

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

DRISCOLL RANCH, INC.)	
)	
Employer,)	
	)	Case No. 80-RC-2-SAL
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,	)	8 ALRB No. 9
)	
Petitioner.)	
)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO, (UFW) on July 24, 1980, a representation election was conducted on July 26 among the Employer's agricultural employees. The official Tally of Ballots showed the following results:

UFW .....	. . .	.115
No Union. ....	. . .	35
Challenged Ballots. .		3
Void. ....	. . .	<u>-1</u>
Total		154

The Employer timely filed post-election objections, one of which was set for hearing. In that objection, the Employer alleges that the Board agent failed and refused to permit company observers to inspect the ballot box prior to its being closed in preparation for the voting.

A hearing was held before Investigative Hearing Examiner (IHE) Beverly Axelrod on July 21, 1981. In a decision issued on

September 27, 1981, the IHE found that, at most, there was a technical violation of the Election Manual rules because one company observer could see only half way into the box prior to its being sealed. The IHE recommended that the Employer's objection be dismissed and that the UFW be certified as the exclusive collective bargaining 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 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 Decision in light of the exceptions and brief, and has decided to affirm the IHE's rulings, findings, and conclusions, and to adopt her recommendation.

At the hearing, the evidence fell far short of proving that the Board agent failed and refused to allow the company observers to inspect the ballot box. The Employer presented evidence that one observer could not see the bottom of the ballot box from her vantage point. However, there was no allegation or proof that that observer requested to see further inside the box and was refused, or that she in any way expressed any dissatisfaction or concern with the procedure at the time. There was no evidence that any of the other company observers were unable to observe that the box was empty prior to being sealed. There was uncontradicted evidence that 75 to 100 people did see the box

empty. As we have stated before, deviations from the procedures in the ALRB Election Manual, without more, are not grounds for setting aside a secret-ballot representation election and should be dismissed at the prehearing stage. Harden Farms (Feb. 23, 1976) 2 ALRB No. 30. Had the objection here been worded to reflect the actual proof presented, it would have been dismissed at that, stage. Because the objection alleged what appeared to be a substantial issue, it was set for hearing and unnecessarily delayed certification for ten months. Accordingly, the Employer's objection is hereby dismissed, and we shall certify the UFW as collective bargaining representative of the Employer's agricultural employees.

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 Driscoll Ranch, Inc., in the State of California for purposes of collective bargaining, as defined in Labor Code section 1155.2(a), concerning employee's wages, hours, and working conditions.

Dated: February 19, 1982

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

JOHN P. MCCARTHY, Member

CASE SUMMARY

Driscoll Ranch, Inc.

8 ALRB No. 9
Case No. 80-RC-2-SAL

ALO DECISION

One objection was set for hearing, that the Board agent failed and refused to permit company observers to inspect the ballot box prior to its being sealed in preparation for voting. The ALO found that there was no misconduct and that the Board agent showed the empty box to 75-100 people prior to sealing it. The ALO further found that, at most there was a technical violation of the Election Manual rules since one company observer could not see the bottom of the box before it was sealed. Since this technical violation was not shown to have affected free choice or the outcome of the election in any way, the ALO recommended that the election be upheld and the UFW certified.

BOARD DECISION

The Board affirmed and adopted the recommendations of the ALO.

* * *

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

* * *

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:)	
)	
DRISCOLL RANCH, INC.,	)	Case No. 80-RC-2-SAL
)	
Employer,)	
)	
and	)	INVESTIGATIVE HEARING
	)	<u>EXAMINER DECISION</u>
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

Alan S. Gerber,
Littler, Mendelson, Fastiff & Tichy for the Employer.

Chris A. Schneider,
 Legal Department, UFWA/AFL-CIO for the Petitioner.

DECISION

STATEMENT OF THE CASE

BEVERLY AXELROD, Investigative Hearing Examiner: This case was heard, before me in Salinas, California on July 21, 1981. A petition for certification was filed by the United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW), on July 24, 1980. The Agricultural Labor Relations Board conducted an election on July 26, 1980. The tally of ballots showed the following results:

UFW	115
No Union	35
Unresolved Challenged Ballots	3
Void	<u>1</u>
TOTAL	154

Driscoll Ranch, Inc. (hereinafter referred to as the Employer) thereafter filed timely post-election objections pursuant to Labor Code Section 1156.3 (c),

The following issue was set for hearing: Whether the ALRB agents conducting the election failed to show company observers an empty ballot box prior to the commencement of voting, thereby placing a taint on the election process.

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.

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

FINDINGS OF FACT

WHETHER ALRB AGENTS CONDUCTING THE ELECTION FAILED TO SHOW COMPANY OBSERVERS AN EMPTY BALLOT BOX PRIOR TO COMMENCEMENT OF VOTING AND, AS A RESULT, CAST A TAIN T UPON THE INTEGRITY OF THE ELECTION.

A. Facts

Pursuant to the aforementioned Petition for Certification, a representative election amongst the employees of Driscoll Ranch, Inc. was held on July 26, 1980 at the ALRB office in Salinas, California. Lawrence Alderete was the Board Agent in charge of the election.

Prior to the commencement of voting, tables were set up outside the ALRB office for the purpose of voting. In

the presence of some 75 to 100 company observers, union representatives, workers and board staff, Mr. Alderete showed the ballot box to be empty. He then sealed it and placed it on top of one of the tables to be used for the election.

Esmeralda Arista testified^{1/} on behalf of the Employer and stated that she and Maria Delores Hernandez were the company observers^{2/} at the election. Ms. Arista testified that: prior to sealing the box shut with tape, the officer in charge placed it on the election table for the participants to see. She indicated she was able to see into the box but could not see the bottom of the box (TR. p. 10). She testified further that she did not know whether the other company observer(s) or the other 75 to 100 people present at this time were able to see into the ballot box (TR. p. 19).

Ms. Sylvia R. Gutierrez, an agent for the ALRB, was called to testify for the UFW. Ms. Gutierrez testified that she witnessed the election, including the disputed preelection assemblage of the ballot box. She indicated that the box was knocked-down and flat before it was assembled (TR. pp. 30-31). She testified further that Mr. Alderete

^{1/} At the time of the election, Esmeralda Arista's last name was Gonzales. The declarations and other documents she signed just after the election were signed "Esmeralda Gonzales. " Since that time, she has married; thus, the change in her last name.

^{2/} The employer, in its brief (at p. 2), contends that there were three company observers at the hearing: Esmeralda; Arista; Maria Delores Hernandez and Catalina Ortez. Testimony by employer's sole witness, Ms. Arista, however, mentioned only two such observers: Ms. Arista and Ms. Hernandez (TR., p. 7).

took the unassembled box and showed it to the 75 to 100 persons present to show them that nothing was inside the box (TR., pp. 28, 34) and that he then assembled the box and taped it shut. Lastly, and most importantly, she testified that she was able to see into the ballot box and that there were no ballots in the box prior to the commencement of voting (TR., pp. 28-29).

I found both witnesses credible and have no reason to doubt the testimony of either.

I find, however, that even if Ms. Arista was unable to see more than halfway into the unsealed ballot box, there is no testimony that the other company observer(s) were similarly unable to view the inside of the box, or that the other 75 to 100 observers from the union, the workers, and the ALRB staff were denied an opportunity to see that the box was empty. More importantly, I have no reason to doubt the un-contradicted testimony of Ms. Gutierrez that the ballot box was, in fact, completely empty prior to the commencement of voting.

B. Analysis and Conclusion

It is important to note at the outset that there is no allegation that the election results are incorrect or incomplete, or even that the ballot box was, in fact, tampered with. The sole contention advanced by the employer to set aside the results of the election is that one of the three observers they sent to the election is unable to verify that the ballot box was empty. It is argued that this casts a

taint upon the integrity of the election process sufficient to set aside the election.

It is the law that the balloting process must be held to the highest standards possible. Where a situation exists which, from its very nature, casts a doubt or cloud over the integrity of the ballot box itself, the practice has been to set aside the election. (Austill Waxed Paper Company, 169 NLRB 1109; 67 LRRM 1366 (1968)). However, the record in this case falls far short of establishing a situation which casts doubt on the integrity of the results of the election. Quite the contrary, I find nothing in the record to lead me to any conclusion other than that the election was conducted fairly and accurately.

Even though Ms. Arista may have been unable to see all the way into the open ballot box, the record is conspicuously silent as to what the other Employer representatives were able to witness. For all we know, they had a completely unobstructed view of the inside of the box. Surely where it bears the burden of proof on such an important matter as this, the Employer must provide us with more complete testimony than we have been given.

Parenthetically, it is difficult to imagine that the inside of the box was unviewable to the 75 to 100 other observers present at the beginning of voting. Neither witness indicated that any of those present voiced disquiet with this part of the election process. It is difficult to re-imagine that 75 to 100 workers and union officials would stand quietly by if they were all prevented from seeing whether or

not the ballot box was empty.

Furthermore, we need not speculate on such possibilities since we have the uncontradicted testimony of Ms. Gutierrez that she was able to see the assemblage of the ballot box from beginning to end and that it was, in fact, empty at the critical time in question.

Counsel for the Employer, in their brief, contend that it is possible that Mr. Alderete assembled the box as Ms. Gutierrez testified but that he had partially completed this task by the time Ms. Arista came out to where the tables were assembled. This would explain the apparent inconsistency in the testimony of Ms. Arista and Ms. Gutierrez but, more importantly from the Employer's point of view, it is argued that this would also constitute a violation of the ALRB's own Representative Case Manual.^{3/}

Even if we were to construe every element of the record on this matter in Employer's favor, it would merely support the inference of a technical violation of the election manual with respect to one of the Employer's two or three observers. As the Board held in Harden Farms, 2 ALRB Mo. 30:

"These . . . objections all raise purely technical allegations of deviation from procedures set forth in The Manual of Procedure . . . Election procedures are established to set guidelines for the ideal method of conducting an election. Deviations from procedures are not in themselves grounds for setting aside the secret ballot choice of a collective bargaining representative by employees without evidence that

^{3/} On page 52 of the manual, it states that the ballot box "will consist of a knocked-down cardboard box which will be assembled in the presence of the parties prior to the commencement of voting."

those deviations interfered with employee's free choice or otherwise affected the outcome of the election."

This record is totally devoid of any evidence that the employee's free will was compromised or that this election was tainted in any way. This record will support no conclusion other than that the election was conducted fairly, and that the results are accurate.

CONCLUSIONS OF LAW

Based on the above findings of fact, analysis, and conclusions I conclude that the election was not tainted in any manner and I recommend that the results of the election be certified.

DATED: September 27, 1981.



BEVERLY AXELROD, Investigative
Hearing Examiner

