

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
)
GONZALES PACKING COMPANY,) No. 75-RC-192-M
)
Employer,) 2 ALRB No. 48
)
and)
)
UNITED FARM WORKERS OF)
AMERICA, AFL-CIO,)
)
Petitioner.)

Gonzales Packing Company ("Employer") has filed objections to the certification election conducted among its agricultural employees on October 15, 1975, in which the United Farm Workers of America, AFL-CIO, received a majority of the ballots cast.^{1/} On January 30, 1976, the regional director issued an order dismissing all objections raised by the employer except for one. Both the employer and the UFW appealed to the Board from this order. The employer argued that the dismissals were improper, and the UFW argued that the one remaining objection should also have been dismissed.

The objection which remained after the partial dismissal of objections by the regional director was stated in a declaration accompanying the objections as follows:

"I am an employee of Gonzales Packing Company and was a company observer at the ALRB elections held on October 15, 1975. During the conduct of the elections, I observed one of the United Farm Workers Union observers, Lamberto Perez M., talking to voters as they were standing in line.

^{1/}The tally of ballots shows the following results: UFW - 113; No labor organization - 36; unresolved challenged ballots - 16.

I called this to the attention of the ALRB agent and she warned the UFW observer not to do this anymore; however, he had spoken to many of the voters before he was stopped."

On February 2, 1976, the Board ordered the parties to show cause why the above objection should not be submitted on the basis of the declaration submitted by the employer and the declaration of the board agent in charge of the election describing the incident as she remembered it. The declaration of the board agent was served on the parties along with the order to show cause. Both parties have now responded to the order to show cause.

Pursuant to our authority under Labor Code Section 1146, the decision in this matter has been delegated to a three-member panel of the Board. For the reasons hereinafter set forth, we sustain the regional director's partial dismissal of the objections, and we find that the remaining issue, which was the subject of the order to show cause, does not warrant our setting the election aside. We therefore certify the election.

I. Employer's Appeal from Order of Partial Dismissal

The employer's objections petition is composed of 16 paragraphs. Paragraphs 3-7, inclusive, object to conduct of the election or conduct affecting the results of the election, and therefore must be accompanied by declarations or other evidence establishing a prima facie case. 8 California Administrative Code Section 20365 (a). Employer argues that although there were no supporting declarations for the above objections, they should not have been dismissed because Section 1156.3 (c)² of the Act

²Unless otherwise indicated, all statutory references are to the Labor Code.

mandates a hearing on all allegations of the petition.^{3/}

The Board has previously addressed this argument in John V. Borchard Farms, 2 ALRB No. 16 (1976), and has found that neither the statute nor constitutional principles require an evidentiary hearing where the moving party does not present prima facie evidence of substantial and material factual issues which, if resolved in its favor, would warrant setting aside the election. See also, Samuel S. Vener Co., 1 ALRB No. 10 (1975); Jack or Marion Radovich, 2 ALRB No. 12 (1976). For this reason, as well as those additional reasons stated in the regional director's order of partial dismissal, we affirm the dismissal of paragraphs 3-7 of the petition.

Paragraphs 8-15, inclusive, of the petition raised various objections to the constitutionality of the Act and attacks on the regulations of the Board. In addition, a declaration incorporated by paragraph 16 objects to the use of symbols on the ballot. See, 8 California Administrative Code Section 21000. These allegations must be dismissed as raising matters which are not proper subjects for review under Section 1156.3 (c) of the Act. The only subjects reviewable as post-election objections are: (1) that the allegations made in the petition for certification pursuant to Section 1156.3 (a) were incorrect, (2) that the Board improperly determined the geographical scope of the bargaining unit, (3) that the election was not conducted properly, and (4) that there was misconduct affecting the results of the election.

^{3/}Section 1156.3(c) states in part: "Upon receipt of a petition under this subdivision, the Board, upon due notice, shall conduct a hearing to determine whether the election shall be certified."

Thus, a petition filed under Section 1156.3(c) of the Act does not provide for consideration of the Act itself nor of the rules and regulations promulgated thereunder. Samuel S. Vener, 1 ALRB No. 10 (1975).

Paragraph 1 of the petition raises the objection that the petition for certification was not timely filed with respect to peak of season, see Section 1156.3(a) (1), and paragraph 2 claims that there was insufficient employee support for the petition for certification, see Section 1156.3(a). Paragraph 1 was dismissed by the regional director on the basis of the accompanying declaration of C. Stephen Horwath, president of the employer, to the effect that peak agricultural employment for the preceding year totaled 321 employees, and that in the applicable payroll period there were 311 employees. Since the statute requires only that the employer be at 50% of peak at the time a union files for an election, the declaration directly contradicts the assertion in the petition that the peak requirement was not met. For that reason the objection concerning peak employment is dismissed.^{4/}

The objection of paragraph 2 pertains to the sufficiency of employee support for the petition for certification. This objection is dismissed pursuant to 8 California Administrative Code Section 20315 (c) which states that such matters are not re-viewable in a proceeding under Chapter 5 of the Act. John V. Borchard Farms, 2 ALRB No. 16 (1976); Jack or Marion Radovich, 2 ALRB NO. 12 (1976) .

^{4/} The employer does not specifically contest the dismissal of this objection in its appeal.

II. Order to Show Cause

The order to show cause was related to the only objection remaining after the partial dismissal by the regional director. This objection alleged that an election observer for the UFW spoke in Spanish with various voters as they were waiting to vote. The UFW originally appealed from the order of partial dismissal, arguing that this allegation should have been dismissed also, in that it was vague and overly broad, and was otherwise pro-cedurally deficient. Before the UFW appeal reached the Board, the parties were ordered to show cause why the objection should not be submitted on the basis of the declaration which accompanied the employer's petition and the declaration of the board agent who was in charge of the election, a copy of which declaration was served on the parties along with the order to show cause. The latter declaration described the incident as being an exchange of greetings and other pleasantries.

In its appeal from the order of partial dismissal and again in a declaration submitted in response to the order to show cause, the UFW indicated that the observer's remarks were for the purpose of answering some questions from the voters concerning the identification needed for voting. Both accounts of the incident state that the observer made no further comments upon being informed of the impropriety of his actions.

The employer did not submit any declarations in response to the order to show cause, but relied entirely on the discrepancies between the UFW account of the incident and that of the board agent in contending that a hearing is required to resolve the "conflict in evidence". We find, however, the incident under either version

does not constitute misconduct substantial enough to warrant setting the election aside, and since the employer did not submit any evidence that there was any electioneering or that the incident may have otherwise influenced the election, there is no material dispute of fact. Harden Farms, 2 ALRB No. 30 (1976). Accordingly, the objection is dismissed.

III. Conclusion

Since all objections to the election have been dismissed herein, we certify the election.

Certification issued.

Dated: September 15, 1976

Gerald A. Brown, Chairman

Richard Johnsen, Jr. , Member

Robert Hutchinson, Member