

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

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|----------------------|---|---------------------|
| J. R. NORTON, |) | |
| |) | |
| Employer, |) | No. 76-RC-20-E(R) |
| |) | |
| and |) | |
| |) | 3 ALRB No. 66 |
| UNITED FARM WORKERS |) | |
| OF AMERICA, AFL-CIO, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| and |) | |
| |) | |
| WESTERN CONFERENCE |) | |
| OF TEAMSTERS, |) | |
| |) | |
| Intervenor. |) | |
| |) | |

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

On February 6, 1976, an election was held among all agricultural employees of J. R. Norton who are engaged in that company's farming operations in the Imperial and -Palo Verde Valleys. The tally of ballots showed the following results:

| | |
|------------------------------|-----|
| UFW | 155 |
| No Union | 41 |
| Void | 1 |
| Challenged Ballots | 15 |

The employer filed timely objections ^{1/} of which the executive secretary dismissed 15. A hearing was held on the remaining two objections, and the hearing officer issued a

^{1/}Intervenor Western Conference of Teamsters filed objections which were dismissed in their entirety for failure to submit declarations or other evidence in support of the allegations. 8 Cal. Admin. Code Section 20365(c).

report recommending that the election be upheld. The employer filed timely exceptions to the report. We accept the hearing officer's recommendations.

The hearing officer declined to accept offers of proof pertaining to the dismissed objections. A request for review of the dismissals had previously been denied by the Board. The employer now appeals the hearing officer's rejection of the offers of proof. Citing Samuel S. Vener Company, 1 ALRB No. 10 (1975) and Egger & Ghio Company, Inc., 1 ALRB No. 17 (1975), the employer points out that this Board has granted reconsideration of dismissed objections based in part upon offers of proof made at hearing. In those same cases, however, the Board also upheld dismissal of an objection for which the hearing officer would not accept an offer of proof. The ground for the dismissal in each case was that the declaration submitted in support of the objection failed to establish a prima facie case of conduct affecting the outcome of the election. Here the dismissals were based on the failure to establish the necessary prima facie case and the existence of clear Board precedent that ran contrary to certain of the objections. Under these circumstances, it was not necessary to accept the offers of proof; we adhere to our previous dismissal of the objections in question.

We also dismiss the employer's objection to the time and place of the election. We agree with the hearing officer's conclusion that, in changing the time and place of the election, the Board agent exercised his discretion in a reasonable manner and did not either affect the outcome of the election or create a situation which served to disenfranchise voters.

The hearing officer recommended dismissal of the employer's objection to the bargaining unit determination. We agree that, under the particular circumstances of this case, the employees at the two noncontiguous work locations were properly included within the same bargaining unit.

The United Farm Workers of America, AFL-CIO, is hereby certified as the bargaining representative for all agricultural employees of J. R. Norton Company in the Imperial and Palo Verde Valleys excluding off-the-farm packing shed and vacuum cooling plant employees.

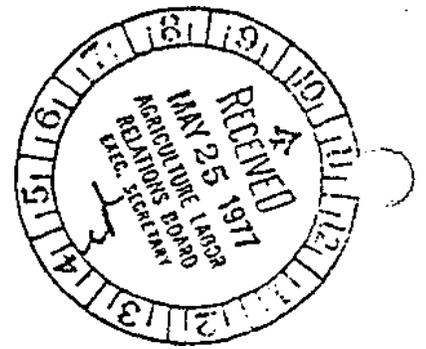
Dated: August 10, 1977

RICHARD JOHNSEN, JR., Member

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:)

Case No. 76-RC-20-E(R))

J. R. NORTON,)

Employer,)

INITIAL DECISION OF)
INVESTIGATIVE HEARING)
EXAMINER)

and)

UNITED FARMWORKERS OF)
AMERICA, AFL-CIO,)

Petitioner,)

and)

WESTERN CONFERENCE OF)
TEAMSTERS,)

Intervenor.)

Robert Roy, Dressier, Stoll
& Jacobs of Newport Beach,
for the Employer

Linton Joaquin of Salinas,
for the Petitioner

No appearance for the
Intervenor

STATEMENT OF THE CASE

JOEL GOMBERG, Investigative Hearing Examiner: This case was heard by me on May 9, 1977, in Brawley, California, pursuant to a Notice of Investigative Hearing by the Executive Secretary of April 12, 1977.

A petition for certification was filed on January 30, 1976, by the United Farmworkers of America, AFL-CIO (hereafter "UFW") .

The Western Conference of Teamsters filed a timely petition for intervention and an election was held on February 6, 1976, among all agricultural employees of the employer in the Imperial and Palo Verde Valleys, excluding off-the-farm packing shed and vacuum cooling plant employees. At the election the UFW received a majority of the votes cast. The Tally of Ballots discloses that 211 of approximately 336 eligible voters cast ballots. There were 155 votes for the UFW, 41 for no union, 15 unresolved challenged ballots, and one void ballot.

Thereafter, the employer filed a timely petition pursuant to Labor Code §1156.3(c) objecting to the certification of the election on 17 separate grounds. Fifteen of the objections were dismissed by the Executive Secretary on March 28, 1977, pursuant to §20365 (e) of the Board's regulations. The employer filed a Request for Review by the Board of each of the dismissals, pursuant to §20393 of the regulations. The Request v/as denied by the Board.

Evidence taken at the hearing was limited to the two objections which were not dismissed:

1. Whether the Board agent improperly determined the scope of the bargaining unit by including Blythe (Palo Verde Valley) employees in the same unit as Brawley (Imperial Valley) employees; and
2. Whether the Board agent held the election at a time and place which prevented a substantial number of employees from voting.

The employer and the UFW were represented at the hearing and were given full opportunity to participate in the proceedings. Both parties presented oral arguments at the close of

the taking of testimony.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the argument of the parties, I make the following findings of fact and conclusions of law:

I. THE BARGAINING UNIT OBJECTION

A. Facts.

The employer, one of the nation's largest producers of lettuce, is headquartered in Phoenix, Arizona, and carries on fanning operations throughout California, as well as several other states in the Southwest.

The UFW petitioned for a single bargaining unit of all employees in the Imperial and Palo Verde Valleys, which are 90 miles apart and separated by a mountain range.

The Palo Verde operation covers approximately 8,000 acres, of which less than 1,000 are devoted to growing lettuce. The remainder of the land is used to grow onions, melons, cotton, and alfalfa. All the farm work in the Palo Verde area, other than lettuce harvesting, is performed by approximately 100 full-time, stationary employees under the supervision of a resident manager. These employees include tractor drivers, irrigators, weeders, tillers, mill workers, and general field laborers.

There are two annual lettuce harvests in the Palo Verde area, one in the fall and one in the spring. Self-contained harvesting crews, with their own supervisors and equipment, under the control of a company-wide lettuce harvesting coordin-

ator, completely independent of the resident manager, are brought in to harvest the lettuce. About 200 lettuce harvesters are employed at the peak of the harvest season.

All of the employer's land in the Imperial Valley was planted in lettuce at the time of the election, although some alfalfa is now also grown. The lettuce is harvested in the winter, between the two Palo Verde harvests, by the same crews which harvest the lettuce in the Palo Verde fields. Approximately 250 lettuce harvesters are employed at the peak of the harvest season. Fewer than 20 stationary employees, consisting of irrigators and tractor drivers, work in the Imperial Valley.

Management is highly centralized in Phoenix. All payroll operations are conducted from the main office, and all paychecks are issued from Phoenix. The wages of the lettuce harvesting crews are set, on a company-wide basis, in Phoenix. The harvesters receive the same pay whether they are working in the Imperial or the Palo Verde Valley.

Agricultural employees other than the lettuce harvesters receive the same wages and benefits, by work classification, in Brawley as they do in Blythe, although the testimony indicated that wage rates of these employees are set by the resident managers.

The water supply for both operations comes from the Colorado River, but is supplied by different water districts.

The lettuce harvesting crews are covered by a company-wide insurance plan. Truck drivers, stitchers, and folder's are covered by a slightly different plan, pursuant to a Teamster

collective bargaining contract. The stationary employees in Blythe are covered by a third plan. None of the harvesting crews has ever been covered by a collective bargaining agreement.

B. Analysis and Conclusions .

The policy of the Agricultural Labor Relations Act with respect to bargaining units is set forth in Labor Code §1156.2:

The bargaining unit shall be all the agricultural employees of the employer. If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the Board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted.

While the UFW does not concede that the Palo Verde and Imperial Valleys do not constitute "a single definable agricultural production area,"¹ both parties agree that the factors outlined by the Board in Bruce Church, Inc., 2 ALRB No. 38 (1976), are applicable in determining the appropriate unit in this case.

As in Bruce Church, the employer's administration is highly centralized. The Phoenix office maintains all of the

1. Some of the factors relied upon by the Board in determining the existence of a single definable agricultural production area, such as a common labor pool, common water supply, and similar climate, are present here, but the distance between the two valleys is 90 miles and the harvest seasons differ. The evidence is insufficient for me to conclude that the two valleys constitute a single definable agricultural production area. See Egger and Ghio Company, 1 ALRB -Mo. 17 (1975) ? John Elmo re Farms , 3 ALRS No. 16 (1977): and Napa Valley Vineyards , 3 ALI13 No. 22 (1977) .

company's records, enters into statewide insurance contracts, conducts collective bargaining negotiations, and makes all decisions with respect to land purchases.

The lettuce harvesting operations are identical in the two locations. The harvesting crews travel as self-contained units, with their own supervisors and equipment. The work to be performed is the same and the wages and other terms and conditions of employment are the same for the harvesting crews in both locations. The interchange of lettuce harvesters is total.

The bargaining history of the employer is of little guidance, because the only collective bargaining agreement in existence does not cover an ALRA unit; i . e . , one covering all agricultural employees in a given location.

The thrust of the employer's case is based upon a fundamental misapprehension of the nature and extent of the Board's discretion under the ALRA in bargaining unit matters. The employer has demonstrated that it treats lettuce harvesters in a manner significantly different from the way in which other agricultural employees are treated. But the Board has no authority whatever to carve out separate units of agricultural employees who work for the same employer in the same or contiguous geographical areas. Bruce Church, supra, p. 4, n. 3. Throughout the hearing, the employer's counsel and witnesses referred to the permanent Blythe employees as the Blythe employees," without reference to the 200 lettuce harvesters who are also clearly "Blythe employees" under the ALRA.

Indeed, the Board could not legally hold an election in Blythe, as a separate unit, except during the lettuce harvest seasons, because the permanent Blythe employees do not constitute a majority of the Blythe employees at peak. Labor Code §1156.4. To require two elections to be held when the same employees constitute the majority of the employees at both locations, and to then require two separate contracts to be negotiated, would be inefficient, costly, and serve no rational purpose. Nor would such a result serve "to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own-choosing, to negotiate the terms and conditions of their employment . . . " Labor Code §1140.2.

This objection should be dismissed.

II. THE TIMES AND PLACES OF THE ELECTION OBJECTION

A. Facts.

At the pre-election conference held on February 4, 1976, the representation election was set for February 6. There were to be three voting sites:

1. The employer's onion shed in Blythe (6 : 0 0 - 8 : 3 0 a . m . ;
2. The employer's lettuce field near Westmorland (11:00 a.m. - 2:00 p.m.) ; and
3. The Employment Development Department (HDD) office, also known as "the hole" or "el hoyo," in Calexico (4:30 - 6:30 p.m.) .

There was agreement between the employer, and the UFW on the first two sites. The employer objected to the third site,

because of control problems, and suggested "its labor camp in Heber, or its Brawley office, as alternatives. The Board agent rejected these objections because the EDO site had been used in a number of previous elections, primarily for the purpose of permitting eligible employees who had recently left work to vote.

On February 5, 1976, employees were notified of the time and place of the election by word of mouth and written notices.

As Board Agent Carlos Bowker drove to the election site in Blythe early on the morning of the election, he noticed that it was raining. The voting in Blythe was conducted without incident, except that Mr. Bowker had forgotten his voter eligibility list. All those voting were challenged, but apparently most of these pro forma challenges were resolved prior to the tally of ballots. According to Mr. Bowker, approximately 30 to 40, or possibly a few more, employees voted in Blythe.

At about 8:00 a.m., Marshall Ganz, a UFW official, contacted Mr. Bowker on the employer's car radio, and informed him that the rain had caused the employer to cancel the day's work for the lettuce harvesting crews. Mr. Ganz suggested that the voting hours at the Calexico site be expanded and that no voting take place at the Westmorland lettuce field. Verne Smith, the employer's lettuce harvesting coordinator, testified that Mr. Bowker informed him that the Westmorland voting would be cancelled, that there would be one hour of voting, from 11 a.m. until noon, at the Heber labor camp, and ~~that~~ the hours at the Calexico site would be from 1 p.m. to 6:30 p.m. Mr.

Smith objected to these changes because it was too late to notify the employees.

Mr. Bowker allegedly told Mr. Smith that the employees would be notified, fir. Bowker testified that he said that he would try to notify the employees and that he asked a Board employee to place an advertisement on a Mexicali radio station to inform the employees of the change. Mr. Bowker did not know if his request had been carried out.

Mr. Smith contacted the Brawley office to inform his staff of the election site changes. One supervisor want to the Westmorland site but nobody was there. Because it was pay day, a secretary was ordered to notify any workers coming into the office to pick up their checks of the change. The employees were dispersed because of the rain.

At the Heber site, where he arrived just before 11:00 a . m . , Mr. Smith was stationed in a car near the only entrance to the camp: He saw no employees enter during the hour the polls were open. Mr. Smith testified that between 20 and 25 employees lived in the camp. Mr. Bowker testified that he also arrived at the Heber camp around 11:00 a . m . and that a large group of people was milling about. Mr. Bowker set up a voting line. He estimated that between 50 and 70 employees voted in Heber. Ramon Medina Medina, a UFW observer in Heber, testified that between 40 and 50 employees voted at the labor camp.

Voting at the Calexico site began at 1 p . m . and concluded at 6 : 3 0 p . m . Approximately 100 employees voted in Calexico, according to Mr. Bowker.

Of the 235 lettuce harvesters eligible to vote, at least 75% were transported to the fields in buses provided by the employer. Most of these employees lived in Mexicali and were picked up by the buses in Calexico at "the hole," the site of the election. According to the credible testimony of Mr. Medina, the buses stopped at the Heber labor camp to pick up additional employees.

Mr. Medina testified that on pay days when work was cancelled because of rain, as on the day of the election, employees received their checks from the foreman at the Popular Drugstore in Calexico. Mr. Medina picked up his check there on the day of the election, in mid-afternoon, during the voting at the hole, Some employees might not have gotten their checks until the following Monday, if they did not cross the border into Calexico.

Both parties agreed that there had been some turnover among the lettuce harvesting employees in the week preceding the election. Mr. Smith testified that turnover was "unreal" during this period and that turnover averaged at least 30% annually.

B. Analysis and Conclusions.

Section 20350 (a) of the Board's regulations provides that:

. . . All elections shall be by secret ballot and shall be conducted at such times and places as may be ordered by the regional director. Reasonable discretion shall be allowed to the agent supervising the election to set the exact times and places to permit the maximum participation of the employees eligible to vote. (Emphasis added.)

Mr. Bowker testified that, as a rule, it was Board policy to hold elections where employees were working to ensure the

highest possible turnout. Therefore, two of the election sites in this case were to be in the employer's fields, while the third, primarily for employees eligible to vote, but no longer working for the employer, was to be in a place where employees for many employers in the Imperial Valley assembled to take buses to work.

It is undisputed that on the day of the election work was cancelled by the employer in the Imperial Valley because of the rain. No buses took employees from Calexico or Heber to the Westmorland field. At least 75% of the employees customarily were transported to the field on these buses. Mr. Smith testified that no employees showed up at the Westmorland field on election day. Clearly, voter turnout would not have been maximized by keeping the Westmorland site open. Rather, the record indicates that on pay days when work was cancelled, employees would typically go to Calexico to pick up their checks. The employer was aware of this practice and had the opportunity to direct its foremen to tell employees that voting was going on at "the hole."

Mr. Bowker testified that he decided to establish a site at the Heber labor camp, a site which the employer had previously suggested, because many employees who ordinarily would have worked in the fields lived there. The Calexico site was already listed on the Direction and Notice of Election, and was well known to the many employees who lived in Mexicali.

Although the election records were not admitted into evidence, Mr. Bowker testified that only 40 employees, or perhaps

a few more, voted in Blythe, out of a total of 100 eligible voters. Even assuming that 50 employees voted in Blythe, that would constitute a 50% voter turnout, while about 160 of 235 voted in the Imperial Valley, a 2/3 turnout.

Eligible employees may not have voted in the Imperial Valley for a number of reasons. The rain may have deterred some from crossing the Mexican border. Others may not have wanted to vote. Some may have quit work and left the area. The turnover was, according to the employer, "unreal." Still others may have failed to vote because they did not have notice of the time and place of the election. In some cases, notice on February 4, 1976, the date of the pre-election conference, would have been too late for employees who had already quit their jobs. See Lu-ette Farms, 2 ALRB No. 49 (1976). In other cases, the switch in election sites may have caused disenfranchisement.

The Board has refused to overturn elections on the mere possibility that some employees may have been disenfranchised, especially where, as here, there is no affirmative evidence that a single eligible voter was disenfranchised as a result of the change in election sites. The employer failed to produce a single employee witness on this issue, relying instead on the testimony of one supervisor. Superior Farming Company, 3 ALRB No. 35 (1977).

The election in this case was not a close one. The UFW received 114 more votes than the no union alternative. Mr. V. Bowker's testimony establishes that no more than 75 of the 125

eligible voters who failed to vote were from the Imperial Valley. Thus, there is no reasonable possibility that voters sufficient to affect the outcome of the election were prevented from voting by lack of notice. Harden Farms, 2 ALRB No. 30 (1976).

If the Board agent were guilty of serious misconduct, it might be appropriate to overturn the election even absent evidence that the outcome of the election was affected. Carl Joseph Maagio, Inc., 2 ALPJ3 No. 9 (1976). But all the evidence here indicates that the Board agent exercised his discretion in a reasonable manner to maximize employee participation, under difficult circumstances. It would have been unreasonable not to have cancelled the Westmorland site and not to have extended the voting time at the other noticed site. The Heber camp site was a reasonable choice, both because employees were sure to be there and because the employer had previously recommended it. Furthermore, the turnout in the Imperial Valley compared favorably with the Palo Verde turnout. This fact in itself is evidence that eligible voters were not prejudiced by denial of notice. Kawano Farms, 3 ALRB No. 25 (1977). This objection should be dismissed.

III. RECOMMENDED DISPOSITION

I recommend that the objections of the employer to certification of the election results be dismissed and that the United Farmworkers of America, AFL-CIO, be certified as the exclusive bargaining representative of all the agricultural

employees of J.R. Norton Company in the Imperial and Palo Verde Valleys, excluding off-the-farm-packing shed and vacuum cooling plant employees.

DATED: May 23, 1977.

AGRICULTURAL LABOR RELATIONS BOARD

By

Joel Gomberg

JOEL GOMBERG

Investigative Hearing Examiner