

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

GEORGE A. LUCAS & SONS,	)	
Employer,	)	Case No. 81-RC-3-D
	)	
and	)	
	)	
UNITED FARM WORKERS	)	8 ALRB No. 61
AMERICA, AFL-CIO,	)	
	)	
Petitioner.	)	

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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 May 26, 1981, a representation election was conducted on June 2, 1981, among the agricultural employees of George A. Lucas & Sons, the Employer. The official Tally of Ballots showed the following results :

UFW . . . . .	219
No Union . . . . .	150
Challenged Ballots . . . . .	<u>24</u>
Total Ballots	393

The Employer timely filed post-election objections, which raised the following -issues: (1) whether agents or supporters of the UFW engaged in electioneering at the polling sites; (2) whether agents or supporters of the UFW prevented employees from voting; and (3) whether agents of the Agricultural Labor Relations Board (ALRB or Board) engaged in misconduct by (a) campaigning for the UFW , (b) allowing employees to complain

about the Employer at the polling sites, and/or (c) improperly, removing campaign signs from the Employer's property, thus preventing the Employer from expressing its views against unionization.

An investigative hearing on the Employer's objections was conducted by Investigative Hearing Examiner (IHE) Beverly Axelrod during August and September 1981. In her proposed Decision, which issued on February 18, 1982, the IHE recommended that all of the Employer's objections be dismissed and that the UFW be certified as the 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 and the Regional Director for the ALRB's Delano Region<sup>1/</sup> each filed a reply brief.

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

The Board has considered the record<sup>2/</sup> and the attached Decision in light of the exceptions and briefs and has decided

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<sup>1/</sup> Prior to the opening of the hearing, the Regional Director timely filed a motion requesting leave to intervene in the proceedings. At the hearing, the IHE granted the Regional Director's motion and permitted him to generally intervene in all aspects of the case. No party filed an exception to the IHE's granting of the Regional Director's motion to intervene.

<sup>2/</sup> The Regional Director filed a motion to correct the reporter's transcript, and the Executive Secretary thereafter transferred the motion to the Board. As there was no opposition to the motion, we grant it and hereby correct the reporter's transcript as set forth in the motion. We also hereby deny the Employer's request for oral argument.

to affirm the IHE's rulings, findings,<sup>3/</sup> and conclusions and to adopt her recommendation.

Alleged Board Agent Misconduct

We affirm the IHE's finding that Board agents reasonably exercised their discretion, and did not engage in any misconduct, by removing the Employer's campaign signs from company property on the evening of June 1, 1981, and the morning of June 2, 1981. (See Fotomat Corp. v. NLRB (6th Cir. 1980) 634 F.2d 320 [100 LRRM 2027].) We therefore need not reach the proper standard to be applied in reviewing election objections where Board agent misconduct is established. However, we note that the Employer, in its exceptions brief, argues that we should adopt the "strict neutrality" rule for evaluating cases of alleged board agent misconduct enunciated by the National Labor Relations Board (NLRB) in Athbro Precision Engineering Corp. (1967) 166 NLRB 966 [65 LRRM 1699] (the national board set aside the election because an employee, who had already voted, observed a board agent drinking beer with a union representative in a

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<sup>3/</sup>The Employer contends that the IHE mechanically discredited all of the Employer's witnesses and credited only the witnesses presented by the UFW and the Regional Director, thereby demonstrating her bias against the Employer. The fact that a hearing examiner credits one party's witnesses over another party's witnesses is not improper and does not by itself imply bias. (Mission Packing Company (June 30, 1982) 8 ALRB No. 47.) This Board will not disturb an IHE's credibility resolutions, to the extent they are based on demeanor, 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; El Paso Natural Gas Co. (1971) 193 NLRB 333 [78 LRRM 1250]; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1531].) Our review of the evidence in this matter indicates that the IHE's credibility resolutions are supported by the record as a whole and we therefore affirm them.

nearby cafe). A close reading of the national board's Athbro case and its subsequent history,<sup>4</sup>/ as well as the cases issued after Athbro, reveals that, contrary to the Employer's assertion, the NLRB does not apply a per se or "strict neutrality" test in board agent misconduct cases, but instead has utilized, on a case-by-case basis, a composite approach which includes a determination of whether the agent's alleged misconduct tended to affect the employees' freedom of choice or the outcome of the election, and whether the appearance of impropriety compromised the integrity of the board's procedures.

The NLRB has declined to set aside elections where alleged board agent misconduct did not tend to affect the results of the election. (See, e.g., Glacier Packing Co., Inc. (1974) 210 NLRB 571 [86 LRRM 1178], where the board set aside an election because the board agent's treatment of a company observer and representative created a commotion in the polling area during voting, tending to impair employee free choice; Queen City Foundry, Inc. (1970) [73 LRRM 1345], where a conversation between a board agent and a union representative in the presence of voters prior to the opening of the polls was insufficient grounds to set aside the election; and Wabash Transformer Corporation (1973) 205 NLRB 148 [83 LRRM 1545], where a board agent's statement over a loudspeaker that the polls were

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<sup>4</sup>/ (Athbro Precision Engineering Corp. (1967) 166 NLRB 966 [65 LRRM 1699], vacated sub nom. Electrical Workers, IUE v. NLRB (D.D.C. 1968) [67 LRRM 2361], acquiesced in Athbro Precision Engineering Corp. (1968) 171 NLRB 21 [68 LRRM 1001], enforced NLRB v. Athbro Precision Engineering Corp. (1st Cir. 1970) 423 F.2d 573 [73 LRRM 2355].)

open and employees could vote "for your union representative", without also stating that employees could vote against the union, was an insufficient basis to set aside the election.)

The courts recognize that the NLRB is vested with wide discretion in its conduct and supervision of representation elections and that its decision to certify an election warrants special respect by reviewing courts.<sup>5</sup>/ (NLRB v. A.J. Tower Co. (1946) 329 U.S. 324 [19 LRRM 2128]; Skyline Corp. v. NLRB (5th Cir. 1980) 613 F.2d 1328 [103 LRRM 3003]; NLRB v. Osborn Transportation Inc. (5th Cir. 1979) 589 F.2d 1275 [100 LRRM 2787].)

We have previously announced a standard for setting aside an election in the agricultural setting based on Board agents' bias or the appearance of bias. In a unanimous Decision in Coachella Growers, Inc. (Jan. 22, 1976) 2 ALRB No. 17, we noted that:

[T]o constitute grounds for setting an election aside bias or an appearance of bias must be shown to have affected the conduct of the election itself, and to have impaired the balloting validity as a measure of employee choice.

(Id., at p. 5.)<sup>6</sup>/

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<sup>5</sup>/ (But see Provincial House, Inc. v. NLRB (6th Cir. 1977) 568 F.2d 8 [97 LRRM 2307] and Delta Drilling Co. v. NLRB (5th Cir. 1969) 406 F.2d 109 [70 LRRM 2272] (later limited in NLRB v. Dobbs Houses, Inc. (5th Cir. 1970) 435 F.2d 704 [76 LRRM 2120]).)

<sup>6</sup>/ Member McCarthy would disavow the language quoted from Coachella Growers, supra, 2 ALRB No. 17 only to the extent that it appears to establish a single test for setting aside elections whereas the statute provides expressly that the Board may refuse to certify elections on the grounds, inter alia, that "the election was not conducted properly, or misconduct affecting the results of the election occurred." (Emphasis added.)

(Labor Code § 1156.3(c).)

(See also Bruce Church, Inc. (Dec. 13, 1977) 3 ALRB No. 90, where Board agent conduct was held not to be such as would render improbable a free choice by the voters; Mike Yurosek & Sons (Aug. 4, 1978) 4 ALRB No. 54, where an isolated comment by the Board agent at the pre-election conference did not tend to affect the employees' free choice; Bertuccio Farms (Nov. 17, 1978) 4 ALRB No. 91, where, even if the Board agent told workers he was from the union, it was an isolated and inconsequential incident and did not tend to affect employees' free choice in the election; and Monterey Mushroom, Inc. (Jan. 9, 1979) 5 ALRB No. 2, where the presence of Board agents at a UFW hall to interview witnesses in an unfair labor practice case (but not while a union organizing meeting was in progress) was held insufficient grounds for setting aside the election, distinguishing Provincial House, Inc. v. NLRB, supra, 568 F.2d 8, on basis that the board agents did not allow themselves to become "a part of" the union meeting.)

The Employer argues that we adopted a strict neutrality rule for evaluating Board agent misconduct in The William Mosesian Corporation (Sept. 8, 1980) 4 ALRB No. 60. In that case, the Board agent told a group of twenty employees waiting to vote: "Don't forget. Vote for the Union." Although the IHE's Decision, which applied the neutrality standard announced in Athbro, was affirmed by the Board without comment, the election was properly set aside under the standard articulated in Coachella Growers, Inc., supra, 2 ALRB No. 17, since the Board agent's comment demonstrated bias or the appearance of bias which tended to affect employees'

free choice.

We also note that the NLRB's Athbro standard is based on its "laboratory conditions" doctrine, which has not been accepted by this Board as applicable in the agricultural context, where rerun elections are far more difficult to conduct.

(D'Arrigo Brothers of California (May 10, 1977) 3 ALRB No. 37.) The NLRB, applying its "laboratory conditions" analysis, still has not embraced a per se or strict neutrality rule concerning board agent misconduct, but also considers whether the objectionable conduct tended to affect the outcome of the election. Fifty-Page Limitation on Post-Hearing Briefs

The Employer excepted to the IHE's Decision based on the grounds that it was deprived of due process of law because the Executive Secretary struck pages 51 through 144 of its post-hearing brief. The hearing in this matter ended on September 17, 1981, and, after the Executive Secretary granted several extensions of time, post-hearing briefs were due November 10. On September 27, 1981, section 20370 (e) of the Board's regulations was amended to require conformance with the 50-page limitation on briefs contained in section 20370(g) (2) of the Board's regulations.

The Employer's argument was based partly on the declaration of its attorney, Paul Coady,<sup>7/</sup> in which Coady alleged that, during a conversation with a representative of the Executive

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<sup>7/</sup> As there was no objection to the Employer's request that Coady's declaration be admitted into the record, we have included it in our review.

Secretary's office, he was advised that the new regulations would not apply to this proceeding. Coady's declaration is insufficient to establish that the alleged conversation in fact occurred, since the declaration does not indicate with whom Coady spoke, nor the date the conversation took place. In addition, the declaration was not made under the penalty of perjury.

However, even assuming the facts as stated in Coady's declaration, there is insufficient evidence to establish that the doctrine of equitable estoppel prohibits the Board from applying the new regulations in this case. Coady did not explain to the Executive Secretary's representative when his post-hearing brief was due. Had Coady clearly described his situation, the Executive Secretary's response might have been different. Having failed to establish that the Executive Secretary's office was fully apprised of Coady's situation, the Employer has not established equitable estoppel. (Strong v. County of Santa Cruz (1975) 15 Cal.3d 720.) We note, additionally, that the doctrine of equitable estoppel is not applied against a government if it would result in the nullification of a strong rule of policy adopted for the benefit of the public, (Id.), and that application of equitable estoppel here would frustrate the Board's policy of expediting the processing of cases by limiting briefs to 50 pages.

Coady also declared that he did not personally become aware of the new regulations until November 15, four days after they were filed with the Secretary of State.<sup>8</sup>/ (Cal. Govt. Code

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<sup>8</sup>/ Notice of the new regulations was mailed on September 24, 1981, to Coady's law firm, Seyfarth, Shaw, Fairweather & Geraldson.



section 11346.2.) Actual notice of the regulations was not required for Coady to be bound by them.

We also reject the Employer's argument that the new regulations were applied retroactively. Post-hearing briefs in this matter were due well after the effective date of the new regulations. Even assuming that the case was still "in litigation" because no IHE Decision had yet issued, the application of a procedural statute to pending litigation is proper. (Anton v. San Antonio Community Hospital (1977) 19 Cal.3d 802; Governing Board v. Commission of Professional Competence (1977) 72 Cal.App.3d 447.) The change created by the new 50-page limitation was clearly procedural and not the type of change which had a "substantive effect" and would therefore have operated retroactively on existing rights. (See e.g., Estate of Giordano (1948) 85 Cal.App.2d 588.) Submission of post-hearing briefs is within the discretion of the IHE, and the new regulation does not preclude the filing of briefs, but merely limits the number of pages therein. Section 20370(g)(3) of the Board's regulations allows for longer briefs to be filed if leave is obtained in advance of the due date.

Finally, the Employer was not prejudiced by application of the new regulations. The Employer had the opportunity to raise in its exceptions to the IHE's Decision any issue of fact or law which it was not able to sufficiently argue in its post-hearing brief to the IHE because of the 50-page limitation. The Employer requested, and received, permission to file an exceptions brief in excess of 50 pages. The Employer has not

alleged that it did not have an adequate opportunity in its exceptions brief to address all the issues in this case.

For all the above reasons, we conclude that the Employer was not denied due process of law or otherwise prejudiced because the Executive Secretary rejected pages 51 through 144 of its post-hearing brief to the IHE.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all agricultural employees of George A. Lucas & Sons in the State of California for purposes of collective bargaining, as defined in Labor Code section 1155.2(a), concerning employees' wages, hours, and working conditions.

Dated: September 10, 1982

JOHN P. MCCARTHY, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

CASE SUMMARY

George A. Lucas & Sons (UFW)

8 ALRB No. 61

Case No. 81-RC-3-D

IHE DECISION

The IHE dismissed the Employer's objections to the election, which alleged that UFW agents or supporters engaged in electioneering at the polling site and /or prevented employees from voting, and that Board agents engaged in misconduct by (1) campaigning for the UFW, (2) allowing employees to complain about the Employer at the polling sites, and (3) improperly removing campaign signs from the Employer's property, thus preventing the Employer from expressing its views against unionization.

Based on her credibility resolutions, the IHE found that there was insufficient evidence to support the Employer's allegations that a Board agent distributed pro-UFW leaflets and wore a UFW button at the election, acted in a biased manner by ordering that a "no-union" sign be removed from a truck at the election site, threatened workers or prevented them from voting, and made pro-union statements at the voting site. The IHE also found that there was insufficient evidence to support the Employer's allegation that Board agents indicated to the workers by words or gestures, when they handed out ballots at the election, that the workers should vote for the UFW, or the allegation that workers' complaints about the Employer not paying them tended to affect the outcome of the election.

The IHE found that some employees had UFW buttons, bumper stickers, and leaflets at the polling sites, and that Board agents removed the Employer's signs from company property. The IHE noted that the Board has not adopted the NLRB's "laboratory conditions" standard, since rerun elections are far more difficult to conduct in the agricultural setting. The Board therefore will not set aside an election unless objectionable conduct created an atmosphere which renders improbable a free choice by the voters. The IHE found that the presence of UFW buttons, bumper stickers, and leaflets at the polling sites was insufficient grounds to set aside the election, since there was no disruption of the voting. The IHE also found that the Board agents did not abuse their discretion by removing the Employer's signs from the polling area. The IHE further noted that, even if the Employer had shown that the Board agents abused their discretion, the election would not be set aside because the evidence did not establish that employees were thereby precluded from expressing a free and uncoerced choice in the election. The IHE also found that the Employer was fully able to communicate its views to the employees and that the removal of the signs was not unconstitutional. The IHE therefore concluded that there was insufficient evidence to indicate that the election did not reflect the free choice of the voters and recommended that the Employer's objections be overruled and that the UFW be certified.

The IHE granted General Counsel's motion requesting leave to intervene in the proceedings and permitted him to generally intervene in all aspects of the case.

BOARD DECISION

The Board affirmed the IHE's rulings, findings, and conclusions, and adopted her recommendation to certify the UFW as the exclusive bargaining representative of the employees of George A. Lucas & Sons. The Board noted that, since it affirmed the IHE's finding that Board agents reasonably exercised their discretion when they removed the Employer's campaign signs from company property, it did not reach the proper standard, to be applied in reviewing election objections where Board agent misconduct is established. However, the Board noted that the NLRB, rather than applying a per se or "strict neutrality" rule, as alleged by the Employer, utilizes, on a case-by-case basis, a composite approach which includes a determination of whether the agent's alleged misconduct tended to affect the employees' freedom of choice or the outcome of the election, and whether the appearance of impropriety compromised the integrity of the Board's procedures. This Board has stated that it will set aside an election in the agricultural setting based on Board agent bias or the appearance of bias only where such bias or appearance of bias is shown to have tended to affect the conduct of the election itself or to have impaired the balloting validity as a measure of employee free choice.

The Board also found that the Employer was not denied due process of law or otherwise prejudiced because the Executive Secretary, pursuant to the Board's regulations, rejected a portion of the Employer's post-hearing brief to the IHE.

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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.

\* \* \*

STATE OF CALIFORNIA  
BEFORE THE  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
)  
GEORGE A. LUCAS & SONS, )  
)  
Employer, )  
)  
and )  
)  
UNITED FARM WORKERS OF )  
AMERICA, AFL-CIO, )  
)  
Petitioner. )  
\_\_\_\_\_ )

Case No.: 81-RC-3-D

DECISION OF  
INVESTIGATIVE HEARING  
EXAMINER

APPEARANCES:

Paul J. Coady and Gary C. Moss  
Seyfarth, Shaw, Fairweather &  
Geraldson  
Los Angeles, California  
For the Employer

Marcos Camacho  
Keene, California  
For the Petitioner

William G. Hoerger  
Sacramento, California  
For the Intervenor

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## I. STATEMENT OF THE CASE

Beverly Axelrod, Investigative Hearing Examiner: This case was heard by me on August 25, 26, 27, September 1, 2, 3, 8, 9, 10, 14, 15, 16, and 17, 1981, in Delano, California, pursuant to a Notice of Investigative Hearing issued by the Executive Secretary of the Agricultural Labor Relations Board on July 10, 1981.

A Petition for Certification was filed by the United Farm Workers of America, AFL-CIO (hereafter "UFW") on May 26, 1981. (JX:1A.)<sup>1/</sup> The Petition was filed in the Delano office of the Agricultural Labor Relations Board (hereafter "ALRB" or "Board"); that office was a field office at the time, and subsequently (July 1, 1981) was changed to a Regional Office of the ALRB. The Petition was filed to certify the UFW as bargaining representative of the agricultural employees of George A. Lucas & Sons (hereafter "Employer").

A pre-election conference was held on May 30, 1981, attended by representatives of the Employer, the UFW, and the ALRB.<sup>2/</sup>

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<sup>1/</sup> Joint Exhibits are noted herein as "JX". Employer's Exhibits are noted herein as "ERX". Petitioner's Exhibits are noted herein as "PX". Exhibits of the Regional Director are noted herein as "RDX".

<sup>2/</sup> The pre-election conference is referred to in various places in the Reporter's Transcript of the hearing. See, e.g., Tr. I: 146-148. (References to the Reporter's Transcript are noted herein as "Tr." followed by the volume number in Roman numerals and the page numbers.)



A Notice and Direction of Election was issued by the Regional Director on May 30, 1981 (JX:1B). An election was held on June 2, 1981 at four locations on the Employer's premises. The Tally of Ballots (JX:1C) shows the following results:

UFW-----	
--	219
No Union -----	
-- 150	Unresolved Challenges ----
----- 24	
	<hr/>
TOTAL BALLOTS	393

The Employer timely filed a petition pursuant to Section 1156.3 (c) of the Agricultural Labor Relations Act (hereafter "Act"), objecting to the certification of the election. The petition objected that agents of the ALRB engaged in misconduct while conducting the election, and that agents of the UFW engaged in electioneering and prevented certain employees from voting.

On July 3, 1981 the Executive Secretary of the Board issued a Notice of Allegations for Hearing (JX:1D), and on July 10, 1981 the Executive Secretary of the Board issued a Notice of Investigative Hearing (JX:1E), setting forth the above-mentioned objections for hearing before an Investigative Hearing Examiner. The Notice of Investigative Hearing set a date of August 25, 1981 for commencement of the hearing. The objections set for hearing were: (1) Whether agents or supporters of the UFW engaged in electioneering at the polling places; (2) Whether agents or supporters of the UFW prevented employees from voting; and (3) Whether agents of the Board engaged in misconduct by (a) campaigning for the UFW,

(b) allowing employees to complain about the Employer at the polling sites, and (c) improperly removing signs from the Employer's property.

On August 21, 1981 Mr. William G. Hoerger, Esq. filed a Notice of Entry of Appearance and Request to Intervene, noting his appearance for the Regional Director of the Delano Regional Office of the ALRB and moving that the Regional Director be allowed to intervene in the hearing. On August 25, 1981 the Executive Secretary of the Board issued an Order Transferring Motion to Investigative Hearing Examiner, in which the Regional Director's request to intervene was transferred to the Investigative Hearing Examiner for a ruling.

On August 25, 1981 I commenced the hearing in this case and took up the issue of the Regional Director's request to intervene as a preliminary matter. The Employer objected to the Regional Director's intervention. After hearing argument on this matter, I granted the motion of the Regional Director to intervene (Tr. 1:9).

The hearing commenced on August 25, 1981 and was adjourned on September 17, 1981. All parties were represented at the hearing and were given full opportunity to participate in the proceedings.

The parties filed post-hearing briefs. The Board has granted the UFW's motion that I not read those parts of the briefs in excess of the Board's 50-page limitation on briefs. I note in this regard, however, that the Employer's brief contains within the first 50 pages a complete 4-page outline

of all its arguments. (See Post-Hearing Brief for Employer, pp. i-iv.) Thus, I have been able to address myself to all the Employer's arguments.

Throughout this Decision I have noted the specific transcript references, and often have quoted the specific passages of testimony, upon which I have relied in making my findings.

Upon the entire record in this case, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties as described above, I make the following findings of fact and conclusions of law.

## II. SUMMARY OF THE EMPLOYER'S OBJECTIONS TO THE ELECTION

The Employer alleges the following misconduct upon the part of agents of the ALRB's Delano office:

1. Board agent Nicholas Reyes:

(a) Distributed leaflets at the polling site urging workers to vote for the UFW;

(b) Wore a UFW button at the polling site;

(c) Made statements at the polling site indicating his desire that the UFW should win the election;

(d) Improperly prevented employees from voting at the polling site by threatening them with a fine; and

(e) Indicated his bias for the UFW and against the Employer by ordering a worker to remove an anti-UFW sign.

2. Board agent Edward Perez indicated to workers at

the polling site that they should vote for the UFW, by pointing to the UFW's eagle when he handed them their ballots.

3. Board agent Beatrice Espinoza indicated to workers at the polling site that they should vote for the UFW, by pointing to the UFW's eagle when she handed them their ballots.

4. Board agents improperly allowed UFW buttons and bumper stickers at the polling site.

5. Board agents improperly allowed workers to complain about the Employer at the polling site.

6. Board agents improperly removed the Employer's signs from the Employer's premises.

### III. INTERVENTION OF THE REGIONAL DIRECTOR

Before discussing the facts and conclusions concerning the conduct of the election, I will here take up the issue of intervention of the Delano ALRB Regional Director in the hearing.

The Regional Director moved before the hearing to intervene in the case. The Employer opposed intervention on the ground that there is no authority for intervention in a post-election objection hearing.

There is no specific statutory provision in the Act or regulation of the Board which refers to the right of intervention in such hearings. However, that right can be inferred from construction of the applicable Board regulations.

First, the Act speaks very broadly of the right to object to an election and, by implication, to participate in the hearing on the matter. Section 1156.3 (c) of the Act states that "any person" may object to the election. Section 1140.4(d) of the Act defines "person" to include "any legal entity."

The Board's regulations provide that "the parties" have a right to participate in the investigative hearing (8 Cal. Admin. Code Section 20370(b)). "Party" is defined in Section 20130 of the regulations. That section lists a number of specific entities which qualify as parties, and states that the definition of "party" is not limited to that list.<sup>3/</sup>

Consistent with the overall broad purpose of the Act to determine at substantive rights based on a full understanding of the facts, Section 20370 of the regulations provides for an investigative hearing which is not limited to the strict rules of evidence which apply to civil actions (see Section 20730 (c)). This is a strong indication that the purpose of the investigative hearing is to best arrive at a complete understanding of what took place in the election proceedings.

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<sup>3/</sup> Section 20130 (8 Cal. Admin. Code Section 20130): "The term 'party' as used herein shall mean any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under the Act, any person named as respondent, as employer, or as party to a contract in any proceeding under the Act, and any labor organization alleged to be dominated, assisted, or supported in violation of Labor Code Section 1153 (a) or (b); but nothing herein shall be construed to prevent the Board or its designated agent from limiting any party's participation in the proceedings to the extent of its interest only."

The fullest understanding of what took place in election proceedings can best be had by permitting persons with a clear interest in the proceedings to take part in the hearing. In this case, the interest of the Delano Regional Director is apparent from looking at the summary given above of the Employer's objections to the election (Part II supra). The Employer is not merely alleging technical defects in the manner in which the ALRB's agents conducted the election, nor is it seeking to imply from circumstantial evidence that the agents may not have been fully neutral. Rather, the Employer has specifically alleged that three ALRB agents in the Delano office directly, openly, and flagrantly lobbied for the UFW in clear violation of their duties. The Delano Regional Director has an interest, in the face of such charges, in seeing that the fullest presentation of facts is made at the hearing with regard to these matters.

Given the Regional Director's interest in the matter, and given the broad purposes of the Act and regulations to arrive at a full understanding of the election proceedings, the intervention of the Regional Director is appropriate in the instant case.

The Employer was not prejudiced by the intervention of the Regional Director. Counsel for the Regional Director did engage in extensive cross-examination of some of the Employer's witnesses at the hearing, but given the nature of the objections in this case it is not surprising that all counsel engaged in vigorous examination and cross-examination

of witnesses. In no instance did I find that counsel for any of the parties overstepped the bounds of proper representation. A trier of the facts, I was impressed with the highly professional manner in which counsel for all parties conducted themselves. The record in this case demonstrates that a full and extensive inquiry was had on all the matters raised in the Employer's objections. The hearing provided a complete basis upon which to make findings of fact and conclusions of law. I can see no prejudice to the Employer by the Regional Director's participation in the hearing.

Accordingly, since I find that the Regional Director had a clear interest in this case, that he timely moved to intervene before commencement of the hearing, and that there was no prejudice to the Employer by the Regional Director's intervention, I conclude that the intervention of the Regional Director was properly within my discretion in the instant case.

#### IV. THE FACTS

##### A. Pre-Election and Election Procedures.

The Employer is a partnership engaged in growing grapes in Kern and Tulare Counties, California. In October 1980 it had a peak employment of approximately 635 employees. In May 1981 it employed approximately 400 employees. On May 26, 1981 the UFW filed the Petition for Certification. On May 30, 1981, Board agent Ricardo Ornelas convened a pre-election conference to determine the election procedures. Representatives of the

Board, the UFW, and the Employer attended the conference. At the conference the parties agreed that the election would be held at four locations on the Employer's premises, on June 2, 1981.

A brief description of the four election sites, election procedures, and the arrangement of personnel from the UFW, the Employer, and the Board, is as follows: (1) Bowen Ranch Site<sup>4/</sup>

The Bowen Ranch voting site was located on a vacant lot, approximately one hundred feet wide by one hundred and fifty feet long. The lot is located on Dietz road, near the town of Earlimart. The nearest intersecting roads are Avenue 48<sup>5/</sup> and Cable Road<sup>6/</sup>. The lot is unpaved, and is enclosed on the south and west by vineyards. On the north side of the lot is a small house. The east side of the lot fronts on Dietz road. There are two sets of "standpipes" or vertical tanks on the lot. These are approximately fifteen feet apart, located about halfway in from Dietz Road. Diagrams and photographs of the Bowen Ranch site were introduced into evidence at the hearing. ERX:11; RDX:2,9; PX:1.

Two tables were set up at the Bowen Ranch site by the Board agents conducting the election. The eligibility table was set up facing Dietz Road. Board agent Elsa Levya sat at

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<sup>4/</sup> The Bowen Ranch site was sometimes referred to at the hearing as the "first site," the "Earlimart site," the "Dietz site," and the "Bowen site."  
"

<sup>5/</sup> Also called "Armstrong Avenue."

<sup>6/</sup> Also called "ABC- Road."



this table, checking the eligibility list when the workers came to vote. Employer observer Joaquin Delgadillo sat on one side of Ms. Levya at this table, with a second Employer observer, Soledad Moreno, standing next to Mr. Delgadillo. UFW observer Ricardo Fuentes sat on the other side of Ms. Levya, with a second UFW observer, Ezekiel Perez, standing next to him. Two observers from each of the crews that were voting at the Bowen Ranch site stood behind the Employer and UFW observers.<sup>7/</sup>

The voting procedure at the Bowen Ranch site utilized four voting booths. These were set up about ten feet to one side of the eligibility table, the side on which the Employer observers were placed. A ballot box was placed in front of the booths. The general voting procedure was that a worker would come to the table and would be asked by Ms. Levya or one of the observers for identification. The worker's name was then checked on the eligibility list. The worker would then walk towards the voting booths. Board agent Ed Perez was standing in front of the eligibility table near the voting booths, and he would hand the worker a ballot. The worker would enter the booth, vote, then leave and put the ballot (folded) into the ballot box.

A challenge table was placed about ten feet from the eligibility table, perpendicular to it. Board agents Manuel

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<sup>7/</sup> Mr. Delgadillo and Ms. Moreno were referred to at the hearing as permanent Employer observers. Mr. Fuentes and Mr. Perez were referred to as permanent UFW observers. The crew observers were referred to as temporary observers. The crew observers were in place only when their specific crew was voting.

Melgoza and Raquel Leon sat at this table during the voting.

There were several state cars and a van parked on the lot during the voting.

Board agent Beatrice Espinoza was on the lot during the voting. She gave voting instructions to groups of workers as they lined up to vote.

Board agent Ricardo Ornelas, the agent in charge of investigating the UFW's Petition in this case, was also on the lot during the voting. He stood near the voting booths and checked that voters entered the booths one at a time, and that challenged workers had their ballots placed in challenge envelopes .

Board agents Nicholas Reyes, Edward Perez, Lawrence Alderete and John Moore were also present at the Bowen Ranch site at various times during the voting.

The Bowen Ranch site was the first site for voting. Five crews of workers voted at the Bowen Ranch site between 6:15 a.m. and 8:30 a.m.

(2) Ducor Site<sup>8</sup> /

The Ducor voting site was located on a private dirt road in a vineyard on the Employer's property. A reservoir is located along the road, a few hundred yards from the voting site. A diagram of the Ducor site was introduced into evidence, ERX:12.

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<sup>8</sup>/ Also referred to as the "second site" and the "reservoir site."

The eligibility and challenge tables were set up along the road. The tables were about ten feet apart. Board agent Elsa Levya sat at the eligibility table. Employer observers Joaquin Delgadillo and Soledad Moreno were located at the table, as were UFW observers Ricardo Fuentes and Ezekiel Perez. Board agents Raquel Leon and Bea Espinoza were seated at the challenge table.

Three voting booths were set up next to the eligibility table, with a ballot box placed in front of them. The voting procedures were the same as at the Bowen Ranch site. Board agent Jack Matalka handed out ballots to the workers at the Ducor site. Board agents Ricardo Ornelas, Nicholas Reyes, Lawrence Alderete, Manuel Malgoza, and John Moore were present during the voting.

There were three state cars parked on the dirt road near the tables.

Two crews voted at the Ducor site between 9:15 a.m. and 10:45 a.m.

(3) Silva Labor Camp Site<sup>9</sup> /

The Silva Labor Camp Site was located in a dirt parking lot area at the Silva Labor Camp near the town of Earlimart, The parking lot is located on the west side of Road 184, between the intersections of Avenue 48 and Avenue 52. A diagram of the Silva Labor Camp site was introduced into evidence.

ERX:8.

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<sup>9</sup>/<sub>-</sub> Also referred to as the "third site," "Silva site," and "shop" or "shop area" site.

The parking lot is about two hundred yards from the Employer's shop area, containing a shop yard and buildings. There is a building near the parking lot, referred to as a "tool shed," located a few feet from the lot in the direction of the shop area. The tool shed has a fenced yard around it.

The voting procedures at the Silva Labor Camp site were similar to the procedures at the Bowen Ranch site and the Ducor site. Voting took place at the Silva Labor camp site between 11:45 a.m. and 1:00 p.m.

(4) Famoso Ranch Site <sup>10</sup>/

The Famoso Ranch site was located under an open barn on the Famoso Ranch, located on Highway 46 approximately fifteen miles south of Delano.

The eligibility table was set up under the barn by Board agents Nicholas Reyes, Ricardo Ornelas, and Elsa Levya. Employer observers Joaquin Delgadillo and Soledad Moreno were located at the table, as were UFW observers Ricardo Fuentes and Ezekiel Perez.<sup>11</sup>/

The voting procedures at the Famoso Ranch site were similar to the procedures at the three other sites. Only a small number of workers voted at this site. The balloting took place between 2:30 p.m. and 3:30 p.m.

(5) Tally of the Ballots

When the balloting was completed, Board Agent Jack Matalka took the ballot boxes to the ALRB office in Delano.

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<sup>10</sup>/ Also referred to as the "fourth site."  
<sup>11</sup>/ Mr. Perez was standing alongside the table.

Employer observers Joaquin Delgadillo and Soledad Moreno, and UFW observers Ricardo Fuentes and Ezekiel Perez accompanied him. At this time a Certification on Conduct of Election was signed by the observers. RDX:4.

The ballots were tallied in a lot adjacent to the ALRB office. The tally showed:

UFW -----	219
No Union -----	150
Unresolved Challenges -----	24
Void ballots -----	7

Following the tally of the ballots, Board agents Ricardo Ornelas, Nicholas Reyes and Jack Matalca executed the Tally of Ballots, witnessed by Paul Coady, Soledad Moreno and Joaquin Delgadillo for the Employer and Ben Maddock, Ricardo Fuentes, and Ezekiel Perez for the UFW. JX:1C.

B. The Employer's Objections to the Election.

The Employer's objections to the election can be grouped into four categories: (1) The alleged misconduct of Board agent Nicholas Reyes; (2) The alleged misconduct of Board agents Edward Perez and Beatrice Espinoza; (3) The alleged misconduct of Board agents in permitting UFW electioneering at the polling sites; and (4) the alleged improper removal of the Employer's signs by Board agents. I will deal with each of these objections in turn.

(1) The Alleged Misconduct of Board Agent Nicholas Reyes.

Mr. Nicholas Reyes is a graduate legal assistant employed by the ALRB. He began full-time employment for the Board in March 1980 (Tr. 11:91). He had also worked for the Board during the summer of 1977, while a first-year law student (Tr. 11:91). Prior to the instant case, he had worked on three previous representation elections (Tr. 11:91-92).

In the present case, Mr. Reyes was one of the Board agents who worked as a roving monitor at the different voting sites. Under the direction of the Board agents in charge, Mr. Reyes' job was to patrol the sites and to help out as directed by the agents:

My job responsibilities were to help out in any fashion which I was told by the agent in charge (Tr. 11:92).

At that election site, I think one of the jobs I had assigned was to basically see that the sites -- one of my job assignments was to see to it that the areas were being monitored. I would just monitor the area and see that there was nothing -- nothing wrong going on." (Tr. II:93-94).

Mr. Reyes drove around the site areas in his automobile, getting out to walk around from time to time (Tr. 11:93-94). Examples of the kinds of tasks he was asked to do included: asking workers who entered the voting quarantine areas for identification, making sure that people entered by the proper entrances, removing electioneering signs from within the quarantine area, and making sure that no improper electioneering was occurring at the sites (Tr. 11:94-97).

The Employer alleges that Mr. Reyes engaged in four specific instances of misconduct during the election:

(a) distributing pro-UFW leaflets and wearing a UFW button at the Bowen Ranch site; (b) indicating bias by removing an anti-UFW sign at the Bowen Ranch site; (c) improperly preventing employees from voting at the Bowen Ranch site; and (d) making pro-UFW statements at the Famoso Ranch site.

(a) Distributing Pro-UFW Leaflets at the Bowen Ranch Site.

The Employer called four witnesses who testified that a man matching Mr. Reyes' description handed out pro-UFW leaflets at the election.

Mr. Jesus Guzman testified that he is an employee of the Employer's, working in the crew of Mr. Ernie Estrada (Tr. III: 23). Mr. Estrada's crew voted at the Bowen Ranch site (Tr. III:24). Mr. Guzman testified that he got to the site at "about six, six-thirty," (Tr. III:24), and that there were people at the site and cars parked along the road. He stated that when he got to the site he started to get on the line to vote and two people came over and handed him a pro-UFW leaflet (Tr. III:24-25). A leaflet of the same type was introduced into evidence, ERX:5. Mr. Guzman knew one of the people, a man named Emilio who worked in the crew. Emilio gave him the card. The man with Emilio was also giving out cards to employees. This man was described as "Thin, not very tall; medium. He had curly hair and a mustache" (Tr. III:27). Mr. Guzman identified the man as the same person who had testified at the hearing the previous day, but said that he did not know if that was Mr. Reyes (Tr. III:27). The context of Mr. Guzman's answers indicates that Mr. Guzman was identifying Mr. Reyes,

but was not sure of Mr. Reyes' name.

Mr. Guzman testified that there were three other workers with him at the time the leaflets were handed out. One was a friend named Robert, another was named Rafael, and the third was a man whose name he did not know (Tr. III:28-29).

Mr. Guzman testified that Mr. Reyes, who was next to Emilio, handed out the leaflet cards openly to whomever he approached:

"Q. You didn't see the other man [next to Emilio] trying to hide the fact that he was handing out card, [sic] did you?

A. No.

Q. The other man just walked along and handed cards to whomever he approached, is that correct?

A. Yes.

Q. And that was done very openly and visibly to people, is that correct?

A. Yes." (Tr. 111:46-47.)

Mr. Guzman testified that this leafletting was done inside the vacant lot used as the voting site; the men handed him the leaflet inside the lot, several yards from the road (Tr. III:55, 33). The leaflets were being handed out just prior to the balloting, as workers were lining up to begin voting (Tr. II: 38).

Employer's Exhibit 5, the type of leaflet Mr. Guzman testified that Mr. Reyes was handing out, is a blue card approximately six inches by seven and one-half inches. It contains the words "!VOTE ASI!" printed in thick black letters one-half inch high. Below that is the UFW's Eagle Insignia



printed in solid black, three inches wide and one and one-half inches high. Below that is the UFW's name, and on the reverse side are picture instructions and words telling how to vote for the UFW at the ballot box.

Mr. Guzman testified that the man he identified as Mr. Reyes was wearing a UFW button at the time he was handing out leaflets to the workers on the election site (Tr. III:59). However, he later stated that he did not know if Mr. Reyes was wearing a UFW button or not: "I don't know if he had the UFW button.... I don't know if he does -- I don't know if he had a badge for the UFW or not" (Tr. III:66-67). He testified that Mr. Reyes" was wearing a state badge (Tr. III:27, 29). Mr. Guzman was shown a declaration he signed two days after the election, RDX:1, in which he stated that the man was wearing a UFW button (Tr. III:66-67). He testified that his memory of the election events was "about the same" at the time he signed the declaration as it was at the time of the hearing (Tr. III:67).

Mr. Roberto Valencia testified that he is an employee of the Employer, working in Mr. Estrada's crew (Tr. III:82). He testified that he went to the election site by himself. He then testified:

"Q. Mr. Valencia, when you -- when you arrived at the voting area, what did you see?

A. I saw a man who was giving leaflets; a man with curly hair and a mustache.

Q. Was there anybody else giving leaflets?

A. No. I just saw him, because he was there in the front.

Q. Did he try to give you a leaflet?

A. Yes." (Tr. III:84.)

Mr. Valencia testified that he did not accept the leaflet, "I just saw that he was going to give it to me and I -- since I can't read, I just kept on going" (Tr. III:84). He stated that he did not notice what was on the leaflet (Tr. III:85). He identified the man who was passing out the leaflets as the man who had testified the previous day (Tr. III:85-87). It is apparent from the context of the answers that he was identifying Mr. Reyes.

Mr. Valencia was asked if he had discussed his testimony with anyone before coming to testify at the hearing. He stated that he had talked with counsel for the Employer, but that "I was just told that then it was going to be my turn" (Tr. III:93).

Concerning his possible interest in the case, Mr. Valencia was asked his relationship with a company foreman. He gave testimony on this point in a manner which I found evasive:

"Q. Who is Rolando Deramos?<sup>12/</sup>

A. He's one -- the same one who works there with the company. He is the one that is over the foremens. He is the representative.

Q. Representative of the company?

A. I think so. I don't understand those kind of things.

...

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<sup>12/</sup> Mr. Deramos was initially called "Orlando" by counsel, but this was corrected to Rolando (Tr. 111:94).

Q. Is your wife related to the family of Mr. Rolando Deramos?

A. It's the family of who?

Q. Rolando Deramos.

A. Is it my family?

Q. Yours, or whatever you want to call it.

A. No, mine.

Q. He's -- he's related to you in some form, Rolando Deramos?

A. We're very distant relatives.

Q. But he is a relative of yours?

A. Yes, from here to Guadalajara.

. . .

Q. How long have you known Mr. Deramos?

A. Seven years.

Q. That -- has that been at Lucas [the Employer], you have known him for seven years?

A. Yes.

Q. Is it a fair statement to say that you and Mr. Deramos are very close friends, apart from being relatives?

A. Yes. I'm -- I'm friends with the world, whoever wants to be my friend.

HEARING OFFICER: Mr. Valencia, please answer the question directly, without adding other things that are not necessary. The question was, are you and Mr. Deramos good friends?

A. Yes." (Tr. III:93-96).

Mr. Valencia was asked if he saw anybody at the voting site when he initially got out of his truck. He stated that "There was a person there on one side that I didn't remember" (Tr. 111:99). He was asked if he could describe the appearance

of that person, and he responded "No, I didn't look. I just got off the pickup and I started walking" (Tr. III:101). Then he was asked about the person who tried to hand him the leaflet:

"Q. When -- when you were walking down the street, someone tried to hand you something.

A. Yes.

Q. You did not pay very much attention to that, did you?

A. No, because I -- I don't know how to read.

Q. And you continued walking in your normal pace down that road.

A. Yes.

Q. You didn't pay any more attention to that person than you paid attention to the person on the corner [whom he saw when he got out of his truck], isn't that true?

A. Just like I said, when I got off the pickup, I didn't pay attention. The same when I was walking. I met this person, I didn't pay attention, and I was just walking toward the voting place." (Tr. III:102.)

Mr. Valencia testified that he was working in the fields with his crew after the election, and that foreman Rolando Deramos came and took Mr. Valencia out of the fields and accompanied him to the Employer's packing shed. In the shed Mr. Valencia met with Mr. Deramos and an attorney for 'the Employer. Mr. Valencia discussed with the attorney the events of the election day. He then signed a declaration that was written down by the interpreter for the attorney, summarizing Mr. Valencia's account of the events. Mr. Valencia was shown the declaration, RDX:6. In that declaration he made no mention of a man matching Mr. Reyes' description handing out a leaflet to Mr. Valencia.

Later in the examination of Mr. Valencia, a question was raised concerning his identification of Mr. Reyes. Specifically at issue was the fact that Mr. Valencia had testified that he saw Mr. Reyes in the hearing building the previous day, and recognized him as the man who handed him the leaflet; the question was whether Mr. Valencia had told the employer's attorneys or anyone else that he recognized Mr. Reyes in the building as the man who handed him the leaflet, prior to his testimony from the witness stand. I conducted questioning of Mr. Valencia on this point, and his responses were vague, contradictory, and evasive:

Q. (By Hearing Officer): Mr. Valencia, the man whom you described as with the bushy hair and the mustache, did you see him at anytime after election day, and before you came here to this building?

A. It was the first time I had seen him -- there.

Q. All right. And did you see him again at any other time before you came here to this building yesterday?

A. First over there, and then yesterday when I came here.

Q. And at no other time in between?

A. This would be day before yesterday.

Q. Was that in this building?

A. Yes.

Q. What I want to know is if you saw him someplace else, other than in this building after election day?

A. Today.

Q. No, before today. Before yesterday, but after election day.

A. No, just the election and here.

Q. All right. Did you ever see a photograph of this man?

A. No.

Q. When you first saw him in this building, where was he? In what part of this building when you first saw him?

A. Where was he?

Q. Yes.

A. In an office, I think that's over there.

Q. And when you first saw him, did you know right away in your mind that that was the man that you had seen on election day?

A. Yes.

Q. Did you then say to anyone that this was the man you had seen on election day?

A. Well, no, I know him.

Q. I know, but did you tell anybody else that this was the same man?

A. No.

Q. Did you tell Chuey that this was the same man?<sup>13/</sup>

A. No.

Q. Did you tell Mr. Coady or Mr. Moss that this was the same man?<sup>14/</sup>

A. No.

Q. Did you tell anyone else before you were here under oath that this was the same man?

A. Here?

Q. Yes.

A. Yes.

Q. You -- you told us while you were here, sitting in that chair.

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<sup>13</sup>/ Chuey was a friend of Mr. Valencia.

<sup>14</sup>/ Mr. Coady and Mr. Moss were the attorneys for the Employer at the hearing.

A. Yes, here.

Q. Anyplace else?

A. No.

. . .

Q. (By Hearing Officer) Mr. Valencia, I'm interested in when you spoke about having seen the same man. You spoke about it while you were sitting in this chair, is that correct?

A. (No response)

Q. It's correct, is it not, that you testified that that man with the bushy hair was the same man you saw on election day? Is that correct?

A. Yes, he is the same one.

Q. All right. You said that to us while you were here, sitting in this chair, is that correct?

A. Yes.

Q. Now did you say it when you were anyplace else besides when you were sitting in that chair?

A. No.

Q. You did not say it to the lawyers over here?

A. Oh, yes, I had forgotten. I told them here.

Q. When did you tell them?

A. Yesterday -- here.

Q. And did you also tell Chuey?

A. Chuey told him, also, yes.

Q. No. Did you tell Chuey?

A. No.

Q. Did you and Chuey talk about the fact that it was the same man?

A. Yes, I first saw him when he went in there. When he went in there, I saw him, and then when he came out, he saw him, and then we both said that he was the man.

Q. So did you and Chuey, together, agree that that was the man?

A. For me, yes.

Q. And for Chuey?

INTERPRETER: And he says him, also.

Q. (By Hearing Officer): Did you have -- did you talk about it first, before you agreed?

A. No, just to look at him -- we recognized him.

Q. Was that before or after you talked to these lawyers here about it?

A. We had seen him before we talked.

Q. You and Chuey together?

A. Yes, we were over there smoking some cigarettes when he went by." (Tr. III:145-148.)

The final two witnesses called by the Employer on this issue were Ms. Maria Luz Samano and her sister, Ms. Alicia Samano.

Ms. Maria Samano testified that she is an employee of the Employer, working in Mr. Ernie Estrada's crew (Tr. VIII:3-4). She testified that she and her sister drove to the Bowen Ranch voting site, and that there were a lot of people there when they arrived (TR. VIII:5). They got out of their car and got on the end of the voting line. The balloting had not yet started, and the workers were lining up to vote. While they were standing on the voting line she testified that she saw one person handing out blue leaflets with the UFW's eagle insignia on it (TR. VIII:5-7). The person "was a man or a boy with his hair, like, curly, and a very thick mustache" (Tr. VIII:7). The man was wearing "a card with his



photograph.... The identification that he was from the State of California" (Tr. VIII:7). She testified that she "knew he was from the ALRB" (Tr. VIII:8). She identified the man as the same man she had seen in the hearing building the previous day (Tr. VIII:9). The context of her answers indicates that she was identifying Mr. Reyes.

Ms. Maria Samano testified that the people on the voting line were holding blue cards like the ones that Mr. Reyes was handing out (Tr. VIII:6,12). She stated that the man handing out the cards was supervising the people in the line, telling some of them to line up (Tr. VIII:12). Ms. Samano testified that Mr. Rolando Deramos came over to her crew about a week after the election and asked the workers who had seen anyone handing out blue papers (Tr. VIII:18-19), and Ms. Samano told him about the man with the mustache.

Ms. Alicia Samano testified that she is an employee of the Employer, working in Mr. Estrada's crew (Tr. VIII:31). She testified that she and her sister went to the voting site and got on the voting line. People were getting in line to begin voting (Tr. VIII:33). The balloting had not yet started (Tr. VIII:37). She saw a man about twenty feet away handing out blue papers with the UFW's eagle insignia on them (Tr. VIII:33-34). She identified ERX:5 as the type of papers being handed out (Tr. VIII:35). She testified that the man was "not too tall, he had curly, curly hair -- sponged up, and he had a mustache" (Tr. VIII:35). He was

wearing an identification and photograph on his shirt (Tr. VIII:36). She testified that he was the same man she had seen in the hearing building the day before (Tr. VIII:36). The man handing out the blue papers was holding several different kinds of papers, including some white ones, "but the one that was more recognizable was that blue one" (Tr. VIII:37). He was holding the blue leaflets on top of the white papers (Tr. VIII:45). She estimated that he gave out the UFW leaflets to about forty people on the voting line (Tr. VIII:52).

Both Ms. Maria Samano and Ms. Alicia Samano testified that Mr. Reyes was not wearing a UFW button when he was handing out leaflets (Tr. VIII:14,38).

Mr. Reyes testified at the hearing that he drove to the Bowen Ranch site the morning of the election with Board agents Ed Perez and John Moore (Tr. X:102). He arrived at the site at approximately 5:30 a.m. He testified that a UFW observer and an Employer observer were at the site when he arrived (Tr. X:102). There were several other people there as well, including some UFW workers.

Mr. Reyes testified that after he arrived he waited a few minutes, then helped Board agents Ed Perez and Ricardo Ornelas set up the tables (Tr. X:103). He then helped to set up the voting booths, following which he had some food with Board agents Bea Espinoza and Raquel Leon (Tr. X:105).

Mr. Reyes testified that under the instruction of Board agents he monitored the voting site during the morning (Tr. 11:92-97). Mr. Reyes testified that in the course of the

voting period at the Bowen Ranch site, his activities included: ordering employees to remove some signs (Tr. X:106-108); asking a woman in a nearby house to keep her dogs away from the voting area (Tr. X:108); checking that Board agents were patrolling the perimeter of the voting area (Tr. X:109-110); responding to the request of some workers to be allowed to vote early so that they could return to their piece-work (Tr. X: 110-111); requesting a UFW organizer to remove a sign (Tr. X:111-113); getting some food for himself and some other Board agents (Tr. X:114); asking a man in a car to identify himself (Tr. X:114-127); and generally watching the voting area for possible irregularities (Tr. 11:92-97; Tr. X:106-129).

Mr. Reyes testified that he never at any time had in his possession any UFW leaflets (Tr. X:129-131), that he never handed out any leaflets (Tr. X:130-131), and that he did not wear a UFW button at any time (Tr. X:131-132).

Mr. Ricardo Ornelas testified that he is a field examiner with the ALRB, and that he was the Board agent in charge of the election at th Employer's premises (Tr. XI: 120-121). He testified:

"Q. Prior to opening the polls, when people started actually to vote, did you see Nick Reyes?

A. Yes, I did.

Q. How many times did you see him?

A. I'd say -- ah -- several times, because he was walking about and I was walking about.

Q. Of those several times, how close did you get to him?

A. From two feet to 15 to 20 feet to probably even more than that.

. . .

Q. At times prior to the opening of the balloting, did you ever see Nick wearing [a UFW button]?

A. No, never.... He wasn't wearing any buttons. The only thing he had was his ID.

HEARING OFFICER: Mr. Ornelas, if he had been wearing a button, do you think you would have noticed it?

WITNESS: I would have told him to take it off.

HEARING OFFICER: Do you think it would have drawn itself to your attention, then, if he had worn it?

WITNESS: Oh, certainly, yes. If he had been wearing a button?

HEARING OFFICER: Yes.

WITNESS: I would have noticed it.

Q. During the time you saw Nick before the polls opened, did you ever see him with [the UFW leaflet] in his hand?

A. No.

Q. Did you ever see him passing it out?

A. No.

Q. Had you assigned any specific [duties] to Nick Reyes?

A. Yeah, I asked him -- I told him to -- that he would be a 'rover' during the election....I just think I repeated what his general instructions would be as a rover, and otherwise, just assist me in any other task." (Tr. XI:126-.128.)

Mr. John Moore testified that he is an attorney representing the General Counsel of the ALRB in the Fresno Region (Tr. 1:15). He assisted the agent in charge, Mr. Ornelas, in conducting the election at the Employer's premises (Tr. 1:15). He testified that he saw Mr. Reyes at the Bowen Ranch site and that "At no time did I ever observe Mr. Reyes with [the UFW leaflet] or anything remotely resembling it" (Tr. XII:157). He stated that he saw Mr. Reyes on several occasions at the Bowen Ranch site, including one occasion during which he gave Mr. Reyes some instructions (Tr. XII:157-160). Mr. Moore testified that "In each of those occasions when I observed Mr. Reyes he was carrying nothing" (Tr. XII:160). He also testified that Mr. Reyes was not wearing a UFW button on any of those occasions (Tr. XII:160). Some of the occasions on which Mr. Moore observed Mr. Reyes were brief, lasting less than a minute (Tr. XII:174-176). Mr. Moore testified that he observed Mr. Reyes at least six times during the voting at the Bowen Ranch site (Tr. XII:172-177).

Ms. Raquel Leon testified that she is an attorney working for the ALRB (Tr. II:1). She participated in conducting the election at the Employer's premises (Tr. II:3). She testified that she was present at the Bowen Ranch site at the time the workers were being lined up for the voting (Tr. XIII:11). She saw Mr. Reyes at this time talking to people, telling them to get into line (Tr. XIII:13). She testified that when she saw Mr. Reyes talking to the people in the line, "He didn't have anything in his hands" (Tr. XIII:18). She also

testified that Mr. Reyes was not wearing a UFW button (Tr.XIII:18).

Mr. Jose Cisneros testified that he is an employee of the Employer, working in Mr. Ernie Estrada's crew (Tr. IX:73). He testified that he voted in the election at the Bowen Ranch site, and was one of the crew observers for the election at that site, during the voting of Mr. Estrada's crew (Tr. IX:73). Mr. Cisneros testified that just after the voting began he walked down the line of workers waiting to vote, in order to group his crew together (Tr. IX:79). At that time he saw Ms. Maria Samano and Ms. Alicia Samano on the line, two workers he knew from his crew (Tr. IX:79-80). Mr. Cisneros testified that while he was observing the lining up of the Estrada crew he did not see anyone passing out leaflets to the workers on the line (Tr. IX: 81).

In addition to these witnesses, four other witnesses testified that they saw Mr. Reyes at various times during the voting at the Bowen Ranch site and that he was not handing out any leaflets or wearing a UFW button at any of the times they saw him: Board agent Bea Espinoza testified that her job was to monitor the line of workers waiting to vote and to give them voting instructions, and that Mr. Reyes was not handing out leaflets or wearing a UFW button at this time (Tr. XI:84-86); Board agent Elsa Levya testified that she saw Mr. Reyes at the Bowen Ranch site just before the voting began, when Mr. Reyes was dealing with the dogs that were getting onto the site, and that he was not wearing a UFW button or

passing out leaflets at this time (Tr. XIII:62-66); UFW organizer Ben Maddock testified that he spoke to Mr. Reyes, asking him to remove a sign at the Bowen Ranch site, and that Mr. Reyes was not wearing a UFW button and he did not have any leaflets in his hands (Tr. XIII :.38-40) ; and employee Epigmenio Gutierrez testified that he arrived at the site at the time Mr. Roberto Valencia was there, and that Mr. Reyes was not wearing a UFW button and was not handing out any leaflets (Tr. XII:3-5).

In making my determination concerning this issue, I note that the Employer did not include this matter in its Objections to Conduct of the Election filed pursuant to Section 20365(a) of the Board's Regulations (S Cal. Admin. Code Section 20365(a)). These Objections were filed on June 8, 1981. However, although the Employer's attorneys had taken the declaration of Jesus Guzman, containing this allegation, on June 4, 1981, there was no positive identification at that time by Mr. Guzman of Mr. Reyes as the man who allegedly leafletted him. The incident was referred to in the Objections, but stated to be the actions of UFW agents. The matter was fully litigated at the hearing. Given this explanation why it was not included in the Employer's Objections, and given the fact that it was fully litigated, I find that this objection is properly before me.

In resolving the conflicting testimony on this matter, the Employer argues that the credibility of Mr. Reyes should be considered weak.

There were some conflicts in the testimony between Mr.

Reyes and other witnesses. Some conflicts between the various witnesses who supported Mr. Reyes' testimony were to be expected in a situation involving an election among four hundred workers, at four sites, with eight Board agents and numerous observers participating. For the most part these discrepancies were minor, such as the different description of the style of Mr. Reyes' shirt given by several witnesses. Similarly, I find nothing surprising in the differences among these witnesses as to the exact position of Mr. Reyes at the site at various times. Considering Mr. Reyes' specific duties as a "rover," and the obligations of the other Board agents who testified to cover other aspects of the voting process, it would be expected that the people involved would not all place Mr. Reyes, whose duties involved much coming and going, at the identical places and times at the site.<sup>15/</sup> The witnesses, particularly Mr. Ornelas, Mr. Moore, Mr. Cisneros and Ms. Leon, collectively saw Mr. Reyes a number of times when the workers were being lined up to vote, the time at which the Employer's witnesses stated that he was handing out the leaflets. I believe that these witnesses have accounted for a significant portion of the voting time, including the period singled out by the Employer's witnesses, and that they have credibly supported by Mr. Reyes' testimony that he did not hand out any leaflets or wear a UFW button.

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<sup>15/</sup> R. Leon testified that she did not see Mr. Reyes at the site at all after the voting commenced (Tr. XIII:29). E. Gutierrez testified that he saw Mr. Reyes at the site for "more or less an hour" (Tr. XII:15).



I found the testimony of Mr. Reyes credible on this issue. Overall, I felt that his account of his movements was straightforward, and was generally consistent with the supporting testimony of the other witnesses. I note that I admonished Mr. Reyes on several occasions to confine his answers to the question asked. However, during the course of the hearing I made similar admonitions to a number of the witnesses, especially to the lawyers and law students. See, e.g. , Tr. XIII-.62 (Levy) ; XII: 157 ,160 ,173 ,174 (Moore); XIII: 14 (Leon). As I remarked during one such admonition, during the testimony of Board Attorney Raquel Leon, "I know it's hard for a lawyer to be a witness, but please restrict your answers to what was asked in the question without adding other things" (Tr. XIII:14). I do not feel that this occasional tendency towards expostulation on the part of those trained in the law indicates a general lack of credibility. Specifically, I credit the testimony of Mr. Reyes that he did not hand out UFW leaflets and that he did not wear a UFW button. I find that the occasional discrepancies or contradictions in his testimony were overall minor in nature, and that his demeanor and bearing on the witness stand supported the general credibility of his testimony.

In considering the testimony of the four witnesses called by the Employer, I first disregard the testimony of Mr. Valencia. In his case, I specifically state that I discredit his testimony on this and all other issues. I do so because I found his testimony to be consistently vague, contradictory, and

evasive. His bearing and demeanor indicated that he generally wanted to shape his testimony in a favorable light rather than give straightforward answers to questions which might hurt his overall testimony. His testimony on this matter was contradicted by his previous declaration. He was evasive as to his possible interest in this case due to his relationship with a supervisor of the Employer. Whether this relationship provided a motive for him to testify in the manner in which he did, I cannot specifically say, but in view of his demeanor and his evasiveness I do not credit his testimony. Further, I find it somewhat remarkable that, having indicated that he was not paying any attention to the man who tried to hand him the leaflet, he stated immediately and with specificity that this man had "curly hair and a mustache." Accordingly, for the reasons just stated, I disregard Mr. Valencia's testimony. In turning to the other three witnesses' testimony, that of Mr. Guzman and Ms. M. and A. Samano, it should be kept in mind exactly what is being alleged here. These witnesses stated that just as the voting was about to begin, with the workers lined up waiting to get their ballots, and at a time when there were two permanent Employer observers on the scene, several temporary crew observers, and six additional Board agents, Mr. Reyes openly walked down the line of workers handing out UFW leaflets. One of the witnesses, Mr. Guzman, stated that Mr. Reyes was wearing a UFW button while he did this, a statement which was contradicted by the other two witnesses.

In considering this testimony, the nature of the leaflet is important. This leaflet, ERX:5, is no small-type treatise on the UFW. Rather, it had a block UFW eagle three inches wide printed in flat black ink on the front. Above that, in large letters, was an eye-catching "VOTE ASI!" Viewing this leaflet, the eagle fairly jumps out at the observer. As Ms. Alicia Samano noted, the eagle insignia could be seen by someone several yards distant. It is alleged that Mr. Reyes handed out these leaflets to "approximately forty" workers on the line, and that Mr. Reyes "just walked along and handed the [leaflets] to whomever he approached, ... very openly and visibly to people."

I do not find the testimony of these three witnesses credible on this issue. It is hard to believe that a Board agent could undertake such highly visible lobbying on the election site and not have a single Employer observer notice the activity. Further, since Mr. Reyes encountered a number of the other Board agents during the period, it must be inferred, if the testimony about the leafletting is believed, that these Board agents saw what was happening and did nothing about it.

Considering the credibility of Mr. Reyes on this issue, and the credibility of the testimony in support of Mr. Reyes' testimony; and considering the unlikelihood that such alleged campaigning could have gone unnoticed by the election observers, or that it was silently acquiesced in by experienced Board agents, I do not credit this testimony of Mr. Guzman, Ms. Maria

Samano, and Ms. Alicia Samano.

For the reasons stated, therefore, I find that Board agent Nicholas Reyes did not hand out pro-UFW leaflets and did not wear a UFW button at the Bowen Ranch site.

(b) Removing an Anti-UFW Sign at the Bowen Ranch Site.

The Employer alleges that Mr. Reyes ordered an employee to remove a "Vote No Union" sign from the side of a pick-up truck parked at the Bowen Ranch site, and that this conduct displayed Mr. Reyes' bias against the Employer.

The facts on this issue are not essentially in dispute. Mr. Leonard Salais was called by the Employer, and he testified that he is an employee of the Employer and that he voted at the Bowen Ranch site in the election (Tr. III:9-10).

Mr. Salais stated that he drove to the polls in one of the Employer's trucks, and that there was a sign on the side of the truck which said "Vote No Union" (Tr. III:11). He testified that a man whom he identified as Mr. Reyes came up to him before he voted.<sup>16/</sup> He testified that the substance of the conversation was: "Well, I had a sign on the side of my -- the passenger door, and he said that I'd have to take it off in order to vote" (Tr. III:11). Mr. Salais removed the sign and preceded to vote (Tr. III:10-11). Mr. Salais testified that his truck was parked "Across the street from the house [on Dietz Road, RDX:2] that was right next to the

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<sup>16/</sup> Mr. Salais identified the man as the person who testified earlier that day, Tr. III:10, a reference which in the context of the hearing indicated he was identifying Mr. Reyes, Tr. III:13.

voting area" (Tr. III:11). Mr. Salais later testified that Mr. Reyes had told him he either had to remove the sign, or move the truck somewhere else: "He said that I would have to take the sign off in order to vote, to stay there and vote. If I don't take the sign off, I'd have to take the pickup out of there" (Tr. 111:13-14). Mr. Salais testified that he told two men who were at the site with him about the incident (Tr. III:17).

Mr. Edward Jimenez was called by the Employer and he testified that he is an employee of the Employer and that he was at the Bowen Ranch site (Tr. 11:152,169). He testified that he heard about Mr. Salais having to remove the sign, although his testimony was somewhat vague on this point:

"Q. Did you notice Leonard [Salais] having a conversation with anybody?

A. Well, we were all talking together and, you know, and everything, and so I noticed Leonard left the line, and he talked to somebody else, and I -- I was there on the line, so they told me later on that -- not right then, but a little while later -- Leonard's got to pull that sign off that pickup.

Q. Who told you that?

A. I don't know if it was Martin [another employee], because Martin was ahead of, or somebody else behind me on the line, but they said Leonard had to go pull off a sign on his pickup.

Q. Did you know what he was talking about?

A. Actually, I didn't, because I didn't even know there was a sign on the pickup." (Tr. II:170.)

Mr. Edmundo Valadez testified that he is an employee of the Employer, and that he rode to the Bowen Ranch site with Mr. Salais (Tr. II:198,203). He testified that he did not

notice the sign on the truck at first, and that he first became aware of the sign "when we were told to remove the sign" (Tr. II:220).

Mr. Reyes testified that he told Mr. Salais and the employees with him in the truck to remove the sign: "I directed and I gave orders to a set of employees, not just one worker -- the set of employees to please remove the sign located on a truck parked on the east side of Dietz" (Tr. X:106). Mr. Reyes testified that the truck "was parked within the quarantine area. Maybe approximately a hundred yards or so from the booths; that is, the voting booths and challenge tables, and maybe a little bit -- maybe directly across the house that was in the area" (Tr. X:106).

Mr. Reyes testified that he was specifically instructed to remove the sign by Board attorney John Moore (Tr. X:106-107). Mr. Reyes further testified that after he ordered Mr. Salais to remove his sign, he walked across the voting site and saw UFW organizer Juan Cervantes. Mr. Cervantes' car was parked in the quarantine area and it had a sign on the front of it. Mr. Reyes testified that "I told him [Mr. Cervantes] to get rid of the sign" (Tr. X:112), and Mr. Cervantes complied (Tr. X:112).

Board attorney John Moore testified "I instructed him [Mr. Reyes] to go over to the trucks" (Tr. XII:158). He further testified:

"A. I told him to take care of that problem over there.

Q. That problem was with the 'no union' sign on the truck?

A. That's right." (Tr. XII:174.)

From the above testimony I find that Mr. Leonard Salais parked an Employer's truck within the quarantine area at the Bowen Ranch site, and that the truck had a "Vote No Union" sign on it. I find that Board agent Nicholas Reyes was instructed by Board attorney John Moore to have the sign removed, and that Mr. Reyes told Mr. Salais to remove the sign, which Mr. Salais did.

I further find that Mr. Reyes subsequently told UFW organizer Juan Cervantes to remove a sign from his car within the quarantine area at the Bowen Ranch site.

Concerning whether Mr. Reyes told Mr. Salais that he could not vote, I find from Mr. Salais<sup>17</sup> latter testimony on this point,<sup>17</sup>/ that Mr. Reyes did not tell Mr. Salais that he could not vote, but rather that Mr. Salais could not leave the truck in that spot with the sign on it while he went to vote. I find that Mr. Reyes then gave Mr. Salais the alternatives of removing the sign, or moving the truck out of the quarantine area.

I further find that there is no evidence that Mr. Reyes acted, by words or manner, in a biased fashion in ordering signs removed at the Bowen Ranch site.<sup>18</sup>/

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<sup>17</sup>/ Mr. Salais' testimony quoted in text supra, Tr. 111:13-14: "I would have to take the sign off ... to stay there and vote. If I don't take the sign off, I'd have to take the pickup out of there."

<sup>18</sup>/ My finding on this issue is separate from two other issues raised by the Employer: (1) the issue of the Board agents' overall removal of Employer signs before the election, discussed in Section IV(B)(4) of this Decision, *infra*; and (2) the presence of UFW buttons and bumper stickers on workers and their cars during the election, discussed in Section IV(B)(3) of this Decision, *infra*.

(c) Preventing Employees From Voting at the Bowen Ranch Site.

The Employer alleges that Mr. Reyes prevented two employees from voting at the Bowen Ranch site by threatening them with a fine. The two employees were Mr. Jesus Guzman and Mr. Roberto Valencia.

Mr. Guzman testified that when he and Mr. Valencia lined up to vote at the Bowen Ranch site a worker named Emilio came over to them and said "That we couldn't vote because we had just gotten here from Mexico; that there was a certain date they could vote from; from that day on, they couldn't" (Tr. III:28). He testified that he and Mr. Valencia did not pay any attention to Emilio, and that Emilio then brought over. Mr. Reyes to them (Tr. III:29).<sup>19</sup>/ Mr. Guzman further testified that Mr. Reyes told them "That we couldn't vote, that we had to get out of there.... That they could charge us five hundred dollars, because -- if we stayed there, because we were violating the law" (Tr. III:29). Mr. Guzman and Mr. Valencia then left the voting area and crossed the street, where they waited for their friends. They did not vote in the election (Tr. III:29-30).

Mr. Valencia testified to the same incident: "Look, first Emilio arrived, and then -- and then he told us we couldn't vote because we had been working there a short time, and then

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<sup>19</sup>/ Mr. Guzman identified the man with Emilio as the man who had testified the day before at the hearing, and the context of his statement indicates that he was identifying Mr. Reyes as the man with Emilio (Tr. III:29).



later he comes back with -- accompanied by this man with the curly hair and the mustache, and he told us again that we couldn't vote, to get out of there, because they were going to fine us five-hundred dollars fine" (Tr. III:89). According to Mr. Valencia, it was Emilio who did all the talking, both in the initial encounter and later when he came back with Mr. Reyes:

"Q. Did Emilio say what would happen to you if you didn't leave?

A. Yes, clearly, like the five-hundred dollars that he told us.

Q. Did the other man say anything about a five-hundred dollar fine?

A. They both accompanied each other when they arrived there.

Q. All right, but did the other man say anything about the five-hundred dollar fine?

A. No." (Tr. III:92.)

Mr. Reyes testified about the incident and was asked a series of questions in which he denied that any of the alleged actions took place:

"Q. Did you ever tell an individual that he would have to leave the voting site and was not eligible to vote because he had not worked long enough?

A. No, I never did.

Q. Did you ever tell an individual that if he did not leave the site, he could be fined or penalized five-hundred dollars?

A. No, I never.

. . . .

Q. Do you know an individual named Emilio Perez?

A. No, I do not.

Q. All right. Were you ever present at the [Bowen Ranch] site in the company of another individual who told a prospective worker or voter that he would have to leave the site because he had not worked long enough to vote?

A. No, I was never present at any conversation like that.

Q. Were you ever present when another individual told a prospective worker or voter that if he did not leave the site, he would be fined or penalized five-hundred dollars?

A. No, I did not. I was not present in such a conversation.

Q. Did you have any such conversations on the area of Dietz Road, immediately in front of the [site]?

A. No." (Tr. X:157-158).

Employee Epigmenio Gutierrez testified that he was at the Bowen Ranch site when Mr. Roberto Valencia was there, and that he also saw Mr. Reyes there (Tr. XII:4-6). He testified that he did not hear any conversation between Mr. Valencia and Emilio and Mr. Reyes (Tr. XII:6). He also testified that he, Mr. Gutierrez, had a conversation with Mr. Valencia in which he asked Mr. Valencia if Mr. Valencia was going to vote, and that Mr. Valencia replied "that he was not going to vote for no one" (Tr. XII:7). When asked "Did Mr. Valencia indicate whether that was by his own choice or whether that was because he was prevented from voting?", Mr. Gutierrez testified that Mr. Valencia "just said he didn't want to vote because he didn't want to vote for any side. That was only his answer" (Tr. XII:11).

As can be seen from all the above testimony, the facts on this issue turn solely on a direct credibility conflict between the witnesses. In this regard, I have already stated my reasons for discrediting the testimony of Mr. Valencia. (See Section IV(B)(2)(a) of this Decision, supra.) Mr. Valencia's general lack of credibility is reinforced again here by his evasiveness.<sup>20</sup>/ Further, I credit the testimony of Mr. Gutierrez that Mr. Valencia said he was not intending to vote.

In considering the general demeanor of the witnesses as they testified on this issue, I found the testimony of Mr. Gutierrez and Mr. Reyes to be credible. I was not as impressed with the credibility of Mr. Guzman's testimony. Mr. Guzman's testimony on this issue was given as a consistent part of his testimony, which I have found implausible supra, that Mr. Reyes was walking down the line of workers openly passing out UFW leaflets to them and wearing a UFW button.

For the reasons just stated, I find that Board agent Nicholas Reyes did not tell Mr. Guzman and Mr. Valencia that

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<sup>20</sup>/ I find that Mr. Valencia's initial response to the question whether Mr. Reyes said anything was evasive, and typical of Mr. Valencia's attempts to shape his testimony to avoid straightforward answers:

"Q. Did the other man [Mr. Reyes] say anything about a five-hundred dollar fine?

A. They both accompanied each other when they arrived there."

(Tr. III:91. The full testimony on this point is quoted in the text, supra.)

they were not allowed to vote and/or would be fined, and that Mr. Reyes did not accompany anyone else who told Mr. Guzman and Mr. Valencia anything to that effect.

(d) Making Pro-UFW Statements at the Famoso Ranch Site.

The Employer alleges that Mr. Reyes made a statement to a UFW organizer at the Famoso site indicating his desire that the UFW would win the election.

Mr. Joaquin Delgadillo testified that he was an observer for the Employer at the Famoso Ranch site (Tr. VI:47). The Famoso Ranch site was the fourth and last voting site of the day. Mr. Delgadillo testified that a total of "about 17 or 18 persons" voted at the Famoso Ranch site (Tr. VI:50). He further testified that after the 17 or 18 workers had voted at this site, he overheard a conversation between Mr. Reyes and UFW representative Ricardo Fuentes (Tr. VI:59). The Employer's temporary crew observer had not yet voted at this time, and neither had the crew foreman (Tr. VI-.59-60). The crew foreman was not in the area where Mr. Reyes and Mr. Fuentes conversed, but the temporary crew observer was (Tr. VI:60). Mr. Delgadillo testified that the 17 or 18 workers who had voted were waiting nearby for their foreman to vote and take the crew back to work (Tr. VI:53). Mr. Delgadillo testified further that Mr. Reyes called to Mr. Fuentes "and told him, 'Do you think we're going to win?'<sup>1</sup>" (Tr. VI:60). Mr. Delgadillo testified that upon hearing this comment he turned and looked at Mr. Reyes, and Mr. Reyes then said to Mr. Fuentes "Do you

think they are going to win?" (Tr. VI:61).<sup>21</sup>/

Mr. Reyes testified that he did have a conversation with Mr. Fuentes at the Famoso Ranch site. He testified that the conversation was about "a prior unfair labor practice, which I had been involved in the litigation with, and which Mr. Fuentes had been one of the witnesses and alleged discriminatees" (Tr. X:146). Mr. Reyes testified that he told Mr. Fuentes that the Administrative Law Officer had ruled in Mr. Fuentes' favor in that case, and that the case would be appealed (Tr. X:146). Mr. Reyes testified that Mr. Fuentes asked what Mr. Reyes thought would happen on appeal, and Mr. Reyes responded "that I thought we would win the case" (Tr. X:147). Mr. Reyes testified that the conversation with Mr. Fuentes took place before the voting took place, and that there were no workers present at the time (Tr. X:145).

Board agent Elsa Levy testified that she was at the eligibility table at the Famoso Ranch site, and that she heard the conversation between Mr. Reyes and Mr. Fuentes (Tr. XIII: 73). She testified that she did not remember if the conversation took place before or after the voting occurred, but that it was at a time when there were no workers present and the people at the table were just sitting around talking

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21/ There was some ensuing discussion at the hearing in which the interpreter indicated to counsel that the second phrase allegedly spoken by Mr. Reyes could also be interpreted as "Do you think you are going to win?" (Tr. VI:61). In either case, the gist of Mr. Delgadillo's testimony is the same, that initially Mr. Reyes said "we", referring to the UFW, and upon being overheard by Mr. Delgadillo changed his reference to the UFW to a non-partisan "you" or "they".

(Tr. XIII:74). She testified that the conversation between Mr. Reyes and Mr. Fuentes concerned a prior case, and the Administrative Law Officer's (ALO's) decision:

"Q. All right, and what's your best recollection as to what you heard between Mr. Reyes and Mr. Fuentes?

A. There was something about the ALO decision and -- they had one [sic: won] on the ALO decision, and we had filed a motion to make that decision final." (Tr. XIII:74.)

I find that much of the testimony on this issue can be viewed compatibly. Both Mr. Reyes and Mr. Delgadillo testified that Mr. Reyes spoke to Mr. Fuentes and asked or stated that "we will win." I find that Mr. Reyes and Ms. Levya credibly explained the context of this statement; specifically, that it referred to previous litigation and not to the election. Mr. Delgadillo's testimony does not contradict this, since his own testimony states that Mr. Reyes' comment was "Do you think we're going to win?", without explanation as to the subject matter of the conversation. Mr. Delgadillo assumed that Mr. Reyes was referring to the election, but nothing in his testimony refutes the explanation of Mr. Reyes and Ms. Levya as to the actual context of the statement.

It is further agreed by all witnesses that the conversation did not take place while any voting was going on. The only direct dispute is whether voters were present when the conversation took place. On this issue, I credit the testimony of Ms. Levya and Mr. Reyes, as opposed to the unsupported testimony of Mr. Delgadillo. Both Mr. Reyes and Ms. Levya testified that no voters were present. Mr. Delgadillo's

testimony was unsupported, and the Employer did not call any voters to testify that they heard the conversation.

In sum, I find that Board agent Nicholas Reyes had a conversation with UFW representative Ricardo Fuentes at the Famoso Ranch site. I further find that this conversation took place while no voting was going on, and out of the presence of any workers. I find that the subject matter of this conversation was a previous case, unrelated to the current election, involving Mr. Fuentes as an alleged discriminatee, and in which Mr. Reyes was a counsel for the General Counsel of the Board, presenting the charges on behalf of the alleged discriminatees. I find that in the course of this conversation Mr. Reyes stated to Mr. Fuentes that in Mr. Reyes' opinion "we will win" the appeal of the ALO's decision in that case.

(2) The Alleged Misconduct of Board Agents Beatrice Espinoza and Edward Perez.

The Employer alleges that Board agents Beatrice Espinoza and Edward Perez urged employees to vote for the UFW when they handed out election ballots to the employees.

Ms. Rosa Alba testified that she is an employee of the Employer, working in Dolores Mendoza's crew (Tr. IV:46). She voted in the election at the Bowen Ranch site (Tr. IV:47). Ms. Alba testified that she got on the line to vote, and was handed a ballot by Board agent Beatrice Espinoza (Tr. IV:50). Ms. Alba testified that when Ms. Espinoza handed her the ballot she put her (Ms. Espinoza's) thumb next to the UFW's eagle on the ballot and said "to vote here" (Tr. IV:51). Ms. Alba

further testified that Ms. Espinoza did the same thing to the two people in line ahead of Ms. Alba (Tr. IV:52).

On cross examination Ms. Alba testified that Ms. Espinoza did not use the words "UFW" or "union" when Ms. Espinoza handed out the ballot and indicated, with her thumb, where to vote (Tr. IV:57). Ms. Alba was also asked whether Ms. Espinoza indicated where to vote if the employee wanted to vote for the Employer; she testified that Ms. Espinoza only told her where to vote for the union.

"Q. And when Mrs. Espinoza gave this ballot to you, the first thing she told you was that this is a secret ballot; is that correct?

A. I don't recall her having told me that.

. . . .

Q. Mrs. Espinoza also said to you that you were free to make your own choice; correct?

A. When I got the papers [ballot] she didn't tell me anything regarding that.

Q. When Mrs. Espinoza gave you the paper, she said that you could put your X in either this box, pointing to the box on the left, or that box, pointing to the box on the right; is that correct?

A. No, she didn't tell us anything there. All 'she was doing there was handing us the papers.

Q. Did she hand you your paper individually, or did she hand you a paper together with a group of people?

A. There were others --

THE INTERPRETER: In the feminine gender, your Honor.

A. -- there in line.

Q. Okay. You never heard Mrs. Espinoza mention the words UFW or union, did you?

A. ... (S)he didn't tell us that over where we were lined up.



Q. And when you were lined up to vote, you never heard her mention the name of the company, that is the name Lucas, did you?

A. Nothing. Just vote here, and that was all.

Q. You didn't hear her say "Vote here" twice.

A. No." (Tr. IV:56-57.)

Ms. Artemisa Mariano testified that she is an employee of the Employer, working in the crew of Dolores Mendoza, and she voted in the election at the Bowen Ranch site (Tr. VII: 90-91). She testified that she went to the voting line with Ms. Rosa Alba, and was in front of Ms. Alba on the line (Tr. VII:92). Ms. Mariano testified that Board agent Beatrice Espinoza handed her a ballot "and she told us you can sign right here, she said" (Tr. VII:95). Ms. Mariano stated that Ms. Espinoza had her thumb touching the UFW's eagle when she said this (Tr. VII:95). Ms. Mariano further testified that she heard Ms. Espinoza say and to the same to Ms. Alba, who was standing right behind Ms. Mariano in the line (Tr. VII:95-96)

Ms. Mariano was asked whether Ms. Espinoza said anything to her when she handed out the ballot about where to vote for the Employer:

"Q. When you arrived at the voting line, did you hear anyone explaining the voting procedure?

A. Yes, Mrs. Espinoza.

Q. Did Ms. Espinoza have anything in her hand?

A. Yes, she had a piece of paper in her hand [the ballot]. . . . The paper had - she said, it was marked where to vote for Lucas, and for the union. . . .Ms. Espinoza said, it has where to vote, this is the place for Lucas, and this is for the union." (Tr. VII:92-93.)

Ms. Mariano testified that after explaining where to vote for Lucas [the Employer] and where to vote for the union, Ms. Espinoza grasped the ballot with her thumb on or just under the UFW's eagle and added "you can vote here" (Tr. VII:105).

Ms. Soledad Moreno testified that she is an employee of the Employer, working in Delores Mendoza's crew; she was the Employer's permanent observer, along with Mr. Joaquin Delgadillo, at the Bowen Ranch site (Tr. IV:72-73; V:27-28). She testified that Board agent Beatrice Espinoza<sup>22</sup>/ handed out the ballots to the employees at that site, "explaining in groups to the persons that were lined up there with the ballots what they ought to do" (Tr. IV:74). Ms. Moreno testified that as Ms. Espinoza explained to the employees about the voting, "I saw how she had the ballot in her hand and how she would make the X on the eagle" (Tr. IV:108). Ms. Moreno further testified that Ms. Espinoza did this to several groups of employees (Tr. IV:109). Ms. Moreno testified that she was approximately twenty feet away from Ms. Espinoza when she saw Ms. Espinoza indicating to employees to vote for the UFW's eagle; when Ms. Moreno then walked up next to Ms. Espinoza, Ms. Espinoza stopped pointing to the eagle (Tr. IV:110-111).

Ms. Moreno further testified that a man matching Board agent Edward Perez' description was also handing out ballots at the Bowen Ranch site (Tr. IV: 77,111-113). It is undisputed that Mr. Perez was the other Board agent handing out ballots at the Bowen Ranch site, and I find that Ms. Moreno's testimony

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<sup>22</sup>/ Ms. Moreno knew Ms. Espinoza by the name of Mrs. Goto (Tr. IV:74).

concerned Mr. Perez. Ms. Moreno testified that Mr. Perez:

"was standing passing out -- giving out the ballots, close to where I was, also, and he had all the ballots, and was giving them out one by one to each worker, and then when the person arrived he would tell them, 'You already know where to vote. Right?'

And he would make a cross like that, give them the ballot and make a cross like that." (Tr. IV:77.)

Ms. Moreno indicated that the cross was made by Mr. Perez with his finger, and was over the box marked with the UFW's eagle (Tr. IV:78). Ms. Moreno testified that Mr. Perez did this several times (Tr. IV:78). She also testified that she complained to Mr. Perez about it, and he said that he was not telling any voters how to vote (Tr. V:45).

In connection with Ms. Moreno's testimony, there was conflicting testimony over whether Ms. Moreno tried to write down, at the time of the election, the alleged misconduct she saw. She testified that she tried to take notes on it, and that Board agents stopped her. Board agents testified that there was a prohibition against taking notes, which Ms. Moreno attempted to violate. I find it unnecessary, however, to make any findings in this regard. I will assume that Ms. Moreno attempted to record the alleged misconduct at the time, and I have already noted her testimony that she complained of the alleged misconduct to Mr. Perez. Her attempt to record the alleged misconduct at the time does not affect my finding, infra, on the issue before me of the alleged misconduct of Board agents Espinoza and Perez in telling employees to vote for the UFW. The Employer did not allege in its Objections to Conduct of the Election that the Board agents' refusal to allow Ms. Espinoza to take notes was itself an objection to

the election, and this was not an issue set for hearing. Since I find that this "notes" issue does not affect my finding on the issue before me (alleged misconduct by agents Espinoza and Perez indicating to voters to vote for the UFW), I make no findings on it.

Board agent Beatrice Espinoza testified that she is a field examiner for the ALRB, and has been working as a field examiner since May 1981 (Tr. XI:73-74). She initially began working for the ALRB in 1977 as a clerk and legal typist (Tr. XI:73). Ms. Espinoza testified that she worked at the Bowen Ranch site during the election. She testified that Board agent Ed Perez instructed her to explain the ballot to the workers who were lined up to vote at that site (Tr. XI:77-78). She further testified that she held a sample ballot for the workers to see, holding the ballot in her hand with her fingers at the edge of the ballot (Tr. XI:80-81). Then she explained the ballot to the workers:

"A. Then I tell them, 'This is a sample ballot.' Then I tell them, 'Please mark and [sic] "X" in the box of your choice. You have to make a mark in one or the other. Do not make any other markings on this ballot. Do not write your name; do not write your social security number. If you do, it'll be voided.' (Demonstrating.) That's basically it.

HEARING EXAMINER: Okay, let the record show that when she said that, she held the ballot in her left hand and with her right hand pointed to the two small boxes on either side of the two symbols on the page." (Tr. XI:81.)

Ms. Espinoza testified that she gave these instructions to groups of five or ten voters at a time (Tr. XI:82-83).

The sample ballot was introduced into evidence at the hearing (ERX:9).

Ms. Socorro Perez testified that she is an employee of the Employer, and that she voted in the election at the Bowen Ranch site (Tr. VIII:58). She testified that a Board agent known to her as "Bea" (clearly a reference to Ms. Espinoza), explained the ballot to her and the workers with her:

"A. She took it like this and showed it to them, and she said, 'These are the ballots you're going to get, and right here, if you want the union, or if you don't want a union, you're just going to put an X in the little squares,' and for them not to write anything on the ballot, just to put the cross, fold it, and put it in the box.

. . . .

MR. HOERGER [Counsel for Regional Director]: All right. The witness, as she began her answer, picked up and held the ballot by the two upper corners, one hand on each corner. Then in her answer as she began to describe how Bea pointed here or here to vote for or against the union, she respectfully [sic: respectively] and sequentially pointed to the two squares that appear in the lower third of the ballot and which -- in which are found either the black eagle or the circle and the no.

HEARING OFFICER: I believe that's correct...."  
(Tr. VIII:67-68.)

Ms. Perez testified that she remained near her car afterwards and observed Ms. Espinoza give similar instructions in a similar manner to several groups of workers, approximately ten to fifteen workers per group (Tr. VIII:83-84).

Board agent Edward Perez testified that he is a field examiner for the ALRB (Tr. X:4). He began working for the ALRB in 1975. His position was a field examiner from 1975 through 1978. In 1978 he was appointed regional director for the Fresno region, and in 1980 he voluntarily requested to switch back to a field examiner position (Tr. X:4). He testified that he had been involved as a Board agent in more than fifty elections since 1975 (Tr. X:9).

Mr. Perez testified that he worked during the Employer's election at the Bowen Ranch site (Tr. X:4-6). He testified that his job was to hand out the ballots to the workers as they lined up, and to explain how to vote (Tr. X:16-17). In this regard, he testified:

"WITNESS: ... And as people would come over here, they started walking and I would meet them, and I would -- I would say in Spanish -- I said, 'Do you understand how to vote?' and I would get a ballot out, and I said, 'This is a sample of the ballot. You vote by marking an X in the little square of your preference.... Do not sign the ballot. Do not make any other marks on it,' and I said, 'Do you understand?' 'Yes,' give them the ballot, they would walk in there [and vote].

. . . .

MR. CAMACHO [Counsel for Petitioner]: Okay, and he held the ballot with his right hand [while testifying] as he indicated with his left forefinger as to the square -- two different boxes that the voter had a preference to choice [sic]." (Tr. X:17-18.)

Mr. Perez further testified that on some occasions workers would ask for further clarification, and he repeated the instructions. On one occasion, "The voter asked me something about, 'Is this where I vote for the union?' okay, and he pointed at this, and I said, 'That is a little box for the union, and this is a little box for no union,' okay?" (Tr. X:46). Mr. Perez said that incidents like this have arisen at various elections, and that the Board agents have a practice to deal with instances where voters ask how to vote for one side:

"A. ... This is an area that is, you know, very -- what shall I say -- is very delicate, so to speak, in terms of our role as neutral; that even when we are specifically asked a question, 'Is this the box for the union?' we, as a practice, say -- answer, and then point to the other box, so there can be no misconception, whatsoever, that we're pointing at -- or favoring any one particular party; and that happened once at the Lucas election." (Tr. X:47.)

Mr. Perez testified that at no time during the election did he verbally or physically, with hands or gestures, indicate to voters that they should vote for the UFW (Tr. X:48). Mr. Perez testified that in telling voters that they could make an X in the box of their preference, "I would point to both boxes" (Tr. X:54). He testified that he was "certain" that he did so, "Because I have personally instructed Board agents, when they are conducting elections -- when I was a regional director -- that that is an area that is very, very delicate, and I've told them, 'If you point to one box, point to the other box, so there's no differentiation between the two'" (Tr. X:54).

Board agent Ricardo Ornelas testified that he was generally in charge of conducting at the election at the Employer's premises (Tr. XI:131), and that he saw both Mr. Perez and Ms. Espinoza tell workers at the Bowen Ranch site how to use the ballot. He testified that Mr. Perez "gave instructions -- he told people that on the ballot, there were two choices, and they were to mark an 'X' in the ballot of their choice, and it was important not to sign the ballot or put any other marks on it...." (Tr. XI:129). He testified that Ms. Perez "was telling the voters ... [that they] were to go into the voting booths, mark the mark in the square of their choice, and after voting to hold it and drop it up in the ballot box" (Tr. XI:130).

In addition to the above witnesses, the Regional Director: called two employees, Mr. Jose Uribe (Tr. XII:117-137; XIII:

99-108), and Mr. Alfredo Valencia (Tr. XII:97-116; XIII:90-98). Both these employees testified to the effect that after the election they were called in to the Employer's office and asked to sign declarations by attorneys for the Employer; that they told the attorneys that no one at the election had indicated to them to vote for the UFW; and that they signed the declarations without knowing what was in them. The declarations were introduced into evidence, RDX:6,7, and they contain supposed allegations by the two workers that Board agents indicated to them to vote for the UFW by pointing to the eagle. The Petitioner argues that I should make findings of attempted falsified testimony against the Employer in this regard, and use the two workers' testimony in connection with my determination on the alleged misconduct of Board agents Espinoza and Perez. Employer's attorney Paul Coady testified that the declarations validly reflected what the two employees told the attorneys at the time. I find that it is unnecessary to my determination of the issue of the alleged misconduct of Board agents Espinoza and Perez to consider this testimony of Mr. Uribe and Mr. Valencia, and accordingly I make no findings as to it.

In considering the testimony on the alleged misconduct of the Board agents, I find that most of the testimony is compatible. Only one witness, Ms. Alba, testified that a Board agent (Ms. Espinoza) indicated solely to vote for the UFW and said nothing about where to vote for the Employer. I do not find Ms. Alba's testimony on this point at all credible. It was flatly contradicted by every other witness, including



those for the Employer and including the testimony of Ms. Mariano who was standing right next to Ms. Alba when the ballots were handed out. Rather, I believe the evidence is virtually undisputed that in explaining how to vote, both Ms. Espinoza and Mr. Perez indicated to the employees verbally and with their fingers where to put their "X" if they wanted to vote for the UFW or if they wanted to vote for the Employer. Thus, the only disputed issue is whether the agents, by subtly indicating with their fingers, additionally suggested to the employees that they really should vote for the UFW.

On this latter point, I find that the testimony is most credible that the agents did not indicate any preference to the workers. Mr. Perez is an extremely experienced Board agent, and he testified credibly that the agents are specifically instructed to point to both parts of the ballot precisely to avoid the possibility alleged by the Employer here. Further, I find that Ms. Moreno and Ms. Mariano's testimony is not fully in conflict with that of the agents and the other witnesses who agreed with the agents. I believe that it is a credible interpretation that Ms. Moreno, inexperienced in elections, immediately reacted when she saw the agents point to the UFW eagle without fully understanding the context in which the finger indication was being made.

Overall, I credit the testimony of the witnesses which indicates that the Board agents pointed to both squares on the ballot, and did not indicate by subtle words or gestures a preference for the UFW. I find that the testimony to the

contrary, except for that of Ms. Alba which I do not credit on this point, is based on a misinterpretation of what the Board agents were doing in pointing to both parts of the ballot.

Accordingly, for the reasons just stated, I find that Board agents Beatrice Espinoza and Edward Perez, as part of their duties at the election, handed out ballots to the employees at the Bowen Ranch site and explained to the employees how to use the ballots. I further find that in giving this explanation to the employees, the Board agents indicated to the employees by words and gestures where to vote if the employees wanted to vote for the UFW and where to vote if the employees wanted to vote for the Employer. I further find that Board agents Beatrice Espinoza and Edward Perez did not, by word or gesture, indicate to any employees that they should vote for the UFW, or that the Board agents had a preference that the employees vote for the UFW.

(3) The Alleged Misconduct of the Board Agents in Permitting UFW Electioneering at the Polling Sites.

There are two issues which the Employer has alleged in this connection. First, it is alleged that many workers wore UFW buttons and had UFW bumper stickers on their cars at the polling sites; and that some workers passed out pro-UFW leaflets prior to the opening of the polls. Second, it is alleged that the Board agents permitted employees to criticize the Employer at the Ducor polling site.

Sites. (a) Permitting UFW Buttons, Bumper Stickers, and Leaflets at the Polling

I make the following findings of fact concerning the presence of UFW buttons, bumper stickers, and leaflets at the polling sites:

-- A number of employees wore UFW buttons when they voted at the site. The exact number of workers with buttons was not approximated. Board agent Edward Perez testified that "a lot" of workers wore UFW buttons (Tr. X:24). Board agent Elsa Levya testified that "every once in a while" small groups of workers came to the voting lines wearing UFW buttons (Tr. XIII:76) .

-- There is no evidence I credit that any Board agent wore UFW buttons.<sup>23/</sup>

-- I do not find credible the testimony of two witnesses that a woman temporary observer stood behind the eligibility table at the Bowen Ranch site during the entire voting, wearing a hat with a large number of UFW buttons all over it (Tr. IV: 68-70 (S. Moreno); Tr. V:102-105 (J. Delgadillo)). I note that two other persons present testified that no such woman/ hat was present (Tr. X:55 (E. Perez); Tr. VIII:84-85 (S. Perez)).<sup>24/</sup> I further note that one of the Employer observers who testified to the woman's presence failed to mention this

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<sup>23/</sup> I have earlier found that Board agent Nicholas Reyes did not wear a UFW button.

<sup>24/</sup> A third person also testified that no such woman was present, but I find that testimony weak because the witness did not notice anyone wearing buttons (Tr. XI:85 (B. Espinoza)).

singular individual to the Employer's attorneys when they questioned the witness about the election shortly after the election (Tr. XII:38 (P. Coady)).

-- No permanent observer wore UFW buttons at the polling sites.

-- A number of employees' cars parked in the polling area had UFW bumper stickers on them. The exact number is not clear. The highest estimate is 50-75 cars with bumper stickers at the Bowen Ranch site (Tr. VII:23-29 (P. Coady)). Most witnesses did not give any specific number. I find from the logistics of the number of people voting and from the observation period in question, that the estimate of 50-75 cars is probably high, and that the actual number of cars with bumper stickers was somewhat smaller than that. The cars were parked along Dietz road, approximately 100 feet from the voting tables.

-- Some employees passed out UFW leaflets at the Bowen Ranch polling site prior to the beginning of the voting. Some employees had UFW leaflets in their hands at the polling sites. There was no evidence that any workers were forced to take leaflets, or that there was any disruption to the voting process due to the presence of the leaflets.

-- There was testimony by Employer observer Joaquin Delgadillo that UFW representative Ben Maddock passed out leaflets at the Bowen Ranch polling sites (Tr. V:9497). It is undisputed that Mr. Maddock is a UFW representative, working for the UFW in organizing the Employer's employees. Mr.

Delgadillo testified that Mr. Maddock had his car trunk open, and that workers were taking out many leaflets and buttons from the trunk (Tr. V:94-97). I do not credit this testimony of Mr. Delgadillo. Mr. Maddock testified that he did not have his car trunk open, and that in fact the trunk was not able to be open because it was broken (Tr. XIII:42). Mr. Delgadillo was interviewed by the Employer's attorney for eight hours the day after the election (Tr. XII:47). Mr. Delgadillo had been given instructions by the Employer's attorney prior to the election to be alert for any UFW representatives passing out leaflets at the polling sites (Tr. XII: 58). Yet in the eight-hour interview, Mr. Delgadillo did not mention this alleged incident in which Mr. Maddock was handing out a trunkful of UFW leaflets at the Bowen Ranch site (Tr. XII:39). The alleged incident was not mentioned in the Employer's Objections to the Election.

-- Employer observer Joaquin Delgadillo testified that UFW organizer Juan Cervantes was present at the Bowen Ranch polling site, with a UFW sign propped up against his car (Tr. V: 82-85). I have already found that Board agent Nicholas Reyes ordered Mr. Cervantes to take down this sign, and Mr. Cervantes did so (See Section IV(B)(1)(b) of this Decision, supra.)

-- Employer observer Joaquin Delgadillo testified that a man named Emilio Perez was passing out leaflets at the Bowen Ranch site prior to the opening of the polls (Tr. V:86-88). Mr. Delgadillo testified that Mr. Perez was an employee of

the Employer (Tr. V:87). Mr. Delgadillo also testified that Mr. Perez told him a few weeks before the election, while they were having drinks in a bar, that Mr. Perez was an organizer for the UFW (Tr. V:87). However, there is no evidence besides Mr. Delgadillo's testimony that, Mr. Perez actually worked as a UFW organizer. The evidence in this case shows that he was not a representative of the UFW at the pre-election conference. Mr. Ben Maddock, the UFW's Delano Field office director (Tr. II:128) testified that the UFW's Delano office has only one organizer besides himself, Mr. Juan Cervantes (Tr. II:131). Mr. Maddock testified that Emilio Perez was not one of the employees at the Employer's ranch who he, Mr. Maddock, enlisted to help organize the workers (Tr. II:137). There is no evidence that Mr. Perez actually worked as a UFW representative in any capacity during the pre-election or election period. The sole evidence that Mr. Perez was a UFW representative was his alleged statement to that effect made at a bar several weeks before the election. Mr. Perez was not called as a witness at the hearing. Accordingly, I find that if Mr. Perez did pass out leaflets at the Bowen Ranch site prior to the opening of the polls, he did so as an employee and not as a representative of the UFW.

-- For the reasons stated in the three preceding paragraphs, I find that no UFW representative distributed leaflets at the polling sites. One UFW representative had a sign at the polling site, and that sign was removed by orders of Board agents.

Site. (b) Permitting Employees to Complain About the Employer at the Ducor

The Employer called one witness on this issue, Employer observer Joaquin Delgadillo. Mr. Delgadillo testified that he was at the Ducor site, working as the Employer's observer along with Ms. Soledad Moreno (Tr. VI:1). Mr. Delgadillo testified that he saw at the Ducor site two employees who had voted earlier in the day at the Bowen Ranch site, Mr. Jose Romero, and a man whom Mr. Delgadillo knew by the name of Valdez (Tr. VI:35-36). Mr. Delgadillo testified that the two men approached the challenge table and asked to talk to the ALRB agents, because they said they wanted to make a complaint concerning the Employer not paying them for the time lost while voting (Tr. VI:37). This occurred while approximately 20 voters were gathered at the Ducor site, right next to where the men made their complaint (Tr. VI:38). Mr. Delgadillo further testified that the two workers talked with Board agent Ricardo Ornelas, who was in charge; and that they were talking "strong -- their voice could be heard high" (Tr. VI: 39-41). Mr. Delgadillo testified that Mr. Ornelas told the two workers to "Explain to me [Mr. Ornelas] how it occurred," and that the two repeated that the Employer did not want to pay them for the time they had lost at the election (Tr. VI: 41-42). Mr. Delgadillo further testified that at this point Board agent Bea Espinoza came over to Mr. Ornelas and told him that it was bad for the workers to be talking in front of the people waiting around to vote; that Mr. Ornelas agreed and told Ms. Espinoza to take them to another area; and that Ms.

Espinoza took the two workers to another area, where they had parked the car (Tr. VI:42-43). After the two workers went with Ms. Espinoza they stopped talking in a loud voice (Tr. VI:109). Mr. Delgadillo testified that Board agents John Moore, Elsa Levya, and Raquel Leon were also in the area near the two workers at the time they made their complaint (Tr. VI:33,39,41). The incident lasted approximately 10-15 minutes (Tr. VI:39).

Mr. Delgadillo testified that the two workers talked with the voters in the line (Tr. VI:40). He also testified that apparently the two workers were joined by some of the voters when they went to talk to the Board agents about their complaint, although Mr. Delgadillo's testimony on this point was not entirely clear:

"Q. All right. Now this group [of voters] from the Cardenas crew that was down here ... by the car -- were they still there at the time?

A. No. Upon seeing them, they went over there.

Q. Now upon -- you say, 'Upon seeing them, they went.' You're going to have to be more specific about what you mean by them and they.

A. These people saw the two that arrived, and being that they are from the same crew, they said, 'Let's go ask them what happened to them.'

Q. And then what -- what did you observe at that time?

A. Then they went and made the bunch a little bit bigger.

. . .

Q. Well, was it just the two girdlers [workers] and Mr. Ornelas standing there?

A. No, all the people that were standing, also.



Q. All the people that were standing. What do you mean?

A. All the people that were waiting to vote, and all the people that had already voted." (Tr. VI:38-39,41.)

Mr. Delgadillo did not specify how many of the people had already voted and how many were waiting to vote.

Mr. Ricardo Ornelas, Board agent in charge, testified that he could not recall the specifics of the incident, and that several times during the election, at various sites, he had been asked to deal with some employee problems:

"A. I remember once at the Ducor site, the second site, having my attention called from the election table. Almost simultaneously, I heard -- it might have from [sic] the Board -- it was either Elsa [Levya] or Raquel [Leon], and right around the same time, it seems to me that Soledad, for the Employer, they called my attention to some -- some incident, or -- something that was happening about maybe 20, 25 feet to my west. And at that time, I recall that Soledad [Moreno] said something like, 'Well, those people shouldn't be down there.' And almost simultaneously, I heard from the Board agent." (Tr. XI:150.)

Board agent Beatrice Espinoza testified that two workers came to the Ducor site, and that they were to the side of the line of voters, not next to them (Tr. XI:87). She testified that they said they had a problem to do with wages (Tr. XI:88), She told the two workers to move further back, and then talked with Mr. Ornelas; he was busy, so she went to Board agent Manuel Melgoza at the challenge table and asked him to talk with the two workers (Tr. XI:88). Ms. Espinoza testified further that Mr. Melgoza moved the two workers further back and spoke to them (Tr. XI:88). Ms. Espinoza testified that she did not see any commotion caused by these two workers, that she "didn't hear any yelling," and that the two workers

did not talk to the voters in the line (Tr. XI:88-89).

Board agent Manuel Melgoza testified that he is an attorney with the ALRB. He began working for the Board in 1977 as a graduate legal assistant, and has been a Board attorney since 1980 (Tr. XI:105-106). He worked at the Ducor site during the election, assigned to take challenges at the challenge table (Tr. XI:106).

Mr. Melgoza testified that the challenge table was lined up next to the eligibility table, a few feet away from it (Tr. XI:106-107). He testified that Board agent Bea Espinoza came to him at the challenge table and told him there were some workers who "had come and that they had some sort of problem that was happening to them at the time in their crew, because it was something connected with the election. And she said something about the fact that she wasn't satisfied that Ricardo [Ornelas] was attending to them and asked me if I would go and see what the problem was and take care of the problem" (Tr. XI:108). Mr. Melgoza testified that "the workers [who had come with the problem] were about -- I would say about 20 -- about some 20 to 22 yards away from where the challenge table was. And that is, they were to the west of the challenge table behind the line of the voters" (Tr. XI:108).

Mr. Melgoza further testified that he went to the workers and told them to move further back from the voters; that they moved back about ten more feet; that he asked them what the problem was and they seemed a "little bit confused about what the problem was"; and that eventually he understood that the

problem was the Employer was not paying the crew for time missed during the voting (Tr. XI:109). Mr. Melgoza testified that he recalled that there were three workers making this complaint (Tr. XI:109).

Mr. Melgoza further testified that he told the workers to wait, and he went to talk with Board attorney John Moore. Mr. Moore told him that the workers should file a complaint with the ALRB (Tr. XI:110). Mr. Melgoza testified that he returned to the workers and told them that they could file a complaint in the ALRB office, and that they left (Tr. XI: 110).

Mr. Melgoza was asked whether there was any interchange between the workers and the voters in the line:

"Q. From the time you first noticed the workers when Bea [Espinoza] pointed them out to you, did you observe the workers talk to any of the voters in the line?

A. No.

Q. Did you see any of the voters rush up to where they were?

A. [No response.]

Q. To try to talk to them?

A. No.

Q. ... Did -- from the time you noticed the workers to the time you talked to them, did any of the voters do any kind of yelling or shouting in relation to what you were doing with the workers?

A. Well, I don't know if they were -- I didn't hear any of them doing any yelling or screaming, or anything." (Tr. XI:111.)

Mr. Melgoza testified that he did not see the initial conversation between Ms. Espinoza and the workers (Tr. XI:115-116).

From the above testimony, it is clear that two or three workers came to the Ducor site and complained that they were not being paid by the Employer for the time they missed during the voting. The only disputed issue is whether this complaint was made in the presence of the voters on the line. Mr. Delgadillo testified that the workers initially made their complaint to the voters in the line, that they repeated their complaint to Mr. Ornelas in a loud voice right next to the voters, and that a number of voters accompanied them when they went to talk with Ms. Espinoza about their complaint. Ms. Espinoza testified that when she saw the workers they were not near the voters, and that they did not talk to the voters. Mr. Melgoza testified that from the time Ms. Espinoza pointed out the workers, they were away from the voters and did not talk to them.

I found Mr. Melgoza's testimony to be very credible. However, Mr. Melgoza's testimony only covers the end of the incident, and does not contradict Mr. Delgadillo's account that the workers talked with the voters when they arrived. The same might be said for Ms. Espinoza's testimony, in that she does not account for the time when the voters initially arrived. However, there is one major dispute between the testimony of Mr. Delgadillo and Ms. Espinoza. Ms. Espinoza testified that she spoke only to the workers (following which she went to Mr. Melgoza to have him handle the complaint) Mr. Delgadillo's testimony clearly places Ms. Espinoza with Mr. Ornelas at the time Mr. Ornelas was allegedly talking with

the workers,<sup>25</sup>/ and he testified that at the time Mr. Ornelas was talking with the workers, "all the people [were there] that were standing, . . . All the people that were waiting to vote, and all the people that had already voted" (Tr. VI:41). Thus, according to Mr. Delgadillo there must have been a very large group of over twenty people present when Ms. Espinoza talked with the workers, while Ms. Espinoza testified that the workers were alone at the time.

I do not find Mr. Delgadillo's account on this matter to be very accurate. I have quoted in text several passages of his testimony which indicates that his recall of the issue was not entirely specific as to which group of voters was standing in which places at the time the workers were talking to the agents. I find Ms. Espinoza's account of this interchange to be more credible. Where her testimony overlaps with that of Mr. Melboza's, Mr. Melgoza's testimony supports that of Ms. Espinoza; I found Mr. Melgoza's testimony to be the most precise on this issue, and his agreement with Ms. Espinoza on the sequence of events lends credence to her testimony on this issue. Further, although Mr. Delgadillo testified that the whole group of voters was present during the complaint, no voters were called to testify that they overheard the complaint.

Accordingly, for the reasons just stated, I find that a group of two or three workers came to the Ducor election site and complained to the Board agents at that site that they were

<sup>25</sup>/ Mr. Delgadillo testified that Ms. Espinoza came over and told Mr. Ornelas to move the workers away from the voters, see text supra.

not being paid by the Employer for time lost during the voting. The group of workers made their complaint to Board agent Beatrice Espinoza, and then to Board agent Manuel Melgoza. I further find that the workers made their complaint to the Board agents at a distance of several yards away from the line of voters, that the workers did not complain to the voters, and that no voters were present with the workers when they made their complaint to the Board agents. I find that it is a possibility that some voters may have overheard the workers making their complaint to the agents, but that this possibility was not substantiated by testimony from any voters.

(4) The Alleged Improper Removal of the Employer's Signs by Board Agents.

(a) Posting and Removal of the Employer's Signs.

The facts concerning the posting and removal of the Employer's signs are not disputed. A supervisor of the Employer instructed a crew foreman to have signs made on May 29, 1981. The signs generally read: "Vote No Union"; "Vote Lucas Ranch Shop: No Union"; and "Vote: George A. Lucas & Sons: No Union." The signs were from about one and a half feet square to two-by-five feet. Some were cardboard and some were plywood. They were lettered in bright orange, red, and gold lettering, with some streamers attached to them. Samples of the signs were introduced into evidence (ERX:2A,B; RDX:10). The signs were constructed by employees of the Employer during working hours, under the direction of a crew foreman; the

employees were paid for the work.

Approximately fifty such signs were constructed on May 29th, and were posted in and around the various voting sites the next three days. Some signs were posted on utility poles along Dietz road, at the Bowen Ranch site. Other signs were posted on the Employer's fences along the Employer's property. Some signs were posted inside the Employer's shop area. The signs were visible from the voting sites, And were within the half-mile quarantine areas established as boundary lines for the polling sites.

During the day on June 1, 1981 there were some conversations between the Board agents and the Employer's attorney. The substance of those conversations is in dispute, and is discussed in the next section of this Decision, infra. On the evening of June 1st, the night before the election, the Board agents noticed that the signs were still posted in the quarantine areas. The agents attempted to contact the Employer at its office, but the office was closed. The agents then tried to call the Employer's attorney, but were unable to reach him. The agents then began to remove the signs. The evening of June 1st, they removed all the signs except those within the Employer's locked shop area. The signs they removed were those posted on the utility poles on the roads by the polling sites, and on the Employer's fences next to the polling sites. The signs were taken to the Board's office.

When the agents were removing the signs the evening of June 1st, a night-crew foreman of the Employer told the agents

that they were not allowed to remove the signs, and that he had instructions from a supervisor of the Employer to prevent the signs from being removed. The Board agents told him that they were from the ALRB and that there was an agreement that the signs were to be removed. The agents continued to remove the signs. The crew foreman called the county sheriff's office, and the sheriff arrived on the scene. The sheriff took an incident report about the matter. The Board agents continued to the other sites, and removed all the signs (except those inside the locked shop area).

During the removal of the signs at the Bowen Ranch site the evening of June 1st, the Board agents' activities were witnessed by the crew foreman who called the sheriff, and by one worker in the night crew (the night crew consisted of approximately six employees). During the removal of the signs at the Silva Labor Camp site, the Board agents' activities were witnessed by two employees who were driving a tractor. The employees told the Board agents that they had instructions that the signs were not to be removed. The Board agents told the employees that they were from the ALRB and that the signs were supposed to be removed. The Board agents then removed the signs.

On the morning of June 2, 1981, the day of the election, Board agents arrived at the Bowen Ranch site at approximately 5:30 a.m. At that time, Board attorney Raquel Leon spoke with Employer attorney Paul Coady, concerning the signs in the Employer's shop area. Ms. Leon stated that the signs were



within the half-mile quarantine area, and asked Mr. Coady if he intended to remove them. Mr. Coady stated that the signs were on private property, and the Employer had the right to keep them. He stated that he would consider whether or not to remove them. At this point, Ms. Leon and other Board agents went inside the shop area, which was open, and told the crew of employees inside the shop area that the signs had to be removed because there was an agreement with the Employer to remove signs in the polling site quarantine areas. The Board agents then took down the signs. The Board agents' activity at the shop area was witnessed by approximately twelve employees in the shop area.

(b) The Pre-Election Conference and Other Alleged Agreements Concerning the Signs.

A pre-election conference was convened on May 30, 1981 by Board agent Ricardo Ornelas. Present at the conference for the Board were Mr. Ornelas, Board attorney Lawrence Alderete, Board attorney Raquel Leon, and graduate legal assistant Nicholas Reyes. Present for the UFW were Delano Field Office Director Ben Maddock, and UFW organizers Ken Schroeder and Juan Cervantes. Present for the Employer were attorney Paul Coady, office manager John Teguchi, and supervisor Rolando Deramos. Approximately fifteen employees were also present, and Board agent Beatrice Espinoza attended the conference and interpreted for the employees.

There is no dispute that at the pre-election conference it was agreed that there would be a half-mile quarantine area

around each polling site. The testimony is in dispute whether an agreement was also reached that there would be no signs within the quarantine areas.

A number of matters were discussed at the conference. At one point Mr. Ornelas suggested imposing a 24-hour ban on all campaigning prior to the election. This idea, however, was rejected by both the Employer's representatives and the UFW's representatives. (See, e.g., Tr. VII:13 (P. Coady); Tr. XIII: 36 (B. Haddock)).

All four Board agents and Mr. Maddock testified that following the discussion of a ban on campaigning, a discussion was had concerning the presence of signs in the quarantine areas. All testified that agreement was reached that no signs would be allowed in the quarantine areas.

Mr. Ben Maddock testified that he raised the issue of signs present in the quarantine area because he was very concerned that there be no signs allowed, due to experiences in prior elections. He testified that Mr. Coady agreed that there would be no signs:

"A. ... we did talk about the signs in the area -- of the quarantine area, and I raised the question that I did not want the signs in that area, because I had went through an election at the Vincent B. Zaninovich Ranch where there was big signs in the voting area.... I guess I get [sic: got] a little irate -- and a little yelling. I was -- well I was upset at the idea that those signs might be in the area, and then it got to the point of where -- where after there was some discussion on it, Mr. Coady said there wouldn't be no signs in the area." (Tr. XIII:36-37.)

Board agent Ricardo Ornelas testified that "at the preelection conference, we had the parties, myself, Coady and

Maddock, we had a conversation regarding signs. And it was during or -- it was during this conversation that Paul Coady agreed that there would be no signs up" (Tr. XI:141). Mr. Ornelas testified that Mr. Coady specifically represented to Mr. Ornelas at the conference that there would be no signs in the quarantine area (Tr. XI:161-162, 166).

Board attorney Lawrence Alderete testified that Mr. Coady "said [at the conference] that there would be no signs in the quarantine area" (Tr. I:151).

Board agent Nicholas Reyes testified that:

"A. [Mr. Coady] had agreed to the -- to have no signs at the quarantine areas.

Q. Was there anything else said?

A. I think the final outcome, at that point, was that there was an agreement to have no signs in the quarantine areas.

Q. Did Maddock say anything?

A. Well, I think Mr. Ornelas was still trying to get the input, and he had the input on the 24-hour no campaigning. The parties couldn't agree, and he was trying to get the parties to agree on something. Finally, they agreed on just no signs in the quarantine area." (Tr. II:107.)

Board attorney Raquel Leon testified that "I didn't understand there to be an agreement, a specific agreement as to no campaigning within twenty-four hours of the -- in the quarantine area, but as to the signs, my understanding was that there would be none" (Tr. II:10). She testified that Mr. Coady said there would be no signs in the quarantine area (Tr. II:10,83).

The Employer called Mr. Coady to testify on this issue. He testified as follows concerning the pre-election conference:

"Q. During the discussion of the campaigning, and the 24-hour period over the VBZ [Vincent B. Zaninovich Ranch] election, was there any conversation regarding campaign signs?

A. No.

Q. Did you ever agree on behalf of the company not to campaign during the 24-hour period?

A. No, I did not agree.

Q. Did you ever agree on behalf of the company not to post campaign signs during the 24-hour period?

A. No, I did not agree." (Tr. VII:14.)

The Employer also called Board attorney John Moore, to indicate that the prior statements the Board agents made to him show that there was no agreement concerning signs. His testimony, however, indicates that there was such an agreement at the pre-election conference, but that there was some confusion over the time-period involved:

"A. ... Raquel Leon says there was no agreement on campaigning. However, I believe she said that there was an agreement on the signs, which seems to corroborate Mr. Ornelas' version of what occurred. I have been most satisfied with the idea of no signs in the quarantine area by Mr. -- some of Mr. Coady's statements to me. However, the time period -- I've heard different versions about the time period. It seems that at the pre-election conference it wasn't specified and so people walked away from the pre-election conference uncertain as to the specificity of the time element on the no signs in the quarantine area. Was it 24 hours before? Was it election day, or was it just when the voters were there, at the voting, and I've [sic] people give different ideas about that, but I -- my best guess is since the framework of the conversations occurred during a discussion of the 24-hour no campaigning limit and the signs came as an offshoot of that, that they were operating on a 24-hour assumption. At least, that's what Mr. Ornelas -- Mr. Reyes walked away from those discussions with, so it isn't

this is just generally what I've been able to learn in trying to figure out what all these conversations have been about." (Tr. 1:57-58.)

In addition to the testimony concerning the pre-election conference, there was testimony concerning statements allegedly made by Mr. Coady to Board agents in phone calls on June 1st, the day before the election.

Board attorney Lawrence Alderete testified that on June 1st he went to the Employer's premises, and noticed that there were numerous Employer signs posted within the quarantine areas (Tr. 1:155). He testified that he was concerned about the signs since their presence within 24 hours of the election went against the discussions they had had with Mr. Coady at the pre-election conference (Tr. 1:155). Mr. Alderete testified:

"A. ... I called Mr. Coady at the Company office and I told him that the signs were out, were still up, and I was concerned about this.

Q. Did Mr. Coady respond in any way?

A. Yes. Mr. Coady responded with a -- I can't -- I don't remember word for word and I can't quote him, but he said something to the effect that it was private property and we probably didn't have the authority to -- to force him to take down the signs and that he was going to object and then he stopped and chuckled and said, 'I'm just kidding; the signs will come down.'

Q. All right. Did you respond in any way to what Mr. Coady had just said to you?

A. Yes. I responded in relief. I said, 'Well, you shocked me, Paul. Your position that you just stated, I hope you wouldn't take it,' and he said 'No, I was just kidding. I'm going to take the signs down.' I said, 'Fine.' I said, 'But those signs need to come down right away.'

Q. Was there any further communication in that phone call about the signs?

A. No." (Tr. I:155-156.)

Mr. Alderete further testified that he told Mr. Ornelas about the call, and that Mr. Ornelas said that he would also try to contact Mr. Coady about the signs (Tr. I:156).

Board agent Ricardo Ornelas testified that at about 4:00 p.m. on June 1st he placed a call to Mr. Coady. He testified:

"Q. And the reasons for your call?

A. I called Mr. Coady because while I had been doing worker notification, I had noticed that there were some signs up in the quarantine zone, and I remembered two locations that I recall. And so when I returned, one of the things I wanted to do was to call Paul [Coady] right away. And also when I did return, Lawrence [Alderete] had told me that he had called Coady and taken care of the observers for me. And he also mentioned that he had had a conversation with Paul.

Q. Now, you said that you noticed signs in two of the quarantine areas. What areas was that?

A. One was the Ducor area. Some men were just putting signs up. And I believe the other one was the first site, the Earlimart area [Bowen Ranch site].

Q. Once you placed the call to Mr. Coady, who talked first?

A. I think I did.

Q. And what did you say?

A. I told Paul that I had just returned from doing worker notification; that I had seen several signs up in the quarantine areas, and that I wanted to know when the signs were going to be coming down. I asked when the signs would be coming down.

Q. And did he respond?

A. Yeah, he did. He told me that the signs would be coming down before the election.

Q. Did you say anything else?

A. I repeated the question. I asked him, "When will the signs be coming down?" And his response was the same; that they would be coming down before the election,

Q. Did you say anything else?

A. Then I pressed him for a time. I said, 'Well, how about right now,' or 'How about some time later today. 'Because I wanted a specific time. And his response was: 'They'll be coming down before the election.'

Q. Anything else you said to him?

A. I think that was the content of our conversation."  
(Tr. XI:122-123.)

Mr. Coady testified that he had phone conversations with Mr. Alderete and Mr. Ornelas on June 1st. He testified concerning the call from Mr. Alderete that the subject of signs was never mentioned:

"Q. And what topics were discussed then?

A. The first topic was the list of union observers.

Q. Did Mr. Alderete provide that to you?

A. Yes, he did. Secondly, he told me that he had some information that one of the crews was going -- had been fired and would not be working on the following day, and he named the crew boss in charge of the crew.

Q. Was there some continuing discussion about that issue, then?

A. There was. I told him that was the very first I heard of it, that as of late Saturday, we intended to have that crew work on Tuesday, election day, and that this was a surprise to me, and that I would look into it.

Q. Does that fairly complete the topics, or issues discussed during the . . . call, with Mr. Alderete?

A. Yes, it does." (Tr. VII:59-60.)

Mr. Coady testified concerning the phone conversation with Mr. Ornelas that the subject of signs did come up, but

that it concerned signs at the Employer's Merced Ranch:

"A. Ornelas stated that there were a lot of signs at the Merced area, both in and outside the quarantine area.

Q. All right. Now, was one of the voting areas in an area denoted as Merced?

A. No, although the Merced Ranch, the Lucas<sup>1</sup> Merced Ranch was very close to the Formoso Ranch where voting actually took place.

Q. How close?

A. I'd say about four miles, four or five miles.

Q. All right. Did he -- did you -- what did you respond when he said this?

A. I told him that I wasn't sure what he was talking about, that I had not been down to that area myself, and that I'd look into it.

Q. All right. Did he reference any signs in any other of the voting areas, or any of the voting areas?

A. No, he talked about the Merced Ranch.

Q. All right. And when you told him that you would look into the matter, what was his response, if any?

A. He basically said okay. I can't recall if he said anything more than that.

Q. All right. Now, any other time that day, did you have any conversations concerning campaign signs with the ALRB agents?

A. No, I didn't." (Tr. VII:15-16.)

I find from all the above testimony that there was an agreement among the parties at the pre-election conference that there would be no signs within the quarantine area. The exact time-frame was not entirely clear, but the discussions took place within the context of the 24-hour time period before the election, and I find that was the understanding concerning the prohibition against the posting of signs.



Mr. Coady's testimony infers, essentially, that all the Board agents engaged in a conspiracy to remove the Employer's signs, and concocted a completely false story about the pre-election conference to cover themselves. Mr. Coady testified that there was no discussion during the pre-election conference about signs. I find this testimony remarkable. Neither of the other two Employer representatives who were present at the conference were called to support it, and it flies in the face of the testimony of five witnesses who testified credibly that there was ample discussion of this specific issue. I find that Mr. Coady's recollection on this matter is faulty, and I credit the testimony that there was agreement reached on the issue of posting signs.

I further find that Mr. Coady repeated his agreement that the signs would be removed, in the phone conversations with Board agents on June 1st. I do not credit Mr. Coady's denial that the subject came up at all in the conversation with Mr. Alderete. I also find Mr. Coady's testimony that Mr. Ornelas was only concerned with signs at the Merced ranch to be implausible and internally contradictory. All the evidence in the case revolved around signs placed in the quarantine areas, mostly at the Bowen Ranch and Ducor sites. It makes no sense that twelve hours before the election, when it is undisputed that there were almost fifty signs at the Bowen Ranch and the other polling sites, Mr. Ornelas called to complain about signs at the Merced ranch where there were no polling sites and he did not mention the numerous signs at the Bowen Ranch

and other sites. Further, Mr. Coady testified that Mr. Ornelas spoke of signs inside and outside the quarantine area, but Mr. Coady also stated that the Merced ranch was four miles from the nearest polling site and thus completely outside any quarantine area. I credit Mr. Ornelas' testimony that he specifically raised the subject which concerned him the most, the signs inside the quarantine areas at the Bowen Ranch and the other sites.

Thus, I find that the Employer agreed at the pre-election conference that there would be no signs in the quarantine areas, and that the Employer's attorney twice reiterated that agreement to Board agents on June 1st.

(c) Findings of Fact Regarding the Removal of the Employer's Signs.

Based on the testimony and discussion in the previous two sections, supra, I make the following findings of fact concerning the removal of the Employer's signs:

1. On May 29, 1981 the Employer had employees construct approximately fifty signs. The signs urged employees to vote for no union in the election. The signs were posted on the Employer's property during the next three days.
2. On May 30, 1981 the parties attended a pre-election conference. At that conference the Employer, the UFW, and the Board agents agreed that there would be a half-mile quarantine area around each voting site. The Employer, the UFW, and the Board agents also agreed that there would

be no signs posted within the quarantine areas. The general time reference for the prohibition of signs within the quarantine areas was 24 hours before the election. The election was scheduled to begin at approximately 6:00 a.m. on June 2, 1981.

3. As of the late afternoon of June 1, 1981, approximately 12 hours before the election, there were still about fifty Employer signs posted in the quarantine areas.

4. At about 4:00 p.m. on June 1st, the Employer's attorney, Paul Coady, stated to Board agents that the signs would be removed.

5. No action was taken by the Employer during the afternoon and evening of June 1st. On the evening of June 1st, Board agents unsuccessfully tried to contact the Employer and its attorney. The agents then removed signs from all the quarantine areas, except the shop area, which was locked for the night.

6. The action of the Board agents in removing the signs on the night of June 1, 1981 was witnessed by approximately three employees. These employees told the Board agents that they had instructions from their supervisor that the signs were not to be removed. The Board agents told the employees that there was an agreement by the employer to remove the signs. One of the employees called the sheriff's office, and sheriff's officers came and took an incident report about the matter.

8. The action of the Board agents in removing the signs at the shop area on June 2, 1981 was witnessed by approximately twelve employees.

## V. CONCLUSIONS OF LAW

### A. Summary of Findings of Fact

There are two Employer's Objections which I have found substantiated by evidence at the hearing: (1) Some employees had UFW buttons, bumper stickers, and leaflets at the polling sites; and (2) Board agents removed the Employer's signs from the polling sites.

I have found no merit to the other Employer objections. Specifically, I have found that:

1. Board agent Nicholas Reyes did not distribute pro-UFW leaflets and did not wear a UFW button at the Bowen Ranch polling site.

2. Board agent Nicholas Reyes did not act in a biased manner in ordering a sign removed from an Employer's truck at the Bowen Ranch polling site. He also ordered a sign removed from a UFW car at the polling site.

3. Board agent Nicholas Reyes did not threaten workers or prevent workers from voting at the Bowen Ranch polling site.

4. Board agent Nicholas Reyes did make a statement to a UFW representative at the Famoso Ranch polling site that "we will win," but the statement was made in reference to previous litigation and not to the election, and the statement was not made in the presence of any voters.

5. Board agent Beatrice Espinoza did not indicate to workers by words or gestures that they should vote for the UFW when she handed out ballots at the Bowen Ranch polling site.

6. Board agent Edward Perez did not indicate to workers by words or gestures that they should vote for the UFW when he handed out ballots at the Bowen Ranch polling site.

7. Two or three workers did complain at the Ducor polling site about the Employer not paying them, but Board agents moved them away from the voters; the possibility that some voters may have overheard the workers was not substantiated by any testimony from any of the voters.

Thus, I turn to an analysis of the legal standards concerning Board elections to determine whether the removal of the Employer's signs and/or the presence of UFW buttons etc., are valid reasons for setting aside the election results.

#### B. Standards For Setting Aside Election Results

The ALRB set out the standard for setting aside elections in D'Arrigo Brothers, 3 ALRB 37 (1977). The Board stated at length why it was not adopting the strict "laboratory conditions" standard used by the NLRB for setting aside elections:

"When the NLRB decides to overturn an election and conduct a rerun of the 'experiment,' the rerun election can usually be held as soon as the determination to set the first election aside is made and can be held among substantially the same electorate. In the agricultural labor context, rerun elections, if they are to have the same standards of employee participation as the initial election, generally cannot be conducted until the next peak of employment which may be the next harvest season, a year after the first election. Furthermore,

the electorate will likely be substantially changed. Thus, our decision to set aside an election in the agricultural context means that employees will suffer a serious delay in realizing their statutory right to collective bargaining representation if they choose to be represented. We will impose that burden upon employees only where the circumstances of the first election were such that employees could not express a free and un-coerced choice of a collective bargaining representative" (3 ALRB No. 37, pp. 3-4.)

This standard was specifically adhered to by the Board in Bruce Church, Inc., 3 ALRB No. 90 (1977). The Board stated:

"In considering the problems of holding elections in the agricultural context we must recognize that some variations and deviations from the ideal will inevitably occur despite our best efforts to prevent them. In this case, following the general principles outlined above, we are convinced that the incidents complained of, including those relating to Board agent conduct, were not sufficiently substantial in nature to create an atmosphere which renders improbable a free choice by the voters" (3 ALRB No. 90, p. 3.)

This "free choice" standard was once again specifically followed in Mike Yurosek & Sons, Inc. (4 ALRB No. 54 (1978)):

"In Bruce Church, Inc., 3 ALRB No. 90, we enunciated a standard which required the setting aside of an election where the complaint of Board agent conduct was '... sufficiently substantial in nature to create an atmosphere which rendered improbable a free choice by the voters.' Id., p. 3. Applying this standard, we cannot find that the isolated comment by the Board agent at the pre-election conference constituted objectionable conduct affecting the results of the election" (4 ALRB No. 54, pp. 3-4.)

In discussing the "free choice" standard, the Board has held that election results will not be set aside where the employees' free choice was not restricted and where the outcome of the election was not affected. In Ranch No. 1, Inc., 5 ALRB No. 1 (1979), the Board held:

"No evidence was presented to indicate that these violations were of such a character as to create an intimidating or coercive impact on the employees' free choice of a collective bargaining representative. 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 this election" (5 ALRB No. 1, p.6.)

It is apparent from the D'Arrigo, Bruce Church, Yurosek, and Ranch No. 1 cases, supra, that the Board has specified that allegations of misconduct must be examined to determine whether they were substantial enough to have restricted the free choice of the employees or otherwise have affected the outcome of the election. The mere existence of misconduct which does not restrict the employees' free choice and which does not affect the outcome of the election is not grounds for setting aside the election.<sup>26/</sup>

The Employer argues (Brief, p. 28) that the Board has now rejected the D'Arrigo, Bruce Church, Yurosek "free choice" standard, and substituted a strict reversal standard for any Board agent misconduct which appears to imply a less than neutral attitude by Board agents. The Employer argues that the Board abandoned the D'Arrigo, Bruce Church, Yurosek standard in William Mosesian Corporation, 4 ALRB No. 60 (1978). I find the Employer's argument in this respect to be weak.

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<sup>26/</sup> In the recent case of Grow Art, 7 ALRB No. 32 (1981), the Board found that a Board agent had failed to give 51 eligible voters adequate notice. However, it held that: "As the inadequate notice of the second polling site did not involve a sufficient number of voters to tend to affect the outcome of the election or render it unrepresentative, we shall not set aside the election on that basis" (7 ALRB No. 32, p. 2.)

In Mosesian there was only a summary opinion by the Board, affirming the IHE's decision. It strains credulity to think that the Board would reverse its leading decisions on the basic standard for setting aside elections without writing a full opinion and without stating that it was doing so. Further, in affirming the IHE, the Board in Mosesian noted that the IHE "found that the UFW violated the Board's access rule and interfered with the Employer's campaign to such an extent that employees were denied the opportunity to hear the Employer's arguments of a 'no union' vote" (4 ALRB No. 60, pp. 1-2). This is clearly a statement that the employees were denied a "free choice," the D'Arrigo and Bruce Church standard. Additionally, the part of the IHE's decision which concerns a Board agent who told a worker to vote for the UFW strongly implies that the conduct may have affected the outcome of the election: "Here, the UFW had only a three-vote majority. While there is nothing in the record to indicate that similar statements were made by the agent to other crews, it is reasonable to infer that the incident was not isolated" (4 ALRB No. 60, p. 15 of IHE's Decision). Finally, Mosesian involved direct electioneering for the UFW by a Board agent. Although the Employer alleged similar instances here, I have found no merit to those particular allegations.

Thus, I cannot understand by any stretch of imagination how the Mosesian case can be seen as sub silentio overturning the basic standard set out by the Board in D'Arrigo,



Bruce Church, and Yurosek. Accordingly, I will evaluate the alleged misconduct of the Board agents in removing the Employer's signs to determine, under the standard of D'Arrigo and the cases which follow it, whether that alleged misconduct may have "created an atmosphere such that the employees could not express a free and uncoerced choice of a collective bargaining representative," or may have affected the outcome of the election.

In seeking to set aside the election, the Employer bears the burden of coming forth with evidence. The Board held in TMY Farms, 2 ALRB No. 58 (1976):

"The burden of proof is on the party seeking to overturn the election to come forward with specific evidence showing that unlawful acts occurred and that these acts interfered with the employees' free choice to such an extent that they affected the results of the election" (2 ALRB No. 58, p. 9).

The Board has held that in determining whether an election should be set aside, the objections to the election should be considered both individually and cumulatively. In Harden Farms of California, Inc., 2 ALRB No. 30 (1976), the Board held that "allegations of misconduct affecting the election must be considered as a whole as well as separately ..." (2 ALRB No. 30, p. 13). See also D'Arrigo Brothers of California, 3 ALRB No. 37 (1978).

A final legal standard concerning alleged Board agent misconduct is the discretion allowed to Board agents in conducting the election. The legal standards concerning Board agent discretion are discussed in the conclusions of law on the issue of the removal of the Employer's signs, infra.

C. The Presence of UFW Buttons, Bumper Stickers and Leaflets at the Polling Sites

It is undisputed that some employees had UFW buttons, bumper stickers and leaflets at the polling sites. However, a series of Board cases have held that such activity, absent special circumstances such as disruption of the voting process due to that activity, is not grounds for setting aside the results of an election. See, e.g., John Elmore Farms, 3 ALRB No. 16 (1977); D'Arrigo Brothers of California, 3 ALRB No. 37 (1977); O.P. Murphy & Sons, 3 ALRB No. 26 (1977); Harden Farms, 2 ALRB No. 30 (1976).

I have found that no Board agents or observers wore buttons, and that no UFW representatives passed out leaflets or otherwise engaged in electioneering at the polling sites. The one exception was UFW organizer Juan Cervantes, who had a sign at the polling site, but Board agents ordered him to remove the sign and he did.

Based on the above cases, I conclude that the fact that some employees had UFW buttons, bumper stickers, and leaflets at the polling sites was not by itself grounds for setting aside the results of the election.

D. The Removal of the Employer's Signs

The Employer argues that the removal of its signs from the polling areas is grounds for setting aside the election (Brief, pp. ii-iii). I will discuss four points in this regard: (1) Whether the removal of the signs was within the proper discretion of Board agents; (2) Whether, if the removal

of the signs tended to create an impression that the Board was not neutral in the election, this requires setting aside the election regardless of whether the employees' free choice was restricted or the outcome of the election was affected; (3) Whether the removal of the signs restricted the employees' free choice and affected the outcome of the election; and (4) Whether the removal of the Employer's signs was unconstitutional. I deal with each of these arguments in turn. (1) Board Agents' Discretion

The Board has held that the Board agents in charge of conducting an election have reasonable discretion to supervise the polling sites. In Perez Packing, Inc., 2 ALRB No. 13 (1976) , the Board held:

"The task of policing the polling area is within the discretion of the Board agents conducting the election and is a function which must be tempered by the exercise of common sense" (2 ALRB No. 13, p. 6).

It is also the task of the Board agents, under Section 20350(d) of the Board's Regulations (8 Cal. Admin. Code Section 20350(d)), to conduct a pre-election conference.

In this case, Board agent Ricardo Ornelas, in charge of conducting the election at the Employer's ranch, convened a pre-election conference. I have found that the Employer agreed that no signs would be posted at the polling sites by any of the parties. I believe that this was a reasonable agreement, in view of the expressed concern by the UFW about a previous election, and in view of the concern of the Board about electioneering by any party at the polling sites (see,

e.g., Sakata Ranches, 5 ALRB No. 56 (1979); Konda Brothers, 2 ALRB No. 34 (1976)).

I have also found that, in spite of this agreement, the Employer kept numerous signs posted at the polling sites. The Board agents spoke twice to the Employer's attorney on the day before the election, requesting compliance with the agreement on signs. The attorney agreed the signs would be removed. The evening of the election, with the polls scheduled to open at 6:00 a.m. the next day, the Board agents discovered that the signs were still there. They again tried to contact the Employer and its attorney, but were unable to do so.

At this point, the Board agents' choices included postponing the election because of the signs, or letting the Employer successfully stonewall the agents on the issue and renege on its agreement. Neither of these alternatives seems desirable, the one frustrating the right of the voters to a prompt choice of a bargaining representative, and the other flaunting the authority of the Board and possibly resulting in a costly and time-consuming appeal and setting aside of the election because of the Employer's misconduct.

I believe that "common sense" would indicate that removal of the signs was the best and most reasonable choice facing the Board agents. It is hard to see how else the quarantine area could have been effectively policed. Removing the signs preserved the agreed-upon integrity of the polling site, allowed the election to proceed, and preserved the integrity of the Board's processes. Further, the removal of the signs

still allowed the Employer a "half loaf." The understanding at the pre-election conference was that the signs would be removed 24 hours before the election. The Employer's refusal to honor the agreement resulted in the signs being posted on the Employer's premises throughout the entire day before the election, thus considerably adding to the Employer's ability to communicate its position to its employees. Finally, the decision to remove the signs at night minimized the possibility that this action would be observed by employees; and only three employees did observe the removal of the signs that night.<sup>27</sup>/

Accordingly, for the reasons just stated, I find and conclude that the Board agents acted reasonably within their discretion, in removing the Employer's signs from the polling sites.

#### (2) Per Se Setting Aside of the Election

In Section V(B) of this Decision, supra, I have discussed the Employer's argument that the action of the Board agents in removing its signs created the impression of bias against the Employer, and that this requires setting aside the election regardless of whether the actions of the Board agents restricted the free choice of the employees or affected the outcome of the election. As stated there, the ALRB has

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<sup>27</sup>/ Approximately 6-12 employees observed removal of the signs in the shop area the next day, but given the Employer's renegeing on its agreement, its posting of the signs in a locked area, and its unavailability the night before the election, the Employer can hardly complain that this exposure the next day was due to unreasonable actions of the Board agents.

consistently taken the position that such "per se" reversals of election results are not the standard used by the Board. The Board has reiterated that election results will be set aside where the alleged misconduct was such that "employees could not express a free and uncoerced choice of a collective bargaining representative," or where the outcome of the election was affected. D'Arrigo Brothers, 3 ALRB No. 37 (1977), p. 4; Bruce Church, Inc., 3 ALRB No. 90 (1977); Mike Yurosek & Sons, Inc., 4 ALRB No. 54 (1978); Ranch No. 1, Inc., 5 ALRB No. 1 (1979); Grow Art, 7 ALRB No. 32 (1981).

Accordingly, I find no merit to the Employer's argument that the election results should be set aside without regard to whether the removal of the Employer's signs restricted the employees' free choice or affected the results of the election.

(3) Effect of the Removal of the Signs on the Voters' Free Choice, and Effect on the Outcome of the Election

I will discuss three aspects of the issue whether the employees' free choice was restricted and the outcome of the election affected: (1) Whether removal of the signs gave employees the impression that the Board favored the UFW and thus influenced the employees in their choice of representative; (2) Whether removal of the signs prevented the Employer from effectively communicating with its employees; and (3) Whether the restriction on the Employer's communication by removal of the signs, was exacerbated by the presence of UFW buttons, bumper stickers, and leaflets at the polling site.

First, regarding whether the removal of the signs gave

the employees the impression that the Board favored the UFW, I find that even if this were true, it had no effect on the outcome of the election since a maximum of fifteen employees witnessed the removal of the signs. The UFW's margin of victory in the election was 69 votes. The Employer necessitated the removal of the signs by renegeing on its agreement not to post signs in the quarantine area. As was noted in the discussion of the discretion of the Board agents supra, the Board agents removed the signs at a time which minimized the exposure to employees.

The Employer, as a party, was fully able to communicate its views to its employees, in exactly the same manner as the UFW was able to. During the days before the election, the Employer had full access to its employees. The Employer's signs were in fact posted throughout the entire day before the election. On the day of the election, neither the UFW nor the Employer was allowed to post signs or engage in electioneering inside the polling quarantine areas. Both by specific agreement of the parties at the pre-election conference in this case, and also in view of the Board's general concern about electioneering by a party within the polling sites (see, e.g., Perez Packing, Inc., 2 ALRB No. 13 (1976); Sakata Ranches, 5 ALRB No. 56 (1979)), the Employer's right to effectively communicate with its employees did not extend to the right to electioneer at the polls. Short of this restriction, which was also applied to the UFW, the Employer's right to communicate with its employees was not restricted in any manner.

Finally, the presence of UFW buttons, bumper stickers, and leaflets at the polls was not electioneering by a party, but expression by employees. I have found that no representative of the UFW engaged in electioneering at the polling sites, with the exception of one sign which was ordered removed by the Board agents. At the hearing, the Employer tried to introduce evidence that the UFW did engage in electioneering, but its efforts to do so only revealed the weakness of its case on this issue. One instance, in which the Employer's permanent observer alleged that the chief UFW representative passed out a trunkful of leaflets, appeared to be litigation-induced testimony and was not even mentioned by the observer during extensive debriefing by the Employer's attorneys the day following the election. The other instance (except for the sign which was removed by Board agents), was the action of an employee who passed out leaflets. In what appears to me to be extremely weak evidence, the Employer's allegation that this employee was in fact a UFW representative was based on an alleged statement this employee made several weeks before the election, over drinks at a bar, that the employee was a UFW organizer. The employee did not represent the UFW in any manner during any of the pre-election or election proceedings in this case, was not on the UFW staff, was disavowed as a representative by the UFW staff who testified at the trial, and was not called to testify by the Employer.

All that the Employer has shown is that some employees passed out leaflets, and some had buttons and bumper stickers.



There is a difference between these activities, by individual employees, and electioneering by a party. (See, e.g., Harden Farms, 2 ALRB No. 30 (1976); John Elmore Farms, 3 ALRB No. 16 (1977); D'Arrigo Brothers of California, 3 ALRB No. 37 (1977); P.P. Murphy & Sons, 3 ALRB No. 26 (1977); Perez Packing, Inc., 2 ALRB No. 13 (1976); Sakata Ranches, 5 ALRB No. 56 (1979); Konda Brothers, 2 ALRB No. 34 (1976).

In sum, the Employer and the UFW had equal opportunity to express their views to the employees. Neither was permitted to electioneer at the polls. The mere wearing of buttons, etc., by individual employees did not impinge upon the free choice of the voting electorate. The removal of the Employer's signs was brought on by the Employer itself, through its refusal to honor its agreement not to have signs within the polling sites. The Employer's signs were in fact present through the end of the working day before the election. The Board agents removed the signs at a time which minimized exposure of the removal to employees, and only about a dozen employees witnessed the action. For all these reasons, I find and conclude that the removal of the Employer's signs by the Board agents did not create an atmosphere which coerced employees in their choice of bargaining representative, or which restricted their free choice in electing a bargaining representative; and I find and conclude that the removal of the Employer's signs did not affect the outcome of the election.

(4) Constitutionality

The Employer argues that the removal of its signs by Board agents was unconstitutional and illegal conduct requiring that the election be set aside (Brief, p. ii). I will discuss here whether the removal of the signs on the Employer's property without a search warrant violated the Employer's right against unreasonable searches and seizures, under the Fourth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 19 of the California Constitution. For three separate and independent grounds, I find that the Employer's rights were not violated and the election should not be set aside for that reason.<sup>28/</sup>

(a) Even if the Employer's rights were violated by the Board agents' removal of the signs, the proper sanction is not setting aside the election; the removal of the signs did not restrict the voters' free choice and did not affect the outcome of the election. I have already discussed at length my conclusion that the removal of the signs did not improperly impinge upon the free choice of the employees to select a bargaining representative, and did not affect the outcome of the election. (See Section V(D)(3) of this Decision, immediately supra.) The U.S. Supreme Court has discussed the appropriate sanctions or remedies for violations of Fourth Amendment rights in several contexts. See, e.g., Bivens v

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<sup>28/</sup> Section 146 of the California Penal Code prohibits state agents from taking property without authority. However, the reasons stated in text apply to the statute as well.

Unknown Agents, 403 U.S. 388; U.S. v Calandra, 414 U.S. 338; G.M. Leasing Corp. v U.S., 429 U.S. 338; Cleary v Bolger, 371 U.S. 392. The Court has pointed out that the sanctions for violation of the rights are intended to redress the wrong to the victim and to deter the conduct by the violator. Nowhere does the Court allow sanctions to be imposed on innocent third parties. Yet here, the Employer is arguing that because the Board agents allegedly violated its rights, the UFW and the voters should be punished by having the election results set aside. As noted, I have specifically found that the alleged violation of the Employer's rights by removal of the signs did not affect the election. The UFW was not the party which removed the signs. The employees freely chose their bargaining representative. Thus, there is no reason why these groups should be punished for the Board's alleged violation. Such punishment would be gratuitous, giving a windfall to the Employer at the expense of innocent parties. The Employer is free to bring action in the courts to impose sanctions against the Board and to receive redress for the alleged violation of its rights. Setting aside the election would not further the purposes of the Fourth Amendment, and would infringe the rights of third parties.

For these reasons, I conclude that the Employer is not entitled to have the election set aside even if its rights were violated by the Board agents' removal of the Employer's signs.

(b) The Employer had no reasonable expectation of privacy in the signs. The U.S. Supreme Court, In U.S. v Miller, 96 S. Ct. 1619 (1976), held that where a party does not have a "reasonable expectation" of privacy in its property, the seizure of that property does not violate the Fourth Amendment. (See also U.S. v Biswell, 406 U.S. 311.) In this case, the Employer agreed that a half-mile area on its property, around each polling site, would be an official quarantine area for the election. The Board agents have a right to police the polling quarantine area. (Perez Packing, Inc., 2 ALRB No. 13, p. 6 (1976)). Further, the Employer agreed that there would be no signs in the polling area. Thus, the Employer did not have any "reasonable expectation" that electioneering signs in the polling area were within its right of privacy. The Employer could not reasonably have expected that it had a protected right to do whatever it chose within the quarantine area, and the Employer could not reasonably have expected that it had a right to engage in this type of electioneering within the quarantine zone. Accordingly, I conclude that the Employer had no reasonable expectation of privacy in the signs and that removal of the signs by the Board agents did not therefore violate the Employer's right against unreasonable searches and seizures.

(c) The Employer consented to removal of the signs. The U.S. Supreme Court has held that where a party consents to a search or seizure, there is no violation of its rights. See, e.g., Schneckloth v Bestamonte, 412 U.S. 218; U.S.

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Matlock, 415 U.S. 164; U.S. v Watson, 423 U.S. 411. In this case the Employer agreed that there would be no signs within the quarantine areas around the polling sites. This agreement was made in the pre-election conference, a part of the election proceeding. The Employer's attorney twice reiterated to Board agents that the Employer stood by its agreement regarding the signs. The statements of employees on the night of June 1st to Board agents, that their supervisor had told them the signs were not to be removed, does not negate the Employer's consent. These statements were made by people who did not have the authority to speak for the Employer in this matter; the statements were also made in an informal context quite different from the formal context of a pre-election conference, where designated representatives of the parties are present in order to make commitments on behalf of the parties. Further, the statement by the Employer's attorney on the morning of the election, that the Employer had a right to keep the signs posted in the shop area, did not validly remove the Employer's consent. The shop area was inside the quarantine area. Allowing such a last-minute statement to waive the Employer's earlier agreements would allow the Employer to make a game out of its rights and obligations, granting consent throughout the election procedures right up to the last minute and then, when nothing could be done about it, removing its consent. This would undercut the Board's processes, and would slight the importance of the Employer's formally given obligations. Thus, I find that by agreeing to a quarantine area and

agreeing to abide by its rules, including that of no signs, the Employer gave consent to the Board to police the quarantine area and to see that no signs were present. The Employer reiterated its consent right up to the election, and the Employer did not make any reasonable efforts to notify the Board of its changed position regarding signs. I conclude that the Board agents' removal of the Employer's signs did not violate the Employer's rights against unreasonable searches and seizures, because the Employer consented to the removal of signs from the polling areas.

#### VI. CONCLUSION

For all the above reasons, I conclude that Board agents did not engage in any pro-UFW electioneering during the election and that the Board agents' removal of the Employer's signs from the polling sites was undertaken to effectuate an agreement among all the parties, including the Employer, was within the proper discretion of the Board agents, and did not restrict the free choice of the voters or affect the results of the election. Therefore, there are no grounds which warrant setting aside the election.

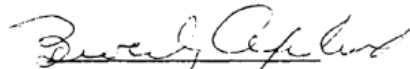
#### VII. RECOMMENDATION

Based on the findings of fact, analysis and conclusions herein, I recommend that the Employer's objections be dismissed and that the United Farm Workers of America, AFL-CIO, be

certified as the exclusive bargaining representative of all the agricultural employees of the Employer in the State of California.

DATED: Feb. 18, 1982

Respectfully submitted,



BEVERLY AXELROD  
Investigative Hearing Examiner