

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
HASHIMOTO BROTHERS NURSERY,)	NO. 75-RC-10-R
)	
Employer,)	
)	2 ALRB NO. 31
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

In a representation election held on September 17, 1975, the United Farm Workers of America, AFL-CIO ("UFW") received a majority of the votes cast by the employer's agricultural employees.^{1/} Thereafter, the employer moved to set aside the election on two grounds: Board failure to conduct the election according to regulations and alleged misrepresentations by the union.

We find that the allegations lack merit and certify the results of the election.

I. Conduct of the election.

Although the exact nature of the employer's objection was not stated with precision, the apparent substance of the allegation, as developed at hearing, was that the regional office failed to brief the employer on election procedures or notify it of the results of the balloting.

^{1/}Eight employees voted for the UFW, one voted for no union, and there was one unresolved challenged ballot.

The Board's regulations provide that during the election each party may be represented by predesignated observers of its own choosing, 8 Cal. Admin. Code, §20350 (b), and that "Upon completion of the election, a Board agent shall furnish to the parties a tally of ballots. Each party shall have a representative present at the time ballots are counted who is authorized to receive such tally," 8 Cal. Admin. Code §20365(a).

The employer attended a preelection conference accompanied by a long-time employee whom the employer had designated as its official election observer. The election was conducted on the employer's premises and was concluded at about 12:30 p.m. on a working day. Nevertheless, the employer did not learn of the outcome of the balloting until the following day when so informed by a neighbor who presumably read the results in a local newspaper.

Upon the conclusion of the election, however, the employer's observer certified that the votes were counted fairly and accurately and that it was served with a tally of the ballots.^{2/} It is presumed that he received a copy of the tally in accordance with election procedures.

Unless the challenging party alleges and demonstrates impropriety in the ballot count, mere failure to serve a copy of the tally is not conduct which would warrant the setting aside of an election.

^{2/}The following statement, in both English and Spanish, appears on the official tally sheet above the observer's signature: "The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally."

II. Misrepresentation.

The employer asserted that the UFW made false statements which may have persuaded employees to vote for the union. In issue is a campaign handbill stating that the UFW does not charge initiation fees, a claim which contravenes Article 10, Section 2 of the union's constitution, as adopted in September, 1973, requiring payment of a \$25.00 initiation fee effective January 11, 1974. The employer stated that UFW representatives distributed the literature on his premises within a day or two of the election and that he received a copy from an employee who voted for the union.

The identical handbill has been considered by this Board on previous occasions. At the hearing in Hemet Wholesale, 2 ALRB No. 24 (1976), the UFW organizer testified that, the constitutional provision notwithstanding, the union president had been authorized to waive initiation fees and that, to his knowledge, such fees had never been assessed.^{3/}

It was our determination in Hemet, supra, that the evidence affirmatively showed that the UFW has not collected initiation fees as a matter of course, and that the employer had failed to demonstrate that such fees were ever collected.^{4/}

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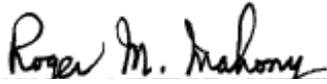
^{3/}For a detailed discussion of the constitutional provisions and waiver of initiation fees, see, Samuel S. Vener Co., 1 ALRB No. 10 (1975); Hemet Wholesale, 2 ALRB No. 24 (1976).

^{4/}The employer submitted UFW contracts which contained provisions for the collection of initiation fees. However, the contract language made the collection of such fees discretionary with the union.

We find that Hemet, supra, is dispositive of the issue of misrepresentation and the objection is hereby dismissed.

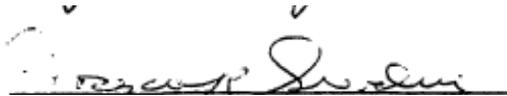
Certification ordered.

Dated: February 23, 1976

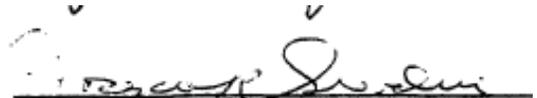


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