

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

H. H. MAULHARDT PACKING COMPANY,)	
)	
Employer,)	Case No. 79-RC-1-OX
)	
and)	
)	
INTERNATIONAL UNION OF)	6 ALRB No. 42
AGRICULTURAL WORKERS,)	
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Intervenor.)	
)	

DECISION AND

CERTIFICATION OF REPRESENTATIVE

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

A Petition for Certification was filed by the International Union of Agricultural Workers (IUAW) on March 2, 1979, and the United Farm Workers of America, AFL-CIO (UFW) intervened on March 6, 1979. A representation election was held on March 9, 1979, among the agricultural employees of H. H. Maulhardt Packing Company, the Employer herein. The Tally of Ballots showed the following results:

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IUAW	23
UFW	42
No Union	1
Challenged Ballots	<u>1</u>
Total	67

After the Employer and the IUAW filed post-election objections, the Board's Executive Secretary issued a Notice of Objections Set for Hearing and Order Partially Dismissing Employer's Objections. On June 5 and 6, 1979, an evidentiary hearing was held on the remaining objections.

On January 22, 1980, Investigative Hearing Examiner (IHE) Newman Strawbridge issued his Decision in which he recommended that the objections 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 Board has considered the record and the IHE's Decision in light of the exceptions^{1/} and brief, and has decided to affirm the rulings, findings, and conclusions of the IHE, and to adopt his recommendations. Accordingly, the objections are hereby dismissed and certification is herein granted.

^{1/} Respondent has suggested that the election should be set aside because a majority of the eligible employees did not vote. The Agricultural Labor Relations Act (Act) only requires that an election be decided by a majority of the votes cast, and, absent any concrete showing that significant numbers of eligible voters were denied the opportunity to vote, low voter turnout' is not a basis for setting aside an election. IMY Farms (Nov. 29, 1976) 2 ALRB No. 58.

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 representative of all the agricultural employees of H. H. Maulhardt Packing 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: July 24, 1980

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

H. H. Maulhardt Packing Company (UFW)

6 ALRB No. 42

79-RC-1-0X

IHE DECISION

In a representation election conducted among the Employer's agricultural employees on March 9, 1979, the Tally of Ballots showed 42 votes for the UFW, 23 votes for the IUAW, 1 vote for No Union, and 1 Challenged Ballot.

A hearing was conducted on June 5 and 6, 1979, to determine whether the pre-petition employee lists supplied by Respondent were adequate and whether certain conduct during the election could have affected the outcome.

The Investigative Hearing Examiner (IHE) found that the pre-petition list was 86.3 percent accurate and therefore legally sufficient. As to the objection regarding the late opening of the polls, he found that the polls were opened 20 minutes late, but were held open an extra 20 minutes at the end, with no proof that the delay caused disenfranchisement. As to the statement of a Union supporter regarding the eligibility of certain workers to vote, the IHE found no effect, as all the workers voted anyway. The IHE recommended dismissing the objection that a Board agent erred in denying an individual company-observer status. The testimony indicated that there were sufficient company observers and that the individual was merely told the rules regarding supervisors in the polling area. Finally, two incidents of possible disenfranchisement were mentioned by the IHE, though not raised in any objection, but disregarded since only two votes were involved and this number could not have affected the outcome of the election.

BOARD DECISION

The Board affirmed the rulings, findings, and conclusions of the IHE, and adopted his recommendation to dismiss the objections and certify the UFW as the exclusive representative of all agricultural employees of H. H. Maulhardt Packing Co.

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:

H. H. MAULHARDT PACKING
COMPANY,

Employer

Case No. 79-RC-1-OX

and

INTERNATIONAL UNION OF
AGRICULTURAL WORKERS,

Petitioner,

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Intervenor.

Cal B. Watkins, Jr., Grower-Shipper
Vegetable Association of Santa
Barbara and San Luis Obispo Counties,
for the Employer.

Arturo Castro and Tim Rabara
for the Petitioner.

Peter Cohen for the Intervenor.

DECISION

STATEMENT OF THE CASE

NEWMAN STRAWBRIDGE, Investigative Hearing Examiner: This case was heard before me on June 5 and 6, 1979, in Santa Maria, California. On March 2, 1979, the International Union of Agricultural Workers (hereafter "IUAW") filed' a

Petition for Certification, with the Agricultural Labor Relations Board (hereafter "Board"), for all agricultural workers of the H. H. Maulhardt Packing Company (hereafter "employer") in Santa Barbara and San Luis Obispo Counties. The unit includes all of the employer's agricultural employees. On March 6, 1979, the United Farm Workers of America, AFL-CIO (hereafter "UFW") filed a Petition for Intervention. The employer filed its response on March 5, 1979. The Regional Director issued a Notice of Election on March 8, 1979. The election was held on March 9, 1979. The tally of ballots was issued on that date. Sixty-seven workers voted out of an eligible work force of 140 persons. The tally was as follows:

IUAW	23
UFW	42
No Union	1
Challenged Ballots	1

On March 19, 1979, the employer and the IUAW each filed Petitions to Set Aside the Election. On May 4, 1979, the Executive Secretary set the following objections for hearing:

1. "Whether the list of employees' names and street addresses which the employer provided failed to comply with 8 Cal. Admin. Code Section 20310, and if so, whether such conduct affected the election" (objection filed by the IUAW), and,

2. "Whether the time period for balloting at the morning election site was half as long as the originally ~ scheduled time period, and if so, whether such conduct affected the election" (objection filed by the employer), and,

3. "Whether a UFW supporter interfered with the workers' rights to vote in the election by telling some workers, members of the broccoli crew, that they could not vote, and if so, whether such conduct affected the election" (objection filed by the employer), and

4. "Whether an agent of the Board abused his or her discretion in denying observer status to a potential employer observer and also denied this person the right to vote, and if so, whether such conduct affected the election" (objection filed by the employer).

The employer, the IUAW and the UFW were represented at the hearing and had full opportunity to present evidence as well as examine and cross-examine all witnesses. Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments made by the parties, I make the following findings of fact, conclusions and recommendations.

I. Jurisdiction

Neither the employer, the UFW, nor the IUAW challenged the Board's jurisdiction. Accordingly, I find that the employer is an agricultural employer within the meaning of Labor Code Section 1140.4 (c) and that the UFW and the IUAW are labor organizations within the meaning of Labor Code Section 1140.4(f).

II. The Adequacy of the List

The IUAW claims that the employee list supplied by the employer prior to the election was so inadequate that it substantially impaired the union's ability to contact and communicate with the workers.

Timoteo Rabara, IUAW Vice-President, testified that the IUAW had possession of the employee list since before the pre-election conference and that the first time the IUAW made any attempt to use the list for a home visit campaign was in the late afternoon the day before the election. Mr. Rabara stated that he and another organizer attempted to visit one person who was no longer living at the address provided. He further testified that he and the other organizer then went to some hotels in Guadalupe in an attempt to locate voters. He stated that they found one worker but that the rest of the workers were not there.

My own review of the list indicates that twelve people had no addresses at all and seven more had no street addresses. There were, therefore, 19 names out of a list of 138 (two names on the list twice) with inadequate addresses.

Labor Code Section 1157.3, and Section 20310(2) of the Board's regulations (8 Cal. Admin. Code Section 20310(2)) impose an obligation to provide the Board with "a complete and accurate list of the complete and full names, current street addresses, and job classifications of all agricultural . employees...in the bargaining unit sought by the petitioner in the payroll period immediately preceding the filing of the petition..." In considering whether to set aside an election due to deficiencies in the list, the Board has held that where it appears that the employer has failed to exercise due diligence in obtaining and supplying the necessary information, and the defects or discrepancies are such as to substantially impair

the utility of the list in its informational function, the employer's conduct will be considered grounds for setting aside the election. Yoder Bros., 2 ALRB No. 4 (1976); Mapes Produce Co., 2 ALRB No. 54 (1976); Salinas Lettuce Farmers Co-op., 5 ALRB No. 21, (1979.); Royal Packing, 5 ALRB No. 31 (1979); Jack T. Baillie Co., Inc., 5 ALRB No. 72 (1979).

In Yoder Bros., supra, the Board refused to set aside an election where there were nine omissions from a list of approximately 160 eligible voters, six of the listed addresses did not exist, and in seven instances the organizers could not locate the employees at the listed addresses. As to all of the above, the Board found no evidence of negligence on the part of the employer. In Mapes, supra, the Board set aside the election where, due to the employer's negligence in maintaining current addresses (the employer obtained addresses from employees only once a year), some 255 people out of 355 were virtually unreachable. In Salinas Lettuce Farmers co-op., supra, the Board set aside the election where 81 out of 236 eligible voters were unreachable due to the employer's failure to ever obtain street addresses for them. In Royal Packing, supra, even though the employer attempted to remedy deficiencies in the list, the Board set aside the election where the original list had usable addresses for only half the employees and the employer's tardy response did not make up for the original deficiencies.

In the present case, there is no evidence regarding the employer's diligence or lack thereof in obtaining current employee addresses. Further, the evidence does not support

a finding that the IUAW's ability to communicate with the voters was substantially impaired by the inadequacies of the list. The evidence does indicate that the IUAW organizers were unable to find some workers at the addresses given on the list but does not indicate the number of workers the IUAW could not find.

Further, the list itself shows no addresses for 19 out of 138 eligible voters, a number in proportion much smaller than in Mapes, supra, Salinas Lettuce Farmers, supra, or Royal Packing, supra, where the Board found the deficiencies sufficient in number to warrant setting aside the election. In Yoder, supra, wherein the Board refused to set aside the election, the numerical deficiency in the list was proportionally equivalent to that in the present case. Accordingly, the objection should be dismissed.

III. Late Opening of the Polls

The employer claims that the time period for balloting, at the Machado Ranch election site, was half as long as scheduled and that the shortened time period affected the outcome of the election.

The Machado Ranch election site was scheduled to open at 6:00 a.m. and remain open until 8:00 a.m. The employer's general manager testified that the actual polling did not start until about 7:00 a.m.

Pedro Garcia Contreras, an observer for the company, testified that there were about 50 people around the polls at the time the voting began. He testified that he saw the Tony Reyes crew leave the polling site in a van and that he

thought they left before the polls opened, right when the voting was going to begin. He further testified that he did not know how many people were in the van, nor did he know whether those in the van were eligible voters, i.e., Reyes workers employed at Maulhardt.

The Board agent in charge of the election testified that the polls opened at the Machado Ranch site at about 6:20 a.m. and remained open until about 8:20 a.m. He further testified that the delay was caused, in part, by his compliance with the employer's request to move the voting booths so as not to disturb the employer's landlord who lived near the polling site. The Board agent was not aware of any prospective voter leaving the polling area without voting.

The Board has held that there must be affirmative proof of voter disenfranchisement before the late opening of the polls can provide a basis for setting aside an election. Hatanaka & Ota Company, 1 ALRB No. 7 (1975); Admiral Packing, 1 ALRB No. 20 (1975); H. & M. Farms, 2 ALRB No. 19 (1976); Missakian Vineyards, 3 ALRB No. 3 (1977); Dairy Fresh Products, 4 ALRB No. 2 (1978). No such proof has been established by the employer here. Although there was testimony that the polls opened between 20 minutes and one hour late, there is no clear evidence that any eligible voter left before the polls opened. Pedro Garcia Contreras testified that he thought a certain group of people left just prior to the opening of the polls but that he did not know whether these people were eligible voters. This evidence is insufficient to

establish voter disenfranchisement. Accordingly, the objection should be dismissed.

IV. UFW Interference

The employer contends that a UFW supporter interfered with the election by telling some workers that they could not vote.

Pedro Garcia Contreras, an observer for the company, testified that, at the election site on the morning of the election, a man named M. Salvador Vaca told him that he (Garcia Contreras) and his crew should not vote because they were not full-time employees of the employer. The employer's General Manager testified that he believed that Salvador Vaca was an active union supporter, that he had heard that Vaca was on or wanted to be on the UFW ranch committee, and that in the last election, which was quite a while ago, Vaca campaigned for the UFW. He further testified that he had seen Vaca wear buttons on his lapel. Vaca testified that he was the committee ranch representative at the time of the election.

Garcia Contreras further testified that he and his crew did, in fact, vote in the election. Tulio Espinoza, an observer for the IUAW, also testified that the people in Garcia Contreras's crew voted. Carmelo Tover, an observer for the UFW, testified to the same effect.

In order to set aside an election, there must be some showing that the unlawful conduct, here the statement by Salvador Vaca that Garcia Contreras and his crew were ineligible to vote, created an atmosphere in which employees

could not freely and intelligently choose their bargaining representative. Takara International Inc., 3 ALRB No. 24 (1977). Conduct of a non-party is to be accorded, less weight than that of a party in determining whether or not the standard is met. Takara International Inc., supra; Mondavi & Sons, 3 ALRB No. 65 (1977).

In the present case, it is not clear whether or not Salvador Vaca is a party. Assuming, however, that he is a party and that his statement was made inside the polling area during the time of the voting, his statement would only warrant setting aside the election upon a showing that it affected the outcome of the election. Superior Farming Co., 3 ALRB No. 35 (1977); Sakata Ranches, 5 ALRB No. 56 (1979).

Here, there has been no such showing. There is no evidence whatsoever that Vaca's statement had any impact on the election. All three witnesses who testified about the issue stated that Garcia Contreras and his crew did, in fact, vote. Since there is no evidence that Vaca's statement affected the election, the objection should be dismissed.

V. Misconduct of Board Agent

The employer contends that a Board agent refused to allow an employee, Jose Bayon, to serve as an observer and by so refusing abused his discretion since Bayon knew of prospective voters who were going to be late and could have so informed the Board agent. The employer further contends that the agent denied Bayon the right to vote.

Jose Bayon testified that he went to the Guadalupe election site to serve as a company observer and that as he entered the polling area, he began passing out checks to the workers. He stated that an unidentified person (later identified as a Board agent, see below) approached him and asked him why he was there. When Bayon stated that he was suppose to serve as an observer for the company and that he was also there to vote, the person told him that there were already enough observers and that he could not vote. Bayon then left. Bayon stated that the person neither asked his name nor checked to see if his name was on a list.

Bayon further testified that he knew of prospective voters whose truck had broken down but that he did not know whether they were headed for the Guadalupe site, where he would have been an observer, or another site.

A Board agent assisting with the election testified that he saw a man entering the polling area handing out checks. He approached the man and asked him his name and if he was a supervisor. The agent stated that he informed the man that supervisors could not be in the polling area and that if he was' a supervisor he would have to leave. The agent then turned to deal with another problem and when he turned back, the man had left.

It is unnecessary to resolve the conflict in testimony between Bayon and the Board agent since viewing the evidence according to Bayon's testimony, there is no indication that the Board agent abused his discretion or that his conduct affected the outcome of the election. Section 20350(b) of the Board's

regulations (8 Cal. Admin. Code §20350(b)) gives a Board agent discretion to determine the number of observers each party may have. Bayon himself testified that the Board agent denied him observer status because there were already sufficient observers. There is no indication that the Board agent's determination of the number of observers was in any way an abuse of discretion.

Further, Mr. Bayon did not know how many prospective voters were in the broken down car or if they were en route to the Guadalupe site or if they were indeed unable to vote because of their late arrival. There also appears to be no reason why Bayon could not have told the agent that some voters were going to be late.

The Board agent's alleged statement, that Bayon could not vote, does not warrant setting aside the election since there is no evidence that the incident affected the choice of any voting employee, and one vote could not have affected the outcome of the election. Dumas Bros. Manuf. Co., 205 NLRB 919, 84 LRRM 1411 (1973); Bancroft Manuf. Co., 210 NLRB No. 90, 86 LRRM 1376 (1974); Newport News Shipbuilding, 239 NLRB No. 14, 99 LRRM 1518 (1978).

For the above reasons, the objection should be dismissed.

VI. Other Voter Disenfranchisement

There was some evidence presented at the hearing indicating that two employees were not allowed to vote. Miguel Cedillos testified that he was prevented from voting by two people, whom he could not identify, when he stated that he did not work for Maulhardt. Pedro Garcia Contreras testified that his brother was not allowed to vote because he did not have any identification.

Neither of the above incidents relates to an objection set by the Executive Secretary for hearing. In any event, the votes of the above two persons could not have affected the outcome of the election and so the incidents could not provide the basis for setting aside the election.

VII: Recommendation

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

DATED: January 22, 1980

Respectfully submitted,



NEWMAN STRAWBRIDGE
Investigative Hearing Examiner