

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PAUL W. BERTUCCIO &)	
BERTUCCIO FARMS,)	
Employer,)	Case No. 77-RC-13-M
)	
and)	
)	
UNITED FARM WORKERS)	4 ALRB No.
91 OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
_____)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

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

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on October 11, 1977, a representation election was held on October 17, 1977, among the agricultural employees of the Employer herein, Paul W. Bertuccio and Bertuccio Farms. The tally of ballots showed the following results:

UFW.....	218
No Union.....	93
Challenged Ballots.....	52
Void Ballots.....	1
Total.....	<u>363</u>

The Employer timely filed objections, all of which were set for hearing. Subsequent to the hearing, Investigative Hearing

Examiner (IHE) Kathleen M. Meagher issued her initial Decision in which she recommended that the objections be dismissed and that the UFW be certified as collective bargaining representative of the Employer's agricultural employees.

The Employer timely filed exceptions to the IHE's Decision and a brief in support of its exceptions. The UFW filed a brief in opposition to the Employer's exceptions.

The Board has considered 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, and to adopt her recommendation to dismiss the objections and to certify the UFW.

A. The Alleged Misrepresentations

The Employer excepts to the IHE's conclusion that promises of help with immigration matters, attributed to UFW representatives, were not misconduct affecting the results of the election. It contends that these promises constituted campaign misrepresentations warranting the setting aside of the election under Hollywood Ceramics, 140 NLRB 221 (1962), or were implicit threats of adverse treatment by the Immigration and Naturalization Service (INS) requiring that the election be set aside.

We need not decide in this case whether Hollywood Ceramics or the National Labor Relations Board's more recent pronouncement in Shopping Kart Food Market, Inc., 228 NLRB No. 190 (1977) should be applied in the agricultural context. The credible testimony of Respondent's witnesses does not clearly

establish that the UFW^{1/} made any misrepresentations.^{2/} See Lawrence Vineyards Farming Corp., 3 ALRB No. 9 (1977). There has been no showing that the Employer lacked an adequate opportunity before the election to reply to the representations made by union organizers from two weeks to two months before the election. See Hollywood Ceramics, supra. And the record does not establish that the immigration representations were an integral part of the UFW's campaign or that they were more than isolated comments. See Jack J. Cesare & Sons, 2 ALRB No. 6 (1976).

We also reject the Employer's contention that the UFW's promises of immigration help were masked threats of deportation which constituted misconduct affecting the results of the election. The union promises were not coercive since the benefits pledged were not tied to pre-election support, were remote and of uncertain value, and were no more than a pledge of assistance. There is no evidence in the record of any pervasive fear among the employees or that the employees feared retribution at the hands of the UFW. The record is barren of any evidence of recent INS investigations on the Employer's premises, or of any detention of

^{1/} We do not address the agency question raised by the Petitioner and upon which the IHE made no finding.

^{2/} The IHE found that the credible testimony established only that UFW organizers told employees that the UFW would attempt to help its members who had difficulties with the immigration authorities. Finding that the Employer failed to show that such a service was not, in fact, offered, the IHE refused to find that the statements of UFW organizers regarding immigration were misrepresentations. We find the IHE's credibility resolutions to be supported by the record as a whole.

undocumented workers on the Employer's premises by the INS.

B. The Alleged Board Agent Misconduct

After a careful review of the entire record, we are satisfied that the IHE correctly found that Board Agents did not express support for the UFW or use a state car in an attempt to encourage workers to support the UFW.

In arriving at her recommendation, the IHE made credibility resolutions based in substantial part upon the demeanor of the witnesses, and these resolutions are supported by the record as a whole.

Even assuming that the alleged misconduct occurred, as testified to by Beltran, its isolated and inconsequential nature leads us to conclude that it did not create an atmosphere which rendered improbable a free choice by the voters. Bruce Church, Inc., 3 ALRB No. 90 (1977); Mike Yurosek & Sons, Inc., 4 ALRB No. 54 (1978). See also Coachella Growers, Inc., 2 ALRB No. 17 (1976).

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

CERTIFICATE OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code Section 1156, the said labor organization is the exclusive representative of all of the agricultural employees of Paul W. Bertuccio and Bertuccio

Farms, in the State of California, for the purpose of collective bargaining, as defined in Labor Code Section 1155.2(a), concerning employees' wages, hours and other terms and conditions of employment.

DATED: November 17, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

CASE SUMMARY

Paul W. Bertuccio and
Bertuccio Farms (UFW)

4 ALRB No. 91
77-RC-13-M

IHE DECISION

After an election won by the UFW, a hearing was held on two objections: (1) that the UFW promised employees immunity from the immigration laws if they would sign authorization cards; and (2) that Board Agents, using a state-owned vehicle, encouraged support for the UFW on the day before the election. The IHE found that the credible evidence established no more than that on two occasions UFW organizers had told employees that the UFW would attempt to help members who had difficulties with the Immigration and Naturalization Service (INS) and that it had not been shown that this was a misrepresentation. Assuming *arguendo* that there had been a misrepresentation, the IHE concluded that the two isolated incidents did not warrant setting aside the election because they were not shown to be part of an organized campaign and the Employer was not deprived of an opportunity to reply. The IHE also noted *Shopping Kart Food Mart, Inc.*, 228 NLRB No. 190 (1977), the recent NLRB decision which overruled *Hollywood Ceramics*, 140 NLRB 221 (1962) and which held that misrepresentations would not generally be a basis for setting aside an election. The IHE also concluded that the UFW's promises of help with the INS did not constitute an impermissible inducement which warranted the setting aside of the election because the promises of help were not contingent on signing cards before the election, were related to the UFW's suitability as a representative, were only promises of protection against future liability, and were not likely to make undocumented workers more fearful.

With respect to the alleged Board Agent misconduct, the IHE found that the Board Agents did not express support for the UFW or use a state car in an attempt to encourage workers to support the UFW. She found that both the Board Agents and one of the Employer's witnesses testified credibly, but concluded that the Board Agents' denials were more persuasive in light of circumstances which tended to undermine the reliability of the other witness' testimony.

BOARD DECISION

The Board dismissed the objection based on the alleged UFW promises of help with immigration matters, noting that no misrepresentations were established, that no showing had been made that the Employer lacked an adequate opportunity before the election to reply to the representations, made from two weeks to two months before the election, and that the representations appeared to be isolated and not an integral part of the UFW's campaign. The Board declined to decide whether *Hollywood Ceramics* or *Shopping Kart* should be applied to ALRB misrepresentation cases. The Board also rejected the Employer's argument that the UFW promises were masked threats of deportation, noting that the benefits pledged were not tied to pre-election support, were remote and of uncertain value, and were no more than a pledge of assistance. The

Board observed additionally that there was no evidence in the record of pervasive fear among the employees, or of recent INS investigations or detentions on the Employer's premises.

Finally, the Board dismissed the objection based on alleged Board Agent misconduct, finding that the Board Agents did not express support for the UFW or use a state car in an attempt to encourage workers to support the UFW. The Board also stated that, even assuming that the alleged misconduct occurred, its isolated and inconsequential nature indicated that it did not create an atmosphere which rendered improbable a free choice by the voters, citing *Bruce Church, Inc.*, 3 ALRB No. 90 (1977); *Mike Yurosek & Sons, Inc.*, 4 ALRB No. 54 (1978); and *Coachella Growers, Inc.*, 2 ALRB No. 17 (1976).

Objections dismissed; election upheld; UFW certified as collective bargaining representative of the Employer's agricultural employees.

* * *

This case summary is furnished for information purposes only, and is not an official statement of the case or of the Agricultural Labor Relations Board.

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

PAUL W. BERTUCCIO & BERTUCCIO FARMS,

Employer,

Case No. 77-RC-13-M

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Respondent.

Darrell H. Voth and David Fujiura,
Dressler, Stoll, and Jacobs for Employer.

Linton Joaquin, for the United Farm
Workers of America, AFL-CIO.

DECISION

KATHLEEN M. MEAGHER, Investigative Hearing Examiner: This case was heard by me on February 7 and 14, 1978, in Gilroy, California.

The United Farm Workers of America, AFL-CIO (UFW), filed a petition for certification October 11, 1977, and an election was held at Paul W. Bertuccio and Bertuccio Farms (Bertuccio) on October 17. The results were:

UFW	218
No Union	93
Unresolved Challenges	52
Void	1
Total Valid Votes	363

The employer filed a timely objections petition seeking to set aside the election on the following grounds:

1. The union and its agents intimidated the Calvo family by telling them that their car would be turned over and set afire if

they did not cooperate with the union.

2. Throughout the organizational campaign, the union promised employees that they would be granted immunity from the immigration laws if they would sign authorization cards.

3. Agents of the Agricultural Labor Relations Board encouraged employees to support the union on the day before the election.

4. A state vehicle and state employees were used to convince the employees of Paul Bertuccio that they should belong to the union. The Executive Secretary set these objections for hearing.

Both parties were represented at the hearing and were given full opportunity to participate in the proceedings. Both parties submitted post-hearing briefs. Upon the entire record, including my observation of the demeanor of the witnesses, I make the following findings of fact, conclusions, and recommendations.

I. Jurisdiction

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

II. Intimidation and Threats by the UFW

The employer presented no evidence on this issue. I consequently dismiss this objection.

Union Statements about the INS

A. Findings of Fact

1. In the Fields

Several witnesses testified for the employer about statements made to Bertuccio employees by UFW representatives who talked to workers in the fields. Jose Luis Duran testified that he worked in August in the peppers. During this time, two people, one of them tall and bearded, the other short, fat, and with no beard, visited the crew on one occasion and identified themselves as being from the UFW. They were trying to get signatures for a petition, and when one worker asked if illegals could sign, they responded that if employees who were UFW members were picked up by Immigration, the UFW would send someone to see if they could get them out. Duran testified that the members of the crew later discussed these statements among themselves, saying that if they signed, it would give them a chance to get away from Immigration.

Jesus Diaz, an employee of Jesus Quintero, a labor contractor, worked in Bertuccio's corn field in September and October. He testified that in October, about 15 days before the election, two people wearing buttons with a black eagle came to his crew to talk about "the union." One of the people was a woman of about twenty, with black hair; the other he did not describe. The people from the union asked the workers to sign cards, and told them that if they had cards and were picked up by Immigration, they could call the union office, and that the union had attorneys who could defend them.

Alfonso Reyes testified that he worked in September and October in the peppers and that his paychecks were signed by Quintero, but that he couldn't remember whom he worked for, although when asked by the employer if he had worked at Bertuccio, he answered yes.

Reyes testified that representatives from the union had come to his crew during the chile season and asked them to sign cards. The union people said if workers carried the card and were picked up by Immigration, they could call the phone number on the card, and young men from the union could get them out.

I did not find Reyes to be a credible witness. His testimony about his employment was confused - he stated that he worked in the chiles the entire season, but also said that he had held many different jobs in September and October. He was unclear about when he had worked for Bertuccio and did not remember the election on October 17, although his name appears on the eligibility list (employer's exhibit No. 1). Because of his uncertainty about when he worked for Bertuccio, Reyes¹ testimony does not establish that the organizers' statements he described were in fact made to Bertuccio employees. Furthermore, I find it unlikely that a witness who was not able to remember where he worked five months after his testimony would be able to recall the statements of organizers with the exactness showed by Reyes, especially because he testified that he was picking chiles when the statements were made. I therefore do not credit his testimony.

Miguel Ramos was a foreman for Bertuccio in October, working in the chiles. He testified that three people wearing buttons with a black eagle came to his crew two weeks before the election. One was a blond young man who spoke Spanish well, and the others were a Black woman and a woman with "light black" hair. Ramos did not hear what the three said to the members of his crew, but he heard some of the workers later talking among themselves about the union, and saying that the union could help them with Immigration. Ramos testified that over half of his crew did not have papers.

The UFW presented the testimony of three organizers who denied making statements about the union being able to help workers who were picked up by the Immigration service. Alfonso Montez and Vicente Mendoza testified that they did organizing work for the UFW at Bertuccio for about one and one-half to two weeks in September. They spoke to workers in the chile, clean-up, and tomato machine crews. Roberto San Ramon testified that he began organizing at Bertuccio in September. He organized until the time of the election, mainly in the chile, clean-up, and tomato machine crews, although he once visited the corn and gourd shed and the maize crew. He said that the workers had asked him if they could sign cards if they had no papers, but that otherwise there had been no discussion of the Immigration service in his conversations with workers. San Ramon testified that other organizers had come to Bertuccio, among them Arturo Rodriguez, Bill Granfield, and a woman named Maria. He testified that the other organizers had come four or five days before the election, but on cross-examination he stated that he did not know exactly when Bill Granfield had begun to organize at Bertuccio.

Maria Gloria Castillo and Enrique Diaz, Bertuccio employees at the time of the election, testified that organizers had come to their crews, but had not said anything about authorization cards helping people with Immigration. Castillo worked in the chile packing shed, and identified the organizers who visited her crew as Roberto San Ramon and Alfonso Montez. Diaz worked in the bell peppers. Organizers came to his crew the week before the election - he said that one was a Miss Pacheco, and the other was a young man whom he did not name. Neither witness had heard other employees discussing any connection between authorization cards and Immigration.

The testimony of Jose Luis Duran, Jesus Diaz, and Miguel

Ramos is not contradicted by the testimony of the UFW witnesses. Although I credit the testimony of organizers Montez, Mendoza, and San Ramon that they made no statements about authorization cards helping employees with Immigration, and the testimony of employees Castillo and Diaz that they heard none, this testimony does not prove that the statements were not made.

Duran heard the statements in August, at a time when the UFW organizers who testified were not at Bertuccio. The testimony of Jesus Diaz, Miguel Ramos and Enrique Diaz indicates that organizers other than those who testified had spoken to employees in the fields.^{1/} I therefore find that representatives of the UFW^{2/} told workers that if they were members of the UFW the union would send someone to help them if they got picked up by Immigration, and that if people had cards and were picked up by Immigration, they could call the union office, and that the union had attorneys who could defend them.^{3/}

1/ Roberto San Ramon testified on direct that other organizers came four or five days before the election. On cross-examination, however, he seemed less sure of when at least one of the other organizers came to Bertuccio.

2/ The issue of agency on the part of the makers of these statements was not discussed at the hearing or in the briefs. The employer did not attempt to establish the identities of the persons who promised that the union would help workers with the INS, nor did the UFW offer any evidence on the identities of the blond young man and the women described by the witnesses. Because my decision is based upon an analysis of the substance of the statements themselves, I do not find it necessary to make a finding on the issue of agency.

3/ Although the testimony of Miguel Ramos is evidence that organizers did talk to workers in his crew, it is not relevant to the issue of what they said. He testified that employees in his crew said that the UFW would help them with the card if they were picked up. This does not support an inference that organizers made such statements to the employees. Furthermore, because the employer did not establish that any such statements were made to this crew, these workers' statements of belief about what the UFW would do for them is not evidence of the effect on them of any statements by organizers.

2. In the labor camp

Ramon Garcia, a Bertuccio employee, testified that UFW organizers came to the labor camp at 750 Sunnyslope Road in Hollister and told workers that the union would protect them from Immigration if they signed cards. I do not, however, credit Garcia's testimony, which was confused and inconsistent. He had a difficult time answering questions about when and how often the organizers had visited the camp, at first saying they came two or three times, then saying they came twice a week. On direct examination, he testified that the organizers assembled workers and talked to them, but on cross-examination he said that the organizers came to the camp to take people to meetings, that the people would be waiting for the organizers to come, and that the organizers left the camp very shortly after they arrived. Although he testified that the organizers solicited authorization cards at the camp, he said that the workers signed cards in the fields, and not in the camp. Furthermore, although Garcia's testimony indicated that he was living in the camp at 750 Sunnyslope Road both before and after the election, the eligibility list submitted as employer's exhibit No. 1 and dated October 6 shows Mr. Garcia's address as 1740 Southside Road, Hollister. The employer presented no other evidence about statements made at the camp.

UFW organizers Montez and San Ramon testified that they had visited the camp on Sunnyslope Road to take people to meetings in Hollister, and that they had said nothing about the Immigration service. Epiphanio Zarate, a Bertuccio employee who testified he lived at the camp, and who is listed on the eligibility list as living at that address, said that he was aware of and observed the organizers' visits to the camp on all but one occasion, and that the organizers came to

invite people to meetings and stayed only a short time. He said that he did not hear the organizers saying anything about authorization cards helping people with the Immigration service.

I find that the employer has presented no credible evidence of what organizers told employees at the Sunnyslope Road camp.

3. Testimony of INS agent

Bruce Haakedahl, an employee of the Immigration and Naturalization Service, testified that it was not the policy of the INS to release illegal aliens from custody at the request of the UFW, and that, to his knowledge, the UFW had not obtained the release of any illegals from custody. He said that people in custody were entitled to request deportation hearings, and that they had the right to be represented by attorneys at these hearings. He also testified that individuals could be released because of extenuating circumstances, such as pregnancy or job-related injuries.

B. Analysis and Conclusions

The employer argues that the UFW's promises of help to employees detained by the Immigration service were misrepresentations which destroyed the possibility of a free choice by voters. The employer has not, however, come forward with evidence showing that the statements were misrepresentations, or would reasonably have lead hearers to form false beliefs. Lawrence Vineyards, 3 ALRB No. 9 (1977).

The reasonable meaning of the statements reported by Jose Duran and Jesus Diaz was that the UFW would attempt to help members who were in difficulties with the INS, and that there were attorneys who could represent people who were picked up. These statements could reasonably refer to offering advice to workers who were detained, to representing them at deportation hearings, or to assisting them in

obtaining the papers necessary to remain in the country legally. The employer did not show that the UFW did not offer this service to its members, nor did it show that such a service would be valueless and thus it did not show, as required by Lawrence Vineyards, that the statements were, in fact, false or misleading. Bruce Haakedahl, the INS agent, said that to his knowledge the UFW has not "obtained" the release of anyone from custody, but he also testified that undocumented workers were entitled to request hearings and to be represented by attorneys at those hearings, and that illegal aliens could be released from custody because of extenuating circumstances. UFW attorneys could clearly be of help to workers in custody. I do not find the statements about UFW aid to workers in the custody of the Immigration Service to have been misrepresentations.

Even if the statements could be characterized as misrepresentations, they would not be sufficient grounds to overturn the election. The Board has questioned whether, in agricultural labor elections, misrepresentations would be grounds for overturning an election, and has not yet set aside an election on that basis. Samuel S. Vener Co., 1 ALRB No. 10 (1975); Jack or Marion Radovich, 2 ALRB No. 12 (1976).^{4/} To find misrepresentations serious enough to set aside an election, the Board has required that the statements be part of an organized campaign and that the other party be deprived of an opportunity to reply. Jake J. Cesare, 2 ALRB No. 6 (1976). Neither of these elements has been shown by the employer here. Only two isolated incidents of such statements have been shown - this is insufficient to show that the UFW's assistance with the INS was a central part of its

4/ The NLRB has recently ruled that it will not set aside elections on the basis of misrepresentations. Shopping Kart Food Mart, Inc., 228 NLRB No. 190, 94 LRRM 1705 (1977).

campaign at Bertuccio. One of the statements was made in August and the other two weeks before the election, clearly enough time for the employer to explain to its employees the limited nature of the UFW's ability to help them.

The employer also characterizes the UFW promise of help to employees in the custody of the INS as an impermissible inducement of support in the election. Pre-election promises of benefits by employers may be grounds for setting aside an election. Hansen Farms, 2 ALRB No. 61 (1976). Promises by a union, which has no control over wages and working conditions, however, do not imply a threat that benefits will be withdrawn if it is displeased, and have not generally been held to be similarly coercive. NLRB v. Golden Age Beverage Co., 415 F.2d 26, 71 LRRM 2924 (5th Cir. 1969).

Some promises or inducements by unions have been found to be coercive. Such inducements have involved benefits over which the union has control and which are contingent upon employee support in the pre-election campaign. In NLRB v. Savair Manufacturing Co., 414 U.S. 270, 84 LRRM 2929 (1973), the Supreme Court held that waivers of union initiation fees during an organizing campaign which were contingent on the signing of authorization cards before the election were grounds for overturning an election. The Court found that such offers coerced employees into supporting the union in order to gain a financial benefit and that, because the granting of the benefit depended upon pre-election support, and was in the union¹'s sole control, such offers, like pre-election promises by employers, implied a threat that the benefit would disappear if the giver was displeased by the results of the election. A union offer of a life insurance policy to all employees who joined the union by a certain date before the election was similarly found to be coercive by the NLRB in Wagner Electric

Corp., 167 NLRB 532, 66 LRRM 1072 (1967).

Not all promises of benefits within the control of the union, however, are destructive of employees' free choice. Both the ALRB and the NLRB have refused to overturn elections because of offers to waive initiation fees which remain open beyond the date of the election. Jack or Marion Radovich, 2 ALRB No. 12 (1976); NLRB v. Wabash Transformer, 509 F.2d 647, 88 LRRM 2455 (5th Cir. 1975), enforcing 210 NLRB 462, 68 LRRM 1111 (1974). In a case in which an incumbent union offered employees a rebate of a strike fund deduction one week before an election, the NLRB upheld the election because it found the benefit offered to be an offer which related to the union's suitability as a bargaining representative, and not a pure bribe for support. Primco Casting Corp., 174 NLRB 244, 70 LRRM 1128 (1969). A promise by a union to establish a strike fund was held to be permissible because it was not a direct financial benefit, but a "protection against a possible future liability." NLRB v. Muscogee Lumber Co., Inc., 473 F.2d 1364, 1367, 82 LRRM 2849, 2851 (5th Cir. 1973). The court held that "contingent, remote, and uncertain benefits" do not coerce employees' choice in an election. Id.

By any of the standards discussed above, the statements in the instant case could not be found to be coercive or destructive of the employees' free choice. The promise of help with the INS was not contingent upon the signing of authorization cards before the election. On one occasion when a promise of help with the INS was made - the incident testified to by Jose Duran - cards were not mentioned at all. Duran testified that representatives of the UFW came to the fields asking workers to sign a petition in order to get higher wages. When asked if illegals could sign, they said yes and

added that, if UFW members were picked up by the INS, the union would send someone to see if they could get them out. The offer of help was limited to members, but it was not limited to workers who became members before the election. It is not improper for a union to offer services to its members, or to mention those services to employees it wishes to organize. An offer to waive initiation fees, for example, is, by its nature, limited to union members, but it is only those offers contingent upon pre-election support which are improper.

The second promise of help with the INS did mention cards. Jesus Diaz testified that union representatives asked workers to sign cards and told them that, if they had cards, they could call the union office if they were picked up, and union attorneys could defend them. The statement is somewhat ambiguous - giving help to those who "had cards" could mean that help was limited to members, or it could mean that the authorization card contained the union's phone number, which anyone who had a card could call. How employees who signed cards and gave them to organizers would also have them to use later was not explained. No evidence was offered to show whether the UFW authorization card used at Bertuccio had a portion to be kept by the signer after the card was signed and given to the union, or whether it was the practice of organizers to give the cards to employees to keep for a time while making their decision to sign. One reasonable meaning of the statement heard by Diaz is that help was contingent on signing the card, but I do not find this to be the only reasonable meaning. Furthermore, no time limits were placed on the offer - employees were not told that only if they signed or became members before a certain date would they receive the offered help.

Apart from the absence of time limits placed on the offer,

I do not find that what was being offered was a bribe which would improperly influence employees' choice in the election. Obviously, all promises of what a union will do for employees are designed to influence their choice in the election. It is only offers of direct financial gain which are unrelated to issues in the campaign or to the union's suitability as a representative that are improper. Primco Casting Corp., 174 NLRB 244, 70 LRRM 1128 (1969); NLRB v. Muscogee Lumber Co., Inc., 473 F.2d 1364, 82 LRRM 2849, (5th Cir. 1973) The promises here were clearly ones which related to the union's value as a representative of a work force which included a sizeable number of employees who were in the country illegally. Furthermore, the aid promised by the UFW, like the promised strike fund in Muscogee Lumber, was not a direct or immediate financial benefit to employees, but a "protection against a future liability." 473 F.2d 1367.

The employer argues that the precarious situation of many employees with respect to the INS renders the UFW's promises inherently coercive. It is not improper to mention or discuss the issue of deportation during an election campaign. Even threats of deportation, made by non-parties, have been found not to have affected employees' free choice. Takara International, Inc., 3 ALRB No. 24 (1977); Kawano Farms, Inc., 3 ALRB No. 25 (1977). In these cases, the Board recognized that undocumented workers unfortunately experience a certain amount of fear because of their situation. In judging whether pre-election statements about the INS could have affected these elections, the Board applied a standard of whether the statements could have exacerbated that fear. The promises of help in the instant case were not the kind of statements which would have caused undocumented workers to be more fearful or uncertain of their positions. They were

Statements of one benefit offered by the union which would have been of particular value to some workers, and which they could have fairly evaluated along with all the other benefits and drawbacks of union representation discussed by the parties during the election campaign.

Because I find that UFW representatives' promises of help with the INS were neither misrepresentations nor improper financial inducements I find that they did not interfere with employees' exercise of free choice in the election. I therefore dismiss this objection.

IV. Board Agent Misconduct

A. Findings of Fact

Two of the objections which were set for hearing - that Board agents encouraged employees to support the UFW and that a state vehicle and a state employee were used to convince employees to belong to the union - refer to the same incident. The evidence presented by the parties about this incident is in direct conflict.

Two witnesses testified for the employer on this issue. Hope Beltran, daughter of Jesus Quintero, a labor contractor who supplied workers for Bertuccio, works as a bookkeeper for her father at one of his labor camps. She testified that on the Sunday before-the election she was in the fields bringing lunch to some workers when she saw three people in a white car talking to workers in several fields. She saw the same people in the Quintero labor camp on Wright Road about one-half hour later. She described the car as a white, 1970 or 1971 four-door model, with a seal which said "State of California" on the passenger side. Two men got out of the car -one she described as a tall, light-complexioned Mexican with a very high forehead and long sideburns, the other as a good-looking Mexican

with a round face and black hair, wearing a suede jacket. A carload of people - two of whom Beltran identified as eligible voters in the Bertuccio election - was leaving the camp as the state car was entering. Beltran testified that the tall man with the high forehead stopped the car and said, "Soy de la union."^{5/} She was standing about ten feet away from this man at the time, as were two ladies doing their laundry nearby.

Beltran turned away at this point and went into the office. A few minutes later, the third man, who had remained in the car during the events described above, spoke to her. He showed her an ID card with the name Lopez on it, and said he was an ALRB agent and was posting notices at the camp of the election to be held at Bertuccio. This man was described by Beltran as good-looking and well-dressed, with beautiful light-colored eyes.

The employer's second witness on this issue was Catalina Gonzales. She testified that one Sunday three people came to the labor camp on Wright Road in a white car with a seal on the back door. She did not remember what month this was, or how long before the election, Gonzales was in the laundry with another woman. A tall man came up to them, said he was from the union, and asked them to sign some white and yellow papers. On cross-examination she identified a copy of the white notice and direction of election and a copy of the yellow notice to workers informing them of their rights - both Board documents - as similar to the papers she was asked to sign. She said the man said nothing more than that he was from the union.

I do not find Catalina Gonzales's testimony credible. It is inherently incredible to me that a union representative or a Board agent (even assuming, for the sake of argument, that the Board agent

^{5/} "I am from the union."

wished to encourage support for a party) would approach workers, say he was from the union, ask them for signatures which could be of no possible utility to the Board or to the UFW, and then leave without saying more. Furthermore, Gonzales's demeanor showed her to be anxious and uncertain, particularly after she was asked about a declaration, bearing her signature and dated October 21, 1977, describing the "I am from the union" statement. The declaration was in English, and the witness said that she could not read English and did not remember signing it. I discount this witness's testimony on the basis of her demeanor and the substance of her statements.

The UFW called Board agents Luis Lopez and Arturo Martinez, both field examiners in the Salinas regional office. Both testified that they had visited the Quintero labor camp the Sunday before the election in the company of Luis Viniegra, another field examiner, in order to inform workers about the election. Lopez, who matches the description of the man with light eyes whom Beltran testified she talked to, testified that the three agents drove to the camp in a white state vehicle, which may have had a seal on the door or a sticker in the window. When they got to the camp, they saw a few employees, including two ladies in the laundry, and asked them if they were Bertuccio employees. They posted notices around the camp, but saw only 10-15 workers there. Lopez said he spoke for a few minutes to Quintero's daughter, who came out of a building to talk to them. He did not remember seeing a car leaving the camp or stopping one. He did not say "Soy de la union" to any workers, nor did he hear the other Board agents make this statement. He believed that the three Board agents stayed together while they were in the camp.

Arturo Martinez matches Beltran's description of the tall

man who stopped the car. He testified that he, Lopez and Viniegra visited the camp in a bluish, beige or grayish state car. They talked to 18-26 workers and posted notices about the election. He testified that they spoke to the daughter of Quintero as she stepped out of a building. He believed that he was always with at least one of the other agents during the visit to the camp, but he later said that they may have separated and talked to workers individually. Martinez recalled that one of the agents stopped a car on its way out of the camp and said that they were from the ALRB. He said that neither he nor any of the other Board agents said "Soy de la union."

The issue of Board agent misconduct and misuse of a State vehicle thus resolves itself into the question of whether a Board agent said "Soy de la union" to a group of workers, two of whom were eligible to vote. The evidence on the factual question of whether the statement was made is contradictory. Both Beltran and the two Board agents testified credibly; none of their testimony was contradictory or confused. Lopez and Martinez differed from each other on some points - Lopez did not remember stopping a car, whereas Martinez did; Lopez remembered that all three stayed together, whereas Martinez believed they might have spoken to workers separately. Such differences, given the passage of months and the number of such visits each must have made in the course of his duties, are not reasons to discredit their testimony. On the essential point - that none of the Board agents told workers he was from the union - their testimony agrees.

On balance, I find Lopez's and Martinez's version of the events to be the more persuasive. It is possible that Beltran misheard the statement - it was not directed at her, and she testified she was

standing ten feet away when it was made. She did not testify whether the car that was stopped had its motor running, but this is quite likely if, as she said, the car was on its way out of camp and was stopped suddenly by the Board agents. The agent might have said, "Soy del consejo"^{6/} or "No soy de la union"^{7/} - over a car engine the exact words could have been difficult to distinguish. Furthermore, Gonzales was not questioned about this particular statement, although Beltran's testimony indicated that the two ladies doing laundry, one of whom appears to have been Gonzales, were standing just as close to the Board agent as Beltran was. Presumably, if she could have corroborated Beltran's testimony she would have been asked to do so. Lopez and Martinez, on the other hand, clearly knew what they said or did not say and corroborated each other's testimony that no such statement was made.

I find that Board agents did not express support for the UFW or use a state car in an attempt: to encourage workers to support the UFW. I therefore dismiss these objections.

RECOMMENDATION

Based on my findings of fact, analysis, and conclusions, I

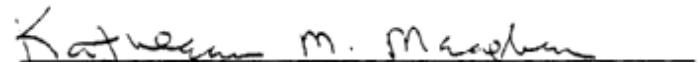
6/ "I am from the Board."

7/ "I am not from the union."

recommend that the respondent's objections be dismissed and the United Farm Workers of America, AFL-CIO, be certified as the exclusive bargaining representative of all the agricultural employees of Paul W. Bertuccio and Bertuccio Farms in the State of California.

DATED: June 14, 1978

Respectfully submitted,

A handwritten signature in cursive script, reading "Kathleen M. Meagher", is written over a horizontal line.

KATHLEEN M. MEAGHER

Investigative Hearing Examiner