

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
TAKARA INTERNATIONAL, INC.)	No. 75-RC-11-R
dba NIEDENS HILLSIDE FLORAL,)	
)	
Employer,)	3 ALRB No. 24
)	
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

On September 19, 1975, an election was held at Niedens Hillside Floral. The tally of ballots showed the following results:

Eligible	1 0 1
Votes Cast	9 1
UFW	4 8
No Union	3 6
Challenged Ballots	7

The employer filed timely objections of which 22 went to hearing. Of these 22 objections, several were not proper subjects for review, no evidence was introduced on several others and for still others there was no prejudice from the conduct complained of. We find no merit in these objections and dismiss them accordingly.^{1/} We proceed to the one objection of substance.

The employer alleges that UFW agents threatened to call the U. S. Immigration and Naturalization Service (INS) if the union lost the election. It alleges that these threats had a substantial impact on the election because 30-40% of the

^{1/} For a discussion of these objections, see Kawano Farms, Inc., 3 ALRB No. 25 (1977), where most of the same objections were repeated word for word.

work force consisted of undocumented workers, commonly known as "illegals".

It was generally agreed by all witnesses, both the employer's and the UFW's, that rumors of INS raids were current throughout the farm in the month preceding the election. UFW witnesses testified that they tried to reassure the illegals and convince them that unionization was in their best interest. Employer witnesses testified that it was the UFW supporters at Niedens who were themselves responsible for the rumors. It was generally agreed that the INS did not conduct any raids at Niedens in the month before the election.^{2/}

The threats were allegedly made by four employees who were supporters of the UFW. None of the four was an organizer, and only one was a member of the in-plant organizing committee. No employer witness was directly threatened, but three of them overheard conversations between UFW supporters in which the calling-in of the INS was discussed. One witness claimed that a UFW supporter revealed to INS officials where illegals were hiding, Two other employer witnesses testified to ambiguous statements or comments by UFW supporters, to the effect that if the union lost the election, things would not go well for the illegals. One employer witness claimed there were no threats at all before the election.

The employees who allegedly made the threats were called as witnesses by the UFW. They denied making threats. They testified that, on the contrary, they made efforts to assure

^{2/} Two employer witnesses testified about a raid the day before the election; but other witnesses, including one called by the employer, testified that raids occurred only after the election. We find the latter to be true.

the workers that the union would try to protect them. One employee, who employer witnesses claimed was directly threatened, took the stand and denied that anyone threatened her.

On a preponderance of the evidence, we find that some UFW supporters were responsible for rumors that the INS would raid Niedens Hillside if the UFW lost the election. We also find that UFW supporters attempted to assure illegals of the union's commitment to their interests.

* * *

The question in every objections case is whether the misconduct, if it occurred, created an atmosphere in which employees could not freely and intelligently choose their bargaining representative. In general, misconduct by a party will be considered more destructive of a healthy atmosphere than misconduct by a non-party. Parties have far greater economic strength and institutional power than individuals, and therefore their actions and statements are more coercive of employees. With that greater power comes a strong responsibility for proper conduct.

As we said in Jack or Marion Radovich, 2 ALRB No. 12 (1976), there must be some showing that the "threat" tended to affect the outcome or that the election was conducted in an atmosphere of fear. But where, as here, a non-party's conduct is in question we will accord that conduct less weight in determining whether or not that test has been met.

These principles can be shown by a pair of recent decisions of the NLRB. In Westside Hospital, 218 NLRB 96, 89 LRRM 1273 (1975), a union representative threatened an employee with deportation unless he sided with the union. The Board found that this conduct by an agent of a party was coercive and the election

was overturned. In Mike Yurosek & Sons, 225 NLRB No. 20, 92 LRRM 1535 (1976), two union adherents, who were members of the in-plant organizing committee, told voters that the INS would deport workers if the union did not win. Other members of the committee tried to reassure the illegals. The Board first found that membership in the organizing committee did not convert the adherents into union agents. It went on to uphold the election, stating:

We doubt that the threats and rumors herein, considering their source, so exacerbated these fears [of deportation] as to render any illegal alien employees incapable of exercising a free choice in the election.

We find Yurosek persuasive.

Returning to the present case, we find that the UFW-supporters were not agents of the union. They were not organizers, nor was there evidence that they were answerable to the union. The threats were apparently the talk of individual employees and did not, so far as the record shows, stem from a union policy of threatening a large portion of its potential constituency. The testimony showed that one employee was frightened; but there seems to have been no pervasive atmosphere of fear and confusion. Few, if any, employees were directly threatened. There was no organized campaign of fear. We note that there were no INS raids in the month before the election, and the voter turnout was very high—over 90%. Unfortunately, illegals always live in some degree of fear; but it does not appear that the fear was greatly worsened in this case.

On these facts, we will not overturn the election. We do not in any sense condone the threatening of illegals. All

employees, regardless of citizenship or status, are entitled to the protections and benefits of this Act. Threats of deportation are highly destructive, and we will not approve their use. However, we do not believe that the facts of this case warrant overturning the election.

The United Farm Workers of America, AFL-CIO, is certified as the bargaining representative for all agricultural employees of Takara International, Inc., dba Niedens Hillside Floral.

Dated: March 15, 1977

Gerald A. Brown, Chairman

Robert B. Hutchinson, Member

Ronald L. Ruiz , Member

MEMBER JOHNSEN, Dissenting:

The record in this case reveals that the election was conducted in a general atmosphere of coercion and fear which substantially interfered with the exercise of free choice on the part of a large percentage of the work force. I cannot agree with the majority's position that, because illegal aliens always live in some degree of fear, the threats of deportation in this case were largely ineffectual.

Our Act does not distinguish between those who are illegal aliens and those who are residing in this country legally; as noted by the majority all agricultural employees are entitled to its protection and benefits. Deportation strikes at the heart of the illegal alien's liberty and economic security. Thus, the threat of deportation can become a potent weapon in the hands of unscrupulous union or management personnel and their sympathizers. When it is used to tip the scales in favor of a

particular party to an election, the rights of those legally in this country also suffer. To accept the vulnerability of illegal aliens as a mere fact of life is to reduce those people to pawns in a struggle that subverts the purposes and policies of the Agricultural Labor Relations Act.

Although the illegal alien may live with an ever-present threat of deportation, that does not mean that he is insensitive to statements to the effect that he can lessen the chances of deportation by taking certain action. We see in this case that a number of illegals would repair to a special hiding place when informed of the imminent arrival of immigration authorities. By the same token, if an illegal was led to believe that he could lessen his chances of deportation by voting for a particular party, it is not unreasonable to expect that he would do so. Here, the message conveyed to the illegals was that if the UFW did not win the election, the immigration authorities would be called in. With 35 to 40 percent of the work force reportedly being illegal aliens, such a threat could easily have, influenced the outcome of the election.

The majority places great emphasis on the fact that those responsible for the threats were not actually agents of the union. This, they contend, greatly diminished the effect of the threats, citing Mike Yurosek and Sons, 225 NLRB No. 20, 92 LRRM 1535 (1976). However, the threats here came from individuals who received organizing information from attendance at union meetings and from individuals upon whom the illegals relied for information as to when and where to hide from the immigration authorities. Under these circumstances, the illegals

had no reason to discount the threats and the lack of an agency relationship becomes irrelevant. See, Willis Shaw Frozen Express, 209 NLRB No. 11 (1974).

The majority also fails to recognize that, unlike the situation in Yurosek, supra, the union supporters here made no substantial efforts to disabuse employees of the idea that the union would call the immigration authorities. Some of these supporters testified that they made efforts to assure the workers that the union would try to protect them. However, this testimony came from some of the same individuals who the evidence shows were responsible for the threats and rumors. In any event, the efforts at allaying the workers' fears were feeble at best. Moreover, the assurances seemed to relate to what the union would do if it won the election, not what it would do if it lost the election. Thus, the improperly induced incentive to vote for the union remained undiminished.

Under all the circumstances of this case, I can only conclude that the impact of the threats and rumors was too lightly regarded by the majority and that the election should be overturned.

Dated: March 15, 1977

Richard Johnsen, Jr., Member