

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

CARL JOSEPH MAGGIO, INC. ,	)	
	)	
Employer,	)	No. 75-RC-18-M
	)	
and	)	2 ALRB No. 9
	)	
UNITED FARM WORKERS OF AMERICA	)	
ALF-CIO,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
WESTERN CONFERENCE OF TEAMSTERS	)	
AGRICULTURAL DIVISION, IBT AND	)	
ITS AFFILIATED LOCAL UNIONS 166,	)	
186, 274, 542, 630, 865, 890,	)	
898 AND 1973,	)	
	)	
Intervenor.	)	

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In an election conducted on September 10, 1975, in Greenfield and King City, the United Farm Workers of America, AFL-CIO ("UFW") received the majority of the votes of all voters eligible to vote.<sup>1/</sup> The Western Conference of Teamsters ("Teamsters") objected to the bargaining unit in which the election was held<sup>2/</sup> and the employer objected to the conduct of the election. We certify the results of the election.

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<sup>1/</sup> The results were as follows: UFW - 70 votes; Teamsters - 8 votes; no union - 3 votes. There were 5 void ballots and 7 unresolved challenges.

<sup>2/</sup> The Teamsters claimed that employer misconduct, UFW misconduct and Board misconduct affected the results of the election, but did not produce any evidence on these claims. These objections to conduct are therefore dismissed. The Teamsters also claimed that Board improperly failed to conduct an election in a multi-employer

I. NOTICE OF ELECTION

The employer objects to the conduct of the election because the date and time of the election were not announced until about an hour before the election was to begin, and the employer was not notified that voters would be permitted to vote at a polling place in El Centro in sufficient time for the employer to notify voters of the El Centro polling place and to arrange for observers there. We overrule these objections solely because the votes of employees who could have voted had they been notified would not have changed the results of the election.

The petition for certification was filed on September 2, 1975.<sup>3/</sup> The employer provided a voter eligibility list as required,<sup>4/</sup> and informed the Board agent in charge of the election that he would not be able to attend a preelection conference on September 8 or 9. A preelection conference was begun at 10:00 a.m. on September 10 with all parties present. At the conference, an election was directed to begin at 12:30 p.m. that same day in three locations: the employer's field in Greenfield, the employer's field in King City and at the Board offices in El Centro. These arrangements were not known to the parties until the preelection conference. However, two days before the election, the UFW

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(fn. 2 cont.)

bargaining unit consisting of the employees of members of the Employer's Negotiating Committee. This objection was considered and dismissed in the case of Eugene Acosta, et al., 1 ALRB No. 1(1975)

<sup>3/</sup>This was the first date petitions for certification could be filed under the Agricultural Labor Relations Act.

<sup>4/</sup> 8 Cal. Admin. Code §20310(d).

requested that voters who had left the area be permitted to vote in El Centro. The UFW was told that its request would be granted, but the Teamsters and the employer were not notified.

At about 11:30, the employer radioed the message of the time and place of the Greenfield and King City elections to his foremen, who in turn notified the workers. By the time of the announcement of the election, a number of carrot tiers had left work for the day.

The eligibility list provided by the employer contained the names of 136 eligible voters, including three truck drivers. The list included the names of workers in the bunch harvest, thinning crew, and truck drivers. It included members of a mechanical carrot harvesting crew and a mechanic who does minor repair and maintenance work on field equipment. Six persons whose names were not on the list voted/ of whom four were challenged by the Board agent and two voted by agreement. Three persons voted in El Centro and were challenged because the eligibility list was not available; however, their names were on the eligibility list.<sup>5/</sup>

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<sup>5/</sup>After the October 9 hearing on the objections of the employer and the Teamsters, the Board requested its regional office in Salinas to ascertain the answers to seven questions relating to the number of voters voting in El Centro, the nature of the challenges, the contents of the eligibility list, and the nature of the employer's packing shed operation. This information was obtained from the Board's files and from the parties. All parties were notified that the Board had requested that the record be supplemented and all parties were served with a copy of the report of the regional director which was addressed to the Board. No party has questioned the accuracy of the information obtained. The Board requested the information as part of its statutory duty to determine the bargaining unit (Labor Code § 1156.2) and investigate election petitions [Labor Code §§ 1156.3 (a) and (c)].

Of the 138 eligible voters, 84 voted<sup>6/</sup> and of these, 70 voted for the UFW.<sup>7/</sup> Hence, even if every eligible voter who did not vote had voted for no union or for the Teamsters, the UFW still would have won the election. The Board is obligated to certify elections unless there are sufficient grounds to refuse to do so. Labor Code §1156.3 ( c ) . Under these circumstances, earlier notification of the time and place of elections would not have changed the results, and so we must certify the election.

Had the results of the election been affected by the votes cast in El Centro or the votes of workers who were not notified of the election because they were not present during the only time before the election that the time and place was announced, we could not let this election stand. While the severe time restraints imposed by statute<sup>8/</sup> will not always permit much advance notice of an election, at least there should be some opportunity for workers to be notified of the exact time and place of an election. In this case, notice would have been adequate if all of the crews were working at the time the election was

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<sup>6/</sup>These 84 include the 81 votes that were counted in favor of the UFW, the Teamsters, and no union, and the three votes cast in El Centro of voters who were on the eligibility list, but were challenged and not counted. The five void ballots are not counted as representing voters since the record does not indicate whether or not those voting void ballots ultimately voted valid ballots.

<sup>7/</sup>Had the three votes cast in El Centro been counted, the UFW could conceivably have increased its lead.

<sup>8/</sup>Labor Code §1156.3( a ) .

announced, but the fact that some workers had left for the day would have made the notice deficient, unless some other means could have been devised for notifying them of the election.<sup>9/</sup>

Similarly, the failure of the Board to notify the Teamsters and the employer that there would be a polling place in El Centre may have prevented some eligible voters from voting as well and did prevent the employer and Teamsters from having observers present. While conducting the election in a location where workers are likely to be, even if that place is far from the place of business of the employer, is desirable, if it enables more people to vote, it is, of course, unfair to set up a polling place without telling all parties in enough time for them to notify voters. Here, two days before the election, the UFW requested that voters be permitted to vote in El Centre, and though the UFW apparently was told that the request would be granted once an election was set,

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<sup>9/</sup>The employer directs our attention to the case of Kilgore Corp., 203 NLRB No. 28 (1973), where the NLRB overturned an election because the employer failed to post a notice of election until the day before the election. The NLRB rested its decision in part on the function the notice plays in NLRB elections of advising employees of their rights.

The case is distinguishable. There, the vote was so close that the number of eligible voters who did not vote plus the void ballots could have changed the results of the election. In agricultural elections, the Board does not rely on posted notices as the only means of instructing voters of their rights since, in many cases there is no central place where all employees will see notices.

the other parties were not notified until the day of the election.<sup>10/</sup>

Apart from the question of whether employees have due notice of an election, the parties, including the employer, are entitled to notice that an election will take place. Labor Code § 1156.3 (a) . In this case, the employer was not disadvantaged by lack of notice of the specific time and place of election. Once the petition for certification was filed, he was on notice that, assuming the allegations in the petition were correct, an election would be held within seven days.<sup>11/</sup> For purposes of a party's election campaign, more specific notice of the time and place of the election, though desirable when possible, is not required.

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<sup>10/</sup> Contrary to the contention of the employer, we do not characterize the request of the UFW that voting be permitted in El Centro as an unauthorized ex-parte communication, prohibited by Section 20700.1 et seq. of our current regulations.

<sup>11/</sup> In this case, the election was held on the eighth day following the filing of the petition. The employer did not object to the election on this ground. In fact, he testified that he did not know whether in setting the date of the election, the Board counted week-ends or an intervening holiday. Some workers left the area on the fourth day following the filing of the petition for certification, but otherwise, the work force was the same on the day of the election as in the preceding payroll period.

Labor Code Section 1156. 3 (a) provides that an election shall be held "within a maximum of seven days of the filing of the petition." The parties cannot agree to waive the seven day maximum.

In Klein Ranch 1 ALRB No. 18 (1975), we held that we would not overturn an election conducted on the eighth day in the absence of any showing that any party or persons were prejudiced. We said that we would make a Board agent available if necessary to explain the reason for the delay.

(fn. cont. on p. 7)

II. BARGAINING UNIT

A. Packing shed workers. In addition to growing and harvesting carrots, lettuce, and bell peppers, the employer owns and operates two packing sheds, one in the city of Salinas and one outside of King City. The packing shed near King City is part of a complex that in addition to the shed, contains facilities for cooling and processing. The packing sheds handle produce produced by the employer, produce in which the employer has some financial interest and produce of other growers in which the employer has no financial interest.

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(fn. 11 cont.)

In this case, at least one reason for the delay was that the employer told the Board agent that he would not be available to attend a preelection conference on the sixth or seventh day. According to the employer's testimony, the Board agent was informed of this fact shortly after the petition was filed. Regardless, the unavailability of an employer or his agent is not sufficient ground for delaying an election.

The duty to set a preelection conference and an election lies not with the employer or the union, but with the Board. In fact, if the employer says he does not want to attend the preelection conference or he does not want to have an election, the conference and the election would proceed without him. In this case, except for the rush of business in the first days of the Act, there appears no reason why the preelection conference could not have been held before the sixth day.

Since neither party claimed or demonstrated prejudice, we do not set the election aside.

The employer estimates that about 10 to 15 percent of the packing done at his two sheds is in the latter category.<sup>12/</sup>

At the time of the election, 250 workers were employed in the packing, cooling and processing operations. These workers are covered by a contract between the employer and the Amalgamated Meat Cutters and Butcher Workers of North America, Fresh Fruit and Vegetable Workers, AFL-CIO Local P-78-A. The employer has had a contract with the Fresh Fruit and Vegetable Workers for approximately 20 years. Packing shed workers do not work in the fields and field workers do not work in the packing sheds. The National Labor Relations Board has certified the Fresh Fruit and Vegetable Workers as the exclusive bargaining 137 agent of the packing shed workers.<sup>13/</sup>

Labor Code Section 1156.2 states that "the bargaining unit shall be all the agricultural employees of an employer". In determining which employees are agricultural employees, we are bound to follow applicable precedents of the NLRB, the courts, and the U.S. Department of Labor. Mr. Artichoke, Inc., 2 ALRB No. 5 (1976), Labor Code § 1140.4 (a) and (b).

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<sup>12/</sup> This information derives from the investigation of the regional officer referred to in footnote 5, supra, and is based on information supplied by the employer's attorney, Arnold B. Myers. At the hearing, the employer, Carl Joseph Maggio, testified in response to questions of Teamster and UFW representatives that the packing sheds are used in the harvest of crops that are the product of joint ventures between the employer and other growers, as well as for strictly commercial packing. The testimony was uncontradicted.

<sup>13/</sup> Case number 20-RC-2720. The unit is described in Grower-Shipper Vegetable Association of Central California, 112 NLRB 807 (1955).



According to the NLRB, a packing shed employee engaged in packing produce grown not only by the employer, but also grown by others is not an agricultural employee, even when the proportion of the produce of other growers to that of the employer is small, Garin Co., 148 NLRB No. 138 (1964). Therefore, the employer was correct in not including packing shed workers on the eligibility list. The packing shed workers are not agricultural workers and are not part of the bargaining unit.

B. Truck drivers. The Teamsters objected to the inclusion of three employees who are truck drivers or are in related classifications in the unit of agricultural employees. The truck drivers were included on the eligibility list. Two of them voted in the election.

No evidence was presented on the duties of these employees and so we cannot determine whether or not they are agricultural employees. If they are agricultural employees we have no discretion to exclude them from the bargaining unit. Labor Code Section 1156.4.

Since the issue of the status of these truckers as agricultural employees is now before the National Labor Relations Board, and since their votes could not have affected the outcome of the election, we defer a determination of whether they are agricultural employees to the NLRB, to the agreement of the parties, or to a future proceeding of the Board. Cf. Interharvest, Inc., 1 ALRB No. 2 (1975).

C. Mechanics. The Teamsters objected to the "arbitrary exclusion of certain agricultural employees such as maintenance personnel and/or packing shed employees." Insofar

as maintenance personnel are agricultural employees, they must be included in bargaining units. Salinas Marketing Cooperative  
1 ALRB No. 26 (1975) .

There are two mechanics. The employer employs one mechanic who drives a van around the fields and does minor repair and maintenance work. This worker was included on the eligibility list and is a member of the bargaining unit. Salinas Marketing Cooperative, supra. The other mechanic works on machinery at both the King City and Salinas packing sheds and does not work on field machinery. This mechanic was not included on the eligibility list. He is not an agricultural employee because his work is exclusively with the packing shed operations, which are not agricultural operations. The mechanic in the packing shed does not perform functions as an incident to or in conjunction with the farming operations, and therefore was properly excluded.

### III. NOTICE OF COUNTING OF BALLOTS

Because of pending litigation, the ballots in this and 16 other elections in the Salinas Valley were not counted until a week after the election. A representative of the Board contacted the employer's place of business 15 minutes before the ballots were to be counted and did not reach the employer, who was not present for the ballot count. The employer's attorney was present when the ballots were counted.

Board agents should inform all parties of the time and place of the ballot count in enough time to allow them to have representatives witness the tallying. Here, however, the employer's representative was present and so the employer

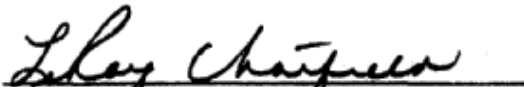
was not prejudiced. In addition, there is no allegation that the ballot count was improper. See J. R. Norton, Co., 1 ALRB No. 11 (1975).

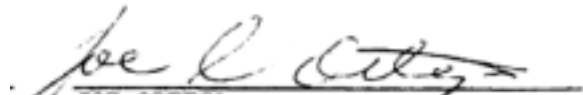
CONCLUSION

The United Farm Workers of America, AFL-CIO is certified as the exclusive bargaining agent for all of the agricultural employees of Carl Joseph Maggio, Inc., excluding those employees engaged in processing, packing, or cooling operations at the employer's packing and cooling facilities at King City and Salinas.

Certification issued.

Dated: January 16, 1976.

  
LERoy CHATFIELD

  
JOE ORTEGA

Member GRODIN, concurring:

I share the concern of our dissenting colleagues over the Board agent's failure to notify other parties in timely fashion of election arrangements in El Centro, and I do not accept the implications of the majority opinion that an election should be set aside only where it is demonstrable that misconduct could have affected the outcome. In some circumstances it may be appropriate to set an election aside as a means of deterring particularly objectionable conduct, or of safeguarding public confidence in the integrity of the election process. Here there is no evidence that the union was in any way responsible for the failure of the Board agent to notify other parties, nor do I read the record to suggest that the failure of notification was attributable to anything other than simple neglect. Accordingly, I conclude that the expressed will of a majority of the eligible employees in the bargaining unit should be honored.

Date: January 16, 1976

A handwritten signature in cursive script, appearing to read "Joseph R. Grodin".

/Joseph R. Grodin, Member

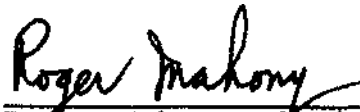
Members Johnsen and Mahony dissenting:

We respectfully dissent from the majority opinion. The majority properly raised serious questions regarding the scheduling by the Board Agent of an additional polling place in El Centro at the request of one party without notice to the other two parties until the morning of the election and less than three hours prior to the start of the election. The majority goes on to conclude, however, that despite this improper action on the part of the Board Agent, the election need not be set aside since this error could not have affected the outcome of an election in which one union received an absolute majority of all eligible voters.

We cannot agree. The Board both directly and through its agents has the responsibility of guaranteeing that the processes and procedures of the new California Agricultural Labor Relations Act serve all parties equally. The Board must be mindful of the ten-year history of suspicion, bitterness and mistrust that preceded the ALRA and must spare no effort to insure impartiality not only in fact but also in appearance.

In this case, the scheduling of an additional election site without notice to two of the three parties, even in the absence of any evidence of purposeful bias or collusion, casts a shadow of partiality on the election. In our view, the appearance of partiality which surrounds the scheduling of the El Centro polling site cannot be cured by any less drastic action than the setting aside of the election. Accordingly, we dissent from the majority opinion and would set aside the election.

Dated: January 16, 1976



Roger Mahony  
Roger Mahony, Chairman



Richard Johnson, Jr.  
Richard Johnson, Jr., Member