STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

T. ITO & SONS FARMS, Employer,	)	Case No. 82-RC-2-OX
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	9 ALRB No. 56

DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on March 29, 1982, a representation election was conducted among the agricultural employees of T. Ito & Sons Farms (Employer or Ito) on March 31, 1982. The official Tally of Ballots showed the following results:

UFW	212
No Union	121
Challenged Ballots. . . .	18
Total.	358[1/]

The Employer timely filed post-election objections to the election, 23 of which were set for hearing. A Hearing was conducted before Investigative Hearing Examiner (IHE) Beverly Axelrod who thereafter issued the attached Decision in which she recommended that the Agricultural Labor Relation Board (Board

[1/] There were seven void ballots.

or ALRB) dismiss the Employer's objections and certify the UFW as the collective bargaining representative of the Employer's agricultural employees. The Employer timely filed exceptions to the IHE's Decision and a supporting brief, and the UFW filed a brief in response to the Employer's exceptions.

Pursuant to the provisions of Labor Code section 1146, the ALRB has delegated its authority in this matter to a three-member panel.

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

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all agricultural employees of T. Ito & Sons Farms in the State of California for purposes of collective bargaining, as defined in section 1155.2(a) concerning employees' wages, hours, and working conditions.

Dated: September 27, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

PATRICK W. HENNING, Member

CASE SUMMARY

T. ITO & SONS FARMS
(UFW)

9 ALRB No. 56
Case No. 82-RC-2-OX

IHE Decision

Twenty-three of the Employer's objections were set for hearing in the instant case. They alleged that the election petition was not properly filed; that the Board agents had no credible basis for determining that a majority of employees were on strike; and that UFW agents and supporters coerced and frightened employees into voting for the UFW, both before and during the election.

The IHE concluded that even though the election petition was not filed in the appropriate regional office, it was nonetheless properly filed. The petition was personally given to the Board agent in charge of investigating the petition and conducting the election. In addition, the Employer did not allege a lack of notice of the filing of the petition. The IHE also concluded that the Board agents properly concluded that a majority of the Employer's agricultural employees were on strike, based on the information available to them at the time the determination was made. Finally, the IHE concluded that while some minor strike-related misconduct by UFW supporters occurred prior to the election and some campaigning by UFW supporters occurred within the quarantine area during the polling, this misconduct did not tend to affect the results of the election. The IHE recommended that the Employer's objections be dismissed and that the UFW be certified as the representative of all of the Employer's agricultural employees.

Board Decision

The Board affirmed the IHE's rulings, findings, and conclusions and adopted her recommendation that the UFW be certified as the exclusive representative of all of the Employer's agricultural employees in the State of California.

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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

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: T. ITO & SONS FARMS, Employer and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	Case No. 82-RC-2-OX DECISION OF INVESTIGATIVE HEARING EXAMINER

Appearances:

Littler, Mendelson, Fastiff & Tichy
by Robert K. Carrol and
Robert W. Drake of San
Francisco, Cal. for the Employer.

Ned Dunphy and Tomas Gonzales
of Keene, Cal. for the Petitioner.

Silvia Lopez of Oxnard, Cal. for
the General Counsel, ALRB.

DECISION

I. Statement of the Case

BEVERLY AXELROD, Investigative Hearing Examiner: This case was heard by me on July 27, 28, 29, 30, August 2, 5, 6, and 10, 1982, in Westminster, California, pursuant to a Notice of Investigative Hearing issued by the Executive Secretary of the Agricultural Labor Relations Board (herein "ALRB" or "Board") on June 15, 1982.

A Petition for Certification was filed by the United Farm Workers of America, AFL-CIO (herein "UFW") on March 29, 1982.[1] The Petition was filed to certify the UFW as bargaining representative of the agricultural employees of T. Ito & Sons Farms (herein "employer").

A Notice and Direction of Election was issued by the Oxnard regional director of the ALRB on March 31, 1982. An election was held on the same day at the Katella field on the employer's premises. The Tally of Ballots shows the following results:

UFW:	212
No Union:	121
Unresolved Challenges:	18
TOTAL BALLOTS	351

On April 5, 1982 the employer timely filed objections pursuant to section 1156.3(c) of the Agricultural Labor Relations Act (herein "Act"), objecting to the certification of the election. The employer objected that agents of the ALRB engaged in misconduct while conducting the election, and that agents and supporters of the UFW engaged in misconduct before and during the election.

On May 21, 1982 the Executive Secretary of the Board issued an Order Setting Objections for Hearing, and on June

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1. The employer's objections to the procedures used for filing the Petition are discussed infra in this Decision. The Petition for Certification is referred to herein as an "Election Petition."

7, 1982 and July 14, 1982 the Executive Secretary issued Supplemental Orders Setting Objections for Hearing. A total of 23 objections were set for hearing alleging misconduct of ALRB agents and UFW agents and supporters.

The hearing was commenced on July 27, 1982 and was adjourned on August 10, 1982. All parties were represented at the hearing and were given full opportunity to participate in the proceedings. The employer and the UFW filed post-hearing briefs.

Upon the entire record in this case, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following findings of fact and conclusions of law.

II. The Facts

A. Summary of Pre-Election and Election Procedures

The employer grows strawberries in Orange County, California. The operation of the farm is supervised by Mr. Tom Ito and his son, Mr. Bill Ito. The employer's main field is called the Katella field, and is located near Cypress and Los Alamitos, California. The Katella field consists of approximately 150 acres. The employer also operates smaller fields a few miles away from the Katella field.

On March 27, 1982 a number of employees at the employer's fields went on strike for higher wages. (R.T. I: 16-17.)[2] On March 29, 1982 the UFW gave a Petition for

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2. References to the Reporter's Transcript are given

Certification to Board Agent Baltazar Martinez. The details concerning this Petition are discussed infra. Board Agent Martinez conducted an investigation on March 29 and 30, 1982, assisted by regional attorney Judy Weissberg. Ms. Weissberg and Mr. Martinez made a determination that a majority of employees were on strike, and the regional director ordered an expedited election held on March 31, 1982. Ms. Weissberg notified the employer's attorney that the election would be held. A pre-election conference was convened on the evening of March 30, 1982.

On March 31, 1982 the election was held at the Katella field, with the UFW winning a majority of the votes. The election was supervised by Board agents Baltazar Martinez, Tony Sanchez, Judy Weissberg, and Mauricio Nuno. Present at the election were employer observers Juan Vallejo and Francisco Ruiz, and UFW observers Ofelia Romero and Arturo Zamora. The specific events which allegedly occurred during the balloting are discussed infra.

The election was conducted under the authority of section 1156.3(a) of the Act, which provides for an expedited election in a majority strike situation. The timing of the formal procedures, as discussed more fully infra, was as follows: on Monday, March 29, 1982 at approximately 4:50 p.m. the employer was served with a Petition for Certification by the UFW. On the same day at approximately

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herein as "R.T." followed by the volume in Roman numerals and the pages in Arabic numerals.

5:00 p.m. the UFW gave the Petition to Board Agent Martinez. At approximately 5:30 p.m. that day Mr. Martinez left a copy of the employer's response form at the employer's office. On Tuesday, March 30 at approximately 7:30 p.m. a pre-election conference was held. On Wednesday, March 31 at approximately 7:00 a.m. the election was conducted at the employer's premises. Approximately 38 hours elapsed between the serving of the Petition for Certification and the holding of the election.

B. The Employer's Objections to the Election.

The employer makes four general objections to the election:

(1) The Election Petition was not properly filed;

(2) The Board agents had no credible basis for determining that a majority of employees were on strike;[3]

(3) UFW agents and supporters coerced and frightened employees, before and during the election, into voting for the UFW;

(4) The Board agents failed to conduct the election procedures properly, failed to police the quarantine area, manipulated the challenge ballots to favor pro-UFW voters, and told voters to vote for the UFW.

1. The Filing of the Election Petition.

The evidence concerning the filing of the Election Petition consists largely of the testimony of the Board

3. This determination provided the basis for calling an expedited election under section 1156.3(a) of the Act.

agent in charge of the investigation, Mr. Baltazar Martinez. Mr. Martinez is a Board agent and field examiner and has worked for the Board for approximately two and one-half years. (R.T. II:132.) He worked out of the Oxnard Regional Office at times material to this case.

Mr. Martinez testified concerning the filing of the Petition as follows:

On Monday, March 29, 1982 Mr. Martinez received a phone call from Mr. Roberto De La Cruz, an organizer for the UFW. The call was received at 9:00 a.m. in Mr. Martinez' ALRB office in Oxnard. Mr. De La Cruz informed Mr. Martinez that "there was a strike at Los Alamitos at the [employer's] farm, and [Mr. De La Cruz] wanted somebody to go to Los Alamitos, and the workers wanted to have an election." (R.T. II:133.)

Mr. Martinez arranged to go to Los Alamitos to investigate later that afternoon. He discussed with his supervisor, Mr. Newman Strawbridge, what procedures to follow. Mr. Martinez testified: "Mr. Strawbridge and I agreed that I would take whatever was necessary to set up a temporary office in Los Alamitos." (R.T. II:142.)

Mr. Martinez drove to the Katella field that afternoon. (R.T. II:134.)[4] He arrived at approximately 3:00 p.m. and saw a group of employees gathered along a street near

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4. Joint exhibit #1 is a diagram of the Katella field. Joint exhibits are herein referred to as "JX," employer's exhibits are herein referred to as "EX" and the UFW's exhibits are referred to herein as "PX."

the side of the field. Some of the employees wore UFW buttons and carried a sign that said "Huelga." (R.T. II:137.) Mr. Martinez met Mr. De La Cruz, who was busy gathering authorization cards or taking notes from the workers. They agreed to meet later at a coffee shop about a mile from the premises when Mr. De La Cruz had finished. (R.T. II: 139.)

Mr. Martinez carried with him ALRB forms, including an Election Petition: "[I]n the election kit that I carry, I carry most everything that we use in elections, proof of service, declaration forms, petitions." (R.T. II: 140-141.)

Mr. Martinez and Mr. De La Cruz met at the coffee shop at approximately 4:00 - 4:30 p.m. (R.T. II:156.) Several workers were present, and Mr. Martinez discussed with them the strike at the employer's premises. Then Mr. De La Cruz "said he wanted to fill out the petition for an election; [I] went to the car, took out the forms." (R.T. II:156.) Mr. Martinez testified that he was not sure if he gave the petition form to Mr. De La Cruz or if Mr. De La Cruz already had one. (R.T. II:158.)

Mr. Martinez testified that Mr. De La Cruz filled out the Petition at the coffee shop, in Mr. Martinez' presence. (R.T. II:158.) Mr. Martinez counted the authorization cards from Mr. De La Cruz. Mr. De La Cruz then went to the employer's offices to serve the Petition. (R.T. II:159-160.)

Mr. Martinez waited for Mr. De La Cruz at the coffee shop. While Mr. De La Cruz was gone, Mr. Martinez phoned his office and told a secretary that Mr. Martinez was going

to be receiving an Election Petition. (R.T. II:160.) Mr. De La Cruz returned in approximately fifteen minutes, "close to 5:00 p.m." (R.T. II:161.) He had with him a proof of service. At that time Mr. De La Cruz gave the Petition to Mr. Martinez. (R.T. II:161.) Mr. Martinez then wrote the date and time on the Petition. (R.T. II:163.)

During questioning by counsel for the employer, Mr. Martinez stated that he could not recollect whether Mr. De La Cruz had filled out the Petition when the two initially met in the coffee shop at 4:30, or whether Mr. De La Cruz just filled out a proof of service at that time. (R.T. II: 161-62.) Mr. Martinez also stated that he could not remember the exact times, but that Mr. De La Cruz returned from serving the Petition "at five o'clock, or close to five o'clock," and at that time Mr. De La Cruz gave Mr. Martinez a copy of the proof of service and the Petition. (R.T. II: 162, 165.)

Mr. Martinez also testified that Mr. De La Cruz left to serve the Petition on the employer at "about five o'clock." (R.T. II:162.) Mr. Martinez then testified that he entered a time of "five o'clock, or shortly before 5:00" on the Petition when Mr. De La Cruz returned and gave the Petition to him. (R.T. II:163.)

Following receipt of the Petition from Mr. De La Cruz, Mr. Martinez asked Mr. De La Cruz whether he had left an employer's response with the employer. Mr. De La Cruz stated he had not, and Mr. Martinez went to the employer's

office. He arrived at approximately 5:10 p.m. and told the security guard that the UFW had served an Election Petition on the employer. Mr. Martinez told the guard to call the owners and tell them he was leaving an employer's response in the office. The guard called and spoke to someone in the owner's family, informing the person that Mr. Martinez was leaving an employer's response in the office. (R.T. II:169.)

When asked by counsel for the employer where the Petition was "filed," Mr. Martinez testified that "It was filed at the Los Alamitos coffee shop." (R.T. II:165.) Counsel for the employer asked Mr. Martinez whether he was aware of any significance to filing the Petition before 5:00 p.m. in order to have the expedited election period (48 hours) run from Monday, March 31 instead of beginning Tuesday. Mr. Martinez testified that "I'm aware of the legal part of it," and "I did not want it to be an issue." (R.T. IV:12.)

Mr. Martinez did not return to the Oxnard Regional Office that night, and he kept the Petition with him. (R.T. II:180.) The next morning, Tuesday March 30, Mr. Martinez went to the Katella field at 6:00 a.m. to continue his investigation. At that time he spoke with Mr. Bill Ito, the employer's general manager, about the Election Petition. Mr. Ito said he had received the Petition, and that his attorneys would be handling the matter. (R.T. II:186-187.)

Mr. Martinez then phoned the Oxnard Regional Office at approximately 9:00 a.m. and spoke to his supervisor, Mr.

Strawbridge. He informed Mr. Strawbridge that a Petition had been filed, and also that Mr. Martinez believed that a majority of the employees were on strike. (R.T. II:193.)[5] Mr. Martinez testified that he was not sure whether at that time Mr. Strawbridge gave him a docket number over the phone for the Petition. (R.T. II:194-197.)

Mr. Wayne Smith was called by the employer to testify. Mr. Smith has been the ALRB's regional director for the Oxnard region since 1980. (R.T. VIII:9.) Mr. Smith testified that there is no ALRB regional office or sub-regional office in Los Alamitos, and that Mr. Martinez did not have authority to establish a regional or sub-regional office in Los Alamitos. (R.T. VIII:5-6.) He stated that since 1980 there were no instances other than the present case in which an Election Petition was received in his region in a location other than a regional or sub-regional office. (R.T. VIII:9.) Counsel for the employer asked Mr. Smith:

"Q. Do you have the authority to authorize Baltazar Martinez to deem an election petition to be filed in [the coffee shop in Los Alamitos] or any other location?

"A. Well, that's sort of a tricky question. If I have the authority to deem the [coffee] shop a regional office, I'd say no. The authority to accept a petition outside of the regional office, particularly, I'd probably say, yes.

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5. The facts concerning the majority-strike issue are discussed in the next section, <u>infra</u>.

"Q. Could you tell me, specifically, from where your authority to do that would emanate in the regulations or in the law itself?

"A. It would be only an interpretation of section 2300(e) [§20300(e) of the Board's regulation], which says, where a petition is to be filed, the Petition for Certification shall be filed in the regional office. The interpretation would be that it would be in the region rather than the specific office." (R.T. VIII:8-9.)

Mr. Smith amplified his explanation:

"A. Section 2300(e) is the specific site that states how a petition shall be filed, and it states it shall be filed in the regional office. One interpretation, obviously, is that it has to be filed in that office. In situations such as the election at [the employer's farm], and particularly in a region such as the one that I have jurisdiction over, where an election situation involving a 48-hour election, which would be a strike election, might come up, it may be burdensome and even detrimental to the person of [sic: or] act to require the petition to be physically filed in the office before we finish our investigation of that petition. In the instant case, Mr. Martinez went down there, I believe, prior to the Petition actually being filed in the office and did the investigation and made the physical, factual determination and then related it to me. I then authorized the holding of that election under the provisions of the 48-hour strike prior to documents actually being physically filed in the office, due to the fact that,

normally, in these kinds of situations, I would err on the side of protecting the process and in sort of covering in the specific filings and so forth during the course of that process. That's what I did in this case." (R.T. II: 11-12.)

Mr. Smith was asked whether, in his conversations with the employer's attorneys during the pre-election and election period, the attorneys complained about the filing of the Petition. He testified that the attorneys did not complain about the filing of the Petition. He further testified that the attorneys did complain about the determination that a majority of employees were on strike, and the attorneys complained about the short time period before the election was to be held, stating that the employer's campaigning would be restricted. The alleged improper filing of the Petition was not included in the employer's objections to the election, submitted pursuant to section 1156.3(c) of the Act.

The Petition for Certification in this case has written on it a filing date of "3-29-82," followed by a time notation of "5:00 p.m." The Proof of Service attached to the Petition contains a date of "March 29, 1982" followed by a time of "4:50 p.m."

There was testimony that it took about two hours to drive to the employer's premises from the Oxnard Regional Office. (R.T. V:4, 48.)

Based on all the above testimony and evidence, I find the following facts:

(1) The Petition for Certification was served on the employer at approximately 4:50 p.m. on March 29, 1982.

(2) The Petition for Certification was given to Board Agent Baltazar Martinez by UFW representative De La Cruz at approximately 5:00 p.m. on March 29, 1982. Although Mr. Martinez was not certain of the exact time and sequences, I find no reason to discredit his testimony that it was received by him at or before 5:00 p.m.

(3) The Petition for Certification was given to Board Agent Martinez during his investigation of the strike, at a coffee shop in Los Alamitos near the employer's premises. The coffee shop is not a regional or sub-regional office of the ALRB.

(4) Board Agent Martinez went to the employer's office shortly after receiving the Petition and left an employer's response form at the office. Mr. Martinez also had a guard notify the employer's owners that the response form was in the office.

(5) Board Agent Martinez telephoned his supervisors in the regional office the next morning and informed them that a Petition for Certification had been filed. He also spoke to the employer's owner at that time, who acknowledged having received the Petition.

(6) The Petition for Certification was not brought to the Oxnard Regional Office by Mr. Martinez until after the election.

The legal effect of the above procedures is discussed in the Conclusions of Law, infra.

2. The Determination that a Majority of the Employees Were on Strike.

The evidence concerning the determination that a majority of the employees were on strike shows that several Board agents were involved in making that determination. A number of witnesses testified as to the events.

Board Agent Baltazar Martinez testified that he received a telephone call from UFW representative Roberto De La Cruz at 9:00 a.m. on Monday, March 29, 1982. (Mr. De La Cruz told Mr. Martinez that there was a strike at the employer's farm and that the employees wanted an election. Mr. Martinez arranged to come to the employer's premises later that afternoon. (R.T. II:132.)

Mr. Martinez drove to the Katella field, arriving between 2:00 and 3:00 p.m. (R.T. II:135.) When he arrived he saw employees gathered on the street alongside the field. Some were wearing UFW buttons and caps. (R.T. II:137.) There was one sign being displayed that said "Huelga." (R.T. II:137.)[6] Some of the people were sitting in cars and vans. (R.T. II:137.) Mr. Martinez testified that "There were over a hundred people there." (R.T. II:137.) Mr. Martinez further testified that he was just estimating the number of people. "I estimated that there were a hundred and fifty on Hope Street [next to Katella field]. This is

6. "Huelga" means "strike" in Spanish.

just a figure out of my head. I don't know if it's right or how far I am either way." (R.T. IV:44.)

Mr. Martinez testified that when he arrived at Katella field Mr. De La Cruz was getting the people gathered there to sign authorization cards (R.T. II:139-140), although Mr. Martinez was not sure if Mr. De La Cruz was taking cards from the workers at that time or just taking notes as he talked with the workers. (R.T. II:145.)

Mr. Martinez arranged to meet Mr. De La Cruz at a nearby coffee shop. Shortly after Mr. Martinez arrived at the coffee shop some of the workers that had been on strike came in and Mr. Martinez spoke with them. (R.T. II:146.) Mr. Martinez asked them how many employees worked at the employer's farm, and the workers told him approximately 350. (R.T. II:154.) The workers also told him that the employer had made threats to the striking workers. (R.T. II:154.) Mr. Martinez asked the workers how many people were on strike. He testified: "They said the majority were on strike. They said that there were over 200 workers. A few had come back when they heard those threats, immigration threats, and the company had hired some people on Monday, or hired replacements for the beginning of that day." (R.T. II:155.)

After his conversation with the workers, Mr. Martinez spoke with UFW representative De La Cruz. At that time Mr. De La Cruz gave Mr. Martinez approximately 200 authorization cards. (R.T. II:156.) Mr. Martinez testified: "We counted the cards, there were over 200 cards." (R.T. II:159.)

Mr. Martinez returned to the Katella field the following morning (Tuesday, March 30, 1982) at 6:00 a.m. (R.T. II:180.) He visited with the workers on strike, then talked with Mr. Bill Ito. Mr. Ito told Mr. Martinez that he had received the Election Petition from the UFW (R.T. II:186.) Mr. Martinez told Mr. Ito that the employer should file a response, and Mr. Ito said Mr. Martinez should talk to the employer's attorney, Robert Carrol. (R.T. II:187.) Mr. Martinez then spoke to some of the striking workers and was given written statements from some of the workers. (R.T. II:201.) The statements concerned alleged threats made by the employer that people would be fired and evicted from company housing if they struck, and that the employer would call the Immigration service. (R.T. II:203.)

Mr. Martinez then called the Oxnard Regional Office and reported to his supervisor, Mr. Newman Strawbridge, on the progress of his investigation. (R.T. II:203.) Mr. Strawbridge told Mr. Martinez that Board attorney Judy Weissberg would be coming down to Los Alamitos to assist Mr. Martinez in the investigation. (R.T. II:209.) Mr. Martinez told Mr. Strawbridge to call the Immigration service (INS) and inform them that a labor dispute was in progress at the employer's farm and request that the INS not come to the employer's farm. (R.T. IV:2-3.)

Mr. Martinez testified that Ms. Weissberg arrived at approximately 12:30 p.m. that afternoon (March 30). She told him that she had contacted the employer's attorney,

and that attorney Scott Wilson would be handling the case for the employer. (R.T. IV:14.) Ms. Weissberg and Mr. Martinez, joined by another Board agent, Mauricio Nuno, then went to the employer's office. They identified themselves and asked an employee there for the payroll list of the employer's employees. (R.T. IV:21-22.) The employee gave them the list and they began checking the authorization cards Mr. Martinez had received the previous day against the list. After five minutes the employee came back and said she had spoken to Mr. Ito, and that Mr. Ito had said not to give the list to the agents. (R.T. IV:22, 25.) The employee took the list back. (R.T. IV:22.)

Mr. Martinez testified that he and the other two Board agents then drove to another office of the employer's at 2:00 p.m. and met there with Mr. Bill Ito, Mr. Tom Ito, and employer attorney Scott Wilson. The three Board agents were joined by a fourth, Mr. Tony Sanchez. (R.T. IV:23.) Mr. Martinez testified that at this meeting Mr. Wilson objected that there were not a majority of employees on strike. (R.T. IV:29.) Mr. Martinez testified: "So, we took a recess. Judy [Weissberg], Mauricio [Nuno], and Tony [Sanchez] and I went back across the street where the pickets were and I told them the company was saying that the majority was not on strike." (R.T. IV:41.) At that time, Mr. Martinez testified, the agents were given a list by either Mr. De La Cruz or one of the striking workers, "that contained over 200 names of people that had been on strike the previous day -- as of the previous day." (R.T.

IV:46.) Mr. Martinez testified that later that day he checked that list against the authorization cards he had been given by Mr. De La Cruz the previous day. (R.T. IV: 47.) Mr. Martinez further testified that the employer's representatives had told him earlier at the 2:00 meeting that there were approximately 400 employees employed at the employer's farm. (R.T. IV:44-45.)

Mr. Martinez testified that he and the other Board agents returned to the meeting. "I told [employer attorney] Scott Wilson that based on the information I had, that the majority were on strike and that I was requesting that the list [employer's payroll list of employees] be given over as soon as possible." [R.T. IV:48.) Mr. Martinez told the employer representatives that part of the basis for his determination was the fact that he had authorization cards from a majority of the 400 employees, and that he had seen a lot of people on strike. (R.T. IV:50.)

Mr. Martinez testified that at the 2:00 p.m. meeting the agents and employer representatives also discussed the alleged threats the employer had made to workers. (R.T. IV: 54-55.) Attorney Wilson stated at the meeting that no employee would be evicted or threatened with deportation. (R.T. IV:61.) Mr. Martinez testified that Mr. Wilson further stated that the employer opposed an expedited election because a majority of the employees were not on strike and because the employer would need more time to campaign. (R.T. IV:62.) Mr. Martinez testified that he responded that based

on the information he had a majority of employees were on strike, and also considering the statements he had received from some workers about threats, an expedited election would tentatively be held. (R.T. IV:63.) Mr. Martinez further testified that in a case of this type he would not make the final decision to conduct an expedited election himself, but would first consult with the regional director before a final decision would be made. (R.T. IV:16.) Mr. Martinez testified that the 2:00 p.m. meeting "ended with the company agreeing to give us the employee list of the employees' responses by later that afternoon because we still hadn't determined that the majority was on strike as far as the authorization cards. Everything was -- An election was going to take place pending the confirming the authorization cards with the employee list." (R.T. IV: 65.) A pre-election conference was tentatively scheduled for 7:00 p.m. that evening. (R.T. IV:66.)

Mr. Martinez testified that he then telephoned Mr. Wayne Smith, the Oxnard regional director, and told him about the status of the investigation. Mr. Smith told Mr. Martinez that if the authorization cards proved to be valid the expedited election should be held.

Mr. Martinez testified that at approximately 5:00 p.m. the employer provided the employee list, and "[W]e checked the authorization cards against the list. We saw a majority." (R.T. IV:68.) He further testified that the Board agents had some doubts about the employee list the employer had

provided, because it appeared to contain names of people who began working after the eligibility period for voting (week ending March 23rd). However, even with those names the authorization cards still showed a majority interest. (R.T. IV:68.)

Mr. Martinez testified that in making his determination that there were a majority of employees on strike he took into account the fact that at the meeting with the employer representatives the employer did not provide any documentary evidence to support its contention that a majority of employees were working. (R.T. IV:92, 96-97.)

Board attorney Judy Weissberg testified and confirmed the sequence of events as testified to by Mr. Martinez. She testified that she arrived at the employer's farm about 12:30 on Tuesday, March 30, 1982, and found Mr. Martinez "going through authorization cards that he had received from the UFW. And, I told him that it appeared the first thing we should be doing is meeting with the company attorney or company representatives and getting the employee list. So, we decided we would go do that." (R.T. V:4.) Ms. Weissberg testified that the Board agents initially got the employee list from an employee at the office, but that the list was taken back by the employee who stated that "Bill Ito has told me that you can't have the list." (R.T. V:7.) Ms. Weissberg and the Board agents then met with Mr. Ito and Attorney Scott Wilson at 2:00 p.m. (R.T. V:7.) Mr. Wilson stated at the meeting that there was not a majority on strike, and protested having an expedited 48-hour

election. (R.T. V:8.) Mr. Wilson and Mr. Ito did not provide any documentary evidence to support their statements that a majority was not on strike. (R.T. V:8.) The Board agents also talked with Mr. Wilson about the alleged threats against striking employees. (R.T. V:9.) Ms. Weissberg testified that in view of the employer's statements at the 2:00 p.m. meeting that a majority was not on strike, "[Mr. Martinez] and I made the decision that what we would do is go across the road to speak to the strikers and to reverify the reasons, or the need for, a 48-hour election." (R.T. V:11-12.)

Ms. Weissberg further testified that she and Mr. Martinez went across the road where approximately 40 workers were present, and they spoke to the workers. The workers told them that a majority of the employees were on strike. (R.T. V:13.). At that time, "We were given, by one of the workers, a group of papers which he tore out of a book, which was stated to us was a list of striking employees who had signed up on the strike line on [Monday] March 29th, the date the petition was filed; and that list was numbered and handwritten signatures by different people, with a total number of about 211 or 212 names on it." (R.T. V:13-14.) Ms. Weissberg and Mr. Martinez then returned to the meeting and "Either [Mr. Martinez] or I stated to the company that upon verification, again through the workers, we were of the impression that we were correct in saying that there was a majority of workers on strike; that we felt that this

was sufficient evidence to merit a holding of a 48-hour election." (R.T. V:16-17.)

Ms. Weissberg testified that the Board agents verified the authorization cards that Mr. Martinez had been given, by checking them against the employee list the employer provided later that afternoon. (R.T. V:22.) She further testified that the agents had some questions about the names on the employee list since it wasn't clear exactly what dates the employees had worked, but that in any event the authorization cards showed a majority interest. (R.T. V:22.) At that point the agents called Mr. Wilson and set up a pre-election conference for that evening. (R.T. V:23.)

Ms. Weissberg testified that at the pre-election conference that evening Mr. Wilson again protested the expedited election. (R.T. V:26.) She further testified that Mr. Wilson did not submit any documentary evidence at that time to indicate that a majority of workers were not on strike. (R.T. V:26.)

Mr. Wayne Smith, Oxnard regional director, testified that he authorized an expedited 48-hour election in this case, based on the representations of Mr. Martinez and Ms. Weissberg that a majority of the employees were on strike:

"A. ... [Mr. Martinez] called me one afternoon. I had received a call prior to that time from [Employer attorney] Scott Wilson, and he had indicated that he had some objections to the possibility of a 48-hour election; and he wished that I would make sure that there was a

factual determination of the majority on strike issue. And I told him I would relay that to the agent in the field, but I could not personally go down there and do that. And he said, 'Fine,' he'd be calling back later to see whether I actually directed the election as such. I did contact Mr. Martinez. I did, in fact, send the regional attorney Judy Weissberg down there, and they made the determination, called me back, and told me that they had ascertained a majority were on strike. And so I directed the election." (R.T. VIII:14.)

Mr. Bill Ito, general manager of the employer, testified that on the afternoon of March 30, 1982, he gave the Board agents the list of the employer's employees. There were 418 names on the list. (R.T. I:45.) Mr. Ito testified that the Board agents would not tell him how many employees were on strike, other than to say there were more than fifty percent. (R.T. V:46.) Mr. Ito testified ambiguously about whether he showed the agents any documentary proof that more than half the employees were working:

"Q. Okay. And did you give them any information that would indicate that more than half your people were not -- that more than half your people were working?

". . . . . .

"A. I believe we offered them a record. I don't recall giving it to them.

"Q. Did you tell them what the records indicated?

"A. Yes." (R.T. I:47.)

Mr. Ito also testified that he prepared a written declaration which he gave to the Board agents, in which Mr. Ito asserted that the majority of workers were working. (R.T. I:50.)

Attorney Scott Wilson testified that he and Mr. Ito met with the Board agents on the afternoon of March 30, 1982. He testified that at that meeting the Board agents stated they believed that a majority of the employees were on strike, but would not give the specific information on which the agents based that belief: "[I] said, what information do you have that there's a majority of people on strike. And their response was, well, it's our belief -- we just have that information. I said, 'Well, what is it. We've got the numbers; we know how many people are at the company, and our count shows that there isn't a majority on strike, so what do you have that rebuts this?' And they said, 'Well, we don't have tell you, but we think,' or 'we know that there's a majority of people on strike.'" (R.T. II:69.) Mr. Wilson testified that he also stated to the agents at the meeting that the employer opposed an expedited election, and that the employer would not have time to campaign in an expedited election. (R.T. II:77.) Mr. Wilson stated that Mr. Ito hand-wrote a statement to the agents in which Mr. Ito stated the employer's objection to an expedited election. (R.T. II:80.) This statement was given to the agents shortly before the pre-election conference. (R.T. II:81.) Mr. Wilson also formally objected to the expedited election at the pre-election conference

held at 8:00 p.m. on March 30, 1982. (R.T. II:88.)

Based on the above testimony, I make the following findings:

(1) Board Agent Baltazar Martinez investigated the strike at the employer's farm. Mr. Martinez' investigation took place on March 29 and 30, 1982.

(2) During Mr. Martinez' investigation he saw a number of employees gathered outside the employer's field. There was a strike sign, and some employees wore UFW buttons. Mr. Martinez saw approximately 100-150 employees.

(3) Mr. Martinez was told by UPW representative De La Cruz and by some employees that a majority of the employer's employees were on strike.

(4) Mr. Martinez was given more than 200 authorization cards gathered by UFW representative Roberto De La Cruz.

(5) The employer submitted to the Board agents an employee list with a total of 418 names on it.

(6) Board agents Martinez and Judy Weissberg checked the authorization cards against the employer's list and determined that the cards showed a majority. The agents believed that the list may have contained names of ineligible employees, but that even including those employees the authorization cards showed a majority.

(7) Board agents Martinez and Weissberg were given a list signed by 211 or 212 employees. The list was given to them by UFW representative Roberto De La Cruz or by a

striking employee, in response to their request for information concerning the number of employees on strike.

(8) Employer representative stated to the Board agents that a majority of employees were not on strike. The employer did not provide any documentary evidence to that effect. Mr. Bill Ito gave a written statement stating that a majority of employees were working, but did not provide documentary evidence. Mr. Ito's testimony concerning provision of documentary evidence indicates that no evidence was actually provided to the Board agents.

(9) Oxnard Regional Director Wayne Smith authorized an expedited election based on the representation of Board agents Martinez and Weissberg that a majority of employees were on strike.

3. Alleged Pre-Election Coercion by UFW Agents and Supporters.

The employer objects that UFW agents and supporters coerced employees into voting for the UFW by actions before and during the election. The alleged actions during the election are discussed in the next section, infra.

The employer's objections to pre-election conduct allege: (a) striking workers coerced and threatened employees at the Walker and Irvine fields on Saturday, March 27th; and (b) striking workers coerced and threatened employees at the Katella field on Monday and Tuesday, March 29 and 30.

(a) Saturday, March 27th.

Mr. Bill Ito, the employer's general manager, testified that the workers in foreman Miguel Rodriguez' crew at the Katella field engaged in a work stoppage on Saturday, March 27. (R.T. I:15.) The workers were asking for higher wages. (R.T. I:16.) Mr. Ito and his father decided to send the workers home for that day. (R.T. I:17.) Mr. Ito testified that the workers from Mr. Rodriguez' crew did not go home, but instead drove in cars across the street to another crew at the Katella field. This part of the field is referred to as the Walker Field. Approximately 40 workers went to that part of the field. (R.T. I:18-19.) The workers did not have permission to go into that part of the field. (R.T. I:19.) Mr. Ito testified that the workers from Mr. Rodriguez' crew got out of their cars and stood "at the edge of the field," approximately "a hundred feet" from where the other employees were working. (R.T. I:19-20.) The Rodriguez workers "were yelling at the workers that were still working." (R.T. I:20.) Mr. Ito testified that he did not understand all of the Spanish words the workers yelled, but that they were yelling at the workers in the field to stop working. (R.T. I:23.) He further testified that at one point the workers started walking towards the workers in the field:

"Q. And they started walking towards Benjamin's crew [in the field]?

"A. Yes.

"Q. And what did you do?

"A. I asked them to stop, stay out of the field.

"Q. And did they stop?

"A. Yes." (R.T. I:23.)

Mr. Ito further testified that the workers in the field stopped working when the Katella workers came to the field, and that he and the foreman decided to send the workers in the field home that day. (R.T. I:23.)

Ms. Anita Jaime testified that she was employed in the employer's strawberry fields in the 1982 season. (R.T. VII: 135.) She testified that she was working at the Walker field on Saturday, March 27, when a group of workers from the Katella field drove over to the Walker field. (R.T. VII: 141.) The people got out of their cars and stood outside of the field, approximately 50 to 60 feet away from the workers at the Walker field. Ms. Jaime testified that the group yelled at the workers in the Walker field to stop working, and also cursed the Walker field workers and threatened to call the INS on them. (R.T. VII:145.) Ms. Jaime further testified that some of the group from the Katella field threw rocks at the Walker field workers. (R.T. VII:145-146.) Ms. Jaime also testified that she was stacking boxes of strawberries and two of the workers, Mr. Alvaro Vasquez and Mr. Orlando Flores, came over and kicked over the boxes of strawberries. (R.T. VII:147.)

There was a conflict between the testimony of Mr. Ito and Ms. Jaime as to the actions of the Walker field workers

when the striking group came over. Ms. Jaime testified that when the striking group began yelling "all the [Walker] people left immediately. Only about four remained." (R.T. VII:144.) Mr. Ito testified that the Walker field workers "stopped working but stayed in the field." (R.T. I:23.) Mr. Ito and the foreman then decided to send the Walker field workers home. (R.T. I:23-24.)

Neither Mr. Ito nor Ms. Jaime testified that any of the striking employees mentioned the UFW or indicated that they were acting for, or on behalf of, the UFW in this incident.

Mr. Ito testified that after he sent the workers at the Walker field home he went to another of the employer's fields, the Irvine field. (R.T. I:25.) When he arrived he found the crew of employees, approximately 70 in all, working. (R.T. I:25.) Shortly afterwards about 70 striking employees from the Katella field arrived in cars, driving on the paved road up to the point where the Irvine field workers were working. They stopped about 150 feet away from the workers. (R.T. I:26.) The Katella workers did not have permission to come to the Irvine field. (R.T. I:26.) The Katella workers began yelling at the Irvine workers to quit work. (R.T. I:27.) The Irvine workers stopped working and stood around. (R.T. I:27.) Mr. Ito discussed the situation with the Irvine foreman and decided to send the Irvine workers home for the day. (R.T. I:28.)

Mr. Marciano Figueroa-Soria testified that he is the foreman at the employer's Irvine field. (R.T. I:107.) He testified that on Saturday, March 27, about 75-80 workers from the Katella field arrived at the Irvine field about two in the afternoon. They were driving their cars. (R.T. I:108-109.) Mr. Figueroa testified that the Irvine workers were "working very close to the road that comes into the field," and that the Katella workers drove up the road and parked "very close" to where the Irvine workers were working. (R.T. I:109.) He testified that "very close" was approximately "75 to 50 yards from where we were." (R.T. I: 110.)

Mr. Figueroa testified that the Katella workers began yelling and cursing at the Irvine workers, shouting "Get the hell out of here, you sons of bitches," and other curses. (R.T. I:112.) He testified that some of the Katella workers picked up sticks and rocks and threatened to beat the Irvine workers if they didn't leave the field. (R.T. I:112.) Mr. Figueroa testified that he then told his workers to leave. (R.T. I:113.)

Ms. Juana Hernandez testified that she was an employee in the Irvine field on Saturday, March 27. (R.T. VIII:71-72.) She testified that a group of Katella workers came over to the field in the afternoon and told the Irvine workers to get out of the field. (R.T. VIII:74.) She testified that the Katella workers were yelling. (R.T. VIII: 75.) Ms. Hernandez was asked if the Katella workers had

anything in their hands when they were yelling, and she testified "No. I did not see anything." (R.T. VIII:75.) After the Katella workers arrived Ms. Hernandez left the Irvine field. (R.T. VIII:75.) She testified that when the Katella workers began yelling all of the Irvine workers got out of the field. (R.T. VIII:78.) Ms. Hernandez testified that the following day she told her foreman that "I was not going to go and work because of the threats that they were hurtling at us." (R.T. VIII:81.) Ms. Hernandez further testified that the striking workers who came to the Irvine field included workers from the Katella field and also workers from the Walker field. (R.T. VIII:85.)[7] On cross-examination Ms. Hernandez was asked if she saw anyone with big sticks or rocks, or throwing rocks, and she replied "No." (R.T. VIII:85.)

Mr. Figueroa and Mr. Ito also testified to alleged incidents at this time in the Irvine field involving their attempts to drive out of the field. Mr. Figueroa testified that after he and Mr. Ito told the Irvine workers to leave for the day he went to his van to go home. He testified that he could not drive away because "Mr. Alvarez came and stopped me." (R.T. I:116.) From Mr. Figueroa's earlier testimony, it is apparent he was referring to Mr. Alvaro Vasquez. (See R.T. I:108, 117.) Mr. Figueroa testified that he had about 15 Irvine workers in his van at the time, and that Mr. Vasquez "made them get out of the van." (R.T.

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7. Ms. Hernandez testified that the group included employees from "Miguel's and Benjamin's crew." (R.T. VIII: 85.) It is undisputed that Miguel Rodriquez' crew was the Katella field crew, and Benjamin Toledo's crew was the crew working in the Walker field.

I:116.) He testified that the workers got out of the van. (R.T. I:116.) He further testified that Mr. Vasquez told him and the workers who had been in the van not to go to work the next day. (R.T. I:116.) Mr. Figueroa testified that a group of the Katella workers was blocking the road at that time. (R.T. I:118.) Mr. Figueroa tried to drive away but the workers blocked him. (R.T. I:122.) Mr. Figueroa testified that the Irvine crew was standing nearby when this happened. (R.T. I:122.) Mr. Figueroa further testified that one of the Katella workers then tried to puncture the tires on Mr. Figueroa's van, but his testimony appeared to be partly conjecture:

"Q. All right. After the workers from Katella stopped your van as you were driving on the road, what happened?

"A. Well, many, many of them were screaming, 'Don't let him through,' or 'Stop him, stop him.' Then one guy, I don't really know his name, because, as I already said, I do not know the people who work there, [went to] to puncture my left tire, left side where I drive.

". . . . . .

"Q. Okay. Did this individual actually puncture your tire?

"A. When he actually bent down to puncture the tire, I said to him, 'Please do not do anything to my car. If you want to do anything, then do it to me.'

"Q. Did you notice if he had anything in his hand?

"A. Yes, he certainly did have something in his hand. There was no way he could have punctured my tire with his

finger. He evidently had something, and it was probably like an iron or something.

"... . . . . .

"A. I saw that he had something in his hand. I did not quite pay attention to what it was. It might have been a knife, but he was going to puncture my tire.

"ADMINISTRATIVE LAW OFFICER [Sic: INVESTIGATIVE HEARING EXAMINER]: Do you know that because he said so, or do you know that because you saw something that had the ability to puncture your tire?

"THE WITNESS (through interpreter): When the people started screaming, he actually said, 'I am going to puncture his tire so that he cannot move.'

"ADMINISTRATIVE LAW OFFICER: All right. I will strike the portion in which the witness discusses something -- 'something in his hand.' He obviously did not see anything." (R.T. I:127-128.)

Mr. Figueroa testified that the incident ended when "A lady that I don't know and I don't really know her name, but I do know that she works for Katella, said 'Don Marciano [Mr. Figueroa] is right.' ... [T]hen the people just opened up the road. She said, 'God bless you,' and I said, 'Thank you, you too.'" (R.T. I:128-129.) Mr. Figueroa further testified that the people who had left his van came back in the van and drove home with him. (R.T. I:129.) None of the people allegedly in the van were called to testify.

Mr. Bill Ito testified that after he and Mr. Figueroa told the Irvine workers to leave the field a worker came over

to him and said he could not drive his van out of the field. The worker was Federico Arredondo. (R.T. I:28-29.) Mr. Ito testified that he then got into the van and tried to drive it out of the field but the Katella people blocked the road. (R.T. I:29.) Approximately 10 Katella workers were blocking the van. (R.T. I:31.) Mr. Ito had about 10 to 15 Irvine workers inside the van. (R.T. I:31.) He testified that when the van was blocked "All the workers [inside] jumped out of the van." (R.T. I:31.) He further testified that the Katella people said that "the Irvine people could not leave the field." (R.T. I:32.) Mr. Ito testified that at this point Katella worker Alvaro Vasquez came up and swung a stick at Mr. Ito. (R.T. I:34.) Mr. Vasquez did not hit Mr. Ito with the stick. (R.T. I:34-35.) Mr. Ito testified that other than Mr. Vasquez he did not see any other workers with sticks. (R.T. I:35.) He testified that he saw some workers with rocks. (R.T. I: 69.) Mr. Ito was asked if he was concerned about his physical safety at that point, and he responded "Not really." (R.T. I:35.) Mr. Ito testified that the incident ended when he agreed to hold a meeting with all the workers the next day, and the Katella workers then let him pass. (R.T. I:37.)

Mr. Ito testified that he saw no workers with UFW strike flags during this incident at the Irvine field. (R.T. I:69.) There was no testimony that any of the workers indicated they were acting for or on behalf of the UFW. Mr. Ito testified that he did not include this incident when he made up his list of objections to the election, and that he did not discuss this incident with his attorney when he

and his attorney prepared Mr. Ito's declaration in support of the employer's objections to the election. (R.T. I:71.)

Mr. Alvaro Vasquez was called as an adverse witness by the employer. He testified that he worked in the employer's Katella field in March 1982. (R.T. III:100.) He testified that the employees in his crew stopped working on Saturday, March 27. (R.T. III:101.) Some of the workers then drove to the Irvine field and yelled at the workers at the Irvine field. (R.T. III:105.) He did not hear anyone threaten to call the INS or threaten to beat the Irvine workers. (R.T. III:105.) Mr. Vasquez testified that he saw foreman Marciano Figueroa in a van with a number of workers inside it. (R.T. III:110.) Mr. Vasquez went to talk with Mr. Figueroa. (R.T. III:110.) Mr. Vasquez testified that he did not have a stick or rock in his hand when he went to the van. (R.T. III:110.) He further testified that a group of people went with him to talk with Mr. Figueroa. (R.T. III:118-119.) They wanted Mr. Figueroa to stop so they could talk with the workers inside the van. (R.T. III:119.) The employees got out of the van and Mr. Figueroa drove off. (R.T. III:119-120.) Mr. Vasquez testified that no one attempted to puncture the tires on Mr. Figueroa's van. (R.T. III:121.) Mr. Vasquez further testified that he saw Mr. Ito driving a truck and he went over to talk with Mr. Ito. Mr. Vasquez had a jacket in his hand, and was not carrying a stick. (R.T. III:122.) Mr. Vasquez testified that he and the other striking workers wanted Mr. Ito to pay attention to their complaints. (R.T. III:124.) Mr. Ito

did not want to listen, and the people shouted at him. (R.T. III:125.) The employees in Mr. Ito's van then got out, and Mr. Ito drove off. (R.T. III:126.)

The petitioner (UFW) called Ms. Ofelia Romero as a witness. It was stipulated that she would testify she was working in the Katella field on Saturday, March 27, and went out on strike with the other employees in foreman Miguel Rodriguez' crew. It was further stipulated that she would testify she went with the other workers to the Walker field and shouted at the workers there to stop working. It was also stipulated that she would testify that she did not see anyone from her crew throw rocks or threaten the workers in the Walker field. Finally, it was stipulated that her testimony as to the events at the Irvine field would be "very similar in substance" to the testimony of Mr. Alvaro Vasquez. (R.T. VIII:93 et. seq.)

There were also stipulations about the testimony of two other workers, Mr. Rodolfo Nunez and Ms. Guadalupe Diaz. It was stipulated that Mr. Nunez' testimony would be substantially the same as that of Mr. Vasquez and Ms. Romero. (R.T. VIII:154.) The same stipulation was made concerning Ms. Diaz' testimony. (R.T. VIII:157-158.)

(b) Katella Field (Monday, March 29 and Tuesday, March 30).

Several witnesses testified to the events at Katella field.

Mr. Bill Ito testified that "several" employees were standing across the street from Katella field yelling at

the workers who were working in the field on Monday, March 29. (R.T. I:40-41.)

Mr. Jesus Diaz testified that he was employed picking strawberries and driving a truck at the employer's farm. (R.T. III:3.) Mr. Diaz testified that he was working in the Katella field on Monday, March 29. (R.T. III:29.) He testified that at that time a group of striking employees came to the edge of the field and began yelling at the workers working in the field. (R.T. III:30, 73.) Mr. Diaz testified that there were approximately "eight or ten" people yelling at the workers, and that he did not see any of them wearing buttons or carrying placards. (R.T. III:31.) Mr. Diaz testified that the people who were yelling also cursed the workers in the field, calling them "kiss asses" and "mother fuckers." (R.T. III:33.) Mr. Diaz testified that the eight to ten yelling workers were approximately a hundred meters from the employees working in the field. (R.T. III:76-78.) The people continued to yell at the workers for about an hour. (R.T. III:78.) Then the people left the area. (R.T. III:79.)

Mr. Gerardo Nunez testified that he was employed picking strawberries at the Katella field on Monday, March 29. (R.T. V:125.) He testified that at about 11:00 a.m. a group of striking workers came to the field. The striking workers stopped at the edge of the field and did not go onto the field. (R.T. V:129.) He testified that there were about fifteen people in the group that came to the field.

(R.T. V:130.) Mr. Nunez testified that the striking workers shouted "Hey, get out picking, you sons of bitches," and told the employees "[I]f you're not afraid of us, come out and fight with any one of us that you want." (R.T. V:133.) Mr. Nunez testified that the striking workers did not have anything in their hands. (R.T. V:133.) He further testified that the striking workers moved up and down the edge of the field. (R.T. V:136.) Mr. Nunez testified that after a while the striking workers yelled that they were "going to call the Immigration" on the employees in the field. (R.T. V:137.) Mr. Nunez testified that the week previously there had been an INS raid at the employer's farm. (R.T. V:141.) Mr. Nunez further testified that all of the employees remained working in the field (R.T. V:142), and that after lunch the striking workers returned to the area and "punched a tire where one of the cars was there." (R.T. V:142.) From the context of Mr. Nunez' testimony and further questions asked of him (see R.T. V:143-144), it is clear that Mr. Nunez meant that the striking workers "punctured" a tire on the car. Mr. Nunez testified that approximately 40-50 employees were working in the field when these events occurred. Mr. Nunez further testified that "four or five" workers were involved in the tire incident. (R.T. V:147.)

Mr. Jose Gascon testified that he was employed loading boxes in the Katella field on Monday, March 29. (R.T. VI: 88.) It was stipulated that Mr. Gascon's testimony would be consistent with the above testimony of Mr. Nunez

concerning the events at the Katella field that day. (R.T. VI:88-89.)

Mr. Francisco Ruiz testified that he was employed in the Katella field on March 29. (R.T. VI:120.) It was stipulated that Mr. Ruiz' testimony would be similar to the above testimony of Mr. Nunez concerning the events at Katella field that day. (R.T. VI:120-121.)

Mr. Ruiz further testified that on Tuesday, March 30, similar occurrences happened at the Katella field. (R.T. VI: 123-124.) He testified that on this day the striking workers who yelled at the employees all had UFW buttons on. (R.T. VI:125.) Mr. Ruiz indicated considerable confusion about the dates and times of the events to which he testified. (See R.T. VI:122-123.) His answers to questions were sometimes vague and confusing. For example he was asked, "[D]id you have any conversations with any of the workers in the labor camp regarding other threats?" Mr. Nunez responded: "Well, when I got there with them, I got them to sign a paper, a card, because if I didn't sign that, there wasn't going to be any work for me, nothing." (R.T. VI:123.)

Mr. Bill Ito testified that on Tuesday, March 30 approximately 60 striking workers gathered across the road from Katella field. He testified that "On Tuesday, I don't believe they were yelling, no." (R.T. I:43.) Mr. Jesus Diaz testified that on Tuesday nothing happened similar to the incidents he testified to concerning Monday, March 29. (R.T. III:81.) Mr. Gerardo Nunez testified that on Tuesday the

same employees worked in the Katella field as had worked on Monday. (R.T. V:154-155.) Mr. Nunez did not mention any incidents occurring in the field on Tuesday.

The petitioner called Ms. Guadalupe Diaz to testify to the events on Monday, and it was stipulated that her testimony would be that she and other striking workers went to the Katella field and shouted at the workers there to leave the field. Some of the striking workers cursed the employees in the field. None of the workers threatened the employees in the field with physical harm or with calling the INS. The striking workers did go on the field, but moved back behind a fence when they were told to. (R.T. VIII:158-159.)

Board Agent Baltazar Martinez testified that on Tuesday, March 30, he observed a number of striking workers near the Katella field. (R.T. II:197.) Mr. Ito came over to Mr. Martinez and complained that the strikers were yelling at the other workers, and that Mr. Ito was concerned that they would go into the field. (R.T. II:197.) Mr. Martinez told the strikers that they could not go onto the field. (R.T. II:199.)

Mr. Alvaro Vasquez testified concerning the time the UFW was first called by employees. He testified that he called the UFW and spoke with organizer Roberto De La Cruz on Monday, March 29, and that Mr. De La Cruz came to the field for the first time Monday afternoon. (R.T. III:98-99.)

Mr. De La Cruz gave out UFW buttons to the strikers later that afternoon. (R.T. V:71.) Mr. Vasquez was not certain of the specific dates (R.T. III:98-100), but he believed the events with Mr. De La Cruz took place on Monday, March 29. (R.T. III:98-99.)

(c) Findings.

From all the above testimony, I make the following findings of fact.

(1) Employees in Miguel Rodriguez' crew at Katella field engaged in a work stoppage for higher wages on Saturday, March 27.

(2) Approximately 40 of the workers went to the Walker field and yelled at the workers there to stop working. The Katella workers stood at the edge of the Walker field about a hundred feet from the Walker workers.

(3) Some of the Katella workers began to enter the field and approach the Walker workers, but they stopped when Mr. Ito told them to stay out of the field.

(4) I do not credit the testimony of Ms. Jaime that Katella workers threw rocks at the Walker workers or entered the field and kicked boxes around. Ms. Jaime's testimony differed from that of Mr. Ito's in several respects. Mr. Ito did not mention any workers throwing rocks at the the Walker field, and he testified that the Katella workers obeyed him when he told them to move back out of the field.

(5) Later in the afternoon of Saturday, March 27, some of the striking Katella workers, joined by some Walker field workers, drove to the Irvine field. Approximately 70 workers went to the Irvine field.

(6) The striking workers stopped along the road near the Irvine workers. Some of the Katella workers yelled at the Irvine workers to stop working and cursed at the Irvine workers who remained in the field.

(7) Some of the striking workers picked up rocks while they were yelling at the Irvine workers. I find that no rocks were thrown, crediting the testimony of employer witness Juana Hernandez on this point.

(8) Some of the striking workers at the Irvine field blocked vans driven by foreman Marciano Figueroa and Mr. Bill Ito. The employees in the vans left the vans, and the striking workers let the vans through. I do not credit Mr. Figueroa's statement that a worker tried to puncture the tires of his van. As noted above, it was apparent that Mr. Figueroa did not actually see anything in the hand of the worker. I do not credit the testimony of Mr. Alvaro Vasquez that when he spoke to Mr. Ito while Mr. Ito was driving the van, he only had a jacket in his hand. I credit Mr. Ito's testimony that Mr. Vasquez held a stick while he argued with Mr. Ito. However I also credit Mr. Ito's testimony that Mr. Vasquez' actions were not such as to give Mr. Ito concern for his physical safety.

(9) One employee testified that she was afraid to return to work after the Irvine incident because of the curses and threats made by the striking workers.

(10) On Monday, March 29, a group of striking workers gathered and marched along the edge of the Katella field at approximately 11:00 a.m. At one point the workers entered the field, but moved back shortly thereafter.

(11) Approximately 10-15 of the striking workers shouted and cursed at the employees in the Katella field. The 10-15 striking workers threatened to call the INS on the working employees, and challenged the working employees to come out of the field and fight. The striking workers were approximately 100 yards from the working employees. There was a crew of approximately 50-70 employees working in the field.

(12) Approximately four striking workers punctured the tire on one of the employees' cars parked along the Katella field.

(13) The striking workers did not throw rocks or sticks at the Katella field. Mr. Nunez and other employer's witnesses testified that the striking workers did not have anything in their hands.

(14) There was no testimony that any of the workers who yelled, cursed, or otherwise participated in the above incidents on Saturday and Monday (March 27 and 29) wore UFW buttons or other insignia, mentioned the UFW, stated they were acting on behalf of the UFW, or

otherwise were connected with the UFW. The UFW organizer did not arrive at the employer's premises until the afternoon of March 29.

(15) On Tuesday, March 30, some striking workers gathered near the Katella field and yelled at the workers in the field. Some of the striking workers were wearing UFW buttons at that time. For the reasons stated in discussing the testimony of Mr. Francisco Ruiz, I do not credit his testimony that the activities on Tuesday were the same as those on Monday. I credit the testimony of Mr. Ito and the other employer witnesses, and Mr. Martinez, that the incident on Tuesday was confined to yelling and that the striking workers stayed out of the field when ordered to do so by Board Agent Martinez. There was no testimony from any of the witnesses, except Mr. Ruiz' general statement, that there were any threats, curses, or physical incidents on Tuesday, March 30.

There was also evidence introduced as to the employer's campaigning on the days before the election. Employer attorney Scott Wilson testified that Mr. Ito and he hired a labor consultant, Mr. Joe Sanchez, to campaign among the employees. (R.T. II:57.) Mr. Wilson testified that "Mr. Sanchez' specialty or occupation is conducting agricultural labor relations campaigns." (R.T. II:57.) Mr. Wilson testified that he met with Mr. Sanchez on Tuesday, March 30. (R.T. II:57-58.) Mr. Wilson further testified that during Tuesday afternoon Mr. Sanchez spoke with approximately a hundred employees about the employer's position concerning

the upcoming election. (R.T. II:60.) Mr. Sanchez also indicated to Mr. Wilson that he would talk to another 15 to 20 employees that night who lived in a labor camp (R.T. II:62), and that Mr. Sanchez later did talk with those employees. (R.T. II:63.) Mr. Wilson testified that Mr. Sanchez also went to the employer's fields early the morning of the election day, Wednesday, and spoke with some employees in the fields for about half an hour before the election began. (R.T. II:67.)

Mr. Joe Sanchez testified that he is a management consultant and that he came to the employer's farm on Tuesday, March 30, the day before the election. He campaigned for the employer, speaking with about 60 employees on Tuesday afternoon and another 15 on Tuesday evening. (R.T. VII:115-119.) On Wednesday morning before the election he spoke to about 60 people, including people in the crew he had spoken to the day before. (R.T. VII:122.) Then he went to another of the employer's fields and spoke to 70 more workers. (R.T. VII:123.) Mr. Sanchez distributed a leaflet to the employees he spoke with. (R.T. VII:129.)

I find from the above testimony that the employer hired a specialist in agricultural election campaigns, Mr. Joe Sanchez, and that Mr. Sanchez campaigned for the employer on Tuesday and Wednesday, March 30-31, as described in the previous paragraphs.

4. Alleged Misconduct by ALRB Agents, and by UFW Agents and Supporters, During the Election.

(a) Pre-Election Conference.

A pre-election conference was convened at approximately 8:30 p.m. on Tuesday, March 30. Present were Mr. Bill Ito and Attorney Scott Wilson for the employer, Board agents Baltazar Martinez, Judy Weissberg, Tony Sanchez, and Mauricio Nunez for the ALRB, UFW representative Roberto De La Cruz, and a number of the employer's employees. (R.T. II:87.)

Attorney Wilson testified that at the pre-election conference he objected to the expedited election scheduled to be held the next day. (R.T. II:88.) He also requested that there be several voting sites at the employer's farm. (R.T. II:88.) The Board agents decided to have the election at one voting site, at the Katella field. (R.T. II:91.) Mr. Wilson testified that Agent Martinez asked Mr. Ito where a good place would be to set up the voting site, and Mr. Ito "explained the layout of the company shop around there, and said the best place to have it would be back where they had it, back behind the trailer." (R.T. II:92.) The Board agents agreed it would be held in that vicinity, behind the trailer at the Katella field. (R.T. II:93.) There was no attempt to view the area that night. (R.T. II: 93.) It was decided that the quarantine area would be defined the following morning at the field, prior to the balloting. (R.T. II:99.)

Board attorney Judy Weissberg testified that at the pre-election conference Mr. Martinez decided to have a single polling place at Katella field (R.T. V:25-26), and that the election would be scheduled from 7:00 a.m. to 11:00 a.m. the following day. (R.T. V:26.)

Board Agent Martinez testified that at the conference he decided on the polling site (Katella field) and the time of the election (7:00 a.m. to 11:00 a.m.). (R.T. IV:73, 81.) He testified that all the parties agreed to meet the following morning before the election, to discuss the election observers and procedures. (R.T. IV:81.)

(b) The Election (Wednesday, March 31, 1982).

A considerable number of witnesses testified to the events during the election. Joint Exhibit #1 is a diagram of the Katella field and the polling area. The polling area was behind a trailer, called Benjamin's trailer, and next to a bunk house on the field. Nearby there were several packing sheds and an office trailer.

In the testimony about the election, a number of witnesses referred to the Board agent in charge of the election as the man wearing a green jacket. It was stipulated that this individual was Mr. Martinez (R.T. III:68), and in the following summary of testimony I will simply indicate that the witnesses were referring to Mr. Martinez.

Mr. Scott Wilson, attorney for the employer, testified that he arrived at the field at 6:30 a.m. on Wednesday. Mr. Ito and the ALRB agents were there. They all went out

behind the trailer and decided where the polling place would be. Present were Board agents Weissberg, Martinez, Sanchez and Nuno, along with Mr. Roberto De La Cruz for the UFW. The Board agents followed the "usual procedures" (R.T. II:95) of setting up a table, making sure that the ballot box was empty, and requesting supervisory people to stay out of the area. Mr. Wilson testified that there were no signs or ropes marking off the quarantine area. (R.T. II: 93-99.) Mr. Wilson was asked if he had any "discussion about the creation of such a [quarantine] area, with [the Board agents] immediately prior to the voting?" He responded, "No, I did not. I just didn't think about it." (R.T. II:100.)

Mr. Wilson testified that he saw approximately 100 people standing on Hope Street, across the street from Katella field. They were wearing UFW buttons. He testified:

"A. As soon as the polls opened at 7:30, almost the entire group of people standing over there on Hope Street, came in. They walked through the gate and they walked down to the polling area.

"Q. Yes.

"A. And then they, you know, presumably stood in line and voted.

"Q. Okay.

"A. And then after that, it looked like about, I don't know, half of those people -- probably more than half, maybe two thirds of them -- walked back over to Hope Street,

and they stayed over there in a group." (R.T. II:102-103.) The people in the Hope Street area "were almost all wearing buttons, UFW buttons and other paraphernalia. And also on Hope Street there was a large sign with a black eagle that was standing in front of where these people were." (R.T. II:103.) The people at Hope Street were approximately twenty yards from the Katella field, on the other side of the four-lane Katella Avenue. (R.T. II:104.) As crews of workers from other fields were brought to Katella field in the employer's buses in order to vote, they drove past the milling group at Hope Street. (R.T. II:104.)

Mr. Wilson testified that he watched the proceedings from the office trailer, and that he saw people from Hope Street go back into the voting area after they had voted. The people would come into the voting area each time a group of new employees entered the field to vote, then go back to Hope Street. (R.T. II:105.) Mr. Wilson testified that he spoke to Board Agent Martinez, telling him to prevent the people from coming back into the area. (R.T. II:106.) He testified that Mr. Martinez replied, "Well, we can't arrest the people; we aren't policemen, and there's nothing we can do to stop the people from coming back down here if they want to come down here." (R.T. II:107.)

Mr. Wilson also testified that at about 11:00 a.m. Ms. Weissberg came into the office trailer and informed him that the agents had run out of ballots and were extending the voting time for 45 minutes so they could make more

copies of the ballot. (R.T. II:108.)

Mr. Wilson testified that he could not see the voting table and booths from the office trailer where he was sitting, because there was a stack of boxes blocking his view. (R.T. II:118.) He testified that the voting table was approximately 40 yards in from the edge of the field on Katella Avenue, and was about 50 yards from the office trailer. (R.T. II:119-120.) Mr. Wilson testified that company supervisors remained in the Katella compound near the sheds, because they had work to do. (R.T. II:125-126.) He testified that "there was no agreement" among the parties as to the exact quarantine area. "They [Board agents] wanted the [employer's] supervisors to completely leave the entire fenced area [Katella field compound, as shown in JX:1]. I said that that wouldn't be possible, that they would stay out of the -- the supervisors wouldn't go down and stand next to the voting area. But they weren't going to leave, you know, the whole area because there was work to do." (R.T. II:124.)

Mr. Bill Ito testified that on the day of the election he saw a pro-UFW group of people standing around on the street across from the Katella field. There were approximately 60 pro-UFW people, some wearing UFW buttons, and they were approximately 200 feet from the voting area. (R.T. I:55.) Mr. Ito observed the election from the office trailer at the Katella field. (R.T. I:55.) He could not see the actual voting table from his position. (R.T. I: 55-56.)

Mr. Francisco Gonzales Ruiz testified that he was one of the employer's observers at the election. (R.T. VI:125.) He sat at the voting table during the entire voting period. (R.T. VI:125.) His back was towards Katella Avenue. (R.T. VI:126.) He testified that during the voting there were several people wearing UFW buttons who were in the area but were not in line waiting to vote. (R.T. VI:128.) He testified that there were approximately 40-45 people wearing UFW buttons who came back and forth onto the field after they voted. (R.T. VI:130.) Mr. Ruiz testified that some of the people talked to voters in the line, including Mr. Ruiz' wife, and said to Mr. Ruiz' wife that if she did not vote for the UFW they would call the INS after her. (R.T. VI:132.) Mr. Ruiz further testified that the Board agents at the voting table were approximately five feet away when the people with UFW buttons made this threat to Mr. Ruiz' wife. (R.T. VI:135.) None of the Board agents said anything or told the people to stop making the threats. (R.T. VI:135.)

Mr. Ruiz further testified that when he arrived at the voting area he met with the other election observers and the Board agents. (R.T. VII:3-4.) He testified that Board agent Martinez instructed the observers that they were not allowed to say anything. Initially he testified that the agents said the observers could not talk to the people who were voting (R.T. VII:28), but he then added that the agents also said that the observers were not

allowed to report anything wrong to the Board agents. (R.T. VII:29.)

Mr. Ruiz testified that UFW observer Ofelia Romero told each group of voters that arrived at the voting table to vote for the UFW, and that the Board agents who were present at the table didn't say anything to her about it. (R.T. VII:7.) Later Mr. Ruiz testified that one of the Board agents did tell Ms. Romero not to speak with the voters. (R.T. VII:8.)

Mr. Ruiz testified that Mr. Martinez told the voters when they came to the table how to mark the ballot. The agents indicated both the UFW box and the no-union box, but repeated the statement about where to vote for the UFW three or four times. (R.T. VI:9.) Mr. Ruiz further testified that when voters arrived whose names were not on the list, the Board agents at the table asked the voters to stand aside. He testified that if these voters had UFW buttons on they were then allowed to vote and their ballots were placed in the ballot box, but if the people did not have UFW buttons on they were not allowed to vote. (R.T. VII:9-13.)

Mr. Ruiz testified that he did not say anything at the time about these activities during the election "because we couldn't speak out at all." (R.T. VII:37.)

Mr. Ruiz testified that Board Agent Martinez was wearing a UFW button during the election. (R.T. VII:40.)

Mr. Juan Valejo testified that he was an employer

observer at the election. (R.T. VII:77.) He testified that Board Agent Martinez met with the observers before the voting began. "He told us how we had to watch that the voters did not get close to one another and he gave me a card with my name.... And the name also said 'observer.'" (R.T. VII:78.) Mr. Valejo testified that the Board agent did not give the observers any other instructions. (R.T. VII:106-107.) Mr. Valejo testified that the Board agent took "three or four minutes" to give the observers their instructions. (R.T. VII:107.) Mr. Vallejo did not see anything on Mr. Martinez' jacket. (R.T. VII:79, 106.)

Mr. Valejo testified that Mr. Martinez explained the ballot to voters, and that when he pointed to the UFW's eagle he spoke in a louder voice than when he pointed to the no-union box. Also, Mr. Martinez pointed two or three times to the eagle, and only once to the no-union box. (R.T. VII:85.) Mr. Valejo testified that he was about 20 feet away from the Board agent when the agent gave these instructions. (R.T. VII:87-88.)

Mr. Valejo testified that UFW observer Ofelia Romero sat at the table and told workers to vote for the UFW. (R.T. VII:86.) He testified that she told this to three workers. (R.T. VII:86-87.) He further testified that she wore a UFW button during the balloting. (R.T. VII:87.)

It was stipulated that Mr. Valejo would also testify that he observed a group of people wearing UFW buttons who came into the voting area and stayed there after they voted.

Some of the group went back and forth from Hope Street. The people who stayed in the area told voters to vote for the UFW, and threatened that the INS would be called if they didn't. The Board agents made no attempt to tell these people to leave the voting area. (R.T. VII:74-75.) Mr. Valejo testified that he was stationed about 15 to 20 feet from the voting table during the election. (R.T. VII: 96.)

Mr. Jesus Diaz testified that he voted in the election. (R.T. III:35.) He testified that the Board agent who explained the ballot only showed Mr. Diaz the UFW box, and did not say anything about the non-union box. (R.T. III:38.) Mr. Diaz' testimony was in part somewhat unclear:

"Q. [A]s you went over the area where the booths were, did you see any signs saying that this was the area to vote?

"A. Yes.

"Q. Where did you see the signs?

"A. The person who was there, told us where to go to mark.

"Q. Okay. So, you're talking about -- you saw a person or a sign?

"A. No. I saw a person.

"Q. Okay. And did this person have anything in his hand?

"A. Yes.

"Q. What did he have?

"A. It was a -- a paper.

"Q. Okay. And do you recall what was on the paper?

"A. Yes. It was the union and the nonunion.

"Q. Was it a ballot, a voting form?

"A. Yes, it was a ballot.

"Q. Okay. And what was the person with the ballot form doing with it?

"A. He was saying where to vote and where not to, to some of them; to some others, not." (R.T. III:36-37.)

Mr. Diaz testified that during the voting there were people with UFW buttons in the voting area telling voters to vote for the UFW. (R.T. III:41-45.) None of these people said anything to Mr. Diaz. (R.T. III:41.) The Board agents did not stop the people who were talking to the voters. (R.T. III:44-45.) The people stood in the same place for an hour, saying "vote for the eagle." (R.T. III:46.) There were about eight to ten people telling voters to vote for the eagle. (R.T. III:48.) Mr. Diaz testified that the group of people with UFW buttons was about ten to fifteen yards from the people in the voting line. (R.T. III:66.)

Mr. Gerardo Nunez testified that he voted in the election. (R.T. VI:4.) He testified that while he was in the line to vote, two voters in the line, each wearing a UFW button, asked him in an angry tone why he didn't vote for the UFW. (R.T. VI:6.) He testified that about thirty or forty people in the voting area wore UFW buttons. (R.T. VI: 7.) He further testified that about thirty people stood around the area, not in line to vote, and that these people

had UFW buttons. They walked around the area speaking to voters. (R.T. VI:8-12.) Mr. Nunez testified that he saw them speak to two voters. (R.T. VI:12.) Mr. Nunez testified that Mr. Martinez showed Mr. Nunez and the voters with him how to mark the ballot, and that Mr. Martinez showed them the UFW box and the no-union box. (R.T. VI:47.)

Mr. Mauricio Bernal testified that he voted in the election and that a group of about 50 people with UFW buttons on walked around the voting area telling people to vote for the UFW. (R.T. VI:63.) Mr. Bernal further testified: UFW observers Ofelia Romero and Alvaro Vasquez left the voting table and joined the people going around telling voters to vote for the UFW (R.T. VI:76); Board Agent Martinez wore a UFW button (R.T. VI:77); when Agent Martinez instructed Mr. Bernal on use of the ballot, Agent Martinez pointed to the UFW box and told Mr. Bernal "I am from this Farm Workers Union, you are a farm worker, you work here, yes. Look, you have to vote here." (R.T. VI:68.) Mr. Bernal's testimony at times indicated some confusion over specific occurrences. He testified that about 50 people with UFW buttons were milling around the voting area, and they were joined by another large group of people with UFW buttons. He was questioned on this point:

"Q. [W]hile you were in line to vote, did another group of people, wearing UFW buttons, enter the polling area?

"A. Yes.

"Q. So then, if there were 50 already there, before you got there, and another large group came in while you

were there --

"A. Yes.

"Q. -- how many people with the UFW buttons did that make?

"A. Well, it probably would have been about 50 people.

"Q. You testified earlier that there were about 50 people there with UFW buttons on before you arrived, and then another large group of people wearing UFW buttons arrived while you were there.

"A. Yes.

"Q. So, did that make it approximately 75 people marching up and down with UFW buttons?

"A. With buttons.

"Q. So, it was approximately 75?

"A. No.

"Q. How many?

"A. There must have been some 50.

"ADMINISTRATIVE LAW OFFICER [Sic: INVESTIGATIVE HEARING EXAMINER]: Mr. Bernal, you said there were 50 when you arrived; is that right?

"THE WITNESS: Yes.

"ADMINISTRATIVE LAW OFFICER: So, how many were there altogether, the 50 that were already there, and then how many more?

"THE WITNESS: Well, some 20 more must have come, 20 to 25.

". . . . . .

"COUNSEL FOR PETITIONER: [T]here were 75 people with

UFW buttons marching all around the voting area?

"A. Seventy? Fifty." (R.T. VI:74-76.)

Mr. Jose Gascon testified that he voted in the election, and that there were a group of 20-30 people near the voting lines wearing UFW buttons and not in line to vote themselves. (R.T. VI:90-91.) About six or seven of these people approached Mr. Gascon while he was in line to vote, telling him to vote for the UFW. (R.T. VI:91.) These people were about ten feet away from Mr. Gascon, and three of them threatened that they would call the INS if Mr. Gascon did not vote for the UFW. (R.T. VI:91.) Mr. Gascon testified that there were two long lines of voters at this time, about 80-90 people in all. Mr. Gascon further testified that Board Agent Martinez, who was handing out ballots, told Mr. Gascon he was from the UFW. (R.T. VI:98.) However, Mr. Gascon then testified that Mr. Martinez did not say he was from the UFW, but that Mr. Gascon assumed Mr. Martinez was from the UFW "because he was giving us those forms to vote." (R.T. VI:98.)

Mr. Ernesto Soto testified that he is a "row boss" at the employer's farm and that he voted in the election. (R.T. VI:109.) He testified that while he was lined up to vote there was a group of 20-25 people standing near the lines, wearing UFW buttons. They were four or five feet away from the lines, and were telling people to vote for the UFW. (R.T. VI:110-111.) Mr. Soto further testified that before he could vote the ballots ran out and he waited about 45 minutes until he voted, and during that time the group of 20-25 people wearing UFW buttons stayed in the voting area.

(R.T. VI:112-113.)

Ms. Marguerita Toledo testified that she voted in the election, and that she saw a group of about 75 people wearing UFW buttons in the voting area. (R.T. VII:55-56.) One of the people came up to her while she was in line and told her to vote for the UFW. (R.T. VI:56.) Ms. Toledo testified that Board Agent Martinez was wearing a UFW button, and that when he showed her the ballot he told her to "either vote for the union or to vote for the eagle." He did not say anything about voting for no-union. (R.T. VII:58-60.) Ms. Toledo further testified that Mr. Martinez let people with UFW buttons vote faster than other people (R.T. VII:71), but later she testified that the people with UFW buttons had to go through the same identification procedures as other voters and it was just her "belief" that Mr. Martinez was letting them vote faster. (R.T. VII:58-60.) Ms. Toledo testified that after she voted, a woman with a UFW button made threats to her, and that Mr. Martinez just laughed at Ms. Toledo when the woman threatened her. (R.T. VII:70.) Ms. Toledo testified that she is fifteen years old, and that her father is a supervisor for the employer. (R.T. VII: 65.)

The final witness called by the employer to testify to the events during the election was Ms. Anita Jaime. Ms. Jaime testified that she voted in the election, and that Board Agent Martinez was wearing a UFW button at the election. (R.T. VII:136.) Ms. Jaime testified that Mr. Martinez

told her to vote for the UFW when he handed her the ballot. (R.T. VII:137.) It was stipulated that Ms. Jaime lives in the trailer on the employer's premises, identified in Joint Exhibit #1 as "Benjamin's trailer," with her daughter Marguerita Toledo; and that Benjamin Toledo, a supervisor for the employer, is the father of Marguerita Toledo. (R.T. VIII:47.)

Mr. Baltazar Martinez testified that he is a Board agent and field examiner, and that he was in charge of the election. Mr. Martinez has worked for the Board for approximately two and one-half years. (R.T. II:132.) Mr. Martinez testified that he had been involved in approximately 30 elections as a Board agent. (R.T. IV:85.) He testified that he arrived at the election site at 7:00 a.m. (R.T. IV:97.) Shortly afterwards the other Board agents and the employer and UFW representatives arrived and they discussed the quarantine area. (R.T. IV:98-99.) Mr. Martinez testified that the quarantine area was set us as the entire block depicted in Joint Exhibit #1. (R.T. IV:99.) Mr. Martinez amplified this description, using Joint Exhibit #3. He testified that the quarantine area was bounded by Katella Avenue on the north, the bunkhouse on the west, and a dirt road past the sheds on the east. (R.T. IV:99-105.) No southern boundary was established. (R.T. IV:105.)[8] Mr.

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8. The area to the south is a large strawberry field, and the election activities testified to in this case did not involve any events concerning the southern boundary of the voting area.

Martinez testified that employer attorney Wilson was advised of the quarantine area. (R.T. IV:106.) Mr. Martinez further testified that a group of trees, as well as buildings and stacks of boxes, screened the voting area from the intersection of Katella Avenue and Hope Street, and that the intersection could not be seen from the actual voting table area. (R.T. IV:106.) Mr. Martinez testified that he did not wear a UFW button during the election. (R.T. IV:107.) He testified that he was wearing "a clip-on badge with my name and picture on it." (R.T. IV:109.) Mr. Martinez testified that he showed voters how to use the ballot by holding the ballot up and indicating to the voters that they could vote either for the UFW or for no union. He pointed to each box on the ballot as he told the voters their options. (R.T. IV:111-112.) Mr. Martinez further testified that neither he nor any Board agents indicated, by words or gestures, that voters should vote for the UFW. (R.T. IV: 112-113.)

Mr. Martinez testified that during the course of the election he did not see any group of 35-40 workers wearing UFW buttons and standing around talking with the voters in line. (R.T. IV:114.) He further testified that he did not see any such smaller group. (R.T. IV:115.) Mr. Martinez testified that on one occasion he saw a person, who had already voted, remain in the area and gesture to other individuals on line. Mr. Martinez testified that he told the person to leave the area and the person did so. (R.T. IV:115.) Mr. Martinez testified that Mr. Wilson complained

to him at one point that some workers who had voted were hanging around the field. Mr. Martinez determined that the group was just waiting for the bus to take them away from the voting area. (R.T. IV:116-117.) Mr. Martinez testified that other than the one incident of the individual whom he asked to leave the area, he saw no campaigning or improprieties taking place in the voting area. (R.T. IV: 117.)

Mr. Martinez testified that he did not use any signs or physical objects to demarcate the quarantine area. (R.T. IV:132.) He testified that the quarantine area was naturally bounded by the fences, trees, and buildings of the employer's compound. (R.T. IV:98-105, 132-133.) He further testified that there was no disagreement among the parties about the boundaries of the quarantine area. (R.T. IV:133.) Mr. Martinez testified that when the employer's representatives indicated before the election that supervisors needed to come and go from the sheds and office trailer in the compound, he moved the voting area further away from the sheds. (R.T. IV:135.) He testified that the sheds and office trailer were within the quarantine area. (R.T. IV:138.)

Mr. Martinez testified that he did not notice whether people voting wore UFW buttons, although he recalled two or three who did. (R.T. IV:148.) Mr. Martinez testified that he did not watch to see where workers went after they finished voting. (R.T. IV:153.) He testified that he could see the area immediately around the voting site, and that

no workers gathered there after they voted. (R.T. IV:155.) Mr. Martinez further testified that the agents ran out of ballots during the election and that the people who had not yet voted sat down and waited until more ballots were brought. (R.T. IV:159.)

Ms. Judy Weissberg testified that she had been the Board's regional attorney for the Oxnard region for approximately a year at the time of the election. (R.T. V:3.) Ms. Weissberg testified that she arrived at the election site on the morning of the election and assisted Board agents Martinez and Nuno in setting up the voting booths and table. (R.T. V:27.) She testified that shortly afterwards she and the other Board agents met with Mr. Wilson and discussed the quarantine area. (R.T. V:27.) She further testified that the quarantine area was the compound depicted in Joint Exhibit #1, and that there was an agreement that supervisors could enter the sheds in one part of the area which was out of sight of the actual voting place. (R.T. V:28.)

Mr. Weissberg testified that once the election started she sat at the table with an observer from each of the parties and checked the voters against the eligibility list. (R.T. V:29.) Ms. Weissberg testified that from the voting area itself it would not be possible to see a group of people on Katella Street. (R.T. V:30.) She further testified that during the election she did not see or hear any groups of people campaigning. (R.T. V:31.) She testified that approximately half the voters who voted were wearing

UFW buttons (R.T. V:31), and that Mr. Martinez was not wearing a UFW button. (R.T. V:31.) Ms. Weissberg testified that she saw Mr. Martinez giving the instructions to voters about how to use the ballot, and that he pointed equally to the UFW box and the no-union box. (R.T. V:32.) She testified that Mr. Martinez did not tell the voters to vote for the UFW. (R.T. V:33.) Ms. Weissberg testified that at the voting table she sat facing south, towards the employer's fields. (R.T. V:64.) She testified that the voters lined up behind her. (R.T. V:67.)

It was stipulated that Ms. Weissberg would also testify that she sat at the voting table next to the employer and UFW observers during the entire election, and that she did not see any UFW observers leave their stations and campaign with voters, nor hear UFW observer Ofelia Romero, who was a few yards from Ms. Weissberg, tell any voters to vote for the UFW. It was also stipulated that Ms. Weissberg would testify that she did not hear any threats made to voters by people wearing UFW buttons, and that no employer observer brought to her attention that anyone was making threats. (R.T. VIII:2.)

Mr. Tony Sanchez testified that he is a Board field agent in the Oxnard Regional Office, and has been employed by the Board for approximately seven years. Mr. Sanchez testified that he has worked on more than 100 elections. (R.T. VIII:19.) He testified that he arrived at the election and helped set up the voting booths. After that he and Mr. Martinez read "the standard instructions" to the UFW and

employer observers, using the ALRB instruction form for that purpose. (R.T. VIII:19.) Mr. Sanchez testified that he did not observe any persons campaigning in the voting area or making any threats in the voting area during the election. (R.T. VIII:20.) He further testified that he was involved in the challenge ballot procedures during the election, and that he did not prevent any workers from voting. (R.T. VIII: 23.) He testified that all challenged voters were permitted to vote and their ballots placed in a challenge envelope and then put in the ballot box. (R.T. VIII:36.) Mr. Sanchez testified that he left the election site to get more ballots printed up when the ballots ran out, and that during the election he went to notify workers at the Irvine field of the election. He was away from the voting area for approximately 1-2 hours on these errands. (R.T. VIII:30-35.) Mr. Sanchez further testified that he did not have precise recall of the events of this election because he was only assisting the other Board agents and this was not an election in which he was placed in charge. (R.T. VIII:31.)

Ms. Ofelia Romero testified that she was a UFW observer in the election. (R.T. VIII:93.) She testified that she sat at the voting table during the election. (R.T. VIII: 103.) Ms. Romero testified that she did not leave her place at the table during the election. (R.T. VIII:105-106.) Ms. Romero further testified that once the people with UFW buttons on had voted they left the area and did not stay around to talk with other voters on line. (R.T. VIII:114.)

She testified that she did not see any people who had voted re-enter the voting area. (R.T. VIII:119.) Ms. Romero testified that she and the other UFW observer, Arturo Zamora, wore UFW buttons during the election. (R.T. VIII:136.) Ms. Romero further testified that when people finished voting they left the area from a number of different directions, and she could not see where they went once they passed the edge of Benjamin's trailer. "There was quite a lot of people, and I couldn't tell exactly which way they were going." (R.T. VIII:139.) Ms. Romero testified that she did not speak to voters and she did not tell any voters to vote for the UFW. (R.T. VIII:144.)

Mr. Alvaro Vasquez testified that he was a UFW supporter, that he voted in the election, and that he did not observe any group of people with UFW buttons campaigning in the voting area. (R.T. V:76-80.) It was also stipulated that two other workers, Mr. Rodolfo Nunez and Ms. Guadalupe Diaz would testify that they voted in the election and that they did not campaign in the voting area or threaten any voters, and that their testimony would be the same as Mr. Vasquez' concerning their not seeing any people campaigning for the UFW in the voting area. (R.T. VIII:153-154, 157-160.)

(c) Findings.

Based on all of the above testimony and evidence, including my observation of the demeanor of the witnesses, I make the following findings of fact.

(1) The Quarantine Area.

a. Board Agent Baltazar Martinez established a voting quarantine area the morning of the election. The quarantine area was the employer's compound depicted in Joint Exhibit #1, and was bounded by Katella Avenue on the north, the bunkhouse on the west, a dirt road past the sheds and office trailer on the east, and the strawberry field to the south.

b. Mr. Martinez did not post any signs or use any rope or other objects to demarcate the quarantine area.

c. Due to trees, stacks of boxes, and the physical arrangement of the buildings in the compound, some parts of the quarantine area could not be seen from the immediate vicinity of the voting table and booths.

(2) Alleged Direct Actions of Board Agents.

a. I do not credit the testimony that Mr. Martinez engaged in open and flagrant campaigning for the UFW during the election. I credit the testimony of the Board agents that Mr. Martinez was wearing a state badge and not a UFW button, and that Mr. Martinez neutrally instructed voters that they could vote either for the UFW or for no union. The testimony of the employer's witnesses on these points was often confused, as exemplified by Mr. Gascon's testimony that he assumed Mr. Martinez was from the UFW "because he was giving us those forms to vote." It is undisputed that employer attorney Wilson met with Mr. Martinez

before the election and once during the election. It is also undisputed that Ms. Weissberg and the other Board agents were in frequent contact with Mr. Martinez during the election. There was no testimony from Mr. Wilson that Mr. Martinez wore a UFW button, and it is certain the other Board agents would have noticed such a flagrant violation of Board neutrality.

b. I credit the testimony of Board Agent Sanchez that there was no manipulation of the challenge ballot procedure. I found Mr. Ruiz' testimony on this point vague and somewhat confused, and none of the people allegedly denied the right to vote was called as a witness.

(3) Alleged Actions of UFW Representatives.

a. I find that UFW observers Ofelia Romero and Arturo Zamora did not leave their posts to campaign with voters, and did not threaten or speak with voters as they approached the table. Board attorney Weissberg, who was within a few feet of the UFW observers during the balloting, testified that they remained at their posts and that she did not observe any campaigning on their part.

b. UFW observers Ofelia Romero and Arturo Zamora wore UFW buttons during the balloting.

(4) Alleged Actions of UFW Supporters.

a. Approximately half the people who voted in the election wore UFW buttons during the balloting.

b. A group of people wearing UFW buttons gathered at the intersection of Katella Avenue and

Hope Street, outside the quarantine area. They displayed a UFW sign. This group was not visible from the immediate area of the voting table and booths. Groups of workers being driven in buses to the election went past the group of UFW supporters on the way to the voting area.

c. I credit the testimony of the Board agents that no campaigning by UFW supporters took place in the immediate vicinity of the voting table. However it is undisputed that Ms. Weissberg sat at the table facing a direction away from that where workers entered and left the quarantine area. It is also undisputed that Board Agent Sanchez was away from the quarantine area for up to two hours, and that Board Agent Martinez was busy instructing voters on the use of ballots. Finally, as noted above, parts of the quarantine area could not be seen from the immediate vicinity of the voting table where the Board agents were primarily stationed. I credit the testimony of the employer's witnesses that some groups of people with UFW buttons campaigned in the quarantine area. However, these witnesses varied widely in their estimates of the number of such campaigners. Some testified that there were approximately 10 people, others 25-40, and one witness placed the number at 75. There was considerable confusion in the specifics of witnesses' testimony, the quoted portions of Mr. Bernal's testimony being an example. Where the witnesses testified that people with UFW buttons actually approached them, they placed the number at from two to

six or seven people in small groups actually talking with the witnesses. Based on all the testimony, taking into account the vagueness and confusion of many of the witnesses as to the numbers of people involved, and based on the physical arrangement of the quarantine area and the deployment of the Board agents, I do not credit the testimony that large groups of 25 or more UFW supporters campaigned openly in the quarantine area. Such large numbers of people would have come to the attention of the Board agents around the voting table, and I credit their testimony that they were not aware of such groups. I find that there were UFW supporters entering and leaving the quarantine area during the election, and that small groups of UFW supporters campaigned with prospective voters in the quarantine area.

III. Conclusions of Law

The employer makes two arguments for setting aside the election. First, the employer argues that the Act and Board regulations were violated by the manner in which the Election Petition was filed and by the method which the Board agents used to determine that a majority of employees were on strike. Second, the employer argues that the alleged misconduct of the Board agents, the UFW, and UFW supporters before and during the election was such that the free choice of the employees to choose a bargaining representative was negated.

A. Filing of the Petition.

The employer argues that the election should be set aside because the Election Petition was not physically filed in the Oxnard Regional Office. It is undisputed that the Election Petition was given to Board Agent Martinez in Los Alamitos, and that Mr. Martinez did not bring it to the regional office until after the election.

In determining the legality of the filing of the Petition in this case, the narrow circumstances herein should be noted. Specifically, at issue here is whether the Petition was properly filed where:

(1) the Election Petition was properly served on the employer; and

(2) the Election Petition was personally given to the Board agent sent to the scene to investigate; and

(3) the Board agent subsequently telephoned the regional office and informed the regional office and the regional director of the filing of the Petition; and

(4) the Petition involved strike circumstances.

Section 1156.3(a) of the Act provides: "A petition which is either signed by, or accompanied by a majority of the currently employed employees in a bargaining unit may be filed in accordance with such rules and regulations as may be prescribed by the board...."

The Board's regulations provide: "A petition for certification shall be filed in the regional office having jurisdiction over the geographical area in which all or part of

the unit encompassed by the petition is located.

". . . . . .

"A petition for certification shall be deemed filed upon its receipt in the appropriate regional office accompanied by proof of service of the petition upon the employer." (Cal. Admin. Code, tit. 8, §§20300 (e), (g).)

The employer argues that the Petition must, under these regulations, be physically filed in the regional office itself, and that failure to file the Petition in the regional office requires setting aside the election. I do not agree that a regional director has no discretion to deem a petition properly filed in circumstances such as in the present case.

The employer cites no cases involving the Board regulations at issue here, nor could I find any. However, in other contexts the Board has noted that the regional director and Board agents have discretion in the investigation and holding of an election. (See, e.g., Perez Packing, Inc. 2 ALRB No. 13; Bud Antle, Inc. 3 ALRB No. 7; George A. Lucas & Sons 8 ALRB No. 61.) Further, both the Act and applicable Board regulations concerning strike situations indicate that strike situations are to be given special priority, and Board procedures are to be expedited as much as possible to further the purposes of the Act in allowing employees to choose their bargaining representative. Section 1156.3 of the Act states that "The holding of elections under strike circumstances shall take precedence over the holding of other secret ballot elections." The Board's regulation

concerning strike elections demonstrates the Board's concern that the regional director have sufficient discretion and flexibility to expedite such elections: "The procedures set forth in Chapter 3 of these Regulations shall apply to the conduct of elections under this section insofar as is practicable under strike circumstances. The regional director shall have authority to establish reasonable procedures for the conduct of expedited elections under strike circumstances." (Cal. Admin. Code, tit. 8, §20377(b).)

Given the clear priority in the Act and regulations for expediting elections in strike circumstances, and given the discretion vested in the regional director to investigate and conduct elections in general, and strike elections in particular, I find that the filing of the Election Petition was properly within the regional director's discretion in this case. The Board regulations cited by the employer require that the Petition be filed in the appropriate region, thus preventing "shopping around" for more favorable regions in which to file the Petition. It is undisputed here that the employer's farm is within the Oxnard region. I do not believe that the regulations require that the petition be physically deposited in the office in all circumstances. In this case the Petition was given to the agent sent by the regional office to investigate the strike, and the regional director was informed about the Petition. The Board agent's desire to expedite the investigation and election was completely consistent with the statutory and regulatory man-

dates that strike-circumstance elections are to be given priority. The Petition itself was properly served on the employer, and there is no question here of lack of notice to the employer.

For the above reasons, therefore, I find and conclude that the Election Petition was properly filed.

B. The Determination of a Majority Strike.

The employer argues that the Board agents "flagrantly" violated the Act and Board regulations in making their determination that a majority of employees were on strike. (Post-Hearing Brief for Employer, p. 34.) I find this argument to be without merit.

Section 1156.3(a) of the Act provides that: "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 diligence, attempt to hold a secret ballot election within 48 hours of the filing of such petition."

The Board has promulgated a regulation, Section 20377 (a) (Cal. Admin. Code, tit. 8, §20377(a)), which states: "Where a petition for certification alleges that a majority of employees are engaged in a strike at the time of the filing, the regional director shall conduct an administrative investigation to determine whether such a majority exists, and shall notify the parties of his or her determination."

The employer cites no cases or other authority to

support its contention that the determination of the Board agents in this case was impermissible. Rather, the employer simply asserts that the Board agent's "conclusion that there was a majority strike was wholly unsupported by the credible evidence available to him." (Post-Hearing Brief for Employer, p. 35.) I find that the opposite is true. Mr. Martinez received the petition and spoke to the UFW representative who told him a majority of employees were on strike. Mr. Martinez went to the strike area and saw a large number of strikers. He spoke to several workers who told him a majority of employees were on strike. He received over 200 authorization cards, indicating a majority showing. He and Board attorney Weissberg asked for additional evidence from the employees and received a list with over 200 names. All these actions of the Board agents indicated to them that a majority of the employees were on strike.

In contrast, the employer representatives had several occasions in which to give the Board agents evidence to the contrary, yet the employer's representatives simply asserted that a majority of the employees were working, without providing any payroll or other documentation.

The employer's position seems to be that the Board agents needed some kind of unspecified documentary proof that a majority of employees were on strike. However the employer cites no authority for its contention. The Act and Regulations do not limit the regional director in the

method for making the determination that a majority of employees are on strike.[10] A series of Board cases in other contexts makes clear that the regional director and other Board agents have discretion in investigating and holding elections. (See, e.g., George A. Lucas & Sons 8 ALRB No. 61; Perez Packing, Inc. 2 ALRB No. 13; Bud Antle, Inc. 3 ALRB No. 7; Samsel 2 ALRB No. 10.

In sum, I find and conclude that the Board agents acted reasonably and within their discretion in determining that a majority of employees were on strike, and that their determination was amply supported by the evidence available to them at the time they made their determination.

C. The Election

The employer argues that the election must be set aside because the misconduct of the Board agents, the UFW, and UFW supporters negated the free choice of the employees to elect a bargaining representative.

It is established that the standard for setting aside an election is whether the alleged misconduct "created an atmosphere in which employees could not freely and intelligently choose their bargaining representative." (S.A. Gerrard Farming Corp. 6 ALRB No. 49, p. 12.) In Bruce Church, Inc. 3 ALRB No. 90 (1977), the Board stated: "In considering the problems of holding elections in the agricultural con-

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10. There is no dispute that the regional director made the determination in this case, based on the determination made by Board agents Martinez and Weissberg.

text we must recognize that some variations and deviations from the ideal will inevitably occur despite our best efforts to prevent them. [The question is whether the alleged misconduct] was sufficiently substantial in nature to create an atmosphere which renders improbable a free choice by the voters." (3 ALRB No. 90, p.3.)

The Board has also stated this standard in terms which refer to the likelihood that the alleged misconduct affected the results of the election. In Mike Yurosek & Sons 4 ALRB No. 58, the Board upheld an election, stating that "Applying [the Bruce Church] standard, we cannot find that [the alleged misconduct] constituted objectionable conduct affecting the results of the election." (4 ALRB No. 54, pp. 3-4.) In Ranch No. 1, Inc. 5 ALRB No. 1 (1979), the Board held: "No evidence was presented to indicate that these violations were of such a character as to create an intimidating or coercive impact on the employees' free choice of a collective bargaining representative. Where employees have participated in a free and fair election of a collective bargaining representative, we will not deprive them of their right to collective bargaining by refusing to certify an election because of misconduct which we cannot fairly conclude affected the results of this election." (5 ALRB No. 1, p. 6.)

In determining whether an election should be set aside the objections to the election should be considered both individually and cumulatively. (Harden Farms of California,

Inc. 2 ALRB No. 30; D'Arrigo Brothers of California 3 ALRB No. 37.) The employer bears the burden here of coming forward with evidence that shows the employees' free choice was impaired: "The burden of proof is on the party seeking to overturn the election to come forward with specific evidence showing that unlawful acts occurred and that these acts interfered with the employees' free choice to such an extent that they affected the results of the election." (TMY Farms 2 ALRB No. 58, p.9.)

In the instant case, I have found that the Board agents did not engage in any direct misconduct, and that the UFW or its representatives did not engage in any misconduct other than the wearing of UFW buttons by the UFW observers at the election. The other misconduct I have found in the case consists of pre-election and election activities of UFW supporters. The Board has consistently held that actions of non-parties are viewed with less weight than actions of Board agents or parties in determining their effect on the election. (See, e.g., San Diego Nursery Co., Inc. 5 ALRB No. 43; Kawano Farms 3 ALRB No. 25; Takara International 3 ALRB No. 24.) Further, the Board has held that actions of union supporters are not attributable to the union, absent a showing of some union involvement or union policy behind the actions of the supporters. (See, e.g., D'Arrigo Brothers of California 3 ALRB No. 37; Harden Farms 2 ALRB No. 30; O.P. Murphy & Sons 3 ALRB No. 26.) In this case there is no evidence to indicate that the UFW was behind the

actions of its supporters. The pre-election activities in this case took place before the UFW was even called into the strike at the employer's premises, and I have found that the UFW observers did not engage in misconduct during the election (other than the wearing of UFW buttons.)

I have found that there were pre-election activities by strikers in which the strikers shouted and cursed at other employees. There were some instances in which the strikers carried sticks or rocks and made threats, but no instances of violence to the person of any worker. There was one instance of tires on a car being punctured, and two instances in which vans carrying workers were blocked. As noted, these activities took place before the UFW representative appeared at the employer's premises in response to a call from the strikers. During the election itself I have found that groups of UFW supporters entered the quarantine area and campaigned among the voters. Finally, I have found that the two UFW observers at the election wore UFW buttons. The question then is whether these activities cumulatively resulted in a denial of free choice to the workers in the election. For the reasons stated below, I find and conclude that these activities did not deny to the workers their free choice of a bargaining representative, and did not affect the outcome of the election.

The Board has dealt with similar activities in a number of elections. It has upheld elections in which observers wore union buttons (Chula Vista Farms 1 ALRB No. 23;

D'Arrigo Brothers 3 ALRB No. 37). The Board has also upheld elections where pre-election threats were made to workers (Patterson Farms, Inc. 2 ALRB No. 59; San Diego Nursery Co., Inc. 5 ALRB No. 43). The Board has upheld elections where union supporters threatened to call the INS if workers did not vote for the union (Takara International 3 ALRB No. 24), and where physical acts, including puncturing tires of a car, took place (Kitayama Brothers Nursery 5 ALRB No. 70). Finally, the Board has upheld elections in which union supporters talked to voters in the quarantine area and campaigned within the quarantine area (D'Arrigo Brothers 3 ALRB No. 37; Tepusquet Vineyards 4 ALRB No. 102; John Elmore Farms 3 ALRB No. 16; Sam Barbic 1 ALRB No. 25). In all these situations, the question was whether the misconduct as a whole negated the employees' free choice and affected the outcome of the election. (Bruce Church, supra.)

In the present case I do not find that workers were actually intimidated at the polls. There was evidence that one worker stated that she was afraid to return to work after the strikers appeared in her field prior to the election. I have found that at the election itself there was no campaigning in the immediate vicinity of the voting table, and there is no evidence that workers were prevented from voting or left the election area because of the campaigning of the UFW supporters.[9] I have also found that

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9. The employer alleged that some workers were pre-

the employer had an opportunity to campaign prior to the election, and hired a professional who campaigned with employees the day before, and the morning of, the election.

The figures in this case support the conclusion that the voters were not denied their free choice. The UFW presented to the Board agents approximately 200 authorization cards. The Board agents saw more than a hundred employees on strike, and when they asked the employees for verification of a showing of interest they were given a list signed by approximately 200 employees. The tally of ballots shows that 212 voters voted for the UFW, a tally consistent with the showing of interest by employees prior to the campaigning by UFW supporters at the polling site. It does not appear that the actions of the UFW supporters at the polling area had any material effect in creating a pro-UFW vote. There was no showing by the employer that employees did not vote in the election because of fear of the UFW supporters, and I do not find that "no-union" voters were coerced into changing their votes.

It should be remembered that this was an expedited election under the Act because it was a strike situation. In a strike situation it is to be expected that some emotional involvement of the two sides will be shown. Further, in holding a 48-hour election it is also to be expected that the Board agents may not be able to do as precise a job of

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vented from voting by Board agents' manipulation of the challenge ballots, but I have found this allegation to be unsubstantiated.

setting up and policing the polling area as they can when there is a greater amount of time to prepare for the election. As noted by the Board in Bruce Church, supra, "In considering the problems of holding elections in the agricultural context we must recognise that some variations and deviations from the ideal will inevitably occur...." (3 ALRB No. 90, p.3.) This will be especially true when an expedited 48-hour election is held in the circumstances of a strike. Considering all the circumstances of the election, I do not find that the misconduct of the non-party UFW supporters, plus the wearing of buttons by the UFW observers, "was sufficiently substantial in nature to create an atmosphere which render[ed] improbable a free choice by the voters." (Bruce Church, supra, 3 ALRB No. 90, p.3.) Nor do I find that the misconduct "constituted objectionable conduct affecting the results of the election." (Mike Yurosek & Sons, supra, 4 ALRB No. 58, p.4.)

Thus I find and conclude that under the standards set out by the Board the misconduct in this election was not sufficient to require setting aside the results of the election.

IV. Conclusion

For all the above reasons, I conclude that Board agents did not engage in any pro-UFW electioneering during the election, and that UFW representatives did not engage in any misconduct or impermissible electioneering except the wearing of UFW buttons by UFW observers at the election.

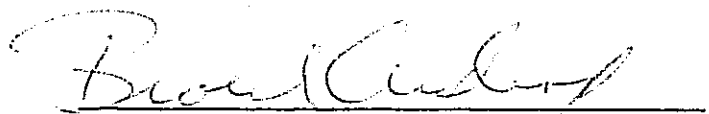
I also conclude that the activities of UFW supporters prior to and during the election were not such as to restrict the free choice of the voters or affect the results of the election. Finally, I conclude that the filing of the Election Petition and the determination that a majority of employees were on strike were proper and within the discretion of the Board agents. Therefore, there are no grounds which warrant setting aside the election.

V. Recommendation

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

DATED: February 25, 1983

Respectfully submitted,



BEVERLY AXELROD
Investigative Hearing Examiner