

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

CAL PAC CITRUS CO. ,)	
)	
Employer,)	No. 75-RC-58-R
)	
)	2 ALRB No. 18
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	

This case involves objections by the employer to an election conducted November 19, 1975 in which the United Farm Workers of America, AFL-CIO ("UFW") received a majority of the votes cast.^{1/} Together with six other cases in the El Centro area, it was considered on December 2, 1975 at a preliminary hearing before Member Joseph R. Grodin for the purpose of identifying for board decision whatever legal issues might be posed, and to arrange for prompt investigatory determination of whatever factual issues might be in dispute. With respect to certain factual issues, further informal hearing was scheduled for the following day before a hearing officer designated by the board. A report containing Member Grodin's summary of the

^{1/}The tally shows: UFW 17; No Union 3; Challenged ballots 1. The number of challenged ballots is not sufficient to affect the outcome.

preliminary hearing as well as a report by the hearing officer of the supplementary hearing were served on both parties, and each had opportunity to respond. Based on the objections, accompanying declarations, the two reports, and the responses of the parties thereto, the Board has determined that the objections are legally insufficient and that the election should be certified.

The employer's first objection asserts on information and belief that on the day immediately preceding the election a board agent participated in ex parte communications and/or social activities with the union. The accompanying declaration by the manager of Cal Pac asserts that the pre-election conference was originally set for 6:30 p.m. on November 18, 1975, but that it was rescheduled to 8:30 p.m. "because of a conflicting meeting of the union"; and that the declarant "was informed" that it was impossible to begin the pre-election conference until 9:00 p.m. "because of the social or business event conducted that day and evening by the UFW, and in which the assistant board agent, the UFW organizer and other UFW members and sympathizers all participated."

Despite the fact that the declaration fails to identify the source of the declarant's information as required by our opinion in Interharvest, Inc., 1 ALRB No. 2, and is otherwise insufficiently specific, the matter was explored at the preliminary hearing. It was agreed that this objection involves the same alleged misconduct, and rests upon the same declarations, supplemental evidence and argument as employer's

objections in Coachella Growers, Inc., Case No. 75-RC-57-R. For the reasons stated in our opinion in that case, 2 ALRB No. 17, (1976), we find the objection without merit.

II.

The employer's second objection asserts that at the polling place, in the presence of voters, "an assistant Board agent announced the preliminary results of another election being conducted which was adverse and prejudicial to this petitioner." The other election referred to was that conducted the same day among employees of Coachella Growers. Cal Pac is a farm operation involving citrus products. It employs approximately 25 employees on a year-around basis. Coachella Growers, Inc., is a harvesting association engaged in the harvest of citrus for various farmers, including Cal Pac. It had, at the time of the election, approximately 205 eligible employees. The union filed election petitions for both firms at the same time, and a pre-election conference was held in both cases on the same day. Arrangements were made to conduct the Coachella Growers election at three polling sites, one of which was adjacent to the polling area established for employees in the Cal Pac election. At the pre-election conference the employer's attorney requested that the two elections be conducted simultaneously so that the results in one would not affect the other. The Board agent, explaining that there was insufficient staff to accommodate that request, scheduled the Coachella Growers election first. The polls in that election closed at 10:00 a . m . , and the polls in the Cal Pac election opened at 11:30 a . m .

Prior to the opening of the polls for the Cal Pac election, a Board agent, who had been present at the preliminary conference, came to the polling area and announced separately to the employer's manager and assistant manager, to another Board agent, and to a UFW organizer, the unofficial results of the Coachella Growers election, in which the UFW received a majority of the votes. The employer asserts that the announcements demoralized him and created a wave of UFW support at the Cal-Pac election that was adverse and prejudicial.

It is not clear whether any employees overheard the announcements.^{2/} Assuming that they did, or that they were

^{2/}According to the hearing officer's report, when the Board agent gave the news to the employer's manager and assistant manager there were five or six Spanish-speaking Cal Pac employees at a distance of about 10 feet. The Board agent stated he doubted that the employees overheard the announcement (assuming they could understand it), his recollection being that the employees themselves were engaged in conversation and gusty wind conditions adversely affected hearing. When the Board agent told the presiding Board agent of the unofficial election results, four observers representing the employer and the union were about 10 to 15 feet away. And when the Board agent told the UFW organizer, four or five employees were standing between 10 and 30 feet away, the difference representing the difference in recollection between the Board agent and the organizer.

The employer contends that the hearing officer's report is incomplete, in that it omits testimony by the employer's manager, Mr. Oden, that "five or six employee voters were within earshot when he told me," and that "my foreman, George Bowker, heard it and he was sitting in the cab of his pick-up." The employer also contends that when the announcement was made to the presiding Board agent, the observers were standing "right behind her at the election table;" and that one of these observers testified that, while he did not overhear the statement, he was nevertheless aware of the news.

told the news by persons to whom it was directly reported,^{3/}
we do not find these facts sufficient to warrant overturning
the election.

While it is within the discretion of the regional directors
to arrange the timing of elections so as to minimize any possible
impact that the outcome of one election may have on voter behavior in
another, such an arrangement is not required by the statute, and
failure to make such an arrangement is not an abuse of discretion. If
voters are in fact influenced by the results of elections
among employees of related employers, such an effect is inevitable
in many situations.^{4/}

////////////////////

////////////////////

^{3/}This is apparently the case if, as contended by the employer, one
of the election observers was informed of the news by a source other
than the Board agent.

^{4/}If, for example, the UFW had filed its Coachella Growers
petition a day earlier, and that election had been completed, there
would have been no way to prevent Cal Pac employees from learning the
results.

Indeed, such information may be regarded by workers as a relevant factor in exercising their own choice, and it is not contrary to the policy of the statute that they should do so.^{5/} Accordingly, we do not find the Board agent's conduct warrant setting the election aside.^{6/}

III.

The employer's third objection is that union organizers repeatedly trespassed upon private property on the day of the election and during the hours of voting, electioneering and pressuring employees. The accompanying declaration asserts, in this regard, (a) that at the polling site of the election, a union organizer "directed conversation at the two company observers which by them and other people present could be interpreted as threatening in nature," and (b) that on the day of the election

^{5/}This situation is distinguishable from one in which an election is conducted in several segments of what one of the parties claims to be a single bargaining unit. Under such circumstances, it is appropriate to arrange the election in such a way that the votes in one part do not influence voting behavior in other parts of the same unit.

^{6/}The employer relies as evidence of misconduct upon the fact that the Board agent who made the announcement was present at the pre-election conference at which the employer expressed his concern with the possibility of Cal Pac employees being influenced by the vote at Coachella Growers. The Board agents are not bound by the employer's expression of concern, however.

and at "all other times prior to said election," the union organizer "was on the ranch property contacting my employees completely without regard to the limitations on access to my private property as imposed by the Agricultural Labor Relations Board."

As to (a) , the declaration fails to allege with sufficient specificity the nature of the alleged misconduct on the part of the union organizer, and therefore fails to establish a prima facie case. Nevertheless, the substance of this objection was made the subject of further inquiry at the supplemental hearing. The employer offered no evidence on the issue.

As to (b) , which was also explored further at the supplemental hearing, the employer presented no evidence that UFW organizers were present on the premises until the day of the election. With respect to that day, the only evidence was that a union organizer appeared on the premises the morning of the election and talked to employees about the election. The organizer claims he received permission to do so from the employer's manager at the pre-election conference held the evening before.^{7/} The employer contends that the permission extended

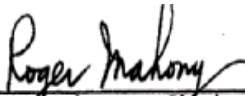
^{7/}According to the hearing officer, the organizer stated without contradiction that he sought and was granted permission to be on the property and electioneer. The employer in a post-hearing brief contends that the organizer stated only that there was no objection by the employer's attorney or manager.

only to observing the election arrangements to insure that the election was being conducted according to law, and that only the board agents were to notify the employees of the election and when the poll was open. In view of what appears to be a good faith dispute concerning the extent of the permission that was granted, and the relatively insubstantial nature of the conduct involved, we do not regard the organizer's presence and communications on the morning of the election as constituting grounds for setting the election aside.

Accordingly, the United Farm Workers of America, AFL-CIO, is certified as bargaining representative for all agricultural employees of the employer in Riverside County.

Certification issued.

Dated: January 22, 1976



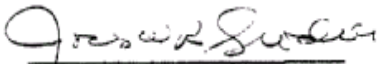
Roger Mahony, Chairman



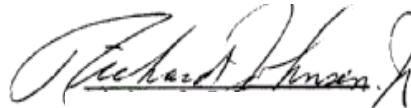
Joe C. Ortega



LeRoy Chatfield



Joseph R. Grodin



Richard Johnsen