

AGRICULTURAL LABOR RELATIONS BOARD

Employer.

(August 6, 2026)

On July 9, the Employer filed a Response along with payroll records and an employee list consisting of 332 employees.² The UFW submitted authorization cards as evidence in support of the petition as follows:

² On July 14, Charging Party UFW filed a charge alleging the Employer violated the Agricultural Labor Relations Act (“ALRA”) by failing to provide the Charging Party and the

- July 7: 140 authorization cards
- July 10: 12 authorization cards
- July 11: 35 authorization cards
- July 12: 19 authorization cards
- July 13: 18 authorization cards
- July 14: 1 authorization card

Additionally, the UFW challenged the inclusion of 24 employees classified as “Row Bosses” on July 10.³

Following an investigation by the Region, the Regional Director determined that 170 authorization cards were valid, 51 were invalid, and 1 was from a challenged voter. As 170 authorization cards constitute a majority of the 332 employees on the eligibility list, the Regional Director determined that proof of majority support had been established, and on July 15 issued a Certification of Investigation of Validity of Majority Support Petition and Proof of Support.

ALRB with correct employee addresses and telephone numbers in connection with the MSP, rendering the union unable to reasonably communicate with employees. This charge is currently being investigated and is docketed as 2026-CE-042.

³ The Declaration of Jessica Arciniega in Support of the Regional Director’s Tally states that “[t]he region conducted an investigation and collected evidence that suggests the row bosses acted as statutory supervisors.” (Declaration of Jessica Arciniega, p. 3.)

On July 20, the Employer submitted timely objections to the certification. On July 22, the UFW submitted a response to the Employer's objections. On July 24, the Employer filed a motion to strike the UFW's opposition brief.⁴

ANALYSIS

Labor Code section 1156.37, subdivision (f)(1) sets forth four grounds for objecting to the certification of a union pursuant to a majority support election:

- (A) Allegations in the Majority Support Petition were false.
- (B) The board improperly determined the geographical scope of the bargaining unit.
- (C) The majority support election was conducted improperly.
- (D) Improper conduct affected the results of the majority support election.

Upon receipt of objections, the Board may administratively rule on the objections or order a hearing to be held to present further argument and evidence. (Lab. Code § 1156.37, subd.

(f)(2).)

Here, the Employer's objections center around grounds (C) and (D), alleging the majority support election was conducted improperly and that actions of UFW agents affected the results of the election. Having considered these arguments, we find the objections to be without merit, and we dismiss the Employer's objections.

1. The Majority Support Election Was Not Conducted Improperly

⁴ As Labor Code section 1156.37, subdivision (f) does not provide for the filing of a response to objections, we have not considered the UFW's filing in undertaking our subsequent analysis.

The Employer asserts on objection that the Region improperly conducted the majority support election by allowing the UFW to submit 140 authorization cards with the July 7 petition and then continue to submit subsequent batches of authorization cards signed after the initial filing. The Employer argues the Region committed misconduct by allowing the union to submit fewer than the amount of authorization cards required to establish majority support, and then, in the Employer's words, "intentionally allowed the UFW to go to workers' homes for additional cards during a period of five days after the MSP was filed." (Emp. Objections, p. 4.)

The Employer alleges the Region should have followed the provisions set forth in Board regulation 20391,⁵ mistakenly stating that the Regional Director should have dismissed the petition under subdivision (c)(1)(A). (Emp. Objections p. 8.) However, this subdivision applies only to circumstances in which "the regional director determines the petition must be dismissed because a bona fide question of representation does not exist or the unit described in the petition is not appropriate. . ."⁶ Such is not the case here, where the Regional Director found a bona fide question of representation existed and that the petitioned-for bargaining unit was appropriate. (RD Tally, pp. 2-3.) Accordingly, the

⁵ The Board's regulations are codified in Title 8 of the California Code of Regulations, section 20100 et seq.

⁶ The employer incorrectly asserts "[o]nly then [after dismissal] may the RD provide the Union with a determination to allow 30 days to submit additional proof." (Emp. Objections, p. 8.) Board regulation 20391, subdivision (c)(2) makes clear that this 30-day "cure" period does not require dismissal of the petition. (8 CCR § 20391(c)(2).)

Employer’s objection turns on whether it was proper for the Regional Director to continue to accept signed authorization cards submitted after the July 7 petition.

The Board has squarely addressed this issue in *Wonderful Nurseries, LLC* (Mar. 18, 2024) ALRB Admin Order No. 2024-04. There, as here, the Employer objected to the union’s “rolling production” of authorization cards during the course of the Region’s investigation of the majority support petition. Analyzing the language of Labor Code section 1156.37, subdivision (c), the Board determined the statement that “[t]he showing of support shall be submitted together with the Majority Support Petition” did not preclude the Regional Director from accepting and considering authorization cards submitted after the initial filing of the petition.⁷ (*Id.* at 25-26.) The Board emphasized:

“Valid cards expressing employee support for the union should be given effect, regardless of the timing of their submission in an initial production or a day or two later. To refuse to give effect to a valid authorization card produced in the days after a petition is filed but while the matter remains pending before the region would be to exalt form over substance.” (*Id.* at 26.)

Pursuant to this authority, we find that the Regional Director did not act improperly by considering the submission of authorization cards in the days following the initial filing of the majority support petition. We are especially cognizant of the fact that,

⁷ We note that Board regulation 20391, subdivision (a)(2) also does not require the concomitant filing of a majority support petition and accompanying proof of support, noting only that evidence of majority support shall be submitted “as soon as possible after the petition is filed . . .” (8 CCR § 20391(a)(2).)

under Labor Code section 1156.37, subdivision (d), the petitioning labor organization will not receive a list from the employer of eligible employees in the petitioned-for bargaining unit until up to 48 hours *after* the submission of the majority support petition. This makes it difficult for the petitioner to definitively determine if it has secured majority support in advance of filing the petition. Accordingly, we find the Region did not err in permitting a “rolling production” of authorization cards in the few days following the submission of the MSP, and we dismiss the Employer’s objection to this effect.

2. The Results of the Majority Support Election Were Not Affected by Improper Conduct.

The Employer additionally argues that during the few days following the initial submission of the majority support petition, agents of the UFW “obtain[ed] additional cards using [] promises, misrepresentations, public humiliations, and coercion.” (Emp. Objections, p. 8.) The Employer submitted declarations from employees detailing these allegations. The allegations at issue are as follows:

- UFW agents went to the home of husband and wife Manuel Martinez and Amalia Pacecho and told them “we needed to sign the card to get an increase in wages and other benefits.” Martinez and Pacecho signed the cards, but say they felt intimidated by individuals knowing where they lived. (Declarations of Amalia Pacecho and Manuel Martinez, p. 2.)
- A UFW agent went to the home of husband and wife Alberto Garcio and Archely Garcia. When Archely Garcia got angry that the UFW agent knew their personal information, the UFW agent said to Alberto, “So now you let

your wife tell you what to do?” In the words of Alberto, the UFW agent “tried to get in by pushing the door, but I informed her we only needed her outside. We did not let her in.” The UFW agent left the premises and then said over a loudspeaker that “They were cowards.” They did not sign authorization cards. (Declaration of Alberto Garcia and Archely Garcia, pp. 1-2.)⁸

- A UFW agent called employee Javier Saavedra Bravo and said that, in his words, “I must sign a contract or agreement.” Saavedra Bravo took this as referring to a union authorization card. He did not sign a card. (Declaration of Javier Saavedra Bravo, pp. 1-2.)
- UFW agents told employee Teresa Cruz that, in her words, “everyone in the company had signed cards except me. They claimed that I was the only one who was left who did not sign a card” and that she “had to sign.” (Declaration of Teresa Cruz, p. 1.) A UFW agent told Cruz that “they will guarantee 40

⁸ The Declaration of Alberto Garcia and Archely Garcia and the Declaration of Amalia Pacecho and Manuel Martinez are signed by both spouses, but contain first person language like “The woman . . . told me *who I was*, what work *I did* . . .” (Declaration of Alberto Garcia and Archely Garcia, p. 1) and “[t]hey both told *me* . . .” (Declaration of Amalia Pacecho and Manuel Martinez, p. 2) (emphasis added.) Thus, it is difficult to determine which witness had firsthand knowledge of the facts to which they are testifying. (See *UFW (The Dimare Company)* (November 2, 2023) ALRB Admin. Order No. 2023-11, p. 16 [“[T]he Board has required declarations be based on personal knowledge or will not be considered.”]; *South Lakes Dairy Farms* (2013) 39 ALRB No. 2, p. 10 [“motions filed before the Board in which facts not in the record are alleged should be accompanied by a declaration filed under penalty of perjury by a person with personal knowledge of those facts”].) While these joint declarations are of questionable validity for the reasons cited, we nevertheless dispose of them on other grounds explained below.

hours a week, all holidays paid, and year-round work,” to which she responded that she already had year-round work. She did not sign a card. (*Id.* at 2.)

- A UFW agent told employee Angelica Julio, after she refused to sign an authorization card, “this is how you teach your kids?” (Declaration of Angelica Julio, p. 1.)
- Foreman Juan Morales heard from his crews that UFW agents told employees that “if they wanted to get a wage increase they had to sign the union’s authorization card.” (Declaration of Juan Morales, p. 2.)
- Foreman Elias Maldonado heard from his crews that UFW agents told employees that “if they wanted to get a wage increase, they must sign the UFW cards” and “everyone else has signed except you.” (Declaration of Elias Maldonado, p. 2.)⁹

Even accepting all of the allegations set forth above in the light most favorable to the Employer, we still hold that the Employer has failed to establish the aforementioned conduct affected the results of the majority support election:

A. The alleged conduct did not affect a determinative number of voters

⁹ The declarations by foremen Juan Morales and Elias Maldonado concerning what they were told by members of their crew clearly constitute hearsay and are to be disregarded. (See *UFW (The Dimare Company)*, supra at pp. 15-16 [“[T]he Board has long held that election objections will not be referred for hearing where they are not supported by declarations stating facts within the personal knowledge of the declarants. Objections that rely on hearsay evidence do not meet this standard.”]; *Coastal Berry Co., LLC* (2000) 26 ALRB No. 1, p. 98 [objection dismissed where supporting declaration was “based entirely on hearsay”].)

“[T]he party objecting to an election bears a heavy burden of demonstrating not only that improprieties occurred, but that they were sufficiently material to have impacted the outcome of the election.” (*Gerawan Farming, Inc.* (2018) 44 ALRB No. 10, p. 4, citing *Oceanview Produce Co.* (1994) 20 ALRB No. 16, p. 6; *Nightingale Oil Co. v. NLRB* (1st Cir. 1990) 905 F.2d 528.) “The burden is not met merely by proving that misconduct did in fact occur, but rather by specific evidence demonstrating that it interfered with the employees’ exercise of their free choice to such an extent that the conduct changed the results of the election.” (*Id.*, citing *Kux Manufacturing Co. v. NLRB* (6th Cir. 1989) 890 F.2d 804; *Premiere Raspberries, LLC* (2017) 43 ALRB No. 2, pp. 5-6.) As such, the Board has “long employed a realistic ‘outcome-determinative’ test.” (*Mann Packing Co., Inc.* (1990) 16 ALRB No. 15, p.4; *Gerawan Farming, Inc. v. ALRB* (2018) 23 Cal.App.5th 1129, 1127-1228 [noting that the unique and seasonal nature of agricultural work explains the ALRB’s “outcome-determinative” standard as compared with the National Labor Relations Board’s “laboratory conditions” standard].)

Here, even if all of the Employer’s proffered evidence is accepted as true, the Employer has only established that two employees, Amalia Pacecho and Manuel Martinez, signed cards because they felt pressured by union agents. (Declarations of Amalia Pacecho and Manuel Martinez, p. 2). The rest of the employees that submitted declarations for the Employer did not proffer testimony that they signed authorization cards. The Regional Director’s Tally of Ballots counted 170 valid authorization cards in a petitioned-for unit of 332 employees. Thus, even if taken in the light most favorable to the Employer, the exclusion of the authorization cards signed by Amalia Pacecho and Manuel Martinez would

still leave 168 valid authorization cards out of 332 employees, a sufficient number to establish majority support. The Employer has thus failed to establish in its objections that its allegations would be outcome-determinative, as required by Board precedent.

B. The conduct alleged by the Employer would not reasonably interfere with employee free choice.

Next, even assuming *arguendo* that UFW engaged in the conduct alleged by the Employer, and that conduct was disseminated more widely than the employees specifically mentioned in the Employer's declarations, we would still find that the conduct did not reasonably interfere with employee free choice in the majority support election.

"[A]llegations of misconduct that could affect the results of an election are evaluated under an objective standard, rather than by the subjective individual reactions of employees, and thus the inquiry is whether the conduct was such that it reasonably would tend to interfere with employee free choice in the election." (*Gerawan Farming*, *supra* at p. 5, citing *L.E. Cooke Co.* (2009) 35 ALRB No. 1, p. 13; *Triple E Produce Co. v. ALRB* (1983) 35 Cal.3d 42, 54- 55.) Accordingly, we do not consider the subjective declarations of whether certain individual employees felt pressured or coerced, and instead focus on the actual conduct alleged by the Employer.¹⁰

¹⁰ Based on this precedent, we reject the Employer's argument that the conduct of a UFW agent was objectionable because employee Teresa Cruz "didn't like his vibe." (Emp. Objections, p. 7.) Declaratory evidence generally, and evidence of misconduct sufficient to justify an objection and necessitate further investigation specifically, cannot be supported on "vibes" alone: more is needed to adequately support such an allegation.

Examining the alleged conduct imparted to UFW agents by the Employer, we hold that even if these allegations were true, such conduct would not reasonably interfere with employee free choice during the majority support election.

“Employees are generally able to understand that a union cannot obtain benefits automatically by winning an election but must seek to achieve them through collective bargaining. Union promises . . . are easily recognized by employees to be dependent on contingencies beyond the Union’s control and do not carry with them the same degree of finality as if uttered by an employer who has it within his power to implement promises or benefits.” (*FleetBoston Pavilion* (2001) 333 NLRB 655, 655, citing *Smith Co.* (1971) 192 NLRB 1098.) Accordingly, we find the alleged statements made by UFW agents that signing an authorization card would earn employees wage and benefit increases do not constitute objectionable promises of benefit.

Next, we find the alleged statements that “everyone else” was signing union cards did not constitute misrepresentation or coercion which would reasonably interfere with employee free choice, especially in light of the significant number of cards collected by the UFW before these alleged statements were made. See, e.g., *Beaver Bros. Baking Co.* (1972) 198 NLRB 327, 329 [statement that “you might as well sign a card, practically everybody else signed, it’s no use, you might as well sign too.” found unobjectionable].)

Finally, we note that “mere name-calling . . . does not generally warrant setting aside an election.” (*Local 299, International Brotherhood of Teamsters*, 328 NLRB 1231, 1231 fn. 2; citing *Firestone Textiles Co.*, 244 NLRB 168, 171 (1979) [derogatory remarks made to employees who ignored union handbillers, including “company suckass,” “bitch,”

and “son of a bitch,” not found to constitute statements which would intimidate or coerce voters in upcoming representation election].) Accordingly, we find the alleged statements made to certain employees that “they were cowards,” “[s]o now you let your wife tell you what to do?”, and “this is how you teach your kids?”, though perhaps uncouth, would not amount to threats or coercion sufficient to overturn the results of a Board election.

For these reasons, we dismiss the Employer’s objection that alleged improper conduct affected the results of the majority support election.

ORDER

For the foregoing reasons, the Employer’s Objections to Petitioner UFW’s Majority Support Petition are DISMISSED. The Regional Director’s Certification of Investigation of Validity of Majority Support Petition and Proof of Support is AFFIRMED.

IT IS SO ORDERED.

DATED: August 6, 2026

Victoria Hassid, Chair

Barry D. Broad, Member

Ralph Lightstone, Member