

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VISTA VERDE FARMS, )  
 )  
 Employer, ) No. 75-RC-5-S  
 )  
 and ) 3 ALRB No. 19  
 )  
 UNITED FARM WORKERS )  
 OF AMERICA, AFL-CIO )  
 )  
 Petitioner. )  
 \_\_\_\_\_ )

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

On September 3, 1975, the United Farm Workers of America, AFL-CIO ( " U F W " ) filed a Petition for Certification as the bargaining representative of the employees at Vista Verde, Farms. An election was held 11 days later, on Sunday, September 14, 1975. The total employment at the ranch for the payroll week preceding the filing of the petition was 432 workers. In the election, 236 workers voted. The election results were: UFW - 121; No Union - 50; Unresolved Challenged Ballots - 63; Void Ballots - 2.

The employer filed a timely objections petition, pursuant to Section 1156. 3 ( c ) , raising 35 objections. Twenty of these were set for an evidentiary hearing.<sup>1/</sup> Three of the objections are that the election was held beyond the seven-day

---

<sup>1/</sup>Three additional objections were filed by the employer within ten days of the completion of the election. They were dismissed as untimely, and the employer appealed from the dismissal. As we decline to certify the Vista Verde election, it is unnecessary to consider the appeal from the dismissal of these additional objections.

limit within which the Board is required to schedule representation elections,<sup>2/</sup> on a Sunday, with insufficient notice to the employees. We find that these objections have merit and we set aside the Vista Verde election. Because of our disposition of this case we will not consider other objections to the election raised by the employer.

This election was held in the first, harried days of the Act. During the period between the filing of the petition and the election, the regional director, the general counsel, and a special Board-appointed agent, held extensive conversations with the parties concerning the peak of season issue at the ranch. This issue was not resolved until Friday, September 12. Until that date, the parties disputed the 1975 peak figures: the employer contended that the petition had not been timely filed, the UFW claimed that the method of peak computation used by the employer was inaccurate.

On Saturday, September 6, the employer's attorney, Randolph Roeder, was informed in a phone conversation with Regional Director Aguilar that no determination whether to hold an election at Vista Verde had yet been made. Aguilar stated that he would consider the employer's invitation to inspect the ranch's peak records, but no inspection was made.

---

<sup>2/</sup> Labor Code § 1156.3 (a) states in part, "Upon receipt of [the Petition for Certification], the board . . . shall immediately investigate such petition, and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition."

On Monday, September 8, Aguilar spoke several times by phone with Roeder and with the UFW organizer in charge of Vista Verde Farms, Jan Peterson. There was still a dispute over the peak issue. Aguilar informed Roeder he had advised Peterson to withdraw the UFW petition. She had refused, -and Aguilar stated he had told her he might be compelled to dismiss the petition.

Roeder contacted the regional Board office on Tuesday, September 9. Aguilar was not in and Roeder spoke to the General Counsel, Walter Kintz, who told him that he, Roeder, would be advised by Aguilar later that day if an election was to be scheduled. Roeder heard nothing from the Board on September 9 or on Wednesday, September 10. Based on his conversation with Kintz and the fact that the 10th was the seventh day after the petition was filed,<sup>3/</sup> Roeder concluded that the petition had been dismissed or had become moot and so informed the employer, who in turn discontinued its election campaign on the ranch.<sup>4/</sup>

On September 11, a special Board agent called Roeder and told him that the Board needed some more information, something in writing to close out the case. Roeder complied. On September 11, Roeder also became aware of a Los Angeles Times article quoting Ms. Peterson as stating that the ALRB had denied the UFW's petition for an election at Vista Verde Farms.

Ms. Peterson testified that she was informed that 'ALRB General Counsel Kintz had undertaken consideration of the

---

<sup>3/</sup> Labor Code & 1156.3 ( a ) . See footnote #2.

<sup>4/</sup> The employer had hired at least one individual to conduct an election campaign which consisted primarily of advising employees of alternatives to union organization.

petition; she subsequently met with Kintz on Wednesday, September 10 and on Friday, September 12, to discuss the peak issue. Peterson testified that Kintz stated he was considering dismissal of the petition, but needed more information. On the afternoon of September 12, Kintz took the peak issue to the Board, and at approximately 5 p.m., the Board decided that the election should take place as soon as possible.

On the evening of Friday, September 12, Roeder was contacted by Regional Director Aguilar who informed him that the Board had just decided to direct an election at Vista Verde. Roeder testified that he had objected but that he and Aguilar had come to "an understanding of sorts" that nothing would be done concerning an election until Monday morning, September 15. The employer's attorney then departed for a weekend trip, but was contacted at 2:30 p.m. on Saturday, September 13, by the employer who told him that Regional Director Aguilar had called with word that the election had been scheduled for 1 p.m. on Sunday, the following day. Roeder was unable to reach Aguilar until about 5 p.m. on Saturday. He objected to conducting the election the next day, pointing out that it would be extremely difficult to get the employees to the polls. Aguilar agreed that the selected date posed many problems not only for the parties, but for himself as well. He told Roeder that he in turn had presented these problems to the Board but that the Board had simply ordered him to go forward with the election.

When the election was ultimately scheduled, it was set for a Sunday. Only 130 employees worked at Vista Verda that Sunday and there was evidence presented that Sunday is not

commonly a work day for agricultural workers. Labor contractors who sought to notify workers about the election testified that they were only able to contact a small number of workers Saturday evening. Of those contacted some had planned to attend religious services on Sunday; others had planned to leave the area for the day.

Approximately 200 workers did not vote.

The holding of a representation election more than seven days after the filing of a petition for certification does not invalidate an election in the absence of some showing that persons or parties were prejudiced by the delay. Klein Ranch, 1 ALRB No. 18 (1975). A central question in establishing that prejudice is whether or not the purpose of the seven-day requirement -- to effectuate this Board's policy of maximizing the franchise to agricultural employees<sup>5/</sup> -- was frustrated.

Klein Ranch, supra. We have upheld elections where this policy was enhanced by the delay because in the period between the seventh day and the day of the election, additional eligible voters returned to work. J. J. Crossetti Co., Inc., 2 ALRB No. 1 (1976), and where there was a high voter turnout, Jake J. Cesare & Sons, 2 ALRB No. 6 (1976). We have overturned elections where this policy was frustrated because the late election prevented otherwise eligible workers from voting. Ace Tomato Co., Inc., 2 ALRB No. 20 (1976); Mapes Produce Company, 2 ALRB No. 54 (1976).

---

<sup>5/</sup> Labor Code § 1140.2 states in part, "It is hereby stated to be the policy of the State of California to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing . . . ."

In both Ace and Mapes, we concluded that had the election been held within seven days, a significant number of additional workers might have voted.

Normally, the notice of the election in this case would have been adequate. Yamano Bros., 1 ALRB No. 9 (1975); Carl Joseph Maggio, Inc., 2 ALRB No. 9 (1976); and conceivably there might well be times when the scheduling of a Sunday election is the best way to insure the maximum participation of eligible voters. But under the facts of this case these two factors played a material role in disenfranchising a significant number of voters. We find that had the election been held within seven days, had the employer not been led to reasonably believe that the petition for certification had been dismissed, a significant number of additional workers might have voted. The employer has established that the voter turnout was prejudiced by the delay in holding the election beyond the seventh day. Accordingly, we set the election aside.

Dated: February 28, 1977

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RONALD L. RUIZ, Member