

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MONTEREY MUSHROOMS, INC.,)
)
 Employer,) Case No. 95-RC-2-SAL
)
 and)
) 21 ALRB No. 2
 UNITED FARM WORKERS OF) (July 13, 1995)
 AMERICA, AFL-CIO,)
)
 Petitioner,)
)
)
 and)
)
 COMITE DE CAMPEÑINOS UNIDOS,)
)
 Certified Bargaining)
 Representative.)
)
)

DECISION AFFIRMING PARTIAL DISMISSAL OF ELECTION
 OBJECTION AND CERTIFICATION OF REPRESENTATIVE

This case is before the Agricultural Labor Relations Board (ALRB or Board) on a request for review, filed by the Comite de Campesinos Unidos (CCU), of the Executive Secretary's (ES) partial dismissal (attached hereto) of CCU's election objections. The objections stemmed from a rival union decertification election held on April 4, 1995, in which a majority of votes were cast in favor of replacing the current certified bargaining representative, the CCU, with the United Farm Workers of America, AFL-CIO (UFW).¹ CCU filed three

¹The tally of ballots was as follows:

UFW	302
CCU	87
No Union	7
Void Ballots	7
Unresolved Challenged Ballots_____	_30
Total	433

numbered objections. The ES set for hearing only the portion of Objection No. 3 in which it is alleged that observers for the UFW took custody of the unsealed ballot box for approximately 15 minutes out of the view of CCU observers and Board agents.² The other allegations contained in the objections were dismissed for failure to present a prima facie case of conduct which would warrant overturning the election. In its request for review, CCU asserts that all of the allegations contained in the objections should have been set for hearing. As explained below, the assertion is based almost exclusively on the claim that the ES erred in concluding that the supporting declarations failed to establish that the conduct complained of was committed by agents of the UFW.³

DISCUSSION

Objection No. 1

In Objection No.1, it is alleged that the UFW, on the day of the election and during the week leading up to the election, distributed a sample ballot that had been altered so as

²This allegation has gone to hearing and a decision by Investigative Hearing Examiner (IHE) Thomas Sobel dismissing the allegation issued on June 12, 1995. As no exceptions to that decision were filed with the Board, the decision is now final.

³Misconduct by parties to an election is evaluated under a stricter standard than misconduct by nonparties. Misconduct by a party or its agents is examined to determine if it would have tended to interfere with employee free choice to such an extent that it affected the results of the election. (*Mann Packing Company, Inc.*(1990) 16 ALRB No. 15; *Bright's Nursery* (1984)10 ALRB No.18.) In contrast, an election will be overturned only where misconduct by third parties was so ggravated that it made it impossible for employees to express their free choice.(*Agri-Sun Nursery* (1987)13 ALRB No. 19.)

to give the impression that the ALRB endorsed the UFW and had given the UFW access to the Board's files. The ES observed that the declarations do not establish that the sample ballot was distributed other than on the day of the election. He then concluded that the ballot differed so dramatically from actual ballots that employees would not have been misled into thinking it was an official ballot or an ALRB endorsement of the UFW.⁴

CCU argues that the ES erred in his analysis of the sample ballot by not requiring the taking of testimony concerning the circumstances surrounding its distribution and effect on voters. This claim is based on the two-part analysis used by the National Labor Relations Board (NLRB) in such cases. (*SDC Investment, Inc.* (1985) 274 NLRB 557 [118 LRRM 1410].) First, the NLRB examines the ballot to see if it indicates on its face that it is of non-official origin. If not, then it is evaluated to see if it is official enough looking to give the impression that it emanated from the agency.

Here, the ES concluded that the sample ballot does not indicate on its face that it came from the UFW. The ES, in accordance with the rule in *SDC Investment, Inc.*, then examined the document in order to evaluate whether it would have given the reasonable voter the impression that it emanated from the ALRB. As the ES noted, the altered sample ballot varies dramatically from the official sample ballot and gives no indication that it

⁴Copies of the altered sample ballot and an official ballot are attached to the Executive Secretary's partial dismissal as Attachments 1 and 2.

is of official origin.⁵ Moreover, contrary to the claims of CCU, the fact that the words "official ballot" are crossed out further indicates that it is not of ALRB origin. Given the clear non-official character of the sample ballot, there was no need for an evidentiary hearing.⁶

Objections Nos. 2 and 3

In Objection No. 2, it is alleged that agents and representatives of the UFW threatened employees with discharge or other adverse changes in working conditions if they did not wear UFW buttons and vote for the UFW. It is also alleged that the UFW promised economic benefits within its control (medical and life insurance) if it won the election. In Objection No. 3, in addition to the allegation set for hearing, it is alleged that the UFW interfered with the conduct of the election and created fear and bias in the minds of the electorate by campaigning in the vicinity of the polls, using agents and/or officials of the union as election observers, and using agents to conduct surveillance and monitoring of employees in line to vote.

With regard to the dismissal of the allegations in Objections Nos. 2 and 3, CCU claims only that the ES erred by failing to analyze them under the standard for party misconduct.

⁵CCU's claim that the ballot indicates that the UFW, at minimum, had inside information concerning the order of the choices on the ballot is not persuasive, as the order of the choices in a decertification election is a matter of standard practice in Board elections.

⁶There is no indication in *SDC Investments, Inc.* that a hearing is necessary whenever the source of the sample ballot is not clearly identified on its face.

There appears to be no claim that the ES's analysis was mistaken under the third party standard. In addition, CCU does not appear to quarrel with the conclusion of the ES that the declarations submitted in support of the objections did not establish a prima facie case of agency under the third party standard. CCTJ instead argues that the ES should have conducted an investigation, considered materials submitted in support of two charges, Case Nos. 9S-CL-2-SAL and 91-CL-3-SAL, and/or asked for further information if he had any question as to the agency relationship between the UFW and the Comité Para Protección de Beneficios (CPB).⁷

Attached to the request for review are various documents, not previously provided to the ES, which are offered to indicate not only that the CPB was formally affiliated with the UFW, but also closely controlled by the UFW. However, the failure to timely provide this information to the ES along with the election objections precludes consideration of it at this time. As most strongly reflected in the provisions requiring elections to be held within seven days of the filing of the petition and election objections to be filed within five days of the election, the Agricultural Labor Relations Act places a "premium on speed and finality in deciding the results of elections." (*Charles Malovich* (1979) 5 ALRB No.33, p.6; *Ruline*

⁷Allegedly, most of the misconduct was committed by members of the CPB. Based on the content of the supporting declarations, the ES reasonably concluded that the CPB was merely a campaign committee which supported the UFW.

Nursery Co. v. ALRB (1985) 169 Cal.App.3d 257, 253 [216 Cal.Rptr. 162].)

Mirroring this policy, the Board's regulations do not allow for the tardy supplementation of objections petitions.

Regulation 20365, subdivision (b) states:

No extensions of time for filing objections shall be permitted, and no amendments to objections petitions shall be permitted for any reason after the five-day filing period has elapsed.

(Emphasis added.) Regulation 20365, subdivision (c) (2), requires a party objecting to an election on the grounds of pre-election misconduct to provide declarations setting forth facts which, if uncontroverted or unexplained, would provide a sufficient basis for overturning the election. Regulation 20365, subdivision (d) , states that the ES shall dismiss any objections which do not satisfy the requirements of, *inter alia*, subdivision (c) .

The above regulations make it clear that the objecting party has the burden of providing the ES with all information, within five days of the election, necessary to screen the objections, and that the ES has no duty to attempt to discover additional evidence that may bear on the issues raised. The only mention of investigation by the ES appears in Regulation 20365, subdivision (e), which provides that the ES may engage in a variety of information gathering techniques, with respect to any portion of the petition not dismissed pursuant to subdivision (d) . Thus, Regulation 20365, by its terms, squarely places on the objecting party the burden to establish a *prima facie* case based on the supporting materials filed with a timely objections petition. Where this threshold requirement has been met, the ES

may conduct some further inquiry prior to setting the matter for hearing. Where, as here, the threshold requirement has not been met, the BS is under no duty to engage in some further investigation or inquiry before deciding to dismiss the objections.

CCU also argues that the ES should have taken administrative notice of documents filed by CCU in other cases. Again, there is no indication in the regulations that the ES is under any duty to sua sponte search Board files for any cases involving the same parties that might contain relevant information. Rather, it is the duty of the objecting party to bring all relevant materials to the attention of the ES. In its objections petition, CCU did refer to Case No. 95-CL-2-SAL, and the ES reviewed the declarations filed in that case. That review, as well as our own, revealed no further indication of an agency relationship between CPB and the UFW. Only in its request for review did CCU mention an earlier case, 91-CL-8-SAL. Therefore, the ES was not timely alerted to the possible relevance of that file and had no duty to consider it.

Lastly, CCU claims that Regulation 20393, dealing with requests for review, allows for additional evidence to be presented to the Board. Subdivision (f) of Regulation 20393 provides that the record before the Board in reviewing dismissals of election objections shall consist of the election petition, election notice, tally of ballots, the objections petition and supporting documents, the ES order, and "the request for review

or statement of objections and any supporting documents or briefs." CCU asserts that the latter reference "supporting documents" includes additional evidence.

First, it must be stated that, if no amendments to the objections petition are allowed, it makes no sense to nevertheless allow additional evidence to be presented to the Board on review. Moreover, not only is the expansive interpretation of subdivision (f) of Regulation 20393 urged by CCU at odds with the language of Regulation 20365 discussed above, but it is belied by the wording of other portions of Regulation 20393. In subdivision (a), which governs requests for review generally, and subdivision (e), which limits the record before the Board on review of dismissals by regional directors of various representation petitions, there is an express provision for the inclusion of supporting "evidence" in the materials filed with the request for review. The use of different language with regard to the record before the Board in reviewing dismissals of election objections undoubtedly reflects a deliberate limitation on materials properly placed before the Board in such matters.

Lastly, CCU claims that, in *J.R. Norton. Co. v. ALR3* (1979) 26 Cal.3d 1, the California Supreme Court upheld the Board's regulations concerning the screening of election objections only because the objecting party could still present evidence to the Board on review in order to get a full hearing. That case says nothing of the sort. Instead, the court upheld the Board's regulations based on two principal findings. One, it

is proper for the Board to forego any evidentiary hearing unless the objecting party first presents, through declaratory support for its objections, a prima facie case. Two, delegation of the screening function to the ES was proper, since the party may obtain Board review of the ES determination. Nowhere in the opinion is there a passage which is susceptible to the interpretation that the Board, in conducting its review, must consider evidence in addition to that originally presented to the ES.

CERTIFICATION

As explained above, the Board affirms the partial dismissal of the election objections filed by Comite de Campesinos Unidos. In light of this dismissal, coupled with the final decision of Investigative Hearing Examiner Thomas Sobel dismissing the portion of Objection No. 3 set for hearing, the Board hereby orders that the results of the election conducted on April 4, 1995 be upheld and that the United Farm Workers of America, AFL-CIO be certified as the exclusive collective bargaining representative of all the agricultural employees of Monterey Mushrooms, Inc. at 777 Maher Court, Watsonville, California.

DATED:

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

MONTEREY MUSHROOMS,
INC. (UFW)

21 ALRS No. 2
Case No. 95-RC-2-SAL

Background

This matter came before the Board on a request for review, filed by the Comite de Campesinos Unidos (CCU) , of the Executive Secretary's (ES) partial dismissal of CCU's election objections. CCU filed three numbered election objections. The objections stem from a decertification election held on April 4, 1995, in which a majority of those voting selected the United Farm Workers of America, AFL-CIO (UFW) to replace the CCU as their exclusive collective bargaining representative. The ES set for hearing only the portion of Objection No. 3 in which it is alleged that observers for the UFW took custody of the unsealed ballot box for approximately 15 minutes out of the view of CCU observers and Board agents. The other allegations contained in the objections petition were dismissed by the ES for failure to provide a prima facie case of conduct which would warrant overturning the election. On June 12, 1995, a decision dismissing the allegation which was set for hearing was issued by an Investigative Hearing Examiner. As no exceptions to that decision were filed, it became final.

In its request for review, CCU argued that Objection No. 1, in which its is alleged that the UFW distributed prior to the election a "sample ballot" that had been marked in favor of the UFW and would give the impression that the ALRB had endorsed the UFW and/or had given the UFW access to the Board's files. With regard to Objections No. 2 and No. 3, CCU argued that the ES had mistakenly applied the more lenient third party standard in evaluating the alleged pre-election misconduct, based on his conclusion that the supporting declarations did not indicate the alleged perpetrators were agents of the UFW. While not directly quarreling with the analysis of the ES, CCU nonetheless asserts that the ES should have conducted an investigation, considered • material filed in other cases involving the same parties, and/or asked for further information if he had any question concerning the issue of agency. CCU attached to its request for review various documents, not previously provided to the ES, which are offered in support of its agency claim.

Board Decision

The Board affirmed the partial dismissal of CCU's election objections. The Board found that the ES properly dismissed Objection No. 1 because the "sample ballot" marked in favor of the UFW and allegedly distributed by the UFW prior to the election was so dramatically different from an actual ballot that employees would not have been misled into thinking that it was an official ballot or an endorsement by the ALRB.

The Board also affirmed the dismissal of Objections No. 2 and No. 3. The Board first concluded that an objecting party may not submit evidence to the Board that was not provided to the ES along with the objections petition. The Board observed that the ALRA places a "premium on speed and finality in deciding the results of elections," and that the Board's regulations reflect this policy by, inter alia, prohibiting amendments to objections petition and limiting the record placed before the Board. The Board further explained that its regulations squarely place on the objecting party the burden of establishing a prima facie case based on the supporting materials filed with the objections petition. Thus, the ES has no duty to conduct any further investigation or to sua sponte search Board files for any cases involving the same parties that might contain relevant information.

Based on the affirmance of the partial dismissal of CCU's election objections, coupled with the finality of the decision dismissing the allegation set for hearing, the Board upheld the results of the election and certified the UFW as the exclusive collective bargaining representative.

* * *

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

Estado de California
CONSENJO DE RELATIONS TRABAJAORES AGRICOLAS

In the Matter of:

MONTEREY MUSHROOMS, INC. ,
Employer,
and
UNITED FARM WORKERS OF AMERICA, AFL-CIO,
Petitioner,
and
COMITE DE CAMPESINCS ONIDCS ,
Certified Bargaining Representative.

CERTIFIED COPY
Case No. 95-207-257
Case Num.
STATE OF CALIFORNIA
County of Sacramento
J. Antonio Barbosa, Executive Secretary of the Agricultural Labor Relations Board of California, do hereby certify that this document is a full true and correct copy of the original on file in my office and that I have carefully compared the same with the original.
PRESENTED BY
EPRESENT
Wrote my hand and the seal of said Agricultural Labor Relations Board this
13th day of JULY 19 95
the supervision of J. Antonio Barbosa, Executive Secretary of the Agricultural Labor Relations Board

CERTIFICATION OF REPRESENTATIVE
CERTIFICACION DEL REPRESENTATIVE

An election having been conducted in the above matter under the supervision of Agricultural Labor Relation Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected: and no petition filed pursuant to Section 1156.3(c) remaining outstanding;

Habiendosa conducido ana e/eccion en al asunto arriba citado bajo la supervision del Consejo de Relaciones de Trabajadores Agrico/as de acuerdo con las Reg/as y Regulaciones del Consejo; y apareciendo par la Cuenta de Votos quo se ha saleccionado un representanta de negociadon colectiva; y qua no se ha registrado (arctivado) una peticion de acuerdo con la Saecfon 1156.3(c) qua queda pendieme;

Pursuant to the authority vested in the undersigned by the Agricultural Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for

Oe acuerda con la autoridad asxaolecida en ai suscrfbienta por al Consefo de Relacianes de Trabajadares Agrico/as. por LA PRESENTSSS CSRT1PICCA que la mayor/a de lasbalotas validashan sido depositadas en favor de

United Farm Workers of America, AFL-CIO

and that, pursuant to Section 1156 of the Agricultural Labor Relations Act, the said labor organization is the exclusive representative of all the employees in the unit sat forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

y qua, de acuerdo con la Saccion J155 dai Acto de Ralaciones de Trabajadoras Agrico/as. dicha organization de trabajadores as a/ representante exclusive de todos las traba/adares en la unidad aquifimolicada. y se ha determinado que es apropiada con tl fin da llevar a caoo negodacion co/ecn'va con respecto al salario, las haras da trabajo, y otras condiciones de emplea.

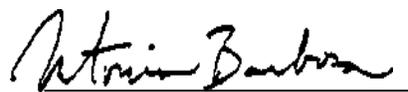
UNIT- All the agricultural employees of Monterey Mushrooms, Inc at
UNIDAD- 777 Maher Court, Watsonville, California

Signed at Sacramento, California
On the 13th day of July 19 95

On behalf of
AGRICULTURAL LABOR RELATIONS 30ARD

Firmado an. _____
En el _____ dia de _____ 19 _____

De parts del
CONSSJQ DE RELACIONES DE TRABAJADORES AGRICOL


J. ANTONIO BARBOSA
Executive Secretary, ALRB

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MONTEREY MUSHROOMS, INC.,)	
)	
Employer,)	Case No. 95-RC-2-SAL
)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA AFL-CLO, NOTICE OF OBJECTIVES SET)	
FOR HEARING; NOTICE OF)	
Petitioner,)	PARTIAL DISMISSAL OF
)	ELECTION OBJECTIONS; AND
and)	NOTICE OF OPPORTUNITY TO
)	FILE REQUEST FOR REVIEW
COMITE DE CAMPESINOS UNIDOS,)	
)	
Certified)	
Bargaining)	
Representative.)	
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PLEASE TAKE NOTICE that pursuant to Labor Code section 1156.3 (c) and (d), an investigative hearing on the following objection filed by the Certified Bargaining Representative in the above-captioned matter has been scheduled to begin at 10 a.m. on May 30, 1995, and consecutive days thereafter until concluded, at the El Dorado Motel, 1351 North Main Street, Salinas, California. The investigative hearing shall be conducted in accordance with the provisions of Title 8, California Code of Regulations, section 20370. The Investigative Hearing Examiner shall take evidence on the following issue raised by the allegations in the objections petition:

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Objection No. 3(c):

Whether the Board agents left the ballot box unattended, and, if so, whether there was any impairment of the integrity of the ballot box, or any substantial possibility for the occurrence of such impairment. (California Coastal farms (1976) 2 ALRB No. 26.)¹

PLEASE TAKE FURTHER NOTICE that, pursuant to Labor Code sec. 1156.3 (c), and Title 8, California Code of Regulations section 20365, the remaining objections filed by the Comite de Campesinos Unidos (CCU) have failed to establish a prima facie case of substantial and material factual issues to indicate that the election held on April 4, 1995 was not conducted properly, or that there was preelection misconduct by one of the parties which affected the results of the election. (*Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861 [226 Cal.Rptr.119]; *J.R. Norton v. Agricultural Labor Relations Bd.*(1979) 26 Cal.3d 1 [Cal.Rptr. 710].) Accordingly, the remaining objections are hereby DISMISSED for the reasons discussed below.

OBJECTION NO. 1

Objection No.1 alleges that Petitioner United Farm workers of America, AFL-CIO (UFW), by its agents and representatives, during the week prior to the election, and on the day of the election, distributed and posted a sample ballot on the Employer's premises that had been altered so as

¹ The request of the Certified Bargaining Representative that the Executive Secretary consider the supplemental declaration of Jose Urzua is granted.

1 to create the impression that the Agricultural Labor Relations
2 Board (Board) had endorsed the UFW, and that the Board agents
3 had provided the UFW with unilateral access to the Board's
4 files.

5 In analyzing the use of sample ballots as election
6 propaganda, the National Labor Relations Board has engaged in
7 a two-stage analysis. In the first stage, the NLRB examines
8 the sample ballot to determine if the document on its face
9 I informs voters that it is party propaganda. If the document
10 does not inform voters of its party origin, the NLRB then 11,
11 evaluates whether the ballot was so official looking as to
12 give voters the impression that it issued from the agency
13 conducting the election. (*Worth's Stores Corp.* (1986) 281
14 NLRB 1191, 1192 [123 LRRM 1215]; *SDC Investment, Inc.* (1985)
15 274 NLRB 557 [118 LRRM 1410].)

16 No evidence that the sample ballot was distributed a
17 week before the election was presented. The declaration of
18 Hilda A. Ortega alleges that on the day of the election, at
19 6:15 a.m., Santiago Gutierrez, a member of the Comite de
20 Proteccion de Beneficios (CPB), gave Rosario Mendoza sample
21 ballots. Both Gutierrez and Mendoza are employed by the
22 Employer. Rosario Mendoza allegedly posted copies on a
23 bulletin board in one department and in the lunchroom, and
24 showed the ballot to fellow workers.² The declaratory
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26 ² The statement of Jose A. Colorado, dated April 10,
27 1995, was not considered by the Executive Secretary. The statement
was not signed under penalty of perjury and did

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2 support does not specify how many employees may have been
3 shown or would have seen the ballot.

4 The ballot (See Attachment 1)³ bears no agency name " or
5 insignia. It does not purport to be an official ballot; it
6 is not an exact copy or reproduction of the official ALRB
7 sample ballot (See Attachment 2); it does not make any
8 reference to endorsement of the UFW by the ALRB; and, it does
9 not include any mention of the ALRB or the State of 9i
10 California. The ballot appears to be nothing more than a 10;
11 propaganda piece which endorsed the UFW as a choice and
12 indicated that the voters should place an "X" by the black
13 eagle, the UFW's symbol.

14 A comparison between the UFW ballot and the sample
15 official ballot reveals so many differences that it is
16 unreasonable to assume that voters would mistake it for an
17 official ballot. Only the names of the unions and their
18 symbols bear any close resemblance to those appearing on the
19 official ballot. The upper part of the ballot contains the
20 words "Official Ballot," which has been crossed out. The

21 _____
22 not state with specificity the details concerning the
23 distribution and posting of the sample ballot as required by
24 Board Regulations section 20365(c)(2) (b) and (c)(4). Even
25 if Colorado's declaration had been properly sworn, the
26 result would be the same, because the statement merely
27 asserts that the altered sample ballot was distributed by
the UFW, at places and times not specified.

28 ³The declaration of Jose Colorado is not sufficient to
29 authenticate the UFW ballot. However, the declaration of
30 Hilda A. Ortega describes the UFW ballot with sufficient
31 detail to allow its consideration.

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2 border around the CCU emblem is crudely and unevenly outlined
3 with straight lines, as compared to the rounded graphics on
4 the official ballot. The lower part of Attachment 1 is not
5 only off center, but the reproductions of the squares to be
6 marked by the voters are crudely made with a felt pen and
7 unequally sized and spaced. The ballot also does not contain
8 the standard voting instructions in English and Spanish found
9 on the Board's official ballots. The NLRB has held much less
10 crude reproductions to give notice to voters that the sample
11 ballot was not from the agency. (*Worth's Stores, supra*, at
12 1193 (off-centered partial reproduction.)

13
14 The UFW ballot, therefore, while it did not show on
15 its face that it was issued by or on behalf of one of the
16 parties,⁴ had such an irregular appearance that it gave
17 notice to the voters that it was not an official ballot. It
18 certainly was not so similar in appearance to be called a
19 forgery of a Board document. It therefore must be treated as
20 what it was, campaign propaganda recognizable as such by the
21 voters. Under *Midland National Life Insurance Co.* (1982) 263
22 NLRB 127 [110 LRRM 1489], election propaganda will not be a
23 basis for setting aside an election, unless it is a
24 sufficiently good forgery as to prevent the voters from
25 recognizing its real character.

26 ⁴ There is no evidence that Santiago Gutierrez and Rosario
27 Mendoza are agents of the UFW and that their conduct is
attributable to the Petitioner. See discussion in Objection
No. 2.

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union unless special circumstances, discussed more fully below, not shown here, are present. They therefore cannot provide the basis for setting aside an election unless they created an atmosphere of fear and reprisal under the third party standard as dismissed below. In *San Diego Nursery Co., Inc.* (1979) 5 ALRB No. 43, at p. 3-7, the Board adopted the I rule followed by the NLRB that employee union activists, even if they are members of a pro-union employee committee, will not be found to be union agents in the absence of some manifestation by the union to other employees that the union had authorized the committee to act as agents.

A declarant stated that CPB members and followers told employees that they would have to wear UFW buttons "or else." The declarant does not identify the individuals who made the threat, or specify when the threats were made or how many workers may have been affected. The declaration of Jose Urzua states that several workers told other workers in line, their number not specified, that "soon we'll get you out of here - let's see if your daddy Pablo can put you back in again." Hilda Ortega states that Jesus Ruiz, an organizer and sympathizer, told employees that they would have to wear UFW buttons whether they wanted to or not. Ortega does not specify when this conduct occurred, other than it took place in the morning, or how many workers may have been affected. One declaration submitted in the unfair labor practice cases alleges that at an unspecified time, at some

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2 time between early January 1995 and three weeks before the
3 election, a CPB member told employees that they would be discharged
4 if they did not support the UFW by signing
5 authorization cards .⁵

6 Finally, Jose Urzua states that O Chae, an employee
7 who supported the UFW, came to Urzua 's work station the day before
8 the election. Chae told Urzua that he had been told by UFW
9 organizers that if Urzua did not vote for the UFW, Urzua "would
10 have to face the consequences." The organizers are not identified
11 as UFW agents and, in the same sentence, Urzua identifies Chae as
12 "a worker and organizer for the UFW". Urzua 's declaration says
13 nothing more about any further incident involving O Chae. Urzua 's
14 declaration fails to state a prima facie ground for setting aside
15 the election. The declaratory support does not show that Chae is a
16 union agent, nor were the other "organizers" he referred to,
17 placing this conduct under the third party standard. The strongest
18 characterization that can be given to Chae's statements would be
19 that the UFW would engage in unspecified reprisals. Such a vague
20 threat falls far short of creating an atmosphere of fear
21 and reprisal making a fair election impossible.

22 The only statements in Urzua 's declaration that
23

24 ⁵ I have considered the unfair labor practice declarations
25 submitted by CCU. Except for the incident referred to above, I find
26 that they report incidents not alleged in or relevant to the CCU's
27 objection petition as they concern attempts to revoke UFW
authorization cards the declarants had signed.

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2 could arguably satisfy the third party standard did not take
3 place until the day after the election. Urzua states that
4 Chae returned again the day after the election and tried to
5 hit Urzua. He told Urzua that Urzua knew how unions worked
6 and that therefore Urzua knew that they were going to kill
7 him, and that they had intended to hit Urzua, and two other
8 prominent CCU supporters after the vote count, but had not
9 done so since the UFW won the election. This conduct could
10 not have created any atmosphere of fear and reprisal
11 precluding free choice by the voters since the election
12 concluded prior to the alleged threat.

13 The threats of discharge are attributed not to UFW
14 representatives, but to employees of the Employer identified
15 as CFB members, as to whom no agency has been shown. While
16 an election will be set aside based on the statements of the
17 parties' agents if such statements interfere with the voter's
18 free and uncoerced choice, statements by third parties,
19 including rank and file employees, will not be the basis for
20 setting aside an election unless the statements created such
21 an atmosphere of fear and reprisal that free choice is
22 impossible. (*Pleasant Valley Vegetable Co-op.* (1982) 8 ALRB No.
23 82; *Triple E Produce Corporation* (1991) 17 ALRB No. 15).

24 Statements by employees on such campaign committees
25 to fellow employees who do not support the union, that it will
26 procure the discharge of the non-supporting employees discharge
27 if it wins, by themselves, do not create the

1
2 atmosphere of fear and reprisal warranting setting aside an
3 election. (*Pacific Grain Products, Inc.* (1992) 309 NLRB 690, 691 [142
4 LRRM 1132].) Absent some circumstance making the I threats credible,
5 even fairly ominous -sounding threats by mere fellow employees who
6 have not been shown to be union agents, do not warrant setting aside
an election.

7 In *Q.B. Rebuilders, Inc.* (1993) 312 NLRB 1141, 1142 [144
8 LRRM 1209], the NLRB recently stated that

9 [T]he objecting party must establish that the third-party
10 conduct during the election campaign was so aggravated as to
11 create a general atmosphere of fear and reprisal rendering a
12 free election impossible... in determining the seriousness of
13 a third-party threat, the Board evaluates not only the nature
14 of the threat itself, but also whether the threat also
15 encompassed the entire bargaining unit; whether reports of the
16 threat were disseminated widely within the unit; whether the
17 person making the threat was capable of carrying it out; and
18 whether it is likely that the employees acted in fear of
19 [that person's] capability of carrying out the threat; and
20 whether the threat was "rejuvenated" at or near the time of
21 the election. (*Q.B.* at pp. 1141-1142.)

22 In *Q.B.*, the NLRB set the election aside because unionsupporters'
23 earlier threats to have anti-union employees deported were
24 "rejuvenated" by the Immigration and Naturalization Service's seizing
25 such an individual from the plant the day before the election.

26 The NLRB's treatment of the threat in *Q.B.* shows that
27 substantially all of these elements must be present. No event, like the
Immigration and Naturalization Service's removal of an employee from
the plant on the day of the election in *Q.B.*, validated or rejuvenated
the earlier union

1 supporter's threats to inform on non-union supporters.

2 Most of the threats allegedly made here are vague
3 and lack the requisite specificity to properly evaluate their
4 impact. In a number of cases, the person or persons who made
5 the threats are not identified. There is also no showing that
6 such person or persons had the ability to carry out the threats,
7 or to prevail on the Employer to do so. The threats did not
8 encompass the whole unit, but apparently were addressed to a
9 relatively small number of CCU supporters. There is also no
10 evidence of widespread dissemination in this large unit.
11 Finally, there is an absence of confirmation or rejuvenation.
12 Therefore, there is no prima facie showing that the alleged
13 threats, even if established, created such an atmosphere of fear
14 and reprisal that free choice is impossible.

15 UFW Bumper Stickers

16 The objection further alleges that employees were
17 intimidated by the placing of UFW bumper stickers on non-UFW
18 supporters' cars by unknown persons. Since the placement of
19 unwanted bumper stickers was not shown to be attributable to
20 UFW supporters, much less agents, and cannot reasonably be said
21 to have created the "atmosphere of fear and reprisal" for "third
22 party" conduct to cause an election to be set aside, the
23 objection is without merit and is dismissed.

24 Promise of Benefits

25 Finally, the objection alleges that the UFW, through
26
27

1 unspecified persons, promised employees that if the UFW won,
2 it would extend a health insurance plan to the employees that
3 would provide the favorable terms for
4 co-payments in its unilaterally administered medical insurance
5 plan. The objection is dismissed as CCU failed to provide any
6 declarations in support of its objection. Moreover, it is well
7 established that a union's promise to obtain better medical
8 coverage from the Employer constitutes permissible campaign
9 propaganda. *Midland National Life, supra.*

10
11 **OBJECTION NO. 3**

12 Objection No. 3 alleges that the UFW interfered
13 with the conduct of the election and created fear and "bias"
14 in the minds electorate by: (a) Campaigning in the immediate
15 vicinity of the polls during the election; (b) Using agents
16 of the union as election observers; (c) Taking custody of the
17 unsealed ballot box from an ALRB agent for 15 minutes and
18 transporting the ballot box 100 yards out of view of the
19 CCU's observers and the Board agents; and (d) Using "agents
20 and representatives, who had been denied permission to act as
21 observers, to conduct surveillance and monitoring of
22 employees at the polling places, and taking notes of
23 employees who were in line to vote.

24 Part (a) of Objection No. 3, which alleges that
25 employees supporting the UFW engaged in campaigning in the
26 immediate vicinity of the polling areas during the election
27 process, is dismissed for the following reasons.

1 All of these incidents are attributed to Monterey
2 Mushroom employees who supported the UFW. No evidence to
3 I establish their agency on behalf of the UFW has been presented.

4 The first incident of alleged improper campaigning
5 occurred during the first session, on level 500, from 6 a.m.
6 to 8 a.m. The declaration of Ernesto Leon states that
7 Roberto Zuniga, who had arrived at the election site before
8 the polls opened, to be available as an alternate election
9 observer for the UFW, failed to leave after voting, as
10 requested by the Board agent. Leon states that Zuniga
11 returned to the workers and kept making comments. Leon
12 states that he heard that they" (persons not specified) were
13 advising the workers to vote for the UFW. The location of
14 the workers is not specified, and the identity of the persons
15 who heard Zuniga make the comments is not disclosed. Urzua
16 states that Zuniga left as directed when he was not selected
17 as an observer, then returned to vote. Urzua says Zuniga
18 left for a short time, then returned, and was seen close to
19 the voting area. At 2:30 p.m. he was a few meters from the
20 voting place and was telling voters how to mark their ballots
21 as they approached to vote.

22 Leon states that at the next level, CPB member
23 Salvador Pena, a UFW observer, was allowed to leave briefly,
24 apparently after the few voters on that level had voted.
25 Leon states he observed Pena talking with six persons Leon
26 calls.
27

1 UFW organizers. The six are not further identified except
2 that Leon concludes that they were not employees of Monterey
3 Mushrooms because they had entered through another farm behind
4 the Employer's facility. Leon did not overhear the
5 conversation. After returning, Pena said he had to make a
6 telephone call, and was allowed to do so. Leon asserts the CCU
7 observers were not allowed to make telephone calls or have
8 contact with the workers. Leon makes no claim that the CCU
9 observers requested this same privileges and were denied the
10 Board agents.

11
12 The Board has held that objection declarations do
13 not present a prima objection for hearing if they show only a
14 few conversations during the voting time of indefinite
15 duration. (*Ace Tomato Company, Inc.* (1986) 12 ALRB No.20.) No
16 prima facie showing of improper campaigning that would come
17 anywhere near the standard for setting aside an election has
18 been made here. If engaged in by agents of a party, lengthy
19 conversations in or near the polling area with voters waiting to
20 vote would be grounds for setting an election aside. (*Arco Seed*
21 *Company* (1988) 14 ALRB No. 6.)

22 Where the campaigning among voters waiting in line
23 to vote is attributed to employee supporters, even if they are
24 members of a committee of employee union supporters ,as it is
25 here, the election will be set aside only if it disrupts voting
26 procedure or destroys the atmosphere required for a free choice
27 in the election. (*Rheem Manufacturing company*

1
2 (1992) 309 NLRB 459, 462-463 [141 LRRM 1257] (remarks by
3 individual employees; cf. *Pepsi-Cola Bottling Co.*(1988) 291
4 NLRB 578 [129 LRRM 1236] (union supporters comprising one fifth
5 of employees in unit formed line around other employees on way
6 to vote, jeering at and taunting them.) Here, it is not clear
7 that Leon and Urzua's description of Zuniga's comments were
8 based on personal knowledge or, if so, whether the comments
9 occurred in the quarantine area during the balloting. Even if
10 they occurred in the quarantine area, there is no showing that
11 such conduct disrupted the voting procedures or destroyed the
12 atmosphere required for a free choice in the election.
13 Accordingly, the objection is dismissed as without merit.

14 Part (b) of Objection No.3, which alleged that
15 the UFW used its agents or officials as election observers does
16 not allege conduct that would be grounds for setting aside the
17 election. The Board's Regulations require only that the
18 observers be non-supervisory employees of the Employer or
19 persons agreed to by all parties in writing (Cal. Code of
20 Regs, tit. 8, sec. 20350(b)). CCU offered no evidence that the
21 UFW's observers were not employees of the Employer, and both
22 UFW observers provided declarations stating that they were
23 employees of Monterey Mushrooms.

24 Part(d) of Objection No. 3 alleges that
25 "agents and representatives" of the UFW engaged in conduct
26 creating the impression that they were engaged in surveillance
of voters as

1
2 they were waiting to vote. As discussed above, the only
3 persons to whom such conduct was attributed were employees of
4 the Employer, and no evidence has been presented to establish
5 their agency in the face of the well established doctrine that
6 such employees are not agents of the party they support.

7 Ernesto Leon states that in the first session, another UFW
8 supporter, forklift driver Gerardo Leon, drove his forklift by
9 the polls 10 times carrying no pay load. Ernesto Leon states
10 that he inferred Gerardo Leon was taking notes on who was in
11 line to vote. The observation is based not on Ernesto having
12 observed any notetaking or slowing down but on the fact that
13 Leon's forklift was empty when it should have been carrying
14 garbage. Ernesto Leon does not claim that Gerardo engaged in
15 any conduct that would have been noticeable to the voters,
16 like stopping or slowing down.

17 Ernesto Leon also states in the next balloting
18 session, from 8:30 a.m. to 9:15 a.m., on level 800, that CPB
19 member Santiago Gutierrez, talked to employees while standing
20 in line to vote. After voting, Gutierrez sat in his pickup
21 truck parked 8 to 10 feet from the "voting" taking notes on a
22 notepad for 20 minutes. The declaration does not state whether
23 any voters were still in line at this time. In the next voting
24 area, set up for only a few voters, UFW alternate observer
25 Rodolfo Dominguez chatted with other voters both before and
26 after voting. Leon's declaration contains no representation
27 about the subject discussed.

1
2 The surveillance and impression of surveillance as to
3 forklift truck driver Leon is without merit and is dismissed, since
4 nothing in the evidence established that Leon engaged in any
5 surveillance, or that any voters would have inferred from his forklift
6 being unladen that he was engaged in surveillance. The incident at the
7 9:45 session in which Santiago Gutierrez sat in his pickup and wrote on
8 a pad for 20 minutes fails to establish that any voters were in line at
9 this time, or for reasons to believe that had any voters been present,
10 that they would have concluded that Gutierrez was engaging in
11 surveillance of them or engaged in any conduct that would cause a
12 reasonable person to believe he was taking down names of individuals
13 rather than doing a task that could involve writing.

14 Therefore, the declaratory support submitted fails to
15 establish a prima facie basis of rival union surveillance sufficient
16 to set aside the election.⁶

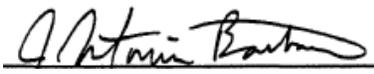
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18 PLEASE TAKE FURTHER NOTICE that, pursuant to Title 8,
19 California Code of Regulations, section 20393 (a), the Certified
20 Bargaining Representative may file a request for review of the
21 Executive Secretary's Dismissal of its

22 ⁶ The allegations in the Statement of Facts submitted with the
23 objection petition referred to an incident where UFW supporters
24 shouted down CCU's president a week before the election, while he was
25 addressing employees, and brushed his face with a UFW flag, and that
26 observers were not required to present Employer-issued identification
27 documents prior to voting. These matters were not alleged
specifically in Objections Petition, nor supported by any
declaration. Therefore, they are not addressed in this order.

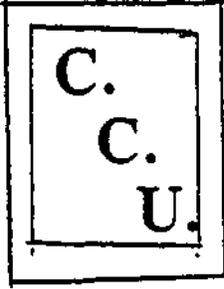
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Objections Petition with the Board by May 22, 1995. The five-day filing period set forth therein is calculated in accordance with the provisions of Title 8, California Code of regulations, sections 20170, which excludes intervening Saturday, Sunday and holiday

DATED: May 15,1995



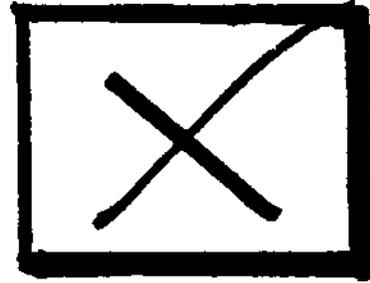
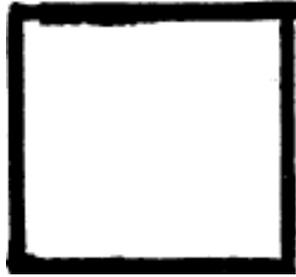
J. ANTONTO BARBOSA
Executive Secretary,



NO UNION



U.F.W.



ATTACHMENT 1

STATE OF CALIFORNIA

ESTADO DE CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

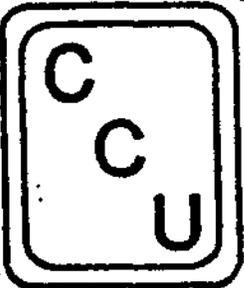
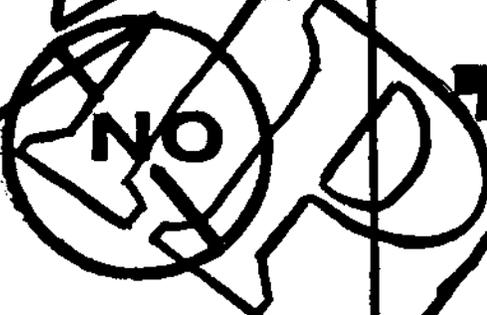
CONSEJO DE RELACIONES DEL TRABAJO AGRICOLA

OFFICIAL SECRET BALLOT

OFICIAL BOLETA SECRETA

Mark an X in the square of your choice.
Ponga una X en el cuadro de su eleccion.

For Employees of: MONTGOMERY MUSHROOMS, INC
Para Empleados de:

 <input type="checkbox"/> COMITETS DE CAMPESINOS UNIDOS COMITETS DE CAMPESINOS UNIDOS	 <input type="checkbox"/> NO UNION NO UNION	 <input type="checkbox"/> UNION DE CAMPESINOS DE AMERICA APLICIO UNITED OF FARM WORKERS AMERICA C.A.F.L.-C.I.O.
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DO NOT SIGN THIS BALLOT. Fold and drop in ballot box, If you spoil this ballot, return it to the Board Agent for a new one.

NO FIRMS BSTA BOLBTA. Doblela y pongala en la urna. Si echa a perder su boleta, regresela al Agente del Consejo y obtenga una nueva.