

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VERDE PRODUCE COMPANY, INC.,	)	
	)	
Employer,	)	Case No. 79-RC-1-EC
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	6 ALRB No. 24
AMERICA, AFL-CIO,	)	
	)	
Petitioner.	)	

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DECISION AND ORDER SETTING ASIDE ELECTION

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on February 21, 1979,<sup>1/</sup> the Regional Director conducted a representation election among the agricultural employees of Verde Produce Company, Inc. (Employer) on February 23, 1979. The official Tally of Ballots showed the following results:

UFW .....	36
No Union .....	16
Challenged Ballots .....	<u>14</u>
Total .....	66

The Employer timely filed post-election objections, three of which were thereafter set for hearing. A hearing was

<sup>1/</sup>Unless otherwise noted, all dates in this Decision refer to 1979.

conducted before Investigative Hearing Examiner (IHZ) Carla Jo Dakin who thereafter issued the attached Decision in which she recommended the Board dismiss the Employer's objections and certify the UFW as the collective bargaining representative of the unit employees. The Employer timely filed exceptions to the IHZ's Decision and a supporting brief. The UFW filed a brief in reply to the Employer's exceptions.

The Board has considered the objections, the record and the IHZ's Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the IHZ only to the extent consistent herewith.

The Employer grows and harvests cantaloupes, wheat and lettuce in the Imperial Valley. On February 21, the UTW filed a Petition for Certification which alleged that a majority of the employees in the unit were on strike against the Employer. Pursuant to the 43-hour election provision of Labor Code Section 1156.3(a),<sup>2/</sup> the Regional Director scheduled the election for February 23, two days after the UFW filed its Petition. Thereafter, the Regional Director faced very difficult notice problems in view of the shortened time frame of the election. On February 21 and 22, the Employer neither harvested lettuce nor

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<sup>2/</sup> Labor Code Section 1156.3(a) reads in pertinent part:

If at the time the election petition is filed a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of the petition. The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections.

employed any agricultural employees. On February 23, the Employer fielded crews totaling only 81 agricultural employees, significantly less than the number of employees the Employer generally utilized at that stage of the harvest.<sup>3/</sup> Board Agents attempted to provide the 222 eligible employees with notice of the election through announcements on Spanish-speaking radio stations in the area and by distribution of leaflets at the Calexico-Mexicali border station. The UFW also distributed leaflets and the Employer made some effort to notify employees through its foremen. Notwithstanding these efforts, only 66 employees, or 29.7 percent of the eligible electorate, cast ballots. Each of the 66 voters casting ballots worked on the day of the election and thus received notice at the workplace. For the reasons set forth below, we shall set the election aside.<sup>4/</sup>

Standing alone, low voter turnout is not a basis upon which this Board will set aside an election. As in other settings, prospective voters may refrain from exercising their franchise without affecting the integrity of the electoral process. Where, however, inadequate notice procedures result in a voter turnout

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<sup>3/</sup> Apparently, no lettuce was ready to harvest on February 21 or 22. The Employer did not decide to harvest on February 23 until the preceding evening and therefore was unable to obtain a full complement of workers for that day.

<sup>4/</sup> The Employer also asserts that it was not at 50 percent of its peak agricultural employment for the 1979 calendar year during the eligibility period, as required by Labor Code Section 1156.4. We reject this contention. During its 1979 peak agricultural employment period, the Employer employed 390 employees; during the eligibility period, the Employer employed 222 employees. As 222 is more than 50 percent of 390, we find that the requirements of Labor Code Section 1156.4 were met. Donley Farms, 4 ALRB No. 66 (1978).

too low to provide a representative election, we shall set the election aside. Sun World Packing Corporation, 4 ALRB No. 23 (1973); Lu-Et-te Farms, 2 ALR3 Mo. 49 (1975).

We find in this case significant evidence that lack of notice resulted in the disenfranchisement of a significant number of eligible voters. The Employer presented evidence that large numbers of eligible voters did not work during the period in which the Regional Director attempted to notify them of the election and that the only employees who did vote worked the day of the election. Those voters received notice of the election at the workplace. These factors, combined with the low voter turnout, suggest that a significant number of eligible voters did not vote because they were not notified, of the election.

The ALBA provides for representation elections to be conducted very soon after the filing of a Petition for Certification. Labor Code Section 1156.3 (a). This requirement serves to increase voter participation under seasonal employment conditions. However, the procedures necessitated by expedited elections create difficult notice problems for Board Agents. Thus, even where some eligible employees fail to hear of an election because of the notice difficulties, we shall nonetheless certify the results if the Regional Director provided as much notice as reasonably possible under the circumstances. Sun World Packing Corporation, supra; Lu-Stte Farms, supra. Notwithstanding the several steps the Regional Director took to provide eligible employees with notice of the election in this case, we find, on the basis of the entire record, that the election was scheduled so

promptly that employees did not receive adequate notice.

This election was conducted pursuant to the 48-hour provision of Labor Code Section 1156.3(a). When an election is scheduled to be conducted within 48 hours after the filing of the Petition for Certification, the logistical problems often inherent in elections conducted under the Agricultural Labor Relations Act are greatly magnified. However, the principle that employees who are eligible to vote should receive adequate notice of an election is applicable to all elections held under the Agricultural Labor Relations Act. As the 48-hour provision is not jurisdictional, Kyutoku Nursery, Inc., 3 ALRB No. 30 (1977), the Regional Director may, in his or her discretion, schedule an expedited election to be conducted more than 43 hours after the filing of the Petition for Certification, if necessary, in order to insure a representative election.

ORDER

By authority of Labor Code Section 1156.3(c), the Agricultural Labor Relations Board hereby orders that the election in this matter be, and it hereby is, set aside and that the Petition for Certification be, and it hereby is, dismissed.

Dated: May 16, 1980

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

RALPH FAUST, Member

CASE SUMMARY

Verde Produce Company (UFW)

6 ALRB No. 24

Case No. 79-RC-1-EC

IHE DECISION

The Investigative Hearing Examiner recommended that the Board dismiss the Employer's objections and certify the UFW as the employees' collective bargaining representative. The IHE found that the Employer was at more than 50 percent of its current year's peak agricultural employment during the payroll period for determining voting eligibility. She also found that the Regional Director provided adequate notice of the election considering the fact that the petition was filed while a strike was in progress. The IHE also found that the Employer's name as set forth on the Notice of Election was not misleading.

BOARD DECISION

The Board rejected the IHE's recommendation, set aside the election, and dismissed the petition. The Board found that the employees did not receive adequate prior notice of the election and, in view of the very low voter turnout, held the election was not representative.

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This case summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case No. 79-RC-1-EC
	)	
VERDE PRODUCE COMPANY, INC.,	)	
	)	
Employer,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Petitioner.	)	
	)	
<hr/>	)	

James L. Leather for the Employer.

Carlos M. Alcala for the Petitioner.

DECISION

STATEMENT OF THE CASE

CARLA JO DAKIN, Investigative Hearing Examiner: This case was heard by me on May 9, 10, and 11, 1979, in: Holtville, California. A petition for certification was filed by the United Farm Workers of America, AFL-CIO, ("UFW"), on February 21, 1979. The Agricultural Labor Relations Board ("Board") conducted an election on February 23, 1979. The tally of ballots showed the following results:

UFW	36
No Union	16
Unresolved Challenged Ballots	14
Total Ballots Cast	66

Verde Produce, Inc. ("company" or "employer") filed timely objections pursuant to Labor Code §1156.3(c). The Executive Secretary of the Board dismissed one objection concerning

whether it was an abuse of discretion for the Board agent to select a voting site identified with the LTW, on the grounds that the employer failed to present evidence that the selection of the site affected voter free choice. The following issues were set for hearing:

1. Whether the election was held when the employer was at 50% of its peak employment as required by Labor Code 51156.4.

2. Whether the vote was non-representative and, if so, whether those not voting were prevented from voting by the conduct of a party or the Board.

3. Whether the Notice of Election improperly and incorrectly named Hector Saikhon as the employer and thereby misrepresented to Verde Produce employees that the employer was Hector Saikhon, and if so, whether this affected the results of the election.

On April 23, 1979, the employer petitioned the Board to request review of the Executive Secretary's dismissal of the objection relating to selection of a voting site. After consideration of the matter, the Board, by Order dated May 4, 1979, denied the request for review, noting that "to the extent voter turnout may have been affected by the designation of a particular voting site, evidence related thereto is admissible pursuant to objections already set for hearing."

All parties were represented at the hearing and were given full opportunity to participate in the proceedings.

Upon the entire record, and after consideration of the arguments made by the parties, I make the following findings of fact and reach the following conclusions of law:

FINDINGS OF FACT

I. Background

Verde Produce Company, Inc., a corporation, is located in Holtville, California. The supervisor of the operation is Hector Saikhon. He is also the only officer of the corporation. The company grows and harvests cantaloupes, wheat, and lettuce. It also harvests lettuce for other growers. Lettuce is its main crop. The cantaloupe harvest occurs in July. In 1979, the company planted 400 acres of cantaloupes.

The company grew 400 acres and harvested a total of 1000 acres of lettuce in the 1978-79 season. Its lettuce harvest began in Holtville on December 11, 1973, and lasted until March 23, 1979. Ordinarily the company operates during the lettuce harvest with three crews of its own, and employs additional crews provided by labor contractors if needed.

At the time of the election the employer was approaching the end of its lettuce harvest. The election was a 48-hour election, pursuant to Labor Code §1156.3(a).<sup>1/</sup> Two voting sites were used, one on the employer's property and the other at the State Employment Development Department ("EDD") facility in Calexico, also known as "El Hoyo" (the hole). All voters voted at the on ranch site. No voters voted at the HDD site.

<sup>1/</sup> "If at the time the election petition is filed a majority of the employees in a bargaining unit are engaged in a strike, the Board shall, with all due diligence, attempt to hold a secret ballot election within 43 hours of the filing of such petition. The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections." Labor Code §1156.3(a).

II. Objections

A. Peak

Facts. The employer and the union stipulated at hearing to the number of workers employed during the peak week (week of highest employment during the calendar year 1979) and the eligibility week (payroll period preceding the filing of the election petition). The following table is an accurate summary of the employer's payroll records which were admitted into evidence,<sup>2/</sup> and reflects the parties' agreement upon figures for both payroll periods:

TABLE I

A. Peak week: Week Ending January 23, 1979

<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>	<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	
<u>1/17</u>	<u>1/18</u>	<u>1/19</u>	<u>1/20</u>	<u>1/21</u>	<u>1/22</u>	<u>1/23</u>	
105	101	112	97	0	140	139	Regular Crews
46	85	68	0	0	0	31	Labor Contractor Crews
11	14	15	10	0	8	11	Drivers
<u>162</u>	<u>200</u>	<u>195</u>	<u>107</u>	<u>0</u>	<u>148</u>	<u>181</u>	Daily Total

Total Number of Employees - 390

B. Eligibility Week: Week Ending February 20, 1979.

<u>Wed</u>	<u>Thurs</u>	<u>Fri</u>	<u>Sat</u>	<u>Sun</u>	<u>Mon</u>	<u>Tues</u>	
<u>2/14</u>	<u>2/15</u>	<u>2/16</u>	<u>2/17</u>	<u>2/18</u>	<u>2/19</u>	<u>2/20</u>	
3	2	7	7	4	150	147	Regular Crews
0	0	0	0	0	25	27	Labor Contractor Crews
0	0	0	0	0	9	6	Drivers
<u>3</u>	<u>2</u>	<u>7</u>	<u>7</u>	<u>4</u>	<u>184</u>	<u>180</u>	Daily Total

Total Number of Employees - 222

<sup>2/</sup> Employer's Exhibit 2 and 3.

These payroll records further establish that 390 employees were employed during the peak week, and 222 employees were employed during the eligibility week.<sup>3/</sup>

Testimony concerning the amount of turnover in the workforce consisted of Hector Saikhon's statement that there were a lot of new people during the eligibility week payroll period. There was no testimony concerning turnover during peak week.

Hector Saikhon testified that the company's normal work week was six days, and that it did not work Sundays. However, payroll records in evidence for six weeks of the harvest, January 17 to February 21, 1979, show a considerable variation in the work week. The records show that the harvest crews' work weeks ranged from a seven-day week to a two-day week. There was only one week during this period in which the harvest crews worked a six-day week.

Analysis. The peak question here turns on which method is used to determine whether "... the employer's payroll reflects 50% of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition." Labor Code §1156.4.

There are two methods approved by the Board to determine peak, the employee count method and the employee averaging

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<sup>3/</sup> The Tally of Ballots states that there were a total of 177 eligible voters. However, an examination of payroll records in evidence indicates that the number was actually 222.

method, discussed below. Both formulas are "reasonable measures of the timeliness of petitions under this statute," and the Board will find petitions to be timely which meet either of these formulas. Sonita Packing Co., Inc., 4 ALR3 Mo. 96 (1973). In a case where the use of the formulas led to conflicting results, the Board held the peak requirement had been met and the petition was timely. Donlay Farms, 4 ALSB Mo. 66 (1973) (the petition was timely under the employee count method but not under the employee averaging method).

The employer and the union both agree that by the employee count method, the eligible employees are more than 50% of the number of employees at peak. By this approach, the number of employees eligible to vote is compared to the number of employees working for the employer during the peak period. Kawano Farms, Inc., 2 ALR3 No. 25 (1976); Valdora Produce Co., 3 AL3S Mo. 3 (1977) and Donley Farms, 4 ALRB No. 66 (1973).

In this case the number of eligible voters, 222, is more than 50% of the number of employees at peak, 390. Therefore under the employee count method, the petition was timely.

The employer's position however, is that the employee averaging method should be applied under the facts of this case, with the result that the petition was untimely. This method, set out in a line of cases beginning with Mario Saikhon, Inc., 2 ALSS Mo. 2 (1976), determines an average number of employees per day for the relevant payroll periods and compares them. The average reflects the employer's job requirements, indicating the

number of people needed to do the work (rather than the actual number of workers hired). In devising this formula, the Board sought to account for the effect of high turnover and to minimize the distortions in the peak estimate created by a fluctuating workforce. Id.

The employer asserts that use of the Saikhon formula is required in order to consider the number of "representative days" during the eligibility payroll period. It cites a line of cases, including Ranch No. I, 2 ALRB No. 37 (1976); High & Mighty Farms, 3 ALRB No. 88 (1977); California Lettuce Co., 5 ALRB No. 24 (1979)., in which the number of employees working on some days was very low by comparison with other days during the pertinent payroll period.

The employer argues that there are five representative days during the eligibility week, February 15, 16, 17, 19 and 20, and thus the divisor used in the Saikhon formula should be five. February 15, 16, and 17 are included even though only the general farm crew worked. No harvesting occurred on those three days because the lettuce was not ready to be cut, and therefore the harvest crews did not work. February 19 and 20 are the only two days the harvest crews worked that week. February 14, a Tuesday, was not representative because no harvesting occurred in the Imperial Valley since it was the day of the funeral of a slain UFW picket. February 13, a Sunday, was unrepresentative because the employer usually works a six-day week and does not work Sundays.

The union asserts that the Saikhon formula is not necessary to decide this case, but that if it is used, the peak requirement is met nevertheless because there are only two representative days, i.e., the days on which the harvest crews worked.

The union argues, and payroll records in evidence show, that for six weeks around the peak harvest period, January 17 through February 21, there was an erratic work schedule which did not reflect a six day work week. There were three weeks containing three workdays, one week of seven workdays, one week of six workdays, and one week of two workdays.

The records for this period also show that the work did not occur consistently on the same days of the week. For these six weeks, work was as often done on Sundays as it was on Thursdays, i.e., during the period from January 12 to February 21, Sunday was worked twice and Thursday was worked twice. This evidence undercuts the employer's assertion that Sunday normally is not a workday.

I find that the evidence demonstrates the lack of any clear pattern of employment during the lettuce harvest months of January and February 1979 for the employer. The erratic nature of the harvest work makes it difficult to determine what are representative days in this case.

The Board has established two methods for determining peak, which while based on different theories, are equally appropriate under the statute. Bonita Packing Co., Inc., 4 ALPS No. 96 (1973). Sines under an approved method for resolving the

peak question the petition is shown to be timely, I do not resolve the argument surrounding the use of the Saikhon formula. I conclude that peak question is resolved by the proper application of the employee count method, and that the election petition was timely. I recommend that the objection be dismissed.

B. Respresentative Vote

The employer asserts three bases for its objection that the vote was not representative. These are: whether the Board gave adequate notice of the election, whether the Board properly selected the second voting site, and whether the Board's switching of the site caused disenfranchisement of voters. Each of these aspects of the objection is examined below.

Facts;

a) notice: The Board agent in charge of the election testified credibly that he followed established ALRB procedures in giving notice to workers. Radio announcements in Spanish were broadcast the evening prior to the election and on election day, every hour or half hour. Board agents distributed 200 - 250 leaflets on the day before the election and on election day. Leaflets were distributed at the employer's fields and at the border crossing. Both the announcements and the leaflets stated the times and places for voting: 10:00 a.m. to noon on company property, and 4:00 p.m. to 6:00 p.m. at the HDD office in El Hoyo in Calexico.

Additionally, Pedro Valdez, a UFW organizer, credibly testified that he and another organizer distributed 1,000 copies of a union leaflet at the border crossing, at two restaurants

frequented by workers in Calexico, and. at the employer's fields. The leaflet included the times and places of the voting. The organizers distributed them on election day. The employer's efforts to give notice consisted of supervisor Jose Herrera notifying five employees the night before the election. Although two of the employees were foremen, Herrera did not know whether they notified their crew members.

Herrera also testified as to worker inquiries about the time and place of the election, after the close of the morning polling between 1:30 and 2:30 in the afternoon. While at work in the fields he saw 13 or 19 cars drive up one by one. Each car contained one or more persons. He told everyone to go to El Hoyo to vote between 4:00 and 6:00 p.m. If all these people came to the employer's field and received directions, it is unlikely that not one single voter would show up at the second site. The fact that no one came to vote at El Hoyo suggests that the testimony may have been exaggerated.

Out of the 222 names on the eligibility list (per the stipulation of the union and employer, 66 cast ballots. This represents a 34% turnout. The testimony indicated a number of causes which may have contributed to a low voter turnout. The employer had a very erratic work schedule in January and February. There was no harvest work the two days prior to the election. Only late Thursday did the employer decide that work would take place Friday, election day. Of the 31 persons working election day, 66 voted. Some workers lived in Mexico and had to bear the costs of getting to the polls at the border, which may have

deterred them from voting.

b) selection of site; The second voting site at the EDD office at El Hoyo is frequently used for ALRB elections. It is a public place, partially paved as a parking lot and enclosed by a fence. El Hoyo is well known to farm workers as a gathering place where they wait to meet busses which transport them from the border to jobs in the fields.

At the pre-election conference, neither party to this election advocated El Hoyo as the off-ranch site. The union wanted the "parquecito", located right at the border. The employer was opposed to the "parquecito", and wanted the site to be away from the border, possibly at another city park. The Board agent chose El Hoyo as a compromise. He had several sound reasons for doing so. In addition to its frequent use by the ALRB for elections, the site is close to the border crossing, and it is convenient to workers. It is state property and easy to control. It is an easily identified location. The agent testified that it is not uncommon for no workers or only one or two to show up at a particular election site, especially in an election with more than one voting site.

c) switching sites; The second polling site was changed on election day and then switched back to the originally designated location. The Board agent testified credibly that he learned midway through election day that the UFW had scheduled a rally for 4:00 p.m. at El Hoyo. Realizing that this partisan activity could interfere with the election, he arranged to move the polling site from El Hoyo to Jefferson School, also in Calexico, about two miles away. He notified the parties and

stationed two Board agents at El Hoyo to inform any employees who arrived of the change, and to provide transportation if needed. The two agents went to El Hoyo before 4:00. They were located there all the time the agent in charge was at Jefferson School. The agent in charge arrived at Jefferson School early, about 3:45 p.m. As he was preparing that site, before 4:00 p.m. a union representative informed him by telephone that the rally had been cancelled. The Board agent then decided to return to the location originally designated in, the notices and radio announcements distributed by the Board.

The net effect of the changes in location was a delay of 20 - 25 minutes in the opening of the polls at El Hoyo. There was no evidence that the delay caused prospective voters to be denied the right to vote. Board agents were present at the El Hoyo site throughout the scheduled polling period. There was no testimony that the change itself caused disenfranchisement of voters.

Analysis; The concept of a representative vote is that the outcome of the election should adequately express the interest and desire of employees. The mere numbers of voters casting ballots does not determine whether a vote was representative. Rather, the determination of representativeness centers upon the question of whether those not voting were prevented from voting by the conduct of either a party or of the Board. Lu Ette Farms, 2 ALRB No. 49 (election upheld; 50% voted), Pacific Farms, 3 ALRB No. 75 (election overturned, 11% voted; inadequate notice found), Sun World Packing Corporation, 4 ALRB No. 22 (election upheld, 50% voted), Valencia Service Co., 59 NLRB

343, 30 LHPJ! 1074 (1952).

Like the NLRA, this Act "makes no provision for a quorum or for the participation of any definite proportion of the eligible employee complement in an election. Ordinarily, the political rule applies and those who do not take the time to vote acquiesce in the choice registered by a majority of those voting". Piper Industries, 212 NLRB 474, 37 LRRM 1277 (1974). "In every election conducted by Board agents, it is our concern that each employee eligible to vote be afforded an opportunity to cast a secret ballot if he so desires. No compulsion is placed upon any employee to require him to exercise his right to vote". Stiefel Construction Corp., 65 NLRB 925, 17 LRRM 251 (1946) (election upheld, 31% of eligible voters cast ballots).

To prove its assertion that employees were disenfranchised by insufficient notice, the objecting party must produce evidence that eligible voters who otherwise might have voted did not do so because they did not receive notice of the election. Jack or Marion Radovich, 2 ALRB No. 12 (1976).

The parties to an election are expected to participate in informing workers that an election will be held shortly due to the Act's statutory time limitations. LuEtte Farms, 2 ALRB No. 49 (1976) , R. T. Englund Company, 2 ALRB No. 23, Sun World Packing Corp., 4 ALRB No. 23. As in seven-day time frame for most elections, the participation of parties in notifying workers should be equally required within the time frame of 48-hour elections.

The Board has not dealt with the specific issues of adequate notice procedures in an election under strike circumstances. The decision to hold an election within 43 hours of the filing of the petition is a discretionary one. Kyutoko Nursery, Inc., 3 ALRB No. 30 (1977). The issue here is whether under the circumstances of a 48-hour election, the Board agent acted reasonably in providing notice. The Board agent followed the usual procedures for seven-day elections, but acted within the 43-hour time frame. His efforts were designed to reach both currant workers at the ranch by leaflets, and those who were not at work by radio spots.

Jose Herrera's testimony that he spoke to at least 18 people on election day after the morning polls closed and told them where and when to vote indicates additional notice given. There was no evidence that these people were in fact eligible voters. Assuming they were eligible, the fact that even after such personalized notice none of them came to vote indicates that they chose not to exercise their right to vote, which is not a basis for setting the election aside. Lu Stte Farms, 2 ALRB No. 49.

The employer's objection concerning the 21 Koyo site, as it relates to the selection of the site, is not before me. That objection was dismissed by the Executive Secretary. The only aspect of the choice of the site before me is its possible effect on voter turnout.

Section 20350(a) of the Board's regulations provide:

All elections ... shall be conducted at such times and places as may be ordered by the

regional director. Reasonable discretion shall be allowed to the agent supervising the election to set the exact times and places to permit the maximum participation of the employees eligible to vote.

Evidence must demonstrate that the chosen site was intimidating to the voting rights of employees and therefore it was an abuse of Board agent discretion to set the election at that location. Ralph Samsel Company, 2 ALRB No. 10.

While it is possible that employees hearing of a UFW rally at El Hoyo might have been deterred from voting, no evidence was introduced of the extent to which the rally was publicized. The supposition that such publicity existed and further that it reached employees not voting in this election is itself speculative, and is not sufficient basis for concluding that employees did not vote because of the rally.

The Board has held that where an election site was changed during election day due to an unpredicted cancellation of work (caused by rain), and there was no evidence that any voters were disenfranchised as a result, there was no basis for overturning the election. The Board agent exercised reasonable discretion, and the change neither affected the election outcome nor created a situation which served to disenfranchise voters. J. R. Norton, 3 ALRB No. 66 (turnout was between 50 - 67%).

Absent evidence of disenfranchisement, the late opening of polls is not a basis for overturning the election. Admiral Packing Co., 1 ALRB No. 20 (1975).

There is no evidence that the changing of the site had any effect whatsoever on voter turnout. Nor is there any evidence that the 20 - 25 minutes delay in opening of the polls caused people not to vote. I conclude that the switching of the site during the election did not effect representativeness of the vote or the outcome of the election, <sup>4/</sup>

The evidence establishes that the Board agent followed the usual procedures for providing adequate notice of the election, and I so find. The evidence further establishes that El Koyo was chosen for good reasons, was an adequate polling site, and did not affect voter turnout, and I so find. There is no evidence that employees were prevented from voting by lack of notice, by the choice of El Hoyo as the second polling sits, or by the last-minute decision to switch sites. Since the evidence does not show either that the notice given or the choice of site affected the representativeness of the vote, it does not require overturning this election. Lu Etta Farms, supra, Pacific Farms, supra, Sun World Packing Corp., supra.

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4/ Under the circumstances necessitating the change, the agent responded properly upon suddenly learning of the potential problem of a union rally in the vicinity of the polling site. He quickly decided to move the site, and so informed the parties. By establishing other agents an El Soya he took precautions against disenfranchising eligible voters. His subsequent decision to return to the original site upon learning that the rally was cancelled followed the policy of maximizing voter participation. See 3 Cal. Admin. Code §20350(a). Since the notice named ' El Hoyo as the voting site, it seems probable that if voters were intending to vote that afternoon, they would have come to El Hoyo. I conclude that the Board agent acted reasonably under difficult circumstances.

I recommend that the objection be dismissed.

C. Name on Notice of Election

The Board agent in charge of the election placed two names upon the notice of election. In the space indicated for "Name of Employer" the notice read: "Verde Produce, Inc. (Hector Saikhon)". The employer asserts that the notice was intimidating and misleading to workers because it used the name Saikhon. In support of this position, the employer looks to certain events in the area close to the time of the election. There was a strike in progress in the Imperial Valley, Mario Saikhon's name appeared in the news, and a striking worker had recently been killed on Mario Saikhon's property.

The inference that the employer would draw from these facts, that the Saikhon name was intimidating, is tenuous and speculative. No worker testified that the name Saikhon had become associated with violence and fear, as the employer claims. No worker testified that the name was intimidating. Indeed, the name was familiar, not new, to all the eligible voters in this election. All workers had seen the name Hector Saikhon as often as they had been paid by the employer since Mr. Saikhon signs all the checks. Moreover, the reason for using the name was that the Hoard agent had been requested to do so by a group of workers, who said that "Hector Saikhon" was the manner in which workers customarily referred to this employer. The only person with significant worker contact who testified that he never heard the employer referred to as the "Hector Saikhon Company" was supervisor

Josa Herrera. On this point his testimony was characterized by evasiveness and cannot be credited.

In addition, there was no evidence to indicate that the name was misleading reference to this employer. Hector Saikhon and other witnesses established that Saikhon has the dominant role in this enterprise. One labor contractor, Daniel Garcia, in his testimony referred to Saikhon as "the owner" of the company. (RT 11:53)

I conclude that the placing of the name Hector Saikhon on the Notice and Direction of Election was not improper, and further that the name on the notice did not have an adverse effect on this election and is not a basis for setting- the election aside.

I recommend that the objection be dismissed.

### III. Conclusion of Law

Based on the above findings of fact, analysis, and conclusions, I recommend that the Employer's objections be dismissed and that the United Farm Workers of America, ATL-CIO, be certified as the exclusive bargaining representative of ail the agricultural employees of the employer in the State of California.

DAT2D: January 3, 1980



CARLA JO DAXIN

Investigative Hearing Examine