

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO CO., INC.,)	
)	
Employer,)	No. 75-RC-17-S
)	
and)	2 ALRB No. 20
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Petitioner.)	
)	

On September 18, 1975, the United Farm Workers of America, AFL-CIO (" UFW ") filed a Petition for Certification as the bargaining representative of the employees of Ace Tomato Company. An election was held eight days later, at which at least 298 employees were eligible to vote.^{1/} Of these, 91 voted. The employer objects to our certifying the election because the election was held beyond the seven-day limit within which the Board is required to schedule representation elections,^{2/} and because of the relatively low voter turnout.^{3/} We agree and set aside the election.

The employer grows tomatoes in San Joaquin County. On September 18, 1975, the date the union filed its Petition for Certification, the tomato harvest was coming to an end.

^{1/}The UFW claimed that 35 persons who cast challenged ballots were eligible to vote and should have been on the eligibility list, The election tally showed 82 votes for the UFW, 9 for no union, and 35 unresolved challenges.

^{2/}Labor Code § 1156.3 (a) .

^{3/}Because of our disposition of the case, we do not consider other objections to election raised by the employer.

The harvest was completed by September 23, and after that date workers no longer went to the fields. The record does not reveal any compelling reason why the Board scheduled the election for September 26, the eighth day following the filing of the petition, rather than on an earlier day.

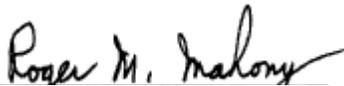
In Klein Ranch, 1 ARLB No. 18 (1975), we held that an election held after the seventh day following the filing of a Petition for Certification, though in violation of Labor Code § 1156.3 (a), would not be a basis for setting aside an election unless it was shown that any party or persons were prejudiced. In J. J. Crosetti Co., Inc., 2 ALRB No. 1 (1976) we upheld an election held on the eighth day because holding the election then facilitated the voting of employees who had been laid off during the week following the filing of the petition and who were working on the eighth day when the election was held, and thereby facilitated the statutory purpose of attempting to maximize voter turnout.

In this case, holding the election after the seven-day statutory period may explain the unusually low voter turnout.^{4/}

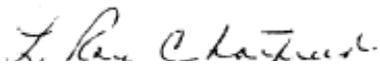
^{4/}We do not imply that we consider a turnout of one-third of the eligible voters unacceptably low in all cases, nor that we would set aside this election had it been held within the statutory seven-day period.

There is certainly no evidence that delaying the election increased the turnout. Accordingly, we set aside the election.

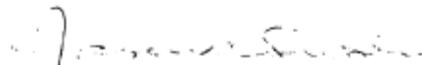
Dated: January 22, 1976



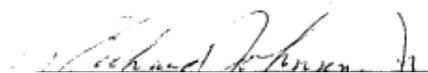
Roger M. Mahony, Chairman



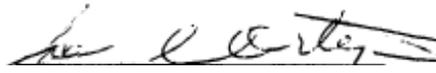
LeRoy Chatfield, Member



Joseph R. Grodin, Member



Richard Johnson, Jr., Member



Joe C. Ortega, Member