

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

VESSEY FOODS, INC.,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 80-RC-3-SAL
	)	
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	
Petitioner.	)	8 ALRB No. 28
	)	

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DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on July 23, 1980, a representation election was held among the Employer's agricultural employees on July 26, 1980. The official Tally of Ballots showed the following results:

UFW . . . . .	128
No Union . . . . .	5
Challenged Ballots . . . . .	<u>72</u>
Total . . . . .	205

The Employer timely filed post-election objections, three of which were set for hearing. In its objections, the Employer alleged: that the conduct of strikers intimidated and threatened the voters and affected the outcome of the election; that UFW supporters campaigned at and near the polling place, affecting the outcome of the election; and that a UFW observer repeatedly spoke with prospective voters despite cautions by Board agents conducting the election.

A hearing was held before Investigative Hearing Examiner (IHE) David C. Nevins on December 1 and 2, 1980. In a Decision issued on January 29, 1981, the IHE found that the Employer had not shown that the alleged conduct of the strikers, UFW supporters, and a UFW observer tended to affect the outcome of the election, and recommended that the Employer's objections be dismissed.

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

Pursuant to Labor Code section 1146, the Board has delegated its authority in this case to a three-member panel.

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

In his Decision (IHED) the IHE concluded that the alleged strike conduct which preceded the election was insufficient to warrant setting aside the election. While we agree with his analysis and his conclusion, for the reason set forth below we do not rely on the IHE's finding that the strikers' conduct was not attributable to the UFW.

In Joseph Gubser Co. (Oct. 9, 1981) 7 ALRB No. 33, p. 2, we stated:

Respondent excepts to the IHE's finding that the people involved in the field rushing incident were not agents of the UFW. To the extent that this exception suggests that a different result would be reached if the field rushers were UFW agents it is without merit.

Thus, in circumstances such as those present here, the

issue of whether the Union was responsible for the strikers' pre-election violence is not dispositive of the case. See NLRB v. Carroll Contracting & Ready Mix (5th Cir. 1981) 363 F.2d 111 [106 LRRM 2491]; Poinsett Lumber & Mfg. Co. (1956) 116 NLRB 1732 [39 LRRM 1083].

Respondent contends that we must set aside the results of this election because of the Union observer's admitted conversations with prospective voters, citing Perez Packing, Inc. (Jan. 20, 1976) 2 ALRB No. 13, and Milchem, Inc. (1963) 170 NLRB 362 [67 LRRM 1395]. We disagree.

In Perez, we set aside an election in consideration of the totality of objectionable conduct in that case. We agree with the IHE that the conduct in the present case is clearly distinguishable from the conduct alleged in Perez. In that case we found that the election was conducted in a carnival-like atmosphere. Here, the IHE found that the election was "smoothly conducted ... peaceably and without interruption."

While we agree with the IHE that the UFW observer's continuing conversations with voters was an infraction of election procedures, we find that those conversations did not tend to affect the results of the election. The uncontroverted testimony of the Union observer indicates that he simply responded to the voters' questions as to what to do next, or where to go. The record fails to raise the slightest suggestion that the observer was engaged in electioneering or campaigning on behalf of the Union. These brief conversations can be characterized only as innocuous statements.

Even under the principle espoused in Milchem, Inc., supra, 170 NLRB 362 that, generally, conversations between the parties and voters at the polling place will invalidate the results of the election, we would reach the same conclusion in this case.<sup>1/</sup> One recognized exception to the Milchem rule is that innocuous conversation between the parties and voters at the polling place will not invalidate the results of the election. NLRB v. Oesterlen Services for Youth, Inc. (6th Cir. 1981) 649 F.2d 399 [107 LRRM 3221]; Princeton Refining (1979) 244 NLRB 1 [101 LRRM 1603]. As we have found that the observer's statements to the voters were innocuous, this exception to the Milchem rule is applicable.

We hereby dismiss the Employer's objections and uphold the election and shall certify the UFW as the bargaining representative.

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, and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all agricultural employees of Vessey Foods, Inc., in the State of California, for the purpose of collective bargaining, as defined

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<sup>1/</sup>We rejected the strict application of that principle in Superior Farming Co. (Apr. 27, 1977) 3 ALRB No. 35, holding that the agricultural context militated against that degree of election conduct regulation.

by Labor Code section 1155.2(a), concerning employees' wages,  
working hours, and other terms and conditions of employment.

Dated: April 6, 1982

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

CASE SUMMARY

Vessey Foods, Inc.

8 ALRB No. 28

Case No. 80-RC-3-SAL

IHE DECISION

Following a representation election in which the UFW received a majority of the votes, the Employer timely filed post-election objections, alleging: that strikers intimidated and threatened the workers, that Union supporters campaigned at and near the polling place, that a Union observer had repeated conversations with prospective voters, and that such acts, considered separately or together, tended to affect the results of the election. The Investigative Hearing Examiner (IHE) recommended dismissal of the Employer's objections. The IHE found that the strikers' conduct did not tend to affect the outcome of the election, and that there was insufficient evidence to establish that the conduct of the strikers was attributable to the Union. The IHE also found that the polling-site conduct of union supporters did not tend to affect the results of the election.

BOARD DECISION

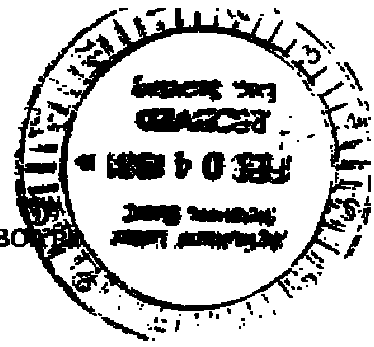
The Board affirmed the IHE's findings and conclusions and certified the UFW as the exclusive bargaining agent of the Union employees. The Board rejected the IHE's reliance upon his finding that there was insufficient evidence to establish that the UFW was responsible for the strikers' pre-election violence, holding that under the circumstances of this case no such responsibility need be shown. The Board characterized the Union observer's conversations with prospective voters as innocuous, which, even under the Milchem rule, would be an insufficient basis for setting aside the election.

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

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STATE OF CALIFORNIA  
BEFORE THE  
AGRICULTURAL LABOR RELATIONS BOARD



1  
2  
3  
4  
5 VESSEY FOODS, INC. )

)  
6 Employer )

7 and )

8 UNITED FARM WORKERS OF AMERICA, )  
9 AFL-CIO )

10 Petitioner )

Case No. 80-RC-3-SAL

11  
12  
13 APPEARANCES:

14 For the Employer:

15 Ronald H. Barsamian  
16 Dressier, Quesenbery, Laws & Barsamian  
17 P. O. Box 2130  
18 Newport Beach, California 92663

19 For the Election Petitioners

20 Alicia Sanchez  
21 United Farm Workers Legal Department  
22 P. O. Box 30  
23 Keene, California 93531

24 DECISION

25 STATEMENT OF THE CASE

26 David C. Nevins, Investigative Hearing Examiner: This  
27 proceeding involves a dispute between Vessey Foods, Inc. (here-  
28 after the "Employer"), and the United Farm Workers Union,

1 AFL-CIO (hereafter the "UFW"). A hearing was held on  
2 December 1 and 2, 1980, where both parties were afforded a full  
3 opportunity to present evidence. Both parties submitted post-  
4 hearing briefs. The proceeding involves several objections  
5 raised by the Employer over a certification election held on  
6 July 26, 1980.<sup>1/</sup>

7 I. Background And The Objections.

8 Pursuant to the UFW's petition for certification,  
9 filed on July 23, an election was conducted on July 26, and the  
10 following results were tallied:

11	UFW:	128
12	No Union:	4
13	Challenged Ballots:	72

14 In a timely manner, the Employer filed its objections to the  
15 election. Pursuant to that filing, as well as a successful  
16 appeal taken by the Employer, the Board's Executive Secretary,  
17 in notices dated August 27 and October 7 and 8, set down for  
18 hearing the following objections:

- 19 1. That UFW strikers interfered with the  
20 election by rushing fields at Robert  
21 Lindeleaf Farms and by engaging in surveil-  
lance of, assaulting, and threatening the  
Employer's employees.
- 22 2. Whether an observer spoke to voters  
during the election.
- 23 3. Whether people displayed UFW flags  
24 during the voting.

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27 <sup>1/</sup>Unless otherwise specified, all dates herein refer  
28 to 1980.



1     II. Factual Background.

2                     A. The Strike Activity

3                     On July 21, the Employer had a crew of some 150  
4 workers harvesting garlic in a field owned by Robert Lindeleaf,  
5 outside of Gilroy, California. The crew was directed by Peter  
6 Bourdet, a labor contractor, who was not present on July 21, and  
7 the crew's foreman, Joe Arellano, who was present.

8                     Somewhere around 11:00 a.m. a group of workers  
9 began gathering outside the Lindeleaf property, on Gillman Road.  
10 They made known to those present that they were from A and D  
11 Christopher Company, They began yelling to the Employer's  
12 workers that they were on strike, long live the strike, and  
13 yelled for them to come out of the field so they could get better  
14 According to Foreman Arellano, the Christopher strikers  
15 also yelled that if the crew did not leave the field their tires  
16 would be punched. (Two of the Employer's workers who testified,  
17 Juvenal Ornelas and Marta Bravo, recalled no such threats.)

18                     Some of the Christopher strikers then entered the  
19 Lindeleaf property and began talking to the working employees.  
20 The "strikers" requested support for the strike and asked the  
21 Employer's workers to leave the field. The Employer's workers,  
22 for the most part, left the field and stopped working for the  
23 day, although before leaving the field they finished filling  
24 their garlic "baskets" and punched out. Mr. Ornelas recalls  
25 taking about 30 minutes to finish filling his family's baskets  
26 before leaving, and Ms. Bravo recalls taking about 10 minutes.

27                     It is disputed as to whether any "violent" conduct  
28 occurred on July 21. Foreman Arellano recalls that two of his

1 workers, both women, were struck by objects thrown by the  
2 strikers, one being struck by a green tomato and the other being  
3 struck by a head of garlic. Mr. Ornelas and Ms. Bravo observed  
4 nothing thrown at the workers and recall that communication be-  
5 tween the strikers and workers was peaceful and cordial. No  
6 dispute exists over the fact that at no time on July 21 was  
7 there evidence of the UFW's presence in connection with the  
8 strike.

9           On July 22, a similar event occurred. After the  
10 Employer's crew had been working for about one hour, the  
11 Christopher strikers again appeared on Gillman Road. Approxi-  
12 mately 60 of them entered the Lindeleaf property and headed to-  
13 ward the Employer's crew. After quickly notifying the local  
14 sheriff's department of the situation, Mr. Bourdet went to meet  
15 the strikers as they entered the field. He attempted to stop  
16 them, telling them they were trespassing and should leave, but  
17 the strikers nevertheless continued to proceed toward the har-  
18 vesters. At some point the strikers were yelling toward the  
19 workers that they should stop work and support the strike. Mr.  
20 Bourdet recalls that the strikers threw clods of dirt, green  
21 tomatoes, and heads of garlic, and that a dirt clod landed close  
22 by a worker and his two children. Bourdet recalls that the  
23 worker became irate, after which the throwing stopped. Neither  
24 Mr. Ornelas nor Ms. Bravo recalls any objects being thrown.

25           As some of the strikers were progressing toward  
26 the working employees, a deputy sheriff arrived and drove into  
27 the field. That deputy, Jack Chew, after surveying the situa-  
28 tion, approached the strikers and told them they were

1 trespassing and would have to leave the field. According to  
2 him, the strikers began leaving the field about 30 seconds after  
3 he confronted them. Deputy Chew saw no throwing or other vio-  
4 lent conduct. The Employer's workers again left the field,  
5 after individually filling their garlic baskets and punching out.  
6 No arrests were made that day, nor were any citations issued.  
7 As the strikers returned to Gillman Road they pulled up some no  
8 trespassing signs and wrote in their demands for more money for  
9 the garlic harvest, holding and waving the signs. Again no evi-  
10 dence of the UFW's presence (e.g., UFW flags) was seen that  
11 morning.

12           July 21 and 22 were apparently the beginning of a  
13 strike for garlic harvesters. For some three weeks or so strike  
14 activity and picketing occurred in the Gilroy area, From  
15 approximately July 23 on, UFW flags were in evidence among the  
16 strikers, and the Lindeleaf property became one of the congregat-  
17 ing spots for strikers, who then proceeded to other fields as  
18 well. No further work was performed at the Lindeleaf property  
19 after July 22.

20           B. The July 26 Election

21           The election, located at Hollister's Airport Park,  
22 began about 12:30 p.m., about 30 minutes later than originally  
23 scheduled. After the voting began, Janet Maroney, the Em-  
24 plover's observer, heard yelling coming from the highway area,  
25 some 50 yards away from the registration table. She turned  
26 around and observed that people were standing on the far edge of  
27 the highway, among some parked cars, and recalls they were yell-  
28 ing and waving UFW flags. Some of the flag" were draped from

1 the parked cars and others were being held and waved by those  
2 standing next to the highway.<sup>2/</sup> She also noticed one man standing in  
3 the middle of the highway, where cars making a left turn  
4 into the airport parking lot would slow down and stop; he was  
5 yelling and standing in front of the turning cars.

6 According to Ms. Maroney, the flag waving and yell-  
7 ing from across the highway continued for over an hour. She re-  
8 calls that one of the Board agents expressed concern about it  
9 and went to speak with the demonstrators, but the yelling and  
10 flag waving nonetheless continued. On the other hand, one of  
11 the voters, Graciela Garcia, who was in the voting area between  
12 2:00 and 5:00 p.m. observed no such yelling and flag waving,<sup>3/</sup>

13 Ms. Maroney also recalls during the four hours or  
14 so of voting that the UFW observer, also seated at the registra-  
15 tion table, continually talked to voters checking in for their

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16 <sup>2/</sup>Prior to when the voting began, Ms. Maroney also  
17 noticed some 20 or so UFW flags being displayed by persons in  
18 the voting area, close by the parking lot. She mentioned those  
19 flags to one of the Board agents and, after evidencing some re-  
20 luctance to interfere with their display, the Board agent told  
21 the flag carriers they would have to put the flags away. The  
22 flags were then rolled up and later they were put away in cars.

23 It should be noted that one of the Employer's origi-  
24 nal election objections related to the display of UFW flags in  
25 the voting area. This objection was dismissed by the Executive  
26 Secretary in his order dated August 27. The Employer offered  
27 evidence concerning the flags present in the voting area only by  
28 way of background evidence for what was later observed by Ms.  
Maroney during the voting.

29 <sup>3/</sup>Ms. Garcia drove to the voting area in a car caravan  
30 of some 30 cars. The caravan gathered at one of the strike loca-  
31 tions and drove to the voting area with flags waving from the car  
32 windows. She recalls being told to put away the flag when she arrived in  
33 the parking lot, and remembers that the flag's she and  
34 the others had were put away in the cars. She recalls no flags being in  
35 evidence across the highway or that any yelling ema-  
36 nated from that area.

1 ballots. This talking by the UFW observer was in conflict with  
2 one of the instructions issued by Board agents prior to the  
3 election. Ms. Maroney, having only a limited familiarity with  
4 Spanish, was unable to discern what the UFW observer was saying  
5 the voters, but she recalls hearing the word "union" used by  
6 him and thought that the observer was mainly explaining the  
7 ballot form to voters.

8           Also according to Ms, Maroney, the UFW observer  
9 Was talking to voters so much that it occasionally delayed pro-  
10 cessing voters at the registration table. She recalls that at  
11 one point the Board agent, who was also seated at the registra-  
12 tion table, spoke to the UFW observer and instructed him to stop  
13 I talking. Maroney remembers that the UFW observer began again  
14 talking to voters a short time after he was instructed to stop  
15 it.

16           The UFW observer, Jose Compean, admits he was  
17 talking to voters as they stood at the registration table. He  
18 claims he spoke to them because they were continually asking him  
19 what to do or where to go next after registering at the table,  
20 Mr. Compean said he instructed them where to go next because no  
21 one else was telling the voters what to do, Mr, Compean admit  
22 he talked to voters pretty much throughout the voting, and con-  
23 cedes that he was told twice, once by Board Agent Luis Vinegra  
24 and once by the Board agent seated at the registration table, to  
25 stop talking to voters.

#### 26                                   ANALYSIS AND CONCLUSIONS

#### 27 I. Introduction.

28           Noting that a "decision to set aside an election in

1 the agricultural context means that employees will suffer a  
2 serious delay in realizing their statutory right to collective  
3 bargaining representation if they choose to be represented," the  
4 Board has enunciated that:

5 We will impose that burden upon employees  
6 only where the circumstances of the first  
7 election were such that employees could not  
8 express a free and uncoerced choice of a  
9 collective bargaining representative.<sup>4/</sup>

10 This accepted standard requires inquiry into whether the conduct  
11 objected to was either singly or in toto sufficient to esta-  
12 blish that the voting employees were unable to exercise a free  
13 and uncoerced choice in casting their ballots. In order to test  
14 the conduct objected to in this proceeding under that standard,  
15 first the individual objections will be considered, and then the  
16 overall conduct will be evaluated to determine whether the Em-  
17 ployer's employees were able to cast their ballots in a way pro-  
18 tected by our Act.

## 19 II. The Strike Conduct.

20 Without belaboring our discussion, several factual  
21 conclusions emerge from an analysis of the strike conduct high-  
22 lighted in the record, which occurred on July 21 and 22. First,  
23 those two days were the beginning of a garlic strike, which em-  
24 ployees from different companies joined in, initially at the be-  
25 hest of employees from Christopher Company. Second, when the  
26 Christopher strikers sought support from among the Employer's  
27 workers, they gave no evidence of being affiliated with the UFW.  
28 The picketing activity that occurred at the Lindeleaf property

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4/D'Arrigo Bros. of California, 3 ALRB No. 37 (1977)  
(Page 4, slip Opinion).

1 on July 21 and 22 was without any overt identification with the  
2 UFW, an identification that emerged only after July 22, when the  
3 "strikers" continued their activity at that property as well as  
4 elsewhere.

5 Third, the level of "violence" associated with the  
6 strike on July 21 and 22 can only be described as minimal. No  
7 person has described anything more serious than some objects  
8 being thrown; and even as to that throwing, no one has sought to  
9 describe how extensive that throwing was or how long it lasted.  
10 The threat it posed to the Employer's workers could not have  
11 been substantial, for no evidence exists that they sought to re-  
12 treat from it or to abandon their work as a result of it. In-  
13 deed, in joining the strike, the Employer's workers apparently  
14 calmly finished their immediate work, filled their garlic  
15 baskets, and then punched out as they normally did. None of  
16 the strike activity indicates that serious intimidation or  
17 coercion existed at the Lindeleaf field.

18 In addition, two workers who were present on July 21 and  
19 22 did not even see any objects being thrown. When the  
20 deputy sheriffs arrived on July 22, only a short time after the  
21 Christopher strikers had arrived, they too observed no one  
22 threatening the workers or throwing anything at them. Also,  
23 when one of the deputy sheriffs asked the strikers to leave the  
24 field, they responded affirmatively only seconds after the re-  
25 quest was made. No arrests and no citations took place that  
26 day.

27 The circumstances described above establish no identi-  
28 fication between the UFW and the strikers on July 21 and 22, the

1 two days from which the strike activity is claimed to have in-  
2 terfered with the subsequent election, held some four days  
3 later. Also, the atmosphere surrounding that strike activity  
4 cannot be described as so extreme as to warrant the conclusion  
5 that it either then or later had residual intimidating and coer-  
6 cive influences in connection with the voting some four days  
7 later. In short, these two foregoing conclusions establish that  
8 it would be improper to view the strike conduct as sufficient to  
9 call for setting aside the election held on July 26. No suffi-  
10 cient nexus exists between the UFW and that strike conduct or  
11 between the severity of that conduct and the smoothly conducted  
12 election held four days later.

13 III. The Conduct Of The Election.

14 Two features surrounding the election itself are  
15 placed into issue by the Employer's objections. One feature  
16 concerns the demonstration that occurred outside the polling  
17 area. The second feature concerns the continual conversations  
18 engaged in by the UFW's election observer with the voters.

19 As for the election demonstration, several facts must  
20 be noted. The demonstrators' activity was composed of yelling  
21 and waving UFW flags. No evidence exists that those demonstrat-  
22 ing were UFW organizers or officially associated with the UFW.  
23 The demonstrators stood some 50 yards away from where the voters  
24 were receiving their ballots and casting them. No evidence is  
25 put forward in respect to what the demonstrators were yelling,  
26 Nor is there evidence that the demonstration disrupted in any  
27 fashion the election, which the record reflects was run peace-  
28 fully and without interruption. In view of these considerations,



1 a conclusion similar to that announced in Veg-Pac, Inc., 2 ALRB  
2 No. 50 (1976) (Page 6, Slip Opinion), must be reached: "Presence  
3 of union organizers at or near the polling place, in the absence  
4 of evidence of coercion or other objectionable conduct, is in-  
5 sufficient to warrant setting aside an election." See also  
6 Harden Farms of California, Inc., 2 ALRB No. 30 (1976)(Page 8,  
7 Slip Opinion). In short, the evidence in this case is insuffi-  
8 cient to establish that the demonstrators interfered with the  
9 employees' ability to exercise their free choice.<sup>5/</sup>

10 When our analysis turns to the conduct of one of the  
11 UFW's two election observers a much more serious consideration  
12 arises. The record reflects that through most of the election,  
13 that observer, Jose Compean, engaged in conversations with  
14 voters. Those conversations not only violated the instructions  
15 earlier issued by Board agents who were conducting the election,  
16 but they once or twice resulted in cautionary admonishments from  
17 Board agents during the election. And, although no claim is  
18 made that Compean's individual conversations were long or sub-  
19 stantial, those conversations did occasionally delay processing  
20 voters at the registration table.

21 To a significant extent, then, Mr. Compean's conduct  
22 appears similar to that found in Perez Packing, Inc., 2 ALRB No.  
23 13 (1976), to be "a serious violation of the Board agent's in-  
24 structions regarding the conduct of the election." (Slip  
25

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26 <sup>5/</sup>Indeed, it might be noted that the testimony of  
27 Graciela Garcia, one of the voters, would suggest that by the  
28 time a large number of voters arrived at the polling area the  
demonstration had ceased or was so minimal as to go unnoticed.

1 Opinion, at Page 8.<sup>6/</sup> Despite the Perez Case, however, the  
2 Board has noted:

3 Our decisions hold that conversations bet-  
4 ween union or management observers and  
5 prospective voters fall within the scope  
6 of the [Milchem]rule, but that where an  
7 observer is involved we may inquire into the  
8 substance of the conversation and consider  
9 whether it is of such character as to affect  
10 the free choice of voters in the election.<sup>7/</sup>

11 While one can characterize the UFW observer's continu-  
12 ing conversations with voters as a serious infraction of his in-  
13 structions, as well as a serious breach in the conduct of an  
14 election, one must also be aware of countervailing considera-  
15 tions. For example, no evidence is put forth that any one of  
16 his conversations with voters was substantial, yet alone that  
17 they were routinely substantial. The level and extent of dis-  
18 ruption caused by his conversations is not addressed by the tes-  
19 timony in any clarifying or specific manner. Mr. Compean  
20 claimed his conversations with voters stemmed only as a response  
21 to their questions to him as to what to do next or where to go

22 <sup>6/</sup> In Perez the Board concluded that " [c]onsidered  
23 collectively, the objectionable conduct raised by the employer  
24 undermines the integrity of this election to such an extent  
25 that it would be inappropriate for the Board to affix its im-  
26 primatur to the outcome." But, in Perez several forms of objec-  
27 tionable conduct were established by the evidence, including the  
28 improper designation of an election observer, that the voting  
area had a "carnival-like" atmosphere due to the drinking and  
noise-making nearby, plus the observer's conversations with  
prospective voters.

29 <sup>7/</sup> Kawano Farms, Inc., 3 ALRB No. 25 (1977) (Page 18,  
30 Slip Opinion). Accord: Harden Farms, supra, 2 ALRB No. 30;  
31 Sakata Ranches, 5 ALRB Mo. 56 (1979) (Page 7, Slip Opinion).  
32 Thus, the Board has rejected the notion that it would apply  
33 Milchem, Inc., 170 NLRB No. 46 (1980), in such a way as to  
34 set aside elections where observers engage in conversation  
35 with voters, irrespective of the content of those conversa-  
36 tions.

1 next. No witness was called to dispute his claim. Nor was any  
2 background identification of Compean established that would por-  
3 tray him as an aggressive UFW supporter, whose conversations  
4 with voters might likely be inferred to include references to  
5 the UFW and to requests for voter support.

6 Based essentially on the unknown content of the UFW  
7 observer's conversations with voters, but in view of their regu-  
8 larity, the Employer puts forth its election objection. No case  
9 authority under our Act, however, has been cited that would esta-  
10 blish that single feature of "misconduct" as sufficient to  
11 aside an otherwise properly conducted election. See Hecla  
12 Mining Co., 218 NLRB No. 61 (1975). Nor is any specific evi-  
13 dence put forward to demonstrate that Compean's conversations  
14 affected the voters' ability to freely cast their ballots.

15 One must be hesitant to reach any conclusion that  
16 would approve the kind of conduct engaged in by the UFW observer,,  
17 which is so open to abuse and to unfair, last-minute campaigning,  
18 but one must also be hesitant in setting aside the results of an  
19 election, otherwise fairly conducted, which could lead to serious  
20 frustration of employee rights under our Act. On balance, des-  
21 pite the UFW observer's misconduct it cannot be concluded that  
22 it was so serious or so compelling as to warrant setting aside the  
23 results of the July 26 election. A per se rule does not  
24 exist that calls for so setting aside that election; nor does  
25 the evidence demonstrate the missing nexus between the content  
26 of the observer's conduct and exercise of the voters' free  
27 choice so as to show a need to set that election aside. See  
28 Gonzales Packing Co., 2 ALRB No. 48 (1976).

1 IV. The Totality Of The Conduct.

2 In view of the foregoing analysis it essentially  
3 follows that the totality of conduct manifested in the record  
4 does not call for setting aside the election results in this  
5 case. Neither separately nor together do the acts addressed in  
6 the record reflect that the Employer's employees cast their  
7 ballots in an atmosphere of intimidation or coercion or that  
8 they were unable to freely select their ballot choices.

9 V. Conclusion.

10 Based on all the foregoing considerations, it is re-  
11 commended that the results of the July 26 election be certified  
12 and that the Employer's election objections be dismissed.

13 Dated: January 29, 1981

14 AGRICULTURAL LABOR RELATIONS BOARD

15  
16 By David C. Nevins  
17 David C. Nevins  
18 Investigative Hearing Examiner  
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