STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JOHN ELMORE FARMS, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	No. 75-RC-38-M 3 ALRB No. 16

On September 8, 1975, a petition for certification under Section 1156.3 (a) of the Labor Code was filed by the United Farm Workers, AFL-CIO, hereinafter UFW, requesting a representation election among all of the agricultural employer of John Elmore Farms, hereinafter employer, in Lompoc and Guadalupe, California. An election was held on September 17, 1975, at the Lompoc and Guadalupe operations of the employer.[1/]

The employer filed timely objections to the election pursuant to Labor Code Section 1156.3(c). The executive secretary set for hearing[2/] the following objections that: (1) the Board improperly determined the geographical scope of the bargaining unit, (2) the Agricultural Labor Relations Board does not have

[1/]The ballots were counted on September 18, 1975. The tally of Ballots showed the following results: For UFW - 68, For No Union -27, Challenged Ballots - 4. The challenged ballets are not sufficient in number to affect the results of the election.

[2/]paragraphs 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Employer's Petition Objecting to Election were dismissed before hearing by the executive secretary. The employer renewed said objections at the hearing and in his post-hearing brief. We uphold, the decision by the executive secretary to dismiss these objections.

jurisdiction in that the election was held more than seven days after filing of the petition, and (3) union misconduct affected the results of the election.

I - FACTS

The employer has its headquarters in Brawley, California, from which it oversees farming operations in the Imperial, Lompoc and Santa Maria Valleys of California and the Parker Valley of Arizona. The UFW requested that a certification election be held among the employees working on the employer's two ranches situated in the Lompoc and Santa Maria Valleys on the central California coast, hereinafter referred to as the Lompoc and Guadulupe ranches. These two ranches are approximately 30 miles apart by highway. Separating the two ranches is a range of small hills. Both the Lompoc and Santa Maria Valleys extend towards the sea along an east-west axis, following the course of rivers draining from the coastal mountains to the west. Both valleys are used to grow *a* similar variety of crops under similar growing conditions. The labor requirements needed for planting and harvesting are similar and occur at basically the same time of the year.

II - THE SCOPE OF THE BARGAINING UNIT

The employer maintains in his objections petition and post-hearing brief that the regional director improperly determined the scope of the bargaining unit when she allowed the two ranches that comprise the northern part of the employer's farming operations to vote as one unit.

In resolving the question of what is the proper scope of the unit under our Act, we begin with the statutory' requirement.

of Labor Code Section 1156.2, which reads:

> "The bargaining unit shall be all the agricultural employees of an employer. If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the Board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted."

We must interpret this provision in light of the purposes of the Act, which are "to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment . . . ." (Labor Code Section 1140.2).

Our Act, unlike the NLRA, requires a single unit of all the employer's agricultural employees if its operations are contiguous. However, if the employer's operations are noncontiguous, the Board must, determine the "appropriate unit or units" for collective bargaining purposes. Even here, where the Board must use its discretion in determining the scope of the appropriate bargaining unit, it has no discretion in determining the composition of the bargaining unit. Labor Code Section 1156.2 requires that the Board include in the unit all the employees of the employer at the one or more noncontiguous sites it finds within the scope of the appropriate bargaining unit. Since the NLRA permits alternative units of employer, craft, plant or subdivision thereof, many of the factors considered by the NLRB are simply not relevant. The basic principles, however, are identical and were expressed by the NLRB in Kalamazoo Paper Box Corporation, 136 NLRB 134 (1962):

> Because the scope of the unit is basic to and permeates the whole of the collective-bargaining relationship,

> each determination, in order to further effective expression of the statutory purposes, must have a direct relevancy to the circumstances within which collective-bargaining is to take place. For, if the unit determination fails to relate to the factual situation with which the parties must deal, efficient and stable collective bargaining is undermined rather than fostered. At 137.

The first sentence of Labor Code 1156.2 reflects the judgment of the Legislature that given the highly seasonal nature of California's agricultural industry and its migratory work force, employer-wide units best serve the purpose of "efficient and stable collective bargaining." Kalamazoo Paper Box, supra. The exception to employer-wide units, couched in terms of "noncontiguous geographical areas," reflects the Legislature's concern with the bargaining unit when different employment patterns and work conditions are present in separated operations of an employer. Thus, before a noncontiguous operation in the Imperial Valley can be combined with one in the Salinas Valley, the Board has to determine the appropriate unit or units based on factors which have "a direct relevancy to the circumstances with which collective bargaining is to take place." Ibid. [See for example, Bruce Church, Inc., 2 ALRB No. 38 (1976).]

In Bruce Church, we looked to several elements set forth by the NLRB for making that determination. In Egger & Ghio Company, Inc., 1 ALRB No. 17 (1975), we enunciated the test of "a single definable agricultural production area," which we defined there in terms of similar water supply, labor pool, climate and other growing conditions. These factors, which are affected by the geographical separation between any two operations of an employer, generally affect the time of peak employment. Thus, a finding

that separate operations of an employer are in a single definable agricultural production area, will be another basis for deciding whether or not the operations should be included in a single unit.

We hold here that separate operations of an employer do not have to be contiguous to be in a single definable agricultural production area. Under the power granted the Board in Labor Code Section 1156.2 to "determine the appropriate unit or units" in cases where they are noncontiguous, the fact that such operations are in a single definable agricultural production area will be a significant factor. As we find, infra, that the Lompoc and Santa Maria Valleys are in a single definable agricultural production area, it will not be necessary in this case for us to address the question of what standards we will look to in determining the appropriate unit or units in situations where the operations of an employer are not in a single definable agricultural production area.

In this case, we have two operations of an employer that are located in two nearby valleys that have very little difference in their seasons, climate, harvest and planting times, need for labor, kind of crops grown and growing conditions. Consequently, we find that the Lompoc and Guadalupe ranches of the employer are located in a single definable agricultural production area and that the unit determination made by the regional director was proper. Accordingly, the objection of the employer to the scope of the bargaining unit is dismissed.

III - THE ELECTION ON THE NINTH DAY

The employer objects to certification of the election because it was conducted beyond the seven-day time limit of Labor

Code Section 1156.3(a)(4).

At the opening of the hearing, all parties stipulated that the testimony and exhibits received into evidence concerning the reasons for delay in the election in Waller Flower Seed Company, 1 ALRB No. 27 (1975) would be incorporated into the record of this hearing.[3/]

The employer contends that by not holding an election within seven days, the Board is deprived of jurisdiction to conduct the election. We have held that it is not. Klein Ranch, 1 ALRB No. 18 (1975); Waller Flower Seed Company, supra; J. J. Crosetti Co., Inc., 2 ALRB No. 1 (1976); Jake J. Cesare & Sons, 2 ALRB No. 6 (1976); Ace Tomato Co., Inc., 2 ALRB No. 20 (1976).

The employer did not introduce any evidence that any party suffered any actual prejudice by the election being held past the seven-day limit. Ibid. Rather, it argues that the delay worked to the advantage of the union in that it had two additional days in which to conduct organizational activities. Allegations of an elongated pre-election organizational campaign do not constitute evidence of conduct of such a character as to affect the employee's free choice of a collective bargaining agent. The objection is dismissed.

IV - ALLEGATIONS OF MISCONDUCT

The employer contends that various instances of alleged misconduct by UFW representatives and sympathizers that went

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[3/]That case involved a petition for certification filed in the same region and on the same date as here. The election was also held on September 17, nine days after the filing. We adopt our findings in that case that the delay was justified and was in no way attributable to conduct by any of the parties involved.

uncorrected by the Board agent in charge of the election, despite their being pointed out to him at the time, constitute conduct that affected the results of the election.

The employer devoted much testimony at the hearing to constructing a pattern of behavior on the part of UFW organizer Luis Ayala that was in flagrant disregard of the Board agent's instructions. The sum of the evidence amounted to the fact that: (1) the Board agent had given general instructions that all parties were to leave the voting area and go to any location where they could not see the polling place, (2) Ayala spent most of the election period sitting in his car, one-half mile away from, but within sight of, the polling place, and (3) Ayala had conversed with the occupants of two cars leaving the election area and one car taking employees to vote.

The record only shows that Ayala had been in the vicinity when the Board agent gave instructions to the testifying witnesses that they should leave the polling area, not that he actually received them.[4/] Further, no evidence was introduced that any voters were aware of Ayala's presence one-half mile from the polls, nor were they aware that his presence there was contrary to the Board agent's instructions. Ayala's talking to the occupants of the cars leaving the election was not electioneering. Such conversations, even if they could be considered electioneering,[5/]

[4/]Ayala denied receiving any instructions from any state officials and explained that he left the area when he saw the other parties leave. He says he parked at a spot that put him approximately the same distance from the polls as he had waited in prior elections.

[5/]The employer introduced no evidence as to the content of this conversation. Ayala said he only gave directions to the polling place.

would not be grounds to set aside the election as they involve a single instance far from the immediate area surrounding the building where voting was going on and there is no evidence that any voter was affected by it. See Yamada Bros., 1 ALRB No. 13 (1975); Herota Brothers, 1 ALRB No. 3 (1975); Yamano Bros., 1 ALRB No. 9 (1975); William Pal Porto & Sons, Inc., 1 ALRB No. 19 (1975). The fact that the Board agent chose to do nothing about Ayala's presence when it was pointed out to him during the election by an employer observer is not an abuse of discretion. A Board agent does not improperly act when he chooses to remain conducting an election rather than leave the polls to travel one-half mile to ask a party sitting in his car to move farther away. The objection that Ayala's conduct constituted misconduct that should lead to overturning the election is not supported by the evidence.

The employer also contents that the election results were adversely affected because the Board agent allowed four voters who were alleged to be UFW sympathizers to linger around the polling building after they voted and because there were people in the polling area wearing UFW insignia.

We have ruled previously that the presence of campaign materials relating to a party inside the polling area is not a ground for setting aside an election unless the presence of such material caused a disruption of voting or otherwise interfered with the election, Harden Farms of California, Inc., 2 ALRB No. 30 (1976); accord, Veg-Pak, Inc., 2 ALRB No. 50 (1976). There is no such evidence here. Therefore that part of the objection is dismissed.

The evidence shows that a family of four voters did remain near the building where the voting was being conducted, and that this was pointed out by the employer observers to the Board agent. The family lingered by their car which was, according to witnesses, from 48 to 150 feet from the polling building. There is no evidence that members of the family talked to other employees. An employer's witness testified on cross-examination, by way of hearsay, that members of the family had made threats to some workers to vote UFW on the day of the election. These threats were allegedly made before the voting began and away from the polling area.

We find that none of these voters were connected, other than as sympathizers, with the UFW. We also find that though the Board agent should have asked voters lingering near the polling area after voting to leave the area, his failure to do so is not grounds for setting aside an election, particularly as the evidence shows the four voters in question did not talk to anyone but themselves and there was no interruption of an otherwise calm and orderly election process. See Harden Farms, 2 ALRB No. 30 (1976). We said in Chula Vista Farms, Inc., 1 ALRB No. 23 (1975), that:

> Prescribed election procedures may not always be followed with the precision which this Board requires. The question in such cases is "whether the manner in which the election was conducted raises a reasonable doubt as to the fairness and validity of the election." Polymers, Inc., 174 NLR3 232, enforced 414 F.2d 999 (C.A.2, 1969), cert. denied 396 U.S. 1010 (1970).

We find here, that even though the conduct objected to was improper, the fact that the Board agent did not ask the four voters who remained near the polls to move did not affect the

outcome of the election. Nor was the conduct of Mr. Ayala in sitting in his car one-half mile away from the polling building and conversing with one car going to the polls so egregious as to have interfered with the voter's free choice in a representation election. See Veg-Pak, Inc., supra. Accordingly, these objections are dismissed.

V - CONCLUSION

The United Farm Workers of America, AFL-CIO, is certified as the bargaining representative for all agricultural employees of John Elmore Farms, Inc., in the Lompoc and Santa Maria Valleys.

Dated: February 18, 1977

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

MEMBER JOHNSEN, Dissenting:

I disagree with the finding of the majority that the two ranches are in a single definable agricultural production area and consequently that all agricultural employees at the two ranches constitute a single unit for purposes of collective bargaining. I would therefore set aside the election.

Under Labor Code Section 1156.2, "If the agricultural employees of the employer are employed in two or more noncontiguous geographical areas, the Board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted." Recognizing the many variables in regard to agricultural production, land areas, marketing practices, nature and supply of labor, farm ownership and management techniques, the California Legislature gave the Agricultural Labor Relations Board discretion in determining the appropriate bargaining unit when farm workers are employed on two or more noncontiguous farms. Farm workers on individual farms often have separate and distinct desires and needs which may be peculiar to the farm upon which they are working. To protect the rights of agricultural employees as stated in Labor Code Section 1140.2, I believe it is incumbent

on the Board to carefully consider the designation of an appropriate unit in which a secret ballot election shall be held.

Previously the Board determined in Egger & Ohio Company, Inc., 1 ALRB No. 17 (1975), that a single unit may be appropriate where two or more farms are located within "a single definable agricultural production area", which we defined in terms of common water supply, labor pool, climate and other growing conditions.

The instant case does not meet the criteria set forth in Egger & Ghio, supra, because the individual ranches are located in separate and distinct valleys separated by a third distinct agricultural growing area -– the Purissima Hills, a mountainous area of dry brush with some cattle raising and pasture farming. While some similarity of farming operations exists with respect to the two valleys, there is no commonality of water supply, labor pool, climate, soil conditions, or marketing practices. Even were the Lompoc and Guadalupe ranches to share agricultural or geographical similarities, they would nevertheless not be in a single definable agricultural production area because of the 30-mile-wide hill area that separates them. This third area shares no similarities with the areas on either side of it and supports only limited farming operations of a very different nature.

Having determined that the two ranches are in noncontiguous geographical areas, the Board could still determine that a single unit of employees would be appropriate. However, in this case, the community of interest factors which one normally associates with a single unit determination are not present. The record indicates that each ranch controls its own day-to-day operations, and each contracts for the sale of its own harvest. The foreman at each ranch exercises independent judgment and

control in regard to planting and harvesting schedules as well as employee hirings, firings and assignments and in recordkeeping and purchases. There is no interchange of employees between ranches, nor is there a history of prior collective bargaining. The employees in the Lompoc ranch are considered to be a constant and unchanging labor force, while at the Guadalupe ranch the labor force is supplied primarily by contractors.

The employer asserted that two independent units were appropriate at the pre-election conference as well as in post-election proceedings. The record indicates that the employees on the Lompoc ranch requested a separate unit. Elections were conducted on each of the two ranches, but the ballots were comingled for the tally, thereby forcing a single unit determination.

I conclude that the ranches are located in noncontiguous geographical areas and that the ranch operations are sufficiently autonomous to require single ranch bargaining units. Accordingly, I dissent from the majority and would set aside this election.

Dated: February 18, 1977

Richard Johnsen, Jr., Member