

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

ROBERT J. LINDELEAF,	)	
	)	
Employer,	)	Case No. 80-RC-54-SAL
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	8 ALRB No. 22
AMERICA, AFL-CIO,	)	
	)	
Petitioner.	)	

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DECISION AND CERTIFICATION OF REPRESENTATIVE

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

UFW . . . . .	71
No Union . . . . .	35
Challenged Ballots . . . . .	<u>4</u>
Total . . . . .	110

The Employer timely filed post-election objections, four of which were set for hearing. The Employer alleged that UFW organizers and supporters threatened the Employer's employees with physical violence and job loss if they failed to sign authorization cards or to support the union, and that UFW organizers violated the Board's access regulations. (Cal. Admin. Code, tit. 8, §§ 20900, et seq.) The Employer also contended that Board agents abused their discretion by allowing a UFW organizer to jump on the

Employer's tomato harvester and talk to workers in order to secure an observer for the election, by stating at the pre-hearing conference that they would ignore challenges to voters, and by failing to check voter identification at the election and refusing the Employer's observer's challenges.

The hearing on the above objections was held on June 1, 2 and 3, 1981, before Investigative Hearing Examiner (IHE) Beverly Axelrod, who issued her Decision on October 29, 1981. In her Decision, the IHE found that the Employer had failed to establish that UFW organizers and supporters threatened the Employer's employees. In addition, the ALO found that, although the Employer established that some technical violations of the Board's access regulation occurred, those violations were de minimis in nature and did not deprive the voters of their free choice of a bargaining representative in the election. The IHE also found that the Employer failed to demonstrate that the Board agents abused their discretion either during the incident when a UFW organizer climbed on the Employer's tomato harvester, or during the election when a Board agent refused to accept the Employer's observer's challenges.<sup>1/</sup> The IHE recommended that the Employer's objections be dismissed and that the UFW be certified as the exclusive collective bargaining representative of the Employer's agricultural employees.

The Employer timely filed exceptions to the IHE Decision

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<sup>1/</sup>The IHE found it unnecessary to resolve the conflict in the testimony concerning the Board agent's remarks at the pre-hearing conference.

and a brief in support of its exceptions, and the UFW filed a reply brief.

Pursuant to Labor Code section 1146,<sup>2/</sup> the Agricultural Labor Relations Board has delegated its authority in this case to a three-member panel.

The Board has considered the record and the attached IHE Decision in light of the exceptions and briefs, and has decided to affirm the IHE's rulings, findings and conclusions, and to adopt her recommendations.

We agree with the IHE's finding that the Employer failed to produce any competent evidence that UFW organizers or supporters threatened the Employer's employees with job loss if they refused to sign authorization cards or to vote for the UFW. The only testimony offered by the Employer at the hearing concerning threats was hearsay. Pursuant to section 20370(c) of the Board's regulations, hearsay, by itself, is insufficient to support a finding of fact unless it would be admissible in a civil action. Since the hearsay statements elicited from the Employer's witnesses would not be admissible in a civil action under any recognized exception to the hearsay rule (see Cal. Evid. Code, §§ 1220, et seq.), those statements are insufficient to support a finding that any threats

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<sup>2/</sup>All section citations herein refer to the California Labor Code unless otherwise stated.

were made.<sup>3/</sup>

We share the IHE's concern that the Board agent acted improperly when he failed to individually note all the challenges he refused to accept during the election. Such failure is contrary to section 2-7100 of the Board's Election Manual and makes it difficult to evaluate a party's objection that the challenges should have been allowed.<sup>4/</sup> In this case, however, the rejected challenges involved at most 13 employees, an insufficient number to affect the results of the election, which the union won by a wide margin. In addition, the Employer failed to show that any persons who voted were not eligible to vote, since the employees were identified by one of the observers and/or provided union identification cards. Toste Farms (Dec. 5, 1975) 1 ALRB No. 16.

Accordingly, we hereby overrule the Employer's objections and we shall certify the union.

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<sup>3/</sup>We note that, even if the hearsay statements were admissible, the Employer would still have failed to show that misconduct occurred which would require us to set aside the election. There is inadequate proof that any threats were made by UFW organizers or agents, and, generally, threats of job loss made by other employees are insufficient grounds to overturn an election. Patterson Farms, Inc. (Dec. 1, 1976) 2 ALRB No. 59; San Diego Nursery Co., Inc. (June 14, 1979) 5 ALRB No. 43; Bufkor-Pelzner Division, Inc. (1972) 197 NLRB 950 [80 LRRM 1577].

<sup>4/</sup>However, the IHE's reference to George Lucas and Sons (Feb. 1, 1977) 3 ALRB No. 5, is not entirely on point. In that case, we declared void three challenged ballots that were cast without a notation of the voter's name, making it impossible to resolve the voter's eligibility. When employees vote challenged ballots, the Board can later resolve the challenges and either open and count or destroy the ballots. In this case, even if the rejected challenges had each been noted, and we determined that the voters were ineligible to vote, it would be impossible to separate their ballots from these of the other employees.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to California Labor Code section 1156, the said labor organization is the exclusive representative of all the agricultural employees of Robert J. Lindeleaf in the State of California for the purpose of collective bargaining as defined in Labor Code section 1155.2(a), concerning wages, working hours, and other terms and conditions of employment.

Dated: March 23, 1982

JOHN P. MCCARTHY

ALFRED H. SONG

JEROME R. WALDIE

CASE SUMMARY

Robert J. Lindeleaf  
(UFW)

8 ALRB No. 22  
Case No. 80-RC-54-SAL

IHE DECISION

After a representation election was held on September 4, 1980, the Employer filed post-election objections alleging: (1) that UFW organizers and supporters threatened the employees with physical violence and job loss if they failed to sign authorization cards or to support the union; (2) that UFW organizers violated the Board's access regulations; and (3) that Board agents abused their discretion by allowing a UFW organizer to jump on the Employer's tomato harvester and talk to workers in order to secure an observer for the election, by stating at the prehearing conference that they would ignore challenges to voters, and by failing to check voter identification at the election and refusing the Employer's observer's challenges.

The IHE found that the Employer failed to establish that UFW organizers and supporters threatened employees and that, although some technical violations of the Board's access regulation occurred, those violations were de minimis in nature and insufficient to deprive voters of their free choice in the election. In addition, the IHE found that the Employer failed to demonstrate that Board agents abused their discretion either during the incident concerning the tomato harvester, or during the election by a Board agent's refusal to accept the Employer's observer's challenges.

BOARD DECISION

The Board affirmed the findings, rulings, and conclusions of the IHE, noting that the only testimony offered by the Employer at the hearing concerning threats was hearsay and was, by itself, insufficient to support a finding that threats were made. The Board therefore overruled the Employer's objections, upheld the election, and certified the UFW as the exclusive representative of the Employer's agricultural employees.

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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: )  
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ROBERT J. LINDELEAF, )  
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Employer, )  
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and )  
 )  
UNITED FARM WORKERS OF )  
AMERICA, AFL-CIO, )  
 )  
Petitioner. )  
\_\_\_\_\_ )

CASE NO.: 80-RC-54-SAL

Stanley E. Tobin, James G. Johnson,  
Hill Farrer & Burril and Pioda, Bryan  
& Ames, for the Employer

Chris A. Schneider for the Petitioner

DECISION

STATEMENT OF THE CASE

BEVERLY AXELROD, Investigative Hearing Examiner: This case was heard by me on June 1, 2 and 3, 1981 in Gilroy, California. A petition for certification was filed by The United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW), on August 29, 1980. The Agricultural Labor Relations Board conducted an election on September 4, 1980.

The tally of ballots showed the following results:

UFW	71
No Union	35
Unresolved challenged ballots	<u>4</u>
TOTAL	110

Robert J. Lindeleaf (hereinafter referred to as the Employer) thereafter filed timely post-election objections pursuant to Labor Code Section 1156.3(c). The Executive Secretary of the Board reviewed the 11 objections filed by the Employer and dismissed objections nos. 3, 4 and 6 in their entirety and parts of objections nos. 1, 2, 5, 7, 8, 9, 10 and 11, with the result that the following three issues were set for hearing:

1. Whether the UFW organizers and supporters threatened the Employer's workers with physical violence and job loss if they failed to sign authorization cards or support the union and, if so, whether such threats created an atmosphere in which the employees were not able to freely exercise their choice of a collective bargaining agent.

2. Whether Board agents abused their discretion by allowing a UFW organizer to jump on the Employer's tomato harvester, walk on the harvester and talk to workers on the harvester while the organizer was attempting to secure an observer for the tomato field polling site, and, if so, whether such abuse of discretion affected the outcome of the election.

3. Whether a Board agent said at the pre-hearing conference that, if there were more than a few challenges to



votes, the Board agents would ignore the challenges and continue with the voting because noting the challenges takes too long, and whether the Board agents abused their discretion in checking voter identification and refusing challenges at the election.

On March 10, 1981, the Executive Secretary issued an order granting in part and denying in part the Employer's request for review and thereby added an additional issue for hearing, viz.:

4. Whether UFW organizers violated the access regulations of The Agricultural Labor Relations Board, 8 Cal. Admin. Code Section 20900, et seq., and whether such violations of the access regulations, in combination with misconduct alleged in the objections heretofore set for hearing, created an atmosphere in which the employees were not able to freely exercise their choice of a collective bargaining representative in the election.<sup>1/</sup>

All parties were given full opportunity to participate in the hearing and, after the close thereof, counsel for each side filed a brief in support of its respective position.

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1/ The issues set for hearing were clearly spelled out. The jurisdiction of an Investigative Hearing Examiner is strictly limited by the order of the Executive Secretary. Despite this, counsel for the Employer attempted on numerous occasions to present testimony concerning objections to the election which had already been dismissed. Such attempts were ruled out of order by the Hearing Examiner. Counsel for the Employer was permitted, however, to make offers of proof concerning these non-noticed objections in order to allow them to preserve whatever appellate remedies they might have.

Upon the entire record, including my observations of the demeanor of the witnesses and after consideration of the briefs filed by the parties I make the following findings of fact and conclusions of law:

### FINDINGS OF FACT

#### I. JURISDICTION

Neither the Employer nor the UFW 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), that the UFW is a labor organization within the meaning of Labor Code Section 1140.4(f), and that an election was conducted pursuant to Labor Code Section 1156.3 among the Employer's employees.

#### II. BACKGROUND

The election on September 4 was held in two locations at separate times. In the morning, the election was held in the bell pepper field near Leavesly Road and Llagas Creek, and in the afternoon the election was held in the tomato field near Renz Lane, between Tenth and Oilman Road.

#### III. ALLEGED PRE-ELECTION MISCONDUCT AND THREATS OF JOB LOSS IF EMPLOYEES REFUSED TO SIGN AUTHORIZATION CARDS AND VOTE FOR THE UFW

##### A. Facts

The Employer called several witnesses in support of its contention that threats of job loss had created an atmosphere of intimidation at the Lindeleaf farm.

Porfirio Acevedo, an employee of some 11 years tenure with Lindeleaf testified that on July 3 (some two months before the election) he was driving from one field to another when he saw a group of people drinking water from the line he was working on. He stopped his truck and the group of people, which included 6 men, an elderly woman and some children, approached him. One of them had a red flag with a black eagle on it. When they ascertained that he worked for Lindeleaf, one of the adults "called one of the children and they asked him to bring some cards" (II Tr., p. 35).<sup>2/</sup> The card was given to Acevedo for him to sign. He signed it without reading it because "the men I work for had told us not to -- if we were confronted in a way like that, to just go ahead and sign and don't argue" (II Tr., p. 36). Acevedo made no mention of any threats on the part of the group of people.

Leandro Estrada testified that three days before the election an unidentified Mexican man in his 30s told him (Estrada) that some unidentified member of "the union had threatened him by saying that if he didn't vote for the union that he wouldn't have a job" (I Tr., p. 129). He also testified that approximately three other unidentified persons made similar statements to him (I Tr., p. 130).

This testimony, and the subsequent testimony of Jesus Olivares, was the subject of considerable debate at the hearing

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<sup>2/</sup> References to the hearing transcript will be denominated "Tr.", preceded by the volume number "I", "II", or "III", and followed by the page number(s) on which the pertinent material is found.

as to its evidentiary sufficiency. Faced with total exclusion of the testimony on the grounds that it was impermissible hearsay, counsel for the Employer offered the testimony not for the truth of the matter asserted (i.e. that threats were actually made as recounted by Estrada and Olivares) but only for the limited purpose of showing the state of mind of the employees near the time of the election. It was received on this limited basis.

Jesus Olivares, a former employee of Lindeleaf's labor contractor, who was to begin work for Lindeleaf the day of his testimony or the day thereafter, also testified to overhearing conversations of unidentified employees. He could not identify who was speaking because he was busy working and "couldn't turn around and find out who was saying what" (I Tr., p. 152). Nonetheless, he indicated that these people said "if the union won that everybody had to show a card issued by the union, and that if they didn't have that card that they would not be able to work in those places" (I Tr., p. 154). The unidentified workers never stated the type of card to which they were referring (I Tr., p. 155). These same workers also "kept saying they were going to vote for the union because with a union they were going to get more benefits" (I Tr., p. 167).

Lastly, Olivares testified to a comment made after the election by Enadelina Hernandez, a worker at Lindeleaf, that "Now we won, and we're going to get rid of all the 'esquir-roles'."<sup>3/</sup>

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3/ The term "esquirrole" was translated to mean either "scab" or "strikebreaker".

B. Analysis and Conclusion

The record is devoid of any competent testimony regarding threats of job loss by the union if employees refused to sign authorization cards and vote for the UFW.

Porfirio Acevedo mentioned no threats whatsoever. To the extent the Employer alleges that such a threat was implicit in the situation he faced, the facts do not support such a conclusion. Although he was outnumbered by the people who asked him to sign an authorization card, that group included an elderly woman and several children. Moreover, there is nothing to indicate they interfered with his freedom to go or that they used their superior numbers to coerce him into signing. In fact, to the extent that he described his reason for signing the card, it was based on orders he received from his employer rather than acts of the representatives of the union.

Leandro Estrada and, to some extent, Jesus Olivares alluded to overhearing unidentified persons describing threats made by unidentified union representatives. Their testimony on this matter was hearsay, offered not for its truth but merely to show the state of mind of the employees who were alleged to have made the statements. However, Employer's counsel seems now to be arguing for substantive use to the extent that he suggests these statements indicate threats were actually made. They were never admitted for this broader purpose and cannot be so used.

Looking at these statements in light of the more limited purpose for which they were received, they do tell us something about the state of mind of several of the employer's

workers near the time of the election. However, even this message is far from clear. It does appear that the workers overheard by Leandro Estrada may have been fearful of reprisals if they did not support the union and it won. However, since we cannot use their statement substantively, there is no evidence that this state of mind was the result of actual union threats. It could have been based on unfounded rumor or mere speculation on the part of these three or four unidentified workers. Threats by persons not associated with the union do not constitute sufficient ground to set aside an election where they do not appear to stem from a union policy of threatening employees, there is no showing of a pervasive atmosphere of fear, or few employees are directly threatened and there is a high voter turnout. Takara International d/b/a Niedens Hillside Floral, 3 ALRB No. 24 (1978).

The state of mind of the persons overheard by Mr. Olivares is even more ambiguous. To the extent that it showed a belief on their part that if the union won they would have to have a card in order to work, it is certainly open to the interpretation that they believed that if the union won, it would attempt to negotiate a valid union security clause in its contract with the employer. This is a particularly credible interpretation in light of Mr. Olivares' uncertainty as to which cards were being discussed and in light of the fact that these very same workers' declared state of mind included a belief that a vote for the union meant more benefits for them.

Nevertheless, even if we were to interpret this ambiguous state of mind evidence as fear that reprisals would take place if workers failed to support the union, there is no competent evidence placing responsibility for that state of mind on the union or its supporters.

Lastly, the post-election comment attributed to Enadelina Hernandez adds little to our understanding of the state of mind of the workers at the time they voted and is subject to the same frailties as the previous testimony; it cannot be relied upon for broader evidentiary use.

The Employer has failed to meet its burden to prove that the UFW organizers and supporters threatened the employer's workers with physical violence and job loss if they failed to sign authorization cards or support the union or that any such threats created an atmosphere in which the employees were not able to freely exercise their choice of a collective bargaining agent.

#### IV. ALLEGED ABUSE OF DISCRETION BY BOARD AGENTS REGARDING THE TOMATO HARVESTER INCIDENT

##### A. Facts

The Employer presented three witnesses and the UFW presented one to testify about an incident wherein Larry Tramu-tola, a UFW organizer, climbed onto a tomato harvester in order to secure an election observer for the afternoon election in the tomato fields. Carlos Acevedo (the nephew of Porfirio Acevedo), Ferman P. Canno and Robert John Lindeleaf testified for the Employer. Esmeralda Ramirez testified for the UFW. Although there were some minor inconsistencies in the

testimony of the various witnesses they were not material and all testified essentially to the same sequence of events.

A few minutes prior to commencement of voting in the tomato field, Larry Tramutola realized that one of his morning observers had not come over from the bell pepper field. In order to obtain another observer, he got into his car and drove over to where a tomato harvester, with its crew on board, was situated. Prior to that time, the ALRB agent in charge, Neuman Strowbridge, had designated the field as a "quarantined area" (I Tr., pp. 60, 64).

As Tramutola jumped on the machine to talk to the workers, Strowbridge looked out to the field, apparently to see what was going on. Immediately upon seeing Tramutola in the field, Strowbridge sent Luis Viniegra, another ALRB agent, out after Tramutola (I Tr., pp. 62-64; II Tr., pp. 91-92). At this point, the Employer, Robert Lindeleaf, followed Viniegra into the field. Viniegra went to the machine where Tramutola was and spoke to Tramutola for a couple of seconds. Tramutola then got off the machine within thirty to forty seconds and left the field.

#### B. Analysis and Conclusion

The Employer has failed to demonstrate that the Board agents abused their discretion in this incident. Immediately upon seeing that Tramutola had entered the "quarantined area", Strowbridge sent Viniegra into the field to get Tramutola off the harvester in order to protect the integrity of the election. Viniegra communicated the demand to



Tramutola and he (Tramutola) left. The Board agents did exactly what one would expect them to do.

There is no evidence to indicate that Tramutola was engaging in last-minute electioneering or doing anything other than attempting to secure an observer for the election. There is no evidence that this incident intimidated any of the workers on the machine or that any of the workers who witnessed the incident did not vote as a result of this or were unable to make a free choice at the polls when they did vote.

V. ALLEGED STATEMENT BY BOARD AGENT THAT CHALLENGES WOULD NOT BE ACCEPTED IF THERE WERE TOO MANY AND ALLEGED ABUSE OF DISCRETION BY AGENTS IN CHECKING VOTER IDENTIFICATION AND REFUSING CHALLENGES

A. Facts

The Employer, Robert Lindeleaf, testified that at the pre-election conference in the ALRB offices on September 3, Ladislao Pineda, one of the ALRB agents, said that "If there was [sic] more than three challenges, they would be overlooked and the proceedings would go on, or the election would go on" (III Tr., p. 6). Ladislao Pineda was called by the Employer as an adverse witness and testified that he did not make the statements attributed to him by Mr. Lindeleaf (III Tr., pp. 2-3).

Leandro Estrada also testified for the Employer, indicating that he was chosen as a company observer and that during the morning election in the bell pepper field it was his responsibility to observe the handing out of ballots and to note challenges to prospective voters (I Tr., pp. 112, 140).

During the afternoon election in the tomato field it was his responsibility to observe the ballot box and he had nothing to do with making challenges to prospective voters for" this part of the election (I Tr., p. 140). He testified that he made "about ten" challenges for lack of proper identification at the morning election.<sup>4/</sup> He stated further that he didn't believe that all his challenges were noted for the record (I Tr., p. 117) and that although he couldn't say for sure whether all his challenges were noted (I Tr., p. 133), it was his opinion that Exhibit E-3 (the ALRB form for Challenges Refused) was not an accurate summation of every challenge he made because it only noted four challenges for improper identification at the morning election (I Tr., p. 139)<sup>5/</sup>

Finally, Estrada testified that he made these challenges of all workers who were using union cards to identify themselves since some of these cards were without names or Social Security numbers (I Tr., p. 116). He noted further that he made these challenges even though he himself recognized a

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4/ An offer of proof was made to the effect that Estrada made other challenges based on the Employer's claim regarding separate bargaining units. This was ruled out of order as being outside the issues noticed for hearing (I Tr., p. 115).

5/ This issue was complicated to some degree by a problem of proof that seems to recur at these election hearings. The original "Challenges Refused" form (Exhibit E-3) simply does not photocopy adequately and the copy that was introduced into evidence was a virtual blank page. It was only through the efforts of counsel for the Employer that Exhibit E-3 was corrected to add the four names that apparently appeared on the original. (See I Tr., pp. 135-139.)

number of voters as members of the crew (I Tr., p. 131) and that the workers were allowed to vote based on the fact that they were recognized and identified by observers for the union (I Tr., pp. 118-119).

B. Analysis and Conclusion

As to the contention that agent Ladislao Pineda threatened to ignore challenges in excess of three or four we are faced with the flatly contradictory testimony of Mr. Pineda and Mr. Lindeleaf. I found both to be credible witnesses and have no reason to disbelieve either. However, the declaration of intent of Mr. Pineda is not the critical issue. Instead the matter before us that determines the validity and integrity of the election is not what Mr. Pineda said he intended to do but rather what agent Strowbridge did, in fact, do on the day of the election.

As to the actual challenges lodged on the day of the election, all challenged voters were identified by observers for the union. Title 8 of the California Administrative Code Section 20350 provides that the Board Agent may, in his discretion, determine the adequacy of identification supplied by prospective voters and that recognition of an employee by an observer may, at the discretion of the Board Agent, constitute adequate compliance. Toste Farms, 1 ALRB No. 16 (1975); cf. Tex-Cal Land Management, 3 ALRB No. 11 (1978).

I find more troublesome the contention that the Board Agent failed to note all challenges for the record and chose instead to summarize some of them under a general category of

challenges for I.D. This would seem to run afoul of the rule that challenged ballots cast without a notation of the voters' names are void (see, for example, George Lucas and Sons, 3 ALRB No. 5).

However, according to Mr. Estrada's testimony, no more than 6 to 10 challenges are involved, depending upon whether the four additions to Exhibit E-3 were properly noted. Since the UFW won this election by an overwhelming 71 to 35 margin, the number of challenges which may have been improperly noted is not outcome determinative.

Therefore, even if we accept the Employer's version of these facts, there are no grounds for setting aside the election. R.T. Englund, 2 ALRB No. 23; TMY Farms, 2 ALRB No. 58.

VI. ALLEGED VIOLATIONS OF THE "ACCESS RULE" AND WHETHER THEY AFFECTED THE OUTCOME OF THE ELECTION

A. Facts

The Employer called several witnesses to testify to alleged violations of the ALRB's access rule.

Carlos Acevedo testified that on September 1 he went out to one of the tomato fields at lunchtime where some 15 workers were eating their lunch. Two or three UFW organizers attempted to talk to the workers about union benefits but were told by the workers that they were not interested. When the lunch break was over the organizers left the field (I Tr., pp. 28-41).

Robert Lindeleaf testified that on August 31 he and his wife drove out to the tomato field where they found four or five UFW organizers talking to a group of 20 to 24 workers

who were on break. Since it was not a lunch break Lindeleaf told the organizers to leave, which they did (II Tr., pp. 80-83).

Louise Lindeleaf testified that she and her husband returned to the tomato field later that evening. There she saw UPW organizer Mike Hernandez and two or three others whom she assumed to be with the UFW, talking to workers in the middle of a road that borders one of the company fields (I Tr., pp. 85, 88, 95). She went up and stood directly behind Hernandez for some 20 to 30 minutes to watch him while he assisted workers in filling out authorization cards (I Tr., p. 89). Hernandez and the workers were speaking in Spanish and she was unable to understand what they were saying. After she saw Hernandez fill in the name and address for several workers on the card she demanded to know what he was doing. Hernandez raised the card in the air, responding: "Let me be a witness that this gentleman can't write English, so I'm going to put an X on it" (I Tr., pp. 89-90).

James Zamzow also testified for the Employer. He said that on August 25 he drove out to one of the Employer's fields where 50-60 employees were working. He saw Mike Hernandez and two other UFW organizers talking to the workers. Since this was a "non-access" period he asked Hernandez and the others to leave. They did so (II Tr., pp. 56-60). Hernandez waited until after quitting time and then returned to talk with workers where they had their cars parked in the loading area (II Tr., pp. 62, 65).

Zamzow also testified that two days later he saw Hernandez and five other UFW organizers talking to a group of about 60 workers who were on lunch break. Zamzow told one of the organizers (John Brown) that they were only allowed to have four organizers present for a crew of 60. The two extra organizers left before the end of the lunch break (II Tr., pp. 66-71).

Javier Lopez testified that on September 3 he went to one of the Employer's tomato fields where 20-25 employees were taking a lunch break. There he saw John Brown and three other UFW organizers talking to the workers. Lopez told Brown that since there were only 30 workers present, the UFW was limited to two organizers. Brown told two of the others to leave, which they did (II Tr., pp. 73-75).

#### B. Analysis and Conclusion

The law is quite clear that access violations do not in and of themselves provide grounds for setting aside an election unless it can be shown that they were of such a serious nature as to deprive voters of their exercise of free choice. K.K. Ito, 2 ALRB No. 51 (1976); Dessert Seed, 2 ALRB No. 53 (1976); Triple E Produce, 4 ALRB No. 20.

Some of the testimony presented by the Employer (such as that of Carlos Acevedo) simply does not indicate a violation of the rules. It is not a violation of the access rules to attempt to win over workers (on a lunch break) who indicate that they are not interested in hearing about a union.

The other testimony discloses -- at the very worst -- violations of the most technical sort, i.e. having three or four organizers present when the rules limit the union to two. In all such situations the organizers left when they were asked to do so by the company. There is no testimony that indicates that the UFW at any time interfered with work at Lindeleaf. There is nothing to indicate that these violations, individually or collectively, deprived the voters of their free choice of a bargaining representative. To the extent that violations of the access rules have been proven they are de minimus in nature and do not warrant overturning the results of the election.

#### CONCLUSIONS

For all of the above reasons, I find that the election on September 4, 1980 was not tainted, and the employees of Employer were not deprived of the opportunity to exercise their free choice in that election.

#### RECOMMENDATION

Based on the findings of fact, analysis, and conclusions, I recommend that the Employer's objections 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: October - 11, 1981

Respectfully submitted,

  

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BEVERLY AXELROD  
Investigative Hearing Examiner