

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

COACHELLA IMPERIAL DISTRIBUTORS,	)	
	)	
Employer and Respondent,	)	Case Nos. 77-RC-17-C
	)	77-CE-140-C
and	)	77-CE-177-C
	)	77-CE-180-C
UNITED FARM WORKERS	)	77-CE-182-C
OF AMERICA, AFL-CIO,	)	77-CE-204-C
	)	
Petitioner and	)	
Charging Party,	)	
	)	5 ALRB No. 73
and	)	
	)	
INDEPENDENT UNION OF	)	
AGRICULTURAL WORKERS,	)	
	)	
Intervenor.	)	
	)	

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DECISION AND ORDER ON UNFAIR LABOR PRACTICES AND  
DECISION ON OBJECTIONS AND CHALLENGED BALLOTS

These consolidated cases involve challenged ballots, post-election objections, and related unfair labor practice allegations.

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW) on June 22, 1977, and intervention by the Independent Union of Agricultural Workers (IUAW), a representation election was conducted on June 29, 1977, among the agricultural employees of Coachella Imperial Distributors (Employer or Respondent). The tally of ballots showed the following results:

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UFW .....	112
IUAW .....	9
No Union .....	136
Challenged Ballots .....	149
Void Ballot .....	1

As the number of challenged ballots was sufficient to determine the outcome of the election, the Regional Director conducted an investigation and issued his Report on Challenged Ballots on August 12, 1977. In Coachella Imperial Distributors, 5 ALRB No. 18 (1979), this Board resolved 92 of the challenged ballots. Thereafter, a second tally of ballots was issued, which showed the following results:

UFW .....	118
IUAW .....	11
No Union .....	149
Challenged Ballots .....	57
Void Ballots .....	2

As the number of the challenged ballots was still sufficient to determine the outcome of the election, the Regional Director conducted a further investigation and issued his Supplemental Report on Challenged Ballots on July 20, 1979. The UFW filed timely exceptions to portions of that supplemental report.

On October 18, 1979, this Board ordered the Regional Director to open and count 40 ballots as to which the Regional Director had recommended overruling the challenges, no exceptions having been taken to those recommendations. Thereafter, a third

tally of ballots was issued, which showed the following results:

UFW .....	155
IUAW .....	12
No Union .....	151
Challenged Ballots .....	17
Void Ballots .....	2

On January 27, 1979, Administrative Law Officer (ALO) David Nevins issued the attached Decision on the unfair labor practice allegations and the post-election objections. Thereafter, Respondent filed exceptions and a supporting brief, and General Counsel and the Charging Party each filed a reply brief.

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the Regional Director's reports, the record made at the hearing, and the ALO's Decision in light of the exceptions and briefs of the parties, and has decided to affirm the recommendations of the Regional Director, and the rulings, findings, and conclusions of the ALO with respect to the unfair labor practice allegations and post-election objections, as modified herein, and to adopt the ALO's recommended order with modifications.

Unfair Labor Practices

The ALO concluded that Respondent violated Labor Code Section 1153(a), in four incidents on June 27, 1977, by threatening to call the sheriff to remove UFW representatives who were legitimately present on its property for organizing purposes.

See D'Arrigo Brothers Co. of California, Reedley District No. 3, 3 ALRB No. 31 (1977). Two of these incidents raise the issue of the application of the one-hour after-work provision of the Board's access regulation in situations where employees leave work at different times.<sup>1/</sup>

On the day in question, UFW organizers had gathered near the field after 9:00 a.m. in preparation for taking access during the employees' regularly-scheduled lunch break from 10:30 to 11:00 a.m.<sup>2/</sup> When coordinating organizer DeLaCruz informed Supervisor Salazar of the organizers' intentions, the latter replied, "sure," and confirmed that the lunch break that day would take place at the pre-designated time. Shortly thereafter, however, Foreman Lopez advised one of the organizers that all crews were preparing to finish work for the day. Thus, at about 10:00 a.m., before employees could take their anticipated mid-day break, work was halted due to an insufficient sugar content (ripeness) in the grapes being harvested. Acting on this information, as well as on another organizer's independent observation that some of the workers were already leaving the area, DeLaCruz

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<sup>1/</sup> The ALO did not address the question of application of the access regulation because he found that the organizers were legitimately present pursuant to the terms of an outstanding Board order directed at Respondent. Yegi Kitagawa, et al., 3 ALRB No. 44 (1977). As our analysis is based on the after-work provision of the access regulation, we do not reach the question of the applicability of the Board order to this matter.

<sup>2/</sup> By letter dated June 17, 1977, Respondent had advised all of the parties as well as the Riverside County Sheriff's Department that all crews would take a regularly-scheduled lunch break from 10:30 to 11:00 a.m. commencing June 20 and continuing through the balance of the 1977 harvest season.

directed the organizers to proceed into the field. Salazar told DeLaCruz to call back the organizers, presumably because some work was still going on, adding that otherwise he would call the sheriff. DeLaCruz complied and all organizers left the field immediately, with the exception of Leticia Hernandez who defied requests to leave from both DeLaCruz and Salazar. Although Salazar repeated his threat to call the sheriff, Hernandez did not leave until after the supervisor had returned to inform her that he had notified the authorities.

According to Ms. Hernandez' testimony, she distributed leaflets and talked to employees in one crew who were packing the last of the grapes. She said some workers had already finished before she arrived and that the majority of the remaining workers left the work-site at staggered intervals before she did.

Regulation Section 20900(e) (3) (a) provides in pertinent part that "[o]rganizers may enter the property of an employer for a total period of one hour...after the completion of work to meet and talk with employees in areas in which employees congregate..." A literal reading of this provision would arguably require that organizers wait until the last employee had finished work for the day in order to assure that work was in fact completed. Such a rigid interpretation would render meaningless post-work access in situations where, as here, employees leave work in stages. Under the circumstances here, we find that the organizers were justified in entering the field as employees were finishing work, particularly because employees had just resumed work that morning following a layoff, and as the election was to be held just two

days later. Organizers were prepared to take advantage of the lunch-hour-access provision but were prevented from doing so because of the unforeseen early cessation of work, and they were not informed as to when work would resume. Moreover, they attempted to communicate with employees and to remind them of the scheduled election only after they had been reliably informed that the day's work would soon be completed and after it became apparent that some workers were actually departing the work place. As noted above, all organizers promptly left the fields when requested, leaving behind only Ms. Hernandez. There is no evidence that the organizers disrupted work. Accordingly, we conclude that the organizers were in substantial compliance with the access provision and that Respondent's threats to call the sheriff to remove the organizers violated Section 1153(a). D'Arrigo Bros., supra.

#### The Election

The Regional Director recommended that 40 of the unresolved ballot challenges be overruled, that these ballots be opened and counted, and that the remaining 17 challenges be sustained. No exception having been taken to the recommendation to overrule 40 challenges, these ballots have been opened and counted pursuant to our Order, as reflected in the third tally. The UFW filed exceptions as to 10 of the challenges which the Regional Director recommended be sustained. We affirm the ALO's recommendation that seven as to which no exception was taken be sustained. We adopt the Regional Director's recommendation that three of the 10 disputed challenges be sustained, and we

find it unnecessary to resolve the remaining seven challenges.

Hector Vega and Rosalba Vega

These two voters were challenged as not being on the eligibility list. They are minors who did not work during the eligibility period while their mother, also an employee, was ill. In our prior decision in this matter, Coachella Imperial Distributors, 5 ALRB No. 18 (1979), we ordered the Regional Director to investigate whether the children would have performed work but for their mother's illness. As the Regional Director found that the children were not dependent upon their mother for transportation to work, we hereby sustain the challenges to their votes.

Frances Luz Saavedra

This individual voted a challenged ballot and was listed as an economic striker. The Regional Director found that she has not worked since she had a child in 1975. Her conduct since 1975 provides sufficient support for the Regional Director's conclusion that she has abandoned interest in the struck job, and we therefore sustain the challenge to her ballot.

Given the aforesaid disposition of the challenges, neither labor organization could obtain a majority of the ballots, even if all of the unresolved challenged ballots were opened.

The ALO found that Respondent engaged in objectionable conduct and committed numerous unfair labor practices during the course of the UFW's organizing campaign, including granting, promising and announcing benefits including increased wages, a

new medical plan, an employee party, refreshments in the field, a new break time and a new recall system, failing to provide adequate employee lists, threatening to arrest organizers taking legitimate access, and threatening workers for supporting the UFW. We affirm all of these findings and conclusions. Based on Respondent's objectionable pre-election conduct and unfair labor practices, the ALO recommended that the election be set aside.

In view of the finding, supra, that neither union could obtain a majority in this election, and as Respondent's pre-election conduct and unfair labor practices affected the election, we find that the interests of the workers in obtaining a final resolution of the representation issue would not be served by conducting a runoff election. Accordingly, we hereby set the election aside and dismiss the petition.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, Coachella Imperial Distributors, its officer, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Promising, granting, or timing the announcement of wage increases, medical benefits, rest periods, recall systems, free refreshments, employee parties, or other employee benefits where the purpose is, or the probable effect would be, to interfere with the right of employees to freely choose whether to be represented by a labor organization.

(b) Failing or refusing to provide to the ALRB

in a timely manner, the employee lists required by 8 Cal. Admin. Code Section 20910(c) and 8 Cal. Admin. Code Section 20310(a).

(c) Denying, or otherwise interfering with, access to its premises to agents or representatives of the UFW or any other labor organization seeking such access pursuant to 8 Cal. Admin. Code Section 20900.

(d) In any other like or similar manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Labor Code Section 1152.

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

(a) Allow UFW representatives, during the next period in which the UFW files a Notice of Intent to take Access, to organize among Respondent's employees during the hours specified in 8 Cal. Admin. Code Section 20900(e) (3), and permit the UFW, in addition to the number of organizers already permitted under Section 20900(e)(4)(A), an additional organizer for each 15 employees.

(b) Grant to the UFW, upon its filing a written Notice of Intent to Take Access pursuant to Section 20900(e)(1)(B), one access period during the 1980 calendar year in addition to the four periods provided for in Section 20900(e)(1)(A).

(c) Provide, during the UFW's next organizational drive among Respondent's employees, the UFW with access to Respondent's employees during regularly-scheduled work time for one hour, during which time the UFW may disseminate information to and conduct organizational activities among Respondent's

employees. The UFW shall present to the Regional Director its plans for utilizing this time. After conferring with both the union and Respondent concerning the union's plans, the Regional Director shall determine the most suitable times and manner for such contact between organizers and Respondent's employees. During the times of such contact, no employee will be required to engage in work-related activities. All employees will receive their regular pay for the one hour away from work. The Regional Director shall determine an equitable payment to be made to nonhourly wage earners for their lost production time.

(d) Provide, during the UFW's next organizational drive among Respondent's employees, the ALRB with an employee list as described by 8 Cal. Admin. Code Section 20910 (c) (1976) upon the UFW's filing of a Notice of Intent to Take Access as described by 8 Cal. Admin. Code Section 20900(e) (1) (B). The list shall be provided within five days after service on Respondent of the Notice of Intent to Take Access. Respondent shall maintain such an employee list containing the current street addresses of all its agricultural employees.

(e) Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth hereinafter.

(f) Distribute copies of the attached Notice in appropriate languages to all present employees and to all employees hired by Respondent during the twelve (12) month period following the date of issuance of this Decision.

(g) Mail copies of the attached Notice in all appropriate languages, within 31 days from the date of issuance of this Order, to all employees employed by Respondent since April 6, 1977.<sup>3/</sup>

(h) Post copies of the attached Notice in all appropriate languages in conspicuous places on its property for a period of 90 consecutive days, at times and places to be determined by the Regional Director. Respondent shall promptly replace all Notices which have been altered, defaced, covered, or removed.

(i) Arrange for a representative of Respondent or a Board Agent to read the attached Notice in appropriate languages to Respondent's assembled employees. The Notice shall be read on company time to each crew of Respondent's employees employed during the next peak period of employment. The Board Agent shall be given a reasonable amount of time after each reading, outside the presence of Respondent's agents and supervisors, to answer questions which employees may have about the substance of the Notice and their rights upon the Act. Piece-rate workers shall receive compensation for time lost at a rate computed by taking the average hourly pay earned during the remainder of the Notice and the question-and-answer period.

(j) Inform the Regional Director in writing within 30 days after the date of issuance of this Order and thereafter,

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<sup>3/</sup> The date selected is based on the date of Respondent's first unfair labor practice during the organizational campaign, when Respondent provided the Board with an insufficient pre-petition employee list.

upon the Regional Director's request, report in writing on the steps Respondent has taken to comply with this Order.

Dated: December 21, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a hearing in which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we have interfered with the rights of our employees. The Board has ordered us to post this Notice and to take other actions.

We will do what the Board has ordered and also tell you that the Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;
2. To form, join or help unions;
3. To bargain as a group and to choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help and protect one another; and
5. To decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT give you or promise to give you benefits like wage increases, rest periods, recall letters, free refreshments, or parties in order to influence your vote in any election conducted by the Agricultural Labor Relations Board.

WE WILL NOT time the announcement of such benefits as medical insurance in order to influence your vote in any election conducted by the Agricultural Labor Relations Board.

WE WILL NOT fail or refuse to maintain a current list of employees' street addresses as required by state law or to provide such a list to the UFW or any other union which has filed a Notice of Intention to Organize the employees at this ranch.

WE WILL NOT interfere with the UFW or other union organizers who come into our fields to talk to you about the union when they are there as the law allows.

Dated:

COACHELLA IMPERIAL DISTRIBUTORS

By: \_\_\_\_\_

\_\_\_\_\_

Representative

Title

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

Coachella Imperial Distributors

5 ALRB No. 73

CaseNos.77-RC-17-C  
77-CE-140-C  
77-CE-177-C  
77-CE-180-C  
77-CE-182-C  
77-CE-204-C

ALO DECISION

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW), and intervention by the Independent Union of Agricultural Workers (IUAW), a representation election was conducted among the Employer's agricultural employees. Objections to the election and unfair labor practice allegations were consolidated for hearing.

The ALO concluded that Respondent turned over insufficient pre-petition lists and eligibility lists. The ALO found that the eligibility list deficiencies violated Section 1153(a) and that the pre-petition and eligibility list deficiencies constituted a basis for setting aside the election.

The ALO found that Respondent violated the Act when it interfered with access on June 27, both before work and after work commenced.

The ALO found that the Employer violated the Act and committed misconduct affecting the election by: granting a wage increase; announcing a medical insurance plan timed to interfere with the Union's organizing plan; giving an election eve party for its employees designed to interfere with employee free choice; and promising and granting other benefits including soft drinks in the fields, a recall letter for the following season and a morning break.

The ALO found that Respondent affected the election by threatening employees with discharge if they signed authorization cards, and by threatening one employee with discharge for sympathizing with the UFW.

The ALO recommended that the election be set aside.

REGIONAL DIRECTOR'S REPORT

Following investigation of the challenged ballots, the Regional Director issued his Report on Challenged Ballots. In 5 ALRB No. 18, the Board considered the issues raised by the challenged ballots, and resolved 92 of the challenged ballots. An amended tally of ballots showed: UFW - 118 votes; IUAW - 11 votes; No Union - 149 votes; challenged ballots - 57 votes. As the unresolved challenged ballots were still sufficient in number to determine the outcome of the election, the Regional Director conducted further investigation, and thereafter

issued his Supplemental Report on Challenged Ballots. The UFW filed exceptions to portions of that, supplemental report. This Board ordered that 40 ballots be opened, as to which the Regional Director recommended the challenges be overruled, and no exception was taken. An amended tally of ballots showed: UFW - 155; IUAW - 12; No Union - 151; challenged ballots - 17. The Regional Director recommended that the 17 remaining challenges be sustained. The UFW filed exceptions to 10 of these recommendations.

#### BOARD DECISION

The Board affirmed the ALO's conclusions as to unfair labor practices and conduct affecting the election.

The Board found that Respondent violated the Board's access regulation by threatening to call the Sheriff to remove organizers who were properly taking access. The Board found that the organizers were justified in entering the fields pursuant to the "post-work" provision of the access regulation before all of the employees had finished work, where the employees left work in stages.

The Board sustained the challenges to the votes of two minors who did not work during the eligibility period, while their mother was ill. The children were not dependent upon their mother for transportation to work.

The Board sustained the challenge to the ballot of one woman who was listed as an economic striker. She had not worked since 1975, when she had a child, and was found to have abandoned interest in the struck job.

The Board declined to resolve the remaining 7 challenges as to which the UFW filed exceptions. The Board concluded that given the aforesaid disposition of the challenges, neither labor organization could obtain a majority of the ballots, even if all of the unresolved challenged ballots were opened. In view of the Employer's objectionable conduct, and the interest in obtaining a final resolution, the Board set aside the election.

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