

STATE OF CALIFORNIA AGRICULTURAL  
LABOR RELATIONS BOARD

TOMOOKA BROTHERS )

Employer, )

and )

WESTERN CONFERENCE OF TEAMSTERS, )

Petitioner, )

and )

UNITED FARM WORKERS OF AMERICA, )  
AFL-CIO, )

Intervenor )

No. 75-RC-104-M

2 ALRB No. 52

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Following an election on September 24, 1975 in which the Western Conference of Teamsters ("Teamsters") received a majority of the votes cast,<sup>1/</sup> the United Farm Workers of America, AFL-CIO ("UFW"), intervenor in the election, filed a petition of objections to the election pursuant to Labor Code Section 1156.3(c). The issues set for hearing were:

1. Did the employer deny access to UFW organizers after August 29, 1975 in violation of Section 20900 of the Regulations,

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<sup>1/</sup> The tally was Teamsters - 67, UFW - 23, No Union - 0, Challenges - 4.

and if so, did such denial of access affect the outcome of the election? <sup>2/</sup>

2. Did representatives of the Teamsters misrepresent facts to Tomooka employees on the morning of the election, make inflammatory and derogatory comments at that time, minutes before voting, and if so, did such conduct affect the outcome of the election

3. Did Board agents engage in improper conduct including a refusal to accept written challenges, permitting employer's foreman to remain in the voting area, and dismantling voting equipment while eligible voters were waiting to vote, and if so, did such conduct affect the election?

#### I. Access

The UFW alleges that its organizers were denied access to Tomooka field workers on several occasions. UFW organizer Echavarria testified that on September 15, 1975, he and two other UFW organizers went to Tomooka fields at about noon. He stated that employees were working when they arrived but they assumed that the employees would soon stop working for lunch. As they were collecting campaign materials from their car before approaching the workers, Mr. Tomooka, the owner of the ranch, arrived and told them they could not talk to the workers at that time. The organizers left.

Echavarria testified that three or four days after that incident, on September 18 or 19, he again went to Tomooka fields with two other UFW organizers at about noon. The three were stopped by a security guard as they attempted to enter the property

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<sup>2/</sup>An objection that UFW organizers were denied access to the employer's property prior to August 29, 1975, the effective date of the access regulation, was also set for hearing but at the hearing, no evidence was introduced on this issue. Therefore, the objection is dismissed.

and were told that they could not talk to workers at that time because the workers had already completed their lunch break.<sup>3/</sup> The three organizers then went to try to find Tomooka but were unsuccessful. They returned to the field and attempted to enter by another road. They were again stopped by a guard. As they were talking to the guard, Tomooka came up and told them they could not talk to the workers at that time but if they came back at 4:30, they might be able to see the workers then. Echavarria testified that he returned at 4:30 and saw only one worker who said that the crews had quit work at 2:30.

UFW organizer Nieto testified that he went to the Tomooka fields at about noon on September 22, 1975 and was stopped by a supervisor and told to leave. He ignored the supervisor and continued to drive toward the field but was met by Tomooka. Tomooka told Nieto that the employees had already had their lunch break and that he could come back around 5:00 p.m. When Nieto returned at 5:00 p.m., no employees remained.

The ALRB access rule, provides in Section 20900(5} (b) that "organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period. If there is an established lunch break, the one-hour period shall include such lunch break. If there is no established lunch break, the one-hour period may be at any time during the working day. " Thus, if there is no established lunch break, organizers still

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<sup>3/</sup>One of the crew bosses testified that Tomooka employees generally take their lunch break at 10:30 or 11:00 a.m.

have the right to come onto the employer's property for a one-hour period which encompasses the employees' lunch break. K. K. Ito Farms, 2 ALRB No. 51 (1976). In this case, on all three occasions on which the UFW alleges they were denied access, the UFW organizers came to the fields at about noon after employees had already had their lunch break. Under those circumstances, the employer was within his rights under the access rule in refusing to allow access to his workers each time. V. B. Zaninovich & Sons, 1 ALRB No. 22 (1975) .

The UFW also contends that on one occasion in which UFW organizers gained access to Tomooka workers, Tomooka and his security guards engaged in illegal surveillance of their organizational activities. The evidence with respect to this allegation is testimony by Nieto that he arrived at Tomooka fields at about noon on September 23, just as employees were finishing lunch. The UFW organizers were stopped briefly by Tomooka and a security guard, but then were allowed to go into the field where the workers were. Nieto testified that the UFW organizers tried to talk to workers for five or ten minutes, but Tomooka walked back and forth some ten feet away from the organizers and workers and a security guard was visible to the workers. Nieto testified that the organizers left after five or ten minutes both because the employees were returning to work and because they viewed Tomooka's presence as inhibiting. The record does not disclose whether Tomooka was normally or frequently present in the fields while employees worked. In the circumstances of this case, where we have an instance of mid-day access

at a time when employees were finishing lunch and returning to work, we cannot presume that the employer was present in the field for the prohibited purpose of surveillance of union campaign activity. The burden is on the party alleging illegal surveillance to present evidence to warrant the conclusion that the employer was present at a time when union organizers are attempting to talk to workers for the purpose of surveillance. See Konda Brothers, 2 ALRB No. 34 (1976); V. B. Zaninovich, supra; J. C. Penny Co., 209 NLRB No. 50 (1974); Randall's, 157 NLRB 86 (1966).

Apart from the alleged incidents of denial of access, the record reveals that UFW organizers successfully exercised their right of access to workers on several occasions. An employee called as a witness by the UFW testified that both Teamster and UFW organizers came onto the fields to talk to employees five or six times in the month preceding the election. An employee called by the employer testified that he personally was approached by a UFW organizer while he was working in the fields on three occasions in the month before the election. A witness called by the employer, a crew boss, testified that UFW organizers came onto the fields at lunch twice during the week before the election and each time they handed out leaflets to every worker and talked to some workers. Nieto testified that he succeeded in going to the fields and talking to workers on two occasions in the week before the election. In addition, it is undisputed that UFW organizers campaigned among Tomooka

employees at the labor camp in which they lived every Sunday for several weeks prior to the election. Under all these circumstances, we do not find that there were instances of improper denial of access sufficient to affect the outcome of the election.

The UFW also contends that the employer unfairly granted freer access to Teamster organizers than to UFW organizers. The only evidence offered on this point is testimony by Nieto that as he was leaving the field on September 23 after speaking briefly with employees, he saw a car carrying persons whom he recognized to be Teamster organizers drive onto the fields without being stopped by either Tomooka or his security guard and saw the Teamster organizers begin talking to workers. Nieto testified that the employees had already resumed working when the Teamsters arrived. The record indicates that the Teamsters had a collective bargaining contract covering Tomooka employees prior to the election which may have provided for access to employees at work for purposes of servicing the contract beyond the level of access required by this agency's regulation. In any event, in the face of testimony by the UFW's own witness that UFW and Teamster organizers came onto the fields and talked to workers about an equal number of times in the month before the election, we do not find that the one instance of unobstructed access by the Teamsters which Nieto relates established that access to the workers by the two unions was substantially unequal.

This objection is dismissed.

## II. Misrepresentation

The UFW alleged that representatives of the Teamsters misrepresented facts to Tomooka employees on the morning of the election, and made inflammatory and derogatory comments minutes before the start of the election. The evidence consists of testimony by a UFW organizer that just prior to 7:00 a.m. on the day of the election, while he was at the labor camp standing around an open fire and talking to 15-25 employees regarding the union, a Teamster organizer came up to the group, grabbed a copy of a leaflet which the UFW organizer was distributing, crumpled it and threw it in the fire, and initiated a heated argument in which the Teamster charged that the UFW receives directions from Asia or Europe, that under UFW contracts workers must crawl on their bellies to obtain jobs, and that if Jesus Christ were to return, the UFW would be the first to crucify him.

The NLRB has characterized statements such as these as "obvious campaign propaganda, clearly recognizable as such by the employees." Merck and Co., 104 NLRB No. 124 (1953). In Merck, one union distributed pamphlets in which leaders of another union were accused of graft. The NLRB held that this was not interference with the election and that employees were entirely competent to evaluate such material. They held such statements did not warrant setting aside the election.

We conclude that, under the circumstances, the derogatory comments by the Teamster organizer were clearly

recognizable by employees as mere campaign propaganda.<sup>4/</sup> Such inflammatory rhetoric has no place in a representation election campaign. We conclude, however, that it is not of such character as to influence employees in their free choice of a collective bargaining representative. We therefore dismiss this objection.

### III. Board Agent Conduct

The UFW alleges three instances of Board agent misconduct. First, it claims that Board agents permitted a foreman to dismantle voting equipment while eligible voters were waiting to vote. No evidence was introduced on this issue. The objection is therefore dismissed.

Secondly, the UFW alleges that Board agents permitted the employer's foreman to remain in the voting area during voting. The only evidence with respect to this objection is that Rogelio Hernandez, allegedly the foreman of the thinning crew, served as a Teamster observer during the election. The record, however, indicates that the parties agreed at the pre-election conference that Hernandez was an eligible voter. Under these circumstances, the UFW has waived any right to object to his presence during voting.<sup>5/</sup>

Finally, the UFW alleged that Board agents refused to allow written challenges to five voters. The evidence shows that challenges were in fact made to three of these

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<sup>4/</sup> See *Hollywood Ceramics, Inc.*, 140 NLRB 221, 51 LRRM 1600 (1962).

<sup>5/</sup> 8 Cal. Admin. Code Section 20350(b); *West Foods, Inc.*, 1 ALRB No. 12, (1975).

voters and that the parties agreed at the pre-election conference that the fourth would vote without challenge. There is no evidence as to whether the fifth person attempted to vote. Even if the Board agents did improperly refuse to permit a challenge to the fifth voter, such error was not sufficient to affect the outcome of the election. We therefore dismiss this objection.

The Western Conference, of Teamsters is certified as the collective bargaining representative of all agricultural employees of Tomooka Brothers at its- farming ranches 1 through 18 in Santa Barbara and San Luis Obispo Counties.

Dated: October 29 , 1976 .

Gerald A. Brown, Chairman

Richard Johnsen, Jr. , Member

Roger M. Mahony, Member

Robert B. Hutchinson, Member

Ronald L. Ruiz, Member