STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CALIFORNIA COASTAL FARMS, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner, and WESTERN CONFERENCE OF TEAMSTERS, I.B.T., Intervenor	No. 75-RC-49-M 2 ALRB NO. 26

The Western Conference of Teamsters, I.B.T., ("Teamsters") and the employer both object to certification of the election which took place at two locations[1/] of California Coastal Farms on September 17, 1975.[2/] For the reasons discussed below, we conclude that the evidence does not warrant setting aside this election.

TEAMSTERS' OBJECTIONS

The Teamsters object to the inclusion of truck drivers, stitchers, hijo operators, mechanical harvesting machine operators, and maintenance employees within the bargaining unit, and further object to various types of alleged misconduct by both the employer and the United Farm Workers of America, AFL-CIO ("UFW").

[1/] The two polling locations were Gonzales and Holtville, California.

[2/] The election tally: UFW - 105, Teamsters - 91, No union - 4, Challenges - 3.

The Teamsters presented no evidence to support the allegations of misconduct by either the employer or the UFW, and these objections are dismissed.

As to the Teamsters' objection to the inclusion of truck drivers and related classifications within the bargaining unit, two contentions are made: (1) that these truck drivers are not agricultural employees within the meaning of the Agricultural Labor Relations Act, Labor Code section 1140.4(b), and (2) that even if they are agricultural employees they do not share a community of interests with other such employees and have a separate bargaining history. We have previously disposed of this latter argument by noting that this Board has no jurisdiction to exclude truck drivers from the unit if they are found to be agricultural employees.[3/]

The question of whether or not the truck drivers are agricultural employees under the National Labor Relations Act is a question currently pending before the N.L.R.B. Resolution of the matter of the truck drivers' inclusion in the bargaining unit is, therefore, appropriately deferred until there is a decision by the N.L.R.B., agreement of the parties,[4/] or to some future proceeding of this Board on a motion for clarification of the unit described herein.[5/]

[3/] See Carl Joseph Maggio, 2 ALRB No. 9 (1976), West Coast Farms, 1 ALRB No. 15 (1975), J.R. Norton Co., 1 ALRB No. 11 (1975), and Interharvest, Inc., 1 ALRB No. 2 (1975).

[4/] Our disposition of this issue is the same as that taken in the cases cited in footnote 3, supra.

[5/] In prior cases involving this issue (footnote 3, supra), the number of votes cast by employees in the disputed classifications was not sufficient to have affected the outcome of the elections. Here, 14 truck drivers voted, unchallenged, and this number could have affected the election results.

(fn. 5 cont. on p. 3)

On another aspect of the unit determination, the employer presented evidence regarding the status of four mechanics who were included in the unit. These mechanics work in the employer's repair shop which is located off the farm. They work exclusively for this employer in repairing equipment and vehicles owned by it and used in its farming operations. The employer contends that these mechanics are not agricultural employees within the meaning of the Act, and therefore, that their inclusion within the bargaining unit is improper.

In Salinas Marketing Cooperative, 1 ALRB No. 26 (1975), we confronted a unit question which was based on an essentially similar factual situation, and there held that the mechanics were properly included within the bargaining unit since they were agricultural employees within the meaning of Labor Code section 1140.4(b) and involved in agriculture as that term is defined in Labor Code section 1140.4(a). We reach the same conclusion here.

(fn. 5 cont.)

In order to preserve the issue of voter eligibility for post-election proceedings, the party contesting that eligibility must have timely challenged the prospective voters. Hemet Wholesale, 2 ALRB No. 24 (1976). A contrary rule would allow parties to await the outcome of an election before deciding whether to contest the eligibility of any voters and then, in the event the party loses the election, relying upon the asserted ineligibility of those voters as a ground for setting aside the election.

Section 20350 of our regulations enumerates five grounds upon which prospective voters may be challenged. One such ground is that "the prospective voter is not an agricultural employee of the employer as defined in Labor Code Sec. 1140.4(b)." By contending that the truck drivers are not agricultural employees, the Teamsters assert a ground for challenging the ballots cast by those voters. Section 20350 also requires that any challenge "must be asserted prior to the time that the prospective voter receives a ballot . . . ." The Teamsters here failed to timely challenge the eligibility of the truck drivers to vote in this election, and by this failure they have waived the right to challenge these ballots in a post-election proceeding. Our requirement that challenges be made at the time of the election is consistent with N.L.R.B. precedent. E.g., Ann Arbor Press, 88 NLRB 391 (1950).

I. The Petition for Certification is barred by an existing collective-bargaining agreement.

According to the notice of hearing, this allegation was to be heard "insofar as the employer can present evidence that the alleged collective bargaining agreement does not fall within the terms of Labor Code section 1156.7."[6/] Since the employer presented no evidence in support of this allegation, we dismiss this objection.

II. The UFW improperly distributed literature immediately before the election.

On the morning of September 17, 1975, the day of the election, two organizers from the UFW went to the employer's fields in Gonzales and there talked with employees and distributed copies of a letter from Cesar Chavez, President of the UFW, and campaign buttons. The organizers arrived at about 6:30 a.m., prior to the commencement of work, and left the property by 7:45 a.m., after having visited all three crews present that day.[7/] The places at which the organizers handed out the leaflets and buttons were at least a quarter of a mile from the polling area. The employer contends that this "last minute campaigning"

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fn. 5 cont.

In the absence of timely challenges to the truck drivers' eligibility to vote, these otherwise valid ballots must be counted in the final tally. Accordingly, we accept as the final tally for this election that which is set forth in footnote 1, supra.

[6/]Labor Code section 1156.7 provides, in pertinent part, "No collective-bargaining agreement executed prior to the effective date of this chapter shall bar a petition for an election."

[7/]According to the Direction and Notice of Election, the election was scheduled to begin at 9:00 a.m.

violated the 24-hour rule of the National Labor Relations Board and denied the employer an opportunity to respond to allegations made.[8/]

The 24-hour rule of the N.L.R.B., set forth in Peerless Plywood Co., 107 NLRB 477 (1953), prohibits employers and unions from making election speeches on company time to massed assemblies of employees within 24 hours before the time scheduled for an election. The thrust of the decision is that "[s]uch a speech, because of its timing, tends to create a mass psychology which overrides arguments made through other campaign media and gives an unfair advantage to the party ... ." We have previously expressed doubt as to the appropriateness of the Peerless rule under our Act.[9/] However, even if that rule were to be applied here, conversations carried on in the fields between union organizers and employees, individually or in small groups, can hardly be deemed "speeches" to "massed assemblies of employees ."[10/] Moreover, in Peerless the N.L.R.B. itself stated that "[t]his rule will not interfere with the rights of unions or employers to circulate campaign literature on or off the premises at any time prior to an election, nor will it prohibit the use of any other legitimate campaign propaganda or media."

[8/]The Milchem case involved sustained conversations with prospective voters who were waiting in line to cast their ballots. Thus, Milchem involved facts far different from those in the case before us in that here (1) the prospective voters were not in the polling area, and (2) the conversations did not occur during the voting period. We therefore find that Milchem, Inc., is not applicable to the present case.

[9/]Yamada Bros., 1 ALRB No. 13 (1975).

[10/]In Nebraska Consolidated Mills, Inc., 165 NLRB 639 (1967), a discussion between union representatives and employees three hours before the election did not warrant setting aside the election even though the discussion extended into company time since the discussion started on the employees' own time, was extemporaneous, and was voluntarily attended.

The effect of the 24-hour rule is not a generalized prohibition on electioneering but rather a restraint on a particular type of objectionable electioneering - a type which did not occur in this election. We find therefore that the electioneering of the UFW organizers immediately prior to the election was not improper.

III. The ballot box was out of the control of the Board for three days.

The ballots cast at the Holtville polling site were placed in a manilla envelope which was sealed by tape at each end. The three observers at this location affixed their signatures to the tape. This envelope was then covered with a type of cardboard material[11/] and placed inside a larger manilla envelope. This package was mailed to the Salinas regional office on September 17, 1975, and arrived at that office on September 20, 1975, where all of the ballots cast at both election sites were commingled and counted. The package was not mailed by either certified or registered mail. None of the observers who had placed their signatures on the ballot envelope were present at the tally although representatives of all the parties were present, including the employer's observers from the Gonzales location.

Testimony as to the condition of the ballot envelope at the time of the tally indicates that there was no damage to the interior envelope, but that the outside envelope was damaged

[11/] This covering was described by an employer's witness, who was present at the counting of the ballots, as "some type of cardboard covering like a small box or mailing protector."

to some extent.[12/] There is no evidence that the interior envelope was tampered with in any way. The employer argues, however, that the loss of control over the "ballot box", coupled with the fact that no one present at the sealing of the envelope was present at its opening, raises such a serious question as to the integrity of the ballots contained therein that those ballots must be discounted.[13/]

The integrity of the ballot box is, of course, vital to the conduct of a secret ballot election, and Board agents should take every precaution reasonably available to assure that integrity. Any impairment of the integrity of the ballot box, or any substantial possibility for the occurrence of such impairment, may require that an election be set aside.

In Polymers, Inc., 174 NLRB 282 (1969), while the Board agent had sealed the ballot box, the method of sealing was not in compliance with rules issued by the General Counsel and regional director. In addition, the Board agent had left the ballot box unattended in his parked car for several hours during the day of the election. In upholding the election, the NLRB stated,

> We recognize that the manner in which the ballot box was sealed in this election could have been improved upon; still, both masking tape and scotch tape were affixed to the box in a manner which makes it quite improbable that any tampering with the box would not have left suspicious traces. Furthermore, although the Board Agent in charge of the election did not-retain personal physical custody of the sealed box . . ., the security afforded . . . was such that there was only the most remote possibility

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[12/] One witness testified that the outside envelope was torn at the corner? another testified that it was bent at the corner but not torn.

[13/] The employer's observer at the Holtville location testified that 20 of the 21 eligible voters there cast ballots. The employer contends that discounting these ballots requires setting aside the election because all of the ballots from the election were commingled, and the margin of victory was less than 20 votes.

> that anything untoward occurred. In view of the extreme improbability of any violation of the ballot box, and in the absence of any affirmative indication of tampering, we again conclude . . . that no reasonable possibility of irregularity inhered in the conduct of the election.

In the case before us there is no evidence of any impairment of the ballot box nor was there any substantial possibility that any impairment could have occurred. In addition, the presence of the Holtville observers at the ballot counting is not required to assure the integrity of the ballot envelope because any tampering with the interior envelope, which had been sealed would have been evident to those persons actually present, and it was not, therefore, necessary to verify the observers' signatures at the time of the tally.

IV. Pre-election misconduct impairing free choice of voters.

On the fourth employer's objection set for hearing, the employer presented no evidence, other than that already discussed, to support the allegation that the UFW had engaged in pre-election misconduct which resulted in a denial of the employees' right to vote objectively. This objection is, therefore, dismissed.

V. Post-election procedures were improper.

The employer's final objection is that section 20365 of our regulations and the ballot counting procedures established in the Manual of Procedure were not complied with in this election. The employer does not specifically state how the post-election procedures deviated from either our regulations or the Manual of

Procedure, and our review of the record discloses no deviations.[14/] Accordingly, this objection is dismissed.

The United Farm Workers of America is hereby certified as the bargaining representative for all agricultural employees of California Coastal Farms in Gonzales and Holtville, California.

Dated: February 2, 1976

Roger Mahony, Chairman

Joseph R. Grodin

LeRoy Chatfield

Richard Johnsen, Jr.

[14/] We do not mean to imply that failure of Board Agents to adhere to the procedures set forth in the Manual, in itself, would require us to set aside an election. As was stated by the N.L.R.B. in Polymers, Inc., supra, wherein the Board Agent had deviated from rules established by the General Counsel and regional director with respect to the sealing and security of ballots; the N.L.R.B. "cannot be considered 'bound' by [these rules] in the sense that any deviation from [them] by a Board Agent would require nullification of an election."