

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
MISSAKIAN VINEYARDS,)	No. 75-RC-69-F
)	
Employer,)	3 ALRB. No. 3
)	
and)	
)	
WESTERN CONFERENCE OF TEAMSTERS,)	
Agricultural Division, I.B.T.,)	
)	
Petitioner,)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Intervenor.)	
)	

Pursuant to a Petition for Certification filed by the Western Conference of Teamsters, Agricultural Division, I.B.T., (Teamsters), a representation election was held September 26, 1975, among the agricultural employees of Missakian Vineyards (employer). The United Farm Workers of America, AFL-CIO, (UFW) intervenors in the representation proceedings, received a majority of the votes cast. The amended tally of ballots^{1/} showed the following results:

For the Teamsters	59
For the UFW	82
For No Labor Organization	1
Void Ballots	4
Unresolved Challenged Ballots	13

^{1/}The original tally of ballots included 22 unresolved challenged ballots. The Regional Director subsequently issued a Report on Challenged Ballots, to which none of the parties excepted. The amended tally of ballots showed the results herein indicated.

The employer and the Teamsters both timely filed objections to the election pursuant to Labor Code Section 1156.3 (c) . By Notice of Hearing and Order of Partial Dismissal of Petition, this Board set for hearing certain allegations of these objections.^{2/}

Pursuant to our authority under Labor Code Section 1146, the decision in this matter has been delegated to a three-member panel of the Board.

At the hearing, conducted January 12, 1976, the Teamsters failed to produce any evidence in support of their objections. Accordingly, the objections filed by the Teamsters are hereby dismissed.

The employer's objections set for hearing were that (1) "the ALRB agent arbitrarily and without sufficient authority refused to allow the employer's payroll clerk to serve as an election observer, while he allowed far less qualified observers to serve in that capacity for the unions",^{3/} (2) that "...the voting which was scheduled to start at 6:15 a.m. did not commence until more than one hour later as a direct result of which a number of employees actually on the eligibility list and a number of purported 'economic strikers' who were allegedly eligible to vote were effectively disenfranchised",^{4/}

^{2/}At the outset, we note that there are procedural matters relating to the post-hearing briefs of the parties before us. The employer has filed a "Motion to strike brief of the United Farm Workers and alternative request for leave to file response to supplemental post-hearing brief; response to 'supplement to post-hearing brief of intervenor'". The employer's motion to strike the UFW's brief is denied, and their request to file a response to the UFW's supplemental post-hearing brief is granted. As the employer's response was filed together with their motion to strike, it is part of our record and has been considered.

^{3/} Employer's post-hearing brief, at 3.

^{4/} Ibid., at 4.

and (3) that "the UFW was allowed to engage in mass electioneering at or near the polling place on the day and at the time of the representation election".^{5/} For the reasons stated herein, we dismiss the objections of the employer and certify the election.

Disqualified Observer

At the election, the parties were allowed and did have three observers each. Originally, the employer had submitted at the preelection conference the names of his four designated observers; one from each of his three work crews and the disqualified payroll clerk. At the pre-election conference, the Board agent disqualified the payroll clerk from serving as an observer, leaving the employer with three observers. It is not clear from the record precisely why the Board agent disqualified the payroll clerk. We note that, absent evidence of supervisory status, the payroll clerk would have been a proper observer.

The employer, however, has not shown that he was prejudiced by the disqualification of the payroll clerk, nor that the disqualification affected the results of the election. "The Board agent in charge of an election is responsible for determining the qualifications of observers. Ordinarily, his decision will not be disturbed". Yamada Brothers, 1 ALRB No. 13 (1975) at 4. This objection does not warrant setting aside the election and accordingly is dismissed. Tardy Opening of the Polls

By agreement of the parties and by Direction and Notice of Election, the polls were to open at 6:15 a.m. The evidence indicates that the Board agent did not arrive at the polling site until sometime

^{5/} Ibid., at 4.

between 6:15 a.m. and 6:30 a.m. The actual voting, after set-up of the polling equipment, did not begin until shortly after 7 a.m.

The employer testified that the tardy opening of the polls disenfranchised approximately 30 purportedly eligible voters, all of whom were former employees of his and all of whom were working on another ranch on the day of the election. According to the employer, the work day at the other ranch began at 7 a.m. The employer claims to have seen six or seven of these purportedly eligible voters at the election site, arriving together at approximately 6:15 a.m. and departing without voting at approximately 6:45 a.m. The observer for the UFW, who was also present at the election site during this time, testified that he saw no such group arrive and depart without voting. The employer does not know whether this group voted later in the day.

Although the employer testified that these six or seven former employees had worked for him in prior seasons and again just prior to the election, he was unable to identify these individuals by name. The employer further testified that it is his practice not to know individual workers so as not to undermine the authority of his foremen and that he never looks at the workers when he goes out to the fields because he is only interested in his grapes. The employer did identify by name the driver of this group, who apparently had also worked for the employer in past seasons.

At the hearing, the employer made no attempt to present as witnesses these six or seven allegedly disenfranchised voters, nor did he attempt to present the driver of this group as a witness. The record does not show that the employer made any attempt to discern the names of these former employees during or after the election.

Consequently, there is no evidence that these six or seven former employees were in fact eligible voters. "Thus, the testimony in this case does not support a finding that any voter was deprived of the right to vote because of the late opening of the polls". United Celery Growers, 2 ALRB No. 27 (1976) at 3. "The objecting party has the burden of producing evidence tending to show that the deviation from the official voting period caused voter disenfranchisement". United Celery Growers, supra, at 4. Here, the employer has not met his burden of producing such evidence and thus has not shown that any eligible voter was disenfranchised by the tardy opening of the polls. Accordingly, this objection is dismissed.

The employer further contended that the tardy opening of the polls also disenfranchised 30 purportedly eligible economic strikers, and that the election should be set aside for that reason. However, the employer produced no evidence to show that any economic striker presented him or herself to vote and was unable to vote because of the deviation from the official voting period.^{6/} For the reasons stated above, we dismiss this objection.

Electioneering at the Polls

The parties stipulated that two to four UFW agents and/or organizers positioned themselves at each of the three entrances to the employer's premises. It was further stipulated that these three entrances were approximately one-half mile from the shed where the

^{6/}At the pre-election conference, the UFW stated that approximately 30 economic strikers would present themselves to vote. However, there is no allegation, or evidence to show, that an economic strike existed against the employer. The record does show that one individual presented himself at the election, declared himself an economic striker, and voted a challenged ballot.

voting took place. The evidence showed that the UFW agents/organizers shouted slogans, waved UFW flags, and sang "UFW songs" as the employees entered the premises to vote. At still another location, which was stipulated to be one-quarter mile from the voting shed, there were approximately twelve UFW agents/organizers who engaged in similar activity. At this same location, there were also three or more employer representatives, ostensibly present to "observe" the conduct of the UFW agents/organizers. The employer contends that the above-mentioned activity of the UFW agents/organizers warrants setting aside the election. We disagree.

We have consistently held that electioneering such as that above, beyond the polling area, without more, is not conduct sufficient to set aside an election. See, e.g., Salinas Marketing Cooperative, 1 ALRB No. 26 (1975); William Pal Porto & Sons, 1 ALRB No. 19 (1975); Klein Ranch, 1 ALRB No. 18 (1975); Toste Farms, Inc., 1 ALRB No. 16 (1975); Green Valley Produce Cooperative, 1 ALRB No. 8 (1975); Herota Brothers, 1 ALRB No. 3 (1975).^{7/} There is no contention nor any evidence to show that the UFW agents/organizers engaged in any conduct other than the shouting of slogans, the waving of flags, and the singing of songs. "We are concerned, of course, that once the polls have been opened, employees should be permitted to cast their vote in an atmosphere free of interference by the parties or their adherents". Toste Farms, Inc., 1 ALRB No. 16 (1975) at 5. We do not consider the

7/ See also Chula Vista Farms, Inc., 1 ALRB No. 23 (1975) (Member Grodin, concurring) where official election observers engaged in "electioneering" by the wearing of UFW buttons during the election, but where the election was certified and not set aside, Member Grodin stating that the statutory language of the ALRA establishes a strong presumption in favor of certification.

public display of the union insignia or other non-aggravated electioneering a quarter of a mile or more away from the polling area to be such interference. This objection is dismissed.

The employer further contends that the election should be set aside because there were union organizers present in the immediate vicinity of the voting shed during the time the voting should have taken place, or between 6:15 a.m. and shortly after 7 a.m. There is no evidence or allegation that these organizers engaged in electioneering or other objectionable conduct during this time. The evidence shows that all the organizers for both unions left the polling area before the commencement of the voting at the request of the Board agent. This objection is without merit and is dismissed. Veg-Pak, Inc., 2 ALRB No. 50 (1976).

Conclusion

The United Farm Workers of America, AFL-CIO, is certified as the bargaining representative for all agricultural employees of Missakian Vineyards.

Dated: January 27, 1977

Gerald A. Brown, Chairman

Richard Johnsen, Jr., Member

Ronald L. Ruiz, Member