STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KAWANO FARMS, INC., Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	No. 75-RC-8-R 3 ALRB No. 25

FACTS

On September 5, 1975, a Petition for Certification was filed by the United Farm Workers of America, AFL-CIO ("UFW") seeking to represent all agricultural employees of the employer, Kawano Farms, Inc. An election was held on September 12, 1975. Of 649 eligible voters, 277 cast votes for the UFW; 171 voted for no union, 13 ballots were void, and 42 votes were challenged and remain unresolved.

On September 18, 1975, the employer filed an Objection Petition pursuant to Section 1156.3 (c) of the Labor Code, alleging that the election was conducted improperly and that certain conduct on the part of the UFW and other parties affected the results of the election.[1/] On October.29, 1975, the Board issued a Notice of Hearing and Order of Partial Dismissal of Petition on said objections. A hearing was conducted on December 22, 1975, and

[1/] The employer filed 29 objections, some of which were multiple objections. Attorneys for the parties have in one form or another objected to our screening procedure in objections cases as presently

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on January 16 and 17, 1975, in San Diego, California, before Administrative Law Officer Leo Kanowitz.

A discussion of the objections set for hearing follows:

I. REGIONAL DIRECTOR'S INABILITY TO DETERMINE "PEAK"

The employer objects to the conduct and certification of the election because, given the information the Board agents obtained from the employer, the regional director could not have made a finding of peak employment in the manner directed by Section 1156.4 of the Labor Code. Section 1156.4 provides that:

> [T]he Board shall not consider a representation petition or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition.
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> In this connection, the peak agricultural employment for the prior season shall alone not be a basis for such determination, but rather the board shall estimate peak employment on the basis of acreage and crop statistics which shall be applied uniformly throughout the State of California and upon all other relevant data.

Three days after a petition for certification had been served on the employer, Board agents requested and received information as to the single highest week of employment at

(fn. 1 cont.)

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set forth in Section 20365 of our regulations. They need only look to the bulk of objections filed here to see its necessity and importance. What is particularly exasperating is to find some of these very objections reproduced in "boiler-plate" fashion in other cases; only the names have been changed. Additionally, there have been complaints that the screening procedure deprives the parties of an opportunity to present the cumulative prejudicial effect of conduct surrounding an election. Some of the issues in this case were properly and ably raised but it is suggested that the cumulative effect of the "boiler-plate" objections might not be in its proponent's best interest.

Kawano, Inc. during the preceding year, 1974; and information concerning the total acreage Kawano, Inc. devoted to crops in 1975.[2/] According to this information, the employer's peak in 1974 was 796 employees. Testimony at the hearing placed the 1975 peak at approximately 930 employees. Also submitted by the employer on September 8, 1975, was a list of employees, totalling 649, who appeared on the payroll period immediately preceding the service of the petition.

The employer contends that with the information available to the Board agents, they could not have correctly determined peak employment for the current calendar year because Section 1156.4 of the Act requires the agents to establish that at the time the petition is filed, at least 50 percent of peak employment for the current calendar year has been reached.

In Ranch No. 1, Inc., 2 ALRB No. 37 (1976), we disapproved the contention that Section 1156.4 prevents Board agents from relying solely on the employer's employment records in determining whether peak had already been reached for the current calendar year.

The regional director was free to rely on the two relevant payrolls supplied him. Given the 649. employees, the employer was well at peak.

Additionally, Section 1156.3(c) requires the employer to allege that he was not at 50 percent of his peak agricultural

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[2/] This data is among the information which 8 Cal. Admin. Code Section 20310(d) [repealed 1976; compare Section 20310(a)(6)(A) and (B)] required an employer to file with the Board agents within 48 hours after the filing of the Petition for Certification.

employment. No such allegation is made here. Accordingly, we dismiss this objection.

II. EMPLOYER'S REQUEST FOR SAMPLE BALLOT

The employer objects to the conduct of the election on the ground that on three occasions the employer requested a sample ballot from the ALRB, and that these requests were denied. The employer asserts that Section 1156.3(a) of the Labor Code[3/] requires that the ALRB provide a sample ballot to the employer prior to the election for distribution to eligible voters. The employer points to the NLRB practice of including a sample ballot within the notice of election, and contends that Section 1148 of the ALRA requires this Board to follow such precedents of the NLRB.[4/] The ALRA does not specifically require distribution of sample ballots.

In ALRB v. Superior Court, 16 C. 3d 392 (1976), the California Supreme Court interpreted Section 1148 as not binding this agency to follow the practices and procedures of the NLRB. Moreover, given the seven-day requirement for holding elections and the fact that intervention can occur up to 24 hours before the election, ballots often times will not be printed until just hours before the election.[5/] To require the regional directors

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[3/]Section 1156.3(a) reads, in part: "(4) . . . Upon receipt of [the Petition for Certification] the board shall immediately investigate such petition, and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by secret ballot to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition." (Emphasis added.)

[4/]Section 1148 of the Labor Code states: "The board shall follow applicable precedents of the National Labor Relations Act, as amended."

[5/]Labor Code Section 1156.3 (a)(4) and 1156.3(b).

to make available sample ballots to the parties would impose an undue hardship. This objection is dismissed.

III. NOTICE OF ELECTION

A. Notice to the Employer

The employer objects to the conduct and certification of the election because it received insufficient notice of the election and consequently was denied an adequate opportunity to discuss with the eligible voters the issues presented in the election. The petition for certification was served on the employer on September 5, 1975, and an election was held on September 12, 1975; the employer first received notice of the election date on September 10, 1975.

We have previously held that the requirement contained within Section 1156.3 (a)(4) that a representation election be held within a maximum of seven days of the filing of a certification petition is sufficient justification for the short notice of elections held under the ALRA. Yamano Bros., 1 ALRB No. 9 (1975); Carl Joseph Maggio, Inc., 2 ALRB No. 9 (1976). Once a petition is served on an employer, he is on notice that an election will be held within seven days. For purposes of his election campaigning, more specific notice of time and place, although desirable when possible, is not required. Maggio, supra. We dismiss this objection.

B. Notice to the Employees

The employer also objects that there was a lack of sufficient notice of the election to the employees, thereby depriving eligible voters of the opportunity to vote.

We have previously held that where a substantial number of eligible voters cast ballots in the election such participation is itself proof that there was no prejudicial denial of due notice to the employees sufficient to set aside the election. Yamano Bros., 1 ALRB No. 9 (1975); West Foods, Inc., 1 ALRB No. 12. (1975); Yamada Bros., 1 ALRB No. 13 (1975); Admiral Packing Co., 1 ALRB No. 20 (1975). We find the-fact that 503 of 649 eligible voters cast ballots sufficient evidence that the workers in this ease received adequate notice that an election was to be held. For these reasons we overrule this objection.

IV. BOARD AGENT CONDUCT DURING THE PRE-ELECTION CONFERENCE

A. Marking Eligibility List

The employer objects to the Board agent's conduct of the election on the ground that during the pre-election conference, he made markings on the master eligibility list indicating those employees whom the UFW wished to have challenged by its observers during the polling. The employer alleges that the Board agent made those markings on the list solely for the purpose of aiding the UFW and its observers in lodging challenges against the votes of eligible agricultural employees, thereby depriving those employees of their right to fully participate in the election. The employer also contends that, pursuant to Section 20350[6/] of our Emergency Regulations, it is the function and role of the election observers to lodge challenges for their respective parties and that neither the Act nor the regulations provide for Board agents to facilitate those challenges. The record indicates

[6/] 8 Cal. Admin. Code Section 20350.

however that the Board agent made the same small circle next to the names of the voters the employer indicated he would challenge. Twenty-nine names on the list are marked by a small circle.

In Coachella Growers , Inc., 2 ALRB No. 17 (1976) , we established the standard for overturning an election on the basis of Board agent bias. We stated that to constitute grounds for setting an election aside, Board agent bias or an appearance of bias must be shown to have affected the conduct of the election itself, and to have impaired the balloting 's validity as a measure of employee choice.

Regulation Section 20350 which concerns election procedures does not expressly permit or deny Board agents to solicit information from the parties prior to an election regarding the challenges they intend to assert. We stated in Harden Farms of California, Inc. , 2 ALRB No. 30 (1976) , that election procedures are established to set guidelines for the ideal method of conducting an election. Deviations from procedures are not in themselves grounds for setting aside the secret ballot choice of a collective bargaining representative by employees without evidence that those deviations interfered with the employees' free choice or otherwise affected the outcome of the election.

In this case, we find that Board agent Hernandez manifested no evidence of bias towards the UFW. We dismiss the objection.

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B. Duties Assigned to Observers

The employer objects to the Board agent's requirement that observers prepare declarations or present documentary evidence to support any challenges they might make to the eligibility of voters. The employer contends that because the observers were required to be nonsupervisory employees, they could not be expected to have the skill necessary to prepare and present this type of documentary evidence. The imposition of such a duty upon the observers is alleged to have deprived the employer of the opportunity to effectively challenge the eligibility of voters during the Kawano election.

Section 20350 (b) of the Emergency Regulations provides that: "[0]bservers must be non-supervisory employees of the employer." In reference to the procedure for challenging ballots, the same section states:

> Any party or the Board agent may challenge for good cause shown, the eligibility of any person to cast a ballot . . . . Good cause shown shall consist of a statement of the grounds for challenge accompanied by the presentation of substantial evidence, which may include, but need not be limited to, declarations and other documentary evidence.

On the basis of Section 20350 (b), we find that the Board agents merely followed the mandates of our regulations in requiring that only nonsupervisory employees be election observers and that the observers submit some sort of evidence to support their challenges. An objection to the imposition of such duties on the observers constitutes no more than an attack on this Board's regulations and is not a proper ground for objection under Section 1156.3(c) of the Labor Code. Accordingly, we dismiss this objection.

V. OBJECTIONS TO THE DIRECTION AND NOTICE OF ELECTION

A. The Unit Description

The Petition for Certification filed by the UFW stated that "[T]he bargaining unit is all agricultural employees of the employer at the following locations:" Attached to the petition was a description of four of Kawano's five ranches, excluding the Bonsai Ranch. The Directions and Notices of Election issued by the Board agents after the pre-election conference were five in number and described the five Kawano Ranches, including Bonsai. Each Direction and Notice stated: "The undersigned [Regional Director], having investigated the above captioned petition, has concluded: 1) the unit described in the petition would be appropriate for collective bargaining." The employer objects to the conduct and certification of the election on the grounds that the statement in the Directions and Notices of Election was erroneous because the unit described in the petition did not include the Bonsai Ranch.

On September 7, the employer informed the Board that the UFW's petition had omitted the Bonsai Ranch and that it should be included as part of the bargaining unit. Subsequently, in compliance with Regulation Section 20310(d)(2),[7/] the employer included in its 48-hour employer information, transmitted to the Board, a statement that it did not contend that the unit sought

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[7/] Section 20310(d)(2) reads in part: "If the employer contends that the unit sought by the petition is inappropriate, the employer shall additionally and immediately provide the Board or its agents with a complete and accurate list of the names and addresses of the employees in the unit the employer contends to ..be appropriate, together with a written description of that unit."

by the petition was inappropriate except that the Bonsai Ranch should be included in that unit. The employer then specifically requested that the ranch be included in the unit.

We have established that the standard to be applied to objections to the conduct of elections or to conduct affecting the results of elections is that an election will not be overturned unless such misconduct reflects an atmosphere in which employees are unable to freely choose a collective bargaining representative. Harden Farms of California, Inc., 2 ALRB No. 30 (1976).

It is unlikely that any employee who saw the unit description on the notices would have been aware of the discrepancy between it and the unit description in the petition for certification. It is improbable that any employees' right to free choice of a bargaining representative was in any way hampered by the differing descriptions. The objection is dismissed.

B. Separate Notices

The employer objects that the Directions and Notices of Election improperly described the bargaining unit because a separate notice was written for each of the five Kawano ranches, each specifying only the time and place for the election on that particular ranch. The employer contends that the separate notices appeared to provide for a separate unit in each field and that the individual notices failed to advise the employees of all five polling places in the unit.

We note that near the top of each of the notices there is a printed designation "Unit Description," followed by

the handwritten words, "Carlsbad Ranch, Bonsall [sic] Ranch, Vandergrift West Ranch, Vandergrift East Ranch, San Luis Rey (Home Ranch)." In the center of each notice is printed:

> The election will be held under the supervision of an agent of the board on the date, time(s), and location(s) specified below. The board agent in charge of the election may, in order to assure maximum employee participation in a fair and free election, have the polls open at other times and locations.

Following this is given the date, time and place of the election on the particular ranch where the notice was to be posted. The notice itself provides that polling places and times not indicated on the notice may be provided and clearly states that all five ranches comprise the unit. The employees' free choice was in no way hampered by the form of the notices. Harden Farms, supra. The objection is dismissed.

C. Voter Identification

The employer objects that the types of voter identification listed in the Direction and Notice of Election, to be required of each voter at the polls, discriminated against the illegal aliens employed at Kawano, Inc. The printed statement on the notice reads:

> Each voter will be asked for some identification such as *a* driver's license, social security card, voting registration receipt, credit card, payroll deduction slips, etc.

The employer contends that these examples of proper identification are devices peculiarly not within the possession of illegal aliens, and, therefore, that the notices deterred aliens from voting by causing them to believe they would be turned away from the polls. Because illegal aliens comprise approximately

50 percent of the Kawano employees, the employer contends that a high number of eligible voters were prejudiced.

We interpret the language of the Direction and Notice of Election to be unrestrictive in nature, and to merely suggest examples of voter identification which would be acceptable. The words "such as" and "etc." clearly indicate that the list is not exclusive. No evidence was presented at the hearing establishing that other forms of identification were rejected at the polls. Moreover, payroll deduction slips were listed as an acceptable form of voter identification. These slips are equally available to all workers, whether or not they have papers which entitle them to work legally in the United States. The high voter turnout is further proof that most eligible voters were not deterred from voting because of the wording of the notices. We dismiss this objection.

D. Notice of Pre-Election Conference

The employer objects to the conduct of the election on the ground that the Direction and Notice of Election directed the parties to appear at a pre-election conference on September 11, at 10 a.m., but that the notice was not even issued until 3 p.m. on September 11, after the pre-election conference had been held. The employer alleges that it was prejudiced by such conduct in that the language in the Direction and Notice of Election, directing a pre-election conference to be held, gave the employees the impression that the employer had willfully delayed dissemination of the notices, although in fact the employer had received the notices only after the conference was held.

Aside from his allegation of prejudice the employer has failed to present any evidence demonstrating that prejudice.

We dismiss the objection.

VI. DETERMINATION OF VOTER ELIGIBILITY

The employer alleges that the Kawano election was improperly conducted in that the Board agents involved unilaterally determined that clerical and packing shed employees were ineligible to vote in the election. The employer contends that the ALRB must first obtain a preliminary determination from the NLRB as to whether or not these categories of employees are excluded from coverage of the NLRA before Board agents can decide whether the employees are or are not eligible to vote as "agricultural employees" within the meaning of Section 1140.4(b) of the Labor Code.

At the pre-election conference, the UFW representatives stated that they would challenge the votes of clerical or "mechancical" employees on the ground that those employees were not "agricultural employees" within the meaning of Section 1140.4(b) of the Labor Code.

No evidence was presented at the hearing as to whether or not the votes of clerical or packing shed employees were in fact challenged by the UFW. However, the list of unresolved challenged votes, included in the record, indicates that five employees were challenged by the UFW on the ground that they were clerical employees. The company employs four clerical and two sales personnel.

Neither the ALRA nor the regulations promulgated by this Board require that we obtain a preliminary determination from the NLRB as to whether or not certain types of workers come within the term "agricultural employees" before those workers may vote in a representation election. We stated in Hemet Wholesale, 2 ALRB No. 24 (1976) that the proper procedure for determining whether or not particular employees are agricultural employees, and thus entitled

to vote, within the meaning of Section 1140.4(b) of the Labor Code, is to allow those employees to vote subject to challenge, as provided in Regulations Section 20350 (b). If the number of challenges is determinative of the outcome of the election, then the question of the challenged employees' eligibility to vote will be determined pursuant to the challenge procedures prescribed in Regulation Section 20365(e)(f).

The employer alleges that the Board agents who conducted the Kawano election unilaterally decided to deprive clerical and packing shed employees the right to vote. However, no evidence was produced at the hearing that any employee who wished to vote was turned away at the polls. Moreover, the list of unresolved challenged ballots clearly indicates that those employees whom the UFW contended were clerical workers not falling within the designation "agricultural employees" were duly challenged but were properly allowed to vote. We dismiss this objection.

VII. UFW PRE-ELECTION CAMPAIGN

The employer objects that the UFW engaged in conduct which affected the results of the election by distributing during its pre-election campaign material which falsely and wrongfully aligned the employer with the Teamsters Union, thereby deceiving the employees into the belief that the election posed a choice between the UFW and the Teamsters. No evidence was introduced at the hearing to support this charge. We dismiss this objection.

VIII. CONDUCT DURING THE ELECTION

A. Board Agent Conduct: Distribution of Ballots

The employer objects to the conduct of the election on the ground that numerous employees requested ballots at the polls, but that the Board agents conducting the election refused to furnish them with ballots and refused to allow them the opportunity to vote, without properly employing the challenge procedure to contest these employees' eligibility to vote.

The only evidence presented in support of this objection was that of a conversation had between Board agent Hernandez and the employer's attorney who testified that he had been told by Board agent Cesareo Hernandez, after the termination of the voting at the Vandergrift East Ranch, that a number of persons had asked for ballots although their names were not on the eligibility list. Hernandez said that those employees had been given ballots, but that if the same thing occurred at the Vandergrift West or San Luis Rey polling places, Hernandez would refuse to issue ballots to those persons. Hernandez indicated he would not issue even challenged ballots to such employees because the procedure was causing the polling at each site to run over the allotted time. Hernandez did not testify. Had he adopted such a policy, it might well be grounds for overturning the election. The statement itself was unfortunate. On the other hand, at the time of the election the law had been in effect little more than two weeks and conducting an election of this size on five different locations in one day under a new law might well have contributed to such a statement. Absent a showing that

even a single voter was refused a ballot because his name did not appear on the eligibility list, we will not set aside the election. This objection is dismissed.

B. Board Agent Conduct: Accepting Voter Identification

The employer objects that in the course of the polling at Kawano, Board agents accepted cards prepared by the UFW purporting to identify persons as eligible voters. The employer offered no evidence in support of this objection. We dismiss this objection.

C. Observers Conduct: Talking to Voters

The employer objects to the conduct of the election on the ground that a UFW observer campaigned at three of the five polling sites during the course of the balloting. The objection revolves around the conduct of UFW observer Refugio Vasgis who spoke to, according to the employer's witness, at least 10 persons at the Carlsbad site, 5 persons at the Bonsai site and 12 to 15 persons at the Vandergrift East site. The employer also contends that it was the Board agents obligation to prevent such campaigning and that he improperly failed to do so.

The record reveals that the observers for the company and for the UFW acted as observers at each of the five polling sites and that prior to the balloting they were given certain instructions by Board agent Hernandez, one of which was to avoid talking to the voters. The employer presented two witnesses on the question of Vasgis[1] campaigning, the employer's attorney, Norman Vetter and one of the employer's observers, Edwardo Castellon, Vetter saw Vasgis talking to voters at Vandergrift East as they

were forming lines prior to the start of the balloting. In Admiral Packing Co., 1 ALRB No. 20 (1975) we held that campaigning in the polling area prior to the actual opening of the polls is not conduct requiring the setting aside of an election. Assuming that what Mr. Vetter saw was campaigning we find Admiral Packing Co. controlling.

Castellon testified to having seen Vasgis talk to groups of voters at both Bonsai (5 voters) and Vandergrift East (12 to 15 voters) Ranches during the polling, although he could not hear what was said. He reported this conduct to Vetter.

Mr. Castellon testified that with two exceptions Vasgis' conversations were greetings, "Good morning, hello, how are you." In Harden Farms, supra, we held that the exchange of greetings by observers with voters during the balloting were not of such a character as to affect the voter's free choice of a collective bargaining representative. We find that decision controlling here.

Additionally, it should be noted that both Castellon and Vetter complained to Hernandez about Vasgis' talking to voters. Twice Hernandez warned Vasgis, but he also warned Castellon once for the same thing.

The remaining two conversations that the employer contends constitute campaigning were testified to as follows by Mr. Castellon, At the Carlsbad voting site while greeting people, Vasgis asked a woman voter why she didn't have her UFW button on; she answered that she didn't think she was supposed to wear them. That was the total conversation between Vasgis and the woman. The second

conversation in question also took place at the Carlsbad ranch between Vasgis and a male voter. There are three versions of this conversation. Mr. Castellon testified that the voter asked Vasgis "where to put the X at and Mr. Vasgis told him where the black eagle was." Javier Acosta, another UFW observer testified that a voter asked Mr. Vasgis "where he was supposed to vote for the union" and "Vasgis said in the black eagle." Mr. Vasgis[1] version was that an "illegal didn't know where to cross the vote" and asked him and he "just showed him where two symbols were." Castellon added that no other voters were close enough to hear either conversation.

The employer cites the rule enunciated by the NLRB in Milchem Inc., 170 NLRB No. 46 (1968) to support its position that the alleged misconduct by Vasgis invalidates this election. In Milchem, the NLRB stated that sustained conversations between a party and voters while the latter are in a polling area waiting to vote will normally be deemed prejudicial without investigation into the content of the remarks. This Board has applied the Milchem rule to varying fact situations in earlier opinions. Our decisions hold that conversations between union or management observers and prospective voters fall within the scope of the rule, but that where an observer is involved we may inquire into the substance of the conversation and consider whether it is of such character as to affect the free choice of voters in the election. Perez Packing, Inc., 2 ALRB No. 13 (1976); Harden Farms, supra.

Assuming that these two conversations occurred exactly as the employer's observer recounted them, we do not find that

either, spoken outside the hearing of the other 502 voters, were of such a character as to affect the free choice of the voters in this election. We dismiss this objection.

D. UFW Conduct; Presence of Union Symbols at the Polls

The employer objects to the presence of a camper with UFW symbols on it located approximately one quarter of a mile from the polling site at Vandergrift East. It was not visible from the polling site but could be seen by the employees from the adjacent fields.

We have previously held that a vehicle bumper sticker reading "Vote UFW," which could not be seen from the polling place, would not warrant setting aside an election, even if the sticker had been seen by the "workers on their way to the polls, Herota Brothers, 1 ALRB No. 3 (1975). In Samuel S. Vener Company, 1 ALRB No. 10 (1975), we held that the presence of UFW insignia on four cars stationed within 100 feet of the polls was not prejudicial to the fair conduct of the election. This objection is dismissed.

IX. METHOD OF TALLYING BALLOTS AND RESULT OF ELECTION

A. Outcome Determined by a Majority Vote

The employer objects to the certification of the UFW because it did not win the votes of a majority of the agricultural employees in the bargaining unit. The employer asserts that under Section 1156 of the Labor Code,[8/] a labor union cannot be the

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[8/] Section 1156 reads: "Representatives designated or selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in the bargaining unit shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment."

exclusive representative of agricultural employees unless it receives an affirmative vote from a majority of the eligible voters in the particular bargaining unit. Because there were approximately 649 eligible voters in this election, the employer contends that the UFW needed 325 votes. The UFW received 277 of the 503 votes cast.

The outcome of an election conducted under Section 1156 of the Labor Code is determined by a majority of the votes actually cast. Lu-Ette Farms, 2 ALRB No. 49 (1976). This objection is dismissed.

B. Disposition of Unresolved Challenged Ballots

The employer alleges that the Board agents involved in this election interfered with the conduct of the election by improperly tallying the ballots cast, attributing the unresolved challenged ballots to the UFW and basing its majority in part on those ballots. One of the printed statements in the Tally of Ballots reads:

> A majority of the valid votes counted plus undetermined challenged ballots has been cast for: _____.

The name of the UFW has been written in the blank.

We find that the employer is in error in interpreting this clause to mean that the unresolved challenged ballots have been attributed by the Board agents to the UFW. The UFW won a. majority of the valid votes cast, (277 of 490 valid ballots cast) and no unresolved challenges were attributed to the union for the purpose of giving it a majority. For this reason we overrule this objection.

C. Reconciliatign of Counted Ballots

The employer objects to the conduct of the election on the ground that the Board agents involved failed to properly reconcile the number of votes cast with the number of ballots handed out to the voters at the polls. A printed statement on the Tally of Ballots asks for the "Approximate number of voters." The number "649" is written in. The employer apparently interprets this to mean the number of voters to whom ballots were given during the Kawano election. The employer contends that the difference between this figure and the 490 valid ballots cast represents a large number of unaccounted for ballots.

The phrase "Approximate number of voters" does not mean the number of voters who received ballots during the election. It means the approximate number of eligible voters, as indicated on the voter eligibility list. We find no evidence on the record to establish that the Board agents improperly tallied the ballots or failed to count any votes cast. We dismiss this objection.

X. THREATS AND THE IMMIGRATION AND NATURALIZATION SERVICE

The employer contends that agents of the UFW threatened property and physical safety of employees resulting in some employees terminating employment at Kawano and that the UFW supporters had employees removed from vehicles depriving them of transportation to work on the day of the election.

According to the employer, the Kawano ranches employ 50 percent undocumented workers. Two employee lists are kept — the "regulars" list which includes all who are legally in the United States and the "casuals" list of the undocumented workers.

The only evidence supporting the allegation of employees terminating their work at Kawano was the testimony of Pasqual Lopez a Kawano foreman. He stated that on or about September 10 an undocumented worker had told him that he and four others were leaving Kawano because "the people from Tijuana" said they could get hurt or they might have Immigration "sent on them" if they didn't vote for the union. According to Lopez, the worker who relayed the threats did not identify who "the people from Tijuana" were. The persons who were allegedly threatened were not at the hearing and the persons who made the threats were not named.

Evidence of other threats consisted of the testimony of two undocumented workers employed at Kawano. Miguel Ramos testified that "the Chavistas" told undocumented workers that their work would be over if they didn't vote for the UFW. His testimony mostly concerned statements by Jose Alman, a worker who was elected to the organizing committee at Kawano, but he also mentioned three other employees who allegedly made similar statements. Ramos denied, however, that he had been threatened with being deported if he did not support one side or the other. When asked if he was afraid of being deported, he said he was only bothered that he would have to pay $20 for a ride back to work.

Elpedio Munoz Herrera testified that Alman and the "Chavistas" (he didn't name anyone else) had said that if they didn't vote for the UFW they would be deported. On cross-examination he said he was not afraid that anyone would find out how he voted.

Both Ramos and Herrera testified to an incident on the border on the morning of the election. According to their statements, they were in a van at a doughnut shop apparently near the San Ysidro border, which was a gathering place for workers to find rides, when Alman and another UFW supporter pointed them out to Immigration authorities. Five workers in all were taken back to Tijuana by Immigration authorities. Ramos and Herrera then returned to work the next day.

Alman denied having seen Ramos or Herrera in a van on the morning of the election. Both Alman and the other UFW supporter denied ever speaking to Immigration authorities that morning or pointing out any undocumented workers to them.

Ramos and Herrera both testified that they had been deported many times in 1975. The record showed that during 1975 there were up to 50 or more raids at Kawano by the Immigration and Naturalization Service (INS). According to Ramos, there was a period in the spring of 1975 in which the INS conducted raids at Kawano ranches for 42 consecutive days. Ramos himself had been deported nearly 50 times during 1975.

Ramos and Herrera had both been deported about a week before the election. Herrera had attempted to return to work on the day before the election, but was apprehended by INS and sent back to Mexico before he could reach the doughnut pick up site. Ramos has been deported since the election.

Javier Acosta, an employee of Kawano, testified for the UFW. He had served as a "union organizer" or "union person" before the election. He stated that his job was to tell undocumented workers that they had the same rights, same pay, and same benefits

of all farm workers. He testified that he was not aware of any order or instruction by any union office to threaten employees with deportation if they did not support or vote for the union.

In Takara International, Inc., 3 ALRB No. 24 (1977), a companion case to this, we held that when a nonparty is alleged to have threatened workers, we will accord such misconduct less weight in determining whether or not an election should be set aside. There we cited Mike Yurosek & Sons, 225 NLRB No. 20, 92 LRRM 1535 (1976), with approval.

In Yurosek, the NLRB was presented with issues similar to the case at hand. There, members of an in-plant organizing committee made statements that if the union did not win the election, the Immigration authorities would be called to deport undocumented workers. In upholding the election, the National Board first found that the fact that members of the organizing committee had engaged in such conduct was insufficient to establish agency; and that conduct engaged in by third persons tended to have less effect upon voters than similar conduct of one of the parties.

In evaluating the impact of those threats on the atmosphere for expression of employee free choice, the NLRB considered as relevant the fact that the Immigration authorities had been at the employer's plant in the recent past checking on employees who were undocumented workers. It also found it significant that the union had made substantial efforts to dissuade the employees that it would call the Immigration authorities if it lost the election. The NLRB concluded with the following language:

> In any event, we believe illegal aliens naturally experience some fear of detection and deportation as a consequence of their unauthorized presence in the U.S. and we doubt that the threats and rumors

herein, considering their source, so exacerbated these fears as to render any illegal .alien employees incapable of exercising a free choice in the election.

We find Yurosek persuasive in the case at hand. On the basis of the evidence we do not find any agency relationship between any person alleged to have made threats and the UFW. Alman was a member of the organizing committee but this fact is insufficient to find him a union agent in the circumstances of this case.[9/]

As noted in Yurosek, conduct of nonparties tends to have less effect on voters than similar conduct by one of the parties. Evaluating the entire record, we conclude that the conduct of Alman and other UFW supporters was not so aggravated as to destroy the atmosphere for the expression of employee free choice. The alleged threats of deportation were made at work sites where raids by Immigration authorities twice a week were not infrequent and where raids were conducted for 42 consecutive days a few months before the election. The threats were on the premises of an employer who kept a list of "casuals" and who also kept tallies of the raid results. For these employees, deportation was a fact of life.

Of the two workers testifying to the threats, one said that he had not been personally threatened with being deported and he was not afraid of or intimidated by deportation. The other witness testified that workers had been told they would be deported if they didn't vote for the union, but he was not afraid that anyone would find out how he voted.

[9/] See Yurosek, supra.

Both of the employees who alleged that UFW supporters pointed them out to Immigration authorities on the day of the election admitted that they had also been deported the week before the election. One admitted to being deported about 50 times that year and the other admitted being apprehended the previous morning even before he reached the pick up point. It is difficult to imagine that the Immigration authorities would have needed much assistance in identifying these two men. Finally, the double hearsay testimony by a Kawano foreman that several employees had left Kawano because of threats by unidentified people is too remote to support the allegation. Accordingly, these objections are dismissed.

CONCLUSION

Having considered the objections individually and cumulatively, Harden Farms of California, Inc., supra, we find that they are insufficient to warrant our setting the election aside. The United Farm Workers of America, AFL-CIO, is certified as the bargaining representative for all agricultural employees of Kawano Farms, Inc.

Dated: March 16, 1977

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RONALD L. RUIZ, Member

MEMBER JOHNSEN, Concurring:

Although I concur in the result reached by the majority, I wish to re-emphasize the seriousness with which I view threats of deportation, as outlined by my dissent in Takara International, Inc., 3 ALRB No. 24 (1977). Unlike the situation in Takara, the record here does not substantiate an atmosphere of coercion and fear of such magnitude as to interfere with the free choice of the eligible voters at Kawano Farms.

Dated: March 16, 1977

Richard Johnsen, Jr., Member