STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: ROYAL PACKING COMPANY, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner, and WESTERN CONFERENCE OF TEAMSTERS, AGRICULTURAL DIVISION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Intervenor.	No. 75-RC-33-M 2 ALRB No. 29

On September 5, 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 the Royal Packing Company in the Salinas Valley, excluding noncontiguous packing sheds and vacuum coolers. Subsequently, the Western Conference of Teamsters ("Teamsters") intervened. On September 17, 1975 an election was conducted in which the tally was: UFW - 69 votes, Teamsters - 65 votes, no labor organization - 4 votes, 8 challenged ballots, and 4 void ballots. Pursuant to a written stipulation signed by all three

parties,[1/] a run-off election between the UFW and the Teamsters was held on September 25 and 26, 1975. The results of this election were 83 votes for the Teamsters, 62 votes for the UFW, 5 challenged ballots and 2 void ballots.

Thereafter, the UFW objected to this election being certified, alleging that statements by company representatives to one of the employer's harvesting crews to the effect that Royal Packing Company would not be harvesting and packing lettuce in Salinas next year if the UFW won the election constituted threats of reprisal for supporting the union and, therefore, affected the outcome. We agree and set the election aside.

From the record, it appears that on the afternoon of September 22, 1975, Frank Solorio, a supervisor, and Joe Chavez, the company payroll clerk, came to a field where one of Royal's harvesting crews was operating and gathered all of the workers together. At the outset, Chavez told the workers that there was going to be a run-off election between the UFW and the Teamsters in a couple of days and he asked the workers to help the employer by casting their votes for the Teamsters. Chavez then proceeded to explain to the crew that Royal was a small company and that it did not own any of the land where its employees were harvesting lettuce; all of the land was owned by Hansen Farms. Royal

---

[1/] It appears from the Board's records that since the harvesting season for the employer was rapidly coming to an end, all three parties were concerned that the administrative function of resolving the 8 challenged ballots would not be completed in time to conduct a meaningful rerun election during this growing season. In light of the parties' belief that a rerun would be necessary in any event, the parties stipulated that the challenged ballots from the first election would not be resolved and that a rerun election would be conducted on September 25 and 26, 1975.

harvested the lettuce on the Hansen property through an agreement[2/] with Hansen; however, since Hansen[1]s employees had previously voted for no union representation, Hansen was putting pressure on Royal. Chavez informed the workers that Hansen had told Royal that if the UFW won the Royal election there would be no more lettuce from Hansen, causing Royal to go bankrupt. The workers were told that if Royal went bankrupt both the company and the workers' jobs would disappear. Chavez and Solorio concluded the speech by stating that the only way for the company not to go broke was for the workers to choose the Teamsters as their bargaining representative.

The factual basis for Chavez' speech apparently originated from a brief conversation in early September between Albert Hansen of Hansen Farms and Don Hart, vice president of Royal. Although Hart could not recall the precise details of the conversation, he testified that Hansen told him there was a possibility that Hansen Farms may not be growing any lettuce next year. Hart could not remember whether Hansen actually told him the reason for this possible decision; however, Hart testified that he construed the statement to be an insinuation that if either Hansen or Royal "went UFW", Hansen would probably just drop his vegetable business for at least the next year. Aside from this inference by Hart, Hansen apparently gave no explanation for his comment. Hart stated that he did not tell either Solorio or Chavez about this

---

[2/] Don Hart testified that Royal Packing Company has a joint growing-harvesting agreement with Hansen Farms, renewable annually, which provides that Hansen plants and grows lettuce on its land for Royal, who then harvests, packs and ships the lettuce to market.

conversation, but he did recall informing his brother, who was president of the company.

In response to the UFW's[1] contention that this speech to the crew constituted an unlawful threat that Royal Packing Company would go out of business if the employees voted for the UFW, the employer argues that an employee speculating as to possible events which might occur and which were of real concern to growers could not be interpreted as a threat that the employer would cease operations. We cannot accept the employer's argument.

First, to the employees listening to the speech by Chavez and Solorio it would not appear that the statements were merely idle speculation by lower echelon employees as to the employer's possible alternatives should the UFW win the election. On the contrary, both speakers could reasonably be expected to be closely associated with the interests of management by the field workers since Chavez was the employer's payroll clerk and Solorio was a supervisor-who had, at times, signed the employees' paychecks on behalf of the employer. Furthermore, through the explanation of the interrelationship between Hansen and Royal and the statement attributed to Hansen regarding the future effect of a UFW victory at Royal, the comments of Chavez went beyond speculation. Accordingly, we find that this speech to the harvesting crew plainly conveyed the message that the consequence of selecting the UFW as the employee's bargaining representative would be the discontinuance of the employer's lettuce harvesting operation in Salinas, the coercive effect of which is clear.

Likewise, we find the employer's argument that this speech was protected by the free speech guarantee of the First

Amendment to the Constitution of the United States to be without merit. The United States Supreme Court in NLRB v. Gissel Packing Co., 395 U.S. 575 (1969), established the standard for distinguishing between protected and unprotected speech under First Amendment principles in the context of a union organizational campaign. An employer, the Court said, is "free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union" absent a threat of reprisal. Id. at 618.

> He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. See Textile Workers v. Darlington Manufacturing Co., 380 U. S. 263, 274, n. 20 (1965).If there Is any implication that an employer may or may not take action on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. Id.

In reaching this conclusion, the Court recognized that the employer's free speech right to communicate his views on unionization to the employees cannot outweigh the equal rights of the employees to associate freely, which are embodied in section 7 of the NLRA[3/] and protected against infringement by section (a) (1)[4/] and the proviso to section 8(c)[5/]. Any balancing

[3/] 29 U.S.C. §157.

[4/] 29 U.S.C. §158(a) (1).

[5/] 29 U.S.C. §158 (c).

of these competing rights must necessarily consider the coercive impact of such unfounded predictions upon employees who are economically dependent on their employer. The Agricultural Labor Relations Act of 1975 contains provisions[6/] substantially identical to the three sections of the NLRA relied upon by the Supreme Court in Gissel, accordingly, the Supreme Court's analysis in Gissel is applicable under our Act. Furthermore, in view of the threatening nature of the statements to the harvesting crew and the limiting language of Section 1155 of the Labor Code[7/]— we find that Section 2 of Article I of the California Constitution[8/] does not require a different result.

The application of this restriction on permissible employer speech by the NLRB has not been limited to predictions of adverse consequences, the occurrence of which were solely controlled by the employer. In Blaser Tool & Mold Co., 196 NLRB No. 45 (1972), the NLRB applied the First Amendment holding of Gissel to statements made to all employees by the employer's president which indicated that the employer's major customer was free to withdraw its patronage at any time and he was apprehensive that the customer would cease doing business with

---

[6/] See Labor Code Sections 1152, 1153(a) and 1155.

[7/] "The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit."

[8/] "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for abuse of this right. A law may not restrain or abridge liberty of speech or press."

the employer if the employees chose to be represented by a union. Since the employer offered no factual basis for suggesting the possibility that the customer would withdraw its patronage if the employees voted for the union, the NLRB held the statements to be violative of section 8(a)(l). See also, NECO Electrical Products Corp. (Electrical Workers, IVE), 289 F. 2d 757 (D.C. Cir. 1960).

It is apparently the employer's position that the single conversation between Albert Hansen and Don Hart in early September provided sufficient factual foundation for the employer's belief that Hansen would terminate the growing-harvesting arrangement between Hansen Harms and Royal if the UFW was selected as the bargaining representative for Royal's employees and, therefore, the statements to the harvesting crew were protected under the First Amendment.

Assuming arguendo that it would be permissible for Royal to report to its employees a definitive management decision by Hansen not to do business with Royal if its employees voted UFW, those are not the facts. According to Hart, Hansen merely stated there was a possibility that Hansen would not be growing lettuce the following year. Such a statement hardly meets the Gissel requirement for evidence of demonstrably probable consequences beyond the employer's control.

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

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

Accordingly, we find that the coercive impact of the statements to Royal's harvesting crew on September 22, 1975 could reasonably be expected to have affected the outcome of this election and, therefore, we set this election aside. Dated: February 5, 1976.

Roger M. Mahony

Roger M. Mahony

LeRoy Chatfield

LeRoy Chatfield

Joseph R. Grodin

Richard Johnsen, Jr.