

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

SOUZA & BOSTER, INC. ,	)	
	)	
Employer,	)	
	)	No. 75-RC-168-M
and	)	
	)	
UNITED FARM WORKERS OF AMERICA,	)	2 ALRB No. 57
AFL-CIO,	)	
Petitioner,	)	
	)	
and	)	
	)	
WESTERN CONFERENCE OF TEAMSTERS,	)	
	)	
Intervenor.	)	

---

On October 3, 1975, the United Farm Workers, AFL-CIO ( " UFW " ) filed a petition for certification under Section 1156. 3 ( a ) of the Labor Code requesting a representation election among all of the agricultural employees of Souza & Boster, Inc. ("employer"). Subsequently, the Western Conference of Teamsters ("Teamsters") intervened. On October 10, 1975, an election was conducted in which the tally was: Teamsters - 16 votes, UFW - 11 votes, no labor organization - 1 vote. Thereafter, the UFW objected to this election being certified.1/

---

1/The UFW petition contained eight allegations of misconduct.

Allegation ( 2 ) , relating to the sufficiency of employee support, was dismissed before hearing by the Acting Regional Director of the Salinas office pursuant to Section 20315 ( c ) of 8 Cal. Admin. Code, which makes such matters non-reviewable by the Board under Chapter 5 of the Act.

Portions of allegation ( 1 ) , relating to the charge that the company foreman and supervisors brought Teamster authorization cards to the workers in the fields and threatened and intimidated workers until such cards were signed,were dismissed before hearing by the Acting Regional Director for lack of supporting declarations or other evidence as required by Section 20365( a ) of 8 Cal. Admin. Code.

The Acting Regional Director set for hearing allegations 3, 5, 6, 7, 8, that part of allegation ( 1 ) not relating to company personnel bringing authorization cards to the fields, and allegation ( 4 ) , except for that part of the allegation that related to the company never engaging in illegal surveillance when Teamster's representatives talked to the workers.

Pursuant to our authority under Labor Code Section 1146, the decision in this case has been delegated to a three member panel of the Board (Chairman Brown and Members Mahony and Johnsen).

At the hearing, held on January 9, 1976,<sup>2/</sup> motions were made by counsel for both employer and intervenor to dismiss the UFW petition for failure to serve properly on all parties the detailed statement of facts contained in the declarations accompanying

---

<sup>2/</sup>At the hearing, no evidence was offered in support of the following UFW objections: allegation (3) that the company foremen threatened loss of jobs, a change to crops requiring fewer workers and closing the farm operation if the UFW won the election; allegation (6), that the company hired, in the period preceding the election, workers specifically to vote for the Teamsters; and allegation (8), that the hiring of these workers demoralized and intimidated other workers. These objections are therefore dismissed.

At the close of hearing, counsel for the employer moved for and counsel for the UFW agreed to, the dismissal of allegation (5), which alleged that at a mandatory employee meeting, the company owner and foremen expressed preference for the Teamsters, threatened workers with closing of the farm and/or reduction in jobs if the UFW won and also said they would never sign a contract with the UFW.

Counsel for the employer moved both at the beginning and the close of the hearing that the Board reconsider its denial of the employer's pre-hearing motion to dismiss the UFW's petition of objection to the election for improper service. we decline to reconsider it.

its petition of objection to election.<sup>3/</sup> The hearing officer

---

<sup>3/</sup>The Acting Regional Director of the Salinas Regional Office of the Board directed on November 14, 1975, that the objecting party (UFW) serve all parties by the seventh day preceding the hearing with either declarations in support of the allegations which were to be heard, or a detailed statement of the facts contained in its declarations. This directive was issued pursuant to the Board ruling in Interharvest, 1 ALRB No. 2 (1975), which says that when the petitioner declines to submit to the opposing party its declarations in support of its objections petition filed under Section 1156.3(c) of the Labor Code, then the petitioner must serve ". . . papers informing the opposing party of the specific nature of the objections. . . ." Id., p. 4 of the slip opinion. The reasons behind requiring that a detailed statement of facts be served on all parties when declarations were not made available is to allow the opposing parties ". . . to secure (their) own witnesses and otherwise prepare (themselves) to counter the objections at an evidentiary hearing." Id.

In order to have complied with the Acting Regional Director's directive requiring service by the seventh day preceding the hearing, the UFW would have had to send or deliver the statement to the parties so that it arrived by January 2, 1976. See Section 20400.4 (a) of 8 Cal. Admin. Code. The record contains a sworn declaration under penalty of perjury by the UFW that it sent the statement of facts by certified mail to both employer and intervenor on January 3, 1976, a day after it should have been in the hands of the opposing parties. Counsel for the employer acknowledged receiving the statement of facts in time to allow at least 3 days preparation before the hearing, but counsel for the Teamsters maintained it never received a statement of facts.

The consequences of late service of papers on opposing parties are detailed in Section 20400.3 of 8 Cal. Admin. Code which says that untimely service "shall be a basis for either (a) a rejection of the document or (b) withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond". Both the directive of the Acting Regional Director and Section 20400.3 are concerned with insuring that no party is prejudiced in putting forward its evidence by untimely service of vital papers. The Board notes that counsel for the employer refused an offer by both the hearing officer and the petitioner to continue the hearing until a later time rather than dismiss the objections petition as he requested for late service. Counsel for the Teamsters, though claiming he was at a disadvantage, did not move for a continuance. The record does not show that the opposing parties were prejudiced or denied a "reasonable opportunity to respond" by the untimely service of the UFW.

overruled these motions. We uphold the hearing officer's decision on this matter.

Evidence was received at the hearing on the following issues:

1) Did the employer illegally aid and support the Teamsters in their organizing efforts, and if so, did such aid and support affect the outcome of the election?

2) Did the employer engage in illegal surveillance of UFW organizational activities, and if so, did it affect the outcome of the election?

3) Did representatives from the Teamsters deny access to a crew of employees to organizers from the UFW on election day, and if so, did it affect the outcome of the election?

I. Employer Aid and Support to the Teamsters

The UFW alleges that the employer and the Teamsters conspired to force employees to sign authorization cards and that the "company foremen and supervisors consistently stopped work in the fields in order to allow Teamster organizers to individually pressure workers into signing the cards". No evidence was introduced with respect to a conspiracy, between employer and Teamsters to pressure workers into signing authorization cards. Accordingly, that part of the allegation is dismissed.

The only evidence offered to establish the fact that the employer consistently stopped work to allow Teamster's access to the workers was the testimony of owner Souza. He described one incident in which he was approached by Teamsters' representatives

who told him they had "union business to conduct" with their members on the ranch.<sup>4</sup>/ He said he did not inquire into the nature of the Teamsters' business that day, nor did he subsequently learn what the Teamsters did or said during their visit. No evidence was introduced to support the contention that the Teamsters did more than service their contract that day. We do not find that this one incident, where the grower permits the Teamsters to exercise their contractual right of access to the workers, to be evidence of improper aid and support of the Teamsters.

This objection is dismissed.

## II. Employer Surveillance

The UFW contends that on almost all occasions when UFW organizers entered the employer's premises, the employer's supervisor, Julio Noriega, followed them and engaged in illegal surveillance of their organizational activities.

A UFW organizer, Leo Nieto, was the only witness to testify in support of this allegation. He said that UFW representatives

---

<sup>4</sup>The record shows that the Teamsters had a collective bargaining contract covering Souza & Boster employees prior to the election. The contract provision on visitations reads:

### ARTICLE XV - VISITATIONS

All agents of the Union shall have the right to visit properties of the company at all times and places, to conduct legitimate union business; however, he (sic) shall not unduly interrupt operations.

The Board notes that this provision gives representatives from the incumbent union greater opportunity to visit workers, as they would not be limited to the time constraints laid down in this agency's access rule, 8 Cal. Admin. Code Section 20900. (But it also notes that any visits beyond the scope of this agency's access rule by an incumbent union under a contractual visitation clause such as the one above must be for the purpose of conducting "legitimate union business".) On this record, the Board is not confronted by the question of the effect of an incumbent union's use of such a "visitation" clause for campaign purposes, rather than for "legitimate union business".

made almost daily visits to the ranch in the last week of September and first ten days of October preceding the election. He testified that he and another organizer would try to go to the fields daily at 6:15 a.m., and often they would return at mid-day. Nieto admitted that he was "followed" only four to six times by the ranch supervisor, Noriega, during their many visits to the ranch in this pre-election period. Though Nieto's testimony is not clear, it appears that these "following" incidents occurred only when Nieto went onto the property for mid-day visits, and not during the almost daily morning visits.

Nieto's testimony also indicated that they were usually only "followed" when they came in from the back entrance to the ranch. These "followings" consisted of Noriega appearing behind their car in his truck, catching up to Nieto's and his fellow organizer's vehicle, stopping them and ordering them to leave. Though Nieto's testimony is contradictory on the point, it seems the organizers left without visiting workers only after the first confrontation. According to Nieto, some of these four to six confrontations with Noriega occurred within hearing distance of workers. The record also indicates that on at least some of the times that either an owner or supervisor confronted Nieto during his mid-day visits, the workers were still working and not yet on their lunch break. On those occasions, the presence of the owner or supervisor could not be considered illegal surveillance.

The evidence shows Noriega to be a supervisor of the broccoli crew, the group of employees that the UFW organizers visited the most. He also spent 40 to 45% of his time driving

around the ranch. His presence in the vicinity of the broccoli crew, particularly when they were working, or in a truck driving around the ranch was not unusual. The record does not indicate that Noriega lingered near or watched the UFW organizational activities after they refused his request to leave. As we stated in Tomooka Brothers, 2 ALRB No. 52 (1976), "the burden is on the party alleging 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 also, Konda Brothers, 2 ALRB No. 34 (1976); V. B. Zaninovich, 1 ALRB No. 22 (1975); J. C. Penney, 209 NLRB No. 50 (1974). The UFW did not meet this burden of proof.

Accordingly, this objection is dismissed.

### III. Teamster Denial of Access to the UFW on Election Day

The UFW contends that representatives from the Teamsters Union, on the morning of the election, positioned their car across a road leading to a Souza & Boster crew, making it impossible to get by and thus denying UFW organizers access to employees and affecting the outcome of the election.

Testimony by the UFW organizer, Nieto, established that he and other organizers drove to the Souza & Boster fields at about 7:30 a.m. on the morning of the election in order to talk to a hoeing crew.<sup>5</sup> They were traveling down the only road leading to

---

<sup>5</sup>The employees here were apparently working at the time the Teamsters' representatives prevented the UFW organizers from reaching the field. If, in fact, the UFW's attempted visit occurred at a time outside the scope of our access rule, an employer might be justified in excluding the organizers. However, his prerogatives in such a situation cannot be delegated to, or usurped by, a competing union.

this crew when a car belonging to a Teamster representative and driving towards them stopped and parked across the road in a way that made it impossible for the UFW car to get past. The UFW organizers pulled up short of the parked car, waited until they saw that it was not going to move, and then turned around and drove off to speak to other employees. Nieto testified that the Teamsters' car was parked in the same spot whenever he had occasion to be looking in that vicinity on the morning of the election. Nieto further testified that the UFW did not speak that morning to the crew working in the field beyond the parked car of the Teamsters' representatives.

We have ruled previously that a single denial of access following several days during which union organizers have had frequent contact with workers would not warrant setting an election aside. Certified Eggs, Inc., 1 ALRB No. 5.<sup>6/</sup> Here, the UFW organizer testified that they had had continuous contact with all employees throughout the pre-election period, including talking at least three to four times previously to the crew they were prevented from visiting on election morning. We decline to overturn the election on the basis of the denial of access in this case.

---

<sup>6/</sup>That case involved a violation of the Board's access regulation, 8 Cal. Admin. Code Section 20900, by an employer. In our decision, we strongly reaffirmed "the importance of a union's right to communicate with workers as a key ingredient of a fair election process...." *Supra*. The same considerations apply to one union's denial of access to another union. Such action by a union against another union, taken in the context of an election campaign, might necessitate a finding that the election process was not fair. This is not such a case.



The Western Conference of Teamsters Local 865 is certified as the collective bargaining representative of all agricultural employees of Souza & Boster, Inc.

Dated: November 18, 1976.

Gerald A. Brown, Chairman

Richard Johnsen, Jr., Member

Roger M. Mahony, Member