

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

J. OBERTI, INC., J. OBERTI)	
VINEYARDS, J. A. G. S. VINEYARDS,)	
G. OBERTI SONS, OBERTI FARMS,)	
LTD., FRANK OBERTI RANCHES,)	
CHOWCHILLA VINEYARDS, A & D)	
OBERTI, INC., and A. OBERTI)	Case No. 82-RC-11-F
RANCHES,)	
Employer,)	
)	
and)	
)	
UNITED FARM WORKERS OF)	10 ALRB No. 50
AMERICA, AFL-CIO,)	(9 ALRB No. 7)
)	
Petitioner.)	
)	
)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on October 28, 1982; a representation election was conducted among all agricultural employees of J. Oberti, Inc., J. Oberti Vineyards, J. A. G. S. Vineyards, G. Oberti Sons, Oberti Farms, Ltd., Frank Oberti Ranches, Chowchilla Vineyards, A & D Oberti, Inc., and A. Oberti Ranches (Employers) on November 2, 1982. The Tally of Ballots showed the following result:

UFW	249
No Union	90
Unresolved Challenged Ballots	<u>244</u>
Total	583

Following the decision and order on Challenged Ballots of the Agricultural Labor Relations Board (ALRB or Board; in)

J. Oberti, et al. (1983) 9 ALRB No. 7, the Regional Director issued an amended Tally of Ballots which showed the following result:

UFW	330
No Union	107
Unresolved Challenged Ballots	<u>24</u>
Total	461

The Employers filed timely objections to the election the following of which were set for hearing:

[The objection] alleging that the Petitioner or its agents misdirected 19 eligible voters from a Home Ranch crew to the wrong polling location, causing said eligible voters to be disenfranchised.

The objections...alleging that the election results were affected by coercion and an atmosphere of fear generated by violence and threats by strikers and union agents, to wit: blocking vehicles and tractors of non-striking workers, ordering them to sign cards and threatening them...and rushing fields and shaking ladders of non-striking workers and threatening them....

[The objection] alleging that the Board agents responsible for the conduct of the election failed to tell certain employees that it was their turn to vote, after having told said employees not to vote until so informed.

A hearing was conducted before Investigative Hearing Examiner (IHE) Robert S. Dresser who thereafter issued the attached Decision. The IHE recommended that the Board dismiss the objections filed by the Employers and certify the UFW as the exclusive collective bargaining representative of the Employer's agricultural employees. The Employers timely filed exceptions to the IHE's Decision and a supporting brief.

Pursuant to the provisions of Labor Code section 1146

the Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record^{1/} and the IHE's Decision in light of the exceptions and brief and has decided to affirm the IHE's rulings, findings,^{2/} and conclusions and to certify the UFW as the exclusive collective bargaining representative of all the agricultural employees of the named Employer in California.

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

^{1/} Member Henning cites as inappropriate the conduct during the hearing of a counsel for the Respondent engaging in seemingly sexist and frivolous remarks while questioning two witnesses. Seeking to learn the identity of a woman who had visited the "Home Ranch" informing workers of the upcoming election, the counsel asked the witness to describe the type clothing the woman was wearing. After learning that the person was wearing clothing similar to that worn by the interpreter at the hearing, counsel queried "Your Honor, do you think we could ask the interpreter to introduce her skirt into evidence?" (Volume III, p. 91.) Later he asked another witness whether a female ALRB agent at the election site was "pretty" (p. 167). Such conduct should have no part in proceedings of this agency.

^{2/} The Employer has objected to certain credibility resolutions made by the IHE. To the extent that such resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. (Bright's Nursery (1984) 10 ALRB Mo. 18, pp. 5-7.) While we do not find persuasive indications of credibility or the lack thereof in a witness' inability to specifically identify individuals, especially in light of the size of this Employer's work force, our review of the record herein indicates that the IHE's credibility resolutions are supported by the record as a whole.

agricultural employees of J. Oberti, Inc., J. Oberti Vineyards, J. A. G. S. Vineyards, G. Oberti Sons, Oberti Farms, Ltd., Frank Oberti Ranches, Chowchilla Vineyards, A & D Oberti, Inc., and A. Oberti Ranches in the State of California for purposes of collective bargaining as defined in section 1155.2(a) concerning employees' wages, hours, and terms, and conditions of employment.

Dated: December 26, 1984

JOHN P. McCARTHY, Member

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

CASE SUMMARY

J. Oberti, Inc., et al.
UFW

10. ALRB No. 50
82-RC-11-F

IHE DECISION

The UFW petitioned for an election which was held on November 2, 1982, where nearly two-hundred and fifty ballots were challenged. The Board issued its Decision on Challenged Ballots in J. Oberti, et al. (1983) 9 ALRB No. 7, and the following Tally of Ballots issued:

UFW	330
No Union	107
Unresolved Challenges	24_
Total Ballots	461

The Employer filed objections to the conduct of the election and a hearing was held on whether the UFW or Board agents misdirected or failed to notify certain voters of the election and whether the election results were affected by alleged threats and violence.

The IHE recommended dismissing the Employer's objections, finding insufficient evidence of an atmosphere of fear and violence which would have deprived employees of an opportunity to freely participate in the election. The IHE also found that employees were given adequate notice of the election and provided an opportunity to vote.

BOARD DECISION

The Board adopted the rulings, findings, and conclusions of the IHE and certified the UFW as the exclusive representative of all the agricultural employees of the Employer in the State of California. Member Henning noted separately that certain conduct by the Employer's counsel at the hearing was inappropriate.

* * *

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

* * *

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:

J. OBERTI, INC., et al.,

Employers,

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

Case No. 82-RC-11-F

DECISION OF INVESTIGATIVE
HEARING EXAMINER

APPEARANCES:

Campagne & Giovacchini
A Professional Corporation
By: Thomas E. Campagne, Esq. and
Thomas M. Giovacchini, Esq.
of Fresno, California
For Employers

Marcos Camacho
of Keene, California
for the Petitioner

Richard Rivera
For the Delano Regional Office, ALRB

DECISION

I . Statement of the Case

ROBERT S. DRESSER, Investigative Hearing Examiner (IHE); This case was heard before me on October 17, 18, 19, 20, 21, 25, 25, 27 and 28, 1983, in Madera, California pursuant to an Order Setting Certain Objections For Hearing; Notice of Hearing issued by the Executive Secretary of the Agricultural Labor Relations

Board (herein "ALRB" or "Board") on August 31, 1983. (BX:5.)^{1/} The

Petition for Certification was filed by the United Farm Workers of America, AFL-CIO (hereafter "UFW", Petitioner or Union) on October 28, 1982. (BX:1.)^{2/} The election petition was filed to certify the UFW as bargaining representative of the agricultural employees of a group of different entities hereafter referred to as Oberti or Employer.^{3/} The UFW and the Employer entered into the following stipulations at the hearing: 1) The UFW is a labor organization as defined in the Agricultural Labor Relations Act (hereafter ALRA or Act) and the Employer is an employer as defined in the ALRA. (See Tr. I:8.)^{4/} 2) The election was held on November 2, 1982. 3) On the day of the election there were 12 voting sites and four mobile ALRB election teams conducted the election. 4) A strike commenced on October 25, 1982 at certain locations, including the Kismet Ranch, and by October 28 the strike had spread to all of the Employer's locations.

^{1/} Board exhibits are noted herein as "BX". There are eight Board exhibits. The Employer introduced 13 exhibits, and the Employer's exhibits are noted herein as "EX". The Petitioner introduced three exhibits, noted herein as "PX". All dates refer to 1982 unless otherwise indicated.

^{2/} The Petition for Certification is referred to herein as an "election petition".

^{3/} The following list of employers is found in the election petition (BX:1) and the Employer's Written Response to the Petition for Certification (BX:2): J. Oberti, Inc. (corporation); J. Oberti Vineyards (partnership); J.A.G.S. Vineyards (partnership); G. Oberti and Sons (partnership); Oberti Farms, LTD. (partnership); Frank Oberti Ranches (partnership); Chowchilla Vineyards (partnership); A & B Oberti, Inc. (corporation) and A. Oberti Ranches (partnership).

^{4/} References to the Reporter's Transcript are noted herein as "Tr." followed by the volume number in Roman numerals and the page numbers in Arabic numerals.

A Notice and Direction of Election was issued by the Delano Regional Director of the ALRB on November 1.^{5/} The first tally of ballots (BX:7) showed the following results:

UFW	249
No Union	90
Unresolved Challenges	244
Total Ballots	583
Number of Void Ballots	3

Since the unresolved challenged ballots were outcome determinative, the Regional Director conducted an investigation and issued his Report on Challenged Ballots on December 7. The Employer timely filed exceptions to the Regional Director's Report and the Board issued its Decision on Challenged Ballots found at 9 ALRB No. " on March 1, 1983. Pursuant to the Board's Decision, the Regional Director issued an amended tally of ballots (BX:4) which shows the following results:

UFW	330
No Union	107
Unresolved Challenges	24
Total Ballots	461
Number of Void Ballots	4

On November 8, 1962 the Employer timely filed 64 objections pursuant to section 1156.3 of the Act, objecting to the certification of the election. The Employer alleged a variety of union misconduct, Board agent misconduct and that an

^{5/} See the English version of the Notice and Direction of Election contained in BX:3a-3f. The Spanish translation of three pages of the Notice and Direction of Election are contained in BX:8. I find that the English and Spanish versions were issued on November 1. See the testimony of Board agent Ed Perez at Tr. IX:53 wherein Perez, the Board agent in charge of the election, testified that the Notice and Direction of Election regarding the Crow Ranch, the Kismet Ranch, the Home Ranch and Madison Elementary School was prepared on November 1, 1982 following meetings with the Employer at the Employer's offices.

unrepresentative and inadequate number of voters participated in the election. The Executive Secretary issued an order on December 30, 1982 directing the Employer to submit additional declarations and evidence in support of various of its objections. On January 10, 1983 the Employer submitted its response. Pursuant to her authority under 8 Cal. Admin. Code section 20365(d), the Executive Secretary on May 2, 1983 dismissed each of the Employer's objections. The Employer then timely filed a Request for Review on May 10, 1983 requesting that the Board reverse the Executive Secretary's dismissal of the Employer's objections and set all the objections for hearing. After consideration of the Employer's Request for Review and the Petitioner's Response to the Executive Secretary's Notice dated July 5, 1983, granting and partially denying the Request for Review, the Board set the following objections and portions of objections for an investigative hearing:

Objection 3A alleging that the Petitioner or its agents misdirected 19 eligible voters from a Home Ranch crew to the wrong polling location, causing said eligible voters to be disenfranchised.^{6/}

The objections set forth in Objections 5, 6, 8, 9, 13, 17, 19B, 24, 25 and 26 alleging that the election results were affected by coercion and an atmosphere of fear generated by violence and threats by strikers and union agents, to wit: blocking vehicles and tractors of non-striking workers, ordering

^{6/} During the hearing on October 27, 1983, the UFW moved to dismiss this objection on the grounds that no evidence was presented in support thereof. The Employer agreed that no evidence had been introduced regarding this objection, and I therefore granted the motion to dismiss the objection. (Tr. VIII:1-2.)

them to sign cards and threatening them (as alleged in exhibits 4, 28, 29, 32, 35, 40, 42, 49 and 50 of Employer's Objections Petition) and rushing fields and shaking ladders of non-striking workers and threatening them (as alleged in exhibits 33, 39, 43, 44 and 51 of Employer's Objections Petition).

Objection 38 alleging that the Board agents responsible for the conduct of the election failed to tell certain employees that it was their turn to vote, after having told said employees not to vote until so informed.^{7/}

All parties were represented at the hearing and were given full opportunity to participate in the proceedings, including examining witnesses^{8/} and filing briefs.^{9/}

^{7/} During the course of the hearing, the Employer attempted to introduce into evidence testimony which related to objections-which were either previously dismissed by the Board or which were not clearly included in the objections actually set for hearing. In each such instance, I attempted to limit the introduction of such testimony for background purpose only and I in no way intended to have litigated by the parties objections which were either previously dismissed by the Board or which were not relevant to the objections actually set by the Board. The UFW continuously objected to evidence being introduced related to objections that had been previously dismissed by the Board.

^{8/} During that portion of the hearing when Board agents testified, they were represented by an attorney from the Delano Regional Office. The record includes the testimony of 27 witnesses called by the Employer, five witnesses called by the UFW as well as the various exhibits referred to in footnote number 1.

^{9/} The Employer's Post-Hearing Brief exceeded the fifty (50) page limitation contained in 8 Cal. Admin Code section 2037Q(e) which refers to a 50 page limitation set forth in section 20370(g)(2). The Executive Secretary issued an order dated February 7, 1984 granting the Employer's application to permit deletion of alternative pages from the Employer's Post-Hearing Brief. The Employer's Request for Review, of the Executive Secretary's Order Denying Application to Permit Filing of an Enlarged Post-Hearing Brief, dated February 2, 1984, was denied by direction of the Board in an order dated February 28, 1984.

Throughout this decision I have noted the specific transcript references, and have often quoted specific passages of testimony, upon which I have relied in making my findings. Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of all the evidence and the parties' post-hearing briefs, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Background

Stan Oberti and Phil Oberti are partners in the company (Oberti or Employer) which consists of the nine legal entities set forth on page 2 of the Employer's Response (BX:2), and includes 17 ranches. (Tr. VII:5,23,97.) The Employer grows olives and grapes and had approximately 995 workers on its payroll as of October 25. (Tr. VII:94-98, 99;^{10/} see also BX:4.)

On October 25, approximately 150 agricultural employees at the Employer's Kismet Ranch went on strike. (Tr. VII:23-24.) The strike quickly spread to the Crow and Home Ranches no later than October 26. (Tr. VII:109.) The strike further spread to an additional nine ranches. (Tr. VII:17.) The 12 polling sites were established at these same 12 ranches. (Tr. VII:17.) The main picket line activity and the main strike activity occurred at the Kismet Ranch, the Crow Ranch and the Home Ranch. (Tr. VII:114.) Ed Perez testified that most of the picketing occurred at the Kismet Ranch.

^{10/} The 17 ranches are listed at Tr. VII:94-97. Of these 17 ranches the only ones relevant to my decision are the Kismet Ranch, the Crow Ranch, the Home Ranch and the Dambrosia Ranch.

Stan Oberti began to employ security guards on October 26 at several of the struck ranches, including the Kismet Ranch, the Crow Ranch and the Home Ranch. Security guards were placed on a part-time basis at the Kismet Ranch at both of the entrances where the picket lines were set up. Sheriff's cars were also at those entrances some of the time, beginning on October 25. At the Crow Ranch, there were security guards and sheriff's cars present at the three different picket lines. There were two picket lines at the Home Ranch, and the Employer had a security guard there. One sheriff's car was present at the Home Ranch. (Tr. VII:110-112.) The Employer hired a total of seven security guards for the twelve struck ranches. (Tr. VII:98.)

The record is unclear as to the termination date of the picket lines. Stan Oberti testified that he observed a picket line at some of the ranches until the day of the election. David Villarino, a UFW organizer, testified that the picket lines ended at the close of the day of Thursday, October 28 at all ranches except the Kismet Ranch. (Tr. VIII:242.) The reason that the picket line remained up at the Kismet Ranch, according to Villarino, was due to a lack of ladders for the returning striking workers at that ranch in violation of a stipulation reached between the Employer and the UFW on October 27 to return all striking employees to work. I credit Villarino's more specific testimony and find that the picket lines went down at all ranches except Kismet by the end of the day Thursday, October 28.

Within a day following the commencement of the strike, the Employer and the UFW entered into an access agreement which

permitted UFW organizers to take access to all 17 of the Employer's ranches for a one hour period prior to the beginning of work, one hour during their lunch break, and one hour after work stopped. (Tr. VII:115.) The UFW first took access pursuant to this agreement on Tuesday, October 26. (Tr. VIII:161.) One factor complicating the access agreement was that many of the Employer's workers did not take a lunch break because they worked piece rate, or took lunch breaks at different times. (Tr. VIII:161; Tr. VII:115.)

On October 27, the UFW filed three separate election petitions which related to only three of the Oberti ranches. The UFW sought an expedited election at those ranches where employees were on strike, requesting that elections be held within 48-hours of the filing. Later on October 27, the UFW and the Employer entered into a stipulation whereby the bargaining unit was amended to include all the agricultural employees of the Employer in the State of California at its 17 ranches in exchange for an agreement by the UFW that the election be conducted on November 2 rather than an earlier date. (Tr. VII:19; Tr. VIII:169; see also EX:6.) Another purpose of the stipulation was to put back to work the Oberti employees who had gone out on strike. (Tr. VII:20; Tr. VIII:242.)

Pursuant to this stipulation, on October 28 the UFW filed a new election petition covering all 17 of the Employer's ranches. (See BX:1,2.) On Friday, October 29, Board agents began visiting ranches to advise the workers that there would be an election on November 2.

Board agent Perez held a pre-election conference late on Friday, October 29. Perez testified that, since the UFW alleged that the Employer had reneged on its agreement to reinstate some of the strikers, the time and place of the election were not resolved during that pre-election conference. (Tr. IX:50-52.) In fact, it rained on the following Saturday and Sunday, October 30 and 31, and there was no work during these two days. (Tr. VII:18.) Meetings were held in the Employer's offices on November 1, during which the election was set for November 2 and the polling sites and hours of voting were established.

B. Coercion and Atmosphere of Fear

The Employer's objections related to coercion and an atmosphere of fear may be divided into the following four areas:

1. Rushing fields and shaking ladders of non-striking workers;
2. Blocking vehicles and tractors of non-striking workers;
3. Threats related to signing cards;
4. Other allegations related to coercion and atmosphere of fear.

I will treat each one of these divisions separately and will indicate the record evidence any of my findings related to each ranch where the alleged conduct occurred.

1. Rushing Fields and Shaking Ladders of Non-Striking Workers

a. Crow Ranch

The Employer presented six witnesses who testified about various incidents of ladder shaking, rushing of fields, and confrontations between strikers and non-strikers. According to

the Employer, these events created an atmosphere of fear and coercion which either deterred workers from supporting the Employer or forced workers to join the strike. The UFW presented one witness and took the position that the Union was taking access pursuant to an agreement between the parties and that the Employer interfered with its legal access and attempted to prevent the Union from communicating with the workers. According to the UFW the workers walked out on a spontaneous strike and the only ladder shaking that might have occurred was for the purpose of gaining the attention of the workers to join the strike rather than to intimidate or knock workers off their ladders.

Employee Adan Herrera testified that, at about lunch time, some 20 unidentified strikers or UFW supporters came into the field where he was picking olives. He was unable to indicate the date when this occurred. One of these individuals moved his ladder while he was on the top, and he avoided falling by holding on to the tree branches. Since Herrera was facing the tree when this occurred, he was unable to identify any of the 20 people who came into the field, or to identify the person who shook his ladder. He testified that the person who shook his ladder told him to get down so "we could make a strike" (Tr. I:91) and talked about "a better wage." (Tr. I:101.) Some of the 20 people who came into the field wore scarves. He was unable to recall the color of the scarves, and could not describe the insignia or emblem he saw on the scarves. (Tr. I:127.)

After his ladder was shaken and he refused to come down off the ladder to discuss joining the strike, Herrera continued working for the rest of the day.

Herrera testified that other workers had complained to him that their ladders had been shook, but he did not identify which workers made those complaints, when those complaints were made or who was responsible for shaking the ladders of the other workers. (Tr. I:91.) His testimony regarding the complaints of other workers is hearsay and was not corroborated by other testimony.

He also testified that he saw strikers come into the fields on other unspecified days, and that he saw police cars in the area. (Tr. II:92.)

Herrera testified that he was made fearful of supporting the Employer by these events (Tr. I:92), yet he testified that he did not discuss the election with other workers either before or after the ladder shaking incident or before or after the field rushing incidents. Furthermore, he was asked only once to join the strike. I find it unlikely, therefore, that these events affected his participation in the election process.

Jose Naranjo testified that he worked on the Crow Ranch during the entire olive harvest season of September and October, and was present at the Crow Ranch on October 25, the day that the strike started. He observed some persons saying "go out to the side. We're going to make a strike." (Tr. II:141.) However, Naranjo did not know whether other employees stopped working since he was paying attention only to his own work. (Tr. II:142.)

He testified that his ladder was shaken on the second day of the strike, October 26. He did not notice any strikers except the person who shook his ladder, because he was high up

in the tree. (Tr. II:147.) The person who shook his ladder told him "go out. We're going to go vote with the Union," (Tr. II:148), and to come out on strike so he could get a wage increase. (Tr. II:156.) Naranjo was unable to identify the person who shook his ladder, but, when he looked down, he noticed the person wore a button. (Tr. II:152.) When Naranjo was asked how long his ladder was shaken, he replied that when he turned around the person who shook his ladder was already leaving and all he could see was the little badge. Though Naranjo testified that he was frightened by the ladder shaking, he finished cutting the last of the olives.

Naranjo also testified that he heard other unidentified people yelling "come out to the edge. We're going to go on strike and vote for the Union." (Tr. II:148.) He did not notice any more strikers come into the field on days following the day his ladder was shook. (Tr. II:149.)

Naranjo did not describe the button worn by the person who allegedly shook his ladder, and did not identify any UFW organizer or agent as being involved in the ladder shaking incident.

Porfirio Sanchez testified that on October 25 at the Crow Ranch "they began to say that we should vote for the Union, and then insult." (Tr. II:171.) He testified that someone called him *mojado*, which according to Sanchez, means one who comes over without papers to work here. No one shook his ladder, and Sanchez continued working, while the people said "come on. We're going to form a union and to vote. Don't be stupid." Sanchez testified that he did not pay attention to them. (Tr. II:172.)

Luis Abarca testified that he was employed during the period October 25 through November 2, and his job was to check the boxes and the trees that were already finished. He and his brother, Roy Abarca, were the labor contractors for one of the crews working at the Crow Ranch.

Abarca testified that David Villarino is a Union representative and on October 28, he saw Villarino and two other people come into the field at noon. They were joined by Crow workers who came down from their ladders. Apparently it was on this day that Abarca saw some unidentified persons approach the ladder of some Crow workers and tell them to "Get down, get down" and grab an unspecified number of ladders. (Tr. IV:85.) Abarca did not indicate that he saw any violence, coercion, shaking of ladders or any other similar type of conduct.

Pascual Mendoza testified that he was a supervisor or foreman of the Abarca crew at the Crow Ranch between October 25 and November 2. (Tr. VI:89-90.) He first met Villarino on October 25 when Villarino entered the field with two other people. One was Alfredo Sepeda^{11/} (Tr. VI:127) and the other was a woman (Tr. VI:135) and they were "people that were working with us, that had left on strike with him." (Tr. VI:91.) Mendoza testified that Villarino came "at the time when they were supposed to come in that day," at 12:00 or 1:00. (Tr. VI:91.) During this visit, Villarino told the workers to go out on strike; however, they did not pay attention to him and they continued working. (Tr. VI:92.)

^{11/}The correct spelling would be Cepeda.

On the next day, Villarino and a few people wearing a black eagle and a yellow handkerchief or scarf were in the field at 6:30 a.m. when he arrived. Mendoza testified that the people with Villarino "came out by surprise, and they scared us because we hadn't thought that there was anyone behind us. And so they began to grab the people here (indicating) and say 'come on, let's go'." (Tr. VI:94.) Mendoza testified that there might have been, about 40 people with Villarino and 10 or 15 had handkerchiefs around their faces. Mendoza testified that olive pickers sometimes wear handkerchiefs over their mouth and nose to protect them from dust, but he insisted that the people who came out of the fields with Villarino were not pickers because they did not have their buckets. Mendoza testified that Villarino and the unidentified people with him succeeded in getting all 25 of the workers Mendoza brought in to leave the field, some voluntarily. (Tr. VI:95.) Philip Oberti then arrived and began to talk with Villarino while the workers were gathered around him.

Mendoza testified that some of the people with Villarino began to shake the ladders of some of Mendoza's crew so that the workers would get down and that other crew members upon seeing the ladder shaking incident, got down and left because they were afraid that they might suffer some kind of accident. (Tr. VI:99.) This testimony was speculative, and Mendoza did not identify any members of his crew who told him that they were afraid because of what they observed.

When asked how many ladders he actually saw shaken on the day his crew of 35 left the field, he answered "4 or 5."

(Tr. VII:129.) None of the workers were knocked over, and he did not know the names of any of the workers even though they were members of his crew.

(Tr. VI:129.)

Although Mendoza testified that he talked to some of the people from Planada who told him that they did not want to return to work "because they were afraid that they were going to be hit" (Tr. VI:101), Mendoza failed to identify any of those persons, and their alleged remarks are uncorroborated hearsay. Mendoza later testified that two of the six workers from Planada did in fact return to work. These six workers had just begun working on the day of the incident, and, all parties agreed, were ineligible to vote in the election. (Tr. VI:125-126.)

Mendoza testified that there were security guards at the entrance to the ranch on the morning when he and his crew were surprised by Villarino.

Villarino took some of the workers from Mendoza's crew: in his car, and the other ones "went outside to make the picket line." (Tr. VI:121.)

Although he was not certain, Mendoza testified that 15 or 20 of the workers who left the field returned the next day. (Tr. VI:123.)

Mendoza testified that at the close of the next workday at approximately 5:00 p.m., Villarino returned to the field accompanied by a group of approximately 50 people. At this point the crew was beginning to leave work. One man had only a small amount left to fill his box, and the group that accompanied Villarino wanted to get him out, but the man told them to wait

until he filled his box. One of the persons in the group accompanying Villarino swore at the workers. (Tr. VI:102.) Mendoza recognized the man who made this remark, but was not sure if he was an Oberti worker. (Tr. VI:131.)

Stan Oberti testified that on Tuesday, October 26 at approximately 12:30 p.m. David Villarino and five or six of his organizers were on the Crow Ranch property pursuant to the access agreement.^{12/} When they arrived to the point where the pickers were located, they rushed into the field yelling "Huelga" (Strike) and "Junta" (Meeting) (Tr. VII:5) and shook five to ten ladders. (Tr. VII:6-7.) Though the ladders were shaken hard (Tr. VII:6), no one fell off the ladders. (Tr. VII:116.) Oberti was unable to identify the workers whose ladders were shaken.

Oberti testified that he and his cousin Philip approached Villarino and asked him to stop yelling "Strike" and "Meeting", shaking ladders and disrupting the work in the field. Villarino responded by stepping up to within 12 inches of Stan Oberti, putting out his arms and screaming "Hit me, hit me." (Tr. VII:7) Oberti testified that approximately 20 to 30 workers were anywhere from 5 feet to 50 feet away, apparently in their trees. Sheriff officer Van Horn witnessed this exchange (Van Horn did not testify at the hearing). Oberti testified that Van Horn advised the UFW "organizers" that they could not disrupt the picking, and that

12/The only one of the five or six "organizers" identified by Oberti was Fillamon Vargas. Yet Oberti acknowledged that Fillamon Vargas was an Oberti employee who was apparently on strike. (Tr. VII:116.)

if there was going to be trouble they would have to leave. (Tr. VII:9.)

Oberti testified that later that day he spoke with approximately 25 to 50 workers about this incident, and that these workers told him that "It was very upsetting to them." Oberti was unable to identify any of these workers. (Tr. VII:9.)^{13/} I find his testimony is uncorroborated hearsay and would not support a finding that these workers had been frightened by the incident. Furthermore, his testimony was evasive when he was asked which interpreters he used to communicate with the workers and when he spoke with the workers. (Tr. VII:65.)

Oberti did testify that he assured the workers that security guards and sheriff officers would help them enter and leave the ranch. (Tr. VII:117.)

Though Oberti took notes on all of the strike-related incidents about which he testified and used these notes to prepare his two declarations in support of the Employer's objections (EX:6 and EX:5), neither of his declarations referred to any field rushing or ladder shaking incidents occurring at the Crow Ranch. (Tr. VII:60.) Nor does Philip Oberti's declaration (EX:4) refer to any ladder shaking incidents on October 26 at the Crow Ranch. In fact, EX: 4 states that Villarino eventually agreed with officer Van Horn's request that he conduct his access without yelling "junta" or "huelga." I find these omissions to be significant in evaluating the reliability of Stan Oberti's testimony regarding

13/No workers testified they had spoken to Stan Oberti about this incident.

the October 26 confrontation with Villarino as well as the other striker misconduct which he alleged during his direct examination.

Contrasted with the less than convincing testimony of Stan Oberti is Villarino's credible denial that ladder shaking occurred on October 26. Supporting Villarino's version of the events of October 26 is the absence of any evidence that officer Van Horn warned or discussed with Villarino anything related to the shaking of ladders (EX:4). Officer Van Horn was following close behind Stan and Phil Oberti as they entered the field to confront Villarino and presumably would have observed what Stan Oberti witnessed. (Tr. VII:62.)

Oberti testified that while he was inside the Crow Ranch the Home Ranch and the Kismet Ranch he heard picketers yelling for ladders and threatening that they were going to rush the field and "Swipe the ladders away from the people that were working." (Tr. VII:28.) He testified that people on the picket lines threatened workers in the fields that "They were going to harm them, they were going to harm their families, they were going to deport them. They were going to get them when they left, ..." (Tr. VII:29.) Oberti testified that these threats were uttered every day except the days that it rained and upset the people in the field. These threats were yelled in Spanish and English. Oberti never identified either the people making the threats nor the people to whom the threats were directed. Oberti's testimony regarding these matters was unspecific and vague. This is not the type of testimony which would support a finding that these types of threats were made.

Oberti testified that he observed altercations between strikers and non-strikers every day on a constant basis at the Crow Ranch, the Kismet Ranch and the Home Ranch. He was a witness to "200 to 300 observations." (Tr. VII:33.) When asked to explain the types of things spoken between the former picket line participants and the workers who were not former strike line participants, Oberti responded:

"Well, the major thing was union voting. If they would not vote for the union, they would not have a job in the field anymore." (Tr. VII:33.)

There is no evidence, however, that UFW organizers or agents made such threats nor that the workers had reason to believe that such threats could be implemented. (Tr. VII:123.)

Similarly, when asked on direct, "Did your observations include any conversations as to why they would not have a job in the field if they did not vote for the union, or how that would result?", Oberti answered, "Because only union people would work there, and they would be deported back to Mexico." (Tr. VII:33.) I find that his testimony was not specific as to time, place or identity of the participants in these alleged threats or conversations.

David Villarino^{14/} testified that on October 26, "the first day we took access," he entered the Crow ranch at around noon to take access, accompanied by four individuals all of whom were Oberti workers from the picket line. He did not recall their

14/He is the son-in-law of Cesar Chavez and the Manager of the grape and fruit tree division of the UFW for Madera and Fresno counties.

names. No one else entered the ranch with him. There were two sheriffs present, and they were both trailing him, about 15 yards away. One was Lt. Hahn and the other was Sgt. Van Horn. (Tr. VII:146-147.)

Villarino tried to get the attention of the workers by telling them to gather around and shouting in a loud voice "Huelga, junta." He was shouting because people were already working and olive pickers are reluctant to stop because they work piece rate. As soon as he started talking, Phil Oberti accompanied by Stan Oberti came running up to him and yelled at him that he could not yell that there was going to be a meeting or a strike meeting. He testified that the Obertis' were upset:

"They were real mad. And I turned around and I said, "Well, you're not going to tell me how I'm going to take my access." I said, "The law says I have access and furthermore, you're infringing on my access. You're not only surveilling my access, but you're infringing on my access." And I said, "You'd better get out of here before I file a charge."

Phil Oberti then told Villarino that he could not raise his voice and yell "junta" and "huelga" because he was interrupting work. Villarino replied to Phil:

"I have a right to approach people during my access period. If they want to come together one by one, or all together, that's up to them, and not you or your brother." Or I said, "Not you or that guy there." I didn't know who Stan was. I said, "That guy there can't tell me how I'm going to take my access." I said, "I'm free to take access." (Tr. VIII:147-150.)

It was then that Stan Oberti said "you can't run around these fields like a monkey." According to Villarino, Stan Oberti

was "real, real angry" and very aggressive.

(Tr. VIII:150-151,236-237.) Villarino testified that he then turned around and said "Who's this gorilla here?" Stan Oberti took a couple of steps toward Villarino with his fist closed and Villarino dared Stan Oberti to hit him. The sheriffs came running up and said "Okay, that's enough of that. You guys calm down." (Tr. VIII:150-151,236-237.) When asked by the IHE why he dared Stan Oberti to hit him, Villarino gave a spontaneous and credible response that he was attempting to put Stan Oberti on the defensive in light of Oberti's aggressive and threatening behavior. (Tr. VIII:236-237.)

Villarino told the sheriffs that he had a very short time to speak to the workers and the Oberti's were disrupting his access. The sheriffs asked Villarino to approach the workers as best he could. Villarino told the sheriffs he didn't want the Oberti's surveilling him because it's intimidating to workers. The Oberti's responded it would be okay so long as the Union didn't disrupt the work. The Oberti's and the sheriffs walked away and Villarino continued talking with the people. (Tr. VIII:152.) Villarino denied that he or the four workers with him shook any ladders. (Tr. VIII:152-153.)

I find that Villarino was on the property pursuant to the access agreement reached between the UFW and the Employer, he was going from tree to tree attempting to gather workers for a meeting about the strike, that Phil and Stan Oberti both approached him in an aggressive manner, and that Villarino's dare to Stan Oberti to hit him was a reasonable response to Stan Oberti's aggressive behavior.

Regarding the Wednesday morning incident at the Crow Ranch, Villarino testified that he took access at approximately 6:00 a.m. He was accompanied by four Oberti workers. He could not recall the names of the people who came in with him since different workers were coming in with him at different times. It was barely sunrise, and it was dark. Pascual Mendoza was opening up the back of his camper, and people were piling out. He approached Mendoza and told him who he was and what he was doing there. He told them the Union had gotten the dollar wage increase and he said that "We needed their help and they could help us by joining the picket line. And they agreed." (Tr. VIII:141-142.)

Villarino testified that he talked to 40 other workers as he walked through the trees and he told them to gather around. A meeting then occurred between himself and a number of olive pickers who came down from their trees.

He gave specific testimony about the contents of the message he delivered to the 40 to 50 gathered workers. (Tr. VIII:143.) At the conclusion of the address, "They all came with us and joined the picket line." (Tr. VIII:144.) During the time he was addressing the workers, Phil Oberti was present on the side of the dirt road.

Villarino testified that the women had bandanas around their faces. Villarino explained that the bandanas were used for the dust and the cold and that it usually covered the mouths of the people wearing them. Approximately 10 of the women were wearing bandanas during the time he was addressing the workers. (Tr. VIII:144-145.)

Villarino testified that he did not observe any confrontations between the striking workers and the non-striking workers during this period leading up to the meeting. He denied grabbing any workers, and he denied seeing any of the people who accompanied him pushing any workers out of the field toward the meeting. Villarino testified that the workers at the meeting were enthusiastic:

"Well, a lot of 'viva Chavez' and a lot of attentive listening, clapping at the end of the meeting. When I was talking—a lot of hand clapping—they were hand clapping." (Tr. VIII:145.)

Most of the 40 or 50 people were clapping. After the five or six workers from Planada joined the picket line, they were eventually provided with a ride back to Planada.

Villarino denied shaking the ladder of any workers who were working at the Crow Ranch that day (October 27), and he also denied seeing any striking employees shake ladders of non-striking employees. (Tr. VIII:146.)

On cross-examination Villarino testified that he never saw anyone shake ladders during the period from October 25 through November 2. His demeanor when answering these questions about ladder shaking was calm and his testimony was responsive.

Villarino was asked whether he used Fillamon Vargas Ramirez as some type of helper or assistant. Villarino testified "No, he was a union sympathizer like many people were." (Tr. VIII:219.) Villarino denied that Vargas helped him get signatures on cards from other workers during access. Villarino denied that Vargas took access with him. He testified

that Vargas was working at the Crow Ranch, went on strike on Wednesday, October 27, and returned to work on Friday, October 29. (Tr. VIII:221-222.)

Villarino testified that he knew Alfredo Cepeda, Cepeda is the husband of Maria Cepeda, Maria is related to Serafin Osorio (his testimony will be discussed infra), Cepeda went on strike on Tuesday, October 26 and that he returned to work on Friday, October 29. (Tr. VIII:221-222.)

Villarino formed a loose-knit committee. It was "Nothing formal." And the strike was a "spontaneous strike. I mean the people were just coming out and wanted to sign cards. They wanted the union." (Tr. VIII:222-223.) When asked how he made selections of people who were on the committee, Villarino responded that there was no "real committee. I just used people when I needed them." (Tr. VIII:223.)

The Employer witnesses regarding events at the Crow Ranch were not particularly impressive. Adan Herrera's testimony regarding the field rushing and ladder shaking incidents as well as his testimony infra related to lack of notice and blocking of entrances to the Crow Ranch was marked by a poor memory and vague and non-responsive answers. Throughout his testimony, he looked down at the floor and in general he was an unreliable witness. Jose Naranjo's testimony was marked by a lack of awareness of the activities and events occurring at the Ranch. The testimony of Porifirio Sanchez was vague and confused in many respects and certainly does not support a finding of any coercive field rushing. I did not find Luis Abarca to be a credible

witness. He was very nervous when testifying, and his failure to identify any of the workers who were allegedly impacted by misconduct of strikers or Union agents casts doubt on his testimony. Furthermore his testimony concerning the date of the incident he described was very confusing and, after my request for clarification, the Employer's attorney was unable to elicit a clear answer. (Tr. IV:85-87.) At times the testimony of Stan Oberti during cross-examination manifested a certain degree of hostility to the Union (see for example Tr. VII:106, lines 5-14; Tr. VII:62, lines 5-14).

In contrast, Villarino was an impressive witness. During both his direct and cross-examination Villarino was calm, took time to think of his answers and appeared to make a good faith effort to tell the truth. His answers were generally responsive. At times he paused for a moment in order to think about the question and his answer. At other times he responded immediately to questions. He manifested a good memory for detail both on direct and on cross-examination. His testimony on cross-examination was generally consistent with his testimony on direct. One indication of his objectivity on cross-examination was the fact that he gave credit to Employer attorney Tom Campagne for helping to get workers back to work on Monday, November 1. In fact this was the reason that there was no picketing going on at any of the 17 ranches as of November 1. (Tr. VIII:244.) Though Villarino's testimony contained a couple of inconsistencies and he did not remember the names of workers who took access with him, I found him to be an honest and credible witness.

Philip Oberti did not testify at this hearing though two of his declarations were admitted into evidence. The Employer could have called Phil Oberti to testify about the contradictions between the testimony of Pascual Mendoza and that of Villarino regarding the incident on the morning of October 27. Villarino testified that Phil Oberti was present when Villarino spoke to the gathering of workers. The failure of the Employer to call Philip Oberti to testify about this event is one factor I used to credit the testimony of David Villarino over that of Pascual Mendoza regarding what transpired on the morning of October 27.

Based on all the above testimony and evidence, I find the following facts related to rushing fields and shaking ladders of non-striking workers at the Crow Ranch:

(1) Tuesday October 26 is the first day that the UFW and UFW organizer David Villarino took access to the Crow Ranch. Villarino took access pursuant to an agreement between the Employer and the UFW. He was accompanied by several strikers on the 26th when he took access. I find that Pascual Mendoza's testimony referring to the 25th of October really refers to events which occurred on Tuesday, October 26th. Mendoza stated that on this particular day Villarino was on the Crow Ranch pursuant to the access agreement.

(2) On October 26 Villarino advised Crow workers about the strike and requested them to join the strike. In attempting to gather the workers for a meeting during the access hour, he shouted "huelga" and "junta." He did not issue any threats to the gathered workers.

(3) No ladder shaking incidents or coercive field rushing incidents occurred on October 26th. I credit Villarino's testimony regarding the events which transpired, and I note that Mendoza's testimony did not indicate that any coercion or violence occurred on this day. The ladders of Adan Herrera and Jose Naranjo were touched but not shaken hard on October 26. Herrera testified that he finished picking after his ladder was shaken, and he did not readjust his ladder. As discussed supra, I have found Herrera to be an unreliable witness. Though I find that Naranjo's ladder was touched on October 26th, he did not fall, he continued working until the end of the day and he did not readjust his ladder. Herrera and Naranjo were both asked by unidentified union supporters to stop work and either attend a meeting or join the strike. No UFW organizer or agents were involved in these events.

(4) No one shook the ladder of Pofirio Sanchez, and he was not coerced or intimidated during the strike. I credit Villarino's denial that he shook any worker's ladder at any time during the strike. I discredit Stan Oberti's testimony regarding the ladder shaking incident in that he was non-specific regarding which workers were affected or who was responsible, no arrests were made and his testimony was too vague.

(5) There was a confrontation between Villarino and Stan and Phil Oberti on October 26th at about 12:30 p.m. which did not coerce any workers.

(6) Stan Oberti's vague, hearsay testimony is insufficient to support a finding that workers were frightened or coerced. I find that Stan Oberti did talk to workers on three

occasions (one of them being at the Crow Ranch) and assured them that they could safely remain working as there were security guards and sheriff officers present at the ranches where the primary strike activity was occurring.

(7) The incident described in EX:3 alleging an argument between Villarino and Phil Oberti at 4:30 p.m. at the Crow Ranch was not witnessed by any workers and did not have any effect on workers' free choice.

(8) The events of October 26th did not cause an atmosphere of fear or coercion, nor did they contribute to any such atmosphere.

(9) On October 27 Villarino took access to the Crow Ranch pursuant to the access agreement between the UFW and the Employer.

(10) On October 27th 35 to 50 workers voluntarily joined the strike and the picket line after meeting with Villarino.

(11) There were no ladder shaking incidents and no pushing or coercing of Oberti workers at the Crow Ranch on October 27. I note Villarino's credible denial of any such events. Mendoza's testimony lacked the type of specificity necessary to support a contrary finding. Mendoza also agreed during parts of his testimony that at least some of the olive pickers at Crow joined the strike voluntarily on October 27.

(12) On October 28th Villarino took access at noon pursuant to the access regulation. No ladders were shaken, and there was no specific testimony from Luis Abarca to the contrary. Abarca's testimony was very confused. I note that Abarca did not testify as to any violence or coercion. On October 28 at

5:00 p.m. I find there was no coercion or atmosphere of fear or coercion related to a striker using foul language to a worker who in fact finished picking.

b. Kismet Ranch ^{15/}

The Employer presented six witnesses who testified field rushing and ladder shaking incidents at the Kismet Ranch. According to the Employer, these incidents created an atmosphere of fear and coercion, resulted in some workers involuntarily joining the Union's strike, and interfered with workers' ability to complete their work. The Union presented one witness and contended that it was not responsible for events at the Kismet Ranch and in any event the conduct there did not create an atmosphere of fear and coercion which would preclude a free vote by the workers.

Leocadia Bustillos testified that she worked as an olive picker at the Kismet Ranch during the harvest season of 1982. Her labor contractor was Manuel Gonzalez and her husband, Lauro Bustillos, was her foreman.

She first testified that no strikers spoke with her on October 25th before she quit working, and she did not notice who told her to go on strike. (Tr. II:4.) Mrs. Bustillos then testified that on the first day of the strike, "they told me to come down off the ladder." A man told her to come down, and "he tried to shake the ladder." She testified that she threatened to kick him if she was not allowed to finish filling her can.

15/The Kismet Ranch is sometimes referred to as the Kismeth Ranch They are one and the same ranch.

When asked how hard the man shook her ladder, she replied "No, he only touched it like this (indication) and asked me to come down. And if not, he would shake it." The IHE noted that the witness demonstrated a minor shaking motion, more like a tap. (Tr. II:8.) Mrs. Bustillos finished the can, filled her box and then went to her van. She was unable to identify or describe the man who tapped her ladder. (Tr. II:14.)

She testified that 15 or 20 of her co-workers got down off their trees and began yelling "huelga, huelga." (Tr. II:4.)

After the strike began Mrs. Bustillos stopped working and eventually left the field. Though she resumed working the next day, some members of her crew remained out on strike. Mrs. Bustillos testified that the day the strike began "the boss increased the price of the olives that he was paying us." (Tr. II:6.)

She testified that ten of her co-workers were trying to persuade the other workers to stop picking. She claimed that these ten were throwing "dirt clods, rocks,..." (Tr. II:12.) This *is* why she left after finishing her can. She could not identify the co-workers who threw dirt clods. She saw four or five rocks being thrown. Finally she testified that she saw only two people pick up dirt clods. (Tr. II:18.) The two co-workers were "quite aways" from her (Tr. II:21) and they threw the clods at other workers who were near her picking. (Tr. II:19-20.)

When she returned on the 26th of October and thereafter she no longer paid any attention to these strikers and she just worked. She noticed nothing unusual in the groves. (Tr. II:7,13.)

Lauro Bustillos testified that during the strike he was employed under labor contractor Gonzalez at the Oberti Ranch.

When he arrived to work on October 25 at 7:00 a.m., there were already some employees working in the field. "They continued working, and then, around 8:30 or 9:00, they began saying 'huelga, huelga.'" (Tr. II:26.) Bustillos estimated that approximately 30 of the 50 to 55 workers left the field. When the 30 workers first left the field, the remaining 20 or 25 workers continued picking in order to finish their cans. Bustillos testified that the 30 workers who had left re-entered the field. One of these 30 had shaken his wife's ladder. Of the 30, he saw no more than three persons throwing dirt clods. (Tr. II:34.) Bustillos testified that he did not see anybody get hit by rocks or dirt clods, nor did anyone tell him that they had been hit. (Tr. II:37.) He was unable to identify or describe the two men who threw dirt clods, and did not observe any other actions of the 30 strikers. (Tr. II:37.)

His version of the ladder shaking incident involving his wife was similar to Mrs. Bustillos' version. (See Tr. II:38-40.) When asked to describe the person who shook his wife's ladder, he testified that the man was about his same stature and fat. Bustillos did not remember the man's name, though he did remember that he was an Oaxacan. I find that the person who touched his wife's ladder was a co-worker who was one of the group of 30 workers who started the strike. (Tr. II:56.) He did not see the 30 strikers who had re-entered the field shake anyone else's ladder besides his wife's. (Tr. II:41.)

Mr. Bustillos testified that Manuel Gonzalez' secretary was present in the field with him during these events. Bustillos testified that there were some small children in the field. He wanted to make sure that the children were not hit and this is one reason he suggested that; the remaining crew members should leave the field. Bustillos testified that the parents, i.e. the workers who did not go on strike, gathered their children and waited for Stanley Oberti to come. When Bustillos was asked if he talked to any of these 20 workers before they left the field after the 30 striking workers re-entered the field, he testified "I told them that let's wait for Stanley to see if they would increase. And they said, 'we don't want anything. We want 'huelga, huelga, huelga'." (Tr. II:44.) Bustillos testified that these 20 workers who had originally remained inside the field were now together with the 30 workers who originally left the field (Tr. II:44) and they were talking and laughing together. (Tr. II:47.) At this point Employer's counsel sought to impeach Mr. Bustillos, his own witness. Bustillos testified that at most there were six workers from the 20 who failed to join the strikers, and that some of the 20 who had their children with them stayed with the strikers. (Tr. II:49.)

Bustillos testified that when he went outside with the 20 people who had initially continued picking, he met Stan Oberti and told him in response to Oberti's question of what was happening that "They want more money." (Tr. II:55.)

It appears from Bustillos' testimony that he would be a supervisor rather than an eligible voter. He testified that unlike his wife, he does not pick.

Carmen Roach testified that she was employed by Manuel Gonzalez during the olive harvest season of 1982. She supervised several tally girls in properly obtaining records from the employees and tallying the boxes.

She was at the Kismet Ranch on October 25 and began working at 7:00 a.m. Sometime between 8:30 and 9:00 a.m., "some of the workers that were working picking olives started yelling 'strike, strike',..." (Tr. II:61-62.) They got off of their ladders, and walked out of the field onto a dirt road. They continued yelling "strike, strike," and then within an hour they came back into the field yelling at the 20 remaining workers. They started throwing big clods up in the air. Roach testified that "some were rocks, some were big clods." (Tr. II:63.) She testified that the rocks and clods were landing around where the people were working and that the workers had their children nearby in some type of "boxes". The rocks and big clods "were landing around the babies." (Tr. II:63.) After first testifying that 15 strikers were throwing rocks or clods, she changed her testimony to indicate that five strikers were throwing objects.

She saw five or six dirt clods actually land during the entire time that she was there. Mr. Bustillos was right behind her and was able to see everything that she saw. (Tr. II:79-80.) I note that Mr. Bustillos testified he saw only about two of the 30 strikers throw dirt clods. Roach was unable to identify the people who were throwing the rocks or clods even though they had been working at the Kismet field before, and she had talked to them on several occasions.

The 30 strikers who re-entered the field were talking to the people and trying to get them off the ladders and quit working. She testified that "they shook Mrs. Bustillos' ladder." Roach did not testify to any other ladder shaking incident. (Tr. II:65.) Though Roach testified that the 20 workers who remained in the field were frightened, I find that her conclusion was based on hearsay and speculation and not entitled to any substantial weight. I note that Roach failed to identify any of the 20 workers who said that they were frightened. (Tr. II:69.)

Contrary to the testimony of Mr. and Mrs. Bustillos, Roach testified that after the strikers had re-entered the field, talked to the 20 remaining workers and then left the field, the 20 workers continued to-work for the rest of the day. She testified that they continued to work until the regular quitting time which was 2:00 or 3:00. However, she also testified that she left at noon.

When asked on cross-examination to describe' the person that shook the ladder of Mrs. Bustillos, Roach testified "It's the same one that came at me with a clod." (Tr. II:82.) She gave a physical description which was vague, and she was unable to identify him by name. She then tried to retract her initial testimony that the person who shook Mrs. Bustillos' ladder was the same person who came at her with a clod. (Tr. II:84.) At this point, she testified "I think I'd better not perjure myself." (Tr. II:84.)

She claimed that this worker raised the rock above his shoulder as if he were going to hit her with it. He was two or

three feet away from her. She testified that the girls she supervises and Mr. Bustillos observed this. (Tr. II:103-105.) I note that Mr. Bustillos made no mention of this incident during his testimony. From the testimony of Ms. Roach, I find that at most three workers observed this confrontation between the man with the dirt clod and Roach. None of the three tally girls were called to testify to corroborate Roach's testimony regarding this confrontation; Roach could not identify or remember the name of this worker. She testified that the worker did not hit her with the clod. (Tr. II:110.)

Mr. Jesus Diaz testified he has recruited people to pick olives for the Obertis for the past 15 years. He was working for the Obertis' as a labor contractor at the time of the strike, and 1982 was his first year as a labor contractor at Kismet.

On October 28th he had 60 workers employed at the Kismet Ranch. His crew began working at 9:00 a.m. A representative from the state and two county deputy sheriffs were present. The state employee arrived shortly after Diaz. At approximately 9:00 a.m. Canas (Daniel Cabrera) came with 40 workers who had never before worked with Diaz. Diaz testified that Canas and the group of 40 were workers for Manuel Gonzalez. I find that Canas and these 40 were all striking Oberti employees from the Gonzalez crew and had previously been working at the Kismet Ranch.

Canas and the 40 people parked their cars on one side of the orchard, and everyone got out and "were coming" towards where Diaz had his people working. Canas addressed all of the

workers, the 40 who came with him as well as the 60 working for Diaz. Canas told the assemblage that he would take the ladders that Diaz' people were using pursuant to an order to take those ladders from Macillas, supposedly a representative of the Union. At this point the 40 people who accompanied Canas came towards Diaz' workers to attempt to force them to let go of the ladders. Diaz then told Canas that Canas should tell his people not to do that in the absence of a directive from Stan Oberti. Though the state representative did not tell him of any agreement to reinstate striking workers at that ranch, Stan Oberti told Diaz later on the 28th that strikers were going to be returning to work that day. (Tr. III:18-19.)

At this point a few of the workers with Canas began forcing Diaz' workers to let go of the ladders by shaking ladders. "Then they knocked over one of my workers." (Tr. III:5.) This unidentified worker fell from the ladder to the ground. According to Diaz, "the boy got frightened and he left." (Tr. III:5-6.) Diaz testified that the boy never returned to work. Diaz was unable to remember the boy's name. (Tr. III:22.)

When asked whether any other workers ' ladder was shaker. , Diaz replied "Aside from that ladder, they didn't shake any more because I spoke to Canas." (Tr. III:6-7.) He testified that before the boy fell, "Well, they shook a few, but they only knocked one person over." (Tr. III:7.) Diaz testified that only one ladder was shaken. The other ladders were grabbed but not shaken. (Tr. III:13-14.)

Stan Oberti arrived and told the two sheriff's who accompanied him to get Canas and his group out of the area. Canas and his group then left. (Tr. III:8.)

Diaz testified that the 40 people who accompanied Canas had UFW buttons and 10 of the 40 were wearing UFVJ bumper stickers on their hats. Some of the 40 had UFW bumper stickers on their cars.

When asked on direct what his crew of workers told him when discussing the ladder shaking incident with him, Diaz responded "They didn't say anything. They only worked, that's all." (Tr. III:15.)

Raul Garcia, Sr., the father of Haul Garcia, Jr. and Jesse Garcia (two other Employer witnesses), testified that he owns two trucks and during the strike he drove one and his son drove the other.

Garcia testified that at the Kismet Ranch he saw one person enter in the morning and shake one ladder, but he could not identify the person shaking the ladder. (Tr. VI:41-42.) Garcia did not know the name of the man who fell off the ladder. The ladder wasn't very tall, and the man who fell off continued picking. (Tr. VI:43-44.) Garcia did not report this incident to anyone. (Tr. VI:50.)

Garcia testified that this ladder shaking incident occurred on October 25 or October 26 at about 4:00 in the afternoon. He testified that there was no picket line at that time. (Tr. VI:45.)

Stan Oberti testified that at approximately 9:30 a.m. on Friday, October 29 he noticed "20 to 40 UFW organizers and picketers running into the field disrupting work." (Tr. VII:14.) He later clarified that they entered in groups of five to ten rather than all at once. (Tr. VII:119-120.) These 20 to 40 unidentified persons were blocking people from moving their tractors, blocking people from working, telling people to come down off their ladders and join the picket line, shaking ladders, and engaging in "UFW tactics of disrupting work." (Tr. VII:14,120) Oberti did not take any action other than telling one of his assistants to let the sheriff's patrol know if he saw any more trouble.

Oberti testified that later on October 29 he spoke with approximately 50 workers from the Kismet Ranch regarding this incident. When asked what the workers told him about this incident, he replied "It was the same story again as I repeated. They were threatened, they were coerced, they were ridiculed." (Tr. VII:5.) This is hearsay and there is no other corroborating testimony. He was unable to identify any of the 50 workers.

Oberti's declaration (EX:5) indicates that when he observed the 20 to 40 UFW organizers and picketers entering the Kismet field between 9:30 and 10:00 a.m., he personally asked those persons to leave. They left but within a few minutes they re-entered the Ranch at a different location. He told them again to leave, but took no other action. (Tr. VII:15.) This is inconsistent with his direct testimony when he said he took no action. His failure to take any action and the absence of specific

testimony suggests that the incidents were free of any coercive or violent conduct. He did not file any police reports regarding these incidents.

I find Oberti's testimony regarding this field rushing incident to be vague and devoid of any real substance related to coercive conduct engaged in by those who entered the field.

The UFW called Lawrence Alderete who testified that *he* is the Regional Field Examiner for the Delano/Fresno Region and that he began working for the ALRB in October 1976. He came to the Kismet Ranch because he was aware of an agreement which provided that strikers were supposed to return to work. He arrived at the Kismet Ranch shortly after 8:00 that morning (October 29), people were already working in the orchard (Tr. VIII:5) and there were strikers outside lined up on the roadway on the opposite side of the field about 100 yards away from the main body of workers. When he arrived at the field, he noticed that there were many empty boxes for the olives. He denied seeing any empty boxes on field wagons blocked in the avenue, nor did he see any pickers waiting for those field boxes. (Tr. VIII:41.) He did not see any strikers in the field at any time during the two hours that he was at the Kismet Ranch. (Tr. VIII:6.)

As he drove into the Ranch, he spoke with Mike Ybarra, a UFW organizer, who was on the picket line. Ybarra advised Alderete that there were problems with getting ladders. Alderete then entered the field to see if he could locate Stan Oberti. Oberti arrived 10 or 15 minutes later. (Tr. VIII:7.)

Alderete spoke with Stan Oberti about putting the people back to work. He and Oberti then attempted to locate ladders to accommodate the people that were striking. After he located ladders, he talked to Mike Ybarra and arranged for a number of workers to be brought into the Ranch corresponding to the number of ladders available. (Tr. VIII:9-10.) Alderete estimated that between 10 and 15 people were put back to work in this fashion over a two hour period with Oberti's permission. (Tr. VIII:11.) Alderete testified and I find that he was with Stan Oberti during much of this two hour period. He stopped the effort after he was unable to find more ladders. Oberti left the ranch, and then Alderete left. (Tr. VIII:19.) When Alderete left, the picketers were in the same location they were at two hours earlier. (Tr. VIII:20.)

He testified that he talked with some sheriffs who were present during this two hour period, at the corners of the field. He also communicated with the two people Stan Oberti said were labor contractors at the Kismet Ranch.

Alderete denied observing any strikers shaking ladders of non-strikers, or any quarrels between non-strikers and strikers.^{16/} Stan Oberti did not make him aware that morning or at any subsequent time that any striking employees had shaken ladders of non-striking employees. Nor did Oberti complain to Alderete of any quarrels between striking employees and non-striking employees. (Tr. VIII:17-18.) Neither of the labor

^{16/}His testimony on cross-examination was consistent with his testimony on direct. (See Tr. VIII:28.)

contractors told Alderete of any quarrels between striking employees and non-striking employees, nor did they complain to Alderete that strikers had shaken ladders of non-striking employees. (Tr. VIII:18.)

I find Mrs. Bustillos and Mr. Bustillos to be generally credible witnesses who made good faith efforts to tell the truth. Their answers were responsive despite some confusion from time to time. Ms. Carmen Roche on the other hand appeared to have a story to tell. She was especially hostile during cross-examination even though the cross-examination was by no means abusive or improper (see Tr. II:79). She often changed her testimony and in general she was not a very reliable witness. I did not give much weight to the testimony of Mr. Jesus Diaz as I found his testimony to be somewhat confused and non-responsive. I found the testimony of Haul Garcia, Sr. to be improbable, unclear and speculative. Lawrence Alderete manifested a good memory for details during cross-examination including the type of truck that Stan Oberti was driving the morning of October 29 and a good recollection of the types of roads that were on the Kismet Ranch property. He looked at his questioner both on direct and cross-examination, he was calm, his answers were responsive and clear and he was a credible witness.

Based on all the above testimony and evidence, and in addition to my previous findings, I find the following facts related to rushing fields and shaking ladders of non-striking workers at the Kismet Ranch:

1. On October 25 at approximately 8:30 a.m. 30 of 55 workers who were picking olives at the Kismet Ranch went out on strike for more money. The 30 workers (hereafter strikers) attempted to encourage the other 20 to 25 workers to leave the field. The strikers then left the field, leaving 20 to 25 workers who continued picking.

2. The strikers re-entered the field approximately one-half hour to one hour later. As they entered the field, two to five strikers threw dirt clods up into the air. One unidentified striker tapped the ladder on which Mrs. Bustillos was picking olives. She completed filling her can and then left the field with her husband.

3. No workers or children were hit by any objects thrown.

4. At some point after the strikers re-entered the field, the 20 to 25 workers who had initially remained in the field left the field and all but six joined the strikers. Their joining the strike was a voluntary and non-coerced action. The Employer raised the wages later that day and some of the strikers returned to work the next day.

5. None of the workers were coerced into leaving the field by violence or threats of violence. I discredit the testimony of Roach that she was threatened by an unidentified worker who allegedly raised his hand while holding a dirt clod. Her testimony was rather non-responsive, often evasive and sometimes confused. In any event Ms. Roach was not hit by any object. At most three of the tally girls witnessed the alleged threat. The testimony of Roach regarding this alleged threat

is unsupported by any other evidence. There is no evidence that the three tally girls were dissuaded from campaigning or voting in the election.

6. On October 29, 40 strikers entered the Kismet Ranch and attempted to get ladders from Diaz' crew since ladders were not available when these 40 strikers arrived. I find that the testimony of Diaz related to events on October 29 rather than October 28. This is consistent with Stan Oberti's testimony and his declaration which refers to a field rushing incident on October 29. Board agent Lawrence Alderete visited the Kismet Ranch on October 29 to assist striking workers in obtaining ladders, and he saw Mike Ybarra, a UFW organizer. Oberti also referred to the presence of Mike Ybarra at the Kismet Ranch on October 29. Another reason for finding that the testimony of Diaz related to October 29th is that he testified that he saw a Board agent or a state agent on the particular day in question. I find that this Board agent was Lawrence Alderete.

7. No violence or ladder shaking occurred on October 25 during the field rushing incident around 10:00 a.m. Oberti's declaration did not refer to any violence or ladder shaking. Alderete credibly denied observing any field rushing incident for the two hours he was present. There is no evidence that the 60 workers in the Jesus Diaz crew left the field. The only evidence indicating a ladder shaking incident that day was the testimony of Mr. Diaz, but I have discredited his testimony in that it was unlikely that he would not know the name of a member of his crew or that he would fail to report this incident to the

sheriffs who quickly came to the scene. I credit Alderete's testimony over that of Diaz.

8. I discredit the testimony of Haul Garcia, Sr. who indicated that he saw a person shake a ladder and the worker on that ladder fall down and then resume picking. His testimony was non-specific and he was an unreliable witness for reasons stated supra.

9. I find that there was no atmosphere of violence or coercion existing at the Kismet Ranch on October 25 or October 29, the only two days about which specific testimony was adduced at the hearing.

c. Dambrosia Ranch

Arturo Castaneda testified that he was a labor contractor and his crew of 50 to 100 employees began work at 7:00 a.m. on October 25th. In the morning, Phil Oberti gave the workers a pay raise, and Castaneda speculated that the workers were satisfied. (Tr. III:146-149.) Yet, a strike later occurred between 11:00 a.m. and 1:00 p.m. when about 150 people rushed the olive orchard and yelled in Spanish that there was a strike and that everyone should stop working. (Tr. III:147-148.)

The people who came into the field were not people he had hired. The only one he recognized was Fillamon Vargas who was doing the initial yelling. This group approached workers who were on ladders picking and tried to convince them to get off the ladders. Some of the workers did get off the ladders, and some didn't. (Tr. III:149.)

Castaneda testified that he observed from eight to twelve strikers shake a ladder. (Tr. III:150-151.) No one actually fell off the ladder.

When asked to describe the "average shaking" Castaneda testified:

"Jeez, I don't know what you would call--there was enough to shake the person. I don't know if that's hard or mediocre, or if it was light,--if you're on the ladder, and someone says 'hey', you know, it's not where he'll fall down, but it's enough to catch his attention..." (Tr. III:151-152.)

I find that the ladders were not shaken hard enough for the workers to fall, but rather the strikers shook the ladders in such a way as to draw the attention of the workers so that the strikers could request that they leave the field. I find that this conduct was not coercive or intimidating.

Castaneda testified that about 50% of the people walked out immediately after the field rushing event which lasted no more than an hour. Eventually everybody did walk out. (Tr. III:158.) He estimated that 40 to 50% of his crew joined the picket line. (Tr. III:174-177.) Eighty percent of his crew of 50 workers left the field following the field rushing incident and met with the strikers at a "rally" where strikers explained the strike. (Tr. III:177.) Castaneda did not testify to any violence or threats occurring during this field rushing incident.

I find that Castaneda's testimony that some workers stopped working because they were frightened is vague and based on hearsay and there is no other corroborating testimony to support a finding that the workers who did not return were in fact scared or frightened. (Tr. III:159-160.)

Phil Oberti made the decision not to go back to work at Dambrosia and that the Castaneda crew would move over to the Crow Ranch where they had guards at the time.

Castaneda's testimony does not establish that any UFW organizer or agent participated in or planned the field rushing incident.

Based on all the above testimony and evidence, and in, addition to my previous findings, I find the following facts related to the Dambrosia Ranch:

1. Either on October 25 or one day shortly thereafter approximately 150 persons who were unidentified except for Fillamon Vargas, an Oberti employee, entered the Dambrosia Ranch and persuaded without any threats or violent conduct the majority of Castaneda's crew to walk out of the field and attend a strike rally.

2. The majority of the Dambrosia workers voluntarily left the field and honored the strike.

3. The 150 persons who rushed the field did not create an atmosphere of fear or coercion.

4. I find Castaneda to be a somewhat unreliable witness because he had a difficult time giving a specific answer to questions either on direct or cross-examination. He appeared to be nervous during a good portion of his testimony.

2. Blocking Vehicles and Tractors of Non-Striking Workers

a. Kismet Ranch

The Employer presented five witnesses and contended that pickets intimidated workers by blocking the roads into the

Kismet Ranch and by shouting obscenities at workers. The Employer also contended that during one day workers were prevented from completing their work because of actions by a UFW organizer. The UFW presented no witnesses and argued that the activities testified to by the Employer's witnesses were not coercive or intimidating.

Ruben Sandoval testified that he was employed at the Kismet Ranch on or about October 27. As he was leaving work in an automobile, there were two sheriff's patrol cars present. Sandoval and the others with him asked if they could pass and the sheriff officers said yes. Sandoval's car began to leave the area when some men from the side of the road insulted them. Sandoval and the others in the car tried to ignore the men, and they were driving slowly in order not to hit them. At this point two or three unidentified men threw a branch across the road, and "Since it was very fast, we went over the branch, and the car went from side to side, with the danger of turning over." (Tr. I:17.)

Contrary to Sandoval's testimony on direct, his declaration (admitted as EX:1) stated that four individuals picked up a tree branch and threw it in front of the car. The driver, Santiago Martinez, "had to swerve sharply in order to avoid hitting the log and thereby damaging his car." (EX:1.) The inconsistency concerning whether the car actually drove over the log was not explained. Sandoval did not recognize the men who put the branch in the path of the car, though he did testify that the men carried flags.

Sandoval testified that there must have been 100 to 200 people carrying buttons, signs and "orangey" flags^{17/} who came close to their car and that Sandoval and the others became afraid that "They might hit us." When asked why he believed that "They might hit you", Sandoval answered "That is to say, we had, at the end, we had never seen anything like that and we did not stop for it." (Tr. I:18.) This non-responsive answer was typical of Sandoval's testimony.

Sandoval testified that his car continued driving as the police stayed with the crowd through which Sandoval's car had driven. (Tr. I:18.) No one from the large group touched or tried to touch him, and he and the passengers in the car paid no attention to what the group was yelling.

No substantial evidence was introduced that he was deterred from voting or campaigning because of this alleged incident. In fact no evidence was introduced showing that he was an eligible voter.

Sandoval testified that he was not aware that a strike was occurring at the Kismet Ranch. (Tr. I:26.)

Santiago Martinez testified about the same incident described by Ruben Sandoval. The sheriffs told him and his four passengers that they could pass and not to be afraid if the group of 100 to 200 men told them anything. (Tr. I:33-34.) As Martinez' car began to leave, a group of men standing along side of the canal approached them yelling at them to stop. However, Martinez

27/Sandoval was unable to recall whether the flags had any pictures on them, nor did he recall the initials on the flag.

and his passengers did not pay attention to them and the car continued along slowly. It was then that some unidentified men came out and dragged an olive tree in front of the car. Martinez testified that the car ran over the olive tree.

Martinez testified that there was a sheriff's vehicle right behind their car and the sheriffs remained with those who placed the branch in front of the car. Martinez identified flags held by some members of the large group of men as being red in color. He was unable to identify or describe the symbol appearing on the flags. According to Martinez, the large group yelled only that the car should stop and did not yell anything else. He testified that the four men who put the log in front of the car were not carrying any flags.

The group of 100 to 200 people at the closest point came to within some three feet of the car. Someone in the group even touched the car with a flag. Though the group was stopping traffic, Martinez testified that "nobody approached or anything," it was clear ahead, so the car just continued on its way. (Tr. I:37.) When asked again what the group was yelling he testified that the group yelled for them not to vote for "that one, to vote for them." His testimony on this point was unclear and would not support a finding that any member of the group of 100 to 200 told the passengers in Martinez' car to vote for or against any entity. (Tr. I:38.) Martinez testified that all of the group of 100 to 200 people were making these statements about voting or not voting. At this point Employer's counsel stopped his direct examination.

There is no testimony from Martinez that anyone in the car was touched or frightened or that the car suffered any damage.

Martinez signed EX:1. The declaration states that the four individuals who put the tree in the way of the automobile were waving flags and wearing hats and buttons bearing the UFW insignia. This is contrary to his testimony on direct. In addition, the declaration indicates that the car driven by Martinez, swerved sharply and avoided hitting the log. Martinez testified on direct that the car ran over the log. He testified that after he passed the group of 100 to 200 men he confronted a group of ten men. This group of ten is not mentioned in the declaration. Martinez' testimony is frequently inconsistent with his declaration and I find that this tends to weaken his testimony

Unlike Sandoval, Martinez was aware that a strike was going on. The strikers were asking him and the other passengers to join the strike. This is somewhat contrary to his earlier testimony that he was not paying much attention to what the strikers were saying and then that the strikers were asking him either to vote for or against some unidentified entity. On cross-examination he added that the strikers told them to vote for Chavez and "Viva Chavez." (Tr. I:43.)

There is no substantial evidence that Martinez or Sandoval were deterred from voting or campaigning because of this incident. Nor was there evidence introduced indicating that they were eligible voters.

Martinez' testimony was inconsistent in certain regards with that of Sandoval. For example, Martinez testified that he

confronted a group of ten persons from which came the several who placed the branch or log in front of his car. Sandoval makes no reference to a separate group of ten persons. Neither Sandoval nor Martinez gave credible testimony that any one in the car was touched or frightened or that the car suffered any damage.

Carmen Roach testified that on October 26 she drove two tally girls through picket lines and she had to slow down. Obscene signs were made and obscenities were spoken to them by unidentified picketers (Tr. II:94.), and stickers were placed on her car as she passed through the picket line. She testified that she had to paint her car and one sticker was placed on her car every other day. She did not observe who placed the stickers on her car. She assumed that it was the strikers.

Though she observed on five or six occasions dirt clods being thrown at vehicles crossing the picket line, she did not testify that any of these clods hit or damaged the cars at which they were thrown. Some of the pickers who had struck the day before were on the picket line. The sheriff was present on October 26. She did not testify that the two tally girls were intimidated with respect to voting or campaigning because of these picket line incidents. (Tr. II:69-76.)

Her testimony regarding picket line activity indicates at most a de minimus effect on the two tally girls who were her passengers. Neither of the tally girls were called as witnesses by the Employer.

Jesse Garcia testified that on some unspecified day he was going with his brother Haul to the Kismet Ranch when someone

swore at him. There were security people present at Kismet, and he and his brother ignored the person yelling the profanities. (Tr. VI:15-16.)

Stan Oberti testified that on October 29 there was a UFW organizer named Mike Ibarra (the correct spelling may be Ybarra) in the Kismet Ranch at approximately 8:30 a.m. Ibarra's car was blocking tractors and people trying to get into work. (Tr. VII:10.) Oberti asked Ibarra to move his car and remove himself from the orchard since his period of access was over. Ibarra ignored him, so Oberti approached him again and told him to move his vehicle from the field or Oberti would get the sheriff's department to arrest him. Again Ibarra said nothing to Oberti. There were approximately 50 workers in the vicinity. Oberti then contacted sheriff officer Pisano and told Pisano to get Ibarra out of the field. Within five to fifteen minutes thereafter, Ibarra left the field in his vehicle.

Oberti testified that he spoke to 30 to 50 workers who witnessed this incident and these workers told him that this experience "was very threatening to their picking, that they were being coerced by the union into signing cards to vote." (Tr. VII:12-13.) Oberti was unable to identify any of these workers and his testimony is hearsay with respect to the alleged coercive nature of Ibarra's conduct. In addition, security guards and sheriff officers were present at the picket line and the Ranch during this incident with Ibarra.

On cross-examination Oberti testified that he did not recall whether he spoke to the 25 to 50 workers individually or

as a group. His testimony on this point was vague. (Tr. VII:70.) He took notes of what these people told him and these notes were used in preparing the declarations admitted into evidence. Yet his declaration (EX:5) does not mention this subsequent meeting with workers.

Ruben Sandoval generally was not a credible witness. His answers were frequently non-responsive and vague. In addition his testimony was partially inconsistent with his declaration. I find it incredible that he was unaware that a strike was occurring at the Kismet Ranch. Although I found Santiago Martinez to have a better memory than did Sandoval, Martinez' lack of candor regarding prior meetings with the Employer's counsel lessened the weight of his testimony. (Tr. I:45-46.)

Based on all the above testimony and evidence, and in addition to my previous findings, I find the following facts related to blocking vehicles and tractors incidents at the Kismet Ranch:

1. The October 27 incident described by Ruben Sandoval and Santiago Martinez did not create an atmosphere of fear or coercion, nor did it deter eligible voters from campaigning or participating in the election held November 2. I note that deputy sheriffs had advised Martinez and Sandoval that their car could proceed through the picket lines, that their car was never actually stopped, their car was not damaged, and that any misconduct was de minimus in nature. Neither Sandoval nor Martinez were particularly credible witnesses. The conduct described by Sandoval and Martinez occurred within sight of either security

guards and/or sheriff officers and did not rise to the level of conduct which would be coercive in nature.

2. The conduct described by Carmen Roach was de minimus and did not create an atmosphere of fear or coercion.

3. The incident described by Jesse Garcia does not indicate any atmosphere of fear or coercion, nor is there evidence that Garcia or any other worker was deterred from campaigning or voting in the election.

4. The incident described by Stan Oberti was not coercive or intimidating to any workers. Crediting Oberti's testimony to the fullest extent possible, at most some workers were prevented from filling their boxes or obtaining their boxes for a short period by the conduct of Ibarra.

b. Crow Ranch

The Employer called ten witnesses and contended that Union organizers or supporters were responsible for blocking roads into the Crow Ranch, blocking and detaining one or two tractor drivers at the Crow Ranch, uttering obscenities at workers who crossed the picket lines and blocking and detaining a van carrying 17 workers. The Employer argued that these events contributed to an atmosphere of fear and coercion. The Union presented one witness and argued that picket line conduct was not coercive, no tractor drivers were stopped and involuntarily detained, the van containing 17 workers was not blocked, the passengers in the van voluntarily signed authorization cards, and that in general the conduct described by the Employer witnesses either did not happen or was not coercive conduct creating an atmosphere in which workers could not freely cast their votes.

Adan Herrera testified that strikers had blocked off certain roads into the Crow Ranch and he had a difficult time entering the field during the unspecified day when a field rushing incident occurred. After Herrera testified that unidentified persons threw rocks, he then testified that no one threw rocks at him. His testimony regarding the blocking incident was vague and he was able to gain entrance to the ranch on the one day when some roads were blocked. (Tr. I:123-126.)

Jose Naranjo testified that he and his father, Pedro Becerra, arrived at the fields at 2:00 a.m. before the strikers, because they feared that the strikers might do something. When asked why he was afraid that the strikers might do something, he testified "They might be there at the edge, not to let the people into work." (Tr. II:143.)

When he and his father left the field after work, all of the strikers approached the car and told them to stop and vote for the Union. (Tr. II:145.) The strikers carried flags and wore buttons which contained a black eagle. When Naranjo was asked whether passing through the strikers frightened him, he testified that he was frightened when "I was picking because somebody came up and shook my ladder." (Tr. II:146-147.) This does not indicate that he was harassed by strikers either upon entering or exiting from the Crow Ranch.

When he left the field after work, there were two or three sheriff's cars and security guards present. He believed that the security guards carried guns. (Tr. II:156-157.)

Naranjo's testimony does not establish that there was any picket line violence at the Crow Ranch. (Tr. II:149-150.)

Porfirio Sanchez Vargas testified that when he entered the Ranch the strikers yelled insulting words at him. Sheriffs were present at the picket line.

Art Castaneda testified that on or about October 27 or 28 when his crew arrived at the Crow Ranch from the Dambrosia Ranch, there were security guards and strikers where he entered. As members of his crew went through the picket line, some unidentified strikers placed stickers on some of the cars. He did not identify those workers whose cars had the stickers placed upon them. When asked what he observed when he left the Crow Ranch on that particular day, he testified that he didn't remember. He testified that, as workers left at the end of the day, some unidentified persons on the line asked them to stay behind so that they could attend a rally. Both the security guards and sheriffs were there each day of the strike when workers entered and exited the field. (Tr. III:182.) Castaneda's testimony does not establish that there was any picket line violence at the Crow Ranch.

Victor Medina testified that he drove a tractor hauling several bins in an olive orchard at the Crow Ranch. Someone out of a group of 20 people whom he described as "those from the union" threatened him. The group had been inside the field with the other workers. He was on his tractor returning from the edge of the field to pick up a new load when this group stopped him and told him to get down from the tractor and to sign. When he

told the group that he wasn't going to sign anything, he again was asked in a loud voice to get down from the tractor. One of the group called him a "kiss ass" because he was working for the Employer. He testified that many of these people wore a button or sticker with a black eagle. The button said Chavez.

Medina testified that he did not drive his tractor away because the 20 people had surrounded it, and he remained on his tractor for about an hour or an hour and a half. (Tr. III:40-42.) One of the group grabbed him by his left sleeve. Medina did not get down from the tractor. The person grabbing him told him that he had to sign a card, but Medina told the person he was not going to sign anything and in fact did not sign the card. The person told Medina that he would report Medina to Immigration if Medina did not sign. The person then left him, Medina started the tractor and drove away. He was able to leave the area. There is no evidence that any other workers witnessed this event. (Tr. III:45.)

These events occurred right before lunch on Friday, October 29. Medina did not know the name of the man who threatened him but he described him as being tall and thin with a black moustache and dressed in a cowboy outfit with a cowboy hat. (Tr. III:42.) He also described two other individuals in the group, but he did not provide the names of any of these persons. One of the persons he described as tall and thin could conceivably fit the description of David Villarino. This particular person, even if it were Villarino, did not say anything to Medina. In light of Villarino's denial that he was involved in any similar

type of incident with a tractor driver, I find that the person described by Medina was not David Villarino.^{18/}

The person who threatened Medina had a button or stamp and a package of bumper stickers, and put one of the bumper stickers on Medina's tractor. This is not the person who might have been Villarino. According to Medina, this bumper sticker had on it "Farm Laborers Union" (Tr. III:47) and also had the word "Chavez" on it.

On cross-examination, Medina testified that he did not recall what day it was that the people came and surrounded his tractor. Roy Abarca was his labor contractor, but Abarca was not present. (Tr. III:67.) Medina's testimony did not indicate that any supervisor or labor contractor was present during this incident. Medina did not recall the name of his supervisor, who supervises the tractor drivers. (Tr. III:66.) Four people approached him from the front of his tractor, and the rest of them came later. There might have been less than 20 people. Some members of the group were around the bin and there were approximately three who were actually speaking. Then he testified that everyone was telling him to sign. He was threatened only one time. (Tr. III:64.) They also swore at him. (Tr. III:64-65.)

Medina testified that during the time he was stopped seven or eight members of the group left to talk to other workers. (Tr. III:66,84.) One of the members of the group had turned off his tractor. Medina testified that he worked for the rest of

^{18/}The person whose physical description might match that of Villarino was referred to by Medina as someone about Medina's height. I note that Villarino is considerably taller than Medina.

the day and that he did not tell anybody about what happened. (Tr. III:67.)

Medina testified that, when he met with the Employer's attorney to prepare his declaration, he told the attorney everything that he testified to at the hearing, (Tr. III:68) and his declaration, signed on October 30, 1982 (PX:1), was admitted into evidence. Medina declared in PX:1 that at approximately 11:00 a.m. 20 strikers approached him while he was driving a tractor on the Ranch. Nowhere in the declaration does Medina indicate that he was touched by any members of the group. Nor does the declaration indicate that any members of the group swore at him, or called him a kiss ass or otherwise insulted him. His declaration indicates that one of the men who spoke with him was believed by Medina to be a UFW organizer. However there was no mention of the name of David Villarino nor does the description given contain enough specifics for me to find that it matches the description of Villarino.

Medina's testimony on cross-examination is somewhat inconsistent with his testimony on direct. For example, on direct he testified that the man dressed like a cowboy who asked him to sign a card went away for just a few seconds to meet with the light-skinned man with a small yellow car. On cross-examination, Medina said that the man dressed like a cowboy talked with the light-skinned man for about 5 minutes. There is also a conflict in his testimony regarding when the man who allegedly threatened him spoke with the light-skinned man. At one point in his testimony it appeared that the cowboy who threatened him talked

to the light-skinned man after the threat was made. (Tr. III:59.) At another point it seems that he talked to the light-skinned man before the threat was made. (Tr. III:73-74.) There's no evidence that the man who made the threat was a union organizer or agent or that he was not a striking worker. He did not indicate in his testimony or in his declaration that any other workers (besides the group of 20) witnessed the alleged threat.

Medina's declaration makes no mention of any threat regarding deportation or his alleged undocumented status. I used this omission, the inconsistencies and his unclear responses to discredit Medina's testimony regarding the alleged threat.

I find that the tractor was stopped, he was asked to sign a card, he refused to sign a card, he was not threatened with deportation or threatened in any other manner, he was detained for an uncertain period of time (see discussion infra), and he then left, ate lunch and finished his day's work. I find that no other workers besides the strikers witnessed this incident. I find it unlikely that he was stopped for one and a half hours. It would seem that a supervisor would have been aware that a tractor driver carrying boxes or bins necessary for the picking operation had been held up for such a long time and would have acted to remedy the situation. Yet, there is no evidence that any supervisor attempted to intervene here. I find that at most one of the strikers touched Victor Medina's sleeve when asking him to sign a card. I do not find this to have been coercive conduct. Nor does the evidence indicate that any union organizer or agent was involved in this incident. There is no evidence

that this incident deterred Medina from participating in the election process.

Antonio Abarca Guerrero testified that he was working for his labor contractor sons (Luis and Roy Abarca) on the Crow Ranch and that his duties consisted of assigning trees to the workers who picked olives. He was paid by the hour. Employer's counsel represented on the record that Abarca's name did not appear on the official eligibility list. He indicated that the name might appear on a disputed page that was purportedly to have been included. I find it likely that Abarca was not an eligible employee.

He testified that about three or four days before the election he was driving into the Ranch between 6:00 a.m. and 7:00 a.m. with a worker named Pedro Ceja when someone opened his car door, grabbed him roughly by the jacket, ripping his jacket, and asked him to get out of the car to sign a card for the union. The person grabbing him was "one from the union." (Tr. IV:100-102.) There was a group of 50 or 60 strikers in the area. He was told to get out and sign the card or they were not going to allow him to enter the Ranch.

He testified that he had stopped voluntarily since he did not want to run over anyone. He does not know the identity of any of the people involved. No other Oberti workers observed this incident, (Tr. IV:104) and he was the only worker stopped that morning by the strikers.

Abarca testified that sheriff officers saw what happened to him, but they took no action. (Tr. IV:111-112. He could not

describe the man who grabbed him and he did not report the incident to anyone since "They didn't hit me or anything." (Tr. IV:113.) Abarca testified that the person who grabbed him was carried on the car door for a distance of approximately 15 feet.

Gonzalo Damien testified that he was employed during the week of October 25 - November 2 at the Crow Ranch. He and two other people were accompanying Abarca to work at approximately 6:00 a.m. When they arrived at the entrance, there were about 50 strikers who had orange-red buttons and stickers. The bumper stickers and the buttons contained initials, and Damien testified that these people were supporting Chavez' union.

Damien testified that some of the strikers surrounded Abarca's car and opened Abarca's door. Damien and the other two passengers put their button down and locked the car. The strikers told them that if they didn't sign a card their car would not be allowed to enter into work. Damien testified that all four of the passengers in Abarca's car said that they would not sign. At that point someone grabbed Abarca by the left shoulder. They pulled on him and Abarca grabbed the steering wheel and put down the gas pedal. The man who was pulling on Abarca was dragged about 15 feet. (Tr. VI:66-68.) Though Damien testified that this incident frightened him, Damien served as an Employer observer on election day.

The next morning Damien arrived to work about 4:00 a.m. to avoid a similar incident. Normally the strikers arrived between 5:30 and 6:00 in the morning.

Damien completed the entire 1982 harvest season with Oberti as did Pedro and Rafael, the other two passengers. On the day the car was stopped by the strikers there were two sheriff's cars present. Luis Abarca was also present. The sheriff and Luis Abarca were watching what was happening. Damien did not file a police report with the sheriff's since the sheriff saw everything. The sheriffs did nothing because Abarca's car was able to cross the line and left the strikers behind. In addition to the sheriff and Luis Abarca, there were more than four security guards standing with Luis Abarca observing the incident 50 feet away. (Tr. VI:75-78,85.) According to Damien, the security guards had guns. (Tr. VI:85.) Damien estimated that the entire incident occurred "in a moment, rapidly."

I found Damien to be a more credible witness than Abarca and accordingly I find that in addition to Damien there were two other workers present when this incident occurred. There is no evidence, however, that these two workers were eligible voters. In any event, there is no evidence indicating that either Damien or the two other workers were intimidated or deterred from campaigning or voting in the election. To the contrary, Damien was an observer at the election.

Raul Griego Garcia worked for Oberti farms as a truck driver between October 25 and November 2. He hauled the Oberti olives from the Crow Ranch and the Dambrosia Ranch to the cannery located at the Home Ranch in Madera.

Garcia testified that when he crossed the picket line at the Crow Ranch, the picketers used "some real, real bad words,"

threatened him and threatened to tear up his truck. The next day (October 26) he found that two of his tires had been "messed up" with some type of instrument, and he had to fix the tires. (Tr. IV:34-35.) Garcia did not identify any of the picketers who made these statements.

Garcia testified that sheriff's cars were present at the Crow Ranch picket lines throughout the strike. When Garcia crossed the picket line at the Crow and Dambrosia Ranches, he was driving a heavy duty, large, three-ton bobtail truck.

On October 28th a yellow van followed him from the Crow Ranch, and he almost overturned. Garcia testified that the unidentified eight men in the van shouted obscenities at him, but there is no evidence that these people were agents of the UFW. Furthermore there is no evidence that the van attempted to run his large truck off the road. His bobtail truck was significantly bigger than the van.

Garcia testified that he voted in the election, and he never signed a union authorization card. I find that his testimony was rather vague regarding alleged coercive conduct by picketers. There is no evidence that Garcia filed any type of police report regarding any of the incidents he described in his testimony. In summary, Garcia's testimony did not establish an atmosphere of fear or coercion on the picket lines of the Crow or Dambrosia Ranch.

Luis Abarca (referred to as Louis in Tr. IV) testified that one or two days before the election he observed David Villarino with 15 or 20 other people stop a tractor driver.

Villarino told the tractor driver that he should sign a card. Abarca was unable to identify the tractor driver even though the tractor driver was in Abarca's crew. Abarca testified that some of the 15 or 20 people had been working at the Crow Ranch and some had come from another orchard.

According to Abarca, members of this group were telling the tractor driver that if he signed the card "they" would fix his papers and that if he did not sign then they were going to report him to "immigration". (Tr. IV:80.) Abarca initially failed to identify the person who threatened the tractor driver.

Abarca testified that the group surrounded the tractor. When he observed the tractor driver being stopped, he came running up toward the group and heard the immigration threat. He then testified that Villarino made the threat. (Tr. IV:80-81.) I note that Abarca's testimony refers to a day one or two days prior to the election whereas Victor Medina's testimony refers to Friday, October 29 which was four days prior to the election. In addition, Medina did not testify that Abarca or any other supervisor was present during the time his tractor was stopped.

Abarca testified that three or four people pulled on the unidentified tractor driver attempting to get him off of the tractor. When asked whether Villarino had pulled the tractor driver, Abarca answered that the only name of those who were pulling that he was aware of was David. He claimed that he heard the name "David, David" when he arrived to the location where the tractor driver was stopped. (Tr. IV:83.) Abarca incredibly testified that he had heard the name Villarino from Philip Oberti

a day or two before the election when Phil Oberti called out the name Villarino in an effort to stop Villarino from telling the workers that there would be a strike. This testimony seemed contrived. The strike was over at the Crow Ranch by October 29. It was clear that Employer's counsel was leading this witness and suggesting in his question the appropriate answers at this point during the testimony. Abarca's testimony regarding when he saw Villarino on other occasions at the Crow Ranch was confused and difficult to follow. (Tr. IV:83-87.)

Abarca testified on cross-examination that this incident occurred three days before the election whereas on direct examination he said the incident occurred one or two days before the election. (Tr. IV:88.) Abarca testified that the incident occurred at about noon and that half of the group which confronted the tractor driver were working at the Crow Ranch on that day and joined Villarino when he took access to the Ranch. (Tr. IV:82,89.) I conclude that the Employer failed to prove that the tractor driver mentioned by Abarca is Victor Medina.

Serafin Osorio's testimony was so confused at the beginning of his examination that I requested that the Employer's counsel begin again the direct examination. (Tr. V:42.)

Osorio testified that on a day the date of which he did not recall 15 people including Fillamon Vargas and Alfredo Cepeda stopped his van as he was leaving the Crow Ranch for home. They opened the door of the van and began talking to the people inside, asking them to sign "the card." Some unidentified members of the group placed some type of little "paper" from the union on the paint of his van.

Osorio testified that David Villarino was present when the van was stopped. Villarino was telling Osorio and his passengers to sign cards. Sheriff's cars were also present near the van, and the sheriffs observed the incident. (Tr. V:79,80-82.) Osorio's testimony regarding the blocking incident was not very specific and did not indicate an atmosphere of fear or coercion.

Osorio's declaration (PX:2) does not mention that any stickers were placed on the painted part of his van. The declaration states that 15 people, including David Villarino stopped his van.

Osorio and his 16 passengers continued working at the Crow Ranch through the date of the election and completed the harvest. (Tr. V:76.)

Based on the close proximity of sheriff officers to Osorio's van, the lack of specific testimony by Osorio regarding coercion or improper conduct by the 15 strikers who stopped his van and Villarino's plausible denial of making any threats, I find that the stopping of his van and the asking of the 17 workers inside to sign union cards did not create an atmosphere of fear or coercion at the Crow Ranch.

Jesse Garcia testified that on one occasion on October 27 four pickup trucks driven by unidentified persons followed him from the Home Ranch cannery to the Crow Ranch. The security guards stationed at the Crow Ranch allowed him to come in. Garcia testified that the drivers of the four pickup trucks attempted to slow him down, but they failed and in any event he would have

run them down had it been necessary. He was in his brother Haul's large truck and stated that "I could take advantage of them then, you know." (Tr. VI:9.) Although Garcia testified that he was afraid and therefore asked his brother Haul to drive at some point during the strike, I find that Garcia's testimony was vague and would not support a finding either that he was followed by UFW organizers or agents or that his vehicle was blocked by picketers from entering the Crow Ranch on October 27 or that he was deterred in any way from participating in the election process or from voting.

The only witness called by the UFW was David Villarino. Villarino testified that he came over to Osorio's parked van on Friday afternoon between 4:00 and 4:20 p.m. at the request of some workers who called him from a meeting. Some of the unidentified 20 workers in the van asked him to explain to Osorio about the Union and if they would be fired or deported if the Union were to come into the Ranch. Villarino advised the workers and Osorio about the Union, that Cesar Chavez was a spokesman for undocumented workers and that the UFW was the best organization in the country to speak for undocumented workers. These passengers in Osorio's van were people who lived with Osorio and depended upon Osorio for a ride to and from work. He explained to them the advantages of being in the Union and he showed them an authorization card and explained the function and purposes of the card. He passed out buttons and authorization cards to the workers. All the passengers (workers) in Osorio's van signed authorization cards. Osorio did not sign. It was then that Osorio

had asked him if he could fix a ticket with the Highway Patrol. (Tr. VIII:137-140.)

I found Victor Medina's testimony was somewhat confused, and I note that Employer's counsel indicated on the record that he had had difficulty in getting some responses to his questions during direct examination. The inconsistencies between Medina's declaration and his testimony further reduced the weight which I gave to his testimony. Antonio Abarca impressed me as a fast talking witness who seemed to have a story to tell and failed to listen closely to the questions before answering. His answers were, therefore, frequently non-responsive. His testimony shifted in several instances and I found him to be an unreliable witness. I found Luis Abarca to be a nervous witness who did not have good independent recollection of the events about which he testified. His answers were often difficult to comprehend and his testimony changed regarding the date on which the tractor driver was allegedly threatened. I did not find Luis Abarca to be a very credible witness.

Villarino gave straightforward and responsive testimony both during direct and cross-examination, and he exhibited a very good memory. I credit his testimony over that of Osorio. Villarino's demeanor indicated to me that he was telling the truth whereas Osorio did not appear to be a credible witness.

Based on all the above testimony and evidence, and in addition to my previous findings, I find the following facts related to blocking of vehicles and tractors at the Crow Ranch:

1. There were security guards and sheriff officers present at the entry and exit of the Crow Ranch during the entire time picket lines were up at that Ranch, and the Crow Ranch workers were aware of their presence.

2. The vague testimony of Adan Herrera would not support a finding that strikers or picketers blocked the entrance to the Crow Ranch.

3. The testimony of Jose Naranjo fails to establish that he or his father, Pedro Becerra, were harassed or intimidated while crossing the picket lines at the Crow Ranch.

4. The testimony of Porfiro Sanchez Vargas does not establish any picket line violence or intimidation.

5. The unspecific testimony of labor contractor Art Castaneda did not establish any picket line misconduct or an atmosphere of fear or coercion at the Crow Ranch.

6. Victor Medina was stopped by a group of strikers and was asked to sign an authorization card. One of the strikers pulled his sleeve but not in a manner which would result in Medina being forcibly removed from the tractor. Medina refused to sign the card and after a short period was able to leave the area, continue working and finish his work for that day. David Villarino was not present at any time during the incident involving Medina, nor was any UFW organizer or agent present during this incident. I credit Medina's testimony that no labor contractor or supervisor came to his assistance during this incident. No other agricultural employees aside from the group witnessed this event. Since Medina's declaration did not mention his being touched, I find

that any touching mentioned in his testimony was of an insubstantial and nonthreatening nature. I find that Medina was not subjected to any physical violence or threats of physical violence and at most he was pressured to sign an authorization card which he refused to sign. I do not believe that he was detained for the period of time to which he testified. I do not find that this incident created an atmosphere of fear or coercion at the Crow Ranch.

7. The incident involving Antonio Abarca involved strikers and picketers but no UFW organizers or agents. Though he was grabbed, he was not hit, he did not report the matter to the police, and the incident occurred very rapidly. Abarca and the other three passengers completed the harvest season and were not deterred from campaigning or otherwise participating in the election. Sheriffs and security guards were present nearby, yet they took no action against the strikers. Though not to be condoned, I find that this incident did not create an atmosphere of fear or coercion.

8. The non-specific testimony of Haul Griego Garcia could not support a finding of any picket line violence or coercion.

9. The incident involving a tractor driver described by Luis Abarca was not the same incident involving Victor Medina. I find that Villarino did not threaten any tractor driver with deportation for not signing an authorization card.

10. I credit Villarino's testimony over that of Osono and find that Villarino advised the 17 passengers in Osorio's

van about the benefits of being in a union and that they voluntarily signed authorization cards.

c. Dambrosia Ranch

The only Employer witness called was Haul Griego Garcia. I have discussed supra my analysis of his testimony and I note here that his testimony regarding the Dambrosia Ranch fails to establish picket line misconduct resulting in the creation of an atmosphere of fear and/or coercion at the Dambrosia Ranch. (Tr. IV:37.)

3. Threats Related to Signing Cards

a. Crow Ranch

The Employer called 11 witnesses. The Employer contended that a number of workers were threatened with deportation if they did not sign Union authorization cards and that some workers were told in a coercive manner that they had to sign authorization cards in order to work at the Ranch. The UFW called Villarino to deny threatening any tractor driver or the 16 workers who resided with and received rides to and from work with Serafin Osorio. According to the Union, no threats were made regarding deportation and no Union official or supporter told workers that they needed to sign an authorization card in order to be able to work.

Victor Medina's testimony concerning the incident where a group allegedly stopped his tractor, has been discussed supra.

Arturo Castaneda testified that after his crew moved from the Dambrosia Ranch to the Crow Ranch some of the pickers were asked to sign cards without explanations as to what they

were signing. He testified that a swamper named Mike Flores told him that he signed a "registration card" because he did not want to lose his job. This testimony regarding Flores is uncorroborated hearsay, and I note that Flores was not called to testify at the hearing. (Tr. III:164.) Castaneda failed to identify any of the persons who asked members of his crew to sign cards. There is no evidence in the record that these people were UFW organizers or agents.

Raul Griego Garcia's testimony was too vague and insubstantial to support a finding that any specific workers were intimidated or coerced by the actions of unidentified strikers requesting that the people crossing the picket line sign authorization cards. (See Tr. IV:34-36,42.)

I have already reviewed Luis Abarca's testimony regarding a tractor driver whom he alleges was threatened by Villarino if he did not sign a paper. His testimony was confused and unreliable.

Antonio Abarca's testimony about the picket line incident when his shoulder was grabbed as his car was passing through the picket line has been discussed supra. During this incident, he testified that an unidentified person from the Union asked him to sign a card for the Union. Abarca did not sign the card. (Tr. IV:101.)

There was no testimony that Nicolas Trujillo was threatened, intimidated, or unable to enter work. (Tr. IV:122-123.)

Teresa Ramirez Zamudio testified that no one asked her to sign an authorization card. (Tr. V:10.)

Serafin Osorio's testimony was very confused. Initially Osorio testified that Villarino, Fillamon Vargas and Alfredo Cepeda told him and the 16 workers living with him (and who he drove to and from work) that if they didn't sign authorization cards that they (Villarino, Vargas and Cepeda) would report them "to the immigration." (Tr. V:36,37.) Later Osorio testified that Villarino was not present when threats about the immigration authorities were made. (Tr. V:44-45.)^{49/}

Osorio did not remember the first day that Villarino came to his house, but it was in the afternoon.^{20/} He came by himself. The 16 workers were present. (Tr. V:43.) During this visit, Villarino asked them to sign cards and told them that they had to sign the cards to be able to enter work. The next morning Fillamon Vargas and Alfredo Cepeda told Osorio and the 16 workers in the field that if they did not sign the cards they would be reported to Immigration. (Tr. V:44.)

On his second visit Villarino asked about the van driven by Osorio and whether Osorio was charging the 16 workers for rides

19/Since it appeared to me that at the beginning of his direct examination Osorio was confusing the various visits made by Villarino, Cepeda and Vargas, I requested that Employer's counsel ask the witness about each of these three individuals separately. (Tr. V:37,42)

20/I note that during Osorio's testimony there was a translation problem regarding the word "Vivir". Initially the interpreter translated it as meaning "drinking". The interpreter later corrected the error and the record should reflect that "vivir" means living. I have made the adjustment in my review of Osorio's testimony.

to and from the Crow Ranch. According to Osorio, Villarino grabbed Osorio and said that Osorio was the one who was telling the workers not to sign the cards. Osorio testified that the 16 workers were present when Villarino grabbed his left sleeve. At this point Osorio's family came out and asked what was happening. Villarino then left Osorio's home. (Tr. V:45-47.)

Osorio testified that it was on a subsequent day, (he could not remember which day) that Vargas and Cepeda stopped his van at the Crow Ranch, opened the doors to the van and began talking to the workers inside asking them to sign cards. Villarino also was present. When Osorio was talking with Villarino, 7 or 8 stickers were placed on the painted portion of Osorio's van.

Villarino credibly denied grabbing Osorio by the shoulder (his testimony will be discussed infra), and I find that Villarino did not grab Osorio's shoulder.

Osorio testified that Fillamon Vargas came to his home four times after the strike began. The first visit occurred about 7:00 in the evening (Osorio did not know the date). Vargas was accompanied by an unidentified boy. Vargas said to bring the people together so that they could sign the card. The 16 workers told Osorio they did not want to sign the card since they wanted to work. Vargas then told workers that if they did not sign they would not be allowed to enter to work. (Tr. V:52.) Osorio testified that it was because of these remarks by Vargas that Osorio went to work so early. (Tr. V:52.) This explanation is inconsistent with Osorio's initial explanation that they arrived early to avoid the immigration authorities.

When asked how Osorio understood that Vargas could prevent Osorio and the 16 workers from entering work if they didn't have cards, Osorio testified "That's -- that's what I don't know. He says that we have to have this--we have to have this card to work." (Tr. V:53.) There is no evidence that Osorio or the 16 workers reasonably believed that they could not work without the cards. (Tr. V:76.) When asked if Osorio knew what a picketer *is*, Osorio testified "No. I've never been in a union." (Tr. V:53.) I find this testimony improbable and it further underscores the lack of reliability of most of Osorio's testimony.^{21/}

During Vargas' second visit, Vargas told Osorio that it was better for Osorio to tell everyone to sign because if not everyone was going to go to Mexico. This second conversation between Vargas and Osorio took place at a store and other workers were not present.

On his third and fourth visits, Vargas again asked the people to sign cards. The people did not want to sign cards, so Vargas left. (Tr. V:56-57.) Villarino was not present during any of these four visits.

Osorio's testimony regarding Vargas' four visits and the blocking of his van which occurred the day following the fourth visit is consistent with Villarino's testimony that the 17 workers in Osorio's van signed authorization cards on Friday, October 29.

^{21/}Tr. V:54 beginning at line 5 through line 14, gives an example of the non-responsive, confused and internally inconsistent answers which Osorio frequently gave.

Villarino testified that he visited Osorio's home on Saturday and Sunday following the signing of signature cards.

Osorio testified that Alfredo Cepeda visited his home three times. During the first visit which occurred on the first day of the strike at about 5:00 or 6:00 p.m., Cepeda was accompanied by his wife. Osorio testified that Cepeda's wife is the sister of Osorio's wife. (Tr. V:77.) Villarino was not present during any of Cepeda's visits. All 16 workers were present. Cepeda told the people to sign the card and accused Osorio of telling the people not to sign. (Tr. V:58-59.) There is no indication of any threats or coercive conduct by Cepeda.

Cepeda and his wife came to Osorio's house the next day after work. There is no evidence that Cepeda threatened or coerced workers. (Tr. V:63.).

Osorio testified that during his third visit, Cepeda said that if Osorio did not sign the card that they would not be given work since only the people from the Union were going to pick. According to Osorio, the people "said no." (Tr. V:65.)

Osorio's testimony regarding the three visits by Cepeda did not reflect coercive or threatening conduct by Cepeda. Nor was any evidence introduced that Cepeda was anything other than a striker.

Osorio testified that neither Vargas nor Cepeda ever grabbed Osorio. The only time Osorio was grabbed was the one

time when Villarino allegedly grabbed him a couple of days before the voting occurred. (Tr. V:64.)^{22/}

A review of Osorio's declaration indicates that no mention is made of David Villarino having touched him. Osorio's declaration also appears to indicate that Villarino visited Osorio's home on Sunday, October 31 and that Villarino was attempting to get Osorio to sign a card rather than the 16 workers who lived with Osorio. This is consistent with Villarino's testimony that the 16 workers had signed authorization cards on Friday, October 29 and that Villarino's effort to have Osorio sign was directed towards recruiting him as a union member thereby making it easier to obtain the votes of these 16 workers. Osorio's declaration seems to confirm that the 16 workers apparently signed the authorization cards on Friday, October 29.

I did not find Osorio to be a credible witness. His ability to remember and recall was not good. Osorio was frequently non-responsive in his answers, and I had to remind him to answer responsively (see Tr. V:38). His testimony regarding the grabbing of the shoulder by Villarino was not contained in his original declaration. In short, Osorio was unable to recount in a straightforward and cohesive manner the events about which he testified.

Jesse Garcia's testimony did not establish any coercive conduct or an atmosphere of fear or coercion at the Crow Ranch. (Tr. VI:5-6.)

^{22/}The timing of this visit is consistent with Villarino's testimony that he visited Osorio's house on Saturday and Sunday before the election.

Gonzalo Damien's testimony regarding the incident when he was a passenger in Antonio Abarca's car has been discussed supra.

Pascual Mendoza testified that on October 26 or October 27 at 5:00 p.m. Villarino and 50 persons entered the field to talk to workers who were completing their work and leaving. One member of the group that accompanied Villarino used profanity to one of the pickers. Approximately 100 workers were addressed by Villarino and the group of 50 who accompanied him into the field. Mendoza gave vague testimony about three or four of the workers being "grabbed" and asked to sign a card. (Tr. VI:102-103.) Mendoza did not testify that there were any threats or other coercive conduct regarding this meeting.

The UFW called David Villarino as its only witness. Villarino testified that he took access to the Crow Ranch and spoke with tractor drivers on two occasions. The first was on Friday, October 29 when he entered the Ranch at the lunch hour with two Oberti workers. When he met with the unidentified tractor driver, Villarino was by himself. Villarino began the conversation by introducing himself and mentioning that there would be an election. He told the tractor driver about the wage increase obtained by the Union at the Oberti Ranches. He explained that the election would be by secret ballot. The tractor driver remained on his tractor during the conversation. (Tr. VIII:113-114.)

The tractor driver asked Villarino whether the workers would be fired if the Union came in, and Villarino responded that

the workers would not be fired and that the workers who went on strike on Tuesday and Wednesday from his crew had returned to work and had not been fired. (Tr. VIII:114.)

The tractor driver asked whether the Union allowed undocumented workers as members, and Villarino explained that the majority of the Union's members are undocumented workers. (Tr. VIII:114.) Villarino patted the tractor driver on the shoulder when he shook his hand so that the tractor driver would feel comfortable in Villarino's presence. (Tr. VIII:115.) Villarino credibly denied threatening this tractor driver with deportation. (Tr. VIII:115.)

Villarino testified that the second time he spoke with a tractor driver was on November 1 after work at about 4:30 p.m. During access which he took earlier that day, he had called for an after-work meeting. During the meeting, a tractor driver drove a tractor and trailer through the middle of the group. The driver stopped his machine but left the engine running which prompted Villarino to ask the tractor driver to turn off the motor. The tractor driver complied and turned off the motor. Villarino recalled in specific detail the contents of the speech he gave to the 50 or 60 workers present at the meeting. Villarino testified that deportation was not brought up at this meeting. He testified that two or three people approached the tractor driver, but Villarino denied making or hearing any threats. He also denied observing anyone trying to pull the tractor driver off the tractor or anyone touching the tractor driver. (Tr. VIII:116-121.)

He testified that Luis Abarca was around the area where he was making his speech and that Abarca refused to leave the area. (Tr. VIII:121-122.)

Villarino testified that he visited the home of Serafin Osorio twice. The first visit was on Saturday, October 30 at 5:00 p.m. Osorio and seven or eight of the workers who lived with Osorio were present. Villarino testified that he shook Osorio's hand and patted him on the shoulder when he shook his hand. Villarino credibly related in detail the contents of his explanation about the Union and why it was important to win the election. He explained how the UFW helped to protect undocumented workers against deportation. He also testified that he asked the workers how much they paid to Osorio to ride back and forth to work. Villarino testified that the workers told him they paid \$3.50 per day at which point Osorio responded that the van belonged to "all of us." When Villarino asked Osorio under whose name the van was registered, Osorio answered that the van was registered in his name. Villarino then told the workers that Osorio was lying to them if Osorio told them that all of them were the owners of the van. (Tr. VIII:127-130.) Villarino credibly denied threatening the workers with deportation. (Tr. VIII:129-130.)

The second visit to Osorio's home occurred the following evening, Sunday, October 31. He arrived at around 7:00 p.m. and spoke with 15 workers. Osorio was not present when he arrived. Villarino testified that he explained to the workers the voting procedures and the secret ballot. The workers had their union I.D. cards. (Tr. VIII:130-132.)

A half hour after he arrived at Osorio's home, Osorio came into the house. Osorio rudely asked what Villarino was doing in his house. Villarino responded that he had been invited by the workers. Osorio told Villarino that Osorio was going to go into his room and that when he came out Villarino had better be out of the house. At this point Villarino asked the workers whether he should leave or stay and the workers told him it would be better if he left. Villarino then left. (Tr. VIII:132-133.)

Villarino denied that he threatened the workers with deportation during this Sunday night meeting. He testified that he did not shake Osorio's hand or otherwise touch him during the Sunday visit. Villarino denied grabbing Osorio at any time. (Tr. VIII:132-134.)

I find Villarino's testimony regarding his conversations with the workers on Sunday evening to be consistent with his testimony that workers had signed authorization cards in the Crow Ranch fields on Friday, October 29. I further find that Villarino was attempting during the two meetings at Osorio's house to persuade the workers to vote for the Union rather than having them sign cards.

Villarino testified that he asked Maria Cepeda, Osorio's sister-in-law, to speak to Osorio and talk up the Union as much as she could. (Tr. VIII:134.) Villarino denied asking Fillamon Vargas to visit Osorio at his home or elsewhere. (Tr. VIII:134.)

Villarino testified that he had spoken with Osorio at the Crow Ranch on Friday afternoon while Osorio was leaving the

Ranch with 16 workers in his van. This incident has been discussed supra. It was at this time that Villarino and union supporters obtained the signatures of the 16 workers. (Tr. VIII:136-140.)

Villarino testified without contradiction that he met Osorio again on Monday afternoon at 4:00 when Osorio was exiting the Crow Ranch. He saw Osorio's van approaching, and he signaled Osorio to pull over. Osorio pulled the van over, and Villarino parked behind him. Villarino approached Osorio and apologized for any inconvenience that Villarino caused on Sunday. Osorio told Villarino it was "okay" and that Villarino should not worry about it but should check with Osorio the next time.

(Tr. VIII:134-135.) Villarino testified that the reason he stopped Osorio's van was to show that the Union was reasonable. Villarino testified that there were from 18 to 20 workers in the van and that these workers heard Villarino's apology to Osorio.

On cross-examination Villarino testified in regard to the first tractor driver that three or four other workers accompanied him into the Crow Ranch at about noon. This testimony differed somewhat from his testimony on direct when he stated that two workers accompanied him during the lunch period. He denied handing the tractor driver an authorization card, and I note that he was looking at the Employer's counsel directly when answering his question.

When asked on cross-examination about the second tractor driver, Villarino described in detail the location and subject of the meeting with the 50 to 60 workers. Villarino prepared a diagram admitted into evidence as EX:10 which clearly indicated

how the tractor driver entered into the circle of workers. Villarino testified that no one was blocking the tractor driver and Villarino's recall of detail was good as manifested by his memory of the tractor and trailer rig and the details of the incident. The Employer failed to meet its burden of proving that Villarino was involved in the incident described by Victor Medina.

Villarino's recall of the details of his two visits to Osorio's house was more impressive than Osorio's inability to coherently recall the days and events related to Villarino's visit. Villarino's testimony on cross-examination about his effort to obtain Osorio's signature on an authorization card shortly before the election is logical given Villarino's unrebutted explanation that when you deal with workers who are from Oaxaca generally you need to persuade their leader first. (Tr. VIII:207-213.)

Villarino testified in the same manner on cross-examination as he did on direct. He testified in a rather low-key manner, his voice was firm, he took time to try to recall what occurred and it appeared that he made an effort to tell the truth.

Based on all the above testimony and evidence, and in addition to my previous finding, I find the following facts related to threats regarding the signing of authorization cards at the Crow Ranch:

1. Victor Medina was not threatened with deportation. In any event, there's no evidence indicating that a UFW organizer or agent made any such threat. Medina was asked to sign an

authorization card by members of the group of 20 striking Oberti workers, but he did not sign the card and was not pulled off his tractor. Eventually he was able to complete his work that day and he was able to finish the harvest. He was not deterred from participating in the campaigning or election process by the events of October 29.

2. The events described by Arturo Castaneda do not support a finding of an atmosphere of fear or coercion.

3. The events described by Haul Griego Garcia do not support a finding of an atmosphere of fear or coercion.

4. The events described by Luis Abarca do not support a finding of an atmosphere of fear or coercion. I find that the incident described by Abarca did not involve Victor Medina. I discredit much of Luis Abarca's testimony and do not believe that the events he described involving a tractor driver actually occurred.

5. Antonio Abarca was asked to sign an authorization card by a picketer at the Crow Ranch. He refused to sign, his shoulder was grabbed, he was not hit and he accelerated his car and was successful in driving into the Ranch in full view of a number of security guards and deputy sheriffs. His frequently confused testimony combined with his desire "to tell a story" has led me to discredit much of his testimony. I find that the events described by Antonio Abarca combined with the testimony of Gonzalo Damien do not rise to the level of creating an atmosphere of fear and coercion at the Crow Ranch.

6. The events described by Nicolas Trujillo did not constitute an atmosphere of fear or coercion.

7. The 16 workers who drove to work with Osorio and lived at Osorio's house voluntarily signed authorization cards on Friday, October 29. Osorio never signed an authorization card, and I find that he was not threatened or coerced by David Villarino. I credit Villarino's specific and direct testimony. Neither Osorio nor his family nor the 16 workers who lived with Osorio were coerced or intimidated by Villarino, Cepeda or Vargas, nor were they deterred from participating in the election process or from campaigning by any of the conduct found to have occurred during the strike. I specifically find that none of these workers were threatened with deportation by Villarino, Cepeda, Vargas or anyone else.

8. The incidents described by Jesse Garcia did not constitute an atmosphere of fear or coercion.

9. Pascual Mendoza's testimony was too unspecific to support a finding of an atmosphere of fear or coercion,

b. Dambrosia Ranch

The only Employer witness called was Arturo Castaneda, who presented weak and unreliable evidence in support of alleged threats related to the signing of cards made at the Dambrosia Ranch. (Tr. III:154-158.)

c. Kismet Ranch

Raul Garcia, Sr., the first of two witnesses, testified that some time between October 25 and October 27 during the strike he was approached at about 3:00 p.m. and asked to sign an

authorization card. Apparently three men approached him when he was in the company of two of his sons. (Tr. VI:26-27.) I note that his two sons who testified are large men. Garcia testified that one of the three men who approached him was the son-in-law of Cesar Chavez, David Villarino. He testified that Villarino cussed at him as Villarino left the field. (Tr. VI:29.) Garcia's testimony provides scant evidence of any form of coercive conduct. His testimony was difficult to understand. (Tr. VI:24-27.)

Garcia testified that some unidentified man came up to him on an unspecified day and asked him to sign a card for the Union. Garcia advised the man that he did not want to sign and the man was cussing at him and then some unidentified people said they were going to break his truck. Garcia had a poor recollection for the events which he testified about and he was not a reliable witness. I find that the event described by Garcia does not support a finding of an atmosphere of fear or coercion at the Kismet Ranch. (Tr. VI:24-25.)

Stan Oberti testified that on October 29 at 8:30 a.m. at the Kismet Ranch UFW organizer Mike Ybarra was blocking a road thus preventing workers from picking olives. Oberti observed Ybarra gathering groups of workers together and talking with them. (Tr. VIII:10-11.) Later that day Oberti spoke with a group of 30 to 50 employees and some of these unidentified workers told him that they were being coerced by the Union into signing "cards to vote" (Tr. VII:13) and that they were told if they did not sign cards they would not be permitted to cross the picket line.

Oberti told the workers not to be intimidated by the Union and that the workers did not have to sign cards in order to come to work. (Tr. VII:118-119.) There was at least one deputy sheriff and security guards present that day. I find this uncorroborated hearsay testimony by Oberti to be too vague to support a finding that any threats were made.

4. Other Allegations Regarding Atmosphere of Fear and Coercion

The Employer argues that several other incidents contributed toward an atmosphere of fear and coercion.

Arturo Castaneda testified about a confrontation with David Villarino which occurred on election day. Villarino challenged the observer (Alice Castaneda) chosen by Castaneda since she was a bookkeeper. Villarino raised his voice, and moved his arms up and down. Villarino did not, however, indicate that he might hit Castaneda. (Tr. III:167-169.) Finally Villarino agreed to accept Alice as the observer. (Tr. III:170.) Villarino continued talking in a loud voice. Castaneda told Villarino that there was no reason why Villarino should get excited, and Villarino allegedly asked Castaneda if he wanted to make something of it. Castaneda said no and at that point the 30 or 40 workers who were in the area began to laugh and "thought it was kind of funny, I guess." (Tr. III:172.) It appears from Castaneda's own testimony that none of the workers took this incident very seriously and they were certainly not coerced by the conduct of Villarino.

Luis Abarca claimed that Villarino threatened Abarca with the loss of Abarca's labor contractor's license and the filing of a lawsuit. According to Abarca, 15 to 20 unidentified workers at the Crow Ranch observed and heard this threat two days before the election. (Tr. IV:76-77.) The 15 or 20 workers were approximately 20 feet away from where Villarino made the threat to Abarca.

Abarca testified that he spoke with the workers after the threat was made and the workers told him that they were afraid because if they were to vote against the Union his license might be taken away. (Tr. IV:77-78.) There is no evidence that these workers had any reason to believe that the Union would know how they voted. Abarca never identified any of these workers even though apparently they were members of his own crew.

Abarca testified that he was sued by Villarino sometime after this threat was made. The parties stipulated that attorney Ellen Eggers is representing various employees of Oberti companies against the Oberti's and labor contractors, including Luis Abarca's company, for alleged minimum wage and overtime violations. It appeared that Eggers has the same address as the group of attorneys representing the UFW, though according to Marcos Camacho, Eggers is not representing the workers on behalf of the United Farm Workers. I note Abarca is a labor contractor and not an eligible voter.

I found that Abarca was not a very reliable witness. Since Villarino testified that his conversation with Abarca regarding alleged violations of law by Abarca was not overheard

by any worker witness and Villarino impressed me as a more reliable witness than was Abarca, I credit Villarino's testimony over that of Abarca and find that whatever statements or threats were made by Villarino were not overheard by any workers. I find that Abarca did not communicate this threat to any of his workers.

Raul Garcia, Sr. testified about a vague threat made to him sometime on October 26 or 27 by people that he can not identify. He recalled that the people had a black flag, that many people were yelling at him, and that these people made threats regarding his truck. He also testified that some unidentified persons threw olives at him, apparently while he was in his truck. (Tr. VI:25-26.) It appears that these alleged threats occurred while he was crossing the picket line. (Tr. VI:30.)

There is no testimony that his truck was damaged or that he was hit by the olives. (Tr. VI:32.) Garcia's testimony was confused and vague. He did not file a police report, nor did he tell anyone about the olive throwing incident or the threats regarding his truck. I have discredited much of his testimony and find that the events did not occur. (Tr. III:48.)

Oberti also testified with respect to alleged coercive conduct at the pre-election conference which was held on Friday, October 29.^{23/} He invited 50 to 75 workers to attend the

^{23/} Though the conduct of the pre-election conference itself was not set for hearing, I permitted Oberti to testify regarding the pre-election conference as it might relate to an atmosphere of fear and coercion existing at the Employer's ranches before the election.

pre-election conference, and he observed another 100 workers from his ranches whom he did not invite.

Oberti testified that Villarino put on his "propaganda act" in front of the workers. (Tr. VII:35.) Villarino screamed "huelga" and was doing his "dancing on the floor, screaming 'huelga'." (Tr. VII:76.) Oberti testified that during the pre-election conference the sheriff's "S.W.A.T." team was called by the Madera Police Department. However, no arrests were made and there is no specific testimony that any of the workers present were intimidated or coerced by actions of UFW organizers or anyone else. (Tr. VII:125.) Oberti's testimony regarding workers telling him that they were frightened by this conduct is uncorroborated hearsay and does not support a finding that in fact they were upset or coerced. Oberti testified that a number of these workers were clapping their hands in unison with David Villarino. This certainly does not suggest an atmosphere of fear and coercion created by the UFW. (Tr. VII: 124.) I find that the Employer failed to establish that there was any misconduct by the UFW or any of its organizers or agents which coerced or tended to coerce Oberti workers present at the pre-election conference.

Villarino testified that he had a conversation with Luis Abarca on Friday, October 29 at 6:30 a.m. while Villarino was taking access at the Crow Ranch. No one else was present. He told Abarca that he had heard that Abarca had been threatening people with loss of their jobs and deportation if they voted for the Union. Villarino warned Abarca that he would file charges against Abarca with the state and take Abarca to court if Abarca

continued to threaten the workers in any way. (Tr. VIII:125.) Abarca responded that he didn't care since he had attorneys.

Villarino testified that Ellen Eggers sued Abarca after his conversation with Abarca. (Tr. VIII:200.) Villarino testified that he prepared a flyer that stated that a lawsuit for over \$20 million had been filed and the flyer listed Abarca's name. (Tr. VIII:203.)

No worker witnesses testified that they overheard this alleged threat by Villarino to Abarca. Nor did any workers testify that they heard about this threatened lawsuit. There is no evidence about the fear allegedly felt by some workers other than the hearsay testimony of Abarca. I credit Villarino's version of this incident over that of Abarca.

I find that none of the other allegations involving an atmosphere of fear and/or coercion discussed in this subsection 4, either taken separately or considered cumulatively, resulted in an atmosphere of fear or coercion at any of the Employer's ranches.

C. Alleged Failure to Notify Employees it was Their Turn to Vote After Having Told Said Employees Not to Vote Until So Informed

1. Crow Ranch

The Employer called twelve witnesses and contended that Board agents advised workers at the Crow Ranch that they should not vote until advised by a Board agent that it was time for them to vote. The Employer contended that many workers were disenfranchised because Board agents failed to advise them on election day when it was their turn to vote. The UFW called three

Board agents and asserted that the only time that workers were told to return to the fields and that they would later be called to vote was on election day at the Crow Ranch when 3 group of workers congregated by the polling area and an unavoidable delay in the opening of the polls prompted a decision by Board agent Perez to have the workers return to the field and be called to vote after the polls opened. The UFW maintained that these workers were in fact advised by Board agents when it was their turn to vote.

Adan Herrera testified (as did several other Employer witnesses) that two days prior to the election (which would be a Sunday when there was no work) some Board agents told him that they would notify him on the day of the election so that he could go "sign" (vote). (Tr. I:96.) The Board agents passed out papers to the group of workers but he did not receive one. (Tr. I:102-103.) He was unable to recall anything about the Board agents' instructions except that they would let the workers know when the workers should "sign." When Herrera was asked what was to be signed, Herrera testified that he did not understand what the Board agents meant. (Tr. I:103.) As this was the only statement made by the Board agents on a day prior to the election that Herrera could recall, I find that this witness had a selective memory and that his testimony was unreliable. I had the distinct impression that this witness had been coached regarding this issue. (Tr. I:104.)

The same Board agents returned to the Crow Ranch on election morning and said the same thing again. (Tr. I:97.)

The Board agents addressed about 100 workers in the field, speaking to them in small groups. Herrera's group contained about ten workers. (Tr. I:98.) He waited for the ALRB agent to tell him when to vote. (Tr. I:97.) He testified that no one advised "us" when "we" were picking. Herrera testified that he attempted to go vote, but the polls had already closed by the time he arrived. (Tr. I:98.)

Though he testified that Board agents came to talk to his crew on election day at 9:00 or 10:00 in the morning, (Tr. I:105), the Notice and Direction of Election indicates that the voting hours at the Crow Ranch were from 6:00 in the morning until 9:00 in the morning. (Board agent Perez confirmed these hours.) This illustrates the poor memory of this witness. (Tr. I:105-106.)

When Herrera was asked on cross-examination what time he finally attempted to vote, Herrera's answers were vague regarding where he went or with whom he spoke. (Tr. I:115-116.)

Herrera testified that while he was in the field on election morning everybody was yelling "let's go vote." (Tr. I:121.) Herrera indicated that the people who were shouting let's go vote voted before he tried to vote and before the polls closed.

I find that Herrera had an opportunity to vote. He was put on notice by Board agents that there would be an election, and he heard his co-workers yelling "let's go vote" during the morning. I do not credit his testimony that the reason he did not vote was because he was waiting for Board agents to tell him that it was time to vote.

Pedro Becerra testified that sometime before November 2 a State official advised a group of Crow Ranch workers ranging between 20 to 60 in number that he was from the State and he gave each of the workers a paper in Spanish advising when the voting would take place and the location of the polling site.^{24/} The Board agent told the workers that there would be voting on November 2, that on election day the workers should work the same as they would on any other day, and that Board agents would notify the workers of the hour they should leave work to go vote. (Tr. II:118-119.)

The Board agent did not read the paper, but he simply handed it out. Becerra read the entire paper and he remembered that the paper mentioned three locations for voting, one of which was a school. I discredit part of Becerra's testimony on the basis that he continued to testify that the Board agent passed out papers containing the time and place of voting three or four days prior to the election. (Tr. II:120.) I find that the record clearly establishes that the Notices and Direction of Election which contained this information were not distributed to the Crow Ranch workers until November 1. Since I have credited Ed Perez' testimony that he told Crow Ranch workers on Friday, October 29 that the election would occur on November 2nd and that the Notice and Direction of Election was not distributed until Monday, November 1, I find that Becerra's testimony is somewhat

^{31/} Becerra was somewhat confused as to the identity of the ALRB officials or Board agents since he initially referred to them as "the people of the little eagle" because they wore a sign which had a little eagle on it. (Tr. II:114.)

confused with respect to when he received the Notice and Direction of Election. As will be discussed infra, I also credit the testimony of Ed Perez and Jenny Diaz that what was passed out on Friday, October 29th was the ALRB Official Notice (PX:3), which states the rights and responsibilities of farmworkers but does not contain the date or location of the election.

Like Adan Herrera, Becerra was unable to recall anything about what the Board agent told the workers prior to the election except that "they would notify us at the hour that we would go vote." (Tr. II:128.) I find that Becerra displayed a selective memory regarding this incident, and I, therefore, tend to discredit his testimony. I also find that if Becerra read the Notice and Direction of Election as he testified he did, he should have known that the voting was to occur at the Crow Ranch between 6:00 a.m. and 9:00 a.m.

Becerra testified that on election day no state agent came to advise him of the time he should vote, and that this was why he did not vote. (Tr. II:121.) Becerra could not describe the appearance of the ALRB official who had made this representation to him three or four days before the election. (Tr. II:121.) The only other worker he knows did not vote that day was his son, Jose Naranjo. (Tr. II:121.) Though he and Naranjo work closely together, Becerra did not have any discussions with Naranjo about whether or not they were going to be notified. Nor did Becerra discuss with any of his co-workers whether or not it was his crew's turn to vote. "We only simply waited to be notified." (Tr. II:123.)

Becerra testified on cross-examination that he could have voted at the Madison Elementary School that evening. (Tr. II:125.) During his testimony he rhetorically asked why should he vote since there was no voting site at the place where he worked.

When asked whether he became concerned when no Board agent arrived, he responded "My only concern is to work." (Tr. II:131.) Becerra testified that he was working for Roy Abarca at the time of the election and that neither Roy Abarca or any of the supervisors told him to vote on election day. (Tr. II:133.) I find Becerra's failure to ask other workers when it might be his turn to vote or at least to attempt to go to the polling site to be inconsistent with his earlier stated desire and concern about voting.

I find that he did receive and read a copy of the Notice and Direction of Election and was put on notice that there was a voting site at the Madison Elementary School. I find that he could have voted at the Madison Elementary School, but he chose not to do so for personal reasons.

Jose Naranjo testified that on the day before the election a man from the State came and talked to the entire crew of over 100 workers. He does not recall what the State agent looked like. This State agent (ALRB official) advised the workers in Spanish that there would be voting on the 2nd of November and he gave out papers "to each and everyone" of the workers, including Pedro Becerra. (Tr. II:138-139,153.) Naranjo read the paper and remembered that the paper indicated that the voting would be on November 2nd.

He testified that the Board agent told the workers that on election day the workers would have to wait until the Board agent notified them to go out to vote, because "there were going to be different places where there would be voting, and that he would say when it was our turn." (Tr. II:139.) I find this explanation to be unlikely since there's no evidence that there was more than one polling site at the Crow Ranch.

Naranjo testified that on election day a Board agent was present at the edge of the field and said to go into work and that he would tell the workers when it was time to vote. (Tr. II:139.) Naranjo's testimony is consistent with the testimony of Board agents Ed Perez and Carlos Bowker (discussed infra).

The Board agent he saw on the morning of the election is the same Board agent that he had seen on a day prior to the election when he received the paper in Spanish advising as to the time and location of the voting sites. I find that this would be true if Naranjo's testimony about what occurred on a day prior to the election is interpreted as referring to Friday, October 29 which is the day that Board agent Ed Perez distributed the Official Notice (PX:3). However, Board agent Perez was not at the Crow Ranch on Monday, November 1. Rather it was Board agents Jenny Diaz and Albert Mestas who distributed the Notices and Direction of Election at the Crow Ranch. There is no record evidence that Mestas was at the Crow Ranch on election day. This discrepancy in dates casts some shadow on the testimony of Naranjo.

Naranjo testified that no Board agents or anyone else advised him to go vote. When asked if he saw the Board agent

come in and talk to anybody else in the crew, Naranjo testified that he was "way towards the center of the orchard, and I did not notice." (Tr. II:140.) He did not vote that day because "nobody notified me to go out and vote." He did not see any other workers from his crew vote that day. (Tr. II:140.) When asked if he talked with other workers in his crew regarding whether or not they had voted, he responded "I only go to work, and I don't make it a habit of talking." (Tr. II:140.) Naranjo was unable to identify any other members of his crew who did not vote. Naranjo testified that he did not talk with his father regarding what time they were supposed to vote. When asked whether he became concerned when the Board agent did not appear, Naranjo testified that since the Board agent said he would notify us, "we just continued working." (Tr. II:155-156.) Since Naranjo testified that he did receive the Notice and Direction of Election, I find that he was put on notice as to the time that the polling sites would be open. I also find that he was aware of the Madison Elementary School polling site.

Porfiro Sanchez Vargas testified that two days prior to the election someone advised 30 workers in his crew that there would be voting on the 2nd and that he would notify "us" when the voting would take place. Sanchez testified that he did not understand what "of the government" meant when asked whether this was a government agent. (Tr. II:161-162.) The man also passed out "a little paper." Sanchez stated that he didn't read or pay any attention to the paper except that the voting was going to be on the 2nd. (Tr. II:162.)

Sanchez presented himself to vote and "they" told him that the voting would not take place then and for the workers to continue working and that "they" would notify the workers when they could vote. (Tr. II:163.) Sanchez' testimony became very confused at this point. For example, when asked who had told him "they" would notify the workers, Sanchez responded "That person who said that there was not going to be a vote after all that day." (Tr. II:164.) I therefore have given little weight to Sanchez' testimony.

Sanchez testified that he presented himself to vote at about 10:30 or 11:00 in the morning. When asked whether he saw any tables or voting booths nearby at the time he was told to go into work, he answered "I didn't see anything. I didn't see anything. They just said that there wasn't going to be any voting that day." (Tr. II:164.) He testified that it was then that "they" told him to go back to work. I find this testimony to be incredible and unreliable. Sanchez testified that several workers were with him when they came out of the field to attempt to vote. He then estimated the number to be 15, but he was unsure. When Employer's counsel attempted to get a description of the person who told Sanchez and the group of 15 that they could not vote, Sanchez testified "I didn't see anything on him, only the voice, that there would not be any voting, that they would notify us when it would be. And that was all." (Tr. II:170-171.) I find that Sanchez did not testify that it was a Board agent who allegedly told him and a group of approximately 15 persons that they could not vote. His testimony was too confused to permit such a finding. (See Tr. II:183.)

I find that Sanchez was advised by a Board agent that there would be an election on November 2nd at the Crow Ranch and that he was aware of the hours of voting because he received the Notice and Direction of Election. I find that his failure to vote was not attributable to Board agent misconduct.

Arturo Castaneda did not provide evidence to establish a failure of Board agents to notify Crow Ranch workers when it was time to vote.

Ernesto Garcia testified that about two days before the election a State agent told him and other workers that there would be an election and that "they" were going to advise us when to vote. He saw only two Board agents and they were both men. Yet on cross-examination he conceded that he did not know what either a State official or Board agent was. (Tr. IV:63.) Only one of the Board agents spoke to him, and this Board agent spoke with Garcia alone. (Tr. IV:65.) I find this to be unlikely in light of other testimony indicating that on Friday, October 29, Ed Perez and Jenny Diaz addressed a large group of workers at the Crow Ranch. Furthermore, the record evidence established that Board agent Jenny Diaz, a woman, was present on October 29 and November 1 at the Crow Ranch, the two times Board agents gave notice of the election to Crow Ranch workers.

He testified that on election day "we were waiting for them to advise us, and no one came to advise us." (Tr. IV:56.) He did not vote. He testified, however, that an ALRB agent did come on election day and advise some of the workers. (Tr. IV:58.) Garcia also testified that his supervisor or foreman

(Pasquel Mendoza) asked him if he had voted and he responded that no one had advised him. He and 16 co-workers then attempted to go vote, but the polls had already closed. (Tr. IV:59,72.)

He left the field to go vote at about 10:30 a.m. along with Gabriel Yniguez and Teresa Ramirez, the only two individuals he identified in the group of 16. (Tr. IV:68.) Garcia testified that Gabriel did vote at the Madison Elementary School.

Garcia testified that on the day prior to the election some of his co-workers told him that voting would occur from 8:00 a.m. to 9:00 a.m. (Tr. IV:71.) I, therefore, find that Garcia was on notice that there would be voting at the Crow Ranch on the morning of November 2nd.

When asked what he saw on the day of the election when he went out to vote, Garcia responded "Well, when I left to vote, there wasn't very many people there. They were already returning to work." (Tr. IV:71.) He testified that some of his co-workers did vote. (Tr. IV:67.) This indicates that Garcia's co-workers had already voted by the time he left the field to attempt to vote.

Garcia testified that his foreman Pascual told Garcia that he could vote at the Madison Elementary School, but since he was far away from the town where the school is located, he did not go. (Tr. IV:73.) Garcia testified that Pascual told the other members of his crew who hadn't voted that they could vote at the Madison Elementary School. I, therefore, find that Garcia and the remaining crew members who did not vote at the Crow Ranch site were advised that they could vote at the Madison

Elementary School. This finding is consistent with Garcia's testimony that his co-worker Gabriel voted at the Madison Elementary School and with the testimony of several witnesses that the Notice and Direction of Election was received by Crow Ranch workers.

Antonio Abarca testified that when State agents arrived at the orchard on election day, they told Abarca that there would be voting that day and that members of another crew would vote first. Abarca then entered the field and was told by a Board agent that the Board agents were going to come back and inform him and the workers when it was time to vote. He testified that they did not come any time that day. Abarca did not recall their names, nor was he able to describe their physical appearance except to say that some of the men were tall and some were short. (Tr. IV:106-107.) Abarca estimated that 15 to 20 workers were able to hear the Board agents make this representation about returning to the field to advise the workers when it was time to vote. Much of his testimony during direct examination on this point was unclear. (See for example Tr. VII:109-111.)

On cross-examination, however, he testified that he first spoke with Board agents when inside the field after he had begun working (Tr. IV: 11-4) and that the Board agents were walking inside the field. As will be discussed infra, Board agents Perez and Bowker testified that two Board agents were walking in the fields advising the workers from each of the two crews when it was their turn to vote. I credit the testimony of Perez and Bowker

over that of Abarca, and I find that Board agents did address Abarca's crew inside the field and told them to vote at that time.

Abarca testified that he was in front of the entire crew marking trees. (Tr. IV:118.) I find that he may have misunderstood what Board agents Bowker and Longoria were telling the workers or he may not have heard them.

It's not even clear that Abarca was an eligible voter. (Tr. IV:118.) In any event, when Abarca was asked whether he was interested in going to vote, he responded "No." (Tr. IV:119.) I find that Abarca was not interested in voting and that his failure to vote was not attributable to any omission or misconduct by Board agents.

Nicolas Trujillo testified that two days prior to the election he saw State people come onto the Crow Ranch property. They told the workers only that there would be voting in two days. No more than 10 other workers heard what the State workers said. Assuming that Trujillo was referring to Board agents who came onto the Crow Ranch on Friday, October 29, I find unlikely his version of the events in light of the testimony of Board agents Perez and Diaz and that of other worker witnesses that Board agents passed out papers and discussed other matters on that day.

Trujillo testified that on the day before the election Board agents did pass out papers to him. (Tr. IV:128.) Since Trujillo did not know how to read, he put the paper in his pocket without reviewing it. The Board agents did tell him that there was going to be a voting site at the Ranch and there would be a voting site at the Madison Elementary School during the evening.

(Tr. IV:128-129.). He was unable to go to the School voting site since "we don't have a car to go." (Tr. IV:129.) In any event, I find that he was advised of the time and place of the election.

On the morning of the election State people told about ten workers that there was going to be an election but that the workers should go to work and the State people would advise them when it was time to vote. (Tr. IV: 124.) Trujillo testified that the State people did come into the field and tell him when it was his turn to vote. (Tr. IV:125.) At that point the Employer's counsel attempted to elicit the opposite answer. The witness upon being re-examined testified that the State people did not come into the field and advise him when it was time to vote. He testified that he did not vote that day, though he did at some point in the day attempt to vote but was unable to do so as the polling site had apparently closed. (Tr. IV:126-127.) He also testified he was working away from the crew.

Trujillo testified that when he attempted to vote after the polls had closed, he believes that a Board agent told him that there was no more voting there and that he could vote at the School. (Tr. IV:135.) Trujillo testified that it was about 1:00 p.m. when he attempted to vote and this occurred after his foreman Pascual Mendoza had told him to try to vote. The polls closed at 9:00 a.m.

I find that Trujillo was notified on a day prior to the election and on election day about his opportunity to vote. Pascual, his foreman, told him after the polls had closed that he could vote at the Elementary School in Madera. (Tr. IV:133.)

In addition, Trujillo testified that strikers told him that he could vote at the Elementary School. He knew where the School was located. (See Tr. IV:136-137.)

Teresa Ramirez Zamidio gave unreliable testimony and Employer's counsel had to recommence his direct examination because of the confused nature of her answers. (Tr. V:2.) Even after Employer's counsel recommenced his direct examination the witness was still confused. For example, she testified that she did not know which people were from the State and which ones were the workers who had voted. (Tr. V:6.)

Ramirez did testify that she heard four or five workers say on election day that they didn't care about voting because they wanted to work and did not want to have time taken away from their work. (Tr. V:10.)

Gonzalo Damien testified that his first meeting with an ALRB agent was with Ed Perez at the Crow Ranch two days before the election. There were two or three women Board agents with Perez. (Tr. VI:57-58.) Perez informed a group of workers what day the election would occur, when it would be their turn to vote and that Board agents would call them as it came to be their turn to vote. The two Crow Ranch crews (the Abarca crew and the Castaneda crew) consisting of approximately 150 to 160 people were present. (Tr. VI:58,69.)

Though he testified that Perez passed out to the workers BX:8, the Spanish translated version of the Notice and Direction of Election, I find that Board agents Jenny Diaz and Albert Mestas passed out the Notice and Direction of Election at the Crow Ranch on the day prior to the election.

Perez indicated to them that there would be a polling site at the Crow Ranch and an evening site at the Madison Elementary School. Furthermore, Damien testified that Perez told them that workers could vote either at the Crow Ranch or at the Madison Elementary School. (Tr. VI:72.) Damien estimated that Perez talked to the combined crews for about 20 minutes. During that period, Perez read from BX:8. Perez asked the group if there were any questions, and there were a few questions, which Perez answered. No one else from the State talked to the workers at this time. (Tr. VI:80.)

Damien was one of the Employer election observers at the Crow Ranch. He was situated behind the voting table, and he testified that before the polls opened a group of people were waiting to vote. Perez told these people to leave, and he advised them that Board agents would call them to come to vote. He then testified "But, well, then he never did it -- they never did it." (Tr. VI:60-62.) Damien estimated that Perez advised about 20 people to go into work and they would be called to vote later that morning. (Tr. VI:62.)

Damien's understanding was that the Castaneda crew would vote first, followed by the Abarca crew. (Tr. VI:73-74.) When asked approximately how many workers voted, Damien testified that it was more than 50 and less than 100. He also testified that workers from both the Castaneda and the Abarca crews voted. (Tr. VI:81,72-73.)

When the polls closed and after he had signed the seal on the ballot box, Damien saw about 25 people approach in an effort

to vote. These workers were told by Board agents that the election was already closed. Damien then went back to work. (Tr. VI:63-64.)

Damien testified that the polling site opened at 9:00 a.m. This is wrong as the polls opened at approximately 6:00 to 6:20 a.m. (see BX:8 and testimony of Ed Perez infra).

Damien testified that the polls closed between 11:00 and 11:30. I credit the testimony of Board agent Perez, corroborated by the Notice and Direction of Election, that the polls closed at about 9:00 a.m. When the polls were closed, there were no workers waiting in line to vote. Damien testified that there were some workers "barely coming." (Tr. VI:82.) When asked how much time passed from the time that the polls closed until the workers came to vote, Damien estimated five minutes had passed. Damien estimated that about 15 to 20 people came up to the polls after the polls closed in an effort to vote. (Tr. VI:82-83.) Before Damien advised Perez that more workers were coming, Damien had already signed the seal on the ballot box. (Tr. VI:83.)

I find that Damien's testimony clearly establishes that workers from both the Abarca and Castaneda crews received notice from Board agents of the time and place of voting at the Crow Ranch. Between 50 and 100 workers voted from these two crews. His testimony also helps to establish that the Notice and Direction of Election was distributed to and received by workers from both the Castaneda and Abarca crews. Though I credit portions of Damien's testimony, I note that his memory did not

serve him well with respect to the opening and closing times of the polls at the Crow Ranch. This weakened some of his testimony, particularly his testimony relating to when Perez addressed the two Crow Ranch crews and what Ed Perez told the members of these crews. Damien's testimony helped to establish that workers from both crews at the Crow Ranch were advised of the Madison Elementary School voting site.

Pascual Mendoza, foreman for the Abarca crew and known as Nano or Pascual, testified that on election day when workers arrived to the field, he told "the people" to go vote before they entered the field so that they would not lose time. An unidentified State agent told the workers to go to work and that "they" were going to inform them when to vote. This was the same State agent that had addressed the workers two days earlier about the election. (Tr. VI:108-109.) Mendoza testified that he then got into line to vote but was told by David Villarino that he could not be in the voting area and would have to leave. Mendoza left the voting area and went to the edge of the field where he remained until sometime between 10:00 and 11:00 a.m. when a worker from another crew told him he could enter the field. I find it improbable that Mendoza, a supervisor or foreman, would leave the field in reliance upon orders from a UFW organizer. His testimony is also inconsistent with that of Board agent Perez who testified that he had Employer and Union representatives leave the quarantine area prior to opening the polls. I also find it unlikely that he re-entered the field because some unidentified worker from another crew told him that it was permissible for him to return to his crew.

Mendoza testified that when he returned to the field he began asking the workers if they had gone to vote. He testified, "Many said yes, and many had told me that they had not been spoken to." (Tr. VI:111-112.) Mendoza did not identify any of the workers who told him that they had not been spoken to by Board agents.

Mendoza testified that he told these workers to vote "now." (Tr. VI:112.) These unidentified workers returned and told him that "they" did not let them vote because the "time was over." He estimated that "possibly 40" workers advised him that they were not permitted to vote because the time was over. (Tr. VI:112.)

Mendoza's testimony corroborates that of Damien and Perez to the extent that it helps to establish that workers at the Crow Ranch did vote. I credit Mendoza's testimony that Board agents did tell some workers to return to their worksite and that they would be called later. I discredit Mendoza's testimony regarding Villarino's presence after voting actually began. I find that Villarino left the polling site before any workers actually voted. Mendoza is yet another Employer witness who testified that Board agent Perez addressed a group of workers at the Crow Ranch two days prior to the election which is a Sunday when no work was conducted.

Stan Oberti's declaration (EX:6) indicated that the UFW and the Employer entered into a stipulation to have the election conducted on Tuesday, November 2nd. I have found that this agreement was made known to Board agent Perez and in reliance

thereon Perez advised workers at the Crow Ranch on Friday, October 29 that the election would be held on November 2nd. I find that the Employer introduced no evidence indicating that workers at the Crow Ranch were confused or led to believe by the events at the pre-election conference that the election would not be held on November 2. (Tr. VII:41.)

In response to a question as to why Oberti believed that the rotation of observers was important to assuring a full voter turnout, he answered that "that's why we have our observers, supposedly, at an election, so our people, our observers, can distinguish who is eligible to vote." (Tr. VII:46.) A moment later, however, Oberti shifted his testimony to indicate that it was important for particular observers to be at particular Ranches in order to "go into the field to get our people to come out and vote at those particular sites at those particular times." (Tr. VII: 47.) I find that though the Company and the Union also had obligations to notify workers of the time and place of the election, the record evidence does not support a finding that any changes in the plan covering which ALRB voting teams or which Company or Union observers were to be at a particular ranch had any effect regarding whether or not Board agents failed to tell certain employees that it was their turn to vote, after having told said employees not to vote until so informed.

Oberti testified that he drove three Board agents, including Ed Perez, around the ranches and showed them where workers would be on November 2nd. The ranches visited included the Crow Ranch and the Home Ranch. (Tr. VII:52-53.) This provides

further evidence that the Employer was proceeding pursuant to the assumption that the election would occur on November 2nd. Oberti's testimony also supports my finding that Board agents made a reasonable and effective effort to find out where various crews would be working on November 2nd at the different Ranches including the Crow and Home Ranches.

Oberti testified that he learned that there would be a voting site at the Madison School sometime in the afternoon of November 2nd. (Tr. VII:128.) Yet his declaration (EX:6) states at page 15 that it wasn't until the "evening" of November 1 that the Company learned that there would be a polling site at the Madison Elementary School from 5:00 p.m. to 8:00 p.m. This is an indication that Oberti's recollection was not always highly reliable.

Former Board agent Jenny Diaz testified that at the time of this hearing she was working for the Department of Social Services and had not worked for the ALRB since August of 1983. (Tr. VIII:51.) At the time of the election she was a Field Examiner and she had participated in approximately ten to fifteen elections including some very large elections.

Diaz testified that she and Ed Perez distributed at the Crow Ranch on Friday, October 29, the ALRB Official Notice (PX:3). She and Perez arrived at the Crow Ranch sometime in the morning. Perez talked to the workers after Perez and Diaz together had assembled all of the workers that were in the orchard and passed out the ALRB Official Notice. Diaz testified that she and Perez advised the workers that an election petition had been

filed, explained what the petition meant and told them that the election would be on a Tuesday. Furthermore, Diaz testified that they advised the workers that at a later time Board agents would tell the workers exactly "where and at what time" the election would occur but that in any event the voting site would be close to their worksite. (Tr. VIII:52-53.) Diaz testified that this ALRB Official Notice was handed out to all the workers and there were "a lot of workers at the Crow Ranch." (Tr. VIII:63.) She estimated that she and Perez were at the Crow Ranch at least 30 minutes that Friday morning. The ALRB Official Notice which was passed out is both in Spanish and English. She and Perez also answered questions from the workers.

She testified that it was the Abarca crew which was assembled for the presentation by Board agent Perez on Friday, October 29.

Diaz recalled that prior to gathering the workers, Perez talked to the foreman and asked if he could assist in gathering all the workers. The unidentified foreman said "fine" and Perez and Diaz along with the foreman and the foreman's helpers called the people out of the orchard and gathered them "towards the end on the dirt road." (Tr. VIII: 64.) Diaz testified that the group which was gathered was a large group, more than 50 people. (Tr. VIII:65.) She identified the crew boss or labor contractor as Abarca. She also testified that she and Perez did not tell the workers what time the workers would vote at the Crow Ranch. (Tr. VIII:70.) Diaz testified, that it was Ed Perez who had advised her beforehand that the election was going to occur on November 2nd.

Diaz testified that on the day before the election she returned to the Crow Ranch with Board agent Beto (or Albert) Mestas, a Field Examiner with the Fresno Office at that time. (Tr. VIII:56.) She and Mestas distributed the Notice and Direction of Election in Spanish (BX:8). When she arrived at the Ranch, she and Mestas went from tree to tree where the people were picking and distributed these notices to the workers. She also placed copies of these Notices (BX:8) on vehicles that were parked on the dirt roadway along the field. She and Mestas separated while they were distributing these Notices and Direction of Election in order to be able to cover the workers.

When she and Mestas were distributing BX:8 to each worker, she told the workers that if they were unable to vote at the Crow Ranch they could vote that evening at the Madison Elementary School. (Tr. VII:58.) She testified that Mestas did the same thing to other members of the Abarca crew.

When asked whether she at any time on November 1 indicated to the workers that they were to remain in the field on election day until Board agents came to call them out, she credibly and unhesitatingly responded "No, I didn't." (Tr. VIII:59.) Nor did the Employer introduce any specific evidence that Mestas made such representations to workers.

She testified that she and Mestas gave the Notice and Direction of Election on November 1 to all the workers she knew to be on the Crow Ranch that day. (Tr. VIII:108-109.) She testified "We walked all the rows where there were people there." (Tr. VIII:110-111.) I find that Diaz and Mestas made a reasonable

effort to distribute the Notice and Direction of Election in English and Spanish on November 1 to all the workers they saw at the Crow Ranch.

The Employer did not introduce any evidence about a lack of notice to workers at the Kismet Ranch. (Tr. VIII:68-69.)

Ed Perez was the Board agent in charge of this election. He *is* a very experienced Board agent having served as a Field Examiner for six years and as a Regional Director of the Fresno/Delano Region for two years. He has been involved in over 100 elections and he has been in charge of numerous elections. He was the Board agent in charge of two or three elections larger than the Oberti election. (Tr. IX:38.)

Perez testified that prior to November 2nd he participated in giving notice of the election to Oberti workers at the Crow Ranch as well as the Kismet Ranch. On Friday, October 29 he arrived late in the morning at the Crow Ranch, and he notified the employees that an election was going to take place the following Tuesday, November 2nd. (Tr. IX:3.) He was aware of the agreement between the parties to hold the election on November 2. (Tr. IX:41-42,60.) Perez testified without contradiction that he had obtained an agreement from Phil Oberti to gather the Crow Ranch workers and address them as a group. Perez was accompanied during the morning of October 29 by Board agent Jenny Diaz.

When he first arrived, Perez talked to labor contractor Abarca, the man in charge at the Crow Ranch. (Tr. IX:4.) Perez, Board agent Diaz, Abarca and Abarca's foreman gathered the workers

outside of the olive grove. He addressed everyone working at the Ranch on Friday, October 29. Perez testified that he believed that the workers from the Castaneda crew also attended the gathering and heard his presentation. This testimony is unrebutted and I, therefore, find that Perez did address the Castaneda crew and the Abarca crew on Friday, October 29. He addressed more than 150 workers at that gathering. (Tr. IX:5.) I find that Abarca as an agent of the Employer had an obligation on October 29 to advise Perez if there were another crew that was not present with Abarca's crew. Abarca did not indicate that there were any other crews working in the field. (Tr. IX:153.)

Perez testified that he stood on the bed of a pickup truck in order that his voice would carry to all the workers. He identified PX:3 (the ALRB Official Notice) as the document which he and Diaz passed out to all the workers. (Tr. IX:6.) Perez testified that the workers were all around the pickup truck and that in his presentation he paraphrased the rights set forth in the ALRB Official Notice. (Tr. IX:7.) He advised the workers that he would answer any of their questions regarding the upcoming election. According to Perez there were questions, and Perez proceeded to give a brief rundown on the voting process, including the type of identification required, voting eligibility, and how the voting takes place. Perez denied telling the workers on October 29 to stay in the field on election day until called out by the Board agent or that they would vote crew by crew. I credit this testimony and I find that it is consistent with the testimony of Board agent Jenny Diaz. I further find that it is not

specifically rebutted by credible testimony from any other witness.

(Tr. IX: 9.)

During a meeting with Employer representatives Monday morning, Perez told them that the election would be held the next day, Tuesday. It was decided at that meeting that a voting team would vote the Crow Ranch from 6:00 to 9:00 a.m. and the Home Ranch from 10:00 to 11:00 a.m. (Tr. IV:68.)

Following his Monday morning meeting, Perez had his staff type up the Notice and Direction of Election at the Fresno ALRB Office. It was there that BX:3f and BX:8 were prepared and four to five hundred copies were made thereof. He directed Board agents Jenny Diaz and Al Mestas to distribute these Notices at the Crow, Home and Kismet Ranches. Board agent Diaz left the Fresno Office at about 2:30 or 2:45 p.m. to distribute these notices. Perez testified that Board agents Jenny Diaz and Albert Mestas were the only two agents who were on those Ranches on November 1. I find that Board agent Perez did not distribute Notices or address workers at the Crow or Home Ranches on November 1. Perez estimated that Board agent Diaz arrived at the Crow Ranch at about 3:00 p.m. on November 1.

He then telephoned Employer attorney Tom Giovacchini at around 3:00 p.m. and told Giovacchini of the voting sites and voting times for the Crow Ranch, the Kismet Ranch, the Home Ranch and the Madison Elementary School. (Tr. IX:12.)

Perez was in charge of the election sites at the Crow Ranch, the Home Ranch and the Madison Elementary School evening site. (Tr. IX:14.)

When Perez arrived at the Crow Ranch voting site at 5:30 a.m. and began setting up the polls and equipment, 50 potential voters were already gathering at the polls. Based in part on this unrebutted testimony that workers were congregating to vote at 5:30 a.m., I find that Board agents had prior to election day provided Crow Ranch workers with adequate notice of where and when to vote on election day. This also supports the testimony of Board agents Perez and Diaz that they did not advise workers on Friday to wait to vote until called out by Board agents.

The voting was scheduled to commence at 6:00 a.m., but some issues arose which delayed the opening of the polls.

Board agent Carlos Bowker suggested to Perez at about 6:00 a.m. that rather than having a group of workers massed by the voting site, Board agents should advise the workers to begin working and that Board agents would then call out the workers crew-by-crew. Perez agreed with this idea, and he therefore instructed Bowker and the other Board agent who accompanied Bowker, Jesus Longoria, to effectuate Bowker's recommendation. Perez testified that Bowker and Longoria then spoke to the workers congregated and advised them to start work and that the Board agents would call the workers out of the orchards to vote a little later that morning. The workers returned to work. (Tr. IX:16.)

Perez testified that Board agents Bowker and Longoria then implemented the plan, went out into the orchards, called the workers out to vote, and the workers did come to vote. (Tr. IX:18.)

Perez estimated that the Crow Ranch polling site opened at 6:20 a.m. and closed at 9:00 a.m. He testified that approximately 100 workers voted at this site. When the site closed at 9:00 a.m., no one was in line to vote, nor was anyone in view who was attempting to vote. Perez, therefore, told the Board agents to put away the equipment and close the polls. Perez then gathered the observers from the Company and the Union and said that he was going to seal the voting boxes.

At about 9:07 a.m. and after the ballot box was sealed, Perez testified that he saw five or six workers walking up the Avenue and these workers said that they wanted to vote. One of the workers asked Perez where the Madison Elementary School was located and Perez told the worker the location of this School and that they could vote there. Another of the workers stated that he knew where the School was located. Perez then proceeded to the Home Ranch voting site and opened the polls there. (Tr. IX:20-22.)

Perez explained that to have permitted the five or six workers to vote at that point in time would have entailed reassembling the voting booth, breaking the seal on the box, voting the workers, resealing the ballot box, breaking down the voting booth and repacking it, and then departing for the Home Ranch. It was a ten mile drive from the Crow Ranch to the Home Ranch. Since the Home Ranch voting site was scheduled to open at 10:00 a.m., I find that Perez had a deadline to meet and he was reasonable in advising the five or six workers that they could vote at the Madison Elementary School and then proceeding to the

Home Ranch to open the polling site there in a timely fashion. (Tr. IX:22.)

I credit Board agent Perez' testimony that it was only prior to the opening of the Crow Ranch polling site that Board agents Bowker and Longoria advised workers who had been congregating there since 5:30 a.m. to return to work and that the Board agents would then advise them when to vote. I find that after the polls opened no Board agent instructed any potential voter to return to work and that those potential voters would be called back later. (Tr. IX:118.)

Perez was in charge of the Madison Elementary School voting site. Approximately 15 to 20 workers voted at that site. Perez testified that he received assurances from the Regional Director that radio spots would be played announcing the evening voting site, including the Madison Elementary School site. (Tr. IX:124-125.)

Perez testified that after he opened the polls at the Crow Ranch he did not see any agents of the Union or the Employer in the quarantine area. (Tr. IX:148.) This testimony is consistent with that of David Villarino, and I credit this testimony over that of Pascual Mendoza.

The last witness called by the UFW was Board agent Carlos Bowker. Bowker testified that he had been employed by the ALRB since October of 1975 as a Field Examiner. (Tr. IX:152.) He arrived at the Crow Ranch on election day at around 5:30 a.m. He observed a small crowd of people gathered near the polling site, so he suggested to Board agent Perez that the workers who

were already congregating by the polling site be advised to go to work and that they would then be called out to vote when the polls opened. Perez agreed with this suggestion. Bowker testified that he then told the workers waiting in line to vote that the election was going to begin soon, that the workers should return to the fields, and that as soon as the Board agents had the polling sites ready Bowker would come into the fields and notify them that it was time to vote. (Tr. IX:153.)

Bowker then proceeded to notify the workers that it was time to vote. He left the polling site at about 6:30 a.m. and went first to the Castaneda crew since that crew was working the closest to the voting site. Bowker was accompanied by Jesus Longoria. They drove into the field where the Castaneda crew was working. Both Bowker and Longoria got out of the car and walked along the rows where the workers were picking. They each yelled for the workers to come down from the ladders and go vote. Bowker testified that he promised the workers that they would be voted quickly so that they could return to work fast. (Tr. IX:153-155.) Bowker estimated that he was 30 to 40 feet apart from Longoria as each walked down the rows. He and Longoria spent about 15 minutes with the Castaneda crew encouraging them to go vote. After he finished notifying the workers, he returned to the voting site to assist the other Board agents process the challenged ballots.

Bowker testified that once he saw that there were not many people left in line from the Castaneda crew he then went into the field to notify Abarca's crew that it was their turn

to vote. He testified that the Abarca crew was located on the southwest side of the olive ranch. Longoria accompanied Bowker. When Bowker and Longoria arrived to the field where the Abarca crew was working, Bowker and Longoria walked through the field in such a way as to make sure that every worker in the crew would hear that they were yelling that it was time for the crew to vote and vote as soon as possible. With respect to both the Castaneda and Abarca crews, Bowker testified and I find that he was able to hear Longoria yelling that it was time to vote. (Tr. IX:156.) Bowker testified that both he and Longoria were talking to the crews in Spanish.

After Bowker and Longoria notified the Abarca crew at the Crow Ranch, Bowker testified that they returned to the election site and again assisted the other Board agents processing the challenged ballots. (Tr. IX:157.)

At about 8:15 a.m. Bowker and Longoria returned to the Castaneda crew and notified the workers that they still had an opportunity to vote and that the polls would be closing at 9:00 a.m. After completing the second notification effort to the Castaneda crew, he and Longoria returned to the Abarca crew and did the same thing. (Tr. IX:158.) I find that this testimony by Bowker is basically un rebutted and that he and Longoria did notify the workers in both the Castaneda and Abarca crews to vote on two different occasions prior to the closing of the polls.

Bowker testified that there were approximately 80 to 100 people in each of the two crews. He estimated that the two crews were separated by less than half a mile. He recalled that

it was foggy and this was one reason he had to yell loudly to make sure that he notified all the workers. He testified he and Longoria got sore throats from yelling so much.

Adan Herrera's testimony was confused and he demonstrated a poor memory. His answers were frequently vague and his testimony was generally unreliable (see for example Tr. 1:96). I also found that Pedro Becerra was often a confused witness and that he exhibited a selective memory with regard to the content of what the Board agent told the group of workers prior to the election. The testimony of Teresa Ramirez Zamudio was not reliable. Employer's counsel had to try to rehabilitate her after she testified that she had not spoken with Employer's counsel (Tom Campagne) the morning she testified. (Tr. V:19-24.)

I found that the three Board agent witnesses called by the Union were generally credible witnesses. Jenny Diaz maintained eye contact with the questioner both on direct and cross-examination and her answers were responsive. She made a good faith effort to recall the events about which she testified, and her demeanor clearly indicated an honest witness. She demonstrated a good memory for the contents of what she and Board agent Perez told the workers at the Crow Ranch on Friday. Her testimony on cross was generally consistent with her testimony on direct. I also found Board agent Ed Perez to be an honest and straightforward witness. His demeanor indicated that he made an effort to recall and relate the truth. He was calm during both his direct and cross-examination and his answers were

generally responsive. He gave every indication of answering honestly and forthrightly.

I find that Bowker manifested a good memory and provided responsive answers both on direct and cross-examination. He is an experienced Board agent having been with the Agency for approximately six to seven years prior to the Oberti election. He manifested a good demeanor and looked directly at the examiner both during direct and cross-examination. He appeared to be telling the truth. I found him to be a credible witness.

Based on all the above testimony and evidence, and in addition to my previous findings, I find the following facts related to the alleged failure of Board agents to notify employees it was their turn to vote after having told said employees not to vote until so informed at the Crow Ranch:

1. Board agents Perez and Diaz advised all the workers at the Crow Ranch on Friday, October 29th that there would be an election on November 2. Neither Perez nor Diaz told workers at that meeting to continue working until notified by Board agents on election day.

2. Board agents Jenny Diaz and Albert Mestas distributed the ALRB Notice and Direction of Election to Crow Ranch workers on Monday, November 1. Diaz advised the workers that they could vote at the Madison Elementary School evening site if they so chose. I find that neither Diaz nor Mestas told workers to remain in the fields on election day until called out by Board agents to vote.

3. Board agent Ed Perez in response to a recommendation by Board agent Carlos Bowker directed Bowker to advise workers waiting in line to vote at about 6:00 a.m. to return to work and that the Board agents would advise the workers later in the morning when it was their turn to vote. Board agents Bowker and Longoria so advised the workers waiting in line prior to the opening of the election site, and the workers entered the fields to work. Thereafter, Board agents Bowker and Longoria entered the fields and on two separate occasions advised workers in the Castaneda crew and in the Abarca crew that it was time to vote. Bowker and Longoria made reasonable efforts to assure that workers in these two crews would vote. No Board agent advised workers during the period when the Crow Ranch polling site was open that they could not vote.

4. After the polling site at the Crow Ranch was closed and the ballot box was sealed, five or six Crow Ranch workers approached Board agent Ed Perez and the observers and asked if they could vote. Because Board agent Perez had to set up a polling site at the Home Ranch by 10:00 a.m., Board agent Perez advised these workers that they could vote at the Madison Elementary School polling site that evening. One of the workers acknowledged that he knew where that site was located.

5. I find that Board agents gave reasonable notice of the time and place of the election to the Crow Ranch workers. I further find that the Employer failed to prove that Board agents did not advise Crow Ranch workers that it was their turn to vote after having told the workers to return to work and await further notice from Board agents.

C. Home Ranch

Anita Diaz, the daughter of labor contractor Jesus Diaz, testified that pursuant to the request of Ed Perez she advised 55 Home Ranch workers to come down from their ladders and vote. (Tr. I:66.) These workers did not vote because Ermel Rodriguez, who was following her, told the workers not to believe her and that it was not yet their turn to vote. (Tr. I:67-69.) Diaz variously described Rodriguez as an organizer or an observer. During her cross-examination, she appeared mad and hostile, and she was not a cooperative witness. She testified that when she left the Home Ranch after having notified the workers, the voting had not yet begun. She testified she did not see who did vote or who didn't vote. (Tr. I:82.)

She testified that on the day following the election she spoke to about four or five unidentified workers who told her that they did not vote because of the confusion caused by a UFW sympathizer or because Board agents did not call them out of the trees to vote. (Tr. I:83-85.) Her testimony in this regard was unclear and constituted uncorroborated hearsay, and I discredit it.

Anita Diaz was recalled to testify on the fourth day of the hearing. She testified that while she was advising the workers to vote, she heard Ermel Rodriguez telling these workers not to believe her and that she was crazy. (Tr. IV:3.)

Diaz told somebody about Ermel Rodriguez' comments, but she does not remember who it was. She told this unidentified person to tell Ed Perez about this incident. I find this testimony

improbable in light of her earlier testimony that she immediately left the field after advising the workers to go vote because "I was in quarantine." (Tr. IV:3.) Her explanation for not returning to the area to tell Ed Perez about the alleged interference by Ermel Rodriguez is not persuasive. (See Tr. IV:3.)

When asked to whom Ermel Rodriguez was referring when Rodriguez allegedly said that "someone" was going to come and tell the workers when it was their turn to vote, Diaz testified that she guessed Rodriguez was referring to "people from the State." (Tr. IV:4.) Yet her declaration admitted as EX:2 states that Rodriguez told the workers that they should go back to work and that later on they would be advised by "UFW representatives" when it was time to go vote. This inconsistency further undermines her credibility.

When she was asked who Ermel Rodriguez was, she testified "he never had worked with us before, until that day of the election, is when he started working." (Tr. IV:4.) Yet in her declaration (EX:2) she declared that "he is currently employed at the Home Ranch as a harvester but he did not work on November 2, 1982 because he had requested leave to act as an observer at the election on behalf of the UFW." This inconsistency serves to further discredit her testimony.

When asked whether she had personal knowledge that Ermel Rodriguez was a UFW observer at the election, she answered that she was told that he was an observer. This is uncorroborated hearsay evidence.

Diaz testified that she believed that people on the ladders would have followed Ermel Rodriguez' instructions rather than her own even though she is the daughter of a labor contractor. (Tr. IV:8.) I find this testimony to be especially improbable in light of her own testimony that the workers usually do what she tells them to do. (Tr. IV:8.) She referred to herself as a supervisor. (Tr. IV:27.)

Throughout her testimony she was vague and exhibited a poor memory. I find that her testimony is very unreliable.

George Medina testified that he was working during the strike at the Home Ranch and that two unidentified people (a man and a woman) came to the Ranch about two days before the election and told him not to vote until he was called out. These people did not say who they were or for whom they worked. (Tr. III:88-89.) They did not pass out any pieces of paper, nor did they come to the Home Ranch on election day. (Tr. III:89-90.) Medina claimed that the two persons made this representation to 55 or 60 olive workers nearby. (Tr. III:92.)

Medina testified that Anita Diaz came into the field on election day and told everyone working to come out and vote. (Tr. III:95.) However, some unidentified man followed Anita Diaz and told the workers that Diaz was telling lies. This man had a UFW button and a bumper sticker. (Tr. III:104-106.) Medina incredibly testified that he paid attention to the man because the man had a UFW button. He further testified that he did not vote because of what this man said. I find this improbable in light of his testimony that he did not think Anita Diaz was crazy

and that he viewed Anita Diaz as the wife or daughter of the Home Ranch labor contractor, Jesus Diaz. (Tr. III:125.) He also testified that the badge worn by this man is the same as the badges worn by other workers at the Home Ranch. In summary, there is no basis to conclude that Medina reasonably relied on what this man said rather than on what Ms. Diaz said. (Tr. III:106.)

Medina testified that he had seen this unidentified man at the Home Ranch picking before the election. (Tr. III:117.) This is inconsistent with Ms. Diaz' testimony, but it is consistent with her declaration (EX:2)

He estimated that he noticed approximately 20 or 30 who failed to vote. I find that his estimate was speculative and not entitled to much weight. (Tr. III:120.)

On cross-examination Medina's testimony indicated several inaccuracies. For example, Medina testified that Anita Diaz came to the grove to notify the workers at 1:00 or 2:00 in the afternoon which is inconsistent with her testimony and was a time long after the polling site had closed. (Tr. III:122.)

I find that Medina was an unreliable witness. He displayed a poor and very selective memory. (See Tr. III:135.)

The UFW called Board agent Ed Perez as its first witness. Perez testified that after he set up the voting site at the Home Ranch, he found that he was about an eighth of a mile north of where the people were working. He decided that this would be too far a distance for workers to walk in order to vote and that it might inhibit some workers from voting. He, therefore, decided to change the voting site to a point close to where the

people were working. He set it up some 30 to 40 feet away from where a crew was picking. (Tr. IX:24.)

After setting up the voting site, he tried to get observers for the parties since there were none at that point. Perez spoke with Anita Diaz. Perez testified, contrary to Diaz' testimony, that when he spoke to Anita Diaz he knew her status as the daughter of labor contractor Jesus Diaz. Perez testified that he asked Anita Diaz to help him get people out to vote. He recalled that she helped in the selection of a Company observer.

Perez observed Anita Diaz go out and notify workers that it was time to vote. He recalled that Ms. Diaz walked up to people that were working on a ladder and told them in a loud voice that it was time to vote. Perez was also notifying workers at the time he observed Anita Diaz attempting to get people to vote. Perez testified that he at no time saw anyone behind or following Ms. Diaz as she was attempting to notify workers to come and vote. (Tr. IX:28.) Nor did Perez observe anyone instructing workers not to get down off their ladders and vote. (Tr. IX:29.) I credit Perez' straightforward and direct testimony rather than Ms. Diaz' confused and inconsistent testimony and I find that no one followed behind Ms. Diaz telling workers not to vote.

Perez testified that he walked through the grove where the people were working, stopping at every other ladder and in a strong voice advising the person on top of the ladder that it was time to vote. Perez testified that he encouraged the workers to vote. Diaz' efforts to get workers to vote occurred before

the polls actually opened. He told Diaz to leave the area prior to the polls opening since it had been brought to his attention that she was a supervisor. (Tr. IX:30.) Thereafter, Perez himself spoke to the workers that Anita Diaz had already spoken to. (Tr. IX:30.)

According to Perez' unrebutted and credited testimony, workers were telling him that in the olives you have to pick in order to make money and they asked who was going to pay them if they wasted half an hour or an hour voting. Perez estimated that a dozen workers so advised him. (Tr. IX:31.) Perez responded to the workers' concern by explaining that it was only through a secret ballot election that the desire of the majority of the workers would be known. (Tr. IX:31-32.) Perez testified without contradiction that he advised the Home Ranch workers that there was going to be an evening site and that they'd be welcome to vote at the evening site.

He testified that the workers he addressed were on the southern portion of the Ranch and that when he drove in he did not see anyone working on the northern portion of the Ranch. Perez testified without contradiction that he asked Ms. Diaz if these were all the workers that were working at the Ranch and she responded that these were all the workers. (Tr. IX:34.) He testified that he walked into the field up and down the three rows which stretch in a long line from north to south. He was urging the workers in these rows to vote. I find that the record evidence establishes that Board agent Perez made a reasonable effort to notify all the workers at the Home Ranch that they should vote.

Perez testified that he extended the voting time 20 minutes in an effort to get more people to participate (Tr. IX:35) and that approximately 30 to 40 Home Ranch workers voted at the Home Ranch site. (Tr. IX:37.)

Board agent Perez' testimony regarding the Home Ranch voting site was very specific and indicated a good recall of detail. (See BX:12.) Perez testified that his efforts to notify and encourage workers at the Home Ranch to vote were as great if not greater than at other elections in which he has participated. (Tr. IX:144.)

Jenny Diaz testified that during the afternoon of November 1 she and Mestas went to the Home Ranch to distribute the Notices and Direction of Election, but they did not see anyone working. They posted Notices on the portable toilets at the Home Ranch. (Tr. VIII:96.)

Based on all the above testimony and evidence, and in addition to my previous findings, I find the following facts related to an alleged failure to notify employees it was their turn to vote after having told said employees not to vote until so informed at the Home Ranch:

1. There is no credible evidence presented by the Employer that any Board agent at any time told any Home Ranch worker to remain in the field on election day until notified by Board agents to come out to vote.
2. Board agent Ed Perez made reasonable efforts on election day to encourage Home Ranch workers to vote.
3. No Home Ranch worker was denied an opportunity to vote by any conduct or misconduct by a Board agent.

III. Legal Analysis

A. Coercion and Atmosphere of Fear

The Employer argues that there was an atmosphere of fear and coercion generated by violence and threats by Union agents including David Villarino as well as by Union supporters. The Employer contends that this alleged atmosphere had a coercive effect on a substantial number of workers. The burden of proof in election proceedings under Labor Code section 1156.3(c) is on the party seeking to overturn the election. TMY Farms (1976) 2 ALRB No. 58; Bright's Nursery (1984) 10 ALRB No. 18; NLRB v. Golden Age Beverage Company (5th Cir. 1969) 4.15 F.2d 570 (1982). The Board has long recognized that this is a heavy burden, requiring an objecting party to come forward with "specific evidence that misconduct occurred and that this misconduct tended to interfere with employee free choice to such an extent that it affected the results of the election." Bright's Nursery (1984) 10 ALRB No. 18 at pages 6-7.

The issue presented in this case is whether the alleged field rushing and ladder shaking incidents, the blocking of vehicles and tractors of non-striking workers, and the threats related to the signing of cards occurring before and/or after the filing of the election petition created an atmosphere of fear and coercion which deprived the employees of an opportunity to express a free and uncoerced choice of a collective bargaining representative in the November 2 election.

Recently the California Supreme Court held that it would not inquire into the subjective individual reaction of a particular

employee to threatening statements but would rather determine whether the statements, considering the circumstances surrounding their utterance, reasonably tended to create an atmosphere of fear and coercion. The adoption by the Court of an objective standard is consistent with the standards heretofore used by both the ALRB and the NLRB. Triple E Produce Corp. v. ALRB (1983) 35 Cal.3d 42 at pages 54-55. See also G.H. Hess (1949) 82 NLRB 463 [23 LRRM 1581].

In assessing the effects on an election of alleged coercive conduct engaged in during a strike situation, the Board is more concerned about whether threats or violence tended to create an atmosphere of fear or coercion rather than with whether the perpetrators of the threats or violence were agents of the Union. Joseph Gubser Company (1981) 7 ALRB No. 33 at page 2; Vessey Foods, Inc. (1982) 8 ALRB No. 28 at pages 2-3. The Board held in Gubser that "the issue of whether the Union was responsible for the strikers' pre-election violence is not dispositive of the case." Id. at pages 2-3. The Board stated that "all violence, actual or threatened, is coercive to a greater or lesser degree depending on the circumstances and the character of the author." Joseph Gubser Company (1981) 7 ALRB No. 33 at page 2.

It is instructive, therefore, to review ALRB and NLRB cases involving coercion and atmosphere of fear and coercion to determine the factors used to either certify or set aside an election.

In Joseph Gubser Company (1981) 7 ALRB No. 33 a group of 30 people rushed fields where employees were working. A number

of these people carried UFW flags and they were clearly violating no trespassing signs. As these people entered the field, they began to run and wave their flags, yelling in Spanish in an angry tone. These field rushers ran past the farm manager, and continued toward the workers, picking up hard dirt clods or rocks and throwing them at the workers. In response some of the workers ran out of the fields as soon as the people with the flags entered. Other workers left when the clods were thrown. Though no worker was hit by a dirt clod, the crew foreman was hit by a dirt clod and he suffered a large cut next to his eye which began to bleed profusely and required eleven stitches. Furthermore, the farm manager was hit across his arm or shoulder with a flag stick and his camera was stepped on. The Board upheld the election stating that the violence in this case was isolated and remote from the election which occurred 19 days after the field rushing incident.

It should be noted, however, that the violence in Gubser was more severe than the conduct which occurred during the field rushing incidents here. For example, no one was hit by a dirt clod or rock at the Oberti Ranches. Nor was there any physical violence involving workers or foremen at Oberti. No workers were knocked off their ladders at Oberti and at most strikers touched ladders of workers at the Crow Ranch and the Kismet Ranch to get their attention in order to ask for their support during the strike. Though tractor driver Victor Medina was stopped for a short period of time and asked to sign an authorization card, he was not pulled off his tractor nor injured or harmed in any

manner. The incident involving Antonio Abarca, though not to be condoned, was not very serious in light of Abarca's testimony that he was not hit though his shoulder was grabbed.

Frudden Enterprises, Inc. (1981) 7 ALRB No. 22 involved a two day strike election. Some 13 days preceeding the election a group of 25 to 50 UFW supporters who were carrying UFW flags and were accompanied by a UFW organizer entered the fields and approached machines where employees were working. The field rushers shouted strike slogans and obscenities and urged the workers to stop working. Some threw tomatoes and dirt clods and some climbed on the machines. The sheriff was summoned and eight deputies arrived at the field. A number of the employees who were on the machines left the field and did not return until the next day. Two of the workers on the machine were hit with tomatoes.

Significantly, at least two of the employees were found by the IHE not to have voted in the election because of their fear of the Union. There were several additional incidents of rushing of fields and access violations preceeding the election. There was also a shoving match between a Union organizer and a supervisor in front of a number of workers. Nevertheless the IHE found and the Board affirmed that the Employer had failed to establish a causal connection between the improper conduct and the failure of a number of employees to vote, and the election was upheld. The IHE noted that there was no evidence of specific threats connected with voting and that the purpose of some of the misconduct was to cause employees to stop work and listen

to union appeals and possibly to join a strike. Furthermore, there was no evidence of interference with the polling process or with employees' access to the polls. (See IHE Decision at pages 52-57.)

At Oberti, unlike Frudden, there is no evidence that any workers failed to vote because of coercion or violence by the UFW. The nonvoting workers who testified here indicated that the reason they did not vote was because of a lack of notice or a lack of interest rather than because of any coercion or atmosphere of fear or coercion. The facts surrounding this election indicate less coercive conduct than was found in Frudden. Like the workers in Frudden, the workers here were able to vote on election day without any interference by strikers or picketers. Unlike Frudden there is no evidence here that UFW representatives participated in any field rushing incident. Nor were any UFW organizers or agents present when Victor Medina was stopped.

In Vessey Foods, Inc. (1982) 8 ALRB No. 28 a strike election was held on the third day following the filing of the election petition. Four days prior to the election, 60 strikers entered the field where employees were working and headed towards the crew. The strikers were yelling at the workers that the workers should stop work and support the strike. Some of the strikers threw dirt clods, tomatoes and heads of garlic. At that point the deputy sheriff arrived and told the strikers to leave. There was no evidence of Union presence (for example, flags) on this day. On the next day, however, UFW flags were in evidence among the strikers.

The Board affirmed the IHE finding that the level of violence associated with the strike was "minimal" and the Board upheld the election. No arrests and no citations occurred during these days. The IHE concluded that the atmosphere surrounding that strike activity did not affect the voting conducted four days later. Page 9 and 10 IHE Decision Vessey Foods (1982) 8 ALRB No. 28. Similar to the situation in Vessey, the record evidence here establishes that no arrests or sheriff reports were made at any time.

The fact situation here is far different from that found in Phelan & Taylor Produce (1976) 2 ALRB No. 22 where the Board set aside the election based upon an assault and physical violence perpetrated against a UFW organizer by a Teamster organizer in view of 25 bargaining unit employees. The Board held that violence or threats of violence by representatives of parties is inconsistent with employee free choice. Here there was no violence nor threats of violence.

In Triple E Produce (supra) 35 Cal.3d 42, union organizers threatened workers with job loss if the workers did not vote for the Union. These threats were made the day before the election. Here there was no direct attempt to influence voting nor was there any threat that if the Union won it would attempt to have any worker fired. No alleged threat was made by a union organizer or agent. Nor was there any credible evidence that any alleged threat involving the calling of the immigration authorities or the need to have an authorization card in order to be able to cross the picket line was communicated by those

allegedly threatened to any other workers. Neither was there a reasonable basis for a worker to believe any representation that workers would not be permitted to cross picket lines and work unless they had a union card.

Even if such threats occurred, they were made to such a small handful of people as to have had no effect on the outcome of the election which the UFW won by approximately a three to one margin. According to the record evidence, the number of workers affected by the alleged coercive conduct, including the alleged threats, is too small to be outcome determinative.^{25/}

The National Labor Relations Board has long held that whether the union was responsible for the action of strikers or union adherents causing pre-election violence is not dispositive of the case. Instead, the critical fact is that an atmosphere of fear or coercion existed thereby precluding free employee choice.

In Poinsett Lumber Manufacturing Company (1956) 116 NLRB 1732 [39 LRRM 1083] an election was set aside because

^{25/} Antonio Abarca, Gonzalo Damien and two other workers were involved in a Crow Ranch incident where Abarca's shoulder was grabbed. Ruben Sandoval, Santiago Martinez and three other workers were involved in the Kismet Ranch incident where a branch was placed in front of their car. Jesse Garcia, Victor Medina, Jose Naranjo and Adan Herrera were allegedly frightened. Perhaps six Kismet workers did not voluntarily join the strike on October 25. Three tally girls with Carmen Roach were allegedly affected. I have discounted Stan Oberti's hearsay testimony about the three groups of 25 to 50 workers who allegedly advised him they were frightened or bothered by alleged field rushing at Crow, the pre-election conference and blocking of tractors at Kismet. I have similarly discounted Castaneda's and Anita Diaz' hearsay testimony regarding what workers allegedly told them. No workers heard the alleged threat by Villarino related to Luis Abarca's license, and no threats were made to the 16 workers living with Osorio.

the overall atmosphere of fear and reprisals rendered a free election impossible. Union supporters made threats of personal retaliation involving job loss and job harassment if a worker did not sign a card^{26/} or join the union as well as threats of personal violence against two anti-union workers (these threats became known throughout the plant a day before the election). In Al Long, Inc. (1968) 173 NLRB 447 [69 LRRM 1368] the NLRB set aside an election involving a violent strike where there was a bomb threat, extensive property damage, threats of bodily harm and other physical violence. The Board held that there was no need to prove union agency under these circumstances. In Diamond State Poultry Company, Inc. (1953) 107 NLRB 3 [33 LRRM 1043] the NLRB set aside an election in the absence of any clear union agency where three union supporters who were not employees at the plant engaged in threats of physical violence on election day. In Sonoco of Puerto Rico, Inc. (1974) 210 NLRB 493 [80 LRRM 1122], the NLRB set aside the election because employees were personally threatened by co-workers with physical violence if they did not vote for the union. See also Gabriel Company Automotive Division (1962) 137 NLRB 1252 [50 LRRM 1369].

In Home and Industrial Disposal Service (1983) 266 NLRB 22 [112 LRRM 1257] the National Board overruled Hickory Springs Manufacturing Company (1978) 239 NLRB 641 [99 LRRM 1715] and held that a union agent's threats which are presented in terms of possible future conduct rather than how a worker will vote

^{26/} After hearing the threat, two workers signed cards who theretofore refused to sign cards.

may be grounds to set aside an election if the tendency of such threats is to have a substantial and destructive effect on free and open campaign discussion. Id. at page 5. However, the facts in Home Industrial are easily distinguishable from the facts in this case. In Home Industrial a union official made a threat of violence against a worker one hour before the election. The threat related to anyone who would help the employer during a strike. The vote was six to five in favor of the union, a factor which "though not controlling" was nevertheless referred to by the National Board. Id. at page 7. I have found that there were no threats of violence before or during the Oberti election, no prohibited conduct occurred on the day of the election, no union organizer was responsible for any alleged threats, and the margin of the union's victory was substantial.

In Ciervo Blanco, Inc. (1974) 211 NLRB 578 [86 LRRM 14.52], the NLRB set aside an election where serious misconduct occurred including firebombing and damaging employees' houses and cars as well as visits by strikers to employees' homes in the presence of a union organizer where strikers threatened workers with physical injury if workers crossed the picket line.

The situation in this case is very different from those described in the preceding NLRB cases. There were no threats of violence, nor was there an atmosphere of fear or coercion at the Oberti election. To the contrary, there was no evidence of specific threats related to voting or to future support of the Union at Oberti. The field rushing incidents were related to requesting workers to join the strike. There was no physical

violence nor threats of physical violence. There were no threats of job loss.

I have also concluded that neither UFW agents nor supporters threatened to report to the immigration authorities workers who did not sign authorization cards. There is not even evidence that workers allegedly so threatened were in fact undocumented workers. The record is devoid of any evidence indicating that there were raids by immigration authorities. There was no evidence that the UFW engaged in any campaign to threaten workers by calling the immigration authorities. In Takara International, Inc. (1977) 3 ALRB No. 24 the ALRB found that some UFW supporters were responsible for rumors that the INS would raid the employer if the UFW lost the election. The Board also found that some UFW supporters made efforts to assure undocumented workers of the union's commitment to their interests. The Board stated that misconduct by a party would be considered more destructive of a healthy election atmosphere than misconduct by a non-party. Id. at page 3. The Board cited the National Board's decision in Mike Yurosek & Sons (1976) 225 NLRB 20 [92 LRRM 1535] where two union supporters who were members in an in-plant organizing committee told voters that the INS would deport workers if the union lost. The National Board found that membership in the organizing committee did not "convert the adherents into union agents." The National Board upheld the election stating that the threats and rumors would not render undocumented workers incapable of exercising a free choice in the election. The ALRB found Yurosek persuasive and held that the UFW supporters were

not agents of the union. The Board found that there was no evidence that the UFW supporters were answerable to the union. Neither was there a union policy threatening a large portion of its possible constituency. Although one employee was frightened, according to credited testimony, there was no evidence that more than a few employees, if any, were directly threatened. Takara International, Inc. (1973) 3 ALRB No. 24 at page 4.

In Pleasant Valley Vegetable Co-op (1982) 8 ALRB No. 82 the Board set forth a standard which is to be used in determining if employee conduct or third party conduct before an election should result in setting aside an election. The question which must be asked is whether the action of the voting unit employee or other third party "created a situation so coercive and disruptive, or so aggravated, that a free expression of employees choice with respect to representation was impossible." Id. at page 12. The Board emphasized that it would not base a finding of agency on weak evidence "because the consequences of union agency by 'apparent authority' often are contrary to the self-organization rights guaranteed under section 1152 of the Act." Id. at pages 7-8. The Board relied on its holding in San Diego Nursery (1979) 5 ALRB No. 43 wherein the Board also held that the burden of proof in determining union agency is on the party asserting the agency relationship. Id. at page 7.

The Employer here presented weak evidence that Fillamon Vargas or Alfredo Cepeda were agents of the UFW. Arturo Castaneda claims to have seen Vargas yelling on October 25 Stan Oberti testified that Vargas was at the Crow Ranch with

Villarino on October 26th. Villarino denied that Vargas took access with Villarino at the Crow Ranch or that he relied on Vargas to any substantial extent during the strike. Pascual Mendoza testified that he observed Alfredo Cepeda at the Crow Ranch on October 27. Osorio testified that Vargas and Cepeda each visited him on several occasions. There is no substantial record evidence, however, that Vargas or Cepeda was an agent of the UFW. Rather, the evidence suggests only that both Vargas and Cepeda were strong union supporters who participated in strike activities without any proven direction or ratification by Villarino or other UFW organizers or agents. Nor is there evidence that Daniel Cabrera, nicknamed Canas, was a UFW agent. There is no credible evidence that Cabrera's activities at the Kismet Ranch were authorized or ratified by the UFW.

Applying the above principles to the facts here, I find that the Employer has not proven that Fillamon Vargas or Alfredo Cepeda were agents of the UFW. Furthermore, even assuming that either or both of these striking workers made the alleged threats that immigration authorities would be called if certain workers did not sign union authorization cards, such alleged misconduct did not create a situation so coercive or disruptive that a free expression of the workers' choice in the election was impossible.

I have discounted the effect of workers being told that they needed some type of union card (authorization card) in order to be able to cross the picket line and work. Midland National Life Insurance Company compels the conclusion that any such

statements would or should be deemed as mere propaganda without evidence indicating that the union or its adherents had any control over the hiring process. Significantly those Oberti workers who did not sign an authorization card were able to consistently cross the picket line and work every day through the election. In Sam Andrews' Sons (1978.) 4 ALRB No. 59, the Employer objected to the election on the ground that the UFW threatened employees that they would lose their seniority and jobs if they did not sign authorization cards. The Board found that even were such statements made they could not be interpreted as threats within the union's power to carry out but would rather fall within the scope of campaign propaganda which is left to the good sense of the employees to evaluate in deciding how to vote. The Board held "As campaign propaganda, such statements do not constitute a sufficient basis for setting aside this election." Supra at footnote 1 page 5. Unlike Poinsett, there is no evidence here that because of threats any workers signed a card they had previously refused to sign. There is no evidence that any UFW organizer or agent advised workers they needed a Union card to work. Nor is there evidence that workers reasonably believed that the union could carry out such threats.

It is important to note the statutory mandate to hold strike elections contained in section 1156.3(a). The Legislature obviously contemplated that such elections would be held during a strike, at a period when emotions ran high on all sides, and even in the presence of picketing. Given this legislative mandate, the Board must be careful not to impose too strict a code of

(See also Lu-Ette Farms (1976) 2 ALRB No. 49; Verde Produce Co., Inc. (1980) 6 ALRB No. 24; Sun World Packing Corporation (1978) 4 ALRB No. 23.)

Though the Regional Director is required to give as much notice as "is reasonably possible under the circumstances of each case" the Board emphasized that "we do not require that election notices be given individually to each potential voter." Id. at page 4.

The objection set for hearing by the Board, however, is narrower than whether adequate notice was provided to the Oberti employees. The objection set for hearing is whether Board agents failed to tell certain employees that it was their turn to vote after having told said employees not to vote until so informed. The only evidence introduced by the Employer involved the Crow Ranch and the Home Ranch.

Eight employees from the Crow Ranch^{27/} testified that they were notified not to vote until a Board agent told them it was their turn to vote. I found that those eight employees received adequate notice of the date and time of the election and that each of them could have voted either at the Crow Ranch or at the Madison Elementary School. I credited Board agent Perez' testimony that five or six employees were turned away at the Crow Ranch after the polling site had been closed over the testimony, of Gonzalo Damien who estimated 15 to 20 Crow workers

^{27/}The eight employees are Adan Herrera, Pedro Becerra, Jose Naranjo, Porifirio Sanchez Vargas, Ernesto Garcia, Antonio Abarca Nicholas Trujillo and Teresa Zumidio.

conduct which might be inconsistent with the exercise of section 1152 rights by strikers, including the right to strike and to try to persuade people to honor picket lines.

The election was conducted smoothly, peaceably and without interruption. By election day the picket lines were down and most of the strikers had returned to work. There is no evidence that workers failed to vote or campaign out of the fear of the UFW or because of an atmosphere of fear or coercion.

There was no evidence that more than a handful, if any, workers were actually frightened by any of the alleged misconduct. To the contrary, the evidence indicates that many workers joined the strike at the Kismet Ranch as well as at other locations. Nor was there evidence of widespread knowledge of alleged threats.

I find that taken together the objective nature of the alleged misconduct does not reflect an atmosphere in which employees were unable to freely select a collective bargaining representative (Harden Farms (1976) 2 ALRB No. 30).

B. Alleged Failure to Notify Employees it was Their Turn to Vote After Having Told Said Employee Not to Vote Until so Informed

In Leo Gagosian Farms, Inc. (1982) 8 ALRB No. 99 the Board reiterated its long standing proposition that:

"Low voter turnout, standing alone, is not a basis upon which this Board will set aside an election. An election is deemed to be representative where there is sufficient notice, the voters are given an adequate opportunity to vote, and there is no evidence of interference with the electoral process." Id. at page 3.

were turned away. I discredited the hearsay testimony of Pascual Mendoza that up to 40 employees told him that they were unable to vote because the polling site had closed.

I found that Board agents provided Crow Ranch workers with adequate notice of the time and place of the election. Board agents Perez and Diaz distributed the Official Notice to Crow Ranch workers on October 29 and Board agents Diaz and Mestas distributed the Notice and Direction of Election to Crow Ranch workers on November 1. I also found that the only time Board agents told Crow Ranch workers to go to work and that they would later be notified of the time to vote was on election day when Board agents Bowker and Longoria, pursuant to Board agent Perez' instructions, so advised Crow Ranch workers to alleviate congestion at the polling site at 6:00 a.m. I found that Board agents Bowker and Longoria thereafter notified the Castaneda and Abarca crews in the field on two separate occasions that it was their turn to vote. A substantial number of Crow Ranch workers did vote.

The Employer failed to introduce any evidence that Board agents told Home Ranch workers not to vote until later notified by Board agents. I concluded that Board agent Perez gave adequate notice to Home Ranch workers. He walked through the rows of olive trees shouting to the Home Ranch workers that it was their turn to vote. He encouraged the Home Ranch workers to vote and even suggested to them that the voting would not take very long and that they would not lose much time from their work. I credited Perez' testimony that a number of workers at the Home Ranch advised him that they did not vote because they did not wish to lose time

from their work. I discredited the testimony of Anita Diaz and George Medina that Ermel Rodriguez followed Anita Diaz and advised workers not to pay attention to Anita Diaz when she was telling the workers it was time to vote. I credited the testimony of Board agent Perez that he notified the Home Ranch workers himself that it was time to vote. I also credited Board agent Perez' testimony that 30 to 40 Home Ranch workers did vote. Diaz had estimated that 55 workers were at the Home Ranch on election day.

I therefore recommend that this objection be dismissed.

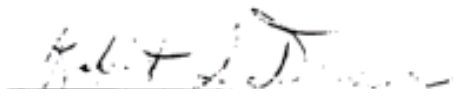
C. Conclusion and Recommendation

For all the above reasons, I conclude that the conduct shown on this record did not establish an atmosphere of fear and coercion which deprived the employees of an opportunity to exercise their free choice in the November 2 election. I also conclude that Crow Ranch and Home Ranch workers were given adequate notice of their opportunity to vote.

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: July 31, 1984

Respectfully submitted,



ROBERT S. DRESSER
Investigative Hearing Examiner