

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SUNNYS IDE NURSERIES, INC.,)
 Employer,) Case No. 75-RC-184-M
)
 and)
) 4 ALRB No. 88
 UNITED FARM WORKERS)
 OF AMERICA, AFL-CIO,)
)
 Petitioner.)
 _____)

DECISION AND
CERTIFICATION OF REPRESENTATIVE

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW), on October 8, 1975, a secret-ballot election was conducted on October 15, 1975, among the agricultural employees of the Employer at its Salinas nursery. The official amended tally of ballots^{1/} showed the following results :

UFW	89
No Union	80
Challenged Ballots	8
Void Ballots	1
Total	178

//////////

//////////

^{1/}The original tally of ballots showed 14 challenged ballots, six of which were sustained in the Board's Decision on Challenged Ballots in Sunnyside Nurseries, Inc., 2 ALRB No. 3 (1976).

This election was conducted three years ago, and has given rise to three separate Board proceedings.^{2/} We are here concerned with the Employer's objections to the election, two of which were set for hearing pursuant to 8 Cal. Admin. Code 20365(c). Subsequent to the hearing, Investigative Hearing Examiner (IHE) Constance Carey issued her Decision, in which she recommended that the Employer's objections be dismissed and that the UFW be certified as collective bargaining representative of the unit employees. The Employer timely filed exceptions to the IHE's Decision and a supporting brief. The UFW filed a brief in opposition to the Employer's exceptions.

The Board^{3/} has considered the objections, the record, and the IHE's Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the IHE as modified herein, and to adopt her recommendations to dismiss the objections and certify the OFW.

The Employer alleged that an improper appeal to racial prejudices was made during the pre-election campaign by an employee acting as an agent of the Petitioner. We affirm the IHE's analysis and her conclusions that the employee in question

^{2/}Sunnyside Nurseries, Inc., 2 ALRB No. 3 (1976), involved a Regional Director's investigation and report and Board decision on challenged ballots. In Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977), petition for writ filed in June 22, 1977, in Sunnyside Nurseries, Inc. v. ALRB, 1 Div. 41657, the Board found that the Employer committed numerous unfair labor practices during and after the UFW's pre-election campaign.

^{3/}Members Ruiz and Perry have not participated in consideration of this case.

was not an agent of the Petitioner, and that the statement in question was in any event insufficient to affect the outcome of the election.

We note that there is ample evidence in this record and in the record of Sunnyside Nurseries, Inc., 3 ALRB No. 42, to establish that the relationship of ethnic group membership to Respondent's employment policies was a relevant topic in this

campaign.^{4/} Especially under these circumstances, we decline to set aside an election based upon a single allusion to this subject occurring three weeks prior to the election.

The other issue now before us concerns the Board's failure to provide ballots printed in the Korean language, despite timely requests for same by both the Petitioner and the Employer. Both parties and the IHE focused their attention on an effort to discover whether the Korean-speaking voters in this election were "confused" by the ballot and whether the fact that the ballot was not printed in Korean "caused" any such confusion. Before proceeding to consider the facts in this case, it is necessary to place them in context by

^{4/}The Employer excepts to the IHE's taking administrative notice of the Decision and the record in 3 ALRB No. 42, supra. It is the practice of the NLRB to take such notice of the records of its own proceedings in related matters, provided that the facts noted are stated on the record at hearing or in the hearing officer's proposed decision so that the affected party may have an opportunity to rebut or except to them. Longshoreman's Union (Pacific Maritime Association), 102 NLRB 907, 31 LRRM 1416 (1953); Teamster Local 901,193 NLRB 591, 78 LRRM 1377 (1971). Such notice is also proper where the Board's decision is pending on appeal. NLRB v. Mueller Brass Co., 509 F 2d 705, 88 LRRM 3236 (5th Cir. 1969) . We note in any event that we would reach the same conclusions set forth herein based solely on the instant record.

considering the function of the ballot and its role in coping with the language problems occurring in most ALRB elections.

We are not here concerned with insuring the voters' understanding of the issues concerning union representation, but with providing them with a ballot which designates their choices in such fashion that the voters may recognize them when they enter the booth. In recognition of the high percentage of Spanish-speaking persons in California's agricultural workforce, Labor Code Section 1156.3(a) requires the Board to provide ballots in Spanish and English. By explicit statutory language, however, the Board has discretion to determine the circumstances in which ballots will be printed in languages other than English and Spanish.^{5/} In the exercise of this discretion, we presume that the printing of ballots in voters' native languages is helpful to their understanding of the ballot, notwithstanding problems of literacy and of establishing meaningful translations of the choices on the ballot. Thus, where a timely request is made for ballots printed in languages other than Spanish and English, the Board will provide them where

//////////

//////////

^{5/}Labor Code Section 1156.3(a) reads in relevant part as follows:

The board shall make available at any election under this chapter ballots printed in English and Spanish. The board may also make available at such election ballots printed in any other language as may be requested by an agricultural labor organization, or agricultural employee eligible to vote under this part.

Practicable.^{6/} However, it was clearly the intent of the legislature that a failure to provide such ballots should not automatically invalidate an election, as the statute does not require the Board to provide ballots in all appropriate languages Nor do we think that such a strict standard is justified by the benefits which can be assumed to flow from the provision of third-language ballots.

We have assumed that the use of symbols^{7/} on the ballot suffices to remind illiterate voters of the choices available to them as they cast their ballots. Because we believe that the inclusion of written designations of the choices in languages other than English and Spanish may be helpful, we shall provide them where practicable; but we do not consider that the absence of such written designations so impairs the voters' ability to identify their choices that it justifies setting aside an election.

In this particular case, the Board Agents made reasonable efforts to compensate for the Board's failure to

//////////

^{6/}The Board's 1975 regulations and its current regulations set forth procedural requirements for requesting foreign languages on the ballot. 8 Cal. Admin. Code 20320 (1975), and 8 Cal. Admin. Code 20320 (1976). Under the current regulations, a party requesting such ballots must estimate how many employees can read the requested language and no other. The current regulations further state that the Board will provide such ballots where practicable.

^{7/} 8 Cal. Admin. Code 21000; see Samuel 5. Vener Co., 1 ALRB No. 10 (1975).

provide ballots printed in Korean.^{8/} These efforts included the use of a Korean sample ballot in conjunction with the regular sample ballot, and an employee-translator, selected by the Employer at the Board Agent's request, who explained the ballot and election procedures to the Korean voters.^{9/} We take the fact that there was only one void ballot cast in this election as evidence that the voters in fact understood how to mark and cast their ballots in a mechanical sense.

At the hearing on this matter, which took place twenty months after the events in question, the Employer called as witnesses ten Korean voters, each of whom testified at some length about the conduct of the election and their ability to comprehend its purpose. This testimony was offered

^{8/}The Board Agents refused to postpone the election, despite the parties' requests that this be done. In view of the Employer's stable workforce, postponement would have been appropriate notwithstanding the seven-day limit, see *Jake J. Cesare & Sons*, 2 ALRB No. 6 (1976); *Ace Tomato Co.*, 2 ALRB No. 20 (1976). In October of 1975, however, the Board agents reasonably believed that Labor Code Section 1156.3(a) precluded this course of action.

^{9/}We reach this conclusion based upon the testimony of Board Agents Wanders and Trujillo and Mr. Choi, the employee-translator. These witnesses consistently testified that Choi displayed the Korean sample ballot to the Korean voters. Choi testified that he instructed them how to mark the ballot by making motions and using the same Korean words as were written on the sample. Since neither Board Agent understood him, it is not possible to confirm their impression that he said more than this at Manders' instruction. With respect to the nine Korean voters in Mas Kato's, crew, we conclude that they received the same instructions from Choi either individually or collectively. The record reflects that Board Agent Sumio Yoshi spoke in Japanese to these nine voters, but as it cannot be determined what he said, we reach no conclusions concerning his instructions .

to establish that these witnesses had a very limited grasp of what transpired and, in particular, that they did not understand the choices on the ballot. We have reviewed the testimony of these witnesses, and find that it is virtually impossible to establish facts concerning the election or the witnesses' understanding of it based thereon. The Employer objects to the IHE's finding, based on their nervous demeanor, poor memories of events and inconsistencies in testimony, that these witnesses were not credible. The Employer would have us conclude that this very same lack of clarity concerning these events is itself proof that the witnesses were confused by the lack of Korean ballots. However, we cannot equate the abilities of these employees as witnesses with their degree of understanding of a simple ballot which was adequately explained to them at the time of the election. The fact that these witnesses may have been confused at the time of the hearing does not persuade us that they were confused with respect to the available ballot choices two years previous to the hearing. Moreover, we do not advance the argument by adding our own speculation concerning the sources of these witnesses' confusion to that of the IHE and the Employer. Without reaching the issue 'of the credibility of these witnesses, we find that this testimony is too inherently speculative

//////////

//////////

in view of its subject matter and the passage of time to serve as a basis for decision in this case.^{10/}

Under all the circumstances noted above, including the policies and purposes underlying the provision of ballots in foreign languages, the use of symbols on the ballot, and the use of an employee-translator who, according to his own testimony, gave reasonable basic instructions concerning the ballot to the Korean-speaking voters, we conclude that the Board's failure to provide ballots printed in Korean is insufficient basis for refusing to certify this election. Labor Code Section 1156.3(c). Accordingly, 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

//////////

//////////

^{10/}The IHE discusses this testimony at length in her decision, and attempts to draw from it more precise conclusions concerning the witnesses' state of knowledge as of October 1975 than it will support in our view, as does the Employer in its' exceptions brief. Because we take a somewhat different approach to this issue than did the IHE, we have been able to avoid the necessity for reaching such conclusions on inherently speculative testimony. We note, however, that our review of the record discloses no basis for the Employer's allegations of bias and prejudice on the part of the IHE.

all agricultural employees of Sunnyside Nurseries, Inc., for the purpose of collective bargaining, as defined in Labor Code Section 1155.2(a).

DATED: November 7, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Sunnyside Nurseries, Inc. (UFW)

4 ALRB No. 88

Case No. 75-R0184-M

IHE DECISION

After an ALRB representation election which was won by the UFW, a hearing was held before an Investigative Hearing Examiner on two Employer objections: (1) that an improper appeal to racial prejudices was made during the pre-election campaign by an employee acting as an agent of the UFW; and (2) concerning the Board's failure to provide ballots printed in the Korean language, despite timely requests therefor by both the Employer and the UFW. Subsequent to the hearing, the IHE issued her Decision, in which she recommended, on the basis of the entire record and her observation of the witnesses, that the Employer's objections be dismissed and that the UFW be certified as collective bargaining representative of the Employer's agricultural employees.

BOARD DECISION

The Board affirmed the IHE's analysis and her conclusions that the employee who allegedly made the racial statement was not acting as an agent of the UFW, and that, in any event, the statement in question was not sufficient to affect the outcome of the election. The Board noted that there is ample record evidence, in this case and in Sunnyside Nurseries, Inc., 3 ALRB No. 42, to establish that the relationship of ethnicity to the Employer's employment policies was a relevant topic in the election campaign. Accordingly, the Board found it unwarranted to set aside an election based on a single allusion to that topic which occurred three weeks before the election.

As to its failure to provide ballots printed in Korean, the Board noted: that in each case its object is to provide a ballot which designates, by words and symbols, the available choices clearly enough to be recognized by each voter as he casts his ballot; that "as Labor Code Section 1156.3(a) gives the Board discretion whether to provide ballots in languages other than English or Spanish, a failure to provide such ballots does not per se invalidate an election; that a hand-drawn sample ballot in Korean was made available for voters to see and that a translator selected by the Employer explained the ballot and election procedures to Korean voters; and

the fact that there was only one void ballot cast in the election, indicating that the voters understood how to mark and cast their ballots in a mechanical sense. The Board declined to equate the confusion in the testimony of Korean witnesses at the hearing with their degree of understanding of a simple ballot which was adequately explained to them at the election, twenty months earlier. Accordingly, it was concluded that the failure to provide Korean-language ballots did not warrant setting aside the election.

Objections dismissed. Election upheld. UFW certified as collective bargaining representative.

* * *

This Case Summary is furnished for information only and is not an official statement of this case, or of the ALRB.

* * *

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:
SUNNYSIDE NURSERIES, INC.,

Employer,

and

Case No. 75-RC-184-M

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Petitioner,

Jordan L. Bloom, Michael J. Hogan,
Littler, Mendelson, Fastiff & Tichy
for the Employer.

W. Daniel Boone, Allyce Kimerling
for the United Farm Workers of
America, AFL-CIO.

DECISION

STATEMENT OF THE CASE

CONSTANCE CAREY, Investigative Hearing Examiner: This case was heard before me in Salinas, California, on May 9 through 13, and May 16 through 18, 1977.

An election was held at Sunnyside Nurseries, Inc. on October 15, 1975. The results were 89 votes for the UFW, 80 for no union, one void ballot and 14 challenged ballots. Six challenges were sustained.^{1/} Since the other eight votes are non-determinative, they have not been counted.

^{1/} See Sunnyside Nurseries, Inc., 2 ALRB No. 3 (1976).

The Employer filed objections to the election. Two of these objections were the subject of this hearing:

1. Whether a party to the election urged the employees to consider and act upon race as a factor in the election; and whether such racial appeals, if any, affected the outcome of the election.

2. Whether the Board failed to provide Korean ballots when requested to do so, and whether this conduct affected the outcome of the election.

All parties were given full opportunity to participate in the hearing. Upon the entire record,^{2/} including my observation of the demeanor of the witnesses, and after consideration of all available evidence, I make the following findings of fact, conclusions of law, and recommendation.

FINDINGS OF FACT

The Employer has several nurseries. The Salinas nursery which is the subject of this hearing employs for the most part a stable, year-round work force consisting of nine crews.

On October 18, 1975, the UFW petitioned for an election among the Sunnyside employees. After the apparent victory by the UFW, the Employer unlawfully discharged 20 employees for their support of the union.^{3/} The Board has ordered those employees reinstated with back pay.

2/ This hearing was recorded on cassette tapes, which constitute the official record. A small portion of the cross-examination of the Employer's first witness, Chong Sik Kirn appears to have been inadvertently erased. My notes of that cross-examination do not reveal any testimony essential to the resolution of the issues. No testimony that is not on the tapes has been considered.

3/ See Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977). At the request of the Petitioner, I agreed to take administrative notice of the record and Board opinion in this case since it involved unfair labor practices committed by the Employer immediately before and after the election which is the subject of this hearing. The NLRB has determined that official notice may be taken of "all relevant documents and facts" from prior cases involving the same parties, California Cartage Co., Inc., 215 NLRB 541, 88 LREM 1117 (1974).

A. The Alleged Racial Appeal

The Employer contends the election should be set aside because of a racial appeal made before the election by an employee alleged by the Employer to be a UFW agent.

Louis Carillo, a supervisor, with Sunnyside, testified that he interpreted for the Employer at crew meetings held before the election. On September 22, Eiichi Yoshida, the president of Sunnyside Nurseries, met with the employees of the crew supervised by Charlie Iwamuro. Also present was his brother, Sho Yoshida, who manages the Salinas nursery as well as serving as vice-president of the company. There were 18-22 employee crew members present. One of these was Feliciano Perez Merlin, an employee of Sunnyside for two to three months at this time.

Bennie Lopez, a spokesman hired by the Yoshida Brothers, spoke to the workers in Spanish regarding the rights of employees under the new ALRA. Eiichi Yoshida had come to California from the company headquarters in Cleveland, Ohio, to help his brother conduct a no union campaign.^{4/} He told the workers of the benefits of the company, both present and proposed. Carillo testified that these meetings were in response to the union's organizing campaign and that the Employer was concerned about unionization. He said employees were talking about the union at this time and wearing union buttons.

After the Employer's representatives spoke, Perez spoke in Spanish to his fellow employees. Carillo translated into

^{4/}Some of this information comes from the record in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977). See n.3.

English for the Yoshida Brothers. According to Carillo, Perez said that, the union did not come in, the Mexicans would be fired and gabachos, gringos, Koreans and others would be hired in their place. Carillo said Perez spoke in Spanish in a strong, angry voice and that he gestured with his hand. Perez said if the union came in, all employees would be hired through a hiring hall. Carillo recalled that the workers present were all Mexicans except for one Korean, one Portuguese, and one or two Filipinos. Carillo thought the workers looked surprised and as if what Perez was saying might be true.

Mr. Sho Yoshida said that when Perez spoke to the employees he was shaking his finger and looking stern and angry. He characterized Perez as a straightforward person. According to Yoshida the people looked amazed and shocked after Perez spoke. Mr. Yoshida's testimony was similar to Mr. Carillo's regarding what Feliciano Perez said to his fellow employees at the September 22 meeting. His recollection was that Perez said that if all the Mexicans didn't stick together and vote for the union, they would be replaced. If the union won the election the nursery would have to hire employees through the union hiring hall. Yoshida testified Perez said that only Mexicans would be hired through the hall.

Carillo testified there was another meeting with Charlie's crew five days earlier or later (the testimony is confused as to the time of the second meeting). This time, too, some of the employees seemed surprised while others seemed to agree. The testimony as to when or whether Perez spoke at a second meeting is confused. Carillo said meetings were held with all crews the

week of September 22 in order to explain the new law regarding elections and to describe the Employer's benefits given in the past and planned for the future. I do not find it credible that two identical meetings were held. Thus, I find there was only one meeting where Perez spoke to the employees.^{5/}

As to the meeting of September 22, 1975, Perez admitted that he spoke loudly and gestured while he spoke. He said he always speaks loud. His testimony at this hearing was given in a loud voice in a forthright manner.

Perez remembered saying that the Mexicans should unite with the UFW. He said the nursery was trying to hire other races and no Mexicans. He mentioned two Mexicans who had been discharged. While there had been a sign in Spanish up at the office for three months saying there was no work, during that time the company had been hiring persons of other races, he said. Perez said he spoke in a "clear manner so my fellow workers could understand me." He did not remember saying anything about union hiring halls at the September 22 meeting. However, he remembered Lopez saying that the Employer did not want to have its employees referred to work through the union hiring hall.

Sho Yoshida testified that he believes Feliciano Perez is a UFW organizer. He was at the pre-election conference as a UFW representative and was a UFW observer at the election. According to Yoshida, Perez admitted at the unfair labor practice hearing that he has been a UFW organizer since 1970.

5/ Even if there had been a second meeting, my conclusion in regard to the impact of Perez's statement would be the same, since it is alleged that Perez said the same things to the same group of people at both meetings.

Perez said he has been a long time UFW supporter. He said the only money he had ever received from the UFW was as a striker in September, October, and November, 1970 when he received food and gas money. Perez testified that he has never been on the staff of any UFW office and has never been paid by the UFW for organizational work. Although he actively tried to organize Sunnyside workers into the UFW, he never attended meetings of organizers nor received instruction as an organizer. As to the testimony of sho Yoshida that Perez had admitted being an organizer at the unfair labor practice hearing, Perez said he called himself an organizer because he explained the benefits of the union to his fellow employees and carried authorization cards for them to sign. Ever since 1970 he has gone to the union office two or three times weekly to attend meetings and to visit with other workers. He named other Sunnyside employees who were also active in passing out union authorization cards. When Perez tried to get other workers to sign cards, he did it on his lunch or break time and did not go to their homes to try to organize them.

There is conflict in the testimony as to whether Perez said only Mexicans could be hired through the union hiring hall if the UFW won the election. Perez denied saying anything about the hiring hall. Carillo, the, interpreter, said Perez stated all workers would have to be hired through the hall if the UFW won the election. Sho Yoshida testified Perez said only Mexicans could be hired through the hall. Yoshida said he did not understand Spanish and relied on Carillo's interpretation of Perez's remarks. What Yoshida said Carillo said in his interpretation of Perez's comments is hearsay. Since it was not corroborated by Carillo,

it does not support a finding that Mr. Perez said only Mexicans would be hired out of the hiring hall. Whether he said that all workers would have to be hired through the hiring hall is irrelevant to the objection set for hearing; thus, I make no finding as to whether it was said, finding it unnecessary to resolve the apparent conflict in the testimony on that issue.

B. Korean Ballot Issue

The Employer contends that the failure to provide ballots in the Korean language is sufficient ground to overturn this election. Both the UPW, in its petition for certification, and the Employer, in its response to the petition, requested that the ALRB provide ballots printed in Korean. UFW Exhibit 5, a list of eligible voters has 16 names on it which appear to be Korean. All these are checked as having voted. One Korean voter was challenged as a supervisor. This challenge was sustained. Ten Korean voters testified at this hearing.

Elise Manders, Board agent in charge of the election, testified that she called Sacramento to arrange for Korean- ballots and was assured that they would be sent from Sacramento. When they had not arrived by the day before the election, she called again. She said she was told that the ballot had been sent. She asked that a duplicate be sent by Greyhound Express. The person she spoke with said he did not have a copy to send and there was not time to have another made. When the ballot did not arrive in time for the election, she was told by the acting regional director to proceed with the election and to find an employee to interpret who knew both English and Korean.

Ms. Manders did not attend the pre-election conference two days before the election but Celia Trujillo, another Board agent who assisted with this election, testified that she assured the parties that there would be Korean ballots. The Employer testified he offered to fly to Sacramento to pick up the ballots. Ms. Trujillo did not recall that the Employer offered to fly to Sacramento to get the ballots but said she would have rejected such an offer since she did not think it would be a good idea to travel in the Employer's plane. At any rate it appears there was no ballot available in Sacramento at that time since Ms. Manders was told the next day that the only available Korean ballot had already been sent to Salinas.

When the Board agents arrived at Sunnyside Nurseries on election day, Ms. Manders gathered the parties to inform them that there would be no Korean ballots. Both parties were upset. Ms. Manders suggested to the Employer that he pick a bilingual Korean worker to interpret for the Korean voters. The UFW was displeased with this arrangement but consented to it when Manders suggested that this person could serve as an Employer observer as well as interpreter.

According to Ms. Manders, Mr. Sho Yoshida, vice-president of Sunnyside Nurseries, introduced Mr. Jung Kak Choi to her in English and represented to her that he would be able to do the necessary interpretation. Mr. Choi testified that Mr. Yoshida explained the election process to him in Japanese before he undertook his role as observer-interpreter.

Before the voters came, Ms. Manders prepared a sample ballot (UFW Exhibit 4) with the UFW eagle symbol on the left

side along with the words in English, "United Farmworkers" and the no union symbol on the right side with the words, "no union." Ms. Manders testified that she asked Mr. Choi to translate those words into Korean symbols and place them under the corresponding English words. She said that Mr. Choi did not indicate any difficulty in understanding what she said and seemed to follow her directions. She thought the characters he had written on the ballot said "United Farmworkers" and "no union." The official ALRB interpreter at the hearing translated the words written by Mr. Choi as "agree" under the UFW symbol and "reject" or "oppose" under the no union symbol. Mr. Choi testified that he did not understand Ms. Manders' instructions and that he understood her to say "I like it" while pointing to the left side of the ballot and "I don't like it" when pointing to the right side of the ballot. He said he did not tell her he did not understand. The official interpreter said the words written by Choi do not connote "good" or "bad" but agreement or opposition.

The testimony of the two Board agents was consistent as to the steps taken to make sure that the Korean voters were given as full instruction as possible. An Employer observer, Vicki Estrada, also testified concerning the circumstances at the election itself as did Mr. Choi, the Employer designated interpreter. Ms. Estrada testified that the sample Korean ballot was prepared after some Koreans had already voted; but all other witnesses testified that this ballot was ready at the start of voting and I so find.

Board agent Celia Trujillo was present throughout the election and gave instructions to all voters in the election in

both Spanish and English. The crews at the nursery came to the polls separately according to arrangements made beforehand. UFW Exhibit 8 is a list of the crews and the times they were supposed to come to vote. Because of the confusion caused by the lack of Korean ballots, the election started half an hour later than planned. Thus, the crews arrived later than previously scheduled. The Board agents testified that the election itself was quiet and orderly and that the crews arrived one at a time, as planned for. Celia Trujillo gave her instructions to each crew separately. As they arrived at the site she gathered them around her and, for each crew, gave identical instructions in both English and Spanish while holding a sample ballot. Whenever a crew arrived which had Korean members, she held the Korean sample ballot prepared by Mr. Choi directly below the official sample ballot while she gave the usual explanation in English and Spanish. At least one Korean voter told Ms. Trujillo in English that she understood the explanation given.

In addition to this effort to instruct the Korean workers, Ms. Manders gave an explanation to Mr. Choi to give to each of the Korean voters. He stood behind Ms. Manders at the eligibility table. Whenever a Korean voter approached, he gave his explanation, pointing to the union and no union side of the Korean mock ballot. Celia Trujillo took that ballot to Mr. Choi at the eligibility table after she gave her speech to each crew. Then, it was returned to her after the crew voted and before she spoke to the next crew. This procedure was followed for the first part of the election.

The crew supervised by Mas Kato was one of the last crews to vote. There are nine Korean names among that crew, including that of Byong Ho Kim who was challenged at the election as a supervisor. This challenge was sustained by the Board, the employer having filed no exceptions to the recommendation of the regional director that it be sustained.^{6/} Several witnesses at this hearing testified he was their supervisor at the time of the election. Thus there were eight Koreans in this crew with whom we are concerned. Seven of them testified at the hearing. One of them, Mr. Yool Huh, said that he did not vote with his crew. The Board agents commented that the Mas Kato crew marched to the election site in formation. Ms. Trujillo said the Anglos were first in line, the Mexicans second and that the Koreans marched in together at the end of the line.

Both Board agents testified that before the Mas Kato crew arrived to vote, a Japanese Board agent named Sumio Yoshii arrived at the election site. When he heard of the concern of the Board agents because there were no Korean ballots, he offered his assistance. According to both Board agents, Mr. Yoshii spoke to the Korean workers in the Mas Kato crew. He spoke in a language they did not understand which they assumed to be Japanese since he told them that the Koreans would understand him if he explained the ballot to them in Japanese. Mr. Choi remembered that Yoshii

^{6/} Sunnyside Nurseries, Inc., 2 ALRB No. 3 (1976). I am taking notice of this opinion since it concerns the issue of the supervisorial status of Mr. Kim, an issue in this hearing because of the testimony of Sho Yoshida that he had no Korean supervisors at the time of the election.

was present at the election and remembered that the two of them conversed in Japanese. Although he did not remember that Yoshii spoke to the Korean workers in Japanese, this is not surprising since he had his own role to play in the election as an observer. After he spoke to the Koreans, Yoshii told Board agent Trujillo that the Koreans had understood because one Korean understood English and one Korean understood Japanese. Yoshii told Trujillo that these workers explained the voting process to the others. None of the Korean workers testified that anyone spoke to them in Japanese at the election site. In fact, many of the witnesses said no one spoke to them in any language.

During the hearing, Korean language documents were introduced into evidence. Some of these were introduced by the Employer, some by the UFW, and some by the Board. Of these exhibits, the three which have the most relevance to this decision are Board Exhibits 31, 32, and 33. These are exact copies of the official ballot used in the Sunnyside election except that in addition to the three languages (English, Spanish, and Portuguese) which were originally on the ballot, these ballots also have Korean translations. Board Exhibit 31 was assembled in the Salinas regional office of the ALRB especially for the hearing, using the official Korean translation of the ballot which had been sent to the regional offices by the head of language services for the ALRB in Sacramento. This exhibit provided a literal and formalistic- interpretation of the exact words used on the ballot. It was very difficult for most of the Korean witnesses to understand. One problem is that it uses Chinese characters. They are understood by North

Koreans or by South Koreans who attended school before the Japanese occupation. Thus this language would be understood mainly by scholars or older educated persons.

The Employer and the union recognized that there would be problems with this ballot and asked the official ALRB interpreter at the hearing to translate the official ballot according to their instructions. These sample ballots were then also made up in official form at the regional office. Board Exhibit 32 reflects the Employer's choice of language and Board Exhibit 33 reflects the union's choice.

The literal translation of each of these samples was given at the hearing by the official ALRB interpreter. The essential differences are in the language which appears under the union symbol on the left side of the ballot and under the no union symbol on the right side of the ballot. The official translation of that portion of the three Korean language exhibits is as follows:

United Farm Workers of
America/ AFL-CIO_____

No Union

Board Exhibit 31

American Farmers
Agricultural Federation
Committee (followed by a
transliteration of "United
Farm Workers of America,
AFL-CIO" in parenthesis)

We reject labor
union (followed)
by a transliteration
of "union" in parenthesis)

Board Exhibit 32

We want it to be AFL-CIO
Farm Workers of America

We don't want to be
a member of labor
federation

Board Exhibit 33

United Farm Workers of
America, AFL-CIO

Non-union

The official interpreter testified that Exhibit 31 would be difficult for Korean workers of limited education. Number 32 would present a problem because it literally speaks of a labor federation rather than a labor union. The interpreter testified that Exhibit 33 would be adequate for persons experienced with unions but difficult for those with no knowledge of unions since the ballot does not have language expressing the idea of acceptance or rejection.

Testimony of the Korean Witnesses

1. Chong Sik Kim

At the hearing Mr. Kim said he had no idea how to vote because he did not know anything about the UFW. However, he recognized the union symbol since he had received leaflets from organizers and seen buttons on fellow employees and knew where to vote if he wanted the union and where to vote if he did not want the union. It was clear at the hearing that his confusion came because he did not know whether or not he wanted the union, not that he did not know how to vote once he made up his mind. Mr. Kim was the first witness on the first day of the hearing. Later he was recalled to read the Korean ballots, Board Exhibits 31, 32, and 33. He was able to read them and testified he would have been helped by a Korean ballot. However, he also testified that he still did not know the benefits of the union so did not know whether he wanted a union.

His supervisor was a man named "Bob." He said that Bob spoke no Korean so Mr. Choi translated for Bob to tell him what to do. He did not know how much English Choi spoke, however.

Mr. Kim remembered that Mr. Choi showed him a paper at the polls with Korean written on it, saying "agreed" and "objection." He did not see any symbols on the paper shown by Choi. If there had been symbols, he said, he would have been able to compare them with those on the ballot and would have known what to do. UFW Exhibit 4 is the sample ballot that was used for the Koreans and it has the symbols on it. He had his official ballot at the time he saw the Korean ballot.

Mr. Kim testified that he said nothing at the election but later said that he spoke to Mr. Choi to find out about the union and was told to be quiet.

2. Mon Soo Chun

Mr. Chun was a member of Mas Kato's crew. However, he said Kato had nothing to do with him and that he has always worked directly under Mr. Kim, a Korean.

He went to the polls with the other members of his crew and saw neither Mr. Choi nor anything written in Korean. Although he says he does not read English or Spanish he said that a Mexican in back of him in line told him how to vote. He signed a declaration in March 1977 saying he knows no English, but he answered several questions before they were translated into Korean.

He said he was not given any instructions in regard to voting but said he knew what to do because "somebody who is not a member, an outsider" showed him he was supposed to make a mark in one of the two boxes on the ballot. He said he doesn't recall whether he was confused or not.

Although he remembered being given leaflets before the election, he did not remember seeing the UFW symbol on them.

He said that at the time of the election he had no idea whether he wanted to vote for a union or not. He said even if the ballot had been in Korean he would not have known whether the UFW was good or not unless someone told him.

When asked whether he would have known what choice to make if he had known the choice was between the UFW or no union, he said, "I can't make a choice. How could I make a choice not knowing anything? Even if you asked me a hundred times, still I don't know."

When given Board Exhibits 31, 32 and 33, he was able to read them but said he didn't know the meaning of the words "yun man" or "jo hop" which are the words used on the exhibits for "union." In spite of this he claimed that he would have understood if the ballot was in Korean.

3. Kyung Ja Kato

Mrs. Kato has been in the United States since 1959. She is married to supervisor Mas Kato. Her husband is Japanese American and speaks no Korean. Any communication from Mrs. Kato to her husband is in broken Japanese according to Mrs. Kato. She is in Robert Castenada's crew and receives her instructions from him in English. She voted at the election with the other members of her crew.

She stated that she had never talked to anyone about the election except that she had spoken to the Employer's interpreter and attorney on the Friday before the start of the hearing. When asked whether they had asked her questions about the election, she did not answer directly but said they told her to tell the truth about what she could remember. Although there is a declaration

signed by her on March 7, 1977 in regard to the election, she did not remember talking to anyone about the election other than the one time with the Employer's attorney.

At first she said she did not know whether she voted and then remembered that she had. No one explained the ballot to her in a language she understood. But she did recall Mr. Choi holding a paper with the Korean words for "objection" on the left side and "approved" on the right side. She does not recall symbols or any other language on this paper and specifically did not recall the black eagle symbol on Choi's paper. To her the word "approval" means "good" and the word "objection is "bad."

Mrs. Kato said she lived in a trailer at the nursery and had only once before this hearing seen the UFW black eagle symbol. That was on a button worn by another worker and she just thought of it as a picture of a bird.

When given copies of Board Exhibits 31, 32, and 33, it was apparent that her ability to read Korean is limited. She did best on Exhibit 32, although she had a very difficult time with it.

Although she said she has forgotten everything about the election she was able to remember in detail being checked off the voter list. She said she ^received no instructions as to voting and does not remember instructions being given to anyone in her crew. Before the election she had never had any discussion about unions with anyone, she specifically stated she would not have known what the United Farm Workers union was, even if it had been written in Korean.

4. Son Bi Kim

Mrs. Kim has been in the United States for five years. She never attended school but says she learned to read at home. While in Korea she learned some Japanese.

Although she said she had never voted in an election before she said she knew to make a mark in the box when she received a ballot. She recognized the official ballot and said that she was scared because she did not know what to do with it since it was not in Korean. However, she said, "I was asked to take this piece of paper and go the small boxes and vote." Later, she said no one said anything to her at the polls and she said nothing to anyone.

When shown the Korean sample ballots she had great difficulty reading them although she said she could have voted without confusion if the ballot had been like Exhibit 32.

She did not clearly understand the instructions in Korean which said to put a mark in the box and when she looked at Board Exhibit 33 said, "I want to know what is secret ballot."

She said she had not heard of the UPW before the hearing and did not know what the UFW symbol was. Although she remembered signing a declaration, she said she had never spoken with anyone in regard to the election, not: even Mr. Choi. Ms. Kim is the sister of Kyung Ja Kato, the wife of supervisor Mas Kato.

5. Kyong Ok No

Ms. No had worked at Sunnyside for one and a half years before the election. She kept saying she understood nothing because she had been in the country such a short time. Before

the election she had heard nothing about it, had seen no union symbol and had never heard of unions either in the U.S. or in Korea.

Although she finished high school in Korea she was unable to understand any of the Korean language ballots presented to her. One difficulty seemed to be a total lack of understanding of the concept of a union. But even though it was clear that she could not intelligently read the language on the Korean ballots, she answered affirmatively when asked if she would have known what to do if given a Korean language ballot.

Although she signed a declaration in March 1977, in regard to the election, she said she had never talked with anyone about the election. This declaration stated she knew no English, yet, she answered several questions asked in English without waiting for the interpreter to translate them into Korean.

She first testified she remembered nothing about the election. She did not remember whether she went to the election site alone or with her crew. Later she said she went with her crew. She expressed certainty that no one at the election site explained anything to her. In response to leading questions she recalled getting a paper, taking it into a booth, marking it and putting it into a box. But she did not remember how she knew to put it in a box.

She did not recall seeing Mr. Choi or any paper with Korean writing on it and heard no one speak at the polls in any language.

6. Kyong Hwan Hwang

Mr. Hwang was in the crew supervised by the Korean, Mr. Kim, and testified that he voted with the rest of his crew.

Although, he stated that he could not remember whether anyone talked to him about the election beforehand, he said, "I was told it was kind of a Board election."

Mr. Hwang had voted in elections in Korea and testified that in Korea there is a rule that one cannot talk while waiting in line to vote. He said he heard nothing said in any language while waiting in line to vote. Also, he saw nothing written in Korean, and Mr. Choi did not speak to him.

There was quite a bit of cross-examination concerning his statement on direct examination that a lady from the union gave him a piece of paper. While denying that he had made the statement he said that the woman who handed him the paper was not a Sunnyside employee so he assumed that she was from the union, from the government or an outsider. He also said he did not know the voting had anything to do with the union.

Hwang recognized Board Exhibit 30 as a copy of the ballot which he marked and put in the ballot box. He said he did not recognize the symbols on the ballot, had never seen them before, and never saw them again until the hearing. He said he was confused when he was given the ballot because he did not know what was good or bad about the issues.

He said that he knew the ballot was in English and Spanish since he saw there were two different languages on it and he thought they must be English and Spanish. Also he said that the girl at the election said that one side is in English and the other in Spanish. He said this after saying no one spoke while he was at the election.

Only after considerable prompting was he able to fairly well understand the Korean language ballots (Board Exhibits 31, 32 and 33). As did all the Korean witnesses he signed a declaration in March of 1977 in regard to the election. He said he had no conversation with Choi regarding this declaration but that it was given to him by Japanese supervisor Mas Kato who told him to read it and sign it if he wanted to.

7. Hyo Ja Hwang

This witness said she does not speak or read English, Spanish or Japanese. Before the election, she said there were no meetings of workers. She never heard anyone talking about unions or elections before the election.

She said that no one explained what the election was about beforehand and so she went to the polls not knowing what the election was for. When shown the union symbol, she said she does not remember seeing it. At the time of the election, she did not know what the UFW was, and she still doesn't. While she was waiting to vote, no one told her what the election was about. She heard no one speak in Korean and did not see anything written in Korean. She said Mr. Choi was not there. Because she was "absent-minded," she cannot remember whether she heard anyone speak in any other language.

Although she at first said that she went alone to the polls and that no persons in her crew were there, she later said that she heard from the Mexicans in her section a rumor that there would be a vote and that they told her to follow them to vote, which she did, following their motion. The Korean, Mr. Kim, was her supervisor.

When shown the official ballot (Board Exhibit 30), she did not recognize it, saying "I cannot remember. At that time I was out of my mind." In spite of this she remembered being given a piece of paper and being "...told to vote, so I vote." She remembered that she went into a booth, marked the ballot and put it in a box.

When shown Board Exhibit 32, she said, "I do not understand the meaning." When first shown the Korean words under the No Union symbol, she said, "I don't know what it means." Then she said, "I know that you want it or that you don't want it."

Then she said, "It means to be good or bad," but she did not know which one. Finally, after looking at it word for word she said it means, "I don't like it." She was able to say the left side means you want a labor union.

She had similar difficulty reading Exhibits 31 and 33.

Yet when asked by the Employer's attorney, "Looking at these two pieces of paper, numbers 32 and 33, if the ballot that was given to you at the election in 1975 would have had Korean words on it, like either one of these two pieces of paper, would you have been confused?", she answered, "If it was written in Korean, I was not confused."

When the word for union was shown to her, she said, "I don't know what it means." She said-she had never heard the word for union in Korean.

On cross examination, she said she spoke to the Employer's attorneys and their interpreter before the hearing and that they told her to speak the truth. She said she did not talk to them about the election, however.

During redirect examination, Mr. Bloom tried unsuccessfully to elicit from this witness her memory of discussing the election in

preparation for her testimony. All through the following examination, Ms. Hwang appeared nervous and turned her back to the questioner. There was the following dialogue.

"Do you remember that Ms. Choi and I asked you last week to tell what you remembered about the election?"

"Never talked like that."

"Do you remember talking to me and Ms. Choi last week?"

"Yes."

"Do you remember that we talked about the election?"

"I cannot remember because we never discussed about such things."

Then Mr. Bloom told the witness she had nothing to fear in admitting she had spoken to him about the election and once more asked, "Do you remember last week talking to me and Ms. Choi about the election?"

"Yes, you never speak about the election."

"Did Ms. Choi speak about the election?"

"No. "

8. Song Ji Choi

Ms. Choi is the wife of Jung Kak Choi who was chosen by Sho Yoshida to help explain the election to the Korean voters. She and Kyung Ja Kato, wife of a supervisor, were the only two Koreans who were in the crew of Robert Castenada.

Ms. Choi said she has been in the U.S. for four and a half years and does not speak or read any language other than Korean. She evinced some knowledge of spoken English, however, by answering some questions directed to her before they were translated into Korean.

Ms. Choi did not hear about the election until it happened, when she went to the election site and waited to vote with the other employees in her crew. No one explained what the election was for,

but she remember seeing a paper with the rean word for "oppose" on the left and the word for "agree" on the right. She did not remember "pictures" on the paper but "I can think you must have some like arrow, but I cannot remember." Her husband, Mr. Choi, was holding the paper.

There were no other Koreans voting with her and no explanation about the election was given while she waited to vote.

She received a ballot and went into the booth and marked the ballot. She cannot remember how she decided where to mark it "because I was much confused." She did not remember the official ballot when it was shown to her, and it did not look familar to her.

This witness had a very difficult time reading Korean. When shown Board Exhibit 32 she said, "Even though this is written in Korean, it is very difficult to explain to say what it means."

When shown Exhibit 31, she said, "I cannot explain what it means. Some of the words I can understand but some of them I don't understand." On Exhibit 33, she read the words under the No Union symbol as saying, "shining or make bright."

After Ms. Choi attempted to read each of the three Korean language ballots, Mr. Bloom handed her Board Exhibit 32 again and said, "[I]f the ballot at the election in 1975 had these Korean words on it whether that would have helped you?" Her answer, "Yes, it helped a lot, if it were written in Korean." After the Employer's attorney verbally substituted a different word for union on Exhibit 32, the witness was able to say the words under the no union symbol would mean, "I don't want this labor union."

On cross examination Ms. Choi said she went to school in Korea during the Japanese occupation and learned Japanese rather than Korean in school. She said she learned to read Korean from her younger brothers.

She never attended meetings at Sunnyside with fellow employees before the election and she said she did not speak with any other Koreans about the union before the election. She said she did not talk with anyone about the election afterwards.

Ms. Choi said that when she went to the election site, "A lady, a stranger to me, she told me to line up in line. She spoke English, but I cannot understand so I followed what other person did." At another point in her testimony, she could not remember whether anyone spoke in any language at the election. When asked whether she could understand any English words, Ms. Choi said, "I don't know because I'm not long in this country here."

When asked whether she knew what a union was at the time of the election, she answered, "I never heard of such a word so I do not know. If I knew I wouldn't have been confused about the union." Ms. Choi did not know the meaning of the Korean words "yung man" but in response to being asked the meaning of the words "no dun jo hop," she said "union" in English.

She remembered seeing the UFW symbol on a paper shown her at the election by the lady who told her to line up. She said it was a white paper and had no Korean on it.

9. Byong Hee Yi

Mr. Yi's immediate supervisor was Mr. Kim while Mas- Kato was the "secondary supervisor." Mr. Yi remembered going to the polls with his crew.

When asked whether anyone explained what the election was about before he went to vote, he said, "Yes."

When he went to vote no one explained about the election while he was in line and he did not see anyone with a paper, which

had Korean written on it. He said, "I recall getting some kind of paper from a member of the union, but I cannot recall exactly whether it preceded the election or not." He did not recall whether he picked up a ballot or it was handed to him.

When shown the official ballot (Board Exhibit 30), he pointed to the union symbol and said he remembered seeing it before but was not sure whether it was on that paper. When asked about voting, he said, "I was new, and I was given a piece of paper. I was told that there was an election and although I marked, I didn't know what I marked, for or against what was proposed then."

He was able to read Board Exhibit 32 and testified that if he had been given that paper he would have been helped in voting since he would have known one side meant "I want a union" and the other "I don't want a union." He could read the right side of Exhibit 31 as saying "one doesn't want a union" but the language under the union symbol caused him to say, "Isn't that also some kind of a union? I don't know the exact distinction because this one is American Farmers Federation Committee."

He said he did not know what the United Farm Workers Union of America was at the time of the election. But he said if those words were in Korean, they would have had meaning to him. He said the words would have meant "either farm labor union or non-labor union."

When further asked, "What do the words United Farmworkers Union of America mean to you?", the witness answered, "It simply meant that it is a labor union. It may not be the union."

Mr. Yi heard no one speak in Korean at the election and did not recall anyone speaking in any language.

He was asked whether he knew there was to be an election before he voted. His answer was, "Well, since I was very new, I just didn't know what was going on. Right before the election, maybe I heard something, but I don't recall exactly when or who said it." He said he attended no meetings with other workers before the election and did not hear any workers or other people talk about unions before the election.

He remembered getting a paper with the union symbol on it so thought it was given him by a union member. However, at the time he received it, he did not know whether that symbol had anything to do with the union. He did not recall seeing the symbol before the election and wasn't sure whether he received the paper with the symbol on it before or after the election or whether people were wearing union buttons or not.

This witness said he spoke with Mr. Bloom and Ms. Choi, the interpreter with the Employer, about the election. He said he told them as much as he could remember but that he "just couldn't remember most items they asked." He recalled being told to tell the truth.

10. Yool Huh

Mr. Huh is a member of the crew of Mas Kato, but he said he did not go to vote with others in his crew. He said Kato and not Kim was his supervisor.

Mr. Huh said no one told him about the election ahead of time and added, "I was not interested."

He said that before he voted, "I got a piece of paper by a member of the union but it contained English and Spanish. I understood some English, of course no Spanish, but I didn't understand too much of it."

He understands people in English if they use simple words. He said he knows more English now than at the time of the election since he went to school. Several times he answered questions without waiting for interpretation.

He does not remember seeing Choi or a paper with Korean words on it at the election. He says he has not talked with Mr. Choi about the election.

He did not recall the official ballot, but he remembered making a mark on a ballot.

He found out about a week after the election that the emblem on the ballot was for the union since he took a piece of paper out of his pocket that had the union symbol on it.

When asked what the writing under the No Union symbol on Board Exhibit 32 says, he said, "This means that it doesn't want the union."

He said if he had been given a ballot with the Korean writing on Board Exhibit 32 on it he would not have been confused and could have chosen what he wanted.

He was unable to read Exhibits 31 and 33 as easily.

He was asked, "When you went to vote, did you know what the American Farm Labor Union was?" His answer was, "I had no way of knowing."

He read the words under the union symbol on Board Exhibit 33 and was asked whether he knew what it was. He answered, "Even now I don't know what it's all about."

He remembered signing the declaration that said he can understand English a little but does not remember that the declaration had anything else in it. He said attorney Bloom gave him the paper and no one else was present. Mr. Bloom spoke to him in simple English.

This witness understands Japanese quite well but says he heard no one speak Japanese at the election site.

In March of 1977, many of the Korean workers signed declarations regarding the election.^{7/} That of Mr. Choi who acted as interpreter for the Korean voters states that he spoke to every Korean who voted and that each one said they were confused as to whom they were voting for. However, the workers who testified said they did not speak to Mr. Choi or to anyone else about the election after it was over. After being reminded, some remembered speaking to the employer's attorney in March of 1977. It appears that Mr. Choi did not speak to the other Koreans on his own in regard to the election.

The declarations signed by the other workers are identical except that some say, "I am Korean and cannot read, speak or understand the English language." While the others say, "I am Korean and cannot fully read, speak, or understand the English language." Each declaration says the declarant was "confused

^{7/} It is interesting to note that no declarations from Korean voters accompanied the objections petition filed immediately after the election. These declarations were made over a year after the election.

if I was voting for the company or for the union." The choices on the ballot were the UFW or no union. There was no place to mark for the company. That may be the reason for the confusion at the time the declarations were signed.

During the hearing the first Korean witness, Mr. Chong Sik Kim, forthrightly explained that his confusion was caused by the fact that he did not know whether he wanted to vote for the union or not. He said he did not know enough about the union to decide whether he wanted to be a member. Mr. Kim knew the union emblem from seeing it on buttons worn by fellow employees and leaflets distributed by the union. He knew where to mark his ballot to indicate that he wanted to be represented by the union. I credit this witness's explanation of the source of his confusion. He testified in a straightforward manner and appeared relaxed.

The Korean witnesses who testified after Mr. Kim were less comfortable and more nervous. The second Korean witness also testified that he did not know whether he wanted to vote for a union or not. When he was presented with the Korean ballots which had been made especially for the hearing, he testified that he would have understood if the ballot had been in Korean. However, it was obvious that he would not have understood since he did not know the meaning of the Korean words "yun man" or "jo hop" which are the words used on the exhibits for "union."

Each of the witnesses said they would not have been confused if the ballots had been in Korean. It was obvious that this was not true for all the witnesses since many of them were barely literate in the Korean language and were confused by the

Korean language ballots. After hearing the witnesses say over and over again, "If only the ballots had been in Korean I would not have been confused," I realized that this phrase must have been prompted by coaching before the hearing.

The witnesses after Mr. Kim either were afraid to remember very much about the election or were genuinely unable to remember.

Those who remembered seeing the sample ballot held at the election by Mr. Choi did not remember that the UFW and no union symbols were on the ballot. Yet those symbols were on the sample Korean ballot in the same positions as they were on the actual ballots given to the voters. The first witness said that if those symbols had been on the sample, he would have been able to compare them to the symbols on the actual ballot. Also, several witnesses testified with certainty that the word "opposed" was on the left side of this paper and "support¹" was on the right although the opposite is true.

Mr. Choi testified that he showed that sample to all the Korean voters. Board agent Trujillo said she also showed that sample to all the Korean voters, holding it directly under the actual sample ballot which had the identical symbols. After Trujillo gave her talk in English and Spanish to each crew, she took the Korean ballot to Mr. Choi at the eligibility table where he showed it to each Korean voter. He testified that he spoke to each Korean who came to the table, saying to each as he pointed to the side with the union symbol, "This side means agreement,"

and as he pointed to the non-union side, "This side means opposition." He testified that he recognized the no union symbol as a symbol meaning non-support.

Many of the Korean voters did not remember seeing Mr. Choi at the election site. Yet, Ms. Manders and Ms. Trujillo, both of whom I credit, remembered that he was present the entire time and spoke to each Korean voter. Mr. Choi himself testified that he was present the entire time and spoke to each Korean voter.

Because the Board agents were not parties to the election and because of the basic consistency of their testimony, I have credited their version of the events of the election day whenever it conflicts with the testimony of the Employer's witnesses. As to the events they remembered, they testified in a straightforward, direct manner.^{8/} They have no personal stake in whether the election is upheld or not since they were not personally responsible for the fact there were no Korean ballots provided. Mrs. Trujillo

8/ The Employer requests that the testimony of Elise Manders be disregarded in toto because of her inability to recall many of the events surrounding the election. I find that her recollection was sufficient in regard to the Korean ballot issue for me to be able to rely on that portion of her testimony. In regard to those matters of which she had no recollection, they were for the most part irrelevant. It is not surprising that her memory was selective. She testified that she worked in from 20-30 elections in the fall of 1975 and that the only distinctive feature of this one was the missing Korean ballots. As to that issue, it differentiated this election from the others in which she participated. She testified convincingly of her concern that the Korean voters understand the ballot. Thus, it is understandable that she has a clear recollection of the efforts made to assist the Korean voters while having little recall as to the more mundane procedures followed in this election. For instance, she had only a vague recollection of the physical set-up of the election. However, she was the only witness who remembered that the ballots used in the election were blue colored.

testified the ballots were not her responsibility. Ms. Manders testified that she followed the regular procedure in attempting to obtain the ballots which was to call Sacramento and request them. The Employer's witnesses as to election procedure were an election observer for the Employer and a supervisor for the Employer. Mr. Choi, the supervisor, was called by the Employer only on rebuttal after the testimony of Manders and Trujillo. I find it impossible to resolve the discrepancies between the testimony of Mr. Choi and Vicki Estrada, the Employer's observer, while the testimony of Manders and Trujillo is inherently consistent. Ms. Estrada¹'s memory of the events at the election site was dim. Mr. Choi's testimony was much closer to that of Ms. Manders and Ms. Trujillo.

Many of the Korean witnesses said they heard no one speak at the election in any language. Yet, Ms. Trujillo spoke to every voter in English and in Spanish. The Employer suggests that the Koreans may not remember this since she did not speak their language. However, Mr. Choi spoke to each Korean witness in Korean. The witnesses did not recall his speaking to them.

No Korean witnesses remembered Board agent Sumio Yoshii speaking to them. Yet, his presence at the election was attested to by Mr. Choi as well as Ms. Manders and Ms. Trujillo. Manders and Trujillo said he spoke to most of the Korean voters (those in the Mas Kato crew) in what they assumed to be Japanese. While Mr. Choi did not remember that Mr. Yoshii spoke to any of the voters, he did remember that the two of them conversed in Japanese.

The Employer claims that the testimony in regard to Mr. Yoshii should not be relied on as it is hearsay. His presence at the election is not hearsay. Four witnesses testified he was there. The testimony of Manders and Trujillo that they heard him speaking to the Koreans in the Mas Kato crew in a language they did not understand is also not hearsay. The testimony of Mr. Choi that he conversed with Mr. Yoshii in Japanese is also not hearsay. It is reasonable to infer that Mr. Yoshii did indeed speak to the Koreans in the Mas Kato crew in Japanese. He was holding both the official sample ballot and the mock Korean ballot. It is reasonable to infer that he gave voting instructions to those workers in Japanese. Therefore, I find that Sumio. Yoshii instructed the Korean voters in Mas Kato's crew in Japanese.

The fact that the voters did not recall this incident causes me to discredit them. I find the voters to have little memory of the events of the election. Although each of the voters said they were told to tell the truth, I find they were very nervous and were not credible.^{9/} At the time of this hearing, Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977), had not issued. In that decision the Board ordered reinstatement to 20 employees

^{9/} My credibility findings are based on my own assessment of demeanor of the witnesses, consistencies or inconsistencies in testimony, and the credibility of the testimony as it occurred in this hearing. I note that the official interpreter at the hearing commented on the nervousness of the witnesses as they testified. Although I do not rely on his conclusion, I find it interesting since he knew some of the witnesses through English language classes they had attended and his impression is corroborative of mine.

of Sunnyside who had been discriminatorily discharged because of their union activity. Perhaps these employees were afraid that discharge would be their fate if they remembered the events of the election clearly. While it is understandable that witnesses at a hearing might exhibit some anxiety, these witnesses were extremely uneasy, especially as the hearing went on. It seemed that the first witness was comfortable and forthright. The second was a little less comfortable. The other eight witnesses showed unusual discomfort while testifying. During breaks they were somewhat relaxed with the official Board interpreters. But, of course, they were not speaking of the election. They were as uneasy during direct examination as on cross examination. Some witnesses turned their backs on the Employer's attorney while he asked them questions. There was a woman named Soon Bok Choi who was present with the Employer, seemingly to help with Korean interpretation. She had little direct contact with the Korean witnesses but sat with the Employer's attorneys throughout the hearing. A few times she spoke to witnesses at the end of testimony or during breaks. Uniformly they seemed uncomfortable in her presence although comfortable with the official ALRB interpreter.^{10/}

It is perplexing that the workers appeared to know so little about the election. There were active campaigns at Sunnyside Nurseries both by the Employer and by the UFW.

^{10/} Ms. Choi's presence in the hearing room seemed to make the witnesses uncomfortable. I have no explanation for this.

Although many of the Koreans had limited or no knowledge of English, they did not work in an isolated crew but worked alongside English and Spanish speaking crew members. The first Korean witness knew that he had an opportunity to decide whether he wanted union representation and was familiar with the UFW symbol because of the active UFW campaign. Sho Yoshida himself testified many workers wore union buttons. Yet after the first Korean witness testified that he knew the union symbol, most of the others said they had never seen it before the hearing or had seen it only on the ballot at the election. This simply is not credible.

The hearing officer in the unfair labor practices case involving Sunnyside Nurseries found that both parties waged a vigorous campaign. In fact, the "campaign by Respondent [Employer] frequently and regularly overstepped the permissible boundaries of conduct as regulated by the Act."^{11/}

There was no evidence that the union had made an effort to organize the Korean workers. Sho Yoshida testified that he was unable to campaign among the Koreans because he had no one who could interpret for him. He said he could not recall saying at the unfair labor practice hearing that the Koreans at Sunnyside did not want to be organized. UFW Exhibit 3 consists of two pages of the official transcript from the hearing. In it there are the following questions with answers by Mr. Yoshida:

11/ Sunnyside Nurseries Inc., 3 ALKB No. 42 (1977). Page 15 of ALO decision adopted by the Board.

Q. Did you notice that certain ethnic groupings among your workers, tended to support the idea of non-unionization more than others?

A. There is a very ethnic range, but how they voted, I really wouldn't know.

But, yes, my Koreans, I think they didn't • want to be organized.

Q. I see.

So you felt that the Koreans tended less to want to be with the union?

A. Yes.

On page 153 of that transcript Mr. Yoshida was being questioned about a company leaflet written in English and Spanish. I am reproducing this portion of the transcript since it shows how Mr. Yoshida could have believed the Koreans were not interested in unionization.^{12/}

Q. Why wasn't the leaflet also written in Korean, Mr. Yoshida?

A. Well, I had a Korean that went around and explained it to them.

Q. And other Asian workers--this was not printed for them in other languages?

A. NO.

Just for the Spanish speaking workers, and it was explained to the Koreans.

I personally went and explained it to the Koreans myself.

Q. Okay.

So the leaflet was directed at. ...

A. With a Korean translator that I took with me.

12/ This is not in evidence. However, I am considering it under my authority to administratively notice the record of previous proceedings involving the same issues and parties. See n.3.

Mr. Yoshida testified as above on November 24, 1975, a little more than a month after the election which is the subject of this hearing. This hearing took place more than one and a half years after the election. .It would be reasonable to assume that Mr. Yoshida's memory of the pre-election campaign was clearer at the time of the earlier hearing. However, it is interesting to note that at this hearing he emphatically denied campaigning among the Koreans, saying he had no one to interpret for him and even saying that he had asked supervisor Mas Kato to find a Korean interpreter for him but that he had been unable to find anyone. He also said that he was unable to use any of his employees to interpret for him as it was his understanding of the law that only supervisors could interpret his anti-union campaign to the employees. At the hearing he said that Mr. Choi and Mr. Byong Ho Kim are presently supervisors. He said they presently understand conversational English although no workers understood both English and Korean at the time of the election. Later, he said he did not know whether Mr. Kim spoke English or Spanish in 1975- although he speaks both now. He said that he speaks to both Mr. Kim and Mr. Choi in Japanese. He testified that Mr. Choi was made a supervisor after the election and that Mr. Kim was made a supervisor quite some time after. However, at the earlier hearing he testified that Mr. Kim and Mr. Ch6i became supervisors around the middle of October "after the election."^{13/} Also, I note that Mr. Kim voted a challenged ballot in the election on the basis that he was a supervisor. The regional director found Kim to be a supervisor in his challenged ballot report. Since the employer

13/ See pages 92-93 of the official transcript.

did not except to that finding it was adopted by the Board.^{14/}

Several of the Korean witnesses from the Mas Kato crew testified that Mr. Kim was their supervisor at the time of the election. Thus

I find, contrary to the testimony of Sho Yoshida, that there was a Korean supervisor at Sunnyside in October 1975.^{15/} In any event, I have discredited Sho Yoshida's testimony at this hearing. He was extremely evasive during cross examination. At one point when asked whether he had ever signed a declaration regarding the election, he looked at the company's attorney before responding, as if trying to determine whether to admit he signed the declaration or not. He said that at the time of the election the Koreans received no orders in Korean but were taken by the hand and shown how to do their work. Later, he said that Choi "could have been used as interpreter, to direct work maybe." He said no worker at that time understood both English and Korean and later said he did not know whether Mr. Kim understood English in 1975 although he now does.

Vickie Estrada, an Employer witness, testified that at the time of the election she called Mr. Choi on the intercom to-give him directions in simple English. Employer witness Kim who worked in the same crew as Mr. Choi said that he received his instructions from Mr. Choi who first received them in English from the supervisor, Mr. Kim was not able to say how well Mr. Choi understood English.

^{14/} Sunnyside Nurseries, Inc., 2 ALRB No. 3 (1976).

^{15/} That supervisor understood Japanese and could have interpreted for Mr. Yoshida to the Korean workers. Mr. Kim was not called to testify at this hearing.

Administrative Law Officer David Nevins discredited Sho Yoshida's testimony at the prior hearing. He found that the Employer had engaged in an extensive anti-union campaign among all its employees and that all employees including the Koreans had attended meetings where the Employer had outlined its benefits and made a plea to his employees to remain non-union. He found that at these meetings the Employer's "officials and agents overstepped the boundaries of protected discussion and committed serious violations of §1153(a) of the Act.^{16/}

ANALYSIS AND CONCLUSIONS

A. Alleged Racial Appeal

The Employer argues that the remarks made by Feliciano Perez Merlin constitute a basis for setting aside the election. It claims that Mr. Perez is a union agent; thus, any statements made by him are attributable to the union. Then it argues that the allegedly inflammatory and irrelevant appeals to race made by Mr. Perez are sufficient reason to overturn the election. If these remarks are not found to be racially inflammatory, -the Employer says they should be analyzed under the standards for a material misrepresentation capable of affecting the results of the election.

As to the argument that Perez is a union agent, we have his own testimony that he is an active and vocal union supporter and considers himself an "organizer" because he encouraged his fellow employees to join the union. In addition to this "admission" by Mr. Perez, the facts the Employer cites to urge a finding of

^{16/} ALO decision, p.18. I am not basing my credibility findings on this earlier decision but note it as corroborative of my finding.

agency are these: (1) Perez actively advocated union membership at Sunnyside and solicited the signatures of fellow employees on authorization cards; (2) Perez attended the pre-election conference as a supporter of the UFW; (3) Perez was an observer for the UFW at the election; and (4) Perez had visited the union office two to three times a week for several years.

The objection as framed for hearing requires a finding as to whether or not Feliciano Perez Merlin was a union agent in the fall of 1975 when he spoke in favor of the UFW to the members of his crew. The first part of the objection is worded as follows:

Whether a party to the election urged the employees to consider and act upon race as a factor in the election

Only if Perez was an agent of the UFW can he be considered a "party" to the election. The Employer cites a number of NLRB cases for its position that Perez is an agent. Each of the cases cited is distinguishable from this one. In NLRB v. Longshoremen, Local 6, (420 F.2d 957, 73 LRRM 2216 (9th Cir. 1969)), the man found to be an agent of the local union was a paid organizer of the international union acting on behalf of the local. As stated by the Employer, in NLRB v. Trabajadores, 540 F.2d 1, 92 LRRM 3425 (1st Cir. 1976), the union was aware of the conduct of the employee found to be its agent and did nothing to discourage or repudiate him. In other NLRB cases cited the Board found employees to be agents for the limited purpose of soliciting authorization cards at the union's direction. None of the cases cited reflects the situation here. Feliciano Perez was a vocal and active union supporter. On his own initiative he obtained authorization cards from the union for his fellow workers. He testified that he was not given directions on filling them out.

The employees completed and signed them and he returned them to union headquarters.

The remarks by Mr. Perez were made at a meeting of his crew where the owner of the company spoke against unionization. There were no union representatives present. There was no opportunity for the union to refute the statement of Perez in regard to Mexicans as there is no evidence that the union was aware of the statement.

As for the reliance of the Employer upon the facts that Perez was an observer and an active union supporter, these are not enough to hold the union responsible for his statements. In Yurosek & Sons, 225 NLRB No. 20, 92 LRRM 1535, at 1537 (1976), the Board said that "the fact that employees served as members of the in-plant organizing committee or as election observers does not, in the circumstances of this case, constitute them as Petitioner's agents in the making of threatening statements to fellow employees." In that case the employees had threatened illegal workers with deportation if they failed to support the union. The ALRB has held that appointment as an election observer and membership on a ranch committee have no bearing on an employee's status as an agent of a union. C. Mondavi & Sons, 3 ALRB No. 65 (1977). In this case there is not only no evidence that Perez had been requested by the union to act on its behalf, there is no evidence that the statement attributable to Perez was authorized, approved or ratified by the Petitioner.

For all the reasons cited above, I find that Perez was not an agent of the union when he made his remark that Mexicans should stick together with the union or they would be fired.

Although I find that Perez is not an agent of the UFW, I will analyze the statements made as if he were an agent. The issue is whether the statement that the Mexicans should stick with the union or they would be fired is an appeal to racial prejudice which would constitute a basis for setting aside the election. The NLRB has set elections aside where either the union or the employer has injected racial appeals into its pre-election campaign in such a manner that it becomes a dominant issue of the campaign. Sewell Mfg. Co., 138 NLRB 66, 50 LRRM 1532 (1962).

Even if Perez's statement could be attributed to the union, it would be an insufficient basis for overturning this election under this standard. It is not reasonable to believe that a one time statement to one crew more than three weeks before the election could have made the racial appeal a dominant issue of the campaign.^{17/}

The Employer in his post hearing brief requests that I consider the statement as misrepresentation if I find Perez is not an agent of the UFW. Perez said that he made the statement that the Mexicans should stick together or they would be fired because he believed it to be true. To support the statement he said that the employer had had a sign at the office for three months before this time saying there was no work. This sign was in Spanish. Perez said that was because the employer wanted to discourage Spanish speaking applicants. He also spoke of the firing

17/ Since the statement was made by an employee and not a party, there is even less basis for setting aside the election because of it. The cases cited by the Employer for the proposition that elections are to be set aside because of inflammatory racial appeals all involve statements or conduct by unions or employers rather than by employees. Conduct of an employee is given less weight than conduct of a party. Takara International, Inc., 3 ALKB No. 24 (1977).

of Maria Theresa Coyt, a strong union supporter, as an indication of the need for union protection.

The NLRB's long standing rule as to misrepresentation in election campaigns was to set aside elections "only where there has been a misrepresentation. . . which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election."^{18/} "That rule is inapplicable here. First, as found above, the statement by Feliciano Perez Merlin is not attributable to the union. Second, the events following the election showed the statement to be very close to the truth. After an apparent union victory, the Employer fired 20 workers who have Spanish names, a firing found by the ALRB to be in violation of the Act.^{19/} Third, I find that the statement by Perez was made three weeks before an election in which both the union and the employer campaigned vigorously. It would

^{18/} Hollywood Ceramics, 140 NLRB 221, 224, 51 LRRM 1600 (1962).

^{19/} Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977). The Employer objects to my taking notice of this hearing in part because I sustained a petition to quash its subpoena of UFW hiring hall records. It claims those records were necessary in order to show the discriminatory manner in which the hiring halls are administered and to support its allegation that Perez stated only Mexicans would be hired out of the hiring halls. My refusal to allow enforcement of that subpoena was based on lack of relevance. The Employer wanted to show the UFW discriminates on racial grounds in its hiring hall practices and that therefore the election should be set aside. The NLRB does not allow the issue of discrimination within a union to be litigated at a hearing on objections. Handy Andy, Inc., 228 NLRB No. 59 (1977). As far as whether or not that information would be relevant as to whether the alleged statement that only Mexicans would be hired out of the hiring hall, was a misrepresentation, I find that issue to be moot because of my determination that Sho Yoshida's testimony on that issue, was not credible, and there is no other evidence that the statement was made.

not have been a pervasive element in the pre-election atmosphere. Finally, the statement was made in the presence of the Yoshida Brothers, president and vice-president of Sunnyside Nurseries. There is no evidence they tried to persuade their employees that Perez's statement was not true, but there was certainly abundant opportunity for them to rebut it if they chose to.

Accordingly, I find there is no basis on which to set aside this election because of an allegedly racial appeal, and I would dismiss this objection.

B. Korean Ballot Issue

The Board is mandated by §1156.3(a)(4) of the ALRA to provide ballots printed in English and Spanish at all Board elections.^{20/} The Board has enacted regulations §20.320 (first enacted in 1975 and reenacted in slightly different form in 1977) to direct that requests to the Board for ballots in any other language be made in writing at least 24 hours before a scheduled election. Both the union and the Employer complied with the regulation. The failure to provide Korean ballots must be judged by the same standard as would any other objection to the conduct of the election. That standard is whether this failure affected the results of the election by depriving the voters of the opportunity to express their free choice.^{21/} The issues are: (1) whether

20/ The relevant language is as follows: "The Board shall make available at any election under this chapter ballots printed in English and Spanish. The Board may also make available at such election ballots printed in any other language as may be requested by an agricultural labor organization or agricultural employee eligible to vote under this part."

21/ D'Arrigo Bros. of California, 3 ALRB No. 37 (1977).

the Korean employees were able to mark their ballots to indicate their free choice even though the ballots were not in Korean, and (2) if not, whether ballots printed in Korean would have enabled them to do so.

There are factors other than the ballots themselves which are important in determining whether Korean voters were able to express their free choice at the election. These include such things as the amount of information and instruction the voters received from the parties before the election, the type of instruction given at the polls, confusion at the polls, and the number of void ballots.

In this election, there was only one void ballot. Board Exhibit 30 is a xerox copy of that ballot. It was used at the hearing to question witnesses as to their recollection of the actual ballot. Even this ballot shows that the person marking it understood that a mark should be placed either in the box under the symbol for the UPW or in the box under the "No" symbol. The fact that there was only one void ballot gives rise to the inference that the voters understood how to mark the ballots.

Two Board agents testified convincingly of their concern that the Korean voters receive sufficient instruction. When Ms. Manders requested the Employer to provide a bilingual employee to interpret, the Employer did not say there was no one available. Mr. Choi was selected by the Employer as a bilingual employee who would be able to explain the voting procedure to the Korean workers. The petition to set aside an election (Board Exhibit 7) states that "a bilingual employee, Mr. Choi explain[ed] the procedure of the election to the voters." Attached to the petition is a

declaration from Ann Sparling, an observer for the employer who did not testify at the hearing.^{22/} She states under penalty of perjury that Mr. Choi is a bilingual Korean used "to explain the system of voting to the Korean voters."

At the hearing Mr. Choi stated that he did not understand a word that Ms. Manders said to him when she instructed him to make the mock ballot and to give directions to each Korean voter. It is apparent that he did not follow the instruction of Manders (as confirmed by Estrada) that he was to write "United Farm Workers of America, APL-CIO" under the union symbol and "No union" under the No symbol. From the efforts made by the Employer and the union in cooperation with the official interpreter at the hearing to express those words on Exhibits 32 and 33, it is apparent that Korean expression of those words is not easy even for professional interpreters. Board Exhibit 31 (the official translation) is an exact translation of the English, but it was not understood by many of the Koreans. Mr. Choi's statement that the Board agent repeated the words "I like it, I like it" while pointing to the left side of the mock ballot and "I don't like it, I don't like it" while pointing to the right side is not credible. This is not what he wrote on the ballot. According to the official interpreter, Mr. Choi wrote "support" on the left side of the ballot and "opposition" on the right side. These words in Korean have no connotation of "good" or "bad" according to the official interpreter. It seems reasonable to infer that Mr. Choi chose the words he did because

22/ It is interesting to note that the ALO for the UFW hearing (Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977)) found the "testimony of nearly every witness called by the Respondent (save Ms. Sparling's, Sho's secretary) was largely evasive, self-contradictory, and self serving. . ." ALO decision, page 4.

he understood that an X mark under the no union symbol would mean opposition to the union. The Korean voters uniformly were able to read the words written by Mr. Choi whereas the words for "United Farm Workers of America, AFL-CIO" and for "No union" as written on the official mock ballot prepared in Korean by the Board (Board Exhibit 31) were incomprehensible to many of the voters.

Board agents Manders and Trujillo said that Mr. Choi spoke to each worker. Mr. Choi himself remembered that he showed each Korean worker the mock ballot and told each one which side to mark for opposition to the union and which side to mark to show support of the union.

Several of the workers had such difficulty in reading any of the Korean presented at the hearing as to appear to be functionally illiterate. The symbols on the ballot are there precisely because the Board has determined that symbols are essential because a significant proportion of farm workers are illiterate in all languages.^{23/} Mr. Choi testified that he recognized the symbol for no union, confirming the view of the Board that "the circle with a diagonal slash is a long-standing, internationally recognized symbol for 'no' which would be familiar to voters, particularly those from foreign nations."^{24/} Each Korean voter was shown the mock ballot with the symbols on it, assuring that when the voter received the official ballot, he or she would understand that a mark under the union symbol would mean support for a union whereas a mark under the "no" symbol would mean rejection of a union. This was a reasonable method of assuring that the Korean voters would understand what their votes meant.

^{23/} Samuel S. Vener Co., 1 ALRB No. 10 (1975).

^{24/} Id.

The first witness, Mr. Kim, made it clear that he knew exactly how to make his choice. His confusion stemmed from the fact that he did not feel he knew enough about the union to know whether he wanted to vote for representation or not. But he clearly stated that he knew where to mark if he did not want a union. The fact that some voters may not have understood the issues well enough to make an intelligent choice is not a basis for setting aside an election so long as that failure is not the result of misconduct by the Board or by a party. In this case there is no suggestion that either the employer or the union was prevented from waging a vigorous campaign.

Since I have discredited most of the Employer's witnesses due either to their inability to remember or the incredible nature of their testimony, I find that the Employer has not met its burden of showing that sufficient employees to affect the results of the election were prevented from making a free choice at the election because of the lack of Korean ballots.

The NLRB has overturned elections when the lack of a ballot printed in the language of voters has prevented those voters from freely making a choice. In Palm Container Corporation, 117 NLRB 434, 39 LRRM 121 (1957), the Board upheld an election where there were no Spanish language ballots for Spanish speaking employees. In doing so, the Board said there was "no evidence whatever of-any employee who has claimed that his ballot, as marked, did not express his true intent." Id., at page 436.

In this election there were voters who seemingly did not know their true intent. Korean voters stated they did not know enough about the issues to know how they wanted to vote.

That is no different from uninformed voters in any election. Civil elections are presumed to express the intent of the voters although often there has been little effort by some of the candidates to present their views to the voters.

The ALRB has been reluctant to overturn elections unless it is clear that something has interfered with the free choice of the voters. There was no such interference here. Each Korean voter was told in his or her own language that a mark on the left side of the ballot under the UFW symbol indicated support for the union while a mark under the no union symbol meant opposition to a union. Some of the voters indicated that they did not know what a union was. This is not sufficient reason to set aside the election. The ALRB has a duty to ensure that voters will be free to make their choice. It is not the Board's obligation to explain those choices to the voters. That is up to the parties. If elections were overturned because some voters did not understand the issues, this would be an objection in every election.

The Employer pointed out that one voter attempted to ask a question of Mr. Choi in regard to the ballot, and that the Board agent told Mr. Choi not to talk with him in Korean. That voter was Mr. Kim, the Employer's first witness. He did not try to question Mr. Choi as to the mechanics of voting. His concern was the content of the election. He wanted more information about the union. It was certainly appropriate of the Board agent to halt this conversation.

During the election, no Korean workers expressed confusion to the Board agents as to how to vote. As pointed out earlier, there was only one void ballot. The election itself ran smoothly.

Although the Employer objected that there were no Korean ballots, it submitted no declarations from Mr. Choi or any Korean voters with its objections petition. The declarations of the voters were taken over a year after the election.

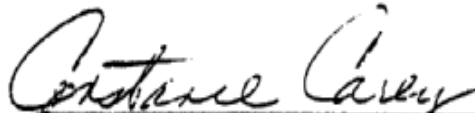
The Board has established that the burden is on the objecting party to present evidence that the conduct complained of affected the results of the election. TMY Farms, 2 ALRB No. 58 (1976). The Employer has not met its burden of showing that any voters were prevented from making a free choice in the election because of the lack of ballots in the Korean language. This objection should be dismissed.

RECOMMENDATION

Based on the findings of fact, analysis, and conclusions, I recommend that the Employer's objections be dismissed and that the United Farm Workers of America, AFL-CIO, be certified as the exclusive bargaining representative of the agricultural employees of Sunnyside Nurseries.

DATED: May 8, 1978

Respectfully submitted,



CONSTANCE CAREY
Investigative Hearing Examiner