STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	
SKYLINE FARMS, Employer,	NO. 75-RC-18-R
and	2 ALRB No. 40
UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	

On September 30, 1975 a representation election was conducted pursuant to Labor Code Section 1156.3(a) among all of the agricultural employees of Skyline Farms. The tally of ballots was:: UFW - 58 votes, no labor organization - 3 votes and 3 ballots were void.

The employer filed an objections petition on October 6, 1975 under Labor Code Section 1156.3(c) requesting the Board to set the election aside. Thereafter, on October 22, the employer sought to amend its objections petition so as to raise an additional objection based on facts which the employer allegedly became aware of on October 16.[1/] The regional director of the Riverside Regional Office rejected the proposed amendment on the ground that it was not timely filed under Section 1156.3(c) and Regulation §20365(a) (8 Cal. Admin. Code, §20365(a)), and

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[1/] As its additional objection, the employer alleged that the UFW engaged in misconduct affecting the results of the election by distributing leaflets to employees of the employer which falsely stated that no initiation fee was required when applying for membership in the union.

the employer subsequently requested review of the decision by the Board.

In affirming the regional director's dismissal of the employer's proposed amendment, we recognize that the timeliness of objections to an election is governed by Labor Code Section 1156.3(c) which requires that objections be filed within five days after the election. This five-day limitation seeks to promote the expeditious processing of matters before the Board so that resolution of the representation question is not unduly delayed. Consistent with this goal, Section 20365(a) of our regulations (8 Cal. Admin. Code §20365(a)) provides that objections to the conduct of the election or conduct affecting the results of the election must be accompanied by declarations or other evidence establishing a prima facie case in support of the allegations in the objections petition. See Interharvest, Inc., 1 ALRB No. 2 (1975).

Despite the language of Section 1156.3(c) and the requirements of Regulation §20365(a), the employer argues that its proffered amendment should be accepted since it had previously filed other objections within the five-day time limit and since its new allegation is based on information that the employer did not become aware of until October 16. These contentions are clearly inconsistent with the concept of resolving questions concerning representation proceedings as speedily as possible. Contrary to the employer's argument, filing objections within the statutory period does not create an unconditional right to subsequently file additional objections outside the five-day period, nor does the employer's superficial allegation of

newly discovered evidence provide sufficient basis to allow this untimely amendment.[2/] See Eklund Bros. Transport, Inc., 136 NLRB No. 47 (1962). Absent unusual circumstances, the Board will not permit amendments to objections petitions after expiration of the five-day period set forth in Labor Code Section 1156.3(c). Accordingly, the regional director's rejection of the employer's amendment to its objections petition is sustained.

Two objections in the employer's petition were dismissed prior to hearing on the basis that the allegations, where the alleged misconduct was in conformity with the Board's regulations, were not proper subjects for review under Labor Code Section 1156.3(c).[3/] The employer petitioned the Board for reconsideration of this partial dismissal and, during the course of the hearing, sought to amend the notice of hearing to include the dismissed

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[2/]Here, the employer's only allegation was that it became aware of the facts supporting this objection during the Samuel S. Vener hearing, in which the same objection was timely raised by the employer. Since the basis for this identical objection was discovered within the five-day post-election period in Vener, it appears that this employer could have timely raised the allegation through the exercise of due diligence.

[3/]The first of these objections was directed at the use of symbols on the ballots in the election. This allegation was dismissed on the ground that the ballot format used in the election was in compliance with Section 21000of our regulations. 8 Cal. Admin. Code, §21000. The employer's argument that the ballot lacked a symbol representing the employer was considered at length by the Board in Samuel S. Vener Company, 1 ALRB No. 10 (1975). We find that Vener is dispositive of this issue and, therefore, affirm its dismissal. The second objection alleged that agents of the union unlawfully trespassed upon the employer's property to solicit support. Because Regulation §20900 (8 Cal. Admin. Code, §20900) allows union organizers to enter an employer's premises at limited times and under specified circumstances, this allegation was dismissed insofar as it alleged conduct in conformity with the regulation. See Vener, supra; Egger & Ghio Company, Inc., 1 ALRB No. 17 (1975). Since the employer introduced no evidence during the hearing establishing a violation of Regulation §20900, this objection is dismissed in toto.

objections. The hearing officer properly denied the employer's motion to amend and, subsequently, the Board denied the petition for reconsideration.

As to the remaining issues raised in its objections petition, first, the employer alleges that agents of the UFW solicited authorization cards by the use of false and misleading statements. In support of this allegation one employee testified that approximately two weeks before the election persons wearing UFW identification came to the employer's farm, approached a group of five or six workers including the witness for the purpose of soliciting signatures on authorization cards, and said in that connection "that it was very necessary for people to vote and enter into union". Asked a second time what the organizer said about signing cards, the witness stated "that it was necessary to in order to join the union and in order to vote, that's all". A second witness testified that a person wearing UFW identification approached him alone and said, in connection with the cards "that I needed the card in order to vote, that was all".

Matters relating to the sufficiency of employee support are not reviewable in a post-election objections proceeding, 8 Cal. Admin. Code, Section 20315, and we have held that a union's conduct in obtaining authorization cards falls within that rule unless it amounts to unlawful conduct which, independently of its relationship to showing of interest, is of such a nature as to constitute a basis for setting the election aside. John V. Borchard Farms, 2 ALRB No. 16, fn. 2. The employer, arguing that the conduct here was of such a character, relies upon NLRB v. Savair Mfg. Co., 414 U.S. 270 (1973). In Savair the court held

that a union's waiver of initiation fees for employees who signed authorization cards prior to an election was an objectionable campaign tactic under the National Labor Relations Act, requiring that the election be set aside. The grounds upon which the court reached that result included the premises (1) that the employees who signed cards might feel obliged to vote for the union in order to carry through on their stated intention to support the union, and (2) that by permitting the union to offer to waive an initiation fee for those employees who signed cards, the NLRB was allowing the union "to buy endorsements and paint a false portrait of employee support during its election campaign". The employer contends that both these premises are equally applicable to this case.

We find Savair inapposite for several reasons. The court's analysis in Savair was not limited to the premises stated above, but included two further observations. One was that authorization cards could in some situations be used not only for the purpose of obtaining an election but also for the purpose of establishing majority status and demanding recognition without an election. The other was that a union's promise of waiver of initiation fees is analogous to an employer's granting of benefits during an organization campaign, on the ground that in both cases the conduct carried with it an inference of the actor's ability to effect retribution upon workers who proved antagonistic. Neither observation is wholly applicable here. Under the ALRA an employer is not permitted to accord voluntary recognition to a union on the basis of cards without

an election[4/]; and a statement as to the legal effect of signing or not signing an authorization card does not carry any implication with respect to matters under the union's control.

Moreover, the facts of this case do not warrant application of the Savair premises relied upon by the employer. The conduct complained of was not shown to be part of a generalized campaign, as in Savair, but rather consisted of communications by unidentified persons, presumably UFW organizers, to a small number of employees. The communications themselves as reported by the two witnesses, were ambiguous, in that they might well have been intended to convey the accurate impression that it was necessary for the workers to sign authorization cards in order to have an election in which they could vote. Finally, even if the workers were told, inaccurately, that they could not vote individually unless they signed an authorization card there was an ample period between the time of the communication and the time of the election in which that error could be corrected by other workers, by the employer, or by agents of the Board. The eligibility of all agricultural employees who worked during the relevant payroll period is made clear by the statute, applicable regulations and from the standard notice of election. See Smith Co., 192 NLRB No. 162 (1971). The falsity of such a communication would be easily demonstrable, and its demonstration would deprive the union of any advantage in terms of either a

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[4/]Labor Code §1153(f). Whether this provision affects the authority of the Board to order an employer to bargain with a labor organization as a remedy for egregious unfair labor practices, cf. NLRB v. Gissel Packing Co., 395 U.S. 575 (1969) is an issue we are not called upon here to decide.

sense of obligation on the part of the worker to vote for the union or a misleading picture of employee support.

The employer argues independently of Savair that the election should be set aside as a means of deterring such conduct in the future. Assuming arguendo that the communications referred to constituted deliberate misrepresentations we agree that such conduct should be deterred. A procedure exists for calling such matters to the attention of the regional director for his administrative investigation and appropriate action, which may include rejecting the union's preferred showing of interest. See Borchard Farms, supra. The employer did not follow that procedure here.

The employer's final objection alleged that agents of the California Employment Development Department office ("EDO") sent farm worker applicants for unemployment assistance to the San Ysidro UFW office, at which time union authorization cards were solicited. Upon stipulation by both parties it was agreed that this issue would be considered on the basis of the testimony and documentary evidence submitted on the identical issue during the evidentiary hearing in the matter of TMY Farms, 75-RC-13-R. The evidence presented in that matter has been previously considered by the Board in Jerry Gonzales Farms, 2 ALRB No. 33 (1976), wherein the employer's objection was dismissed on two grounds. First, insofar as the allegations related to the gathering of the UFW's showing of interest, the matter was held not reviewable in a post-election proceeding. 8 Cal. Admin. Code, §20315(c). See also, Chula Vista Farms, Inc., 1 ALRB No. 23 (1975), Egger &

Ghio Company, Inc.; 1 ALRB No. 17 (1975), and Samuel S. Vener Company, 1 ALRB No. 10 (1975). Second, in the absence of evidence that the workers referred by the EDD were employed by this employer or voted in the challenged election, there was no showing that the conduct complained of affected this election. See Vener, supra. We reaffirm these grounds and overrule the employer's objection.

Accordingly, the United Farm Workers of America, AFL-CIO, is certified as the collective bargaining representative of all the agricultural employees of Skyline Farms.

Dated: February 25, 1976