

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

TEPUSQUET VINEYARDS,)	
)	Case No. 75-RC-228-M
Employer,)	
)	
and)	4 ALRB No. 102
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner,)	
)	
and TEAMSTERS LOCAL)	
)	
865,)	
)	
Intervenor.)	
_____)	

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 a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW), an election was conducted on November 5, 1975, among the agricultural employees of Tepusquet Vineyards (Employer). The tally of ballots showed the following results:

UFW	118
Teamsters	7
No Union	52
Challenged Ballots	13
Void	<u>2</u>
Total	192

The Employer timely filed objections, four of which

were set for hearing. Three additional objections were noticed for hearing by the Board upon Employer's Request for Review. The hearing was held on December 5, 6, and 7, 1977. On April 17, 1978, Investigative Hearing Examiner (IHE) Armando Flores issued his initial Decision, in which he recommended that the objections be dismissed and that the UFW be certified as the collective bargaining representative of all the Employer's agricultural employees.

The Employer timely filed exceptions to the IHE's Decision with a supporting brief. The UFW filed cross-exceptions to the IHE's analysis of the agency issue with a supporting brief, and a brief in opposition to Employer's exceptions.

The Board has considered the objections, the record, and the IHE's Decision in light of the exceptions, cross-exceptions, and briefs, and has decided to affirm the IHE's rulings, findings, and conclusions as modified herein, and to adopt his recommendation to dismiss the objections and to certify the UFW.

Employer excepts to the IHE's finding that Martin Alvara was not a UFW agent. It argues that the UFW ratified Alvara's conduct at the polls, or alternatively, that the UFW authorized Alvara to act as its agent.

Alvara testified that he was an active union supporter when he worked for the Employer, and that he voluntarily passed out UFW leaflets and authorization cards to other employees. He attended a union meeting for employees, but never attended UFW staff meetings, which were open only to UFW organizers and staff. Alvara received no pay from the union and held no official union position. He did not join the union until after the election was

conducted.

David Bacon, a UFW organizer, testified that although UFW organizers were active in the pre-election campaign, they relied upon the employees to bear much of the organizing burden. UFW representatives instructed the employees on the use and purpose of authorization cards, and furnished them with union authorization cards and UFW leaflets to distribute among the workers.

The record shows that Alvara was among the first employees to vote in the election. After voting, Alvara accompanied crews of other voters to the polls, urged them to vote for the UFW, waited in the polling area while they voted, then left the polling area and repeated the process with other crews.

The Employer argues that the UFW ratified Alvara's electioneering at the polls on election day. We disagree. There is no evidence the UFW was aware of Alvara's activity or that it approved his actions. The Employer asserts that UFW ratification of his actions is proved by testimony that Alvara approached a group of UFW organizers during the afternoon of the election day and told them that each of the workers to whom he had spoken was going to vote, or had voted, for the UFW. The evidence presented in support of this position is not altogether clear. However, even if the people in the group were UFW organizers, there is no basis for finding that Alvara's informing them of his opinion as to how employees had voted, or would vote, established prior authorization or subsequent ratification by the UFW with respect

to Alvara's conduct, or that Alvara was acting as an agent of the UFW.

On the authority of International Woodworkers of America, AFL-CIO, 131 NLRB 189, 48 LRRM 1005 (1961), the Employer argues that the UFW authorized Alvara to act as its agent when it provided him with authorization cards and leaflets, when it instructed him on the purpose and use of the cards, and when it relied on him to carry the burden of organizing by distributing the leaflets and cards, collecting signatures, and advocating the union. Woodworkers is distinguishable from the instant case because Stringer, the person the NLRB found to be a union agent, was not an employee of the company he sought to organize. Martin Alvara, however, was an employee of the Employer herein when he participated in the union pre-election organizing campaign.

The fact that an employee is a proponent or adherent of a union is not a sufficient basis for attributing responsibility for his conduct to the union. D'Arrigo Bros, of California, 3 ALRB No. 37 (1977). Moreover, an agency relationship is not established by evidence that an employee has solicited signatures for union authorization cards. Firestone Steel Products Co., 235 NLRB No. 80, 98 LRRM 1014 (1978). We find the record to be insufficient to establish that Martin Alvara was an agent of the UFW or that his conduct at the polls on election day was attributable to the UFW.^{1/}

The Employer argues that even if Alvara was not a UFW

^{1/} In so holding, we do not adopt the IHE's discussion of success in obtaining authorization cards as a factor in determining agency.

agent, his conduct at the polls requires our setting the election aside.

We do not condone activity which interferes with the proper conduct of an election. We reaffirm that Board Agents have a responsibility to preserve the integrity of the election process. However, because the record is devoid of evidence that Alvara's activity at the polls had a prejudicial effect on the voters, we find that Alvara's electioneering does not warrant setting aside the election. See Chula Vista Farms , Inc . , 1 ALRB No. 23 (197 5). Our decision in no way implies that this Board will decline to act forcefully when presented with a record of activity which establishes an atmosphere rendering improbable a free choice of a bargaining agent by employees.

On the basis of the above and the record as a whole, and in accordance with the recommendations of the IHE, the Employer's 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 the 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 Tepusquet Vineyards in the area east of Santa Maria, Santa Barbara County, for the purpose of collective bargaining, as defined in Labor Code Section 1155.

2 (a), concerning

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employees' wages, working hours, and other terms and conditions of employment.

Dated: December 19, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

CASE SUMMARY

Tepusquet Vineyards (UFW)

4 ALRB No. 102
Case No. 75-RC-228-M

IHE DECISION

After an election won by the UFW, a hearing was held on six Employer objections: (1) whether the union had engaged in electioneering in the polling area while employees were about to vote; (2) whether the union had engaged in disruptive activity in the polling area while employees were about to vote; (3) whether union adherents had engaged in disruptive activity in the polling area while employees were waiting to vote; (4) whether union adherents engaged in campaigning activity in the polling area while eligible employees were waiting to vote; (5) whether immediately prior to the election the United States Immigration and Naturalization Service (INS) was present near the polling area, and arrested an employee; (6) whether a union organizer prejudiced the rights of the Employer by accusing the Employer in the presence of eligible voters and observers of engaging in improper conduct. An additional objection was withdrawn during the hearing.

The IHE found that a union organizer did accuse the Employer's representatives of calling "Washington," i.e., the INS, but found no prejudice to the Employer since the evidence on the record was insufficient to establish that any eligible voters or observers heard the remarks. The IHE also found that the INS' appearance on the Employer's property before the polls opened, and the INS' arrest of a worker, did not destroy the atmosphere of a free election of a bargaining representative because of prompt efforts on the part of the Board Agent and a party representative to get the INS to release the worker in view of the workers who witnessed the arrest, and to get the INS to leave the property.

Finally, the IHE found that electioneering did occur in the polling area during the election. However, he found that Martin Alvara, the eligible voter doing the electioneering, was not a union agent or a party to the election. He also determined that Alvara's conduct was not sufficient to require overturning the election.

BOARD DECISION

The Employer and union timely filed exceptions to the IHE's Decision and supporting briefs. The Board considered the objections, the record, and the IHE's Decision in light of the exceptions, cross-exceptions, and briefs and affirmed the IHE's rulings, finding, and conclusions with modifications.

The Board found that the record failed to establish that Martin Alvara was a union agent, and failed to establish grounds for holding the union responsible for Alvara's conduct. The Board disagreed with the Employer's exception that Alvara's conduct required setting aside the election even if his conduct was not attributable to the union. It found that the record failed to establish that Alvara's conduct had any prejudicial effect on the voters. The Board dismissed the objections, upheld the election, and granted certification to the UFW.

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

TEPUSQUET VINEYARDS,
Employer,

Case No. 75-RC-228-M

and

UNITED FARM WORKERS OF AMERICA,
AFL-CIO,
Petitioner,

and

TEAMSTERS LOCAL 865,
Intervenor.

William F. Terheyden,

Littler, Mendelson, Fastiff &
Tichy, for the Employer.

James Rutkowski,
Jeff Stgeetland,
for the United Farm Workers
of America, AFL-CIO.

DECISION

STATEMENT OF THE CASE

ARMANDO M. FLORES, Investigative Hearing Examiner: This case was heard before me on December 5, 6, and 7, 1977, in Santa Maria, California.

The objections petition, filed by Tepusquet Vineyards (hereafter referred to as "employer") and served on the United Farm Workers of America, AFL-CIO, (hereafter the "UFW"), alleged numerous

objections which the employer argues require the Agricultural Labor Relations Board (hereafter the "Board") to set aside the representation election conducted among its employees on November 5, 1975.^{1/}

By orders dated, April 28, 1977 and November 4, 1977, the Executive Secretary to the Board partially dismissed employer's election objections petition and set the following objections for hearing:

1. Objection 16, that the petitioning Union engaged in electioneering in the general vicinity of the polls while eligible employees were about to vote;

2. Objection 17, that the petitioning Union engaged in disruptive activity in the general vicinity of the polls;

3. Objection 18, that Union adherents engaged in disruptive activity in the general vicinity of the polls while eligible employees were about to vote;

4. Objection 19, that Union adherents engaged in campaigning activity in the general vicinity of the polls while eligible employees were about to vote;

5. Objection 34, that Board agents responsible for the conduct of the election illegally, improperly and erroneously, neglected and failed to require voters to present proper identification before voting;

6. Objection 48, that immediately prior to the election the United States Immigration and Naturalization Service was present near the polling area, and arrested an employee;

7. Objection 49, that one of the petitioner's organizers prejudiced the rights of the employer by accusing the employer in the presence of eligible voters and in the presence of observers of engaging in improper conduct.

1/ The results of the election were as follows: The UFW received 118 votes, the Teamsters received 7 votes, "no union" received 52 votes. There were 13 challenged ballots and 2 void ballots. According to the tally of ballots, a total of 190 valid ballots were cast out of 230 people eligible to vote.

The employer and the UFW were represented at the hearing and were given a full opportunity to participate in the proceedings.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the post-hearing briefs submitted by the parties, I make the following findings of fact, conclusions and recommendations:

FINDINGS OF FACT

During the hearing employer withdrew Objection 34 (Issue No. 5), that Board agents responsible for the conduct of the election illegally, improperly and erroneously neglected and failed to require voters to present proper identification before voting. Thus, this objection is no longer in issue.

I. Introduction

On November 5, 1975 the Board conducted a representation election among the agricultural employees of Tepusquet Vineyards. The election was scheduled to begin at 10:30 a.m., but the polls did not open on schedule. The actual voting commenced at approximately 11:45 a.m. The polls closed at about 2:45 p.m. that day.

The election took place on Tepusquet property situated adjacent to Santa Maria Mesa Road (sometimes referred to during the testimony as Highway 138). Tepusquet employees were picking grapes that day in certain vineyard blocks located south of Santa Maria Mesa Road. The polling place was located down a dirt road at the southernmost portion of the vineyard. The dirt road was one-half to three-quarters of a mile in length.

The polling site was at the base of the dirt road, next to a well.

The vineyard was not located on level ground. Rather, there was a distinct slope to the property, such that the portion of the vineyards nearest Santa Maria Mesa Road was on higher ground than the southern portion of the vineyard where the balloting took place. From the polling area one could see all the way up the dirt road to Santa Maria Mesa Road.

The vineyard was in the form of a rectangle. It was bounded by Santa Maria Mesa Road on the north and by dirt roads running north and south on the west and east sides. The vineyard was divided into three approximately equal blocks designated as blocks A-10, at the north end, A-11, in the middle and A-12, at the south end,

II. Appearance of the Immigration and Naturalization Service

Approximately one-half hour before the election began, a green and white van belonging to the United States Immigration and Naturalization Service (INS) drove from Santa Maria Mesa Road onto the dirt road on the west side of the Tepusquet Vineyard where employees were working. The polling place was located at the base of this dirt road next to a well. The Man drove down the dirt road, in a southerly direction, and parked on the east side of the dirt road next to the vineyard where employees were picking grapes, The van parked adjacent to the upper portion of block A-11, approximately one-third of a mile south of Santa Maria Mesa Road, and about one-third to one-half of a mile away from the polling area. Two uniformed,

armed INS officers exited from the van, entered the vineyard, arrested and handcuffed an employee. This was the first time the INS was present at Tepusquet Vineyards during 1975.

As its first witness on this incident employer called Mr. Robert Millman, employer's legal counsel at the time of the election. He was present at the Tepusquet property near the polling area when the INS officers arrived. Mr. Millman and company foreman Jose Avila drove, from the polling area, up to the area where the INS officers were. Mr. Millman testified that when he and Avila arrived at the scene an employee was handcuffed and under arrest off to the east side of the dirt road, about 10 to 15 feet into the vineyard. When they arrived, they saw UFW organizers Fred Ross Jr. and David Bacon already at the scene watching. Mr. Ross was next to the handcuffed employee speaking with him. Mr. Millman testified that there were about four or five vehicles in the immediate area, and that there was a "tremendous amount of people and commotion" in the area. He further testified that there were six to eight crews of people in the "general area," and that adjacent to the arrested employee were the eight members of his crew.

Sidney Briggs, the ALRB agent in charge of the election, and another ALRB agent came to the scene.

Mr. Millman testified that he saw workers in the arrestee's crew watching the incident. He described their visible reactions in terms of "shock" and "bewilderment," but "some of them," he said, "just stood there placidly." Mr. Millman testified that a "substantial number" of employees viewed the incident - including the arrested employee's own

crew and workers in the nearby rows of vineyards. His guess was that the six to eight crews in the immediate area saw the incident This area was described as block A-10 and half of block A-11. There were eight members in each crew.

Mr. Millman testified that the INS officers were on the property about 15 to 30 minutes before they left. He also testified that he had no knowledge beforehand that the INS would appear onto the property. After the incident Mr. Millman drove back to the polling place with Mr. Avila,

Mr. Millman testified under cross-examination that aside from the arrested employee's own crew he could not say how many employees saw the incident. As to how many other employees in other crews could have witnessed the arrest, Mr. Millman could only speculate. There were about six to eight crews in the upper two-thirds (blocks A-1Q and A-11) of the vineyard at the time.

Mr. Avila also testified with respect to this incident. He testified that the INS vehicle turned down onto the dirt road from Santa Maria Mesa Road and stopped near the uppermost portion of block A-11, He went down to the polling area, picked up Mr. Millman and drove to the scene of the arrest. Mr. Avila saw the INS officers, Board agents, UFW organizers and Teamster observers already there, Mr. Avila described the scene as "a lot of people looking, running crazy, wondering what's happening, what's going on, how come the immigration was there," He testified that, "there was a lot of commotion, a lot of crazies, crazy people - it was all confused," There was a lot of talking, he added. He testified that the other seven members of the

arrestee's crew were staring at the employee in handcuffs and the immigration officers. He further testified that there were five or six crews in the block A-11 area, and additional crews in block A-12,

Mr. Avila described the vines in the immediate area of the arrest as between four and eight feet high, with gaps between some of the vines. He also testified that the rows are about 1,000 feet long.

Under cross-examination Mr. Avila testified that the immigration officers let the arrested employee go. He testified that he witnessed the scene of the arrest from a spot between the road and the row of vines where the arrest was made. There were eight workers in that row (the arrested employee and his crew). From this location Mr. Avila could see workers in other rows watching the incident, but he could not specify how many.

Tepusquet employee Ramon Cano (Alvarez) also testified about this incident. Mr. Cano, an employee responsible for moving the tractors and gondolas on the property that day, saw the arrival, arrest and release of the employee from a spot on the dirt road near where the immigration officers stopped. He testified that he told the boy (the arrested employee) that the immigration was coming. The boy didn't believe him so he walked out of the vines to look around. When the boy saw how close the INS officers were he ran. Mr. Cano testified that the boy tried to escape and that the INS officials "grabbed" him. According to Mr. Cano about twenty employees were watching the incident. He testified that another group of workers nearby--- family of the boy and about ten in number---came out of the same

block to see the boy. Mr. Cano testified that altogether there were about 30 employees watching the incident. He further testified that at the time of the incident employees other than the 30 watching did not know of the incident, but after the workers ate lunch "everybody knew." The employees ate about 12:00 that day.

According to Mr. Cano the vines in the area where the incident took place were about six feet high on the day in question. "Some were taller some were shorter - they were not all even," he testified.

Mr. Cano also testified that the INS officials unhandcuffed the employee and released him. The employee then went back to work. He further testified that all the employees who saw the arrest also saw the employee released.

UFW organizer David Bacon was called to testify by the UPW. He was present at the Tepusquet property on the day of the election and witnessed the INS incident. He was at the polling site when he saw the INS van drive onto the dirt road and stop, Mr. Bacon testified that when he and UFW organizer Fred Ross Jr. saw the van arrive they got into their car and drove to the scene to find out what was going on. Upon their arrival at the scene, Mr. Bacon observed an INS officer and a worker with handcuffs on standing in the vineyard row. He testified that:

"Fred Ross spoke with the immigration officer and explained to the officer that an election was about to begin and that it would be a good idea if the officer left, because the presence of the officer might have a bad influence on the election, the workers. And also asked the officer to let the worker go."

Mr. Bacon testified that after he and Ross arrived, Mr. Sid Briggs, (Board agent in charge of the election), Mr. Millman and a company supervisor (Jose Avila) came to the scene. He testified that Mr. Briggs talked with the INS officer, explained that an election was about to begin and asked him to release the man and leave. The INS officers then released the worker and left.

With regard to how many employees observed the activity, Mr. Bacon testified that he saw a woman in the row in which the man was handcuffed and other members of the same crew in the rows around the arrested worker. The crew had eight members and he saw most of the members of that crew during the time that the INS official and Beard agent Briggs conversed.

Mr. Bacon testified that the vines in that area were five and six feet high, and that in his opinion one could not look through the rows of vines beyond two rows and see people. Mr. Bacon examined Employer's Exhibit No. 1 and described the density of foliage in that photo as typical of the density of foliage in the area where the arrest took place.

Mr. Bacon described the reaction of the workers to the incident in the following terms, "They kind of put their heads between their shoulders and kept on working." Mr. Bacon described the scene of the arrest as "quiet" and testified that the only discussion that took place was between Sid Briggs, Fred Ross and the Border Patrol agent.

After the departure of the INS officers the employees returned to work and the Board agents, the election observers, the UFW organizers, Mr. Millman and Mr. Avila returned to the polling area where the election was soon to begin.

All witnesses agreed that the INS incident occurred before the polls opened.

III. UFW Accusation Against the Employer

After the departure of the INS officers the employees at the scene returned to work and the people who came to the scene from the polling area returned to the polling area.

Mr. Millman testified that when he got back to the polling area a woman in a white knit cap said to him, in a louder than average voice, "What did you do, call Washington?" This woman was identified as UFW organizer Jessica Govea.^{2/}

Jose Avila testified that while he was at the polling place a Mr. Jose Guzman said to him, "Joe, how come you called the immigration?" Mr. Avila claimed that Guzman was a UFW organizer. Mr. Avila further testified that after Guzman made the comment a woman repeated it to him. He identified the woman wearing the white knit cap in Employer's Exhibit. No. 1 as the person who made the same comment to him that Guzman had made. Mr. Avila testified that people in the area when these comments were made to him were "some employees,"

2/ She was identified from the photograph marked as Employer's Exhibit No. 1. The photo was taken by employer witness David Aquino at or near the polling site. Mr. Aquino identified the woman in the photo wearing a white knit cap as UFW organizer, Jessica Govea.

the state officers, and the Teamster and UFW organizers. He did not specify who the employees were. Other testimony on this point leads me to believe that he was referring to the election observers, and I so find.

Mr. Avila based his conclusion that Guzman was a UFW organizer on the facts that he had seen Guzman at the pre-election conference with a UFW organizer and had seen Guzman, "give UFW information to the people." Although Mr. Guzman was an employee of Tepusquet and a UFW observer at the election, no independent evidence was presented showing that he was also a UFW organizer. I find the evidence insufficient to establish that Mr. Guzman was, as Mr. Avila claimed, a UFW organizer.

Mr. Millman testified that persons in the "vicinity" when Jessica Govea made the comment to him were Mr. Avila, the company and union observers, and three or four Board agents. When asked if any other employees were in the vicinity at the time the comment was made, Millman responded, "What ever employees may have been picking grapes in and about the southernmost vineyards, the vineyards closest to the polling area." He estimated the distance between the polling area and the first row of vineyards to be about 25 to 50 feet. He testified that any employees who "may" have been in that area "might" have heard the comment of Jessica Govea.

Under cross-examination Mr. Millman testified that any employees who were UFW observers would have been close to the polling area when the comment was made and "might have overheard" it. He could not testify whether anyone in fact heard the comment. Nor did witness Avila, In fact,

no observers, including Juan Galarza, testified that they heard any of the comments.

I find that UFW organizer Jessica Govea made comments to Mr. Avila and Mr. Millman suggesting that they called the "immigration" or "Washington," and that the comments were made in the polling area, before the opening of the polls. However, I find the evidence insufficient to establish that any employees, including the election observers, overheard the comments. IV. Electioneering in the Polling Area

In 1975 Martin Alvara worked for three weeks during the pruning season and three days during the grape harvest at Tepusquet Vineyards, Several days prior to the Tepusquet election Mr. Alvara missed a day of work and upon his return was not given work. Martin Alvara was one of the employees eligible to vote in the Tepusquet election held on November 5, 1975.

The activities of Martin Alvara form the basis of employer's objections regarding electioneering in the polling area.

Company foreman Jose Galarza testified that he observed Alvara escorting crews from the vineyards to the polling tables during the election. As Alvara walked with workers to the polling area Mr. Galarza heard Alvara say to them, "Do not forget the eagle." Mr. Galarza could not say how many workers he heard Alvara speak to---except to say, "there were several crews---many, many people."

Witness Juan Galarza ^{3/} served as a Teamster observer at the Tepusquet election and was seated at the observer table

^{3/} Juan Galarza is the son of witness Jose Galarza and was an employee of Tepusquet at the time.

near the ballot box throughout the entire election. From this position he could view people standing in line to receive their ballots.

According to Juan Galarza the first person to vote was Martin Alvara. After Alvara voted he left the polling area. Mr. Galarza testified that Alvara soon returned, walking with and speaking to a crew of eight workers. He further testified that Alvara stood next to the voters in line and talked with them as they waited to get their ballots.

Juan Galarza testified that, "He (Alvara) was telling them who to vote for. He told them to vote for the UFW." Galarza saw Alvara speak to about 20 people during the course of the election. Mr. Galarza actually heard about ten conversations between Alvara and the voters waiting in line to vote (i.e., on ten occasions).

Juan Galarza, at one point, approached Alvara and asked him to leave the polling area. Alvara briefly retreated from the line of voters, but did not leave the area as requested.

Employer witness Lilia Galarza^{4/} testified to the activities of Martin Alvara in the polling area. Mrs. Galarza, a forewoman, voted in the election. Mrs. Galarza testified that when she went to vote she saw Alvara standing by the voting booth. Mrs. Galarza testified that, "Before I voted he (Alvara) made sure to tell me to vote for Chavez."

4/ Lilia Galarza is the wife of Juan Galarza.

On about four or five occasions during the course of the election, Mrs. Galarza drove a van transporting workers from the vineyard blocks to the polling area. Mrs. Galarza testified that every time she dropped off workers at the polls she saw Alvara talking to voters waiting in line to vote. On several occasions she heard Alvara say to people waiting in line, "vote for Chavez." Alvara was not talking in a loud voice. However, Mrs. Galarza could hear him from the van she was in on the road next to the polling area. She further testified that she saw Alvara talk to most of the people she brought to the polling area and that she brought about 30 to 40 people to the polls.

Martin Alvara also testified, Mr. Alvara admitted that he talked with workers as they came to vote and as they waited in line to vote, and that he stayed in the polling area the entire time of the election. He testified that he talked with about ten people the entire time. I do not credit this estimate of how many voters he spoke to. He testified that he stood at the end of the line of voters, about 50 feet from the table where the line began. When asked about the content of his conversations with the voters, Alvara admitted that, at times, he told them to vote for his union (the UFW). At other times he explained the ballot with its three choices. He talked to the people in line in a normal tone of voice.

Mr. Alvara testified that Board agents never told him to leave the polling area, but Juan Galarza did. No evidence was presented that the observer, Juan Galarza, or anyone else brought this matter to the attention of the Board agents and

requested the Board agents to ask Alvara to leave the area.

In summary, I find that after Martin Alvara voted, at the commencement of the Tepusquet election, he left the polling area. He then returned to the polling area escorting a crew of eight workers, during which time he urged them to vote for the UFW. Once back inside the polling area Mr. Alvara remained there until the end of the election. While in the polling area Alvara spoke with 20 to 40 voters waiting in line to vote and urged them to vote for the UFW. Mr. Alvara did not leave the area when requested to do so by an election observer who witnessed his activities. There was no evidence that Board agents were informed about Alvara's activities and failed to respond.

V. Status of Martin Alvara

An issue raised by employer's objections and the evidence presented at this hearing is whether the activities of Martin Alvara can be attributed to the UFW. That is, whether the "petitioning union" engaged in electioneering and disruptive activity in the general vicinity of the polls, as alleged in Objections 16 and 17.

Juan Galarza testified that he knew Martin Alvara was an employee of the UFW on November 5, 1975. Mr. Galarza had seen Alvara on the picket line at another ranch where Galarza had previously worked. At that time, a UFW organizer (whom Galarza did not identify) told Galarza that if he (Galarza) joined the picket line the UFW would pay him. Thus, Galarza concluded that all persons who picket for the UFW are employees of the UFW. This served as the basis of Galarza's "knowledge" that Alvara was an "employee" of the UFW.

When cross-examined for additional facts which led Galarza to this conclusion, he testified that he saw Alvara passing out UFW leaflets before the Tepusquet election. Galarza had no knowledge as to whether Alvara was on the payroll of the UFW or if Alvara ever received any money from the UFW in 1975.

Lilia Galarza testified that she knew Martin Alvara, and believed him to be a "UFW representative" at the time of the Tepusquet election. When asked what she meant by the term "representative," Mrs. Galarza testified that, "He (Alvara) had talked to me earlier, in support of the UFW," and, "He talked to others in favor of the union." Mrs. Galarza did not know whether Alvara was on the staff of the UFW.

Employer witness Emilio Ibarra^{5/} testified that he thought Martin Alvara was a "UFW organizer." Mr. Ibarra testified that he arrived at the Tepusquet property at about 6:00 on the morning of the election and saw Alvara distributing literature. During that morning, but before the election started, Ibarra saw Alvara enter the work areas and talk with workers. He also testified that he saw Alvara passing out leaflets at Rancho Sisquoc a week before.

At about 2:15 on the afternoon of the election Ibarra saw Alvara walk up to a group of "organizers." According to Ibarra, Mr. Alvara said to them that each of the workers he

5/ At the time of the election Mr. Ibarra was employed by an organization called "Los Padres Grower Foundation." He was located near the Tepusquet property during the entire election day. He was there on instructions from his boss, David Aquino, to whom he was to report on the election.

(Alvara) talked to voted for the "Chavez union," Mr. Ibarra could not identify any of the persons he called "organizers." He thought they were "organizers" because, prior to the election, they had talked to people about the UFW and had distributed UFW literature. Mr. Ibarra did not know if any of those persons were employees of the UFW.

Employer witness, David Aquino,^{6/} testified that he, "knew Martin Alvara to be affiliated with the UFW," His "knowledge" was based upon the facts that several weeks prior to the election he saw Alvara distributing UFW literature at Rancho Sisquoc, and that Alvara approached him, at Tepusquet Vineyards, to sign a UFW election authorization card. Mr. Aquino also testified that, between two and three o'clock on the day of the election, Alvara approached a group of "United Farm Worker organizers" and told them that all workers he (Alvara) had talked to said they were going to vote for the UFW. Mr. Aquino did not identify any of the persons he called "UFW organizers," Nor could Mr. Aquino testify as to whether Alvara was on the staff of or ever paid by the UFW.

Martin Alvara testified that he passed out UFW leaflets and authorization cards to employees at Tepusquet Vineyards.^{7/} He testified that he engaged in picketing activity for the UFW when

6/ Mr. Aquino was employed by the organization called "Los Padres Grower Foundation" at the time of the Tepusquet election.

7/ When asked under cross-examination if he was ever able to get Tepusquet employees to sign authorization cards, Alvara answered, "No," His testimony was uncontroverted.

the UFW was boycotting "Safeway" (Supermarket). Mr. Alvara admitted that he passed out UFW literature many times and in many places, including Rancho Sisquoc, churches, stores, and auctions. He also testified, however, that he distributed leaflets and authorization cards not at the request of UFW organizers but because he volunteered for the activities---he would ask organizers for the literature and cards to pass out, and they were thus given to him.

Mr. Alvara further testified that he never received any payment or expenses from the UFW for his activities, that he was not a member of any union or UFW ranch committee at the time of the Tepusquet election, and that he did not join the union until after that election.

Mr. Alvara testified that he attended one UFW union meeting for Tepusquet employees before the election, but never attended any UFW staff meetings.

David Bacon also testified with respect to the status of Martin Alvara. Mr. Bacon was on the staff of the UFW, as an organizer, at the time of the Tepusquet election. He played an active role in the organizational campaign at Tepusquet.

Mr. Bacon named the organizers who worked out of the Santa Maria UFW office at the time of the election. Martin Alvara was not among them. The first contact Mr. Bacon had with Alvara was during the organizing campaign at Tepusquet where Alvara was a worker. Mr. Bacon testified that Alvara was never a member of the UFW staff--that he was only an "active supporter." "People on the staff as organizers," he testified, ". . . worked full time, worked for subsistence (wages), were subject to discipline, and

had to attend staff meetings," He further testified that Alvara may have attended UFW meetings for Tepusquet employees, but never attended any UFW staff meetings,

Mr. Bacon was asked under cross-examination if the UKW instructed workers, to whom authorization cards were given, as to what they should do with the cards. The witness would not directly respond, but under persistent questioning did say that workers to whom cards were given for distribution would be told the purpose of the cards, i.e., what use would be made of the cards in connection with the filing of a petition for an election.

Mr. Bacon also testified that he never gave any instructions to Mr. Alvara to remain at the polling place during the election or knew of any such instruction from any other UFW organizer.

ANALYSIS AND CONCLUSIONS

I. Withdrawn Objection

As previously stated, at the hearing employer withdrew Objection 34 (Issue No, 5 in the Notice of Hearing). Thus, that objection is no longer in issue and will not be considered.

II. UFW Accusation Against the Employer

Objection 49 (Issue No. 7 in the Notice of Hearing) alleged that one of petitioner's organizers prejudiced the rights of the employer by accusing the employer in the presence of eligible voters and in the presence of observers of engaging in improper conduct. (Emphasis added).

In TMY Farms, 2 ALRB No. 58 (1976}, the Board stated that the burden of proof is on the party seeking to overturn an election.

The record in this case shows that Mr. Jose Guzman, while in the polling area prior to the opening of the polls, asked Mr. Jose Avila why Avila called the immigration authorities. However, it was not established that Guzman was a UFW organizer, nor that any eligible voters overheard the comment. In the absence of such evidence, employer failed to meet its burden of proof as to this incident.

The record also shows that UFW organizer Jessica Govea, while in the polling area prior to the opening of the polls, asked the attorney for employer if he had called Washington," i.e., the immigration authorities. The question was in the form of an accusation. However, no eligible voter nor election observer was called to testify that he/she heard this comment. Employer's attorney/witness could only testify that employees who may have been in the vineyards nearest the polling area and observers who may have been in the polling area, "might" have overheard the comment. I find the evidence insufficient to establish the crucial fact that the comment was overheard by any eligible voters or observers. This objection has not been established by the record. I therefore recommend that it be dismissed.

III. Appearance of the Immigration and
Naturalization Service _____

The Board will set aside an election where the circumstances were such that employees could not express a free and uncoerced choice of a collective bargaining

representative, D'Arrigo Brothers of California, 3 ALRB No. 37 (1977) , or, as the Board stated more recently, where the incidents complained of are sufficiently substantial in nature to create an atmosphere which renders improbable a free choice by the voters, Bruce Church, Inc., 3 ALRB No, 90 (1977).

However, the Board will accord the conduct of a non-party less weight in determining whether or not the tests have been met.

Takara International, Inc., 3 ALRB No. 24 (1977), Kawano Farms, Inc., 3 ALRB No. 25 (1977), C. Mondavi and Sons, 3 ALRB No. 65 (1977).

Like Takara, Kawano and C. Mondavi this case concerns conduct by a non-party, which under those cases should be accorded less weight in determining whether that conduct was sufficiently substantial in nature to create an atmosphere which rendered improbable a free choice by the voters. Unlike Takara, Kawano, and C. Mondavi this case does not involve threats by employees against other employees - conduct which the employers in those cases sought to attribute to the UFW, a party to those elections. Whether any party was responsible for summoning the INS to the Tepusquet property is not in issue. The issue here is whether the arrival of immigration officials at the Tepusquet property and arrest by them of a worker, in the presence of prospective voters just prior to the opening of the polls, created an atmosphere which rendered improbable a free choice by the voters.

The employer contends that the organizer purposefully came to the aid of the arrested employee and that this, "undoubtedly gave Tepusquet employees the impression that the UFW might be able to help the arrested employee out of his predicament, and influenced or swayed them immediately prior

to the election."^{8/} However, there was no showing that the UFW organizer acted for the purpose of enhancing the image of the union in the eyes of the prospective voters, Moreover, the organizer did not act alone. Board agent Briggs came to the scene. He also explained to the INS officer that an election was about to begin, asked for the release of the employee, and asked the officers to leave. The officers then released the employee and departed. They did so at the behest of the organizer and the Board agent. This was observed by the workers present, and by employer's legal counsel who raised no objections at the time. The UFW organizer did no more than the Board agent did or could have done. The organizer's conduct was not improper and would not, in my judgment, influence how workers who saw these events transpire voted in the election.

The employer also contends that, "the presence of Immigration and Naturalization Service officers and the chase and arrest of an employee could only have had a markedly intimidating, frightening and disturbing effect on the Tepusquet employees."^{9/} The evidence does not support such a finding. The high degree of voter turnout indicates that the INS incident did not prompt a significant number of employees to refrain from voting in the election, which took place soon thereafter.

In support of its contentions employer cites the NLRB case of the Great Atlantic & Pacific Tea Co., ^{10/} wherein the NLRB

^{8/} See page 9 of the employer's post-hearing brief.

^{9/} Ibid.

^{10/} The complete citation is: The Great Atlantic & Pacific Tea Company & Retail Wholesale & Dept". Store Union, AFL-CIO, 120 NLRB 765 1(1958).

set aside an election because of the arrest of "one Irving Lebold,"^{11/} by two deputy sheriffs in the presence of voters immediately prior to the start of the election. Employer contends that Great Atlantic must be applied to the facts of this case to set aside the election. Examination of that case reveals that Irving Lebold was not an employee of the company, but was the petitioning union's principle organizer. That fact was dispositive and renders the case inapplicable here.

The record in this case shows that as many as 30 workers (prospective voters) witnessed the arrest of their fellow employee. There was testimony by one witness that the person arrested attempted to run when he saw the immigration officials and that they "grabbed" him. He was then handcuffed. Some of the employees viewing the incident were shocked, some were bewildered, some observed passively, while others continued working in an effort not to attract attention to themselves. That a large number of people and attention were briefly concentrated in the immediate area of the arrest seems apparent from the record. However, I find the singular testimony that there were a lot of "crazies" there, and it was "all confused," greatly exaggerated. However, I also doubt the accuracy of the testimony that the scene was "quiet."

It is significant that only one INS vehicle with two officers entered the premises to make the arrest and they arrested only one employee. It would, therefore, be inaccurate to characterize the incident as an INS "raid" of the Tepusquet

^{11/}At page 11 of employer's post-hearing brief.

property. Moreover, there was no evidence, other than the use of the term "grabbed," that violence or a struggle occurred when the arrest was made. It is most significant that upon the intervention and request of the Board agent in charge of the election and a UFW organizer, the INS officers released the arrested employee from their custody, the workers saw this, the INS officers departed from the Tepusquet property, and the employee and those who had been watching went back to work. The entire incident occurred prior to the opening of the polls, albeit by only minutes, and outside the polling area, approximately one-third to one-half a mile away.

It is quite conceivable that, as one witness testified, by 12:00 when workers ate lunch, "everybody" knew about the incident. This was soon after the polls opened (about 11:45). Yet such knowledge did not prevent a sizable voter turnout. (See n.1.)

In any event, the appearance of immigration officers in search of an undocumented worker was beyond the control of the parties and the ALRB agents and there was no evidence that any of the parties summoned the INS.

Clearly, the arrival of the INS officers at Tepusquet Vineyards and arrest by them of an employee in the presence of other employees can not be treated lightly. It was the kind of incident that had the potential of infecting the election environment with fear and confusion. However, prompt and successful efforts were made by the Board agent in charge of the election and one of the party representatives to check the activity of the INS officers. Upon notice of the election

circumstances the officers cooperated by releasing the employee and vacating the premises. The arrested employee and the employees who had been observing went right back to work. There were no further arrests of undocumented workers and no one was prevented from voting. Consequently, I find that the INS incident was not so aggravated as to destroy the atmosphere for the expression of free choice by the voters, and therefore, does not constitute sufficient grounds to set aside the election.

IV. Electioneering in the Polling Area

Employer's Objections 16, 17, 18 and 19 (issues 1, 2, 3 and 4 respectively) all concern the same activity. The evidence submitted by the employer in support of Objections 16 and 17, i.e., that the petitioning Union engaged in electioneering and disruptive activity in the general vicinity of the polls while employees were about to vote, was the evidence relating to the activities of Martin Alvara, an eligible voter in the election. It is employer's contention that Martin Alvara was a UFW organizer, ^{12/} or an agent of the UFW, whose misconduct is therefore attributable to the UFW, ^{13/} a party to the election.

Whether Martin Alvara was a "UFW organizer," in the common meaning of the term, is not difficult to ascertain from the record. In the context of this case, the question is more factual than legal.

When employer's witnesses were asked upon what facts they based their claims that Martin Alvara was "an employee of

^{12/} See page 12 of employer's post-hearing brief.

^{13/} See pages 16-18 of employer's post-hearing brief.

the UFW," a "UFW representative" or a "UFW organizer," they simply relied upon the facts that Alvara had been seen passing out UFW literature, picketing on behalf of the UFW, soliciting authorization cards, or talking with employees in favor of the UFW. None of these witnesses could testify from personal knowledge that Alvara was on the staff of the UFW or was paid by the UFW for his activities on its behalf. In contrast, Martin Alvara credibly testified that his activities on behalf of the UFW were voluntary, for which he received no payment, and that he did not even join the UFW union until after the Tepusquet election. David Bacon, UFW staff member of the Santa Maria UFW office and one of the principle organizers of the employees at Tepusquet, testified that Alvara was not a member of the UFW staff, which would have required full-time work for subsistence wages, submission to UFW discipline and attendance of UFW staff meetings. Both Alvara and Bacon testified that Alvara never attended UFW staff meetings. Furthermore, organizer David Bacon encountered Alvara for the first time during the organizing drive at Tepusquet, where Alvara was employed.

Leafleting, picketing, card soliciting and speaking on behalf of the UFW are insufficient activities to make Martin Alvara a "UFW organizer," i.e., a full-time, paid member of the UFW organizing staff. The testimony of Alvara himself and of David Bacon support the conclusion that Alvara was, in fact, not a "UFW organizer."

Employer argues that Martin Alvara was an agent of the union and hence the union is responsible for any illegal

electioneering or disruptive activity that he engaged in.^{14/}

The National Labor Relations Board, in its early days, addressed the question of union agency. International Longshoremen's and Warehousemen's Union (CIO), Local 16, 79 NLRB No. 207, 23 LRRM 1001 (1948). Since that case the NLRB has treated labor organizations as legal entities, like corporations, which act, and can only act, through their duly appointed agents, as distinguished from their individual members.^{15/} In that decision, which is recognized as the standard on union agency, the Board set forth the principles by which it would be guided in determining union agency:

1. The burden of proof is on the party asserting an agency relationship, both as to the existence of the relationship and as to the nature and extent of the agent's authority...
2. Agency is a contractual relationship deriving from the mutual consent of principal and agent that the agent shall act for the principal. But the principal's consent, technically called authorization or ratification, may be manifested by conduct, sometimes even passive acquiescence as well as by words. Authority to act as agent in a given manner will be implied whenever the conduct of the principal is such as to show that he actually intended to confer that authority...
3. A principal may be responsible for the act of his agent within the scope of the agent's general authority or the 'scope of his employment' if the agent is a servant, even though the principal has not specifically authorized or indeed may have specifically forbidden the act in question. It is

^{14/} Employer's post-hearing brief, at page 16.

^{15/} At 23 LRRM 1005.

enough if the principal actually empowered the agent to represent him in the general area within which the agent acted...16/

Employer cites several cases wherein the NLRB, under various theories of agency, attributed misconduct of individuals to unions.

In Teamsters Union, 115 NLRB No. 184, 38 LRRM 1027 (1956), an individual was found to be acting as agent of the union even though he was not shown to have been a member of the union. In that case union officials and organizers gathered each day across the street from a certain company to conduct a union organizing campaign. On numerous occasions an individual, who was not shown to have been a member of the union, was seen participating with union officials and organizers in soliciting truck drivers not to cross a picket line --- conduct which the NLRB found to be unlawful. Because his participation in the solicitation was not disavowed or even discouraged by the admittedly authorized agents of the union, the individual was found to have been an agent of that union. The NLRB reasoned that the individual's, "close cooperation and association with the admitted agents of [the union] in the performance of their duties clearly bespeaks approval and acceptance of his services and ratification of his activities."^{17/}

In International Woodworkers Union, 131 NLRB No. 29, 48 LRRM 1005 (1961), the NLRB held that a rank and file union

16/ At 23 LRRM 1005.

17/ At 38 LRRM 1030.

member was an agent of the union when he engaged in alleged unlawful conduct, whether or not the specific conduct was authorized or ratified. The individual, who worked for a different employer, approached employees of a company to obtain signatures on authorization cards and impressed upon at least two employees that if they did not sign the cards, their jobs would be in jeopardy. The NLRB concluded that when the union accepted the individual's offer to organize employees on behalf of the union, instructed him on the procedure to be followed if employees wished to be represented (i.e., obtaining signed authorization cards), procured the cards for him, and accepted the fruits of his efforts by filing a petition based on the signed cards he secured, it made him its agent for the purpose of organizing employees. Furthermore, said the NLRB:

"It is immaterial that German (International's Representative) did not 'instruct' Stringer (the individual concerned) that he was to organize Central's employees, as German must have known that such was Stringer's sole purpose in securing the authorization cards. We find, accordingly, that Respondent (International) was responsible for Stringer's conduct in furtherance of that organizational purpose, whether or not that specific conduct was 18/ authorized or ratified."(Emphasis added.)

Lastly, employer cites the case of United Mine Workers of America, 163 NLRB No. 181, 64 LRRM 1394 (1967), wherein the remarks of an individual to one of the employer's officers were held by the NLRB to be attributable to the union. The NLRB found

18/ At 48 LRRM 1005 & 1006.

that the individual concerned was very active in soliciting union membership, presented himself to employees as representing the union, and as "an organizer," and some of his activities were carried out in the presence of admitted union agents without disavowal.

On the surface, each of these cases appears to be applicable to the facts of this case. The Teamster Union case concerned activity by an individual not shown to have been a union member, but who nevertheless was found to be an agent of the union under the theory of ratification. The United Mine Workers case also concerns activity by an individual found to be an agent of the union under a theory of failure to disavow, i.e., ratification.^{19/} in both cases, however, the specific misconduct of the individuals, which was attributed to the unions involved, occurred in the presence of union organizers or officials who were in a position to disavow the activity complained of, but who did not do so. The NLRB found this to be form of consent by ratification, and held the misconduct attributable to the unions. Thus, for the misconduct of an individual to be attributable to the union under the theory of ratification, the union (as the principal) must be in a position to either approve of or disavow the specific misconduct by the person alleged to be an agent. In the case at hand, the misconduct of Martin Alvara---improper electioneering---took place inside the polling area. There is no evidence that the UFW was present when Alvara engaged in the electioneering, and thus, was in a position to approve of or disavow Alvara's improper activities

19/ Unlike the United Mine Workers case there is no evidence here that Alvara represented himself to be a "UFW organizer."

In fact, union organizers are not even permitted in the polling area when balloting is in progress. Consequently, the UFW could not, and did not, by words or by passive acquiescence authorize or ratify the specific misconduct of Alvara which employer seeks to attribute to the UFW.^{20/} The UFW, therefore, can not be held responsible for the activities of Martin Alvara in the polling area under the theory of agency by ratification.

In the International Woodworkers case ratification was not material to the ultimate decision. However certain significant facts were clearly in evidence. First, the individual involved was a union member and worked for a different company. In this case, Alvara was not a union member and did, during the eligibility period, work for Tepusquet.^{21/} Second, the individual volunteered to organize employees. This is true of Martin Alvara. Third, the individual was told the purpose of obtaining signed authorization cards. Presumably, Alvara already knew this since he requested the cards from the UFW. Fourth, the individual obtained the cards from the union. This is also true in Alvara's case. Fifth, the union accepted the fruits of the individuals' efforts by filing a petition

20/ Witness Ibarra and Aquino testified that Alvara, near the end of the election, approached a group of persons whom they thought to be "UFW organizers" and told them that the people he spoke with had voted for the "Chavez Union" of the UFW. However, neither of the witnesses could identify any of the individuals in the group. Moreover, there is no indication on the record that those persons in any way, encouraged Alvara's activity or were even aware of it before this occasion when he approached them. Nor was there any testimony regarding the reaction, if any, of these persons to Alvara's comments. I, therefore, do not credit the testimony of these witnesses.

21/ However, I do not consider union membership to be the point on which the International Woodworkers case turned.

based on the signed cards he obtained. That important link in the chain of necessary elements is absent in this case. The only evidence on this point is the uncontradicted testimony of Martin Alvara that he was unable to get Tepusquet employees to sign authorization cards. Moreover, the extent to which Alvara went in distributing cards and soliciting signatures remains unclear. Only one witness, David Aquino, testified that he was approached by Alvara to sign an authorization card. He declined to do so.^{22/} Had Alvara been successful in obtaining signatures to any of the cards, he undoubtedly would have given them to the UFW, who undoubtedly would have accepted them and made use of them in qualifying to file a petition for an election. Since the UFW's petition for an election was not based upon any signed authorization cards secured by Martin Alvara, the UFW did not benefit from his efforts. Thus, an important element of the pertinent NLRB case is missing and an agency relationship between Martin Alvara and the UFW can not clearly be established.

Furthermore, the above quoted portion of the International Woodworkers Union case, makes it clear that the misconduct for which the union was held responsible occurred in connection with and was limited to the improper manner in which signatures to authorization cards were obtained by the union, and that the individual was an agent of the union for that purpose. In the present case, Alvara is not alleged to have improperly solicited signatures to authorization cards.

I, therefore, conclude that under NLRB precedent an agency

22/ Since Aquino was not an employee of Tepusquet he could not have signed a card anyway.

relationship between Martin Alvara and the UFW, through which the UFW would be held responsible for Alvara's electioneering activities inside the polling area, has not been established.^{23/}

Several ALRB decisions have dealt with the subject of improper electioneering inside the polling area---conduct sought to be attributed to the UFW. In Chula Vista Farms, Inc., 1 ALRB No. 23 (1975), the employer's objection concerned the conduct of a Mr. Manual Tec Dominquez, an employee who was neither an observer nor officially connected with the election in any way except as an eligible voter. Mr. Tec, while wearing a UFW button, spoke to each employee waiting to vote and then ushered each of them to and about the polling area. This conduct continued for approximately 30 minutes, during which time Mr. Tec stood alongside the table on which the ballot box had been positioned and, for a period of about five minutes, stood with one foot on the table as employees placed their ballots in the ballot box. While indicating that it did not approve of Mr. Tec's conduct, the Board nevertheless did not set aside the election. The Board stated:

"It is true, as the employer claims, that elections have been set aside by the National Labor Relations Board when parties to the election have conversed with potential voters in the polling area or with

23/ A precautionary observation is in order at this point. To find that obtaining leaflets and authorization cards from a union and distribution thereof are sufficient acts to create an agency relationship between a worker and a petitioning union for purposes of unrelated misconduct, would be to extend agency principles beyond practical and equitable limits, and would severely hinder the ability of such unions to enlist the active participation of workers in seeking representation elections for fear of being held responsible for the misconduct of the worker not connected with those specific activities. It would also, by equating employees with the parties, severely limit the right of employees to communicate with each other, contrary to the express provision of Labor Code §1152.

employees who were waiting in line to vote. Milchem, 170 NLRB 362 (1968). But, Mr. Tec was not a party to this election within the meaning of the Milchem rule as he was neither an official of the union nor a representative of the employer.

In the absence of any evidence of prejudice to the employer by Mr. Tec's conduct, we cannot find that his activities constituted conduct which would warrant setting aside of this election."

The employer in this case makes the same Milchem rule argument that was made in Chula Vista.^{24/} The cases are very similar. Like Chula Vista this case concerns electioneering inside the polling area by an employee who was not an agent of the union nor officially connected with the election in any way except as an eligible voter. Thus, the Board's finding in Chula Vista is appropriate here, i.e., Martin Alvara was not a party to this election within the meaning of the Milchem rule since he was not an agent of the union. Although Alvara's conduct was improper and can not be condoned, it nevertheless does not under Chula Vista constitute sufficient grounds for setting aside this election.^{25/}

A similar result was reached by the Board in the more recent case of D'Arrigo Bros, of California, 3 ALRB No. 37 (1977). In D'Arrigo, two individuals who had earlier handed out UFW buttons and bumper stickers to voters, were seen talking to voters waiting in line to vote; but no material was passed out, nor was any conversation

^{24/}Employer's post-hearing brief, at page 13.

^{25/} The polling area should remain off limits to electioneering. It is the duty of those Board agents conducting the election to control the polling area. Once Alvara voted and left the polling area he should not have been allowed to reenter and converse with prospective voters waiting in line to receive their ballots. There was no evidence, however, that Alvara's actions were brought to the attention of the Board agents supervising the election. Election observers who witness this kind of activity taking place should immediately notify the Board agents, who should then respond appropriately.

overheard. One of the two individuals previously worked for D'Arrigo. The testimony bearing upon the relationship of those individuals to the UFW was that one was earlier seen at the UFW office passing out literature, and the other was seen giving out union literature at one of the employer's labor camps some two or three weeks prior to the election. The Board held that:

"The fact that a person is an active proponent of a union is not sufficient to attribute to the union responsibility for the misconduct of the individual... On the basis of the record we cannot conclude that the electioneering activity allegedly engaged in here may be attributed to the UFW."

As in D'Arrigo this case pertains to electioneering inside the polling area by a worker who actively supported the union in its organizing drive. The record clearly shows that Alvara leafletted, picketed and solicited signatures to authorization cards on behalf of the UFW prior to this election. Yet, such active pre-election activities in support of the union are not sufficient to attribute to the union responsibility for Alvara's misconduct inside the polling area. The record shows that Alvara urged a number of employees waiting in line to receive their ballots to vote for the UFW. However, on the basis of D'Arrigo, I conclude that the electioneering activity engaged in by Martin Alvara, an eligible voter and active union supporter, cannot be attributed to the UFW and therefore is not grounds for setting aside this election. Accordingly, I recommend that Objections 16, 17, 18 and 19 be dismissed.

RECOMMENDATION

Based on the findings of fact, analysis, and conclusions,

I recommend that 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.

DATED: April 17, 1978

Respectfully submitted,

Armando M. Flores

ARMANDO M. FLORES
Investigative Hearing Examiner, ALRB