

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
 )  
PEREZ PACKING, INC. , ) No. 75-RC-15-F  
 )  
Employer, ) 2 ALRB No. 13  
 )  
and )  
 )  
UNITED FARM WORKERS OF AMERICA, )  
AFL-CIO, )  
 )  
Petitioner )  
 )  
\_\_\_\_\_ )

On September 2, 1975 the United Farm Workers of America, AFL-CIO ("UFW") filed a petition for certification under Section 1156. 3 (a) of the Labor Code requesting a representation election among all of the agricultural employees of Perez Packing, Inc. Pursuant to a Notice and Direction of Election issued by the Fresno Regional Office of the Agricultural Labor Relations Board, an election was conducted in the office of the employer's packing shed on September 12, 1975.<sup>1/</sup> The results of this election were 76 votes for the UFW, 3 votes for no union, 10 challenged ballots and 1 void ballot.

Thereafter, the employer filed a timely petition under Section 1156. 3 (c) of the Labor Code which raised substantial questions regarding the conduct of this election. Although there is a strong presumption in favor of the validity of a certification election,<sup>2/</sup> we find that in considering the totality of objectionable

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<sup>1/</sup>Although this election was conducted ten days after the certification petition was filed, none of the parties raised an objection on this ground.

<sup>2/</sup>See Board Member Grodin's concurring opinion in Chula Vista Farris, Inc., 1 ALRB No. 23 (1975).

conduct which occurred during this election, it must be set aside.

As its first objection, the employer combines an allegation of bias and favoritism by the Board agents with a misrepresentation by the UFW, which allowed it to utilize an improper election observer. The record discloses that the parties entered into a written stipulation during the preelection conference the day before the election wherein it was agreed that the UFW would be allowed two election observers, one an employee of the employer and the other a "nonorganizer clerical employee of the United Farm Workers, subject to employer right to object to specific names." Furthermore, it was agreed orally that the UFW would inform the employer of the identity of this "nonorganizer clerical employee" by 10:00 a.m. on the day of the election so that the employer could investigate the prospective observer and raise any appropriate objection prior to the election which was scheduled to begin at 3:00 p.m.

It is apparently undisputed that the UFW failed to inform the employer of the identity of this observer as it had agreed to do, but rather the UFW representatives arrived at the election site 10-15 minutes before the election and informed the Board agents and the employer's representatives of the name of its "nonorganizer clerical employee" observer.

Upon learning whom the designated UFW observer was, Thomas Perez, president of Perez Packing, Inc., informed his representative that on one occasion he had seen this person at the Perez labor camp, although he did not know the reason she had been there. At this juncture, the employer's representative,

in the presence of the Board agents, objected to the UFW representative on the ground that its designated observer was apparently a UFW organizer and, therefore, ineligible under the parties' stipulation to act as their election observer. The UFW representative denied that she was an organizer and, in response to questioning by the employer's representative, the observer denied that she was an organizer and asserted that she worked in the Mendota UFW office doing clerical work. In light of these representations, the employer did not raise any further objection to her status as an observer for the UFW prior to the commencement of the election.

Upon completion of the election, the employer's representative informed the Board agents that contrary to her previous assertions, the non-employee observer was an organizer for the UFW and challenged her status to act as an observer. The Board agents then interviewed a foreman for the employer who stated that he had observed the person on two or three occasions standing outside the gate to the Perez labor camp organizing Perez employees and passing out authorization cards. On this basis the Board agent declared that the challenge to the UFW's non-employee observer was valid and that the ballots would be impounded. Apparently the ballots were not in fact impounded, but rather, this issue was left for resolution in a postelection objections proceeding

Contrary to the observer's denials when questioned by the employer's representative prior to the election, during the course of the objections hearing the UFW stipulated that this observer had engaged in organizing activities for the UFW. Notwithstanding this stipulation, the observer testified that she did not

consider her conduct during the numerous times she visited the Perez labor camp to be organizing. She stated she visited farm worker friends in the camp and assisted them with medical problems, transportation and other family matters. However, she also stated that she had taken groups of UFW organizers to the camp for the purpose of organizing and, during her trips to the camp, she answered questions from workers regarding the advantages of being represented by the UFW. Although she denied having passed out UFW authorization cards at the Perez camp, her testimony was contradicted by three workers who observed her passing out authorization cards. Based on this record, we find that the UFW's non-employee observer was a UFW organizer and that her designation by the UFW to act as an election observer constituted a violation of the parties' stipulation regarding election observers.

Although regulation section 20350, 8 Cal. Admin. Code §20350, provides that election observers shall be nonsupervisory employees of the employer, we recognize that the parties may agree to different arrangements if it facilitates the conduct of the representation election. However, where the parties agree to such a variance under this regulation, the Board will carefully scrutinize any alleged violation of the agreement to safeguard against resulting prejudice to the fairness of the election process. Since this record is devoid of any indication of impermissible conduct during the election by this observer, it is questionable if the violation of the parties' stipulation, standing alone, is sufficient to set this election aside. See, Tyler Pipe Industries, Inc., v. NLRB, 447 F 2d 1136, (5th Cir. 1971).

Despite the observer's preelection assurances to the Board agents and the employer's representative that she was not a UFW organizer, the employer contends that the Board agents conducting the election knew that she was a UFW organizer since, on the preceding day in another election conducted by two of these three Board agents, she had been successfully challenged as an observer on the basis that she was an UFW organizer.

These facts are established by the record and although it is the parties' duty to challenge a prospective observer, we find that under the circumstances of this case the Board agents should have informed the employer's representative of her organizer status when she was designated as a UFW observer. The Board agents were aware of the parties' stipulation regarding the non-organizer UFW observer and, due to their knowledge concerning the person and the lateness of the designation of the observer by the UFW, they possessed special knowledge otherwise unavailable at that time to the employer.

As its next objection, the employer contends that the Board agents failed to properly supervise the polling area by allowing alcoholic beverages in or near it. From the record, it appears that the polling area inside the Perez packing shed consisted of a small office located two to three feet down a hallway from the shed's loading dock. During the election the Perez employees were congregated around this loading dock drinking beer, yelling and chanting UFW slogans which were clearly audible inside the designated polling area. The employer's observers testified that many voters had been drinking and some appeared intoxicated as they came to cast their ballots. At least one voter fell inside

the polling place and had to be assisted to his feet by the Board agents.

Although there was no evidence of beer drinking inside the polling area itself, the employer's<sup>1</sup> observer stated that two employees were sometimes seated on a plank across the narrow hallway from the door to the polling area drinking beer and looking inside the office. Furthermore, she testified that at times the noise from the chanting and cheers of the crowd outside became so loud that it seemed as though the crowd was actually inside the polling area. The Board agents either could not or would not control the situation. According to an employer observer, the presiding Board agent at one point requested an assistant to go out and quiet the crowd, but he declined.

The task of policing the polling area is within the discretion of the Board agents conducting the election and is a function which must be tempered by the exercise of common sense. However, from a review of the record of this case it appears clear that the Board agents should have attempted to control what one witness aptly described as the "carnival-like" atmosphere of this election. The Board agents could have attempted to quiet the crowd of employees and limit the beer drinking to an area further removed from the poll so that the disruptive effect of this conduct could have been minimized.

The final question raised by the employer relates to the allegation that the UFW observer from the employer's crew campaigned during the course of the election. Although they could not hear the substance of the conversations, both of the employer's observers

testified that the UFW observer engaged in conversations with prospective voters after the Board agent had checked their names against the eligibility list and while they were waiting to cast their ballots. It appears clear from the record that the Board agents had informed the observers prior to the election that they were not allowed to talk to any of the persons waiting to vote and that anything they desired to ask a voter should be asked through the Board agents. Furthermore, the observer's conduct was not merely an isolated incident; he was warned on two or three occasions by the Board agents to stop conversing with the prospective voters. Despite these warnings, the UFW observer persisted in talking throughout the election to the individuals waiting to vote.

Upon these facts the employer contends that the National Labor Relations Board's decision in Milchem, Inc., 170 NLRB No. 46 (1968) requires this election to be set aside.

As we recognized in Toste Farms, Inc., 1 ALRB NO. 16 (1975), the NLRB in Milchem enunciated a rule to the effect that sustained conversations in the polling area between parties to the election and employees waiting to vote, regardless of the substance of the conversation will invalidate an election. Such conversations between union or management election observers and prospective voters are encompassed within the scope of the NLRB's rule;<sup>3/</sup> however, where an observer is involved the NLRB may inquire as to the substance of the conversation between the observer and the prospective voter.<sup>4/</sup>

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<sup>3/</sup>See General Dynamics Corp., 181 NLRB No. 142 (1970); Modern Hard Chrome Svc. Co., 187 NLRB No. 111 (1970).

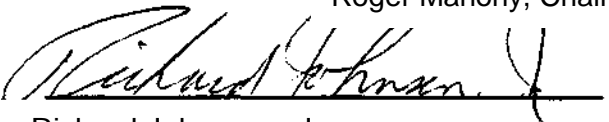
<sup>4/</sup>see Century City Hospital, 219 NLRB No. 6 (1975) .

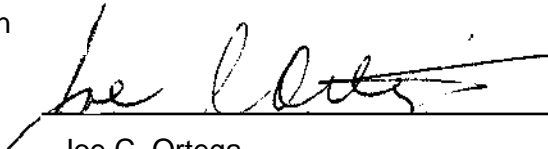
Although the employer's observers could not testify as to the content of the UFW observer's conversations with the voters, we find that his actions exceeded permissible bounds. The election observers were not only given specific preelection instructions regarding prohibited conversation with prospective voters, but this particular observer was also admonished on two or three separate occasions by the Board agents after they noticed him talking to employees waiting to vote. Notwithstanding, the observer continued conversing with the voters before they cast their ballots. We view such conduct by one acting as an agent for a party as a serious violation of the Board agent's instructions regarding the conduct of the election.

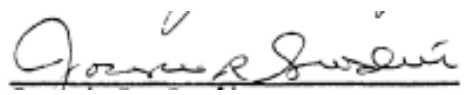
Considered collectively, the Objectionable conduct raised by the employer undermines the integrity of this election to such an extent that it would be inappropriate for the Board to affix its imprimatur to the outcome. Accordingly, the Board declines to certify the results of the election and sets it aside, without prejudice to the right of any labor organization to file a new petition which meets the statutory requirements.


Dated: January 20, 1976.

  
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Roger Mahony, Chairman

  
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Richard Johnsen, Jr.

  
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Joe C. Ortega

  
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Joseph R. Grodin

  
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LeRoy Chatfield