STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

F & P GROWERS ASSOCIATION Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 83-CE-108-OX 83-CE-108-1-OX 10 ALRB No. 28

DECISION AND ORDER

On October 7, 1983, Administrative Law Judge (ALJ) Matthew Goldberg issued the attached Decision in this matter. Thereafter, Respondent timely filed exceptions to the ALJ's Decision with a supporting brief.

Pursuant to the provisions of California Labor Code section 1146,[1/] 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 of the parties and has decided to affirm the ALJ's rulings, findings, and conclusions, as modified herein, and to adopt his proposed Order.

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

as modified.[2/]

In F & P Growers Association (1983) 9 ALRB No. 22, the Board held that Respondent had unlawfully refused to bargain when it rejected the request for negotiations made by the United Farm Workers of America, AFL-CIO, (Union or UFW) the certified collective bargaining representative of Respondent's agricultural employees. Respondent had contended that the Union no longer enjoyed majority support among Respondent's employees. The question of Respondent's duty to bargain under those circumstances is now pending before the courts. In the meantime, no bargaining is taking place between the parties, and the Union, in order to communicate with Respondent's employees, has sought to take post-certification access to the citrus groves where Respondent conducts its harvesting operations. Since the time of its refusal to bargain, Respondent has denied union representatives access to its employees except when it was enjoined from so doing by the Ventura County Superior Court.

This case raises the question of whether Respondent, having already been adjudged by this Board to be acting in violation of Labor Code section 1153(e) and (a) by refusing to bargain, violated the Agricultural Labor Relations Act (Act)

[2/]We find it unnecessary for the ALJ to have concluded that, independent of the right of post-certification access, Respondent had a duty to provide the Union with the names of grove owners and crop and production information and that its failure to do so was a violation of sections 1153(e) and (a) of the Act. That issue was not litigated by the parties and is therefore not properly before the Board in this case. Since we find no violation of section 1153(e), we decline to employ the extension of certification recommended by the ALJ.

anew by refusing to allow post-certification access to its employees' certified collective bargaining representative while it waits for the court to rule on the legitimacy of its refusal to bargain. A further issue concerns the General Counsel's assertion that Respondent is required to supplement the taking of access with certain information which will assist the Union's representatives in locating Respondent's crews. For the reasons stated below, we conclude that Respondent has committed a separate violation of the Act by denying access under these circumstances and that it is required to provide, in the limited format discussed below, information which is needed in order to locate the workers with whom the Union must communicate in order to carry out its responsibilities as their exclusive bargaining representative.

Any consideration of post-certification access must begin with O. P. Murphy (1979) 4 ALRB No. 106, the case wherein this Board established the parameters of post-certification access in the agricultural setting. Citing ALRB v. Superior Court (1976) 16 Cal.3d 392, the Board determined that there was a need for effective communication in the post-certification context and held that post-certification work-site access would be afforded to the union except where it could be shown that there existed an effective alternative means of communication. The Board contemplated that arrangements for access at reasonable times and places would be worked out as a preliminary matter at the bargaining table and that, if an employer did not allow the certified bargaining representative reasonable post-certification

access, such conduct would be "considered as evidence of a refusal to bargain in good faith." In addition to placing various procedural restrictions on the taking of post-certification access, the Board noted that "the purpose for taking access must be related to the collective bargaining process."

Here, bargaining is not currently taking place, but only because Respondent is refusing to bargain in order to test in court its belief that the Union has lost its majority support among Respondent's employees and that Respondent's bargaining obligation has therefore terminated. The Charging Party is thus deprived of any opportunity to work out arrangements at the bargaining table for taking post-certification access. Respondent's refusal to engage in bargaining does not, however, obviate the need for post-certification access. Respondent concedes that it will have to resume bargaining if and when the appellate court determines that it did not have a valid basis for its refusal to bargain. In the meantime, the Union may, for lack of access, find itself unable to accurately determine and assess the concerns of the workers with respect to wages, benefits and working conditions. (See Sunnyside Nurseries (1980) 6 ALRB No. 52, p. 7, fn. 4.) It has long been established that, in the agricultural setting, effective communication between union and workers rests heavily on the availability of work-site access. (ALRB v. Superior Court, supra, 16 Cal.3d 392.) The general lack of alternative means of communication, together with a high degree of employee turnover, makes it especially difficult for a union to maintain up-to-date information on the

desires and concerns of the workers it represents. Thus, without ongoing access, it is unlikely that the Charging Party would be in a position to resume bargaining in an effective manner immediately upon a verdict by the appellate court that the refusal to bargain was improper.

Pending review by the Court of Appeals, Respondent's refusal to bargain must be considered unlawful pursuant to our Decision in F & P Growers Association, supra, 9 ALRB No. 22. To sanction a denial of post-certification access in this situation would be to compound the effects of the lengthy delay in bargaining which has already taken place. We therefore conclude that post-certification access is reasonably related to the bargaining process even during a period when the employer is testing its obligation to bargain in court and that the denial of access during that refusal to bargain constitutes a presumptive interference with the rights of agricultural employees to maintain their ability to bargain collectively through representatives of their own choosing and therefore violates section 1153(a) of the Act.[3/]

[3/]Although agreeing with this conclusion, Member McCarthy notes a distinction between a refusal to allow post-certification access and other acts or failures to act that are consistent with an employer's refusal to bargain. For example, the employer who is engaged in such a refusal to bargain does not commit an additional unfair labor practice by failing to comply with union requests for meetings or by failing to provide the union with information related to bargaining proposals. To charge the employer with additional violations under those circumstances would be inconsistent with the employer's legal posture and would result in a meaningless exercise. A continuing requirement that access be afforded does not present those problems; its purpose

(Fn. 3 cont on p. 6.)

Our finding that Respondent has unlawfully denied the Union post-certification access is predicated on the absence of effective alternative means of communication. We agree with the ALJ that the existence of such alternative means of communication was not demonstrated by Respondent and that Respondent has therefore failed to rebut the presumption that its denial of post-certification access was unlawful under the circumstances.

We also agree with the ALJ that Respondent is under an affirmative obligation to make the Union's access rights meaningful by providing a certain amount of information that will aid the Union in locating the crews that it wishes to contact. As noted by the ALJ, the citrus harvesting industry has certain characteristics, involving uneven terrain, dense growth, and lack of ranch identification, which make it especially difficult to find a given crew of workers. Although, as pointed out by Respondent, the Union successfully contacted enough workers to obtain an election among Respondent's employees, and did so without the benefit of employer-provided information, we do not regard that fact as establishing that there is no need to supplement post-certification access with information as to crew location. It is unrealistic to expect the Union to mount the

(Fn. 3 cont.)

is not to force bargaining at a time when the bargaining obligation is being tested in court. Instead, continuing post-certification access simply enables the union to keep its finger on the pulse of the workers it is still certified to represent, so that if and when bargaining does resume, the union will be in a position to provide informed and effective representation at the bargaining table.

same kind of effort in taking post-certification access to locate particular crews as the Union would in conducting an organizational drive among citrus harvest workers generally. Moreover, as the still-certified representative of Respondent's employees, the Union has greater claim to such information than it did when it was seeking to become the representative of those employees.

That information which we deem essential in order to make the Union's right to post-certification access meaningful is as follows: (1) the number of crews working for the Company on the day access is to be taken; (2) the approximate time when the crews would be taking lunch that day; and, (3) directions to the site(s) at which each crew will be working that day. The last item is to be supplemented by a map, to be provided by the Union and upon which Respondent can designate, with as much precision as practicable, routes to, and the location of crews within, the particular ranches where its workers can be found. Absent some other agreement by the parties, access shall be permitted at the same times and with the same number of personnel as allowed under our pre-election access regulations. (See Cal. Admin. Code, tit.8, § 20900.) Further restrictions on the taking of access shall be as set forth in our Order herein,

We regard as excessive the ALJ's recommendation that, for purposes of post-certification access, Respondent be ordered to provide the Union with the names of each of the owners of the groves where Respondent harvests. The names are not relevant to the locations of the groves, nor are they relevant to the

Union's ability to communicate with the workers. We also find it inappropriate to order Respondent to reimburse the UFW for its expenses in searching for the crews, as it appears that the Union representative's unfamiliarity with the area contributed to the length of the search.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent F & P Growers Association, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Denying United Farm Workers of America, AFL-CIO, (UFW) representatives access to bargaining unit employees, at reasonable times, on the property or premises where they are employed, for purposes related to collective bargaining between Respondent and the UFW.

(b) Failing or refusing to provide, upon request, timely and accurate information to the UFW regarding the sites at which its harvest employees are working, and the times when they are taking their lunch break.

(c) In any like or related manner interfering with, restraining, or coercing agricultural employees in the exercise of the rights guaranteed them 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) Furnish to the UFW, upon request, the following

information in conjunction with post-certification access:

(1) the number of crews working for the Company on the day access is to be taken;

(2) the approximate time when the crew would be taking lunch that day; and,

(3) directions to the site(s) at which each crew will be working that day, which, when requested by the UFW, shall be supplemented with a map, to be provided by the UFW, upon which Respondent shall designate routes to, and the location of crews within, the particular ranches where Respondent is then conducting its harvesting operations.

(b) Permit UFW representatives to meet and talk with Respondent's agricultural employees on the property or premises where they are employed at times agreed to by Respondent and the UFW, and in the absence of such an agreement, during the time when said employees take their lunch break and during the periods one hour prior to the commencement of work and one hour after the completion of work, for purposes related to its responsibilities as exclusive bargaining representative. Two representatives for each crew employed shall be permitted to exercise access rights, provided that if there are more than 30 employees in a crew, there may be one additional representative for every 15 additional employees. The Union shall, before taking access, provide Respondent with information as to the number and names of the representatives who will be taking access, and the times and locations of the intended access. The right of access shall not include conduct disruptive of Respondent's

property or agricultural operations.

(c) 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.

(d) 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 at any time during the period from January 13, 1983, until the date on which said Notice is mailed or until Respondent no longer denies union representatives access to its employees, whichever occurs first.

(e) 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.

(f) 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 and/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.

(g) 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: June 11, 1984

JOHN P. MCCARTHY, Member

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Oxnard Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, F & P Growers Association, 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 failing to give your certified exclusive bargaining representative, United Farm Workers of America, AFL-CIO, (UFW) information as to daily crew locations and locations of all the groves where Respondent harvests, and by failing to permit the UFW to gain access to those groves for the purposes of speaking to you about a collective bargaining contract. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do and also want to tell you that the Agricultural Labor Relations Act (Act) is a law that gives you and all farm workers 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; and
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 refuse to permit representatives to enter areas where we harvest citrus so that they may talk to you about a collective bargaining agreement.

WE WILL provide information to the UFW, if they request it, about where we harvest and where our crews are working each day.

Dated: F & P Growers Association

By: _____

(Representative) (Title)

If you have a question 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 527 South A Street, Oxnard, California, 93030. The telephone number is (805)486-4475.

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

F & P GROWERS ASSOCIATION

10 ALRB No. 28
Case Nos. 83-CE-108-OX
83-CE-108-1-OX

ALJ's Decision

Respondent, an unincorporated association which harvests citrus fruit, was charged in the complaint with having (1) failed and refused to allow representatives of the UFW to take post-certification access to the Company's premises; and (2) refused to give UFW representatives any information to assist them in locating the Company's crews. Respondent had previously refused to bargain on the ground that the Union had lost its majority support. The Board found that to be an unlawful refusal to bargain and Respondent challenged the Board's ruling in court. The denials of access and information occurred during the pendency of the refusal to bargain.

The ALJ determined that Respondent had a continuing duty to bargain and therefore also had a continuing duty to permit the Union to take post-certification access. He concluded that O. P. Murphy (1977) 4. ALRB No. 106 is to be construed as meaning that a denial of post-certification access constitutes a prima facie section 1153(e) violation which can be rebutted only by a showing of alternative means of communication. He found Respondent to have made no such showing, and concluded that Respondent's denial of access was a separate violation of section 1153(e), and derivatively, a violation of section 1153(a).

The ALJ further concluded that, given the physical characteristics of the citrus industry, Respondent must provide the Union with information regarding the daily location of work crews and that failure to furnish such information is tantamount to a refusal to permit access. For remedial purposes, the ALJ recommended that Respondent prepare a detailed map of its operations for use by the Union in locating Respondent's crews and provide other directional information.

Board Decision

The Board found that there was an absence of effective alternative means of communication and that a union has a right to post-certification access even during a period when the employer is testing its obligation to bargain in court. Without ongoing access, the union may find itself unable to obtain accurate readings on the concerns of the workers and would thus be less effective as a bargaining representative if and when the court ordered the employer to resume bargaining. The Board therefore concluded that post-certification access is reasonably related to the bargaining process even during a period when the employer

is testing its obligation to bargain in court and that the denial of access during that refusal to bargain constitutes a presumptive interference with the rights of agricultural employees to maintain their ability to bargain collectively through representatives of their own choosing and therefore violates section 1153(a) of the Act.

The Board agreed with the ALJ that the Employer is under an affirmative obligation to make the Union's access rights meaningful by providing a certain amount of information that will aid the Union in locating crews that it wishes to contact. However, the Board considered excessive the ALJ's recommendation that Respondent be ordered to provide the Union with the names of the owners of the groves where Respondent conducts its harvesting.

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

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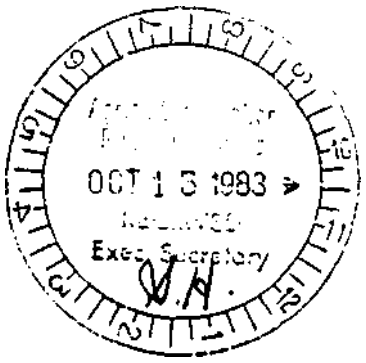
STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

F & P GROWERS ASSOCIATION, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 83-CE-108-OX 83-CE-108-1-OX



Appearances:

Judy Weissberg, Esq. and
Erasmo Elias, Esq.
for the General Counsel

William S. Marrs, Esq. of
Gordon, Glade & Marrs
for the Respondent

Before: Matthew Goldberg
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

I. STATEMENT OF THE CASE

On February 23, 1983,[1/] the United Farm Workers of America, AFL-CIO (hereafter referred to as the "Union"), filed a charge alleging a violation of sections 1153(a) and (e) of the Act. The charge was served on F & P Growers Association (hereafter referred to as "respondent" or the "company") on the same date. The alleged violation itself was grounded upon a claim that respondent had denied "post-certification access" to representatives of the Union. On March 14, the General Counsel for the Agricultural Labor Relations Board caused to be issued a complaint based on this charge. Respondent timely filed an answer, which essentially denied the commission of any unfair labor practices.[2/] Subsequently, on April 12, the Union issued an amendment to the charge, which was duly served on Respondent. The amendment, alleging a further violation of section 1153(a) and 1153(e), involved a denial to furnish certain information to the Union. The information was claimed to be necessary to facilitate the taking of access by the Union.

On May 3, 4 and 5 a hearing in the matter was held before me in Oxnard, California. Respondent and General Counsel appeared through their respective representatives. The parties were given full opportunity to present testimonial and documentary evidence, to examine and cross-examine witnesses, and to submit oral arguments and post-hearing briefs. Having read and considered these briefs,

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1. All dates refer to 1983 unless otherwise noted.

2. The original complaint and notice of hearing, as well as the amendments thereto, were duly served on Respondent.

based upon the entire record in the case, including my observations both of the witnesses who testified and of the work site(s) with which this proceedings is concerned[3/] I make the following:

II. FINDINGS OF FACT

A. Jurisdiction

1. Respondent, at all times material, is an agricultural employer within the meaning of section 1140.4(c) of the Act.

2. The Union was and is, at all times material, a labor organization within the meaning of section 1140.4(f) of the Act.[4/]

B. The Unfair Labor Practices Alleged

This case is concerned with the "denial" by respondent of post-certification access as, requested by the Union, to areas where it harvests citrus, and the further refusal by respondent to furnish certain information principally regarding the location of work crews which, General Counsel contends, was necessary to make said access "effective" and "reasonable."[5/]

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3. As will be detailed below, General Counsel filed a motion that the ALJ tour the areas where respondent carries out its operations. Pursuant to that motion, an on-site inspection was conducted. Following the inspection, the ALJ issued a statement on the record summarizing his observations, and afforded the parties an opportunity to augment or refute them.

4. In its answer to the complaint, the jurisdictional facts were admitted by respondent.

5. The denial of access and the refusal to furnish information were the subjects of an injunction proceeding, detailed below, in the Ventura County Superior Court. The injunctive relief obtained provided a temporary means by which the Union could obtain access. However, as will be more fully detailed below, the informational aspect of the injunction, General Counsel maintained, was not completely adequate.

Respondent did not contest the bulk of the factual assertions which General Counsel sought to utilize as a basis for establishing violations of the Act. Some were admitted in its answer; some were the subject of stipulations between the parties; while others respondent determined not to offer any evidence to contradict or refute.

1. Respondent's Operations

Respondent is an unincorporated association which harvests navel and Valencia oranges and a small amount of grapefruit[6/] in Ventura County. Its operations are carried out in groves principally located between the towns of Fillmore and Piru. The major portion of the groves are located in the so-called "Bardsdale" area, south of Fillmore, Highway 126, and the Santa Clara River, and east of Santa Paula. Two other principal harvesting areas are denominated as the "Goodenough Ranch" area, located along Goodenough Road which runs north from Fillmore, and the "Newhall Ranch" area, which is about three or four miles east of Piru. From the easternmost area in which respondent operates to the area farthest west is a distance of about twenty miles. Eight or nine miles separate the northernmost area from the southernmost. Respondent's operations are performed over a total of approximately 5,000 acres.

Respondent itself does not own the land on which it harvests citrus. Rather, the citrus is harvested in groves owned by approximately 250 different growers. The bulk of those groves carry

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6. Less than ten percent of the citrus respondent harvests are grapefruit. Of the oranges respondent picks, about four percent, of these are navels, with the remainder being Valencias.

no identifying marker as to who owns them.

During its peak, Respondent employs about 350 persons, organized into five separate crews. The harvesting season begins in January and runs for about ten months. Peak is reached in late May or June.

The employees do not live in any company-owned housing, but reside in a number of nearby towns such as Rancho Sespe, Santa Paula, Fillmore and San Fernando. There is a private labor camp in Fillmore in which a number of respondent's workers live. While there are company buses which transport the workers to the particular groves, few workers gather in a central location to be picked up to be taken to the work site. Rather, some workers are picked up at or near their homes, while others drive their own cars to the work sites. At the conclusion of the work day, employees are customarily dropped off where they were picked up in the morning.

2. The Collective Bargaining History and Events Leading to the Instant Controversy

In Case Number 78-RC-9-V, the Union filed a petition in order that a representation election be conducted among respondent's employees. The Union availed itself of access to the respondent's premises[7/] during the course of the organizational campaign. No

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7. As noted above, respondent does not own the land over which it operates and thus, technically, the areas on which access was sought are not "respondent's premises." Such phrase is used as a short-form means of referring to the areas where respondent engages in harvesting operations. As noted in Robert H. Hickam (1982) 8 ALRB No. 102, the Board itself does not utilize "employer's premises" as a narrowily-defined concept, but rather includes within its meaning any property on which the agricultural employees of the employer are performing agricultural services, regardless of who is the holder of the fee or leasehold interest.

information was provided to the Union at that time of the type which the Union presently seeks, i.e., the location(s) where crews were working, directions on how to find them, etc.

The election held on June 13, 1978 resulted in the certification of the Union, which took place on July 10, 1978. Beginning in May, 1979,[8] the Union and respondent engaged in collective bargaining negotiations. Negotiations continued up to and including February 17, 1981. After a five-month hiatus, the Union sent a letter to respondent requesting that it resume the negotiations. The company, through its representative, replied that it refused to meet and bargain with the Union, maintaining that it was no longer under any obligation to do so since the company held a "good faith"[9] doubt that the Union, as of that date, continued to enjoy the support of a majority of its employees. During the time period in question, there had been no decertification election nor rival union election conducted among respondent's employees.

On January 25, 1982, in case number 82-CE-7-OX, the Union filed a charge asserting that Respondent had refused to bargain with it in contravention of section 1153(e) of the Act, from July 31, 1981, forward. Based on this charge, a complaint was issued on April 9, 1982, alleging in substance that Respondent failed and refused to meet and bargain with the Union.

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8. The gap between the certification and the commencement of negotiations was not explained in the record.

9. The issue of respondent's "good faith" was not actually litigated. A charge had been filed which alleged that Respondent engaged in surface bargaining prior to July 31, 1981. The Regional Director found no merit in this charge, and dismissed it.

On September 7, 1982, at the hearing conducted for the purposes of deciding this issue, General Counsel moved for summary judgment. The motion was granted by the Administrative Law Judge, whose decision was affirmed, in pertinent part,[10/] by the Board in F & P Growers' Association (April 29, 1983) 9 ALRB No. 22. The basis for upholding the General Counsel's position on the issue, and finding that Respondent violated section 1153(e), was that under the decisions announced in Cattle Valley Farms/Nick J. Canata (1982) 8 ALRB No. 24, and Nish Noroian Farms (1982) 8 ALRB No. 25, Respondent was foreclosed from raising, as a defense to a refusal to bargain, and consonant with certain NLRB precedent (see, e.g., Dayton Motels (1974) 212 NLRB 553), that it entertained a "good faith" and "reasonable" belief that the Union no longer enjoyed majority support among members of the bargaining unit.

Essentially, the Board declared in Nish Noroian that a union's certification, and the concomitant obligation of an employer to bargain in good faith with it, continued until that union was, pursuant to a representation election, either decertified or deposed

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10. The case was remanded to determine the issue of the applicability of make-whole relief by examining respondent's "good faith belief" in the loss of the Union's majority from July 31, 1981, to April 15, 1982, and whether "the public interest in the litigation of Respondent's refusal to bargain outweighed the harm that such refusal caused to Respondent's agricultural employees." 9 ALRB No. 22 did not contain a "final order" from which an appeal might be taken (see Act section 1160.8). Subsequently, in 9 ALRB No. 22, the Board granted General Counsel's unopposed motion to delete from its request for relief the portion which sought make-whole for this July 31, 1981 to April 15, 1982 period. The Board stated that "the delay and uncertainty imposed upon this and related cases by limiting the applicability of the make-whole remedy for the period . . . would not effectuate the purposes of the Act."

by the certification of a rival union.[11] As there had been neither such proceeding involving respondent's employees, respondent's obligation to bargain with the Union was held not to have been extinguished, its "good faith" doubt of the Union's majority notwithstanding.

On or about January 13, 1983, after General Counsel's motion had been granted by the ALJ,[12] but before the Board had issued its affirmance, the Union again requested by letter that respondent resume negotiations with it. Approximately one month later, on February 11, having received no response from the company in the interim, the Union again wrote respondent to request the resumption of collective bargaining. On February 16, the Union negotiator, by letter, reiterated its request for bargaining and, in addition, requested that it be permitted to exercise access rights to respondent's premises. As admitted by respondent in its answer, the purpose for the taking of access, as set forth (presumably)[13] in the letter, was to "discuss [. . .] negotiations and working conditions with the company's agricultural employees."

On February 18, the Union's negotiator was informed in a telephone conversation with Leon Gordon, attorney for the

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11. At one point during the course of this hearing, as well as during the prior case, respondent argued the "certified until decertified" rule in Nish Noroian was "dicta," not germane to the issues therein. The Board specifically disposed of this contention on pp. 4 and 5 of 9 ALRB No. 22.

12. The ALJ therein rendered his decision on October 6, 1982.

13. The allegation admitted by respondent was ambiguous in this regard.

respondent, that the company would decline to negotiate with the Union. As stated in respondent's answer to the instant complaint, the reasons for not negotiating with the Union at that time were that "the UFW had lost its majority status and was no longer the collective bargaining representative of respondent's employees" and "that the whole issue was [then currently] before the Board awaiting decision."[14/]

Respondent further admitted that as of February 16, it has refused to permit representatives of the Union to avail themselves of access to the premises where it conducts its harvesting operations. After the charge was filed and the complaint issued in the instant matter on the dates noted above, General Counsel sought injunctive relief in the Ventura County Superior Court. A Temporary Restraining Order was entered by the Court on March 25, 1983, under the terms of which respondent was ordered to show cause why it should not be enjoined from denying "reasonable post-certification access" to representatives of the Union. The Court further delineated the terms for the taking of access which were to be observed in the absence of an agreement between the Union and respondent for same: the Union was to be permitted access, on *a* daily basis, "to not less than two representatives of the UFW for each crew . . . employed, and not less than one hour of access per crew per day." Access was to be permitted during the employees' lunch period.

On April 6, the Ventura County Superior Court issued a

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14. As indicated above, case number 82-CE-7-OX had not, as of that time, been ruled upon by the Board.

Preliminary Injunction in the matter enjoining respondent from denying to the Union reasonable post-certification access to its premises. The Preliminary Injunction, in addition to ordering that reasonable access be granted to the Union, also ordered respondent to provide the following information, ostensibly to facilitate the taking of such access:

1. The number of crews working for respondent on the day access was to be taken;

2. The location of each crew on that day;

3. The approximate time when the crew would be taking lunch that day;

4. Directions to the location of each crew.

3. Attempts at, and the Actual Taking of, Access to Respondent's Premises

Jose Manuel Rodriguez, Administrator of the Union's citrus division for Ventura County, telephoned Bill Winters, respondent's manager, on March 28 to inform him that he would be taking access to respondent's premises pursuant to the court order. He further requested that Winters supply him with information regarding the number of crews that were working, where they were working, and the time when they would be taking their lunch break. Winters declined to furnish the information, saying he needed to speak to his attorney.

Nonetheless, following the above conversation, Rodriguez set out about 8:30 a.m. in an attempt to find the citrus crews. His testimony, which was uncontroverted, reflects that he spent nearly five hours in locating one of respondent's crews. His travels took him from the Union's office in Oxnard through Fillmore to east of

Piru, back to Fillmore, then along the road north of the town, Goodenough Road, and through streets in the Moorpark area. As Rodriguez drove, he simultaneously attempted to spot evidence of the crews' presence. Finally, travelling back to Fillmore and crossing a bridge south of the area, he saw a yellow bus leave a grove. Taking the road from where he noticed the bus leave, he saw a crew working. Rodriguez was not sure whether it was working for the respondent. He approached the foreman to verify whether it was. The foreman answered affirmatively, it was an F & P crew. However, the administator had spent all his time trying to locate the crew. It was then about 1:00 or 1:30 p.m., the crew had taken their lunch, and there remained no time for him to speak with its members.

On March 30, Rodriguez, assisted by Union organizer Chole Trevino, again attempted to locate respondent's crews, avail themselves of access, and speak with the workers. The two initially went directly to respondent's offices, where they inquired of Bill Winters if they might take access, and if so, whether he might furnish them with information which would assist them in finding the crews. While Winters "approved"[15/] the taking of access, he again declined to provide the information they sought, saying that the court order did not oblige him to do so. The organizers left the office about 11:45 a.m., drove east along Highway 126 past Piru, then back to Fillmore along the same highway, Rodriguez driving while Trevino searched along both sides of the roadway for signs of one of respondent's crews.

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15. Respondent was by then acting under the compulsion of a court order.

In the course of driving around the Union representatives happened upon a company bus, which indicated the presence of a crew in the vicinity. At the site they announced to foreman Cruz Molina who they were, and proceeded to speak to crew members, who were by then, at 12:10 p.m., already eating lunch. Twenty minutes later, the foreman gave the order to resume work, and discussions between crew members and organizers ended. Rodriguez asked the foreman whether the crew would be in the same location the following day. The foreman replied that he did not know.

The next day Trevino and Rodriguez again attempted to locate respondent's crews. Since their request for information regarding crew location was denied the previous day, they did not ask for any that morning. Leaving the Oxnard Union office about 9:45 a.m., they drove along Highway 126 to the eastern side of Piru, looking for indications of crews working in groves on either side of the highway. Not finding any, they drove back to the Fillmore area, then took the Goodenough road north from the town. From there they traveled south back through Fillmore towards the Moorpark area. Periodically they would stop the car and attempt, from an elevated vantage point,to espy a crew. They were unsuccessful.

Finally, they spotted a crew pruning lemons[16/] where they inquired of some workers whether they had seen any F & P crews. After one worker told them that he knew where their orchards were and had seen one of respondent's yellow buses go by, the organizers then drove to the Bardsdale area, criss-crossing through the streets

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16. Respondent does not perform any opertions in conjuction with lemon, crops.

until Trevino spotted a bus and a crew. The crew was working under the supervision, of foreman R. Mesa. As they had spent so much time looking for the crew, they only had about fifteen (15) minutes to actually speak with the workers. When the workers were asked where they would be the next day, none seemed to know.

The following day, Rodriguez and Trevino again attempted to locate respondent's crews. Leaving Oxnard between 8:30 and 9:00 a.m., they followed a route similar to that of prior days: east past Piru along 126, then back to Fillmore. Once in Fillmore itself, at a supermarket parking lot, they asked a man they met who appeared as if he were a citrus harvester, whether that man was familiar with F & P. Professing to know the company, the man told the representatives that he thought that company picked in Fillmore, Santa Paula, and Ojai. The organizers then drove from 126 to the vicinity of Ojai, looking for orange orchards. After locating some, they found out they were under the aegis of another concern. By that time, the lunch hour had passed. Thus, Trevino and Rodriguez spent the entire morning looking for respondent's crews, to no avail, and were not able to speak with any workers that day.

On the next day that the crew worked, Monday, April 4, after again being refused information regarding crew whereabouts, Rodriguez spotted two company buses in the course of his meanderings around and though company premises. At that location the crews of foremen Mesa and Enriquez were working. After speaking with crew members over a span of forty-five minutes, Rodriguez returned to his Oxnard office.

For the next three days, Rodriguez was occupied with other

matters. On April 8, the first opportunity Rodriguez had to attempt access after the entry of the Preliminary Injunction, the organizer telephoned Bill Winters between 7:30 and 8:00 a.m. When asked to furnish information to assist in locating the crews, Winters this time complied, giving Rodriguez the name of each foreman supervising crews that day, and the name of the particular ranch and street where each crew would be working.[17/] Winters asked the organizer who would be taking access, and which crew or crews would be visited. Rodriguez supplied these particulars.

Rodriguez testified, however, that the information he received from Winters was not totally adequate. He still experienced difficulty in locating the Esquivel crew, which he had chosen to visit that morning. Rodriguez had been informed that the crew was at the Old Mountain ranch by the Goodenough Road, located to the north of Fillmore. After an initial search of the area failed to yield results, Rodriguez again telephoned Winters and asked him to spell the name of the place where the crew would be found. Winters obliged.

Rodriguez had left his office about 10:30 that morning. It took him nearly one hour of searching before he happened upon Esquivel's crew.[18/] Driving along Goodenough Road, he looked on

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17. Rodriguez also asked what time the crews would be eating, and according to the strict letter of his testimony, Winters did not relate this information. However, subsequent testimony bore out that crews ate at the same time each day, or 12:00 noon.

18. The groves are about a forty-five minute drive from Oxnard. Rodriguez testified that he began speaking with crew members about 12:05 p.m.

both sides of it for evidence of the crew. In that area there are several groves, none of which have signs indicating the ranch name.[19/] On one side the land is elevated above the roadway, making it impossible to peer into the groves on that side. By chance Rodriguez spotted a truck emerging from a particular grove. Once he went inside, he saw a bus and a crew, neither of which were visible from the road. After speaking with the crew for about one-half hour, Rodriguez asked the foreman whether he knew where the crew would be the next day. The foreman replied in the negative, adding that "they tell us not to speak to you."

The following Monday, Rodriguez followed a similar procedure, telephoning Winters in the morning, and obtaining the names of each foreman and the ranch and street where they would be working that day. Rodriguez decided to visit a crew which he was told would be at Bardsdale and Ojai Streets in the Bardsdale area south of Fillmore. After travelling around this location without success, he telephoned the respondent's office again to obtain more exact instructions. Subsequently, Rodriguez located the entrance to the grove in question, and found the crew, which could not be seen from the street.[20/] He was able to speak to the crew for about

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19. This is the case with all of respondent's orchards save Newhall Ranch, the entrance to which is marked by a sign. However, there are problems in locating crews within that site. These will be discussed below.

20. Rodriguez testified that he found the crew about 10 a.m. having left his office about 8:00. Taking into account the forty-five minutes driving time from Oxnard, it must have taken about one hour to find the crew.

one-half hour while they took their lunch. None of the crew members was able to tell him where they would be working the following day.

The next day, April 12, Rodriguez obtained crew location information from Winters, as in days previous. That day Rodriguez chose to visit the Cruz Molina crew, working at the Newhall Ranch. As previously noted, the entrance to the ranch is clearly marked. However, once on the property, the dirt road through it twists and turns and contains many offshoots. The terrain is a succession of hills and gullys, the roads within the orchards like those without, winding through the groves so as to make it impossible to look through the grove for signs of activity. The height and fullness of the trees compounds the problems in locating work crews. Rodriguez thought he arrived at his destination upon seeing a company bus, only to find that the crew and the bus were that of foreman Esquivel. Esquivel could not provide any assistance in locating Molina and his crew. Finally, at around 12.10 a.m., Rodriguez found Molina's crew about one mile from where Esquivel's was working. He was able to speak to the Molina crew for approximately twenty minutes.

On April 13, due to weather conditions, work did not begin until after the lunch period. Thus, under the terms of the court order, Rodriguez was unable to speak to the crews during their break. However, he did avail himself of the opportunity that day to speak with some employees who gathered near the company offices to board the buses to be taken to the work sites.

Between April 13 and April 29, Rodriguez did not attempt to gain access to respondent's premises. Some days in this interval it rained, and crews did not work; others Rodriguez was occupied in

different capacities. At some point Rodriguez spoke to Winters and asked that the manager meet with him and provide him with a list of all the ranches harvested by the respondent as well as a map which would assist in locating them. Winters, according to Rodriguez' testimony, told him that a map could be obtained from the county offices, and referred him to respondent's attorney for the remaining information.

Rodriguez spoke to Winters again on the morning of May 7, and obtained information similar to that which he had previously obtained regarding crew locations. However, he did not take access that day.

Rodriguez stated that what he required was the cooperation of the company in meeting with him and designating those areas where it harvested citrus. Once he obtained this information, it would enable him to understand the company's directions. Rodriguez admitted that following the entry of the preliminary injunction, he was never refused information by company personnel.

By way of defense, respondent introduced testimony to the effect that when the Union originally organized F & P in 1978, it took access without any information or assistance from the company. Furthermore, Rodriguez, who assumed his current responsibilities in 1982, admitted that he did not communicate or obtain any information from his predecessors regarding the location of company operations.

4. Factual Analysis and Conclusions

As with any particular geographical location, once one develops a certain familiarity with the area, pinpointing a specific place becomes that much easier. From Rodriguez' testimony it

appears that his lack of familiarity with the region contributed to some extent to the problems he experienced in attempting to locate respondent's crews. Nevertheless, a thorough-going acquaintance with the area would not, in and of itself, suffice to solve all of those problems.

The three principle areas in which Respondent operates -- the Bardsdale area, the Goodenough Road area, and the Newhall Ranch -- each contain certain topographical peculiarities. If one were trying to find someone or something, perhaps the easiest area to do so would be in Bardsdale. There, as if in a small town, the orchards are demarcated by roads which criss-cross through them. The groves are rectangular, their borders marked off by street signs. The roads through the grove are straight, enabling one to look within the grove from one end and see the other.

By contrast, in both the Goodenough Road and the Newhall Ranch areas, in order to locate crews, the need for a thorough familiarity is much more acute. In these locations it is nearly impossible to spot evidence of the crews' presence from the roadway. One must walk inside the groves. The terrain is greatly varied, the groves located on a succession of gullys and hills. The roads in and around the groves follow no particular pattern, and apart from Goodenough Road itself, contain no identifying markers.

There are no signs in any of the three basic areas where respondent operates which indicate either who the owner of the particular grove is, or that it is respondent who is harvesting the citrus growing there.

Once all of the evidence – Rodriguez' narrative of his

experiences in attempting to locate the crews and the physical characteristics, obtained through visual inspection, of the land on which the groves are found -- is considered, it is abundantly clear that without any foreknowledge of where to go, locating respondent's crews would be a time-consuming, arduous, if not impossible task. Efforts of Union personnel to communicate with the workers that they represent would result in frustration and a needless waste of resources. The Union's responsibilities as collective bargaining representative would be thwarted by the simple dilemma posed by the physical location of the work force, i.e., that they cannot be found.

As previously noted, familiarization with a given area would not, in and of itself, serve to totally obviate the Union's difficulties in this regard. A circuit in excess of fifty miles would have to be covered in order to pass by the greater part of respondent's groves. Given the fact that most of the workers do not assemble in a central location to be transported to the work site, and similarly, are not dropped off at one location at the conclusion of the work day, the pre-work and post-work access which is commonly in usage in a variety of agricultural settings under the access regulations would be ineffectual in allowing the Union to communicate with the bulk of respondent's workers. Access during the course of the work day -- i.e., at lunch time so as not to disrupt the work[21/] -- is the only reasonable means of attaining

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21. This is not to imply that the Union may not avail itself of access at other times during the course of the work day

(Footnote continued—)

this goal. Given these time constraints, the conclusion is virtually inescapable that the respondent must provide assistance in locating the work crews in order that Union personnel do not expend all of their energies driving around an extensive area trying to find them, and, as Rodriguez occasionally experienced, use the time allocated for access in his search.

Likewise, requiring a certain degree of familiarity with the region imposes on the Union the necessity of utilizing particular personnel to perform tasks in connection with representing respondent's work force. Should the Union desire to or need to send someone to respondent's work sites other than the person most familiar with the region, the problems faced in locating the crews would be experienced anew. Thus, a system should be derived, if legally required, whereby any individual might be capable of finding one of respondent's crews in any given place at any given time.

5. Applicable Legal Principles and Conclusions of Law

a. General Standards

Respondent does not dispute that if it is required to bargain in good faith with the Union, it is required to allow the Union to take "post-certification" access. However, respondent maintains that it will not be "required" to meet and bargain with

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(Footnote 21 continued---)

when the object is other than communication with workers for purposes related to collective bargaining, such as grievance resolution with supervisors or on-site observation of working conditions. The times when such access is achieved is best left the collective bargaining process. (See, generally, O.P. Murphy Produce Co., Inc. (1977) 4 ALRB No. 106.)

the Union, and hence grant access to its representatives, unless and until the underlying case (9 ALRB No. 22) becomes judicially resolved, i.e., that the case has reached the stage that appellate processes have been exhausted, and the Board's order is fully enforceable.[22/]

Respondent cites no authority for this contention that the duty to bargain is suspended while a Board determination which announces the existence of the duty is being challenged in the appellate courts. The great weight of precedent is decidedly to the contrary. (Superior Fanning Co., Inc. (1978) 4 ALRB No. 44; Adam Farms (1978) 4 ALRB No. 76; George Arakelian Farms (1982) 8 ALRB No. 36; Ruline Nurseries (1982) 8 ALRB No. 105; N.L.R.B. v. Winn-Dixie Stores, Inc. (1974) 211 NLRB 24. While these cases have principally dealt with the duty to bargain during a certification challenge grounded upon objections to the underlying election,[23/] the nature

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22. Respondent conceded these points at the hearing. Mr. Marrs stipulated as follows in regard to the company's litigation stance:

> The UFW is no longer the exclusive collective bargaining representative of the employees of F & P Growers Association because the UFW has lost the support of the majority of the employees. Therefore, F & P Growers Association has no duty to bargain with the UFW and no duty to permit UFW representatives to take post-certification access. The company's position is that until the courts uphold the Board's decision in 9 ALRB No. 22 or until the Board's decision becomes final, the company has no legal obligation to bargain with the UFW or to permit UFW representatives to take post-certification access. If the courts uphold 9 ALRB No. 22 or the Board's decision becomes final, F & P will permit UFW representatives to take post-certification access.

23. Adam Farms involved an appeal of a Board decision in an unfair labor practice proceeding wherein it was determined that the employer had hired persons for the purposes of voting in a representation election in contravention of section 1154.6 of the Act.

of the challenge is not a significant distinction. What matters is the continued vitality of the obligation to bargain during the appellate process, once that obligation has been initially established by the Board. As noted in Montgomery Ward & Co. (1977) 228 NLRB No. 166, collateral litigation does not suspend the duty to bargain under section 8(a)(5), the NLRA counterpart to section 1153(e). Therefore, it is clear that respondent's obligation to bargain with the Union is a continuing one extant until the Union is decertified or deposed. (Nish Noroian, supra; Jack or Marion Radovich (1983) 9 ALRB No. 45.)

Since respondent has a continuing obligation to bargain with the Union, it has, co-extensively, a continuing duty to permit the Union to take access to areas where it is conducting operations. As noted in Sunnyside Nurseries (1980) 6 ALRB No. 52, p. 7, fn. 4:

> . . . the pendency of court proceedings [in which the Board's certification is being tested] does not, in and of itself, excuse Respondent's refusal to grant the union access. The duty to bargain in good faith, which is the well-spring of post-certification access, is not held in abeyance by the pendency of Respondent's testing of certification [citing cases]. Moreover, even though negotiations may not be currently in progress due to Respondent's appeal, post-certification access may still be necessary for the union to obtain current information about working conditions and to keep the employees advised of developments in the court litigation challenging the Board's certification . . . .

Accordingly, it is determined that respondent violated sections 1153(a) and (e) of the Act in refusing to allow the certified Union to take access to its premises.[24/]

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24. In O. P. Murphy Produce Co., Inc., supra, the Board stated at p. 8 that where an employer refused to allow

(Footnote continued---)

b. The Informational Aspect of the Access Issue

Having determined that respondent is under an obligation to permit the Union to avail itself of access to areas in which it is

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(Footnote 24 continued——)

post-certification access such conduct will be considered as "evidence of a refusal to bargain in good faith." The NLRB cases cited by the Board in that decision have basically found violations of the NLRA counterpart to section 1153(e) when access to company premises was denied to union representatives. (See generally, Fafnir Bearing v. N.L.R.B. (2d Cir. 1966) 362 F.2d 716; Wilson Athletic Goods (1968) 169 NLRB 621; Winn-Dixie Stores, Inc. (1976) 224 NLRB No. 190, and other cases cited on page 8 of the Murphy decision.) Undoubtedly, the Board relied on such "applicable" NLRB precedent as the basis for the above-quoted language in O. P. Murphy.

Curiously, however, subsequent cases treating the issue of post-certification access have found that a refusal to permit same merely constitutes a violation of section 1153(a), omitting any reference to section 1153(e) of the Act. Those cases under consideration include the strike access cases (Bruce Church, Inc. (1981) 7 ALRB No. 20; Growers Exchange, Inc. (1982) 8 ALRB No. 7; Bertuccio Farms (1982) 8 ALRB No. 70) as well as the cases arising under non-strike, post-certification circumstances. (Sunnyside Nurseries (1980) 6 ALRB No. 52; Patterson Farms (1982) 8 ALRB No. 57; Robert H. Hickam (1982) 8 ALRB No. 102.)

"The need for post-certification access is based on the right and duty of the exclusive representative to bargain collectively on behalf of all the employees it represents." (Sunnyside Nurseries, supra, p. 7.) The Sunnyside case interpreted the "refusal to bargain" language in O. P. Murphy as creating a rebuttable presumption that worksite access is necessary. The burden of proof shifts to the employer to overcome evidence of a "refusal to bargain" by demonstrating that "alternate means of communication exist." (Sunnyside Nurseries, supra.)

Thus, the Board's holding in 0. P. Murphy is construed to mean that the denial of a request for post-certification access constitutes a prima facie section 1153(e) violation.

Respondent offered no proof of any "alternative means of communciation." Its refusal to permit access was inextricably intertwined with its outright refusal to recognize and bargain with the Union, already found violative of section 1153(a) in 9 ALRB No. 22. No rationale appears for viewing respondent's denial of access to be anything less than a separate violation of section 1153(e), and derivatively, a violation of section 1153(a).

conducting operations, the question remains as to whether the respondent is under a concomitant duty, given the peculiarities of the citrus industry, to provide information to the Union which would, in effect, assist in its efforts to communicate with workers on the job site by enabling Union personnel to physically locate these workers. Any analysis of this question must begin with the central premise developed through General Counsel's proof herein, that it is difficult, if not impossible, to determine where the employees are working on a given day without any foreknowledge of their location. Simply stated, the workers cannot be found, except by pure happenstance, unless someone reveals where they are.[25/]

Since the initial promulgation of the organizational access regulations, communication between agricultural workers and Union personnel has consistently been couched in terms of its "effectiveness:" effectiveness not necessarily in the sense of the Union's ability to persuade, but in the sense of the actual physical ability of people to meet and talk with one another face-to-face.

The prologue to the access regulation itself (Regulations

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25. The thrust of respondent's defense that during the original organizational drive, without advance knowledge of crew whereabouts, Union personnel took access and spoke with workers, has minimal probative impact to counter this conclusion. No proof was adduced as to the number of Union people so engaged at the time. It would obviously take less time to locate crews if, say, ten people were involved in searching for them than it would if there were only one. Further, there was no evidence that the Union was receiving assistance from workers at that time which, assuming that it was, could have done much to expedite the task. Respondent's basic assertion that since the giving of information was unnecessary before, it should not be necessary now, thus fails as a defense in the instant matter owing to the absence of proof that the circumstances which existed during the organizational campaign are still prevalent and applicable to the taking of post-certification access.

section 20900(a) - (e)) contains repeated references to the concept of "effective" communication:

> (b) . . . When alternative channels of effective communciation are not available to a union, organizational rights must include a limited right to approach employees on the property of the employer . . . . (c) . . . [u]nions seeking to organize agricultural employees do not have available alternative channels of effective communcation. Alternative channels of effective communcation which have been found adequate in industrial settings do not exist or are insufficient in the context of agricultural labor. (Emphasis supplied.)

The California Supreme Court, in its decision upholding the validity of the organizational access regulation (A . L . R . B . v. Superior Court (1976) 16 Cal.3d 392), struck a similar note in its opinion. The Court stated the "interest asserted [by the access regulation] is the right of workers to have effective access to information . . . . (16 Cal.3d at 402, emphasis supplied.) It later quoted with approval (16 Cal.3d at 409) from language contained in Republic Aviation Corp. v. N.L.R.B. (1945) 324 U.S. 793, 802, wherein the U.S. Supreme Court stated that "the employer's right to control his property does not permit him to deny access to his property to persons whose presence is necessary there to enable the employees effectively to exercise their right to self-organization and collective bargaining . . . " (emphasis supplied).

As the above reference makes clear, at the cornerstone of the organizational access regulation is the notion that presumptively, no "alternative channels of communciation" between Union and worker exist. Any means other than direct verbal exchange, such as leafletting, radio broadcasts, mailings, 'newspaper advertising, and home visits, have been proven "ineffective" in

attaining the goal of informing workers about, and involving them in, the collective bargaining process. A similar rationale is found in the Board decision upholding the Union's right to take post-certification access to an employer's premises. (O. P. Murphy Produce Co., Inc., supra, at p. 7.)

To paraphrase the access regulation prologue, access rights, like organizational rights, "are not viable in a vacuum." In order that the right of access itself be rendered "effective," the simple truth is that the right should be exercised to allow Union personnel the opportunity to speak with workers, rather than wander aimlessly through citrus groves or on public highways. Merely permitting persons from the Union to enter property without speaking to workers does not fulfill the purpose of the grant of the right of post-certification access. As noted in O. P. Murphy Produce Co., Inc., supra, p. 10, the duty to represent employees in the certified unit "cannot be discharged fully without access to, and the opportunity to communicate directly with, all the employees" (emphasis supplied). Given the physical characteristics prevalent in the areas where respondent operates, the company must provide information regarding the daily location of work crews so as to impart real meaning to the Union's right of access. Failing to furnish such information is tantamount to a refusal to permit access, and thus provides an independent basis for finding a violation of section 1153(e) of the Act herein. The nature and extent of this information will be discussed below in the succeeding section.

c. The Duty to Furnish Information Independent of the Right of Access

It is axiomatic that the Union is entitled to receive information, upon request, that is relevant and necessary for collective bargaining. (See, generally, As-H-Ne Farms (1980) 6 ALRB No. 9; see also O. P. Murphy Produce Co., Inc. (1979) 5 ALRB No. 63.) Stated in another fashion, respondent may not refuse to supply the Union with information where that refusal will deprive the Union of the "opportunity to bargain intelligently" regarding the mandatory subjects of wages, hours, and other terms and conditions of employment; (Cattle Valley Farms (1982) 8 ALRB No. 59.)

The record reflects that Union representative Rodriguez requested that the company supply him with information on a given day regarding the number of crews working, their whereabouts, and the time at which they would be taking their lunch break. Such requests were denied until mandated by court injunction.[26/] In the foregoing section, it was concluded that access rights are an integral part of the collective bargaining process. Information regarding crew whereabouts is necessary to make such access "effective." It therefore follows that the providing of such information is "relevant and necessary" for collective bargaining.

However, apart from these considerations, an independent ground exists for the company to furnish crew location information. Assuming, arguendo, that the information was not requested so as to

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26. The unfair labor practice aspects of this case, are, of course, not vitiated by compliance with an injunction. (See, generally, Chefs, Cooks, Pastry Cooks & Assistants, Local 89 (Stork Restaurant, Inc.) (1961) 130 NLRB 543.)

facilitate access, would the respondent still be required to furnish it to the Union as part of the collective bargaining process? That question must be answered in the affirmative.

The Board has held in prior cases that employers are obligated to supply similar information where requests for same by the certified union have been refused. As previously noted, respondent does not own the land on which it harvests citrus. In Robert H. Hickam, supra, the employer was ordered to furnish to the Union, upon request, "personnel, crop and production information and information about work assignments and work locations" of its agricultural employees. (Id. at p. 20.) The respondent had provided information regarding land it alone owned or leased, but did not relinquish information regarding property which it did not solely own or lease. The Board held that such information was relevant to the collective bargaining process, as it related to the status of employees as unit employees. In the instant case, "information about work assignments and work locations" would also have a direct bearing on working conditions, a mandatory bargaining subject. Thus, the Union would be entitled to receive such information when requested.

Similarly, in As-H-Ne Farms, supra, the employer was held to be obligated to supply information to the Union concerning its relationship with other agricultural interests. The Board noted that the information concerned the scope of the bargaining unit, and was considered "fundamental to the union's full knowledge of which employees it represented." (Id. at 10.) Although that case sought the information to determine the extent of interchange between unit

employees with other agricultural entities, thus rendering such information relevant to the collective bargaining process, the situation is analogous to the instant case in that the Union here is requesting information regarding the relationship of respondent, a harvesting association, to other agricultural entities, or growers, with whom it may or may not do business.[27/] Again, such information is relevant to the Union's understanding of the full range of working conditions for respondent's employees, as well as the "scope" of the bargaining unit, as the size of the unit may increase or decrease depending on whether the number of growers for whom respondent harvests is augmented or diminished.

In Cattle Valley Farms, supra, respondent failed to provide information regarding land it had recently acquired, and the effects the acquisition would have on the bargaining unit. The Board held that "respondent's total acreage, cropping patterns, and labor needs are clearly relevant to mandatory subjects of bargaining. (Id., p. 2.) The locations of company operations herein provide similar input to the Union in facilitating collective bargaining.

Lastly, the Board held in O. P. Murphy Produce Co., Inc. (1979) 5 ALRB No. 63, that the employer failed to provide the Union with yield information, and that such failure violated section 1153(e) of the Act, as it inhibited the Union's ability to intelligently discuss and calcultate piecerate proposals. While there is no evidence of any request in the instant case for yield

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27. The evidence demonstrated that there was no visual evidence as to who owned the properties themselves, and no actual knowledge by the Union as to which groves were under respondent's charge to harvest.

information, locations of company operations could logically result in calculations of particular yield data for particular areas, as well as determinations that work was being assigned equitably (i . e . , that certain crews are not consistently given areas with high or low productivity).

Therefore, respondent, in failing to provide the Union with information which *is* relevant and necessary to collective bargaining, violated sections 1153(a) and (e) of the Act.

THE REMEDY

General Counsel requested as part of the remedy herein that respondent be ordered to provide extensive information regarding the location of crews on any given work day:

> This information shall include, but not be limited to, the following:
>
> 1) A map of Ventura County on which is drawn the groves of each grower member of F & P that are harvested by F & P, marked with the name of each grower member, any ranch name, any grove name, and any block designations. The map shall also include the names of all towns and roads necessary to locate the groves harvested by F & P.
>
> 2) Specific directional information, including distances, compass directions, directions on roads inside ranches or groves, and directions to locations inside ranches or groves.

While it is felt that much of this information would facilitate the taking of access, as well as furnish data that is relevant and necessary to collective bargaining, a good portion of that which General Counsel seeks is redundant and places an undue burden on respondent, while at the same time requires no initiative from the Union in collating, then utilizing the information the company has provided.

Obviously, if one had a map, one would not need "specific

directional information, etc." Further, while the company should assist the Union in the preparation of such a map, a joint effort, rather than employing the sole energies of the company, would seem to foster a more abiding collective bargaining relationship. Toward that end, I shall recommend that the company meet and confer with the Union for the purposes of preparing a map[28/] of the areas where it operates, designating specific groves by the same system (i.e., ranch name, block number, etc.) that it utilizes to identify them for its foremen when it orders them to report to a specific area on a specific day.

Additionally, I shall recommend that a list be furnished to the Union of the names of each of the owners of the groves where respondent harvests, keyed in some fashion to the map jointly devised by the Union and the respondent. This list may not only facilitate access but will also provide the Union with information "relevant and necessary for collective bargaining," as it will indicate the scope of respondent's operations.[29/]

RECOMMENDED ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent F & P Growers Association, its officers, agents, successors, and assigns shall:

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28. The blank map of the general area is to be furnished by the Union.

29. General Counsel moved for summary judgment in the instant case, based on its assessment that there existed no triable issues of material fact. I informed the parties that I would take the motion under submission. This decision on the merits of the case obviously renders the summary judgment motion moot.

1. Cease and desist from:

a. Failing or refusing to meet and bargain collectively in good faith, as defined in section 1155.2(a) of the Agricultural Labor Relations Act (Act), on request, with the United Farm Workers of America, AFL-CIO (UFW), as the certified exclusive bargaining representative of their agricultural employees;

b. Failing or refusing to provide, upon request, timely and accurate information to the UFW regarding the daily whereabouts of its work crews, and the locations and/or designations of each particular grove or plot where it conducts harvesting operations.

c. Denying UFW representatives access to bargaining unit employees, at reasonable times, on the property or premises where they are employed, for purposes related to collective bargaining between respondent and the UFW.

d. In any like or related manner interfering with, restraining, or coercing agricultural employees in the exercise of the rights guaranteed them by section 1152 of the Act.

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

a. Upon request, meet and bargain collectively in good faith with the UFW as the certified collective bargaining representative of its agricultural employees at reasonable times and places to confer in good faith and submit meaningful proposals with respect to its employees' wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such an understanding in a signed agreement.

b. Furnish relevant information to the UFW, upon

request, for the purposes of obtaining access and bargaining, including, but not limited to, personnel, crop and production information, the names of the owners of each specific area where it harvests citrus, and information about daily work assignments and work locations of Respondent's agricultural employees.

c. Meet and confer with representatives of the UFW, upon request, for the purposes of designing and devising a map to be provided to the UFW which includes and designates all of the areas or groves where respondent carries on harvesting operations. The UFW shall furnish a blank of said map to be filled in during the course of this joint conference. Designations of particular areas noted on the map shall be in the same manner (e.g., block numbers, owner's name, etc.) as the company utilizes when it assigns foremen and crews to work in those areas.

d. Permit UFW representatives to meet and talk with Respondent's agricultural employees on the property or premises where they are employed, at times agreed to by Respondent, or in the absence of such an agreement, during the time when said employees take their lunch break, and at other reasonable times, for purposes related to collective bargaining between Respondent and the UFW. Two representatives for each crew employed shall be permitted to exercise access rights. Further, Respondent is to permit UFW representatives pre-work access to the buses it utilizes to transport workers to harvest sites, and permit the representatives to ride on said buses from the point where the first worker or group of workers is picked up, until the bus reaches the harvest site and

the work day commences.[30/]

e. Reimburse the UFW for expenses incurred by its representatives in attempting to locate respondent's work crews for each day that access was attempted or achieved from March 28, 1983 forward until compliance with this Order is achieved. Said reimbursement shall include compensation for automobile mileage expenses, less those expenses normally incurred on trips directly from the Oxnard UFW office to the respondent's groves where access was attained, and also shall include reasonable compensation for the time spent, less one and one-half hours, by UFW representatives in searching for the crews. Reimbursement for mileage and/or time shall not be paid on any day when representatives were able to locate respondent's crews within one and one-half hours after leaving the Oxnard UFW office, assuming that they went directly from that office to respondent's groves.[31/]

f. 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

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30. Bus access has been sanctioned by the organizational access regulation, section 20900(e)(5)(a). Customarily, however, organizers leave the buses before they depart. Here there is no central embarcation point from which all crew members are picked up. Rather, they are picked up at several points en route to the groves. It is felt that this type of access is particularly appropriate here where Union representatives may utilize not only for purposes of speaking with workers, but also for the purpose of familiarizing themselves with the areas where respondent operates.

31. Representative Rodriguez testified that it normally took forty-five minutes to travel this distance. Additional time is included for what might be the result of a lack of familiarity with the specific area. Anything beyond one and one-half hours needed to locate a crew, it is determined, is the direct result of inadequate information supplied' by the respondent.

for the purposes set forth hereinafter.

g. 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 employeed by Respondent at any time during the period from January 13, 1983 until the date on which the said Notice is mailed.

h. 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.

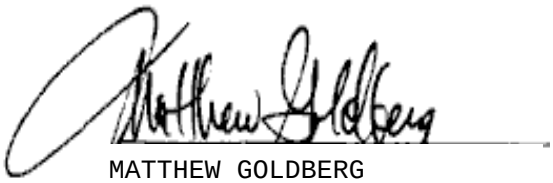
i. Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and/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.

j. 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.

IT IS FURTHER RECOMMENDED ORDERED that the certification of the UFW, as the exclusive collective bargaining representative of Respondent's agricultural employees, be extended for *a* period of one year from the date on which Respondent commence to bargain in good faith with the UFW.

DATED: October 7, 1983



MATTHEW GOLDBERG
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Oxnard Regional Office, the General Counsel of the Agricultural Labor Relations Board issed a complaint that alleged that we 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 failing and refusing to bargain with your certified exclusive bargaining representative, United Farm Workers of America, AFL-CIO (UFW), by failing to give the UFW information as to daily crew locations and locations of all the groves where respondent harvests, and by failing to permit the UFW to gain access to those groves for the purposes of speaking to you about a collective bargaining contract. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do and also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all farm workers 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 hereafter fail or refuse to meet and bargain collectively, on request, with your certified exclusive bargaining representative, the UFW.

WE WILL NOT hereafter fail or refuse to give the UFW, upon request, daily information regarding where our crews are working, or information about where we harvest citrus.

WE WILL NOT refuse to permit representatives from gaining access to areas where we harvest citrus so that they may talk to you about a collective bargaining agreement.

WE WILL, in the future, bargain in good faith with the UFW with the intent and purpose of reaching an agreement.

WE WILL provide information to the UFW, if they request it, about where we harvest and where our crews are working each day.

WE WILL allow UFW representatives to come on to the property where we are working so that they may speak with you about a contract.

WE WILL reimburse the UFW for the expenses they had trying to find our work crews.

DATED:

F & P GROWERS ASSOCIATION

(Representative) (Title)

If you have a question 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 528 South A Street, Oxnard, California 93030; the telephone number is (805) 486-4475.

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

DO NOT REMOVE OR MUTILATE.