

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

|                                  |   |                     |
|----------------------------------|---|---------------------|
| BEE AND BEE PRODUCE , INC . ,    | ) |                     |
|                                  | ) |                     |
| Employer,                        | ) | Case no. 75-RC-79-M |
|                                  | ) |                     |
| and                              | ) |                     |
|                                  | ) |                     |
| WESTERN CONFERENCE OF TEAMSTERS, | ) |                     |
|                                  | ) | 3 ALRB No. 84       |
| Petitioner,                      | ) |                     |
|                                  | ) |                     |
| and                              | ) |                     |
|                                  | ) |                     |
| UNITED FARM WORKERS OF AMERICA,  | ) |                     |
| AFL-CIO,                         | ) |                     |
|                                  | ) |                     |
| Intervenor .                     | ) |                     |

---

DECISION AND CERTIFICATION OF  
REPRESENTATIVE

Pursuant to the provisions of Labor Code Section 1146,<sup>1/</sup> the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel .

Following a petition for certification filed by Western Conference of Teamsters (WCT) on September 11, 1975,<sup>2/</sup> an election by secret ballot was conducted on September 18 among the agricultural employees of the Employer in Ventura County, California. Timely objections were thereafter filed by the Intervenor, United Farm Workers of America, AFL-CIO (UFW). In the course of a hearing on objections in late December, all three parties executed

---

<sup>1/</sup>All references herein are to the Labor Code unless otherwise indicated.

<sup>2/</sup>All dates herein refer to 1975 except where otherwise stated.

an agreement setting aside the election, thereafter approved by the Board at the parties' request, which provided, inter alia, for a re-run election, which was held on February 5, 1976. The tally of ballots furnished to the parties at that time showed that there were 39 votes for the UFW, 28 for the WCT, 7 for no union, 1 void ballot and 1 challenged ballot. Thereafter, the Employer and WCT filed timely objections.<sup>3/</sup> The Board's Executive Secretary, on January 10, 1977, noticed for hearing the following three issues raised by the objections and dismissed<sup>4/</sup> the remaining objections:

1. Whether distribution of the document entitled "Un Mensaje Muy Importante For Todos Los Campesinos" violated the settlement agreement and, if so, whether this affected the outcome of the election.
2. Whether charges arising from the first election were used in the campaign for the re-run election

---

<sup>3/</sup>Although the WCT withdrew its objections prior to the hearing, its Local 186 appeared at, and participated fully in, the hearing.

<sup>4/</sup>In their exceptions, the Employer and the WCT refer to a statement in the Executive Secretary's Order of Partial Dismissal and Notice of Hearing dated November 22, 1976, that a leaflet distributed by the UFW before the re-run election violated the December 1975 agreement setting aside the first election between the parties. The Employer and the WCT contend in effect that the Executive Secretary's statement should be considered a formal finding by this Board that the UFW leaflet violated the said agreement. This argument is rejected. The Executive Secretary's January 10, 1977, Notice of Hearing made it clear that one of the issues to be resolved was whether the distribution of the leaflet violated the agreement of the parties and the issue was fully litigated at the hearing. It does not appear that any party was prejudiced or misled by the Executive Secretary's statement of November 22, 1976.

in violation of the settlement agreement and, if so, whether this affected the result of the election.

3. Whether the ballot box was tampered with and in what respect, and, if so, whether on this basis the Board should refuse to certify the election.

On February 15, 16 and 17, 1977, a hearing was conducted in Oxnard, California, before Investigative Hearing Examiner Constance Carey, who, on April 19, 1977, issued, pursuant to Section 20370 (f) of 8 Cal. Admin. Code, her "...initial decision, including findings of fact and a statement of reasons in support of findings, conclusions and recommended disposition." She recommended that the objections be overruled and that the UFW be certified as the exclusive collective bargaining representative of the Employer's agricultural employees.<sup>5/</sup>

The Board has considered the objections, the record, and the Investigative Hearing Examiner's Decision in light of the exceptions and briefs of the parties and hereby affirms the rulings, findings and conclusions of the Investigative Hearing Examiner as augmented herein, and adopts her recommendations.

The agreement setting aside the election between the parties was executed by WCT on December 24, by UFW on December 26,

---

<sup>5/</sup>We reject the contention of the Employer and the WCT in their exceptions that Section 1156.3(c) prohibits the hearing officer from making such recommendations to the Board. The prohibition in that section applies, by its specific terms, only where the hearing is conducted by an officer or employee of a regional office of the Board. Ms. Carey is not an officer or employee of any regional office of the Board.

and by the Employer on December 29. The Board was not a party to the agreement and did not execute it, although an addendum thereto stated, "The ALRB may issue an order consistent with and incorporating the contents of the above Settlement Agreement." It provided for the setting aside of the first election, the conduct of a re-run election, union access rights, Employer distribution of a letter to its employees, and (in paragraph 7 thereof) an agreement by the parties that "...none of the allegations, issues or charges arising out of the petition to set aside the election, or the results of the election, shall be utilized in any manner nor reference made to same during the re-run election campaign... and that no mention of the issues, charges or allegations set forth in the petition shall be made to the press (in all of its branches) or to the workers of Bee and Bee or any other workers."

The agreement did not provide any penalty or sanction to be imposed in the event of a breach of the agreement by any of the parties and it contained no provision suggesting that a breach of the pact by any party would or should be considered a basis for setting aside the re-run election. In its Order Approving Settlement Agreement dated January 6, 1976, the Board stated, "The Settlement Agreement<sup>6/</sup>...is incorporated herein by reference

---

<sup>6/</sup>We consider Poole Foundry & Machine Co. v. NLRB, cited by the dissent, inapplicable here. That case involved the settlement of an unfair labor practice case before the NLRB, clearly distinguishable from the instant matter involving a private agreement between the parties to an ALRB representation case, providing for the holding of a rerun election because of disenfranchisement of voters at the original election. The Board published the agreement in its Order to expedite an election which the parties agreed was necessary.

and is hereby adopted as a formal order of this Board." Like the parties to the contract, the Board made no statement, express or implied, that it would consider a breach of the agreement as a basis for setting aside the re-run election.

Contrary to our dissenting colleague, we do not consider that the issue herein is whether the UFW's actions "violated the Board's Order". Rather, as stated in objections 1 and 2 (supra), the issues are whether the UFW violated the agreement of the parties and, if so, whether such violation affected the outcome of the election. The dissent implies that the UFW's conduct was in direct violation of the Board's Order. However, that Order directed compliance with some, but not all, of the provisions of the parties' agreement (e.g., the Employer must grant access, provide employees' names and addresses and distribute a letter). It is significant that the Board's Order did not direct the parties to do (or refrain from) anything mentioned in paragraph 7 of the agreement.

The dissent appears to be unduly concerned about the Hearing Officer's reliance on the "official translation" of the leaflet proffered at the hearing. However, none of the parties, either at the hearing or in their subsequent arguments, has made an issue of the translation provided at the hearing. Granting that the official translation was not literal,<sup>7/</sup> the evidence in this case indicates that the employees did not consider these

---

<sup>7/</sup>The translator interpreted "las practicas injustas laborales" to mean "practical injustices" rather than "unfair labor practices".

words to mean "unfair labor practices". A Spanish-speaking employee, called by the Employer, testified that the words in question meant to him that, "the first election was not right, that's what I see as an injustice. There are many things here that aren't right." Thus, the only interpretation from a Spanish-speaking employee who received the leaflet is not supportive of the inferences the dissent believes would be drawn by a reader of the message.

Our dissenting colleague also suggests that the UFW's use of the words "las practicas injustas laborales" could refer only to statutory unfair labor practices committed by the other parties. It is at least equally logical to conclude that the UFW's use of that phrase (in a leaflet distributed to employees not overly familiar with labor law terminology) referred only to the admitted disenfranchisement of voters which occurred in the first election. If so, the leaflet is correct in stating that it was for that reason the Board decided to set aside the election, without reference to any party's responsibility therefor.

We agree with the hearing officer that the leaflet distributed by the UFW early in the election campaign did not violate the terms of the agreement<sup>8/</sup> and that the campaign

---

<sup>8/</sup>The leaflet imparted much the same information as the Employer's notice to workers which was circulated by the Employer as part of the agreement. Though using different terminology, both leaflets reported need for the rerun election and included the same guarantees of an opportunity for the employees to vote free of intimidation.

statements of the UFW organizer, Teodore Diaz, in which he mentioned the prior election, amounted only to a technical violation of the terms of the agreement.

However, even were we to find that the UFW's actions violated the terms of this agreement, we would not on that basis alone be compelled to set aside the results of the rerun election. Although we encourage parties to enter into agreements which remove impediments to a quick resolution of representation issues, we do not believe that private agreements between the parties, with or without Board endorsement, can expand or contract the basis on which election results can be set aside.

Absent the agreement, and the alleged violation thereof, the UFW's leaflet and statements objected to by the Employer were clearly permissible and commonplace pre-election activities. If the parties in a particular case, by mutual agreement, should agree not to engage in any lawful pre-election campaigning activities and thereafter breach the agreement, their subsequent lawful campaigning should not, and would not, constitute objectionable conduct, regardless of whether the Board had approved and/or published their agreement as part of an official Order. This is exactly what occurred in the instant case. All three parties, by voluntary mutual agreement, contracted to cease and desist from engaging in lawful pre-election activities, e.g. discussing prior conduct of the parties, the results of the prior election, and the allegations, issues and charges arising out of

the original objections. A breach of such an agreement<sup>9/</sup> by any or all of the parties, cannot be deemed to transform lawful preelection conduct into unlawful or objectionable conduct. Accordingly, the objections are hereby dismissed, the election is upheld and certification is granted.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code Section 1156, the said labor organization is the exclusive representative of all agricultural employees of Bee & Bee Produce, Inc., for the purposes of collective bargaining, as defined in Labor Code Section 1155.2(a), concerning employees' wages, hours and other terms and conditions of employment.

DATED: November 18, 1977

Gerald A. Brown, Chairman

Herbert Perry, Member

Ronald Ruiz, Member

---

<sup>9/</sup>Though the language of this agreement was approved by the Board in January, 1976, we do not now agree with the limitations on campaigning imposed in the agreement. We do not approve of limiting the flow of information from the parties, even where such limitations are self-imposed, on issues that are pertinent to the electorate's making an informed choice in a representative election.

Member HUTCHINSON dissenting:

This Board is called upon to determine for the first time the force and effect of a stipulated agreement between the parties which was incorporated in a subsequent formal Board order.

In the course of a hearing on objections to a representation election which had been held on September 18, 1975, all parties thereto agreed to a new balloting process untainted by the prior election. Accordingly, all parties petitioned this Board for approval of the agreement declaring the first election a nullity and directing a new election with the proviso that none of the issues or allegations inimical to the first election would be publicized or utilized in any manner by the parties.<sup>1/</sup>

---

<sup>1/</sup>Paragraph 7 of the agreement reads as follows:

7. The parties agree that none of the allegations, issues or charges arising out of the petition to set aside the election, or the results of the election, shall be utilized in any manner or reference made to the same during the rerun election campaign. It is the understanding of the parties hereto that it is an integral part and consideration of this agreement that no mention of the issues, charges or allegations set forth in the petition shall be made to the press (in all of its branches) or to the workers of Bee & Bee or any other workers.

On January 5, 1976, the full Board reviewed and approved the terms of the agreement, thereby transforming it to a formal Board order, A new election was directed to be held on February 5, 1976.

Almost immediately thereafter the UFW caused wide distribution to the workers at Bee & Bee, and others of a leaflet entitled "Un Mensaje Muy Importante Para Todos Los Campesinos",

The initial question presented is whether or not the distribution of this leaflet, printed only in Spanish, violated the Board's order.<sup>2/</sup>

---

<sup>2/</sup>The complete text of the leaflet reads:

Hay muy buenas noticias para los campesinos de Bee & Bee referente a: sus derechos a elecciones libres y secretas. La Junta de Relaciones Laborales Agri-colas del estado de California ha decidido que debido a todos las practicas injustas laborales en torno a la eleccion, en Septiembre 19, 1975, los resultados de la eleccion son invalidos. For lo tanto, cada uno de ustedes tendran la oportunidad de votar en una eleccion para elegir union completamente libre de cualquier amenazas o intimidaciones. La nueva eleccion se llevara a cabo en Febrero,

ESTA ES UNA VICTORIA IMPORTANTE POR LA JUSTICIA

ESTA ES VICTORIA IMPORTANTE PARA CADO UNO  
DE USTEDES

Organizadores de la UNION DE CAMPESINOS se pondran en contacto con ustedes referente a las proximas, si ha sido victima de amenazas relative a sus derechos de elegir la union de su preferencia-----por favor haganoslo saber. Los organizadores y el Departamento legal de nuestra UNION DE CAMPESINOS estamos listos y ansiosos de servirle a usted.

QUE VIVA LOS CAMPESINOS DE BEE & BEE!

The hearing officer found that, in fact, the UPW caused the leaflet to be widely distributed but concluded that its message did not violate the terms of the agreement. The majority adopts the hearing officer's conclusion although, as will be demonstrated, it is not supported by the record or by logical analysis.

The initial error committed by the hearing officer was accepting, apparently without critical analysis, the hearing interpreter's translation of a key sentence of the leaflet. The hearing officer accepted the following translation: "the ALRB had decided to look into all the practical injustices of the (first) election." Hearing Officer's Report, p. 3 (Emphasis added). The underlined portions mark significant departures from the actual meaning. The importance of this will be more thoroughly discussed below.

The hearing officer then noted that the leaflet went on to announce that the Board had decided to set aside the election and direct a new one. No reference is made to the other language in the leaflet.

In concluding that the leaflet did not violate the Board Order the majority adopts the reasoning that the language was not dissimilar to the official Board notice which advised workers of a new election because some workers had not had an opportunity to vote in the first election. "The 'injustices' spoken of in that document are not defined, nor are they attributed to any party." Hearing Officer's Report, p. 4. Even assuming the correctness of the translation, and the lack of relevance of the remaining language, the reasoning is faulty.

The adopted interpretation not only declares that the ALRB recognized "injustices" associated with the first election but also implies that because of those the "Board had decided to set aside the election...", Hearing Officer's Report, p. 3. Thus in addition to referring to "allegations, issues or charges<sup>3/</sup> proscribed by the Board Order the leaflet also misrepresents a material fact. Contrary to the implication given the Board never reached the merits of the objections to the first election. The message further implied, since it was issued by the UFW, that the Board found that the Teamsters or the employer or both, had committed those injustices. Again, this is simply not true. The Board only adopted an agreement which expressly stated that it was not to constitute an admission of wrongdoing by any party.

The erroneous conclusion is partly caused by the failure to consider the language in the leaflet as a whole. Following the sentence discussed above is a statement that each worker will have an opportunity to vote in a new election "completely free of any threats or intimidations." Following this, in bold type, are the words "THIS IS AN IMPORTANT VICTORY FOR JUSTICE," Definition is, therefore given to the "injustices," and the "victory" could only refer to the UFW's objections petition,

It is even more clear that the leaflet violated the terms of the order when the language is accurately translated. As noted above the hearing officer placed some emphasis on the vagueness of the words "practical injustices." If properly translated the words are not vague at all. The English version of the

---

<sup>3/</sup>The order prohibits reference or use "in any manner."

actual language is: "the (ALRB) has decided that owing to (or because of) all the unfair labor practices during the election of September 19, 1975, the results of the election were invalidated." It is readily apparent that the actual message not only expressly refers to "allegations, issues or charges" arising out of the first election but also clearly misrepresents the extent to which the Board resolved any of those issues on the merits.

It is, in my view, beyond doubt that the leaflet, considered in the light of its actual meaning and total context, violates the letter as well as the spirit of the Board's Order.

Having found the leaflet to violate the Board's Order, and considering that the hearing officer did find a verbal violation of the agreement, Hearing Officer's Report, p. 14, I would set the election aside. Failure to do so would undermine the integrity of this Board's orders and it follows, the election process itself.<sup>4/</sup> Under NLRB practice settlement agreements

---

<sup>4/</sup>The hearing officer noted that this Board has in the past chosen to overlook violations of agreements between parties in the absence of conduct affecting the results of the election, citing Perez Packing, Inc., 2 ALRB No. 13 (1976). There, however, an agreement between only the parties to an election was in issue, whereas the case at bar involves a formal document which was carefully negotiated by the parties subject to the subsequent perusal and endorsement of this Board. In Perez, supra., we recognized that parties may agree to arrangements other than those provided for in our regulations if those arrangements facilitate the conduct of the election. But, we also made clear that alleged violations would warrant close scrutiny in order to safeguard against resulting prejudice to the fairness of the election process. Mann Packing Co., Inc., 2 ALRB 15 (1976), was decided just two days later. In issue was an informal agreement by which the parties allegedly agreed to a no-electioneering rule on company buses. It was held that the presence of union bumper stickers alone would not warrant the setting aside of the election. But, we also made clear that "We do not here reach the question of what action the Board would take should it find that an express agreement had been violated."

adopted by the Board "have definite legal effect and manifest an administrative determination that some remedial action is necessary to safeguard the public interests intended to be protected by the Act," Poole Foundry & Machine v. NLRB, 192 F. 2d 740, 743 (C.A. 4, 1951), 29 LRRM 2104, 2107; cert. den'd 342 U.S. 954, 72 S. Ct. 558, 29 LRRM 2551 (1952).<sup>5/</sup>

Although I think it reasonable to conclude that the UFW's conduct affected the fairness and the outcome of the election I do not deem it necessary to make an actual finding that the outcome would have been different in order to justify a remedial order. Under such an approach Board orders acquire meaning not at the time they are issued but only after a subsequent infraction has a measurable effect on a given election. The parties are thus required to guess at the efficacy of such orders which, in turn, only invites non-observance. Such a result would be inconsistent with the legislative intent, "to bring certainty and a sense of fair play to a presently unstable... condition in the state." The majority suggests that even if it were to find that the leaflet violated the agreement no remedial action can be taken by this Board because the Order did not specify what sanctions would be imposed upon a breach. The

---

<sup>5/</sup>There, an employer agreed to bargain with the union in return for the withdrawal of prior unfair labor practice charges. Nevertheless, the Fourth Circuit's discussion of the practical purpose of settlement agreements is generally applicable and instructive. It stated that "[Although] not an admission of past liability, a settlement agreement does constitute a basis for future liability.. An entire structure or course of future labor relationships may well be bottomed upon the binding effect of ... the terms of a settlement agreement." The court described such agreements as "amicable and judicious means to expeditious disposal of disputes arising under the terms of the Act," 192 F. 2d 740, 743, 29 LRRM 2104, 2107-2108.

lack of an express "penalty clause" is, in my view, no barrier. The Statute empowers the Board to refuse to certify an election for "misconduct affecting the results of the election." Labor Code Section 1156(c). The results of an election are always "affected" by one party taking unfair advantage over another. The parties were well aware of the Board's power and authority in this regard in spite of the absence of a reminder in the order.

I do not propose to set an election aside every time a technical or minor violation of the law is demonstrated. But, where, as here, the violations are deliberate and directly contravene the primary intent of the parties and the Board there is no alternative.

We have on numerous occasions, encouraged the parties to settle their differences through voluntary agreements. But when the Board fails to remedy a unilateral and deliberate breach of those agreements the parties are encouraged to do anything but enter into them.

In executing and adopting the agreement it was clearly the intent of the parties, and the Board, to expunge all semblance of wrongdoing by any party from the election process. Thus a new election could not only be expedited but the campaign would be limited to the actual merits of the issues before the workers: whether or not to select a bargaining representative and, if so, which one. At the time, January of 1976, it was clearly in the best interest of the Bee & Bee workers, the unions and the employer to resolve the dispute in such a fashion. It was well known that the Board was running out of money and the only alternative to an agreement was long delay and uncertainty as to the outcome.

Strong public policy reasons clearly outweighed any concerns about limiting the scope of any subsequent campaigns. The UFW's unilateral violation, in the manner described, so tainted the fairness of the second election as to compel remedial action.

Dated: November 18, 1977

ROBERT B. HUTCHINSON, Member

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

BEE & BEE PRODUCE, INC.,

Employer,

and

WESTERN CONFERENCE OF

TEAMSTERS,

Petitioner,

and

UNITED FARM WORKERS OF  
AMERICA, AFL-CIO,

Intervenor.

Robert C. McMillan,  
Marshall, Lowthrop, Richards & Hibbs,  
for Employer,

Carol Dahle,  
Duenow, Burke & Smith, for Local 186.

Henry Giler and Fritz Cpnle, for the  
United Farm Workers of America, AFL-  
CIO.

Joe Luna and Yolanda Herrera, Spanish  
Interpreters for the Agricultural Labor  
Relations Board.



Case No. 75-RC-79-M

DECISION

Statement of Case

CONSTANCE CAREY, Investigative Hearing Examiner: This case was heard before me in Oxnard, California on February 15, 16 and 17, 1977. A petition for certification was filed on September 11,

1975 by the Western Conference of Teamsters, followed by an election on September 18, 1975. There were objections to the election by the United Farm Workers who had intervened in the election.

At the hearing on the objections, the parties reached a Settlement<sup>1/</sup> which the Board approved. As part of the settlement agreement a rerun election was held on February 5, 1976. Objections to the rerun election were filed by the employer and by the Western Conference of Teamsters and its affiliated Locals 946 and 196.

Although the Western Conference of Teamsters withdrew their objections prior to the hearing, Local 186 which had been a party to the objections petition, appeared at the hearing and participated fully. The scope of the hearing was limited to those issues not previously dismissed by the Executive Secretary. Notice of those issues had been served on the parties by an Order of Partial Dismissal dated November 22, 1977 (ALRB Exhibit No. 7) and, in final form, by the Notice of Hearing of January 10, 1977 (ALRB Exhibit No. 8) Those issues as stated in the Notice of Hearing were the following:

1. Whether distribution of the document entitled "Un Mensaje Muy Importante Por Todos Los Campesenos" violated the settlement agreement and, if so, whether this affected the outcome of the election.
2. Whether charges arising from the first election were used in the campaign for the rerun election in violation of the settlement agreement and, if so, whether this affected the result of the election.
3. Whether the ballot box was tampered with and in what respect, and, if so, whether on this basis the Board should refuse to certify the election.

---

1/ See ALRB Exhibit No. 2

The settlement agreement was approved by Order of the Board on January 6, 1976 (ALRB Exhibit No. 2). The pertinent section in regard to the issues of this hearing is No. 7 which states:

7. The parties agree that none of the allegations, issues or charges arising out of the petition to set aside the election, or the results of the election, shall be utilized in any manner nor reference made to same during the rerun election campaign. It is the understanding of the parties hereto that it is an integral part and consideration of this agreement that no mention of the issues, charges or allegations set forth in the petition shall be made to the press (in all of its branches) or to the workers of Bee & Bee or any other workers.

Both objections numbers one and two relate to alleged violations of this section of the agreement.

I. Un Mensaje Muy Importante Por Todos Los Campesenos

The employer alleged that the above titled leaflet distributed by UFW organizers during the campaign violated paragraph seven of the settlement agreement. Both the employer's witnesses and the UFW witnesses testified to wide distribution of this document (ALRB Exhibit No. 9). I find that this document does not violate the terms of the settlement as it does not discuss the results of the first election nor any of the charges raised in the objections to the first election.

The official hearing interpreter translated this Spanish document into English. He translated the pertinent part as saying that "the ALRB has decided to look into all the practical injustices of the [first] election." The leaflet then announces the Board has decided to set aside the election and that there will be a new election.

The Board's official announcement of the rerun election<sup>2/</sup> which was distributed under the terms of the settlement agreement said there would be a new election because some workers had not had an opportunity to vote in the first election. This is similar to the message of the UFW announcement. The "injustices" spoken of in that document are not defined, nor are they attributed to any party. There is no mention of the results of the first election. Although there was much testimony that this leaflet was passed out by UFW organizers to virtually all Bee & Bee workers early in the second election campaign, this widespread distribution is irrelevant to this decision since I have determined that the document does not violate the terms of the agreement.

One worker who testified as to the meaning of the statement that there had been injustices said he thought this meant that the first election "wasn't right." This is precisely the meaning that the Board's announcement conveys by saying the election will be set aside because some workers were unable to vote.

This objection should be dismissed.

## II. The Alleged Violations of the Settlement Agreement by UFW Organizers

The employer alleged that the UFW violated the settlement agreement during its campaign prior to the rerun election. Because of these violations the employer urges that the election be set

---

<sup>2/</sup> This announcement is part of ALRB Exhibit No. 2.

aside. The employer argued that if violations of a settlement agreement are not a per se reason to refuse to certify an election, parties will be reluctant to enter into settlement agreements.

Hisai Hiji, a partner in Bee & Bee Produce, testified that he would not have signed the settlement agreement if it did not contain paragraph seven,<sup>3/</sup> nor would he have signed it if he had known there would be a violation of that section. Cruz Martinez, a representative of the Western Conference of Teamsters and also a signatory to the agreement, testified similarly. The issue is whether there was a violation of paragraph seven by UFW organizers, and, if so, whether on this basis the election should be set aside. The ALRB has dealt with the question of an agreement between the parties in Perez Packing, Inc., 2 ALRB No. 13 (1976). The Board found that the UFW had violated a written stipulation and an oral agreement entered into at the pre-election conference. The stipulation called for the UFW to use as an observer in this election a "non-organizer clerical employee;" the UFW also agreed orally to notify the employer of the identity of this person five hours prior to the election. Both agreements were broken, but the Board found that "it is questionable if the violation of the parties' stipulation standing alone is sufficient to set this election aside," since the improper observer was not accused of any misconduct. Thus, in the only instance in which the Board has found a violation of an agreement, it did not find such violation to be a per se reason for setting aside the election.

---

<sup>3/</sup> See page 3 for the language of paragraph seven.

Here, the agreement among the parties was approved by order of the Board. It disposed of all allegations of the UFW as to misconduct during the first election campaign by setting that election aside and ordering a rerun. The employer contends that that rerun election should now be set aside due to violations of the agreement.

A. The Teamster Incident

There is one incident in which Teamster organizers accused a UFW organizer of stating that the company favored the Teamsters. This could be considered a reference to Section 4c of the UFW objections petition which says in full:

c. High level management personnel expressed a preference for the Teamsters and engaged in slanderous misstatements against the UFW.

Earl Sterling who was in charge of the election campaign for the Teamsters testified to this incident which occurred in a field where he and another Teamster organizer confronted two UFW organizers. He testified that the two UFW organizers whom he did not know by name were with four members of the parsley crew when he and fellow Teamster organizer, Tony Alonzo, approached. He described the following incident. As one of the UFW organizers was discussing UFW benefits, Alonzo interrupted by telling the workers that the Teamsters had better benefits. There followed some arguing and name calling, Alonzo saying that the Teamsters had won the first election and would win the second. At this point, according to Sterling's testimony, the UFW organizer made

his statement that if the company had not favored the Teamsters they would not have won.<sup>4/</sup> Mr. Sterling identified the organizer making this statement as a bilingual Caucasian with blondish-red hair. His companion, who said nothing, was described as having long brown hair and a scar on his face.<sup>5/</sup> This incident occurred at noon about one and a half weeks before the election.

Tony Alonzo, the Teamster organizer who Sterling said was with him, corroborated this testimony in part. He said that a UFW organizer whose name he did not know had said to him that if the company had not cheated, the Teamsters would not have won the first election. This was said in English and in Spanish in the presence of four workers. Mr. Alonzo described the organizer making the statement as "kind of little" with reddish hair. Although this person wore no buttons, he knew he was a UFW organizer as he had seen him before. The person with him was described as "kind of little" with blonde hair. Mr. Alonzo at first did not remember when this occurred except that it was after the first election, but under redirect examination he stated that it was sometime during the second campaign. He and Mr. Sterling were present not for campaign purposes but to service the workers under an existing Teamster contract, according to Alonzo's testimony.

Thomas Nagle who had been previously identified by employer witness Ramon Martinez as tall and light with hair to his ears and by Jesus Durate, another employer witness, as a tall, light Anglo also testified to an encounter with these two Teamster

---

4/ On direct examination when asked if the UFW organizer had said the company "cheated" in the first election, Mr. Sterling said, "Yes." On cross examination when asked the word used, he said "favored."

5/ Mr. Sterling stated this person had been present in the hearing room. This description fits Thomas Nagle who, indeed, had been present earlier.

organizers. His version is different. He stated that he was the only UFW organizer present, that he was talking with four workers when Mr. Alonzo and Mr. Sterling came up. He said he greeted them but they ignored him. He said Mr. Alonzo greeted one of the workers he was talking with and drew him aside. Since this worker was a Teamster observer during the election, he said he assumed that Alonzo was contacting the worker to ask him to be an observer.

Thomas Nagle testified that he was the only bilingual UFW organizer involved in Bee & Bee campaign. There were two other organizers who both spoke Spanish only. Neither of them had blonde or reddish blonde hair.

Thus, there are discrepancies in the evidence. There is insufficient evidence to sustain a finding that the person who said the Teamsters won only because of the favoritism of the company was an organizer. In addition, I find that if the alleged statement was made, it was made in response to Teamster organizer Alonzo's reference to the Teamster victory in the first election. Since the parties had agreed not to discuss the results of the first election in the campaign for the rerun election, this mention was a violation of the agreement. The implications of this breach do not need to be considered since Teamster violations were not at issue in this hearing.<sup>6/</sup>

I find too many discrepancies in the testimony to support a finding that this incident occurred as described by Mr. Sterling. It is impossible to attribute to the UFW the statement which violates the settlement agreement when no UFW organizer having blonde or reddish blonde hair has been identified.

---

6/ A mere mention of the results of the first election should not warrant setting aside the second election. The official tally of ballots of the first election indicates a Teamster win. It can be assumed the workers voting in the first election were aware of the results.

## B. Employee Witness

The employer presented several worker witnesses who testified to alleged violations of the agreement. The testimony of the workers concerns statements by the UFW organizers, Thomas Nagle and Teodoro Diaz. Both of these organizers testified at the hearing and denied making statements in violation of the agreement. The first employer witness, tractor driver Jose Mendoza Sanchez, testified that Tomas (as Nagle is known to the workers) stated during the campaign that the company had made "crooked moves" and that there would be another election since the first had not been right. When asked to be specific, this witness could not recall any occasions when Tomas had referred to the first election. Nagle testified to little contact with Sanchez whom he thought to be a UFW supporter. I find that he did not violate the settlement agreement in any conversations with Sanchez. Nagle's testimony in regard to his discussions with workers was credible. Sanchez was not credible in regard to alleged violations of the agreement by Nagle. He did not cite any specific instances when Nagle had said the company had cheated during the first election. Nagle stated that whenever he was asked by workers why there was to be a second election, he said that it was because some workers had been denied the opportunity to vote in the first election. He convincingly stated that he had been told by Fritz Conle of the UFW legal department, and by Larry Tramutt who was in charge of the Oxnard office of the UFW, not to discuss the first election. Only when asked by workers did he mention the first election and then only as stated above.

As to Teodoro Diaz, although Sanchez testified that Diaz said many times the company cheated in the first election, he could remember only one incident. In fact, when he was questioned as to any specific incident in which he heard UFW organizers state that the company had cheated in the first election, he first discussed an occasion when Teodoro had spoken of the benefits of the union but had not discussed cheating by the employer or by the Teamsters in the first election.

Robert McMillan, attorney for the employer, asked Mr. Sanchez to affirm statements made in a declaration<sup>7/</sup> signed by him after the rerun election and submitted by the employer in support of its objections petition. Mr. Sanchez did so, but only after being told exactly what those statements were. Portions of his declaration were read to him, and he was asked, "Do you reaffirm these statements?" Under these conditions, it is hardly surprising that he said, "Yes."

The only incident which was specific enough to warrant consideration was one time when Mr. Sanchez testified that he was oiling his tractor and was approached by Tomas and Teodoro. Sanchez said that Teodoro said that the company and the Teamsters had cheated and that someone had paid people to vote. Sanchez said he did not ask who was paid. Tomas said nothing, according to Sanchez.

Both Nagle and Diaz remembered an incident when they were both present with Mr. Sanchez. Nagle remembered that he said nothing. Diaz did not remember speaking to Sanchez, but Nagle remembered him making a casual comment. Nagle said they thought Sanchez was a solid UFW vote. It is understandable that the

---

7/ This declaration was received into evidence as UFW Exhibit No. 1

organizers would believe Sanchez to be a supporter. He appears eager to please whomever he is speaking to. When asked what he said to organizers who spoke to him, he said, "I would say what they wanted me to and that was it." He testified that he spent most of his time at work and on breaks alone and that he asked no questions of the organizers.

When asked to be specific in regard to times when he had contact with UFW organizers, he remembered two occasions, in addition to the one above. But at those times the organizers made no reference to "cheating" by the company during the first election. If the organizers actually said many times that the company cheated, it is surprising that the witness was unable to remember more occasions.

This witness' testimony was confused and evasive on cross examination. His credibility is questionable, perhaps due to the length of time since the incidents in question, but also it seemed to me he was eager to please whomever was speaking to him. Thus, I find him too suggestible to be believed as to statements made by UPW organizers.

The next employer witness was Ramon Martinez, an avowed Teamster supporter and observer for the Teamsters who worked with the lettuce crew as a box closer. Mr. Martinez stated that Teodoro had said that the company had cheated by bringing in people to vote. He said that Tomas came near him only once to hand him a leaflet, but said nothing about the company cheating.

When Mr. Martinez was asked to discuss the first time when Teodoro said the company had cheated, he talked of the first time Teodoro spoke to him and said there was nothing about cheating at that time. He said that Teodoro had spoken to him altogether

20 times in the field and 20 times at his home, and that he had said that the company had cheated about four or five times altogether.

Teodoro Diaz testified that he remembered Ramon Martinez, and that he remembered going to his home four times but finding him home only twice.

I find it credible that Diaz spoke to Martinez 20 times in the field since Diaz was responsible for the campaign among the lettuce crew. However, I find it incredible that Diaz would have gone to his home 20 times during the campaign. Mr. Diaz began his work sometime after January 11, 1976. The election was February 5. I do not believe that Mr. Diaz would have gone to Mr. Martinez<sup>1</sup> home 20 times during those three weeks, given the fact that Mr. Martinez was a vocal Teamster supporter and that the organizers would be attempting to contact as many workers as possible. This one statement by Mr. Martinez taints his credibility. If he exaggerated as to the number of times Mr. Diaz visited him, he may well have exaggerated the subject matter of the conversations. Mr. Diaz stated that when questioned as to why there was to be a rerun election, he said only that the first election had been unfair since some workers had been denied the opportunity to vote. Perhaps some workers interpreted this as meaning the company had cheated by preventing workers from voting. The actual testimony of Mr. Martinez, however, was that Diaz said the company had cheated by bringing workers in just to vote. This was not alleged by the UFW in its objections petition. Mr. Diaz testified that he did not know why the first election was set aside other than the fact some workers had not voted as he did not work for the UFW during the first election campaign.

The third employer witness, Jesus Duarte, also said he had spoken with Teodoro many times. As to Tomas, he said that he had seen him only once and that Tomas asked him only how long he had been working for Bee and Bee. But as to Teodoro, Mr. Duarte stated that he had many times said that the company had cheated.

When asked if he could remember any specific times, the witness stated he remembered one time when Teodoro said "they" had brought people in and paid them to vote. The witness did not specify who allegedly brought people in to vote. He said he is in the same crew as Ramon Martinez. He never discussed with his fellow workers what Teodoro had said.

This witness' testimony is confusing. The problem probably stems from the fact that the election was held over a year before the hearing, and also because the witness was questioned through a translator.

These three workers each testified to the fact that Teodoro Diaz said that the company had cheated in the first election by bringing people in to vote. I have discredited the testimony of Jose Mendoza Sanchez because he seems to try to please whomever he is speaking with and because of the discrepancies in his testimony. Ramon Martinez spoke of the UFW organizer visiting him at his house 20 times. As I discredit that statement, I also find that his other testimony is subject to exaggerations. The testimony of Jesus Duarte was vague and evasive. The fact that these three workers testified similarly gives some credence to their stories. Even if I were to give full credit to their testimony there is insufficient evidence to sustain a finding that Thomas Nagle violated the settlement agreement.

Although the testimony as to Teodoro Diaz does not clearly specify any occasions on which he said the company cheated, I find it more likely than not that he did do so. This is due to the fact that the workers seemed positive that he had, although not able to remember specific incidents.

However, given the vagueness of the testimony, I do not find that Mr. Diaz made these statements frequently. The workers remembered specific conversations when Mr. Diaz talked of the benefits of the UFW far more than they remembered instances when he said the company had cheated in the first election.

The charges that Mr. Diaz made against the company, that is, that the company cheated by bringing in people just to vote, and by paying people to vote, are not a literal violation of the settlement agreement as they do not arise out of the allegations of the UFW objections petition. However, the intent of paragraph seven must have been to ensure that no organizers would discuss any misconduct by any of the parties in regard to the first election, Thus, I find a violation of the agreement.

The employer argues that any violation of the agreement should be a ground for setting aside the election. Such a ruling would not be in conformity with the policy of the ALRA that the Board shall certify elections unless it determines there are sufficient grounds to refuse to do so.<sup>8/</sup>

As discussed above, the only time the Board, has addressed the question of the effect of a violation of an agreement, it said that the conduct complained of must be objectionable in itself to warrant setting aside an election. Perez Packing Co., supra.

---

<sup>8/</sup> California Labor Code Section 1156.3

NLRA precedent supports this rationale. A second election held by order of the Board after the first was set aside by stipulation was upheld even though the union had distributed a leaflet on the morning of the election which stated that "the only reason" for the second election was that "the top management of our company violated our rights, had no respect for our intelligence and broke the laws of the United States." Prior to this election there had been no finding as to the objections to the first election. The Board felt, however, that the employees would be able to evaluate the above statements and that their votes would not be influenced by them. Keller Dye and Finishing Co., 184 NLRB No. 54, 74 LRRM 1449 (1970).

This is similar to the situation at Bee & Bee. There had been no allegation on the objections petition to the first election that the company had paid people to vote or brought people in just to vote. Those employees who had worked for Bee & Bee at the time of the first election would be able to remember whether people had been brought in to vote. It is unlikely that workers would credit such a statement since they knew the election had in fact been overturned for the opposite reason, that is, that people had been unable to vote.

In the situation at Bee & Bee, I believe that a finding that the conduct of Teodoro Diaz violated the settlement agreement should not be ground for setting aside the election. The policies of the Act and the rights of workers must be considered. Since the violation is not found to have influenced the workers in their voting, no purpose would be served in setting aside the election. The proof was barely sufficient to find a violation, given the

confusion in the testimony. No worker testified to being influenced by the statements of Diaz. It was unreasonable that they would have been. The workers at Bee & Bee have voted twice. They should not be denied their free choice of a bargaining agent.

Based on the weakness of the evidence and a consideration of the legal issues, I recommend dismissal of this objection.

### III. The Issue of Ballot Tampering

The employer and the Teamsters objected to the election on the basis of possible ballot tampering. The evidence submitted with the objections petition consisted of declarations of the employer's attorney, Robert McMillan, and of Teamster organizer Earl Sterling. They were both present at the ballot counting. They both declared that all of the ballots were orange colored except that two were pink.

Mr. Sterling testified at the hearing that he saw the two pink ballots and objected at the time of ballot tally. No explanation was given to him by Board agent Ralph Perez who decided to count the pink ballots. Employer attorney McMillan took the stand to testify similarly. Mr. McMillan introduced the original employer's eligibility list (Employer Exhibit No. 1). He pointed out that this list was identical to UFW Exhibit No. 3, except that the UFW list which was subpoenaed from the Oxnard Regional Office of the ALRB has two names added by hand on the bottom of page four.

This evidence appeared on its face to lend credence to a charge of ballot tampering. The UFW claimed that all names checked off on the list plus the two names added by hand had voted in the election. There were 74 names checked off the list. The tally of ballots indicated that 76 persons had voted. The hand-written names were not checked off.

Employer observer Joe Padilla testified that the two persons whose names were added to the list had presented themselves to vote but were turned away since their names were not on the list. Mr. Padilla was a credible witness. He remembered many details of the voting procedure on election day. See Employer Exhibit No. 2 which is a diagram drawn by Mr. Padilla to show the set up in the shed where the election took place. He stated definitely that the two persons whose names were pencilled in did not vote. He knows them both by sight. One of them presented a check stub which he did not look at. He heard that the other one did, also, but he did not see it.

Norma Bautista, an agent of the ALRB who was subpoenaed by the UFW, cleared the mystery. She said that she printed the ballots the night before the election. The color of the ballot in any election is kept a secret until the polls are open in order to prevent copying of the ballots. She decided to print orange ballots. When she was through, she printed three to five extra ballots on pink paper. She printed these to be used as samples because she wanted to show the parties their positions on the ballot prior to the election. Although there was testimony by employer and Teamster witnesses that no one had questioned the ballot positions, I find Ms. Bautista's testimony that there had been some controversy as to ballot position at the pre-election conference to be persuasive. Although ballot position is normally determined by whether a party is the petitioner or an intervenor, this election was a rerun of the first election and the parties may have expected a change in the usual procedure.

Ms. Bautista testified that on election day she carried the ballots to the polling place in an envelope. Before the polls opened she pulled one pink ballot from the envelope, showing it to the observers as a sample of the ballot. Then she handed the envelope to Board agent Ralph Perez who was in charge of handing out ballots to eligible voters. She said that she forgot about the remaining pink ballots in the envelope she handed Perez until the votes were tallied. When the bottom of the ballot box was reached, she was startled to see two pink ballots. Perez confirmed to her that he handed pink ballots from the top of the pile in the envelope to the first two voters. When he saw that the third ballot he handed out was a different color, it was too late to correct the situation as the first two voters had already left the area. Thus, he determined that the pink ballots should be counted.

This objection could have been prevented if the parties had been given the explanation as to the off-colored ballots at the time of the tally. The Teamsters and the company both objected to those ballots being counted. No one explained to them what had happened. Needless expense was incurred by the parties in presenting the issue in their objections petitions and in presenting their cases at the hearing. No matter how much one might regret the inconvenience to the parties caused by Board agent misconduct, it would be inappropriate to set aside the election on this basis. The workers at Bee & Bee Produce have twice gone to the polls in order to choose a bargaining agent. The misconduct of Board agents had no effect on their free choice in this election. Mr. McMillan argued that any irregularity in procedure should be grounds for setting aside the election. The Board does not agree. Harden Farms, 2 ALRB No. 30 (1970)

As to the two pencilled names, Ms. Bautista also cleared that mystery. She stated that the two women whose names were added to the list presented themselves to vote. They were not on the eligibility list, but were allowed to vote challenged ballots. Thus, there were 76 ballots tallied and 76 persons confirmed as voting. It is understandable that Mr. Padilla thought those two persons had not voted. They were not checked off by the observers, and they were sent to the challenge table for clearance.

Ms. Bautista's testimony was confirmed by evidence brought to the hearing from the regional office. The regional file contained the check stubs submitted by the challenged voters as well as declarations allegedly signed by them. The pink ballot marked "SAMPLE" which Ms. Bautista testified she put in the file after the election was found there.

The sealed envelope of ballots was unsealed in the hearing room. It showed that there were two challenge envelopes bearing the names of the two voters added to the list. One of the envelopes had been opened and the vote counted by agreement of the parties. The other challenge envelope is still sealed. All ballots were replaced in the envelope, and the envelope was resealed in the hearing room. All parties signed their names across the tape indicating that the contents removed for investigation had been replaced.

This objection is dismissed. The evidence shows no ballot tampering.

#### IV. Conclusion

Based on a review of the testimony and a study of the legal issues involved, I conclude that the objections should be dismissed.

The only violation of the settlement agreement which is found is that UFW organizer Teodoro Diaz said the company cheated in the first election. This statement was not shown to have had any influence on voters. Mr. Diaz was responsible for organizing the lettuce crew, tractor drivers and irrigators. The persons from those crews who testified were for the most part obviously opposed to the UFW. They did not credit the charge that the company had cheated.

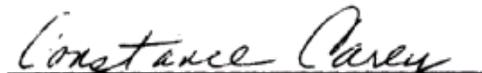
Although the Board has a policy of encouraging settlement agreements (see Mann Packing Co., Inc., 2 ALRB No. 15 (1976)), the violation here does not warrant the setting aside of the election.

The United Farm Workers of America, AFL-CIO, should be certified as the sole bargaining representative of the workers at Bee & Bee Produce.

DATED: April 19, 1977

Respectfully submitted,

CC:ph

A handwritten signature in cursive script that reads "Constance Carey". The signature is written in dark ink and is positioned above a horizontal line.

CONSTANCE CAREY Investigative  
Hearing Officer