STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACK or MARION RADOVICH, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 81-RD-1-D 81-CE-240-D 81-CE-259-D 9 ALRB No. 45
JACK or MARION RADOVICH, Employer, and EXZUR ALEJO and JACINTO SANTIAGO, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Certified Bargaining Agent,	)	

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

On September 16, 1982, Administrative Law Judge (ALJ)[1/] Ronald Greenberg issued the attached Decision in this proceeding. Thereafter, Respondent, General Counsel, and the Charging Party, United Farm Workers of America, AFL-CIO (UFW), each timely filed exceptions and a supporting brief.

[1/] At the time of the issuance of the ALJ's Decision all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 30, 1983.)

Following a Petition for Decertification filed by employees Exzur Alejo and Jacinto Santiago on September 1, 1981, a representation election was conducted on September 8 among Respondent's agricultural employees. The official Tally of Ballots showed the following results:

UFW	44
No Union	123
Challenged Ballots	2
Total	169

The UFW thereafter timely filed post-election objections, many of which were set for hearing. Those post-election objections were thereafter consolidated for hearing with various unfair labor practice allegations involving related conduct which occurred before, during, and after the election.

The Board has considered the record and the attached ALJ Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[2/] and conclusions of the ALJ and to adopt his recommendations as modified herein.

Employer Campaign Statements After Decertification Petition Filed

On September 4, 1981, the last work day before the election due to a three-day weekend, Jack Radovich made speeches to each of the three crews working at that time and handed out

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[2/] The parties except to certain credibility resolutions made by the ALJ. To the extent that such resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. (Adam Dairy dba Rancho Dos Rios (1978) 4 ALRB No. 24.) Our review of the record herein indicates that the ALJ's credibility resolutions are supported by the record as a whole.

a two-page leaflet. The speech and leaflet accused the UFW of telling lies and making false promises, compared the benefits in effect at nonunion ranches to UFW contract benefits, stated that Respondent's employees were receiving lower wages and benefits than the employees at nonunion farms because the UFW would not agree to offers made by Respondent, and claimed that the UFW was considering raising the amount of its membership dues.

The ALJ recommended dismissal of the one allegation in the amended complaint relating to the September 4 speeches and leaflet, crediting Jack Radovich's testimony that he had not promised workers to pay them on a weekly basis but had told them they could discuss the change after the election. As to the election objections, the ALJ recommended they be dismissed on the grounds that the speech was not an improper "captive audience" speech and the Union did not meet its burden in proving Respondent was guilty of misrepresentation in describing benefits available under the union medical plan or that the Union was "considering raising its dues."

We affirm the ALJ's findings that the speeches and leaflet do not constitute unlawful "assistance" to the decertification campaign and we do not find them to be objectionable as misrepresentations or captive audience speeches. However, our decision to certify the results of the instant election and to decertify the Union is based on a more extensive examination of the speech involved.

We considered the September 4 speeches and leaflets

from the perspective that neither employer speech which tends to interfere with employee free choice nor conduct which otherwise violates the Agricultural Labor Relations Act (ALRA or Act) can be insulated by blanket invocation of the First Amendment. As the U.S. Supreme Court said in NLRB v. Gissel Packing Co. (1969) 395 U.S. 575, 617:

> Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely, as those rights are embodied in section 7 and protected by section 8(c). And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.

In his Decision, the ALJ cited several cases for the proposition that the National Labor Relations Board (NLRB) regulates election conduct in a manner that is consistent with free speech guarantees. (See Dal-Tex Optical Co. (1962) 137 NLRB 1782, 1787 [50 LRRM 1152]; Bausch and Lomb v. NLRB (2nd Cir. 1971) 451 F.2d 873, 878 [78 LRRM 2648] enforcing 185 NLRB No. 62 [76 LRRM 1704].) However, those cases also recognize that the statutory limitations imposed by the National Labor Relations Act (NLRA) on employers and unions, in furtherance of the national labor policies promoting employee free choice and stable bargaining relationships, make some necessary inroads into the parties' freedom of speech. The Court in Bausch and Lomb stated:

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> We recognize that the Board's laboratory standards may have a minimal chilling effect on both the speech of the employer and the union. The parties vying for the votes of the employees may be reluctant to express themselves fully, fearing that an unintentionally false statement will be seized upon later in overturning an election. But the incidental effects of regulation on the rights of employer and union must be weighed against the interest of employees and the public at large in free, fair and informed representation elections.
> (451 F.2d at 878.)

Threats of force or reprisals and promises of benefits[3/] by employers interfere so effectively with employee free choice that they are virtually exempt from First Amendment protections both as evidence of an unfair labor practice (see section 1155) and as objectionable conduct justifying setting aside an election. Although promises of benefits need not be explicit to be unlawful, the NLRB generally views employer comparisons of existing benefits between union and nonunion shops,[4/] absent a more explicit inducement, as "permissible campaign techniques

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[3/] Although these statements were not alleged as "promises" in themselves violative of the Act, we find that they were fully litigated in the context of the instigation and assistance allegations.

[4/] In Jack or Marion Radovich (1983) 9 ALRB No. 16, we found this same employer's denigration of the union's medical plan in comparison to the plan the employer had prior to the advent of the union to be an impermissible implied promise to reinstitute the pre-union plan. Members Carrillo and McCarthy find that holding inconsistent with this Decision and would overrule 9 ALRB No. 8 on that basis. Chairman Song finds no inconsistency and would therefore not overrule the earlier case. He finds Respondent's comparison of benefits available at neighboring nonunion ranches with the UFW contract provisions in force at Respondent's operations was informational in nature and hence protected speech under section 1155 of the Act. (Thrift Drug Co. (1970) 217 NLRB 1094 [89 LRRM 1292].) The previous case presented an implied promise previously granted benefits would be reinstituted if the employees voted to decertify the Union.

which fall within the bounds of free speech permitted by section 8(c) of the Act.",[5] even when the unionized employer cites better benefits available at his own nonunion shops. (Thrift Drug Co. (1975) 217 NLRB 1094 [89 LRRM 1292].) Although section 8(c) of the national act and its ALRA counterpart, section 1155, do not apply specifically to representation cases,[6] we shall not set aside an election on the tenuous possibility that a comparison of existing benefits such as the one herein might be perceived by potential voters as an implicit promise to pay them more favorable benefits if they vote against the Union. We find that the employees' interest in full disclosure and maximum information concerning the advantages and disadvantages of unionization outweighs any arguable or possible coercive effect of the statements.

Another commonly recognized limitation on free speech is the prohibition against direct negotiations with employees who are represented by a certified bargaining agent. (McFarland Rose Production (1980) 6 ALRB No. 18; Pacific Mushroom Farms

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[5] Section 1155 of the ALRA, almost identical to section 8(c) of the NLRA, provides as follows:

> The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

[6] In fact, the NLRB has held that "the test of conduct which may interfere with the "laboratory conditions" for an election is considerably more restrictive than the test of conduct which amounts to interference, restraint, or coercion which violates section 8(a)(1). (Dal-Tex Optical Co., supra, 137 NLRB 782, 797.)

(1981) 7 ALRB No. 28; NLRB v. General Electric Co. (1969) 418 F.2d 738, 756, cert. den. 397 U.S. 965; Safeway Trails Inc. (1977) 233 NLRB 1078 [97 LRRM 1542] enforced (D.C. Cir. 1979) 641 F.2d 930 [102 LRRM 2328] cert. den. (1980) [103 LRRM 266].) Although an employer is entitled to provide its employees with information as to the status of its negotiations with their union, see Proctor and Gamble (1966) 160 NLRB 334 [62 LRRM 1617] and Fitzgerald Mills Corporation (1961) 113 NLRB 877 [48 LRRM 1745], employer communications to employees which disparage and attempt to by-pass the union can constitute a violation of the duty to bargain. (Safeway Trails Inc., supra, 233 NLRB 1078 and Hiney Printing Company (1982) 262 NLRB No. 22 [110 LRRM 1255].

We also recognize that the Union's status as the certified bargaining representative continues through the decertification drive[7/] and beyond the election until such time as decertification is finalized. Even when a decertification election results in a no-union vote, the results are certified as of the date of the election, not before. (Nish Noroian Farms (1982) 8 ALRB No. 25.) Thus, the employer's duty to bargain

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7/By "decertification drive" we mean the period between the filing of the decertification petition and the decertification election.

continues during the decertification drive and the election.[8/] Conduct which violates the duty to bargain in good faith before a decertification petition is filed continues to be prohibited during the decertification drive; such conduct certainly does not become lawful merely upon the filing of a petition because the petition itself does not suspend the employer's duty to bargain. (See RCA Del Caribe (1982) 262 NLRB No. 116 [110 LRRM 1396] and Dresser Industries, Inc. (1982) 264 NLRB No. 145 [111 LRRM 1436].) Disparagement of the union or direct dealings with employees during a decertification drive, especially concerning the very issues which sparked the employees' disaffection from the union, is particularly likely to be coercive and to affect adversely employee free choice and the election results by undermining the status of the incumbent union in the eyes of undecided employees. Thus, consistent with the NLRB's rules against conduct which constitutes a violation of the duty to bargain, to the extent that employer campaigning during a decertification election amounts to conduct inconsistent with its duty to bargain and to the extent that such conduct tends to interfere with employee free choice and affect the election results, we shall consider it as grounds for setting aside an election.

In applying well-established NLRA and ALRA precedent

[8/] Even a no-union tally does not terminate the employer's bargaining obligation if a decertification election is eventually set aside; an employer refuses to bargain pending certification of the decertification results at his/her peril. (Nish Noroian Farms (1982) 8 ALRB No. 25.)

concerning employer coercion or interference with employee free choice in a decertification context,[9/] we reject any suggestion that we should establish a total prohibition against any employer speech or conduct in decertification drives. Employer statements, views, and arguments are just as relevant in the decertification context as they are in the organizational context because they pertain to the same question concerning representation that exists in both kinds of elections, viz: Do employees want a collective bargaining representative? Employees are entitled to receive information relevant to their decision to vote regardless of whether the information comes from the union, the employer or third parties, so long as it is not coercive or otherwise unlawful, so that they can make an informed as well as a free choice. Employer speech in a decertification campaign should be prohibited only when it is coercive or tends to interfere

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[9/] Such established rules include prohibition of employer instigation or assistance in decertification drives, and employer speech which contains threats, promises of benefits or other forms of reprisals, and prohibition of speech or conduct which violates the employer's duty to bargain, such as direct negotiations with employees. By its rules, the NLRB prohibits coercive speech or conduct and does not allow an employer to become, in essence, an organizer for the decertification drive. Indeed, NLRB cases are replete with examples of impermissible employer speech or conduct. We note, in response to Member Henning's dissent, that the lack of authority under the ALRA for employers to file decertification petitions does not require an analysis different from what we have followed. Our discussion of employer speech during a decertification drive presupposes that the employer has not instigated or unlawfully assisted the decertification effort nor filed the decertification petition.

with the free choice of employees.[10/] We agree with the ALJ that it is the free choice of employees, not the union's survival, that is at issue in a decertification election. We shall thus adhere to the same standard in decertification elections as applies to representation elections. (See D'Arrigo, Inc. (1977) 3 ALRB No. 37.) We shall set aside decertification elections only where the circumstances of the election were such that employees could not express a free and uncoerced choice or misconduct occurred which tended to affect the results of the election.

In the instant case, however, we find that Respondent's decertification campaign constituted neither unlawful direct dealing nor disparagement justifying setting aside the election. In the context of the employees' requests for information and a genuine grass-roots decertification drive, Respondent's campaign statements, including his reference to the wage and insurance plan offers, and his attempts to blame the union for rejecting Respondent's offers, do not amount to the kind of effort to undermine and bypass the union which would violate Respondent's duty to bargain, compare Safeway Trains, Inc., supra, 233 NLRB No. 171 and Hiney Printing Company, supra, 262 NLRB No. 22, or justify setting aside the election. Accordingly, the UFW's post-election objections are hereby overruled.

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[10/] What speech or conduct will prevent employee free choice will be determined by the guidelines applicable in representation elections and ALRB and NLRB rules such as those referred to in footnote 9.

Post-Election Bargaining Conduct

After the no-union vote at the election, Respondent essentially terminated its bargaining relationship with the UFW. It ceased negotiating a new contract, implemented a new medical plan, increased wage rates, and terminated dues check-off.

The ALJ correctly noted that Nish Noroian Farms (1982) 8 ALRB No. 25 controls this situation. Respondent has a duty to bargain with the UFW until the UFW is decertified pursuant to election results certified by this Board. An employer who refuses to bargain with the incumbent union after a no-union vote does so "at its peril."

However, as the Union is herein decertified, Respondent's refusal to bargain after the election does not constitute a violation of Labor Code section 1153(e) or (a).

CERTIFICATION OF ELECTION RESULTS

It is hereby certified that a majority of the valid ballots were cast for "no union" in the representation election conducted on September 8, 1981, among the agricultural employees of Jack or Marion Radovich in the State of California and that the United Farm Workers of America, AFL-CIO, thereby lost its prior status as the exclusive representative of the said employees for the purpose of collective bargaining, as defined in California Labor Code, section 1155.2(a).

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ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

Dated: August 17, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JORGE CARRILLO, Member

MEMBER WALDIE, Concurring and Dissenting in part:

I agree with the majority's adoption of most of the ALJ's Decision; however, I disagree with their conclusion that Respondent's conduct prior to the decertification election did not interfere with employee free choice.

The majority notes that the decertification context is different than the certification context in that the employer has a duty to bargain in good faith with the certified union, until that union is decertified. (Nish Noroian Farms (1982) 8 ALRB No. 25.) The duty-to-bargain prohibits the employer from dealing directly with its employees and from disparaging the union, since such conduct tends to undermine the status of the exclusive representative in the eyes of the workers. (Safeway Trails Inc. (1977) 233 NLRB 1078 [96 LRRM 1614].) Particularly where the employer attempts to circumvent and disparage the union regarding the very issues which sparked the employees' disaffection and consequent decertification efforts, the risk of

coercion and interference with employee free choice is great.

Having noted this difference, however, the majority then states that the standard in decertification cases is the same as that used in certification cases and finds nothing offensive in Respondent's conduct here. I disagree and suggest that the majority has created a significant standard with one hand and diluted its effectiveness with the other.

Far from being isolated or insignificant, Respondent's efforts to persuade its employees to decertify the Union in this case were addressed to every employee in captive-audience speeches, on company time, at the end of the last work day before the election. Not only was every employee required to receive the message, but the message was artfully timed to virtually eliminate any meaningful rebuttal by the Union.[1/]

The substance of Respondent's speech and accompanying leaflet is quite disparaging to the Union. After accusing the Union of telling lies and making false promises, with no specific references, Respondent stated that the Union was solely responsible for the low wage rates, that the Union was planning to increase its dues, and that the employees would receive the same wage rates and insurance as the nonunion ranches in the

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[1/] In fact, efforts by organizer Ken Schroeder to challenge Respondent's statements at one meeting were shouted down by Respondent's agents, after which the employees refused to talk to Schroeder individually.

area, if they decertified the UFW.[2/] I find this conduct is far too aggressive and destructive an attack on the Union to be dismissed as "information relevant to [the employees'] decision to vote." This is not "information," it is campaign propaganda, which tends, by its tone, subtle distortions, timing, and pervasiveness, to influence the employees to throw the Union out. I find that Respondent's statements do not inform employees of the status of the negotiations, but rather tend to fan the flames of their discontent, discredit the honesty and efforts of their exclusive bargaining representative, and thereby interfere with their free choice. I would set this election aside.

Dated: August 17, 1983

JEROME R. WALDIE, Member

[2/] While Respondent offered the area wage rates and insurance in contract negotiations, and would have been free to implement its wage and insurance offers after impasse, there is no evidence that an impasse existed at the time of this speech. In this context, without having to exhaust good faith bargaining, Respondent has used the election process to promise a unilateral change it could not otherwise make.

Member Henning, Dissenting:

The Board majority begins its analysis of the issue of employer campaigning during a decertification drive by citing National Labor Relations Board (NLRB) precedent which recognizes that regulation of employer speech is proper when weighed against the interests of employees. (Bausch and Lomb v. NLRB (2nd Cir. 1971) 451 F.2d 873 [78 LRRM 2648].) In addition, the majority opinion also cites NLRB v. Gissel Packing Co. (1969) 395 U.S. 575 [71 LRRM 2481], which states that employer expression must be assessed in the context of its labor relations setting. However, after recognizing, or perhaps just reciting, these important principles, the majority fails to distinguish between employer speech in initial representation campaigns and decertification campaigns.

In analyzing Radovich's speeches and leaflets within the context of the labor relations setting in which they occurred, (NLRB v. Gissel, supra, 395 U.S. 575) I consider the fact that

the communications were given during a decertification campaign to be significant. This Board is presumed to possess "particular sensitivity to the effects of speech in the labor election context." (Abatti Farms, Inc. v. ALRB (1980) 107 Cal.App.3d 317, 327.) That sensitivity requires us to look to the communications herein in the context of a decertification campaign.

In its long history, the NLRB, perhaps intentionally, has not specifically differentiated the campaign "rights" of employers during certification versus decertification campaigns. Recognizing that employers have some First Amendment rights, the NLRB has not required employers to remain silent. Yet while the national board has tolerated the presence of employers in decertification campaigns, it has neither endorsed nor advocated such presence as the majority herein seems to do.

We must also recognize the distinctions between the National Labor Relations Act (NLRA) and the Agricultural Labor Relations Act (ALRA or Act). In practice, under section 9(c) of the NLRA, an employer may file a decertification petition when it questions the union's continuing majority support. In addition, an employer may file for an election when it receives conflicting claims for recognition from two or more individuals or labor organizations. The ALRA, however, does not authorize employers to file petitions for elections under any circumstances. To the contrary, this Board has recently held that a labor organization is certified until it loses an election certified by the Board, and the employer must continue to

recognize and bargain with it pending Board certification of such election results. (Nish Noroian Farms (1982) 8 ALRB No. 25.)

This difference in the statutes is significant. Under the rules of statutory interpretation, when one statute is framed in identical language to previously enacted legislation, it will be presumed that the Legislature intended that the language in the later enactment would be given a like interpretation. (Belridge Farms v. ALRB (1978) 21 Cal.3d 551, 557; Nishikawa Farms, Inc. v. Mahoney (1977) 66 Cal.3d 781, 787.) In the instant case, the Legislature specifically deleted the reference to employers filing any election petitions. Thus, a strong argument can be made that by deleting these references, the California Legislature intended to limit the role of agricultural employers in elections under the ALRA.

The relationship between the parties is also different in the certification versus the decertification context. During decertification campaigns, the employer is duty bound to recognize and bargain with the employees' certified bargaining agent. Of course, this relationship does not exist during initial organizational campaigns. Decertifications, under our Act, are triggered when members of the bargaining unit, not the employer, are dissatisfied with their union and want to decertify it. Employers may not instigate or support decertification efforts. (See Abatti Farms, Inc. and Abatti Produce, Inc. (1981) 7 ALRB No. 36.) They remain obliged to recognize the union. Since it is the dissident employees who originate decertification drives, they, not the employer, are the ones entitled to engage

in the no-union campaign. The employer cannot become an organizer for the decertification.

In a recent NLRB case, during a strike, an employer distributed a leaflet advocating that the employees abandon their bargaining representatives to save themselves the expense of paying dues. In concluding that this type of employer communication amounted to an 8(a)(1) violation [analog to section 1153(a)], the national board stated:

> ... At a time when Respondent was supposed to be engaged in good faith bargaining to reach a new collective bargaining agreement it was inconsistently acting in opposition to such a goal by advising employees of the futility of supporting the labor organization which represented them and with which Respondent was engaged in collective bargaining and telling them that they did not need a union. The issuance of such a publication, particularly at the time it was, was certainly a violation of the Act. [Citations] (Mark Twain Marine Industries, Inc. (1981) 254 NLRB No. 1095 [107 LRRM 1008].)

The national board thus recognized that although an employer has free speech rights under section 8(c), its duty to recognize and bargain with the certified bargaining representative requires it to abstain from conduct in derogation of that duty. (See Safeway Trails, Inc. v. NLRB (1979) 641 F.2d 930 [102 LRRM 2328].)

The majority acknowledges that more limitations exist on employer communications after a collective bargaining representative has been certified. Thus, the majority discusses NLRB case law relating to direct negotiations, disparagement and attempts to by-pass the union, and the duty to bargain. Yet, it concludes that employer speech in decertifications is

both relevant and necessary because it pertains to a question of representation.

The Court in Bausch and Lomb, supra, 451 F.2d 873, 879, cited by the majority, recognized that unlike public elections, representation elections do not require the "debate on public issues" which commands extra "breathing space" under the First Amendment. (Citing New York Times v. Sullivan (1964) 376 U.S. 254.) This is even more true in decertification campaigns where the employees have previously expressed their free choice by voting for certification of the union. This choice is presumed to reflect the will of the majority of the employees until a different will is expressed in a subsequent vote for a rival union or no-union in a Board-certified election. (See Nish Noroian, supra, 8 ALRB No. 25.) In addition, as discussed above, it is not the employer that is seeking decertification of the union, but rather members of the bargaining unit themselves. These dissident employees themselves can relay the benefits of decertification to their fellow bargaining unit members.

The above considerations of the relationships and interests present in decertification situations, along with the ever-present economic dependence of employees on their employers recognized in NLRB v. Gissel, supra, 395 U.S. 575, lead me to conclude that a different approach is necessary to determine whether a decertification election should be set aside. My approach would be to acknowledge that the employer communication occurred in the context of a decertification. Given this fact

and the other considerations discussed above, I would then make a determination whether the employees were able to express a free and uncoerced choice for or against continued union representation. In my view, the minimal effect on the employer's free speech rights is outweighed by the need for true free choice in decertification elections which is assured by the organizational efforts of the pro-decertification employees and the union supporters, and the stability of the existing bargaining relationship.

In the instant case, the employer's communication unfairly placed sole responsibility for the lack of agreement on new wage and benefit levels on the Union. These statements went beyond communicating the provisions of bargaining offers to the membership of the bargaining unit. The message was intended to suggest that the Union was the major stumbling block preventing an agreement and that the employees would be better off without the Union. These statements are particularly damaging in the instant case where the Employer directed his remarks at the very issues which sparked the employees' disaffection. I would conclude that the employer's statements interfered with employee free choice and would thus overturn the election herein.

Dated: August 17, 1983

PATRICK W. HENNING, Member

CASE SUMMARY

Jack or Marion Radovich

9 ALRB No. 45
Case Nos. 81-RD-1-D
81-CE-240-D
81-CE-259-D

ALJ DECISION

In this consolidated RD and CE case the ALJ found that the employer had neither initiated nor assisted the petition to decertify the UFW nor unfairly or objectionably attempted to influence the outcome of the election. Therefore, since the no-union vote was valid, Respondent's subsequent refusal to bargain with the UFW did not violate the Act. Based on credibility resolutions, the ALJ summarily dismissed allegations of promises, interrogation, threats, interference with access, surveillance, and direct dealing by Respondent and its agents. He found Respondent's communications with employees during negotiations to have been in response to employee requests. He declined to infer that Respondent inspired a decertification petitioner by misleading him to believe the union was responsible for difficulties with payment of his wife's medical bills or that Respondent manufactured discontent by transferring a crew to a nonunion ranch where wages were higher than at Respondent's ranch. He found Respondent's distribution of "Vive la Uva" buttons unobjectionable because of lack of evidence that the buttons were procured specifically for the decertification campaign or that they were "forced" on employees. He found no discriminatory denial of access to UFW nonemployee organizers in favor of employee-petitioners. He found Respondent's leaflet and speech to workers four days before the election was protected by the First Amendment and was not objectionable as a captive audience speech.

BOARD DECISION

The Board adopted the ALJ's recommendation to dismiss the complaint and certify the results of the election. In affirming the finding that the employer's pre-election speech and leaflets were neither objectionable nor violative of 1153(a), the Board expanded on the ALJ's analysis of employers' decertification campaign rights. The Board stated that despite limitations on employer speech in the decertification context which do not exist in the certification context, e.g., prohibitions against initiation and assistance of decertifications and against direct dealing with employees, the standard for determining whether conduct is objectionable, requiring the election to be set aside, is the same in both cases: namely, whether the employer's speech interfered with employees' free choice so as to affect the results of the election. The Board also analyzed the comparison of benefits in the incumbent union's contract and at the nonunion ranches in the area, which Respondent distributed to employees

in a leaflet shortly before the election. The comparison was deemed not to constitute a promise of benefits, Members Carrillo and McCarthy finding that the Board's contrary determination as to a similar comparison in Jack or Marion Radovich (1983) 9 ALRB No. 16 should be overruled. Member Song distinguished and declined to overrule the earlier case.

MEMBER WALDIE DISSENT:

Member Waldie would find that Respondent engaged in agressive and highly effective campaigning which disparaged the UFW and attempted to bargain directly with the workers in violation of Respondent's duty to bargain. He would therefore set the election aside.

MEMBER HENNING DISSENT:

Member Henning's dissent points out the different interests present in decertification versus initial representation elections. In addition, Member Henning compares the statutory language of the National Labor Relations Act and the Agricultural Labor Relations Act (ALRA) and finds that employers are afforded a much more restricted role in elections under the ALRA. Member Henning concludes that these differences should be given consideration when reviewing employer campaign speech where the issue presented is whether a decertification election should be set aside.

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

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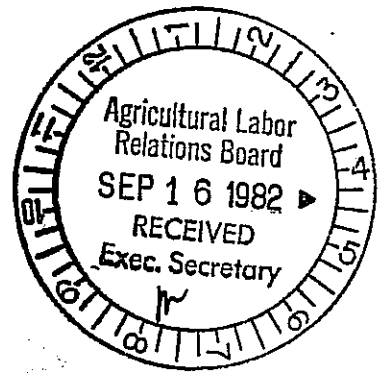
STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
JACK OR MARION RADOVICH,	)	Case Nos. 81-RD-1-D
	)	81-CE-240-D
Respondent,	)	81-CE-259-D
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	



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DECISION OF THE ADMINISTRATIVE LAW OFFICER

RONALD GREENBERG, Administrative Law Officer:

This case was heard by me in Delano, California, on December 2, 3, 4, 8, 9, 10, 11, 1981 and January 4, 5, 6, 7, 8, 11, 12, 13, 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29. It centers upon the validity of a decertification election held among the employees of Respondent/Employer[1/], Jack or Marion Radovich, and the lawfulness of certain actions taken by Respondent both before and after the election. The tally of ballots was:

No Union	123
UFW	44
Challenged Ballots	2

Pursuant to Labor Code section 1156.3 and 2 California Administrative Code section 20365, the United Farm Workers of America, AFL-CIO, (UFW) which had been previously certified as the collective bargaining representative of Respondent's employees (see Jack or Marion Radovich (1976) 2 ALRB No. 12), filed objections to the election alleging a variety of conduct on the part of Respondent which, it is said, unlawfully influenced the outcome of the election.

Pursuant to California Administrative Code section 20365(c), the Executive Secretary screened the union's objections, setting some for hearing and dismissing others. (See Order, dated October 22, 1981.) The UFW timely filed a Request for Review of the action of the Executive Secretary. (See Request for Review, dated

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1. As the caption indicates, this is a consolidated unfair labor practice/elections objections proceeding; instead of continually referring to Jack or Marion Radovich in the capacity of Respondent in the unfair labor practice case and Employer in the election objections case, I have chosen to refer to the company uniformly as Respondent.

October 30, 1981.) Upon consideration of the Request for Review, the Board reversed the Order of the Executive Secretary, and issued a new Order permitting proof of all the original allegations contained in the objections petition, with the proviso that some allegations were to be considered only as background evidence. (See Order Granting Request for Review, dated November 12, 1981.)

According to this order, the issues set for hearing included: whether Respondent arranged employment for the purpose of voting in the election; whether Respondent made a number of misrepresentations which could have affected the outcome of the election; whether Respondent unlawfully initiated or supported its employees' decertification effort; whether Respondent promised benefits; whether Respondent coerced its employees by ordering union representatives to leave its property; whether one of Respondent's foremen, Alfonso de Leon, threatened employees with loss of their jobs if they did not vote No-Union; whether Respondent violated the Union's access rights; whether Respondent interrogated its employees; and whether Respondent breached the terms of the pre-election agreement. (See Notice of Investigative Hearing, dated October 26, 1981.)

Because of the Board's Order on the Request for Review, all parties utilized the original objections petition as an outline of the conduct to be investigated, whether by way of background, or as conduct objectionable in and of itself.

On October 13 and November 10, 1981, the United Farm Workers of America filed two charges generally alleging that conduct of the type set out in its objections to the election also

constituted unfair labor practices and that Respondent committed various unlawful refusals to bargain. After investigation, a complaint issued, alleging Respondent unlawfully initiated or supported the decertification campaign through a number of separate acts, and that it unlawfully refused to bargain with the United Farm Workers of America.[2/]

By Order dated November 25, 1981, the election objections and the unfair labor practice allegations were consolidated for hearing. At the hearing all parties were given the opportunity to present evidence, to call and examine witnesses, and to argue their positions. Upon the entire record, including my observation of the demeanor of the witnesses,[3/] I make the following:

FINDINGS OF FACT

I.

BACKGROUND AND PRELIMINARY FINDINGS

A.

AGRICULTURAL OPERATIONS

By its answer, Respondent admits that it is an agricultural employer. It is engaged in growing table grapes, pistachios and pomegranates. United Farm Workers of America is a labor organization, certified by the Board as the collective bargaining

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2. At the hearing, I permitted General Counsel to amend his complaint to conform to proof. (See XVI:112-114.) See Amended Complaint.

3. It is to be understood that my credibility resolutions in this case, even when not explicitly demeanor-based, rely to a great extent upon my personal impression of a witness' truthfulness. In the extensive examination of witnesses which took place in this case, the impression of an entire personality can become quite vivid and my sense of the veracity of testimony has been correspondingly informed by observation of a host of non-verbal attitudes.

representative of Respondent's employees. (See Jack or Marion Radovich (1976) 2 ALRB No. 12.)

Respondent farms land it owns and land it leases. (XXIV:131.) During the period in question, its work force was divided into three crews, headed by Esmenia Agbayani, Joe de Jesus, and Alfonso de Leon, all admitted agents of Respondent. (See Answer, Paragraph 1.) By its answer, Respondent also admitted that Jack Radovich, Virginia Radovich, Joe Sanchez and Richard Barsanti were its agents. Ibid.

B.

BARGAINING HISTORY

The events which were the subject of this hearing occurred during the last year preceding the expiration of a collective bargaining agreement between the UFW and Respondent. (See GC 4.) The agreement contained a reopener provision, pursuant to which the parties began to negotiate new wages and benefits in the spring of 1981.[4/] Jack Radovich and Company negotiator George Preonas testified that, as harvest approached, it was clear that a number of employers in the Delano area were paying more than the contract wage. (XXIV:132; XIX:43.) In response to employee inquiries, (XXIV:174; XIX:43), they decided to send GC 30 on July 29, 1981, to show that Respondent's last offer was competitive with area wages:

> On Tuesday, July 28, we met with the Union to negotiate a new wage rate. We offered to increase the general hourly

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4. Respondent was negotiating along with other employers. Final agreement on the re-opener between the union and the other employers was reached on September 14, 1981, after the election. (See Stipulation, III:81.)

rate to $4.45 per hour. We also offered to pay retroactivity for 30 days from the day the Union agrees. /s/ Marion "Jack" Radovich. 5/

II.

THE ELECTION

The two main proponents of the decertification effort were Exzur Alejo and Jacinto Santiago (Tito). Alejo, a Radovich employee since 1977, was a member of the Agbayani crew;6/ Tito, employed by Respondent since 1975, was a checker in the de Jesus crew. Alejo testified that he was unhappy with the United Farm Workers because he did not like the union medical plan or the wages he received under the union contract. (See generally, TR II:104-116, 159.)7/ Tito, a former Teamster organizer, also testified that he did not like the union:

> ". . . during the years that I have worked there when there was no union, work was better than with the union. One would work better than with the union. (TR: XIII:68.)

Both men testified they discussed their mutual unhappiness with the

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5. Jesus Nunez testified he did not remember the company offering $4.45/hour, but no union witness testified that the company's representation of its wage offer was incorrect. No union campaign materials dispute it either.

6. Alejo is married to Esmenia Agbayani's, his forewoman's niece.

7. Alejo testified he complained about the UFW medical plan to Ken Schroeder. (II:153.) Schroeder at first denied speaking to Alejo about any problems he might have had (See III:126); but later admitted he could not recall whether he had spoken to Alejo. Although Alejo was somewhat guarded in his testimony, as I will discuss below, he was not deliberately misleading as Schroeder was in his and as to this I credit him over Schroeder. Additional evidence of Alejo's unhappiness with the Union is provided by his testimony that he signed previous decertification petitions. (II:104.)

union before the decertification petition was ultimately filed.[8] (Alejo: II:117; Tito: XIII:30.) The event that apparently inspired their petition was the circulation of another decertification petition by Americo Ramos.

Ramos was upset at the union for two reasons: first, he had difficulty in getting a medical claim paid,[9] and second, as a formerly active union supporter at Radovich, he apparently held the union responsible for his not being hired after the union was certified at the company. (TR: XVIII:77-78.) Shortly after he had the problem obtaining treatment for his wife, he expressed his disappointment about the union to other members of his crew, some of whom agreed with him. (XVIII:81, et seq.) This expression of dissatisfaction led to their starting a decertification petition on a sheet of paper taken from the top of a grape-packing box. (XVIII:76-77.) While this "petition" was circulating, Tito arrived; Ramos asked him to sign the petition. Tito said: "This isn't done like that. That's just a common paper and they're not going to pay

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8. Alejo and Santiago discussed their dissatisfaction with the union the first day they met. (XIII:29.) Alejo complained about the insurance.

9. General Counsel argues that Respondent was responsible for Ramos' disillusion with the union on the score of the medical claim because Ramos' wife was injured at work. Ramos testified that Juan Cervantes, the union representative, was essentially uninterested in hearing about his problem in getting the claim paid. Ramos testified that Cervantes brushed him off by saying that contract negotiations were more pressing than his (Ramos') problem. Although Cervantes denied Ramos spoke to him (XXV:17), I credit Ramos. (TR VIII:72.) There is no evidence that Respondent knew of Ramos' wife's injury until Ramos reported it to Joe de Jesus after he had his unsatisfactory experience. (TR XVIII:113, et seq.) Finally, General Counsel, on cross-examination, himself elicited considerable testimony about Ramos' dissatisfaction with the union (TR XVIII:132, et seq.).

attention to you." (XVIII:84.) Tito also said: "We will take care of that later." (XVIII:84.) As a result, Ramos tore up the petition and "two or three days" later, Tito and Alejo began to circulate their petition. (XVIII:84; XIII:66.)

Tito's, Alejo's and Ramos' discontent were not the only signs of ferment among Respondent's employees during the period preceding the circulation of the decertification petition. Wages under the union's contract with Radovich were $4.10/hour. As noted earlier, it was apparently common knowledge among the crews that workers at some other Delano growers were making more money.[10/] Moreover, just before the harvest began, some of Respondent's employees -- those of the de Leon crew -- had worked for a non-union employer, Frank Guidera (IX:231), where they were apparently making $4.45/hour. (See e.g. XI:128, Testimony of Anita Huizar.)

In any event, Adela Dalere, a sister of Esmenia Agbayani, circulated a petition in the Agbayani crew asking for a raise:

> We made that because -- since we are members of the union, we are supposed to have our raise -- we get paid -- what do I mean -- early, but we always get -- we are always, the last one to get the raise. That's why I got in my mind that all my friends said they have raise already, so I think of this. (XIV:52.)

According to Dalere, she decided to circulate the petition (UFW 16) in her crew the night of August 14. She took a piece of paper to the field and asked her niece, Marlynn Dalere, to write the heading. She then circulated the petition during lunch. (XIV:55-58.)

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10. See e.g., testimony of Nancy Sanchez, XVIII:182-83, 1226 and UFW 16 & 17; Testimony of Alejo II:155, et seq. The fact that wages under the contract were lower than that of some non-union growers is not in dispute. (See e.g., testimony of Ken Schroeder, V:117; Adela Dalere, XIV:52,55.)

Marlynn Dalere, not presently employed by Respondent, corroborated her aunt's testimony. (XXI:2.) Ruth Silva, however, testified that she was present when the wage petition was prepared and that Esmenia Agbayani was the one who wrote it. (XV:107.) Upon witnessing Esmenia Agbayani prepare the petition, Silva purportedly said it was illegal for a forewoman to start a petition. Esmenia is supposed to have replied that no one would find out. (XV:107-108.)

Nancy Sanchez, a member of the de Leon crew, also circulated a petition in her crew, asking for higher wages. (XVIII:182-83.) This petition was prepared by Manuel Sanchez. (XVII:226.) Dalere and Sanchez testified they gave the petitions to Richard Barsanti, after they were completed. Although Sanchez could not remember when she prepared and circulated her petition, Barsanti testified that he received it from her two or three days after he received the Dalere petition. (XXII:136.) Barsanti took each petition to the office of Respondent. (XIII:162, Dalere petition; 165, Sanchez petition.)

Jack Radovich's response to the petitions was to send another letter, GC 31, which stated:

TO ALL EMPLOYEES:

> Many of you have asked about wages but as we have told you before on Tuesday, July 28, we met with the Union to negotiate the new wage rate. We agreed to increase the general hourly rate to $4.45 per hour. We also offered to pay retroactivity for 30 days from the date the Union agrees.
>
> * * *
>
> On August 5 we again met and made this offer. We have told the Union this is our final offer and we hope the Union agrees.
>
> /s/ Marion "Jack" Radovich

III.

THE EVENTS OF THE DECERTIFICATION CAMPAIGN

For convenience of understanding, the campaign can be divided into two distinct phases: first, the efforts by Alejo and Tito to obtain the showing of interest; second, the campaign waged by the parties.[11/]

A.

THE PETITION AND THE SHOWING OF INTEREST

Sometime after his discussion with Ramos -- perhaps the same day -- Tito suggested to Alejo that they go to the ALRB office to obtain a petition. (XIII:74.) According to Tito, he saw Alejo in the field during lunchtime, recalled their earlier conversation about the union, and asked him to go to the ALRB with him. (XIII:74-75.) Alejo testified that he and Tito left work that day to get the petition. (II:89.)[12/] Ruth Silva, however, testified

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11. Overshadowed by the company and union efforts were those of the petitioners. Although Alejo testified that he did campaign (II:128) and Tito testified that he spoke to a few people (XIII:81), it is obvious the main battle was waged between the union and the company.

12. Tito testified he told his foreman, Jose de Jesus, he was going to be leaving work. (XIII:27.) Alejo testified he did not ask his forewoman for permission to be absent from work at any time. (II:39; see also Testimony of Esmenia Agbayani, XIV:135.) However, Ruth Silva testified that Esmenia Agbayani told her that Alejo would be circulating a petition even before he arrived at the field. (XVI:34.) Tito testified he told de Jesus he would not be working the day he circulated the petition. (XIII:28.) Jack Radovich testified that as a matter of policy Respondent wants their crew members to request permission to leave work once they have started and to seek permission to take time off, but that the policy is not enforced. (IX:215.) General Counsel put on no persuasive evidence that Respondent was discriminatorily lenient in treating Alejo and Tito.

that about two weeks before the election Esmenia Agbayani told her that "some men would come by with a petition so there would be an election to throw the union out." (XV:109.) Both men testified that they began to circulate the petition the day after obtaining it and they filed it the same day they circulated it. (See, e.g., Alejo:II:31a, 44-45.) By tracing the efforts of Tito and Alejo, then, we can trace the brief course of the first part of the campaign.

According to Alejo, he circulated the petition in the Agbayani crew for about two hours. (II:34.) The crew was working, picking grapes, while he was among them circulating the petition. (II:35.) He went from worker to worker explaining that he was carrying "a decertification paper to get rid of the union." (II:123.) The longest he talked to anyone was three minutes. (II:124.) He saw his forelady, Esmenia Abayani, but neither said anything to the other. (II:39.)

That same morning, Tito had begun to collect signatures in the de Jesus crew. (XII:47.) He delivered his wife and some riders to work that morning, placed the petition on the front of his car and "as people arrived, [explained] to them what [he] was going to do and they would sign." (XII:48.) While workers were signing the petition, Joe de Jesus arrived, walked over to the "crowd", apparently observed the nature of the petition (XII:52), and left, saying "he didn't want to know anything about it." (XII:52.) As his crew began to work, Tito went to look for Alejo (XII:54), who was in a nearby field. (XII:57.) Tito drove there and waited for him. He could see Alejo collecting signatures as he waited for him

for about an hour. (XII:60.)

When Exzur finished obtaining signatures at the Agbayani crew, he and Tito went in Tito's car to the de Leon crew, arriving at approximately 11:00. They remained there for about an hour and a half. (XII:61,64; III:38.) The de Leon crew, too, was at work during the circulation period. (XII:64; II:36.) Tito testified they passed de Leon when they first arrived, but no one said anything to anybody. (XII:63-64.)[13/] After they finished in de Leon's crew, they drove to a bank to make copies of the petition. (XII:66.) Alejo then took the petition to the ALRB. (II:63; XII:67.) It was filed at 2:45, September 1. (See date stamp, GC 2.)

Ken Schroeder, the UFW's contract administrator at Radovich (III:2), was in the Agbayani crew on September 1, 1981, at 8:30 when he saw the petition being circulated. The crew was at work; Esmenia and her husband, Primitivo, were present in the fields. (III:6-8; III:138.) That morning, Schroeder had met the UFW crew representatives, Frank Morales and Joe Montes (V:140), who informed him that Alejo and Tito were in the fields with a "petition".[14/] Schroeder left them to investigate. (V:150.)[15/] He saw Tito and

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13. Alejo testified that de Leon was some distance from them when he circulated the petition. (II:38.)

14. Schroeder testified that Frank and Joe told him that two men were walking around talking to people with "a piece of paper." (V:141,149.)

15. Schroeder testified that he went to investigate, not because of curiosity or concern, but because "I had reason to believe that . . . the company was behind it." (V:150.)

(Footnote continued----)

Alejo coming out of one of the rows and asked them what they were doing. (V:153-154.) Although they didn't answer him, he could see Alejo had a piece of paper. (V:157.) Schroeder went to Esmenia Agbayani, who was standing a short distance away (III:8, V:159), to inform her that Alejo and Tito were circulating a petition on company property. (III:8, V:159.)[16] She replied: "Exzur wasn't working that day and he wouldn't be paid for the time." (Ibid.)[17] Schroeder then told Primitivo Agbayani of the petition, Primitivo replied: "He didn't realize that they were in the field and . . . Exzur wasn't working that day." (III:8.)[18] A bit later, Schroeder

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(Footnote 15 continued----)

Schroeder's "reason to believe" was that "they were on company property during worktime . . . and we know the company doesn't want the union . . ." (V:151.) A consistent theme in the testimony of UFW agents was that they were "investigating" the company's "unlawful" acts while they were taking access during the campaign that followed. (See, eg., V:37; VI:3, XI:23.)

16. Alejo and Tito testified that only Alejo circulated the petition in the Agbayani crew. Ruth Silva also testified to the presence of both men in the Agbayani crew (XVI: 160-161), although she placed the date in August.

17. General Counsel would have me conclude from Esmenia's comment that she must have had foreknowledge that the decertification campaign was going to begin. I cannot draw that conclusion. If Schroeder leaped to the conclusion that an anti-union petition was being circulated, why couldn't Agbayani's perceptions have been as quick? And why couldn't her desire to avoid an unfair labor practice -- and therefore to make sure Alejo was not paid for his efforts -- be as great as Schroeder's desire to ensnare her in one? The record indicates Respondent had previous experience with decertification petitions and Esmenia's comment may point as much to caution as to conspiracy.

18. Tito, too, testified that he joined Alejo in the Agbayani crew, and that he spoke to Exzur "in the field . . . on the outside of the alley . . . [where] he was getting signatures . . ." (XII:58-59.) The critical difference between Alejo's and Tito's

(Footnote 18 continued----)

would also inform Richard Barsanti, Respondent's field manager at that time, about the petitioning activity. (Barsanti was driving his truck down one of the avenues where the crew was working when Schroeder stopped him. III:9.) Barsanti said he was too busy to be concerned with it. (III:10.) Schroeder testified no one did anything to stop the circulation of the petition (III:10). He also testified he saw no supervisor help the men circulate the petition, nor did he observe any conversation between the petitioners and any supervisor. (V:29.)[19/]

After informing Esmenia and Primitivo that a petition was being circulated, Schroeder approached Tito and Exzur again to ask them what they were doing. (V:166.)

> I asked them, "What are you doing? What is that petition you have?"
>
> * * *
>
> And then Exzur -- that's the point when Exzur threatened me.

(Footnote 18 continued----)

testimony, on the one hand, and Silva's and Schroeder's, on the other, is not whether the two were in the fields together at any time, but whether the two circulated the petition in the Agbayani crew. I don't regard this difference as of much bearing on my ultimate credibility resolution. I shall examine in some detail Silva's credibility and to a lesser extent, Schroeder's; for the moment, it is sufficient to say that I found Alejo and Tito to be generally credible witnesses, although I have not uniformly credited them.

19. Evidence about Schroeder's informing company supervisors was adduced in support of General Counsel's theory that Respondent had an obligation to stop workers from circulating a decertification petition.

* * *

He said, "If you keep talking to me, we're going to have a fight and you're going to get beat up." (V:166,168.) 20/

Wondering about decertification activity in the other crews, Schroeder left the Agbayani crew to go to the de Jesus crew (IV:28) where he spoke to Miguel Mendez, who told him someone might have been there earlier, but no one was there now. (VI:14) After a stop in Delano, Schroeder next went to the de Leon crew in order to look for Tito and Alejo. (VI:14.) He arrived before they did and stayed for an hour, bringing the message to employees that "two workers were circulating a petition on the ranch and that we believed the company was trying to get rid of the union," and that "you don't have to sign it." (VI:15-16.) Schroeder also watched Tito and Alejo for a while.21/

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20. Although Alejo denied threatening Schroeder, I credit Schroeder; but I do not generally credit him. Schroeder's testimony about this encounter with Alejo is quite revealing about his general credibility. As will be seen with respect to his testimony about the Radovich speech, Schroeder had a tendency to leave out details surrounding events so as to give a highly misleading impression. This obvious and deliberate shading of his testimony detracts from his credibility. With respect to the incident between him and Alejo in the Agbayani crew, Schroeder's original version leaves one with the impression that his encounter with Alejo gave rise to an abrupt, immediate threat. (IV:5-6.) The "expanded" version which came out on cross-examination, and is illuminated by his other behavior, leaves one with the impression that Schroeder is intrusive and provocative. Thus, both Tito and even Ruth Silva testified Schroeder "followed" the men. (Tito, XIII:79; Silva, XV:160.) Even Schroeder's testimony on cross-examination is to the effect that Alejo said "If you keep talking to me . . ." (XV:160.)

21. Schroeder also testified that, at one point, when he was ducking under the vines to go to another row, Exzur told him to be careful. (VI:22.) Alejo testified he said this to Schroeder because Schroeder had earlier told him to be careful in ducking under vines. (II:87.)

B.

THE UNION CAMPAIGN

As is apparent from Schroeder's testimony, the union's campaign began immediately with Schroeder's activity in the de Leon crew. Obviously concerned about the decertification effort, the union threw a number of people into the campaign against it, including Maurilio Urias, Juan Cervantes, Debbie Miller, Julian Balidoy, and Claudine Girard. (IV:55, see, III:55.) Over the next week union representatives visited workers in the labor camp, at their homes and in the fields; they passed out leaflets[22/] and they spoke to workers individually.

1.

LABOR CAMP ACCESS

Debbie Miller testified that she campaigned in the labor camp for approximately a half hour on September 7 (XI:19-21) and for 45 minutes on September 8 (XI:2-3).

2.

HOME VISITS

Schroeder testified the union visited homes on September 2 thru September 7; he specifically testified that he and Urias visited about 20 homes and saw about 30 to 40 employees, on the

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22. Respondent 5 was distributed on Friday (IV:70); Respondent 6 was distributed on either Wednesday or Thursday (IV:70); Respondent's 7 and 8 were distributed on the morning of the election. (V:3-4.)

weekend of the 5th, 6th and 7th of September.[23]

3.

FIELD ACCESS

Schroeder was in the fields on the 1st, 2nd, 3rd, 4th and 8th, which was every working day between the filing of the petition and the election. He testified he thought Urias was in the fields on the 2nd, 3rd and 4th (IV:58); that Balidoy was there at least one day and so was Cervantes. (IV:58.) Urias testified he was in the de Jesus crew for 15-20 minutes on September 4. (V:229; see also discussion, post, p.18ff, re: Urias' access to de Leon crew.) Debbie Miller testified she was in the fields for two-and-a-half hours on September 8, handing out leaflets. (XI:21.) Although he wasn't certain what times he took access with each crew, Schroeder admitted he was on the property during worktime (IV:58-61), when he talked to workers about the campaign. Workers sometimes stopped work when he was talking to them. (IV:62.) Juan Cervantes testified he was in Respondent's fields "constantly" until the day of the election. (XI:176.)

Schroeder himself had no difficulty in talking to workers during the 1st, 2nd or 3rd of September.[24] (V:42.)

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23. The weekend of the 5th, 6th and 7th was Labor Day weekend; it was also the weekend of the UFW convention. Urias, whom I generally discredit, testified that the list of home addresses he received was not accurate. (V:219) This was neither alleged as an unfair labor practice nor as an election objection and I cut off Urias' testimony about it.

24. He was in the crews a total of 5 hours on the 2nd and 3rd. (V:41.)

4.

THE ALLEGED INTERFERENCE WITH ACCESS

Maurilio Urias testified that on September 4, Steven Guidera interposed himself between Urias and some workers in the de Leon crew. (V:205.) Urias testified: "He told me to get out of there; that I don't have no business in there taking the time of the workers . . . the workers were working and I should -- I don't have no right to be there --" (V:206.) Urias told him he had a right to be there to organize the workers. (V:207.) Guidera stepped aside and "followed" him as he attempted to talk to the workers, but no one was willing to talk to him. (V:208, 210.) According to Urias, Guidera stood at the end of the rows and shadowed him (Urias) as he moved from row to row ducking under vines. (V:211.) At one point, when Urias was talking to a Filipino worker, another worker came by, mentioned something in Filipino, and the first worker broke off conversation with Urias. (V:212.) The entire espisode was cut short when the crew stopped work for the day. Urias testified these events took place in half an hour.

On cross-examination, Urias testified he arrived at the de Leon crew a little after lunch as the crew was about "to start work." (V:240, 245.) He stayed for approximately half- to three-quarters of an hour. He approached the first group of workers, introduced himself and told them he was interested in "talking to [them] and finding out if you have any problems with the union or whatever, because there is going to be [an] election." (V:248.) He admitted the group was not only attentive to him, but not working in order to pay attention. (V:248.) It was at this

point that Guidera asked him to leave. Urias argued with Guidera about his right to be there, adding a number of details about their conversation, including the assertion that Guidera told them the workers were happy working non-union with his father. (V:253.) No one worked during this exchange which Urias broke off by moving to the next table, (V:255), rather than, as he testified earlier, deeper into the rows. (Compare V:247.) During this exchange, Guidera answered questions from workers about the pack (V:259) and helped position tables at the end of the rows. "Shadowed" by Guidera, Urias entered the rows where Guidera watched him from the head of the rows.

Guidera corroborated Urias' testimony that they encountered each other in the field on September 4th, but his version of events was different from that of Urias. According to Guidera, Urias was in the fields for a number of hours on September 4 and, as noted earlier, even Urias admitted he was there on work time. Guidera approached him (but did not "follow" him):

> I (Guidera) asked him if I could ask him a question.
>
> Q: And what did he say?
>
> A: He said, no, because under the agriculture act, that he had the right to be in the field, and I had no right to be around, so I left the scene. (XXI:53-54.)

Guidera also denied the rest of the colloquy attributed to him by Urias.[25/]

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25. Respondent jointly leased some land with Jim Tozzi during the 1981 harvest. (IX:81-84.) The joint lease is apparently simply called RT-5; it has two sections of grapes growing on it. One section belongs to Tozzi, the other to Radovich. (XXI:61;

(Footnote continued----)

Urias also testified that Guidera and Barsanti told him to leave the de Leon crew at around 8:00-8:30 a.m. on the morning of the election and that when he wouldn't leave, they followed him. (V:190-194.) Barsanti testified that he did tell Urias to stop talking to the workers, but only because they were working. He asked Urias to leave because he persisted in bothering the workers. (XXII:157-158.) Indeed, at one point, according to Barsanti, Urias wanted to debate him before the crew: "[Urias] says, 'Come on, let's discuss this in front of the people. Have all the people come on out. Let's discuss it." I says, 'No, the people are working. Just leave them alone." (XXII:241.) Guidera testified he personally said nothing to Urias and he corroborated Barsanti's version. Where their versions differ from that of Urias, I credit Guidera (as to both incidents) and Barsanti. Urias was an incredible witness, giving the clear impression he was making things up as he went along, acting rather than testifying, relishing the additional detail which might vivify a story once told, and

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(Footnote 25 continued)

IX:84.) Tozzi produces grapes under the label "Best Bet" and "Double J."; Respondent packages its grapes under the label "Mother" and "Marion J." (XXI:64.) The crew of Al de Leon harvested both Tozzi and Radovich grapes. (Ibid.) When the crew harvested Tozzi grapes, Steve Guidera "watched over the pack, made sure that they were not putting bad bunches in the box, and that they did pick the fruit that was pickable." (XXI:59; see also, testimony of Anita Huizar: Guidera was a "helper". XI:117.) Guidera, Virginia Radovich and Jack Radovich all testified at various times that Respondent did not pay Guidera at anytime in 1981 (Jack Radovich, X:35; Virginia Radovich, IX:85; Steve Guidera, XXI:59); but Jack Radovich also testified that he paid Guidera and Tozzi repaid him. (IX:219.) Apparently the entire de Leon crew was paid by Radovich for its work on the Tozzi side and Tozzi subsequently reimbursed Respondent. (IX:84.) Guidera, however, only worked on the Tozzi side. (IX:85; XX:61.)

apparently incapable of distinguishing between being an advocate and being a witness. He had to be seen to be disbelieved.

Schroeder and Debbie Miller also testified that Barsanti and Joe Sanchez, Respondent's labor relations consultant, followed them on the morning of the election. Schroeder said he arrived at the Agbayani crew at about 7:30. (III:55.) The crew was working. (III:56.) Barsanti asked him to leave the field. (III:61.) When he refused, Barsanti and Sanchez moved from row to row and stood at the head of each as he (Schroeder) talked to workers. (VI:62-63.) Barsanti testified that he encountered Schroeder in the field on September 8. (XXII:152.) He testified that he asked Schroeder not to interrupt people in their work, XXII:152, but Schroeder told him not to bother him. About five minutes later, he met Schroeder coming out of the fields and asked him to leave because he was disturbing the workers. Schroeder refused. XXII:154. He denied following Schroeder around. Frank Morales testified Schroeder interrupted his work on the morning of the election (XI:94), and that while he was talking to him, Barsanti was not present. Morales also testified he could talk freely to Miller. (Ibid.) I credit Barsanti's version which has support in Morales'. I found him to be straightforward and candid in considerable contrast to Schroeder's less-than-candid approach to his testimony.

Debbie Miller testified she arrived at the Agbayani crew at 6:30 in the morning on the day of the election. She passed out leaflets and campaigned among the crew members waiting to work. (XI:8.) At the same time, according to Miller, Esmenia Agbayani was also passing out leaflets (GC 6) and telling workers to vote

no-union. (Ibid.) Agbayani denied talking to workers. (XXII:61.) Just before work started Barsanti and Joe Sanchez arrived while she was leafletting and talking to workers. (XI:10.) According to her, Barsanti followed her from row to row as she talked to workers, asking, at one point, "how come [the union] didn't come before the election; how come the union came now." (XI:11.) Sometime later, Barsanti also asked her to leave. (XI:13.) Barsanti corroborated that he asked her to leave, but, once again, only after he saw that she was interrupting work. (XXII:151.) He corroborated that he had a brief conversation with her similar to the one she testified to, XXII: 149, and that she asked him to stop talking to her. (XXII:150.) He said he was only trying to be pleasant and left. Ten minutes later, when he observed her in the fields he asked her to leave the field because she was interrupting work. (XXII:151.) She once again refused; he left her and spoke to her only one more time, to give her a button. Miller admitted Barsanti requested her to leave sometime after work started. (XI:10, 31.) Both agree she refused to leave and Miller admitted she was in the fields for over two hours before the Board agents arrived to conduct the election.

C.

THE RESPONDENT'S CAMPAIGN

Evidence as to the nature and events of Respondent's campaign is highly detailed with respect to one or two incidents and extremely fragmented otherwise. This is due to the nature of General Counsel's and the UFW's cases, which depend upon the theory that Respondent began preparing for an eventual decertification election long before the petition was filed in this case and

deliberately and subtly promoted an anti-union atmosphere among its work force. In pursuit of this theory, apparently isolated pieces of evidence were introduced on the theory that they represent stepping stones along the path Respondent set out to follow.

Thus, the evidence presented includes incidents remote from the election, incidents in the heart of the pre-election period, and incidents of apparent triviality which are supposed to carry deep meaning. Most of General Counsel's and the union's case is highly circumstantial with the exception of the testimony of the Silvas, who provided the only direct evidence of Respondent's complicity in the decertification campaign. Before undertaking to outline the evidence relating to the company's campaign, then, discussion of the Silvas' credibility is necessary. In this way, critical evidence can be properly evaluated or discounted as the case may be.

D.

THE SILVAS' CREDIBILITY

Ruth and Isidro Silva had a curious work history at Respondent, appearing to rise, and then to fall, from grace. They began regular crew work in September of 1978 (XV:2), became crew leaders in September 1979, Ibid; (XV:93), and saw their crew disbanded in June 1980. (XV:3, 94-96.) Prior to the time the crew was actually disbanded, Respondent had received a grievance from UFW representative Juan Cervantes (XXIV:56) regarding the Silvas' performance as crew leaders. Respondent 70, a copy of the grievance, alleges that Ruth Salazar was "harassing workers and telling workers not to participate in Union activites." According to Virginia Radovich, the company believed the grievance was

unfounded and denied it. In the meantime, and independent of the grievance, Respondent had already decided to disband the crew. (XXIV:57.) Mrs. Radovich testified that they discussed the breakup of the Salazar crew with the union prior to their disbanding it, and that the grievance was unrelated to it. The Silva crew was disbanded because it was the "least seniority crew" (XXIV:61) under the contract. Ruth Silva testified that when Radovich told her he was going to disband the crew he said to her:

> . . . the people had been raising a petition that we were harassing them and that the best way -- that he had enough problems with that crew and that the best way was to put the people in the other crew.
>
> He said this way the union would lose strength.
>
> (XV:93.)

The Silvas returned to work in October 1980 when they were briefly in charge of a repacking operation (XV:96), after which they resumed regular crew work. (XV:97) Ruth Silva hurt her knee in February 1981, had an operation, and returned in July 1981 as a "quality control" person. She worked in Esmenia's crew most of the time, but also in the de Jesus and de Leon crew. (XV:97-98.) On her return to work, Jack Radovich told her he was deducting dues from her check "so that if there were an election, [she] would get the opportunity to vote." (XV:98.)

The Silvas also testified about a number of incidents after the filing of the decertification petition. Isidro Silva testified that about a week before the decertification election took place, Esmenia Agbayani told him there was going to be an election and

asked him whom he would vote for. (XV:7.)[26/] He replied, roughly, that it was a secret ballot election. She then "pleaded" with him to vote for the company. She also asked him to tell Rafael Corral to vote for the company. (XV:8-9)

Ruth Silva testified that on the morning of the election, Esmenia asked her whom she would vote for. (XV:III.) Also, on election morning, Richard Barsanti asked her to interpret to Rafael Corral which she did. According to her, Barsanti told Corral that if the company turned out no union "that he gave his word that his [Rafael Corral's] sons would be hired" and "that he wouldn't back away from his words." (XV:112.) According to her, Barsanti also asked Ray Valdez, Sr. to try to convince Corral to vote No-union. (XV:113.) Valdez denied this episode occurred (XVII:102), so did Barsanti (XXII:155,156).

Also, on the Friday before the election, Radovich asked her to help him to get the people to vote no-union, especially in the de Jesus crew. She declined, saying she had enough problems. (XV:115-116.) And on the morning of the election, Barsanti told her that if the company turned no-union, people who had complained about her would be the first to be fired. (XV:131.)

The Silvas' testimony, if true, goes far to make the case for Respondent's initiation and support of the decertification effort. However, I cannot credit it. In disbelieving their

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26. Isidro Silva also testified that Benny Santella, another of Respondent's foremen, told him to vote for the company. Silva testified: "He told me that an election [would be] taking place and, well, he told me in English that he didn't mind who I was going to vote for but that he could see the union was no good for us." (XV:10.)

testimony, I have taken into account internal contradictions, contradictions with other witnesses, some bizarre allegations and, not least, their demeanor. All parties spent days cross-examining each other's witnesses on the tiniest of details designed to probe memory and credibility. The testimony of the Silvas, however, is remarkable for containing so many signs of incredibility. There is Isidro Silva's nearly impatient affirmation that he read Schneider's notes followed by his equally strenuous insistence that he had not, see XV:32, et seq.; there is Ruth Silva's attempt to portray herself as a dispassionate witness, unmoved by strong personal feelings, see e.g. XV:140, et seq. just after releasing a startling outburst full of sexual innuendo which revealed an extraordinary depth of spite in her testimony about a conversation with Jack Radovich, see, e.g. XV:133; there are the numerous small contradictions in each of their testimonial accounts, see, e.g. XV:173; there is Ruth Silva's obvious and badly-concealed hostility toward Esmenia Agbayani; and there is the apparent attempt to fabricate an impression that Respondent paid them for their testimony in an earlier hearing, see e.g. XXIV:24, XXV:53, et seq. I refer to these incidents as merely exemplary of their testimony; no great purpose would be served by analyzing the whole of it in exacting detail when my dominant impression of its incredibility is derived from their having uttered it.

E.

THE BUTTONS

As further evidence of Respondent's unlawful assistance, General Counsel and the Union rely upon the fact that some employees

wore "Viva La Uva" buttons, admittedly supplied by the company. Exzur testified that he obtained his button from Rita Pewitt, Respondent's bookkeeper (VIII:10), on the day of the pre-election conference. (II:48; II:130; IX:28.) Ruth Silva testified that she first observed an employee wearing a "Viva La Uva" button in the de Jesus crew about "a week" before the election. (XV:113; XVI:64.) The unidentified employee told Silva that Esmenia Agbayani was giving the buttons out in Richgrove. (XVI:65.) Schroeder testified he saw Agbayani crew members wearing the buttons on September 4 and that Rosita Gallegos was wearing one on election day. (III:69,70.) Gallegos testified she received the button from Exzur on election day. (XVII:180; see also XVIII:176-177.) Rita Pewitt also testified she gave buttons to other workers who asked for them. (IX:28.) Uncontradicted testimony reveals that Respondent has been receiving the buttons periodically from Ed Thomas, who designed it in 1975 as part of the grower response to the grape boycott. (XIX:123-125.)

F.

THE SPEECH[27/]

On September 4, Jack Radovich assembled the workers in the Agbayani crew for a 15 minute speech. Ken Schroeder and Julian Balidoy happened to be there, talking to workers. III:15. According to Schroeder, the crew bosses told the workers to finish so Jack could speak to them III:16. As the people finished their

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27. Respondent gave the same speech to all the crews; however, only the events at the Agbayani crew received so much attention.

work, "Radovich arrived and at about the same time an ALRB car arrived with two ALRB agents." III:16. One of the Board agents asked both employer and union representatives to leave the area so he could address the workers. When the agent was finished, party representatives filtered onto the field again. At this point, Radovich told the Board agent he wanted the union to leave. (III:17.) Schroeder said he had a right to be there and declined to leave. III:18. The crew bosses assembled the workers for Radovich to address them.

Radovich announced that he was going to be speaking to the crew, that "they would be paid for the time and they would also be paid the box bonus . . . and he announced that the union . . . had to leave." III:19. Schroeder again said he had a right to be there. III:20. According to Schroeder, Radovich became quite angry, yelled at him, and started to advance upon him. III:21. Schroeder did not leave and Radovich began to address the crew.

> He had a piece of paper that he was referring to and he said that there was going to be an election and he urged the people to vote No-union. He thanked people for signing the decertification petition and he said he and Virginia appreciated it.28/
>
> * * *
>
> He said that the union didn't do anything for people except take their dues money, that the union was considering raising its dues at the convention that was going to be held that weekend --
>
> * * *

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28. Respondent distributed two leaflets on September 4: one was GC 5, to be discussed below, the other GC 32. GC 32 is a letter to employees thanking them for signing the decertification petition and asking them to turn out the union.

> Specifically he said that the union medical plan . . . didn't serve workers properly, it wasn't a good medical plan; that workers at non-union ranches made more money than workers at the Radovich ranch and that the company couldn't raise the wage at that ranch because of the union.
>
> He said that he would like to run his ranch with no-union and that he wanted the people at the ranch to vote no-union in the election.
>
> III:26

Joe Nunez testified that Radovich compared the $4.10/hour wage with the $4.45 non-union wage and, singling him out, said: "[You] had been at negotiations. [You] could say he offered more money but the union would not allow him to pay more." (XIV:97.)[29/] Afterwards Joe Sanchez "spoke in Spanish on the same material that Mr. Radovich had already spoken on." III:27. Radovich then asked if there were any questions. A woman wondered why the Agbayani crew was paid every two weeks when the other crews were paid weekly. III:28. According to Schroeder, Radovich said "he couldn't make any changes because of the union, but if the people voted no-union, . . . he would consider making the change to paying that crew weekly." III:28, Radovich denied making any such statement; he testified he said: "I do not want to take that up now. We'll discuss it after the election and I don't want to make any promises. I'm not making any promises. (XXIV; 148.) Barsanti corroborated Radovich's version, testifying that Radovich said, "That's the way the crew had been paid . . . and to this point, that's the way they were going to get paid, but if she wanted to discuss it sometime later . . . after the election . . . that maybe he'd talk to her about it, but right

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29. Schroeder did not mention this.

now he couldn't promise her anything." (XXII:145.) (See also Testimony of Ray Valdez: XVII:105: Radovich said he couldn't promise anything. On cross-examination, even Schroeder recalled that Radovich said he couldn't promise anything. VI:41.) I credit Radovich's version; I found him to be a straightforward, responsive witness in comparison to Schroeder, who, I have found, gave deliberately partisan and misleading testimony. VI:45.

According to Schroeder, he began to explain that the union had raised the bi-weekly pay issue with Radovich, but that Radovich had refused to make the change, (III:34) when he was immediately confronted by Radovich, Barsanti and Sanchez who rushed over to him, and yelled at him so loudly that he could not be heard. III:29. Schroeder continued:

> Well, I had stopped trying to talk to the crew because I couldn't make myself heard and as he got up to me, got up that close to me, I asked him if he was going to hit me.
>
> III:29

At this point, according to Schroeder, Barsanti said, "This man is your union representative and you can see what kind of person he is and how he's been acting with the boss and if he were a worker, he would be fired, and you -- he should be fired . . . by voting no-union." III:35. Radovich asked for more questions, but there were none, so he sent the crew home after telling people they would be paid for the time the speech had taken. III:36. Afterwards, Schroeder tried to talk to some of the crew members but they ignored him. III:36. Because of the Labor Day weekend, that day was the last working day before the election. III:43. Respondent stipulated that GC 5, a leaflet including some

by the UFW medical plan. See GC 5. According to the leaflet the UFW medical plan provides that following benefits:

LIFE INSURANCE	$ 500 - 2,000
ACCIDENTAL DEATH	-0-
MEDICAL & HOSPITAL	
INPATIENT	1,500
OUTPATIENT	800
SURGICAL	500
MATERNITY FOR DEPENDENTS	NO [COVERAGE]
COVERAGE IN MEXICO	NONE
VISION CARE	NO [COVERAGE]

Virginia Radovich testified that she prepared the summary from R-61, a brochure entitled Robert F. Kennedy Farmworkers Medical Plan, which lists benefits effective February 1, 1976. According to her this is the only information ever supplied her by the UFW. Analysis of the figures in GC-5 with these in R-61 reveal that GC-5 is a fair summary of the list of benefits in Respondent's 1976 brochure. Virginia Radovich also testified that she had often tried to obtain precise information about plan benefits from the union in connection with worker inquiries, but that she was always told it was none of her business. XXIV:83. Before preparing the leaflet, she tried to obtain information from the insurance commissioner's office about what benefits were available under the RFK plan, but she was told he had no information about private trust. XXIII:124. Additionally, she tried to obtain information from other growers about any benefits which might be different from those contained in R-61. Ibid. I credit her testimony that she prepared the leaflet in reliance on R-61. In general, I found her reliable and candid.

According to Schroeder, the leaflet misrepresented the medical benefits listed in Plan C-36 (UFW-3):

> (Mr. Schroeder): Okay, my understanding which is based on comparing this leaflet distributed by the company to the summary of benefits here, first, on the life insurance, the Exhibit No. 5 here claims the UFW contracts in Delano provide $500-$2,000. The life insurance benefit payable is listed in the summary is $6,000 in addition to death benefits.
>
> The surgical benefit listed on [the leaflet] for the UFW contracts is $500. The summary of the benefits of the plan indicates that the basic surgical benefit is $1,000. Coverage in Mexico, [the leaflet] says the UFW, no, it does not cover Mexico. And maternity and life insurance and death benefits are covered in Mexico. (III:107.)

Schroeder testified that he provided Preonas a copy of Plan C-36 during negotiations (III:88), but Preonas denied receiving one. (XIX:15).[30/] Schroeder also testified that the union distributed R-9, a summary of benefits similar to those contained in C-36, to employees in the Delano area. (V:101.) R-9 says: "If your employer is contributing at least 22¢/hour to the RFK Medical Plan, you may be eligible effective January 1, 1981 for a new and improved package of benefits. . . ."[31/]

On its face, however, Plan C-36 applies only to certain listed companies which Radovich is not among, "and any other Participating Employer who is contributing to the Trust Fund at the contribution rates required for this Plan."[32/] See UFW-3,

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30. Preonas also testified that during the reopener negotiation, Schroeder indicated the 22¢ the company was paying provided a plan similar to C-36, but without all the benefits in it. (XIX:14.)

31. As of January 1981, Respondent was paying 22¢/hour. See GC 4, Art. XXX, p. 57.

32. The contribution rates, as identified by the title of Plan C-36, were 36 cents/hour.

unnumbered Page headed NOTICE. (English translation) Also, on the face of the Plan, benefits in Mexico are only available "for families enrolled in the Mexican Pilot Program." UFW 3, unnumbered page headed Vision Care. (English translation.)

Kent Winterrowd, administrator of the UFW Robert F. Kennedy Medical Fund, also testified that UFW-3 described medical coverage among Respondent's employees. XIV:4,5. "If the workers were eligible by fact of hours or by self pay, they would have been covered by this plan."

> Q. What would Radovich workers not have been covered by in that booklet.
>
> A. They would have had all the coverage, less the dental and the vision.
>
> (Ibid.)

Winterrowd analyzed Respondent's leaflet in this way:

> Q. Okay. Where -- what is inaccurate?
>
> A. Life insurance, it says, $500 to $2,000. That's not correct.
>
> Q. What would be correct?
>
> A. $6,000.
>
> Q. Okay.
>
> A. The --
>
> Q. What else?
>
> A. The out-patient benefits says $800 and that's not correct. That should be $1,500. The surgical benefits says $500, and that should be $1,000. Maternity for dependents, that's not a definite no. Coverage in Mexico -- we do have coverage in Mexico.
>
> Q. Okay. Is there anything else concerning the insurance plan on the front page that is inaccurate?

A. The only thing is that omission of where it says "accidental death," They say zero. That should just be considered regular life insurance. We don't make a distinction. 33/

Winterrowd testified, consistent with Respondent 9, that Radovich employees would have the benefits of Plan C-36 as of January, 1981.34/ XIV:24. According to him the Trustess approved something called the A and B plan in July of 1980 which essentially provided the benefits described in Plan C-36 for any employer contributing 22¢ per hour, effective January 1, 1981. (XIV:33.) (The "A" Plan provided medical, less dental and vision benefits. Ibid.)

Q: I see. So, in other words, in order for the Radovich to be covered -- the Radovich workers to be covered by the A Plan, there would have to be specific reference in the collective bargaining contract to it; is that correct?

A: No, $.22 will give them A Plan coverage.

Q: Is that what the Board of Trustees approved in July?

A: Yes, it is, $.22.

(Ibid.)

In an attempt to test Winterrowd's testimony, Respondent subpoenaed the minutes of the Medical Plan trustees.35/ (See Resp. 46.) This subpoena was resisted by the union on the grounds that it was overbroad and irrelevant because among other things, there was

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33. Winterrowd explained that there is no separate coverage for accidental death. XIV:25.

34. He had earlier testified that the benefits were available to Radovich employees in September of 1980. XIV:8. Moments later, he retracted that assertion, see XIV:24.

35. The subpoena aimed at all minutes of the Trustees of the RFK plan between June 1, 1980 and January 31, 1981.

no meeting in that time period in which "Plan C-36" was extended to employees of employers paying 22¢ an hour. The UFW offered, and I received into evidence, UFW 25, which consists of a copy of an unexecuted resolution that appears to relate to adoption of a new Plan to be known as A-1 which provides the benefits listed in R-9 and an expurgated copy of a December 16, 1980 letter from Frank Dennison to the trustees indicating no action had been taken at the scheduled Board meeting relating to adoption of the plan and asking for the trustees written consent to implement them. I admitted this document, but not for its truth; it stands only for the limited purpose of showing that as of December 16, 1980, Frank Dennison stated that there was no coverage of the kind Winterrowd testified was in effect as of July 1980.

H.

THE PRE-ELECTION AGREEMENTS

1.

THE STARTING TIME

Ken Schroeder testified that it was agreed work was to start on election day at 7:00 (III:115). The first crew he went to was the de Jesus crew. He arrived there at approximately 6:15 a.m. (V:45; III:15) and the crew began to work at 6:30 a.m. Employees in the Agbayani crew started at 7:00 (XXII:148.) As noted earlier, Esmenia Agbayani handed out leaflets to the members of her crew between 6:30 and 7:00 (XXI:178; XXIV:40) and so did Debbie Miller.

2.

THE SIGNS IN THE FIELD

Schroeder also testified that when he visited the Agbayani

crew on election day there were "Radovich -- No Union" signs "stuck in the ground at the end of a number of . . . rows." (III:56.) "The signs were in the work area where the workers were packing grapes. They were on pieces of wood about 6 feet tall with . . . a sign on top." Ibid. He observed these signs between 8:00 and 8:30 a.m. prior to the time voting began. In fact, the signs were removed by the time voting had begun. (VI:65, see also XXII:259.) Schroeder also testified that he observed a swamping truck with a No-union sign on it in the fields on election morning. Barsanti corroborated this (XXII:216); but he explained that the truck was there to unload boxes and left as soon as the unloading was completed. (XXII:217.) The truck was not present during voting. (VI:63.) According to Schroeder, there had been an agreement at the pre-election conference not to have any signs in the fields. (VI:61; Virginia Radovich and George Preonas testified that the agreement was that there would be no signs within one quarter mile of the voting area. (XXIII:117 (Radovich); XIX:5 (Preonas).)

I.

MISCELLANEOUS CONDUCT

Anita Huizar testified that de Leon told her to remember how she got her job and to vote No-Union. (XI:112.) However, she also testified she took this as a joke. (XI:136.) De Leon denied telling her this. (XXI:185.)

General Counsel and the UFW in its objections petition also rely on two other incidents as evidence of employer collusion with the petitioners: one concerns Ray Valdez, Jr's giving Alejo a ride in a company truck, see II:77, from one voting site to another; the

other involves Barsanti's telling foreman Primitivo Agbayani that petitioner's observer, Marlynn Dalere, had been sent to the "voting site and everything was okay." By these two incidents, General Counsel seeks to prove petitioner's and Respondent's cross-identification with each other. Barsanti denied the conversation with Agbayani, XXIII:159, and Marlynn Dalere testified Alejo had asked her to be an observer. XXI:4.

After the tally of ballots the Radoviches hugged the petitioners (and shook hands with union representatives). They also gave their employees the afternoon off with pay, as well as a party. (Stip. IX:188.)

J.

THE DUES PETITION AND THE REFUSAL TO SIGN THE CONTRACT

The first payday after the election was September 25. Although the union had lost the election, Jack Radovich had instructed his payroll people to continue to deduct dues. X:22. When the crews were paid on the 25th, however, Radovich received a call from one of the foremen of the de Jesus crew that the crew was unhappy about the amount of their checks. Radovich drove to the fields, where he encountered a number of workers. Junior Maldonado asked why dues were deducted. X:24, X:182-83. Radovich replied:

> . . . I was compelled to deduct their dues because the union had filed charges against us within the time limits; after the elections, so consequently the election is not valid until we resolve these problems. So, consequently, we have to live under the contract, and that is part of it.
> X:24

As this conversation was going on, about 60-70 employees had gathered to listen; the conversation apparently went back and forth

with Radovich concluding:

> . . . [My] hands are tied, but I suggest that you discuss this with the ALRB, because they're the only ones I know that you could go talk to, and maybe you can get some answers out of them, but my hands are tied.
>
> X:25

The crew decided to go to the ALRB office. (X:184.) Ray Valdez, Jr. and another employee took a company truck. When they arrived at the office a lot of employees were there. XIII:94; X:187. Board agent Ricardo Ornelas, testified that approximately 15-20 people came into the ALRB office (with other people remaining outside) to ask "why the company continued to deduct their dues and they wanted me to do something about it . . . ." XVIII:50.[36/] Ornelas' telling them he couldn't do anything about it did not satisfy the group which, according to his characterization, was becoming angry. XVIII:51. Apparently hearing the difficulty, Luis Lopez, Regional Director, came out of his office and the two Board agents took a representative of the crew to an interior office while they called Sacramento. Ornelas testified:

> After I finished talking to [Sacramento] I told Jacinto what the procedure was and until there was any certification, the election wasn't certified as valid. So I said "How come you're coming to see us . . . why don't you go talk to the union or the company."
>
> And at that point he said, "Well, what if we write them a letter or something, or sign something." And I said, "Well, that's up to you."
>
> XVIII:52-53

Santiago and Valdez evidently understood that they were advised to circulate a petition protesting dues deductions.

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36. Alejo testified approximately 60 people went to the Board's office. (X:179.)

VIII:81; IX:93. As a result, Alejo, Santiago and Valdez circulated the petitions contained in Resp. 14 and 15 among the crews which essentially request, on behalf of the undersigned, that dues not be deducted from their paychecks.[37/]

Upon receipt of these petitions, Respondent ceased deducting dues from the paychecks of those whose signatures appeared on them. After the election, Respondent refused to execute the contract amendment, implemented a new medical plan and, in general refused to recognize and bargain with the union.

CONCLUSIONS OF LAW

I.

INTRODUCTION

This case raises two distinct, though related, questions: the first, is whether Respondent initiated and supported a decertification campaign among its employees, and the second is, if it did not unlawfully aid in the filing of the decertification petition, did it unfairly or objectionably attempt to influence the outcome of the election? The answers to these questions will determine the validity of the election in this case[38/], and the

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37. This discussion of the dues petition is purposely truncated since its legal significance is totally dependent upon the answer to the question of the validity of the decertification election. I have gone into the facts as deeply as I have only to show the continuing ferment among Respondent's employees.

38. To a great extent, the General Counsel's unfair labor practice case is the same as the Union's election objections case. However, because conduct which might constitute grounds to set aside an election does not always rise to the level of an unfair labor practice, at some points, the General Counsel's case and the union's case diverge. Where the General Counsel has argued issues in the representation case (See, e.g. General Counsel's Brief, pp. 22-23, discussion of material misrepresentation) he has overstepped his statutory role and I disregard those portions of his brief.

lawfulness of Respondent's refusal to bargain after the election. If the election were valid, Respondent's refusal to bargain after it was lawful; if the election were invalid, Respondent refused to bargain in a variety of ways according to its own testimony. (Nish Noroian (1982) 8 ALRB No. 25.)

No area of labor law calls for more scrupulous judgment than that concerning the Board's duty to safeguard the election process. Although the Act creates a specific procedure for, and a correspondingly clear right in, employees to oust their previously-chosen representative, it is equally specific in outlawing employer interference with employee free choice. And even where conduct is not proscribed as an unfair labor practice, general election standards otherwise prevent misconduct by any party from unfairly affecting the outcome of an election. But if protection of free choice is the aim of the Act, and if the secret ballot is the only means of attaining it, when the results of such an election reveal employees to have voted overwhelmingly to decertify their representative, only the most careful analysis should justify our confidently saying that it is a vindication of free choice to overturn the one they have ostensibly made.

Except for the Silva's testimony, which provides the only direct evidence of Respondent's instigation and active support of the decertification campaign, General Counsel relies on a chain of circumstantial evidence to lead to his conclusion that Respondent was the inspiration and moving force behind the decertification campaign. Relying on the Board's observation in Abatti Farms (1981) 7 ALRB No. 36, that proof in cases like this is often elusive and

must depend upon inferences to be drawn from consideration of all the circumstances, General Counsel contends:

> Respondent's activities in support of the decertification effort can be seen in a myriad of situations, starting long before the decertification election and continuing afterwards. Taken together Respondent's actions lead to the inescapable conclusion that Respondent in fact attempted to, and was successful in, having a decertification election to rid itself of the United Farm Workers Union.

According to General Counsel, Respondent's efforts to this end consisted in the following: disbanding the Silva's crew in 1980 in order to make the union weaker; hiring inexperienced relatives of their foremen;[39/] ordering "Viva la Uva" buttons as the symbol of decertification; transferring members of de Leon's crew to the employ of Frank Guidera whence, having tasted non-union wages, they would spread the word of their richness, at the same time as Jack Radovich was advertising that the union rejected its $4.45/hour wage offer. After setting the stage in this way, so to speak, it is further alleged that Respondent began to foment anti-union activity among its employees, including the circulation of petitions to raise wages; the misleading of Americo Ramos' about his insurance coverage which, inspired him to circulate a decertification petition; the failure to prevent petitions from being circulated, and finally interference with UFW efforts to communicate with its employees. The UFW objections petition alleges similar conduct as well as some additional varieties of misconduct, such as making promises of

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39. This was not alleged as an unfair labor practice and I dismissed the objections relating to it for failure of proof. I have not considered it in the statement of facts and will not further consider it here.

benefits, holding captive audience speeches, breaching election-eve agreements, manipulating the starting time of the election in order to permit last minute campaigning, interrogating employees and committing campaign misrepresentations.[40/]

Respondent denies it all.

Because I have discredited the Silvas testimony, those unfair labor practice allegations which depend upon it, may be

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40. Some of the UFW objections were originally dismissed by the Executive Secretary as not constituting per se objectionable conduct. In the Board's November 12, 1981 Order on Request for Review, the Board reaffirms the Executive Secretary's conclusion that the previously dismissed allegations of conduct, even if true, would not be grounds to overturn an election, but may still be useful as proof of overall design or scheme. The Board's order, therefore, has already determined that the following conduct may appropriately be considered as part of a pattern but does not of itself constitute grounds to overturn an election and, a fortiori, cannot be considered a violation of Labor Code section 1153(a):

> 1. Evidence tending to prove threats, surveillance and access denials such as threats made by the Employer and its agents to union organizers although not per se objectionable may be admitted if otherwise admissible;
>
> 2. Evidence of post-election conduct tending to prove the promise and granting of benefits to undermine union support such as the promise and post-election granting of a wage increase retroactive to election day, the granting of the afternoon of the election day off with full wages and the picking bonus, while not per se objectionable, may be admitted if otherwise admissible;
>
> 3. Evidence tending to prove last minute electioneering and coercive campaigning such as the Employer and its agents' manipulation of the reporting times of the crews to enable the company to engage in last minute campaigning while not per se objectionable may be admitted if otherwise admissible; and
>
> 4. Evidence of post-election conduct tending to prove coercive interrogation and polling such as on or about September 8, 1981, the Employer and its agents interrogated workers regarding their vote while not per se objectionable may be admitted if otherwise admissible.

summarily dismissed; accordingly, before beginning our discussion of General Counsel's case, we can clear the decks to some extent. I am recommending that Paragraph 7(d), alleging that Esmenia Agbayani and Richard Barsanti interrogated workers, be, and hereby is, dismissed; that entire Paragraph 7(g), alleging that Richard Barsanti, Jack Radovich and Joe Sanchez threatened to discharge workers who exercised section 1152 rights, be, and hereby is, dismissed; that Paragraph 7(j), alleging that Esmenia Agbayani engaged in surveillance and in creating the impression of surveillance, be and hereby is, dismissed; that Paragraph 7(l), alleging that Respondent through Esmenia Agbayani engaged in direct negotiations with workers, blaming the union for low wages and initiating a petition among the workers to raise the wages, be, and hereby is, dismissed; that Paragraph 7(m), alleging that Richard Barsanti promised workers that if the election resulted in a no-union vote, he would hire their relatives, be, and hereby is, dismissed. This done we can return to the remaining allegations.

II.

THE UNFAIR LABOR PRACTICES

I have already briefly outlined General Counsel's picture of the events in this case. As a preliminary observation, I must say I do not see the same picture the General Counsel has drawn: those details which depend upon the discredited testimony of the Silvas simply vanish from the scene; other details which the General Counsel has freighted with great significance appear little more than fanciful. General Counsel leans too heavily on the Board's observation in Abatti Farms, supra, regarding the use of

circumstantial evidence; he has brought a case which rests upon employer misconduct being a possible explanation for a variety of events on the theory that enough of these "possibilities" must demonstrate Respondent's integral involvement in the decertification effort. But often there are both logical difficulties with the inferences, and legal difficulties with the conclusions, General Counsel would have me draw from the evidence adduced.

Even accepting, as I do, the Board's observation in Abatti Farms, supra, that proof in cases like this often depends upon inferences to be drawn from all the surrounding circumstances, I have not found an NLRB case which relies upon the sort of long-distance psychological manipulation which the General Counsel claims epitomizes Respondent's activities in initiating the decertification petition in this case. Indeed, the cases relied upon in Abatti Farms as providing a standard for determining whether an employer has "implanted" decertification in the minds of his employer all contain some form of direct action by an employer.

For example, in Wahoo Packing Company (1966) 161 NLRB 174 proof of initiation consisted of the following: Sullivan, an attorney, testified that he had discussions with President Runyan of Wahoo Packing about "getting the union out of the plant" both prior to, and after, September 1, 1965. On September 1, Sullivan talked with Hayelka about a decertification proceeding and Hayelka recommended an employee, Gordon Specht, as one who might assist such a move. Sullivan made an appointment to see Specht. Sullivan brought to the appointment a "petition" for Specht to circulate. After obtaining the necessary signatures, Sullivan obtained a

decertification form from the national Board's Omaha office which he filled out from information supplied by Respondent's attorney. He then went to Runyan's office with the form and the "petition" containing the showing of interest, and summoned Specht and asked him to sign the form. The Board found that Sullivan was acting as Respondent's agent in initiating the decertification campaign through Specht.

Proof of a similar sort appears in Sperry Gyroscope Company (1962) 136 NLRB 294. In Sperry, several supervisors of Respondent, faced with an upcoming attempt by the local representing its employees to affiliate with an international union, discussed among themselves how to prevent the affiliation from taking place. McMorrow, the company's employee relations representative indicated that decertification or the threat of it might persuade the local's leadership to abandon its affiliation plans. McMorrow asked Doersam, a supervisor, to keep his "ear to the ground" in order to monitor any emerging employee movements. Sometime later the men talked and Doersam, admitting that no one was presently leading bargaining unit dissatisfaction over the proposed affiliation, asked McMorrow if he could talk to one or two men he thought might be willing to organize employee dissatisfaction. McMorrow told him to do it so as to avoid any impression of his (Doersam's) involvement. Doersam talked to one man who was not interested, and then to another named Werst to whom he related McMorrow's concerns, and the fact that McMorrow was looking for a leader. Werst became that leader.

And, in N.L.R.B. v. Birmingham Publishing Company (5th Cir.

1959) 262 F.2d 1, the Court affirmed the following facts constituted unlawful instigation: an apparently popular employee named Crutcher was denied membership in the union representing Respondent's pressmen; Crutcher's foreman, Cleburne, went to the company's vice-president to find out what could be done; the vice-president consulted with the President and the company attorney and went back to the foreman with instructions about how to decertify the union; a few days later the President and Vice-President met with Cleburne and the employees to assure them there would be no reprisal for signing the petition.

Perhaps the classic case in which the Board found evidence of employer manipulation is Montgomery Ward and Co., Inc. (1965) 154 NLRB 1197, in which the Board upheld the decision of the Trial Examiner that Respondent promoted a company-wide decertification campaign. My brief summary of the facts from a 30-page Trial Examiner's decision devoted to the decertification campaign will scarcely reveal the level of management entanglement found in that case, but it will illuminate the nature of General Counsel's case here. Having decided in 1962 to make changes in its benefit programs for purely economic reasons, the company prepared an employee information program to advise its employees of the benefits. These programs which required approximately an hour-and-a-half to deliver were given in all the company's non-union and Teamster-represented stores, sometimes as often as 15 times over the course of a few days. The announced benefits were in fact given on June 1, 1963, at the non-union and Teamster stores.

In April of 1963, while the company was engaged in

bargaining with the Retail Clerk's union, Respondent decided to present its hour-and-one-half speech regarding the new benefits program directly to its Retail Clerk-represented employees. "To adjust for the fact that there was a collective bargaining agent in these stores, a special supplement . . . script was prepared . . . . The purpose of this extension of the benefits speech was to inform the employees that while the benefits were definitely going to be placed into effect in the Teamsters and non-union stores on June 1, here because there was a union, the employees would not receive them until agreement had been reached with the bargaining agent."

As this supplemental brochure was being prepared the company also had a small brochure on decertification prepared with sample petitions and complete instructions about how to decertify a union. Starting in late May, the speeches were delivered in the unit stores; among other statements in the "script" were the following:

* * *

> There are unions other than the Retail Clerks Union that represent some of our employees. These other unions have enthusiastically accepted our new Benefit program. As a result, the only locations where the new programs will not go into effect on June 1 are those where the Retail Clerks Union represents employees.
>
> In order to insure that all employees would receive these benefits on June 1 many months ago we approached all unions that represent any of our employees. This was true not only at locations where the contracts expire on June 1 but even at locations where the contracts have another year or so to run.

* * *

> We have been extremely disappointed in the attitude of the Union. While meetings were held with other unions, it was not until April 1 that any meetings were held with the Retail Clerks Union and this was only for a group of

California stores and several other locations. Subsequently some other meetings were held, but as of today, we have no agreement that will permit us to make the program effective at all Retail Clerk locations. This is true despite the fact that no real objection has been made to the employees of the new Benefit Program.

We sincerely believe you should not be deprived of these new benefits. As far as we are concerned, you are Ward employees, not Retail Clerks Union employees. Nonetheless, under the law we have to deal through your Union and legally we cannot make these programs effective until some understanding is reached.

At the conclusion of the speech, questions were solicited, which almost uniformly included, "How do we get the benefits?" or "How do we get rid of the union?" Although what followed varied in each unit, Ward's managerial personnel advised employees to solicit signatures on decertification petitions, which they did on work time. In some stores, employees were paid for the time spent on the decertification campaign and union representatives were not permitted the same access as the petitioning employees. There was evidence that, at some stores, management personnel actually prepared the petitions. At other stores, supervisors circulated them.

While General Counsel's theory of his case is the same as that which underlies the decision in Montgomery Ward, what took place in each case is quite different. For one thing, the "benefit" speech at Wards amounted to direct bargaining with employees, which is not the case with Respondent's brief letters to his employees, both of which were written in response to employee concerns.[41]/

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41. General Counsel concedes that the letters were in response to employee concerns; however, he further argues that the fact of a "response" proves that the concerns were manufactured.

Respondent has a clear right to keep its employees aware of negotiations. (See Fitzgerald Mills Corporation (1961) 133 NLRB 877; N.L.R.B. v. General Electric Co. (1969) 418 F.2d 738, 756, cert. den. 397 U.S 965.)[42/] Second, and perhaps more critical, Montgomery Ward directly steered its employees into decertification campaigns through a variety of practices, including overt and direct managerial participation. The entire detailed history of the practices condemned in that case stands in sharp contrast to General Counsel's theory that Respondent subtly, and without direct participation of any kind, manipulated its employees into beginning a decertification campaign.

General Counsel's theory reaches its most extravagant form in the argument that Respondent inspired America Ramos' dissatisfaction with the union by giving him "incorrect and misleading information regarding the union's responsibility for payment of his wife's medical bills [when] Mr. Ramos' problem was created by the company's failure to call in the work accident and the company representatives, even though they understood the

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42. Besides free speech strictures, what General Counsel overlooks in his analysis is that the failure to agree in bargaining is a two way street; an employer, fearful of employee discontent and of potential economic warfare, has a right to inform his employees that he is offering competitive wages in order to avoid employee sentiment from being hostilely aroused against him:

> As a matter of settled law, Section 8(a)(5) does not, on a per se basis, preclude an employer from communicating, in non-coercive terms with employees during collective bargaining negotiations. The fact that an employer chooses to inform employees of the status of negotiations, or of proposals previously made to the Union, or of its version of a breakdown in negotiations will not alone establish a failure to bargain in good faith. (Proctor & Gamble Mfg. Co. (1966) 160 NLRB 334, 340.)

situation, never clarified the true situation to Mr. Ramos." There is simply no evidence that Respondent misled Ramos about the union's responsiblity. The contention even flies in the face of uncontradicted testimony elicited from Ramos by General Counsel himself:

> Q: Did someone at the company tell you that your [UFW medical] insurance was supposed to pay for the doctor bill?
>
> A: Nobody . . .
>
> Q: So you did tell Jack or Virginia that your wife had been hurt?
>
> A. Yes, I told Jack and Chris . . . right there in the office.
>
> Q: And Chris didn't tell you that the company was going to pay for the bill.
>
> A: No.
>
> Q: Did he tell you that the union insurance would cover it?.
>
> A: No.
>
> (XVIII:118)

Even aside from the lack of evidence as to Respondent's "motivating" Ramos, the contention that Respondent could select an employee, create "dissatisfaction" in him, and thus cause him to circulate a decertification petition is hard to believe. There simply isn't any necessary connection between the supposed stimulus and the resulting response. One simply cannot conclude from the evidence presented that Respondent capitalized on Ramos' experience, let alone contrived it in order to exploit it.

Similar speculative psychologizing characterizes General Counsel's argument that Respondent transferred the de Leon crew to Frank Guidera in order for the crew to enjoy higher wages so that

Respondent could later disparage their contract wages by comparing them to the wages they received at Guidera's. In the first place, Steve Guidera testified that it was he who asked de Leon to bring his crew over (XXI:50) and de Leon and Radovich corroborated this. (XXIII:1876; XXIV:135.) Moreover, as indicated earlier, it appeared to be common knowledge among the crews that some non-union wages were higher than what Respondent was paying. Since, there is no evidence Radovich arranged the employment and, as noted earlier, an employer has a right to keep employees informed about the status of negotiations, both these events, lawful in themselves, and so far as the record shows, only accidentally related to each other, cannot support an inference that Respondent was subtly manipulating its employees in order to manufacture their discontent.

Logical difficulties also attend General Counsel's argument that Respondent must have instigated the decertification effort because it "ordered" the "Viva la Uva" buttons. I shall put aside any difficulties in concluding that the buttons were the important symbol General Counsel claims them to be in order to concentrate on the inference I am asked to draw from their existence. Uncontradicted evidence indicates that the buttons were periodically given to Respondent by Ed Thomas so that it is only on the basis of the testimony of Juan Cervantes that he had never seen such buttons that General Counsel argues they were obtained for the purpose of the decertification effort. Cervantes may not have seen them, but it doesn't mean they weren't there and his not seeing them cannot support an inference about Respondent's motive in obtaining them.

Furthermore, even though the buttons had some significance

during the campaign, I am not sure I could infer very much from it. The mere distribution of buttons, unaccompanied by any pressure on employees to express a choice in wearing them, is not an unfair labor practice, Farah Mfg. Co. (1973) 204 NLRB 173, 175, nor is it grounds to set aside an election. Black Dot, Inc. (1978) 239 NLRB 929. There is no evidence in this case that any of Respondent's supervisors or agents forced buttons on employees.[43/]

Accordingly, I conclude that there is no evidence that Respondent instigated the decertification campaign and I also recommend dismissal of Paragraph 7(a) and Paragraph 7(h) of the complaint.

The next step in our inquiry requires consideration of evidence relating to "assistance" given the petitioner's in gathering signatures. General Counsel sees employer involvement in the fact that the original wage petitions and, later, the

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43. Compare Pillowtex Corporation (1978) 234 NLRB 560 in which the Board found the following to constitute interrogation sufficient to warrant overturning an election:

> Approximately 3 days before the election, Supervisor Alksnis distributed buttons to employees, imprinted "No Vote No." In one area, where the employees were sewing and "beating" pillows, Alksnis placed a button on each sewing machine and then passed the box in front of each of the other employees. The Hearing Officer found that apparently "every employee who was sewing or beating got a button," and concluded that "the Employer did not require the employees to announce their preference through the acceptance or rejection of the buttons." On the contrary, we find that is what the employees were required to do. When employees are approached by a supervisor and offered buttons such as the ones in issue, they have only two alternatives: accept the buttons and thereby acknowledge opposition to the Union; or reject them, and thereby indicate their support of the Union. In either case, the fact that the employees must make an observable choice is a form of interrogation.

decertification petitions were circulated on company property and on company time, citing Snyder Tank Corporation (1969) 177 NLRB 724, 735, enf'd 428 F.2d 1348, cert. den. 400 U.S. 1021. In that case, the Board affirmed the conclusion of the Trial Examiner that an employer violated 8(a)(1) by assisting in the preparation of an anti-union petition, including permitting it to be duplicated on the office copying machine, and condoning the circulation of it on company time under the persistent surveillance of a supervisor, including some apparent words of encouragement from the supervisor. That case does not stand for the proposition that employee activity on company property and on company time is necessarily an employer's unfair labor practice.

Indeed, the national Board early held that merely permitting union activity on company time was not evidence of unlawful assistance in an 8(a)(2) context, absent some showing of discrimination. In Interstate Mechanical Laboratories, Inc. (1943) 48 NLRB 551, 554, the Board said:

> The Trial Examiner has found that the respondent supported the Association by permitting employees to attend meetings, particularly the meeting of December 5, 1941, during working hours, and by the participation of Borut, the respondent's secretary, in the discussion at the meeting of December 5, 1941. The record shows, however, that the early meetings held on company time were participated in by proponents of the Union as well as by employees who favored an unaffiliated organization. The meeting at which the employees finally voted for an unaffiliated union was held outside of working hours during a half-holiday. Furthermore, although the meeting of December 5, 1941, was held in the morning, there is no evidence that the time was set "at the suggestion of Schachat," as found by the Trial Examiner; nor do we consider the fact that it was held in the morning significant, since there were both day and night shifts in operation at that time, and since working time would therefore have been lost, whatever the hour of the meeting. While Borut was present during part of this meeting, there is no showing that he participated in the

> discussion of group insurance. We therefore find, contrary to the Trial Examiner, that the evidence does not sustain the allegation in the complaint that the respondent contributed support to the Association.

And, once again in an 8(a)(2) context, National Labor Relations Board v. Matheson Alkali Works, Inc. (1940) 114 F.2d 796, 803, the court said:

> The fact that respondent made no attempt to curb solicitations for association on company property would be damning circumstance, were it not for the fact that respondent's attitude towards the rival union was the same.

General Counsel makes an even more extreme form of this argument when he asserts that Respondent had a duty to prevent circulation of the petition in its fields after Schroeder informed Barsanti and Agbayani about it. General Counsel does not cite any cases which support this argument which, unqualified as it is with respect to clear rights of access possessed by off-duty employees, obviously goes too far and, if pushed to the extreme, would require an employer to protect an incumbent union from any and all rival-union or decertification challenges.[44/] Respondent, for its part, argues the converse proposition, that it would be an unfair labor practice to have denied access to Alejo and Tito. This argument goes too far in its own direction, for an employer can adopt non-discriminatory rules limiting, but not denying completely, the right of access of off-duty employees. (See GTE Lenkurt (1973)

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44. It seems as if General Counsel means to argue that since he states in his brief that Respondent had an obligation to discriminatorily permit the UFW access to company property during work and non-work times because the decertification petition threatened the union's survival. (Brief, p. 18.) Contrary to general Counsel's position, what is at issue in a decertification election is the free choice of employees, not the union's survival. (Labor Code Section 1152.)

204 NLRB 921; Tri-County Medical Center (1976) 222 NLRB 1089; Continental Bus Systems (1977) 229 NLRB 1262.)

Even putting aside such general principles concerning access, General Counsel's argument that Respondent had a duty to prevent circulation of decertification petitions on company time has been specifically rejected.

In Curtiss Way Corporation (1953) 105 NLRB 642, the Board said:

> The Union contends that the petition should be dismissed on the ground that it resulted from collusion between the Employer and the Petitioner. The record shows that the Petitioner circulated among employees on his shift during working hours and secured signatures to the petition filed herein. Employees of the Employer's other shift were contacted at the plant by the Petitioner during their working hours. The Petitioner was reprimanded for engaging in such activity during his working hours but apparently no action was taken against him as to his securing signatures to the petition on his own time from members of the second shift. While the evidence clearly shows that the Employer's supervisors had knowledge of the Petitioner's activity, we have previously held that knowledge, alone, of a decertification petition by an Employer is insufficient to establish the collusion which the Union alleges. Therefore, as the record contains no substantial evidence that the Employer inspired or fostered the instant petition, we find no merit in the Union's contention that the petition should be dismissed on this ground.

In Southeast Ohio Egg Producers (1956) 116 NLRB 1076, the Board found no unlawful assistance on the following facts:

> As to the charge of unlawful Employer assistance, the record reveals that the Petitioner requested and received information from the Employer as to the procedure to be followed in obtaining and filing a petition for decertification; that the Employer furnished Petitioner with certain information necessary to complete the decertification petition; that the petition and the showing-of-interest form in support thereof were typed in the Employer's office after working hours by Petitioner's wife, admittedly a supervisor for the Employer; and that employees signed the showing-of-interest form in the Employer's office during working hours in the presence of the Petitioner.

But if Respondent was neither under a duty to grant access to Alejo or Tito, nor a duty to deny them access, the real question, as noted earlier, becomes did it discriminatorily provide access to the petitioners which it denied to the incumbent union? General Counsel and the union contend that it did and I shall address this question in relation to those specific claims. In the present context it is sufficient to say that I cannot find in the mere grant of access to Alejo and Tito evidence of employer involvement in the decertification campaign.

Contrary to General Counsel's view, the picture that emerges from my consideration of this case is of a work force in active revolt against its bargaining representative. As stated earlier, prior to the circulation of the decertification petition, two employees, Adela Dalere[45/] and Nancy Sanchez, circulated petitions asking for higher wages. Afterwards, a single employee,

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45. Dalere is forewoman Agbayani's sister, as General Counsel reminds us; Exzur, too, is distantly related by marriage to Agbayani. Still, their right to engage in concerted activity is protected under the Act. Agency is not established merely by blood relationship. See F.M. Broadcasting Corp. (1974) 211 NLRB 560, 565, "although it might have been the better part of wisdom, in order to avoid suspicion by employees of management participation, for him not to take the leading role in a decertification drive, [the son-in-law of the owner] had a legal right to do so." Nowhere in the test of agency ennunciated by the NLRB or our Supreme Court in Vista Verde Farms v. A.L.R.B., supra, does the matter of relation rise to critical importance. People's sympathies may be more directly aligned with those of their relatives, but whatever natural affinity of sentiment does exist cannot provide proof of agency. The test of agency announced in Vista Verde requires more than a similarity of sentiment; it requires a parallelism of activity between employer and a third party from which it is reasonable to conclude the third party was an agent for an employer. If this test of agency is transformed into one that finds agency from the fact of employee relationship to a supervisor or foreperson, or from the mere fact of employer hostility to a union, both Section 1152 and 1155 rights, will be seriously infringed.

Americo Ramos, separately angered by the union for personal reasons, began to circulate another petition which, inspired another anti-union employee to ask still another anti-union acquaintance to help him circulate what became the decertification petition. Even after the election was over, yet another petition was begun to halt dues deductions, which in turn led to a spotaneous confrontation with Board agents. According to employee witnesses, whom I credit, approximately 40 people crowded into the Board's regional office with many more people outside, wanting to know why dues were still being deducted after the election results had indicated a no-union victory. While General Counsel makes use of these petitions to argue that Respondent refused to bargain with the union, it seems to me, these events betoken obvious, genuine and considerable worker unrest, out of keeping with the theory that Respondent's crews were subtly manipulated by Respondent.[46/]

Accordingly, for all the above reasons, I conclude that Respondent did not assist the decertification campaign at least prior to the filing of the petition. Whether its campaign after the petition was filed overstepped the limits of permissible activity is

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46. The Board has recently held that the duration of an employer's bargaining obligation after decertification depends upon the validity of the election. Nish Noroian Farms (1982) 8 ALRB No. 25. If the election were valid, the employer as a matter of 1153(e) could make unilateral changes; similarly, if the election were valid, the union could not claim to be entitled to dues under Section 1153(c). Still, the question of Respondent's involvement in the dues petitions requires some additional comment. It seems plain from the evidence that the employee complaints were spontaneous and the idea for the petitions apparently came from the employees' understanding of Board agent advice. Although there is a level of company involvement here not present in the decertification phase of the case, Respondent was riding a wave at least partly created by what the employee's reasonably believed the Board to have told them.

another question to which we now turn. In considering this question, I have not found any special rules applicable to decertification elections that are not applicable to certification elections. As a theoretical matter, the only possible difference in the measure of those rights would be the fact that the campaign would be in derogation of the chosen bargaining representative; but since the right to recognition as an exclusive bargaining representative is entirely a creature of statute,[47] maintenance of that bargaining relationship cannot be held to override fundamental First Amendment freedoms.[48] Moreover, both Board opinions in the Dow Chemical cases and the court of appeals opinion which reverses them, at least agree on the essential point that the right to campaign is as applicable in the decertification context as it is in the certification context. Compare Dow Chemical Company (1980) 250 NLRB 748, Dow Chemical Company (1980) 250 NLRB 756 with Dow Chemical v. N.L.R.B. (6th Cir. 1981) 660 F.2d 667.

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47. "Accepting that the constitution guarantees workers the right individually or collectively to voice their views to their employers, . . . the Constitution does not afford such employees the right to compel employers to engage in a dialogue or even to listen." (Babbit v. Farm Workers (1979) 442 U.S. 289, 296.)

48. Although the standard for determining interference with free choice under the Board's election power is generally considered less stringent than that for determining whether an unfair labor practice took place, even in the election area, the national Board and the courts have recognized that the First Amendment must be observed. Dal Tex Optical Co. (1962) 137 NLRB 782, 1787: "Congress specifically limited [the free speech proviso] to the adversary proceedings involved in unfair labor practice cases and it has no application to representation cases. * * * [However] the strictures of the first amendment, to be sure, must be considered in all cases." As the Second Circuit said in Bausch and Lomb v. N.L.R.B. (2nd Cir. 1971) 451 F.2d 873, 878, "Congress by restricting expressions of views in Section 8(c) to unfair labor practice determinations, however, did not, and could not, relieve the Board from the constraints of the first amendment. . . ."

As noted earlier, a large part of both the General Counsel's and the union's case concerns Respondent's alleged denials of access to union representatives. On the whole, the record shows that union representatives regularly and repeatedly took access during the pre-petition period[49] as well as during the pre-election period. Still, there are one or two specific instances that warrant detailed attention. These are: the confrontation between Radovich, Barsanti and Schroeder during the speech[50] and the requests that UFW representatives leave the fields on September 4th and September 8. The latter episode will necessarily include a discussion of surveillance.

General Counsel argues that Jack Radovich's conduct during the speech, and, in particular his confrontation with Schroeder was unlawful. However, I have not found any authority which provides that union organizers have a right to debate an employer. To the extent that a "right to debate" might arise, it would appear entirely to depend upon construing the employer's premise as a public forum, a characterization that has been explicitly rejected for First Amendment purposes by the United States Supreme Court. Hudgens v. N.L.R.B. (1976) 424 U.S. 507. Those cases that have treated certain kinds of private property as First Amendment forums generally focus on the public aspects of the property itself, rather than on the nature of the message sought to be conveyed. See e.g.

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49. In fact, as the record shows, Schroeder was on Respondent's property urging employees not to sign the petition, during most of the petitioner's campaign.

50. I shall separately consider the question of the misrepresentations during the speech.

Robins v. Pruneyard Shopping Center (1979) 23 Cal.3d 899. I do not believe that our Act, which protects an employer's free speech rights, does so only at the price of having his speech subject to the simultaneous contest of his adversary.[51]/

Even construing Schroeder's actions during the speech as a request to address Radovich's employees separately -- which is rather generous under the circumstances -- the general rule is that "an employer's refusal to allow a union the opportunity to reply to such a speech on company premises during working hours is not prohibited provided the employer does not have an unlawfully broad or a privileged no solicitation rule." (N.L.R.B. Representation Elections Law, Practice and Procedure (1980), p. 434.)[52]/ In this case I find that Respondent did not generally prohibit the union

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51. Putting aside the theoretical question for a moment, it must not be forgotten that by dint of his own persistence, Schroeder did turn the speech into an angry debate. That the atmosphere was surcharged with animosity was at least as much due to his provocation as anything Radovich did. When the union's actions thus turned the speech into a nasty confrontation, it cannot be heard to complain that the voice it raised in derision and dispute was rendered "ineffective." Indeed, the law is clear that, had Schroeder been an employee of Respondent's, his intentionally disruptive conduct at the meeting was unprotected. (J.P. Stevens & Co. v. N.L.R.B. (1976) 547 F.2d 792, 794.)

52. "[The] Taft-Hartley Act does not command that labor organizations as a matter of abstract law, under all circumstances, be protected in the use of every possible means of reaching the minds of individual workers, nor that they are entitled to use a medium of communication simply because the employer is using it. (N.L.R.B. v. United Steelworkers (Nutone) (1958) 357 U.S. 357, 364.)

from taking worksite access to its employees.[53]

Even the incidents of September 4th and 8th do not establish a pattern of discrimination against the union. As noted earlier, the union had a great deal of worksite access without incident. So far as surveillence goes, the events of the 4th and the 8th, according to all witnesses, took place on work time when the general rule is "it is justifiable for supervisors to watch over employees at their work stations . . .and this business interest will not be overridden by contemporaneous union activity." (Gorman, Basic Text on Labor Law (1976), p. 173, see also, Nish Noroian (1982) 8 ALRB No. 25.)[54] I find that Barsanti's and Guidera's concerns were with what they perceived to be excessive disruption of work.[55] Had Respondent denied the UFW all work time access after according petitioner's worktime access, it would have violated the Act, but it seems to me that at some point, and especially way after a union has had more access than that accorded the petitioners, an

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53. This whole discussion necessarily begs the question of what right a union has to take access during a decertification campaign. It seems to me that once Respondent permitted worktime access to the decertification petitioners, the inquiry must shift to whether it discriminated against the union. I note that the Board has recently indicated that an incumbent union has organizational access rights during a rival union campaign. (Patterson Farms (1982) 8 ALRB No. 57.)

54. See Crowley, Milner and Company (1975) 216 NLRB 443, 444, where the Board said: "We note, however, that it is not unlawful for an employer to observe the activities of an employee carried on in the [work place] and on worktime."

55. Although intent is not necessarily an element of an 1153(a) violation, the employer's interests must be weighed in considering allegations concerning access to his property. (Republic Aviation Corp. v. N.L.R.B. (1945) 324 U.S. 793; Babcock and Wilcox (1956) 351 U.S. 105.

employer may reasonably declare that enough is enough. Without such a power, an equal part of the main teaching of Babcock and Wilcox, supra -- namely, that an employer has a legitimate interest in production and discipline -- becomes meaningless. There is no question that the organizers in each instance were asked to leave, but only upon the discovery that they were unduly disrupting work. I also find that Guidera and Barsanti did not shadow the organizers.[56]

Accordingly, paragraphs 7(c) and 7(f), and 8(c) are dismissed.[57]

As far as the contents of the speech goes, General Counsel alleges that Radovich promised to consider making a payroll change if the Union were decertified. Since I have credited Radovich's denial that he made such a promise, I must recommend dismissal of Paragraph 7(i).

There remains to be considered Paragraphs 7(b), that de Leon interrogated Huizar; 7(e), that Respondent delayed the starting time of its crews to permit last minute solicitation; and 7(k), that Jack Radovich created the impression in surveillance of its workers. I can find no evidence to support 7(k). Accordingly, I am dismissing this allegation. Paragraph 7(e), alleging that

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56. Since I do not find anything unlawful in Guidera's and Barsanti's actions, I do not specifically address the issue of Guidera's agency.

57. General Counsel also argues that Virginia Radovich surveilled Juan Cervantes on September 1, Mrs. Radovich testified she observed Cervantes in the fields that day while she was delivering a payroll. (XXIV:37, 76.) Mere observation of an organizer's presence during performance of her duties does not constitute surveillance. (Tomooka Bros. (1976) 2 ALRB No. 52.)

Respondent delayed the starting time in order to distribute anti-union leaflets is also dismissed. I can find no evidence of such a purpose. With respect to the allegation in Paragraph 7(b), Huizar testified de Leon asked her how she would vote; de Leon denied this. Since Huizar herself testified she didn't take this seriously, even if I were to credit Huizar's version, any violation would be de minimis. I credit de Leon.

Thus, I recommend that the entire unfair labor practice complaint be, and hereby is, dismissed in its entirety.

III.

THE OBJECTIONS TO THE ELECTION

A.

INTRODUCTION

At the hearing, I dismissed, struck, or the UFW withdrew, the following allegations of objectionable conduct: Paragraph 1(a) and 1(b);[58] the second sentence of Paragraph 3 concerning meetings between Jack Radovich and Jacinto (Tito) Santiago and Exzur Alejo; Paragraph 7;[59] Paragraph 8;[60] Paragraph 11;[61] the part of Paragraph 13 alleging that Esmenia Agbayani told workers not to accept union leaflets; the part of Paragraph 16 that alleges

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58. These objections charge that Respondent refused to hire supporters of the UFW in January, 1981.

59. Paragraph 7, alleging that Respondent mailed a letter to those who had signed the decertification petition thanking them for their signatures, was withdrawn by the UFW.

60. Paragraph 8 alleged that Jack Radovich went from table to table campaigning for a no-union vote.

61. Paragraph 11 alleged that Alphonso de Leon phoned workers individually asking for a No-union vote.

promises to pay retroactive wages to May 11; Paragraph 19;[62] Paragraph 22;[63] Paragraph 26;[64] Paragraph 29[65] and the entire Objection E (that "the employer arranged employment specifically for the purpose of voting, and discriminated against union supporters to gain No-Union votes and to undermine support for the UFW"). (See, XVI:125, et seq., XVII:26-72.)

As indicated by my discussion of the General Counsel's unfair labor case, I am dismissing Paragarphs 2, 3, 4, (that the company engaged in direct negotiations with the workers by notifying them of their last offer and that the company initiated and supported the decertification effort. Also on the basis of my preceding discussion, I am dismissing Paragraphs 10 and 14, to the effect that Respondent's agents denied access to Urias and Miller; Paragraph 16 that Jack Radovich promised benefits; Paragraph 20 characterizing the distributions of buttons as coercive; Paragraph 24, misrepresenting the negotiating process. I am dismissing Paragraph 27, that Exzur Alejo consulted with attorney George Preonas and the entire Paragraph C, that the Respondent promised and granted benefits to the extent it relies on the incidents detailed

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62. Paragraph 19 alleged that Jack Radovich and Alphonso de Leon informed workers they would receive a wage increase the day of the election.

63. Paragraph 22 alleged that Rosie Gallegos interrogated workers regarding their vote and pressured those who voted for the union.

64. Paragraph 26 alleged that the company changed the reporting and starting time of crews to engage in last minute campaigning.

65. Paragraph 29 alleges that foreman Joe de Jesus gave a ride to petitioner's observation.

in A(16-19).

The Executive Secretary dismissed Paragraph 5, 17, and 18 as per se objectionable conduct, (that Alejo threatened to beat up Schroder, that Radovich gave all employees the afternoon of the election day off with full wages and that he had a beer party after the election. Since I do not find that Respondent initiated or supported the decertification effort no "pattern" can revive them as valid objections. They, too, are dismissed.

What remains of the objections case, then, are the union's objections to the "captive audience" speech (Objection 6 and B); that the company engaged in misrepresentations (Objections 6, 16, 23, and D); the objection that Esmenia Agbayani campaigned one-on-one (Objection 13); the objections that the company observer gave petitioners a ride to the voting site, and that the company assisted petitioners in obtaining an observer, (Objections 28 and 29); the objection that Respondent violated election-day rules (Objection F) and finally the objection that Respondent thanked petitioners after the vote tally.

B.

THE CAPTIVE-AUDIENCE SPEECH

Although the NLRB has declined to set aside elections when an employer has refused to permit a reply to a "captive audience" speech, General Electric Co. (1965) 156 NLRB 1247,[66/] it does have a rule, the so-called Peerless Plywood rule that prohibits "employers

66. Part of the rationale for the General Electric rule is the existence of alternative means of access. Since I do not find any imbalance of access in this case, this objection does not warrant further consideration.

and unions from making election speeches on company time to massed assemblies of employee within 24 hours before the time scheduled for an election." Peerless Plywood, (1953) 107 NLRB 477. Our Board has not adopted this rule, see California Coastal Farms (1976) 2 ALRB No. 26, Yamada Bros. (1975) 1 ALRB No. 13; Dunlap Nursery (1978) 4 ALRB No. 9. In any event, at least part of the rationale for the rule is that the 24-hour period before elections should be an insulated period for private decision making. Even if the Peerless Plywood rule was applicable, the Radovich speech was given at least 72 hours before the election so that the mere fact of giving the speech could not violate the rule in any event. Objections 6 and B are hereby dismissed.

C.

THE MISREPRESENTATIONS

The Union contends that Respondent misrepresented its medical plan and whether union dues were going to be raised. It is one of the curious aspects of this case that the Union resisted any effort on the part of Respondent to find out what benefits were applicable to Radovich. The only evidence that the "C-36" type benefits covered Radovich employees was Winterrowd's and Schroeder's testimony that it did and Respondent 9, a circular indicating that "C-36" benefits "may" be available to employees at a 22¢/hour contribution rate.

I must draw an inference adverse to the claim's that GC-5 misrepresented its medical benefits since it refused to produce any stronger evidence on the question than it did. (See Gay and Huff Construction (1978) 237 NLRB 970, 977.)

With respect to the alleged misrepresentation that the union was "considering raising its dues", I am persuaded by national Board authority that this cannot be grounds to overturn an election. In York Furniture Corp. (1968) 170 NLRB 1487, the Regional Director determined that the following statement, false as to the matter of the rise in dues, was a misrepresentation:

> You do not have to believe me. Ask the union agents if they are interested in your welfare if they cannot collect dues from you. I understand that the union is now collecting $5.00 a month dues from employees at other companies, but that the dues are soon to be raised to $7.50 a month. You should understand that when union dues are paid, it is deducted from what you work for -- the company is not allowed by law to pay your dues for you.

The Board disagreed:

> We regard the statement in issue as one based not on the employer's own knowledge but rather on hearsay. Whether or not a dues increase was in the offing was a matter within the knowledge of the Petitioner, and it is reasonable to suppose that before accepting as fact the Employer's second-hand account, the employees would have inquired of the Petitioner itself as to the matter. Indeed, inasmuch as the Employer's letter was mailed 4 days before the election, it is clear that employees had ample opportunity to make inquiry of the Petitioner.

Since "the burden of proof is on the party seeking to have the election set aside to establish that objectionable pre-election conduct occurred which tended to interfere with the employees' free choice to such an extent that it affected the results of the election." (Patterson Farms (1982) 8 ALRB No. 57, I must dismiss the objection.)

I am reinforced in my decision by the fact that even if the medical plan was misrepresented, the union had the opportunity to reply. (See Paul Bertuccio/Bertuccio Farms (1978) 4 ALRB No. 91.) It was present in the fields on the 8th and made at least some home

visits over the Labor Day weekend. Besides, if it is true, as UFW witnesses testified, that R-9 represented benefits available under the plan in effect among Respondent's employees and that it had been disseminated among them, Respondent's employees could have independently evaluated Respondent's claim.

D.

THE VIOLATION OF ELECTION DAY AGREEMENTS

Whether an election-day agreement was violated is not determinative of an 1156.3(c) objection: the question before me is whether the conduct complained of would have affected the free choice of employees. (See, e.g., Abatti Farms and Produce (1977) 3 ALRB No. 83; Harlen Farms (1976) 2 ALRB No. 13.) The Board has held that campaign materials visible from the polling area is not grounds to set aside an election, (TMY Farms (1976) 2 ALRB No. 58) and it has even repeatedly held that the presence of campaign materials inside the polling area is not by itself grounds to overturn an election. (Harden Farms, supra; Veg-Pak (1976) 2 ALRB No. 50; John Elmore Farms (1977) 3 ALRB No. 16, O.P. Murphy & Sons (1977) 3 ALRB No. 26.)

E.

THE OBJECTIONS THAT RESPONDENTS ASSISTED IN OBTAINING AN OBSERVER AND GAVE AN OBSERVER A RIDE

There is no evidence to support the allegation that the company "obtained" an observer for petitioners and, even if it were true, I cannot understand how that and the giving of a ride to an observer could interfere with the private decision about how to cast a vote. Objections 28 and 29 are dismissed.

F.

THE OBJECTION THAT ESMENIA AGBAYANI CAMPAIGNED ONE-ON-ONE

This is not prohibited so long as there is no coercion involved in the communication. In Associated Milk Producers (1978) 237 NLRB 879, the Board held that "one-on-one" campaigning by Respondent's manager did not disturb the "laboratory conditions" of the election.

RECOMMENDATION

Accordingly, I recommend dismissing all the objections to the election and, further that the Board certify the results of the election.

DATED: September 16, 1982.

RONALD GREENBERG
Administrative Law Officer