

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

VLASIC FARMS, INC. :
 :
 V. : Case No. PLRA-C-99-6-E
 : (PLRA-R-99-1-E)
 COMITE DE TRABAJADORES DE CAMPBELL :
 FRESH, a/k/a WORKERS COMMITTEE OF :
 CAMPBELL'S FRESH :

FINAL ORDER

On September 26, 1999, Vlastic Farms, Inc. (Employer) filed with the Pennsylvania Labor Relations Board (Board) timely exceptions and a brief in support of exceptions to a Proposed Decision and Order (PDO) entered on September 7, 1999. In the PDO, the hearing examiner concluded that the Comite de Trabajadores de Campbell Fresh, a/k/a Workers Committee of Campbell's Fresh (Union) had not committed unfair labor practices in violation of Section 6(2)(a) of the Pennsylvania Labor Relations Act (PLRA) in connection with a representation election conducted by the Board on March 25, 1999 in Case No. PLRA-R-99-1-E. On October 18, 1999, the Union filed its response to the Employer's exceptions.

The essential facts of this case as found by the hearing examiner are as follows. The Board conducted a representation election on March 25, 1999, among the Employer's mushroom production workers in accordance with an Order and Notice of Election issued on March 10, 1999. Antonio Gutierres is the Union's president and served as the Union's election observer. The polling area designated by the Board's election officer was the grower's office and the adjacent hallway at Farm A of the Employer. While the polls were open, Gutierres spoke to groups of voters who were not in line to vote and were outside the designated polling area. There was no evidence submitted as to the substance of those conversations nor was there evidence that any of those voters left the area without casting a ballot in the election.

In its exceptions, the Employer contends that the hearing examiner erred in (1) concluding that the Board has jurisdiction over the petitioned-for employes because the employes are "agricultural laborers" within the meaning of Section 3(d) of the PLRA and therefore excluded from the definition of "employee"; (2) making Finding of Fact number 5; and (3) concluding that the representation election should not be set aside based upon Gutierres' conversation with potential voters.

The Employer's exceptions must be dismissed. With respect to the Board's jurisdiction over the petitioned-for employes, the Commonwealth Court has recently thoroughly addressed and rejected the argument that mushroom workers are "agricultural laborers" within the meaning of Section 3(d) of the PLRA and affirmed the Board's exercise of jurisdiction over mushroom workers in a case involving this very same employer. Vlastic Farms, Inc. v. PLRB, 734 A.2d 487 (Pa. Cmwlth. 1999), pet. for allowance of appeal pending, 597 E.D. Allocatur Docket 1999;

see also, Blue Mountain Mushroom Company, Inc. v. PLRB, 735 A.2d 742 (Pa. Cmwlth. 1999), pet. for reargument denied, September 28, 1999, pet. for allowance of appeal pending, 1072 M. D. Allocatur Docket 1999. The Employer's exceptions raise no new arguments in this regard. Accordingly, the Employer's contention that the petitioned-for employees are excluded from PLRA coverage must be rejected.

With respect to the Employer's exception to Finding of Fact number 5, the Board has examined the record and is satisfied that that finding accurately reflects Mr. Gutierres' activities at the March 25, 1999, election. The pivotal factor in Finding of Fact number 5 is that the conversations occurred outside the designated polling area within which electioneering is prohibited by the Board's Rules and Regulations. See 34 Pa. Code §§ 93.18 and 95.52(b).

The hearing examiner also correctly concluded that Mr. Gutierres' activities at the representation election do not justify the invalidation of the election. The hearing examiner found, and the Employer does not dispute, that the conversations engaged in by Mr. Gutierres occurred outside of the designated polling area. This Board has long held that an election will not be overturned based upon electioneering engaged in by the parties that occurs outside the area designated by the Board agent conducting the election as the polling area. Teamsters Local No. 77 v. PLRB, 492 A.2d 782 (Pa. Cmwlth. 1985); Montgomery County, 30 PPER ¶ 30137 (Final Order, 1999). The Employer urges the Board to adopt the rationale of the National Labor Relations Board (NLRB) in Milchem, Inc., 170 NLRB 362 (1968) which requires the setting aside of an election where prolonged discussions occur between representatives of one of the parties to the election and voters waiting in line to vote. However, the same argument was rejected in Montgomery County, supra, where conversations occurred outside of the designated polling area involving voters who were waiting in the voting line that extended outside of the designated polling area. Additionally, the Commonwealth Court affirmed the Board's refusal to overturn an election in Teamsters Local Union No. 77 v. PLRB, supra, where the union representatives were stationed immediately outside the designated polling area and briefly greeted almost every voter entering the polling site. Mr. Gutierres' conversations with potential voters outside of the designated polling area are no more objectionable than the conversations that occurred in either of those two cases. Accordingly, the Board will not direct a new election based upon Mr. Gutierres' election day activities.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Employer and make the Proposed Decision and Order absolute and final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Employer to the Proposed Decision and Order in the above-captioned matter be and the same are hereby

dismissed and the Proposed Decision and Order issued by the hearing examiner be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, Members L. Dennis Martire and Edward G. Feehan, this twenty-first day of December, 1999. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

JOHN MARKLE JR., CHAIRMAN, DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THIS CASE.