

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

THOMAS S. CASTLE FARMS, INC.,)	Case No. 80-RC-40-SAL
)	
Employer,)	
)	
and)	8 ALRB No. 13
)	
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 August 12, 1980,^{1/} a representation election was conducted on August 20 among the Employer's agricultural employees. The Official Tally of Ballots showed the following result:

UFW	122
No Union	61
Challenged Ballots	28
Void	<u>5</u>
Total	216

The Employer timely filed post-election objections, five of which were set for hearing. The Employer alleged that agents of the Agricultural Labor Relations Board (Board) neglected for a time to maintain control of the ballot box at the Watsonville polling site and that, during and following that unsupervised

^{1/}All dates herein refer to calendar year 1980 unless otherwise stated.

period, the observer for the UFW engaged in impermissible campaigning. The Employer also alleged that when its observer objected to the other observer's conduct, the Board agents refused to take appropriate action. The Employer further alleged that over the Employer's observer's objection, voters with fraudulent identifications were permitted to cast unchallenged ballots, and that said voters were procured by the UFW.

The hearing on the above objections was held on July 28 and 29, 1981, before Investigative Hearing Examiner (IHE) Robert L. Burkett who issued his Decision on December 4, 1981.

Pursuant to Labor Code section 1146^{2/} the Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached IHE Decision in light of the exceptions and briefs of the parties and has decided to affirm the IHE's rulings, findings, and conclusions, as modified herein, and to adopt his recommendations.

We find that the evidence presented at the hearing on all the objections was insufficient to carry the Employer's burden to show that the alleged improper conduct took place. California Lettuce (Mar. 29, 1979) 5 ALRB No. 24. Specifically, no evidence whatsoever was presented on the issue of the UFW's alleged procurement of voters with fraudulent identification. On the issue of the alleged failure to control the ballot box, we find, contrary to the IHE, that it is unnecessary to resolve the credibility of the Employer's witness. Taking his evidence as

^{2/} All section citations herein refer to the California Labor Code unless otherwise stated.

true, at most one Board agent, of the four who were stipulated by the parties as having been present and performing their duties, left the situs of the ballot box for a brief period of time. We find the record evidence shows that during the period when that Board agent was away from the ballot box, at least three other Board agents were present and performing their duties, and that at least one Board agent was present at the voting table near the ballot box.

The election objection alleging that some voters used fraudulent identifications is also unsupported by the evidence presented. Further, the Employer's sole witness on this issue testified inconclusively, stating at least twice that those individuals cast ballots which were either challenged or declared void.

The final objection, that impermissible campaigning or electioneering occurred during the balloting, depends on credibility resolutions. The Employer's observer testified that such campaigning did occur, but both Board agents who testified denied that any such campaigning took place. The IHE resolved the issue based on the inconclusive and discredited testimony of the Employer's witness and the credited testimony of a Board agent. To the extent that a hearing officer's credibility resolutions are based on demeanor we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. Adam Dairy dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1531]. We have reviewed the record and find the ALO's

credibility resolutions to be supported by the record as a whole

As we find there is insufficient evidence to support any of the Employer's objections we hereby overrule those objections and uphold the election, and we shall certify the UFW as the exclusive collective-bargaining representative of the Employer's agricultural employees.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the United Farm Workers of America, AFL-CIO (UFW), and that, pursuant to section 1146, the said labor organization is the exclusive representative of all the agricultural employees of Thomas S. Castle Farms, Inc., in the State of California for the purpose of collective bargaining as defined in section 1155.2(a), concerning wages, working hours, and other terms and conditions of employment.

Dated: February 23, 1982

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

CASE SUMMARY

Thomas S. Castle Farms, Inc.

8 ALRB No. 13
Case No. 80-RC-40-SAL

IHE DECISION

After the UFW filed a representation petition on August 12, 1980, an election was held on August 20 at polling sites in Watsonville, Hollister, and Merced. The Employer filed objections to conduct tending to affect the results of the election, alleging that a Board agent neglected to control the ballot box at the polling site in Watsonville, that voters with fraudulent identifications were procured by the UFW and allowed to vote by the Board agents, and that improper campaigning took place by a UFW observer and was permitted by the Board agents.

The IHE concluded that no evidence was presented showing that the UFW procured fraudulent voters. He found the Employer's witness for the other objections was lacking in credibility and relied on the testimony of Board agents to find that the other alleged conduct did not occur.

BOARD DECISION

The Board affirmed the findings, rulings, and conclusions of the IHE, holding that the Employer failed to meet its burden to show that the alleged misconduct occurred. The Board therefore overruled the objections, upheld the election, and certified the UFW as the exclusive representative of the Employer's agricultural employees.

* * *

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

* * *

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of :)	
)	
THOMAS S. CASTLE FARMS, INC.,)	
)	
Employer,)	
)	
and)	Case No. 80-RC-40-SAL
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

Robert Carroll, for Employer

Carmen S. Flores, for Petitioner

DECISION

Statement of the Case

Robert L. Burkett, Investigative Hearing Examiner: This case was heard by me on July 28th and 29th, 1981, in Salinas, California. A Petition for Certification was filed by the United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW) on August 12, 1980. The Agricultural Labor Relations Board conducted an election on August 20, 1980. The tally of ballots showed the following results:

UFW	122
No-Union	61
Challenged Ballots	28

Castle Farms (hereinafter referred to as Employer or Company) thereafter filed timely post-election objections pursuant to Labor Code section 1156.3(c) . The Executive Secretary of the

Board dismissed a number of objections and set the following issues for hearing;

1. Whether the Agricultural Labor Relations Board through its representatives and agents, completely left the polling place during the election with the result that ballot box, polling booths and entire voting area was left unattended; and if so whether such conduct affected the outcome of the election.
2. Whether the UFW, through its observer, who stood next to the voting booths during the polling period, made campaign statements to voters immediately prior to their entering the voting booths and illegally pointed to the box on the ballot in which was located UFW symbol, immediately before voters entered the polling booths to vote; and if so, whether such conduct affected the outcome of the election.
3. Whether the ALRB failed or refused to prohibit a UFW observer from standing next to the voting booths campaigning with the voters as they entered the voting booths, and gesturing to the box on the ballot in which was located the UFW symbol, immediately before the voters cast their votes; and if so, whether such conduct affected the outcome of the election.
4. Whether the board agents interfered with the fair operation of the election process by failing and refusing, despite clear challenges by the employers observer to prohibit several workers who were not employed by the employer and who was not eligible to vote from assuming the names of workers who were eligible to vote permitting them to vote in the election, and, if so, what if such conduct affected the outcome of the election.
5. Whether the UFW through its agents, representatives and supporters interfered with the fair operation of the election process by illegally and wilfully arranging for some persons who were not employed by the employer and were not eligible to vote in the election to assume the identities of workers who were employed by the employer and were eligible to vote in the elections solely to the purpose of voting in the election and, if so, what if such conduct affected the outcome of the election.

FINDINGS OF FACT

Background

The major issues in this investigation revolve around the conduct that took place during the voting at the Watsonville polling site. Stated simply, it is the employers position that the ALRB agents left the voter identification table, the polling booth, and the ballot box unattended for 5 minutes during the election, and that in the absence of board agents, the UFW observers and UFW organizer engaged in various forms of electioneering among 12 voters who were standing in line to get their ballots and voters who were entering the polling booths, as well as other voters who were in the quarantine area.

In addition the employers' most critical witness, Joaquin Garcia, who was the company observer during the election at Watsonville, testified that during the course of the election (8) individuals were allowed to vote over his protest that they were voting under assumed names.

Finally, it is the employer's position that Luis Viniegra, the board agent in charge of the Watsonville polling site, admitted at the hearing that he allowed loiterers to remain in the quarantine area during the voting and actually gave them permission to "make a few comments" to the voters despite Mr. Garcia's strenuous objections that he could be telling voters how to vote.

THE WATSONVILLE POLLING SITE

The voting at the Watsonville polling site took place on/or about August 20, 1980, beginning sometime between 5:45 P.M.

and 6:00 P.M. Mike Castle, vice-president of Castle Farms, arrived at the polling place of Watsonville at approximately 5:10 P.M. Luis Viniegra the board agent in charge of the voting in Watsonville, arrived at the site about 5:15 P.M. Shortly thereafter the board agents began setting up the polling booths in the parking area of the Buena Vista Camp. During this time, immediately before the voting began, a large number of people gathered near the polling area. John Brown, a UFW representative, began passing out the campaign literature to these people and urged them to vote for the union. Mr. Brown ceased his activities once the election began.

Joaquin Garcia, the company observer at the Watsonville polling site, arrived sometime between 6:30 and 7:10. The election began between 5:45 and 6:00 P.M. According to the testimony of Mr. Garcia, upon his arrival (which he claimed took place at 6:30) he spent 10 minutes looking for Mr. Viniegra and then found him and explained why he was late to work and took his place as an observer at the voter identification table. Mr. Garcia testified that 10 minutes later Mr. Viniegra left the table and went to his car which was about seven meters away. While at his car Mr. Viniegra was talking to some girls and putting on his jacket and that he was absent from the table for at least 5 minutes.

Mr. Garcia went on to testify that during Mr. Viniegra's absence the only persons at the voters identification table was Jesus Zamora and Jorge Salgado, the UFW observers, Luis Arteaga, a UFW organizer, and himself. He stated that he overheard Mr. Zamora tell Mr. Arteaga to go persuade the people that were

voting to vote for the union; Mr. Arteaga complied with this request. In addition he testified that Mr. Zamora told the voters "hey, vote for the union. Put your vote on the eagle". He stated that Mr. Zamora also pointed to the UFW eagle on the ballot and told the voters, "put your vote on the eagle" because it was "the good one". Meanwhile, he stated Mr. Arteaga was at the polling booth electioneering as Mr. Zamora had instructed him to. Mr. Garcia stated that he told Mr. Zamora that what they were doing was not right and that they should let the voters vote for themselves. He stated that Mr. Zamora became angry and tried to coerce Mr. Garcia into silence by telling him to "shut up". He testified that after Mr. Viniegra returned from his car to the table, Mr. Zamora, Mr. Arteaga, and Mr. Salgado "fell silent". Mr. Garcia stated that he told Mr. Viniegra that Mr. Zamora, Mr. Salgado, and Mr. Arteaga has been telling the workers how to vote. However, he stated that Mr. Viniegra responded that he could not do anything because he had not seen it happen. Mr. Garcia further testified that he complained to Mr. Viniegra that some 12 people who were not voting were loitering within the polling area and "could be telling people how to vote". He stated that Mr. Viniegra replied that it was not wrong for them to be there.

He further testified that 3 people repeatedly entered the polling area to consult with Jesus, Zamora and Mr. Arteaga and then left.

Mr. Garcia went on to testify that there were approximately 8 individuals who were not employed at Castle Farms and who voted under assumed names. His testimony is contradictory;

at one point he testified that these individuals were allowed to vote using a normal ballot while at another time he testified that these individuals used challenged ballots. Mr. Garcia explained that when the illegal voters came to the voter identification table he told Mr. Viniegra that they were relatives of the persons whose names they were assuming. He testified that Mr. Viniegra then consulted the UFW's observers who said "yes they could vote", whereupon, Mr. Viniegra allowed the illegal voters to cast ballots.

Mr. Viniegra who was the ALRB agent in charge of the election at the Watsonville site was the chief witness for the UFW. Mr. Viniegra testified that there were not many people voting at the site during the approximately 2 hours the polls were open. He further testified that accompanying him at the site were about 5 other board agents among them Arocoles Aguilar and Eduardo Blanco. He stated that Ms. Aguilar was seated at the observers table all during the balloting, leaving only to get a jacket when it got cold. He went on to state that at no time was the observers table left without a board agent present.

He stated that Mr. Blanco was in charge of maintaining the quarantine area and that he would roam within the area during the entire course of the balloting. He further stated that other board agents were present throughout the election at various places within the polling area. He testified that he found nothing unusual or improper occur during the balloting nor did he hear any improper remarks. Finally he stated that all challenged ballots were so designated.

THE HOLLISTER POLLING SITE

The voting at the Hollister polling site took place on/or about August 20, 1980, beginning at approximately 6:30 P.M. Ray Ochoa, Vice-President and Manager of the Sea Division of the Thomas S. Castle Farms, arrived at the polling place in Hollister at approximately 5:20 P.M.

Mr. Ochoa testified that at approximately 6:00 P.M. an individual named Marshall Ganz rounded up the 60 people who had gathered in and around the voting area and talked to them for some 10 minutes about the benefits of having a union. He testified that Ganz told the group that the union provided better benefits and wages and that they would be better off with the union. Voting at the Hollister site began approximately 6:30.

On August 21, 1980, the day after the voting in Hollister, Mr. Ochoa testified that he had a conversation with a Mr. Miller, the company observer at the Hollister voting site. He stated that Mr. Miller told him that the UFW observer had told the voters during the election to vote for the union. Mr. Miller also said that the UFW observer had pointed towards the box and the ballot which obtained the emblem of the UFW eagle on it indicating how the workers should vote.

DISCUSSION OF THE FACTS

The alleged conduct at the Hollister Ranch is supported only by the hearsay statement of a witness that did not testify. There is no eyewitness testimony as to what actually took place during the election.

The conduct that took place at the Watsonville site was testified to primarily by two witnesses both of whom offered a sharp, contrasting and contradicting account of the events that took place. This therefore is a case whose outcome hinges almost solely on the hearing officer's preception of the witnesses credibility.

THE TESTIMONY OF JOAQUIN GARCIA

Mr. Garcia at the outset testified that he arrived at the voting site at 6:30 P.M. and that he then had a talk with the State agent whereby he introduced himself and explained why he was late. He stated that when he got there the State agent was seated at the table and there were two union observers at the table. Under cross-examination, Mr. Garcia stated that he arrived at 6:30 but that it took him 10 minutes to find the State agent because he couldn't find him right away.

In Hearing Officer's Exhibit 2, the Declaration of Mr. Garcia, he stated on the second and third pages that as soon as he arrived he noticed that "one of the union observers were standing by the voting booth talking to the voters as they entered. He would tell them about the ballot and would point or gesture constantly to the box and the ballot that was marked with the union symbol,, I told the observers that he should not be doing this because he was telling them to vote for the union. He said it was okay and that he was just explaining things to them."

"I did not report this conduct to the state official running the election because he was gone to his car at the time.

He was gone less than five minutes."

Here we have three different accounts of Mr. Garcia's arrival all given by Mr. Garcia. A critical part of the employers case rests on the alleged five minutes that Luis Viniegra went to his car. On direct examination Mr. Garcia stated that he told Mr. Viniegra of the alleged misconduct that took place during the 5 minutes he was gone; in his statement, Hearing Officer Exhibit 2, he claims he never said anything to Mr. Viniegra because Mr. Viniegra was gone. At no point in the declaration does he ever state that Mr. Viniegra was informed of this conduct.

This election lasted somewhat beyond two hours. During that time, Mr. Garcia missed 40 minutes. If there were a conspiracy to commit election misconduct it would seem obvious to me that the conspiracy might have been best performed in Mr. Garcia's absence rather than waiting until 10 minutes after he has arrived. Mr. Garcia replied to my question that there were probably about 35 or 40 people who voted but he could not be sure. It goes beyond the bounds of credulity to believe that in an election that spans the time period of (2) hours 12 voters or approximately 1/3 of those voting would have cast their ballots in the five minutes that Mr. Viniegra left the election booth.

Perhaps the most damaging testimony regarding Mr. Garcia's credibility was his statement that Luis Viniegra was the only board agent present during the voting. Mr. Viniegra testified that there were approximately 5 other agents present during most of the election and assigned to various duties. In addition Ms. Aguilar testified that she was assisting Mr. Viniegra at the

observers table during the voting except when she went to get a coat because it was cold. She further testified that while she was gone Mr. Viniegra remained at the table. Mr. Garcia did not even remember that there was a woman at the table. It would seem fair to deduce that if Mr. Garcia were truly unaware of the presence of five board agents on the election sites, he may have confused their activities with those of the agents for the UFW. He might have also thought that they were the group of people lingering around the election site. But in any case it is hard to speculate exactly what Mr. Garcia imagined those other individuals to be doing. Finally, Mr. Garcia's back and forth testimony regarding the illegal voters and unchallenged vs. challenged ballots indicated that he was willing to change his testimony in order to give the answer he thought he was suppose to be giving.

Indeed, the list of challenged ballots does not show any challenge by the company at the Watsonville location.

I also find that Mr. Garcia's allegation that Mr. Viniegra would look to the UFW observers for approval on a challenged ballot to completely lack credibility. Mr. Viniegra is an experienced board agent who has conducted many elections and would hardly be likely to jeopardize himself and the board by committing such a flagrant act of misconduct.

Through both his testimony and the fact that he was the company observer during the 1980 election I find that Mr. Garcia had an anti-union bias.

I therefore determine to give little weight to the

testimony of Joaquin Garcia because of the inherent contradictions, and because I found the testimony to be untrustworthy and unworthy of belief.

TESTIMONY OF LUIS VINIEGRA

While it is true that Mr. Viniegra did suffer lapses of memory, his testimony appeared to me to be accredible and trustworthy. He is an experienced Board agent who has conducted approximately 15 trials since 1976. It is highly unlikely that Mr. Viniegra would have allowed the alleged conduct to have taken place right in front of the company observer.

Mr. Viniegra testified that at all times the polling place was staffed by agents of the board and that the only people in the polling place were voters or potential voters. He testified that when obviously non-voters came into the area he asked them to leave. He also testified that after someone voted they were asked to leave.

Counsel for employer considers as highly relevant and damaging to the UFW position the testimony of Mr. Viniegra where he stated that he allowed some workers in the area to remain until they had made a few comments. Counsel for the employer characterized these as comments to the voters; however, a careful reading of the transcript would indicate that he was referring to people who had already voted and were waiting for other people to finish voting and it would seem that all they were allowed to do was finish a conversation and then leave. There were merely a group of people standing around waiting for their friends to finish voting.

Mr. Viniegra testified that there were a number of observers present at the election, sometimes as many as six, and sitting at the table with Mr. Garcia was Arocoles Aguilar. He stated that there was no UFW conduct complained about during the polling and went on to state that at no time during the polling did he refuse to accept a challenged ballot.

Finally he stated that he heard no conversations that would have led him to believe that any improper conduct was going on.

TESTIMONY OF AROCOLES AGUILAR

Ms. Aguilar testified briefly that she was at the observer table for most of the election leaving only to get a coat because it was so chilly. She testified that at no time was the polling place left unstaffed by board agents. It was clear that her memory of the events of that evening was hazy because she did state that the company observer was there during the whole election when in fact the evidence indicates clearly that he was not.

TESTIMONY OF RAY OCHOA AND MICHAEL CASTLE

Neither Mr. Ochoa's nor Mr. Castle's testimony dealt with the events that took place once the polling began at the Watsonville site. Therefore I find their testimony has no relevance to these matters.

CONCLUSION

1. Whether the ALRB left the polling place during the election with the result that the ballot box and the polling booths and entire voting area was left unattended? and if so what if such act affected the outcome of the election.

The evidence strongly supports the conclusion that the entire balloting area was staffed at all times during the course of the election by board members. While there is no question that Mr. Viniegra did leave the polling area to go to the car for some time, there were other board agents present at the polling booths while he was gone. I find Mr. Garcia's testimony entirely untrustworthy in regards to this particular matter, in that he testified that he believed that there was only one board agent present for the entire election process. The testimony of more credible witnesses indicates that there were a number of board agents present.

Finally, the contention that nearly one third of the entire number of people who voted in this election at the Watsonville location voted within the five minutes that the polling place was alleged to have been left unstaffed seems highly incredible and unbelievable on its face.

2. Whether the UFW, through its observers made campaign statements to voters immediately prior to their entering the voting booths and illegally pointed to the box in the ballot, on which was located the UFW symbol, immediately before voters entered the polling booth to vote; and if so whether such conduct affected the outcome of the election.

The only witness that testified to the UFW observers illegally pointing to the box on the ballot and telling people to vote for the UFW symbol was Mr. Garcia. As I stated previously he testified that at least one third of the workforce voted in the 5 minutes that Mr. Viniegra was gone, and it was during these five minutes that the UFW observers were making campaign statements and pointing to the box with the UFW symbol. In the light of my

earlier finding that the polling place was at all times staffed by a board observer and the high improbability of so many workers voting in such a short time, I find that the UFW did not participate in conduct that affected the outcome of the election.

3. Whether the ALRB failed or refused to prohibit a UFW observer from standing next to the voting booths campaigning with the voters as they entered the voting booths and gesturing to the box on the ballot in which was located the UFW symbol, immediately before the voters cast their votes; and if so whether such conduct affected the outcome of the election.

For the reasons stated above, I find that the ALRB did not participate in conduct that affected the outcome of the election

4. Whether the Board agent interfered with the fair operation of the election process by failing and refusing despite challenges by the employer's observer to prohibit several workers who were not employed by the employer to vote in the election; and if so if such affected the outcome of the election.

The testimony of the employer's own witnesses is ambiguous on this point; however he certainly testified that a number of ballots that were challenged were put into challenge envelopes. The record of challenges as part of Hearing Officer Exhibit Number One does not show any company challenges from the Watsonville polling place. The testimony of the board agent Mr. Viniegra was that all challenged ballots were put into the proper envelopes and designated as such for the purposes of this election.

I find that board agents did not participate in conduct affecting the outcome of the election.

5. Whether the UFW interfered with the fair operation of the election process by illegally arranging for some persons not employed by the employer and ineligible to vote in the election to assume the identities of workers employed by the employer, and if so whether such conduct affected the outcome of the election.

No evidence other than inference was ever presented even by Mr. Garcia that the alleged illegal voters posing as workers for the employer were told to do so by UFW or its agents or representatives. For this reason and for the reasons stated above, I find that UFW did not participate in conduct that affected the outcome of the election.

Finally, I find no evidence to support any of the above employer objections in regards to activities at the Hollister location.

ANALYSIS

My findings in this matter are based almost entirely on the contrasting testimony of Joaquin Garcia and Luis Viniegra. I have found Mr. Viniegra to be a highly credible witness and I've found Mr, Garcia to be an untrustworthy and highly unreliable witness. Their's was testimony that went to the heart of the allegation raised by the employer in its post election objection that was set for hearing in judging the testimony of Mr. Garcia to be untrustworthy and unreliable, I find no other testimony or evidence that would support the objections. However, even if I were to credit the testimony of Mr. Garcia in a more favorable light my conclusions would be the same.

There has been no evidence presented by the employer

that the alleged statements made by the UFW observers affected the results of the election. No witness testified that the alleged statements or actions had some effect, let alone a substantial affect that interfered with the employer's exercise of their free choice. It seems clear that the Agricultural Labor Relations Board has held that it will not set aside an election based upon an appearance of bias unless it affected the conduct of the election and impaired the ballotings validity as a measure of employee choice Coachella Growers/ Inc., (1976) 2 ALRB No. 17, Bruce Church, Inc., (1977) 3 ALRB No. 90, Ranch No. 1, Inc./ (1979) 5 ALRB No. 1 where the Board stated:

"...Where employees have participated in a free and fair election of a collective bargaining representative, we will not deprive them of their right to collective bargaining by refusing to certify an election because of misconduct which we cannot fairly conclude affected the results of the election. K. K. Ito Farms, (1976) 2 ALRB No. 51, Desert Seed Company, Inc., (1976) 2 ALRB No. 53. Accordingly, we hereby dismiss the employers objection and uphold the election.

This is the standard that I have used in my determination in this matter and the employer did not reach its burden of demonstrating that the alleged misconduct affected the results of this election. The primary policy reason for applying this standard is expressed by the Board in D'Arrigo Brothers, (1977) 3 ALRB No. 37 p. 4: "... (t o) set aside an election in the agricultural context means that employers will suffer serious delay in realizing their statutory right in collective bargaining representation if they choose to be represented..."

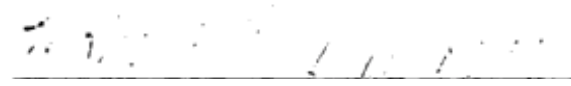
In addition to the problems caused by serious delay in

the agricultural sphere I am persuaded by the petitioners argument that the realities of agricultural labor employment patterns makes the repetition of election extemely difficult, as was stated in the Samuel S. Vener Company, (1975) 1 ALRB No. 10 "...setting an election aside in the context of agricultural employment thus carries complications far beyond those involved in a normal industrial situation."

CONCLUSIONS OF LAW

Based on the above findings of fact, analysis and conclusions I recommend that the employers objections be dismissed and the United Farm Workers of America, AFL-CIO be certified as the exclusive bargaining representative of all the agricultural employees that would be employed by Castle Farms.

DATED: December 4, 1981



ROBERT L. BURKETT
Investigative Hearing Examiner