STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VALLEY FARMS, MAPLE FARMS, & ROSE J. FARMS, Employer , and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	No. 75-RC-59-F 2 ALRB No. 42

In an election conducted among the employer's employees September 19, 1975, the United Farm Workers of America, AFL-CIO ("UFW") received 5 votes, and 11 votes were cast for no union. We overturn the election.

In an unfair labor practice complaint against the employer, the Administrative Law Officer found that the employer unlawfully discharged Manuel Leal, an employee, for union activity the day after the UFW filed a Petition for Certification. The Board found that these acts constituted an unfair labor practice within the meaning of §§ 1153 (a) and (c) of the Act, and ordered the employer to reinstate the discharged employee with back pay and cease and desist from unlawful practices. Valley Farms and Rose J. Farms, 2 ALRB No. 41 (1976).

At the hearing on the UFW's objections to the elections, the parties agreed to incorporate the record of the hearings on the unfair labor practice complaints,[1/] into the

[1/] 75-CE-28-F, 75-CE-28-1-F, 75-CE-62-F and 75-CE-63-F.

record on the objections. Since we adopted the Administrative Law Officer's findings based on that record, we also adopt the findings in the unfair labor practices case in this proceeding.

The employer claims that regardless of whether or not the employee's discharge was unlawful, the discharge could not have affected the outcome of the election. The record does not support this claim. Leal had worn a UFW button to work and had solicited union authorization cards from the workers. His support for the UFW was open and well known. Leal told some workers that he had been fired, and in a small work force, the message would spread that the employer will retaliate against those who vote for the UFW.

In determining whether or not to overturn an election, the Board determines whether the results of the election reflect the uncoerced choice of the workers. Firing a worker for union activity before an election is a display of the employer's economic power that cannot help but chill the desire of a voter to support the union. Domino of California, 205 NLRB No. 123.

As an additional ground for overturning the election, the UFW claims that it was unable to effectively use the eligibility list supplied to the Board by the employer because the list did not contain the addresses of employees and the union did not get the list until the day before the election.

The evidence is not in dispute. The employer cooperated in providing all available payroll records to the Board agent as requested; however, he did not that year, or any previous year, ask harvest season employees for their addresses. Hence he was unable to supply the Board agent or the UFW with the

employees' addresses. The Board agent did not give the list to the UFW as soon as it was available, but gave the list to the UFW at the preelection conference, which was held on the day before the election. When the union requested the addresses at the preelection conference, the employer gave the union the name and location of a labor camp where some employees temporarily resided. The union was in possession of other addresses of employees from whom it had obtained authorization cards.

Labor Code Section 1157.3 requires employers to "maintain accurate and current payroll lists containing the names and addresses of all their employees", and requires that the employer "make such lists available to the Board upon request", The Board's regulation, 8 Cal. Admin. Code §§ 20310 (d) and (e), requires an employer to provide a complete and accurate list of the names and addresses of all employees in the bargaining unit sought by the petitioner within 48 hours after the filing of the petition.[2/]

[2/]The requirement is similar to the rule promulgated by the National Labor Relations Board in Excelsior Underwear, Inc., 156 NLRB No. 1ll (1966), which requires that an employer file an eligibility list with the regional director containing the names and addresses of all the eligible voters.

When an employer fails to supply a substantially complete list of the names and addresses of eligible voters, the NLRB presumes that the employer's failure had a prejudicial effect upon an election which the union lost. Sonfarrel, Inc., 188 NLRB No. 146 (1971). The NLRB presumes that the union will be prejudiced when the employer produces the list later than the rule requires without adequate explanation. Rockwell Manufacturing Co., 201 NLRB No. 57 (1973). If the employer complies with the rule, but the union does not get the list at the required time because of a substantial error of the Board, the election still will be overturned without looking to whether the union was actually prejudiced. Coca-Cola Co. Foods Division, 202 NLRB No. 123 (1973)

We have previously held that where an employer fails to exercise due diligence in obtaining and supplying an accurate, updated list of names and addresses of workers, and the defects or discrepancies are such as to substantially impair the utility of the list in its informational function, the employer's conduct will be considered as grounds for setting the election aside. Yoder Brothers, 2 ALRB No. 4 (1976).

In this case the employer claims, in effect, that the union was not prejudiced by its failure to provide addresses because it had, or could get, the addresses of some of the workers. The NLRB rejected this argument in Excelsior Underwear, Inc., 156 NLRB No. 111. The NLRB said that the fact that the union was in possession of some of the addresses of employees or had access to some employees at the work place did not lessen the requirement that an employer provide a list of the names and addresses of all employees. The union is entitled to an accurate list of names and addresses in order to contact all employees, including those employees whose existence is unknown to the union. See Yoder Brothers, supra, slip opinion at 7, note 4.

The employer contends that he did not comply with the requirement to supply addresses because, at the time the union filed the Petition for Certification, he was ignorant of the requirement that addresses of employees be kept.

We understand the employer's failure to change his long standing operating procedures during the first days of the beginning of the operation of the Act. However, since the failure to provide addresses substantially impaired the utility of the list to the union, we consider the failure to provide the

addresses as grounds for setting the election aside. Yoder Brothers, supra, slip opinion at 16. In addition, the failure of the Board to provide the union with the list until the day before the election also impaired the utility of the list to the union and may explain the low voter turnout.

Accordingly, the election is set aside.

Dated: February 25, 1976

Roger M. Mahony, Chairman

Richard Johnsen, Jr., Member

LeRoy Chatfield, Member

Joseph R. Grodin, Member