seen the organizer before and he did not believe the statement of the organizer that if "no union" won, the employees would receive $1.45 an hour. No ether witness corroborated the statement.

Marion J. Radovich, partner of the employer, testified that he never told any employee that if "no union" won, he would pay $1.45 an hour. In fact, he made a campaign speech opposing the union to one of his crews in which he stated that if there was no union, the workers would earn more than they would otherwise. He promised that if the unions were defeated, *he* would set up a pension fund. In addition, the day before the election, the employer addressed a signed leaflet to all employees which specifically said that "if no union is voted in, we will continue to provide you with all your benefits" under the contract with the Teamsters then in effect, a contract which provided for benefits exceeding $1.45 an hour.[2/]

[2/]The leaflet read, in relevant part:

> "3. When the election is over and approved by the Board, the contract that we have now will be thrown out. If no union is voted in, we will continue to provide you with all your benefits; if a union wins and the election is approved, any benefits that you get must be renegotiated.

(fn. cont. on p. 3)

The statement that the employer would pay $1.45 an hour if the union lost was a misrepresentation not only because the employer promised to pay more than that, but because he was required under law to pay the minimum wage, which exceeds $1.45 an hour. The statement was not a threat because the union cannot lower wages if it loses an election.

In the case of Jake J. Cesare & Sons, 2 ALRB No. 6 (1976), we noted our agreement with the reservations expressed by the National Labor Relations Board about overturning elections on the basis of the Board's evaluation of campaign statements out of the context of a heated election campaign.[3/] We said that insofar as the NLRB's current standards for judging the impact of misrepresentations is based on the notion that elections should be conducted in "laboratory conditions", that analysis may have limited applicability to elections conducted among agricultural employees. Samuel S. Vener Company, 1 ALRB No. 10 (1975). In addition our authority to overturn elections on the

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(fn. 2 cont)

> 4. Many promises have been made to you, but only you can decide what to believe.
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> We are not against unions; we feel that we can work with unions as long as they are fair and reasonable; if a union wins the election and is not reasonable in its demands, we will be forced to get out of the grape business and terminate all of our workers."

Modine Manufacturing Company, 203 NLRB 527 (1973). Member Penello of the NLRB has urged that the Board abandon the rule in Hollywood Ceramics [140 NLRB 221 (1962)] entirely. Medical Ancillary Services, 212 NLRB No. 80 (1974) (dissent). Ereno Lewis, 212 NLRB No. 45 (1975) (dissent).

basis of misrepresentations must be exercised in line with the provisions of the First Amendment to the United States Constitution, and of Section 2 of Article I of the California Constitution.[4/] Wilson v. Superior Court, 13 Cal 3d 652 (1975). See also Labor Code § 1155.

Even if we utilize the guidelines by the NLRB in considering objections to misrepresentation,[5/] we would not set aside the election. The remark about the consequences of the defeat of the union was not part of an organized election campaign. Employees hearing it had no reason to suspect that the organizer had inside knowledge of the employer's plans. In fact, the employee who testified did not believe the remark when it was made. The employer not only had an opportunity to reply, but did reply. Such a misrepresentation could not be a basis for overturning an election.

Two workers, Eladio Maldonado and Domingo Figura, testified that a few days before the election, each of them were told by UFW organizers that if the UFW won the election, no workers would be dispatched from union-run hiring halls, as they had been under a previous contract between the employer and the UFW. The employer claims that these statements to the workers were also misrepresentations.

[4/] "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for abuse of this right. A law may not restrain or abridge liberty of speech or press."

[5/] Hollywood Ceramics, 140 NLRB 221 (1962).

It is to be expected that during' an election campaign, unions will attempt to convince workers that if the workers select the union, the union will bargain on their behalf for working conditions that are desired by the majority of workers. Unlike the employer, who has the acknowledged power to grant or withhold ; benefits, a union can only promise that it will attempt to achieve benefits and changed conditions in the future. Its campaign promises are necessarily prospective. There is nothing in the record to indicate that the UFW s statement constituted a misrepresentation.

2. Economic Inducements. The employer claims that prior to the election, the UFW offered employees (1) a waiver of dues, (2) free medical care, and (3) a party, and that these inducements together constituted an impermissible interference with the rights of employees to refrain from union activities. We find the' objection without merit because, insofar as the offers constituted economic inducements, the inducements were available to employees regardless of whether or not they committed themselves to supportung the union before the election.

In the case of NLRB v. Savair Manufacturing Company, 414 U.S. 270 (1973), the Supreme Court held that it was improper for a union to offer to waive initiation fees only for those workers who signed union authorization cards before the election.

The majority of the Court held that the waiver of fees constituted interference with the rights of employees to refrain

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from union activity protected by Section 7 of the National Labor Relations Act[6] because some workers who in reality did not support the union would sign, authorization cards only to save the initiation fee, should the union win the election. The court reasoned that other workers, who would not otherwise vote for the union, would be falsely influenced to vote for the union because they mistakenly thought that those who signed the authorization cards were supporting the union. The false impression would not be created if the fee waiver were available after the election as well as before the election, since in that case, nonsupporters of the union would not be induced to sign up beforehand.

Eladio Maldonado testified that he was told by a union organizer two days before the election that he would not have to pay union dues for a year if the UFW won the election. The statement did not reflect UFW policy and was countered, at least in part, by the UFW,[7] and by the employer, who during his election campaign," told workers the amounts of both the Teamsters and the UFW dues. But even if the statement was made and understood as offer of a dues waiver, a union may offer to waive dues or fees consistent with the Supreme Court's opinion in Savair, as long as the waiver is available both before and after the election. Wabash Transformer Corp., 210 NLRB No. 68 (1974), enforced 88 LRRM 2545 (8th Cir. 1975), Samuel S. Vener 1 ALRB No. 10 (1975).

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[6]Labor Code Section 1152 contains a similar provision.

[7]Lorraine Mascarinas, a UFW organizer, described a discussion on the subject of dues. She said in the past, union members had been required to pay dues for periods when they were not working, but this was no longer the case.

The other "economic inducements" similarly were available to all workers, not only those who signed authorization cards for the UFW before the election.

Three days before the election, UFW organizer Lorraine Mascarinas told Domino Figura, an employee, that if he felt sick, he could go to the UFW medical clinic without charge, and if needed, the union would provide transportation. Ms. Mascarinas testified that she had spoken to Mr. Figura six or seven times before the election and knew that he was sick. No contention is made that the UFW medical clinic would only be available to workers who committed themselves to voting for the UFW before the election.

Two days before the election, a UFW organizer told a group of employees that if the UFW won the election, the union would have a party for the employees. Though we doubt that the prospect of having a party would be a substantial influence in a decision to vote for the UFW, the invitation was not limited to employees indicating support for the UFW before the election. These objections are without merit. See Samuel S. Vener, supra.

3. Threats. Jose Santiago testified at the hearing that two days before the election he and his wife were approached on the fields at lunchtime by four women who asked them to sign UFW authorization cards. The women wore UFW buttons. Mr. Santiago told the women that he was a member of the Teamsters Union, and, according to his testimony, was told that "if he and his wife do not sign UFW cards and the UFW wins the election, they are going to be out of work." No other workers were present to hear the conversation. He did not tell any other worker about this

discussion, either before or after the election. Before the election, he did not mention the discussion to the employer, the labor contractor, or to a member of the Teamsters Union. Assuming that the statement to the Santiagos can be characterized as a threat,[8/] and assuming that the statement can be attributed to the union,[9/] the statement could not have affected the outcome of the election. The evidence establishes that the content of the conversation was known only to the two workers who testified and there is no evidence that the election was conducted in an atmosphere of fear.

4. Dismissed objections. Before the hearing on the employer's objections, the Board dismissed an objection that the UFW's petition for certification was not supported by valid authorization cards and dismissed another objection that the ALRB failed to provide timely written notice of election. On the employer's request, we have reviewed the dismissal of these two objections and have determined that the dismissals were proper.

The first dismissed objection claimed that the petition for certification was not supported by valid authorization cards signed by a majority of the employer's employees, as required by section 1156.3(a) of the Act. In support of this allegation, the

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[8/] The statement was subject to the interpretation that, if the union won, it would attempt to negotiate a union security clause in its contract with the employer. The validity of such a clause is specifically recognized in Labor Code section 1153(c). At the time of the election, Radovich employees were working under a union security clause between the employer and the Teamsters, and so the employees might have understood the remarks in this light.

[9/] The women who spoke to the employees were not explicitly identified as agents of the UFW.

employer submitted a declaration of Virginia Radovich stating that before the election, she presented samples of the signatures of a majority of the employees to Board agents and requested that they check the signatures. The Board agents told her that they were too busy to check the signatures and that they were not handwriting experts. The declaration did not allege that there was reason to suspect that any of the signatures on the authorization cards were not genuine.

The Board dismissed the objection on the authority of section 20315(c) of the Board's regulations, 8 Cal. Admin. Code §20315(c), which provides that "matters relating to the sufficiency of employee support shall not be reviewable by the Board in any proceeding under Chapter 5 of the Act." The employer claims that the regulation runs counter to Labor Code section 1156.3(a), which provides that petitions for certification must be accompanied by authorization cards signed by a majority of the employees, and section 1156.3(c) which provides that after an election, any person may file with the Board a petition alleging that the assertions made in the petition filed pursuant to subdivision (a) were correct.

Section 20315(c) of our regulations is not in conflict with Labor Code sections 1156.3(a) and 1156.3(c) because the authorization cards are not "the assertions made in the petition." The assertions referred to in section 1156.3(c) are listed in section 1156.3(a)(1), (2), (3), and (4), and do not include the requirement of the submission of authorization cards. Hence, the statute by its terms does not require us to

review the validity of the union's showing of interest in objections cases. The Board's refusal to review the validity of the showing of interest after an election has been held is in accord with the practice of the National Labor Relations Board, and is based on the premise that after an election, the best reflection of the interest and allegiance of the employees is the election tally. See John V. Borchard, 2 ALRB No. 16 (1976). The remedy for improperly obtained authorization cards is an administrative review with the regional director before the election, supported by evidence that particular cards were improperly obtained. If the regional director ascertains that particular cards were improperly obtained, he or she will discount these cards in determining whether or not the union has a showing of interest. Assuming the employer in this case had submitted evidence that put in issue the adequacy of the showing of interest, we would not be obligated to conduct a hearing after the election because we would not overturn an election on that basis.

Another objection, that the ALRB failed to provide written notices of election until approximately 1:00 p.m. on the day prior to the election thereby disenfranchising potential voters, was dismissed because the employer failed to provide supporting declarations, as required by Section 20365(c) of the Emergency Regulations, 8 Cal. Admin. Code 20365 (c). The employer claims that evidence of the time of the delivery of the notices and of the number of voters who voted in the possession of the ALRB, and therefore, no supporting declarations should have been required.

When determining whether employees received adequate notice of an election, the Board looks not merely at the amount of lapsed time between the notice of election and election, but also on what effect, if any, the time lapse had on the voters. Hence, to prove its claim, the employer would have had to produce evidence that some employees, who otherwise might have voted, did not do so because they did not receive notice of the election. In this case, for example, the employer might have produced evidence that eligible voters did not work between the time the notice was posted and the election, and therefore would not have seen the notice. Board records would not show the time a notice was posted, since notices are often posted by employers. The objection was properly dismissed.

CONCLUSION

The United Farm Workers of America, AFL-CIO, is certified as the exclusive bargaining agent of all of the agricultural employees of Jack and Marion J. Radovich.

Certification issued.

Dated: January 20, 1976.

Roger M. Mahony, Chairman

LeRoy Chatfield, Member

Joseph R. Grodin, Member

Richard Johnsen, Jr., Member

Joe C. Ortega, Member