

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

AGMAN, INC., d/b/a	)	
SPRING VALLEY FARMS,	)	
Employer,	)	Case No. 75-RC-54-R
and	)	
	)	4 ALRB No. 7
	)	
INTERNATIONAL BROTHERHOOD OF	)	
TEAMSTERS, LOCAL 63,	)	
Petitioner,	)	
and	)	
CHRISTIAN LABOR	)	
ASSOCIATION, LOCAL 17,	)	
Intervenor.	)	

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DECISION AND CERTIFICATION OF  
REPRESENTATIVE

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

Following a petition for certification filed by International Brotherhood of Teamsters, Local 63, an election by secret ballot was conducted on November 14, 1975 among the agricultural employees of Agman, Inc., d/b/a Spring Valley Farms, After resolution of the challenged ballots, the amended tally of ballots furnished to the parties showed the following results:

Christian Labor Association .....	44
Teamsters .....	38
No Union .....	0
Void Ballots .....	0

Thereafter, the Teamsters filed timely objections and a hearing was held before an Administrative Law Officer

(ALO) who subsequently issued a decision recommending that the objections be overruled and that Christian Labor Association, Local 17, be certified as the exclusive collective bargaining representative of the employees involved. Timely exceptions to the report were filed by the Teamsters along with a supporting brief.

The Board has considered the objections, the record and the ALO's Decision in light of the exceptions and brief filed herein and hereby affirms the rulings, findings and conclusions of the ALO and adopts his recommendations to the extent consistent with this opinion.

One of the Teamsters' exceptions was based on the ALO's finding that the election should not be set aside because of threats allegedly made by a supervisor during separate conversations with each of two employees. Testimony as to one of the alleged threats was uncorroborated. The General Counsel sought to corroborate testimony concerning the other through a witness who admitted that he was not paying much attention to the conversation and whose ability to overhear the conversation appears to have been impaired by a high ambient noise level. The supervisor in question denied having had one of the conversations and gave a nonthreatening version of the statements he made during the other. On the basis of the entire record, we conclude that there is insufficient evidence to establish that any threats were made.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for Christian Labor Association, Local 17,

and that, pursuant to Labor Code Section 1156, the said labor organization is the exclusive representative of all agricultural employees of Agman, Inc. d/b/a Spring Valley Farms, for the purposes of collective bargaining, as defined in Labor Code Section 1155.2(a), concerning employees' wages, hours of work and other terms and conditions of employment.

Dated: February 7, 1978

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member



STATE OF CALIFORNIA  
BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

AGMAN, INC., dba SPRING )  
VALLEY FARMS, )  
Employer, )  
And )  
INTERNATIONAL BROTHERHOOD OF )  
TEAMSTERS, LOCAL 63, )  
Petitioner, )  
And )  
CHRISTIAN LABOR ASSOCIATION )  
LOCAL 17, )  
Intervener. )

Case No. 75-RC-54-R

DECISION

Administrative Law Officer: Bernard Newman

Appearances for the Parties:

For Petitioner: Brundage, Beeson & Pappy  
By William J. Smith, of Los Angeles,  
California

For Intervener: William c. Adams of Newport Beach,  
California

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1 BRIEF STATEMENT OF FACTS REGARDING OBJECTIONS TO THE ELECTION in  
2 which Petitioner also alleged threats of discharge.

3 BACKGROUND FACTS

4 The evidence showed that the Intervener had a collective  
5 bargaining agreement with the employer for a number of years. The  
6 last such agreement was in effect commencing on April 1, 1975, for a  
7 period of two years. The representative of the  
8 Intervener was, and is, Ben Sybesma. Said collective bargaining  
9 agreement included only those employees referred to as "inside"  
10 employees, meaning those employees who were employed on the  
11 inside of the dairies and barns of the employer. Those employees  
12 who worked on the outside, such as feeders, workers in the calf  
13 barn and machine shop were not covered by the collective bar-  
14 gaining agreement. There were approximately 35 "outside" em-  
15 ployees who were not covered by the- collective bargaining agreement  
16 at the time of the election in November 1975.

17 The Petitioner had a collective bargaining agreement with the  
18 employer in regard to another employer-owned farm known as the J. & B.  
19 Farm located approximately 2-1/2 miles from the location of the farm  
20 involved in this proceeding. It was apparent that Petitioner and the  
21 employer had a good relationship in regard to the J. & B. Farm. In  
22 fact, there was an under standing between the business representative  
23 of Petitioner and the chief operations officer of the employer that  
24 Petitioner would not initiate an attempt to organize the workers at  
25 the Spring Valley Farm, hereinafter referred to as the Corona Farm.

26 In or around October 1975, Petitioner was approached by  
27 workers from the Corona Farm requesting that Petitioner  
28

1 represent them. Thereafter, Petitioner filed a Petition for  
2 Certification in October 1975 but failed to procure sufficient  
3 signatures to qualify the same. However, on November 7, 1975,  
4 Petitioner filed a new Petition for Certification, procured  
5 sufficient signatures, and the election was held on November 14  
6 1975.

7 The initial tally showed 38 votes for Petitioner, 41 votes  
8 for the Intervener, and 12 unresolved challenged ballots. The amended  
9 tally, in evidence as General Counsel's Exhibit 1-X,  
10 after res-lution of the challenged ballots, showed 38 votes for  
11 Petitioner and 44 votes for the Intervener. Challenges were  
12 sustained to 9 of said ballots out of a total of 91 votes cast.

#### 13 THE ALLEGED MISCONDUCT OF THE EMPLOYER

##### 14 A. EMPLOYER THREATS OF DISCHARGE

15 The specific allegation is that the employer, through its  
16 supervisor, George Konefat, threatened employees with loss of  
17 employment if they supported Petitioner.

##### 18 1. TESTIMONY OF BERNARDO HSRNANDEZ:

19 Mr. Hernandez was a milker working under the supervision  
20 of Konefat. Prior to the election he overheard a conversation  
21 between Konefat and another milker whose name was Santos Gonzales.  
22 He heard Konefat say to Gonzales that "the ones that voted for 23  
23 the Teamsters, to go to work for the Teamsters, were going to  
24 go." He also overheard Konefat say to Gonzales at that time that  
25 Konefat did not want the Teamsters. That was all that he over-  
26 heard.

27 On cross-examination Hernandez testified that he didn't hear  
28 the entire conversation, only a small portion of it, and

1 the balance of the conversation was not important to him. He  
2 also stated that he was 40 feet or so away from Konefat and  
3 Gonzales, that the conversation between them took place in the  
4 barn, and that there was noise from the machinery in the barn.  
5 On cross-examination he further stated that he couldn't say  
6 specifically what Konefat had said.

7 2. TESTIMONY OF TRINIDAD NUNO;

8 Mr. Nuno was also a milker under the supervision of Kone-  
9 fat. He testified that about two or three days before the  
10 election, in the dairy, while he was working and with no one  
11 else present, Konefat told him there was going to be an election  
12 and "the ones who voted for the Teamsters would be obliged to  
13 look for another job." He did not tell anyone else about this  
14 conversation. On cross-examination Mr. Nuno identified his  
15 signature on one of the declarations attached to General Counsel's  
16 Exhibit 1-VI, in evidence.

17 3. TESTIMONY OF VICENTE LOPEZ PLASCENCIA:

18 Mr. Lopez testified that he started working for employer  
19 around July 1973 until he left the company on April 8, 1977. At I  
20 the time of the election he was a feeder and filled in for other  
21 feeders on their day off. As an "outside" employee he was not  
22 covered by the Intervener's collective bargaining agreement. He  
23 worked in four of the dairies located on employer's farm and had  
24 approximately five foremen. He had three conversations prior  
25 to the election with supervisors of the employer concerning the  
26 election. He did not have any conversations with Mr. Konefat,  
27 who is alleged, in Petitioner's BRIEF STATEMENT OF FACTS REGARD-  
28 ING OBJECTIONS TO THE.ELECTION, to be the supervisor who



1 allegedly made the threats. In any event, during the third  
2 conversation about which Mr. Lopez testified, which took place  
3 about two days before the election, he spoke with Aristides C.  
4 Braga, who was a supervisor of the employer. This conversation  
5 took place at one of the dairies with no one else present. Mr.  
6 Lopez testified that Mr. Braga stated, "Watch out who you sign  
7 for if you want to keep working here." Mr. Lopez responded,  
8 "I know whom I'm going to vote for", and then walked away from  
9 Mr. Braga. Mr. Lopez stated that he understood Mr. Braga wanted  
10 the Intervener and not the Petitioner as the union on the farm.  
11 Mr. Lopez was one of the non-covered employees who had previously  
12 gone to the Petitioner's office and signed an authorization card  
13 for the Petitioner to qualify for the election. Mr. Lopez  
14 stated that he knew he was free to vote for any union that he  
15 desired.

16 4. TESTIMONY OF SANTOS GONZALES;

17 Mr. Gonzales worked for the employer for 10 years, his  
18 employment having been terminated on February 25, 1977. His  
19 supervisor was Mr. Konefat. In the latter part of October or  
20 the early part of November 1975 Mr. Konefat told him at the  
21 dairy where he worked, that the Teamsters were trying to come  
22 in, and if he signed for the Teamsters Mr. Konefat would fire  
23 him. He stated that Mr. Konefat approached him and started the  
24 conversation. Mr. Gonzales initially did not respond but  
25 finally told Konefat that he had nothing to discuss with him  
26 because he already had a union. He stated to Konefat that he  
27 had worked for the Teamsters before and knew the benefits of  
28 both unions. There were no other employees immediately in the

1 vicinity where he and Mr. Konefat were speaking. He also testi-  
2 fied, on cross-examination, that they were talking in a normal  
3 tone of voice while he was milking a cow, and at a distance of  
4 30 feet a normal tone of voice could not be heard because of the  
5 noise of the machinery in the barn. He also testified that he  
6 was not frightened by the threat of Mr. Konefat. This was the  
7 only instance wherein he spoke to Mr. Konefat about the union.

8           5. TESTIMONY OF FERMIN RAMIRES ARANDA;

9           Mr. Aranda was called as a witness by the Intervener. He  
10 has been employed by the employer for 12 years, and worked as a  
11 serviceman at the time of the election. His supervisor was R. D.  
12 Oorman. Mr. Dorman told him to vote for the union that was most  
13 convenient for him. He was not told he would lose his job if he  
14 voted for any particular union. He didn't hear any such threat  
15 directed at anyone else.

16           6. TESTIMONY OF JOSE RODRIGUES:

17           Mr. Rodrigues was a feeder at the time of the election.  
18 His supervisors were Mr. Braga and Mr. William Hall. He testi-  
19 fied that no one told him to vote for one union or the other.  
20 No one threatened him with loss of his job if he voted for one  
21 union or the other. He didn't overhear any such threat made to  
22 anyone else. He didn't overhear any supervisor telling any  
23 employee to vote for one union or the other.

24           7. TESTIMONY OF FERNANDO SOUSA;

25           Mr. Sousa was a feeder for the calves at the time of the  
26 election in 1975. He testified that no one threatened him if  
27 he voted for one union or the other, and no one told him for whom  
28 to vote. He overheard, no such threats made to anyone else. He

1 did not belong to the Intervener before the election since he was at  
2 that time an "outside" employee.

3 8. TESTIMONY OF GEORGE KONEFAT;

4 Mr. Konefat was called as a witness for Intervener. He is a  
5 supervisor at the employer's farm. He recalled the election in  
6 November 1975. He recalled the conversation with Mr. Gonzales just  
7 before the election. He testified that it took place in his office, and  
8 that Mr. Gonzales came to his office and behind the closed door thereof  
9 told Mr. Konefat that he liked the Petitioner  
10 and had been with the Petitioner for 14 years and would like to  
11 see the Petitioner win the election. Mr. Konefat stated that he  
12 preferred the Intervener. Mr. Gonzales then reiterated that he  
13 desired the Petitioner as the union and asked what would happen  
14 if the Intervener won. Mr. Konefat replied that it was up to  
15 Mr. Gonzales. If the Petitioner lost and Mr. Gonzales liked  
16 them so much, Mr. Gonzales would have to find a job where the  
17 Petitioner was the union. Mr. Konefat further testified that  
18 prior to the election he had no conversations of any kind with  
19 Mr. Nuno regarding the election or either of the contesting  
20 unions. On cross-examination he stated that he had belonged  
21 to the Intervener for 10 or 11 years. There were 10 milkers  
22 and two relief employees who worked under his supervision. He  
23 further stated that Mr. Gonzales and he talked only two or three  
24 minutes. He did not talk with any other employees about the  
25 unions or the election.

26 9. TESTIMONY OF AfilSTIDES C. BRAGA:

27 Mr. Braga is a supervisor within the meaning of the ALRA  
28 and was acting in that capacity at the time of the election.

1 Mr. Braga denied having talked to Mr. Lopez concerning which  
2 union he should support. He denied having spoken with Mr. Lopez  
3 about union matters at all. He particularly denied that he told  
4 Mr. Lopez to watch out whom he voted for if he wanted to keep  
5 working on the ranch.

6 DISCUSSION AND CONCLUSIONS;

7 As always, the testimony concerning threat of firing was  
8 in irreconcilable conflict. Certain observations are appropriate  
9 in relation to the testimony of Mr. Hernandez. It is worthy of  
10 note that the alleged threat of firing was not made to Mr. Her-  
11 nandez, but was allegedly overheard by him. He testified that  
12 he was 40 feet or thereabouts away from Mr. Konefat and Mr.  
13 Gonzales when he overheard the threat. He admitted that there  
14 was noise in the barn from the machinery. There was testimony  
15 from others, including Mr. Gonzales himself, that at a distance  
16 of 30 feet a conversation in normal tones could not be overheard.  
17 Moreover, the precise language which Mr. Hernandez testified was  
18 used by Mr. Konefat is consistent with the version of the same  
19 given by Mr. Konefat, that is, that those employees who pre-  
20 ferred the Teamsters could find a job at a ranch at which the  
21 Teamsters represented the workers. Hernandez admitted that he  
22 did not recall specifically what Konefat had said.

23 So far as Mr. Nuno is concerned, he made no reference to  
24 the threat of firing in his declaration attached to General  
25 Counsel's Exhibit 1-VI, in evidence. The basic purpose of the  
26 declaration, apparently, was to support a charge that he was not  
27 rehired because of his preference for Petitioner. In the body  
28 of the declaration he states, "I think the real reason they

1 didn't want me back is because they knew I was for the Teamsters  
2 in the election. . ." His failure to mention the alleged threat  
3 made by Mr. Konefat in this context is detrimental to the force  
4 of his testimony. It would have been entirely natural and appro-  
5 priate for him to have contended in the declaration that the  
6 employer's refusal to rehire him represented the carrying out  
7 of the threat that alle-edly was made by Mr. Konefat prior to  
8 the election.

9           Although the threat of firing testified to by Mr. Lopez  
10 was made by Mr. Braga, and threats of discharge by Mr. Braga  
11 are not included within the Objections Petition or the BRIEF  
12 STATEMENT OF FACTS REGARDING OBJECTIONS TO THE ELECTION, or  
13 indeed, in the Executive Secretary's Notice of the consolidated  
14 hearing to which the amended complaint was attached, such evi-  
15 dence was not objected to and Mr. Braga denied the alleged threat  
16 in his testimony. In regard to Mr. Lopez, it appeared that no  
17 one else was present at the time of the alleged threat, and that  
18 if a threat was intended, Mr. Lopez was not at all cowed thereby  
19 for he responded, "I know who I'm going to vote for" and promptly  
20 turned his back on Mr. Braga.

21           so far as Mr. Gonzales is concerned, the alleged remarks  
22 made by Mr. Konefat to him were also not made in the presence  
23 of any other employees, and on cross-examination he freely  
24 testified that he was not frightened by the alleged threat made  
25 by Mr. Konefat.

26           In Sears Schuman Co., 2 ALRB No. 7 (1976), it was held-that  
27 employer threats of economic reprisal in the event of union  
28 victory can constitute such interference with an election as to

1 warrant setting aside that election, especially where the  
2 employer's conduct tends to engender so much fear of reprisal  
3 as would render impossible a rational, uncoerced decision by the  
4 employees, citing Oak Mfg.. Co., 141 NLRB, 1323 .(1963).

5 The question in every objections case is whether the mis-  
6 conduct, if it occurred, created an atmosphere in which employees  
7 could not freely and intelligently choose their bargaining repre-  
8 sentative.

9 Takara International, Inc., 3 ALRB No. 24 (1977).

10 There must be a substantial showing that the threat tended  
11 to affect the outcome or that the election was conducted in an  
12 atmosphere of fear.

13 Jack or Marion Radovich, 2 ALRB No. 12 (1976).

14 There is a strong presumption in favor of the validity  
15 of a certification election.

16 Chula Vista Farms, 1 ALRB No. 23 (1975).

17 Perez Packing, Inc., 2 ALRB No. 13 (1976).

18 Elections, whether won by a company or a union, are not to  
19 be lightly put aside. Courts ought not to invalidate an elec-  
20 tion without some assurance appearing in the record that the  
21 election results were not reflective of the employees' desires.  
22 The objecting party must shoulder this burden.

23 NLRB v. Monroe Auto Equipment Co., etc., 470 F.2d 1329  
24 (1972).

25 The employer had, at least, seven working supervisors,  
26 and several managers on or connected with this particular farm.  
27 Only two of the supervisors are alleged to have made threats of  
28 discharge. Mr. Konefat had 10 milkers and two relief employees

1 who worked under his supervision. Only two of those employees  
2 alleged that said threats had been made. Mr. Braga had 12  
3 employees working under his supervision. Mr. Lopez was the only  
4 employee who claimed that a threat had been made by Mr. Braga. Mr.  
5 Lopez and Mr. Gonzales both freely admitted they were supporters  
6 of Petitioner. Other employees testified there  
7 were no threats made to them, and they overheard none made to  
8 anyone else. The testimony of Petitioner's witnesses in this  
9 regard is otherwise subject to question as to its weight.

10 Accordingly, it is found that the threats charged here,  
11 if made, were isolated instances. There is no evidence of a  
12 systematic campaign on the part of the employer or its super-  
13 visors to threaten discharge, expressly or impliedly, for the  
14 purpose of influencing the employees in their choice of a union  
15 representative.

16 On the basis of the entire record relating to the alleged  
17 threats of discharge, it is concluded that the same did not tend  
18 to affect the outcome of the election, nor was the election  
19 conducted in an atmosphere of fear and intimidation so as to  
20 nullify the employees' freedom of choice. The invalidation of  
21 the election on this ground is, therefore, denied.

22 B. SUPERVISORS IN IMMEDIATE POLLING AREA

23 The testimony in this regard was presented by Arthur Felix  
24 on behalf of the Petitioner. Mr. Felix was the Petitioner's  
25 observer at the election, and had been employed by the employer  
26 for approximately three years as a maintenance man. Mr. Felix  
27 testified that a number of the supervisors came to the polling  
28 area and voted. He also stated that one-half to one hour after

1 the vote by Antonio Salvadore, Jr., Mr. Hamm, the general manager,  
2 came out of the office building and approached the polls while  
3 people were still voting and protested the challenge that was  
4 made to Mr. Salvadore's vote. Mr. Felix stated that there were  
5 about 15 or 20 people coming off their shifts at that time but  
6 he couldn't recall any of the names of the people there. Mr.  
7 Felix further stated that the Board representative, Mr. Payne,  
8 pulled Mr. Hamm away and the latter finally went back to his  
9 office. Mr. Hamm, Mr. Felix said, was there about 10 or 15  
10 minutes. He also saw Vernon Azevedo, a supervisor, on one occa-  
11 sion bring three employees to the polls in a vehicle.

12 On cross-examination he testified that the people that  
13 Mr. Azevedo brought with him to the polls were people who worked  
14 under his, Azevedo's, supervision, and that after he drove them  
15 to the polling area he drove away. The only thing he could  
16 recall about the conversation of Mr. Hamm was that Mr. Salva-  
17 dore's vote had been improperly challenged. He stated that  
18 Hamm got to about 10 to 15 feet away from the voting tables.

19 Steve Braga, the observer for the Intervener, stated that  
20 the conversation had by Mr. Hamm was with the Board agent, Mr.  
21 Payne. Mr. Payne told Hamm to leave because he was in violation  
22 of ALRB regulations. Mr. Braga further testified that Mr. Hamm  
23 and Mr. Payne spoke in ordinary voices. They were not yelling,  
24 although their voices were raised, and that Mr. Hamm was there  
25 at the polling area for about two minutes.

26 Mr. Hamm, regarding this incident, testified that he was  
27 within 25 to 30 feet of the polling area when the Board agent  
28 came to meet him. He complained to the Board agent that the



1 latter was deviating from a pre-election agreed procedure re-  
2 garding challenged votes. He asked the Board agent why the rules  
3 were changed during the election. Mr. Hamm testified that Mr.  
4 Payne stated that he would discuss it with him later and told  
5 him that he could not come any closer to the polls. Mr. Hamm  
6 thereupon left.

7 There was no testimony that Mr. Hamm talked to any offiie  
8 voters. There was no testimony that any of the persons present  
9 at the time of Mr. Hamm's visit to the polling area overheard  
10 any of Mr. Hamm's remarks or drew any inferences therefrom.

11 Once the polls have opened, employees should be permitted  
12 to cast their votes in an atmosphere free of interference by the  
13 parties.

14 V. B. Zaninovich & Sons, 1 ALRB No. 22 (1975).

15 Toste Farms, Inc., 1 ALRB No. 16 (1975).

16 The supervisors who were at the polls to vote were there  
17 for a. permissible purpose and their presence was, therefore,  
18 proper.

19 V. B. Zaninovich & Sons, supra.

20 Although Mr. Hamm was in the polling area improperly, the  
21 record shows that his presence was immediately reported to the  
22 Board agent conducting the election, and that he left the area  
23 upon request and without incident.

24 Bud Antle, Inc., 3 ALRB No. 7.

25 NLRB precedent applies to cases brought under the Agri-  
26 cultural Labor Relations Act of the State of California. The  
27 National Labor Relations Board has found efforts to get voters  
28 to the polls to be unobjectionable.

1           Toste Farms, Inc., supra.

2           Craddock v. Terry Shoe Corp.; 80 NLRB 1239, 1240-41.

3           Further, there was no evidence of any kind that Mr. Azevedo  
4 who brought three of his employees to the polling area in a  
5 motor vehicle, attempted to, or in fact did influence their vote  
6 in any manner whatsoever.

7           The only remarks made by Mr. Hamm related to the challenge  
8 of Mr. Salvadore's ballot. Nothing was said about either union  
9 or relating to whether the challenged vote was for Petitioner  
10 or Intervener, or indicating a preference for either union or  
11 for whom the employees should vote. There was no evidence at  
12 all that any of the supervisors who voted or Mr. Hamm had any  
13 sustained conversations, or conversations at all, with any of  
14 those waiting to vote.

15           It is found, therefore, that the evidence relating to the  
16 presence of supervisors in the polling area does not establish  
17 a level of interference sufficient to set aside this election,  
18 and the objection on this ground is hereby denied.

19           Superior Farming Co., 3 ALRB No. 35 (1977).

20           Bud Antie, Inc., supra.

21           Veg-Pak, Inc., 2 ALRB No. 50 (1976).

22           Konda Bros., 2 ALRB No. 34 (1976).

23           C.   UNLAWFUL ARRANGEMENT FOR PERSON TO BECOME  
24                VOTER IN ORDER TO EFFECT THE RESULTS OF THE  
25                        ELECTION

26           There was no evidence of any kind offered in regard to  
27 this particular objection, and the same is hereby dismissed.

28    //

1                   D. FAILURE TO PROPERLY TRANSLATE  
2                                 INSTRUCTIONS TO VOTER IN VOTER'S  
3                                 OWN LANGUAGE

4             The principal testimony in this respect was offered by  
5 Mr. Felix and Mr. Steve Braga. Mr. Felix, witness for Petitioner,  
6 stated that there was no Portuguese interpreter present and  
7 there were voters who spoke only Portuguese. He also acknow-  
8 ledged that Steve Braga speaks Portuguese.

9             Mr. Braga testified that the Board agent stated that as a  
10 result of some mistake the ballot did not contain the choices  
11 in the Portuguese language, but only in English and Spanish.  
12 The Board agent stated that the election, however, could not be  
13 delayed, and requested that Mr. Braga explain the ballot to any  
14 Portuguese-speaking workers. Mr. Braga did, in fact, explain to  
15 about 20 or 25 Portuguese employees the positions of each union  
16 on the ballot and the square for the "no union" choice. He also  
17 explained to them that they were to select one of those choices.  
18 He said nothing further to the employees.

19             No evidence was presented that any of the voters were con-  
20 fused or lacked understanding as to the ballot choices available,  
21 or how to indicate his particular preference. In the absence  
22 of such evidence this objection cannot be sustained and is accord\*  
23 ingly denied.

24                   E. UNLAWFUL ASSISTANCE TO OTHER UNION

25             Petitioner charges the following alleged misconduct:

26             1. Statements by supervisory and management personnel  
27 advising the employees to vote for the Intervener and/or stating  
28 that the Petitioner's union is "no good". These statements were

1 charged to have been made by Mr. Braga, Mr. Konefat, Mr.  
2 Salvadore, and Mr. Hamm, and were attributed to them by David F.  
3 Navarro, Mr. Lopez, Mr. Gonzales, and Mr. Gerardo Atilano.

4 The latter witness was called by Petitioner on rebuttal  
5 and testified in substance that at a meeting of the employees  
6 called by Mr. Hamm, Mr. Hamm stated that as long as the Inter-  
7 vener was already there it was better for the employer and the  
8 employees for the Intervenor to be elected since they would not  
9 have to make a new contract.

10 In this area there was also a sharp conflict in the testi-  
11 mony. The above-specified statements were denied categorically  
12 by the witnesses presented by the Intervener, namely, Mr. Ramirez,  
13 Mr. Aristides C. Braga, Mr. Rodriguez, Mr. Sousa, Mr. Steve  
14 Braga, Mr. Salvadore, Mr. William M. Hall, a supervisor, Mr.  
15 Konefat, and Mr. Hamm.

16 We confront here the competing interests of an employer  
17 and his rights of free speech, and the employees who are likewise  
18 entitled to freedom from interference, restraint, and coercion  
19 in the exercise of their rights under the Agricultural Labor  
20 Relations Act.

21 Section 1155 of the ALRA provides:

22 "The expressing of any views, arguments, or  
23 opinions, or the dissemination thereof, whether in  
24 written, printed, graphic, or visual form, shall  
25 not constitute evidence of an unfair labor practice  
26 under the provisions of this part, if such ex-  
27 pression contains no threat of reprisal or force,  
28 or promise of benefit."

1           The United States Supreme Court, in interpreting the  
2 National Labor Relations Act, has held that an employer is free  
3 to communicate to his employees any of his general views about  
4 unionism or any of his specific views about a particular union,  
5 so long as the communications do not contain a threat of reprisal  
6 or force or promise of benefit.

7           NLRB v. Gissel Packing Co., Inc., et al., 395 U.S. 575,  
8 618.

9           "... there is no sanction imposed upon the  
10 right of an employer to express his views on labor  
11 policies or problems, or to express his preference  
12 of one competing union over another, even to take  
13 sides, provided he does not coerce, restrain, or  
14 interfere with the selection of a bargaining repre-  
15 sentative."

16           Lake City Foundry Co. v. NLRB, 432 Fed.(2d) 1962,  
17 1181.

18           The employer, therefore, had the right to express a  
19 preference as between Petitioner and Intervener. Obviously,  
20 the expressed desire of the employer, particularly through  
21 Mr. Hamm, would have substantial effect upon the employees.  
22 Yet, this is permissible under the law in the absence of un-  
23 lawful coercion or interference. The preference expressed for  
24 the Intervener by Mr. Konefat Mr. Braga, and Mr. Salvadore, as  
25 testified to by Mr. Navarro and Mr. Lopez, was independent of  
26 any alleged threats of discharge. Comment has been made herein-  
27 above as to the weight of the testimony of Mr. Hernandez, Mr.  
28 Nuno, and Mr. Gonzales, with respect thereto. There was no

1 evidence that the preference allegedly expressed by Mr. Hamm  
2 for the Intervener was accompanied by threats of any kind,  
3 expressed or implied. Accordingly, such expressions did not  
4 constitute misconduct and cannot furnish the basis for setting  
5 aside the election.

6 2. Petitioner claims to have been denied access to the  
7 employees in violation of the access rule, and additionally  
8 charges that Intervener was given preferential treatment in that  
9 regard by the employer.

10 Two of the business representatives of the Petitioner  
11 presented the substantial portion of the testimony concerning  
12 denial of access in alleged violation of the access rule.

13 Robert E. Marciel, the business representative for Peti-  
14 tioner, stated that after the Petition for Certification was  
15 filed he had a meeting with one Jerry Craveira at the J. & B.  
16 Farms of the employer, at which Mr. Craveira, one of the managers  
17 of the compny, told him not to go over to Corona Farms because  
18 he was not going to be permitted on the premises. Mr. Marciel  
19 stated that he was going to go over there anyway. he and Mr.  
20 Alfred Oropeza went on to the Corona Farms property at approxi-  
21 mately Noon, which he assumed was a lunch period for the em-  
22 ployees. They wore jackets with badges and had copies of the  
23 access rule with them. As they were walking on the farm prop-  
24 erty they saw Mr. Craveira and another man in an automobile in  
25 the path of the direction they intended to take. They thereupon  
26 turned toward the machine shop. At that point Mr. Craveira came  
27 up in the automobile with Mr. Hall, a supervisor, and advised  
28 them to leave stating that he did not want them on the property.

1 After an exchange of challenges, Mr. Marciel left because he  
2 thought there might be some effort to remove him forcibly.

3 One night three or four days later, around 10:00 P.M.,  
4 he again went on the farm property with Mr. Oropeza. They were  
5 talking to some workers when a pickup truck came to the area. A  
6 man got out of the pickup and said, "Don't you know you bastards  
7 can't be on here." Mr. Marciel told him about the access rule  
8 but the man responded that you are not supposed to be here and  
9 requested that he leave, which he and Mr. Oropeza proceeded to  
10 do. Mr. Marciel said he couldn't see who that person was because  
11 the lights of the truck blinded him.

12 On one other occasion, again at night, he went into the  
13 barn in the dairy and talked to the milker employees. Mr.  
14 Oropeza and another gentleman were with him. He was talking to  
15 two of the employees when he saw a man leave on a bicycle and  
16 then return. He supposed that the authorities were notified of  
17 his presence and therefore he and his companions went out the  
18 back of the barn. They were approached by a security guard who  
19 told them that there were orders from Mr. Hamm that they could  
20 not be on the property and had to leave. Mr. Marciel asked him  
21 about the access rule to which the guard responded that he had  
22 his orders and they had to leave. Mr. Marciel said that they  
23 were not going to leave and the guard then left. Mr. Marciel  
24 was in apprehension of an arrest and thus left the property. He  
25 made no other effort to go on the property.

26 on cross-examination Mr. Marciel stated that prior to the  
27 approach of the security guard he had talked to the employees  
28 about the election and had asked for their support for the

1 Petitioner. He stated he knew that the "outside" employees  
2 worked a 12-hour day from approximately 6:00 A.M. to 6:00 P.M.  
3 but he did not know what shifts the milkers worked. He also  
4 stated that he did not see any other business agents on the  
5 property on the occasions to which reference was made above.

6 Mr. Oropeza corroborated Mr. Marciel's testimony in large  
7 measure. On cross-examination Mr. Oropeza stated that he did  
8 campaign both inside and outside the premises. He also testi-  
9 fied that a couple of days after October 30, 1975, he was talking  
10 to a milker and the foreman told him to leave. He also testi-  
11 fied on cross-examination that he did not see any Intervener  
12 representative on the property between November 7, 1975 and the  
13 date of the election. He also stated that he learned that the  
14 milkers worked a split shift and thus didn't have a lunch hour.

15 Mr. Craveira no longer works for the employer and was not  
16 present to give testimony. His whereabouts were not accounted  
17 for by either the Petitioner or the Intervener.

18 In addition to the above testimony there was testimony  
19 from the other witnesses presented by the Petitioner to the  
20 effect that the Intervener's representative was on the property  
21 speaking to employees at various times prior to the election.  
22 Said testimony was quite vague in that the dates thereof were  
23 uncertain, and the particular activities upon which Intervener's  
24 representative was engaged were not known. In much of the  
25 testimony in this regard reference was made to the passing out  
26 of cards for the men to sign. This activity apparently referred  
27 to authorization cards sought by the Intervener to qualify as an  
28 Intervener so far as the upcoming election was concerned.



1           On one occasion Mr. Hernandez testified that the Inter-  
2   vener's representative came to where he was working in the dairy  
3   and asked that he support the Intervener in the election. Mr.  
4   Hernandez also testified that he saw Mr. Oropeza on the farm  
5   property putting up posters one week before the election.

6           Mr. Lopez testified that the Intervener's representative  
7   imposed upon him to sign an authorization card while he was  
8   feeding the cattle.

9           Mr. Felix stated that during the week before the election  
10  he had a conversation with the Intervener's representative in  
11  the shop where he worked as a maintenance man. The representa-  
12  tive told him that he represented the Intervener and persisted  
13  in talking with him. Finally, Mr. Dorman, Mr. Felix<sup>1</sup> supervisor,  
14  told the representative to get out. Mr. Felix said he saw the  
15  representative speak to others, but did not hear anything.

16          Again the testimony was in sharp conflict. The Intervener  
17  representative, Ben Sybesma, testified that he did not go on the  
18  farm property between November 7 and November 14, 1975. He also  
19  testified that he saw Mr. Marciel and Mr. Oropeza at the farm  
20  outside the entrance to the main gate. It was his understanding  
21  that he couldn't go on to the farm property to service his  
22  collective bargaining agreement during that week prior to the  
23  election.

24          Mr. Subesma's testimony was supported by Mr. Vander Weide,  
25  the secretary of the Intervener, who participated with Mr.  
26  Sybesma in going to the farm and attempting to persuade the  
27  employees to vote for the Intervener. Mr. Vander Weide also  
28  indicated that neither he nor Mr. Sybesma went on the farm

1 property between November 7, 1975 and November 14, 1975. They  
2 performed their electioneering activities outside the entrance  
3 to the gate of the farm.

4 Henry C. White was the security guard at the farm at the  
5 time of the election. His instructions from Mr. Craveira were  
6 to permit the unions access to the farm for periods of one hour  
7 before and after work, and during the lunch break. He was in-  
8 structed to treat both unions equally. As the union representa-  
9 tives approached the gate he asked them whom they were going to  
10 see and why, and if they stated they were going to see the  
11 employees on their lunch break he admitted them to the property.  
12 He was instructed to ask the union representatives to leave if he  
13 saw them talking to the employees while the latter were working,  
14 and he did so.

15 Mr. White further testified that a week or 10 days before  
16 the election he found the Petitioner's representatives talking  
17 to the feeders while the latter were at work. He asked them to  
18 stop and to leave, which they thereupon did. He also stated that  
19 he permitted the Intervener's representatives on the property  
20 to service the collective bargaining agreement which it then had  
21 with the employer. He allowed anyone on the premises who gave  
22 him a legitimate reason under his instructions. He had written  
23 instructions which were kept at the guardhouse and which de-  
24 tailed, in substance, the access rule.

25 So far as the Intervener's representative was concerned,  
26 Mr. White was told by Mr. Craveira and Mr. Hamm that he was to  
27 allow the Intervener's representative on to the property on  
28 regular union business, but as far as campaigning was concerned

1 he was to be treated like anyone else. He saw the Intervener's  
2 representative electioneering many times outside the gate, gener-  
3 ally around quitting time. He did not see the Intervener's  
4 representatives campaigning inside the farm property during the  
5 week prior to the election and he did not recall the Intervener's  
6 representative requesting access for the purpose of campaigning  
7 during that week.

8 William M. Hall, a supervisor, testified concerning the  
9 incident referred to by Mr. Marciel when Mr. Craveira requested  
10 that he and Mr. Oropeza leave the property. Mr. Hall's recol-  
11 lection of the conversation was that Mr. Craveira advised Mr.  
12 Marciel that they were not in compliance with the access regula-  
13 tions and therefore had to leave the property. There was no  
14 argument. Rather, they said they would leave and did. Mr. Hall  
15 stated there were no employees on a lunch break at that time to  
16 his knowledge. The place where Mr. Craveira accosted them was  
17 approximately 300 feet from the entrance gate at or near the  
IS malt pit. Mr. Marciel and Mr. Oropeza were merely walking  
19 around the area. There were no employees in that vicinity. Mr.  
20 Craveira advised Mr. Hall that the access rule was to apply  
21 equally to both unions.

22 From the testimony of Mr. Marciel it appears that on two of  
23 the three occasions when he attempted to gain access to the  
24 property, it was at night, and it did not appear that those  
25 occasions took place either during the hour before work or the  
26 hour after quitting time. Nor did it appear that there was a  
27 lunch break at that time. In fact, he could not identify the  
28 person who told him to leave on the first nighttime visit that

1 he made. So far as the daytime occurrence was concerned, the  
2 evidence is sharply conflicting with respect to the time involved  
3 and whether or not it was during a lunch break. During Mr.  
4 Marciel's recitation of the incident, he did not state that he  
5 told Mr. Craveira and Mr. Hall where he was bound, which employees  
6 he intended to see, and whether there was, in fact, a lunch break  
7 in process.

8 It is stated in Bud Antle, Inc., 3 ALRB No. 7, in Footnote  
9 8, at page 6:

10 "Our concern in a representation-case is not  
11 with the enforceability of the organizer's access  
12 rights but with the effect which the conduct  
13 alleged has on the employees' ability to make a  
14 free and informed choice." (citing Samuel Vener,  
15 1 ALRB No. 10 (1975))

16 In the Antle case the issue also concerned whether or not  
17 access was denied to the UPW and whether or not the employer  
18 granted preferential rights of access to the Teamsters Union.  
19 The latter had a collective bargaining agreement with the em-  
20 ployer which permitted access for contract-related matters.  
21 There was in that case, as in the instant case, conflicting  
22 evidence. At page 8, the court in the Antle case, stated:

23 "To the extent that the employer's foreman  
24 restricted UFW access in contravention of its  
25 policy of equal campaign access for both unions,  
26 we think it unlikely on this record that this  
27 would have been perceived by employees as an  
28 expression of employer preference for the Teamsters

1 sufficient to affect their free choice in the  
2 election. Nor has the UFW established that the  
3 discrepancy gave the Teamsters such a signifi-  
4 cant campaign advantage that the employees were  
5 unable to cast an informed vote." (citing  
6 Certified Eggs, Inc., 1 ALRB No. 5 (1975))

7 This was a hotly contested election with substantial  
8 electioneering activity by the employees as well as the union  
9 representatives. On the occasions of the nighttime visits by  
10 Mr. Marciel, he testified that he did talk to the workers prior  
11 to being asked to leave. In connection with the first night-  
12 time visit, he states that after he was asked to leave the  
13 workers did not permit him and Mr. Oropeza to talk to them.  
14 However, there was no testimony or other evidence that would  
15 indicate that the workers were frightened to speak with him  
16 because of the conduct of the unidentified individual. Nor was  
17 there any other testimony or evidence that the workers were  
18 intimidated, or that a climate of fear existed.

19 Further, Mr. Oropeza admitted that he did campaign both  
20 inside and outside the premises. Mr. Felix, Petitioner's wit-  
21 ness and partisan, testified that Mr. Dorman, his supervisor,  
22 ejected the Intervener's representative when the latter per-  
23 sisted in talking with Mr. Felix while he was working. This  
24 hardly smacks of preferential treatment of the Intervener.

25 Mr. White, the security guard, testified that he was in-  
26 structed to and did treat both unions equally, and that he did  
27 not recall any campaign by the Intervener on the farm during  
28 the week before the election. He also testified that he

1 admitted Mr. Marciel and Oropeza to the farm during a lunch  
2 break for electioneering purposes. Mr. White's testimony re-  
3 mained consistent and unimpeached during a vigorous cross-  
4 examination.

5 It does not appear, therefore, that the Petitioner's access  
6 to the premises was impeded to any substantially greater degree  
7 than that of the Intervener. So far as the latter's presence  
8 on the property is concerned, particularly while the employees  
9 were at work, there is no showing that management participated  
10 in permitting the same, and the one instance as to which Mr.  
11 Felix testified indicated that the supervisor concerned was not  
12 going to permit the Intervener to interfere with the employees  
13 while they were working.

14 On the state of the evidence as a totality, as indicated  
15 hereinabove, it is concluded that if there were any denial of  
16 Petitioner's access or any preferential treatment rendered  
17 Intervener, the same had no substantial effect upon the employees  
18 nor upon their ability to freely vote. On the contrary, the  
19 evidence indicates a hotly, though freely, contested election  
20 with no significant campaign advantage to either union. Accord-  
21 ingly, Petitioner's objections to the election on the grounds  
22 of denial of access and/or preferential treatment are hereby  
23 denied.

24 3. Petitioner charges that the employer, through its  
25 agent, Richard Hamm, in a meeting with employees, threatened  
26 the employees in an attempt to discourage their activities,  
27 sympathy, and support for Petitioner (see Amended Complaint,  
28 paragraph 8(f) and BRIEF STATEMENT OF FACTS REGARDING OBJECTIONS

1 TO THE ELECTION, paragraph 1(e)).

2 The only witness who testified for Petitioner in this  
3 connection was Gerardo Atilano, Petitioner's rebuttal witness.  
4 Mr. Atilano specifically testified on cross-examination that  
5 Mr. Hamm made no threats of any kind at the meeting if any em-  
6 ployee voted for Petitioner. Accordingly, if the charge was  
7 intended to allege a direct threat of the nature indicated, the  
8 same is totally without support in the evidence.

9 As to the balance of Mr. Hamm's statements, as testified  
10 to by Mr. Atilano, the context in which they were made had to  
11 do in part with the offers made by Petitioner to the employees  
12 in regard to wages and hours. At that time, the employees were  
13 working 10 hours a day, at a straight hourly rate, on a 6-day  
14 per week basis. The package being offered by Petitioner included  
15 an 8-hour day at a higher rate per hour than was then being paid,  
16 5 days per week, and overtime pay at a higher rate than the  
17 regular hourly rate. Although there was no direct testimony  
18 thereon, it was apparent that the Intervener's package, as to  
19 hours and wages, was the same as then existed.

20 In this connection, according to Mr. Atilano, Mr. Hamm  
21 told the employees that if Petitioner won, the employees would  
22 receive a higher hourly rate and would have two days off per  
23 week, but would end up earning less money because they would  
24 only be working 5 days per week and 8 hours per day as against  
25 10 hours per day for 6 days per week, although at a lower hourly  
26 rate. Mr. Atilano further testified, though rather vaguely,  
27 that Mr. Hamm said they might have to institute a split shift,  
28 that is, that the workers could not get all of the work done

1 under the 8-hour day and 5-day per week basis, and accordingly  
2 might have to create a new shift which might reduce the hours  
3 available to each employee. However, Mr. Atilano testified,  
4 Mr. Hamm went on to say that it was up to the employees to  
5 decide; that he wasn't opposed to either one of the unions and  
6 they were to vote for the one they wanted, that they believed  
7 would be the most convenient for them.

8         The only other witnesses who testified concerning the  
9 meetings conducted by Mr. Hamm were witnesses produced by the  
10 Intervener. The sum and substance of their testimony was to  
11 confirm that Mr. Hamm made no threats, promised no benefits,  
12 and stated that they were to choose whichever union they pre-  
13 ferred. Additionally, they substantially confirmed the state-  
14 ments to which Mr. Atilano testified regarding hours and wages,  
15 although they did not recall any statements by Mr. Hamm con-  
16 cerning "split shifts". Moreover, they testified that the  
17 discussion concerning wages and hours at the meeting and the  
18 statements made by Mr. Hamm in regard thereto was in response  
19 to questions raised by the employees themselves, and that there  
20 was substantial discussions between the employees with respect  
21 thereto. Additionally, they testified that Mr. Hamm also stated  
22 to the employees that the package would have to be negotiated  
23 whichever union won the election.

24         Did the predictions made by Mr. Hamm of the consequences  
25 that might follow in the event of a victory by the Petitioner  
26 constitute an implied threat of retaliatory action which "created  
27 an atmosphere calculated to prevent a free and untrammelled  
28 choice by the employees?"



1 General Shoe Corp., 77 NLRB 124, 21 LRRM 1337.

2 Was the fairness of the election prejudiced by the dis-  
3 cussion concerning wages and hours? Albert C. Hansen, 2 ALRB No.  
4 61 (1976), characterized the issue as the right of the employees  
5 to an untrammelled choice, and the right of the parties to wage  
6 a free and vigorous campaign with all the normal legitimate  
7 tools of electioneering, citing Hollywood Ceramics, Inc., 140  
8 NLRB 221, 224, 51 LRRM 1600, 1601.

9 The Supreme Court in NLRB v. Gissel Packing Co., supra,  
10 held that the employer can make a prediction as to the precise  
11 effects he believes unionization will have on his company. How-  
12 ever, it cautioned that employers are required to be extremely  
13 careful in making any predictions about potential changes in  
14 the business or the working conditions.

15 "if there is any implication that an employer  
16 may or may not take action solely on his own ini-  
17 tiative for reasons unrelated to economic necessi-  
18 ties and known only to him, the statement is no  
19 longer a reasonable prediction based on available  
20 facts but a threat of retaliation based on mis-  
21 representation and coercion, and as such without  
22 the protection of the First Amendment."

23 NLRB v. Gissel Packing Co., supra.

24 The problem is one of eliminating coercive threats and  
25 promises of benefits without foreclosing either party from  
26 communicating views, opinions, and economic judgments calcu-  
27 lated to educate the voters concerning all possible consequences  
28 of selecting one union or the other, both favorable and adverse.

1           Albert C. Hansen, supra, rejected the mechanical approach  
2 to applying free speech protection to pre-election statements.  
3 Instead it looked to the economic realities of the employer-  
4 employee relationship and declared it would set aside an elec-  
5 tion where it was found that the employer's conduct had resulted  
6 in substantial interference with the election, regardless of the  
7 form in which the statements were made.

8           The following types of predictions have been held fatal  
9 to the validity of an election:

10           Threats of plant closure.

11           NLRB v. Gissel Packing Co., supra.

12           There would be layoffs, a strike, and the employer would  
13 refuse to negotiate.

14           Albert C. Hansen, supra.

15           The employees would lose existing benefits, would end up  
16 with a lot less than they then had, and the employer wouldn't  
17 sign a contract even if required to bargain.

18           Dal-Tex Optical, 137 NLRB 1782.

19           The company would go bankrupt if the UFW won.

20           Royal Packing Co., 2 ALRB No. 29.

21           Threat to transfer manufacturing operations to another  
22 area and promise of a wage increase if the union lost the elec-  
23 tion.

24           Royal Typewriter Co. v. NLRB, 533 Fed.(2d) 1030, 1037-1038.

25           Permanent replacement of striking employees.

26           NLRB v. Four Winds Industries, Inc., 530 Fed.(2d), 75, 78-79

27           Implying that an employee would receive less desirable or  
28 more onerous work if he engaged in union activity.

1           NLRB v. Lucy Ellen Candy Div., etc., 517 Fed.(2d) 551, 553.

2           Statements that if the union won the election certain  
3 seniority rights would be lost.

4           E. I. duPont, etc, v. NLRB, 480 Fed.(2d) 1245, 1247-1248.

5           The following types of statements have been held to be  
6 within First Amendment protection:

7           An increase in the hourly rate will mean a reduction in  
8 the overtime work.

9           Cleveland Plastics, Inc., 85 NLRB 513.

10          Collective bargaining with the union would mean a reduced  
11 contribution to the employees' profit-sharing plan.

12          Cleveland Plastics,. Inc., supra.

13          A statement that if the union were to come in it would not  
14 be to the employees' benefit but to their serious harm.

15          NLRB v. Holly Farms Poultry Industries, Inc., 470 Fed.(2d)  
16 983, 985.

17          If the employees unionized, a more strict regimentation of  
18 working hours would be implemented, a more strict observance of  
19 working time would probably result, working conditions might be  
20 made more difficult, sick leave and other fringe benefits might  
21 be changed, and temporary layoffs might result.

22          NLRB v. Lenkurt Electric Co., 438 Fed.(2d) 1102.

23          The statements made by Mr. Hamm take on more of the  
24 attributes of the latter line of cases than of the former. They  
25 must be considered in the context of the factual background in  
26 which they were made, and in view of the totality of employer  
27 conduct. The record reveals no anti-union animus on the part  
28 of the employer or on the part of Mr. Hamm. There was already

1 a union which represented some of the employees. So far as any  
2 antipathy toward Petitioner was concerned, it represented the  
3 employees on another farm owned by the employer nearby. There  
4 is nothing in the record to show that the employer was adamantly  
5 opposed to the advent of the Petitioner, although it may have  
6 preferred that the Intervener continue to represent the employees.

7 The statements made by Mr. Hamm contained no threat of  
8 retaliation or reprisal, express or implied; in the very next  
9 breath he stated that he wasn't opposed to either one of the  
10 unions and the employees were to vote for the union they felt  
11 was best for them.

12 On the basis of the record, it must be concluded that  
13 there was no implied or expressed threat in said statements,  
14 but that they were, at most, predictions of possible disadvan-  
15 tages which might arise from economic necessity or because of  
16 union demands or union policies, similar to the circumstances  
17 existing in NLRB v. Lenkurt Electric Co., supra.

18 In that regard it is significant that Mr. Hamm's remarks  
19 were made in response to questions coming from the employees  
20 during the course of said meetings. The very fact that the  
21 employees felt free to raise the subject of hours and wages and  
22 to discuss them vigorously in the presence of employer's repre-  
23 sentative, dispells any notion that there existed such a climate  
24 of fear and intimidation that the remarks made by Mr. Hamm would  
25 necessarily be interpreted as threats, and that the employees  
26 would thereby be deprived of a realistic and free choice.

27 Based upon all of the above, it is hereby found that the  
28 election was conducted properly and that no misconduct on the

1 part of the employer occurred affecting the results of the  
2 election. The Objections Petition and the specifications set  
3 forth in the pleadings herein referring thereto are hereby  
4 denied.

5 It is recommended that the election of the Intervener be  
6 certified.

7 Dated: June 17, 1977.

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10 Bernard Newman  
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