

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

SILVER CREEK PACKING COMPANY,)	
)	
Employer)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	No. 75-RC-16-F
AFL-CIO,)	
)	3 ALRB No. 13
Petitioner ,)	
)	
and)	
)	
WESTERN CONFERENCE OF TEAMSTERS,)	
)	
Interested Party.)	
)	

This decision has been delegated to a three member panel. Labor Code Section 1146.

On September 10, 1975, an election was held at Silver Creek Packing Company. The tally of ballots showed the following results:

No Union	34
UFW.. . . .	31
Void.. . . .	1
Challenged Ballots.	1

The UFW and the WCT filed timely objections. We set the election aside because the employer denied organizers access to its labor camp, because the employer threatened organizers with firearms, and because the employer displayed the photograph of a discharged employee at the labor camp's guard house. It is not necessary to consider the other objections.

The facts surrounding the denials of access are not in substantial dispute. The employer maintained a labor camp for it approximately 224 employees. It was located one-quarter mile from the public road and accessible only from a company-owned road. The camp was surrounded by a cyclone fence topped with barbed wire and there was a sign posted at the gate warning unauthorized personnel to keep out. The gate was locked and guarded day and night by security guards with immediate access to shotguns and ammunition.

According to employer's brief, "On August 28, 1975, the ALRA became effective throughout the State of California and the company thereafter precluded any union agent from entering its property without having obtained prior permission."^{1/} Three UFW organizers testified that on several occasions they were denied access to employer's labor camp when they attempted to enter and speak with the employees. On the day before the election, the organizers tried to gain entry; the guard at the gate stated that he was not authorized to permit them to enter and gave them one minute to depart.

^{1/} The camp rules read in pertinent part:

14. Religious meetings, government meetings, union and other organized groups will meet in the mess hall with a prior appointment only. Attendance at these meetings is not necessary, they are only voluntary.

18. Visitors or union organizers are not admitted to the cabins of the workers. Only Silver Creek workers are admitted.

As the organizers were backing away from the gate in a van, the guard went to the guard shack, got a shotgun, and either "levelled" it at the organizers or displayed it at "port arms" depending on whose testimony is accepted. Two or three employees witnessed this incident.

The other objection before us concerns the discharge of Jose Luis Martinez six weeks before the election. Mr. Martinez, an experienced melon picker, worked for the employer for two weeks before his discharge. He obtained signatures on authorization cards for the UFW, and his wife was employed by the UFW. Mr. Martinez¹ discharge slip indicated that he was being discharged for picking "green melons" and listed him as a "Huelgista", that is, a UFW sympathizer. After he was fired, his photograph was prominently displayed on the guard shack at the labor camp.

DENIAL OF ACCESS

Our Act insures that employees have the right "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . " Labor Code Section 1152. Implicit in these rights is the opportunity of workers to communicate with and receive communication from labor organizers about the merits of self-organization.

This Board has tried to assure the right of communication by opening and keeping open all legitimate avenues between labor organizations and employees. We have determined that communication at the homes of employees is not only legitimate, but crucial to the proper functioning of the Act. See 8 Cal. Admin. Code Sections 20310(a)(2), 20313, and 20910 (1976); Mapes Produce Co., 2 ALRB No. 54, slip pp. 7 - 8 (1976). An employer may not block such communication. The fact that an employer is also a landlord does not give him a license to interfere with the flow of discourse between union and worker. As the California Supreme Court said in United Farm Workers of America v. Superior Court (Buak Fruit Co.), 14 Cal. 3d 902, 910, (1975), "A labor housing facility is not, of course, the equivalent of a prison isolation block, impervious to visitation . . . "

Since free communication is "a key ingredient of a fair election process," Certified Eggs, Inc., 1 ALRB No. 5 (1975), we will set aside any election where there was, as here, more than minimal interference with that communication.

USE OF FIREARMS

The evidence is in conflict as to the manner in which the guard displayed the shotgun. It is clear that no violence occurred. We are aware that security guards are commonly armed and that, unfortunately, firearms are frequently seen in and around the fields and labor camps. While we cannot conclude that the shotgun incident at the camp, in itself, would justify setting the election aside, we strongly disapprove of their use

in such situations as they have an inherently intimidating impact on the free and uncoerced exercise of rights protected by the Act.

THE POSTING OF A DISCHARGEES PHOTOGRAPH

Jose Luis Martinez was discharged six weeks before the election. The evidence is in substantial conflict as to whether the discharge was lawful and we do not decide that issue. However, the posting of his photograph on the guard shed where employees could see it, especially since Mr. Martinez had solicited authorization cards for a union, was clearly improper. It is inconceivable that such an action would not have an intimidating effect and chill the free exercise of the rights granted by this Act.

The election is set aside.

Dated: February 16 , 1977

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RICHARD JOHNSEN, J R . , Member