

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

SAM ANDREWS' SONS,	)	
	)	
Employer,	)	Case No. 77-RC-10-D
	)	
and	)	4 ALRB No. 59
	)	
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Petitioner.	)	
_____	)	

DECISION AND ORDER

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.

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW), on July 6, 1977, a secret ballot election was conducted on July 9, 12, and 13, 1977, among the agricultural employees of the Employer in California, excluding employees of the Employer's packing shed and cooling facilities under contract with Local 78-B of the Fresh Fruit and Vegetable Workers. The official Tally of Ballots showed the following results:

UFW . . . . .	456
No Union . . . . .	98
Challenged Ballots . . . . .	<u>19</u>
Total	573

The Employer filed timely objections, eight of which were

set for hearing. Subsequent to the hearing, Investigative Hearing Examiner (IHE) Elizabeth Miller issued her initial Decision, in which she recommended that the Employer's objections be dismissed and that the UFW be certified as collective bargaining representative of the unit employees. The Employer timely filed exceptions to the IHE's Decision and a supporting brief. The UFW filed cross-exceptions and a brief 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 and briefs and has decided to affirm the rulings, findings, and conclusions of the IHE as augmented herein, and to adopt her recommendations to dismiss the objections and to certify the UFW.

The UFW contends that the Employer's exceptions do not comply with 8 Cal. Admin. Code Section 20370 (g) and should therefore be dismissed. As we consider there was substantial compliance with the regulation we deny the UFW's request.

One of the major issues at the hearing was whether the access taken by the UFW between June 28 and July 13, 1977, was in violation of our access regulation, 8 Cal. Admin. Code Section 20900 (e) (4) (c), and the Board's Order in Sam Andrews' Sons, 3 ALRB No. 45 (1977), and if so whether such violation was conduct which affected the results of the election and therefore constituted grounds for setting aside the election. In our decision in Sam Andrews' Sons, supra, we granted the UFW expanded access as a remedy for the unfair labor practices committed by the Employer during the 1975 election campaign among its employees.

Our remedial Order provided that, upon the filing of a Notice of Intention to Take Access, the UFW would be permitted to utilize two organizers for each crew in the fields during working hours for organizational purposes and that the organizers could talk to the workers and distribute literature; also that the UFW would not interfere with or disrupt the work, and that not more than two organizers at a time could be with a crew, except as provided by 8 Cal. Admin. Code Section 20900(e)(3) and (4).

The Employer filed numerous exceptions to the IHE's conclusion that ". . . the access violations amount to the possibility that one organizer refused to identify himself, and that the organizers possibly were responsible for a minimal amount of disruption of work. This is insufficient to set aside an election." IHED at p. 17.

The Employer alleges that more than two organizers were present with a given crew during working hours. The record shows the Employer failed to meet its burden of proof that these unidentified and unnamed individuals were organizers for or agents of the UFW. Two witnesses testified that a number of the Employer's own employees organized for the union among the crews where the alleged access violations occurred. Their testimony was never contradicted. The actions of employees who are union adherents cannot automatically be attributed to the union. See D'Arrigo Bros, of California, 3 ALRB No. 37 (1977). For this reason, as well as the Employer's failure to identify or name the organizers where it claimed that more than two organizers were present, we uphold the IHE's conclusion that the union cannot be held responsible for the

activities described where only unnamed persons, purportedly organizers, were involved. On this record, we cannot find that the union utilized more organizers than permitted by the terms of our remedial Order in Sam Andrews' Sons, supra, or by the Access Rule.

The Employer excepts to the IHE's finding that the organizers' conduct did not constitute disruption or interference because it consisted only of speech. The Employer argues that the provision of 8 Cal. Admin. Code Section 20900 (e) (4) (c) that speech by itself shall not be considered disruptive conduct was not intended to apply to cases allowing expanded access. We disagree with this limited application of that provision and find that the provision applies to the instant case. The speech that occurred here was directly related to the grant of expanded access which allowed more time for the union to organize and campaign before the election, because of the Employer's prior unfair labor practices which required the 1975 election to be set aside. Although some crews' work may have slowed down or even stopped for a few minutes when some workers stopped to talk to the organizers, the record shows that any disruptions to the Employer's harvesting operations were minimal.

The Employer objects to the election on the ground that the UFW threatened employees that they would lose their seniority and jobs if they did not sign authorization cards. The evidence shows that organizers who discussed seniority discussed it only in the context of its being a benefit which could be obtained through collective bargaining if there was an election and the

union won. We agree with the IHE's conclusion that such statements are permissible campaign propaganda and therefore do not warrant setting aside the election.<sup>1/</sup>

The Employer excepted to the IHE's finding that the UFW organizers' disruptions of campaigning by the Employer's representatives did not substantially interfere with the Employer's ability to conduct a campaign. Based on our review of the record, we uphold the findings and conclusions of the IHE with regard to each of the incidents described by the Employer and we find that the organizers' conduct toward the Employer's representatives did not create an atmosphere in which the employees' free choice of a bargaining representative was improbable.

On the basis of the above findings and conclusions, and the record as a whole, and in accordance with the recommendations of the IHE, the Employer's 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 the United Farm Workers of America, AFL-CIO, and

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<sup>1/</sup>The Employer's exceptions as to the alleged threats are based on the testimony of Mateo Cerda, whose testimony was specifically discredited by the IHE. We find that such statements, even if made, could not be interpreted as threats within the union's power to carry out, but rather fall within the scope of campaign propaganda which may be left to the good sense of the employees to evaluate in deciding how to vote. As campaign propaganda, such statements do not constitute a sufficient-basis for setting aside this election. See *Stimson Lumber Co.*, 224 NLRB No. 66, 92 LRRM 1452 (1976). Moreover, the statements, if made, were not of sufficient pervasiveness or significance when viewed in the context of the large unit and the large margin by which the union won this election. See *Bancroft Manufacturing Co.*/ 210 NLRB No. 90, 86 LRRM 1376 (1974).

that, pursuant to Labor Code Section 1156, the said labor organization, is the exclusive representative of all agricultural employees of Sam Andrews' Sons employed in the State of California, excluding employees of the Employer's packing shed and cooling facilities, 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: August 21, 1978

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

CASE SUMMARY

Sam Andrews' Sons

4 ALRB No. 59

Case No. 77-RC-10-D

THE DECISION

After an election won by the UFW, a hearing was held on eight Employer objections: 1) whether organizers for the UFW engaged in organizational activities in the Employers' fields and labor camps prior to the filing of the Notice of Intent to Take Access, 2) whether two UFW organizers on separate occasions refused to provide identification as required by Regulations Section 20900 (e)(4)(B), 3) whether prior to the filing of the Notice of Intent to Take Access and subsequent to its filing through the last day of balloting, excessive numbers of UFW organizers took access in violation of the Board's regulations as well as the Order promulgated by the Board to direct the parties in this election, 4) whether from June 28 to July 13 the organizers for the UFW interfered with, disrupted, and stopped the work of individual crew members and entire crews, adversely affected the harvest, and were in violation of the Board's Order as well as Section 20900 (e)(4)(C) of the Board's regulations, 5) whether from June 30 to July 13 the UFW came into the labor camp and continually threatened employees by saying the employees would lose seniority and jobs if they did not sign the UFW authorization cards, 6) whether on five separate occasions on July 10-11, 1977, agents of the UFW did disrupt by physical violence and threats thereof the Employer's attempt (s) to communicate with potential voters, 7) whether the Board Agent conducting the election failed to require any identification (at the hearing the parties agreed to the dismissal of this objection), and 8) whether the Board Agent's "quick scheduling" of the first day balloting had the effect of depriving the Employer of observers for three or four hours at one of the polling sites on the first of three polling days.

The IHE found that organizers did not enter the Employer's fields prior to July 5, when the UFW filed its Notice of Intention to Take Access. In summarizing, the IHE found the alleged access violations amounted to the possibility that one organizer refused to identify himself, and that the organizers possibly were responsible for a minimal amount of disruption of work. This was found to be insufficient to set aside the election. The IHE found the only statement which could be taken as a threat against a particular employee who did not sign an authorization card was not attributed to a named organizer, and there was testimony indicating he was an employee. The IHE concluded these statements could not properly be characterized as threats, but rather were campaign

propaganda describing benefits possible through collective bargaining. With regard to the alleged "quick" scheduling of the election, one of the Employer's witnesses testified it was common knowledge on July 8 that the election was to be held the next day and that he was told at least a day before the election that he might be an observer then, but when he was not specifically told he was to be an observer he was not sure he was wanted and went to work instead. The IHE found there was no evidence of any irregularities in the voting procedures or other effect on the election caused by a lack of observers. The IHE discussed each incident in which the Employer claimed that UFW organizers interfered with the Employer's campaign efforts and concluded they caused minimal interference with the Employer's campaign. The IHE found there was sufficient evidence that the company representatives had many other opportunities to speak with the employees. Although there was some arguing and name calling, the IHE found that was insufficient cause to set aside the election.

#### BOARD DECISION

The Employer timely filed exceptions to the IHE's Decision and a supporting brief. The UFW filed cross-exceptions and a brief in opposition to the Employer's exceptions. The Board considered the objections, the record, and the IHE's Decision in light of the exceptions and briefs and affirmed the rulings, findings, and conclusions of the IHE as augmented in the Board's decision, and adopted the IHE's recommendations to dismiss the objections and to certify the UFW. With regard to alleged threats by the UFW to employees that they could lose their seniority and jobs if they did not sign authorization cards, the Board found that such statements, even if made, could not be interpreted as threats within the union's power to carry out, but rather fall within the scope of campaign propaganda which may be left to the good sense of the employees to evaluate in deciding how to vote. The Board found that as campaign propaganda, such statements did not constitute a sufficient basis for setting aside the election. The Board also noted that such statements, if made, were not of sufficient pervasiveness or significance when viewed in the context of the large unit and the large margin by which the union won this election. With regard to the allegation that the UFW organizers disrupted the Employer's attempts to communicate with potential voters, the Board found the organizers' conduct toward the Employer's representatives did not create an atmosphere in which the employees' free choice of a bargaining representative was improbable.

Objections dismissed. Election upheld. Certification granted.

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 :

SAM ANDREWS' SONS,

Employer,

Case No. 77-RC-10-D

and

UNITED FARM WORKERS OF AMERICA,  
AFL-CIO,

Petitioner.

Peter Jacobs, Dressier, Stoll & Jacobs,  
for the employer.

Glenn Rothner, for the United Farm  
Workers of America, AFL-CIO.

DECISION

STATEMENT OF THE CASE

Elizabeth Miller, Investigative Hearing Examiner: This case was heard by me in Bakersfield, California, on March 30 and 31, and April 3, 4, 5 and 6, 1977. On July 5, 1977, the United Farm Workers of America, AFL-CIO, (UFW) filed a Notice of Intent to Take Access upon the property of the employer, pursuant to Sam Andrews' Sons, 3 ALRB No. 45 (1977)<sup>1/</sup>. A Petition for Certification was filed by the UFW on July 6, 1977, and a pre-election conference was held on July 8, 1977.

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<sup>1/</sup> In Sam Andrews' Sons, 3 ALRB No. 45 (1977), the Board found that employer had denied access to the UFW. As a remedy, the Board ordered expanded access to the property of the employer allowing the UFW to enter the property and talk to employees during working hours.

A representation election was held on July 9, 12 and 13 among all of the agricultural employees of the employer in California, exclusive of packing shed and cooling facilities under contract with Local 78-B of the Fresh Fruit and Vegetable Workers. The result was:

UFW	456
No Union	98
Challenged Ballots	19
Total	573

The employer timely objected to the election, alleging a variety of misconduct as grounds for setting aside the election. Pursuant to his authority under 8 Cal. Admin. Code §20365 (c) (1976),<sup>3/</sup> the executive secretary dismissed some of these objections and set others for hearing. Following rulings upon the employer's Request for Review and Motion for Reconsideration, the following objections were set for hearing:

1. Whether organizers for the UFW engaged in organizational activities in the employers' fields and labor camps prior to the filing of the Notice of Intent to Take Access.

2. Whether two UFW organizers on separate occasions refused to provide identification as required by Regulations §20900Ce)(4J(B)

3. Whether prior to the filing of the Notice of Intent to Take Access and subsequent to its filing through the last day of balloting, excessive numbers of UFW organizers engaged in violation of the Board's regulations as well as the Order promulgated by the Board to direct the parties in this election.

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2/ The Notice and Direction of Election, ALR3 Exhibit 3, erroneously lists the election dates as July 9 and 12 only.

3/ All further references to 8 Cal. Admin. Code (1976) are designated "Regulations."

4. Whether from June 28th to July 13th the organizers for the UFW interfered with, disrupted and stopped the work of individual crew members and entire crews, adversely affected the harvest and in violation of the Board's Order as well as §20900(e) (4) (C) of the Board's regulations.

5. Whether from June 30th to July 13th the UFW came into the labor camp and continually threatened employees by saying the employees would lose seniority and jobs if they did not sign the UFW authorization cards.

6. Whether on five separate occasions on July 10-11, 1977, agents of the UFW did disrupt by physical violence and threats thereof the employer's attempt(s) to communicate with potential voters.

7. Whether the Board agent conducting the election failed to require any identification.<sup>4/</sup>

8. Whether the Board agents' "quick scheduling" of the first day balloting had the effect of depriving the employer of observers for three or four hours at one of the polling sites on the first of three polling days.

On August 19, 1977 and October 31, 1977, the employer filed two Motions to Deny Access based upon the UFW's alleged access violations in connection with the election. Portions of the motions were set for hearing by the Board, and these were consolidated with the representation case. Pursuant to the Board's consolidation order, I will issue two separate decisions, the instant decision being limited, to the representation case.

The employer and the UFW were represented at the hearing and were given full opportunity to participate in the hearing, including

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<sup>4/</sup> At the investigative hearing, the parties agreed to the dismissal of this objection.

examining witnesses and filing briefs. 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 and conclusions of law.

#### EMPLOYER'S AGRICULTURAL OPERATIONS

Sam Andrews' Sons is a partnership with operations in the Imperial Valley and in Kern County. The company grows and harvests a variety of crops, including alfalfa, carrots, cotton, garlic, lettuce, onions, tomatoes, wheat and a variety of melons. The election activities which were described at the hearing all took place in Kern County.

The crops which were being harvested at the time of the election included watermelons, crenshaws, casabas and cantaloupes. There was extensive, and sometimes conflicting testimony about the harvest operations for the various melons.

Cantaloupes are harvested by two methods. The machine crews walk along behind a Likens machine, which consists of a long conveyor belt stretching across several rows of crops, which dumps the melons into a truck which follows alongside the machine. The machine crews have 15 to 17 people, usually men and women, who pick the melons by hand and place them on the conveyor belt. When the machine gets to the end of the field, its wheels simply turn sideways and it travels to the next set of rows. The truck must turn around. The machine workers are paid hourly.

The cantaloupe sack crews consist of about 15 men who walk along the rows carrying sacks over their shoulders, into which they drop melons which they pick by hand. When his sack is full, the employee walks to the field truck, and up its ramp, and dumps the

melons by opening the bottom of his sack. It is easier for members of the sack crews to go at their own pace than for those in the machine crews. These employees are paid at a piece-rate.

Crenshaw melons are picked by a crew of 14. Unlike cantaloupe these melons must be cut from the vine with a knife. Because the melons are delicate, the cutters place each melon in a furrow. A truck and trailer then comes by, and a loading crew pitches the melons to the vehicle, where they are stacked by a few people who ride on the truck and trailer.

The watermelons are harvested in a similar manner. A cutting crew of eighteen to twenty men select and pick the melons. Pitching crews of seven to eight men then pitch and load the melons into trucks. The work of the pitching crews requires strength and the ability to maintain a rhythm with the other workers. The line of seven or eight men each takes a row, and travels together, picking up melons and pitching them to the next man, and then to the truck's loading crew. Unlike the other crews, which are mostly people of Mexican ancestry, the pitching crews are all Black. These employees also work at piece-rate.

#### ACCESS TO THE EMPLOYER'S PROPERTY BY ORGANIZERS

##### Statement of Facts

###### A. Organizational activities prior to filing the Notice of Intention to Take Access

I find that organizers did not enter the employer's fields prior to July 5, when the UFW filed its Notice of Intention to Take Access. Mateo Cerda, an employee witness, testified that he was "as sure as seeing the sun that shines down on us" that he saw four organizers go into the field to talk to sack crew 10 on June 30 and July 1. But Cerda then changed his testimony to say that the organizers

did not go into the fields the first day, but only on the second day, but that he could not remember which day that was. Because of his changing testimony, I discredit Cerda's account of access before July 5.

The testimony of ether witnesses for the employer, including supervisors Ed Rodrigues, Jose Rea, Salvador Alonso and Angel Avila Vera, gave the first date of access to the fields as July 4 or 5. Since none of these witnesses was certain that organizers had entered the fields on July 4, the employer did not meet its burden of showing that organizer entered the fields before July 5.<sup>5/</sup>

B. Incident in a Casaba Crew, July 6

Ed Rodrigues, harvest supervisor for the employer, testified about an incident where five organizers entered a crew and disrupted work by talking to employees who stopped working. Because of the unreliability of his testimony, I cannot find that more than one OFW organizer was present, or that there was more than minimal disruption of work.

Rodrigues named only one organizer, Juliana de Wolf, and provided only a vague description of one other. He testified that de Wolf told him that the organizers could take full-day access, and could have as many organizers present as they wished. But in a declaration executed July 6, 1977, Rodrigues stated only that de Wolf had told him, "They (my supervisors) told us we could be in the fields at any and all times." It appears that Rodrigues fabricated the other statement

As to the alleged work disruption, Rodrigues admitted that the employees could have been taking a break, and that he did not pay attention to the organizers, and was not close enough to see their faces.

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<sup>5/</sup>Although the Executive Secretary set for hearing the objection that organizers entered the company's labor camps before July 5, this allegation cannot constitute violation of the access rule, as discussed infra. Therefore, I will not discuss the testimony regarding this issue.

This was only one of many incidents where employer witnesses could not name organizers. Two UFW employee witnesses testified that they and other employees organized on behalf of the UFW. It appears that some of these "organizers" may have been employees.

### C. Incidents in Cantaloupe Machine Crews

#### 1. Machine Crew 1, Foreman Cirilo Alvarado

The employer presented testimony that on several occasions de Wolf and other organizers entered the crew and talked to employees, causing some members to fall behind the pace of the crew. When they would run to catch up, melons would be left behind. I find that the organizing efforts by de Wolf did cause some workers to slow down, but that the delays were minimal.

The testimony of both of the employer witnesses has problems of credibility. Jose Rea, a supervisor, described an event of July 6, in which two organizers talked to crew members who stayed behind and left melons. Rea could not identify either of the organizers, or any employees. He also confused this incident with another concerning a sack crew when he was cross examined.

Margarita Ibarra, an employee, gave more detailed testimony, but was biased against the UFW and one of the employees she described as slowing down. Ibarra testified that several times de Wolf and other unidentified organizers talked to two employees, Isabelle Alvarado and Juanita Salazar, causing them to slow up and leave ripe melons.

Although Ibarra claimed she had nothing against the union, she admitted she had much against her foreman, who is Isabelle's husband. Ibarra did not like the way he talked to the workers, the way he pushed them, his phone calls to their homes, or his special preference for his wife. Ibarra went to the union to complain, but they said he was okay. Ibarra testified that both Cirilo and Isabelle supported the union.

De Wolf and Arcelia Navarro, an employee, testified that no employees stopped or lagged far behind the machine. De Wolf did admit, however, that she talked to employees while they worked, and that the work required careful examination of the melons. Therefore, it is probable that some melons were left behind, but any disruption was minimal.

Both Ibarra and Rea testified that Rea picked up melons that were left behind due to conversations with the organizers. Rea never asked an organizer to stop disrupting work, never told any employee to work more, and never gave any employee a warning. Instead, he testified that he would have the machine slow down, and would pick up melons himself.

## 2. Machine Crews 3 and 4

Jose Rea testified that on July 6, he saw four organizers in crew 3, de Wolf, Rosalinda Aguirre and two Mexican men, and two organizers in crew 4, described only as men. Rea testified that while he watched, he saw each machine come to the end of a row twice and stop 10 to 15 minutes before starting across the field again, while the organizers talked to the employees. Rea also testified that he had seen: these crews stop at the end of a row when organizers were not present, the machines stopped for only two to three minutes.

I find that when the organizers were present, the machines waited at the end of the row a little longer than usual because the employees talked with, the organizers. I do not find it credible that the delay was as much as ten or fifteen minutes each time. Aguirre estimated the normal delay time as five minutes. As she had never worked in a machine crew, it can be inferred that her experience was limited to observing crews while she was organizing, and that the



organizing did contribute to a slightly longer delay time. On the other hand, Rea's estimates of times did not appear accurate since his testimony was always the same in describing different incidents – the delay time without organizers was always 2 to 3 minutes/ and with organizers 10 to 15 minutes.

D. Incidents in the Cantaloupe Sack Crews

1. Sack Crew 10, Foreman Orozco

Mateo Cerda, an employee witness, testified that organizers once got on a melon truck with employees,, and while in transit to a new field asked some of the employees their names. After the truck arrived at the destination, Cerda testified that some of the employees stayed with the organizers, giving out their names, while the rest of the crew started working.

Cerda could not name any employees or organizers who were involved. The testimony was not credible because as the story was told, the facts kept changing, and the events became extremely improbable. The testimony was originally that the organizers boarded the truck in order to get two or three names they were lacking from the crew of fifteen. The testimony changed at one point to say the organizers needed ten to fifteen names. They spent ten minutes doing this while in transit, and an additional ten minutes after the truck had reached its destination, causing one or two employees to start work five to eight minutes after the rest of the crew. I find that there was no delay since it could not have taken, twenty, or even ten minutes to obtain the names.

2. Sack Crew 14, Foreman Araiza

Jose Rea testified that on July 6, organizers Washburn and Murguia talked to employees in the crew while it worked, and that some

employees would stay behind the rest of the crew, and then leave melons as they ran to catch up with the rest of the crew. Rea testified that this activity recurred one half hour later.

Washburn testified that he and Murguia did go to the sack crews that day, but only to find out which crew was which, the crew numbers, the number of employees in each crew and the captain. Washburn claims he only spent a few minutes in each crew and did not cause the workers to slow down.

I find that there were insubstantial delays caused by the organizers talking with the employees. Rea's confusion about other events in the sack crews that day, infra, makes his testimony less reliable. Washburn's role as supervising organizer lends credibility to his testimony that on July 6, early in the organizing campaign, he was simply trying to find out information about the crews. However, Washburn also testified that the organizers generally did not talk to sack crews while the employees were working because they had to work so fast. It is therefore probable that small delays were caused by the organizers' questions.

### 3. Sack Crew 14 or 16 , Foreman Alonso

Salvador Alonso, sack crew foreman, testified that his crew was delayed four or five minutes on July 7 or 8, when the melon truck was stopped at the exit of a field because two employees were talking to organizers. These employees were identified only as Dolores and "El Pajaro." Alonso testified that four other employees helped these two to catch up.

No organizers were named by Alonso, nor any other employees. Alonso was also not sure as to the date or the crew number. Alonso testified that he did not give out any warning slip because that was

not necessary.

Alonso also testified that he saw organizers paste handbills on a company truck and bus on July 6 or 7. He testified that he knew these were organizers because he knew most of the employees. However, he admitted that he did not know the steady employees, such as irrigators and tractor drivers. Francisco Larios, an irrigator, testified that he had seen employees post bumper stickers on company property.

The last incident recounted by Alonso was that two organizers came, on an unknown date, and talked to some employees who remained in back of the crew for two to five minutes at the most.

#### 4. Unidentified Sack Crews

Jose Rea testified that four organizers came to a sack crew on July 6 and talked to employees, stopping them from working for three to five minutes. Apart from the lack of detail in this testimony, it cannot be credited' because on cross examination Rea said that the incident concerned machine crew 1. In addition, it is not clear whether this is the same incident as was related by Alonso, supra, where employees stopped for two- to five minutes.

Angel Avila Vera, a supervisor in the sack crews, testified that eight to ten organizers spent one to two hours in a field where seven or eight crews were working consecutive rows of eight. Some employees fell behind the pace of their crew and then would hurry to catch up, leaving unpicked melons. On that day, Vera did not tell any employees or organizers not to disrupt work, and he gave no reprimands.

Vera could not name any employees who stopped work, and he could only describe one organizer as a stocky man of medium height.

## E. Incidents in Watermelon Crews

### 1. July 6

Ed Rodrigues presented some very confusing and changing testimony about incidents which occurred among the watermelon crews. Rodrigues testified that two organizers entered a watermelon field, talked to the cutting crew at the edge of the field, and then entered the field, where they were joined by three other organizers. These five then interfered with the work of each pitching crew for fifteen to twenty minutes. On direct examination, Rodrigues testified that two organizers did not identify themselves, but on cross he was able to come up with four names, Washburn, Hurguia, Wallach and Saldano, indicating that only one organizer had refused to identify himself. In a declaration dated July 6, Rodrigues described two different incidents. In -the first, organizers Washburn and Murguia entered a cutting crew. In the second, Murguia, Felix, Wallach and another organizer went to the pitching crews. Washburn testified that he never went to the watermelon fields until July 13.

Because of the unreliability of Rodrigues' testimony as to this event and the July 6 incident in a casaba crew, and the lack of any corroborating evidence, I cannot make any findings as to this incident.

### 2. Pitching Crews, July 8

Ray Adams, foreman of the pitching crews, testified that six or eight organizers came to the field where five crews were working, and "disruptions" occurred in all crews. As described by Adams, the disruptions lasted approximately fifteen minutes, and consisted of workers arguing among themselves about the merits of the union, and about being stopped from working. He testified that the organizers knew the men want to get back to work, and left as soon as possible. The organizers were identified only as Mexicans, mostly male.

### 3. Pitching Crews July 13

On July 13, the day of the election in the pitching crews, a group of about ten organizers visited the crews while they were working. <sup>6/</sup> Most of the organizers went to pitching crews, usually by themselves, and told the crews that Mack Lyons, a black union official, would be coming by to talk to them. <sup>7/</sup> Mack Lyons then went to each crew and spoke to employees.

Although the organizers who testified all denied that there were any interruptions in the work, I find that while the organizers visited the crews some employees stopped working, or slowed down, causing the crew to stop. There were several different causes for work being stopped. First, the employees argued among themselves about the validity of the union. The union was very controversial among the pitching crews since most of the other employees and organizers were of Mexican ancestry, while the pitchers were Black. Several witnesses described the racial animosity which existed. Second, both employer witnesses and organizers testified that most members of the crew had not been informed earlier that an election was to take place that day. The employees were confused, and some expressed anger

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<sup>6/</sup> Various witnesses gave different estimates of the number of organizers, ranging from four to twelve. Six organizers were named, and organizer Fred Ross, Jr., who was able to name six, also testified that there were more organizers whose names he did not remember.

<sup>7/</sup> Rodrigues and Rea testified that the organizers travelled in groups of three or four, while Washburn and Ross testified that each organizer went alone to the crews. I find the latter version more credible since there were usually about seven pitching crews working, and if about nine organizers (excluding Lyons) divided themselves between the various crews, there would usually be only one organizer in a crew.

at being stopped from working for an election. Third, some crew members were angry that the organizers' presence was preventing them from working.

The confusion in the pitching crews can also be explained by the nature of the work, which was physically demanding and required the crew to work together as a chain, and perhaps the personalities of the men, who were described as easily angered.

Rodrigues testified that two to three tons of watermelons were lost due to organizers trampling on vines and broken melons. However, foreman Adams testified that he saw no melons left in the field. Washburn testified that the organizers were careful not to damage any vines or melons. Rodrigues' only testimony as to how he knew the extent of the damage caused by the organizers was that he walked through the fields later that day. Given the extensive testimony describing the uproar and confusion on that day, and the lack of specificity in Rodrigues' testimony concerning how he measured the damage, I do not find that the organizers damaged the vines or the watermelons.

#### Conclusions of Law

The access regulation adopted by the Board in 1976, and applicable to this case, provides guidelines for organizing on the property of agricultural employers. Regulations §20900. Access is available for thirty-day periods commencing upon the filing of a notice of intention to take access. Section 20900 (e) (1) (A) and (B) . Access is permitted only during lunch and before and after work. Section 20900(e) ( 3 ) . Access is limited to two organizers for each crew on the property, unless the crew has more than thirty members. Section 20900(e) ( 4 ) ( A ) . Upon the request of an employer or its

agents, organizers must identify themselves by name and labor organization. Organizers must also wear an identifying badge. Section 20900 (e)(4)(B). The right to access does not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. However, speech by itself is not considered disruptive conduct. Section 20900(e)(4)(A).

Expanded access was granted to the UFW by the Board as a remedy for unfair labor practices committed during a 1975 election campaign at Sam Andrews' Sons. 3 ALRB No. 45 (1977). Upon filing a notice of intention to take access, the UFW could have up to two organizers in the fields during working hours for organizational purposes for each crew, and the organizers could talk to the workers and distribute literature. The, union could not interfere or disrupt the work, and no more than two organizers at a time could be with a crew, except as provided by §20900 (e) (3)and (4).

Violation of the access regulation by a union may constitute grounds for setting aside an election where the conduct affected the results of the election. Section 20900(e)(5)(B). Minimal or insubstantial encroachment of the access regulation is not sufficient to set aside an election. Toste Farms, Inc., 1 ALRB No. 16 (1975); John V. Borchard Farms, 2 ALRB No. 16 (1976). There is no reason to establish a different standard for violations of an access rule established by the Board for application to a specific employer's property.

In many of the incidents described by the employer's witnesses, the employer did not meet its burden of showing that the individuals involved were organizers for the UFW. Where names were

omitted, the descriptions were generally so vague that it would be impossible to identify a specific individual. In some instance the witnesses could not give any description at all. No witnesses gave any reason for knowing that these people were organizers, such as the presence of a badge.<sup>8/</sup> All of these witnesses were asked if they had done anything since the election to determine the identity of these persons, and none had. There was also uncontradicted testimony from two witnesses that a number of employees had campaigned on behalf of the union among the crews in question. The actions of an employee, even an active union proponent, cannot be attributed to the union. D'Arrigo Bros, of California, 3 ALRB No. 37 (1977). I therefore cannot hold the union responsible for the activities described where only unnamed "organizers" were involved. I also cannot find that the union, had too many organizers in the fields based upon the presence of unnamed organizers.

The work disruptions that occurred all consisted of organizers talking to employees as they were working, and the employees slowing down or stopping work for short periods of time. There was no evidence that organizers ever physically interfered with the employees' work. The access regulation leads me to conclude that the organizers ' conduct is insufficient to constitute disruption or interference because it consists only of speech. Regulations §20900 (e) (4) (C) provides that speech by itself shall not be considered disruptive conduct.

Even if the Board meant to include speech as a basis for finding disruption or interference during organizing which occurs

<sup>8/</sup> There was only one person who allegedly was an organizer but wore no badge and refused to identify himself.



during the work-day,<sup>9/</sup> such speech would have to be something more than simply campaigning for the election. The Board permitted UFW organizers at the employer's property to enter the fields for organizational purposes during working hours, and to talk to the people. Nothing more than that occurred.

It was the employees themselves who stopped working, of their own volition. Rather than discipline or even reprimand these employees, or the organizers, the foremen and supervisors (except for a few comments by Ed Rodrigues) did nothing. One foreman even testified that discipline was not necessary. Another simply picked up some melons himself, and told the machine to slow down. These actions by the company's representatives make clear the insubstantial nature of any disruptions which did occur.

In summary, the access violations amount to the possibility that one organizer refused to identify himself, and that the organizers possibly were responsible for a minimal amount of disruption of work. This is insufficient to set aside an election.

One further point must be raised. The Executive Secretary set for hearing the allegation that UFW organizers took access to the company's labor camp prior to filing a notice of intention to take access. The right of access to labor camps flows directly from §1152 and does not depend in any way on the access rule, which only concerns access at the work place. Whitney Farms, 3 ALRS No. 68 (1977); Merzoian Brothers Farm Management Company, Inc., 3 ALRB No. 62 (1977). It is not necessary to file a notice of intention to take access before entering a labor camp.

<sup>9/</sup> This refers to the remedy in Sam Andrews' Sons, 3 ALRB No. 45 (1977) discussed supra.

## THREATS IN SOLICITING AUTHORIZATION CARDS

### Statement of Facts

During the last few days in June, or the beginning of July, UFW organizers visited the barracks where employees lived and urged workers to sign authorization cards. Mateo Cerda, an employee who lived in one of the barracks, testified that organizers made various statements, to himself and others, while soliciting cards. Cerda testified that the organizers would ask workers to sign cards, telling them that if they did so, they would have job security and protection of seniority rights, but that if the employees did not sign the cards, they could lose their seniority or their jobs. Cerda also said that one organizer, who he described as wearing a cowboy hat, told him that if he did not sign, he would lose his seniority.

Various UFW organizers testified that they discussed seniority only as a possible benefit which could be obtained if there was an election and the union won. Others testified that they said nothing about seniority. Two employee witnesses testified that several employees obtained signatures for cards, and that one of these wore a white cowboy hat.

I find that organizers only described seniority and job security as a benefit which the workers could obtain by signing authorization cards and voting for the union, and which could be taken away from them if there was no election, or if the union lost. The only statement which could be taken as a threat against a particular employee who did not sign is not attributed to a named organizer, and there is testimony indicating that he was an employee. Although Cerda also testified that he heard other organizers repeat similar statements, I do not credit that testimony because no specific organizers were

identified and Cerda could give no account of exactly where he was in the barracks or which employees were so addressed. The physical layout of the barracks is such that if Cerda were in his living space, he would not have been able to overhear conversations occurring in other living quarters.

### Conclusions of Law

The campaign statements made concerning job security and seniority cannot properly be characterized as threats. Rather, they are obvious campaign propaganda describing benefits possible through collective bargaining. Bud Antle, Inc. , 3 ALRB No. 7 (1977). Statements by unions listing benefits which will accrue if the election is won, and which will not be received if the election is lost are within the bounds of privileged campaign propaganda. Owens-Corning Fiberglas Corp. , 179 NLRB No. 39 (1969) [72 LRRM 1289]; The Smith Company, 192 NLSJ3 No. 162 (1971) [78 LRRM 1266].

Even if the statement that if Cerda did not sign, he would lose his seniority, is to be taken as a threat to an individual by an organizer, there is no credible testimony that other employees heard it or similar threats. Jack or Marion Radovich, 2 ALRB No. 12 (1976). These statements are insufficient to set aside the election.

### QUICK SCHEDULING OF THE ELECTION

### Statement of Facts

Steven Highfill, who was hired by the employer to act as the company representative in the election campaign, testified that at the pre-election conference he found out for the first time that the election was to begin on July 9 , when the sack crews would vote beginning at 4:30 or 5 a.m. The conference ended about 10 p.m. the night before. The reason for the scheduling on July 9 was that the UFW had produced

a list with names of cantaloupe sack employees who stated that they planned to quit work. Highfill claimed that he was unable to obtain observers for July 9 because by the time the conference had ended it was too late to alert potential observers.

Highfill's testimony as to his knowledge that the election would begin July 9 was put into question by Mateo Cerda, another witness of the employer. Cerda testified that it was common knowledge on July 8 that the election was to be held the next day, and that he was told at least a day before the election that he might be an observer then Cerda also testified that Highfill had told him before the election that he might be an observer. Cerda had planned to be an observer, and had attended part of the pre-election conference, but when no one told him that he was to be an observer, he was not sure that he was wanted and went to work instead. There was no evidence that the employer took any steps to ensure its ability to notify its observers at any time.

On cross examination, Highfill testified that he was not sure that no observers had been obtained, although he did not think any could have been obtained for the morning.

#### Conclusions of Law

The testimony of the employer's witnesses does not clearly establish that the employer had no witnesses at the balloting on the morning of July 9. Highfill testified only that he could not obtain any observers, and that he knew of none and that it was "improbable" that any were obtained. But he also testified that he knew few of the employees and foremen at the time, therefore making it very possible that there were company observers of which Highfill was not aware. Since observers were apparently notified before the conference,

and it was common knowledge the election was to begin July 9, it is probable there were observers present.

Even if there were no company observers, it appears that the employer's lack of observers was due to its own lack of diligence. From the testimony of its own witness, it was common knowledge on July 8 that the election would be held the next day, and that the witness was asked at that time to be an observer but was never contacted. Highfill also testified that 100 to 200 employees attended the conference, which was held near the barracks where many sack workers lived. It appears the employer should have been able to contact observer's that evening, after the exact time had been set, or in the morning as they got up.

Finally, there was no evidence of any irregularities in the voting procedures or other effect on the election caused by a lack of observers.

#### DISRUPTIONS OF EMPLOYER'S CAMPAIGN

##### Statement of Facts

The employer hired Steven Highfill to campaign for the no union position among the employees. Highfill recruited Jaime Brock, Connie Gonzales, Roberto Suarez and Johnny Macias as his assistants. The representatives spent most of their time in the fields from July 9 to July 13, presumably campaigning. Highfill recounted various incidents in which the employer claimed that UFW organizers interfered with the campaign efforts of these company representatives.

##### A. Incident at Machine Crew - July 9 <sup>10/</sup>

On July 9, several organizers were in a field where a

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<sup>10/</sup> As set for hearing, the objection to disruption of the employer's campaign was limited to events occurring on July 10 and 11. However, incidents of disruption of the employer's campaign on July 9 were (cont.

machine crew was working, including Fred Ross, David Valles, and perhaps Lupe Murguia and/or Hector Felix. The company representatives came to the road alongside the field, and the organizers approached them. The organizers and representatives were about thirty yards from the crew. The testimony concerning the encounter varied, but both sides described some arguing between the two groups, and some name calling. Highfill testified that the organizers blocked the representatives path to the employees, and that Ross yelled and " called him names. After 5 to 10 minutes, Highfill and his assistants left the area. Ross described a "verbal sparring match" between the two sides, and name calling by Macias and Brock. He testified that he did not call Highfill names.

From the demeanor of the witnesses, I find that an argument erupted between the two groups, in which both yelled insults at the other. Throughout the hearing, Highfill exhibited bias against the union, often interrupting the testimony of union witnesses to make remarks or to laugh. (Highfill was assisting the employer's attorney in presenting the company's case.) Ross admitted that there was a "verbal sparring match" between the sides, and admitted to making certain derisive comments, such as, "You're in the big leagues now."

Highfill also testified that the organizers had blocked the company representatives' access to the workers, but I do not find that this occurred. There was no precise description of what the organizers had done to block the path, and there was no corroborating testimony. The organizers also denied that this had occurred. There was no testimony by any witness describing any physical contact.

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10/(cont.)encompassed by the order regarding the Motion to Deny Access. Since the incident was properly introduced at the hearing, and since it is evidence of disruption of the employer's campaign, I will consider it also in this representation decision.

B. Incident at Aguilera's Machine Crew - July 10

On the morning of July 10, the company representatives approached the crew of Cesar Aguilera which was working in a field. The only UFW organizer present was Rosalinda Aguirre, who spent most of the campaign with that crew.

Aguilera told the crew to stop working because the representatives were going to talk to them. The representatives had discussed the company's medical plan for about five minutes, when about six UFW organizers drove up and walked to the edge of the field where the representatives were. The employees and Aguirre were about 10 or 15 yards away from this group. The organizers gave credible testimony that they felt they had to be there to protect Aguirre because of the reputations of Highfill's assistants for violent organizing tactics.

There is a conflict in the testimony over an interaction between company representative Gonzales and organizer Valles, which occurred as the organizers walked up to where the representatives stood. Highfill testified that Valles jabbed Gonzales in the chest with his elbow as he passed her, saying "Get the fuck out of my way." Valles testified that the interchange consisted of Gonzales calling him a fat slob. The other UFW organizers denied having seen any interchange between the two.

It is possible that Highfill was mistaken in thinking that Valles jabbed Gonzales as he passed. Gonzales did not testify, and no explanation was given for her absence. The employer has not presented sufficiently convincing evidence to prove that this encounter happened as Highfill testified. As was noted before, Highfill expressed bias against the UFW, and his perception may have been somewhat altered.

The organizers and representatives proceeded to argue about

about the merits of the union. Insults were made by each side about the other. One of the employees asked to hear both sides, and Ross proposed a debate. The representatives rejected the suggestion, and soon left, the whole incident taking about five minutes. A few minutes later, most of the organizers left.

C. Incident at Cirilo Alvarado's Machine Crew - July 10

On July 10, shortly after the incident at Aguilera's crew, another confrontation occurred between the representatives and a UFW organizer. Although there are some inconsistencies and conflicts between the testimony of various witnesses, it appears that the crew was eating their breakfast, some inside a bus and some outside in the shade of the bus. The bus was parked near an irrigation ditch, and the employees outside sat between the bus and the ditch. At one point both Brock and de Wolf had boarded the bus, and were arguing. De Wolf was tailing the workers about Brock's past, and Brock was encouraging the workers to listen to the company's side. After a few minutes, de Wolf and Brock both left the bus. Several of the employees followed Brock outside, where the company representatives spoke with the employees for 10 or 15 minutes.

There was some testimony that as de Wolf passed Brock, as she either got on or off the bus, she pushed him. At the time Brock was standing on one of the steps by the door of the bus. There was uncontradicted testimony that the passageway was narrow, that Brock was a big man, and that de Wolf was angry during the incident. Thus, it is reasonable to conclude that de Wolf did come into physical contact with Brock as she passed, and perhaps pushed him. However, the testimony of the employer's witnesses is in conflict as to the force of this impact.



Highfill testified that when de Wolf pushed Brock, he fell and a worker broke his fall. But Margarita Ibarra, an employee seated near the front of the bus, repeatedly testified that Brock just stepped to one side. Since Highfill was admittedly outside the bus, and therefore could not observe the incident as well, I do not credit his version.<sup>11/</sup>

#### Threat to Suarez - July 10

Highfill also testified that on July 10 the representatives and some organizers met in a road, as the representatives were going to talk to a crew. Highfill testified that one of the organizers threatened Suarez, and the representatives left without talking to the crew because of their fears of violence.

I cannot attribute the threat to any of the organizers because of the inconsistencies in Highfill's testimony.

On direct examination, Highfill claimed that Murguia said to Suarez, "You're not coming back to this field tomorrow or to any other field." But on cross examination, Highfill testified that it was Felix who made the threat. Highfill described Felix as having shoulder length hair, but Felix in fact had short hair, and testified that he always had. Murguia was never described as having long hair.

#### D. Following Company Representatives

Highfill testified that many times the representatives were followed in their cars by organizers. Felix did admit that he followed the representatives when they went to Aguilera's crew on July 10. The

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<sup>11/</sup> Brock was described as being over six feet tall and over 200 pounds, while de Wolf was a woman of average size. It is highly unlikely that she would have pushed him very hard.

only other specific examples recounted by Highfill was when one of the organizers threatened Suarez. Highfill testified that the organizers had been following the representatives, and then stopped and got out of their car after the representatives had.

These two instances of following were not contradicted by the UFW witnesses. Rather, various organizers testified that they knew of the reputations of Highfill's assistants for violence, and at various times took steps to insure that more than one organizer was present when the representatives were there. Therefore, it appears that at times organizers did follow the company representatives. There was no testimony that the following prevented the representatives from campaigning.

#### Conclusions of Law

The organizers' disruptions of campaigning by the employer's representatives did not substantially interfere with the employer's ability to conduct a campaign. Unlike the situation in Borgia Farms, 2 ALRB No. 32 (1976), there is no evidence that the employees were exposed only to the union's campaign, or were deprived of the opportunity to weigh alternatives and to make an informed choice.

The incidents of disruption caused minimal interference with the employer's campaign. The incident on July 9 consisted of company representatives approaching a crew where organizers were already present, and an argument erupting between the two groups. The incident at Alvarado's crew on July 10 also consisted of only an argument between an organizer and a company representative, with the organizer perhaps lightly pushing the representative. The incident at Aguilera's crew on the same day was the only time organizers clearly intruded on a speech by representatives. Even then, the organizers proposed a

debate between the two sides. All of these incidents lasted only about five minutes .

There is also sufficient evidence that the representatives had many other opportunities to speak with the employees. Highfill testified that he spoke with employees in Aguilera's crew for five minutes before the organizers arrived. He also testified that the representatives spoke to employees in Alvarado's crew for ten to fifteen minutes after the incident in the bus. Most important, Highfill testified that he spent his time from July 9 through July 13 in the fields with his assistants, where his job was to campaign for the employer.

The organizers' conduct toward the representatives did not create an atmosphere in which free choice of a bargaining representative was impossible. Although there was some arguing and name calling, that is insufficient cause to set aside an election. Hollywood Ceramics Co., 140 NLRB 221, 224, n. 6 [51 LRRM 1600] (1962).<sup>12/</sup>

The only "violence" which may have occurred was de Wolf lightly pushing Brock. This act was de minimis, and insufficient to have affected the election.

#### CONCLUSION

The employer's case consisted of a series of minor infractions of the access rule and other election guidelines, many of which were poorly documented and blown out of proportion. When we carefully examine the actual evidence we find only that while organizers spoke

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12/ None of the organizers' comments approached the highly inflammatory nature of those in Schneider Mills, Inc. v. NLRB, 387 F. 2d 954 (4th Cir-1962) [57 LC ¶12,458, cited by the employer].

to employees during work, as was allowed by a Board decision, a few of the employees slowed down or perhaps stopped work for a few minutes. Arguments sometimes erupted between workers, organizers and company representatives, causing short delays in work or employee campaigning. One organizer may have refused to identify himself.

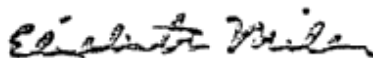
These incidents, especially when viewed in the context of a large election, won by a great majority, <sup>13/</sup> are insufficient to require the election be set aside.

RECOMMENDATION

Based on the findings of fact, analysis and conclusions herein, I recommend that the employer's objections be dismissed and that the United Farm Workers of America, AFL-CIO, be certified as the exclusive bargaining representative of all the agricultural employees of the employer in the State of California.

DATED: May 18, 1978

Respectfully submitted,



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ELIZABETH MILLER  
Investigative Hearing Examiner, ALRB

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13/ Of 578 valid votes, the UFW received 456 and the employer received 98.