STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: HARDEN FARMS OF CALIFORNIA, INC., Employer, and WESTERN CONFERENCE OF TEAMSTERS, TEAMSTERS FARM WORKER UNION LOCAL 1973, AFL-CIO, Petitioner, and UNITED FARM- WORKERS OF AMERICA, AFL-CIO, Intervenor, and AMALGATED MEAT CUTTERS AND BUTCHER WORKERS OF NORTH AMERICA, FRESH FRUIT & VEGETABLE WORKERS, AFL-CIO, LOCAL P-78-A Interested Party.	No. 75-RC-95-M 2 ALRB No. 30

Following a representation election held on September 19, 1975, in which the United Farm Workers of America, AFL-CIO ("UFW"), obtained a majority of the votes cast,[1/] the employer and the Western Conference of Teamsters, Local 1973 ("Teamsters"),

[1/]The tally of ballots showed that of 326 votes cast, 190 were for UFW, 115 for the Teamsters, 3 for no union, 13 challenges and 5 void ballots.

filed separate Petitions to Set Aside Election alleging misconduct by the UFW and the Board.[2/]

I. Whether the Petition for Certification which included shed workers and produce truck drivers was barred by existing collective bargaining agreements.

The employer argues that shed employees and truck drivers are both covered by existing collective bargaining agreements which bar a Petition for Certification covering them. The contracts were in fact entered into prior to the effective date of the Agricultural Labor Relations Act. Section 1156.7 (a) of the Act provides that: "No collective bargaining agreement executed prior to the effective date of this chapter shall bar a petition for an election." Accordingly, this objection is without merit.

[2/]The following objections were set for hearing but were withdrawn by the employer at the hearing: that much of the preelection conference was conducted in untranslated Spanish; that the number of UFW observers was unreasonable; that the employer received insufficient notice of the preelection conference.

No evidence was offered in support of the following objections: that the employer was required to provide a payroll list in less than 48 hours; that the unions failed to designate observers at the preelection conference; and that a UFW organizer and a committee member walked people into the voting area telling them to vote for the UFW. These objections are dismissed.

In its petition objecting to the election, the employer also alleged as misconduct that the Board agents arrived late and the election started 20 minutes late. The Notice of Hearing and Order of Partial Dismissal of Petition neither set that allegation for hearing nor dismissed it. The employer did not object to that omission at any time prior to or during the hearing, but in its post-hearing brief, the employer argues late opening as a ground for setting aside the election. The employer made no attempt to offer evidence at the hearing tending to show that any employees were disenfranchised by the late opening. In the absence of such evidence we will not set aside an election. United Celery Growers, 2 ALRB No. 27 (1976).

II. Whether truck drivers and shed workers are agricultural employees and were therefore improperly included within the bargaining unit.

The employer also contends that shed workers and produce truck drivers were improperly included in the unit because they are not agricultural employees but rather come under the jurisdiction of the National Labor Relations Board. The status of the truck drivers under the National Labor Relations Act is a question currently pending before the N.L.R.B. We conclude that resolution of the matter of the truck drivers' status as agricultural employees and therefore their inclusion in the bargaining unit is appropriately deferred until there is a decision by the N.L.R.B. or some future proceeding of this Board on a motion for clarification of the unit described herein.[3/]

The evidence with respect to shed workers is that the employer operates two packing sheds, the "cauliflower shed" which is located off the employer's property and the "asparagus shed" which is located on the ranch.[4/] The cauliflower shed employees, who are covered by a collective bargaining contract with Amalgamated Meat Cutters and Butcher Workers of North America, Fresh Fruit and

---

[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). The issue of the eligibility of truck drivers or shed employees to vote in the election may not be raised in a post-election objections proceedings, but must instead be raised by challenging voters at the election. Hemet Wholesale, 2 ALRB No. 24 (1976); California Coastal Farms, 2 ALRB No. 26 (1976).

[4/] The employer also introduced evidence with respect to packers who pack the employer's celery and lettuce crops in the field. These persons are clearly agricultural employees as they perform work on the employer's farm, which work is incidental to the production of the employer's crops. See, R. C. Walter & Sons, 2 ALRB No. 14 (1976).

Vegetable Workers, AFL-CIO, Local P-78-A, were excluded from the bargaining unit by agreement of the parties prior to the election. Therefore, this objection does not relate to these employees. Since the asparagus shed is located on the ranch, its employees are agricultural employees whom we have no discretion to exclude from the bargaining unit unless the shed is a commercial shed. There is no suggestion in the evidence that the asparagus shed is commercial. We, therefore, conclude that asparagus shed employees were properly included in the bargaining unit.[5/]

The objection is dismissed.[6/]

III. Whether there was insufficient notice of election.

The preelection conference was held on Thursday, September 18, 1975 from about 7:45 p.m. to 10:20 p.m. At this conference, the election was set for 8:00 a.m., the next morning. The Board agent told the parties that notices of the election would be available around midnight. The employer did not pick up notices because he felt it was too late to give employees notice of the election. Many employees of the employer do not live in the employer's labor camp.

[5/]If any of the parties have evidence that the asparagus shed is a commercial operation, they may seek exclusion of asparagus shed employees by a motion for clarification of the bargaining unit subsequent to certification. Additionally, we note that the asparagus shed was not operating at the time of the election and no asparagus shed employees voted in the election. Therefore, their inclusion in the bargaining unit could not affect the outcome of the election.

[6/]At the hearing the employer argued that the consequence of the improper inclusion of truck drivers in the unit is that the election was held at a time when there was less than 50 percent of peak employment, and that only by counting the truck drivers was there greater than 50 percent of peak employment. The employer did not

(fn. cont. on page 5)

The employer testified that 385 voters were listed on the elibiility list. Of these, 326 voted in the election, a very high percentage turnout. Thus, it is evident that the vast majority of employees were informed of the election. Furthermore, there was an organized effort to bring all employees who worked on the day of the election to the polls by transporting them there in crew buses. The employer presented no evidence that any of the employees who did not vote were deprived of the opportunity to vote because they did not work for the employer on the day of the election and therefore received no notice of the election. The very short time constraints of the ALRA, which require an election within seven days and provide for intervention up to 24 hours before election, make it very difficult to provide exact notice of the time and place of an election well in advance. Board agents should give as adequate notice as possible. Under these conditions we conclude that the Board agent did not abuse his discretion by holding a preelection conference on the evening before the election and relying on the system arranged for bringing voters to the polls to provide notice of the election to the voters. Here there is no reasonable possibility that a number of employees sufficient to affect the outcome of the election were prevented from voting by lack of notice. See, R. T. Englund Company, 2 ALRB No. 23 (1976); West Foods, Inc., 1 ALRB NO. 12 (1975); Yamano Bros., 1 ALRB No. 9 (1975). Accordingly, this objection is dismissed.

---

fn. 6 cont.

allege lack of peak in its petition to set aside the election under Labor Code § 1156.3(c). Section 1156.3(c) requires that objections to an election must be filed within five days after the election. Since the objection with respect to peak was not timely filed, and indeed was not filed at all but merely raised by the employer at the hearing, it is dismissed.

IV. Whether an incident in which a car passed the voting lines and its occupants yelled "Viva Chavez" constitutes misconduct affecting the results of the election.

The balloting was conducted in a garage in one of the employer's labor camps. The garage opens toward a private road beyond which there is a fence separating this employer's property from the adjacent property. Along the edge of the other property is a dirt road. Employees waiting to vote lined up outside the garage along the fence. The testimony is that at one point during the election, when 50 - 75 people were in line to vote, a car drove by on the dirt road and its occupants twice shouted "Viva Chavez." There is no evidence that the incident was the act of any of the parties. The fact that a statement made by an individual favors one party is not a sufficient ground for presuming that the person is an agent of the party.[7/] The reaction of those people lined up to vote was characterized by one witness as a "responsive roar" and by another as merely looking up and then continuing their conversations. Whatever the reaction, we are not prepared to conclude that such conduct affected the results of the election. In U. S. Gypsum Co., 92 NLRB 1661 (1957), the N.L.R.B. held that the statement by an employee which was heard in the polling area that "all you boys know how to vote" is not of such character as to affect the free choice of employees in the

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

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

[7/] Eastern Metal Products Corp., 116 NLRB 1382 (1956).

election. Similarly, the comment of one employee during balloting that "you might as well vote yes" was held too trivial to seriously affect the outcome of the election. Harris Intertype Corp., 164 NLRB 770 (1967), enf'd 401 F. 2d 41 (C.A. 4 1968). We find that the statement made in this case is not of such character as to have impaired the free choice of employees waiting to vote. Accordingly, the objection is dismissed.

V. Whether the Board Agent changed the boundaries of the no-electioneering area around the polls after workers congregated in the area originally restricted.

Whether there was drinking and boisterous conduct within 20 feet of the polls which affected the results of the election.

whether United Farm Worker supporters campaigned at the polls by meeting right by the voting area and hollering "Viva Chavez."

Whether the Board Agent allowed alcoholic beverages in or near the polling area, and thereby affected the results of the election.

These four objections relate to the same factual circumstances. Prior to the start of the election, the Board Agent in charge designated the boundaries of the polling area as Natividad Road to the west and a parking lot or telephone pole at the edge of the labor camp to the east. These boundaries were approximately 550 feet in each direction away from the garage which housed the polls.[8/] Sometime during the polling period employees began to

[8/]The employer's witness estimated that the boundaries were 150 feet on either side of the garage. However, Exhibit 1-J, a map of the area which was drawn by an employee of the employer for insurance purposes, shows that the distance from the garage to the boundaries was approximately 550 feet in each direction. Although the employer's witness refused to authenticate the map with respect to distances and scale, we note that the map has carefully written distances in feet and inches and a scale designation of 1 inch to 10 feet and that the two measures of distance are internally consistent. Therefore, we rely upon the distance designations on the map.

congregate after voting around *a* water tower which was located approximately 60 feet from the polling garage. The employer's observer testified that the people gathered around the water tower could be heard from inside the voting area, [9/] that on three occasions that observer and the Board Agent went outside the garage and observed a group of people around the water tower, and observed that some of them were drinking beer, and that on each occasion the Board Agent requested that the people stop drinking and disperse.

Thus, it appears that the Board Agent designated broadly expansive polling boundaries and then made reasonable, although unsuccessful, efforts to control conduct within these boundaries. There is no evidence that the conduct of the employees around the water tower disrupted polling or was in any way threatening or coercive. In Sewanee Coal Operators' Association, Inc., 146 NLRB 1145 (1945) the N.L.R.B. refused to set aside an election where a crowd, ranging from 200 to 2,000 people at various times, congregated on a sidewalk and street immediately outside the polling area during voting and there was some placard electioneering among the crowd. The N.L.R.B. held that there was no evidence that the crowding and electioneering impaired the exercise of free choice in the election. We reach the same conclusion here.

There is also evidence that two employees were drinking beer while standing in line to vote outside the garage but that they

---

[9/] The only testimony with respect to what was said by the people near the water tower is testimony of a Teamster organizer who was located during the election at the Natividad Road boundary over 600 feet from the water tower. He stated that he heard people shouting "Vote for Chavez" and "Viva Chavez." Because of his location far from the polling area, we do not credit this witness when witnesses far closer to the water tower did not testify to similar statements.

ceased drinking and put the beer aside when requested to do so by the Board Agent. There is also testimony by one of the observers that he could smell alcohol on some voters' breath. We do not find that the fact that some employees had alcoholic beverages before voting, even in the area around the polls, is in itself conduct which interferes with the holding of a fair election. In Tampa Transit Lines, 85 NLRB 1994 (1949), the N.L.R.B. held that the fact that two employees came to the polls in an intoxicated state and acted in a loud and boisterous manner was not sufficient to require the setting aside of an election where there is no evidence that the employees' statements were coercive. In the case at hand there is no evidence that the drinking disrupted the election. Accordingly, we dismiss these objections.

VI. Whether on at least four occasions the UFW observer conversed in Spanish with voters after they had been handed a ballot.

The employer's observer testified that on four occasions a UFW observer spoke to voters in Spanish after they had received ballots. He further testified that in each case it was a momentary exchange, and that he brought it to the attention of the Board Agent and the Board Agent spoke to the observer. The UFW observer testified that the only exchanges in Spanish with voters were in the nature of greetings.

The employer contends that the N.L.R.B.'s rule in Milchem, Inc., 170 NLRB 46 (1968) requires that the election be set aside without inquiry into the content of the alleged statements or whether they could have affected the outcome of the election.

The N.L.R.B.'s Milchem rule provides that the very fact that statements are made by a party in the polling area during voting requires the setting aside of an election without regard to the contents of the statements. Where it is alleged that an observer spoke to voters during polling, the N.L.R.B. inquires into the substance of the statements and considers whether they are of such character as to affect the free choice of voters in the election. Century City Hospital, 219 NLRB No. 6 (1975); Modern Hard Chrome Service Co., 187 NLRB 82 (1970); General Dynamics Corp., 181 NLRB 874 (1970).

In Hecla Mining Co., 218 NLRB No. 61 (1975), the N.L.R.B. recently held that the conduct of an observer in conversing in Spanish with many Spanish speaking voters before they voted was not a ground for setting aside the election because the conversations were confined to greetings and other topics which did not involve electioneering. Here, the employer's observer testified that the alleged conversations were only momentary, a description consistent with the UFW observer's testimony that the exchanges were merely greetings. Thus, we find that the exchanges were not of such character as to affect the voters' free choice of a collective bargaining representative. Accordingly, we dismiss the objection.

VII. Whether there were vehicles with UFW insignia or stickers visible to workers within 20 feet of the polling area.

Whether the employer showed favoritism to the UFW by the use of a company bus bearing a sticker which said "Chavez Si, Teamsters' No," on the day of the election.

The evidence with respect to these objections is that prior to the start of the election, there were 7 or 8 cars with UFW stickers on them parked in the parking lot at the east end of the polling area. This was brought to the attention of the Board Agent who had the stickers covered. in addition, there was a UFW sticker,

which was not visible from the building in which voting took place, on the door of a building on the far side of the water tower. Finally, one car and one crew bus, each with a UFW sticker on it, came into the voting area briefly and then left.

The N.L.R.B. has repeatedly held that the presence of campaign insignia in the polling area is not a ground for setting aside an election in the absence of evidence that the insignia caused some disruption of polling or otherwise interfered with the election. Foremost Dairies of the South, 172 NLRB 1242 (1968); Western Electric Company, Inc., 87 NLRB 183 (1949). We find no evidence to suggest that the presence of campaign insignia in the polling area had any effect whatsoever on the exercise of free choice by the voters. See, R.T. Englund, 2 ALRB No. 23 (1976); Samuel S. Vener Company, 1 ALRB No. 10 (1975). The objections are dismissed.

VIII. Whether the Board agent did not have the proper election forms. Whether the Board Agent told the company that it would do no good to file challenges.

Whether the preelection conference was improper because the Manual of Procedure was not followed in that: (a) the Board Agent did not inspect the voting site prior to the election and (b) the Board Agent did not take notes or keep a written record of the election.

The evidence is that the Board Agents forgot to bring to the election copies of the Board's official tally of ballots forms and that they therefore had to improvise a tally of ballots on plain paper. There is no allegation that the improvised tally is incorrect or incomplete.

The employer's observer testified that as he was filling out pre-printed forms for objections to the conduct of the election, the

Board Agent commented that he should not bother to fill them out as it would not do any good anyway.[10/] He testified that he nonetheless completed the forms.

Finally, the employer's observer testified simply that to his knowledge, the Board Agent did not inspect the election site prior to election day and did not take notes at the preelection conference. There is absolutely no evidence of what possible effect either of these omissions could have had on the election.

These three objections all raise purely technical allegations of deviation from procedures set forth in the Manual of Procedure. Such objections should in the future be dismissed at the pre-hearing stage. Election procedures are established to set guidelines for the ideal method of conducting an election. Deviations from procedures are not in themselves grounds for setting aside the secret ballot choice of a collective bargaining representative by employees without evidence that those deviations interfered with employees' free choice or otherwise affected the outcome of the election. Samuel S. Vener Company, supra; Polymers, Inc., 174 NLRB 282 (1969). There is no such evidence here. Therefore the objections are dismissed.

IX.

The employer argues in its brief that while the incidents alleged as grounds for overturning the election may not individually compel that result, the cumulative effect of all the incidents

---

[10/]The Board Agent's comment may have been triggered by the fact that the forms do not allege facts to support the objections as is required by Regulation 20365 (a) and our decision in Interharvest, Inc., 1 ALRB No. 2 (1975).

is that the integrity of the election is seriously undermined and the election must therefore be set aside. We do agree that allegations of misconduct affecting the election must be considered as a whole as well as separately and we have so considered them here. We conclude, however, that taken together all the alleged misconduct does not reflect an atmosphere in which employees were unable to freely choose a collective bargaining representative.

We, therefore, certify the United Farm Workers of America, AFL-CIO, as bargaining representative for all agricultural employees of Harden Farms of California, Inc., in the counties of San Benito, Monterey and Santa Clara, excluding employees working in the employer's cauliflower packing shed.

Dated: February 23, 1976