

STATE OF CALIFORNIA AGRICULTURAL  
LABOR RELATIONS BOARD

MIKE YUROSEK & SONS, INC.	)	
Employer,	)	Case No. 77-RC-4-E(R)
	)	
and	)	4 ALRB No, 54
	)	
UNITED FARM WORKERS	)	
OF 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 proceeding 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 January 23, 1977, among the agricultural employees of the Employer, Mike Yurosek & Sons, Inc, The tally of ballots showed the following results:

UFW. . . . .	63
No Union. . . . .	12
Challenged Ballots. . . . .	35

The Employer timely filed numerous objections to the election, all but three of which were dismissed by the Executive Secretary by Order dated June 13, 1977. On September 20, 1977, Investigative Hearing Examiner (IHE) Armando M. Flores conducted a hearing on the three remaining objections and thereafter issued his decision on January 6, 1978. The IHE recommended that the

objections be dismissed and that the UFW be certified as the exclusive collective bargaining representative of all agricultural employees of the Employer in the Imperial Valley. Thereafter, the Employer filed exceptions and a brief, the UFW filed cross-exceptions and a statement in opposition to the Employer's exceptions, and the Employer filed a statement in opposition to the UFW's cross-exceptions.<sup>1/</sup>

The Board has considered the objections, the record and the IHE's Decision, in light of the exceptions, cross-exceptions and the briefs, and has decided to affirm the rulings, findings,<sup>2/</sup> and conclusions of the IHE, as modified herein, and to adopt his recommendations.

#### Board Agent Conduct

The Employer excepts to the IHE's recommended dismissal of its election objection based on alleged misconduct by Board Agent Michael AuClair Valdez. Board Agent Valdez testified at

---

<sup>1/</sup>By letter dated February 21, 1978, the UFW requested that the Employer's "Brief in Opposition to Union Cross-Exception to Decision of Investigative Hearing Examiner" be stricken on the ground that the Board's regulations do not provide for such a response. This request is hereby denied.

<sup>2/</sup>In its brief in support of its exceptions, the Employer argues that the IHE erroneously stated that a complaint against the Employer had not been issued based on charges filed against the Employer between January 10 and January 26, 1977. In fact, the IHE correctly noted in his decision that counsel for both parties stipulated that, as of the time of the September 20, 1977 hearing, the referenced charges had not yet gone to complaint. While we do not regard as material the date on which the complaint issued, we note for purposes of clarification that the records of the Executive Secretary show that the complaint in question issued on March 22, 1977, and was received by the Executive Secretary on May 1, 1977. See Case Numbers 77-CE-26-E, 77-CE-46-E, 77-CE-47-E, 77-CE-52-E and 77-CE-53-E.

the objections hearing in regard to his conduct at the pre-election conference, which conduct is the basis for the Employer's objection. While Valdez admitted stating at the pre-election conference that he would grant the union's request for a polling site off the Employer's property because the Employer had threatened employees, he further testified that after the Employer's counsel objected to this comment, Valdez immediately apologized and corrected his statement to indicate that his decision was based only on "alleged" threats. This testimony was partially contradicted by Frank Britton, general farming superintendent for the Employer,, who testified that Valdez neither corrected nor apologized for his injudicious statement. Whether Valdez' initial comment about threats was translated into Spanish is also in dispute.

Unlike the IHE, we are not prepared to make a credibility resolution on this record. To do so would require us to judge the credibility of our own agent, a task which should be avoided where possible.

Nevertheless, accepting the version of events testified to by Britton, we conclude that the Employer's objection should be dismissed. In Bruce Church, Inc., 3 AL53 No. 90 (1977), we enunciated a standard which required the setting aside of an election where the complained of Board Agent conduct was "... sufficiently substantial in nature to create an atmosphere which rendered improbable a free choice by the voters," Id., p. 3. Applying this standard, we cannot find that the isolated comment by the Board Agent at the pre-election conference constituted

objectionable conduct affecting the results of the election.

Unit Determination

Balloting in the election herein occurred in El Centro and Lament, California. Employer's Exhibit No. 1, which consists of lists of eligible employees (marked to indicate those who voted), challenge lists from the Lament and El Centro polling sites, and declarations prepared in connection with the challenged ballots, was received into evidence on the agreement of the parties, for consideration by the IHE and the Board. The challenge lists and declarations show that of the thirty-five (35) challenged ballots cast in the election, twenty-one (21) were cast at the El Centro site and fourteen (14) were cast at the Lament site.

At the investigative hearing, Board Agent Michael AuClair Valdez testified that, based on his review of Board records and not personal knowledge <sup>3/</sup> all ballots cast at the Lament site were challenged by Board Agents. Valdez explained that he examined the list of eligible voters who worked at the Employer's operations outside the El Centro area (hereinafter the "north area employees"), that he counted the number of north area employees who actually voted, that he examined the challenge lists, and that he found that the number of north area employees who actually voted corresponded to the number of voters challenged at the Lament polling site. By this comparison he inferred that all

---

3/Valdez testified that, although he generally supervised the election, he was not present at the Lament polling site. The declarations contained in Employer's exhibit No, 1, which are witnessed by Board Agents, establish that Valdez was present at the El Centro site and that Board Agents Marty Martinez, Lawrence Aldereta, and Augustine Chavez were present at the Lament site.

those voting at the Lamont site cast challenged ballots,

Based on Valdez<sup>1</sup> testimony, which was not contradicted by the testimony of any Employer witnesses, the IHE found that: "As a result of the challenge ballot procedure followed in this case, none of the Lamont area ballots (14 in number) have been counted, since all were challenged..<sup>11</sup> IHED, p. 24. Also based on Valdez' testimony, the parties have assumed that Board Agents challenged all Lamont area ballots because of a known unit dispute, and the Employer has argued that such protective use of the challenged ballot procedure violates the Board's regulations and is improper.

Having reviewed Employer's Exhibit No. 1, we find that the IHE erred in finding that all employees attempting to vote at the Lamont polling site cast challenged ballots. It is true, as Valdez testified/ that the number of voters challenged at the Lamont polling site corresponds to the number of north area employees marked on the eligibility list as having voted. The names of fourteen persons appear on the challenge lists for the Lamont site, and the names of fourteen north area employees are marked on the eligibility lists as having voted. However, it does not follow that all those attempting to vote in Lamont were challenged by Board Agents. A comparison of the fourteen names on the Lamont challenge lists and the names on the eligibility lists shows that none of the voters challenged in Lamont were on the eligibility lists, and that none of the north area employees on the eligibility lists were challenged at the Lamont sits. Moreover, the Lamont challenge lists and related

5.

declarations indicate that all those challenged at the Lamont polling site were challenged by Board Agents because their names did not appear on the eligibility lists, and that one person was also challenged by the union as a foreman. Thus, the Board Agents administering the election in Lament merely carried out their obligation to challenge the ballots of prospective voters whose names were not on the eligibility list, pursuant to California Administrative Code Section 20355 (a)(8). The unchallenged ballots cast by fourteen north area employees have not been segregated from those cast by unchallenged SI Centro voters.

Notwithstanding the lack of complete segregation of the El Centro and Lament ballots, we are prepared to certify the choice of the majority of the Employer's Imperial Valley employees. We agree with the IHE that a separate unit for the Employer's Imperial Valley or Centro area employees is appropriate and, as noted by the IHE, it is undisputed that the Employer was at its peak agricultural employment in the Imperial Valley-El Centro area at the time of the election. Given the expedited election procedure mandated by Labor Code Section 1156.3, Board review of Regional Director unit determinations necessarily follows the election. Given the timing of this review and the seasonal nature of the industry, the choice of the majority of employees, in a unit found to be appropriate and at peak, should be certified unless there are sufficient grounds to refuse to do so. Signal Produce Co., 4 ALBB Mo, 3 (1973).

The Board Agents conducting the election could have

6.

ALRB NO. 54

exercised their discretion to challenge all north area employees attempting to vote on the basis of the unit dispute; the grounds for challenging voters are not limited to those listed in California Administrative Code Section 20355 (a). Although fourteen north area employees voted without challenge along with sixty-one Imperial Valley-El Centro area employees, the failure to challenge and thereby segregate the ballots of the north area employees did not affect the outcome of the election with respect to employees in the Imperial Valley-El Centro area unit. <sup>4/</sup>It would clearly not be warranted to set aside the election herein solely on the ground that a quantity of ineligible voters<sup>1</sup> ballots, insufficient in number to affect the outcome, were commingled with eligible voters<sup>1</sup> ballots. See R. T. Englund Co., 2 ALRB No. 23 (1976); Tomooka Brothers, 2 ALRB No. 52 (1976); Bud Antle, Inc., 3 ALRB No. 7 (1977). See also Hatanaka s Ota Co., 1 ALRB No. 7 (1975); Agro Crop, 3 ALRB No. 64 (1977).

In view of the above findings and conclusions, and in accordance with the recommendation of the IHE/ the Employer's objections are hereby dismissed, the election is upheld, and certification is granted.

CERTIFICATE OF REPRESENTATIVE

It is hereby certified that a majority of the valid

---

<sup>4/</sup>Assuming that all fourteen north area employees who cast unchallenged ballots voted for the UFW, and assuming that all twenty-one of the challenged El Centro voters voted for "no-union," the UFW prevailed forth-nine to thirty-three. Even if it were assumed that ail challenged voters voted "no-union," the OTW prevailed forty-nine to forty-seven. The declarations of the challenged Lament voters establish that at least ten of these voters were employed in the Employer's north area operations.

ballots 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 of the agricultural employees of Mike Yurosek & Sons, Inc., in the Imperial Valley of the State of California, 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: August 4, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member



CASE SUMMARY

Mike Yurosek & Sons, Inc.

4 ALRB No. 54

Case No. 77-RC-4-E(R)

IHE DECISION

After an election won by the UFW, a hearing was held on the Employer's objections that: (1) the Regional Director improperly determined the geographical scope of the bargaining unit, (2) the election was not held during the peak season, and (3) the Board Agent made improper statements implying that the Employer was guilty of an unfair labor practice.

On January 6, 1978, Armando M. Flores, Investigative Hearing Examiner, issued his decision, recommending: (1) dismissal of the peak season objection because no evidence was offered in support of this objection; (2) dismissal of the Board Agent misconduct objection based on his crediting the testimony of the Board Agent, his conclusion, that the statement complained of did not constitute a substantial deviation from required standards of impartiality and neutrality, and his finding that the statement complained of was not shown to have affected the conduct of the election or to have impaired the balloting's validity as a measure of employee choice, citing Cpachella Growers, Inc., 2 ALRB No. 17 (1976); and (3) dismissal of the bargaining unit objection. Although the IHE recommended dismissal of the bargaining unit objection, the IHE recommended that the UFW be certified as the bargaining representative of only the Employer's Imperial Valley employees, excluding from the certified unit the Employer's employees employed at its Bakersfield, Saugus, Cuyama and Santa Maria work sites. The IHE found that the unit determined by the Regional Director and in which the election was conducted was too broad, but that the Employer's Imperial Valley operation was at peak and that a majority of the Imperial Valley employees voted for representation by the UFW. In reaching his conclusion, the IHE found that there was no reason to assume that the Imperial Valley employees would have voted differently had the election been conducted among only them, and that the ballots of the Imperial Valley employees had been segregated from those of the other employees because of Board Agent challenges.

BOARD DECISION

The Employer excepted to the recommendation of the IHE that its Board Agent misconduct and unit objections be dismissed, and further excepted to the recommendation that a unit smaller than that petitioned for be certified.

The Board affirmed the IHE's recommendation that the Board Agent misconduct objection be dismissed on the ground that the alleged isolated Board Agent statement was not sufficiently substantial in nature to create an atmosphere which rendered improbable a free choice by the voters.

The Board also affirmed the IHE's recommendation that only the Imperial Valley election returns be certified, agreeing that the statewide unit was inappropriate. It noted that the Imperial Valley employees' ballots had not been segregated, but found that the ballots mixed with them were not sufficient in number to affect the outcome. The Board concluded that the choice of the majority of employees, in a unit found to be appropriate and at peak, should be certified unless there are sufficient grounds to refuse to do so, citing Signal Produce Co., 4 ALRB NO, 3 (1978),

This summary is furnished for information only and is not an official statement of the Board,

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

MIKE YUROSEK & SON, INC.,

Employer,

Case No. 77-RC-4-E

and

UNITED FARM WORKERS OF  
AMERICA, AFL-CIO,

Petitioners.

Robert J. Kane, Morgan, Lewis  
& Bockius, for Employer.

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

DECISION

I. STATEMENT OF THE CASE

ASMANDO M. FLORES, Investigative Hearing Examiner: This case was heard before me on September 20, 1977, in Bakersfield, California.

The objections petition/ filed by Mike Yurosek & Son (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 "Board") to set aside

the election conducted among its employees on January 28, 1977.<sup>1/</sup>

By order dated June 13, 1977, the Executive Secretary to the Board partially dismissed employer's election objections petition and set three of the objections for hearing.

The Notice of Investigative Hearing, dated August 3, 1977, set the following objections for hearing:

1. That the regional director improperly determined the geographical scope of the bargaining unit;
2. That the election was not held during peak season;
3. That the Board agent made improper statements implying that the employer was guilty of an unfair labor practice.

All parties 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:

## II. FINDINGS OF FACT

### A. PEAK EMPLOYMENT

An issue set for hearing was employer's objection, as stated in its "Objections to Election" Petition, that the election was untimely because the number of agricultural employees employed by Yurosek was less than 50 percent of the employer's anticipated peak agricultural employment for the current calendar year.

---

1/ The results of the election were as follows: The UFW received 63 votes, "no union" received 12 votes. Thirty-five challenged ballots remain unresolved.

During the course of the pre-election conference the parties discussed the possible polling sites. Mr. Valdez testified that the union wanted an off-site (i.e. away from the fields) polling place and that employer wanted only an on-site polling place. Mr. Valdez decided that there would be on-site polling places as well as an off-site polling place .<sup>4/</sup>

On direct examination, Mr. Valdez was asked if he gave a reason for his polling site designations. His response was, "Yes, I did." He was then asked what he said.

Mr. Valdez replied,

"I erroneously stated that the employer had threatened or made threats to the employees. And for that reason a polling site would be located off company property."

Mr. Valdez testified that Mr. Kane "immediately" objected to the statement. Valdez continued his testimony by saying that he immediately apologized. He further testified that:

"I explained that I was tired. That preelection conferences involve a great deal of pressure and that I had neglected to use the descriptive word 'alleged'<sup>1</sup> when I was referring to those threats. And I wanted to make it very clear to all parties that the statements were simply alleged by the union -- that no finding of fact had been made by the Board. And when and if proper charges had been filed that an investigation would take place to determine whether threats had been made by the employer to employees regarding the election."

4/ The "Direction and Notice of Election," dated January 27, 1977, indicates that one off-site polling place (Calexico park) and two on-site polling places were designated.

At the hearing, no evidence, testimonial or documentary, was offered on this issue.<sup>2/</sup> It is therefore recommended that this objection be dismissed.

#### B. BOARD AGENT STATEMENTS

On January 26, 1977, at approximately 7:30 in the evening, the Yurosek pre-election conference was conducted at the Community Center in El Centro. The Board agent who conducted the pre-election conference and who was in charge of the Yurosek election was Michael AuClair-Valdez.<sup>3/</sup> Mr. Valdez was called to testify by the UFW.

##### 1. Testimony of Michael AuClair-Valdez

Mr. Valdez testified that, to the best of his recollection, the following people were present at the pre-election conference: himself, and Board agents Carlos Bowker and Nancy Kirk; Mr. Robert Kane (employer's legal counsel in this matter), Frank Britton and Dave Yurosek. Representing the union were Artie Mendoza, Bob Lawson and Jorge Verdugo. Mr. Valdez testified that there were also "a great deal of workers" present. He estimated that there were about 50 workers in attendance.

According to Mr. Valdez, the pre-election conference was conducted in English and translated into Spanish. Board agent Carlos Bowker translated the proceedings into Spanish.

---

2/Frank Britton, general farming superintendent for Yurosek & Son, testified in general terms as to the company's peak employment periods in the different areas in which it engages in growing and/or harvesting activities. Mr. Britton's peak employment testimony, however, was limited to the bargaining unit question, to be discussed infra.

3/ In January of 1977, Mr. Valdez was employed with the Board as a Field Examiner.

In response to the question whether his statement about employer threats had been translated into Spanish by Mr. Bowker, Valdez answered, "It's difficult to recall. I don't think that it was. As I recall, Mr. Kane immediately objected. And rightfully so, and I quickly amended ray statement."

Mr. Valdez could not recall whether his correction of his earlier statement was translated into Spanish.

Under cross-examination, Valdez repeated that he did not believe that his statement about employer threats was translated. Valdez testified, "My recollection was that I made the statement, your (>Ir. Kane ' s} reaction was immediate. My response was right after your statement. I don't recall if there was time for translation."

On re-direct examination Valdez was asked what was the basis of his statement regarding employer threats. Counsel for employer objected to the question. After argument and discussion, counsel for both parties stipulated that between January 10 and January 26, 1977, five unfair labor practice charges were filed by the UFW against Yurosek & Son, and that, to date, none of the charges has gone to complaint.

## 2. Testimony of Frank Britton

Frank Britton, general farming superintendent for Yurosek & Son for the last one and a half years, testified on the issue of the Board agent's statement. Mr. Britton was present at the preelection conference held on January 26, 1977. Mr. Britton recalled the discussions regarding the polling sites and recalled that Mr. Valdez spoke about this subject.

Mr. Britton testified that, "He (Valdez) said that the United Farm Workers wanted a polling place in Calexico and away from the fields. And that the reason for it was that the broccoli crew had been harassed." Mr. Britton added that the UFW wanted a site in Calexico because the broccoli crew felt that there had been "harassment" of the crew. Mr. Britton then testified that, "He (Valdez) said that the broccoli crew had been threatened, as the reason for the polling place in Calexico."

Mr. Britton testified that Mr. Kane then addressed Mr. Valdez and told him (Valdez) that the statement was "prejudiced (sic) against the company," and that there were people in the crowd who were a part of the crew.

Mr. Britton further testified that there were people in the crowd he recognized. He testified that there were 50 to 60 people in the hall--20 to 25 of which he recognized "out of the different crews."

When asked if Valdez corrected his statement regarding threats, Britton replied that he did not. He further testified that Valdez made no apology at any time during the conference.

Mr. Britton went on to say that Valdez' statement regarding threats was translated into Spanish to the crew by Mr. Carlos (Bowker). Britton then added that "Everything that was said in that meeting was translated. Every word that was said in that meeting was translated into Spanish to the people that were in the hall."

Under cross-examination Mr. Britton admitted that he speaks very little Spanish.



### 3. Findings

The evidence shows that at the Yurosek pre-election conference, the Board agent in charge, Michael AuClair-Valdez, stated that because employer had threatened members of the broccoli crew there would be an off-site polling place and on-site polling places. It is undisputed that a statement to this effect was made. That counsel for the employer, Robert Kane, immediately objected to this statement was not disputed. A conflict in testimony arises with respect to whether the statement was translated. Britton testified that everything said at the conference was translated by Board agent Carlos Booker. Valdez testified that because of Mr. Kane's immediate reaction to the statement: there wasn't time for translation. Mr. Britton did not dispute Valdez<sup>1</sup> testimony that Mr. Kane immediately objected to the statement. To a degree, Britton's testimony tends to corroborate Valdez' insofar as Britton stated that Mr. Kane addressed Valdez and told him that the statement was prejudicial to the company. Such a response would likely have been immediate and thereby would have precluded the opportunity for language translation. Furthermore, under cross-examination Mr. Britton admitted that he speaks very little Spanish. In light of the foregoing I find that the statement in question was not translated into Spanish by Board agent Bowker to the audience.

It is Valdez' testimony that after Mr. Kane's objection to his statement, he (Valdez) apologized and amended the statement. Valdez testified to this in detail. Mr. Britton testified that Valdez did not correct his statement or apologize at any time. Based upon the obvious clarity of memory and sincerity of the

witness I credit the Valdez version and find that Valdez did apologize for and correct his statement in response to the immediate objection of employer's attorney.

### C. BARGAINING UNIT

The UFW filed a Petition for Certification at Mike Yurosek & Son, Inc., with the Board on January 21, 1977. In response to questions 6 and 7a of the petition, the UFW specified as the bargaining unit sought, "all agricultural employees of the employer in the state of California." The election, which took place on January 28, 1977, was conducted on a statewide basis, with election sites in El Centro and in Lament, which is near Bakersfield.

The issue raised by employer's bargaining unit objection is whether the statewide unit in which this election was conducted is 'an appropriate unit.

The evidence presented by the employer on this issue consisted of the testimony of witness Frank Britton. Mr. Britton is employed by Yurosek & Son as General Farming Superintendent. He has been employed in that capacity for one and a half years.

#### 1. Testimony of Frank Britton

##### CROPS GROWN AND/OR HARVESTED

Mike Yurosek and Son is engaged in the growing and/or harvesting of crops in five areas throughout California: El Centro, Bakersfield, Saugus, Cuyama and Santa Maria.

El Centro. Yurosek does not grow crops in El Centro. Yurosek engages only in the harvesting of certain crops. Crops harvested by Yurosek in this area are: Carrots, broccoli, rutabagas, turnips and parsnips.

Bakersfield-Lamont. Yurosek engages in total farming operations in this area, including land preparation, planting, fertilizing, irrigating and cultivating, as well as harvesting. Crops grown and harvested by Yurosek in this area are: Carrots, onions, rutabagas, turnips and parsnips.

Saugus <sup>5/</sup> As in the Bakersfield-Lament area, Yurosek engages in total fanning operations in this area, including land preparation, planting, fertilizing, irrigating, cultivating and harvesting. The crops grown and harvested by Yurosek are:

Carrots, turnips and parsnips.

Cuyama. <sup>6/</sup> Yurosek engages in land preparation, planting, fertilizing, irrigating, cultivating and harvesting in this area. The crops grown and harvested by Yurosek are: Carrots, broccoli, rutabagas and turnips.

Santa Maria. Yurosek does not grow crops in Santa Maria-Yurosek only engages in the harvesting of broccoli and turnips in this area.

#### HARVEST SEASONS <sup>7/</sup>

##### El Centro

1. Carrots: Mid-January to the end of May.
2. Broccoli: Early December to the middle of February.
3. Rutabagas: Mid-January to the end of March.
4. Turnips: Early December to the end of March.
5. Parsnips: February to early March.

---

<sup>5/</sup>Saugus is located at the north end of the San Fernando Valley.

<sup>6/</sup> Cuyama is located about mid-way between Bakersfield and Santa Maria.

<sup>7/</sup> Unless otherwise specified the periods referred to are for the 1976-1977 harvest seasons.

## Bakersfield-Lament

1. Carrots (two seasons) :
  - (a) Spring crop is planted from November to January and harvested from June to August.
  - (b) Fall crop is planted in July and harvested from November through mid-January.
2. Onions (two crops):
  - (a) Direct seeded onions are planted in January and harvested in July.
  - (b) Transplanted onions are planted in early December and harvested in late June.
3. Rutabagas (two seasons):
  - (a) Spring crop is planted in January and harvested from April to May.
  - (b) Fall crop is planted in July and harvested from October to December.
4. Turnips (two seasons):
  - (a) Spring crop is planted in January and February and harvested from April to May.
  - (b) Fall crop is planted in July and harvested from October to December.
5. Parsnips (two seasons):
  - (a) Spring crop is planted in December and harvested in July and August.
  - (b) Fall crop is planted in June and July and harvested in December and January.

## Saugus

1. Carrots; Planted in February and March and harvested from August to December.
2. Turnips (two seasons):
  - (a) Spring crop is planted in December and harvested in March and April.
  - (b) Fall crop is planted in August for harvest from November to January.
3. Parsnips: Planted in February and March and harvested from November to January.

Cuyama

1. Carrots: Planted in April and harvested from September to November.
2. Broccoli: Planted in July and harvested in October. (Planted for the first time this year).
3. Rutabagas: Planted in June and July and harvested in October and November.
4. Turnips: Planted in May and harvested in September and October.

Santa Maria <sup>8/</sup>

1. Broccoli (two seasons):
  - (a) Harvested from March to June.
  - (b) Harvested from September to December.
2. Turnips: Harvested from June to August.

SOIL CHARACTERISTICS

Mr. Britton described the soil conditions and characteristics of the areas in which Yurosek and Son has operations in the following terms:

El Centro. Adobe, clay, heavy soil,

Bakersfield-Lamont. Soft, light, sandy soil.

Saugus. The same as in the Bakarsfield-Lamont area.

Cuyama. Light, sandy soil.

Santa Maria. Very light soils. Light, "Santa Maria loam."

CLIMATIC CONDITIONS

Mr. Britton described the climate -of each area in the following terms:

El Centro. Extremely high temperatures- during the summer.

8/ labor contractor is employed by Yurosek & Son for the harvest of crops in the santa Maria area.

A wide range of winter temperatures, varying from 20° in the morning to 80° in the afternoon. No fog.

Precipitation: Very dry.

Winds: High winds in March and April.

Bakersfield-Lament, Heavy dampness and fog in the winter, with wet mornings and cold days. Not such a wide range of temperatures.

Saugus. Temperatures similar to those in the Bakersfield area. Morning fogs, heavy dews, and wet conditions during the winter.

High, hot winds during the summer.

Guyama. Cool days and evenings during the winter, with daytime temperatures in the 80's and nighttime temperatures in the 40's to 50<sup>r</sup>'s. Heavy dews and fog during the winter.

Santa Maria. Ocean breezes. Some early morning fog.

#### ELEVATION

El Cantro: Sea level and below.

Bakersfield-Lamont: 300 feet

Saugus: 1,300-2,000 feet.

Guyama: 2,100-2,200 feet.

Santa Maria: 150-175 feet

#### WATER AND IRRIGATION

EI Centro. There is an ample, readily available water supply in the Imperial Valley. Cost per acre foot -about \$18.00. The land in this area is sprinkler and furrow irrigated.

Bakersfield-Lament. Ample water, but not in abundance. Cost per acre foot - \$50.00 to \$75.00 per acre. The land in this area is almost 100% sprinkler irrigated.

Saugus. Ample water supply at a cost of about \$50.00 to \$75.00 or more. The land in this area is sprinkler irrigated.

Cuyama. Critical shortage of water. Cost per acre foot - \$75.00 or more. The land in this area is sprinkler irrigated.

Santa Maria. Plentiful water supply. Cost per acre foot - \$50.00 to \$60.00, The land in this area is sprinkler and furrow irrigated.

## EMPLOYMENT PATTERNS <sup>9/</sup>

Mr. Britton testified that peak employment in El Centro for Yurosek & Son occurs from January to the first week in February. Approximately 103 to 105 employees work during the peak employment period. This number declines to about 65 employees from mid-February to the end of March. From March to the end of harvesting in May, the number drops to 25 or 20 employees.

In the Bakersfield-Lamont area Yurosek's peak employment occurs from July 10 to the first week in August. During this period Yurosek employs about 200 people. This compares to 10 employees in January, 30 employees in March, and about 115 to 125 employees during the months of September and October of this year.

Peak employment in Saugus occurs during the months of September and October. Approximately 60 employees work for Yurosek in the Saugus area during this period. During the months of January and February Yurosek employs two persons in this area.

September and October are also the peak employment months for Yurosek in the Cuyama area. About 90 persons are employed. During the months of December (1976) and January (1977) Yurosek employs only one person in Cuyama. This number increases to 3 during February and-March, and 13 to 22 during the months of July.

In the Santa Maria area Yurosek engages a labor contractor for the spring and fall harvest seasons. During the spring harvest (from March to June) 25 persons are employed. During the fall harvest (September to December) 25 persons are again employed by Yurosek through a labor contractor.

---

<sup>9/</sup>The following periods refer to the 1977 harvest year.

## LABOR SUPPLY

Mr. Britton described the supply of labor in El Centro as "plentiful." Labor is obtained in this area by means of personal contact recruitment at the Calexico border crossing. The company foremen go down to the "bullpen," where workers congregate, and obtain crews at the beginning of the harvest season. The foremen then establish "pick-up points" in the Calexico area where company buses pick up the workers each day. All hiring for Yurosek & Son in this area is performed in this manner. Mr. Britton plays no role in the hiring of employees in this area the job of recruitment is left to the company foremen.

Mr. Britton testified that agricultural labor in the Bakersfield Lamont area is "extremely scarce." The means by which labor is obtained by Yurosek in this area is, according to Britton, by word of mouth, through radio advertising and through the farm labor office." <sup>10/</sup> Mr. Britton plays an active role in the recruitment of workers in this area by placing radio advertisements and by talking to labor contractors and recruiters at the farm labor office.

Mr. Britton described the labor supply in Saugus and Cuyama as "scarce," and "hard to come by," as in Bakersfield. In terms of labor procurement, Britton plays the same active role in these areas as he does in the Bakersfield-Lamont area.

The labor supply in Santa Maria was described by Britton as "ample." As previously mentioned, Yurosek obtains its workers through a labor contractor in this area.

---

10/ Presumably, he is referring to the State Employment Development Department.



## WAGES AND ADVANCES

Wages for agricultural employees in the El Centre area are determined by Frank Britton. Bunch carrot harvesters are paid at the rate of \$.27 per bunch. Non-harvest field labor is paid \$3.05 per hour. Tractor drivers are paid \$4.00 per hour. Truck drivers are paid \$25.00 per day. Britton testified that the company policy regarding advances on wages in El Centre is that they are issued on a daily basis.

Wages for agricultural workers in the Bakersfield-Lament, Saugus, and Cuyama areas are determined by Dave Yurosek, Executive Vice-President of Mike Yurosek & Son. Bunch carrot harvesters are paid at the rate of \$.30 per bunch. Non-harvest field labor is paid \$2.75 per hour. Tractor drivers are paid \$3.50 per hour. Truck drivers are paid \$3.67-1/2 per hour. The company's policy regarding advances on wages in these areas is that they are not issued.

## PLACEMENT AND TRANSFER OF COMPANY FOREMEN

Mike Yurosek & Son employs eight foremen to supervise its agricultural employees. The foremen are: (1) Stanley Espinosa, (2) John Cuereno, (3) Brigedo Rios, (4) Francisco Gonzales, (5) Ruben Saldana, (6) Humberto Soto, (7) Vincente Navarro, (8) Elinor Bojorquez.

<sup>11/</sup> Stanley Espinosa performs his duties in Bakersfield.

John Cuereno works only in Bakersfield. Brigedo Rios works in Santa Maria. Francisco Gonzales works in Cuyama. Ruben Saldana works in Bakersfield. Humberto Soto works in El Centre and in Bakersfield. Vincente Navarro also works in El Centre and Bakersfield, Elinor Bojorquez works in Saugus.

---

<sup>11/</sup>The spelling of some of these names is uncertain.

Mr. Britton testified that except for Humberto Scto and Vicente Navarro field foremen do not travel from Bakersfield to El Centre or El Centro to Bakersfield to perform their duties.

#### LABOR RELATIONS DECISIONS

In El Centro decisions regarding labor relations are made by Frank Britton. Crew foremen discuss employee discharge decisions with Mr. Britton. However, Frank Britton ultimately decides whether employees in the El Centro area will be discharged, laid-off or promoted. It is also Frank Britton who determines which fields will be worked and how many persons -will work them.

In the Bakersfield-Lament, Saugus and Cuyama areas labor relations decisions are generally made by Dave Yurosek. Decisions regarding the discharge and layoff of employees are made by the crew foremen in consultation with Dave Yurosek. Decisions regarding promotions are generally made by Dave Yurosek. Dave Yurosek also determines which fields will be worked and how many persons will work them. In Dave's absence, Frank Britton makes these decisions.

In the Santa Maria area discharge and layoff decisions are made, in consultation with the labor contractor, by Frank Britton, who also determines which fields will be worked and how many persons will work them.

#### SENIORITY LISTS

When it comes to the layoff of agricultural employees of Yurosek, Britton testified that people with the greatest seniority are the last to be laid-off. Thus, seniority is a factor in the layoff of employees in 21 Centre as well as in the Bakersfield-Lamont area. Britton also testified that there is no single company-wide seniority list. El Centro has its seniority list. Bakersfield,

which includes Saugus and Cuyama, has its own seniority list.

#### HOURS OF WORK

According to Frank Britton, employer's El Centro harvesting employees work approximately six hours per day.

Yurosek employees in Bakersfield-Lamont work eight or nine, and sometimes ten hours per day, during the growing and harvesting seasons.

Saugus and Cuyama employees also work eight to ten hours per day during the growing and harvesting seasons.

Employees in Santa Maria work about six or seven hours per day during the harvest seasons.

#### PREPARATION AND DISTRIBUTION OF PAYCHECKS

Yurosek's agricultural employees in El Centro receive their paychecks the same week in which they work. Checks are issued on Friday each week from Yurosek's Holtville office. These checks are signed by office manager Doris Hess and by Frank Britton. Mrs. Hess is the only clerical employee in the Holtville office. She performs work only in the Holtville office. Yurosek maintains a bank account in the El Centro area.

Yurosek's agricultural employees in Bakersfield-Lamont, Saugus and Cuyama receive their paychecks on Friday, one week after the week in which they worked (i.e., seven days later). Paychecks for these employees are prepared by a Los Angeles computer check company. The checks are distributed to the employees from Yurosek's Bakersfield-Lamont business office. Yurosek maintains a bank account-in the Bakersfield area.

## HOUSING AND TRANSPORTATION

Mr. Britton testified that Yurosek has never furnished housing for its agricultural employees in El Centre, but that the company does provide housing or lodging to its employees in Bakersfield, Saugus and Cuyama.

In El Centre, Yurosek provides labor bus transportation for its employees. Bus transportation is furnished by the company to workers from pick up points in Calexico and the border to the fields. Approximately 85 to 90% of Yurosek's employees in the El Centre area use this transportation.

In Bakersfield, transportation has not been provided to Yurosek's employees, with one exception. This year, one bus for the 45 member turnip crew was provided with transportation from the Lament packing shed to the fields. <sup>12/</sup>

Transportation is not provided to Yurosek employees in Saugus or Cuyama,

## TRANSFER OF EMPLOYEES

In response to the question regarding the company's employee transfer policy, Frank Britton simply testified that the company does not transfer employees from one area to another.

## CROP/EMPLOYEE PERCENTAGES

In El Centro about 50% of Yurosek's employees work in the turnip and rutabaga harvest. About 30-35% of the workers harvest broccoli. From 15 to 20% of the workers harvest carrots and parsnips.

---

<sup>12/</sup>The turnip crew constituted 40% of the workforce at that time.

In Bakersfield about 50% of Yurosek's employees work in the onion harvest. About 25% of the workers harvest turnips and rutabagas. About 20 to 25% of the workers harvest carrots and parsnips.

In Saugus approximately 50% of Yurosek's employees work in the turnip harvest. The other 50% work in the carrot and parsnip harvest.

In Cuyama Yurosek's largest crops are turnips and rutabagas. About 50% of Yurosek's employees harvest those crops. About 25% of its employees harvest carrots. The remaining 25% harvest broccoli.

In Santa Maria all employees are engaged in the harvest of broccoli. This same crew also performs the turnip harvest.

2. Under Cross-Examination Frank Britton Gave the Following  
Testimony;

COMPANY OFFICES

The main office of Yurosek and Son is located in Lamont. The management personnel working out of that office include Mr. Frank Britton, the eight company foremen, and Dave and Mike Yurosek. The company's main clerical and bookkeeping staff are located in the Lamont office. The Holtville and Lamont offices are Yurosek's only offices. The Holtville office is open only during the harvest months for Yurosek in the Imperial Valley -November through May.

BUSINESS AFFAIRS

Mr. Britton testified that Yurosek leases the land which it harvests. He explained that Yurosek invests in the crops which it harvests, thereby obtaining an interest in the crops - in some

cases a half interest. Land leasing decisions are made by Dave Yurosek for all areas in which Yurosek and Son has operations, Dave Yurosek makes the investment decisions and decides what crops will be planted on the land leased in all areas.

Marketing decisions and crop sales for all of Yurosek's crops are made in the Lament business office.

Mr. Britton testified that Yurosek's crops are marketed under different brand labels. One of them is "Bunny Love,"<sup>11</sup> a carrot label under which onions/ broccoli and parsnips are sold. The "Bunny Love" label is used statewide. Two other labels used by the company are also used on a statewide basis.

#### COMPANY FOREMEN

On the subject of foremen payroll, Mr. Britton testified that, with the exception of the period when two foremen are on the Holtville payroll, all eight foremen are paid out of the Lamont payroll. "They stay," he added, "in their areas." Mr. Britton has the power to hire and fire foremen in the Imperial Valley, but if Dave Yurosek disagreed he could overrule Britton.

Mr. Britton testified that Dave Yurosek oversees the company's operations in the Imperial Valley, through periodic visits during the harvest season, Mr. Yurosek visits the Imperial Valley operations on an average of once a week for two days each week.

There are no middle level supervisors between Mr. Britton and the foremen in the Imperial Valley. When Britton is in the Bakersfield area he becomes the middleman between the foremen and Dave Yurosek. However, there is no one between the foremen and Mr. Britton.

### CROP HARVESTING SKILL

Mr. Britton testified as to the skill required to harvest the various crops from area to area. Dampness is a factor in the sorting of turnips and bunch carrots in the Bakersfield and Cuyama areas. Mold, due to wet conditions, is present on the surface of these crops. Thus, they have to be sorted out, and the people sorting have to watch closely in the process. This is not a problem in the Imperial Valley. Nor is broccoli harvesting the same in each area. In the Imperial Valley ideal winter time growing and harvesting conditions prevail for broccoli. According to Britton, dampness and mildew do not have to be contended with in the Imperial Valley, as in the northern areas.

The difference between crop harvesting in the Imperial Valley and the northern areas, testified Britton, is that in the northern areas workers must be more alert, and have a better knowledge of the crop being harvested. This applies to all crops except onions, which are not grown in the El Centre area.

### EQUIPMENT TRANSFER

Mr. Britton testified at length about the kinds of equipment used by Yurosek in harvesting crops and how the equipment operates. Harvesting machines, tractor lifts and trucks are used in the harvest of carrots and parsnips. This equipment is transferred from area to area for harvesting use. The broccoli harvesting equipment, including tractors, trailers, bins, knives, pants, jackets and boots, is also transferred for use in other areas. Pruning shears, buckets, scales, and the like, are used in the harvesting of turnips and rutabagas. They,

too, are transferred from one area to another. <sup>13/</sup>

#### HOUSING AND TRANSPORTATION

Britton was asked why Yurosek provides its northern area employees with housing but not its Imperial Valley employees. Mr. Britton explained that, almost without exception, companies in the Imperial Valley do not provide housing to harvest employees because many live in Mexicali. That is why Yurosek does not supply housing, he said.

Mr. Britton also testified that Yurosek employees in the Imperial Valley are provided transportation because such is the common practice in that area. Whereas, in the Bakersfield area, few employers provide their workers transportation.

#### WAGES

Mr. Britton was asked why wages paid to workers in the Imperial Valley are different than elsewhere. He responded by saying that wages paid by Yurosek to its Imperial Valley employees reflect the area average. Britton further testified that paychecks are prepared locally and issued weekly because that is the common practice in the area. With respect to setting wages for employees in the Imperial Valley, Britton testified that he did so in consultation with Dave Yurosek - that it was not an independent decision on his part.

#### TRANSFER OF EMPLOYEES

Mr. Britton was asked whether, in fact, some employees work in more than one area for Yurosek. He answered, "There are a few that come up voluntarily from the Imperial Valley to this area

---

13/ Onion harvesting equipment is not transferred because the crop is grown only in the Bakersfield area.



(Bakersfield)." He could not estimate how many.

3. On Redirect Examination Britton Gave the Following Testimony:

Yurosek farms approximately 4,000 acres in the Bakersfield area (including Saugus, Cuyama and Santa Maria). In the El Centro area Yurosek farms about 1,500 acres.

Yurosek leases land in the Bakersfield area, but not in the El Centro area.

By a ratio of five to one, more man hours are worked in the Bakersfield area than in the El Centro area.

4. Testimony of Mike Yurosek

Mike Yurosek, President of Mike Yurosek and Son, briefly testified about the company's packing shed elections. He testified that the National Labor Relations Board had conducted elections at the company's two packing sheds. The elections were conducted separately - one at the Bakersfield shed two years ago, and the other-at the El Centro shed one year ago.

5. Ballot Segregation 14/

Balloting in the Yurosek election took place in El Centro and in Lament. Board agent Valdez generally supervised the statewide election from El Centro. Other Board agents conducted the election at the Lamont polling site.

14/Counsel for the employer objected to the line of questioning regarding segregation of the Lamont ballots from the Imperial -Valley ballots. Employer argued that the questions were irrelevant and that the Board cannot certify a unit other than that for which the election was conducted. In this case the election was conducted on a statewide basis. However, in order to obtain a full and complete record on the issue for a recommended decision to the Board, the objection was overruled. Whether the Board should certify only the Imperial Valley unit when the election was conducted on a statewide basis will be discussed under "Analysis and Conclusions."

Mr. Valdez testified that all ballots cast outside the Imperial Valley (El Centro) were challenged by Board agents. Although he could not testify to this based upon personal knowledge, he said that the challenged ballot records would reflect the same.<sup>15/</sup>

The Tally of Ballots indicates that 35 ballots were challenged in the Yurosek election. <sup>16/</sup> Examination of the challenge ballot records reveals that there are two challenge lists - one for the Lamont area, and one for the SI Centro area. The Lamont list contains 14 names, all of which were challenged by Board agents. The reason given for each of these challenges is, "not on the list." The El Centro challenge list contains 21 names - some of which were challenged by the UFW. The two lists added together equal the 35 challenges indicated on the Tally of Ballots.

As a result of the challenge ballot procedure followed in this case/ none of the Lamont area ballots (14 in number) have been counted, since all were challenged, but, in addition to the El Centro challenges, were insufficient in number to affect the results of the election. The Lamont ballots and the El Centro challenged ballots have thus remained segregated from what amounts to an El Centro (or Imperial Valley) Tally of Ballots.

---

15/Employer moved for production of the Board's challenged ballot records. These include: (1) the list of eligible voters; (2) the lists of challenged ballots; and (3) the declarations of the challenged voters. The motion was granted with the stipulation from the parties that these documents remain sealed and available for inspection only to this hearing officer and the Board. This was done in accordance with the procedure followed by the Board in Napa Valley Vineyards, 3 ALRB No. 22 (1977), footnote No. 6. This procedure is intended to protect the confidentiality of the documents. The documents were marked and admitted as Employer's Exhibit No. 1.

16/ Since this number could not affect the outcome of the election they were not resolved, and thus were not counted.

### III. ANALYSIS AND CONCLUSIONS

#### A. PEAK EMPLOYMENT

For the reason set forth under II., A. , I recommend that this objection be dismissed.

#### B. BOARD AGENT STATEMENTS

At the Yurosek pre-election conference, the Beard agent in charge stated that because employer had threatened members of the broccoli crew there would be an off-site polling place. One off-sits polling place and two on-site polling places were in fact designated. At the time the Board agent made the statement five unfair labor practice charges had been filed by the UFW against Yurosek & Son. However, a complaint against employer, based upon those charges, has never been issued.

The evidence adduced at the hearing clearly establishes that the statement was made. However, it was not established that, the statement in question was translated to the non-English speaking employees in the audience. No employee eligible to vote testified that he/she heard and understood the Board agent's statement. It is my finding that the statement was not translated.

However, since the statement was made it can be assumed that some people attending the pre-election conference heard and understood it. Thus, whether the statement was translated is not a crucial question. The issue is whether the Board agent's statement alone constitutes sufficient grounds to set aside the election.

In its post-hearing brief employer contends that the Board agent's statement had the effect of making the Board a partisan against the employer in the election. The election should be set aside, argues employer, because the Board agent's statement

eviated from the standards of impartiality and neutrality required of Board agents in conducting elections, as established by the National Labor Relations Board in cases such as NLRB v. Athbro Precision Engineering Corp.,<sup>17/</sup> Glacier Packing Co.,<sup>18/</sup> and Dubie Clark Co.

In Athbro Precision the NLRB set aside an election because of conduct on the part of the Board agent in charge of the selection which could be construed as partial. Subsequent to the completion of the first of a "split-session" election, an employee, who had already voted, observed the Board agent drinking beer with one of the union's representatives in a nearby cafe. The Board set aside the election even though the employer had neither alleged that the conduct violated the integrity of the ballot box, nor that the conduct influenced the ballots cast in the second session. The Board stated:

The commission of an act by a Board agent conducting an election which tends to destroy confidence in the Board's election process/ or which could reasonably be interpreted as impugning the election standards we seek to maintain, is a sufficient basis for setting aside that election.  
<sup>20/</sup>

In Dubie-Clark Co., the petitioning union prior to the election filed an unfair labor practice charge which was settled informally by means of an agreement containing a nonadmission clause. In a leaflet sent to employees just three days prior to the election, the union stated that the NLRB had found that the employer had violated

---

<sup>17/</sup> LRRM 2355, 423 F. 2d 573 (1st Cir. 1970)

<sup>18/</sup> 210 NLRB 571 (1974), 36 LRRM 1173,

<sup>19/</sup> 209 NLRB 217 (1974), 35 LRRM 1322,

<sup>20/</sup> 65 LRHM at 1699.

their rights under the law. The Board found this statement inaccurate and misleading. The Board cited previous cases which looked with disfavor upon attempts to misuse its processes to secure partisan advantage, and concluded that such efforts are grounds for setting aside elections. Consequently, the Board set aside the Dubie-Clark election.

In Glacier Packing Co. Board agent conduct and the requirement of neutrality were again in issue. In that case the Board agent in charge of the election was accused of having forcefully ripped "VOTE NEITHER" signs from employer's two election observers, in the presence of voters, and of having loudly admonished employer's personnel director that he had no right to hand out literature 200 feet from the polls. The Board set aside the election reasoning that employees witnessing the incidents could reasonably have interpreted the agent's actions and remarks as indicative that the Board was opposed to employer's position in the election. The Board stated that Board agents must take care that their actions do not tend to foster in the minds of the voters the impression that the Board is not neutral with regard to the choices on the ballot.

It is clear that in promulgating a standard of conduct to be followed by Board agents running elections, the NLR3 in Athbro was concerned with conduct which could be construed as partial by an independent observer. The Board's test does not look to whether the Board agent conduct influenced voters in casting their ballots., Rather, the issue was whether the Board agent's conduct in fraternizing with a party in between a split election tended to destroy confidence in the Board's election process. Without question, the Board agent conducting the Athbro election exceeded the bounds of neutrality by

drinking beer with one of the union's representatives in a nearby cafe during the hiatus in balloting. However, in the Yurosek election, the Board agent engaged in no fraternizing or other similar conduct which would bring into question his impartiality in conducting the election. Thus, on its facts Athbro is distinguishable from this case. Clearly, the Board agent in Yurosek was in error in ascribing to employer threats which had not been proven. However, such conduct does not tend to destroy confidence in the Board's election process, as would drinking beer with a union representative on election day. For these reasons the NLRB's Athbro standard was not violated in this case.

The NLRB's Dubie-Clark and Galcier Packing decisions are also inapposite. Dubie-Clark pertained to conduct by a party (the union) which constituted a substantial misrepresentation of Board processes in order for the party to obtain a partisan advantage. This case concerns an erroneous statement by a Board agent, made under pre-election conference pressures and not for partisan advantage, Glacier Packing is distinguishable from this case insofar as it relates to physical and verbal abuse of employer's election observers and personnel director by a Board agent at the election and in the presence of voters. The gravity of harm to the employer engendered by such acts, and the impressions fostered in the minds of voters therefrom, are well beyond that which could reasonably have occurred in this case.

In my judgment the statement complained of here does not constitute a substantial deviation from the standards of impartiality and neutrality required of Board agents by the NLRB.

The principle ALRB decision to date considering

allegations of Board agent conduct prejudicial to employer is Coachella Growers, Inc., 2 ALRB No. 17 (1976). In that case employer objected that the Board agent who conducted the preelection conference and the election was not fair and impartial, and engaged in conduct which was prejudicial to the employer and biased in favor of the union. The basis of the objection was that: (1) the Board agent refused to sit at the head of the table at the preelection conference; (2) the Board agent refused to answer questions or give assurance that the authorization cards showed that a bona fide question of representation existed; (3) the Board agent attempted to set up two voting polls, which employer contended might have permitted employees to vote twice; (4) the Board agent permitted an assistant to use preliminary voting information of the election for the benefit of the union.

In Coachella the Board agreed with the employer's premise that, "Board agents should not only be free of bias but should refrain from any conduct that would give rise to the impression of bias." <sup>21/</sup> However, the Board did not regard the facts alleged as constituting evidence of bias or the appearance of bias. "Moreover," said the Board, "to constitute grounds for setting an election aside, bias or the appearance of bias must be shown to have affected the conduct of the election itself, and have impaired the balloting's validity as a measure of employee choice." <sup>22/</sup>

Thus, under Coachella the questions to ask are whether the Board agent's remark can be construed as biased, and if so,

<sup>21/</sup> ALRB No. 17 (1976), page 5.

<sup>22/</sup> Ibid.

whether the bias was shown to have affected the conduct of the election itself, and have impaired the balloting's validity as a measure of employee choice.

The Board agent's conduct in this case must be examined in its proper context. Without question, the Board agent should have used the qualifying word "alleged" in reference to any threats which may have occurred. The failure to do so was an admitted mistake. However, in my judgment the improper statement does not, by itself, demonstrate partiality to the union, nor did it substantially prejudice the employer since it was made at the pre-election conference and only in relation to the selection of polling sites, and sites on as well as off company property were in fact selected by the Board agent. If all polling sites had been designated off company property, then such action in conjunction with the statement could reasonably have been construed as a finding by the Board that employer had threatened workers. However, polling sites on and off company property were designated by the Board agent. That decision in addition to the apology and correction, would have minimized any appearance of Board agent bias or prejudice to employer arising from the statement alone. There was no evidence showing that the Board agent's statement was other than isolated and inadvertent. Moreover, the Board stated in Coachella, to constitute grounds for setting aside an election bias or the appearance of bias must have been shown to have affected the conduct of the election itself, and to have impaired the balloting's validity as a measure of employee choice. The evidence does not support the conclusion that the election was improperly or unfairly conducted by the Board agent.



In selecting an off-site as well as on-site polling places the Board agent exercised reasonable discretion and judgment, bearing in mind the interest of the voters, with no prejudice to employer. Nor does the evidence lead me to conclude that the Board agent's statement infringed upon the exercise of free choice by the voters. Accordingly, I find that the Board agent's statement at the preelection conference that because employer had threatened members of the broccoli crew there would be an off-site polling place, does not constitute, under Coachella or under NLR cases, sufficient grounds to set aside this election.

### C. BARGAINING UNIT

The policy of the Agricultural Labor Relations Act with respect to bargaining units is set forth in Labor Code §1156.2;

"The bargaining unit shall be all the agricultural employees of an employer. If the agricultural employees of the employer are employed in two or more non-contiguous geographical areas, the Board shall determine the appropriate unit or units of agricultural employees in which a secret, ballot election shall be conducted."

The UFW petitioned for a single bargaining unit of all of Yurosek's agricultural employees in the State of California. The issue is whether the statewide unit in which the election was conducted is an appropriate unit.

In Bruce Church, Inc., 2 ALR3 No. 33 (1976), the Board announced seven general criteria to be used in determining whether an area or statewide bargaining unit is appropriate. They are:

- (1) the physical or geographical location of the locations in relation to each other;
- (2) the extent to which administration is centralized, particularly with regard to labor relations;
- (3) the extent to which employees at different locations share common supervision;
- (4) the extent of interchange among employees from location

to location; (5) the nature of the work performed at the various locations and the similarity or dissimilarity of the skills involved; (6) similarity in wages, working hours, and other terms and conditions of employment; (7) the pattern or bargaining history among employees. (At Page 5).

Based upon an application of these criteria to the facts in Bruce Church, the Board concluded that a statewide unit of all agricultural employees of the employer was appropriate for purposes of collective bargaining. <sup>23/</sup>

What does application of the Bruce Church criteria to the facts of this case establish?

1. Geographical Location

The employer's farming operations in California are located in five geographical areas: El Centro, Bakersfield, Saugus, Cuyama, and Santa Maria. In relation to El Centro employer's operations in Bakersfield, Saugus, Cuyama, and Santa Maria are in the northern part of California. It is undisputed that employer's operations in the El Centro area are in a separate definable agricultural production area in relation to its northern area operations. <sup>24/</sup>

Geographically, El Centro, which is in the Imperial Valley, is a considerable distance from Bakersfield, which is in the San Joaquin Valley and is the center of employer's northern area operations. Saugus, Cuyama, and Santa Maria are much closer to Bakersfield. These northern areas, therefore, possess similar

---

23/ Thus, the three separate elections held pursuant to the petitions filed in Bruce Church were set aside.

24/ whether employer's northern California operations are in a "single definable agricultural production area," as the phrase is used in Egger & Ghio Co., 1 ALRB No. 17 (1975), is not in issue

characteristics in terms of labor supply, water supply, climatic and other growing conditions. Thus, in geographical terms the division in employer's statewide operations is between El Centre and the northern areas.

## 2. Centralization of Administration

Employer's central office is located in Lament. Management personnel and primary clerical and bookkeeping staff work out of this office. Dave Yurosek works out of this office, and it is he who determines the number of acres to be devoted to individual crops in all areas and makes the company's land leasing and investment decisions. Crop sales and marketing decisions are made in the Lament business office.

Accounting, payroll, and record keeping functions are centralized for the four northern operations in the Lament office. The El Centre operations are not part of this administration. A separate administrative office, with a different payroll schedule, records, and staff is maintained in Holtville for the El Centre area operations.

Frank Britton is vested with control of labor relations decisions in the El Centre area. Whereas, Dave Yurosek is in charge for the northern operations. Although Dave Yurosek oversees the company's operations in the El Centre area, it is Frank Britton who, through his foremen, is responsible for the hiring and firing of employees. Britton also determines the wages to be paid to employees, which employees will work and how many will work. In the northern areas, Dave Yurosek makes these decisions. Although Britton may assume some of these responsibilities in Yurosek's absence, Britton's authority in the northern area is subordinate to Yurosek's on these

matters. Thus, labor relations decisions for the company are divided between Frank Britton for El Centro and Dave Yurosek for the northern areas.

### 3. Common Supervision

In Bruce Church, the Board found a high degree of mobility from area to area among supervisory personnel. Such is not the case here. Yurosek employs eight foremen. Only two of these foreman have worked in both SI Centro and Bakersfield. The other six foremen work only in their assigned areas. Supervisor Frank Britton exercises supervision of employees in the El Centro area, even though Dave Yurosek visits weekly to oversee the company's operations. In the northern areas, Dave Yurosek exercises supervision of employees.

### 4. Extent of Interchange of Employees <sup>25/</sup>

In Bruce Church the Board found a significant transfer of employees from one location of the employer to another - with many workers following the cyclical nature of the season so that they could always work. Evidence of such a pattern is notably absent here. Except for a few workers who voluntarily move up from the

---

25/ In its post-hearing brief the UFW asserts that the rule of adverse inference, "by which the trier of fact may infer from a party's failure to produce evidence within its power to produce that the evidence would be unfavorable," is applicable here. Because employer presented no substantial evidence on the question of employee interchange, the UFW argues that it must be assumed that the evidence would have disclosed a high rate of employee interchange among the different locations. I disagree. Witness Frank Britton unequivocally testified that the company did not transfer employees from one area to another. Evidence to the contrary was not elicited on cross-examination, nor at any other time. There is nothing to indicate that employer sought to hide unfavorable evidence. I find the witness' testimony honest and credible on this point. Under these circumstances the rule of adverse inference cannot properly be applied.

Imperial Valley to Bakersfield, the transfer of employees from one area to another does not take place with this employer. It is the employer's policy not to transfer employees.

5. Nature of the Work Performed at the Various Locations

The record in this case is replete with differences between employer's El Centro operations and its operations in the northern areas. In El Centro only harvesting is performed by the employer, so that employees work only in the harvesting of crops. In the areas of Bakersfield, Saugus, and Guyana, employer engages in a full range of farming activities - including land preparation, planting, fertilizing, irrigating, cultivating and harvesting. Because of climatic differences and planting schedules, these operations are conducted at different times of the year. And due to the presence of colder and wetter weather, greater care and skill is required of workers harvesting the crops in the northern areas than in the warmer and dryer El Centro area. Thus, significant differences appear in this case that were not present in Bruce Church.

6. Wages, Hours, and Other Terms and Conditions of Employment

In Bruce Church there existed a series of collective bargaining agreements on a company-wide basis. Those agreements, said the Board,

"...provided uniformity of wages and working conditions throughout the company's operations. The wages paid for each classification are identical, and there is a uniform health insurance program, pension program, company-wide seniority system, health and safety policy, leave of absence policy, vacation plan, overtime policy, and grievance procedure." (At Page 8).

In the instant case conditions of employment in the SI Centro area differ significantly from conditions in the northern areas. Rather than uniformity, there are considerable differences between the wages, pay schedules, hours, benefits, and other working conditions of employees in El Centro and northern areas. The record shows that wages paid to carrot harvesters, non-harvest field workers, tractor and truck drivers in the northern areas are different than in El Centro. In El Centro workers are paid currently whereas workers in the northern areas are paid a week after the period in which they worked. Advances on wages are issued to workers in the El Centro area, but not in the northern areas. In the El Centro area employees work six hours per day whereas they work eight or more hours per day in the northern areas. In the El Centro area employer furnishes transportation but not: housing to its employees, whereas in the northern areas employer furnishes housing to employees but not transportation. Furthermore, employer maintains separate seniority lists for El Centro and northern area employees.

#### 7. Bargaining History

In this case there is no collective bargaining history on a company-wide basis, as there was in Bruca Church.

#### CONCLUSION

The similar and uniform factors so prevalent in the Bruce Church case are, in almost every important respect, absent in this case. Only under the criterion of centralized administration can the statewide operations of Yurosek be likened to those in Bruce Church. In terms of the other six criteria applied in Bruce Church, substantial differences exist between Yurosek's

El Centro and northern area operations. To these differences can be added differences in climate, availability and cost of water, availability and recruitment of labor, and differences in periods of peak employment. The scope of the differences between these noncontiguous geographical areas militates against finding a statewide unit appropriate. Thus, I conclude that a statewide unit of all agricultural employees of Yurosek and Sons is not an appropriate unit for purposes of collective bargaining.

Even though this election was conducted on a statewide basis I do not recommend that the election be set aside.

Because of the balloting procedure followed in this case it is possible for the Board to certify the results of the election conducted for the El Centro area employees. The evidence demonstrates that a statewide bargaining unit is inappropriate for this employer. Separate units for employer's HI Centro and northern area-employees would be appropriate. The balloting procedure followed in this case allowed for this possibility - through voter challenge and ballot segregation. As previously discussed, all ballots in the northern area (Lament polling site) were challenged. That number is insufficient to affect the results of the election.<sup>26/</sup> Those ballots have remained segregated and have not been counted. Consequently, the current tally of ballots represents the results of the election only for the El Centro area.

---

26/ Since employer's peak employment period occurs in July and August for the Bakersfield-Lament area, and this election took place in January, the voter turnout at the Lament polling site was extremely low.

It was undisputed that employer was at its peak agricultural employment in the El Centro area when this election was conducted. There is no reason to suspect that those employees would have voted differently had the representation election been conducted on the basis of separate units rather than a statewide unit. The El Centro tally of ballots clearly expresses the desire of those employees. Under the circumstances it would be unfair to the employees and a waste of Board resources to set aside the entire election and conduct a new and separate election for the El Centro area.

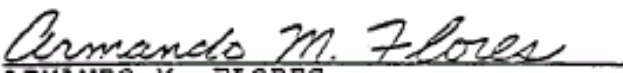
For all of the above reasons the El Centro area, specifically the Imperial Valley, election results should be certified.

#### IV. 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 agricultural employees of the employer in the Imperial Valley.

DATED: January 6, 1978

Respectfully submitted,



ARMANDO M. FLORES

Investigative Hearing Examiner