

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DESERT HARVEST COMPANY,	)	
	)	Case No. 78-RC-9-1-E
Employer,	)	
	)	
and	)	5 ALRB No. 25
	)	
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
Petitioner.	)	
_____	)	

DECISION AND

CERTIFICATION OF REPRESENTATIVE

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

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW) on June 12, 1978, a representation election was held on June 19, 1978, among the agricultural employees of Desert Harvest Company, the Employer herein. The tally of ballots showed the following results:

UFW .....	75
No Union .....	15
Challenged Ballots .....	<u>42</u>
Total .....	132

After the Employer filed five post-election objections, the Board's Executive Secretary issued a notice of allegations to be set for hearing and an order dismissing four of the said objections. On November 29, 1978, an evidentiary hearing was

held on the remaining objection: "that on June 10, 1978, a UFW organizer threatened both a crew foreman and workers with physical harm if any were to leave the labor camp for work".

On January 19, 1979, Investigative Hearing Examiner (IHE) Carla Jo Dakin issued her Decision in which she recommended that the Employer's objection be dismissed and that the UFW be certified as the collective bargaining representative of the Employer's agricultural employees.

The Employer timely filed exceptions to the IHE's Decision and a brief in support of the exceptions. The UFW filed no reply brief, but indicated by letter that it supported the conclusions of the IHE.

The Board has considered 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 modified herein.

Contrary to the IHE, we find the account of the Employer's witness as to the events on the morning of June 10, 1978, to be no less logical than that of the union organizer. However, as the only sources of evidence on the matter are in direct conflict, we cannot conclude that a threat was actually made. We agree with the IHE that even if the evidence established that the threat was made, it would not warrant setting aside the election under the circumstances presented. Accordingly, we adopt her recommendations to dismiss the Employer's objection and to certify the UFW. The objection is hereby dismissed.

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CERTIFICATION OF REPRESENTATIVE

It is hereby certified that the United Farm Workers of America, AFL-CIO, having received a majority of the valid votes cast in a representation election among the agricultural employees of the Employer, is, pursuant to Labor Code Section 1156, the exclusive bargaining representative of all the agricultural employees of Desert Harvest Company in the State of California for the purpose of collective bargaining, as defined in Labor Code Section 1155.2(a), concerning employees' wages, working hours, and other terms and conditions of employment.

Dated: March 30, 1979

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Desert Harvest Company (UFW)

Case No. 78-RC-9-1-E

5 ALRB NO. 25

IHE DECISION

The UFW received a majority of votes in a representation election conducted among the employees of the Employer, a harvester of melons. The Employer filed five post-election objections, one of which was set for hearing. It alleged that two days before the petition for certification was filed, an organizer for the UFW threatened both a crew foreman and workers with physical harm if they left the labor camp for work.

At the hearing, the Employer's case was based on testimony from the foreman, and the UFW's defense was based on testimony from the organizer. Although their testimony was in direct conflict, the IHE considered that the organizer's version was more logical, but concluded that even if the alleged threat was made, existing case law did not warrant setting aside the election as there was insufficient evidence to establish that the threat had affected the election. The IHE noted inter alia that few workers were present at the time the threat was allegedly made, that there was no evidence that other workers were told of the incident, and that the incident was an isolated occurrence.

BOARD DECISION

The Board found the account given by the Employer's foreman to be no less logical than that of the union organizer but agreed with the IHE that even if the evidence had established that the threat was made, it would not warrant setting aside the election under the circumstances presented.

Accordingly, the Board dismissed the objection, upheld the election, and certified the UFW as the exclusive collective bargaining representative of all of the Employer's agricultural employees in California.

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

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STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

DESERT HARVEST COMPANY,  
Employer,

Case No. 78-RC-9-1-E

and

UNITED FARM WORKERS OF  
AMERICA, AFL-CIO,  
Petitioner.

Edward C. Arias, Richard Andrade, and  
James L. Leather for the Employer.

Michael Heumann for the  
United Farm Workers of  
America, AFL-CIO.

DECISION

CARLA JO DAKIN, Investigative Hearing Examiner: This case was heard before me on November 29, 1978, in Blythe, California, A petition for certification was filed by the United Farm Workers of America, AFL-CIO ("UFW"), on June 12, 1978. The Agricultural Labor Relations Board ("Board") conducted an election on June 19, 1978. The tally of ballots was as follows:

UFW	75
No Union	15
Unresolved Challenged Ballots	42
Total Ballots Cast	132
Number of Names on List	318

Desert Harvest Company ("employer") filed a timely objections petition pursuant to Cal. Lab. Code §1156,3 (c), alleging five instances of misconduct which the employer argues require

the Board to set aside the election. By order dated July 31, 1978, the Executive Secretary of the Board dismissed all but one of the employer's objections. The remaining objection, set for hearing, was that a UFW organizer threatened and intimidated workers by threatening a crew foreman at the labor camp.

There were two witnesses at the hearing. The employer called Mario Lopez Cabrera (Lopez), a foreman who has been employed two years by Desert Harvest. The union called Eduardo Nunos Garcia (Nunos), a UFW staff member for eight years. Mr. Nunos is also known by the nickname Calacas.

All parties were represented at the hearing and were given full opportunity to participate in the proceedings.

Upon the entire record, and after consideration of the arguments made by the parties, I make the following findings of fact, conclusions and recommendations.

#### I BACKGROUND

Desert Harvest Company operates in the Blythe, California area. At the time of the election the company was involved with the harvest of melons. About 100 of its employees resided in the Blythe Labor Camp. The labor camp is managed by labor contractor Charlie Garcia, Other employees lived in the vicinity of the town of Blythe.

One of the foremen, Mario Lopez Cabrera, lived at the camp. Five of his crew members lived in the camp. About 80 of the residents of the labor camp were in the crew of Mr. Avila, a labor contractor employed by the company at the time of the election,

Eduardo Nunos Garcia was part of the union's organizing effort at Desert Harvest in June 1978.

On June 9, 1978, the day before the alleged misconduct occurred, a group of UFW pickets came to the labor camp. The picketers urged the workers not to go to work, because there was no collective bargaining agreement in effect between the employer and the union. On June 10, 1978, most of the crews were short, and none of the workers in the labor camp went to work.

Most of the workers left the camp earlier than usual on the morning of June 10, 1978. Nunos arrived at the camp after most of the workers had departed.

## II

### TESTIMONY CONCERNING THE ALLEGED THREAT

#### A. Testimony of Mario Lopez Cabrera

Mario Lopez Cabrera testified that on Saturday, June 10, 1978 at about 4:00 a.m., UFW organizer Eduardo Nunos Garcia, came to the labor camp. Lopez was preparing to leave for work. As he was leaving the bunkhouse to go to his pickup truck, Lopez encountered Nunos. There were eight or nine workers present at the time. It was dark. Lopez said he could not identify who was present. Nunos asked him where the workers were in a loud angry tone of voice. Lopez testified that the organizer swore at him and said that Lopez was responsible for the people not signing authorization cards. He told Lopez he was going to beat him up, Nunos tried to take hold of Lopez, grabbing him by the wrist but Lopez got away. Nunos said, "Take your gun, because I'm going to get mine, and you don't know where it will be coming from. Sticks or stones."

He did not get a gun out, however. Then Nunos left. None of the workers went to work that day.

#### B. Testimony of Eduardo Nunos Garcia

The testimony of the union's witness directly contradicts that of the employer's witness in nearly every aspect. Nunos testified that he came to the labor camp June 10 at approximately 2:45 or 3:00 a.m. and remained about 10 minutes. He saw Lopez at a distance in his pickup. When Nunoz arrived, about four workers present in a car asked him questions, He learned from them that they were leaving the camp because they did not want to pay for food while they were not working. They said they would return the next afternoon, Sunday, in order to find out when the election would be held.

Nunos testified he spoke to Lopez in the presence of five or six workers. The two men were standing 20 to 30 feet apart. Lopez asked the workers present why they did not go to work. Nunos replied that Lopez did not have to get mixed up in the situation because there was a law that the people had to decide on. Lopez responded that he was leaving.

Nunos denied grabbing Lopez, noting that he was standing too far from him, even if he had wanted to do so, He testified that he did not tell Lopez he would beat him up. Nunos denied making any threats to either Lopez or the workers.<sup>1/</sup>

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1/ On cross examination, Mr. Nunos testified that he had recently been released after a period of incarceration. The basis for the incarceration concerned the burning of a bus. He denied he was convicted of a felony. He attempted to explain the circumstances of the conviction, indicating he felt he had been unjustly found guilty of something he did not do.

(Footnote continued on page 5.)



Mr. Nunos explained that the reason he went to the camp so early in the morning was that he thought the company might bring in new workers at an early hour to replace those honoring the UFW picket line set up the previous day. He wanted to check on this possibility because he felt these "strikebreakers" might try to vote but he believed they would not be eligible. He said that he was not there to collect signatures on authorization cards because the people at the camp had already signed cards.

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(Footnote 1 continued)

Representation hearings need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, 8 Cal, Admin. Code §20370(c). However, the California Evidence Code serves as a useful guide in the conduct of these hearings in determining the admissibility of certain evidence.

Evidence Code Section 788 permits examination of a witness regarding felony convictions for the purpose of attacking credibility. The theory of relevancy of a witness felony conviction to attack credibility is that commission of a felony is a specific instance of a witness' conduct that establishes a character trait, which has some tendency in reason to disprove the truthfulness of his testimony. If the trait involved in the offense is that of dishonesty or untruthfulness, a felony conviction of such an offense has far greater probative value to impeach a witness than if the character trait is other than that of dishonesty or untruthfulness. Jefferson, California Evidence Benchbook, 465.

The evidence at the hearing failed to establish that the conviction was a felony. The information elicited from the witness has no bearing on this case. Even if the evidence had established a felony conviction, it would have had little impact on the witness' credibility since the offense does not involve the character trait of dishonesty or untruthfulness. Further even assuming a felony was committed, the conduct which is the basis for the conviction is so unlike the alleged misconduct at issue here that it has no effect on the credibility of this witness.

III  
FINDINGS OF FACT AND  
LEGAL CONCLUSIONS

Where there is direct conflict in the testimony as to whether a threat occurred, and there is no additional evidence to shed light on the truth of the allegation, the Board has found the evidence insufficient to establish that a threat occurred. S. Kuramura, Inc., 3 ALRB No. 49 (1977).

The evidence fails to persuade me that it was more likely than not that a threat was made. While the employer's witness' testimony was not marked by inconsistencies or other ready indicators of unreliability, his version of the encounter with Nunos is not totally convincing in a logical way. The evidence was not disputed that people in the camp had already signed cards. Nor was the evidence disputed that many workers had not gone to work on Saturday, June 10. These facts suggest some apparent success in the union's election campaign. Under these circumstances, it seems unlikely that the organizer would threaten the foreman for the alleged reason that he had interfered with the card signing.

The organizer explained his presence at the camp at an apparently early hour in a satisfactory manner. He visited the camp as part of his organizing tasks and, expecting that some workers would not be going to work, he was looking for their replacements. The organizer's presence at 3:00 a.m. under the circumstances does not seem unreasonable, or any basis for doubting his testimony. Moreover, the organizer repeatedly denied making threats to anyone, workers or foreman, at the labor camp.

The state of the evidence does not establish that a threat occurred. I conclude therefore that the organizer did not engage in the conduct alleged.

Even assuming arguendo the evidence established that a threat had occurred,<sup>2/</sup> there is no basis in caselaw for setting aside this election.

The Board has not set aside an election on the basis of a single threat of physical harm. The displaying of a shotgun by a labor camp guard confronting union organizers, a more immediate threat than that alleged here, absent a finding of violence was held by itself not to justify setting aside an election. The Board acknowledged the inherently intimidating impact of the presence of the weapon. Silver Creek Packing Co., 3 ALRB No. 13 (1977).

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2/ The part of the exchange in which Nunos allegedly said "Sticks and stones" makes no sense, as a threat or otherwise, and would therefore be ignored even if I had found a threat occurred.

3/ The Board has set aside elections where acts of physical violence occurred between parties because the misconduct interfered with the atmosphere conducive to the free and uncoerced selection of a bargaining representative. Phelan and Taylor Produce, 2 ALRB No. 22 (1976); Merzoian Bros., et al., 3 ALRB No. 62 (1977); Security Farms, 3 ALRB No. 81 (1977) The nature of the conduct, however, far exceeded the making of mere threats of physical harm. In Phelan and Taylor, representatives of one union beat up representatives of another union in full view of 25 workers. In Merzoian Bros., in the midst of a course of conduct which included threats of firing, denial of access, and surveillance, a supervisor in favor of one union threatened to fight and kill a worker who supported another union. The Board held that the cumulative effect of these actions created an atmosphere of threats, surveillance and force which interfered with the employees free and uncoerced choice of a bargaining agent. In Security Farms, assaults by a company official on union organizers plus interference with access by organizers to labor camp residents, warranted setting aside the election.

The Board has not set aside an election solely on the basis of a threat of loss of employment. The Board's standard can be stated as three questions: 1) was a threat made; 2) if so, was it attributable to the union; 3) if so, did the statement affect the outcome of the election by causing it to be conducted in an atmosphere of fear? Jack or Marion Radovich, 2 ALRB No. 12 (1976). In Radovich, four women wearing UFW buttons told a worker that if he and his wife did not sign authorization cards and the union won the election, they would be out of work. No other workers were present and the worker did not tell any other workers about this statement. The Board held that there was no evidence that it affected the outcome of the election.

In Select Nursery, 4 ALRB No. 61 (1978), the Board found that the statement of a union organizer to an employee that "perhaps those who don't sign cards would be fired from their jobs" constituted an implied threat but was insufficient to justify setting aside an election.

In Patterson Farms, 2 ALRB No. 59 (1976), the Board considered the statements of one worker to another regarding loss of work for failure to support the union, made in the presence of other workers. No evidence was presented indicating that the alleged statements dissuaded workers from exercising their voting right. No evidence was presented indicating that these statements directly influenced the voters' selection. The worker's statement during the same exchange concerning "death by starvation" in the context in which it was made did not support the conclusion that the statement created an atmosphere of general confusion or fear of reprisal. The Board upheld the election.

The objecting party has the burden of showing that misconduct affected the outcome of the election. Elections, regardless of who is the winner, are not to be set aside lightly. Courts ought not to so act without some assurance appearing in the record that the election results were not reflective of the employees' desires. The objecting party must shoulder this burden. NLRB v. Monroe Auto Equipment Co., 470 F.2d 1329 (CA 5, 1972), 81 LRRM 2929, cert, den. 412 U.S. 928, 83 LRRM 2320 (1973).

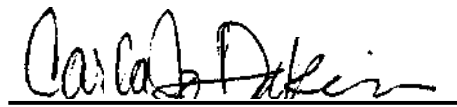
Even assuming the evidence had established that a threat was made there would still be no basis for setting aside this election. No evidence was presented in this case indicating that the alleged threat directly influenced the voters' selection of a bargaining representative. On June 10, at 3:00 a.m. the Elythe Labor Camp was nearly deserted. The few remaining workers were preparing to leave. Assuming that those workers present returned at all, given the generally transient nature of much of the agricultural work force, there is no indication that they returned much before work resumed on Monday. No evidence was presented of workers telling other workers of the alleged threat. In fact, no evidence was presented that workers actually heard the conversation at issue. Additionally, this alleged threat was an isolated occurrence. In sum, the record is devoid of any evidence to suggest that the threat alleged, assuming arguendo it occurred, had any effect on the outcome of the election.

IV  
RECOMMENDATION

Based on the findings of fact, analysis and conclusions herein, I recommend that the employer's objection 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: January 19, 1979

Respectfully submitted,



CARLA JO DAKIN

Investigative Hearing Examiner

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