

STATE OF CALIFORNIA  
 AGRICULTURAL LABOR RELATIONS BOARD

BRUCE CHURCH, INC.	)	
	)	
Employer,	)	Case No. 76-RC-19-E (R)
	)	
and	)	
	)	
UNITED FARM WORKERS OF	)	3 ALRB No. 90
AMERICA, AFL-CIO,	)	
	)	
Petitioner.	)	
	)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

Following petitions for certification filed by Western Conference of Teamsters (WCT) and by United Farm Workers of America, AFL-CIO (UFW), an election by secret ballot was conducted on January 30, 1976, in a statewide unit of all agricultural employees of the Employer, excluding those who work exclusively outside the State of California.<sup>1/</sup> The tally of ballots furnished to the parties at that time showed:

UFW .....	462
WCT .....	311
No Union .....	17
Void Ballots.....	3
Challenged Ballots .....	110

Thereafter, the Employer and WCT filed timely objections to the election. On April 5, 1977, the Executive Secretary of the

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<sup>1/</sup> Bruce Church, Inc., 2 ALRB No. 38 (1976).

Board dismissed seven of the Employer's objections and ordered that an evidentiary hearing be conducted concerning six others. On May 6, 1977, WCT withdrew its objections and disclaimed any further interest in this matter.

Subsequent to the hearing, which was held on May 9, 10, 11 and 12, 1977, Investigative Hearing Examiner James Flynn issued his initial Decision in this matter, recommending that the objections be dismissed and that the UFW be certified as the exclusive bargaining representative of the employees involved. The Employer filed timely exceptions to the Investigative Hearing Examiner's Decision and a brief in support thereof.<sup>2/</sup>

The Board has considered the objections, the record, and the Investigative Hearing Examiner's Decision in light of the exceptions and brief filed herein and hereby affirms the rulings, findings and conclusions of the Investigative Hearing Examiner and adopts his recommendations.

The Employer argues that the NLRB's "laboratory conditions" standard should be applied in this case in determining whether certain conduct of the union and the Board Agents interfered with the election. It argues that the reasons given by the Board in D'Arrigo Brothers of California, 3 ALRB No. 37 (1977), when it refused to adopt such a test are not applicable in a situation, as here, where the employer is at 50 percent of peak of employment for most of the year.

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<sup>2/</sup> The UFW has moved to dismiss the Employer's exceptions for failure to conform to Section 20370 (g) (1976) of the regulations. We hereby deny this motion.

Some 30 years ago, when *the* NLRB first referred to laboratory conditions, it stated its goal as follows: "An election can serve its true purpose only if the surrounding conditions enable employees to register a free and untrammelled choice for or against a bargaining representative." General Shoe Corp., 77 NLRB 124, 126; 21 LRRM 1337 (1948). More recently, the NLRB has distinguished between ideal conditions and realistic standards for the conduct of elections:

Although attempting to establish ideal conditions insofar as possible, we acknowledge that actual facts must be considered in light of realistic standards of human conduct, and that 'elections must be appraised realistically and practically, and should not be judged against theoretically ideal, but nevertheless artificial standards'. Citation omitted. Owens-Corning Fiberglas Corp., 179 NLRB 219, 223, 72 LRRM 1289 (1969). See also D'Arrigo Brothers of California, supra.

In considering the problems of holding elections in the agricultural context we must recognize that some variations and deviations from the ideal will inevitably occur despite our best efforts to prevent them. In this case, following the general principles outlined above, we are convinced that the incidents complained of, including those relating to Board Agent conduct, were not sufficiently substantial in nature to create an atmosphere which renders improbable a free choice by the voters. General Shoe Corp., supra, at 126.

As judged by these standards, we cannot find that the noisy and exuberant demonstrations at the bridge or near the buses, at a considerable distance from the actual location of the polls, constituted objectionable conduct affecting the results of the election. Moreover, we do not consider that one Board Agent's

statement of her opinion that the Employer was delaying the movement of a bus to the polls could or did affect the free choice of the employees. Neither do we believe that any reasonable person would be influenced, in the important matter of voting for a bargaining representative, by the mere sight of what may have appeared to be union literature on the floor of a Board Agent's car. Although another Board Agent may have been somewhat abrupt in controlling the errant conduct of an observer, we find that his manner did not affect or tend to affect the exercise of free choice by the voters. We have enough faith and confidence in the intelligence and common sense of the voters to conclude that none of the conduct alleged as objectionable would or did affect or interfere in any way with their free and untrammelled choice for or against a bargaining representative.

In view of all the surrounding circumstances, including the fact that this election involved a large number of agricultural workers, that it was conducted in the open fields and that, as in most representation elections, emotions apparently ran high, we agree with the Investigative Hearing Examiner that the election was conducted in an orderly and satisfactory manner and that there was insufficient evidence adduced at the hearing to warrant setting aside the election.

With respect to the UFW acts alleged to be in violation of the pre-election agreement of the parties, we agree with the Investigative Hearing Examiner that such acts do not constitute a basis for setting aside the election. Private agreements between the parties, with or without Board endorsement, cannot expand or

limit the bases on which election results can be set aside. Even if the UFW's conduct amounted to a violation of the special access rules provided by the parties in their pre-election agreement, that would not warrant setting aside the election where, as found by the Investigative Hearing Examiner in the instant matter, the conduct did not affect the employees' free choice of a bargaining representative. Bee and Bee Produce, Inc., 3 ALRB No. 84 (1977).

On the basis of the above, the objections are hereby dismissed, the election is upheld, and certification is granted.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code Section 1156, the said labor organization is the exclusive representative of all agricultural employees of Bruce Church, Inc., in the State of California, exclusive of vacuum cooler and packing 'shed employees, for the purpose of collective bargaining, as defined in Labor Code Section 1155.2(a), concerning employees' wages, hours and other terms and conditions of employment.

Dated: December 13, 1977

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

BRUCE CHURCH, INC.,

Employer,

Case No. 76-RC-19-E(R)

and

WESTERN CONFERENCE OF  
TEAMSTERS,

Petitioner,

and

UNITED FARM WORKERS OF  
AMERICA, AFL-CIO,

Petitioner.

William F. Spaulding, Gibson,  
Dunn & Crutcher, for the Employer.

Tom Dalzell, for the United Farm  
Workers of America, AFL-CIO.

DECISION

STATEMENT OF THE CASE

JAMES E. FLYNN, Investigative Hearing Examiner: This case was heard before me on May 9, 10, 11, and 12, 1977 in Salinas, California. In Bruce Church, Inc., 2 ALRB No. 38 (1976), the Agricultural Labor Relations Board (hereafter the "Board") held that a statewide unit of all agricultural employees of Bruce Church, Inc. (hereafter the "Employer" or "BCI"), excluding those who worked exclusively outside the State of California, was appropriate. In doing so the Board set aside three previous elections conducted in inappropriate

units and ordered that petitions filed by the Western Conference of Teamsters (hereafter "Teamsters" or "WCT") and by the United Farm Workers of America, AFL-CIO, (hereafter the "UFW")<sup>1/</sup> be consolidated for an election on a statewide basis in accordance with that decision. An election was subsequently conducted on January 30 in which the tally of ballots was as follows:

UFW	462
WCT	311
No Union	17
Unresolved Challenges	110
Total	900
Void	3
Approximate Eligible	941

Both the Employer and the Teamsters filed timely objections to the election. By order dated April 5, 1977, the Executive Secretary of the Board dismissed seven of the Employer's objections and ordered that this hearing be conducted to take evidence on six others. Both the UFW and the Employer filed requests for review of that dismissal which were denied by the Board in an order dated April 27, 1977.<sup>2/</sup>

The Teamsters withdrew their objections to the election on May 6, 1977.

All parties were represented at the hearing and were given a full opportunity to participate in the proceedings. Both submitted post-hearing briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments made by the parties, I make the following findings of fact, conclusions and recommendations.

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<sup>1/</sup> The WCT petition was filed on September 9, 1975 in Case No. 75-RC-29-M; the UFW in Case No. 76-RC-19-E(R) on January 23, 1976

<sup>2/</sup> The UFW request argued that no hearing should be held, while the Employer's request sought the addition for hearing of three dismissed objections.

## FINDINGS OF FACT

### I. Jurisdiction

Neither the Employer nor the UFW challenged the Board's jurisdiction. Accordingly, I find that the Employer is an agricultural employer within the meaning of Labor Code §1140.4 (c), that the UFW is a labor organization within the meaning of Labor Code §1140.4(f), and that an election was conducted pursuant to Labor Code §1156.3.

### II. The Alleged Misconduct

The objections set for hearing allege four instances of Board agent and two of UFW misconduct as grounds for setting aside the election. First, the Employer alleges that Board agents were not present at tables where voter identification lists were kept, thereby permitting UFW observers to have extended conversations with voters waiting in line to vote. Second, the Employer alleges that Board agents drove employees into the voting area in a state car which had approximately 80 pieces of UFW literature on the floor, thereby giving the impression that the Board endorsed the UFW. Third, the Employer alleges that a Board agent improperly told employees assembling to vote that the Employer did not want them to vote. Fourth, the Employer alleges that a Board agent refused to permit Employer observers to file challenges. Fifth, the Employer alleges that the UFW repeatedly violated access provisions of a settlement agreement on an unfair labor practice complaint. Finally, the Employer alleges that UFW organizers electioneered in the polling area among persons waiting to vote.

### III. Operation of the Employer

The Employer is a large lettuce grower with operations throughout California and in parts of Arizona. Its operations are detailed in Bruce Church, Inc., 2 ALRB No. 38 (1976). To the extent



relevant, I take official notice of the facts found by the Board in that decision.

The time periods relevant to the objections in this case were the months of December 1975 and January 1976. According to Noel Carr, who was in charge of BCI's lettuce harvest, work on the harvest in December was concentrated on ranches totaling 1000 to 1100 acres which were located within a five-mile radius of each other in the Yuma, Arizona area. Toward the end of December and all of January, the lettuce harvest moved to the Imperial Valley in California where BCI had 2200 to 2400 acres in five or six ranches located in an area stretching from the Salton Sea on the north to south of Holtville, a distance of 35 to 40 miles at its extreme points.

IV. Pre-Election Conduct - Violation of  
Access Provisions of Unfair Labor  
Practice Settlement Agreement

A. Organization and Size of the Workforce

BCI field workers consist of machine or ground crews. The size of a crew varied from 25 to 33 for both types of crew.<sup>3/</sup> On a given day, BCI had around 600 workers in the field harvesting lettuce, There were 11 machine crews organized into three divisions. At the time of the election, Division 1 consisted of machine crews 7, 8, and 12; Division 2 of machine crews 2, 6, 9, and 10; and Division 3 of machine crews 1, 3, 4, and 5. According to James Pyle, harvesting superintendent since 1967, BCI attempted to have all crews from a

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3/ Carr testified that crew sizes were approximately the same for both machine and ground crews, but UFW organizer Fred Ross, Jr. stated that ground crews were slightly larger.

division working together in the same fields. Depending on the volume of lettuce needed and the amount left to be cut, Pyle testified that there could be as many as two divisions in one field, but this was not usual practice. Access violations were alleged to have occurred in five of the 11 machine crews.

Pyle was unable to provide a breakdown of the various ground crews, but UFW organizer Fred Ross, Jr.' testified that there were seven ground crews. Access violations allegedly occurred in four of those crews.

#### B. Crew Buses

The work day for BCI employees, supervisors, and UFW and Teamster organizers began early. BCI would bring its buses every morning to a place in Calexico known as El Hoyo, or The Hole. This is a large parking area in a river bed at the Employment Development Department about three blocks from the Mexican border gate. Buses from all companies operating in the Imperial Valley would go there every morning to pick up workers waiting to be transported to the fields. UFW organizer Rebecca Gonzales<sup>4/</sup> testified that she and other organizers arrived at The Hole between 2:30 and 4:00 a.m. BCI buses were driven by foremen, and carried one crew.<sup>5/</sup>

#### C. Settlement Agreement on Unfair Labor Practices Complaint

On December 10, 1975, the Employer and the UFW entered into a stipulation and agreement in settlement of a number of unfair labor practice charges, complaints, and allegations filed against

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4/ Gonzales was also known as Mary Lou Acevedo in the months preceding the election.

5/ Pyle testified that foremen generally kept their bus assignments for as long as they were with the Employer.

the Employer.<sup>6/</sup> That agreement provided for dismissal of certain charges with prejudice; issuance of a notice to employees; reinstatement of one employee allegedly discharged for union activity; a promise not to harass or pressure the employee because of union activity upon his return to work; expanded access during work hours; limitations on access to Employer buses; and a list of employees' names and addresses. 'The Administrative Law Officer recommended adoption of the agreement, and the Board did so on December 15, 1975.

The paragraphs of the settlement agreement relating to access provide that both the UFW and the Teamsters could have one organizer for each crew in the fields during working hours for organizational purposes and could talk to workers and distribute literature. This provision was subject to the limitation that organizational activities could not interfere with or disrupt work and that no more than one organizer, whether Teamster or UFW, could be with a crew at any one time, except as provided by the Board's access rule. The agreement further provided that organizers from both unions could board company buses during the lunch break and could speak to employees and distribute literature at that time, but they were not to affix this literature to the interior or exterior of the buses. Organizers were to leave the buses when the

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<sup>6/</sup> The Stipulation and Agreement, together with the Administrative Law Officer's Recommendation and Transfer and the Board's Order Adopting Stipulation and Agreement, were entered into evidence as Employer Exhibits 1, 9, and 3, respectively. The alleged unlawful discharges of certain workers named in five of the matters covered were reserved for further disposition.

crew returned to work. Only one organizer was to be on the bus at any given time. No organizers were to be on company buses at any other time. This last limitation was emphasized in paragraph 9 of the agreement which stated that no union representatives would be allowed to board company buses before work. If any Teamster representatives boarded buses, an equal number of UFW representatives were entitled to board buses.

The access provisions went into effect on December 12, 1975 and were to expire on the date on which an election was held in the Imperial Valley, or March 1, whichever occurred first. If a statewide election was held, the access provisions were to remain in effect until an election was held, or July 1, whichever was first. At that time, the Employer was free to return to its rules with respect to union organizers' access to fields and buses.

#### D. The Alleged Violations - Organizers on Buses

The alleged misconduct in all cases, but one, involves violations of the settlement agreement, rather than the Board's regulations on access.<sup>7/</sup> Alleged violations are of two types: 1) organizers on company buses at times other than lunch hour, and 2) more than one organizer with a crew during work hours.

##### 1. December 17, 1975<sup>8/</sup> Incident

The first alleged violation occurred on December 17, five days after the effective date of the settlement agreement. Pyle

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<sup>7/</sup>The incident in the fields on January 29, 1976, discussed below, involved an alleged violation of both the Board's access regulation and the settlement agreement.

<sup>8/</sup> Unless otherwise specified, all dates in December refer to 1975, and all dates in January to 1976.

testified that he saw UFW organizer Fred Ross, Jr. in The Hole about 8:30 a.m. on Bus 197 next to the driver's seat talking to employees in ground crew 7.<sup>9/</sup> Pyle informed Ross that he was in violation of the agreement and asked him to get off. Ross completed the conversation and got off. Pyle was uncertain how long Ross was on the bus, but stated that it was three or four minutes from the time he saw him to the time he stepped down.<sup>10/</sup>

Ross, who was in charge of the organizing in the BCI machine crews, admitted being on a bus .in The Hole sometime in December or January and being asked by Pyle to get off, but was unsure of the date. On that occasion, he testified that he was answering questions workers had about BCI leaflets and had to step onto the front steps in order to speak because workers had the windows up due to the cold weather. The Employer's leaflet campaign is discussed below. One of those leaflets was dated December 17, but there was no evidence that this was the leaflet to which Ross referred.

That same day, according to Pyle, UFW organizer Rebecca Gonzales was with machine crew 9 on Bus 175 in The Hole. Pyle testified that when he told her that she was in violation of the agreement, she said "Viva Chavez" and got down. Pyle stated that Gonzales was on the bus for three or four minutes from the time he saw her.

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<sup>9/</sup>Employer Exhibit 8 is a list of buses by numbers mentioned in testimony and their corresponding crews.

<sup>10/</sup> The detail of Pyle's testimony as to these violations and that of a later Employer witness, Noel Carr, is attributable in part to their use of votes made by themselves at or near the time of the incidents. UFW counsel was given an opportunity to review their notes prior to any testimony by the witness.

Gonzales recalled being on machine crew 9's bus in The Hole on one occasion, before Christmas, but she was unsure of the date. She testified that on that occasion, a woman employee sent another woman to get her because she had a health and insurance problem which she felt more comfortable talking about with another woman, rather than one of the male organizers. According to Gonzales, she had just begun talking when Pyle told her to get off. Gonzales stated that workers on the bus then asked her to tell Pyle to let her stay and that they had asked her to stay. Following this, Gonzales testified that she would ask workers wishing to talk with her to get down off the bus to talk.

Pyle could not recall how many workers were on the two buses at the times these events occurred, nor did he hear what was said by the organizers to the employees. Another Employer witness, Noel Carr, testified that it was BCI policy not to attempt to interfere with organizers in the field or to overhear their conversations.

## 2. January 9 Incident

Pyle testified that early in the morning on January 9 at the Three A parking lot across the street from The Hole in Calexico, he saw a person he identified as Marieto Huerta with machine crew 3 on Bus 196. Pyle asked Ross, who was in the area, to speak to Huerta and ask him to step down off the bus because he was in violation of the agreement. Ross asked Huerta to get down and he did. According to Pyle, Huerta immediately walked over and got on Bus 198 with ground crew 5. Pyle testified that Huerta was on that bus three or four

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11/Gonzales testified that there were about 12 workers on the bus during the incident she recalled.

minutes before he walked over to remind Huerta that he was in violation of the agreement, but as he was doing so, Huerta stepped down. Pyle testified that Huerta told him that he was on the bus because a foreman was telling workers that Interharvest, Inc. was not going to sign with the UFW. Employees were on both buses during these incidents, but Pyle could not recall how many.

Pyle testified that Huerta was a UFW organizer who was about six feet tall, 180 to 190 pounds, with black hair and eyes, and a large drooping moustache. His description is similar to that given for another alleged UFW organizer, Hector Velasco, by Noel Carr, the Employer's lettuce harvest manager; however, neither Ross nor other UFW witnesses knew anyone by either name who was a UFW organizer. Ross did not remember an incident in which Pyle asked him to get UFW organizer Maurillio Urias off a bus which he did. Ross did not see Urias get on another bus on that occasion.

### 3. January 24 Incident

Pyle testified that Ross was on Bus 187 with machine crew 4 in The Hole about 6:30 or 6:45 a.m. on January 24. Pyle told Ross that he was in violation of the agreement. Ross then got down at his request and went to Bus 197 of ground crew 7 where Pyle again asked Ross to step down, and he did. Ross could recall only one incident when he was on a bus in The Hole and was asked to get off by Pyle. The record does not show whether his testimony refers to this incident, the earlier one on December 17, or neither.

### 4. January 28 Incident

Pyle testified that UFW organizer Robert Purcell was on Bus 198 with ground crew 5 in The Hole at about 7:30 a.m. on January 28. Employees were on the bus at the time, but Pyle could not recall how many. According to Pyle, foreman Cesareo Cabereo asked Purcell

to get off.

Purcell testified that he went to The Hole every morning during a period when many UFW organizers were sick and four people had responsibility for the whole campaign. On these occasions, Purcell stated he gave news of meetings and election victories. Purcell testified that he got on the front step of a bus once for about 30 seconds to tell the crew about a meeting. Purcell's testimony does not clearly identify this incident as the one described by Pyle.

#### 5. January 30 Incident

The evidence introduced on this incident is tied to the Employer's objection that a Board agent told employees assembling to vote that the BCI did not want them to vote. Facts relating to the context of this incident will be discussed in detail below in connection with that objection. In brief, Pyle and two other employee witnesses called by the Employer, Sotera DuBois and Graciela Godinez, testified that a UFW organizer boarded a machine crew 4's bus in the fields while employees were waiting to be transported to the polls and stated that "Payne and Taylor are shitting." Payne was the vice-president and general manager of BCI. Taylor was not identified. Pyle identified the organizer as Ross; but the two employee witnesses could not identify the organizer by name and gave conflicting physical descriptions. Both stated that the organizer was not Ross, and Ross himself denied the incident. They stated that they had seen the person they described with Ross on other occasions. He stated that the crew was primarily composed of women and to make such a statement would



have been counterproductive.<sup>12/</sup> It appears that Pyle described a different incident than that described by DuBois and Godinez.

Pyle also testified that he saw Huerta on machine crew 3's bus on the same day in the field. Workers were on the bus at that time. Ross testified that machine crew 3's bus was at the same field as machine crew 4's waiting to take voters to the polls.

#### 6. Undated Incident in Field

Sometime in January, supervisor John Bennett saw UFW organizer Gonzales on a bus at the Wiley Ranch at a time other than lunch. Bennett testified that one employee was on the bus cleaning it. He told Gonzales that she knew she should not be on the bus. According to Bennett, Gonzales replied that she was not discussing the union. Bennett then asked her to leave, and she did.

Gonzales testified that on one occasion, she spoke to a woman who was cleaning a bus.<sup>13/</sup> According to Gonzales, she climbed on the trailer hitch which connected a portable toilet to the bus and leaned in the door to talk to the woman who wanted to talk about a problem she had with her daughter. Gonzales stated that the woman never asked her to leave and kept working the whole time she was there. The conversation lasted only a few minutes before a man came up and asked her to leave.

The record does not clearly identify whether this is the same incident about which Bennett testified. On cross examination,

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<sup>12/</sup>Ross stated that this crew was strongly pro-UFW. DuBois supported Ross in this regard. She stated that of the 32 members of the crew, all but 7 supported the UFW.

<sup>13/</sup> Gonzales testified that workers who were not feeling well were sometimes assigned work cleaning the buses.

Gonzales testified that it was Pyle, not Bennett, who asked her to get off during the incident she recalled. Gonzales stated that the woman on the bus saw the man coming and said "Here he comes again, they are always hassling us." Gonzales got down off the hitch to hear what the man was saying because he was on the other side of a ditch from the bus. According to Gonzales, she then returned and told the woman, who was upset, that she was leaving because she did not want to jeopardize her standing with the company.

E. The Alleged Violations - Organizers in Fields

1. December 17

Pyle testified that he saw UFW organizer Gonzales and a man who identified himself as Hector Velasco with machine crew 1 on a ranch near Yuma, Arizona at about 10:00 a.m. on December 17. Employees were not on a lunch break. Pyle testified that he asked them to leave, but both stayed in the area for about 10 minutes, before one walked off.

Gonzales testified that she could not recall this incident and that she did not know Hector Velasco.

2. January 19

Pyle testified that he saw UFW organizers, Gonzales and Huerta, with machine crew 1 in a field about 9:40 a.m. on January 19. According to Pyle, Gonzales was behind the machine talking to workers, and Huerta was in front with the cutters. Pyle testified that he told Huerta of the violation, Huerta responded that he didn't know Gonzales was in back and walked off to another crew. Gonzales testified that she could not recall this particular incident.

3. January 20

Noel Carr testified that UFW organizers Gonzales and Huerta were with a crew at Lot 806 on the Correll Ranch at a time other than

lunch on January 20. According to Carr, he approached them, asked one to leave, and presumes that one did. He could not recall either the time of the day, the crew number, or whether it was a ground or machine crew. Carr knew both Gonzales and Huerta to be UFW organizers from their identification of themselves and from BCI personnel seeing them around.

Carr further testified that on the same day, notes taken by him at the time show that UFW organizers Huerta and Hilarion Silva were in Lot 124. Carr was not sure whether this incident involved the same crew as the earlier incident.

#### 4. January 23

Carr testified that on January 23 UFW organizers Raoul Quesada and Silva were observed talking to workers in ground crew 5 on Lot 314 at about 3:00 p.m. It is not clear from Carr's testimony whether he personally observed this incident or whether it was reported to him by foreman Jesse Juarez.

#### 5. January 27

Carr testified that Silvio Bassetti; the overseer of several crews, approached Carr when he drove up to Lot 745 at the Wiley Ranch about 10:20 a.m. on January 27. The workers in the field were ground crew 2. According to Carr, Bassetti told him that there were some UFW organizers in the field. Carr's notes identified the organizers as Roberto Garcia and Mario Vargas. Carr then looked across the field and saw them. Bassetti told him that he had asked the organizers to leave, but had gotten no response. Carr then told one of the organizers they were in violation and asked that one leave. One organizer left passing out leaflets as he went. Carr estimated that the organizers were in the field for 10 or 15 minutes. Carr testified that an unidentified person advised him that the two organizers later re-entered

the field at a time other than, lunch.

6. January 29

Pyle testified that, on January 29 about 11:00 a.m., he drove up to ground crew 2 on the Wiley Ranch while they were eating lunch and saw six UFW organizers with the crew. They were Purcell, Roberto Garcia, Pedro Morales, Manuel Chavez, and men named Tony and Mario. Pyle told Purcell that they were in violation, but got no response. According to Pyle, the organizers continued talking to ground crew 2 for 30 minutes until the crew finished lunch. At this time Purcell and Garcia went over to speak to ground crew 1 which was eating lunch in the same area. Two other organizers, Rosa Lopez and another whose name Pyle did not know, neither of whom were among the first group of six organizers, joined them and began talking to the crew. The four organizers who remained with ground crew 2 continued talking with the workers after they had returned to work. Pyle does not recall how long they stayed before leaving.

Purcell's testimony differs markedly from Pyle's. He testified that the Wiley Ranch had a number of fields separated by canals. There were four to six crews on the ranch on the day of the incident. Two groups of UFW organizers, with three organizers per car, went out to visit these crews. Around lunch, Purcell left a ground crew which was working near a canal and went up to his car which was parked on the canal road about 12 feet above the field. A catering truck had just pulled up on the same road. According to Purcell, the road was elevated with a steep dropoff on one side to the field and on the other to the canal and was only wide enough for one vehicle to pass at a time. A bus carrying ground crew 2 pulled up from the opposite direction of the catering truck and about 15 workers got out to eat lunch in the shade. Purcell testified there

were about 35 persons in the crew. Another car with three UFW organizers then pulled up behind that bus. Purcell and the two organizers with him began talking to this group of organizers and workers as they walked to the catering truck. Purcell stated that these conversations dealt with which crews they would visit after lunch. At this point Pyle arrived and told them they had too many people there. Purcell then got water from the canal because his car had overheated due to a faulty water pump. The other organizers' car, driven by Robert Garcia, left and then ground crew 2's bus left followed by Purcell's car which had been trapped between the catering truck and the bus. After leaving the area, Purcell's group went to another ranch.

#### 7. Miscellaneous Incidents

Carr testified that supervisors reported 10 or 15 other incidents in which there were more than one UFW organizer with a crew during work hours. No supporting or corroborative testimony was introduced as to these incidents or their details.

Supervisor John Bennett testified that he saw two UFW organizers in the fields near the Salton Sea during work hours. He could not identify them by name, but only as persons he had seen around. Bennett could not recall how many crews were in the fields, nor the names of their foremen or supervisors. Bennett was responsible for Wiley and Salton Sea Ranches and received radio calls on access violations from the fields when moving between ranches. On this occasion, he stated that the UFW organizers must have left because he did not receive another radio call. Bennett testified that there were two occasions when he received calls from supervisors who were having trouble getting compliance, but he did not specify whether the non-complying organizers were Teamsters or UFW.

## F. Teamster Access

### 1. Number of representatives and role

At the time of the election, the Employer had a collective bargaining agreement with the Teamsters.<sup>14/</sup> This agreement apparently contained a provision allowing union access to the work place for the purpose of servicing the contract. The agreement itself was not placed in evidence, rather several Employer witnesses stated that Teamster representatives may have been in the fields as business agents. Pyle specifically recalled Teamster representative Jimmy Tucker coming to him on problems handled by business agents.

Jacinto Roy Mendoza, the chief organizer for the Teamster campaigns at BCI and other employers in the Imperial Valley, named 11 Teamster representatives who worked on those campaigns as organizers. They were Manual Alcantar, Oscar Gonzalez, Oscar Herrera, Domingo Enriquez, Ernesto "Neto" Arrizarraga, Ely Rael, Alfredo Soria, Sam Rivera, Hilda Rangel, Jimmy Tucker, and a woman named Matilde. In practice, these organizers also functioned as business agents.<sup>15/</sup>

### 2. Enforcement of settlement agreement

The Teamsters were not a party to the settlement agreement, but the provisions relating to access on their face apply to them. No evidence was introduced as to the intent of the two parties, the Employer and the UFW, nor was evidence introduced as to how they expected the access limitations to be enforced against the Teamsters who enjoyed a right of access for business agents under a bargaining agreement and whose business agents were also organizers.

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<sup>14/</sup>See Bruce Church, Inc., 2 ALRB No. 38 (1976).

<sup>15/</sup> Because of this dual function, the term "representative" is used in this opinion to refer to persons acting as Teamster business agent-organizers.

Two Employer witnesses, Pyle and Carr, testified that the access provisions of the agreement were enforced for both unions, but their testimony indicated that enforcement was less consistent where the Teamsters were concerned because of the dual roles of their representatives. Pyle testified that he took notes on Teamster violations of the agreement. When he saw a violation, he would advise the Teamster organizers that they were in violation of the agreement, and one would then split off and go to another crew. Pyle recalled three instances in which he saw more than one Teamster representative with a crew, but he did not know whether they were organizers or business agents. Pyle testified that he never saw Teamster representatives on the buses in The Hole. Similarly, Carr was able to recall two instances when he saw more than one Teamster representative in the fields during work hours, but that quite often he saw only one. Where two were present, Carr stated that they may have been business agents with a right to be there. Carr's notes also showed that Carlos Rodriguez and Marcelio Luna reported that Teamster organizers Alcantar in ground crew 5 and Gonzalez in ground crew 3 on Lot 333 stated on January 27 that they would not respect the agreement if the UFW had more than one organizer per crew. Neither Pyle nor Carr explained how they or other BCI supervisory personnel determined that Teamster representatives were operating as organizers and were, therefore, subject to notice of violation, and when they were functioning as business agents and left alone.

### 3. Alleged violations

Mendoza testified that in the two months preceding the election he was in the Bruce Church fields once or twice a week and in The Hole nearly every morning with as many as 10 Teamster organizers. Teamster policy was to send three organizers to a field, if one of the organizers was a woman; and two, if both organizers were men.

As a rule, for safety and assistance reasons, Mendoza never sent fewer than two organizers.

Rodimiro Covarrubias, a foreman with machine crew 4, supported the testimony of Pyle, Carr, and Mendoza that there were occasions when more than one Teamster representative was in the field during work hours. He stated that he saw Matilde and another woman representative on one occasion, and Alcantar and Arrizarraga on another, that as many as three or four Teamster representatives came to his crew, and that he never saw only one Teamster representative. Covarrubias also stated that he and the other foremen were never told that there could only be one Teamster organizer per crew during work hours. According to Covarrubias, the Teamster representatives at his crew never spoke to him about grievances or the contract.

UFW organizer Gonzales testified that Teamster representatives came to a crew when she was already there. While Mendoza spoke to the foreman, Matilde would often get on a machine and tell workers to take a break while she wrapped for them. According to Gonzales, foremen never asked Teamster representatives or her to leave.

Four employees called as witnesses by the UFW testified generally that they regularly saw two or more Teamster representatives in the fields with a crew during work hours and that foremen never asked them to leave. The employees were Ramon Santiago, Eva Ayala de Quezada, Richard Gartrell, and Rafael Jacinto Almaraz who was known as "Don Rafa." While all these employees were able to identify various Teamster representatives they saw in the fields, only Almaraz was able to place two by name with a crew. Almaraz stated that Teamster organizers came to his crew, machine crew 4, daily, and that usually Arrizaraga would come accompanied by Matilde.



Ross testified that, a day after a work stoppage among eight BCI machine crews in Arizona, 30 to 40 Teamster representatives went from crew to crew in groups of 15 and got into heated arguments with some members of the crews. Ganz, Drake, Ross, and nine or 10 other UFW organizers were also present. According to Ross, the incident ended shortly after police, who had been called by BCI general manager Payne, arrived and asked representatives from both unions to leave.

A number of UFW witnesses testified that they saw Teamster representatives on buses in The Hole before work. Ross saw Alcantar twice and Arrizarraga once. Purcell saw Alcantar once arguing with a worker. Gonzales saw Alcantar, Oscar Gonzalez, and Matilde on buses during the months of December and January. Almaraz saw Matilde, Arrizarraga, and Mendoza. Quezada saw Matilde and Alcantar. Almaraz and Quezada stated that they never saw UFW organizers on the buses. Mendoza testified, on the other hand, that he never saw organizers from either union on the buses, while Pyle testified that he saw UFW organizers, but not Teamster organizers on the buses.

G. Employer Preference for the Teamsters - Leaflet Campaign and Harassment of Organizers

1. Leaflet Campaign

The settlement agreement on access was reached against a background of charges by the UFW that the Employer had discriminatorily discharged employees for support of the UFW and other conduct which amounted to illegal support and assistance to the Teamsters, The settlement agreement dismissed a number of these charges without a factual determination as to their truth. It is undisputed that BCI had a series of pre-Act contracts with the Teamsters beginning in 1970.<sup>16/</sup>

<sup>16/</sup> See Bruce Church, Inc., 2 ALRB No. 38 (1976).

At the hearing, the UFW introduced copies of ten leaflets and open letters issued by BCI in the months preceding and following the election.<sup>17/</sup> Michael Payne, the Employer's vice-president and general manager, admitted that the documents in evidence were all produced by the Employer and that he personally had written many of them. Payne testified that prior to the various elections, including the final one statewide, the Employer sent a number of leaflets and open letters to employees. These documents were translated into Spanish and then given to supervisory personnel for distribution to as many employees as possible.

In the last two months before the election, BCI put out these leaflets up to three times a week. With one exception, all the leaflets and letters entered in evidence were issued in the months of December and January. They evidence a strong Employer preference for the Teamsters, if not thinly, disguised campaigning on their behalf. Mendoza testified that he saw all the leaflets in evidence because organizers would bring in copies that they got from workers, but that the Teamsters did not ask the Employer to issue the leaflets.

The first open letter was issued prior to the settlement agreement on December 4. It is an answer to a UFW leaflet distributed to BCI employees regarding absence of certain paid holidays under the Teamster contract. The letter states that a UFW letter claiming that the UFW represented the majority of BCI employees was false, since the Teamsters won the voting in Salinas and San Joaquin. The letter also implicitly criticizes certain UFW contract provisions and states that the Employer "finds this latest UFW propaganda particularly

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<sup>17/</sup> UFW Exhibit 3.

offensive because it demonstrates the UFW's insulting and contemptuous disregard for the intelligence of our employees."

The next open letter is dated December 17, shortly after the effective date of the settlement agreement. It is a response to complaints and grievance filed by the Teamsters in connection with the Employer's call time procedures. The letter makes reference to a work stoppage the preceding day, but the record does not indicate whether this reference is to the work stoppage in Arizona about which UFW organizer Ross testified. The letter describes the work stoppage as a favorite tool of the UFW and states that it did not make sense for employees "to sacrifice their wages to serve the purposes of the UFW organizers." The letter further states that the Teamster grievance procedure and the BCI personnel department would resolve problems without any cost to the employee in lost wages.

Another letter on January 6 states that the Employer expected that the ALRB would overturn the previous elections and conduct a statewide election. It states that the Employer pledges to "abide by the wishes of the majority of its employees."

A letter dated January 14 discusses the question of seniority and job security. The letter criticizes the UFW for requiring that an employee remain in "good standing" with the union in order to stay on the seniority list. It then quotes from a report by a university professor that UFW contracts allow the union to arbitrarily drop any employee it wishes from its membership rolls, even if they paid their dues, and that those dropped had to be dismissed from their jobs. The letter ends by urging employees to look at all the issues and differences between the unions.

On January 19, the Employer issued another letter comparing medical and pension provisions under UFW and Teamster contracts. The comparison implicitly favors the Teamster provisions. For example, the letter describes the UFW pension and retirement plan as providing employees "a place in a 'villa for retired campesinos.'" It goes on to state:

"It appears that you would have to live out your retirement years at that location which may not be the area of your choice. You may want to retire to your home town where your friends and family are."

The letter describes the Teamster plan as providing for a cash payment so that employees could live wherever they wished.

Another letter, dated February 20, renews the Employer's pledge, first set forth in its January 6 letter, that the BCI would abide by the desires of its employees as to which union would represent them; however, the letter then states that these desires must be expressed in a free, honest, and secret election. The letter states that the Employer believes that the January 30 election was not this kind of election, and therefore it had filed formal objections. The letter goes on to list some of the objections and asks employees to contact named Employer representatives with any irregularities or illegal practices observed before or after the election, and lists some of the kinds of violations which might be reported.

Four other letters are undated, but three can be placed by statements contained in them as having been issued in the two-month period preceding the election in the Imperial Valley. One letter obviously followed the settlement agreement on access. It is particularly relevant to assessing the alleged violation of the access

agreement. The letter in its entirety reads as follows:

TO: All Bruce Church, Inc. Employees

When the company allowed expanded access to union organizers, so they could talk with you during all working hours, we did not anticipate that there would be so many organizers nor that they would take up so much time.

But if you think the pressures are great today, I urge you to ask yourself how great the pressure could be on you if some of these same organizers or their bosses had the power to take your job away from you -- and give it to someone else?

We ask that you think about all the things that you could have to do, even though you may not want to, in order to keep "good standing" with a union boss. You know what those things are -- things like having to lose a day's work to go picket or boycott something or someone, or going to meetings you don't want to attend, or paying extra assessments, etc. etc.

We ask that you really think about this because it seems to me to be one of the "gut" issues.

You might ask -- Why is the company so concerned about me and my "good standing" with a union? The answer to that is if you're forced to do something you don't want to do -- and the company can't do anything about it -- you are going to be really unhappy. In the long run, there is no way for unhappy employees and the company to "keep-it-together".

I'd like to take this opportunity to congratulate everyone on the good job that is being done in spite of the pressures from the union organizers.

We've got the best team in the business and by "keeping-it-together" we're going to get even better.

MIKE PAYNE

Although the UFW is not expressly named as the "union" referred to in the letter, the terms "union boss" and the issues of "good standing" and losing a days work to picket and boycott are routinely linked to the UFW in other Employer letters. The clear inference to be drawn is that the Employer criticized the UFW for exercising its access rights.

Another undated letter was issued sometime after the Board's decision to conduct a statewide election. It lists a series of choices

The first choice is between a new Teamster or a new UFW contract, while those that follow deal with various campaign issues. If the parallel of the first comparison is followed, a reasonable person reading this leaflet would view the first choice in each case as the Teamster position and the second choice as the UFW position. In every case, the UFW choice is pictured as the least attractive. For example, the final choice states the following:

If the wages and benefits that you work hard for are for  
you and your family

OR

If part of the wages and benefits go into some mysterious,  
undefined funds to be used by others for their purposes.

The letter closes by stating that about 60 percent of lettuce employees had voted to be represented by the Teamsters and 40 percent by the UFW and that there "are going to be some successful companies - and there are going to be some failures." In its context, the clear inference of this last statement is that companies whose employees choose the Teamsters will be successful. Another undated letter closes with a similar reference to BCI remaining successful so as "not to end up like Freshpict." A statement to be read to employees as part of the settlement 'agreement stated that "BCI has no intention to go out of business or reduce acreage in California, regardless of which union the employees choose to represent them. " The last document in the exhibit is a leaflet asking and answering a series of questions about the UFW contract with Interharvest, Inc.

## 2. Employer Harassment

UFW argued that the Employer's treatment of organizers taking access was markedly different for the two unions. Gonzales testified that Pyle never told her she was in violation of access regulations, but instead he would say, "Get the hell out of here"

when she was with another organizer in the field. She stated that this happened to her every day, sometimes twice a day. At first, she attempted to explain that she was just getting the time, that the organizers were not near the machines, and that they were not organizing at the time. Later, Gonzales testified that she began to ignore Pyle and not leave because she did not feel she was in violation of the agreement. She further stated that supervisors would object to the presence of two organizers even when an organizer was merely being called to leave the field to return to the UFW office,

Gonzales testified that she was never asked to leave a field by a foreman, but only by Pyle and another man with a beard. She stated that Pyle would talk to a foreman who would then come and tell her to leave. According to Gonzales, a foreman with machine crew 8 named Jose Luis Garcia told her that he was sorry Pyle was hassling her and that he felt she was doing nothing wrong.

#### V. Preliminary Facts Relevant to Election Day Conduct

##### A. Voting Procedures - the pre-election conference

The election was conducted statewide at several locations, but the majority of votes were cast in the Imperial Valley at polling sites in Brawley and Calexico. All objections on election conduct relate to these two sites.

Times and places for the election were determined at a preelection conference held on January 28 at Board offices in El Centro. Employer representatives present were Michael Payne, vice-president and general manager of the Employer, and Kenneth Ristau, Employer's attorney. Teamster representatives were Mendoya, Arrizarraga, and Rivera. UFW representatives were Marshall Ganz and Ross. Presiding over the conference for the Board were the agent in charge of the

election, Carlos Bowker, and attorney Maurice Jourdane. Other unidentified persons representing the various parties were also present. Voting was to take place from 7:00 a.m. to 4:00 p.m., in Brawley, and from 5:30 p.m. to 7:30 p.m. in Calexico.

During the conference, the Board agents and parties made several agreements as to polling areas, transportation of employees to the polls, and voting procedures. A site at the Employer's Brawley Ranch, represented by the red-hatched area on Employer Exhibit 3, was designated as the polling area within which no electioneering was to occur.<sup>18/</sup> This area was approximately 1/2 mile from east to west and 3/4 of a mile to one mile north to south. The only access to this area was over a 40 foot long, 20 foot wide bridge located just outside the polling area at the point indicated on Employer Exhibit 3 where U.S. 86 doglogs to the south. The identification tables and the voting booths were located 9/10 of a mile from the bridge, according to Burton Anderson, who was manager of that ranch for 17 years. This area is marked in yellow on Employer Exhibit 3.

The employer volunteered use of its buses to transport employees from the fields to the polls. Bowker asked who would drive those buses, and Employer representatives indicated that drivers would be BCI bus drivers who were in many cases crew foremen.<sup>19/</sup> Bowker objected to crew foremen on the buses. All parties finally agreed that the buses would be used with Bruce Church drivers, but that a Board

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18/The illustration incorrectly shows the hatched area extending across US 86. It should parallel the highway on the ranch side of the road. The bridge entrance is also incorrectly shown as being within the hatched area.

19/ Payne testified that BCI drivers had to drive the buses because of insurance and legal requirements. There was some discussion of using outside drivers before a compromise was reached.



agent would be on each bus from the time it left the field until it arrived in the polling area in order to ensure that no electioneering was done on the buses. Payne testified that Bowker stated the buses were to be an extension of the polling area. Bowker confirmed Payne's testimony and stated that his intention was to prevent electioneering by the parties on the buses. There was no evidence that the agreement also applied to campaign literature placed on buses by employee supporters of either union.

Arrangements were also made to handle eligible voters who might not be working the day of the election and who would arrive at the polls in private cars. Payne testified that the UFW argued that private cars should be allowed into the area, but the Employer objected. Parties finally agreed that persons arriving to vote by means other than the buses would be stopped at the bridge and held there until they could be driven to the voting booths in state cars or a BCI van with a Board agent present.

Parties agreed at the pre-election conference to meet the next day, January 28, to work out a busing schedule.<sup>20/</sup> A schedule was worked out on January 29 and brought to Payne by Ristau who attended the meeting. According to Bowker, the busing schedule was intended to prevent congestion at the voting area while at the same time maintaining a steady flow' of voters.

#### B. Voting Procedures - election day

The day of the election, problems developed around the busing schedule agreed on at the pre-election conference. Some buses arrived

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<sup>20/</sup>Payne stated that this was necessary because the Employer could not tell at the time where or how much volume it would be harvesting on election day.

behind schedule, and Board agents had to keep polls at the Brawley site open 30 to 60 minutes past the official closing time. Evidence indicated that the delay was at least in part the result of attempts by Employer representatives to depart from the schedule and control the flow of voters to the Brawley polling area, contrary to instructions by Board agents.

Board agent, Shirley Trevino, testified that she was one of the Board agents assigned to ride buses from the fields to the polling area. She experienced difficulty on the morning of the election in having an employer representative direct her to the fields where she could board a bus and in permitting buses to leave for the polls. Her testimony in this regard is discussed below in connection with the objection that Trevino told employees that the Employer did not want them to vote. Trevino testified that later in the day, she and Jourdane were parked in a gas station in Westmoreland when they saw two company buses heading to the polls without a Board agent on board. Jourdane stopped the buses and ordered Trevino to get on one. No evidence was introduced to show why this bus had no agent or who had directed it to leave for the polls.

Once inside the polling area, buses followed the path, indicated by the arrows on Employer Exhibit 3, to the voting booths. According to a number of witnesses, buses parked in the area marked by an "X" in box just below the yellow area on Employer Exhibit 3. The buses were approximately 100 feet from the place where voters lined up in front of the identification tables. Employer Exhibit 7 and UFW Exhibits 2a and 2b illustrate the location in the immediate area of the voting booths. Miyaoka testified that at times during the day there were seven private cars also parked in the area of the buses, but there was no evidence as to who the owners of these cars were.

When the buses reached the parking area, Board agents followed certain procedures. Trevino testified that she would wait on the bus with the crew until the last people of the preceding crew had voted.<sup>21/</sup> She would then lead the employees off the bus. Bowker testified that employees would then be placed in one line in alphabetical order, given instructions on how to vote, and shown a sample ballot.<sup>22/</sup> Employees were then separated into two lines, one from A-N and another from O-Z and taken to the two identification tables.<sup>23/</sup> Generally, only one crew was in line to vote at a time.

Observers were stationed at the identification tables. Each party had five permanent observers and one observer for each of the ground and machine crews.

Ballots were handed out to voters after they passed the identification tables by a Board agent who stood on the area indicated by the box marked "3" on UFW Exhibits 2a and 2b and by the circle marked "A" on Employer Exhibit 7. Voters who were challenged were directed to the challenge table marked as box "4" on UFW Exhibits

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21/ When Trevino arrived with machine crew 4's bus, she stated that she was the third bus in the area. The crew from one bus had finished voting and were leaving, while the crew from another was in line to vote

22/ Trevino testified that she also gave instructions when she boarded Buses in the fields for the trip to the polls.

23/ The identification tables are the boxes marked 1 and 2 on UFW Exhibits 2a and 2b, and the ones marked "ID" in Employer Exhibit 7. There is some discrepancy in the testimony of various witnesses as to where the alphabet was broken, but all agree it was split in half for identification at the tables.

2a and 2b and marked "Challenge" on Employer Exhibit 7. Other Board agents were stationed by the ballot box and voting booths. When employees finished voting they boarded buses which left the polling area along the path marked by the arrows on Employer Exhibit 3.

C. Union Supporters at the Bridge

Buses approached the Brawley polling site from the north on U.S. 86 and then slowed to make a left turn into the polling area across the bridge connecting the road with the ranch. Supporters of both the Teamsters and the UFW and representatives of the Employer were present at the bridge, but outside the polling area.

Burton Anderson, BCI general services manager, testified that he was at the bridge for all but 30 minutes between 6 a.m. and 2 p.m. on election day. He stated that there were four or five UFW supporters there at 7 a.m., 10 to 15 at 10 a.m., and 35 after lunch. Teamster supporters were also at the bridge, but this group never exceeded four or five persons. UFW supporters wore the black eagle emblem of the union. UFW official Marshall Ganz was present with them most of the day.<sup>24/</sup> These supporters stood on an embankment 15 feet from the road and shouted slogans like "Viva Chavez" as the buses entered the polling area. Supporters did not run alongside the buses, according to Anderson, because it was virtually impossible to do so due to the narrowness of the bridge.

David Thornberry, BCI production manager, and Marcelino Sepulveda, a foreman for ground crew 7, testified substantially as did Anderson. According to Thornberry, the group at the bridge varied from zero to 40 persons during the day and that they wore emblems on

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24/ Ross testified that Ganz was present in part to make sure that UFW organizers did not jeopardize the election by entering the polling area.

their clothes, but he could not recall seeing flags. Sepulveda testified that when he drove his crew's bus into the polling area between 11 a.m. and 1 p.m., he saw perhaps 50 people on one side of the bus and 15 on the other. UFW supporters on the ground yelled "Viva Chavez" to union supporters on the buses who had opened the windows. Some workers on the bus then shouted "Viva Chavez" back. Sepulveda saw no one run alongside the bus. He saw approximately four Teamster supporters at the bridge.

Trevino testified that she too saw supporters of both unions at the bridge when buses she was on entered the polling area. She stated that she stood in the doorway of the bus, so that it was impossible for anyone to get on or off the bus at that point.

#### D. Board Agent Bias

Allegations of bias on the part of Board agents in favor of the UFW underlie a number of the Employer's objections and attacks on witness credibility. In addition to evidence introduced by the Employer in connection with specific objections, the Employer attempted to introduce evidence of a general bias in favor of the UFW.

Employer witnesses, Sotera, DuBois and Graciela Godinez, testified that they saw Board agent Shirley Trevino in The Hole a week or so after the election. Godinez stated that Trevino was passing out leaflets, but that she did not know what was on the leaflets. Godinez asked Trevino why she was passing out leaflets, if she was from the government, apparently because she felt that only union organizers passed out leaflets in The Hole. Trevino responded that she had been fired.

Trevino testified that it was common practice for Board agents to hand out election notices and worker rights leaflets in The

Hole. After the election at BCI, she was in The Hole leafletting in connection with elections at J.R. Norton and Sahara Packing and the shutdown of the Board due to lack of funds. Trevino stated that she had never handed out a UFW leaflet.

In answer to a question by the Employer's counsel on cross examination, Bowker testified that he and Jourdane had attended a UFW meeting in Calexico prior to the election which was called for the purposes of ratifying the UFW contract with Interharvest, Inc. There were about 700 persons at this meeting. Bowker testified that both he and Jourdane used the opportunity to inform workers of their rights under the Act and to explain what would happen in the event the Board was not funded. Bowker did not know whether any BCI employees were present. He testified that he and Jourdane stayed only ten minutes and left before the vote on ratification. On cross examination, Bowker was asked whether an employee had said at the pre-election conference that he was a UFW agent in the minds of the voters. Bowker stated that accusations and comments of that type were made by all parties at the pre-election conference, and especially by Teamster organizers.

## VI. Election Day Conduct

### A. Electioneering in the Polling Area by UFW Organizers

The Employer's objection is that UFW organizers entered the polling area while the election was in progress and engaged in electioneering and campaigning in the immediate area of the polling booths and ballot box with voters waiting to vote. The Employer introduced evidence as to two alleged incidents of electioneering.

#### 1. The Man in Maroon Pants

Three Employer witnesses testified about this incident. Pedro "Pete" Flores was a closer with ground crew 1 and acted as a

crew observer for the Employer at the Brawley polling site. He testified that when his crew arrived by bus at the polling site, there were three crews in the area, his crew, ground crew 2, and another which was leaving. A Board agent told them to wait, gave them instructions on voting, showed them a sample ballot, lined them up alphabetically in front of the bus a short distance from the identification tables and told them to get out their identification so that their eligibility could be checked. About this time Flores saw a man walking up and down in the line telling employees to vote for Chavez. The man had a moustache and was dressed in maroon pants. Flores did not know the man's name, did not recognize him as an employee, but had seen him before around the buses in The Hole. Flores walked over to Employer observer Miyaoka, who was standing near the identification tables and reported the incident. A male Board agent then told Flores to get back in line because they were going to start voting.

When Flores returned to the line, he saw the man still in the area, so he informed a female Board agent who spoke to the man, but Flores could not hear what was said. Flores then spoke to another male Board agent who went over and talked to the man in maroon pants. The man then walked through ground crew 1 and to the rear of it. As he did so, Flores testified that he heard the man say, "If anyone asks, I work for Bruce Church," and "Viva Chavez." According to Flores, there were about 70 employees from ground crews 1 and 2 in the area preparing to vote when this incident occurred, as well as members of another crew which had finished voting and were waiting for their bus to leave,

On cross examination, the UFW questioned Flores about a declaration filed with the objections petition in which he stated that there were 100 to 140 employees in the area at the time of the incident and that Bowker was the Board agent to whom he spoke. Flores testified that he would recognize Bowker, but he was unable to describe him or any other Board agent. He repeated his testimony that 70 persons were in line, but other crews whose numbers he could not remember were waiting around for their buses after voting.

Miyaoka testified that when Flores reported the incident to him, he looked up and saw a man in maroon pants in front of a bus handing a leaflet to another man who had just come off a bus. At the time this man was at the place marked "1" on Employer Exhibit 7.<sup>25/</sup> Miyaoka got Board agent Bowker who was with another group of voters by the other buses and told him that there was a man campaigning. By this time, the man in maroon pants was headed toward the other two buses, and Bowker and Miyaoka were going over to speak to him. When they were about 50 or 60 feet away, Bowker asked the man what he was doing and whether he was going to vote. The man replied that he was not going to vote. Miyaoka then told Bowker to find out who the man was because he was campaigning. Bowker replied that he was not doing anything and was just going to the bus. Miyaoka again asked to find out who the man was and what he was doing in the area. Bowker then said that he was too busy and had to get back and see what was going on. Miyaoka did not see the man in maroon pants again.

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25/ Employer Exhibit 7 is a representation of the portion of the Brawley area around the voting area itself. The markings at the top left represent Miyaoka's recollection of the placement of buses and voters at the time the incident occurred.



When Miyaoka returned to a place marked by the "X" on Employer Exhibit 7, near the identification tables, he saw the man to whom the man in maroon pants had handed the leaflet still sitting on a rock reading it. The man finished reading the leaflet, folded it, dropped it on the ground, and then walked over to his crew which was getting ready to vote. Miyaoka had a Teamster observer named Cruz send another Teamster observer to get the paper and bring it to him. A copy of the leaflet was entered in evidence as Employer Exhibit 6. It is a letter in Spanish to Bruce Church employees, dated January 30, and signed Cesar Chavez and a paper with the words "Vote Asi" and a square marked with an "X" under the UFW's black eagle symbol and the name of the union below in English and Spanish. On the back of that paper are instructions on how to vote. An English translation of the letter was attached as part of Employer Exhibit 6 at the hearing. The letter in brief calls on employees to choose a union which had not made an alliance with the ranchers and to choose the UFW which was going to win all the elections in the Imperial Valley. Miyaoka apparently never showed the leaflet to a Board agent.

Michael Domingos, who was an Employer observer at the identification table across from the one by which Miyaoka was standing, testified that he too saw a male Mexican with a moustache wearing maroon pants walking along a line of voters and then crossing over to another line.

Bowker could not recall this incident. He did recall another incident also recalled by Miyaoka, involving a sportily dressed man in a tan leisure suit who was joking and talking to voters in line. The workers were kidding the man about his clothes and how much money he made. Bowker testified that he had seen the man drive his wife into the polling area in a private car. He asked the man to move back into

the area where voters who had already voted were congregated. Bowker later saw the man leave the area when his wife had finished voting.

Miyaoka's recollection of this incident is different. He testified that the man in the tan leisure suit was Elios Pacheco, a long-time employee of BCI. Bowker asked Miyaoka whether Pacheco was an Employer observer. Miyaoka told him that Pacheco was not, that he had been asked to be an observer, but the Employer had decided not to use him. Since Pacheco was an eligible voter, Bowker told him to get back into line and await his turn to vote. The conflict in testimony is not critical, since this man was clearly not the man in maroon pants.

Bowker also recalled that a young male Mexican in work clothes appeared at the polling area claiming to be an observer for one of the parties. Because his name was not on the list of observers, Bowker refused to allow him to act as such and sent him to the area where the state cars and van were parked. This area is marked on Employer Exhibit 7 in the bottom left-hand corner. According to Bowker, the man remained there under his surveillance and that of other agents who were in that area for two hours until he was picked up. This man cannot be identified as the man in maroon pants, nor was he the man in the other incident discussed below, since his description does not match that man.

The UFW called three persons who served as UFW permanent observers at Brawley. Ramon Santiago, Rafael Jacinto Almaraz, known as "Don Rafa," and Eva Ayala de Quezada all testified that they were at the identification tables all day and did not see anyone campaigning among the lines of voters. The UFW also called Jose Cedillo, its observer for ground crew 1. He testified that the crew observers voted last after the other persons from the crew and that he stood next to Flores at an identification table throughout the voting. He never saw

Flores speak to a Board agent. When they arrived at the polling area, Bowker asked who the observers for the parties were and then told them to take their places at the identification tables. According to Cedillo, Flores never left to speak to a Board agent.

## 2. Ground crew 7 incident

Two Employer witnesses testified about another incident of alleged electioneering which occurred while ground crew 7 was preparing to vote. Marcelino Sepulveda, an assistant foreman with that crew who drove the crew bus the day of the election, testified that when the bus arrived in the polling area, the Board agent who had ridden in with the crew from the fields got off the bus first followed by the employees. Sepulveda remained seated at the wheel. He testified that he saw a tall, heavy male Mexican with a white moustache approach the bus and speak to the Board agent who had gotten off the bus. Sepulveda did not know the man, but saw him once after the election in The Hole walking toward the heaters with workers from Interharvest, Inc. Sepulveda at first testified that this man told the Board agent from the bus, "Not to forget to tell them how they are going to vote." When asked to repeat what was said, Sepulveda said the man had said, "Not to forget to tell them who to vote for." After making the statement, the man walked with the Board agent about 20 feet toward employees lining up to vote and then returned where cars were parked.

Javier Villareal was a cutter and packer with Sepulveda's crew. He testified that when the crew's bus arrived in the polling area, a tall, heavy Mexican man came up to employees getting off the bus, pointed to a paper, and said, "you know how you are going to vote." According to Villareal, the paper he held up was something like the second page of Employer Exhibit 6 and had a black eagle on it.

Based on the consistency of Sepulveda's first answer with Villareal's testimony and evidence that Board agents gave voting instructions when employees left the buses, I find that the statement made by this man was "Don't forget to tell them how to vote."

The UFW called another cutter and packer with ground crew 7 named Geraldo Flores. He testified that on the day of the election he sat in the front of the bus near Sepulveda. He remained on the bus with Sepulveda and did not vote. From his position Flores could see the crew standing outside. He did not see the man described by Sepulveda and Villareal.

B. Conversations by UFW Observers with Voters

No evidence was submitted at the hearing in support of this objection. Richard Gartrell, Ramon Santiago, and Jose Cedillo, who acted as UFW observers at Brawley, testified that no observers talked with voters and that they were ordered not to do so by Board agents. Board agent Bowker was in the area between the identification tables at all times when voters were present.

C. UFW Literature in State Car Used to Transport Voters to Polls

Miyaoka testified that he was a permanent observer at both the Brawley and Calexico election sites. When the voting was completed at Brawley, the ballots were placed in a grey or green state car. Miyaoka, a UFW observer, and a Teamster observer then rode with Board agent Bowker in that car to the polling site in Calexico. During the ride to Calexico, Miyaoka saw 70 or 80 leaflets in Spanish on the floor of the back seat of the car, a copy of which was entered into evidence as Employer Exhibit 5. The leaflet was mostly handwritten and was directed to D'Arrigo strikers. It announced that emergency meetings would be held each night at 6 p.m. from Tuesday to Friday, January 12 to 16, at the UFW office in Calexico and advised the strikers to call phone numbers listed on the leaflet for more information.

Miyaoka testified that he had seen Board attorney Jourdane drive the car containing the leaflets out to the gate earlier in the day at Brawley and bring back voters to the voting area. Employer observer Michael Domingos also stated that he had seen three voters brought to the polls in a state car on one occasion. Board agent Bowker stated that he once drove one voter who rode in the front seat to the voting area from the gate. Bowker stated that he had never seen the leaflet and the voter who he drove into the polls did not mention it. Bowker only left the immediate voting area to go to the gate when no crews were present voting. No employees who might have seen the leaflet testified.

Board agent Celia Trujillo testified that she had put out the leaflet in question as part of an effort to contact about 300 economic strikers from D'Arrigo for a challenged ballot report on which she was working. According to Trujillo, most of the strikers were UFW members who had gone on strike in 1973. She was in the Imperial Valley from January 10 to 18 working on this report. Trujillo used a state car while she was in the area. Trujillo stated that the leaflet was run off on regular paper because the El Centro office was concerned about paper use and she knew that paper with printing on it was more expensive to use, so she ran it off on blank paper. According to Trujillo, she and other Board agents distributed the leaflets at The Hole in Calexico and, with the help of UFW volunteers, across the border in Mexicali. Trujillo stated that it was common practice for Board agents to request the assistance of the parties in such investigations. She stated that the meeting was set for the UFW office because it was close to the areas in Calexico and Mexicali where the leaflets were distributed, and workers would not have to drive to the Board offices in El Centro.

D. Board Agent Statement that Employer did not want Employees to Vote

A number of witnesses for both the Employer and UFW testi-

fied as to this incident. Based on their testimony, this is what occurred. On January 30, the day of the election, Board agent Shirley Trevino was to accompany buses to the Brawley polling site under the agreement and schedule worked out prior to the election. She and Board agent Wayne Smith had busing schedules and were to wait for a BCI representative to take them to the fields to meet the buses. That morning, Trevino and Smith met a gray-haired BCI representative, named James Pyle, who was known to the workers as "El Caballo Blanco." Pyle told them that he had not yet received his orders to take buses to the polls. They then waited several minutes and asked again, but were again told by Pyle that he had not received his orders. After another short wait with no indication they would be taken to the polls, Trevino and Smith left to look for the fields being worked. When they did this, Pyle also left and they followed him.

Trevino and Smith arrived at a field being worked by a full division consisting of machine crews 1, 3, 4, and 5. Other Board agents had already arrived about 7 a.m. or 8 a.m. They had run into UFW organizer Ross in Westmoreland, asked where crews were working, and followed him there. Ross had heard reports that a female organizer had been roughed up by members of machine crew 1 which was strongly Teamster and anti-UFW and known as the "Tigresa" crew. Several members of the crew had thrown dirt clods at Ross' car when he arrived that day. Most of machine crew 4, which was a heavily pro-UFW crew, were on or around their bus when Ross arrived because their machine was broken and stopped. Machine crew 1 was coming in and out of the field in confrontation with machine crew 4.

After her arrival, Trevino and another Board agent, Jesse Jacques, boarded machine crew 4's bus, explained the voting procedures, and informed employees that they would accompany them to the polls. Trevino then got off the bus and told Pyle, who was sitting in a car with a radio, that a busing schedule had been prearranged, but he

responded that he had not received his orders from the office. Trevino asked Pyle to contact the BCI attorney and find out why buses weren't moving. The driver of the bus was machine crew 4's foreman, Rodimiro Covarrubias, known as "El Cuate." He was instructed not to take the bus to the polls until ordered to do so by Pyle and Ramon Robledo, another foreman with machine crew 4.

Apparently, while Trevino was speaking to Pyle, a person identified as a UFW organizer got on the bus and said either "Payne and Taylor are shitting in their pants, 'Viva Chavez<sup>1</sup>" or "Payne and Taylor both shit; they don't want you to vote." Evidence was contradictory as to the identity of the person who made these statements. Pyle testified that he saw Ross get on the bus, but did not hear what was said. Ross himself admitted getting on a bus briefly next to the driver and telling workers that the voting was being stalled, but he denied doing any campaigning or saying that "Payne and Taylor are shitting." Two employees called by the Employer, Sotera DuBois and Graciela Godinez, were on the bus and heard the statement. They identified the person only as a UFW representative they had seen with Ross, but could not name him. Furthermore, their descriptions were totally different. DuBois described the person as a tall, blond-haired man who wore a knitted hat. Godinez said the person was a short American of medium height with brown hair and no hat. There was no evidence that a Board agent was on the bus at the time the statement was made.

After this incident and upon finishing her conversation with Pyle, Trevino, Smith and Jacques agreed to tell employees on the bus that they would take them to the polls in a state van. Trevino then got on machine crew 4's bus and spoke. DuBois testified that Trevino, in Spanish, said:

"The company doesn't want you to go vote now. We

want to take four buses at a time, but the company wants to send one bus only. Those that want to go to vote, there is a panel. Get in it, and we are going to take you to vote."

DuBois then told Trevino that she was talking the way she was because she was with Chavez. Trevino did not respond.

Godinez's testimony is substantially the same as that of DuBois, except that Godinez states that Trevino's statement was as follows:

"The company dosn't want you to vote; it wants to screw, but we are going to vote."

Trevino testified that when she got on the bus, she said that they were having difficulty with the Employer complying with the procedures worked out. She denied making the statement attributed to her by Godinez, but admitted being frustrated with the situation.

This testimony is contradictory and must be resolved. On direct, DuBois, like Godinez, stated that Trevino said, "The company does not want you to vote;" however, when asked by this examiner to recall as best she could exactly what was said, she stated that Trevino said, "The company does not want you to vote now [Emphasis added]. Only Godinez testified that Trevino stated that the company "just wants to screw." The testimony of DuBois is consistent with that of Trevino and conflicts with that of Godinez. Given the conflict between Employer's own witnesses and Trevino's credible testimony, I find that her statement to the workers was that recalled by DuBois, with addition of the word "now." When Trevino finished speaking, about 10 employees left the bus and got in the State van.<sup>26/</sup>

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<sup>26/</sup>Ross testified that at some point during the incident Rafael Jacint Almaraz and other employees asked him whether they should get in the van and he advised them to wait a little longer.



Smith and Trevino then returned to Pyle's car, told him that they had a responsibility to see that these workers voted as prearranged, and that they would take them in the van. Pyle said, "Let me get to the company." Trevino told Pyle to get on the radio and let her talk to the Employer's attorney because he already knew about the schedule and that Board agents did not know they were going to be confronted with these problems. Pyle then slammed the door and rolled up the window. Later he came back to Trevino and said that he was giving the okay and that the workers could get out of the van and back on the bus. The workers then got back on the bus. Trevino then told the employees the bus was ready to go, and it left for the polls about 8:30 a.m., according to Trevino, and 9:00 a.m. according to Pyle. Covarrubias stated that the order to move the bus was given by Robledo. Trevino rode into the polling area with the bus. When she arrived, there were two buses of workers in the area. One bus's employees had just finished voting, so she had approval to bring in her bus.

#### E. Board Agent Refusal to Permit Observers to File Challenges

##### 1. Brawley Incident

During the voting at Brawley, Employer observer Miyaoka saw a woman named Maria coming to vote wearing a jacket with a large black eagle on the back. He told Board agent Bowker that she could not come into the area with the union insignia on. The woman asked what the commotion was about, and Bowker explained Miyaoka's objection. The woman responded that it was no problem and took off the jacket and threw it over an empty chair, even though Bowker told her that it was not necessary to do so.

At this point, a Teamster observer said that the woman was a UFW organizer who had been in the field organizing. Miyaoka then called over Board agent Annie Gutierrez who was nearby in the area

between the two identification tables and said that he wanted to challenge the woman on the ground that she was a union organizer. Gutierrez then sent the woman toward the challenge table.

UFW observer Quezada testified that at this point she called the challenge to Bowker's attention and said that she could not be an organizer because her name was on the eligibility list. Quezada identified the woman as Maria Lourdes Marquez. Bowker then walked over and brought Marquez, who was crying, back to the identification tables. Miyaoka again repeated his challenge, but Bowker stated that he did not have sufficient grounds for the challenge, since Marquez's name was on the list and she had identification. Bowker stated that if she worked during the eligibility period, she was an agricultural employee entitled to vote.

Miyaoka and Bowker continued to argue in a heated manner near the identification table marked "2" on UFW Exhibit 2a and 2b. According to Miyaoka, about 25 to 30 voters were in line at the time a short distance away. None of them were called to testify that they heard the argument. During the argument, Miyaoka insisted that he had the right to challenge any voter, whether or not their names appeared on the list, and asked Bowker how he knew the woman was not an organizer, Bowker told Miyaoka that he was running the election and would determine who could be challenged. The argument ended when Bowker told him to turn around and look at the ballot box. Miyaoka testified that he turned to see Marquez dropping her ballot into the box. Miyaoka then yelled over to Employer observer Domingos who was sitting at the identification table across from the one where he was standing and told him to prepare an election objection form used by the Employer. The form prepared by Domingos was entered in evidence as Employer Exhibit 4.

Bowker's testimony about the incident was in substance the same as Miyaoka's. Under questioning by the UFW, Bowker stated that he permitted Oscar Gonzalez to vote unchallenged, after overruling a UFW challenge that he was an organizer, because Gonzalez claimed to be an economic striker. Bowker also allowed a person whose name he did not remember who was working in the machines to vote without challenge because he worked in the eligibility period and had identification. This man was also challenged by the UFW as an organizer.

## 2. Calexico Incident

There was no substantial conflict in testimony by witnesses as to a second incident which occurred in Calexico. Miyaoka rode to the Calexico voting site with Bowker and observers from the two unions. Before voting began at Calexico, he asked Bowker what questions he intended to ask economic strikers. Bowker stated that he wanted to know if the person claimed to be an economic striker and when the person last worked for BCI. Miyaoka asked Bowker to ask other questions, such as whether the person returned to work, and, if so, how long after leaving BCI and for whom had they worked on their return. Bowker responded that he would not ask those questions and that the answers to Miyaoka's questions would come out in the post-election investigation of challenged ballots, if that was necessary. All economic strikers were automatically challenged by the Board when they appeared to vote because they were not employed in the eligibility period.

When voters arrived at the polls, Miyaoka began filling out challenge affidavits and questioning voters in the areas Bowker had told him he would not go into. After Miyaoka had completed two or three affidavits, Bowker came up and told him he was not going to

ask further questions. Miyaoka responded that he had to in order to get information. Bowker then told Miyaoka that he could not write anything further either and that he wanted everything Miyaoka had written. Miyaoka refused. Bowker then threatened to throw all the Employer observers out of the polling area if he did not. Bowker finally took the affidavits from Miyaoka.<sup>27/</sup> Voters were in the area at the time.

#### ANALYSIS AND CONCLUSIONS

##### I. Standard and Burden of Proof

The Employer argues that the standard by which the conduct of an election is to be judged is the "laboratory conditions" standard laid down by the NLRB in General Shoe Corp., 77 NLRB 124, 21 LRRM 1337 (1948). The ALRB has rejected this standard as not applicable in the agricultural context where a new election cannot be conducted until the next peak of season, a year after the first election, and where the electorate will likely be substantially changed. Because of the serious delay a laboratory conditions standard would place on employees statutory right to collective bargaining representation, the Board has stated in D'Arrigo Bros. of California, 3 ALRB No. 37 (1977) that it will set aside an election "only where the circumstances of the first election were such that employees could not express a free and un-coerced choice of a collective bargaining representative."

The burden of proof is on the party seeking to overturn an election to come forward with specific evidence showing that unlawful acts occurred and that these acts interfered with the employees' free

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<sup>27/</sup> Bowker testified that he placed the notes taken from Miyaoka in Board files on the case, along with notes kept by a UFW observer as to which persons he intended to challenge which Bowker took at the end of voting.

choice to such an extent that they affected the results of the election.<sup>28/</sup>

## II. General Allegations of Bias

The objections, with the exception of those involving access violations and observer conversations with voters, are based in large part on charges that Board agents conducting the election were biased or by their actions created the appearance of bias. Specific conduct is discussed below in connection with particular objections, but other general evidence of bias is discussed here.

In Coachella Growers, Inc., 2 ALRB No. 17 (1976), the Board held that to constitute grounds for setting aside an election, Board agent bias or the appearance of bias must be shown to have affected the conduct of the election itself and impaired the balloting's validity as a measure of employee choice. The Employer has not met its burden under this standard on the general charges of bias.

The record shows that Board agent Bowker and attorney Jourdane attended a meeting of about 700 persons called by the UFW prior to the election to ratify a collective bargaining agreement with Interharvest, Inc. They used the occasion to inform workers of their rights under the Act and to provide information on the effect of de-funding of the Board on these rights. They stayed 10 minutes and were not present during the vote on ratification. In Coachella Growers, supra, the Board held that appearances by Board agents at such meetings were proper so long as the agents did not conduct themselves in a way which aligned themselves with a particular party. The record here does not show that the conduct of Bowker and Jourdane was improper, nor does it show that it was done in a way indicating their alignment with the UFW.

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<sup>28/</sup> TMY Farms, 2 ALRB No. 58 (1976).

Similarly, evidence that Board agent Trevino passed out leaflets in The Hole after the BCI election relating to Board de-funding and to other elections at other companies does not show bias or create the appearance of bias. While employee Godinez apparently viewed this conduct as leafletting for the UFW, it is unreasonable to conclude that Trevino's conduct was such that it created this misunderstanding in Godinez's mind. Based on this record, general allegations of bias should be dismissed.

### III. Violations of Access Provisions of Settlement Agreement

In this case, the alleged misconduct is not, with one exception, a violation of the Board's regulations, but rather of an agreement between the Employer and the UFW entered into in settlement of an unfair labor practice complaint and adopted by the Board. The Employer argues that this agreement was intended not merely to dispose of the unfair labor practice complaint, but also to set forth the ground rules governing the parties' campaign conduct prior to an anticipated election in the Imperial Valley. The Employer argues that because agreements of this kind are encouraged by the Board, a stricter standard in the form of a per se rule must be applied in weighing the impact of violations on an election.<sup>29/</sup>

At the outset, I seriously question whether this agreement is the kind contemplated by the Board in its latest regulations encouraging voluntary agreements by the parties on access. Such an agreement

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29/Current regulations, not in effect at the time of the election, provide for voluntary agreements to permit access on terms other than those set forth in the regulations. Such agreements must permit access on equal terms to any labor organization which agrees to abide by its terms. 8 Cal. Admin. Code §20900 (a) (E) (2) (1976).

should apply equally to all parties in an election campaign and should clearly set forth the manner in which the agreement is to be enforced and the remedies available for violations. In this case, the agreement purports to bind the Teamsters, but the Teamsters were not a party to the agreement and apparently did not participate in the negotiation of its terms. There is no credible evidence that they agreed to be bound by its terms, and the Employer's understanding of its duty to enforce the agreement on the Teamsters makes the agreement in practice, if not on its face, considerably less than binding on all parties. The only enforcement or remedy contained expressly in the agreement provides for self help; UFW organizers could board buses if Teamster representatives did so in violation of the agreement.<sup>30/</sup>

The terms of the agreement do not set forth the existence or extent of Employer's duty to enforce the access provisions on the Teamsters. No evidence was presented at the hearing to explain the parties' understanding of this duty or the definitions of critical terms such as "organizer" or "representative." The Employer merely argues that in its post-hearing brief that paragraph 6 of the agreement was at best a commitment by BCI "to attempt to achieve Teamster acquiescence to there not being more than one Teamster organizer with a crew during working hours at any one time. The Teamsters right to access, the Employer argues, were already guaranteed under a pre-Act collective bargaining agreement.

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30/ The Employer's argument that its ability to enforce the agreement through unfair labor practice charges was different from the UFW's is valid, but both the Employer and the UFW could have requested the Board to seek enforcement of its order adopting the agreement. Neither did.

Assuming that the agreement was proper, an initial inquiry must be made into the meaning of its provisions and definition of its terms. On a number of occasions during the hearing, I expressed interest in hearing testimony of witnesses on ambiguous areas in the agreement. No such testimony was provided by either party, therefore. I am left with the agreement itself as the full understanding of the parties. The critical provision regarding field access is paragraph 6. On its face, it applies to UFW and Teamster organizers. According to the Employer's post-hearing brief, Teamster organizers already had a right of access under the terms of their pre-Act contract with BCI. This contract was never entered into evidence; therefore, while I can find that such a contract existed, there is no evidence in the record on which to base a finding that the agreement provided for such access by Teamster organizers.<sup>31/</sup> Instead, the testimony by Employer witnesses indicates that Teamster business agents had a right of access under the contract, not organizers.

The problem of distinguishing between the functions performed by union agents is another area which was left unresolved by the parties at hearing. The settlement agreement uses the terms "representative" and "organizer" to refer to union agents. I find that when organizer is used it refers to union agents engaged in organization work; and that when representative is used, it refers to any person, whether organizer or business agent.

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<sup>31/</sup> The Employer did not sign the 1975-1978 California Agriculture Master Agreement between the Employers' Negotiating Committee and the Western Conference of Teamsters. Consequently, I cannot take notice of Article XV - Visitations in that agreement which provides for a broad right of access for all union agents to conduct legitimate union business. The record at hearing does not show whether this same provision was contained in the Employer's agreement with the Teamsters. The Master Agreement is part of the Board's files in Eugene Acosta, 1 ALRB No. 1 (1975).



Chief Teamster organizer Mendoza testified that there was no practical difference between organizers and business agents in their union. Because of this testimony and use of the word organizer in paragraph 6, I find that the limitations on field access applied to organizers or, in the case of the Teamsters, to representatives present for organization purposes.

In view of these findings, the next issue to be resolved is what constituted a violation of the agreement by the parties. The UFW violated the agreement by taking access in excess of or at times other than provided for in the agreement. The Teamsters were not a party to the agreement, and therefore could not violate it. The Employer violated the agreement by denying the UFW the access provided for by it or by failing to achieve Teamster compliance within the limits of its power. In this regard, the Employer's duty included determining whether Teamster representatives present in the fields were present for organizational purposes or for servicing of the contract.

The evidence is not in substantial conflict. The UFW violated the terms of the agreement on field access on a number of occasions in the two months preceding the election by having more than one organizer per crew during work hours. Likewise, Teamster business agent-organizers were also present in excess of the numbers permitted by the agreement. The Employer made an effort at enforcing the agreement, however its efforts with regard to the UFW were considerably more vigorous than those applied to the Teamsters. In particular, the Employer made little effort to distinguish between Teamsters conducting organizing and those servicing the contract.

The basic rule for judging violations of election agreements was set forth in D'Arrigo Bros. of California, supra. The Board has held that it will carefully scrutinize any alleged violation of election agreements made by parties which preclude conduct otherwise permitted to safeguard against prejudice to the fairness to the election.<sup>32/</sup> Prejudice in a particular case depends on the agreement and the conduct alleged to be a violation. In cases involving alleged violations of the Board's access regulations, the basic rule is that access taken by a labor organization which exceeds the limitations of the regulations does not per se constitute misconduct affecting the results of the election and thus warranting setting aside the election.<sup>33/</sup> In such cases, the Board assesses the alleged violations in each case to determine whether they were of such a character as to affect the employees' free choice of & collective bargaining representative. I believe that the same test should be applied in assessing prejudice due to violations of the election agreement in this case.

The Board has recognized that violations of the access rule by employers and labor organizations are not strictly comparable in terms of their effect on the fair conduct of the election. In this

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32/Although this case involves both the allowance and preclusion of "conduct not otherwise permitted, I believe that the same test is applicable.

33/ K.K. Ito Farms, 2 ALRB No. 51 (1976).

regard, the Board has stated:<sup>34/</sup>

The purpose of the access rule is to insure that workers have access to information necessary to make an informed choice about collective bargaining representation. Violations of the access regulation by an employer may involve depriving employees of information which would aid them in deciding whether they wish to be represented by a union in collective bargaining, and if so, by what union. Violations by a union in the taking of "excess access" may mean simply that employees are exposed to more information from which to make their electoral choice than they would have been exposed to if the access regulation were complied with.

Thus, where the only choices on a ballot are those of a union and no union, excess access alone will not cause the election to be set aside absent a showing of disruptive conduct such that employees could not express a free and uncoerced choice of representative.<sup>35/</sup> On the other hand, where as here the ballot choices include more than one union, excess access by one union may prejudice the election simply by providing the violating union with a significant campaign advantage over its rival. The record in this case does not show that such a significant campaign advantage was obtained by UFW violations of the agreement. Teamster access to the workplace and Employer's leaflet campaign in favor of the Teamsters more than counterbalances the impact of minimal violations of the agreement provisions on field access. There is no showing of disruptive conduct in any of the violations.

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34/ K.K. Ito Farms, 2 ALRB No. 51 (1976).

35/ An employer cannot be prejudiced by access in this situation since the "no union" choice on the ballot is not synonymous with the employer as the Board has recognized in a number of cases. See Samuel S. Vener Company, 1 ALRB No. 10 (1975).

The record does not show any violations of the agreement provisions relating to access by union representatives to company buses at times other than lunch. Paragraph 9 of the agreement specifically provided that UFW representatives had a right to board buses if Teamster representatives did. Evidence showed that representatives of both unions boarded the buses, with the number of instances of Teamster violations slightly greater than the UFW's.

The incident involving six UFW organizers with crews in the fields on January 30 may have been a violation of the Board's access regulations as well as .of the terms of the agreement. If testimony by Employer witness Pyle is credited, it shows six organizers with one crew and four with another during lunch. Because of the problems of estimating crew size, I cannot determine how many organizers would have been proper. If there were, as Pyle testified, no more than 30 employees in a crew, the number of organizers allowed per crew would be two. However, if there were 35 employees in the crew as Purcell testified, the number of organizers per crew would be three. I do not find it necessary to resolve this conflict. Even were the Employer's figure accepted as accurate, the evidence would show only that there were six too many organizers in two of the Employer's 18 crews for a period of 30 minutes during the lunch hour. Such conduct is de minimis even when viewed with violations of the settlement agreement and did not affect employee's free choice of a bargaining representative.

For the reasons discussed above, I find that UFW violation of the settlement agreement provision on access did not give them a significant campaign advantage over the Teamsters or affect the employees' free and uncoerced choice of a bargaining representative. The objection should be dismissed.

#### IV. Electioneering in *the* Polling -Area

The NLRB held in Milchem, Inc., 170 NLRB No. 46, 67 LRRM 1395 (1968) that sustained conversations in the polling area between parties to an election and employees waiting to vote would invalidate an election regardless of the substance of the conversation. The ALRB rejected this per se rule in favor of a case-by- case approach in Superior Farming Company, 3 ALRB No. 35 (1977).<sup>36/</sup> In that case, the Board noted the differences between elections in the agricultural context from those which gave rise to the Milchem rule. In particular, the Board observed that the election in the case before it was one of the first conducted under the Act; that the polling site was a large ranch rather than a small confined plant; that the electorate was large; and that voters were bused long distances to the polls. The election among BCI employees exhibits many of these same characteristics.

The standard for judging party electioneering in the polling area under Superior Farming is whether the conduct affected the outcome of the election. The Employer produced evidence of two incidents which is for all relevant purposes uncontradicted. Testimony by Employer witnesses Miyaoka, Flores, and Domingos showed that an unidentified man, not recognized as an employee by the witnesses, was talking to voters and telling them to "vote for Chavez." This man handed a UFW leaflet, introduced as Employer Exhibit 6, to one voter.

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36/ The ALRB noted that Milchem followed the NLRB's earlier case-by-case approach. It seems clear that both the NLRB and the ALRB recognize that per se rules may not be validly imposed until employers a labor organizations have a period of operation under a new law from which they will learn what conduct is appropriate in the context of an election.

The man was overheard by Flores to say, "If anyone asks, I work for Bruce Church." When the man's conduct was called to the attention of Board agent Bowker by Employer observer Miyaoka, Bowker asked the man what he was doing and whether he was going to vote. The man replied that he was not going to vote. Miyaoka asked Bowker to get the man's identification, but Bowker stated that he was busy and had to get back, and that the man was not doing anything and was heading toward one of the buses which had brought employees to the polling area. Based on this evidence, the Employer implies that the man was a UFW organizer and was recognized as such by Bowker. I do not find that the evidence supports such an inference. In an election with over 900 employees eligible to vote, the testimony of three persons that they did not recognize the man in maroon pants as an employee is hardly sufficient to make him a UFW organizer. The evidence merely proves that a person, who may have been an employee, an organizer, or someone else, engaged in electioneering supportive of the UFW in the polling area and stopped when confronted by a Board agent.

The Board has held that the shouting of "Viva Chavez" by an employee who had voted, or talking by employees who had voted to others waiting in line, is not conduct which requires the setting aside of an election since they are not of such a character as to affect the free choice of other employees.<sup>37/</sup> While a request for identification may have been advisable, I cannot find that Bowker's failure to do so was motivated by bias or that it was prejudicial. The failure to request identification is significant only because the

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<sup>37/</sup> Veg-Pak, Inc., 2 ALRB No. 50 (1976) ; Chula Vista Farms, 1 ALRB No. 23 (1975).

Employer's witnesses were unable to identify the man by name or as a UFW organizer. Assuming Bowker had asked for identification and the man in maroon pants had identified himself as a UFW organizer, Bowker could only have done what he did, that is, seen that the man left the area and ceased the objectionable conduct.

A second incident of alleged electioneering is based totally on the testimony of two witnesses. Sepulveda and Villareal stated that they saw an unidentified man approach ground crew 7 which was getting off the bus in the Brawley polling area; hold up a paper with a black eagle on it which looked "something like" UFW literature attached to Employer Exhibit 6; say to a Board agent, "Don't forget to tell them how to vote;" and then walk with the Board agent a distance of about 20 feet while talking in a friendly manner. Their testimony is uncontradicted. The Employer implies from this testimony that the man was a UFW organizer, that the paper was the second page of Employer Exhibit 6, and that the Board agent condoned the electioneering. I do not find that the Employer has shown that the conduct described constituted electioneering. The description of the leaflet was not sufficiently definite for me to reasonably conclude that it was the "Vote Asi" page of Employer Exhibit 6. Identification of the man alleged to be an organizer is again based on the witnesses' statements that they did not recognize him as an employee. This is not sufficient. Based on the record and the testimony credited by me, a more reasonable inference to be drawn from the facts is that a Board agent approached the bus when it arrived, showed employees a sample ballot with the UFW black eagle on it, and told another Board agent not to forget to give employees instructions on how to vote. In any event, the Employer has not carried its burden on either incident of showing conduct which would warrant setting aside the election. This

objection should be dismissed.

I note that Employer's argument that the two incidents must be weighed in light of campaigning on buses carrying voters to the polls, the demonstration at the entrance to the polling area, and the failure of Board agents to stop this activity was considered.<sup>38/</sup> This evidence has no relevance to the second incident since the Employer failed to show that electioneering occurred. Furthermore, I cannot reasonably find that this background activity raises such electioneering as occurred in the first incident involving the man in maroon pants to a level of seriousness where it would warrant overturning the election. All testimony showed that both UFW and Teamster supporters were present at the bridge, although the UFW group was generally larger. The demonstration was limited to the shouting of

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38/ The UFW objected to the introduction of evidence at the hearing of "campaigning on buses carrying voters to the polls on the ground that it involved conduct which had been dismissed prior to hearing by the Executive Secretary and which was the subject of a Request for Review which was denied by the Board. That objection was sustained and the Employer made an offer of proof that buses entered the polling area with UFW flags and posters displayed and that Board agents permitted this in violation of an agreement reached at the pre-election conference. Evidence on that agreement was received over objection by the UFW. It showed that the parties agreed that the buses would be extensions of the polling area; that Board agents would be placed on board to prevent electioneering. Testimony by the witnesses indicated that this agreement against electioneering was aimed at campaigning by parties, particularly foremen who were to serve as drivers. The evidence showed that campaign literature and banners were not expressly covered by the agreement.



slogans; no one ran alongside the buses or attempted to board them. The only union insignia present were on clothes. No UFW supporters entered the polling area. The Board has held that the presence of UFW and Teamster supporters outside the polling area, even though along the voters' route to the polls, is not grounds for overturning an election.<sup>39/</sup>

V. Conversations by Observers with Voters

The Employer introduced no testimony on the objection that Board agents were absent from the identification tables during the voting, thereby allowing UFW observers to have conversations with voters waiting in line to vote. Board agent Bowker testified that he generally stood in the area in front of and between the identification table and that the only time he left to go to the entrance gate to the polling area was when there were no voters in the area. UFW observers Gartrell, Santiago, and Cedillo testified that they were instructed by Board agents to be quiet and that no one spoke to voters. The Employer as objecting party has not met its burden of coming forward with specific evidence that unlawful acts occurred. The objection should be dismissed.

VI. UFW Literature in State Car Used to Transport Voters to Polls

Evidence on this objection is uncontradicted. Board agent Trujillo prepared a number of leaflets in connection with an investigation of challenged ballots in an election at D'Arrigo Bros, of California. The leaflets were aimed at economic strikers at that company. While distributing these leaflets in Calexico, Trujillo used

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<sup>39/</sup> Lawrence Vineyards, 3 ALRB No. 9 (1977).

a state car. During the voting at the Brawley site, 70 to 80 of these leaflets were on the floor of the back seat of a state car used to transport voters to the voting area from the entrance to the polling area. The exact number of employees who rode in this car is not known, but was more than three. There was no evidence that any of these employees actually saw the leaflet. The great majority of voters at Brawley arrived at the polls in buses.

The Employer argues that because the leaflet has nothing on it to show that it was a Board document, any prospective voter who saw it would assume that the UFW was calling a meeting of D'Arrigo strikers to plan strike strategy and, upon seeing the leaflet in a state car driven by a Board agent, would feel that it was an endorsement of the UFW by the Board. I disagree. I do not find that a farm worker seeing this leaflet under the circumstances of this case would reasonably tend to draw the conclusion urged by the Employer. The leaflet was not addressed to BCI employees. It contained no express statements of support for the UFW, nor did it have any statement as to the purpose of the meeting. Furthermore, the Employer failed to produce a single employee who saw the leaflet, or evidence that the employees reading the leaflet read Spanish, since the leaflet was only in one language. On this record, I do not find that an appearance of bias existed which affected the conduct of the election and impaired the balloting's validity as a measure of employee choice.<sup>40/</sup> The objection should be dismissed.

VII Board Agent Statements That Employer Did Not Want Employees to Vote

The issue again is whether bias or the appearance of bias existed. Based on the record and testimony credited by me, I cannot

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<sup>40/</sup>See Coachella Growers, Inc., 2 ALRB No. 17 (1976).

find that such existed. The bus carrying machine crew 4 to the polls was scheduled to leave for the polls at 8 a.m. According to witnesses Trevino and Pyle, it left between 30 minutes and one hour late.<sup>41/</sup>

Employer's supervisor Pyle refused to send the bus to the polls until he received radio instructions from his superiors in spite of repeated requests by Board agents to do so. Trevino spoke to machine crew 4 and explained the problem by stating that the Employer did not want them to vote at that time because of a dispute with Board agents over the schedule and the number of buses to be sent at one time. Trevino then told employees that those wishing to vote would be taken to the polls in a state van. Shortly after this speech and after employees began getting in the state van, Pyle and foreman Robledo gave the orders to move the bus. Before Trevino made her speech and without her knowledge, an unidentified person alleged to be a UFW organizer, but described in contradictory terms by two Employer witnesses, boarded the bus and stated that the Employer's general manager Payne and another man named Taylor "were shitting."

The Employer argues that these events created .in employees' minds the impression that they were a captive audience of the UFW and the Board in receiving a diatribe against the Employer. Elections are conducted under the supervision of Board agents, not of the parties. Board agents have reasonable discretion to set the times for voting and

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41/ The Employer argues that Pyle was correct in refusing to send in the buses because Trevino's testimony showed that there were already two buses in the polling area when machine crew 4's bus arrived. Trevino stated, however, that the plan was to have one crew finishing voting, one lining up, and one bus in reserve ready to line up.

to arrange other election procedures to insure maximum voter participation.<sup>42/</sup> The record does not support the Employer's characterization of Trevino's speech as a diatribe against the Employer. The speech was a reasonable explanation of the reason for delay which was necessitated by Pyle's refusal to send in the buses when requested to do so by Board agents and was proper under the circumstances. The Employer may not now raise this speech as a ground for setting aside the election. The objection should be dismissed.

VIII. Board Agent's Refusal to Allow Employer Observers to File Challenges

An observer or a Board agent may challenge, for good cause shown, the eligibility of any person to cast a ballot.<sup>43/</sup> Regulations in effect at the time of the election stated that "good cause shown" consisted of a statement of the grounds for the challenge accompanied by a presentation of substantial evidence, which may include, but need not be limited to, declarations and other documentary evidence.<sup>44/</sup>

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42/ 8 Cal. Admin. Code §20350 (a) (1975); re-enacted as 8 Cal. Admin, Code §20350(a)(1976).

43/ 8 Cal. Admin. Code §20350 (b) (1975); re-enacted as 8 Cal. Admin, Code §20355(a) (1976) .

44/ Ibid.

Challenges could only be filed on the following grounds:<sup>45/</sup>

- (1) the prospective voter is a supervisor as defined in Labor Code §1140.4 (f);
- (2) the prospective voter was not employed in the appropriate unit during the applicable payroll period;
- (3) the prospective voter is employed by his or her parent, child, or spouse, or is the parent, child, or spouse of a substantial stockholder in a closely held corporation;
- (4) the prospective voter is not an agricultural employee of the employer as defined in Labor Code §1140.4(b);
- (5) the prospective voter was employed or his or her employment was arranged primarily for the purpose of voting in the election in violation of Labor Code §1154.6.

The Employer introduced evidence of two incidents in which, it contends, Board agent Bowker improperly refused to permit its observer to challenge voters under these regulations.

The evidence on the two incidents is not in conflict. During the voting at Brawley, a Teamster observer told Employer observer Miyaoka that a voter named Marquez was a UFW organizer who had been seen organizing in the fields. Miyaoka then attempted to challenge this voter on the ground that she was an organizer and ineligible to vote. Board agent Bowker was informed by UFW observer Quezada that Marquez's name was on the voter list as having worked in the eligibility period for the Employer. Bowker then overruled the decision of another Board agent and refused to allow Miyaoka's challenge on the ground that he did not have sufficient grounds.

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45/ 8 Cal. Admin. Code §20350 (b) (1)- (5) (1975) ; re-enacted as 8 Cal. Admin. Code §20355 (b) (1)-(8) (1976).

Based on this record, I conclude that Bowker was correct in refusing to allow the challenge. First, the charge that a prospective voter, who was otherwise eligible as an employee to vote, was a union organizer was not among the grounds for challenge in the regulations in effect at the time, nor is it included in an expanded list of grounds contained in current regulations. The Employer cites as support for its argument that organizers are ineligible to vote NLRB v. Elias Brothers Big Boy, Inc., 327 F2d 421 (6th Cir. 1964). That case did not involve an organizer's eligibility to vote. The issue was whether a person who was employed by the employer and paid also by a union to do organizing work was an "employee" entitled to reinstatement and back pay for a discriminatory discharge. The organizer's status as an employee related solely to the reinstatement and back pay issues and not to her eligibility to vote in any election which might have been held. I can find no other decisions which support the Employer's argument. Second, Miyaoka presented no substantial evidence in support of his challenge. He relied solely on the statement of an observer for the Teamsters that Marquez had been seen organizing in the fields. No evidence was presented as to whether Marquez was a paid organizer or simply an unpaid employee volunteer. Finally, even had Miyaoka's challenge been for good cause shown, Bowker's refusal to allow it would not have been sufficient to warrant setting aside the election, since the vote of one employee would not have been determinative. In Tomooka Brothers, 2 ALRB No. 52 (1976), the Board held that an objection based on a Board agent's improper refusal to permit a challenge to a voter will not be sustained when the error is not sufficient to affect the outcome of the election.

A second incident occurred during voting at Calxico. Miyaoka was questioning voters claiming eligibility to vote as economic strikers and filling out challenge affidavits. The questions he was asking were those which Bowker had told him prior to the opening of the polls would not be asked. Bowker told Miyaoka he could not ask those questions. After an argument in which he threatened to throw Employer observers out of the polling area if Miyaoka did not turn over the papers he had been filling out, Bowker took the papers from Miyaoka. All economic strikers were automatically challenged by Board agents because their names did not appear on the eligibility list as having worked in the relevant payroll period. Bowker told Miyaoka that inquiry into the facts surrounding their claim of eligibility would be made as part of the post-election investigation of challenges, if that became necessary. Based on this testimony, I find that Bowker's conduct was proper. Furthermore, there is no evidence of any prejudice, since all voters Miyaoka was attempting to challenge were in fact challenged by a Board agent.

Much of Employer's argument on these objections turns not on whether the Board agent's conduct was improper, but on the contention that it created the appearance of bias. The argument is that voters witnessing these two incidents also saw Bowker mass challenge truckers, stitchers, and shop mechanics on behalf of the UFW, and that a reasonable farmworker would have concluded that Bowker was there to help the UFW and interfere with the Employer's observers who were trying to

assert the same rights.<sup>46/</sup> No evidence was taken at hearing as to whether Bowker did in fact mass challenge certain voters because that objection was dismissed prior to hearing by the Executive Secretary and the Employer's Request for Review denied by the Board. I do not find the Employer's argument valid. Proper conduct by a Board agent cannot be argued as creating an appearance of bias. Furthermore, I note that Bowker testified that he refused on two occasions to permit challenges by UFW observers to two persons on the ground they were organizers. Bowker's treatment of such challenges was the same for both UFW and Employer observers. The objection based on these incidents should be dismissed.

IX. Totality of Conduct

Taken as a whole, the election was conducted in an orderly fashion. The objections, considered separately and as a whole, do not contain evidence sufficient to overturn the results.

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46/ I note that challenges to truck drivers and stitchers would have been proper on the ground they were not agricultural employees. In a number of cases, including the recent decision in D'Arrigo Bros. of California, 3 ALRB No. 37 (1977), the Board restated its position that it would defer determination of the status of employees in the truck driver and stitcher classifications pending a determination by the NLRB, On July 21, 1977, the NLRB issued its decision in Grower-Shipper Vegetable Association of Central California,, 230 NLRB No. 150, LRRM (1977). That decision leaves some employees in these classifications under ALRB jurisdiction and places others under the jurisdiction of the NLRB.

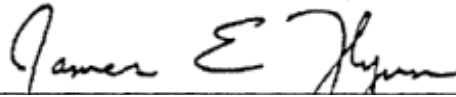


RECOMMENDATION

Based on the findings of fact, analysis, and conclusions, I recommend that the Employer's objections be dismissed and that the United Farm Workers of America, AFL-CIO, be certified as the exclusive bargaining representative of all the agricultural employees of the Employer, in the State of California, excluding packing shed and vacuum cooler employees.

DATED: August 9, 1977

Respectfully submitted,

A handwritten signature in cursive script, reading "James E. Flynn". The signature is written in dark ink and is positioned above a horizontal line.

JAMES E. FLYNN  
Investigative Hearing Examiner