

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

OSHITA, INC.,	)	
	)	
Employer,	)	
	)	No. 75-RC-48-M
and	)	
	)	3 ALRB No. 10
WESTERN CONFERENCE OF TEAMSTERS,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Intervenor.	)	
	)	

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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.

The United Farm Workers of America, AFL-CIO, (hereinafter "UFW") objects to certification of a run-off election which was held on September 20, 1975, claiming that misconduct by Oshita, Inc. ("employer" or "company"), representatives of the Western Conference of Teamsters ("Teamsters" or "WCT"), and agents of this Board affected the outcome of the election. Labor Code, Section 1156. 3 (c). Upon a review of the record, we have found substantial evidence of conduct on the part of the employer which, when considered as a whole, substantially interfered with the election, and thus, on the grounds stated herein, we decline to certify it.

On September 10, 1975, a petition was filed by the Teamsters for certification as the bargaining representative of the agricultural

workers of the employer. The UFW intervened on September 11, 1975. On September 18, 1975, an election was conducted among the company's agricultural employees and 194 votes were cast. The results of that election were: United Farm Workers - 68; Teamsters - 65; no union -37; void ballots - 10; and challenged ballots - 14. A run-off election was held on September 20, 1975, with the following results: Teamsters - 120; United Farm Workers - 74; and challenged ballots - 7.

On September 24, 1975, the UFW filed a petition pursuant to Labor Code Section 1156.3(c), objecting to conduct which, it was asserted, affected the results of both the original and run-off elections. That petition alleged 13 instances of misconduct of the employer, one such instance on the part of the Teamsters, and six instances on the part of representatives of this Board. Several of these objections were dismissed by the Board through the executive secretary in a Notice of Hearing and Order of Partial Dismissal. The UFW sought review of the dismissal order and the Board subsequently issued an order reinstating one of the objections previously dismissed.

A hearing on the remaining UFW objections was held on December 15 and 16, 1975, at which evidence was received addressing seven major issues.<sup>1/</sup> Post-hearing briefs were submitted by the employer and the UFW.

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1/ The issues were: 1) whether the employer denied access to its employees by UFW organizers prior to the elections so as to interfere with employee rights under the Act; 2) whether the grant by the employer of insurance coverage to certain of its employees constituted unlawful interference with the elections; 3) whether pre-election speeches by the employer contained threats of a plant shutdown and, if so, whether such constituted unlawful interference with the election; 4) whether the employer gave unlawful assistance to the Teamsters by permitting that union's organizers unrestrained access to its employees while denying the same to the UFW; 5) whether entrances to the election's site were blocked by agents of the employer in a manner and to an extent sufficient to interfere with the election? 6) whether company foremen were within the polling area during the voting periods and, if so, whether their presence interfered with the elections; and 7) whether bus drivers were company foremen and, if so, whether the busing of employees to the election site by such personnel constituted interference with the elections.

I.

The intervenor's first ground of objection is that the employer systematically curtailed and prevented attempts by organizers of the UPW to gain access to company property and employees during non-working periods, while repeatedly granting preferential access and other such privileges to Teamsters. These actions, it is argued, substantially hindered the UFW in its efforts to effectively communicate its position, had a chilling effect on the receptivity of employees to that union, and thus undermined the ability of Oshita employees to participate in the elections in a free and informed manner.

The witnesses who testified in order to substantiate these assertions were not precise as to every detail of the incidents they described.<sup>2/</sup> Their testimony is, however, consistent, substantial and, for the most part, uncontroverted.

Salvador Vizcaino, an employee in the company's bunching shed, testified that UFW organizers began daily visiting the shed approximately two weeks before the first election but were with few exceptions constantly prevented from speaking to workers employed there by company supervisors. He stated that he, as well as numerous other employees, overheard the shed foreman repeatedly assert that he had orders to deny the UFW access to company property and employees. He testified that on numerous occasions the foreman threatened to call the police and that they were twice actually called for the purpose of evicting UFW organizers from the premises.

Ken Fujimoto, an organizer for the UFW, testified that he began visiting the shed less than a week before the first election

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<sup>2/</sup> For example, few witnesses were able to recall the precise dates on which the incidents they described occurred.

and that on every occasion the foreman in the presence of shed employees declared that he had been ordered to prevent UFW organizers from entering the premises. Nevertheless, according to Fujimoto, he and other organizers generally entered the shed and spoke with workers. On such occasions, however, the foreman followed them, continually repeating that he had been instructed to prevent them from communicating with employees.

Fujimoto further stated that on one occasion he and another UFW organizer were confronted at the shed by the foreman together with Teamster organizers, and that one of the latter physically accosted Fujimoto's companion in an attempt to prevent him from speaking with shed employees. Fujimoto testified that the foreman repeatedly threatened to call the police, that once the police were actually summoned and for at least ten minutes conversed with the foreman inside of the shed in the presence of employees before asking UFW organizers to leave the area.

UFW organizer Carlos Cantu Solis testified to numerous instances in which company supervisory personnel attempted to and/or succeeded in preventing his access to the company's fields and employees. Although he was unsure of the precise dates of the incidents he described, he was certain that most occurred after the effective date of the Act.<sup>3/</sup>

Cantu told of how a foreman known as "El Cinco" consistently attempted to prevent him from entering fields during non-working

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3/ Although there did not exist a right to access to employer-owned property prior to the effective date of the Act and our adoption of access regulations, we have nevertheless deemed it appropriate that this Board review incidents occurring before those dates in order to determine whether they in any manner substantially prejudiced the atmosphere or outcome of an election. K. K. Ito Farms, 2 ALRB No. 51 (1976).

periods and actually succeeded in doing so on at least ten occasions. El Cinco, Cantu stated, repeatedly asserted that there were company orders to deny entry to UFW organizers. He further testified of a substantial number of similar repeated actions of other foremen/ named Ray, Rocha, and Margarito, occurring throughout the company's properties and accompanied by the claim of orders to prevent UFW access and threats to summon police. According to Cantu, these confrontations with supervisory personnel occurred with few exceptions in the presence of large numbers of workers.

Employees Andres Rubio and Pablo Flores Lopez testified that they had witnessed such incidents of interference with UFW organizational activities.

The employer, through both affirmative evidence and cross-examination, demonstrated that UFW organizers had obtained almost daily access to Oshita lands and employees.

When cross-examined, UFW organizer Fujimoto stated that he spoke with company employees on every occasion he visited the bunching shed, that he was on each occasion accompanied by other union organizers who acquired similar access to employees, and that he spoke with workers at their homes and in company camps.

Similarly, Salvador Vizcaino testified of incidents in which the UFW showed slides and gave a talk in the shed, and sponsored a mass meeting at a company trailer camp.

UFW organizer Cantu also testified to obtaining of access to lands and employees despite attempts to prohibit him from entering company properties.

And Juan Ybarra, the company's timekeeper, testified that he never asked UFW organizers to leave Oshita property.

In essence, then, the employer's position is that even were it true that its management had attempted to prevent access to the petitioner's organizers, such attempts, when viewed in the light of the totality of events surrounding the elections, failed to affect either the organizational effectiveness of the UPW or the ability of employees to participate in the elections in a free and informed manner.

Upon consideration of all the foregoing facts and argument, however, we are of the opinion that the events and circumstances preceding the elections here challenged, when viewed as a whole, were of such a nature as to raise serious questions regarding the ability of Oshita employees to vote freely and intelligently. Samuel S. Vener Co., 1 ALRB No. 10; Harden Farms, 2 ALRB No. 30. Although, as the employer contends, isolated abuses of the access regulation will not of necessity provide a basis for setting an election aside, Certified Egg, Inc., 1 ALRB No. 5, in this case we are confronted with a systematically-implemented, employer directive to interfere with the flow of information required for an intelligent vote to be cast and thus to frustrate a fundamental purpose of the Act. The fact that that policy was not completely successful is not controlling. Rather, our sole concern is whether such a policy, and actions taken pursuant to it, tended to inhibit the free choice of those eligible to vote. Republic Aviation Corp. v NLRB, 324 U.S. 793; Western Cartridge Co. v NLRB, 134 F. 2d 240 (7th Cir. 1943).

Since 1970, Oshita's field workers had been covered by a collective bargaining agreement between the company and the Western Conference of Teamsters. The employer's bunching shed workers, however, 60 to 70 in number, were not included under that or any other such agreement.

On August 1, 1975, approximately one and one-half months before the election and before the UFW began its organizing campaign, the employer granted a health insurance plan to its shed workers which was similar to that already possessed by field workers under the Teamster contract. The UFW asserts that this action of the employer constitutes an additional ground for setting the election aside.

Frank Oshita testified that the insurance plan was first discussed and decided upon by management during July of 1975, before the effective date of the Act and approximately a month before the UFW began its organizational efforts among the company's employees. He insisted that the insurance benefits were conferred solely out of management's concern for its shed workers who had no insurance protection while organized field employees had such coverage. When asked what other "fringe benefits" his shed workers enjoyed, Mr. Oshita replied that they received free transportation from company camps to the work site and occasionally were given "loans."

Mr. Oshita denied any relationship between the institution of the insurance plan and the potential organizational activities of the shed workers. However, he offered no justification for the timing of the event nor any explanation as to why he suddenly became concerned about the disparity of treatment between his shed workers and the field workers in July of 1975, when the field workers had enjoyed company sponsored insurance coverage since 1970.

Apart from the question of the employer's motive in establishing the insurance program we are left with both the fact that a benefit of significant value was granted within two months of an election and

with the question of whether such conduct tended to affect the ability of workers who received it to vote freely and intelligently. That an employer's bestowal of benefits upon his employees at a time closely preceding an election may have a significant impact upon their ability to freely participate in an election cannot be reasonably disputed. As the United States Supreme Court held in Medo Photo Supply Corp. v Labor Board, 321 U.S. 678, 686, 14 LRRM 581 (1944), "The action of employees with respect to the choice of their bargaining agents may well be induced by favors bestowed by the employer as well as by his threats or domination." This is so because, as that Court later indicated:

The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

NLRB v Exchange Parts Co., 375 U.S. 405, 409, 55 LRRM 2098 (1964).

In the instant case, the employer, through speeches and actions of his supervisory personnel, indicated to his employees his desire that the UFW not prevail in the forthcoming elections. Under the circumstances his unprecedented granting of significant benefits to the unorganized segment of his work force cannot be reasonably dismissed as a mere expression of noblesse oblige. In the light of the fact that such benefits were granted within weeks of intense union activity and the petitioning for an election, we conclude that such employer conduct resulted in substantial interference with the free expression of the voters.



When these two objections are viewed together, we are compelled to find that the employer's conduct substantially interfered with the election, and we decline to certify. We find it unnecessary to address the other issues raised in the objection hearings. The election held among employees of Oshita, Inc., is set aside.

Dated: February 9, 1977

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RICHARD JOHNSEN, Jr., Member