

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

SUN WORLD PACKING CORPORATION,	)	
	)	
Employer,	)	Case No. 75-RC-42-R
	)	
and	)	
	)	
WESTERN CONFERENCE OF TEAMSTERS,	)	4 ALRB No. 23
	)	
Petitioner,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	
Intervenor.	)	
	)	

---

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 proceeding to a three-member panel.

On October 30, 1975, an initial election was held among the agricultural employees of Sun World Packing Corporation. As neither of the rival unions received a majority of the votes cast, in accordance with a stipulation of the parties, a runoff election between the two unions was conducted on November 6, 1975, in which the United Farm Workers of America, AFL-CIO (UFW) received a majority of the valid votes cast.<sup>1/</sup>

---

<sup>1/</sup> In the initial election 34 votes were cast for the UFW, 33 for the Teamsters, 1 for no union, and there were 2 unresolved challenged ballots. In the runoff election, 45 votes were cast for the UFW, 14 for the Teamsters and there were 20 unresolved challenged ballots.

The Employer and the Teamsters filed timely objections to the runoff election, and three of the Employer's objections were set for hearing. Subsequent to the hearing, Investigative Hearing Examiner (IHE) Ann Bailey issued her initial Decision recommending that the objections be dismissed, that the runoff election be upheld, and that the UFW be certified as the exclusive collective bargaining representative of the Employer's agricultural employees in the State of California. The Employer filed timely exceptions to the IHE's Decision and a supporting brief, and the UFW filed a statement and brief <sup>2/</sup> in opposition to the Employer's exceptions.

The Board has considered the objections, the record and the IHE's Decision in light of the exceptions <sup>3/</sup> and briefs and

---

2/The UFW's assertion that the Board should dismiss the Employer's exceptions as untimely filed is rejected. The exceptions were filed within the extension of time granted, at the Employer's request, by order of the Executive Secretary on December 28, 1977.

3/The Employer has excepted to two specific factual findings of the Hearing Examiner: that it was the Board Agent in charge of the election, rather than the Regional Director, who contacted the Employer to secure its consent to the runoff election; and that the Employer representative, rather than the Board Agent, announced the time and place of the evening voting session at the morning balloting. These minor factual discrepancies are not relevant to a determination of the issues before us and their resolution does not affect the decision in this case. The Employer also argues, in its exceptions brief, that the Direction and Notice of Election issued by the Board was invalid because no pre-election conference was held prior to the runoff election and because it was "postdated". The Employer cites no authority for these assertions. To the extent that they are raised for the first time by way of exception to the Examiner's Decision, they are not properly before us. We note, moreover, that one of the Employer's initial objections was that there was no pre-election conference held prior to the runoff election. The Executive Secretary dismissed this objection, noting that deviations from election procedures are not in themselves grounds for setting aside elections without evidence they interfered with employee choice or otherwise affected the outcome of the election. Harden Farms of California, Inc., 2 ALHB No. 30 (1976).

hereby affirms the rulings, findings, and conclusions of the IHE, as modified herein, and adopts her recommendations.

The Employer's objections set for hearing present in effect a single issue: whether eligible employees were denied the opportunity to vote as a result of the notice procedure in the runoff election. We agree with the IHE that they were not.

Despite high employee turnover throughout the election period, an estimated 50 percent of the eligible employees actually participated in the runoff, a higher voter turnout than at the initial election. The Employer asserts that less than a majority of eligible employees participated. However, the fact that less than a majority of eligible employees participate in an election does not, in itself, mean that the vote is unrepresentative. Lu-Ette Farms, 2 ALRB No. 49 (1976). Failure of eligible voters to participate in an election is construed under our Act, as under the NLEA and in political elections, as assent to the choice of those who exercise their franchise. Therefore, an election is properly carried by a majority of the valid votes cast, absent a showing that eligible employees were denied the right to vote, or were prevented from voting by some conduct of a party or the Board, 4/ or other unusual circumstances.

////////////////////  
////////////////////

---

<sup>4/</sup> The percentage of all eligible voters who actually voted in favor of the UFW in the runoff (45 out of 150, or 30%), a figure frequently mentioned by the Employer in its exceptions, is accordingly not in itself determinative of whether or not the vote was

(fn. cont. on pg. 4)

The Employer has made no such showing here. Rather, the Employer asserts that, particularly in light of the high rate of employee turnover and the fact that many eligible employees were therefore not working for the Employer on the day of the runoff, the Board's method of notification was inadequate. The record establishes that the Board Agent in charge of the election distributed official notices to both unions one or two days before the runoff.<sup>5/</sup> We have previously declined to impose upon Board Agents the task of directly notifying individual workers who are no longer employed by the employer at the time of an election, noting that such a burden would simply be too great in light of the many

---

(fn. 4 cont.)

representative. Also, the number of eligible voters participating in the elections, disputed by the Employer, is not subject to precise determination. There were 138 employees on the election eligibility list. An additional 12 voters were established as eligible by agreement of the parties at the first election tally when they were identified by labor contractor Novarro as employees actually working with his crew during the eligibility period. While we cannot be certain that additional eligible employees were not also excluded from the eligibility list, we may estimate there were 150 (138 + 12) eligible voters in the elections. Of these, at least 75 presumptively eligible employees cast ballots in the runoff election: 59 unchallenged ballots were cast, at least 9 of the 20 challenged ballots were cast by employees included on the eligibility list and therefore presumptively eligible, and 7 of the challenged ballots were cast by employees in the 12-member Novarro crew agreed to be eligible at the first election tally.

<sup>5/</sup> The Employer has excepted to the IHE's finding that the Employer also received a formal Direction and Notice of Election one or two days prior to the runoff. While the testimony on this point was, as the IHE observed, somewhat less than satisfactory, resolution of this factual issue is, in any event, not essential to our decision in this case. The record establishes that the Employer at the least had actual notice of the times and sites of the election, but made no attempt to notify even the employees still employed on the morning of the runoff election. Moreover, the Employer made no effort to maintain contact with eligible employees during the period encompassing the elections.

responsibilities which a Board Agent must fulfill in the brief period provided by the Act between the filing of a representation petition and an election. Lu-Ette Farms, supra. The same considerations apply in the case of runoff elections and we therefore reject the Employer's contention that the Board Agent should be required to distribute the official Direction and- Notice of Election to the employees directly.

The time limitations of the Act are in themselves statutory mechanisms which function to protect voter franchise in an industry characterized by short periods of seasonal employment and high employee turnover. We have previously noted that, in view of these time limitations, the parties themselves are expected to, and generally do, participate in informing workers that an election will be held shortly. Lu-Ette Farms, supra; R. T. Englund Company, 2 ALRB No. 23 (1976). The UFW did so in this case, and the Employer could have done so. It is noted that no objection to the notice procedure was raised by the Teamsters, which lost the runoff election and filed other objections thereto. We also note, as did the IHE, that the Employer is in part relying on its own nonfeasance insofar as it failed to provide the Board with a proper employee list, from which eligible employees could have been contacted. Such reliance is prohibited by Section 20365(b) of the Regulations.

Under all the circumstances, we conclude that the notice procedure here was sufficient. Nothing in the record establishes that employees were not notified of the runoff election or were not aware that it would take place. In fact, the voter turnout at

the runoff was greater than at the initial election: while 34 eligible employees worked for the Employer on the day of the first election, 68 or 70 out of 150 eligible employees voted; although only 25 eligible employees worked for the Employer on the day of the runoff election, 75 presumptively eligible employees cast ballots. In agreement with the IHE, we find the Employer's objections lacking in merit; and accordingly, they are hereby dismissed, and the runoff election is hereby upheld.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that the United Farm Workers of America, AFL-CIO, having received a majority of the valid votes cast among the agricultural employees of the Employer, is, pursuant to Labor Code Section 1156, the exclusive representative of all of the agricultural employees of Sun World Packing Corporation in the State of California, for the purpose 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: April 25, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

## CASE SUMMARY

Sun World Packing Corporation

4 ALRB No. 23

75-RC-42-R

### THE DECISION

On October 30, 1975, an initial election was held among the agricultural employees of Sun World Packing Corp. As neither of the rival unions received a majority of the valid votes cast, a runoff election was conducted on November 6, 1975, with the UFW receiving a majority of the valid votes cast.

A hearing was held regarding the Employer's exceptions? and on November 29, 1977, Ann Bailey, Investigative Hearing Examiner, issued her Decision, recommending that the objections be dismissed and the runoff election upheld.

### BOARD DECISION

The main issue presented by the Employer before the Board was whether eligible employees were denied the opportunity to vote as a result of the notice procedure in the runoff election. The Board found that the notice given to the UPW and the Teamsters two days prior to the election was adequate and that the fact that a majority of the eligible employees did not vote did not in itself mean that the vote was not representative absent a showing that the notice procedure used denied eligible employees the right to vote.

This summary is furnished for information only and is not an official statement of the Board.

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
SUN WORLD PACKING CORPORATION,	)	
Employer,	)	
and	)	
WESTERN CONFERENCE OF TEAMSTERS,	)	Case No. 75-RC-42-R
Petitioner,	)	
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO/	)	
Intervenor.	)	
_____	)	

David E. Smith, for Employer,  
Sun World Packing Corporation

Tom Dalzell, for Intervenor,  
United Farm Workers of America

DECISION

Ann Bailey, Investigative Hearing Examiner: This **case** was heard before me on June 15, 1977, in Coachella, California.

The Western Conference of Teamster's petitioned for an election at Sun World, a Coachella citrus producer, on October 24, 1975<sup>1/</sup> and the UFW intervened on October 27. A representation election was held October 30, with the tally of

<sup>1/</sup> All dates hereafter refer to 1975 unless otherwise indicated.



ballots as follows:

United Farm Workers	34
WCT	33
No Labor Organization	1
Unresolved Challenges	2

The parties stipulated to a runoff election to be held without resolution of the two challenges. That runoff was held on November 6 with the following results:

United Farm Workers	45
Teamsters	14
Unresolved Challenges	20

The Teamsters and the employer filed timely objections to the election. All were dismissed by the Executive Secretary except three employer objections which were noticed for hearing. At the June 15, 1977 hearing, evidence was taken on those three objections:

1. Whether there was no Direction and Notice of Runoff Election issued by the Board, nor was any such Direction and Notice issued to employees entitled to vote in the runoff election;
2. Whether, as a result of the Board agent's failure to properly notice the runoff election, the vote was not representative, since the winning union received less than 30 percent of the votes of employees eligible to vote;
3. Whether the Board agent did not hold the runoff election at the same times and places as the original election and did not give notice of the changes to employees eligible to vote.

The employer and the UFW were represented at the hearing but the Teamsters did not appear. The parties were permitted to submit post hearing briefs and the UFW did so.

Based upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments made by the parties, I make the following findings of fact, conclusions and recommendations.

## FINDINGS OF FACT

### I. Notice

The initial election at Sun World was held on October 30, 1977, within the seven day period specified by the Agricultural Labor Relations Act. The agent in charge was Cesario Hernandez, then on loan from the State Department of Health. At the time the votes were counted, Hernandez informed the parties that there might be a runoff election. He contacted the parties by phone, later in the week, and they stipulated to a runoff without resolution of the two challenged ballots.<sup>2/</sup>

Because the vote was close and a runoff was possible, the UFW continued after the first election to maintain contact with eligible voters from Sun World. (Turnover was extremely rapid, as discussed below, and many of the employees no longer worked at this employer.) Eliseo Medina, Director of the UFW's Coachella field office, testified as to the extensive efforts of UFW organizers to follow the movement of workers in the Coachella Valley and in other parts of the state to insure their participation in the runoff election.

After the agreement of the parties to a runoff election, Hernandez arranged for election sites with the employer's attorney, David E. Smith. One of the sites was the same as in the first election and one was different. The voting times at the two sites were different than the times for voting in the

---

<sup>2/</sup> UFW 1 and 3 are written confirmation of the agreement of the employer and the UFW.

first election. The time at which voting sites were determined, as well as the fact of issuance of formal notice to the employer, through his representative, are in dispute.

Hernandez testified that he made the election arrangements with Smith one or two days before the election, while Smith maintained that he knew of one election site on the afternoon before the runoff, and the other only on the morning of the runoff itself. Hernandez testified that he ran off copies of the Direction and Notice of Election and gave two to Smith and 25-50 to the UPW and to the Teamsters, again one or two days before the election. The notice had been dated and signed by the regional director earlier, before the first election, and the dates and times of the runoff filled in later. There is a copy of this document in the Board's files, and Medina testified that a copy was received by the DFW. Smith denies ever receiving a copy.

The testimony of both Smith and Hernandez is vague and confused as to exactly when and where election arrangements were made, and when and where the Notice of Election was or was not delivered. Based on all of the evidence, including the demeanor of the witnesses, the existence of the Notice in the Board's files and its receipt by at least one other party, I find that the employer's representative had formal notice of the times and places of the election at least the day before the election.

There is no evidence that the Notice itself was posted or distributed to workers or that any of the workers ever saw it.

Only a third of the eligible voters actually worked at Sun World at any time between the first election and the runoff as detailed below. One of those employees, Bernardo Valladares, testified that there had been considerable conversation among the employees still at Sun World between the two elections, and that they were all aware of an impending runoff. He himself received notice of the particulars of the election from flyers printed up and distributed by the UFW.

Board agents did nothing to notify workers other than to distribute Notices to the parties. There is no evidence that they made any effort to individually contact employees no longer at the employer, and the employee list provided by the employer did not present adequate information to do so in many cases.

The employer's representative, Smith, testified that the employer used only the formal notice posted on the premises to notify workers of the first election. (Again, as outlined below, most of the workers were even then no longer at Sun World). The employer did not seek to contact former employees between the two elections, nor did he inform those employees at Sun World about the second election, other than to announce at the morning polling place, the location and time of the afternoon voting.

## II. Representative Vote

There was a relatively low voter turnout at both elections, and the employer raises this as an objection to the runoff.

There were 138 eligible voters on the list submitted by Sun World.<sup>3/</sup> There were approximately 34 of those workers employed on the day of the first election, almost 25 percent.<sup>4/</sup> Seventy votes were cast in the first election, including 2 unresolved challenges, and 12 votes which were initially challenged because they were not on the eligibility list, but subsequently allowed and counted by agreement of the parties.

On October 30, the UFW petitioned for the use of a new eligibility list if a runoff was to be held because of high turnover.<sup>5/</sup> The regional director properly denied the request on the grounds that the Board's Regulations make no provision for use of any other list, but the request clearly indicates some concern over the turnover problem. Approximately 44 eligible employees worked at least one day between the first and second elections. On November 6, when the runoff was held, approximately 25 employees of the 138 on the eligibility list, about 18 percent, actually worked. Seventy-nine votes were cast, including 20 unresolved challenges. Nine of those were challenged by the UFW as hired for the purpose of voting, but those 9 were on the eligibility list. The 20 challenged also included 7 voters not on the eligibility list, but whose votes were counted in the first election by agreement of the parties, according to the uncontroverted testimony of Medina. There were 59 unchallenged votes.

---

3/ Employer 1

4/ Employer 1 and 11

5/ Employer 2

In calculating the number of eligible voters who actually voted, those figures may be taken into account. There were 138 on the eligibility list. Fifty-nine votes in the runoff were unchallenged. Additionally, 9 of those challenged were on the eligibility list. Seven of those challenged were among the 20 permitted to vote in the first election by agreement of the parties, so they could be considered in calculating eligible voters who voted. (That figure must then be added to the eligibility list of 138, giving a total of 145 eligible). The total is then 59 plus 9, plus 7, or 75 of 145 eligible voters who voted, or just over 50 percent. (If the 9 challenged by the UFW as hired to vote are considered ineligible and removed from the 145 eligibility figure, the total is 66 of 136 eligible voting, or over 48 percent). Merely using the number of unchallenged votes, and the original eligibility list, (59 voting of 138 eligible), yields a voter turnout of approximately 42 percent. Any of these methods of calculation results in a turnout substantially higher than that claimed by the employer in his objections.

The UFW offered testimony as to the unusual nature of at least one of the crews used by Sun World during the eligibility period, in that the crew was made up of non-professional farm workers, even more mobile than most. A large percentage of the workers were from this drifting crew. Coupled with a high turnover in the Sun World force in general, this fact led to a body of workers difficulty to locate in any circumstances. The employer did not offer testimony of any workers disenfranchised by lack

of notice, but rather relies on low voter turnout to prove his case. For the reasons listed above, I find that the low voter turnout was due largely to a rapid turnover in work force rather than any lack of notice as to time and date of the election.

#### ANALYSIS

The employer objects to the election on several grounds revolving around notice to employees. The first objection is that no Direction and Notice of Election was issued before the runoff election. I have found that the Notice was in fact delivered to the employer's attorney, one or two days before the election.

The employer also objects that the times and places of the runoff were different, and that employees were not notified of the fact. One polling place and the voting times were in fact different than those in the first election. The choice of times and places for voting are within the discretion of the Board agent supervising the election. 8 Cal. Admin. Code Section 20350(a) (1975); reenacted as 8 Cal. Admin. Code Section 20350(a) 1976. The discretion of the Board agent and regional director shall be exercised to permit maximum voter participation. This objection, then, like that concerning the Notice of Election, must be measured by voter participation, and the degree to which the Notice procedures used here affect voter turnout. This is the employer's central objection.

The mere fact of a low voter turnout, even a minority of those eligible, is not in itself cause to set an election aside. NLRB v. Central Dispensary and Emergency Hospital, 15 LRRM 643 (D.C. Cir. 1944); cert. den. 324 U.S. 847 (1945). Absent misconduct, those who appear to vote will determine the outcome of the election. Valencia Service Co., 99 NLRB 343, 30 LRRM 1074 (1952). The issue is to what extent, lack of notice precluded voters who otherwise would have voted from casting their ballots. Lurette Farms, 2 ALRB No. 49 (1976).

The ALRB has considered similar situations in both Lurette and B.T. Englund, 2 ALRB No. 23 (1976). In the latter case, the employer knew of the sites and times of the election on the evening before it was to be conducted. The union then disseminated notices of the election, and the employer had the chance to do so. Eighty-three of 134 eligible voters cast ballots, and the Board certified the election, noting that notice was within the discretion of Board agents, and was adequate under the circumstances.

The case in Lurette is even more similar. There the Board certified an election in which the Notice was not handed out until the day of the election, and only 50 percent of those eligible actually voted. There, likewise, less than 20 percent of those on the eligibility list were still working on the day of the election. The Board emphasized the difficulties of giving notice to employees when elections must be conducted



quickly, in a work force characterized by high turnover. The Board cited too, the responsibilities of the parties in notifying workers.

The case here is substantially equivalent. All parties had equal notice of the probability of a runoff, stipulated to a runoff, then had equal notice of its particulars. They had an equal opportunity to contact the employees. The UFW thereafter maintained an intense effort to organize and communicate with eligible voters, including the distribution of leaflets stating the exact time and place of the runoff. The employer, on the other hand, while it had the same information available, did nothing to alert its employees about the runoff, even those employees still working at Sun World. There is no indication that the UFW had any information prior to the employer; merely that the information common to the parties was used in different ways. The employer presented no testimony of any single voter disenfranchised, but rather relied on evidence of a low voter turnout, clearly due in part to the extremely high rate of turnover. Notices posted at the workplace immediately after the first election would therefore not have solved the problem. Even had Board agents the time and resources personally to contact the voters, their efforts would have been considerably complicated by the sketchy address list furnished by the employer.

The Board found in similar circumstances in Lulette that notice procedures were adequate and the election representative. I find the same to be true here. I therefore recommend that the

election be upheld, and the United Farm Workers certified as the bargaining representative for the employees at Sun World Packing Corporation.

DATED: November 29, 1977

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ann Bailey", is written over a solid horizontal line.

ANN BAILEY

Investigative Hearing Examiner