Watsonville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

COASTAL BERRY COMPANY, LLC, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner, and COASTAL BERRY OF CALIFORNIA FARMWORKERS COMMITTEE, Intervenor.	Case No. 99-RC-4-SAL 26 ALRB No. I (March 20, 2000)

DECISION AFFIRMING, IN PART, AND OVERRULING, IN PART, PARTIAL DISMISSAL OF ELECTION OBJECTIONS

On June 3 and June 4, 1999,[1] an election was held among the agricultural employees of Coastal Berry Company, LLC (Coastal, Employer, or Company). The initial tally of ballots showed 688 votes for Coastal Berry of California Farmworkers Committee (Committee II or Comite)[2], 598 votes

[1] All dates herein refer to 1999 unless otherwise specified.
[2] Intervenor in the 1999 election, Coastal Berry of California Farmworkers Committee, is referred to herein as Committee II or Comite. An earlier group which was

for United Farm Workers of America, AFL-CIO (UFW or Union), and 92 unresolved challenged ballots. On June 25, the Regional Director of the Salinas Regional Office of the Agricultural Labor Relations Board (ALRB or Board) issued a Report on Challenged Ballots in which he recommended that 56 of the challenges be overruled and the ballots counted, that 17 of the challenges be sustained, and that 19 remain unresolved because they would have required further investigation. On August 12, the Board issued a decision affirming the Regional Director's report and directing him to open and count the ballots for which the challenges had been overruled. (Coastal Berry Company, LLC (1999) 25 ALRB No. 3.) On August 17, the Regional Director issued a revised tally of ballots showing 616 votes for the UFW, 725 votes for the Comite, and 19 unresolved challenged ballots.

The UFW timely filed objections to the conduct of the election and to alleged conduct affecting the results of the election. On October 14, the Board's Executive Secretary issued a Notice setting some of the objections for hearing and dismissing others. This matter is now before the Board on the UFW's request for review of the Executive Secretary's dismissal .of certain objections.

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involved in the 1998 election, Coastal Berry Farmworkers Committee, is referred to as Committee I.

Objection No. 22: Alleged failure to seek aid for injured UFW supporter

This objection alleged that the failure of supervisory employees to seek aid for a UFW supporter who was injured because he refused to join in a work stoppage would demonstrate that the assailants were acting on behalf of the Employer. The objection was dismissed on grounds that the non-action by Employer representatives, as well as their statements that the complainants might either "tell the police" or "file a complaint," did not rise to the level of restraint or coercion that would tend to interfere with employee free choice and warrant the setting aside of the election.

In its request for review, the UFW alleges that the supervisory employees' verbal responses and failure to act would, under the totality of circumstances, lead employees reasonably to believe that the Employer was sympathetic to those opposed to the UFW and would tend to interfere with employee free choice. However, the alleged statements and failure to act do not objectively demonstrate participation in or condonation of violence. Thus, the UFW has not shown that the supervisory employees' conduct, considered by itself or within the totality of circumstances, contributed to an atmosphere of fear and

coercion sufficient to render employee free choice impossible. The dismissal of Objection No. 22 is affirmed. Objection No. 23: Alleged condonation of violence by a supervisory employee

This objection alleged that a supervisory employee appeared to condone violence that took place by suggesting that those who refused to participate in the work stoppage had provoked the attacks against them. The objection was dismissed on grounds that the expression of an opinion, in the absence of a threat or coercion, does not constitute interference sufficient to warrant setting aside an election.

The request for review argues that the supervisor's reaction to violence against UFW supporters would reasonably lead employees to believe that the Employer was sympathetic to those opposed to the UFW and would interfere with employee free choice. The UFW has failed to show that the supervisor's comment constituted a threat or a promise that would reasonably tend to interfere with free choice. The statement does not indicate the speaker's approval of the alleged violence, but merely constitutes an expression of opinion as to its cause. Under an objective standard, the comment cannot be seen as

coercive, and the dismissal of the objection is therefore affirmed.

Objections Nos. 28, 30, 31, 32, 34, 35, 36, 43, 44, & 45; Alleged solicitation by Coastal Berry Farmworkers Committee (Committee I) supporters/ prior to the 1998 election, on Employer's time and property with permission or support of lead employees

These objections alleged that, prior to the 1998 election, Coastal Berry Farmworkers Committee (Committee I) supporters were able freely to solicit employee support while on the Employer's time and property with the permission or support of lead employees so that it would appear to employees that the anti-UFW effort had the approval of the Employer, and that such a perception would tend to interfere with employee free choice. The objections were dismissed on grounds that such conduct is not relevant in the context of an election where the only choices on the ballot were the Committee I and "No Union," because Employer neutrality is not an issue unless the employer demonstrates favoritism towards one of two or more rival unions.

In its request for review, the UFW argues that even though it was not on the 1998 ballot, the UFW and the Committee I were rival unions because the UFW had begun an

organizing drive at the Employer's premises at the time of the Employer's alleged misconduct. The UFW has cited cases holding that employers must not demonstrate favoritism towards one of two or more rival unions on the ballot. However, the UFW has cited no cases holding that prohibitions against Employer favoritism are triggered when there is only one union on the ballot. Therefore, the dismissal of these objections is affirmed.

Objection No. 33: Alleged coercion and favoritism by Employer's supervisor

This objection alleged that prior to the 1998 election, a supervisor announced the election and urged employees not to cause problems in order that the UFW be deprived of grounds for objecting to the election. The supervisor also stated that the Union should not find out that a petition had been filed because they might use "dirty tactics." The supervisor also explained that the Union had the right to come in to talk with workers and that they should not use violence towards access takers. The objection was dismissed on grounds that the statement concerning potential access by union organizers was a factual one, that urging employees to refrain from violence towards access takers was a reasonable precaution, and that

there was nothing inherently threatening or coercive in the description of "dirty tactics."

The request for review states that the Board must examine the statements within the totality of circumstances, and argues that the "dirty tactics" statement would tend to coerce workers. Further, the UFW argues, the suggestion that the UFW should not find out about the Committee I petition is a clear indication to workers that the Employer favored the Committee I over the UFW. However, the UFW has not shown that any of the supervisor's alleged statements would reasonably tend to coerce employees, or that the Employer's alleged favoritism of the Committee I over a union not on the ballot would interfere with free choice. The dismissal of Objection No. 33 is therefore affirmed.

Objections Nos. 46, 47, 48, 49, 50, 51, 52 & 53; Alleged statements of supervisors that they would no longer remain neutral

These objections alleged that on July 25, 1998, two days after the first election, several foremen announced to their crews that they were no longer neutral; two of the foremen donned "no UFW" hats. One foreman allegedly told a crew that some crew members would serve as Committee I representatives and were already negotiating

with the Employer. The objections were dismissed on grounds that since all of the conduct described occurred two days after the election, it could not have been a factor in how employees might have voted in that election, and that it was not the type of conduct likely to have a continuing impact and carry over to the elections held the following season.

The UFW argues in its request for review that since the conduct occurred less than one year before workers were again asked to vote, it is unlikely that workers would forget what had happened, especially because it had been the first ALRB election at Coastal Berry. The UFW alleges that the anti-unionism of the foremen would indicate to the workers that the Employer supported the Committee I and that workers should vote in line with their foreperson's position.

Although the statements of the foremen indicate their feelings about the UFW two days after the first election, the post-election statements cannot have had any influence on the first election, and did not constitute coercive statements that would tend to affect free choice in the second election held the following season. Nor can the statements reasonably be seen as expressions of favoritism of one rival union over another, since at the

time there was no pending election with two unions on the ballot. Therefore, the dismissal of Objections Nos. 46, 47, 48, 49, 50, 51, 52, and 53 is affirmed.

Objection No. 54: Alleged financial support of the Comite and campaigning by supervisor for Comite during working hours

This objection alleged that sometime in May 1999, the Employer supported and financed the Comite by permitting a mechanic to campaign against the UFW and in favor of the Comite during work time. The objection was dismissed for lack of declaratory support.

In its request for review, the UFW alleges that their original objections contained a typographical error whereby the declarations supporting this objection were misnumbered. The UFW states that the correct declarations supporting this objection are Nos. 158, 174, 177, and 180.

Declaration No. 177 states that the declarant, a strawberry picker for the Employer, saw mechanic supervisor Leandro Briano giving orders to several other mechanics and states that Briano told the declarant he was "Boss of the Mechanics." Declaration No. 158 states that on May 23 the declarant, a UFW organizer, saw supervisor mechanic Briano showing workers a flyer during the noon access time; one of the workers said the flyer was a copy of a check from which

union dues had been deducted. Declaration No. 174 states that on May 11 the declarant, a UFW organizer, was talking to employees during an access period when the same supervisor mechanic interrupted them by saying in a loud, mocking voice, "Do not believe it. It is not true," and by turning up the volume of a radio. Declaration No. 180 states that in the first week of May the declarant, a strawberry worker for the Employer, saw mechanic supervisor Briano approach a fellow worker during work time and tell him that "the Union" was worthless and he should not get involved with it.

Even if the Board were to find that it should consider the statements contained in these declarations which were not cited originally in support of Objection No. 54, the declarations do not support the objection's claims. Most of the described alleged conduct occurred not during work time but during union access time. The work-time conversation between the supervisor mechanic and one worker described in Declaration No. 180 is de minimis and cannot reasonably be seen as Employer support and financing of a campaign against the UFW during work time. Therefore, the dismissal of Objection No. 54 is affirmed.

Objection No. 56: Alleged Employer assistance and support of Comite by permitting circulation of petition during working hours

This objection alleged that on or about May 21, the Employer, through an agent foreman, permitted a Comite representative to circulate a petition during working hours. The objection was dismissed on grounds that the declarant stated that his signature was solicited just prior to the beginning of work, and it was not clear whether solicitations continued while employees actually were working. In its request for review, the UFW argues that the declaration clearly states that signatures were still being gathered during working hours, and that the foreman's permission for the campaigning to continue after work began is significant.

There is no indication that the signature-gathering continued for a significant amount of time after work commenced, or that the foreman was even aware of such conduct. In the absence of such evidence, the alleged unlawful solicitation cannot reasonably be seen as other than a technical violation which was not likely to deprive employees of free choice. Therefore, the dismissal of Objection No. 56 is affirmed.

Objections Nos. 57 & 58: Employer's alleged unlawful permission to Comite representatives to take access during work hours without complying with identification requirements

These objections allege that on or about May 24, the Employer through its foreman permitted Comite organizers to take access and engage in electioneering during working hours, and that the organizers failed to comply with the identification requirements of the Board's regulations. The objections were dismissed on the grounds that while there might have been a technical violation of the time provisions of the Board's access rule, there was no showing that the access takers were violent or disruptive or that they hindered employees in the performance of their work. Thus, the conduct did not tend to interfere with or coerce employees in their ballot choice. Further, the dismissal noted that the rule requiring the wearing of identification applies only to nonemployee organizers, and the declarations indicated that the access takers were employees who were not subject to the requirement.

In its request for review, the UFW argues that having Comite organizers hand out literature during work time in front of the foreman, while UFW organizers had to

wait for lunch break, would coerce employees by demonstrating that the Employer favored the Comite over the UFW. Further, the UFW argues, the described conduct was part of a pattern of excess access granted to the Comite, as described in Objections Nos. 59, 62, and 227-234.

The request for review fails to demonstrate that there was anything other than a technical violation of the access rule, or any conduct that would tend to interfere with or coerce employees in their ballot choice. The UFW s attempted reliance on a pattern of excess access as alleged in Objections Nos. 59, 62, and 227-234 is to no avail, since those objections were also dismissed for failure to show any more than de minimis violations of access rules. Therefore, the dismissal of Objections Nos. 57 & 58 is affirmed.

Objection No. 59: Alleged financing, support and promotion of Comite by Employer by permitting Committee I vice-president to take access during work time

This objection alleges that the Employer demonstrated support for those opposed to the UFW by allowing an officer of Committee I, no longer employed by Coastal Berry at the time, to take access during work time on or about May 25. The objection was dismissed on grounds that the mere presence of access takers on company

property, without more, does not establish conduct of such intimidating character as to affect the outcome of the election.

In its request for review, the UFW argues that the objection cannot be viewed in a vacuum, and that the Board must consider the objections as a whole (and, in particular, Objections Nos. 57 & 58) to determine whether the conduct significantly impeded voter free choice. However, the objection does not allege conduct that would tend to coerce employees or affect their free choice. Other dismissed objections do not support the UFW's contentions that the alleged conduct tended to impede free choice. Therefore, the dismissal of Objection No. 59 is affirmed.

Objection No. 61: Allegation that former employee took improper access on May 25

This objection alleges that on or about May 25, a former employee of Coastal stopped about twenty carloads of workers as they entered the work site in the morning to speak to workers. The objection was dismissed on the grounds that even assuming the access taker was a nonemployee organizer subject to the access rule, there was no showing that the time and manner provisions of the access rule were violated or that access was otherwise

taken in a manner that would tend to coerce employees or affect free choice.

In its request for review, the UFW argues that Declaration No. 66 shows that the time provisions of the access rule were violated. However, the alleged access violation described in Declaration No. 66 occurred on June 2, not May 25. The declaration relied on for the alleged access violation on May 25 does not show that the time and manner provisions of the rule were violated or that access was otherwise improperly taken. Therefore, the dismissal of Objection No. 61 is affirmed.

Objection No. 62: Allegation that the Employer permitted the vice-president of Committee I and another man to take access on May 26

This objection alleges that Coastal permitted the vice-president of Committee I and another man to take access to working employees for fifteen minutes at the edge of a field on or about May 26. They then drove to a house on the premises and parked behind it for about forty-five minutes before driving away. The objection was dismissed on grounds that the Board does not entertain technical violations of the access rule absent a showing of intimidation or coercion that would tend to interfere with employee choice, and no such conduct was shown herein.

In its request for review, the UFW states that the objection was dismissed based on a finding that it was not clear whether the employees were not on a break when access was taken, or whether work was in fact interrupted. The UFW argues that the supporting declarations in fact state that the crew was working at the time access was taken, and that the objection was therefore incorrectly dismissed.

While it is true that the supporting declarations state that access occurred while the crew was working, this fact does not demonstrate that there was anything other than a technical violation of the access rule or that any intimidation or coercion occurred during the incident. Therefore, the dismissal of Objection No. 62 is affirmed.

Objection No. 63: Allegation that a puncher boasted to her crew members that Comite obtains monetary support from growers

This objection alleged that a puncher boasted to her crew members that the Comite obtained monetary support from growers. When a crew member suggested it wasn't right for the Comite to take money from growers, the puncher allegedly responded, "So what?" The objection was dismissed on grounds that since the puncher's statements did not contain threats of reprisal or promise of benefits,

there was nothing coercive in them that would tend to interfere with employee free choice.

In its request for review, the UFW argues that the Board must examine the statements in the totality of circumstances, including conduct alleged in other dismissed objections which involved statements made by foremen shortly after the first election indicating that they were "not neutral" but were opposed the UFW. Since nothing in the request for review indicates that the puncher's statements were coercive in any way, the dismissal of Objection No. 63 is affirmed.

Objection No. 64: Allegation that employee was given paid time off to campaign for Comite

This objection alleges that during the week of May 31, the Employer granted an employee paid time off in order to campaign for the Comite at the Employer's Oxnard division. The objection was dismissed on grounds that the supporting declaration was filed by someone who did not have actual knowledge as to whether the employee was paid for the time he spend campaigning.

In its request for review, the UFW argues that since the declarant has a close family relationship with the employee, the information is trustworthy and the statements contained in the declaration qualify as an

exception to the hearsay rule (citing Estate of Stevenson (1992) 11 Cal.App.4th 852, 863 [14 Cal.Rptr.2d 250]). However, that case and the California Evidence Code section it cites (Evid. Code 1310) provide a hearsay exception only for a statement by an unavailable declarant concerning the fact of his own birth, marriage, divorce, blood relationship, or other similar fact of his family history. Since that is not the type of statement the UFW seeks here to admit, the hearsay exception is clearly not applicable, and the dismissal of Objection No. 64 is therefore affirmed.

Objection No. 71: Allegation that supervisor gave employees the impression that Comite was dominated by management

This objection alleges that shortly before one of the two 1999 elections in Oxnard, a supervisor drove by a crew yelling that the Comite was going to win whether they liked it or not. The objection was dismissed on the grounds that such comments are mere hyperbole, and that there was no showing that the statement would tend to create fear or have any coercive impact that would affect voting.

In its request for review, the UFW argues that because the statement was uttered by a high-level supervisor, his statement would be perceived as a statement on behalf of management favoring the Comite, and, further,

because the supervisor was the brother of the Comite's vice-president, the statement would reasonably create fear of retaliation among workers. However, the UFW has failed to show, by an objective standard, that the supervisor's statement contained any threat or promise that would tend to create fear of retaliation or would otherwise have a coercive impact on voter free choice. The dismissal of Objection No. 11 is therefore affirmed.

Objections Nos. 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, & 87 (in part)

These objections allege that one of the Employer's confidential clerks campaigned on behalf of the Comite during the runoff election on June 4 by traveling from crew to crew in her own car, often followed in a separate vehicle by a Employer security guard, stopping from time to time to speak with the crew's punchers or sorters, and sometimes speaking into a cellular telephone. The objections were dismissed on grounds that all of the employee's activities were consistent with the parties' agreement that she would be responsible for advising crews when it was time for them to proceed to the polling area to vote, and there was no showing that she campaigned for any of the parties or conducted herself in a manner that would

interfere with or coerce employees in the manner in which they voted.

In its request for review, the UFW argues that the employee's role was in direct violation of the parties' pre-election agreement that only a Board agent would bring crews to the polling locations, and that company supervisors would have no visibility whatsoever during the voting. The UFW asserts that the employee's actions were reasonably perceived by workers as participation by management in the election process.

The declarations filed in support of these objections do not support the UFW's contention that the employee improperly campaigned during the June 4 runoff election, or that her activities were inconsistent with the parties' agreement that she would be responsible for advising crews when it was time for them to proceed to the polling area to vote. The dismissal of Objections Nos. 73, 74, 76, 77, 78, 79, 80, 81, 82, 83, and 87 (in part) is therefore affirmed.

Objections Nos. 84, 85 & 86: Allegation that the Employer granted anti-UFW supporters permission to leave work early the day before the election

These objections allege that the Employer granted anti-UFW supporters, who were to serve as election

observers for the Employer or the Comite, permission to leave work early on the day before the election in order to participate in a Company-sponsored meeting or training period with pay, and that such action would tend to demonstrate Employer antipathy for the UFW and tend to interfere with employee free choice. The objections were dismissed on grounds that the supporting declarations were vague and failed to attest, on the basis of personal knowledge, that the observers received compensation or otherwise received disparate consideration.

In its request for review, the UFW argues that because the employees were allegedly instructed to attend a training meeting during normal working hours, it is only reasonable to expect that the employees would be paid for that time. However, the declarations filed in support of these objections fail to make a prima facie showing, based on personal knowledge of the declarants, that the employees were actually paid for their time.[3] Further, the allegation

[3] Contrary to the UFW's assertions, the "adoptive admissions" exception to the hearsay rule is not applicable herein, because the Comite organizer who told a declarant that the alleged training "was...held at the office" did not state that the observers were compensated for this time and, in any case, was not in privity with the party against whom the alleged statement is offered, i.e., the Employer. (Estate of Gaines (1940) 15 Cal.2d 255, 262 [100 P.2d 1055].) Further, the "operative facts" exception to the hearsay rule is inapplicable herein, since the truth or

that only anti-UFW supporters were invited to be trained as election observers for the Employer does not demonstrate disparate treatment of UFW supporters, since the Employer was entitled to choose its own election observers. Therefore, the dismissal of Objections Nos. 84, 85 and 86 is affirmed.

Objection No. 87: Alleged campaigning by supervisors on behalf of Comite

This objection alleges that Company foremen and supervisors campaigned against the UFW up to the time of the election, visited employees in their homes to urge them to vote against the UFW, and campaigned during work hours. One declarant stated that after a forewoman had seen a particular flyer, she suggested it be shown to everyone so that they could see how much money the union would take from their paycheck and then they wouldn't vote for the union. The same forewoman allegedly said on the day before the election that the UFW causes all the problems, all the violence. Another declarant stated that after a ranch supervisor emptied a canister of berries into the box of a

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accuracy of persons who allegedly said they would be paid for their training time is at issue; thus, a declaration stating the mere fact that such a statement was made, and not attesting to the truth of the statement, is not relevant. (*Creaghe v. Iowa Home Mutual Casualty Co.* (10th Cir. 1963) 323 F.2d 981, 984.)

UFW supporter, the supporter removed her shirt which bore a UFW emblem. The objection was dismissed on grounds that the supporting declarations were vague, or not supportive of the objection, or failed to describe conduct that would tend to interfere with employee free choice.

In its request for review, the UFW points to declarations alleging that various supervisors were in close proximity to the voting on June 3, and that this violated an agreement among the parties that foremen and supervisors would remain out of sight during the voting. However, none of the supporting declarations make a prima facie showing that the proximity of supervisors to the voting place would have tended to interfere with employee free choice in the election. The dismissal of Objection No. 87 is therefore affirmed.

Objections Nos. 88, 89, 90, 91, 92 & 93; Allegation that the Employer vigorously campaigned for an anti-UFW vote in the June 3 election

These objections allege that the Employer vigorously campaigned for an anti-UFW vote as demonstrated by a foreman's presence in the voting area while workers were waiting in line to vote at the Gonzalez Ranch, and the presence of four apparent management officials on the day of the election, who walked around the Seco Ranch, gathered

near the entrance to the Gonsalez Ranch during balloting, and met with a known Comite supporter in the Seco parking lot. The objections were dismissed on grounds that there was no contention that any supervisorial personnel campaigned among employees, threatened them with reprisals depending on how they voted, or otherwise coerced them.

In its request for review, the UFW contends that the presence of supervisors during the voting violated the parties' stipulated pre-election agreement and tainted the "balance" achieved therein. The UFW cites no facts or case law indicating that the supervisors engaged in' any conduct tending to interfere with employee free choice, and the dismissal of Objections Nos. 88, 89, 90, 91, 92, and 93 is therefore affirmed.

Objection No. 95: Allegation that Employer selected Comite supporters as election observers

This objection alleges that the Employer picked and trained election observers for the Comite and used Comite supporters as its own observers over the UFW's objection. The objection was dismissed on grounds that Board regulations provide that each party to an election may be represented during balloting by observers of its own choosing, and that there was no showing that the Employer acted in contravention of the regulations.

In its request for review, the UFW argues that the Employer was not a "party" entitled to designate election observers at the June 3 election under Board regulation section 20350 (Cal. Code Regs., tit. 8, §20350); however, the UFW provides no case law or legal argument in support of its contention. The UFW also argues that the Employer committed "favoritism" toward the Comite by picking and training its election observers; however, the declarations relied upon by the UFW do not support its contentions in this regard. Therefore, the dismissal of Objection No. 95 is affirmed.

Objection No. 96; Allegation that the Employer facilitated and ratified the Comite's campaign against the UFW

This objection alleges that the Employer facilitated and ratified the Comite's campaign against the UFW in numerous ways, primarily by permitting electioneering on paid work time. The objection was dismissed on grounds that the supporting declarations failed either for procedural reasons (e.g., lack of personal knowledge or being based on hearsay) or because they failed to establish improper campaigning on Company time, and thus there was an absence of misconduct which would tend to interfere with employee free choice.

In its request for review, the UFW argues that on one occasion a forewoman uttered "false speech" while speaking against the UFW, and that other supervisors and Comite organizers engaged in campaigning against the UFW during working hours. However, the expression of opinion by an employee absent a threat of reprisal attributable to the Employer is not conduct tending to interfere with employee free choice. Moreover, there was no evidence that the Employer supported the Comite's campaign by permitting its supporters to campaign on the Employer's time rather than on break time. Even if there were some technical violations of the time and manner provisions of the access rule, there was no showing of intimidation or coercion that would tend to interfere with employee free choice. Therefore, the dismissal of Objection No. 96 is affirmed.

Objection No. 100: Allegation that forewoman told her crew to vote for the Comite

This objection alleges that a forewoman told her crew members to vote for the Comite and not for the UFW. The objection was dismissed on grounds that the forewoman's actual statement, "Remember what I told you, vote for the Comite, not the UFW," was an expression of opinion which, absent a promise of benefit or threat of reprisal, was protected by the ALRA.

In its request for review, the UFW argues that the statement was not an expression of opinion, but either a direct instruction to workers on how they should vote, or an instance of illegal employer campaigning in support of the Comite. However, because the forewoman's statement did not contain either an express or implied promise of benefit if the employees voted for the Comite, nor an express or implied threat of reprisal if they voted for the UFW, the statement was nothing more than a lawful expression of opinion. The dismissal of Objection No. 100 is therefore affirmed.

Objection No. 101; Allegation that forewoman told employee to go home to pick up his wife so she could vote for the Comite

This objection alleges that a forewoman unlawfully assisted and campaigned on behalf of the Comite by instructing a worker to go home and pick up his wife, who had been injured, so that she could vote for the Comite and against the UFW. The objection was dismissed on grounds that there was no showing that the offer was conditioned on the manner in which the employee or his wife would vote.

In its request for review, the UFW argues that the supporting declaration does not demonstrate that the

forewoman "offered" the worker permission to pick up his wife, but rather instructed the worker to pick up his wife so she could vote a particular way, and that the forewoman's direct instruction interfered with workers' rights to vote in a free and uncoerced manner.

While it is true that the forewoman's statement has more of the appearance of a strong suggestion than an offer, there is no express or implied promise or threat in the statement, and thus no showing of conduct which would tend to interfere with employee free choice. The dismissal of Objection No. 101 is therefore affirmed.

Objection No. 102: Allegation that Employer's foreman allowed Comite organizers to leave work in order to engage in electioneering

This objection alleges that on the day of the election, with the permission of their foreman, two Comite supporters left work, were gone all morning, and returned with a box of Comite hats which they distributed to their own crew and then to another crew. The objection was dismissed on grounds that there was no evidence that the employees were being paid for their activity and thus no showing that would implicate the Employer in improper electioneering on paid time.

In its request for review, the UFW argues that the workers were either distributing hats on company property on paid time or they were engaged in illegal and preferential access. In either case, the Union argues, the Employer was unlawfully supporting and/or assisting the Comite.

The declarations supporting this objection do not make a showing that the workers who distributed hats were being paid for their time. Moreover, the workers were not non-employee organizers subject to the Board's regulations governing access. (Cal. Code Regs., tit. 8, §20900 et seq.) Further, there was no showing of coercive conduct which would tend to interfere with employee free choice. Therefore, the dismissal of Objection No. 102 is affirmed.

Objection No. 103: Allegation that foreman unlawfully campaigned for the Comite during a "captive audience" meeting

This objection alleges that on election day a foreman conducted a captive audience meeting in which he spoke against the UFW and urged people to vote as "they had voted last time," and that workers understood him to mean they should vote against the UFW. The objection was dismissed on grounds that the foreman's statement, evaluated under an objective standard, did not urge

employees to vote in a particular manner, nor did it imply promises or benefits according to how they voted.

In its request for review, the UFW argues that the foreman did urge voters to vote in a particular way and that, considering the surrounding circumstances (that is, that the statement was made in the context of an anti-UFW speech), it was reasonable for employees to feel coerced because of the foreman's statements.

Arguably, the employees may have reasonably believed that the foreman was urging them to vote for the Comite and against the UFW. However, there was no express or implied threat or promise contained in the foreman's statement, and thus no showing of conduct which would tend to interfere with employee free choice. Therefore, the dismissal of Objection No. 10.3 is affirmed.

Objections Nos. 106 & 107; Allegation that Employer's security guards allowed Comite organizers preferential access

These objections allege that the Employer's agents, security guards, permitted Comite organizers to take access and talk to workers in a manner which accorded them preferential treatment. Declarations established that the guards ejected the organizers only after UFW organizers complained that Comite organizers were taking access

outside the access rule. The objections were dismissed on grounds that the Board does not entertain technical violations of the access rule absent a showing of significant disruption of work or other conduct which would tend to interfere with employee free choice.

In its request for review, the UFW argues that this conduct, when considered with other Comite access violations, demonstrates a pattern of excess access tending to interfere with employee free choice by suggesting to employees that the Employer favored the Comite. However, the declarations indicate that the guards did act to eject the Comite supporters when they were requested to do so. Further, the Union has failed to demonstrate any conduct by Comite organizers which, either individually or cumulatively, would have had a coercive impact on voter free choice. The dismissal of Objection Nos. 106 and 107 is therefore affirmed.

Objection No. 108; Allegation that Employer arranged a celebration of anti-UFW campaign, thus demonstrating its control and dominance over Comite

This objection alleges that on June 5 the Employer arranged a barbecue celebration for all punchers and forepersons in gratitude for their having successfully waged an anti-UFW campaign, thereby demonstrating its

dominance and control over the "sham" Comite. The objection was dismissed on grounds that news of the barbecue was not disseminated until the day following the election, and therefore the announcement of the event could not have tended to interfere with employee free choice in the election.

In its request for review, the UFW argues that even though the alleged conduct was post-election, it demonstrates that the Employer unlawfully assisted, financed, and created a sham worker committee to thwart workers' collective bargaining rights, and that the objection should be set on this basis.

The dismissal of Objection No. 108 is affirmed, since the alleged post-election conduct could not have tended to affect employee free choice in the election. We note that .the issue of whether employees perceived the Employer and/or third parties to be instrumental in the anti-UFW campaign, and whether employee free choice would reasonably have been affected thereby, has been previously set for hearing (Objections 60, 94, and 99).

Objection No. 119: Allegation that supervisor rewarded employee for acting as Comite observer

This objection alleges that on June 4 a supervisor gave an hourly punch card to an employee who had

been working piece rate as a reward for the employee's having been an observer for the Comite for fifteen minutes earlier in the day. The objection was dismissed on grounds that the supporting declaration was based largely on speculation and that since the conduct would have occurred after the employee had voted, there was no basis for believing that the conduct might have influenced the manner in which the employee voted.

In its request for review, the UFW argues that, in connection with Objections Nos. 84, 85, and 86, this incident relates to payment for training received by election observers for the Employer or the Comite. However, there is no basis for setting this objection, since it is speculative to assume that the time card (which allegedly had a date of 6/3/99 and a time of 7:30 to 8:30 marked on it) was erroneously issued to the employee, or that the employee was paid at a higher rate than he earned, or that any extra pay was given to him as a reward for acting as an election observer for the Comite. Therefore, the dismissal of Objection No. 119 is affirmed.

Objection No. 124: Allegation that supervisor promised employee a promotion for voting against the UFW

This objection alleges that on June 3, prior to the voting at the Seco Ranch, a supervisor told a worker

that if he voted for the Comite, he would give him' a foreman position the following year. The objection was dismissed on grounds that there was no evidence that the promise was widely disseminated among the workforce, and that the offer to one employee would not likely affect the results of the election.

In its request for review, the UFW argues that at least three non-supervisory employees were aware of the promised promotion, and that broader dissemination was likely to result. Moreover, the UFW argues, because a potential foreman would likely be a leader among co-workers, the promise is reasonably viewed as intended to sway an entire group of workers in their voting.

The promise allegedly made to the individual worker in this incident is not the sort of generalized threat or promise that would likely be widely disseminated among the workforce. Even if they heard of the promise, other workers could not reasonably believe that they, too, would be promoted to foreman if they voted for the Comite, and thus it is not the sort of promise that would reasonably tend-to affect the results of the election. Contrary to the UFW's assertion, the promise cannot reasonably be viewed as intended to sway an entire group of

workers in their voting. Therefore, the dismissal of Objection No. 124 is affirmed.

Objection No. 127; Allegation that a foreman warned employees a UFW election victory will result in the bankruptcy of the Company

This objection alleged that a foreman advised his crew members approximately two weeks prior to the election that the Company was experiencing problems and, further, that the Company would go bankrupt if the UFW won the election. The objection was dismissed because the supporting declarations fail to establish that the foreman had in fact warned of bankruptcy and thus, by implication, a loss of employment.

Virtually verbatim declarations from two members of the subject crew suggest that the foreman told employees only that an increase in wages was not likely because the Company "had problems" and "only had so much money." The statement was made in the context of a discussion of wage levels. Neither declarant quoted the foreman as having threatened bankruptcy in the event of a UFW victory. Indeed, as they explained, they only understood the foreman's comments "*to mean* that if we voted for the UFW that the Company would go bankrupt."

An employee's subjective impression or interpretation cannot serve to establish prima facie

evidence of interference with employee rights because such reactions "are irrelevant to the question whether there was, in fact, objectionable conduct." (*Emerson Electric* Co. (1980) 247 NLRB 1365.) In *NLRB v. Gissel* Packing Co. (1969) 395 U.S., 575, 608, the United States Supreme Court "rejected any rule that requires a probe of an employee's subjective motivations as involving an endless and unreliable inquiry." Accordingly, the test is whether the conduct, when measured by an objective standard, was such that it reasonably would tend to interfere with employee free choice. (*Picoma Industries, Inc.* (1989) 296 NLRB 498; *Triple E Produce Co. v. Agricultural Labor Relations Board* (1983) 35 Cal.3d 42.) The Board is required to examine actual events in order to determine, by an objective standard, whether the conduct reasonably would tend to compromise employee choice. As there is no competent declaratory support for the objection, the dismissal of Objection No. 127 is affirmed.

Objection No. 128: Allegation that a forewoman predicted that the Company would go out of business if the UFW won the election

This objection alleges that a forewoman proposed that it would not be in the interest of her crew members to support the UFW as a UFW victory means the Company "goes

under." She also reportedly advised them that participation in a work stoppage would be grounds for dismissal.

The objection was dismissed on the grounds that the statements were expressions of opinion protected by Labor Code section 1155 and relevant Agricultural Labor Relations Board (ALRB) and National Labor Relations Board (NLRB) case law which permits employers and others to express their views about unionization absent threat of reprisal or promise of benefit. The reference to work stoppage reprisals was disregarded on the grounds that since it was not couched in terms that would reasonably lead employees to believe that it was designed to prohibit union-related activity, it would not constitute conduct which would tend to interfere with employee free choice in the election.

In contesting the dismissal, the Union argues that it was error to find that the comments are protected expressions of opinion because the forewoman failed to employ qualifying language which would denote opinion such as "I think" or "I feel" that a certain result will obtain as a result of a UFW vote.

The sole declarant supporting the objection explained that the forewoman told employees that "...if we

wanted to vote for a union we should vote for the Comite...we had the choice of voting for whichever union we wanted, but that by voting for the Comite we would be saving the Company because it was "going under" because it was "already spending a lot of money."

It is true, as set forth in the dismissal, that management's expressions of opinion, including opposition to unionization, are permissible under Labor Code section 1155, but only so long as they contain neither a promise of benefit nor a threat of reprisal. Contrary to the Union's assertion in that regard, statements which may tend to interfere with employee choice do not turn on whether the speaker conditions statements with language suggesting they are only "opinions." Otherwise, a speaker need only preface an otherwise-impermissible threat of reprisal or promise of benefit by suggesting it is only opinion.

It is not clear whether the forewoman meets the test of statutory supervisor so as automatically to impute her comments to the Employer or that she would be perceived by employees as being in a position to speak for management in order that her comments may be deemed attributable to the Employer on a theory of agency. What is clear, however, is that she effectively warned employees that the Company would go out of business, with an attendant loss of

employment, if the UFW won the election. We reverse the dismissal of Objection No. 128 and set for hearing the alleged threat of job loss in order to determine whether it was offered by a management official or by someone whom employees would view as being in a position to speak for management.

Objection No. 130; Allegation that, in an anti-UFW speech, a foreman predicted to his crew members that the field they were then working in would not be planted the following year

The objection alleges that, on the morning of the election, foreman Luis Ramirez warned his crew members that the Company did not intend to replant a particular ranch during the following season because the growers were suffering losses. The objection was dismissed on the grounds that the foreman's stated opposition to the UFW was a permissible expression of opinion and, further, the reference to planting was merely a statement of fact that does not rise to the level of a threat as there is nothing in the statement to suggest that the planting decision was tied to how employees voted.

The Union contends that the statements should not be characterized as mere expressions of opinion because the speaker did not preface his remarks with words designed to

make clear that the statements were only his personal opinion, such as, for example, "I believe." The UFW also contends that there could be no basis for the conclusion that the decision not to plant had in fact already been made or, if so, that the foreman had been privy to management's decision in that regard.

According to one of the declarants, the foreman had gathered the crew together as he does routinely prior to the start of work in order to outline general work procedures, but then reminded them of the election that would be held the same day and proposed that "we should not let...ourselves be fooled." He then announced that the Company was granting an increase in both the hourly and piece rate wages, but also explained that the increase would be limited because "the Company only had so much money." The declarant's interpretation of the statement is "if we voted for the UFW...the Company would go bankrupt."

Another declarant heard the foreman advise that "everyone could decide how they wanted to vote but that they should vote in the same way as last time" and believed the foreman meant "that the people should vote against the UFW." Another hearer was led to "understand" the foreman "to mean that the people should vote against the UFW."

The Board finds that the statements attributed to the foreman, when viewed objectively, constitute neither a threat of reprisal nor a promise of benefit. While employees may have ascribed to the foreman's comments their own subjective interpretation as to what meaning may be derived therefrom, the Board finds that when examined under the appropriate standard, they contain neither a promise of benefit nor a threat of reprisal and to that extent the dismissal is affirmed.

We reach a different result, however, regarding the dismissal of that portion of the objection in which the declaratory support alleges that the foreman told employees that growers had experienced severe losses and that he knew for a fact that the land they were on would not be planted the following season. Coming so close to the start of balloting, the reference to not planting could be construed as a threat of job loss depending on how employees voted. Since there were two unions on the ballots, it would not ordinarily appear that the foreman was threatening to eliminate work in the event of unionization in general. However, in this instance, one declarant attributed anti-UFW remarks to the foreman immediately preceding the foreman's statement that the Company intended to take land out of production. Under these circumstances, the

statement was such that it could tend to be received by employees as a threat of job loss in the event of a UFW victory. On that basis, the initial dismissal of Objection No. 130 is reversed and the matter will be set for hearing in order to determine whether the foreman was a supervisor or an agent of the Employer and therefore whether his statement that the field would not be planted was a threat of job loss in the event that a particular union won the election.

Objection 131; Allegation that a Company supervisor instructed foremen to warn employees the Company would disc the fields if the UFW won the election

In this objection, the UFW asserts that a Coastal Berry Company supervisor from the Company's Watsonville operations traveled to Ventura County in order to instruct foremen in the Company's Oxnard area operations to advise workers there that the Company would disc the fields if the UFW won the election. The objection was dismissed due to failure of any declaratory support based on personal knowledge.

In contesting the dismissal, the UFW acknowledges the hearsay nature of the declaratory support, but contends it nevertheless should be admissible on the grounds that knowledge of the alleged conduct had come to the declarants

as a result of communication among family members and on that basis should qualify for an exception to the hearsay rule. As expressed by one of the declarants, "my aunt told me this" and she knew about it because the supervisor met with my uncle and she heard him report that "everything in Oxnard is under our control. Now the workers will vote more in our favor because of what I told the foremen to say." (We note, parenthetically, that there is no allegation that the alleged "instruction" was ever carried out by the Oxnard foremen.)

The UFW's reliance on *Estate of Stevenson* (1992) 11 Cal.App.4th 852 [14 Cal.Rptr.2d 259] is misplaced. There, in a matter which arose under California's Probate Code, the question was whether an out-of-court statement would be admissible as an exception to the hearsay rule, not to prove the truth of the matter asserted, but as circumstantial evidence of the decedent's intent with regard to inheritance by stepchildren. Here, however, even if *Estate of Stevenson* were applicable to matters arising under our Act, it could not reach to embrace the UFW s present attempt to prove the truth of the matter asserted.

When evaluating allegations of election misconduct, we examine the supporting declarations in order to determine whether the objecting party has presented

facts sufficient to support a prima facie showing of objectionable conduct which, if uncontroverted, unexplained, or otherwise not proven, would establish grounds for setting aside the election. The Executive Secretary's authority on behalf of the Board to dismiss without a hearing objections which fail to meet this standard by means of declarations based on the declarant's personal knowledge of the conduct alleged has been judicially reviewed and approved by the California Supreme Court. (*J. R. Norton Co. v. Agricultural Labor Relations Board* (1979) 26 Cal.3d 1, 13.) The dismissal of Objection No. 131 is affirmed.

Objection 132: Allegation that a supervisor sent Comite organizers to Oxnard to meet with Coastal's Oxnard area foremen to warn of job losses should the UFW win

This allegation is identical to the one immediately preceding except that here Comite supporters rather than the supervisor traveled to Oxnard for the same purpose. As there is no independent non-hearsay declaratory support in favor of the objection, it fails for the same reasons as Objection No. 131 and the dismissal is affirmed.

Objection No. 133: Alleged threat to replace employees if the UFW wins the election

This objection alleges that an employee advised other employees that a foreman said he heard another foremen tell employees that the UFW was no good and warned they would be replaced by employees provided by labor contractors if the UFW won. The objection was dismissed on the grounds that the foreman's view of the UFW was protected personal opinion and that the threat of hiring labor contractors is based on hearsay and is not within the declarant's personal knowledge.

In affirming the dismissal, we need not rely on the Executive Secretary's finding that the foreman's statements were privileged opinion since it is not clear whether he was a member of management in fact or perceived as such by employees. In dismissing, we need only note the insufficiency of the proffered support inasmuch as the sole declarant in support of this objection stated only that a coworker told her the foreman had said "something to the effect that if the UFW won, the Company was going to start hiring farm labor contractors." Not only does the declaration attest to matters not within the personal knowledge of the declarant, but the allegedly improper statement is itself vague and inconclusive and therefore cannot support alleged misconduct which would tend to

interfere with employee free choice. The dismissal of Objection No. 133 is therefore affirmed.

Objection No. 134: Alleged implied threat of Company closure in the event of a UFW victory

According to the objection, two employees (sorters) told other employees they had heard that the UFW had in effect driven unnamed companies out of business. The objection was dismissed on the grounds, among others, that there is no showing the employees directly threatened that the UFW would cause Coastal to close or that their warning could be viewed as credibly based.

The sole declaration submitted in support of the objection discusses a myriad of primarily election related observations (e.g., conduct by observers or observers leaving work early on the day preceding the election in order to attend an election training session), but makes no reference whatsoever to the matter alleged in the objection.

The dismissal of Objection No. 134 is affirmed, but on the primary grounds that the declaratory support fails in any manner to support the objection.

Objection No. 135; Allegation that certain Company action served to lend credence to claims of Comite supporters that

the Company would cease operations if the UFW won the election

The thrust of this objection turns on the placement of earthmoving equipment on one of Coastal's ranches about a month prior to the election. The Union contends that because such equipment normally is not used until the end of season, the sight of such equipment would lead employees to accept as fact claims by Comite supporters that the Company would level the growing field if the UFW won the election. The objection was dismissed on the grounds that the threats of closure, if they in fact were made, were the product of anti-UFW workers who had no apparent authority to carry them out.

The sole declarant in support of the objection said she heard anti-UFW employees "say something to the effect that if the UFW wins the election, the Company would use the machine to take the berries away" (i.e., the Company will close.) if the UFW wins. While the declaration is based on hearsay, it describes a purported threat which is itself vague and inconclusive. The dismissal of Objection No. 135 is affirmed.

Objection 138; Allegation that a foreman warned employees that the Company would cease operations if the UFW won the election

This objection alleges that two employees told a third employee they could not vote for the UFW because their foreman had discussed a meeting in which the Company's general manager allegedly stated that the Company will close if the UFW wins the election. The objection was dismissed because the sole declarant in support of the objection did not state facts within her own knowledge. The declarant attested to something she heard co-workers say about what they heard their foreman say about something he heard the general manager say. In contesting the dismissal, the UFW contends that although the declaratory support is based on triple-hearsay, it nevertheless should be deemed admissible on the grounds that it serves to corroborate other admissible evidence regarding the threatened closure.

We disagree. Each objection is examined on its own individual merits according to whether there is first-person declaratory support describing conduct which, if ultimately proven true, is such that it would tend to affect employee choice as well as the outcome of the election. (Cal. Code Regs., tit. 8, §20365(c)(2)(B).) The dismissal of Objection No. 138 is affirmed.

Objection 139: Allegation that employees were warned that the Company would cease operations if the UFW won the election

This objection alleges that a mechanic told a group of 10 employees that the Company intended to disc the fields in the event of a UFW victory and that, sometime later, a foreman told a different group of workers that someone had received a message from the Company president announcing that the Company would "rent the land and plant vegetables" if the UFW won.

That part of the objection concerning the mechanic's statement was dismissed on the grounds that the declarant failed to allege any facts that would place the mechanic in a supervisory position (e.g., as part of management) or to indicate that he would otherwise be perceived by employees as qualified to know or speak of such matters. The UFW now suggests that the statement regarding the disking of the fields in the event of a UFW victory was made by a statutory supervisor and, further, even if the declaratory support is hearsay-based, the evidence should be deemed admissible simply because it is corroborative of other non-hearsay evidence regarding the threat of closure.

We disagree with both contentions. The UFW has failed to set forth facts establishing prima facie that the shop mechanic possessed any indicia of supervisory status in order to make his comments attributable to his Employer. (Labor Code section 1140.4j.) As we explained in regard to the previous objection, each objection is examined on its own individual merits and each must be supported by ' declarations based on the declarant's own personal knowledge. We affirm the dismissal of Objection No. 139.

Objection 141: Allegation that a foreman told employees that the UFW robs them of their dues

That part of the objection which concerns the foreman's alleged reference to UFW dues was dismissed on the grounds that the declarant did not hear the statement and therefore could not attest to it on the basis of personal knowledge. Moreover, as the Executive Secretary explained, the statement, even if not based on hearsay, is merely an expression of opinion and does not constitute a threat of reprisal. The dismissal of Objection No. 141 is affirmed.

Objection 142; Allegation that employees were subjected to numerous threats of Company closure in the event of a UFW victory in the days immediately preceding the election

In dismissing this objection in its entirety, the Executive Secretary discussed in detail the four separate declarations submitted in support of the objection. Three of the objections were based on hearsay inasmuch as the declarants did not hear threats of closure first hand. Moreover, the "rumors" they heard from other employees were not based on statements made by *management* or other supervisory personnel so as to impute the statements to the Employer. In one instance, the declarant complains merely because a statement by a worker with regard to closure was not contradicted by a foreman and therefore, it is alleged, the statement should be considered a threat by management. The fourth declarant attests to a threat of closure should the UFW win by an acknowledged Comite supporter whose views were well known to the employee-electorate and who, it is suggested, would be perceived by them as someone with authority to himself close down the Company or to be in a position to influence the Company in that regard.

We find nothing in the request for review that should alter the initial dismissal of Objection No. 142 and it therefore is affirmed.

Objection 148; Allegation that a forewoman suggested to employees it would not be in their best interest to vote for the UFW as it would take the Company "down"

In its original objections petition, the UFW alleged that the conduct described above was intended to assist the Company in determining which employees supported the UFW and on that basis constituted illegal interrogation.

The objection was dismissed on the grounds that none of the declarants established that they were questioned by management representatives about their union views or affiliation and the statement concerning the status of the Company was an expression of opinion protected by Labor Code section 1155 and relevant case law.

With regard to interrogation, the sole declarant in support of the objection stated that her forewoman suggested that if employees wanted to vote for a union, they had the choice of voting for whichever union they wanted but advised them to choose the Comite because by doing so "we would be saving the Company" because it was "going under." There is nothing in the declaration to show that employees were questioned about their union affiliation or sympathies and thus there is no basis for finding that employees were interrogated in any manner whatsoever. The forewoman's reference to the status of the Company may be read to denote her impression of how the Company would benefit were the UFW rejected, but is

somewhat problematical if the statement could be construed by employees as a threat of closure and turns on whether she was in fact a part of management or reasonably perceived as such. This portion of Objection No. 148 will be set for hearing: Whether the forewoman was a supervisor or agent of the Employer and therefore whether her statement that the employees should vote for the Comite in order to save the Company from going under would reasonably be perceived by the employees as a threat.

Objection 150: Alleges that management ordered a photo record of voting employees

This objection alleges that on the day of the June 4, 1999 election, company foremen ordered the punchers in Crew No. 4 to take photographs of all employees "who were going to vote."

The objection was dismissed on the grounds that since all employees were to be photographed, the UFW cannot claim that suspected UFW supporters were being singled out and, further, the order to take photographs does not make a prima facie showing of interrogation or surveillance. The UFW argues that-it is irrelevant whether or not the picture taking was intended to identify UFW supporters since such conduct gives rise to a rebuttable presumption that the photographing or videotaping of employees while they are

engaged in protected concerted activity constitutes unlawful surveillance or the impression of surveillance. The UFW may be correct insofar as such conduct occurs in the context of an unfair labor practice proceeding, relying on F. W. Woolworth Co. (1993) 310 NLRB 1197, wherein the National Labor Relations Board held that whereas an employer's mere observation of union activity on or near its premises need not constitute unlawful surveillance, the mere photographing of employees without explanation or justification interferes with employees protected rights and must be balanced against the tendency of that conduct to interfere with such rights. Accordingly, the NLRB has long held that "absent proper justification, the photographing of employees engaged in protected concerted activities violates the [National Labor Relations Act, (NLRA)] because it has a tendency to intimidate." (*Waco, Inc.*, (1984).273 NLRB 746, 747.) Accordingly, an employer who resorts to the photographing of protected activity is required to demonstrate that it had a reasonable basis to have anticipated misconduct by the employees. (See, e.g., *NLRB v. Colonial Haven Nursing Home* (7th Cir. 1976) 542 F.2d 691, 701, holding that "[T]he Board may properly require a company to provide a solid justification for its resort to anticipatory photographing.") The *Wool worth* case, and all

cases cited therein, are predicated on unfair labor practice charges in which the charged party has an opportunity to defend by demonstrating a justifiable reason for its action. (*Sunbelt Mfg., Inc.* (1992) 308 NLRB 780, fn. 3.) The standard remedy for such violations is a cease and desist order.

Here, however, in the context of a representation proceeding, we determine only whether the objecting party has established prima facie evidence of conduct, which if ultimately proven to be true, was such that, by an objective standard, it reasonably tended to interfere with ' employee free choice. Such a determination is made independent of and in the absence of the type of defense the alleged wrongdoer may assert as a basis for its conduct in the context of an unfair labor practice proceeding. Moreover, the remedy is quite different inasmuch as such conduct may lead the ALRB to conclude, under appropriate circumstances, that the conduct affected the outcome of the election and warrants the setting aside of the election.

The sole declarant in support of this objection stated that he served as an observer during a portion of the election, while Crews Nos. 23 and 29 were voting at Beach Ranch. Upon his return to work in Crew No. 4, he overheard a foreman speak to his crew puncher over a

communications radio and issue a directive to all crew punchers to "take out their cameras and take photographs of all the people who were going to vote." As a general rule, rank-and-file employees serve as observers when their own crew is voting and usually are required to cast their ballot prior to assuming their observer duties. This declarant, however, although a member of Crew No. 4, states he was assigned to observe for other crews. Even though he had resumed working, presumably having completed his observer duties, it is not conclusive as to whether the approximately 45 members of his crew also had voted prior to the time the photo directive issued, nor is it clear whether there are enough facts to permit the Board to assess the extent to which the directive may have been disseminated.

The pivotal question, however, is whether the punchers had cameras in their possession and/or whether they in fact photographed employees either prior to or after they had voted. There is not a scintilla of evidence establishing either that they were seen with cameras in their possession or that they used cameras to photograph employees, either before or after they had voted. Accordingly, the dismissal of Objection No. 150 is affirmed for lack of declaratory support for the objection.

Objection 157: Allegation that a confidential employee parked near the polls in order to engage in surveillance of employees as they moved to and from the polls

The only declaration in support of the objection is from an individual who had volunteered his services to transport employees to the *polls during* the election held on June 3, 1999. He is neither an employee of Coastal Berry nor a representative of any of the parties. He drove a voter to Rancho Gonzalez where a security guard directed him to a parking area. The voter got out of the car and walked, by his estimate, about one-mile to the polls. While waiting approximately 30 minutes for the voter to return, he observed a woman seated in a tan compact car which was parked nearby, facing towards the polls.

The objection was dismissed due to a lack of declaratory support which could have identified the woman in the car as, for example, an agent of the Company, the long distance from where she was stationed to the polling site, and the absence of any other facts which would serve to indicate that her purpose was that of surveillance.

In contesting the dismissal, the UFW now, consistent with our findings with regard to other objections, identifies the confidential employee as Maribel Rodriguez, but also, unlike the initial objection, asserts

that she engaged in surveillance by photographing workers during the voting. Also based on our findings relative to other objections, it is clear that Ms. Rodriguez is known generally to most employees because of her duties as a payroll and insurance clerk for the Company and also, based on our prior findings, she served as a general coordinator who advised each crew when it was time for it to proceed to the polls. She parked nearby so as to assess when a particular crew had finished voting and it was time to summon the next crew. We continue to reject allegations that by her use of a cellular telephone, or by actually driving to a crew site in order to advise the crew forepersons that it was time for their crews to vote, she engaged in impermissible campaigning. The dismissal is upheld.

Objection 158: Allegation that Ms. Rodriguez, accompanied by a security guard, campaigned with a known Comite supporter while balloting was on-going

The declaration in support of the objection contends that Ms. Rodriguez arrived at her work site in her own car (the tan Honda civic whose description is consistent in regard to all allegations concerning Ms. Rodriguez) and was followed by a security guard in a separate car. Ms. Rodriguez and the guard took the crew's

sorter aside (in fact, they moved to an area behind the restrooms) where they talked among themselves for a few minutes. There is no indication that the declarant heard anything the two women may have discussed. The two visitors left, but Ms. Rodriguez later returned, alone, and spoke briefly with the crew's two sorters.

Again, as discussed in relation to the preceding objection, there is no declaratory support to suggest that Ms. Rodriguez engaged in improper electioneering or that she had deviated from her duties of coordinating the dispatch of crews to the polls. The dismissal of Objection No. 158 is therefore affirmed.

Objection 159; Allegation that Ms. Rodriguez went from crew to crew campaigning on the day of the election and then injected herself into the actual voting process by insisting that an employee be permitted to vote notwithstanding the absence of proper identification

The dismissal was based on the assumption that even if she had campaigned, it was not established that she was acting as an agent of the Employer and, further, there is no prohibition against last minute campaigning away from the polls or from merely stating a preference for a particular union over its rival.

We affirm the dismissal, but on the basis of a somewhat different analysis. As we will explain below, we are persuaded that Ms. Rodriguez was performing a particular role on the day of the election, that of coordinating the dispatch of crews to their respective voting sites according to schedule. Moreover, there is no contention that she actually campaigned on behalf of a particular party to the election, but only that she was seen speaking to employees who were generally known to be anti-UFW. Nor were any of the declarants able to state that they heard her when she spoke to crew punchers or sorters. The persons to whom she spoke may well have been pro-Comite, as all declarants attest, but the same declaratory support also establishes that they were in a form of crew leadership and thus it logically follows that they would be the persons to whom she would relay instructions about when it was time to vote. One of the declarants states, "[w]hen I saw Maribel talk with the anti-UFW workers, I believe she was campaigning for the Coastal Berry Farm Worker Committee." An employee's subjective interpretation based on pure speculation does not establish prima facie evidence of election misconduct affecting the results of an election.

With reference to the allegation that she attempted to have Board agents permit an employee to vote in the absence of proper identification, the declaratory support establishes only that she was present when a prospective voter presented his check-stub to a Board agent and was advised that the stub was not from the eligibility period. (We note, parenthetically, that the sufficiency of voter identification is a matter within the sole authority and discretion of Board agents. Cal. Code Regs., tit. 8, §§ 20355(a)(1) through (a)(8); § 20355(c).)

In contesting the dismissal, the UFW also asserts that Ms. Rodriguez's "presence and campaign activities violated the letter and spirit of the parties' pre-election stipulation." While stipulations between parties are not binding on the Board, it is important to note that public policy requires that we examine all allegations of election misconduct according to whether the conduct, whether or not the subject of a stipulation, interferes with employee choice.

The dismissal of Objection No. 159 is affirmed.

Objections 160,-161, & 162; Allegations that Ms. Rodriguez improperly campaigned on election day.

The objections describe Ms. Rodriguez's movements from crew to crew, her use of a cellular telephone, the

fact that she was seen carrying a notebook, her "whispering" to a known anti-UFW employee, and her private discussion with a particular crew puncher.

The objections were dismissed on various grounds. The UFW seeks reversal on the grounds that Ms. Rodriguez's activities "violated the letter and spirit of the parties' pre-election stipulation." The dismissal of Objections Nos. 160, 161, and 162 is affirmed on the same grounds set forth in Objection No. 159, above.

Objection No. 163: Allegation that employees preparing to vote observed Ms. Rodriguez waiting in line to vote with at least two different crews, saw her vote with one of the crews, and later heard her order an assistant puncher to obtain a stacker for the crew

The objection was dismissed on the grounds there was nothing inherently improper about her presence in the line of waiting employees or the fact that when she sought a ballot she was challenged on the grounds that she allegedly was a confidential employee not eligible to vote.

One declarant observed that Ms. Rodriguez was already in the polling area when he arrived and appeared to be in line preparing to vote. He said he saw her get in the voters' line again and vote along with his crew. Another declarant, a member of same crew makes no reference

to Ms. Rodriguez's presence when his crew was voting. Nor does he make any reference to Ms. Rodriguez voting in the election at that or any other time. Rather, he states that he saw Ms. Rodriguez bring two women to vote and that instead of waiting in line, she took them to the front of the line to vote.

With regard to the order to stack, he states that on the morning of the election, he refused an order from an assistant forewoman "to stack" because he did not feel that was his job. The forewoman apparently relayed the employee's refusal to comply to Ms. Rodriguez who was nearby at the time, talking on her cellular telephone. Ms. Rodriguez suggested she find someone else from the crew to stack.

The dismissal of Objection No. 163 is affirmed on the basis of the Executive Secretary's rationale.

Objection 164: Allegation that a Company foreman remained in the voting area while employees waited in line to vote

The objection was dismissed for lack of declaratory support.

The UFW seeks reversal on the grounds that the presence of a supervisor in the polling area is contrary to "the letter and spirit of the parties' pre-election stipulation."

As we have noted previously, the Board is not bound by a stipulation entered into by the parties, but is obligated to independently review any allegation of election misconduct according to whether the Board believes the conduct was such that it would tend to interfere with employee free choice. Be that as it may, however, there is nothing in the supporting declaration which even addresses in any manner any events occurring on the day of the election.

The dismissal of Objection No. 164 is affirmed.

Objection 165; Allegation that Management personnel, all wearing identifiable Coastal Berry Company jackets, toured various Company operations on the day of the election

The objection was dismissed on the grounds that the mere presence of Company officials does not establish conduct that would tend to interfere with employee choice. Moreover, contrary to allegations, there was no showing that the officials were in or near the polling areas or otherwise engaged in conduct which would tend to compromise employee choice.

In contesting the dismissal, the UFW merely challenges their presence on the grounds that it somehow violated a purported pre-election stipulation. This matter

has been addressed several times previously. The dismissal of Objection No. 165 is affirmed.

Objection No. 166: Allegation that a security guard took a picture of the declarant and others on the morning of the election

According to the declarant, after voting in the election and proceeding to leave the field/ he observed the presence of three men in blue uniforms, one of whom had a camera and took a photograph of "a group of persons" including the declarant.

The objection was dismissed in reliance on Oceanview Produce Co. (1994) 20 ALRB No. 16. The UFW believes that *Oceanview* is distinguishable because the question in that case involved the photographing of employees by persons alleged, but not conclusively found, to be agents of a union. Here, however, the taking of photos was by Company security guards and therefore there should be no question as to whether their conduct in that regard is directly imputable to the Employer. The Union urges us to overrule *Oceanview* by adopting the principle set forth in *Reno Hilton* (1995) 319 NLRB 1154, 1156 wherein it asserts the national board found that the taking of pictures by an employer was lawful only because it did not involve photographing employees who were voting, suggesting

that a different result would have obtained had photos been taken during balloting. We note at the outset that the issue here is not that of photo taking during balloting, but whether the taking of a photo of a group of persons, including the declarant, after he had voted interferes with free choice. Secondly, *Reno Hilton* does not stand for the proposition put forth by the Union. The NLRB found an absence of record evidence to substantiate the conduct alleged in the unfair labor practice complaint (videotaping employees *as they entered to vote*). The NLRB then went on to describe the videotaping which did occur, noting that employees were taped as they passed through the employees' entrance, several hundred feet distant from the voting area. The Board concluded that the activity was not coercive because employees were not engaged in protected activity when simply entering the work place.

The dismissal of Objection No. 166 is affirmed.

Objection No. 167: Allegation that three company security guards drove around the Gonzalez ranch during actual balloting and photographed employees

The objection was dismissed on the grounds that the declaratory support establishes that the guards were stationed in a parking area near the entrance to the ranch, some distance from the actual polling area, and that they

took some photos of employees walking to and from the polling area or of those who waited in their cars.

According to one declarant, she and several other non-Company employees transported Coastal employees to the voting site at Gonzales ranch and, after parking their van, noticed that a guard had taken a picture of them with a green disposable camera, informed them they were on private property and asked what they were doing there. The declarant stated that one of them replied, "We are enjoying the scenery." Two additional declarants, in the same vehicle, parked in the same locale. A guard took a photograph of them. (It appears that all three of the declarants described the same incident.)

The Union believes the dismissal must be reversed for the same reasons put for in favor of the dismissal of objection No. 166. We disagree. There is no adequate declaratory support to establish that any employees actually were photographed. Rather, all of the declarants are nonemployees who attested only to the fact that they were photographed, in the Company parking lot, by Company security agents. Such conduct is not capable of interfering with the manner in which employees may have chosen to mark their ballots.

The dismissal of Objection No. 167 is affirmed.

Objection No. 168: Allegation only that Maribel Rodriguez, in the company of a security guard/ moved from crew to crew at the Beach Ranch during the election

This objection does not allege how the conduct described therein might have interfered with employee choice. In any event, three different employees state in verbatim declarations that they observed Ms. Rodriguez arrive at their crew site in a brown car, followed by a security guard in a separate vehicle, that she spoke privately to the crew sorter, later returned and again spoke privately with the first as well as a second sorter. Neither of the declarants could attest to what might have been said by Ms. Rodriguez.

The objection was dismissed for failure to establish prima facie evidence of conduct that likely would tend to interfere with employee choice. The dismissal of Objection No. 168 is affirmed.

Objection No. 169: Allegation that during the balloting four uniform guards could be seen at the entrance to Gonzales Ranch

The objection does not allege how the guards, positioned as they were, could interfere with employee choice. However, in seeking reversal of the dismissal, the

Union now adds that the guards constituted an intimidating presence and alleges further, that there was inherently coercive photographic surveillance.

The sole declarant in support of the objection merely states that he transported an employee to Gonzales ranch so that she could vote and upon departing the ranch, he noticed four security guards at the entrance to the ranch. He made no reference whatsoever to the taking of pictures.

The objection was dismissed since it reflects nothing other than the mere presence of guards at an unspecified distance from the voting site. The dismissal of Objection No. 169 is affirmed.

Objection No. 170; Allegation that security guards took photos of employees who supported the UFW

The declarant explains that he, a co-worker, and a UFW official went to a Company cooler where they observed an incident they believed might constitute a possible health and safety violation. In order to record the event, the co-worker took a picture with a camera he had brought with him. In response, a Company security guard approached him, asked him what he was doing, and took a picture of the car in which he was traveling. The guard then denied them further entrance to the cooler.

The objection was dismissed for failure to establish conduct which would tend to interfere with employee free choice. We agree/ and affirm the dismissal of Objection No. 170.

Objection No. 171; Allegation that Company foremen ordered crew punchers to photograph all employees going to vote

There is only one declaration in support of the objection and it alleges that one member of Crew No. 4 overheard a foreman (by means of a communications radio) instruct all punchers to take out their cameras and take photos of all employees who were going to vote. The same objection and virtually identical declaratory support has been previously asserted. Here, as there, the dismissal is affirmed as there is no evidence that any punchers carried cameras or took photos and thus there is no conduct that would tend to affect the outcome of the election.

Objection No. 172: Allegation that the Employer illegally campaigned on the day of the election

Of the 11 declarants whose statements are submitted in support of the objection, five of them made no reference whatsoever to events on the day of the election. One of them merely attests to the presence of several men wearing Coastal Berry jackets. Because they were greeting arriving workers, the declarant asked them what they were

doing there. They replied that they were sent to make sure everything went smoothly and from this statement "It *appeared [to her]* that these men were campaigning on the morning of the election." Another declarant described the presence of a van which the Comite had parked about 75 yards from the voting site and which displayed pro-Comite signs. Prior to the start of balloting at Gonzales Ranch, the eighth declarant saw representatives of the Comite campaigning nearby and later observed the management officials who were wearing Coastal Berry jackets that day, and later, during actual balloting, noted the presence of a parked Comite van about 50 feet from where the voting lines were forming. The ninth declarant describes the same incidents as his predecessor, but omits any reference to the Comite's organizing prior to the opening of the polls. The tenth declarant merely reiterates the presence of Company officials at the entrance to Gonzales ranch. The final declarant, who was neither an employee nor a representative of any of the parties to the election, stated that he drove towards the polling area when a red and white van, bearing a sign which read "Vote Comite," pulled up alongside, and a passenger in the van took a picture of him.

None of the several declarants describe matters which establish prima facie evidence of conduct which would have a tendency to interfere with employee choice and warrant the setting aside of the election. The dismissal of Objection No. 172 is affirmed.

Objection No. 173: Allegation that the Employer intentionally, and thus unlawfully, hired employees for the purpose of having them vote against the UFW. (See Labor-Code section 1154.6 which makes it an unfair labor practice for an employer "willfully to arrange for persons to become employees for the primary purpose of voting in elections".)

The UFW points out that following its May 6, 1999 filing of a Notice of Intent to Organize (NO), by which, on the basis of a 10 percent showing of interest, a labor organization may petition to receive a list of employees names and home addresses, the Employer submitted a list of 1239 names four days later on May 10. One week later, an updated Employer list revealed the names of about 1500 current employees. It is alleged that the Company hired an additional 300 employees within one week and that such conduct would tend to interfere with other employees' rights to freely decide whether to join or reject unionization.

This objection alleges more specifically that the election day experience of two employees suggests that they either were from the raspberry crew (which allegedly was hired "to make sure the [UFW] did not get enough votes") or had worked only about three hours during the voter eligibility period.

One declarant noted that during balloting at Beach Ranch, in response to a Board agent's effort to ascertain the eligibility of a potential voter whose name did not appear on the eligibility list, the employee reportedly advised the Board agent that "I barely started working on the 16th of May," the last day of the eligibility period. The declarant thought this "odd" because the 16th was a Sunday and no strawberry crews worked that day. At that point, an observer spoke up to propose that perhaps his name was not on the list because he is part of the raspberry crew. Two additional declarants, both UFW organizers, described their joint visit to the home of a raspberry worker who told them no raspberry workers would support the UFW and in fact "they were just hired to make sure that the [UFW] did not get enough votes."

The name of a second potential voter did not appear on the eligibility list when he attempted to vote at the Albright Ranch. According to the declarant, the

employee presented a check stub reflecting that he had indeed worked during the eligibility period but thought it seemed "strange...that someone had been hired to work only three hours."

The objection was dismissed for declaratory insufficiency; that is, there was no factual basis for finding that employees were willfully and intentionally hired for the sole purpose of voting against the UFW. Moreover, as the Executive Secretary observed, even if the statement elicited by the UFW organizers regarding the hiring of the raspberry workers in order that they vote against the Union did not constitute hearsay, or an exception to the hearsay rule, it also provides no factual basis for the bare assertion that the crew was hired for an unlawful purpose.

We affirm the dismissal of Objection No. 173, but add that there is no requirement that employees must work a specified number of hours in the eligibility period in order to be entitled to a ballot. Any employee who performs any amount of work for the Employer during the applicable pre-petition payroll period is eligible to participate in the election.

Objection 174; Allegation that Board agents engaged in acts of negligence, bias, and misconduct which impaired the integrity of the election process

This objection more specifically alleges that a Board agent permitted an employee to vote notwithstanding his inability to produce a check stub or photo identification.

According to the declarant, an election observer, he challenged the eligibility of a potential voter because the employee's name did not appear on the eligibility list and the voter failed to produce either a check stub or photo identification. He complains that notwithstanding his challenge, the Board agent permitted the employee to cast a regular ballot.

This Board has long held that whereas any party to an election, as well as Board agents, may, for good cause shown, challenge any prospective voter on various grounds expressly set forth in the Board's regulations, the adequacy of voter identification is a matter reserved to the sole discretion of Board agents. (Title 8, California Code of Regulations, section 20355(a)(1) through (a)(8); section 20355(c); see *Oceanview Produce Co.* (1994) 20 ALRB No. 16, fn. 5 at sl. op. p. 3.) We affirm the dismissal of

Objection No. 174 for the reasons set forth in the Executive Secretary's Order.

Objection Nos. 175 & 176; Allegations that Board agents failed to explain challenged ballot procedures adequately to potential voters whose entitlement to vote was challenged on various grounds

The objections were dismissed, in part because some declarants in support of the objections failed to specify what the Board agents did tell voters, and in part because other declarants merely assert an opinion about the impact of the challenged ballot process on certain voters. According to some declarants, for example, many of the challenged voters became concerned when their votes were placed in sealed envelopes bearing their name on the outside and, allegedly because the Board agents did not explain the process, may have believed they had not cast a secret ballot and therefore the Comite would eventually learn how they voted.

Allegations of objectionable misconduct cannot be tested by subjective individual reactions of employees, as such reactions "are irrelevant to the question whether there was, in fact, objectionable conduct." (*Emerson Electric Co.* (1980) 247 NLRB 1365; see, also, *NLRB v. Gissel Packing Co.* (1969) 395 U.S. 575.) With regard to the

challenged ballot process, the declarants do not allege that Board agents failed to offer any instructions at all with regard to the manner in how challenged ballots are handled, but only that, in their view, the instructions were not adequate. Moreover, none of them assert that their -eligibility to vote was challenged and thus it is not clear how they would be privy to the instructions Board agents did in fact give to challenged voters. Absent clear evidence that a Board agent abused -the discretion vested in him or her by the Board, we will not speculate on the manner in which such assignments were carried out. Mere allegations that Board agents acted improperly does not establish an abuse of discretion.

The dismissal of Objections Nos. 175 and 176 is affirmed.

Objection No. 177: Allegation that Board agents permitted employees who had already voted at Beach Ranch to remain in the polling area

A declarant merely states that Board agents took no action with regard to the many people who remained in the polling area after having voted.

The objection was dismissed because the mere presence of voters, without reference to anything they may have said or done, neither constitutes an abuse of

discretion in the conduct of elections by Board agents nor conduct interfering with employee choice. In challenging the dismissal, the Union explains that its concern is not with what may have been said, but that the presence of the voters created confusion and allowed the Comite to electioneer during the voting time. There is not a scintilla of evidence to support the Union's present characterization of the question nor is there any basis for the Union to assert that Board agents engaged in misconduct and thereby created an incident which tainted the subsequent election because, presumably, it would appear to voters that the ALRB favored the Comite. The dismissal of Objection No. 177 is affirmed.

Objection No. 178: Allegation that a Board agent permitted a supervisor to remain in the voting area during balloting and presumably his presence interfered with employee choice

According to the declarant, she observed that a pickup truck belonging to a supervisor had pulled within about 25 feet of the voting area at a time when one of the crews was lining up to vote. The declarant called the matter to the attention of a Board agent who advised that the supervisor would be transporting a disabled employee who would be permitted to vote ahead of any other employees. The pickup left the area, according to the

declarant's estimate, 17 minutes later. It is not clear . why the Union cites the incident in support of its effort . to set aside the election as there is no allegation of misconduct that would tend to interfere with employee free choice. If the Union is merely objecting to what appears to have been a predetermined arrangement with Board agent knowledge and approval, the objection is misplaced. The Board has granted Board agents wide latitude in the exercise of discretion when conducting representation elections. We find no abuse of that discretion and certainly no showing that there was conduct that would tend to interfere with free choice. The dismissal of Objection No. 178 is affirmed.

Objection No. 179: Allegation that a Board agent, when in the process of advising crews of the upcoming election, was accompanied by a known Comite supporter

The objection is predicated on the assumption that employees would view the association as an indication that the ALRB was endorsing the Comite. The objection was dismissed on the grounds that there is no showing of statements or conduct that was inappropriate. Employees complained about the presence of the Comite supporter and the Board agent asked that she no longer accompany her. The objection was dismissed for failure to alleged conduct

compromising the integrity of the Board's election process. The dismissal of Objection No. 179 is affirmed.

Objection No. 180: Allegation that Board agents permitted an alleged supervisor to vote a regular ballot

The declarant states that two UFW observers informed her that a named employee voted a regular ballot and then added "I believe, however, that he voted challenged." Aside from the fact that there is no non-hearsay evidence in support of the objection, the declarant has not submitted facts that would serve to establish supervisory status. However, assuming for sake of discussion only that the employee is allegedly a supervisor, granting him a challenged ballot was proper Board procedure in order to preserve the question for a later determination of his status either as an eligible rank-and-file employee or a non-eligible supervisor. Thus, rather than implying that the integrity of the voting process somehow was compromised, the declarant has in fact attested to the propriety of Board agent conduct. The dismissal of Objection No. 180 is affirmed.

Objection No. 182: Allegation that an entire crew was permitted to remain in the polling area after voting

According to the declarant, all members of Crew No. 27 remained in the voting area of Albright Ranch after

they voted and observed other employees voting. It is not clear what the declarant means by the "voting" area as, for example, the actual polling site or a larger area beyond the polling site. Employees, whether those who had already voted and remained in the area, or employees waiting in line to vote, normally are in a position to see other employees as they are given ballots, then proceed to the voting booth or to the challenge ballot table, as the case may be. But certainly none of them would be in a position to view how the employee actually voted. The declarant also describes an incident in which one employee said to another "we did it, we won." Such a statement could not be predicated on how employees voted and there is nothing in the statement to suggest who the "we" might be.

In dismissing the objection, the Executive Secretary observed that there is nothing in the declaration to suggest interference with employee free- choice and the mere presence of voters, without more, does not establish interference. The dismissal of Objection No. 182 is affirmed.

Objection No. 183: Allegation that Board agents permitted employees to coach others on how to vote for the Comite during the actual balloting process

At the Albright Ranch during balloting, the declarant states that she heard an unidentified individual advise another individual in this manner: "You already know how to vote -- mark the little strawberries." There is no contention, as alleged, that there was any Board agent involvement in the incident or that the incident itself rose to the level of misconduct interfering with employee free choice. What is in issue is no more than one employee urging another employee to vote for a particular party, a permissible means by which employees may campaign for their ballot choice. The dismissal of Objection No. 183 is affirmed.

Objection No. 184: Alleges that Board agents permitted a Comite supporter to wear a "No Union" button while in the polling area

The declarant explains that after he objected to Board agents about the presence of a Comite supporter who wore an anti-UFW button while in the polling area, the Board agent asked the button-wearer to leave. The objection was dismissed because there is no prohibition on the wearing of campaign insignia in the voting area by employees. (See, e.g., *0. P. Murphy & Sons* (1977) 3 ALRB No. 26.)

The UFW seeks reversal of the dismissal on the grounds that the employee in question served as an election observer and cannot display campaign material while so serving. As the Union correctly observes, the Board's regulations prohibit such display by observers when acting in that capacity. (Tit. 8, Cal. Code Regs, section 20350(b).) However, there is no evidence that the employee did in fact serve as an observer or,, if so, that he wore any campaign insignia of any type while serving as an observer. In fact, according to the same declarant, after the employee was asked to, leave by Board agents, he did in fact leave the area. The dismissal of Objection No. 184 is affirmed.

Objection No. 185; Allegation that Board agents permitted the same employee as immediately above to speak with employees waiting in line to vote

Declaratory support suggests that before Board agents asked the employee to leave, he had already started talking to voters who were standing in line to vote. The declaration does not tell us what the employee may have said to potential voters. The objection was dismissed in reliance on Board precedent which, in instances such as this, requires an examination of the content of the discussion in order for the Board to determine whether it

was electioneering and, if so, whether it interfered with employee choice.

In seeking to overturn the dismissal, the UFW urges us to follow an NLRB rule of *Milchem, Inc.* (1968) 170 NLRB 362, which holds that any discussion by a party with employees waiting to vote will invalidate the election regardless of its content. The ALRB long ago rejected the Milchem rule and will not set aside an election unless it can determine that the content of discussion among waiting employees was such that it would tend to affect the results of the election. The dismissal is affirmed.

Objection No. 186; Allegation that Board agents permitted an anti-UFW employee to campaign in the voting area

The objection alleges that by permitting the employee to campaign in the voting area both before and after he had voted, other employees would be left with the impression that the election was being run by the anti-UFW forces.

The objection was dismissed on the grounds that while such campaigning is prohibited in the polling area, and, in this instance, was not appropriate, the employee's message did not involve threats or other coercive statements.

According to the declarant, an employee, while waiting to vote, said to other potential voters "no matter how many times we voted, the Comite would always win." We presume that the employee in question was a rank-and-file employee eligible to vote in the election. His comments reflect the normal give-and-take of campaigning among employees or, at most, the type of hyperbole associated with contested elections. Therefore, the dismissal of Objection No. 186 is affirmed.

Objection No. 187: Allegation that Board agent permitted balloting to commence before the UFW's observers had arrived

According to the objection and supporting declarations, although balloting began almost a half hour after the time scheduled, three crews voted in the absence of the UFW's observers who, due to an apparent mix-up, had been dispatched to a different voting site. The objection was dismissed because the UFW failed to demonstrate that it was prejudiced by the short absence of its observers.

The Union now argues that the rationale for dismissing the objection is misguided as observers are essential to preserving the integrity of the election process. Otherwise, the Union contents, Board agents could

not know if a potential voter is indeed entitled to receive a ballot.

The argument cannot withstand scrutiny. A party's entitlement to observers is a privilege, not a right. Title 8, California Code of Regulations, section 20350 provides that "[e]ach party may be represented at the election by observers of its own choosing...". With or without a party's representation during the election, in the form of observers, Board agents issue ballots to employees whose names appear on the eligibility list and who, in the view of the Board agents, have presented adequate identification. The dismissal of Objection No. 187 is affirmed.

Objection No. 188: Allegation of Board agent misconduct

This objection alleges that on June 3 at Gonzalez Ranch, a worker in line to vote was constantly telling other workers who were in line to vote for the Comite, and that Board agents did nothing to stop this campaigning. The objection was dismissed on grounds that there was no evidence of knowledge by any Board agent of the conduct and no evidence of any coercive campaign speech by the Comite supporter.

In its request for review, the UFW asserts that the Board agents failed to manage the voting place, in

violation of the pre-election stipulation that Board agents would assume responsibility for getting persons to the polls. The UFW claims that the supporting declaration demonstrates a chaotic situation where Board agents ignored their responsibility and allowed vigorous campaigning by Comite supporters in the voting area.

The supporting declaration alleges that one Comite supporter stayed at the end of the voting line and kept urging voters to vote for the Comite. The declarant states that at first there was no line, and workers were just standing around, but then a line was formed. There is no allegation that any campaigning was brought to the attention of any Board agent, and no allegation that any of the campaigning contained any threats or other coercive conduct; rather, it consisted only of urging workers to vote for a particular choice on the ballot.

Campaigning at the polls is judged on its content, and specifically on its potential for affecting free choice, not on a "per se" basis. (*The Hess Collection Winery* (1999) 25 ALRB No. 2; *Anderson Vineyards, Inc.* (1998) 24 ALRB No. 5.) Under this standard, the Executive Secretary properly dismissed Objection No. 188, and the dismissal is affirmed.

Objection No. 189: Allegation of Board agent misconduct

This objection alleges that Board agents failed to request any identification from two workers at the Beach Ranch polls, even though their identity was challenged. ' The objection was dismissed on grounds that the supporting declaration failed to state whether the workers cast challenged ballots, which would have been the proper procedure for voters whose status was challenged. The objection was dismissed on the further grounds that because the margin of victory in the election was more than two votes, this objection was not outcome-determinative in nature.

In its request for review, the UFW argues that there is no indication that the two voters voted in accordance with challenged ballot procedures, and that "this practice" calls into question the validity of the entire election process regardless of the closeness of the election. However, the vague allegations contained in this objection fail to make a prima facie showing of any misconduct or even any conduct contrary to normal election procedures. Therefore, the dismissal of Objection No. 189 is affirmed.

Objection No. 190: Allegation of Board agent misconduct

This objection alleges that an agent of the Employer was directing workers to vote at the Gonzalez

Ranch polls when Board agents failed to lead these workers to the polls. The objection was dismissed on grounds that even if it was agreed that Board agents would lead the workers to the polling areas, the assistance of company agents is not inherently coercive, and there are no facts reflecting threats or other forms of coercion that would interfere with free choice.

In its request for review, the UFW asserts that the objection was dismissed on the basis that the conduct affected only two workers and was thus not outcome-determinative. On the contrary, the objection was dismissed because there was no showing of threats or other coercion that could have affected free choice in the election. Further, there was no showing of Board agent misconduct. Therefore, the *dismissal of Objection No. 190* is affirmed.

Objection No. 192: Allegation of Board agent misconduct

This objection alleges that Board agents failed to enforce the stipulation that company supervisors be barred from the fields during the voting. The objection was dismissed on grounds that simply seeing a supervisor on the property, even in light of the stipulation, reflects no conduct that could possibly affect free choice.

In its request for review, the UFW argues that the purpose of the stipulation was to prevent surveillance by the Employer and to create a voting atmosphere free of intimidation and coercion. The incident should be taken in the context of the larger picture of Board agent misconduct, the UFW asserts.

The UFW has failed to make a prima facie showing that the Employer was engaged in surveillance or that an atmosphere of intimidation or coercion was created by the mere presence of a supervisor who was passing near the workers in a Company truck. Further, the UFW has made no showing of any "larger picture" of Board agent misconduct. Therefore, the dismissal of Objection No. 192 is affirmed.

Objections Nos. 191 & 193; Allegation of Board agent misconduct

These objections alleges that Board agents failed to prevent campaigning in the voting lines at the Gonzales Ranch and Beach Ranch polling sites. The objections were dismissed on grounds that the statements made were not coercive and did not contain any threats, and thus would not warrant setting aside the election.

In its request for review, the UFW argues that Board agents must make every effort to ensure the integrity of the election, and asserts that the incidents should be

taken in the context of the larger picture of Board agent misconduct.

The objections were properly dismissed under the standard by which campaigning at the polls is judged. Such campaigning is judged on its content, and specifically on its potential for affecting free choice, not on a "per se" basis. (*The Hess Collection Winery* (1999) 25 ALRB No. 2; *Anderson Vineyards, Inc.* (1998) 24 ALRB No. 5.) Under that standard, the campaigning alleged herein did not contain any threats or other coercive conduct, but consisted of no more than urging workers to vote for a particular choice on the ballot. The campaigning alleged herein does not make a prima facie showing of conduct warranting the setting aside the election, and we therefore affirm the dismissal of Objections Nos. 191 and 193.

Objection No. 194; Allegation of Board agent misconduct

This objection alleges that a Board agent at the Gonzalez Ranch told a worker he could not submit a blank ballot, but that he had to vote. The Board agent allegedly also said that the decision was very important and would affect them, using the Spanish word, "afectar." The objection was dismissed on grounds that there was nothing improper with a Board agent telling voters that they must

make a selection on the ballot, and that the dispute over the meaning of "afectar" was inconsequential.

In its request for review, the UFW argues that the Board agent's use of the word "afectar" was not inconsequential in the context of the hotly contested election campaign conducted herein. The UFW asserts that words, and who is saying them, do make a difference, and notes that the declarant states she was rebuffed by the agent when she tried to cure the inaccuracy of the translation.

The declarant claimed that the word "afectar" has a negative connotation in Spanish, and means that a person will suffer the consequences or experience bad things because of a decision. She also claimed that after the Board agent used the word, workers in line to vote "looked like" they were scared. However, nothing in the declaration indicates that anything was said by the Board agent which caused workers to decide not to vote or to vote in a particular way. Further, the declarant's observation that workers in line "looked like" they were scared is purely subjective, and even if true it is not shown to be in any way related to the Board agent's use of the word "afectar." Thus, there is nothing contained in the declaration that demonstrates Board agent misconduct, and

nothing indicating that his use of the word "afectar" in any way tended to affect, or could have affected, the results of the election. Therefore, the dismissal of Objection No. 194 is affirmed.

Objection No. 195: Allegation of Board agent misconduct

This objection alleges that a Board agent at the Seco Ranch instructed a number of workers to vote, even though they had expressed to him a desire not to vote. The objection was dismissed on grounds that the supporting declarations showed merely that the Board agent was urging workers to vote, and that the declarations were too vague to support an allegation that the Board agent insisted that they vote. Further, there was no showing as to how the conduct would have affected the outcome of the election.

In its request for review, the UFW argues that the Board agent shouted to the workers to come and vote and then, when the workers expressed no interest in voting, he pressured them into voting by getting an active and vocal anti-UFW, pro-Comite supporter to go to the workers and bring them to vote by pushing them towards the vote site. However, the declaration does not support the UFW's characterization of the Board agent's actions. Rather, the declaration states that the Board agent shouted at the workers to come vote, and when they told him they did not

want to vote, he spoke to an irrigator and a strawberry picker, who ran over to the crew and touched the workers on their backs and pointed them to the voting area. These allegations are not sufficient to make a prima facie showing that the Board agent's actions were inappropriate. Further, there was no showing of any possible effect on the outcome of the election. Therefore, the dismissal of Objection No. 195 is affirmed.

Objection No. 196: Allegation of Board agent misconduct

This objection alleges that Board agents allowed persons to vote with a labor contractor crew on June 3 even though many of the people brought there to vote were not employees entitled to vote. The objection was dismissed on grounds that the supporting declaration, filed by one of the UFW election observers, merely stated that the declarant heard one worker who was unable to respond who his foreman was and did not know what crew he was working in; further, that although the declarant stated that it appeared to him that many of the workers did not work for the Employer, this statement was completely unsupported by facts; and finally, that the declarant failed to state if these workers voted by challenged ballot.

In its request for review, the UFW argues that the objection should have been set for hearing on the basis

of the declarant's statement that it "looked" as if many of the workers did not work for the Employer, as well as the claim that one employee was unable to name his immediate supervisor. However, the declaration provides nothing but speculation as to the non-eligible status of the employees, and such speculation does not provide a prima facie showing for setting the objection. Therefore, the dismissal of Objection No. 196 is affirmed.

Objection No. 197: Allegation of Board agent misconduct

This objection alleges that Board agents allowed the Employer to violate the pre-election stipulation by having a confidential employee drive workers to the polls and by having a supervisor stationed about 100 meters from the polls at Beach Ranch as the voting was taking place. The objection was dismissed on grounds that there was no evidence of misconduct, in that there was no misconduct in simply allowing a confidential employee to drive voters to the polls, and no misconduct in allowing a supervisor to stand 100 meters from the polls, as there was no indication that he was within the quarantine area.

In its request for review, the UFW reiterates its allegation that the pre-election stipulation did not allow anyone but Board agents to take crews to and from the polling sites, and asserts that because the supervisor was

in a position where voters could see him, this constituted surveillance and intimidation by agents of the Employer. However, neither incident describes any conduct interfering with free choice or tending to undermine the integrity of the election process. Therefore, the dismissal of Objection No. 197 is affirmed.

Objection No. 198: Allegation of Board agent misconduct

This objection alleges that Board agents committed misconduct when they allowed Comite supporters to act as observers for the Employer and let the Employer dictate who would serve as Comite observers. The objection was dismissed on grounds that the supporting declarations did not demonstrate that the Employer was dictating who would be observers for the Comite, and further that there is no requirement that an employer's observers cannot be people who favor one union or the other.

In its request for review, the UFW argues that the Employer should not have been able to make any decisions regarding who the Comite observers would be. Further, the UFW asserts, Board agents should not have allowed Employer observers to appoint crew observers "with impunity, " which could leave an impression that the Comite was in fact running the election.

The objection does not demonstrate that the Employer was dictating who were to be observers for the Comite, nor is there any indication how this could have prejudiced the UFW's interests in the election. Observers must be non-supervisory employees of the Employer, but there is no requirement that the Employer's observers not favor one union or the other. Thus, the objection fails to describe any Board agent misconduct that interfered with free choice in the election or which undermined the integrity of the election. Therefore, the dismissal of Objection No. 198 is affirmed.

Objections Nos. 181 & 199: Allegation of Board agent misconduct

Objection No. 181 alleges that on June 4, a Board agent permitted a worker to vote twice, once with the raspberry crew and once with a strawberry crew. The objection was dismissed on grounds that the supporting declarations were based in part on hearsay, and that even if there were no hearsay problem, the declarations would reflect only that one worker was mistakenly allowed to vote twice, which alone would not impugn the integrity of the election.

Objection No. 199 alleges that during the June 3 and 4 election, Board agents failed to ensure that workers

voted only once, and that on June 4 Board agents permitted four Oxnard workers to vote unchallenged at a Watsonville voting site. The objection was dismissed on grounds that absent any additional information concerning what actually happened at the polling site when the four workers voted, it was impossible to determine if the Board agents erred in allowing the four to vote unchallenged; further, the example did not illustrate any widespread problem with preventing workers from voting more than once.

In its request for review of Objections Nos. 181 and 199, the UFW asserts that since the four Oxnard workers in Objection No. 199 did not belong to any Watsonville crew, and the Board was using crew lists to identify eligible voters, the four voters should have been challenged. Because their names do not appear on the challenged ballot list, the UFW argues, it has raised a prima facie case of Board agent misconduct. Further, the UFW alleges, Objection No. 181 also alleges an example of Board agents permitting a worker to vote more than once, and, taken together, the objections raise serious issues as to whether Board agents properly conducted the election.

The declarations in support of Objection 181 are based entirely on hearsay, and therefore cannot be used to support a prima facie showing of Board agent misconduct.

The declarations in support of Objection No. 199 do not make a prima facie showing that the Board agents erred in allowing the four voters to vote unchallenged. Therefore, the objections do not, either singly or cumulatively, make a prima facie showing of Board agent misconduct that would impugn the integrity of the election, and the dismissal of both objections is affirmed.

Objection No. 200: Allegation of Board agent misconduct

This objection alleges that during the June 4 vote count, Board agents failed to openly reconcile the voting lists that the two Watsonville teams had used to determine eligibility, and further that there were no challenged ballot envelopes opened and placed in the ballot box prior to the vote count. The objection was dismissed on grounds that although the declarant demonstrated a perception that the ballot count proceeded somewhat differently on June 4 than it had on May 26, there were no facts alleged on which to base an inference that Board agents engaged in any conduct that undermined the integrity of the ballot count on June 4.

In its request for review, the UFW argues that because the Board agents did not reconcile the eligibility lists in public, there was a question whether the correct amount of ballots were counted, and whether voters were

able to vote more than once. However, the declaration fails to allege any facts indicating that the procedures followed at the June 4 ballot count were in any way improper or undermined the integrity of the election. Therefore, the dismissal of Objection No. 200 is affirmed.

Objection No. 201: Allegation of Board agent misconduct

This objection alleges that a Board agent incorrectly wrote down the total number of voters on the official tally of votes. The facts indicated that the Board agent erroneously wrote in one. part of the tally the total of regular ballots cast and the unresolved challenged ballots, rather than the total number of voters (which would have included void ballots and challenges resolved prior to the count). The Board agent's error was of no import, since the critical number is the total of regular ballots and unresolved challenged ballots, which number appeared correctly in the right most column of the tally. The objection was dismissed on grounds that the declarant failed to state any facts which would reflect that placing the same number mistakenly on another part of the tally had any implication whatsoever as to the accuracy of the vote tally.

In its request for review, the UFW argues that because of the Board's obligation to ensure voter

confidence in the election process, it must refrain from conduct which would compromise the process. However, the UFW has failed to demonstrate that the Board agent's error would in any way have compromised the integrity of the election. Thus, the dismissal of Objection No. 201 is affirmed.

Objection No. 202: Allegation of Board agent misconduct

This objection alleges that, in general, the June 3 election was tainted by numerous acts of Board (agent) misconduct. The objection was dismissed on grounds that the supporting declarations did not support a finding of Board agent misconduct.

In its request for review, the UFW alleges that one declaration states that an irrigator was directing a weeding crew to the polls, and that this was in direct violation of the pre-election stipulation that only Board agents were to direct and bring workers to the voting site. The UFW also alleges that Comite organizers were actively electioneering within visual and auditory distance of Board agents at the voting site, in violation of the pre-election stipulation.

The Board agent conduct alleged in the declarations supporting this objection does not constitute misconduct sufficient to warrant setting the matter for

hearing. Some of the statements involving what voters allegedly told the declarant about their experiences in the voting area constituted hearsay, which cannot be used in support of the objection. There are no facts to support the declarant's claim that an irrigator directing a crew to the polling area was engaged in campaigning. Other alleged incidents are too vague or inconsequential to constitute misconduct even if true. Therefore, the dismissal of Objection No. 202 is affirmed.

Objections Nos. 204 & 205: Allegation that Comite organizers interfered with UFW access by yelling obscenities

These objections allege that on May 25, Comite organizers interfered with UFW access by yelling obscenities at UFW organizers. The objections were dismissed on grounds that the underlying declaration failed to provide facts demonstrating that the two men uttering the obscenities were acting as agents of the Comite at the time of the incident or that the incident, in the context of an already highly contentious organizing atmosphere, would tend to affect free choice.

In its request for review, the UFW asks the Board to take administrative notice that Objection No. 208 states that one of the two men, Juan Perez, is a Comite organizer,

and that therefore agency had been established. However, the mere fact that the objection labels Perez as an organizer is not enough to make a prima facie showing of his status as an organizer. The fact remains that the declarations supporting the objections fail to allege that either of the two *men was an organizer* for the Comite. Therefore, the original reasons for dismissing Objections Nos. 204 and 205 were sound, and the dismissals are affirmed.

Objection No. 208: Allegation that Comite organizer threatened a UFW observer

This objection alleges that on June 4, a Comite organizer threatened a UFW election observer with physical harm .and that the observer felt "shaken up," as the organizer had physically attacked him before. According to the declarants, the person uttering the threat was a Comite supporter (the declarations do not state that he was an organizer) who leaned against the observer's shoulder, spoke in a confrontational tone, and, as he was leaving, looked back angrily and said that very soon "they" would be giving him a little visit. The objection was dismissed on grounds that while the incident would no doubt be intimidating to the observer, there was no indication that any person other than the observer witnessed it, and thus

no indication that it would have tended to affect free choice.

In its request for review, the UFW argues that although only one worker, the observer himself, was apparently affected by the threats, such threats create an impermissible atmosphere of coercion, and that this is sufficient to set the matter for hearing under the reasoning of Triple E Produce Corp. v. Agricultural Labor Relations Bd. (1983) 35 Cal.3d 42 [196 Cal.Rptr. 518] (Triple E).

In Triple E, the California Supreme Court set aside a Board election on the basis of misconduct by union organizers who uttered threats to employees to the effect that a failure to vote for the union would result in a loss of jobs. The court concluded that the threats, which were pervasive in nature and tied job loss to the act of voting, created an impermissible atmosphere of fear and coercion surrounding the balloting which rendered the election invalid. The threat alleged herein was not tied to voting and was not uttered by a union organizer, but it would have been particularly coercive to the employee, since he had been physically attacked in the past by the person uttering the threat. Further, the fact that the threat was made to only one employee is not conclusive, since it can

reasonably be assumed that threats made during an election will be discussed, repeated, and disseminated among the other employees. (*Sav-On-Drugs, Inc*. (1911) 221 NLRB 1638; *Standard Knitting Mills, Inc.* (1968) 172 NLRB 1122.) We conclude, therefore, that the UFW has made a prima facie showing of threatening conduct which would have tended to create an impermissible atmosphere of fear and coercion surrounding the balloting. We therefore grant the request for review of the dismissal of Objection No. 208, and we set for hearing the following question: Whether, on or about June 4, Comite supporter Juan Perez made a threat of violence against a UFW supporter and, if so, whether such threat created an atmosphere of fear or coercion tending to interfere with employee free choice in the election.

Objection No. 224; Allegation that Comite circulated a flyer misrepresenting amount of UFW dues

This objection alleges that in May, the Comite circulated a flyer which misrepresented and grossly overstated the amount of dues deducted from paychecks by the UFW. The objection was dismissed on grounds that the Board will not set aside elections based on misrepresentations where, as here, the other party had sufficient opportunity to refute or explain away the contested statement.

In its request for review, the UFW claims that the flyer was shown to workers by a supervisor on June 1, and argues that supervisors exert a lot of influence over their subordinates. Further, the UFW argues, the flyer was still being widely disseminated despite the good faith efforts of the UFW to establish its falsity.

The declarations filed in support of this objection do not support the UFW's contention that the flyer was shown to workers by Supervisor Briano on June 1; rather, the alleged date was May 23, more than a week prior to the election. Further, the declarations do not support the UFW's contention that the flyer misrepresented the amount of dues deducted from paychecks by the UFW; in fact, one declarant stated that the union referred to appeared to be the Teamsters Union, and another declarant specifically stated that the union referred to was not the UFW. Thus, even if copies of the flyers were distributed to workers closer to the time of the election, there was no showing that the flyer misrepresented the amount of dues which would be deducted from paychecks by the UFW. Therefore, the dismissal of Objection No. 224 is affirmed.

Objection No. 225: Allegation that Comite supporter threatened to bring ineligible voters to polls

This objection alleges that on June 3 prior to the voting at Seco Ranch, a Comite supporter announced to an entire crew that he was going to Driscoll at 3:30 p.m. to get some workers so that they could vote at Seco Ranch. The objection was dismissed on grounds that there were no facts indicating that the supporter successfully secured ineligible voters to vote in the election, or that he even attempted to do so. Further, no declaration indicated that any workers were hired for the purpose, of voting.

In its request for review, the UFW argues that there was also a suspicious-looking car on the Employer's property on June 3, and that this, together with the statement regarding bringing in outside workers, could be viewed as the Employer allowing outside workers onto the property for the purposes of voting. However, the declarations fail to provide any evidence that either the Employer or Comite supporters hired or otherwise secured ineligible workers to vote in the election, or even attempted to do so. Thus, the objection reflects no conduct that would tend to affect free choice, and the dismissal of Objection No. 225 is therefore affirmed.

Objection No. 226; Allegation that Comite supporter interfered with UFW access

This objection alleges that on May 24, a Comite supporter who had been drinking beer interfered with UFW organizers during after-work access and was waving a bat near workers. The objection was dismissed on grounds that while the incident may have interfered with access on that particular day, there was no evidence establishing that the man was an agent of the Comite and the incident was quickly diffused, so that there was no apparent effect on voter free choice.

In its request for review, the UFW argues that swinging a bat near workers constituted a threat of violence that tended to interfere with free choice, even if the Comite supporter was not acting as an agent. However, because this was an isolated incident where no actual violence occurred, and the man was immediately restrained by a security guard and other workers, the supporting declarations fail to demonstrate that the incident would have tended to affect free choice. Therefore, the dismissal of Objection No. 226 is affirmed.

Objections Nos. 227-234: Alleged interference with UFW's access rights

These objections allege that on various dates from May 1 to June 4, agents of the Employer interfered with UFW's access rights by, inter alia, turning up a radio

so loud that workers could not hear the union organizers talk, blocking a group of workers from going over to another crew to talk about- the UFW, trying to prevent organizers' entry onto the Employer's property, shouting at and interrupting organizers as they tried to talk to workers, refusing to leave an area where workers were talking to organizers, allowing excess access to Comite organizers, and denying organizers permission to take access. Some of the objections were dismissed on grounds that they were based on hearsay and thus did not comply with the Board's regulations on the content of election objections. Other objections were dismissed on grounds that the incidents of interference with access, even if proven, were isolated and de minimis, and would not have tended to affect free choice in the election.

In its request for review, the UFW argues that the alleged interference with access was serious since it occurred during a tightly contested election period, and that all these objections, when considered together, show that the employer's agents created a hostile atmosphere towards the UFW which would have affected free choice. However, when the hearsay allegations are removed from these objections, there remains no showing that any interference was systematic rather than isolated, and no

showing that there were not sufficient opportunities for organizers to talk with the workers. Thus, there was no showing that the alleged interference was sufficient to cause any appreciable impact on free choice in the election. Therefore, the dismissal of Objections Nos. 227-234 is affirmed.

SUMMARY

The following objections are set for hearing on May 9, 2000, along with the objections which have been previously been set for hearing on that date:

Objection No. 128: Whether a forewoman predicted that the Employer would go out of business if the UFW won the election, and whether the statement was made by a management official or by someone whom employees would view as being in a position to speak for management.

Portion of Objection No. 130: Whether a foreman predicted to his crew that the field they were working in would not be planted the following year, and whether the foreman was a supervisor or an agent of the Employer or was someone whom employees would view as being in a position to speak for management, and therefore whether his statement constituted a threat of job loss in the event that a particular union won the election.

Portion of Objection No. 148: Whether a forewoman told employees they should vote for the Comite in order to save the Company from going under, and whether the forewoman was a supervisor or an agent of the Employer or was someone whom employees would view as being in a position to speak for management, and therefore whether her statement could reasonably be perceived by the employees as a threat.

Objection No. 208: Whether, on or about June 4, Comite supporter Juan Perez made a threat of violence against a UFW supporter and, if so, whether such threat created an atmosphere of fear or coercion tending to interfere with employee free choice in the election.

DATED: March 20, 2000

GENEVIEVE A. SHIROMA, Chair

IVONNE RAMOS RICHARDSON, Member

GLORIA A. BARRIOS, Member

HERBERT 0. MASON, Member

CASE SUMMARY

Coastal Berry Company, LLC 26 ALRB No. 1
99-RC-4-SAL

Background

An election was conducted among the agricultural employees of Coastal Berry Company, LLC (Coastal or Employer) on June 3 and June 4, 1999, resulting in a final tally of ballots showing 725 votes for the Coastal Berry of California Farmworkers Committee (Comite) , 616 votes for the UFW and 19 unresolved challenged ballots. Two hundred thirty-four election objections were timely filed by the United Farm Workers of America, AFL-CIO (UFW). By order dated October 14, 1999, the Board's Executive Secretary set some of the objections for hearing and dismissed others.

Executive Secretary's Order

Of the 234 election objections filed, the Executive Secretary set 98 for hearing. Within the Executive Secretary's order, the objections set for hearing were grouped into 18 broad categories:

I. Whether the designated statewide bargaining unit in which the election was held is inappropriate because (1) employees are employed in two or more noncontiguous geographical areas and (2) there is sufficient dissimilarity in their terms and conditions of employment to warrant other than a statewide unit.

II. Whether the petitioner in the election held on July 23, 1998 and the intervenor in subsequent elections held on May 26, 1999 and June 4, 1999 (respectively Coastal Berry Farmworkers Committee [Committee I] and the Coastal Berry of California Farmworkers Committee [Committee II or Comite]) circulated petitions prior to the 1998 and 1999 elections in order to have an election in which employees would vote, not to select a bargaining representative, but to register opposition to the UFW; whether, on or about July 7, 1998. the puncher for crew four, the wife of a foreman, urged employees to sign her petition "so the Union will stay away"; and whether on or about May 21, 1999. a signature gatherer explained that the "paper" was "for No-Union"; and whether the Committees are

therefore inherently incapable of acting as bona fide bargaining, representatives insofar as they were created for the primary purpose of thwarting the organizational efforts of the UFW rather than for the purpose of negotiating with Coastal Berry Company, LLC, concerning employees' hours, wages, and other terms and conditions of employment.

III. Whether, prior to the 1998 election, employees with actual or perceived supervisory capacity wore and/or facilitated the distribution of hats with "No UFW" logos on them during work time, monitored the gathering of signatures on the election petitions by questioning signature gatherers about their progress and inquired as to which employees had or had not yet signed the petition; whether signature gatherers on behalf of Committee I suggested to employees that their willingness to sign the petitions was being watched; and consequently, whether lead employees who might reasonably be perceived to possess supervisory authority engaged in anti-UFW conduct prior to the first election which created such a substantial amount of disorder and confusion that it had a continuing and pervasive impact on the ability of employees to exercise free choice in the elections which were held the following season.

IV. Whether, on or about July 15, 1998, and again on or about May 31, 1999, supporters of the anti-UFW effort warned employees that the Employer would disc the fields, resulting in a loss of jobs, if the UFW won the election and, further, that the UFW was forcing the Employer to check employees' legal status and that any employee whose status was in doubt would be denied further employment; whether employees reasonably would believe that the speakers were in a position to know the matters addressed so that such statements might tend to coerce them when exercising their choice in the election; and, if so, whether such conduct had a continuing and pervasive impact on the ability of employees to exercise free choice in the 1999 elections.

V. Whether anti-UFW employees staged a work stoppage prior to the first election in order to isolate employees who presumably were not sympathetic to Committee I by threatening them and actually engaging

in violent acts directed at some employees who declined to join the work stoppage and whether such conduct reasonably would tend to compromise employee choice to such an extent that a free and fair election would be impossible during the subsequent season.

VI. Whether the company's failure promptly to discipline anti-UFW employees who were instrumental in various acts of threats and violence towards UFW supporters would lead employees reasonably to believe that the Company was sympathetic to those opposed to the UFW and whether such inaction by the Employer tended to interfere with employee free choice and to have a continuing impact on the elections held in 1999.

VII. Whether the Company, at the urging of Committee I supporters, agreed to and did in fact isolate UFW supporters and then deny access to them by UFW organizers and whether such treatment was discriminatory and of a nature that would tend to interfere with employee free choice; and whether such conduct, prior to the first election, created an atmosphere of fear and coercion to such an extent that the ability of employees to exercise free choice in the following elections was compromised.

VIII. Whether, approximately one week prior to the May 26, 1999 election, the Employer granted benefits to employees in the form of a 10-cent-an-hour increase in wages, and in addition, announced that for the first time employees would receive double time pay for Memorial Day; and, if so, whether the employees would perceive the proposed changes as an inducement to vote against the UFW; and whether the Employer's conduct tended to interfere with employee free choice.

IX Whether, on or about May 11, 18, 19, and 22, 1999, the Employer, through various forepersons, made a promise of future benefits in the form of revisions to the established bonus program which rewarded those crews which reported no injuries to crew members during a specified time period or crews with perfect attendance, and whether such conduct tended to interfere with employee free choice.

X. Whether some employees were advised by their crew leaders or foremen that the revised bonus program, providing for raffles for such items as TV's, stereos, and a new truck, would not be open to employees who supported the UFW, and whether such pronouncements had a tendency to interfere with employee free choice.

XI. Whether employees perceived the Employer and/or third parties to be instrumental in the anti-UFW campaign and, specifically, whether employees were told that the Employer paid for hats and flyers used in the 1999 campaign and whether, on or about May 25, 1999 and again on May 27, 1999, the crew No. 4 puncher suggested to employees that growers had been financing the anti-UFW effort; and whether the dissemination of such information tended to affect employee free choice.

XII. Whether, in connection with XI, employees would believe reports that area growers were maintaining a "blacklist" of known UFW supporters, the implication being that their job opportunities in the industry were in peril, and whether such rumors tended to interfere with employee free choice.

XIII. Whether, between about May 1 and July 3, 1999, the Company granted anti-UFW supporters preferential access to various crews during work time, including access by nonemployees in excessive numbers while allegedly discharging a foreman for his failure to discipline a UFW supporter who similarly was collecting signatures on work time and whether there was a disparity of treatment that tended to interfere with employee free choice.

XIV. Whether, prior to the June 3, 1999 election, Committee II agents and/or supporters and/or Employer agents threatened other employees that the Employer would cease operations if the UFW won the election by, variously, disking the fields, renting out the land now planted in strawberries, converting to vegetable production, or selling off the Company and, in addition, the INS would be summoned, and whether the hearers reasonably could believe that the spokespersons were acting on behalf of the Employer and/or Committee II, and, if so, whether such

statements tended to coerce employees in the exercise of free choice.

XV. Whether, prior to the 1999 elections, Company supervisors and/or Committee II supporters and/or agents engaged in surveillance or created the impression of surveillance that tended to interfere with employee free choice.

XVI. Whether employer representatives and/or Committee II supporters or agents engaged in specific threats as outlined below and if so, whether such threats created an atmosphere of fear or coercion tending to interfere with employee free choice in the election: (1) promise to discharge any employee who failed to vote for Committee II; (2) threats of violence against UFW supporters; (3) forewoman's harassment, discipline, and/or threat to discipline workers because of their support for the UFW; (4) threat by Company's General Manager to discipline an employee for his expression of pro-UFW views; (5) statements by organizers for Committee II immediately preceding the 1999 initial and runoff elections that voting for the UFW "would go bad" for employees.

XVII. Whether the Employer discharged UFW supporters in reprisal for their union activities and whether such conduct reasonably tended to interfere with employee free choice.

XVIII. Whether employees who assisted in the anti-UFW effort were rewarded or compensated by being credited for boxes of berries they did not actually pick, thereby suggesting that the Employer supported the efforts to defeat the UFW, and whether such conduct' tended to interfere with employee free choice.

On November 24, 1999, the UFW timely filed a request for review of the dismissal of approximately 140 of its election objections.

Board Decision

The Board found that most of the objections dismissed by the Executive Secretary had been properly dismissed. However, the Board overruled the Executive Secretary's

dismissal of four of the objections and set those for hearing:

Objection No. 128: Whether a forewoman predicted that the Employer would go out of business if the UFW won the election, and whether the statement was made by a management official or by someone whom employees would view as being in a position to speak for management;

A portion of Objection No. 130: Whether a foreman predicted to his crew that the field they were working in would not be planted the following year, and whether the foreman was a supervisor or an agent of the Employer or was someone whom employees would view as being in a position to speak for management, and therefore whether his statement constituted a threat of job loss in the event that a particular union won the election;

A portion of Objection No. 148: Whether a forewoman told employees they should vote for the Comite in order to save the Employer from going under, and whether the forewoman was a supervisor or an agent of the Employer or was someone whom employees would view as being in a position to speak for management, and therefore whether her statement could reasonably be perceived by the employees as a threat; and

Objection No. 208: Whether, on or about June 4, Comite supporter Juan Perez made a threat of violence against a UFW supporter and, if so, whether such threat created an atmosphere of fear or coercion tending to interfere with employee free choice in the election.

* * * * *