

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
)
BORGIA FARMS,) NO. 75-RC-6-R
)
Employer,)
) 2 ALRB No. 32
and)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
Petitioner,)
)
and)
)
WESTERN CONFERENCE OF)
TEAMSTERS, I . B . T . ,)
)
Intervenor.)
)
_____)

A representation election was held at Borgia Farms on September 11, 1975, and the United Farm Workers of America, AFL-CIO, (" UFW "), received a majority of the ballots cast.^{1/} The employer objects to certification of the election on four grounds, one of which is that it was unfairly deprived of an opportunity to contact its employees with respect to the election because a Board agent instructed the employer's owners to have no communication with their workers regarding unionization prior to the preelection conference. Because we conclude that the election must be overturned on this ground, we do not reach the employer's other objections.

The employer contends that the election was improperly and unfairly conducted in that the union alone was given the

^{1/}The election tally: UFW - 98, Teamsters - 1, No union - 33; there were no unresolved challenged ballots.

opportunity to contact and talk to employees prior to the election. Joe and Louis Borgia, partners who own Borgia Farms, testified that sometime between September 6 and September 9, 1975 (their testimony is confused as to the date), a Board agent visited them to deliver copies of the Petition for Certification filed in this case. At that time, the Board agent told them that they may not contact or communicate with their employees until after the preelection conference. Apart from a few isolated instances in which employees approached Louis Borgia with questions, the record indicates that the Borgias complied with the Board agent's instruction and did not campaign among their employees prior to the preelection conference.

The employer argues that although under the Board agent's instruction it could contact employees after the preelection conference, since that conference was not concluded until after the workers had finished work on the day before the election, the employer could contact only a few workers for the purpose of notifying them of the exact time and place of the election. Thus, by complying with the clear instruction of the Board agent not to have any contact with the employees until after the preelection conference, the employer here was effectively precluded from conducting any campaign effort.

Under the circumstances of this case, we cannot say that the employer's reliance on the Board agent's instruction was unreasonable. The petition was filed and the election held during the early weeks of the Act when persons affected by the Act reasonably were uncertain about how to proceed under it.

Furthermore, the instruction came from a Board agent who had apparent authority to state the limitations on conduct which the Act imposed. Here, the employer did not have an attorney prior to the preelection conference and thus could reasonably put substantial reliance on the Board agent's interpretation.

The effect of the instruction not to communicate with workers and the employer's reliance on it is that employees were exposed to only the union's campaign and were deprived of the opportunity to weigh the alternatives open to them and make an informed choice. Consequently, the election is set aside.

Dated: February 23, 1976

Roger M. Maloney
Richard J. Jensen

James E. Sullivan

Member CHATFIELD, dissenting:

While I agree with the majority of the Board that an election should be set aside if a Board agent tells an employer that he cannot conduct an election campaign and the employer acts on that advice, the evidence in this case comes far from establishing that the Board agent acted improperly. The election should not be overturned without hearing the Board agent's version of the conversation.

There was nothing in the employer's petition objecting to the election or in the accompanying declaration that would have alerted the UFW that the conduct of the Board agent was at issue. The UFW could not be expected to be prepared to meet the employer's testimony on this issue. Had the UFW requested the Board to permit the Board agent to testify, the Board would have granted the request because the UFW had no other way to contest the testimony of the conversation between the Borgias and the Board agent other than presenting the testimony of the Board agent. 8 Cal. Admin. Code § 20600.2.

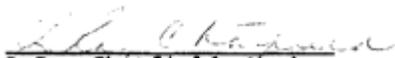
The majority of the Board is, in effect, overturning an election which the UFW won by a vote of 95 to 33 to 1 because the UFW failed to ask for a continuance of the hearing in order to obtain permission for the Board agent to testify. It may be

that the UFW thought that the testimony was inherently incredible and chose to let it stand. It may be that the UFW did not recognize the issue as critical since the testimony was scanty and not emphasized by the employer's attorney. It may be that the UFW did not ask for a continuance in view of the Board's policy of discouraging continuances.

An election should not be set aside unless there is clear evidence that it is appropriate to do so. The Board should not ignore evidence which it can obtain from its agent when the evidence is directly related to the crucial issue in the case. To require the winning union to produce evidence that is not in its possession in order to preserve its victory, when the Board has the evidence, is to run the risk of penalizing the majority of employees who voted to be represented by the UFW.

In cases where parties object to the conduct of Board agents, the testimony, sworn statements, or field notes of the Board agent should be available to the parties and considered as part of the investigation of the conduct of the election. In this case, were the Board agent to give evidence, she might corroborate the testimony of the employers or present a conflict in the testimony for the Board to resolve. The election should not be overturned without further investigation.

Dated: February 23, 1976



LeRoy Chatfield, Member