

STATS OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

DAIRY FRESH PRODUCTS COMPANY,)	
)	
Employer,)	No. 75-RC-16-R
)	
and)	4 ALRB No. 2
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

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

A secret-ballot election was held among the agricultural employees of the Employer on September 23, 1975, based upon a petition filed by the United Farm Workers of America, AFL-CIO (UFW). The original tally of ballots furnished to the parties at that time showed that there were 33 votes for the UFW, 17 for no union, and 17 challenged ballots. In our Decision on Challenged Ballots in 2 ALRB No. 35 (1976), we resolved 15 of the challenges, ordered that those ballots be opened and counted and provided for a later resolution of the two remaining challenges if they proved to be outcome-determinative. As the two remaining ballots did become determinative of the outcome of the election, our subsequent decision in 3 ALRB No. 70 (1977) resolved the issues, sustaining the two challenges. The final tally of ballots showed 33 votes for the UFW and 32 votes for no union.

A hearing- on the following objections, filed by the Employer, was held on December 23, 1975 before Administrative Law Officer Pauline Porter Watts.^{1/}

1. Massing of Voters.

The Employer alleges that during the morning voting session, a UFW observer shouted at voters who then left the area without voting. The Employer maintains that the incident was indicative that the UFW had prearranged a "massing" of voters at the afternoon session because voters went to the polls in one large group and massed for a half hour, causing interference with the voting process.

One Employer witness testified that he went to the polling area in the afternoon and there were 10 or 12 people waiting in line to vote, but there was no apparent confusion. He did not notice people standing around in the balloting area who were not in line to vote. He refrained from voting because he "didn't want to wait around." He came back a second time and there were only three or four people in the voting area but he did not vote at that time either because he "just didn't want to go through the trouble." Another Employer witness testified that ten minutes elapsed between the time he lined up to vote and the time he actually voted, not an inordinate amount of time. There is insufficient evidence in the record to conclude that a massing occurred or that the OTW arranged it. This objection is dismissed.

^{1/}The Employer's renewal of its Motion to Reopen the Hearing is hereby denied.

2. Bad Faith Use of Challenge Ballot Procedure.

It is alleged that the UFW tried to use the challenge ballot procedure to exclude non-Spanish-surnamed employees because it surmised that they were not UFW supporters. Of the persons challenged as supervisors, two were Spanish-surnamed. The record does establish that one Spanish-surnamed truck driver was not challenged while a non-Spanish-surnamed individual was challenged. A UFW witness testified that this occurred because the Spanish-surnamed person was a "local" driver while the other drove "out-of-town." There is no evidence to indicate that the UFW¹'s challenge technique intimidated or disenfranchised any voter, The evidence does not support the Employer's contention that the UFW misused the challenged ballot procedure. Accordingly, this objection is dismissed.

3. Misrepresentation.

The Employer argues that UFW representative Michael Heumann |was referred to as the "UFW attorney," but that he was not in fact an' attorney as he was awaiting Bar examination results Regardless of Heumann' s actual status there is no evidence that an actual misrepresentation was made or that any confusion about his status could have had any effect on the election. This objection is dismissed.

4. Election Appeared Run by UFW.

The Employer maintains that one of the Board Agents at the election did not wear an ALSB identification badge, and that at least one employee thought the Agent was conducting the eiec-

tion on behalf of the UFW. It is also alleged that although the other Board Agent wore a badge, it was affixed below her waistline and therefore not easily seen. The Employer argues that these matters were confusing and misleading to the voters.

The witness who thought the Board Agents were UFW representatives testified that she based her conclusion on the fact that they were "minorities."

It is clear that one Agent wore an official ALRB badge for part of the day. Even assuming that neither Agent displayed proper identification throughout the election, there is no basis for concluding that the outcome of the election was thereby affected. Therefore, this objection is dismissed.

5. Improper Challenge Ballot Procedure.

(a) It is alleged that different election procedures were used in the morning and afternoon sessions. The Employer argues that in the morning, only the UFW observer's opinion about eligibility was considered, but in the afternoon, both the UFW observer's opinion and a statement from the voter were utilized. The record indicates that the afternoon procedure was proper; however, there is no evidence pertaining to the morning procedure. As this allegation is unsupported by the record, it is hereby dismissed.

(b) The Employer contends that because both Board Agents were handling the challenged ballots, they allowed the "massing" of voters to continue longer than it would have otherwise. As discussed above, the record does not support the conclusion that "massing" occurred or that the election process was unduly delayed in any other respect. This objection is dismissed. 4.

6. Late Poll Opening.

I It is undisputed that the polls opened about 20 or 25 minutes late in the morning. However, there is no evidence that any voters were disenfranchised by the late opening. In Admiral Packing Co. , 1 ALBS No. 20 (1975), and D'Arrigo Bros, of California, 3 ALBS No. 37 (1977), where the polls opened 20 and 25 minutes late respectively, we held that such delay would not warrant setting aside an election absent evidence of voter disenfranchisement. This objection is hereby dismissed.

7. 8 ladle Ballots Not Counted.

It is uncontradicted that the blank ballots were not counted before and after the election. As there is no requirement that blank ballots be so counted and no evidence of any tampering with the ballots, this objection is dismissed.

8. No signature Required of Voters.

The Employer argues that the Board Agents made check marks on a master list after each voter orally gave his or her name, and that no signature was required of voters. As there is no requirement that voters sign when they vote, and no evidence of improper voting, this objection is dismissed,

9. Ballot Box Improperly Closed.

After the morning session, the ballot box was taped Shut by the Board Agent, who thereafter maintained sole possession of the box until the afternoon session. Before the box was opened for the afternoon voting, the Employer's ranch manager told the Board Agent that as the ends of the box were not completely sealed, ballots I could be inserted. The Agent then taped the ends closed.

The ranch, manager said that before the extra tape was added/ someone could have inserted something into the box stating, "If he took his knife or screwdriver he could push it in." There ' is no evidence that the ballot box was tampered with. This objection is dismissed.

10. Observers Absented from Polls.

Immediately before the election, the UTW observer and the observer for the Employer left the polling area for three to five minutes to post additional notices of the election at other locations. No observer was present with the Board Agent and the ballot box during their absence. There is no evidence of Board Agent impropriety during the short absence of the observers. This objection is dismissed.

11. improper Tally.

Although the ballots were counted immediately after the election, the official tally of ballots was not prepared until the following day, and it was signed by only one Board Agent and not signed by any observer. In Harden Farms or California, Inc., 2 ALBB No. 30 -(1376) , where the votes were tallied on plain paper, we declined to set aside the election as there was no evidence of impropriety. In the instant matter, several witnesses recall the vote count and there is no dispute about the numbers of votes. The delay in issuance of the official tally of ballots does not warrant setting aside the election. This objection is dismissed.

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 Dairy Fresh Products Company for the purposes of collective bargaining, as defined in Labor Code Section 1155.2(a), concerning employees' wages, working hours and other terms and conditions of employment.

Dated: January 26, 1978

ROBERT B. SUTCHINSON, Member

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member