

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SAN MARTIN MUSHROOM FARM;)	
)	
Employer,)	Case No. 80-RC-78-SAL
)	
and)	
)	
UNITED FARM WORKERS OF)	8 ALRB No. 12
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on September 29, 1980, a representation election was conducted on October 4, 1980 among the Employer's agricultural employees. The Official Tally of Ballots showed the following results:

UFW	10
No Union	4
Challenged Ballots	<u>1</u>
Total	15

The Employer timely filed a Petition to Set Aside the Election and on July 10, 1981, the Executive Secretary issued a Notice of Investigative Hearing for the purpose of taking evidence on the sole issue of "whether the Board agent in charge of the election told the employer's workers that they would get better benefits if they voted for the Union, and if so, whether such conduct affected the outcome of the election."

A hearing was held before Investigative Hearing Examiner

(IHE) Robert Le Prohn on August 4, 1981. In his decision issued on September 22, 1981, the IHE found that the Board agent did not make the improper statements attributed to him in the Employer's objection. The IHE recommended that the Employer's objection be dismissed and that the UFW be certified as the exclusive representative of the Employer's agricultural employees.

The Employer filed timely exceptions to the IHE Decision and a brief in support of its exceptions.

Pursuant to Labor Code section 1146, the Board has delegated its authority in this case to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the IHE's rulings, findings,^{1/} conclusions and recommendations.

As we are affirming the IHE's finding that the Board agent did not make any improper statements when he addressed Employer's workers, we find it unnecessary to reach the Employer's exceptions concerning the legal standard applied by the IHE for reviewing Board agent misconduct.

^{1/} To the extent that the IHE's credibility resolutions are based upon demeanor, the Board will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. Adam Dairy dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24, Rev. den. Ct.App., 2nd Dist., Div. 3, Mar. 17, 1980; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 153]. Having reviewed the record, we find that the IHE's credibility resolutions are supported by the record as a whole. However, in discrediting the testimony of Antonio Sandoval, we do not rely, as did the IHE, on the commonality between his interests and those of the Employer. There is ample support in the record for the IHE's credibility resolution without reliance on Sandoval's relationship to the Employer.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all agricultural employees of San Martin Mushroom Farms in the State of California for purposes of collective bargaining, as defined in Labor Code section 1155.2(a) , concerning employees' wages, hours, and working conditions.

Dated: February 19 , 1982

JOHN P. MCCARTHY, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

CASE SUMMARY

San Martin Mushroom Farms
(UFW)

8 ALRB No. 12
Case No. 80-RC-78-SAL

IHE DECISION

After the UFW filed a representation petition on September 29, 1980, an election was conducted among the agricultural employees of San Martin Mushroom Farms on October 4, 1980, in which the UFW received a majority vote. In its post-election objections, the Employer contended that a Board agent addressed its employees several days before the election and told them that they would get better employment benefits if they voted for the union. Based on his credibility resolutions, the IHE found that the Board agent did not make the alleged statements and recommended overruling the Employer's objection and certifying the UFW.

BOARD DECISION

The Board affirmed the IHE's rulings, findings, and conclusions, dismissed the objection, and certified the UFW as the exclusive collective bargaining representative of all the Employer's agricultural employees.

* * *

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
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
) Case No. 80-RC-78-SAL
)
SAN MARTIN MUSHROOM)
FARMS,)
)
) Petitioner,)
)
and)
)
) UNITED FARM WORKERS)
) OF AMERICA, AFL-CIO,)
)
) Respondent.)
)
_____)

APPEARANCES:

In Behalf of Petitioner:

Patricia J. Rynn
P. O. Box 2130
Newport Beach, California 92633

In Behalf of Respondent:

Marcos Camacho
P. O. Box 30
Keene, California 93531

DECISION

STATEMENT OF THE CASE

Robert LeProhn, Administrative Law Officer: This case was heard before me on August 4, 1981, in Gilroy, California.

On September 29, 1980, the United Farm Workers of America, AFL-CIO, filed a petition seeking certification as bargaining representative for all agricultural employees of San Martin Mushroom Farms. A representation election was conducted on October 4, 1980, among employees in the described unit. The Tally of Ballots was as follows:

UFW	10
No Union	4
Challenged Ballots	1
	15

Pursuant to the provisions of Labor Code Section 1156.3(c) and 8 Cal. Admin. Code Section 20365 (a) San Martin filed a Petition to Set Aside Election on October 10, 1980.

On July 10, 1981, the Executive Secretary issued a Notice of Investigative Hearing, limiting the taking of evidence to the following issue:

"Whether the Board agent in charge of the election told the Employer's workers that they would get better benefits if they voted for the Union, and if so, whether such conduct affected the outcome of the election.

Upon the entire record, including my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

Petitioner, San Martin Mushroom Farms, is engaged in growing mushrooms on a year-round basis. The size of

the employer's work force does not vary significantly during the year. It has no peak or harvest period employment.

Adolfo Rodriguez has been employed by the Agricultural Labor Relations Board (ALRB) as a Field Examiner for four and one-half years. During that period Rodriguez has participated in from 60 to 80 elections and has conducted approximately 30 elections. He conducted the San Martin election.

On October 2nd, Rodriguez went to the employer's operation to "educate" the workers regarding their rights under the Agricultural Labor Relations Act (ALRA). He arrived at approximately noon and contacted the son of the owner (Frank J. Gogliano, Jr.) to obtain permission to meet with the workers. After some discussion with Gogliano, Jr., Rodriguez' request was granted.^{1/}

Commencing about 12:40 p.m. Rodriguez met with the crew for approximately fifteen minutes in the vicinity of the time clock by the packing shed. At the outset of the meeting, he distributed a leaflet explaining worker rights under the ALRA, an ALRB Handbook and copies of the Direction of Election. After reading the leaflet aloud, Rodriguez requested any foremen, who were present to leave. He did not recall seeing anyone leave and concluded there were no foremen present. His request was standard Agency procedure whenever a Board Agent is to answer questions put forth by workers.

Rodriguez testified he did not remember telling

^{1/}Gogliano, Jr. did not testify. Rodriguez' testimony on this point is uncontradicted.

workers to vote for the Union, nor did he remember making any statements about loans, paid vacations or insurance. He denied using the word "benefits" during the course of the meeting and denied telling workers that if the Union won, they would have better benefits. When he finished meeting with the workers, Rodriguez went to San Martin's office to confer with its counsel.

Employee witness, Manuel Bolanos, called by the UFW, testified as follows.^{2/} A State agent came to talk to the workers on October 2nd. He arrived between 11:30 and 12:00 noon.^{3/} After greeting the workers, he asked a foreman who was present to leave so that he could speak to the workers. The foreman departed.^{4/} It was Bolanos' testimony that after leaving Sandoval was unable to hear anything said by Rodriguez.

The Board Agent distributed a leaflet and a book. Bolanos did not recall the Agent saying anything other than telling the workers they had the right to unite themselves into a union. He did not talk to the group about benefits nor tell them to vote for the Union. Bolanos felt the Board agent was neutral.^{5/}

Petitioner presented three witnesses with respect to what transpired at the October 2nd meeting: Antonio Sandoval,

^{2/} Bolanos has been employed for a little more than a year.

^{3/} Bolanos on cross-examination was able to name ten workers, including himself, in the group addressed by Rodriguez

^{4/} Bolanos identified the foreman as Antonio Sandoval; a person whom the parties agree is a statutory supervisor.

^{5/} Bolanos placed the length of the meeting at ten to fifteen minutes.

the foreman, and two rank and file employees: Engleberto Jiminez and Marcos Aragon Lopez.

Sandoval testified he was present when Rodriguez met with the workers one or two days before the election for about 45 minutes.^{6/} Rodriguez distributed papers and then read from them, stating that the papers had the laws which protected the workers. After he finished reading, Rodriguez explained about benefits which could be obtained "if the Union entered," i.e. perhaps loans, paid vacations, hospital and medical benefits. Sandoval quoted Rodriguez: "If the Union wins, be assured that you will obtain benefits." Sandoval testified he particularly remembered this statement because Rodriguez said he was from the State and yet made a pro-Union statement.

Sandoval also attributed the following statement to Rodriguez: "If you're going to vote for the Union don't be afraid, vote for the Union -- or no Union. You're not obliged. Do what you want. But if the Union wins, be sure that there are benefits."^{7/}

Engleberto Jiminez, a field worker, testified he attended a meeting two days before the election together with

6/ Sandoval places the time of the meeting at 3:00 p.m., stating that it occurred after lunch and some people had already come off work. This testimony is inconsistent with that of other witnesses and is not credited moreover, it casts doubt upon Sandoval's ability to recall accurately what transpired.

7/ In response to a question on cross-examination, Sandoval denied ever having been present when Union representatives spoke to the workers. Thus, rejecting the possibility he was confused as to who made the comments he attributes to Rodriguez.

all his co-workers.^{8/} Rodriguez was already speaking when Jiminez arrived; thus, Jiminez was unaware at the time that Rodriguez was a Board Agent. However, he did hear Rodriguez state that if the Union won, the workers could obtain various benefits.

On cross-examination Jiminez conceded that he had heard Union representatives talk to the workers about better benefits.

Marcos Aragon Lopez testified that Rodriguez stated he was a neutral representative from the State;^{9/} that he passed out and read papers to the group, after which workers could ask questions. He read them their rights as workers, i . e . , the right to organize and the right to a secret ballot election, and stated he was neutral and was present to maintain the secrecy of the vote. When he finished reading from the papers, Rodriguez stated, "Men, if the Union wins, that we'll have better benefits."^{10/} Lopez testified he remembered Rodriguez' remark because it wasn't contained in the papers which he distributed to the workers.

Lopez also testified that there were Union representatives present at the meeting who were introduced

^{8/} Jiminez has worked at San Martin for about 20 months

^{9/} Lopez has been employed as a general laborer for approximately three years.

^{10/} This statement is consistent with a declaration given by Lopez on October 3, 1980.

as such by Rodriguez.^{11/}

ANALYSIS AND CONCLUSIONS

The Board will set aside an election "only where the circumstances of the first election were such that employee. could not express a free and uncoerced choice of collective bargaining representative."^{12/}

"The burden of proof is on the party seeking to overturn an election to come forward with specific evidence showing that unlawful acts occurred and that these acts interfered with the employees' free choice to such an extent that they affected the results of the election." Bruce Church, Inc., 3 ALRB No. 90, Slip Op. 48, (1977) (conclusions of the IHE adopted by the Board); TMY Farms, 2 ALRB No. 58 (1976).

In the context of the present case, the burden is on the employer to prove by a preponderance of the evidence (1) that Board Agent Rodriguez made pro-Union statements at the worker education meeting he conducted, and (2) that said statements, assuming them to create an appearance of bias, affected the conduct of the election and impaired the validity of the balloting as a means of employee choice.^{13/}

11/ The presence of Union representatives was mentioned by no other witness. If Lopez is correct in this regard, it is possible that any remarks regarding better benefits were made by a Union representative rather than Rodriguez.

12/D'Arrigo. Bros. of California , 3 ALRB No. 37 (1977) .

13/Coachella Growers,. Inc . , 2 ALRB No. 17 (1976) ; see also Monetary Mushroom, Inc. , 5 ALRB No. 2 (.1979) ; Paul W. Bertuccio & Bertuccio Farms, 4 ALRB No. 91 (1978) ; Mike Yurosek, & Sons, Inc. , 4 ALRB No. 54 (1978) ; Bruce Church, Inc. , Supra.

Adjudging the credibility of a Board Agent is to be avoided where possible.^{14/} When dealing with objections based upon Agent misconduct, the Board most frequently avoids the credibility problem by assuming the Agent acted as alleged thereafter finding the misconduct to be too insignificant or isolated to have affected the results of the election.^{15/}

This approach cannot be followed in the instant case. Here, the alleged pro-Union remarks were made to the entire work force in the context of an assembly convened by a Board Agent and would certainly to an unsophisticated farm worker have appeared to bear the imprimatur of the agency itself. Thus, if one were to conclude Rodriguez made the better benefits remark, it would be necessary to set aside the election. It therefore becomes necessary to resolve the conflict in testimony regarding the statement attributed to Rodriguez. An alternative approach, and one not inappropriate in the present case, is to regard the credibility problems as unresolvable and for that reason recommend that the objection be dismissed because Petitioner has failed to sustain its burden of proof. Such an approach obviates the need to deal with Rodriguez credibility. However, it is not clear that a recommendation resting on this independent ground would be regarded as a sufficient basis for certifying

^{14/} Mike Yurosek & Sons, Inc., Supra.

^{15/} e.g. Mike Yurosek & Sons, Inc., Supra; Bruce Church, Inc., Supra. But see Paul W. Bertuccio & Bertuccio Farms, Supra; Monterey Mushroom, Inc., 5 ALRB No. 2 (1979) ,

the results of the election. So we turn to an examination of the testimony.

I am not convinced that Sandoval was present while Rodriguez spoke with the workers. Contrary to the other witnesses Sandoval places the time of the meeting in late afternoon as opposed to mid-day. He also has the meeting lasting substantially longer than other witnesses. Moreover, Bolanos testified that Sandoval left the assemblage before Rodriguez began to speak, and his presence was not corroborated by either of the other witnesses called by Petitioner. As a supervisor, Sandoval's interests are common with those of Petitioner, a factor appropriately considered in evaluating his credibility. For the reasons set forth, the testimony of Sandoval is entitled to little weight.

Rodriguez is an experienced Field Examiner. Nothing in the record suggests that he has a reputation of pro-Union bias. Thus, there is no historical explanation as to why he might have made the benefit remark.

Petitioner's witness Lopez testified that Rodriguez explained worker rights under the ALRA and their right to a secret ballot election and that he proclaimed his neutrality.^{16/} Having done, so, it is unlikely that Rodriguez would then make

16/ Conduct corroborated by the testimony of UFW witness, Bolanos.

a statement which could only be construed as suggesting the workers vote for the Union. It was out of character.

Manuel Bolanos, a current employee, testified that Rodriguez said nothing about benefits and did not suggest voting for the Union. His testimony is entitled to greater weight than that of employee witness presented by the Petitioner.^{17/} While an objection proceeding is characterized as non-adversary, there can be little doubt that Bolanos' testimony was contrary to the position asserted by his employer.

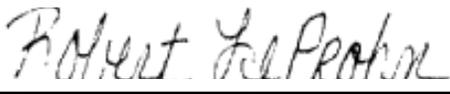
To summarize: Rodriguez' specific denial that he made the "benefits" statement, Bolanos' corroboration of that position, the absence of any reputation for pro-Union bias on the part of Rodriguez, and the unlikelihood he made such a statement lead to the conclusion he did not do so. Stated otherwise, Petitioner has not met its burden of persuasion.

RECOMMENDATION

For the reasons set forth above, I recommend that the Board dismiss the objection and certify the results of the election.

Dated: September 22, 1981

AGRICULTURAL LABOR RELATIONS BOARD

By 

Robert LeProhn
Administrative Law Officer

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^{17/} Gifford & Hill Co., Inc., 188 NLRB 337, 345 (1971); Gengia Rug, 313 NLRB 1304. fn. 2 (1961).