

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

O. P. MURPHY & SONS,)	
)	
Employer,)	No. 75-RC-145-M
)	
and)	
)	
UNITED FARM WORKERS OF)	3 ALRB No. 26
AMERICA, AFL-CIO,)	
)	
Petitioner.)	

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

On September 30, 1975, an election was held at O. P.
 Murphy & Sons. The tally of ballots showed the following results:

UFW	156
No Union	22
Challenged Ballots	25
Void	4

The employer filed timely objections of which the
 executive secretary dismissed thirteen. A hearing was held on the
 remaining two objections.

Subsequently, the employer made a motion to reopen the
 hearing and to enforce subpoenas ad testificandum in order that the
 testimony of previously unavailable declarants could be heard. The
 motion was granted and the Board obtained enforcement of the
 subpoenas pursuant to Labor Code Section 1151 (b), and the hearing was
 reopened.

We uphold the election.

1. Improper Observers

The employer objected to the UFW observers on two grounds:

(1) observers were UFW officials or organizers, and (2) three UFW observers were not predesignated observers.

At the hearing the employer devoted much of its effort to establishing that Pedro Gracia and Romundo Morales were union organizers and thus not qualified to have acted as observers. However, on its face, the pertinent regulation, 8 Cal. Admin. Code Section 20350(b),^{1/} requires only that observers be nonsupervisory employees of the employer. There is no contention that either Pedro Gracia or Romundo Morales were supervisors or not employees. In fact, there was testimony that they were employees. The objection has no merit. Therefore, the Board agent did not abuse his discretion by overruling the employer's objection to the nomination of Pedro Gracia and Romundo Morales at the pre-election conference.

The employer alleged that there were three UFW observers present at the election who had not been predesignated at the preelection conference. While the Board agent should not have allowed observers who were not predesignated [8 Cal. Admin. Code Section 20350(b)], there is no evidence that any actual observer was in fact ineligible to act in that capacity. Therefore the error did not have an impact on the election. In the absence of any facts

^{1/8} Cal. Admin. Code Section 20350(b) (1975) ; re-enacted as Section 20350(b) (1976).

indicating that the difference in the number of observers for the UFW and the employer affected the outcome of the election we hold that the numerical imbalance alone does not constitute grounds for setting aside the election.^{2/}

The employer objected to Vicente Martinez acting as an observer for the UFW on the grounds that immediately before the election he passed out UFW buttons and thus disqualified himself as an observer. According to our determination of allegations of pre-election misconduct, infra, we hold that this objection is without merit.

Therefore, we dismiss these objections.

2. Electioneering at the Polling Site

The objection is based on the following allegations: (1) the passing out of UFW buttons and bumper strips during the election, (2) the placing of bumper strips on cars near the polling site during the election, and (3) the disbursement of UFW buttons near the voting booths during the election.

The evidence is insufficient to support the allegation that during the election people were passing out bumper strips in the parking lot, and accordingly we find this objection without merit.

During the election a voter placed a bumper strip on a car located in the parking lot. This was immediately brought to

^{2/}See, e.g.: Westinghouse Electric Corp., 182 NLRB 481, 74 LRRM 1125 (1970) wherein the NLRB stated! "We find that this imbalance in the number of observers did not create the impression that the Board favored the petitioners over the employer or otherwise prejudiced the election."

the Board agent's attention, and he removed the bumper strip and two others which had already been placed on the car. The employer also objected to the presence in the parking lot of four automobiles with UFW bumper strips on them including one car parked where workers passed by on their way to the voting booths. Previously we have held that the mere presence of campaign material in or about the polling area is not grounds for setting aside an election absent a prejudicial effect on the election. Veg-Pak, Inc., 2 ALRB No. 50 (1976); Harden Farms, 2 ALRB No. 30 (1976); R. T. Englund Co., 2 ALRB No. 23 (1976); Chula Vista Farms, Inc., 1 ALRB No. 23 (1975). We find that the presence of bumper strips during the election and the placing of bumper strips on the car does not warrant setting aside the election.

During the election, the employer's observer left the polling site to assist the Board agent in encouraging a reluctant crew to come and vote. When she returned to the polling site approximately fifteen minutes later there were seven prospective voters wearing UFW buttons and insignia. The observer did not actually know where the workers obtained the campaign material, but she inferred that the campaign material was being passed out at the polling site. At most the evidence indicates that some of the voters wore campaign material at the polling site. This is not sufficient grounds for setting aside the election. Veg-Pak, Inc., 2 ALRB No. 50 (1976); Harden Farms, 2 ALRB No. 30 (1976).

These objections are dismissed.

3. Electioneering at Entrance to the Farm

The employer objected to the election on the grounds that unauthorized UFW observers were allowed to remain at the ranch entrance during the election. This was not established, and even if proven would not by itself constitute grounds for setting aside the election. See: William Pal Porto & Sons, 1 ALRB No. 19 (1975); Toste Farms, 1 ALRB No, 16 (1975). This objection is without merit.

The employer also alleged that one individual electioneered during the election by shouting from the road which runs along the edge of the farm to workers in the field. This objection is without merit for two reasons. First, the occurrence of the incident was not established. And, as we have previously held, the shouting of slogans not attributable to a party to the election is not conduct sufficient to warrant setting aside the election absent a showing that the voters' free choice was impaired. Harden Farms, 2 ALRB No. 30 (1976). Here, at most, the individual who allegedly shouted was a worker and not a union official, and there was no showing that the alleged shouting incident affected the outcome of the election.

These objections are dismissed.

4. Intimidation of Workers

The employer alleged in its objections that the UFW intimidated workers by threats of violence and deportation. An employer witness testified that some workers approached him after the election and told him that they were "being a little bit pushed."

An employer foreman gave testimony which was equally sketchy. He testified that "three or four" workers complained about threats. He could recall the names of two of the workers: "Jimenez" and "Alicia." The employer foreman testified that Alicia told him that she had received a telephone call "on what to do." The above testimony was admissible, but its hearsay nature affects the weight it will be accorded.^{3/}

The employer sought further support for its contention by attempting to introduce into evidence the declarations of three of five workers who had stated that the UFW intimidated workers. These three were in Mexico at the time of the hearing. The hearing officer did not allow these declarations into evidence.^{4/} The two other declarants, Juan Jimenez and Santos Jimenez refused to obey the subpoenas and failed to appear at the hearing.

Upon the employer's motion, Juan Jimenez and Santos Jimenez were brought before the Monterey County Superior Court and ordered to testify, and the hearing was reopened. Santos Jimenez was

^{3/}Former 8 Cal. Admin. Code Section 20390 (a) (1975), re-enacted as Section 20370 (b) and (c) (1976), stated: "Strict rules of evidence shall not apply." Accordingly, we have held that while hearsay testimony is admissible, mere uncorroborated hearsay evidence does not constitute substantial evidence to support a finding of the Board. See Patterson Farms, Inc., 2 ALRB No. 59 (1976); Apollo Farms, 2 ALRB No. 39 (1976). This rule has been substantially reiterated in Section 20370 (b): "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions."

^{4/}Apollo Farms, 2 ALRB No. 39 (1976), held that it was error to admit into evidence the declaration of a declarant absent from the hearing. This was based on the Board's former regulation § 20390 (a) which provided in part: "All witnesses [at post-election objection hearings] shall be examined orally and under oath." 8 Cal. Admin. Code Section 20390 (a) (1975); re-enacted as Section 20370 (b) (1976).

subpoenaed upon the employer's motion to substantiate the allegation of intimidation of workers by the UFW, but instead his testimony indicated the opposite. The testimony and declaration of Santos Jimenez were translated as he does not speak English. Upon reviewing his own declaration, he denied that he had said there were threats or that "they [the UFW] would do something to us , " or that he had made any statement about any other kind of intimidation by the UFW. A review of the record shows that any apprehension Santos Jimenez felt was due to talk among the workers themselves. Santos Jimenez also testified that he signed the declaration simply to avoid any entanglements such as having to testify at a hearing. We note that the employer declined to examine the other declarant, Juan Jimenez, after the testimony of the first proved fruitless.

The evidence does not support the contention that there was intimidation. The testimony of the employer's own witness, Santos Jimenez, undermines the employer's objection.

This objection is dismissed.

5. Pre-election Misconduct

There was testimony that Vicente Martinez, a UFW observer, passed out UFW buttons in the parking lot, which is at least twenty feet from the polling site, before the polls opened. There was also testimony that unidentified persons were passing out bumper strips in the polling area before the election began. We have previously held that campaigning in the polling area prior to the opening of the polls is not grounds for setting aside an election. United Celery Growers, 2 ALRB No. 27 (1976); Admiral Packing Co., 1 ALRB NO. 20 (1975).

This objection is dismissed.

The United Farm Workers of America, AFL-CIO, is certified as the bargaining representative of all agricultural employee of O. P. Murphy & Sons in Monterey County.

Dated: March 17, 1977

GERALD A. BROWN, Chairman

RICHARD JOHNSEN, J R . , Member

RONALD L. RUIZ, Member