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WILLIAM L. WHITTAKER
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HERMILO NOJICA, et al.,

Plaintiffs,

v.

UNITED FARM WORKERS OF
AMERICA, AFL-CIO, et al.,

Defendants.

NO. C-82-0512-WAI (SJ)

DECISION

This matter came on for trial upon a single bifurcated issue: were the plaintiffs appointed or elected to their positions of full-time paid representatives of the United Farm Workers Union, and its constituent members?

I conclude that they were elected.

There is no evidence, contemporary with the events, that supports the contention that they were appointed. Union president Chavez testified that whoever was elected as Ranch Committee president would receive appointment by him as paid representative. There is no evidence that the elected ranch presidents were ever advised either orally or in writing of their subsequent appointment as paid representatives.

Conversely, all of the documentary evidence before the Court with the exception of the CAD plan (Exhibits C and 4), indicates that it was understood by all concerned that

Exhibit

C

1 paid representatives would be selected by the process of
2 election. See: Exhibits D, E, F, H, J, L, N, O, P, Q.
3 It is apparent from the exhibits just listed that senior
4 staff persons such as Ganz (see Exhibit J) regarded the paid
5 representatives as elected; election notices and ballots
6 support that view as well.

7 The Preliminary Plan, Exhibit D, supports the
8 notion of election in its section on policy for full-time
9 service representatives, and in its organizational chart for
10 the ranch community. Both of these features of the Prelim-
11 inary Plan vary from the provisions set forth in the CAD
12 Plan, Exhibit C, in that in the latter the policy provision
13 provides an appointive function and the organizational chart
14 shows direct connection with the president, which is not
15 shown in the Preliminary Plan chart.

16 Ruth Shy, a credible witness, testified that
17 president Chavez was aware of the Preliminary Plan, approved
18 it, and was cognizant of the changes in the CAD Plan which
19 it represented. Pursuant to the president's direction Ms.
20 Shy testified that she made up the election packets (Exhibit
21 E) and took them to the Salinas area, where they were used
22 in the conduct of elections. Ms. Shy testified that Mr.
23 Chavez was advised of the election results as they were
24 reported. Ms. Shy testified that it was understood that
25 paid representatives were subject to removal in the same
26 manner as ranch presidents.

27 Witness Ganz testified that he advised the
28 Executive Board of the paid representative position, and that
29 it was elective. According to Ganz, the Executive Board
30 took the position that paid representatives could not be
31 disciplined by field office directors because the latter
32 should not have that much power over an elected officer. He
stated that the Board's view in that regard was concurred in

1 by Mr. Chavez.

2 Jose Renteria testified that the Salinas area
3 workers expressed a consensus vote that the paid representa-
4 tives be elected, and that shortly thereafter the election
5 packet (Exhibit E) was distributed. He stated that elections
6 were conducted as set forth in Exhibit E. It was explained
7 to the workers that they were electing full-time representa-
8 tives.

9 Mr. Chavez testified that Ruth Shy told him that
10 the Salinas workers had rendered a consensus that full-time
11 representatives be elected. He told her that such a course
12 was not in accordance with the plan (CAD). He subsequently
13 learned that election commitments had been made by staff.
14 As a result he sought legal advice and decided that he would
15 appoint as full-time representative whoever the people
16 elected as Ranch Committee President, and he notified Ruth
17 Shy of that decision. He stated that he did not learn for
18 sometime that the representatives were in fact being elected,
19 and that he never agreed to such a course. He stated that he
20 had many concerns during the times in issue, and was frequent-
21 ly absent from the area and state (Exhibit 5). He denies any
22 knowledge of the Preliminary Plan (Exhibit D), until the
23 time of his deposition earlier this year. He stated that he
24 relies upon the constitution and the CAD Plan as written
25 documents which support his view that the full-time represent-
26 atives are appointive staff officials.

27 Mr. Chavez never undertook any action of which
28 there is written evidence to counteract the admitted belief
29 by all concerned that the representatives were to be elected.
30 While their election may be inconsistent with Article 75 of
31 the constitution, it is arguably consistent with Article 65,
32 and unequivocally consistent with the actions disclosed by
the evidence in this case of all officials and staff people

1 except Mr. Chavez. While Ms. Macri testified with respect
2 to staff duties generally, she had no first-hand knowledge of
3 the events of this case.

4 Mr. Denison, a draftsman of the union constitution
5 stated that in his opinion the controlling constitutional
6 section is that dealing with collective bargaining, part 10,
7 page 115, et seq., and particularly Articles 74 and 75. In
8 part, Mr. Denison's testimony was predicated upon his under-
9 standing that the representatives had been appointed, and
10 that constitutionally they are appointive officers.

11 Plaintiffs have, under the evidence, every reason
12 to believe that they are elective officials; they were led
13 to believe that by their union leadership and by the duly
14 published processes of election. Their election is not
15 inconsistent with Article 65, and the evidence is not con-
16 sistent with a rational belief that responsible union
17 officials regarded Article 75 as controlling. The representa-
18 tive position is a new one, possessing many attributes of the
19 persons governed by Article 65 and by Article 75, and not
20 plainly within the scope of either.

21 The main thrust of defendant's argument is that
22 the election of paid representatives is constitutionally
23 impossible because of the provisions of part 10 of the
24 constitution and of Article 49, defining the powers and duties
25 of the president.

26 Defendants argue that the actions of Ganz and Shy
27 as revealed by the evidence were unauthorized, and that the
28 union constitution cannot be amended by unauthorized acts.

29 As indicated above, the election does not seem to
30 the Court to be inconsistent with the powers of the president
31 as set forth in the constitution. A preponderance of the
32 evidence indicates that Mr. Chavez approved the concept of
election. The Court does not mean to indicate that it finds

1 Mr. Chavez personally to be an incredible witness, but only
2 that the testimony of Shy and Ganz appears to the Court to
3 more probably reflect the truth of what happened. Mr. Chavez
4 was heavily occupied with the boycott at the times in issue.
5 His recollection of and participation in the events upon
6 which this case is structured is understandably less clear.
7 In any event, it is clear that Mr. Chavez took no definitive
8 action, demonstrable in the evidence, showing that the actions
9 taken by lesser union officials was unauthorized.

10 The paid representatives remained for many purposes
11 an integral part of their ranch community. They received the
12 same pay and benefits as other community members, and occupied
13 the traditional office, in most cases, of ranch committee
14 presidents. Aside from performing some duties covered by
15 Article 75, they had no characteristics in common with other
16 union staff as far as incidents of employment are concerned.

17 The evidence on this threshold issue preponderates
18 in favor of plaintiffs. They are entitled to the Court's
19 determination that they were elected officials, not subject
20 to summary dismissal. Finnegan v. Leu, 102 S.Ct. 1867 (1982)
21 is not read by the Court as having application to elected
22 representatives.

23 DATED: 7/16/87

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26 WILLIAM A. INGRAM
27 United States District Judge
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