STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACK or MARION J. RADOVICH, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 79-CE-19-D, 79-CE-20-D, 79-CE-21-D, 79-CE-23-D, 79-CE-26-D, 79-CE-27-D, 79-CE-31-D, 79-CE-32-D, 79-CE-33-D, 79-CE-34-D, 79-CE-35-D, 79-CE-39-D, 79-CE-45-D, 79-CE-48-D	9 ALRB No. 16

DECISION AND ORDER

On March 13, 1980, Administrative Law Judge (ALJ)[1] Paul D. Cummings issued the attached Decision in this proceeding. Thereafter, Respondent and General Counsel each filed timely exceptions, a supporting brief, and a reply brief.

Pursuant to the provisions of Labor Code section 1146,[2] the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.

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

The complaint herein, based on charges filed by the United Farm Workers of America, AFL-CIO (UFW or Union), alleges

---

[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.)

[2] All section references herein are to the California Labor Code unless otherwise specified.

that Respondent violated section 1153(a), (c), and (e) of the Agricultural Labor Relations Act (Act). In late April to early May 1979,[3] Respondent's employees filed three decertification petitions which were all subsequently dismissed by the Fresno Regional Director. Respondent's conduct in the context of the decertification drive gave rise to the charges filed in the instant matter. The complaint alleges that Respondent's agents and supervisors assisted and participated in the solicitation of signatures for the decertification petitions, engaged in other conduct which undermined the strength of the UFW, interfered with Board agents in their efforts to communicate with Respondent's employees,[4] and in various other ways interfered with the section 1152 rights of employees who continued to support the UFW.

Employer Campaigning

On April 27, three days after the first decertification petition was filed, Jack Radovich visited each of the four crews which were working at that time and read a prepared speech to the employees in English. During the course of those speeches,

---

[3] All dates refer to 1979 unless otherwise indicated.

[4] We reject and reverse the ALJ's conclusion that Respondent violated Labor Code section 1153(a) on May 8 by its counsel's refusal to leave the area where a Board agent was distributing a Board Notice. Since the permission obtained by the Board agents was limited to the reading of the official Board Notice regarding the pending decertification petition, and since Board agents had previously exceeded the scope of access agreements with Respondent, it was reasonable for Respondent to monitor the distribution of the Notice. Moreover, since the reading or distribution of a Notice by itself does not create a need for confidentiality or privacy of communication between Board agents and employees, the presence of a company representative would not tend to interfere with the employees' rights under section 1152.

Radovich made the following statement:

> Finally there is the union's insurance plan. In less than one year we paid over 26,000 dollars to the union's insurance plan. With the union's insurance you have nothing but complaints--And the medical clinic has been closed. Before we had the contract you had better insurance and you could go to any doctor or hospital you wanted. In less than one year you have paid nearly 15,000 in dues and we have paid another 49,000 dollars. That is a total of 64,000 dollars. What will happen if you vote the union out? What else will happen? I cannot make you any promises about what will happen in the future and I will not. But I do ask you to remember what it was like before the union. You had good pay--as good as anyone in the area. You had good insurance and you had no dues to pay. You might also ask your friends or neighbors who work at non-union ranches to see what it is like with no union.

General Counsel alleged that through that speech, Respondent improperly interfered in the decertification process by implicitly promising the employees it would provide a better health plan than was available through a union contract if they voted against the Union.

Under section 1155 of the Act, modeled after section 8(c) of the National Labor Relations Act, the expression of any views, arguments, or opinions, whether in written, printed, graphic, or visual form shall not constitute evidence of an unfair labor practice, if such expression contains no threat of reprisal or force, or promise of benefit. Thus, employer speech which does not contain any threat or promise cannot be found to be an unfair labor practice. However, in analyzing employer campaign statements for the presence of promises, we are not limited to finding express statements that particular benefits will be given in exchange for a vote to decertify. Rather, a violation may be found in a statement from which promises may reasonably be inferred.

(Dow Chemical Company v. NLRB (5th Cir. 1981) 660 F.2d 667 [108 LRRM 2924]; Chromalloy Mining and Minerals v. NLRB (5th Cir. 1980) 620 F.2d 1120 [104 LRRM 2987].)

In analyzing employer campaign statements to determine whether they are permissible, we shall focus on whether the employees could reasonably find an implied promise of benefit in what was said. The United States Supreme Court has stated:

> 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 § 7 and protected by § 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.
> (NLRB v. Gissel Packing Co. (1969) 395 U.S. 575 at 617.)

In the instant case, Respondent implied to its employees that the superior medical insurance program which covered them prior to the negotiation of a labor contract would be reinstituted if the UFW was decertified. We find that Respondent's above-quoted statement was an implied promise to restore that benefit in return for a no-union vote. Respondent did not imply that, absent the Union, it would restore all the fringe benefits which employees enjoyed before they had a union contract, but it selected one pre-contract benefit which was superior and implied that that benefit would be restored if the employees rejected the Union.

In NLRB v. Carilli (9th Cir. 1981) 648 F.2d 1206 [107 LRRM 2961], the court upheld the National Labor Relations Board's finding of an unlawful implied promise of benefits where the employer asked

whether they would need the union if medical and dental insurance benefits were otherwise provided. Although the court found the employer's statements innocuous on their surface, it upheld the Board's finding:

> ... that the language used by the Carillis in these conversations was reasonably calculated to give Bywater the impression that Antonino's was considering instituting its own superior medical insurance program if the employees would not support the Union. (Id., at p. 1212.)

Contrary to our dissenting colleague, we find no basis for distinguishing Respondent's implied promise to reinstitute a former benefit program from the subtle promise in Carilli to institute a new benefit program.[5/] We therefore conclude that Respondent, by its implied promise, violated Labor Code section 1153(a).[6/]

Interrogation of Daniel and Enedina Casas

General Counsel excepts to the ALJ's failure to find a

[5/] We also find the cases cited by the dissent inapposite to the instant case. In Shows, Inc. (1977) 228 NLRB 1355 [95 LRRM 1015], Thrift Drug Co. (1975) 217 NLRB 1094 [89 LRRM 1292], and Dow Chemical Co., supra, 660 F.2d 667, no unlawful promises were found in the employers' comparison of benefits enjoyed by union-represented employees under a labor contract to the benefits which were then available to the employers' nonunion employees. The comparison was held to be noncoercive in those cases because it was clear that all nonunion employees had only one option available to them (i.e., the existing nonunion benefit) and that a change to the higher wage level or better benefit program was the consequence of a change to nonunion status. In that context, the employers' description of the nonunion benefits was merely an explanation of the consequences of decertification and did not add any special or novel inducement to decertify the union.

[6/] In finding an unlawful promise of benefits in this case, Member Waldie expresses no opinion as to the right of an employer to engage in a nonunion campaign prior to a decertification election, absent threats of reprisal and promises of benefit.

violation of section 1153(a) in the interrogation of Daniel and Enedina Casas by foreman Alfonso de Leon. We find merit in that exception.

The ALJ found that eight days after the circulation of the first decertification petition, Alfonso de Leon asked employees Daniel and Enedina Casas whether they wanted the Union or no union. De Leon denied asking the question. The ALJ credited Daniel Casas but refused to find a violation for two reasons: (1) the interrogation allegation was not specifically pleaded in the complaint; and (2) it was an isolated event.

Paragraph 20 of the amended complaint alleges that de Leon interrogated the Casas couple about their communications with the UFW. While that allegation does not specifically refer to interrogation concerning the employees' preference for a union or no union, Respondent nevertheless received adequate notice that interrogation by de Leon was at issue. In addition, the issue was fully litigated; de Leon was called as a witness and denied questioning the Casas. This Board has held that violations of the Act may be found even where they are not alleged in the complaint where the incident is fully litigated at the hearing and is closely related to the allegations in the complaint. (See Prohoroff Poultry Farms (1977) 3 ALRB No. 87, enforced (1980) 107 Cal.App.3d. 622.) We also reject the ALJ's finding that the interrogation was an isolated event, since we have found that Respondent has engaged in one other unlawful act on four occasions, and we conclude that all of those acts tended to interfere with its employees' free choice during the decertification campaign, and thereby constituted

violations of section 1153(a) of the Act.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Jack or Marion J. Radovich, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating agricultural employees regarding their union sympathies.

(b) Impliedly promising its agricultural employees improved health insurance benefits if they vote to decertify their certified collective bargaining representative.

(c) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Agricultural Labor Relations Act (Act).

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(b) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent within the six-month period commencing on April 20, 1979.

(c) Post copies of the attached Notice, in all

appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(d) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(e) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: April 4, 1983

ALFRED H. SONG, Chairman

JEROME R. WALDIE, Member

MEMBER McCARTHY, Dissenting in Part:

I dissent from my colleagues' reversal of the Administrative Law Judge's (ALJ) finding that Respondent's message to employees on April 27, 1979, constituted a legitimate exercise of its constitutional right of free speech within the meaning of Labor Code section 1155.

The majority's focus is on a prepared text which, it concedes, lacks an express promise of benefit but from which, it argues, such a promise may be inferred.[1/]

My colleagues have taken Respondent's clear and simple suggestion that employees compare their past and present medical

---

[1/] In its brief in support of exceptions to the ALJ's Decision, General Counsel also concedes the absence of an express promise but suggests that since employees were not given a copy of the prepared text, "each worker had only his impression of the message delivered by Respondent." General Counsel mistakenly assumes that the subjective reaction of individual employees is the criterion for determining whether a promise has been made or implied. Actually, we use an objective criterion, i.e., whether the employer's words would reasonably tend to constitute a promise of benefit.

insurance plans, and have somehow interpreted it to be a subtle implied promise that Respondent would reinstitute the previous plan or provide a new and better plan if the employees would reject the Union. Applying the objective standard referred to above in footnote 1, I would find there was no such promise and no reasonable likelihood that Respondent's words would be so interpreted by employees.

The fundamental error in the majority opinion, in my judgment, is its failure to recognize that Respondent did nothing more than ask its employees to compare the medical benefits and pay available to them both before and after the advent of the Union in order to underscore Respondent's view or opinion, clearly permissible under Labor Code section 1155, that the Union had not materially improved those aspects of their working conditions. In NLRB V. Gissel Packing Co., Inc. (1969) 396 U.S. 804 [72 LRRM 2443], the Supreme Court declared that an employer is free to communicate to its employees its views concerning the consequences of unionization so long as the communications do not contain a threat of reprisal or force or promise of benefit and so long as any prediction of the effects of unionization is based on objective facts.[2/]

[2/] In its reliance on NLRB v. Carilli (9th Cir. 1981) 648 F.2d 1206, the majority correctly but selectively quotes from only a portion of the text of the National Labor Relation Board's (NLRB) Decision which the court affirmed. But the majority has chosen to omit the pivotal finding of the NLRB that the employer had coercively interrogated an employee on two separate occasions, each time proffering benefits conditioned upon the employee's withdrawal from the union. Cognizant of this critical distinction in this and other such incidents, the court also stated that:

(fn. 2 cont. on p. 11)

Following the Gissel court's invocation of First Amendment principles in preelection contexts, the National Labor Relations Board (NLRB) reasoned, in Walgreen Co. (1973) 203 NLRB 177 [83 LRRM 1059], that:

> Section 8(c)3/ grants to an employer the right, in a manner and setting free from coercion, to compare benefits presently in effect in his unorganized operation with those enjoyed by employees in a similar operation which has union representation.

This principle later was extended to an employer's comparison of benefits which a union of its employees had received under a past collective bargaining agreement with benefits which would become implemented in the same company's nonunion facilities. In Shows, Inc. (1977) 228 NLRB 1355 [95 LRRM 1015], the NLRB approved of the ALJ's observation that:

> Under these circumstances, it is a reasonable inference that union employees might conclude that, if they rejected the Union in an upcoming election, they would benefit from some of the company provisions which, at that time, were not available to them. On the other hand, an employer would seem to be entitled to point

(fn. 2 cont.)

> Although the surface innocuousness of the conversations here involved renders the question a close one, we agree with the Board's conclusion that viewed in their overall context, these conversations contained both promises of benefits for withdrawal of support for the Union and coercive implications that once the benefits were instituted, the employees were expected to either withdraw from the Union or find work elsewhere.

Such statements must be viewed in their entirety by an objective standard, and in consideration of the likelihood of their total effect on the receiver. (NLRB v. Gissel Packing Co., supra, 395 U.S. 575; Tommy's Spanish Foods, Inc. v. NLRB (9th Cir. 1972) 463 F.2d 116.) When so viewed, they clearly contain a proscribed promise of benefit as well as a threat of reprisal. Carilli, supra, is distinguishable, on its facts, from the case at hand.

3/ Section 1155 of the Agricultural Labor Relations Act (Act) parallels section 8(c) of the National Labor Relations Act (NLRA).

> out to employees the facts concerning what benefits are extant in a union vis-a-vis a similar nonunion facility.

The NLRB affirmed its ALJ's dismissal of the General Counsel's allegation that the employer had promised employees benefits if they rejected the union.

Thrift Drug Co. (1975) 217 NLRB 1094 [89 LRRM 1292] concerns an employer's preelection comparisons between benefits enjoyed by the employees at one of its union-represented stores and the superior benefits available to employees at its nonunionized stores. In the opinion of the NLRB:

> [T]his comparison of benefits is not objectionable ... We have approved benefit comparisons under a number of other circumstances. Absent threats of reduction of benefits or promise of increased benefits, such benefit comparisons are permissible campaign techniques which fall within the bounds of free speech permitted by section 8(c) of the Act.

As I would find nothing objectionable in Respondent's suggestion that its employees compare their present and past pay and fringe benefits, I find nothing objectionable in Respondent's expressing its opinion that a medical plan which cost less and permitted employees to choose their doctor and hospital was "better" than a plan which did not have those features.

In order to justify its finding that Respondent made an implied promise of benefit, the majority, in my view, has engaged in a strained reading of Chromalloy Mining & Minerals v. NLRB (5th Cir. 1980) 620 F.2d 1120 [104 LRRM 2987]. In Chromalloy, the NLRB found an implicit promise of benefit on the basis of a particular fact situation concerning employer

conduct prior to an election in which only eight employees were eligible to vote. Unlike the Respondent herein, the employer in Chromalloy discriminatorily refused to recall employees who then would have been eligible to participate in the election, presumably in support of the union, and, on the eve of the election, offered one employee special training which could lead to a new assignment with increased job security. The union lost the election by one vote. In affirming in particular the national Board's finding of a promise of benefit, the court found that the training offer constituted a "new" benefit and, taking into account the surrounding circumstances (specifically, the employer's threat to cut back on production should the union prevail), would likely be considered as such by the employee himself. The court concluded that a "subtle intimation of advancement for workers who rejected the union constitutes unlawful interference."

In Dow Chemical Company v. NLRB (5th Cir. 1981) 660 F.2d 637 [108 LRRM 2924], the Fifth Circuit Court of Appeals cautioned that the Chromalloy "inference ... must be one reasonably makeable by the employee or employees to whom the statement is made." As the court explained, it had not intended that under its Decision in Chromalloy,

> ... bits and pieces of statements may be later lifted out of context, that the facts and circumstances in which the statements were made and which were known to the employee or employer may be ignored, and that those bits and pieces may then be viewed in vacuo as either promises or non-promises.
> Dow Chemical Company v. NLRB, supra, at p. 644.)

I believe the majority's opinion in the instant

matter fails to make proper use of the guidance provided in Dow Chemical Company v. NLRB, supra, 660 F.2d 637 [108 LRRM 2924]. The fact that Respondent's prior medical program may have been preferable to benefits provided by the Union is immaterial, as Respondent did not promise, expressly or implicitly, to restore the medical plan employees had been receiving prior to the advent of the union or to provide a better one. It merely invited them to make a comparison of those present and past benefits.

In Dow Chemical, the employer had 7200 employees, 2700 of whom were represented by various craft unions. A group of electrical workers sought to decertify the International Brotherhood of Electrical Workers (IBEW). During a series of meetings with employees, the employer explained differences between the wage-benefit schedules (including medical insurance) of its represented and unrepresented employees. In some instances, the employer pointed out, the salaries and benefits of unrepresented employees were superior to those of represented employees. The employer also stated, as did Respondent herein, that it could not make any promises as to a probable wage-benefit structure in the event the union was decertified. IBEW filed post-election objections and unfair labor practice charges alleging that the employer had told employees that decertification of the union would result in an increase in wages and other benefits.

In the Dow case, the ALJ recognized that NLRA section 9(c) grants employers freedom to express their views

prior to a decertification election. While he found that Respondent told employees only the facts, he suggested that,

> ... the anomaly exists that wages and benefits for salaried employees were in fact better in some respects than wages and benefits being paid hourly represented electricians. In essence, it can be argued that by telling the facts, Respondent was automatically engaging in a promise of benefits ... Respondent went too far when it made the judgment that decertification meant better and increased wages and benefits and told the employees that. By so doing, Respondent advanced into a forbidden area of promising employees benefits if they voted to reject the union.
> (Id., at p. 645; emphasis in original.)

The NLRB affirmed the ALJ's findings but the Fifth Circuit Court of Appeals reversed, stating that, "... the foregoing falters for lack of support in the record." (Id. at p. 645.)

In its brief to the court, the NLRB had asserted that:

> [A]n employer is entitled to present facts concerning the benefits or experience of its non-union employees ... [but] an employer is not free to inform employees outright, or by suggestion, that it will give them more if they vote to decertify the union.
> (Id., at p. 645.); emphasis in original.)

Apparently adopting the Board's view of the applicable law governing campaign speech in the context of decertification elections, the court found no evidence that the employer had promised that employees would receive more than the nonrepresented employees if they voted to decertify the union. The court characterized the statements in issue as either expressions of opinion, reflections of the speaker's desires, or truthful answers to employees' questions.

With particular reference to the free speech provisions

of the statute in representation vis-a-vis decertification elections, the Fifth Circuit commented in this manner,

> ... we see no basis in law or justice for distinguishing on a basis of which side won or lost ... Moreover, we view the Act as requiring that its labor peace goals, as well as protection of worker's freedom to choose, be achieved by an even-handed application of the same rules of the game to all elections and to both sides. (Id., at 654.)

It goes without saying that an employer has the same right to communicate to employees its views, arguments, and opinions with respect to a decertification campaign and/or election as it has with respect to an initial representation or a rival-union campaign and/or election. The NLRB has recognized that right continuously since 1947[4/] by hearing and deciding countless cases involving alleged unlawful or objectionable statements made by employers during decertification campaigns, without ever suggesting that the exercise of that right by employers be limited, except insofar as the employer's statements contain a threat of reprisal or force or promise of benefit. In this regard, in Dow Chemical Company v. NLRB, supra, 660 F.2d 637 [108 LRRM 2924], the court has stated, in an observation which I find especially applicable to the case before us:

> If the ... statements here involved must under the present circumstances be considered 'promises' violative of the Act, virtually nothing would be left to employers in an election campaign but a sterile silence.
>
> * * *
>
> We deal with an election, where the effective silencing of one source of information would be a clear disservice

---

[4/] It was in that year that Congress adopted section 9(c)(1)(A)(ii) as part of the NLRA.

to employees faced with the need of making an informed choice.
(Id., at p. 646.)

I am confident that none of my colleagues would seriously wish to deprive employees of the right to hear both, or all, sides of a representation question before making their important choice in any type of secret-ballot election conducted by this Agency. Based on long-standing NLRA precedents, and the principles set forth in Dow Chemical Company, supra, 660 F.2d 637 [108 LRRM 2924], I find no evidence that Respondent's statements to employees were based on other than fact[5/] or that Respondent promised or even implied to any employees that they would receive more or better wages and/or benefits if they voted to decertify the Union.

For the reasons set forth above, I would dismiss the allegation in the complaint which alleges an unlawful promise of benefits.

Dated: April 4, 1983

JOHN P. McCARTHY, Member

[5/] No party has alleged that any statement made by Respondent was not truthful.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we, Jack or Marion Radovich, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by promising improved health insurance benefits if you voted to decertify the United Farm Workers of America (AFL-CIO), and by interrogating two employees about their union sympathies. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT promise you that improved health insurance benefits will be available if you vote to decertify the UFW.

WE WILL NOT interrogate any agricultural employee about his or her union sympathies.

Dated:

JACK OR MARION RADOVICH

By: _____
(Representative) (Title)

If you have questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California. The telephone number is (805) 725-5770.

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

Jack or Marion Radovich (UFW)

9 ALRB No. 16
Case Nos. 79-CE-19-D et al

The complaint herein, based on charges filed by the United Farm Workers of America, AFL-CIO (UFW), alleges that Respondent Radovich engaged in violations of sections 1153(a), (c), and (e) of the Act. In late April to early May 1979, three decertification petitions were filed by Radovich employees and subsequently dismissed by the Fresno Regional Director. It is Respondent's conduct in the context of the decertification effort which is the subject of the instant case. The complaint alleges that Respondent's agents and supervisors assisted and participated in the solicitation of signatures for the decertification petitions, engaged in other conduct which undermined the strength of the UFW, interfered with Board agents in their efforts to communicate with Radovich employees about the Board's procedures with respect to the decertification petitions, and took various actions to interfere with the rights of employees who continued to support the UFW.

ALO DECISION

The case was heard by ALJ Paul Cummings in Delano, California, during twelve days of hearing. The ALJ ruled for Respondent on almost all counts, crediting Respondent's witnesses over UFW and Board witnesses, including Board agents. The only violation found by the ALJ concerned an incident on May 8, 1979. The ALJ concluded that Respondent violated section 1153(a) by the company attorney's interference with a Board agent as he spoke with employees on Respondents property, since Respondent had previously granted the Board agent permission to enter its property.

BOARD DECISION

The Board adopted the ALJ's findings and conclusions with several exceptions. The Board concluded that the speech delivered by Respondent to its employees contained an unlawful promise to introduce a new medical plan if the UFW was decertified; that two employees were interrogated by their foreman about their union sympathies; and that Respondent did not violate section 1153(a) by interfering with Board agent access on May 8, 1979.

DISSENTING OPINION

In Member McCarthy's view, Respondent's speech was nothing more than an invitation to employees to compare their past pay and fringe benefit structures with similar benefits available pursuant to unionization. He found no evidence that Respondent's statements to employees were based on anything other than fact or that Respondent promised or even implied to any employees that they would receive more or better wages and/or benefits if they voted to decertify the incumbent union. Based on applicable precedents, Member McCarthy would find no distinction between an employer's free speech rights in decertification vis a vis initial certification elections. In so clarifying his position, he stated that he is confident that none of his colleagues would seriously wish to deprive employees of the right to hear both, or all, sides of a representation question before making their important choice in any type of secret-ballot election conducted by this Agency.

* * *

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

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

STATE OF CALIFORNIA

Agricultural Labor Relations Board
MAR 21 1980
RECEIVED
Exec. Secretary

In the Matter of:	)	
	)	
JACK or MARION J. RADOVICH,	)	Case Nos. 79-CE-19-D
	)	79-CE-20-D
Respondent,	)	79-CE-21-D
	)	79-CE-23-D
and	)	79-CE-26-D
	)	79-CE-27-D
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	79-CE-31-D
	)	79-CE-32-D
	)	79-CE-33-D
Charging Party.	)	79-CE-34-D
	)	79-CE-35-D
		79-CE-39-D
		79-CE-45-D
		79-CE-48-D

Martin Fassler, Esq.
for the General Counsel

Deborah Miller
for the Charging Party

Seyfarth, Shaw, Fairweather and Geraldson, Esq.
by George Preonas, Esq., and
Paul Coady, Esq.
of Los Angeles, California
for Respondent

DECISION

STATEMENT OF THE CASE

Paul D. Cummings, Administrative Law Officer: This case was heard before me in Delano, California on July 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, and 30, 1979.

The complaint alleges violations of Sections 1153(a), 1153(c) and 1153(e) of the Agricultural Labor Relations Act (herein called the Act) by Jack or Marion J. Radovich (herein called Respondent). The complaint is based on charges filed by United Farm Workers of America, AFL-CIO (herein called Charging Party). The charges and complaint, including amendments thereto, were duly filed and served on Respondent or amended during the hearing on July 23, 1979 and July 24, 1979. The consolidated third amended complaint contains the complaint and all amendments thereto. Respondent, in its answer to the complaint, admitted the jurisdictional allegations and denied

the substantive allegations contained therein.

All parties were given full opportunity to participate in the hearing and after close thereof the General Counsel and Respondent each filed a brief in support of its position.

The complaint alleges Respondent violations of Sections 1153(a), (c), and (e) of the Act by reason of the following discriminatory acts:

1. On or about April 20, 1979, supervisor Perla Delfin participated in the circulation of a decertification petition.

2. On or about April 20, 1979, supervisor Perla Delfin misrepresented the purpose of the decertification petition to employees to obtain additional signatures.

3. On April 20, 1979, Eladio Maldonado, Agapito Rivera, and Benjamin Gallegos, employees of Respondent, circulated a decertification petition in the crews of supervisors Alfonso de Leon, Juan de Jesus, and Mohammed Abdullah. Respondent paid them for their time spent on April 20, 1979 in preparing, circulating, and seeking support for the petition.

4. During the month of December, Mohammed Abdullah, an agent of Respondent, offered to pay employee Jesus Hernandez to circulate a decertification petition.

5. Sometime between April 10 and April 20, 1979, Respondent threatened to evict employee Joe Monte from Respondent's labor camp because of his union activity.

6. On or about April 20, 1979, Mohammed Abdullah allowed Maldonado, Rivera and Gallegos to circulate a decertification petition among the employees of his crew, during which time the employees were paid full wages.

7. On or about April 25, 1979, Respondent hired Myriam Maldonado, wife of Eladio, in consideration for his efforts in circulating a decertification petition.

8. On or about April 26, 1979, Respondent agents Jack Radovich and Alfonso de Leon conducted surveillance of Charging Party representative Kenneth Schroeder, while he was conducting union affairs

with employees in de Leon's crew.

9. On or about April 27, 1979, agents Jack Radovich and Rita Prewitt made coercive statements to employees in Mohammed Abdullah's crew, referring to the economic power of Jack Radovich and his support for the effort to decertify Charging Party as the bargaining agent of Respondent's employees.

10. On or about May 1, 1979, supervisor Perla Delfin solicited signatures for a decertification petition.

11. On various occasions from April 25, 1979 through May 8, 1979, Respondent agents Paul Coady and Richard Barsanti interfered with the efforts of agents of the Agricultural Labor Relations Board (herein called the Board) to inform employees of Respondent about decertification election procedures and reasons for various actions taken by the Fresno Regional Office of the Board with respect to decertification petitions 79-RD-1-D and 79-RD-2-D.

12. On or about May 3, 1979, Respondent agent Jack Radovich rescinded an agreement with employee Camilo Garcia, a member of Charging Party negotiating team, by which Radovich employed Garcia to clean the company offices, thereby changing his working conditions and reducing his income.

13. On or about April 27, 1979, Respondent agent Ruth Salazar threatened employees in the crew of Mohammed Abdullah with economic retaliation if they were to vote against decertification of Charging Party as their collective bargaining agent.

14. On or about May 1, 1979, Respondent agent Alfonso de Leon interrogated employees Enedina and Daniel Casas about their communications with Charging Party.

15. On or about May 9, 1979, Respondent Jack Radovich informed his employees in the crew of Juan de Jesus that he would not sign a collective bargaining agreement with Charging Party.

16. On or about May 1, 1979, Respondent supervisor Benny Santella assisted in the solicitation of signatures for a decertification petition by summoning the employees in his crew to a place where the petition was being circulated.

17. On or about July 19, 1979, Respondent agent Alfonso de Leon instructed employee Ruben Sanchez not to provide any information to the Board "against the company," that is to the company's disadvantage.

18. During the week of July 9, 1979, Respondent provided work to Agapito Rivera and Eladio Maldonado while not providing work to approximately forty other employees in the crew of Juan de Jesus with more seniority to discourage support for Charging Party.

19. On or about April 27, 1979, Jack Radovich promised his employees in four crews of seasonal workers that if Charging Party were to be decertified in the pending election Respondent would provide a better health insurance plan than was in effect under the existing contract and that Respondent would match wages paid by any employer in the Delano area.

Respondent denied that it had committed any of the unfair labor practices alleged.

Upon the entire record, including my observation of the demeanor of the witnesses and consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

I find that Respondent is an employer engaged in agriculture in California and is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

I find that Charging Party is a labor organization representing California agricultural employees within the meaning of Section 1140.4(f) of the Act.

II. Respondent's Operations

Respondent ranch is a sole proprietorship owned by Marion J. Radovich, who is also known as Jack Radovich. Respondent is engaged in the cultivation of grapes primarily as well as in the growing of pistachios and pomegranates in southern Tulare and northern Kern Counties. Productive vineyards occupy about 1,000 acres in various locations in the two counties. Jack Radovich has over-all supervision of all ranch operations. Richard Barsanti (Barsanti) is Respondent's chief supervisor, with over-all responsibilities of all field operation under Mr. Radovich. A Mike Radovich was next in line of supervision. Little was said of him at the hearing. Respondent employed four separate crews in its operations each crew with its own seniority and each with its own supervisor or boss. These crew bosses are Benny Santella, Juan de Jesus, Alfonso de Leon, and Mohammed Abdullah, the last also known as Tully. The crew which worked under the direction of Benny Santella during the spring of 1979 was known as the "Agbayani crew". It had been under the direction of Primitivo Agbayani until he became ill in December, 1978. He had not returned to work at the time of the hearing. At times this crew was also supervised by Primitivo's wife Esmenia Agbayani. There are also 7 or 8 steady workers not in any crew but who drive tractors, do irrigation work, and work in the grape packing house. They are directly supervised by Mr. Barsanti. Work in the crews is seasonal and the number of employees working at any one time depends on the work requirements of the particular task. Beginning in early December of each year and continuing into February, the vines are pruned so that new growth can be controlled. Between April and June other processes are performed, depending on the variety of grape. These processes include suckering, lateraling, cutting wild shoulders, and deleafing. In 1979, the full crews were recalled on April 16 and performed these preharvest operations until early June, 1979, at which time the crews were laid off. A few workers continued to work during the period between operations, performing various odd jobs, such as hoeing weeds from around the vines.

III. Collective Bargaining Agreement

In September, 1975, the ChargingParty won a Board conducted election among Respondent's agricultural workers and thereafter was certified by the Board as their collective bargaining representative. Respondent and the Charging Party entered into a collective bargaining agreement in May, 1978, which by its terms remained in effect until May 10, 1979. At the time of the hearing Respondent and Charging Party were engaged in negotiating a new collective bargaining agreement, which has since been executed.

IV. Decertification Petitions

On April 20, 1979, after the crews had been recalled in full force, three workers in the crew of Juan de Jesus,

Agapito Rivera, Eladio Maldonado, and Benjamin Gallegos obtained a decertification petition from the Board's Delano field office. This first petition, there were two subsequent decertification petitions seeking to have the Charging Party decertified as the bargaining representative of Respondent's employees, was filed with the Board on April 24, 1979. It was dismissed by Regional Director of the Fresno Regional Office on April 27, 1979. A second such petition was filed on May 3, 1979 and dismissed on May 9, 1979. A third such petition was filed on May 10, 1979 and dismissed on May 11, 1979. It is the conduct of Respondent in the context of this seeking to decertify the Charging Party that is the subject matter of this complaint.

V. Rivera, Maldonado, and Gallegos.

On April 20, 1979, Mr. Rivera, Mr. Maldonado, and Mr. Gallegos began work with the rest of the de Jesus crew and worked until about 9:00 a.m., at which time they left together to go to the Delano field office to obtain what was to be the first of three decertification petitions. They returned to the fields about 25 minutes later. At some time later in the day, they left work to circulate the petition for signature among the other crews working at other locations. It is this time which is in dispute. The crew was paid for nine hours of work. Mr. Rivera, Mr. Maldonado, and Mr. Gallegos were paid for six hours of work. Respondent contends that the three left work about noon and were docked accordingly. The General Counsel contends that the three circulated the petition in the morning hours and that since they were paid their regular wages by Respondent for this time, this constituted illegal subsidy, consequently interfering with employee rights. This matter will be discussed more fully below.

VI. Perla Delfin

Perla Delfin works in the crew of Alfonso de Leon. There is no dispute that when the first petition was brought to the de Leon crew on April 20, 1979, she was largely instrumental in passing it around among the workers, explaining its purpose and soliciting their signatures. This activity is certainly within her right if she is an employee. However, if at the time she solicited signatures she was a supervisor, this activity would constitute interference on the part of Respondent. Extensive testimony was taken as to her duties. From the evidence, I find that Perla Delfin possessed none of the indicia that would indicate that she was a supervisor. Her work was a routine nature. After the work to be done by the crew was explained and demonstrated by Richard Barsanti and by de Leon, the workers would take up their assigned tasks. Ms. Delfin would see that the work was being done as had been directed. While she might indicate what was not being done correctly, she did not discipline the workers in any way. She also had the duty of helping slower workers keep up with the crew. Her duties do not call for the exercise of independent judgment. She is also a dues paying member of the bargaining unit. I find it quite incongruousto contend that for dues paying purposes she is a member of the bargaining unit but not for decertifying purposes. I find no merit to such contention.

I find that Ms. Delfin is not a supervisor and not an agent of Respondent. As an employee she had every right to take part in decertifying activities if she so desired. The slight difference in her base wages from that of other employees is certainly not such as would cloak her in the mantle of a supervisor nor is her routine work when she is placed over a group of female workers from time to time. Every working foreperson is not a supervisor. I find that Perla Delfin also helped to circulate the second decertification on May 1, 1979. My conclusions of fact are as stated above with respect to the first petition. She was not a supervisor.

VII. Misrepresentation of Decertification Petition

It is alleged in the complaint that Perla Delfin misrepresented the purpose of the decertification petition to obtain additional signatures. Ruben Sanchez testified that when Perla Delfin brought him the petition, she stated "Sign it for the Union. If you want the union, sign it, if you don't, don't." He also testifies that when he asked her whether she was going to sign the petition she said "No, because I don't want the Union." Nancy Sanchez, Ruben's wife, testified that Ms. Delfin approached her and her husband and said "Here's a paper for the union dues. If you want to go on with the union to sign it because...if you wanted to be with the union sign it, if you don't, don't sign it." Now, if this were true, it would be misrepresentating the purpose of the petition. The fact is that the petition itself explains its purpose. But more convincingly, Perla Delfin had signed the petition on the same page as the Sanchez signatures appear and above theirs. I find their testimony implausible. They were mistaken. Ms. Delfin did not misrepresent the purposes of the petition. She is of course not a supervisor.

VIII. Circulation of First Petition

Eladio Maldonado testified that after returning from the Delano office with the first petition on April 20, 1979, the petition was left in their car and they returned to work. Shortly before the lunch break they left work to go to the Abdullah crew, 20 minutes away. After circulating the petition there they stopped to get sandwiches in Richgrove and then went on south to Famoso where the de Leon crew was working. They remained with the de Leon crew for about one hour. They then drove back north to where their own crew was working for additional employee signatures. They did not return to work that day. Perla Delfin and Andres Pasion testified that the petition was brought to the de Leon crew in the afternoon. Four witnesses testified that the petition was brought to the de Leon crew in the morning of April 20, 1979. These employees witnesses are Mary Serna, Nancy Sanchez, Cruz Sanchez, and Ruben Sanchez. Mary Serna also testified that Mr. de Leon was present in his crew when the petition was being circulated. The record is clear the he was not present at that time. I have found the testimony of Ruben and Nancy Sanchez in relation to the representation of the petition by Perla Delfin to be unreliable. I do not credit the testimony of any of these four witnesses who

testified that the petition was circulated on the morning of April 20, 1979. I find that the petition was circulated in the afternoon of April 20, 1979. I find no assistance on the part of Respondent by reason of paying the employees concerned for six hours of work on April 20, 1979. It makes no sense for any employer to dock for three hours when he can just as easily dock for four or five under these circumstances. I find that he did not dock more because there was no need to dock more. Although the issue is not presented in view of my finding, I would wonder whether an unfair labor practice had been committed if he had not docked at all, particularly in view of Charging Party agents inundating Respondent's fields by the hour, engaging employees in union activity during working hours during this period of time, no one being docked on that account. Nor would one expect there to be. But what is good for the goose is just as good for the gander. The Act gives employees the right to engage in anti-union activity as well as union activity without interference. When employees engage in union activity during working hours without any reduction in pay, those same employees ought to be allowed to participate in anti-union activity without any reduction in pay. That there is a collective bargaining contract in existence should not color it. There is no contractual right to discriminate for reasons proscribed by the Act, in this case because employees chose to engage in anti-union activity.

IX. Myriam Maldonado

It is alleged that Myriam Maldonado, wife of Eladio Maldonado, was hired by Respondent in consideration for his efforts in circulating a decertification petition. The evidence presented to support this allegation is that Mrs. Maldonado was employed by Respondent at a time when one employee who had seniority was not yet recalled, a Gloria Velazquez.

To conclude, because an employee's wife was employed shortly after that employee was instrumental in the filing of a decertification petition, that such employment was in consideration of such filing is a leap into space that this hearing officer is not willing to make. Further, I find for the purposes of this hearing that Mrs. Velazquez was not recalled because Respondent considered her to be a harvest-only employee. The collective bargaining agreement specifically provides that separate seniority will be maintained for particular operations. Interestingly, when Mrs. Maldonado was hired twelve other employees without seniority were also employed, some of whom were the spouses of current employees. Why would Mr. Maldonado have to file a decertification petition to get his wife hired, when other employees were able to have their relatives employed with no trouble at all? The answer of course is that he did not. He asked his employer to employ his wife and, when a job became available, she was employed. I find as a fact that Mrs. Maldonado's hiring was not in consideration for Mr. Maldonado's filing a decertification petition.

X. Mohammed Abdullah and Jesus Hernandez

It is alleged that during the month of December, crew boss Mohammed Abdullah offered to pay employee Jesus Hernandez to circulate a decertification petition.

Mr. Hernandez testified in effect as follows: About two weeks after pruning season began in early December, 1978, Mr. Abdullah approached Mr. Hernandez and suggested that he file a decertification petition. During the remainder of the pruning season Mr. Abdullah repeated this suggestion on approximately nine other occasions, on some of which he offered to pay an unspecified sum of money in cash if he would circulate such a petition. No dates were set out. Four of these occasions took place at work, the remainder at Mr. Abdullah's home. On one occasion, Mr. Abdullah gave Mr. Hernandez a card with the name and address of the Delano field office urging him to visit the office to obtain a petition. There came a time when Abdullah said "I believe that in the Puerto Rican crew they already have someone." During all this time, in answer to Mr. Abdullah's suggesting, Mr. Hernandez had said little or nothing.

Mr. Abdullah, while admitting he gave Mr. Hernandez the card of a Board agent, denied soliciting Hernandez to file a decertification petition. He gave him the card because Hernandez had asked him "If you have a problem for the company, and you make a complaint to the union and the union didn't take care of it, where could he go?" Mr. Abdullah told him to go to the ALRB office and gave him the card.

If Hernandez's testimony is true, as the General Counsel contends, Respondent has committed unfair labor practices. However, I do not credit Mr. Hernandez. I credit the testimony of Mr. Abdullah. Mr. Abdullah is an experienced union representative, having represented the Teamsters throughout California for a number of years. He would have to be not only stupid but green as grass to solicite an unknown quantity over an extended period to commit a patent unfair labor practice and to offer him a bribe for doing so. Ten times, and maybe even more, is a lot of soliciting. Supposedly, he was "setting" Mr. Hernandez up. If so, he did not wait very long. On his first soliciting try, two weeks after pruning began he requested Mr. Hernandez to go to the Board for a decertification petition. Not likely. This is the same Mr. Abdullah, who, upon Mr. Hernandez's requesting work, told him "This ranch is under union contract, come on....if you like the union, there's work for you." I do not believe that a supervisor who had taken the trouble to discuss a prospective employee's union obligation if employed would turn around and persistently suggest to that employee that he file to get rid of the very union he knew was present. Supposedly Mr. Abdullah continued his solicitation long after Mr. Hernandez was elected or appointed union steward and Mr. Abdullah knew it. This would be a most unlikely state of affairs. I find no solicitation as alleged took place.

XI. Abdullah Crew Lunch Break

It is alleged in the complaint that on or about April 20, 1979, Mohammed Abdullah allowed Maldonado, Rivera, and Gallegos to circulate a decertification petition among the employees of his crew, during which time the employees were paid full wages.

On April 20, 1979, the three petitioners gathered the Abdullah crew together at the beginning of the lunch break and solicited the signatures of the workers for their decertification petition. After they left, Jesus Hernandez, Bruce Rodriquez, Eledia Hernandez, and other employees complained to Mr. Abdullah that they were short 10 minutes from their lunch period. Mr. Abdullah told them "Take a 30 minute lunch. You're entitled to 30 minutes, so take it." The argument is that the employees were paid for the ten minutes their signatures were being solicited and that this constituted employer support. The fact is that they were given 10 extra minutes of lunch at the demand of their union steward Jesus Hernandez. If their signatures were solicited during working hours, as happened at other locations, it would not have been proper to dock their pay. Anti-union activities of employees are just as protected as union activities. When the Charging Party's agents conduct their activities in the field no one is docked for having talked with them during working hours. Here it amounts to the same thing. It is as though the petitions were passed during working hours and the employees still got their 30 minutes for lunch. I further find that Hernandez, as agent for the Charging Party grieved for the extra ten minutes with Respondent's agent Abdullah and received it. That is what union steward's are for, to present grievances of the employees to the employer for remedy.

XII. Joe Monte

It is alleged that sometime between April 10 and April 20, 1979, Respondent threatened to evict employee Joe Monte from Respondent's labor camp because of his union activity.

Joe Monte, a field worker in the crew of Primitivo Agbayani, has lived in Respondent's labor camp for approximately ten years. All the occupants of this camp, approximately eight in number, are in the same crew. Respondent charges no rent and provides a full-time cook at no expense. The occupants pay only for their groceries and utilities. It definitely qualifies as a benefit of some value. Jack Radovich approached Mr. Monte around April 15, 1979 and told him "You haven't been working. You've been staying in the camp and the camp is for people that will work, that will come out in the field." Mr. Monte explained that he was sick. Mr. Radovich asked why he had not reported sick, to which Mr. Monte answered that he just could not, he did not feel like standing. Mr. Radovich then told him that the camp was for people working and that if he could not work he had better find somewhere else, that he had to pay the gas and all those facilities. Radovich stated "You're not fired. You can go live elsewhere but you can work

here." Mr. Monte then asked for another chance to which Mr. Radovich responded "You can stay if you want to, but this is your chance." Mr. Monte was still in occupancy at the labor camp as of this hearing.

The General Counsel contends that Respondent threatened to dispossess Mr. Monte because he had attended a contract negotiation session three days before the described confrontation and Respondent was indicating his displeasure. The General Counsel asks the Hearing Officer to conclude that this was the first such session he attended. There is no evidence one way or the other that Mr. Monte attended a previous session. There is evidence that he attended a number of sessions after his meeting with Mr. Radovich. Apparently he did not associate Mr. Radovich's admonition with respect to his attendance with his union activity and this is understandable. Because if Mr. Radovich wanted him to see any such connection, he certainly disguised it. The fact is Mr. Monte had a very poor attendance record and there is no evidence that in warning him to improve or depart, Respondent was giving him disparate treatment because of his union activity. One might ask if his attendance had been so bad since January, why wait until he has attended his first negotiating meeting in April to ask him to leave? First of all, we do not know that it was his first meeting; second, he was allowed to stay; third, if there was a message to get, it is clear that he did not get it; and lastly, Mr. Monte's attendance continued to leave a lot to be desired and still Respondent continued to act with restraint. He sought to resolve the problem with the assistance of the Charging Party's representative, just as he had from the beginning, even before he spoke to Mr. Monte. I find that Mr. Radovich's actions with respect to Mr. Monte did not interfere or coerce his employees in any manner proscribed by the Act.

XIII. Surveillance of Kenneth Schroeder

It is alleged that Jack Radovich and Alfonso de Leon conducted surveillance of Charging Party representative Kenneth Schroeder while he was conducting union affairs with employees in the de Leon crew.

Kenneth Schroeder, a Charging Party representative, testified in the following manner. On the morning of April 26, he was in the field in which the de Leon crew was working, processing grievances that had been filed. He spoke with each worker or pair of workers for approximately five minutes then he would go on to the next. As he went from row to row, he noticed that Mr. Radovich appeared to be watching him from the end of the row. He did not appear to be talking to any other person or to be doing anything but looking down the row toward Schroeder.

Mr. Radovich testified that his purpose in coming to the field this particular morning was to oversee the crew as they completed one pre-harvest job and commenced another. Mr. Radovich had occasion to walk into a row with Mr. de Leon to examine the work the crew was performing, at which time Mr.

Schroeder confronted him and they had an exchange, with Schroeder saying he was being surveilled and Radovich saying he was only doing his job.

I find that Respondent had a legitimate business reason for being in the fields that day and that he was engaged in the proper pursuit of that endeavor at all times. If a union representative choses to conduct union business in the employer's fields, he can expect to find the employer present on such occasions conducting business of his own. It cannot be concluded because a union agent feels that he is being "looked" at that that agent and the employees with whom he is conversing are the objects of surveillance. If one is standing in a row between vines and another is at the head of the row looking in that direction, is it a fair assumption that one is being spied on? I think not, particularly if the other party has a legitimate reason for being there, like conducting one's own business in one's own field.

XIV. Jack Radovich, Rita Pewitt, and Ruth Salazar

It is alleged that on or about April 27, 1979, Jack Radovich and Rita Pewitt, agent, made coercive statements to employees in the de Leon and Abdullah crews, referring to the economic power of Jack Radovich and of Radovich's support for the decertification effort and Ruth Salazar threatened employees in the Abdullah crew with economic retaliation if they were to vote against decertification of the Charging Party. It is also alleged in the complaint that on this date Jack Radovich promised his employees in each of the four crews that, if the Charging Party were to be decertified, the company would provide a better health insurance plan than was in effect under the existing collective bargaining agreement and that the company would match wages paid by any employer in the Delano area.

With respect to this allegation. Mr. Radovich testified in the following manner. On April 27, 1979, he visited each of the four crews and gave a prepared speech, which he read to the employees in English. He used Ruth Salazar to read the speech to the Abdullah crew in Spanish. He invited Rita Pewitt, office bookkeeper, to go with him to the fields to answer questions from the employees that he could not answer, such as insurance, the medical plan, and payroll matters, so "if there was any question they could be answered right then and there." Rita Pewitt had broad power to answer questions. Mrs. Pewitt's work place was in the office. She rarely visited the fields. On this occasion she visited all four crews in the company of Mr. Radovich. Mr. Radovich's prepared speech, which I find was the speech read to the employees by him and translated on the one occasion by Ms. Salazar, reads as follows:

> "As most of you know on Tuesday a decertification petition was filed. The purpose of the petition was to have another election to determine whether you still want to have a union or whether you want to have no union. I do not yet know whether there will be an election. The union is doing

everything it can to stop you from having a chance to vote. I hope there is an election because I believe all of you should have a chance to vote in secret to decide whether you still want a union. For many years the union called strikes, marched, and picketed so that workers would have the opportunity to vote. It has been nearly four years since the last election and I agree that it is about time you should have a chance to vote again. But now that the workers want an election to throw out the union they no longer want to have an election. Instead of letting you vote, the union has sent dozens of organizers to the fields to stop you from having a chance to vote. Have you asked yourselves why the union does not want you to vote? I have, and I took sometime last night to check our payroll records. _Last year in May we signed a one year contract with the union. Since that time, in less than a year we deducted almost 15,000 dollars from your paychecks and given it to the union. That is more than 1,000 dollars each month that has been taken off your paychecks and paid to the union. Has the union ever told you what happened to your money? What about the money they also get from many, many workers at other ranches? The union says it has thousands of members. Where does all that money go? Then there is the Martin Luther King Fund. For every hour you work we have to pay five cents to the Fund. In less than one year we have paid over 8,000 dollars. Where does this money go? I don't know and I'll bet you don't either. We also pay ten cents per hour to the union pension fund. In less than one year we have paid over 15,000 dollars. Not one farm worker has ever received one penny in pension benefits. Finally there is the union's insurance plan. In less than one year we paid over 26,000 dollars to the union's insurance. With the union's insurance you have nothing but complaints---And the medical clinic has been closed. Before we had the contract you had better insurance and could go to any doctor or hospital you wanted. In less than one year you have paid nearly 15,000 in dues and we have paid another 49,000 dollars. That is a total of 64,000 dollars.

"What will happen if you vote the union out? The union will lose all of this money. What else will happen? I cannot make you any promises about what will happen in the future and I will not. But I do ask you to remember

> what it was like before the union. You had good pay--as good as anyone in the area. You had good insurance and you had no dues to pay. You might also ask you friends or neighbors who work at non-union ranches to see what it is like with no union.
>
> "I will let you know right away if there will be an election. I hope that there will be an election. I hope that you will have a chance to vote and that before you vote you consider carefully what I have said."

Mr. Jesus Hernandez testified that at lunchtime on the day in question, Mr. Radovich came to the Abdullah crew. With him were Mrs. Virginia Radovich, Mike Radovich, Paul Coady (Respondent counsel), and Rita Pewitt, whose name he did not know. First, Mr. Radovich read his speech, and then he gave it to Ruth Salazar to translate into Spanish. When Ms. Salazar finished someone asked her if this was for one to vote for Mr. Jack "...and she answered: 'Yes." And she said, 'He who doesn't...' (witness snaps fingers)." There was no response to Ms. Salazar. As to Mrs. Pewitt, Mr. Hernandez testified that she told the employees "All the union wants to do is swindle you." She said that all they were doing was keeping the two percent. She said:

> "...Look, all of this money, 64,000 has been given to the union and it has been cut from your checks, and you ought to see how no one of you, the workers, has received a pension plan, or not even a good insurance. If you want to help Mr. Jack, there will be content just like we were before there was any union or any of the problems because you never received a check from the union. You have always received them on behalf of or from Mr. Jack and that's why, who is it to whom we owe more, the union, or this man?"

Mr. Hernandez went on to say:

> "And, after that, she said I would like to clarify this. She said this with an aggresive tone in argumentation or allegation, that this is what had been said before by Mr. Jack in his discourse and translated by Ruth."

In answer to the question on cross-examination "What did Jack say about the two percent?", Mr. Hernandez answered:

"That he couldn't promise us anything at the moment. Just the two percent that we had had to pay in deductions, that we moved no longer have to pay that to the union; that we would be getting that with our checks..."

Mrs. Pewitt denied telling the employees that the union was out to swindle them or that the union did not want anything but two percent of their dues or showing them any derogatory cartoons as claimed by Mr. Hernandez or that Mr. Radovich had told the employees anything to the effect that they knew what Jack wanted and they had better vote for him. She stated that she answered the questions of Bruce Rodriguez, who acted as the spokesman for the employees. She responded to his statement that the union had said that if they didn't vote for the union Jack would drop all benefits and decrease wages. She told them that their jobs were skilled and Jack depended on them and if he dropped their wages they could get even with him. She also told them that the law did not allow Jack to make any promises.

Ruth Salazar testified that she was a regular worker when she became assistant crew boss in the Abdullah crew. Her work was routine and I find that in her new position she had none of the indicia of a supervisor. However, when Mr. Radovich gave her the authority to translate his speech to the employees under all the attendant circumstances she was his agent for whatever resulted from this endeavor. She denied telling the employees "Now you've heard what Jack wants, and you better vote the way he said." After translating Mr. Radovich's speech, she asked if there were any questions. Jesus Hernandez asked if they didn't have a union, would they be fired? To this Mr. Radovich answered why should he be fired? If he was doing his job right why would he be fired. A lady asked if they didn't have a union would the wages go down, to which Mr. Radovich answered "No, why?"

I credit the versions of Mr. Radovich, Mrs. Prewitt, and Ms. Salazar as to what transpired in the Abdullah crew on that day.

I find that Ruth Salazar did not snap her fingers and make the remarks attributed to her by Mr. Hernandez. I find that no cartoons of any kind were shown to the employees on that occasion. I find that the employees were not told that the union was out to swindle them or that the union did not want anything but two percent of their dues. I find that the employees were not told anything of a coercive or threatening nature. I find that no promises or threats of any kind were made to the employees in the Abdullah crew.

On April 27, Mr. Radovich and Mrs. Pewitt also went to the de Leon crew. The General Counsel in his brief, calls attention to an incident which took place in the afternoon shortly after Mr. Radovich gave his prepared speech to the assembled employees. Mr. Kenneth Schroeder, Charging Party

representative,was in the field when he noticed Mr. and Mrs. Radovich, Mrs. Pewitt, and Paul Coady, company attorney. Mr. Coady and Mr. Radovich both asked him to leave as Mr. Radovich was going to speak to the workers. Mr. Schroeder testified that he told them he would not leave and he and another representative moved a short distance away as Mr. Radovich addressed the workers. After the speech Mr. Schroeder said he approached Mr. Radovich and asked him why he wanted to get rid of the union. He received no answer. Mr. Coady told him to leave or he would call the sheriff. He asked the question again. Mrs. Pewitt replied that he had no class, that he never got his hands dirty. Schroeder asked Mr. Radovich if he was going to reply or was Rita going to be speaking for him. Mr. Radovich did not answer but Mrs. Pewitt said at that point "Jack is the person that signs everybody's checks." Mr. Schroeder testified that she said it to him but that there were employees within the hearing distances of 10 feet. Everything ended with Mr. Radovich answering that the workers would be going home early that day and that they should pick up their paychecks. This was 2:00 p.m.

Mrs. Prewitt's accounting of this is as follows:

> "...So he (Radovich) calls me over and so I walk over there, and the ladies were still talking to him, and he was going to ask me a question, and at that time Mr. Schroeder left Mr. Coady ....He come charging up there and started hollering and screaming at Mr. Radovich about how he did not have any right to be there, that he, Mr. Schroeder of the United Farm Workers had the right to be there. He was surveilling he said, and that Mr. Radovich shouldn't be there, and just -- you know, hollering, making a lot of noise, and actually embarrasing everybody. Well, he just lost his cool. He was shouting, he was upset....Mr. Radovich kept trying to tell him, you know, to calm down, we were - he was almost finished, and then Mr. Schroeder could go ahead and do his thing, and we were going to leave. And Ken Schroeder, you know, just kept hollering, so I just told him, I said, you know, use a little class. You know, this is the boss. Let him go ahead and say what he's going to say. He's going to say it anyway, and then, you know, we'll go off and you can do what you want, you know."

When asked did she say anything to him about issuing the paychecks, Mrs. Prewitt answered " I don't believe I did, no. Not to my--not that I can recall...."

Mr. Radovich testified that he was in a question and answer discussion with some employees when he called Mrs. Prewitt over to answer a question about the hospitalization plan. Ken Schroeder came rushing over and stood between them and the

Serna family. Mr. Schroeder said "I don't want you talking to these people." He was quite persistent about it and he repeated it again. Mr. Radovich said there was no need to get into an argument there with him. He described the tone used by Mr. Schroeder as being "a little bit louder than what he normally uses, not that much louder, but enough louder."

I credit the testimony of Mrs. Prewitt except for one matter. I find she said words to the effect that Mr. Radovich signs the checks. I find she uttered this statement and that it was heard by employees. However, I find that it was directed toward Mr. Schroeder and that anyone, including employees, who heard those remarks would interpret them to mean that she was informing Mr. Schroeder that he was interupting the head man who as the owner had a perfect right to be there. I find that in all the circumstances that there was no threat or coercion exercised toward employees in the de Leon crew on this occasion.

XV. Carmilo Garcia

It is alleged that Mr. Radovich rescinded an agreement with Camilo Garcia to clean the company offices, thereby changing his working conditions and reducing his income.

Camilo Garcia was a member of the Charging Party's negotiating team and this was known to Jack Radovich. Camilo Garcia and his wife Teresa cleaned Respondent's offices once a week. The company made payment for this service by check made out to Garcia Janitor Service. Mr. Garcia testified that Mr. Radovich told him that it was not right for him to be going to negotiations and cleaning the office at the same time. In response to a question by Mr. Garcia as to whether he thought he was going to look at his papers or something, Mr. Radovich replied that he did not think that and that someone else could become aware of something. Mrs. Garcia was allowed to continue cleaning the inside but Mr. Garcia was restricted to cleaning the outside of the office building. The Garcias paid another person to help Mrs. Garcia clean the inside. A few weeks later Mr. Garcia was permitted to resume cleaning the inside. Mr. Radovich testified that he told Mr. Garcia to stop cleaning the inside of the company office and restrict himself to the outside because Respondent was then engaged in a sensitive stage of negotiations and confidential payroll and business records were left unattended in the office overnight. After Respondent concluded this particular stage of negotiations in which they were responding to the Charging Party's request for information, Garcia was allowed to resume. There was no evidence submitted to refute the statements with regard to negotiations. I find that Respondent was so engaged in a critical period of negotiations and Mr. Garcia was kept outside only for the reason stated and not to discourage his participation in union activities.

XVI. Enedina Casas and Daniel Casas

It is alleged that on or about May 1, 1979, Alfonso de Leon interrogated employees Enedina and Daniel Casas about their communications with the Charging Party.

Daniel Casas testified that some eight days after the first petition was circulated Alfonso de Leon came up to him and his wife Enedina and asked him what was it he wanted, the union or no union? Mr. de Leon drives Mr. and Mrs. Casas to work everyday. Mr. de Leon said no more in that conversation. Mr. de Leon denied putting this question to the two Casas. I credit Mr. Casas. However, there is no allegation in the complaint on this subject. Even if there were I would find the question isolated and of no coercive effect in the circumstances. There is no evidence of any questioning with regard to the questioning of Casas about his communicating with the union under consideration. General Counsel Exhibit 5 was not proven.

XVII. Radovich Statement of May 9, 1979

It is alleged in the complaint that on or about May 9, 1979, Jack Radovich informed his employees in the de Jesus crew that he would not sign a collective bargaining agreement.

Juan Cervantes, a Charging Party contract administrator, testified that he was in a field being worked by the de Jesus crew on May 9, 1979 and that he heard Mr. Radovich shouting to his workers "No union, no union, I'm not going to sign a union contract." On cross-examination he testified as follows:

"Q. You said Jack asked you why are you telling the people he was going to sign a contract that day.

A. Yes.

Q. Okay. And what is it that you said in response to that?

A. I told him I wasn't telling them anything. I heard it was just talk in the crew.

Q. Okay. So you told Jack you weren't telling them anything about signing a contract that day?

A. No.

Q. Okay. I think I got it straight now because before you had, I think, left off a little part of it there that made it confusing.

What did Jack say after that?

A. After the...

Q. Um-hmm. After you said you didn't tell them anything, that it was just "talk in the crew."

A. That it was just talk in the crew. He said he wasn't going to sign a contract.

Q. He said that to you?

A. Yes.

Q. Okay.

A. And then he..that's when he yelled out, "No union, no union." He started walking away and I told him there would be a ULP because he was negotiating at the table, good faith, and he was not doing that in the field. And he said, You're going to file it anyway.'"

Mr. Radovich testified that when he arrived at the field on this occasion Richard Barsanti had informed him that Cervantes was telling the workers that he intended to sign a contract with the union on that day. He asked Cervantes if he were responsible for the rumor but Cervantes denied it in an equivocal manner. Several workers then shouted out to Mr. Radovich, asking him if he intended to sign a contract that day. He answered "No. We're not ready. We're too far from it." He denied saying that he would never sign a union contract.

Mr. Barsanti testified that earlier in the day a worker had asked him if it were true that Mr. Radovich was going to sign a contract that day as a union official was saying in the field. He confronted Juan Cervantes with this and Mr. Cervantes denied that he said anything to anyone. Mr. Barsanti reported all this to Mr. Radovich.

As admitted by Mr. Cervantes, there were rumors about Radovich signing a union contract that day. It is understandable that Mr. Radovich would conclude that Cervantes was spreading them. His consternation is also understandable. I credit Mr. Radovich's account of the incident entirely. I find that Mr. Radovich did not say "No union, no union. I'm not going to sign a union contract" or anything to that effect. I credit Mr. Radovich and Mr. Barsanti.

XVIII. Benny Santella

It is alleged that on or about May 1, 1979 Benny Santella assisted in the solicitation of signatures of employees in his crew for a decertification petition by summoning them to a place where the petition was being circulated.

The brief of the General Counsel does not direct attention to any aspect of the transcript but it is quite probable that he relies on the testimony of Felix Tudaera, who testified that Benny Santella, his crew boss, brought a decertification petition around in the middle of June.

Benjamin Santella testified that petitions were brought to his crew on two occasions by three employees. He denied gathering the employees together on either occasion. On both occasions, the petitions were being circulated among the employees when he became aware of it. He denied having anything to do with the petitions. I credit Mr. Santella.

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

XIX. Ruben Sanchez

It is alleged in the complaint that on or about July 19, 1979, Alfonso de Leon instructed employee Ruben Sanchez not to provide any information to the Board "against the company."

On this occasion, Ruben Sanchez was in his sister's house discussing this hearing with Alejandro Correa, Board field examiner, when Alfonso de Leon drove up. Mr. Sanchez walked outside and conversed with de Leon about Sanchez returning to work at Mid-State, another Delano area grower. During this conversation Mr. Sanchez informed Mr. de Leon that Mr. Correa was in the house. With respect to this he testified, "Yeah, and after that, he goes, who was I talking to, so I told him and he just told me don't say nothing bad." He repeated this and when asked if he remembered Mr. de Leon's exact words he testified, "Don't say nothing about the company." Mr. Sanchez also testified that Perla Delfin circulated the petition. Mr. de Leon denied making any such statements. I credit Mr. de Leon.

XX. Extra Work for Rivera and Maldonado

It is alleged in the complaint that during the week of July 9, 1979, Respondent provided work to Agapito Rivera and Eladio Maldonado, while not providing work to approximately forty other employees in the de Jesus crew with more seniority in order to discourage support for the Charging Party. Benjamin Gallegos is not referred to in this paragraph of the complaint.

Mr. Maldonado and Mr. Rivera each worked all or part of the first two weeks in July, 1979, while many of their fellow crew members were on lay-off. In the first week in July, these two were among eight crew members and in the second week they were among nine workers. The General Counsel asks the hearing officer to conclude because the payroll records and seniority records show that these employees were working and others with more seniority were not working that this action alone was to discourage support for the Charging Party. The General Counsel's brief points out that other de Jesus crew members were working who had even less seniority than Maldonado and Rivera. Some worked who had more. Maldonado and Rivera also worked at this odd job type of employment in the 1978 off-season. Where were the other more senior workers that they were not employed? Respondent was under the impression that they were working elsewhere as they had in other seasons. There is no evidence of any being turned away in favor of Maldonado and Rivera. Even if they were, there is no evidence as to whether Respondent would

know if they were pro or anti-union or would care. I find that the facts do not support the allegations that Maldonado and Rivera's employment discouraged support for the Charging Party.

XXI. Interference with Board Agents

It is alleged that on various occasions from April 25, 1979 through May 8, 1979, Paul Coady and Richard Barsanti interfered with Board agents in their efforts to communicate with Respondent employees with respect to the decertification petitions. This interference took place on April 25, April 30, May 3, and May 8, 1979.

A. April 25, 1979

It is alleged that on April 25, 1979 in the de Leon crew, Paul Coady, Respondent attorney, interfered with the Board agent Frank Pulido, who was talking to employees.

With respect to the April 25 event, I find the facts to be as follows: On the evening of April 24, Paul Coady, company attorney, spoke by telephone with Alejandro Correa, Board field examiner assigned to be in charge of the decertification matter. Mr. Correa wanted to know the locations of Respondent crews on the following morning in order to talk with the workers and conduct what Correa termed "an administrative investigation" into the validity of the first decertification petition. Mr. Coady asked him whether there had been any contention of fraud, employer misconduct, or employer assistance made and supported by declaration. Mr. Correa responded that nothing of the kind had been indicated to them. Mr. Coady then advised him that the company was denying him permission to enter the fields because they had no statutory or regulatory permission to conduct any such investigation and they had no right to disrupt company operations. Mr. Correa informed Board agents that the company had denied them permission to go on its property but to go on anyway. At about 6:00 a.m. on April 25, Board agents Frank Pulido and Vicente Paala were told by Mr. Radovich and Mr. de Leon not to go on company property, to give them a chance to talk to Mr. Coady. They returned to the Delano Board office and received a call from Mr. Coady about 8:15. Mr. Pulido testified that Mr. Coady more or less was giving permission to return to the crew and talk to the workers, which they did. He stated:

> "I began talking to workers individually and... you know, generally asking them if, you know, they had signed the petition and if they answered in the affirmative I asked them whether or not they remembered if the heading had been completed before they signed it and I also asked them if they had been informed as to what the purpose of the petition was."

Mr. Coady testified that he, in answer to their request, called Board agent Correa and informed him that Board agents had no authority to be in the fields and reiterated that he did not want them disrupting operations during working hours. Mr. Correa referred him to Mr. Ed Perez, Fresno Regional Director of the Board. I find that there was no agreement that Board agents could be in the fields at this time. On the contrary, I find that there was denial of permission. At about 10:00 that morning Mr. Coady observed Board agents in the fields talking with workers in the de Leon crew and approached Mr. Pulido, who was taking a statement from a worker. Mr. Pulido accused Mr. Coady of interfering with a Board agent. Mr. Coady told Pulido to leave and informed him that he was trespassing. He objected to his disturbing the worker and taking a declaration from him. Mr. Pulido refused to leave. Mr. Pulido said that Mr. Coady pulled the statement from his hands. Mr. Coady denied it. I credit Mr. Coady. Mr. Coady told Mr. Pulido that he should not be out there during working hours. I find that Mr. Pulido did not tell Mr. Coady that he was investigating unfair labor practices. I find that he did tell him that he was conducting an administrative investigation and was informed that he had no authority to do so. I find that employees were sufficiently near to hear and know what transpired in the field.

B. April 30, 1979

It is alleged that on April 30, 1979, Richard Barsanti interfered with efforts of Board agent Frank Pulido to talk with employees in the de Leon crew.

With respect to the April 30 incident, I find the facts to be as follows: Mr. Pulido was on company property informing the employees in the de Leon crew that the de-certification petition had been dismissed and giving the reason why. The interference issue results from Mr. Barsanti recording the communication between Mr. Pulido and the crew on a portable tape recorder.

Mr. Pulido stated that he told Mr. Barsanti that they did not want their talk with the workers recorded. Mr. Barsanti told him that he had been instructed to record the talk and proceeded to do so. I find that he did it in such a way that the employees knew he was doing so.

About the events of April 30. Mr. Coady testified that on Friday, April 27, 1979 at about 4:45 a.m. he received a call from Mr. Correa telling him that the petition had beed dismissed. Mr. Correa told Mr. Coady that the petition was dismissed because of gross misconduct by the employer and because of extreme misrepresentation of fact by the person who circulated the petition, and because of the

serious and pervasive nature of the misconduct. This was the first time Mr. Coady learned that the petition was being dismissed. Although Mr. Coady had frequent communications with Mr. Correa, this was the first time Mr. Coady learned that Board agents were investigating any such matters. At this time Mr. Correa also asked where the crews would be located on the following Monday, because he wanted to talk with them. Mr. Coady told him not to set foot on company property.

On Monday morning, April 30, 1979 at about 8:15 a.m., Mr. Correa again called Mr. Coady and told him that he intended to go out to the fields to conduct external education and wanted to know the location of the crews. Mr. Coady told him he had no authority to do so and when Mr. Correa again said he intended to do so, Mr. Coady told him he was prepared to call the sheriff. Mr. Correa told him to take it up with Mr. Perez. Mr. Coady called Mr. Perez. He protested that the ALRB had no right to conduct external education and stated that it was his understanding that the practice of conducting worker education had ended some years ago, that it had been enjoined by the court, and that the regional director had no legal authority to conduct this activity. Mr. Perez stated that he did have such a right, with Mr. Coady insisting he had no such right by statute or under the Constitution. Mr. Perez said he felt that there was a tremendous degree of dissention among the workers, that they were upset at having been lied to by the petitioners, that they were threatening to do bodily injury to each other, and that he had the power and his agency had the power to go out into the fields to prevent the commission of unfair labor practices. Mr. Coady told him he was misconstruing the statute, that the only recourse he had was to exercise his authority to seek a temporary restraining order. Mr. Perez said he was going to adhere to his plan of sending Board agents out into the fields. Mr. Coady answered that he was prepared to have the sheriff out there. Mr. Perez said the agents would start for the fields immediately. Fifteen minutes later Mr. Perez called back and stated that he had checked with Sacramento and had been instructed to avoid a confrontation. He wanted to know if a compromise could be reached. Mr. Coady responded that the agents could talk to the workers after work. Mr. Perez countered with the proposal that the Board agents go out during the half hour lunch break. Mr. Coady agreed to that proposal provided that the statement advising the workers that the petition had been dismissed was limited to a simple statement that the petition had been dismissed because of an inadequate showing of interest and that there would be no charges that the company had engaged in gross misconduct. After discussion it was agreed that the petition had been dismissed because of inadequate showing of interest "period". Mr. Perez requested that the agents be permitted to stay after the lunch period if their discussions ran over. Mr. Coady agreed to provide that time to the state if the state would pay for it. That

was the end of the conversation.

Mr. Perez did not testify.

With respect to the circumstances surrounding this event, Mr. Correa testified that the first petition was dismissed by Mr. Perez on Friday, April 27, 1979. On the afternoon of that day, Mr. Correa called Mr. Coady and advised him that the petition had been dismissed and that the next step would be for Board agents to go on the Employer's property and advise workers of that fact. There was discussion with Mr. Coady, the contents of which were not related other than to say there was no agreement reached. On the following Monday, April 30, 1979, Mr. Correa again called Mr. Coady to reiterate his intention of going on company property to advise workers that the petition had been dismissed. Mr. Coady told him that Board agents had no right to go on company property. Mr. Correa contacted Mr. Perez and advised him of Mr. Coady's position and, "after some subsequent phone calls" Mr. Coady's position was that Board agents should go on company property during the lunch hour and "he requested that we limit our... statement to...just the fact that the petition had been dismissed, period." Mr. Correa was not asked to conclude whether an agreement had been reached. Board agents went to the fields after this last conversation. Mr. Correa stated "...I had not instructed them as yet to go out, until we cleared the matter up."

In answer to the question as to what explanation he himself gave to the workers when he talked to them that lunch time, Mr. Correa testified:

> "Well, in essence, it was that the Regional Director had decided to dismiss the decertification petition because there had been an investigation conducted of some unfair labor practices, and that there was some misconduct found on the part of the Employer and his agent, and assistance in the circulating of the petition, the gathering of signatures, and so on, and that the Regional Director's decision was that under those circumstances that he found that it was impossible to hold an election in that kind of atmosphere. There were allegations of threats, and that primarily the fact that a complaint had been issued based on the unfair labor practices that had resulted as a result of the assistance."

Mr. Correa further testified that he was the agent in charge of the processing of the petition and that he was in constant touch with Mr. Perez. Mr. Perez directed and the agents carried out his instructions.

I find that Mr. Perez and Mr. Correa were well informed that the position of the company was that Board agents had no right to go onto company property. I find that Mr. Perez, in order to go onto company property during the lunch break, agreed that the employees would simply be informed that the petition was being dismissed because of an inadequate showing of interest without any further explanation. I find that Mr. Correa was informed as to this agreement and informed the other agents. I find that the Board agents did not abide by this agreement. I find that the employees were informed as contained in the statement of Mr. Correa above. I fully credit Mr. Coady in all respects.

C. May 3, 1979

It is alleged that on or about May 3, 1979, Richard Barsanti interfered with Board agents Lawrence Alderete and David Rodriquez in their efforts to talk to employees in the Abdullah crew.

Board field examiner, Lawrence Alderete testified that on May 3, 1979 he and three other agents, David Rodriquez, David Cervantes, and Alejandro Correa, went out to the fields to the Aldullah crew. It was just after lunch. They went out to talk to the crew about a second decertification petition that had been filed and to find out whether the people were signing it with full knowledge of what they were doing, as well as to answer questions about decertification petitions. Mr. Correa talked to Mr. Coady and Mr. Barsanti, who were present. When he returned they decided to break up and talk to the workers individually. Mr. Alderete was talking to a worker when he noticed Mr. Barsanti looking toward him. Mr. Barsanti approached him and he moved toward Mr. Barsanti. He told Mr. Barsanti that he wanted to speak to the workers alone. Mr. Barsanti told him. "I need to keep my operation running." Mr. Alderete then went to another row and was talking to another employee when Mr. Barsanti again approached. He again reminded him that he wanted to talk to the workers. Mr. Barsanti again told him that he needed to keep his operation going and he proceded to tell the worker that he was not cutting the weeds under the vines correctly. Mr. Alderete then moved to the end of a row of vines from where he could observe that not far from the immediate area where he had been Mr. Barsanti was walking toward David Rodriquez, who was talking with a worker, whereupon Mr. Barsanti appeared to engage them in conversation. There is no evidence of this conversation if there was a conversation. Mr. Alderete stated that they had not been granted permission to be on company property.

Mr. Barsanti testified that he was present in the field with the Abdullah crew when Mr. Correa and three other agents, one of whom was named David, arrived about 1:10 p.m. These men told Mr. Coady, who was also present, that they wanted to talk to the workers. Mr. Coady told them that since it was working time they could not talk to them but that they could come back during their break or after or before work and that would be okay with the company. An argument commenced and Mr. Barsanti stepped in and told them that they could not talk to the workers. Mr. Correa asked who he was and he introduced himself and stated his position with the company. Mr. Correa told Mr. Barsanti that he was going to start talking to the people and he was going to hand out literature. Mr. Barsanti told him that he could not, that if he wanted to come back after work or during the breaks he could. Mr. Correa responded that the union people were out there at that time. Mr. Barsanti suggested that he could call the union and tell them that Board agents would be at a certain crew and ask them if the union would not mind if the Board agents talked to the crew. He received no response at which point the other three agents disappeared and started going into the rows and talking to the workers. Mr. Barsanti explained that just before the Board agents arrived he had pulled a crew out of one section of the field and was putting them in another section across the separating avenue. The workers were then four or five vines into a row. They were going to irrigate and he wanted to get the hoeing done ahead of the water. At one point one of the agents who had come into the rows was talking to a worker. This worker was hoeing weeds but not as Mr. Barsanti wanted him to. He was leaving weeds under the vines instead of putting them out in the center of the row where they could be disced under. Mr Barsanti explained what he wanted done. At this point Mr. Correa hurried up to him and yelled at him that he was being unfair to the ALRB and not letting his agents talk to the workers and that Mr. Barsanti was harassing him. Mr. Barsanti told him that the people were working on company time and that he had a right to be there. Mr. Barsanti corrected other employees as well. He denied making any effort to follow Board agents around.

Mr. Coady testified that about 9:00 a.m. on May 3, 1979, Mr. Correa advised him that a second decertification petition had been filed and wanted to know where the crews were so that he could advise them of it and to distribute the operations of the company. Mr. Correa told him he was going out there immediately. Mr. Coady protested that disrupting company business was costing the company money. Mr. Correa told him to do whatever he felt was appropriate, whereupon Mr. Coady called Mr. Perez to make the same protest. Mr. Perez told him that he intended to have his agents go out there and he also invited Mr. Coady to do whatever he

felt was appropriate. That afternoon Mr. Coady was at the field when the Board agents arrived. He asked Mr. Correa what he was doing there and he was told that they wanted to conduct a meeting with employees and was asked would he gather the employees together. Mr. Coady reminded Mr. Correa that he had asked him not to come out to the field during working hours and asked him to leave, which Mr. Correa refused to do. As he was talking with Mr. Correa, one or two agents entered the rows and started talking to the employees. Mr. Correa and Mr. Coady continued to discuss the field examiners going into company fields and at one point Mr. Barsanti, who was present, and Mr. Correa argued about assembling the employees. Mr. Barsanti took the position that the agents should not interupt the workers at that time, they had work to do, and the company was paying for it. Mr. Coady stated that at no time did he see Mr. Barsanti follow Board agents around.

Mr. Correa testified that he knew that the lunch break was from 12:00 to 12:30 p.m. and that the four agents arrived at the Abdullah crew after lunch was over to inform the workers of the filing of a second petition and to distribute literature on decertification as instructed by Mr. Perez. He was not asked about a prior conversation with Mr. Coady restricting his access to other than working hours.

I find Mr. Correa and the other Board agents went onto company property during working hours when the company had expressly warned them not to. I find that Mr. Barsanti had a legitimate reason for being present and that he was carring out his duties. He was not surveilling Board agents or interfering with them in any way.

D. May 8, 1979

It is alleged in the complaint that on or about May 8, 1979, Paul Coady interfered with Board agent Alexandro Correa in his efforts to talk to employees in the crew of Esmenia Agbayani.

Mr. Correa and Mr. Coady both testified as to the events of May 8, 1979. Their testimony was essentially in agreement and I find these to be the facts. At lunchtime on May 8, 1979, Mr. Correa and Board agent Vicente Paala were in the fields to talk to the Agbayani crew about a second decertification petition and to distribute literature on decertification petitions. They were present with the express permission of Mr. Coady. Mr. Correa was speaking with two workers in Spanish when Mr. Coady came up and stood in close proximity to them for about four minutes, saying nothing. Mr. Correa then crossed an avenue and spoke with these workers who had requested that someone talk to them in English. As soon as he spoke with them, Mr. Coady came over and stood within ten feet of the group. Mr. Correa asked Mr. Coady if he would leave so that he could finish addressing the workers. Mr. Coady said "No". At this point, three

Charging Party agents drove up and objected to the presence of Mr. Coady while Mr. Correa was talking to the workers, asking why Mr. Correa was letting Mr. Coady intimidate him. Mr. Correa informed them that he had requested Mr. Coady to leave and he had refused. He again asked Mr. Coady to leave and he again refused. Mr. Correa then asked the union representatives to leave and they complied with his request. Mr. Correa then turned to the three workers and said,"You see I ask the union to leave and they leave, but I ask the employer's attorney to leave and he doesn't." At this point, one of the workers asked, "What did they mean by intimidation?" Mr. Correa stated, "Intimidation is when somebody stands there like him...with his arms folded while I'm trying to talk to you." indicating Mr. Coady who was standing several feet away with his arms folded. Mr. Coady said"...you're accusing me of violating the law...if that's what you're going to do out here I'm going to ask you to leave." The lunch hour then finished and the workers went back to work. After a heated discussion between Mr. Correa and Mr. Coady, Mr. Correa and Mr. Paala went back to their car and drove off.

I find that Respondent, in the person of its agent Paul Coady, interfered with Board agent Alexandro Correa, while he was conducting official Board business with Respondent employees in the Abayani crew.

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

DISCUSSION AND CONCLUSIONS OF LAW

I find as conclusions of law that Respondent is an agricultural employer within the meaning of the Act and Charging Party is a labor organization within the meaning of the Act.

I find that while Perla Delfin actively participated in the decertification petition in the de Leon crew, she did so as an agricultural employee and not as a supervisor. I find that whatever authority she exercised was of a merely routine or clerical nature which did not require the use of independent judgment. She was in effect a working foreman and a dues paying member of the bargaining unit.

I find that Perla Delfin did not misrepresent the purpose of the April 20, 1979 decertification petition to employees in the de Leon crew. I have found her testimony on this and all subjects completely credible. The Board petition states in English and in Spanish its purpose. There was no showing that anyone was illiterate.

While Eladio Maldonado, Agapito Rivera, and Benjamin Gallegos circulated the petition on April 20, 1979, they did so in the afternoon, for which time they were not paid by Respondent. I have considered that these employees left work to circulate the petition about 11:45 a.m. on that day, which brings up the question, were they not paid for the fifteen minutes? They were, but there is no showing that de Leon or any other supervisor knew what they were about, that it was not an oversight on the part of the company, or that any other employee would have been accounted for any differently. Respondent did dock them for the afternoon, I cannot conclude that a company that would dock its employees for their anti-union activity could be expected to reward them with a miniscule fifteen minute credit. I find no assistance by Respondent in this matter. The people named above are employees and had every right to circulate the petition. I do not address myself to the question whether these employees should have been docked at all in view of Charging Party's contractual right to engage in union business with employees on working time, with no one getting docked.

With respect to the allegations pertaining to Mohammed Abdullah's solicitation of Jesus Hernandez's agreement to circulate a decertification petition. I find that no such solicitation took place, for money or otherwise. I credited Abdullah over Hernandez and I find that the General Counsel has not sustained his burden of proof.

I find that while Respondent threatened Joe Monte with eviction from the camp, he did so for legitimate business reasons. Mr. Monte had a poor absentee record. He was told to shape up or leave. He was given a second chance. Because an employee engages in union activity does not shield him from legitimate discipline. There is no showing that Mr. Monte was discriminated against, let alone for his union activity. I find that Respondent

did not violate the Act when he disciplined Mr. Monte.

I find as a matter of law that Respondent did not violate the Act when Mohammed Abdullah granted a ten minute extension to the lunch hour on April 20, 1979, the day the petition was circulated among his crew. This ten minute extension was asked for by and granted to the Charging Party steward. Also, there is no showing that any other labor organization would not have been granted such an extension under the circumstances.

On April 25, 1979, Respondent hired Myriam Maldonado but the General Counsel failed to sustain his burden of proof that this was done for proscribed reasons. I find that this hiring did not occasion the commission if any unfair labor practice of any kind.

With respect to the alleged surveillance of Charging Party representative Kenneth Schroeder, I find that Respondent did not engage in surveillance of Mr. Schroeder at any time. I find that the General Counsel has failed to sustain his burden of proof that such surveillance took place. When a union representative elects to conduct his union activity in the fields of the employer during working hours, he can expect to be "looked at" from time to time by supervisors who may be present. I find that no reasonable inference can be drawn that Respondent was engaging in surveillance.

I find that on or about April 27, 1979, Jack Radovich and Rita Pewitt did not make coercive statements to employees in the Abdullah crew or in the de Leon crew. The speech given to the employees by Mr. Radovich did not constitute interference or coercion in any way. It was a legitimate exercise of his constitutional right of free speech, recognized by the Act. There were no threats or promises of any kind contained in it. An employer can support what he feels to be his own interests as long as he does not interfere with the rights of employees by actions proscribed by the Act. Mr. Radovich's speech was anti-union and for this and other reasons, I would find the presence of anti-union animous. But the presence of this in a speech does not in and of itself constitute an unfair labor practice. There must be threats or promises relating to the union activity of the employees. I find neither.

Essentially, Mr. Radovich told the employees that a decertification petition had been filed, that he was for an election and the union was against it. He then gave an accounting of how much money the union had acquired under the contract in less than a year. He asked them if they knew where their money was going. Employees should know where their money is going. He told them that there were nothing but complaints with the union's insurance and that there was a better plan in effect before the advent of the union. He pointed out that the medical clinic had been closed. He asked what would happen if the employees voted the union out. He said they would lose the money, which is true, they would. As to what else would happen, he said he could not make any promises and he did not. He asked the employees to remember what it was like before the union. He pointed out

that their pay was as good as any in the area, they had good insurance, and they had no union dues to pay. I do not know what their pay had been or their insurance. It makes no difference. Without a union the employees would not be obliged to pay union dues, that is true. He asked his employees to inform themselves about how others were fairing without a union. Employees should inform themselves where their rights are concerned. He closed by telling them that he would let them know if there would be an election and that if there was before they voted he hoped they would consider carefully what he had said.

Mr. Radovich was asking the employees what the union was doing with their money, a legitimate question, which the union undoubtedly could answer. And to criticize welfare plans which Respondent has bargained with the union for seems a little incongruous but legal. As for days past, Respondent has a right to ask employees to remember them and to reflect on whether he was fair. As for the union not wanting an election there is ample proof that this was true. I find that Respondent did not committ an unfair labor practice when Mr. Radovich read and had read this speech to the employees. Ruth Salazar, although not a supervisor, was an agent of Respondent when she undertook to translate the speech. What she said was not corrected by anyone. However, I do find that nothing she said or did in connection with this speech constituted an unfair labor practice. Mrs. Pewitt was also not a supervisor but she was an agent of Respondent given broad power to answer employee questions, which she did. At no time during this period did any actions of hers constitute an unfair labor practice. Mrs. Pewitt did tell Mr. Schroeder in the presence of employees that "Jack's the person that signs anybody's checks." However, I find in the context of Mr. Schroeder interjecting himself into the employer's meeting to which he was not invited but rather from which he was expressly excluded, that Mrs. Pewitt's reminding him that Mr. Radovich had some status in his own fields by making the statement quoted above did not constitute an unfair labor practice. Mr. Schroeder did not belong there at that time. I find as a conclusion of law that no employee rights were interfered with.

On or about May 3, 1979, Jack Radovich limited the activity of Mr. Camilo Garcia in cleaning Respondent offices, but he did not do it for a purpose proscribed by the Act, even though the action was taken because of Mr. Garcia's activity on the negotiating committee. This committee was at that time engaged in a sensitive part of negotiations. It is axiomatic that negotiations can take place for weeks but a time comes when the parties are taken up with matters of extreme sensitivity, usually money matters, which require greater measures of security to protect one's position. Respondent kept its bargaining material open in its offices, to which Mr. Garcia would otherwise have had access, and it had the right to do so. It was not obliged to put everything away every night just to accomodate Mr. Garcia, union activist or not. The National Labor Relations Board has long recognized the principle of the confidentiality of an employer's labor matters. If Respondent had limited Mr. Garcia's office

cleaning activity simply because of Mr. Garcia's union activity, this would have constituted an unfair labor practice, albeit Mr. Garcia operated through a separate company. But I find the curtailment of his duties was to protect the integrity of Respondent's records, and only for that purpose. In NLRB v. Allied Products Corp., CA 6, 1977, 548 Fed.2d 644, 94 LRRM 2433, the Court said:

> "...We have in the past recognized the need to balance the right of employees to be represented...with the right of the employer to formulate, determine, and effectuate its labor policy with the assistance of employees not represented by the union with which it deals." Westinghouse Elec. Corp. v. NLRB, CA 6 1968, 398 Fed.2d 669, 68 LRRM 2849; Illinois State Journal Register v. NLRB, 412 Fed.2d 37, 71 LRRM 2668.

It follows from this that an employer has the right to limit office access for a short period of time to an employee whose interests lie with the negotiation committee of the Charging Party in opposition to those of the employer. The change in condition here was temporary and for a valid reason. I find no interference or coercion of any employee occurred in connection with this matter.

With respect to the allegations that Mr. de Leon interrogated Enedina and Daniel Casas about their communications with the Charging Party, General Counsel Exhibit 5 contains a sworn statement on this subject but this exhibit was never proven and it is not considered as evidence of any kind. Daniel Casas testified that some eight days after the first petition was circulated, Mr. de Leon, crew boss and a supervisor, came up to him and his wife in the fields and asked him what was it he wanted, the union or no union? Casas answered "I told him no". Mr. de Leon said no more in that conversation about the union. Mr. de Leon denied putting this question to the two Casas. I credit Mr. Casas. Mr. de Leon drove Mr. and Mrs. Casas to work every day giving him ample opportunity to interrogate them on the subject of their union activity but he did not do so. I find this one question was casual and isolated, and did not constitute interrogation of the employees. Further, I find no evidence to support the subject allegation. The General Counsel has not sustained his burden of proof. One does not prove an alleged unfair labor practice by submitting proof of what might be an unalleged unfair labor practice, albeit of a similar nature, such as interrogation.

Concerning the allegation that Jack Radovich informed employees in the de Jesus crew that he would not sign a collective bargaining agreement, I have found as a fact that Mr. Radovich did not make any such statement. The General Counsel has not sustained his burden of proof.

On the allegation that Benny Santella assisted in the

solicitation of signatures in his crew for the decertification petition on May 1, 1979, I have found as a fact that Mr. Santella had nothing to do with the petitions. The General Counsel has not sustained his burden of proof.

Relating to the allegations that Alfonso de Leon instructed Ruben Sanchez not to provide any information to the Board against the company, Mr. Sanchez was the only one to testify in support of this allegation and his testimony was not credited. The General Counsel has not met his burden of proof.

With respect to the allegations that Agapito Rivera and Eladio Maldonado were provided work to discourage support for the Charging Party, the General Counsel has not met his burden of proof that this work was provided in a discriminatory manner as proscribed by the Act or to accomplish a proscribed purpose.

With respect to the allegations in the complaint that Paul Coady and Richard Barsanti interferred with Board agents, since these events took place on Respondent property, of paramount importance is the authority of these agents to be there on these four occasions in April and May of 1979.

Section 1151(a) of the Act provides:

> "For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Chapters 5 (commencing with Section 1156) and 6 (commencing with Section 1160) of this part:
>
> (a) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The members of the board or their designees shall have the right of free access to all places of labor...."

The Court in San Diego Nursery Company, Inc. v. ALRB, 80 Daily Journal D.A.R. 55 (C.A. 4th, Dec. 19, 1979), said "Labor Code Section 1151, subdivision (a), in authorizing access to ALRB agents to "evidence" and "all places of labor" is a constitutional exercise of legislative authority, provided its application is conformable to the limiting principles set forth in ALRB v. Superior Court, 16 Cal.3rd 392." This last case concerned itself with the promulgation of Board regulations pertaining to the rules of access by labor organizations. Section 20300 of the Boards promulgated rules and regulations pertaining to access to private property reads in part as follows:

Section 20300 - Petition for Certification Under Labor Code Section 1156.3.

"...

(i) Dismissal of petition

(1) The petition for certification shall be dismissed by the regional director whenever the contents of the petition or the administrative investigation of the petition disclose the absence of reasonable cause to believe that a bona fide question concerning representation exists, or the unit petitioned for is not appropriate, or there is not an adequate showing of employee support pursuant to Section 20300(j).

(j) Evidence of employee support

(1) Pursuant to Labor Code Section 1156.3(a), evidence that a majority of the currently employed employees in the bargaining unit sought in the election petition support the petitioner shall be submitted with the petition. Such evidence shall consist of either: (a) authorization cards signed by employees, dated, and providing that the signer authorizes the union to be his or her collective bargaining representative, or (b) a petition to the same effect signed by employees, each signature dated....

(2) The regional director shall conduct an administrative investigation to determine whether there exists an adequate showing of employee support, as required by Labor Code Section 1156.3(a) to warrant the conduct of an election. In determining whether the showing of employee support submitted by the union is adequate, the regional director shall determine the average number of employee days worked on each day of the payroll period and shall compare names on authorization cards to names on the payroll to determine if sufficient cards signed by employees whose names appear on the payroll have been submitted to equal at least a majority of the average number of employee days worked during the payroll period....

(3)

(4) Any party which contends that the showing of interest was obtained by fraud, coercion, or employer assistance, or that the signatures on the authorization cards were not genuine, shall submit evidence

> in the form of declarations under penalty of perjury supporting such contention to the regional director within 72 hours of the filing of the petition. The regional director shall refuse to consider any evidence not timely submitted, absent a showing of good cause for late submission. When evidence submitted to the regional director gives him or her reasonable cause to believe that the showing of interest may have been tainted by such misconduct, he or she shall conduct an administrative investigation. If, as a result of such investigation the regional director determines that the showing of interest is inadequate because of such misconduct, he or she shall dismiss the petition. Nothing in this subsection shall diminish the applicability of Labor Code Section 1151.6 to instances of forgery of authorization cards. (Emphasis supplied)
> (5)..."

Interestingly, there is no mention of a procedure for handling a decertification petition in these regulations. However, I find that as a matter of law this section applies to decertification petitions as well.

Thus, in accordance with the law and the regulations promulgated thereunder, a regional director and his agents have the right of access to conduct an administrative investigation to determine the adequacy of the showing of interest and also upon the proper submission of evidence in the form of sworn declarations to investigate certain misconduct in connection with the petition. There was no evidence submitted that there were any such declarations filed with the Board, although the propriety of the presence of Board agents was always in issue. On the other hand there is evidence that there were no such declarations filed, and I so find. It is clear that the Board does not want any self-starting invasion of employer or anyone else's property rights without good cause. There remains to be considered the extent of the right of the Regional Director to conduct an administrative investigation on company property for the purpose of determining the extent of the showing of interest upon the filing of a petition for an election. The whole purpose of the Board agents in going onto Respondent property here was to conduct an "administrative investigation" upon the filing of the decertification petition. This must have been to determine a showing of interest. But the evidence is that this showing was inadequate on the very face of the signature sheets as they were in effect blank in their heading upon submission. As testified to by Jack Matalka, officer in charge of the Board's Delano field office, with respect to the signature sheets "They were blank on the top." In answer to the question "And did you say anything to Mr. Maldonado about that?", Mr. Matalka testified "Yes. When I returned it back to him, I told him to fill it out, he filled out both __ he wrote 'Jack Radovich' on the top

blank and 'UFW' on the bottom blank." Signature sheets on which neither the employees name nor the labor organization involved appears will not support a decertification petition no matter how many signatures are on there. One does not have to ask an employee if he signed and if he did was the heading filled in. One knows if he signed by reading the list. It is already also known that when he signed there was no heading. It is clear that the petition was not supported by an adequate showing of interest. The purpose authorizing an administrative investigation, namely "to determine whether there exists an adequate showing of employee support...", was not present. This condition could have been cured simply by giving new signature sheets to the petitioners and instructing them on filling out the heading properly and informing them that they were required to get new signatures. It could not be cured by sending agents into Respondent's field simply to ask employees if they had signed or not signed. The sheets still would not have been valid. The determination of a showing of interest, without charges of misconduct properly made, is a clerical matter of checking the number of employees petitioning validly against the total number of employees. Now, if charges had been made and properly supported, they should have been made known to all the parties involved. Since that was not the case here, I find that, without Respondent's permission, Board agents did not have the right to enter onto Respondent's property. Even if conditions were present which would warrant an administrative investigation, I find that, absent employer permission, Board agents do not have the right of free access to employer property without a court order. I observe that the section of the Act pertaining to right of free access is constitutional but I also find that being a government agent with the right of free access for legitimate purposes does not give one the right to enter the land of another without the permission of the owner except with a court order. Marshall v. Barlow's, Inc., 406 U.S. 307, 98 S.Ct. 1819 (1978). A constitutional law must be constitutionally administered.

Events of April 25, 1979

On April 25, 1979, Board agents Frank Pulido and Vicente Paala entered onto Respondent property to conduct an administrative investigation triggered by the filing of the decertification petition the day before. As discussed above, they had no statutory or administrative authority for being there, Respondent's permission having been refused. By way of interest and not evidence binding on Respondent, the General Counsel submitted as his Exhibit 23, the Board Representation Manual. This manual provides at page 9. "If the petition appears on its face to be adequate, further investigation is required." The decertification was inadequate on its face and therefore did not require any "administrative investigation." These Board agents did not follow their own manual. Mr. Correa was assigned by Mr. Perez on the afternoon of April 25 to head the Board team working on the decertification petition. This team consisted of as many as six other agents. The Regional Director informed Mr. Correa that the reason they were investigating the petition was because

the signature sheets were blank. Do seven agents have to do what one can do in the blink of an eye? At that stage of the proceedings there were no charges filed. The only thing unusual was a decertification petition had been filed. Even with properly filled in signature sheets it does not take more than one agent to determine the extent of the showing of interest. One wonders whether all election petitions receive this much attention. I find that the Board agents were not in the fields to determine an adequate showing of interest. I find that Mr. Coady was within his rights in insisting that Frank Pulido leave company premises. I find that Mr. Coady did not interfere with the legitimate efforts of Board agents. I find that Respondent did not commit any unfair labor practice by reason of the actions of Mr. Coady on April 25, 1979.

April 30, 1979

With respect to the events of April 30, 1979, Mr. Perez and Mr. Coady reached agreement that Board agents could go onto company property to tell the workers that the decertification petition had been dismissed provided that the reason given therefore was limited to "an inadequate showing of interest, period." It is clear that Board agents did not live up to this agreement. It would be inequitable to find that the singular act of recording a talk given by a Board agent by Respondent to assure conformance with the agreement constituted an unfair labor practice. Board agents' legitimate activities in the presence of employees should not be interfered with and to do so would be an unfair labor practices ordinarily. It is better that agreements once reached should be abided by. The actions of Mr. Barsanti in recording Mr. Pulido's speech are not so notorious as to require the finding of an unfair labor practice. That would not serve the purposes of the Act.

May 3, 1979

With respect to events of May 3, 1979, as discussed above, I find that Board agents Lawrence Alderete and David Rodriguez had no right to be on company property without permission. It was then after lunch and the employees were at work. They were granted access during nonworking periods. They were present if at all at Respondent's sufferance. I find as a matter of law that Mr. Barsanti did not interfere with the activities of Board agents nor did he committ any unfair labor practice of any kind on this occasion.

May 8, 1979

As to events of this day, I find that Alexandro Correa was on Respondent property with Respondent permission and was engaged in legitimate Board business relating to Respondent's employees when he was talking to employees in the Agbayani crew. Mr. Coady in placing himself in close proximity to Mr. Correa and those employees he was talking to interfered with the Section 1152 rights of those employees. Once Respondent granted permission for Board agents to talk with employees on company property, supervisors and agents of Respondent were bound to give those employees a wide berth when they were talking with those agents. Employees have the untrammelled right to engage or not

to engage in union and other concerted activities. For Respondent's agent to place himself, without legitimate reason, in close proximity to a Board agent discussing their rights with them does, I find, interfere with, restrain, and coerce those employees in the exercise of those rights and such actions constitute an unfair labor practice. I find that Respondent has interfered with, restrained, and coerced its agricultural employees in the exercise of the rights guaranteed to them in Section 1152 and that Respondent has committed an unfair labor practice within the meaning of Section 1153(a) of the Act.

I find that Respondent has not committed any unfair labor practices within the meaning of Sections 1153(c) or 1153(e) of the Act. I find that Respondent has committed no other unfair labor practice within the meaning of Section 1153(a) other than that related above.

THE REMEDY

Having found that Respondent has engaged in a certain unfair labor practice within the meaning of Section 1153(a) of the Act, I shall, and hereby do, recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent interfered with, restrained, and coerced its agricultural employees in the exercise of their Section 1152 rights by interfering with the conduct of Board business by Board agents with and in the presence and interest of Respondent employees, I shall recommend that Respondent make known to its employees that it has been found to be in violation of the Act and that it has been ordered to cease violating the Act and not to engage in future violations.

Upon the basis of the entire record, the findings of fact, and conclusions of law and pursuant to Section 1160.3 of the Act, I hereby issue the following recommendation:

ORDER

Respondent, its supervisors, and agents shall:

1. Cease and desist from:

(a) Interfering with representatives and agents of the Agricultural Labor Relations Board in the conduct of their business with employees of Respondent

(b) In any other manner interfering with, restraining, or coercing said employees in their rights to self-organization, to form, join, or assist labor organizations, to bargain collective through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activity.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post copies of the attached notice at times and places to be determined by the Regional Director, Fresno Regional Office. Respondent shall exercise due care to replace any notice within its control which has been altered, defaced, or removed.

(b) A representative of Respondent or a Board agent shall read the attached notice to the assembled agricultural employees of Respondent. The reading or readings shall be at such times and places as specified by the Regional Director to assure reasonably that such employees will be informed of the notice.

(c) Notify the Regional Director within twenty (20) days from receipt of a copy of this Decision of steps Respondent has taken to comply therewith, and to continue to report periodically thereafter until full compliance is achieved.

(d) Copies of the Notice attached hereto, including appropriate Spanish, Arabic, and Philippine languages translations, shall be furnished to Respondent for posting by the Regional Director.

Dated: March 13, 1980

PAUL D. CUMMINGS
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing during which all parties presented evidence an Administrative Law Officer of the Agricultural Labor Relations Board has found that we have engaged in a violation of the Agricultural Labor Relations Act and has ordered us to notify all our agricultural employees that we will remedy this violation and that we will respect the rights of all such agricultural employees in the future. Therefore, we are now telling each of you:

1. We will not interfere with the right of our agricultural employees to communicate with representatives or agents of the Agricultural Labor Relations Board.

2. We will not interfere with, restrain, or coerce any agricultural employee in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or in the exercise of their right to refrain from any and all such activity, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized by Section 1153(c) of the Agricultural Labor Relations Act.

Dated:

JACK OR MARION J. RADOVICH

By: _____

Title

THIS IS AN OFFICIAL NOTICE OF THE AGRICULTURAL LABOR RELATIONS BOARD, AN AGENCY OF THE STATE OF CALIFORNIA. DO NOT REMOVE OR MUTILATE THIS NOTICE.