

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED CELERY GROWERS,)
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Employer)
)
and)
)
WESTERN CONFERENCE OF TEAMSTERS,) No. 75-RC-78-M
I . B . T . ,)
) 2 ALRB No. 27
Petitioner,)
)
and)
)
UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)
)
Cross-Petitioner)
_____)

On September 18, 1975 elections were held among the agricultural employees of the employer in two separate units. Voting unit number one encompassed the employer's Oxnard farm (Ventura County) and voting unit number two covered the Lompoc farm (Santa Barbara County).^{1/} The United Farm Workers of America, AFL-CIO, ("UFW") won the Oxnard election^{2/} and the Western Conference of Teamsters ("Teamsters") filed objections alleging the following: (1) polls were opened late; (2) polls were closed early; (3) the UFW campaigned at the polls; (4) the Board Agent failed to properly translate instructions to voters;

^{1/} Only one case number was assigned and one notice of election issued. The UFW appeared on both ballots, the Teamsters on only one. Although the petitions filed by both the Teamsters and the UFW sought a single unit, no party objects to the treatment of the two locations as separate units. Hence, our disposition of the objections to the Oxnard election does not affect the Lompoc election.

^{2/} The tally of ballots for the Oxnard election showed the following: Of 164 eligible voters, 67 for UFW, 43 for Teamsters, 4 for no union, 9 unresolved challenged ballots.

and (5) an improper observer was used. All five allegations were set for hearing; however, in its post-hearing brief, the Teamsters withdrew the last two listed objections. We consider each objection in the order listed.

I. Late Opening of Polls

The polls were scheduled to be open from 7:00 a.m. to 9:00 a.m., but were not opened until about 7:30 a.m., apparently because the Board Agent was awaiting the arrival of an interpreter. A Board Agent and observers were present and had begun setting up the polls by 7:00 a.m. About 7:10 a.m., a crew truck arrived with 8 or 9 employees and parked near the polling site. There is no dispute that the truck and the employees stayed until after the polls did open, and all persons on the truck had an opportunity to vote.

The testimony is vague and contradictory with respect to the possibility that other voters arrived between 7:00 and 7:30 a.m., and left without voting. The employer's observer testified that about 6 or 7 men came, stood around, and left before the polls opened, but the witness could not say whether they were potential voters. The same observer later testified that he saw "a lot of people enter and leave" between 7:00 and 7:30 a.m. A Teamster representative testified that he saw people entering and leaving the area between 7:00 and 7:30 a.m., but did not testify as to how many people were involved, whether they were voters, or whether they returned to vote. The UFW observer testified that some people

arrived before the voting started but that none left without voting. Three employees who voted at this location also testified that they saw no one who arrived before polls opened leave without voting. No employee testified that he had come to vote between 7:00 and 7:30 a.m., and left without voting. No one testified that he knew of any employee who was deprived of the opportunity to vote because of the late opening.

Thus, the testimony in this case does not support a finding that any voter was deprived of the right to vote because of the late opening of the polls.^{3/} Furthermore, in the circumstances of this case where the Board Agent and observers were all present at the polling site prior to the official opening time thereby making it obvious to anyone who appeared that voting would take place there, and where there is affirmative evidence that some employees who arrived to vote prior to 7:30 a.m. waited until the polls opened and did vote, there is only the remotest possibility that the late opening affected the outcome of the election by disenfranchising voters. Accordingly, the objection is dismissed. H & M Farms, 2 ALRB No. 19 (1976).

II. Early Closing of Polls.

Although the polls were scheduled to remain open until 9:00 a.m., they were prematurely closed at 8:30 a.m., apparently because no more workers were arriving to vote. Despite the fact

^{3/} The NLRB in O. K. Van & Storage Company, 122 NLRB 795 (1955) refused to set aside an election based upon the late opening and early closing of the polls in the absence of evidence that any eligible employees were thereby deprived of their rights to cast a ballot. We agree and reject the employer's argument that we must set aside an election whenever there is a deviation from the scheduled

the polls were closed, the Board Agent and observers remained at the polling site until after the scheduled closing time of 9:00 a.m. Several witnesses testified, without contradiction that no one arrived to vote between 8:30 and 9:00 a.m. Thus, we have affirmative evidence that no potential voters were disenfranchised by the early closing. Therefore, the objection is dismissed. Jake J. Cesare & Sons, 2 ALRB No. 6 (1976); O. K. Van & Storage Company, 122 NLRB 795 (1958).

III. UFW Campaigning at the Polls.

The evidence with respect to this objection is that one or two UPW representatives passed out leaflets to prospective voters in the polling area around 7:00 a.m. prior to the start of actual balloting. There is no evidence in the record with respect to the contents of the leaflet except that it was in Spanish, was entitled "Victory Salinas" and, according to the UFW organizer who handed it out, the leaflet was one "commonly given out to employees." The polling area was set up in an open field near a direct access road. About 7:00 a.m., a crew truck carrying potential voters arrived and parked off the dirt road at a distance variously estimated to be from 10 - 22 feet from the registration table and polling booths. The UFW organizer handed leaflets to some people on the truck. The testimony is undisputed that there was no

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polling period and some employees do not vote. We decline to take such a drastic step unless the evidence demonstrates a substantial possibility that a number of voters sufficient to have affected the outcome of the election failed to vote because of the late opening or early closing of the polls. The objecting party has the burden of producing evidence tending to show that the deviation from the official voting period caused voter disenfranchisement.

coercion or atmosphere of intimidation associated with the leafleting. It is also undisputed that leafleting ceased and the organizer(s) left the area when told to do so prior to the commencement of voting.

The NLRB has held that distribution of pamphlets by a union on the day of the election and the presence of pamphlets in the plant on election day is not misconduct requiring the setting aside of the election. Dallas City Packing Co., 116 NLRB 1609 (1956), enf'd 251 F. 2d. 633 (C.A. 5 1958); G. H. Hess, Inc., 82 NLRB 463 (1949). Even distribution of union handbills during the voting period is not ground for setting aside an election. Union Carbide & Carbon Corp., 94 NLRB 640 (1951). Moreover, both this Board and the NLRB have held that campaigning in the polling area prior to the opening of the polls is not conduct requiring the setting aside of the election. Admiral Packing Co., 1 ALRB No. 20 (1975); Lincoln Land Moving & Storage, 197 NLRB No. 160 (1972). The fact that the campaigning in this case took place after the official opening time but before the actual opening does not require a different result.

Accordingly, this objection is also dismissed.

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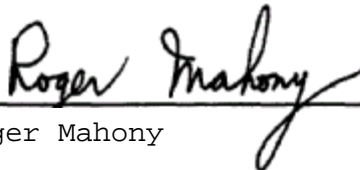
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Certification shall issue for all agricultural employees of United Celery Company at its Oxnard (Ventura County), California, location. ^{4/}

Dated: February 2, 1976

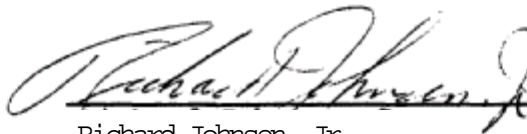


Roger Mahony

LeRoy Chatfield



Joseph R. Grodin



Richard Johnsen, Jr.

^{4/}Consistent with the treatment of the employer's Oxnard and Lompoc ranches as separate units, certification of the results of election or certification of a bargaining representative for the Lompoc location will issue separately after resolution of the unresolved challenges.