

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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|-----------------------------------|---|---------------------|
| THE WILLIAM MOSESIAN CORPORATION, | ) |                     |
|                                   | ) |                     |
| Employer,                         | ) | Case No. 77-RC-12-D |
|                                   | ) |                     |
| and                               | ) |                     |
|                                   | ) |                     |
| UNITED FARM WORKERS OF AMERICA,   | ) | 4 ALRB No. 60       |
| AFL-CIO,                          | ) |                     |
|                                   | ) |                     |
| Petitioner.                       | ) |                     |
|                                   | ) |                     |

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DECISION AND ORDER SETTING ASIDE ELECTION

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.

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on August 3, 1977, a representation election by secret ballot was conducted on August 8, 1977, among the agricultural employees of the William Mosesian Corporation, the Employer herein. The tally of ballots showed the following results:

|                          |           |
|--------------------------|-----------|
| UFW .....                | 291       |
| No Union .....           | 245       |
| Challenged Ballots ..... | <u>40</u> |
| Total .....              | 576       |

The Employer timely filed objections, five of which were set for hearing. Subsequent to the hearing, Investigative Hearing Examiner (IHE) Joel Gomberg issued his initial Decision in which he found that the UFW violated the Board's access rule and interfered

with the Employer's campaign to such an extent that employees were denied the opportunity to hear the Employer's arguments for a "no union" vote. The IHE also found that a Board agent had engaged in electioneering, and therefore recommended that the election be set aside.

The UFW filed timely exceptions to the IHE's Decision and a brief in support thereof, and the Employer thereafter filed a reply brief. The Board has considered the record<sup>1/</sup> and the attached Decision in light of the exceptions and briefs and has decided to affirm the IHE's rulings, findings, conclusions and to adopt his recommendation to set aside the election.

ORDER

It is hereby ordered that the election conducted in this matter be, and it hereby is, set aside and that the petition herein be, and it hereby is, dismissed.

Dated: September 8, 1973

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

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<sup>1/</sup> Although, several of the tapes recorded at the hearing have audio defects, we find that does not preclude obtaining an accurate transcription thereof. Therefore, the UFW's request for a rehearing in this matter based on the quality of the tapes is denied.

CASE SUMMARY

The William Mosesian Corporation

77-RC-12-D

4 ALRB No. 60

IHE DECISION

An election was held on August 8, 1977, among the agricultural employees of the William Mosesian Corporation. The UFW received a majority of the votes cast. Thereafter, the Employer filed timely objections and a hearing was held on the following issues: (1) whether the UFW violated the access rule; (2) whether the UFW interfered with the Employer's campaigning; (3) whether an ALRB agent told employees to vote for the union; (4) whether ALRB agents permitted UFW organizers in the fields during the election while denying access to Employer; and (5) whether such conduct as is alleged to have taken place, if proven, constitutes sufficient grounds for the Board to refuse to certify the election.

The IHE found that the UFW violated the access rule on August 6 and 8, 1977, and that this violation when coupled with the interference of William Mosesian's speeches on August 6 resulted in a denial of the employees' right to receive information from both parties

The IHE also went on to find that a Board agent had engaged in electioneering and that the Employer had failed to establish that it was prevented from campaigning on the day of the election in reliance upon a statement by a Board agent.

The IHE thus concluded that based on the UFW's interference with the Employer's speech while in violation of the access rule and the fact that a Board agent engaged in electioneering, the election should be set aside.

BOARD DECISION

The Board affirmed the IHE's rulings, findings and conclusions and adopted his recommendation to set aside the election.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of: )  
)  
THE WILLIAM MOSES LAM CORPORATION, )  
)  
Employer, )  
)  
and )  
)  
UNITED FARM WORKERS OF AMERICA, )  
AFL-CIO, )  
)  
Petitioner. )  
\_\_\_\_\_ )

Case No. 77-RC-12-D

INITIAL DECISION OF  
INVESTIGATIVE HEARING  
EXAMINER

George Preonas, Seyfarth, Shaw, Fairweather &  
Geraldson, Los Angeles, for the Employer.

Glenn Rothner, Salinas, for the  
Petitioner

STATEMENT OF THE CASE

JOEL GOMBERG, Investigative Hearing Examiner: This case was heard by me on February 21, 22, and 23, 1978, in Bakersfield, California, pursuant to a Notice of Investigative Hearing dated December 23, 1977 (Bd. Ex. 1-1).

A Petition for Certification (Bd. Ex. 1-A) was filed on August 8, 1977, by the united Farm Workers of America, AFL-CIO (hereafter "UFW"). An election was held on August 8, 1977, among all the agricultural employees of the employer. The UFW received a majority of the votes cast.<sup>1</sup>

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1. The Amended Tally of Ballots shows 291 votes for the "UFW, 245 votes for no union, and 40 unresolved challenged ballots.

Thereafter, the employer filed a timely petition pursuant, to Labor Cede §1156.3 (c) objecting to the certification of the election (Bd. Ex. 1-G), Four substantive objections were set for hearing by the Executive Secretary, two alleging misconduct by the UFW and two alleging Board agent misconduct.

Evidence taken at the hearing was limited to those issues set out, by the Executive Secretary in the Notice of Allegations to be Set for Hearing and Order of Partial Dismissal of November 8, 1977 (Bd. Ex. 1-H):

1. Whether the UFW violated the access rule;
2. Whether the UFW interfered with Employer's campaigning;
3. Whether an ALRB agent told employees to vote for the union;
4. Whether ALRB agents permitted UFW organizers in the fields during the election, while denying access to Employer; and
5. Whether such conduct as is alleged to have taken place, if proven, constitutes sufficient grounds for the Board to refuse to certify the election.

Both parties were represented at the hearing and were given full opportunity to participate in the proceedings. The parties requested the opportunity to file post-hearing briefs. I granted the request and the briefs were filed.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

## FINDINGS OF FACT

### I. OBJECTIONS ALLEGING MISCONDUCT BY THE UFW

#### A. Violations of the Access Rule.

The UFW filed a Notice of Intent to Obtain Access late on July 28, 1977 (Emp. Ex. 2). Before that date, some UFW organizers had taken access onto the Employer's fields, but no large-scale organizing effort had begun. Until the Notice was filed, the Employer had a policy of not attempting to limit access by the UFW. According to Peter Mosesian, who is William Mosesian's son as well as a Bakersfield attorney acting as house counsel to the Employer, this policy was motivated by a desire on the part of the Employer to maintain an amicable relationship with the UFW and also to lessen the likelihood of having a representation election.<sup>2</sup>

Once the Notice was filed, the Employer decided to enforce the provisions of the access rule. Peter testified that Scott Washburn, a UFW organizer, phoned him on July 29, and complained that the access rule was being enforced. Peter was unaware of the situation, but agreed to find out what was happening and to meet with Scott later in the day. At the meeting, Peter explained that the Employer was experiencing a decline in production as a result of unlimited access. Scott stated that if the access rule were enforced, the UFW would have to throw more organizers into the campaign and unfair labor practice charges might be filed.

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2. On April 8, 1977, the UFW mailed a form letter (UFW Ex. 1) to the Employer and other growers in the Lamont area, notifying the Employer of the UFW's interest in organizing its employees and working out a voluntary access agreement. There is a substantial conflict in the evidence concerning an alleged meeting between the parties concerning the letter. In any event, there is no evidence that the UFW followed up on the letter during the spring or early

To avoid such trouble, Peter suggested a compromise permitting all-day access, but limiting the number of organizers at each of the Employer's three ranches to three. According to Peter, this compromise was agreed to by Scott. Scott denied that any such telephone call or meeting took place on July 29. Sct stated that he met with Peter on August 1, about a different matter, and that Peter reaffirmed the Employer's policy of permitting unlimited access, but that he didn't want the UFW talking about it. Regardless of whose version of these events is accurate, the Employer introduced no evidence to establish that the UFW violated the access rule or the voluntary agreement between July 29 and August 3.

On August 3, the UFW filed its Petition for Certification. William Mosesian telephoned Scott and informed him that the Employer intended to enforce the access rule strictly from then on. The following day, August 4, Scott telephoned Peter and asked to meet to discuss the access issue. Again, the accounts of what happened at the meeting differ widely. According to Peter, Scott accused him of backing down on his word. Peter said that the Employer had not expected an election so late in the season. Because a petition had been filed, the Employer felt that there was no choice for it but to enforce the access rule. Scott asked if the Employer intended to campaign. Peter replied that it did. Peter asked Scott if the UFW intended to violate the access rule. Scott replied that it did.

Scott Washburn and Jim Brake, the Director of the UFW field office in lamont, who also attended the meeting, tell a quite

different story. According to them, the meeting began as Peter testified, but when the UFW representatives explained that by enforcing the access rule it would be necessary to bring in organizers who were trying to organize the Employer's competitors, Peter agreed to continue the voluntary agreement for unlimited access. Jim Drake denied that Scott stated that the UFW intended to violate the access rule. Scott did not deny making the statement, although he testified after Peter. According to Scott, the Employer did not withdraw from the voluntary access agreement until the pre-election conference on Saturday, August 6.

I find the Employer's version of these events to be more credible than the UFW's. It would have made no sense for the Employer to call off the voluntary access agreement on August 6. The next day, Sunday, was not a work day. The election was to be held Monday. Although the Direction and Notice of Election indicates that the pre-election conference was to be held at 11:30 a.m., William Mosesian testified that he began to campaign at 7:00 a.m., after the conference. His testimony on this issue was not challenged. Further, the service of the Petition for Certification was the kind of event likely to motivate an employer to enforce the access rule. If the UFW testimony is to be believed, the Employer, represented by an attorney, capitulated completely whenever the UFW objected to enforcement of the access rule. Peter's testimony, involving, as it does, an initial agreement on unlimited access followed by a compromise agreement after the notice of intent to obtain Access, and then by a position of enforcement of the access rule after the Petition for Certification, is inherently more credible.



While several of Employer's supervisory employees testified that UFW organizers were often with the crews during working hours, no dates, other than August 6 and 8, were specified. William Mosesian testified, and his testimony was corroborated by Ignacio Gonzalez and Cono Macias, that there were UFW organizers present in the fields during working hours in each of the Employer's crews on August 6. The UFW produced two employee witnesses who did not in essence contradict Mosesian's testimony. None of the UFW organizers was called as a witness. I will discuss the events of August 6 more fully in the next section. Four of the Employer's supervisory employees, Bill Trout, Ignacio Gonzalez, Ralph Mosesian, and Ralph Nacca, placed UFW organizers in the fields on the day of the election. Mr. Trout's testimony was characterized by confusion about dates and times of day and was generally unreliable. Mr. Nacca testified that a UFW organizer, David Vallez, threatened him with a \$5,000 fine for driving some workers to the polls. The UFW introduced no evidence to contradict the testimony concerning election day access.

B. Interference with the Employer's Election Campaign.

After the Petition for Certification was filed on August 3, the Employer decided to undertake an election campaign, to consist of handing out leaflets and short speeches to assembled workers by William Mosesian. The leaflets were distributed on August 5 and 6. On the morning of the 6th, William Mcsasian, accompanied by Ignacio Gonzales and Cono Macias, made a circuit of each of the eight crews working that day. Mr. Mcsasian encountered UFW organizers in each of the eight crews. Although

Mr. Mosesian's vision is quite limited, he could see that the organizers were wearing large badges. Gonzalez and Macias confirmed that they were the large badges required by Section 20900(e)(4)(B) of the Board's regulations.

As he arrived at each crew, Mr. Mosesian asked the organizer or organizers to leave while he made a brief speech. In two instances, the organizers complied with Mosesian's request, and he made a speech urging a "no union" vote without incident. Mosesian spoke in English and Gonzalez translated. In the other six crews, the organizers refused to leave and interrupted Mosesian throughout his remarks. Mosesian testified in great detail about each crew. In one, an organizer led the employees in shouting "Viva Chavez!"; in another, the organizer shouted that Mosesian was a liar; in a third, the organizer continually yelled to the employees to "ask him questions; don't listen to him." Witnesses for the Employer named at least five organizers who were responsible for the disruption. None testified. Ignacio Gonzalez testified that Mosesian was able to get across perhaps 50% of what he intended to say in two crews, and less than 50% in the other four crews where interference occurred.

Two employees testified on behalf of the UFW. Luis Covarrubias was working in a crew which Mosesian attempted to speak to on August 6. Mosesian said a female organizer named Meta had continually interrupted his efforts to speak. According to Covarrubias, Meta was not present when Mosesian spoke. He could not recall Mosesian being interrupted and was able to summarize Mosesian's remarks. Covarrubias stated that, when Mosesian had

finished his speech, he made a pro-union address and complained about employee benefits and working conditions. Eva Mejia, who working in a crew being organized by David Garza, testified that she did not know if Garza was present in the crew when Mosesian made his speech. She was able to summarize the content of Mosesian's remarks and stated that there had been no interruptions.

On Saturday afternoon, the Employer decided to run some one-minute advertisements on a local Spanish-language radio station. This decision was made only after William Mosesian had been unable to campaign effectively in the morning. The record does not disclose how many of the advertisements were broadcast.

On Sunday, August 7, William Mosesian went to one of the company's labor camps to talk to employees about the election. He found that there were few employees in the camp. According to Mosesian, most of the employees who were present were intoxicated, and he was therefore unable to campaign.

## II. OBJECTIONS ALLEGING BOARD AGENT MISCONDUCT

### A. A Board Agent Told employees to Vote for the UFW.

Maria Macias is the Employer's supervisor of truck drivers and loaders. His duties require him to be in the fields. At about 11:30 a.m. on the day of the election, Macias was approaching Edwin Galapan's crew to check on the loading of a truck. As soon as he arrived, two female Board Agents rushed up and told him that he was restricted from the area. As Macias was getting into his pick-up to leave, in accordance with their instructions,

he heard one of the agents, who was dressed in a blue shirt and blue jeans, say in Spanish: "No se olvide. Voten por la union." (Don't forget. Vote for the union.) Macias didn't know her name, but pointed her out to the Employer's attorney, George Preonas. Preonas found the agent and asked her name. She said her name was Margarita Desierdo. Peter Mosesian testified that Desierdo was not wearing a Board badge. He and Preonas asked her why she had no badge. She said that she had lost it. Preonas and Peter then asked Marty Martinez and Ed Perez, the Board agents in charge of the election, about the missing badge. They said that she had lost it.

Margarita Desierdo denied making the statement attributed to her. She also denied having seen Macias, having spoken to Preonas, and not wearing a badge on the day of the election. Although Glenn Rothner, a UFW attorney, testified that he had been in touch with Ed Perez during the hearing, and despite the fact that the allegation that Perez had said that Desierdo was not wearing a badge appears in Employer's objections petition, Perez was not called as a witness. Nor did Rothner attempt to introduce hearsay statements of Perez on this issue, as he did with respect to the other objection alleging Board agent misconduct.

Ms. Desierdo was an unusually nervous witness. As soon as she was asked if she had told workers to vote for the union she launched into a speech explaining why it would have been ridiculous for her to have done so. The fact that she denied act wearing a badge and speaking to Preonas further undermines her credibility. On the other hand, the testimony of the Employer's witnesses was

credible and consistent.

3. Board Agents Denied the Employer Access to the Fields on the Day of the Election.

The substance of this allegation is that William Mosesian was told by an unidentified Board agent on the morning of the election that he could not campaign in an area which had not been subjected to quarantine at the pre-election conference. Mosesian asked the Board agent to check with his superiors. The agent returned and told Mosesian that his prior order stood. Mr. Mosesian did not attempt to campaign further. There is no evidence that any Board agent granted access to the fields to UFW organizers on the day of the election.

DISCUSSION AND ANALYSIS

1. OBJECTIONS ALLEGING MISCONDUCT BY THE UFW.

The record establishes that the UFW violated the Board's access rule on August 6 and 8, 1977.

The Board has consistently refused to set aside an election on the basis of such violations unless they are substantial enough to affect the employees' free choice of a collective bargaining representative. Dessert Seed Company, Inc., 2 ALRB No. 53 (1976), K.K. Ito Farms, 2 ALRB No. 51 (1976), and George Arakelian Farms, Inc., 4 ALRB No. 6 (1978). Although the record here makes it clear that the violations, standing alone, affected the outcome of the election.

But the facts of this case will not permit the access viola-

tions to be viewed in isolation from the UFW organizers' disruption of William Mosesian's campaign speeches on August 6. Had the organizers been in compliance with the access rule, they would not have had the opportunity to prevent Mr. Mosesian from giving his arguments in favor of a "no union" vote.

The Board has set aside elections where one party has acted pursuant to a policy

to interfere with the flow of information required for an intelligent vote to be cast and thus to frustrate a fundamental purpose of the Act. The fact that that policy was not completely successful is not controlling. Rather, our sole concern is whether such a policy, and actions taken pursuant to it, tended to inhibit the free choice of those eligible to vote. Oshita, Inc., 3 ALRB No. 10 (1977).

In Silver Creek Packing Company, 3 ALRB No. 13 (1977), the Board reaffirmed the critical importance of communication between labor organizations and employees: "Since free communication is 'a key ingredient of a fair election process,' Certified Eggs, Inc., 1 ALRB No. 5 (1975), we will set aside any election where there was, as here, more than minimal interference with that communication."

There is no doubt that both the employer and the union have the right to communicate their election views to employees. In Borgia Farms, 2 ALRB No. 32 (1976), the Board set aside an election because the employer, relying on a Board agent's mistaken instruction, refrained from communicating with employees about the election until after the pre-election conference. The Board agent's directive effectively precluded the employer from carrying on any campaign. The Board noted that:

The affect of the instruction not to communicate with workers and the employer's reliance on it is that employees were exposed to only the union's campaign and were deprived of the opportunity to weigh the alternatives open to them and make an informed choice.

In its brief, the UFW argues that any interference with Mr. Mosesian's speeches should be attributed to employees rather than to union organizers. The testimony of the Employer's witnesses establishes, however, that, while the organizers were not the only persons disrupting Mr. Mosesian's speeches, they took a leadership role. William Mosesian was a particularly credible witness whose testimony was generally candid and unstudied. He answered Questions fully, sometimes more than fully, without hesitation or evasion. The failure of the UFW to call a single organizer to rebut this testimony tends to support the Employer's position, despite the testimony of the two employee witnesses. Even if Mr. Mosesian was able to get some of his message across, that is not controlling. Oshita, Inc., supra.

The UFW also argues that the comments by the organizers were an aid in the effort to inform workers about the election issues. I cannot agree that heckling which causes a speaker to leave before saying what he wants to say is a constructive aspect of an election campaign or that it provides an atmosphere conducive to paying attention to the speaker. This argument also conveniently omits the fact that the organizers were not invited to attend. To the contrary, they were requested to leave, in every srew, in compliance with the access rule.

The UFW also argues that Mr. Mosesian must bear the burden of waiting until the last minute to campaign. But the cases cited by

the UFW are inapposite, for they involve disruptions not attributable to a party. Nor do the facts support a conclusion that the employer delayed campaigning to the last minute. The Petition for Certification was filed late on Wednesday, August 3. It was certainly not unreasonable for the Employer to choose Saturday as the day to speak. The UFW's assertion that its April, 1977, form letter to the Employer, in which it indicated an interest in organizing employees, somehow constituted notice of an election is absurd. There was no effort by the UFW to follow up on the letter. William Mosesian testified that he was surprised that an election was held, because the Petition was filed only a week before the end of the harvest and no other elections were being held in the area.

It is true that the Employer did not limit its campaign to Mr. Mosesian's speeches. It also handed out leaflets and ran radio advertisements. But such communication is no substitute for face-to-face speeches. There is no indication that any employees heard the advertisements; nor is there any way of knowing how many employees were able to read the leaflets.

The circumstances of this case are closely analogous to those involving an employer's denial of access to a labor organization. The effect of this disruption is identical to such a denial. I conclude that the UFW's interference with the election campaign of the employer was of such a character as to deny to employees their right to receive information from both parties in order to make an informed choice.



## II. OBJECTIONS ALLEGING MISCONDUCT BY BOARD AGENTS

The Employer has act established that it was prevented from campaigning en the day of the election in reliance upon a statement by a Board agent. Mr. Mosesian mace no effort to contact Ed Perez, the agent in charge of the election, in an attempt to clarify the statement of an unidentified agent that campaigning was not allowed in certain areas. Mr. Mosesian's son Peter, and his labor attorney, George Preonas, were both present and knew how to contact Mr. Perez. Under these circumstances, the Employer's reliance on the statements of the unidentified agent was unreasonable. Nor is there any evidence to suggest that the Employer's failure to speak to massed assemblies of workers on the day of the election, even if legally permissible (see Peerless Plywood Company, 107 NLRB 427 (1953)), affected the outcome of the election. Cf., Borgia Farms, supra.

The second allegation of Board agent misconduct is far more serious. I have found that a Board agent told a group of approximately twenty employees who were about to vote: "Don't forget. Vote for the union."

In Coachella Growers, Inc., 2 ALRB No. 17 (1976), the Board established a standard for evaluating Board agent misconduct:

(T)o constitute grounds for setting an election aside, bias or an appearance of bias must be shown, to have affected the conduct of the election itself, and have impaired the balloting's validity as a measure of employee choice.

In Carl Joseph Maccio, 2 ALRB No. 9 (1976), three Board members indicated that they would set aside an election because of Board agent misconduct, absent a demonstration that it affected

the outcome of the election, as a means of deterring particularly objectionable conduct, or to safeguard public confidence in the Integrity of the Board's election process. This broader standard is consistent with the NLRB's neutrality rule.

The neutrality rule was enunciated in Athbro Precision Engineering Corp., 166 NLRB No. 116, 65 LRRM 1699 (1967), in which the NLRB set aside an election because a Board agent was seen drinking beer with a union representative about a mile from the employer's plant even though there was no allegation that this conduct affected the outcome of the election. The NLRB held that:

The Board in conducting representation elections must maintain and protect the integrity and neutrality of its procedures. The commission of an act by a Board Agent conducting an election which tends to destroy confidence in the Board's election process, or which could reasonably be interpreted as impugning the election standards we seek to maintain, is a sufficient basis for setting aside that election.

In a recent case, Provincial House, Inc., v. NLRB, 97 LRRM 2307 (6th Cir., 1977), the United States Court of Appeals reversed the NLRB and ordered an election set aside because a Board agent, while investigating an unfair labor practice charge during an organizational campaign, permitted himself to be introduced at a union organizational meeting. The Court cited Athbro, supra, and declared that the issue in a case of this type is not whether the outcome of the election is affected, but whether the conduct tends to "destroy 'the neutrality of the Board's procedures.'" 97 LRRM at 2309.

That the Board agent's statement in this case was particularly objectionable and that it could affect public confidence in the

integrity of the Board's procedures is self-evident. In addition, a direction to vote for one party, coming from a representative of the State, could well have a tendency to affect a worker's vote. Here, the UFW had only a three-vote majority. While there is nothing in the record to indicate that similar statements were made by the agent to other crews, it is reasonable to infer that the incident was not, isolated.

I conclude that the Board agent's electioneering was incompatible with maintaining an atmosphere in which employees are able to choose freely how to cast their vote. In this case, the Board agent's conduct could have affected the outcome of the election, in addition to undermining the confidence in the integrity and neutrality of the Board's election processes.

#### RECOMMENDATION

Because I have concluded that the UFW, while in violation of the Board's access rule, interfered with the Employer's campaign to such an extent that employees were denied the opportunity to hear the Employer's arguments for a "no union" vote, and because a Board agent engaged in electioneering, I recommend that the election be set aside.

DATED: April 12, 1977.

AGRICULTURAL LABOR RELATIONS BOARD

By



JOEL GOMBERG

Investigative Hearing Examiner