Rutherford, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED VINTNERS, INC., a Wholly Owned Subsidiary of HEUBLEIN, INC., Charging Party, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charged Party, and NAPA VALLEY VINEYARDS , INC . , a Wholly Owned Subsidiary of BECKSTOFFER RANCHES , INC . , DAVID ABREU VINEYARD MANAGEMENT, K. S. CAIRNS COMPANY, and WIGHT VINEYARD MANAGEMENT, INC .	Case No. 83-CL-3-SAL 10 ALRB No. 34

DECISION AND ORDER QUASHING NOTICE OF HEARING

This is a proceeding under section 1160.5[1/] of the Agricultural Labor Relations Act (ALRA or Act), following charges filed by United Vintners, Inc. (UV or Charging Party), alleging that the United Farm Workers of America, AFL-CIO (UFW or Union) violated section 1154(d) (4) by engaging in "verbal statements, threats and picketing" with an object of forcing or requiring UV to assign work to employees of Napa Valley Vineyards, Inc. (NVV), members of the UFW, rather than to unorganized employees of David Abreu Vineyard Management Company (Abreu), Wight Vineyard

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

Management, Inc. (Wight) and K. S. Cairns Company (Cairns).

A hearing was held on seventeen days between May 3 and June 7, 1983 before Investigative Hearing Examiner (IHE) James Wolpman. All parties except David Abreu[2/] appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to adduce evidence bearing on the issues.[3/] UV, Wight and Cairns filed motions to quash notice of the hearing and supporting briefs and the UFW filed a brief. Response briefs were filed by UV and the UFW.

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

The Board has reviewed the rulings of the IHE made at the hearing and finds them free from prejudicial error. The rulings are hereby affirmed.[4/] The Board has considered the briefs and the entire record in this case and hereby makes the

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[2/] Abreu, owner of David Abreu Vineyard Management Company, to whose employees some of the work at issue was assigned, unsuccessfully sought to avoid service of process. After a court hearing enforcing the UFW's subpoena duces tecum, a special hearing was convened to produce the subpoenaed documents.

[3/] The IHE decided to bifurcate the hearing due to doubts about the applicability of the 1160.5 procedure to the instant dispute. Therefore the only issue before us at this juncture is whether or not reasonable cause exists to believe that a violation of section 1154(d)(4) occurred.

[4/] We reiterate our holding, made pursuant to interim appeal of the IHE's ruling granting motions to revoke subpoenas duces tecum of several ALRB officials, that the Board's jurisdiction to conduct an investigative hearing under section 1160.5 is established by the filing of a charge alleging a violation of section 1154(d)(4), and a determination of "merit" or "good cause'

(fn. 4 cont. on p. 3]

following findings:

The Parties

UV is an employer within the meaning of section 1154(d)(4)[5/] and the UFW is a labor organization.

The Dispute

A. The Facts

The instant dispute involves vineyard management work performed on three Napa Valley vineyards on land owned or leased by UV, presently called Heublein Wines. UV also owns and operates the Inglenook Winery, where most of the picketing occurred, and it distributes wines which are presently the subject of a UFW boycott. The work in dispute has been performed since 1970 by or for subsidiaries of Heublein, Inc. (Heublein), which acquired 82% of UV in 1969 and the remaining 18% in 1976. The vineyard workers were organized by the UFW, which has had collective bargaining agreements covering them since 1971. The first UFW contract was signed with Vinifera Development Corporation (VDC),

(fn.4 cont.)

by the Regional Director is not a jurisdictional prerequisite to the holding of a hearing under section 1160.5. Our decision to quash notice of the hearing renders moot the issue of the UFW's appeal of the IHE's decision to limit the scope of the hearing to the loss of work at the three vineyards listed in the notice of hearing.

[5/] Because section 1154(d)(4) protects "any employer," see infra, footnote 7, it is not necessary for us to determine whether or not UV is an "agricultural" employer or the employer of the vineyard workers whose work is in dispute. Moreover, the National Labor Relations Board (NLRB or national board) has interpreted the term "any employer" to cover not only employers whose work is in dispute, but any employer against whom a union engages in unlawful strike activity. (See International Longshoremen's Association, Local 1911 (Cargo Handlers, Inc.) (1978) 236 NLRB 1439 [98 LRRM 1593].)

a subsidiary of Heublein, organized and run by Andrew Beckstoffer, Heublein's Director of Acquisition, who is now the principal officer and shareholder in NVV. VDC was devoted exclusively to the farming of vineyards either owned or leased by Heublein or under contract to supply grapes to Heublein's wineries. In 1973 a separate corporation was formed to assume VDC's vineyard management functions. The new corporation, eventually called Vinifera Vineyards (VV), was financed by a loan from Heublein, secured by a pledge of Beckstoffer's stock. Heublein also owned 15% of the stock and held one position on the Board of Directors. NVV was created as a subsidiary of the new corporation which was assigned VDC's collective bargaining agreement with the UFW. After a representation election in 1975, the UFW was certified in 1977 as the exclusive bargaining representative of "all the agricultural employees of [NVV] in Napa and Sonoma counties." (See Napa Valley Vineyard Co. (1977) 3 ALRB No. 22.) At the end of that year the financial relationship between VV and Heublein changed. Heublein ceased to own stock and relinquished its place on the-Board. Beckstoffer's open-ended obligation to provide vineyard management so long as Heublein's grape supply contracts remained in force was replaced by a five-year contract between UV and NVV, to expire at the end of the 1982 harvest. When the contract with NVV expired, UV proceeded to contract with Abreu, Cairns and Wight, respectively, for the work on the three vineyards formerly covered by the contract with NVV. The workers of the new vineyard management companies were not unionized, and the UFW, upon learning of the new arrangement,

began picketing at UV's Inglenook Winery, site of the showcase Inglenook Vineyard previously managed by NVV. Later in the season, UFW President Cesar Chavez announced a consumer boycott against UV and UFW pickets appeared at UV's corporate headquarters in San Francisco. During the spring, demonstrations and marches also occurred at the Inglenook Winery and nearby towns. Many of the picketers were laid-off NW workers who had worked on the three UV vineyards previously managed by NVV. Picketers at the Inglenook Winery distributed to visitors leaflets stating that UV "refused to negotiate" with the UFW and "refused to rehire 60 farm workers" who had lost their jobs because of the new management contracts. They chanted and shouted "Boycott" and carried UFW flags and picket signs reading "We Want a Contract," "Farm Workers Struggle," and "United Vintners Unfair." The protests were peaceful, and there is no evidence on this record of violence or threats of violence.

Union contacts with UV officials bore essentially the same message as the picketing and demonstrations directed at the public. The Union sought to regain the work for its members by convincing UV to bargain with the UFW, first as a successor to NVV, later as a joint employer with NVV. When UFW officials met with UV's attorney during injunction proceedings in late February brought by UV in the Napa Superior Court, union officials focused on the need to get NVV's displaced employees back to work.

B. The Charges

On February 28, 1983, UV filed an unfair labor practice

charge against the UFW alleging that the Union had violated section 1154(d)(4) by picketing UV with an object of forcing it to reassign vineyard management work to NVV, whose employees are represented by the UFW, rather than to Abreu, Cairns or Wight, whose employees are unrepresented. On March 28, 1983, UV filed a request to withdraw the charge. The Regional Director of the Salinas Region denied the request and, on April 15, 1983, issued a Notice of Hearing pursuant to section 1160.5.

From the time it requested withdrawal of the charges, UV has maintained that this dispute did not constitute a jurisdictional dispute to which section 1154(d)(4) was applicable. Cairns and Wight have echoed UV's arguments and have filed a joint motion to quash notice of hearing under section 1160.5. NVV has taken no position on the issue. The UFW, although maintaining throughout the hearing that it had not violated section 1154(d)(4) because it was seeking to preserve its members' work, "conceded" in its brief a jurisdictional object to the picketing and invited the Board to make an award of the disputed work.[6/]

Significantly, then, the Charging Party and the Charged Party have both reversed themselves and are now maintaining positions which are the exact reverse of those typically taken by unions and employers in analogous proceedings under the

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[6/] We do not consider ourselves bound by concessions of a party aimed at achieving a particular tactical advantage rather than determining whether in fact the law has been violated. (See Laborers' District Council, Local 910 (Brockway Glass Co.) (1976) 226 NLRB 142, 143 [93 LRRM 1239].)

National Labor Relations Act (NLRA).

Other charges are pending the outcome of the instant proceeding: the UFW has filed refusal to bargain charges against UV, and UV has filed charges alleging the UFW has been engaged in recognitional and secondary picketing in violation of section 1l54(b)(2). The Regional Director has been holding those charges in abeyance pending the Board's Decision herein.

C. The Law

This is the first section 1154(d)(4)[7/] case to come before this Board. When a violation of section 1154(d)(4) is alleged, section 1160.5, analog of section 10(k) of the NLRA, provides for a special procedure to encourage the voluntary resolution of the dispute by the parties. The Regional Director issues a notice that the charge has been filed. The parties

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[7/] Section 1154.(d)(4) provides:

> It shall be an unfair labor practice for a labor organization or its agents to ... do either of the following: (i) to engage in, or to induce or encourage any individual employed by any person to engage in, a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services; or (ii) to threaten, coerce, or restrain any person: where in either case (i) or (ii) an object thereof is ... forcing or requiring any employer to assign particular work to employees in .a particular labor organization or in a particular trade, craft, or class, unless such an employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

The wording of the analogous NLRA provision, section 8(b)(4)(D), is identical but for the superfluous phrase "rather than to employees in another labor organization or in another trade, craft or class ..." which was simply deleted by the drafters of the ALRA.

to the dispute then have ten days in which to submit evidence that the dispute has been resolved or agreement has been reached as to a method for its resolution. Absent such evidence, the Board will "hear and determine the dispute." If the Board finds reasonable cause to believe section 1154(d) U). has been violated, it will determine the merits of the dispute and make an award of the disputed work to one of the competing employee groups. If not, the Board quashes notice of the hearing.[8/] If the parties fail to comply with the Board's award of the work, a complaint issues and the case is brought to hearing as an unfair labor practice, subject to the standard cease and desist and affirmative remedies, enforceable under section 1160.8.

Although the language of sections ll54(d)(4) and 1160.5 tracks almost exactly the NLRA provisions, jurisdictional disputes arise far more frequently under the national act, where a number of unions often represent separate units of a single employer's work force. The classic jurisdictional dispute, in which a neutral employer seeks resolution of the contest between two rival unions for assignment of particular work,[9/] is not likely to occur under the ALRA because of the statutory mandate that all agricultural employees of an agricultural employer be included in a single bargaining unit. (See section 1156.2.) However,

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[8/] The charges are dismissed if the parties adjust the dispute or comply with the Board decision determining the merits of the dispute.

[9/] See NLRB v. Radio and Television Broadcast Engineers' Union, Local 1212 (Columbia Broadcasting System) (1961) 364 U.S. 573, 81 S.Ct. 330 [47 LRRM 2332], hereinafter CBS.

a potential 1154(d)(4) claim may arise in certain situations, such as where an agricultural employer employs both agricultural and nonagricultural employees or where the employer of a particular bargaining unit contracts with another employer, becomes part of a joint enterprise with another employer, or is replaced by an alter ego or successor with a larger pre-existing work force. In such a situation, we look to NLRA precedent for guidance, while remaining mindful that the greater protections afforded employee informational picketing and secondary activity under the ALRA[10/] must be taken into account in determining the scope of the section 1154(d)(4) prohibition.

The applicability of NLRA section 8(b)(4)(D) to specific disputes has itself been the subject of dispute, inspiring a plethora of dissents and concurrences by members of the national

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[10/] Unlike the NLRA, the ALRA, in the proviso to section 1154(b)(4), explicitly protects informational picketing "for the purpose of truthfully advising the public, including consumers, that a product or ingredients thereof are produced by an agricultural employer with whom a labor organization has a primary dispute and are distributed by another employer, as long as such [picketing] does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick-up, deliver, or transport any goods, or not to perform any services at the establishment of the employer engaged in such distribution, and as long as such [picketing] does not have the effect of requesting the public to cease patronizing such other employer." Furthermore the ALRA, unlike the NLRA, permits secondary boycotts, providing that "publicity other than picketing, but including peaceful distribution of literature, which has the effect of requesting the public to cease patronizing such other employer, shall be permitted only if the labor organization has not lost an election for the primary employer's employees within the preceding twelve-month period, and no other labor organization is currently certified as the representative of the primary employer's employees." (Section 1l54(d).)

board. (See, e.g., Highway Truck Drivers and Helpers, Local 107 (Safeway Stores) (1961) 13-4 NLRB 1320 [49 LRRM 1343], Member Fanning concurring, Members Rogers and Leedom dissenting; Electrical Workers, IBEW (Bendix) (1962) 138 NLRB 689 [51 LRRM 1490] Member Fanning dissenting; Teamsters, Local 331 (Bulletin Co.) (1962) 139 NLRB 1391 [51 LRRM 1490], Members Rogers and Leedom dissenting; International Longshoremen's Association, Local 19, (Marine Assoc. of Chicago (1965) 151 NLRB 89 [58 LRRM 1354] Member Fanning dissenting; International Longshoremen's Association, Great Lakes District, Local 2000, (Lawrence Erie Co.) (1966) 158 NLRB 1687 [62 LRRM 1239], Member Fanning dissenting; International Longshoremen's and Warehousemen's Union Local 8 (Waterways Terminals Co.) (1970) 185 NLRB 186 [75 LRRM 1042], Members Miller and McCulloch dissenting.)

However, more recently, the national board settled on a narrower reading of section 8(b)(4)(D). In National Maritime Union of America, AFL-CIO (Puerto Rico Marine Management, Inc.) (1977) 227 NLRB 1081 [95 LRRM 1291] (hereinafter NMU) the NLRB, in a unanimous decision, quashed notice of a 10 (k) hearing where the union was protesting the decision of a public shipping authority to allot vessel management functions to one firm over another firm which had previously performed the work. Picketing by the union which had represented the employees against the firm that lost the contract was held not subject to prohibition under section 8(b)(4)(D) primarily because it was viewed as an

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effort to preserve the jobs of its members.[11/] The Board also distinguished the dispute from the classic jurisdictional dispute described by the U.S. Supreme Court in the seminal CBS case, where the board must "quiet a quarrel between two groups, which ... is of so little interest to the employer that he seems perfectly willing to assign work to either if the other will just let him alone." (CBS, supra, at 579.)

The instant case, like NMU, arose from a corporate decision to allot management functions to one management firm over another.[12/] The UFW picketed with the object of preserving for its members work previously performed by them under NVV's long-standing management arrangement with UV and other Heublein subsidiaries. The decision which resulted in loss of the UFW members' work was initiated by UV, who shows no desire to have the dispute resolved by section 1160.5 Board award.

As the Court noted in Pennelo v. Local 59 Sheet Metal Workers (D.C. Del. 1961) 195 F.Supp. 458 [48 LRRM 2495] in "a painstaking analysis" approved by the national board in Safeway

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[11/] The national board cited its 1970 decision, reversed on appeal to the Ninth Circuit, in International Longshoremen's and Warehousemen's Union, Local 8(Waterway Terminals Co.),supra, 158 NLRB 186, rev. in 467 F.2d 1011 (9th Cir. 1972).

[12/] We do not reach the question of UV' s motivation for the change in vineyard management or whether UV was under an obligation to notify the UFW or bargain over that change. Neither do we consider whether the UFW engaged in unlawful secondary activity or recognitional picketing, as UV has charged. Those prohibitions "serve wholly separate and distinct functions" from sections 1160.5 and 1154(d)(4), and picketing which does not violate section 1154(d)(4) may very well violate section ll54(d)(2). (See United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 5 (Arthur Venneri) (1962) 137 NLRB 828, 831-832 "[50 LRRM 1266].)

Stores, supra, 134 NLRB 1320, the 10(k) procedure "is not meaningful unless designed to come to the employer's rescue only when he is caught between competing forces and is 'between the devil and the deep blue.'" (48 LRRM at 2501.) Otherwise, even should the Board award the work to the picketing union, the dispute with the employer and the disruption of commerce will continue unabated and nothing will be settled. Such a result is even more likely in the instant case, where the Charging Party has attempted to withdraw the charge and contests the Board's very jurisdiction to proceed to hearing.

Accordingly, we conclude that the dispute in this case is not subject to resolution under sections 1l54(d)(4) and 1160.5 and we hereby quash the notice of hearing.

ORDER

It is hereby ordered that the notice of hearing issued in this case be, and it hereby is, quashed.

Dated: July 27, 1984

JOHN P. McCARTHY, Acting Chairman

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

CASE SUMMARY

UNITED VINTNERS, INC., a Wholly Owned Subsidiary of HEUBLEIN, INC.

10 ALRB No. 34
Case No. 83-CL-3-SAL

Board Decision

United Vintners, Inc. (UV) filed a charge against the United Farm Workers of America, AFL-CIO (UFW or Union) alleging the Union had violated section 1154(d)(4) of the Agricultural Labor Relations Act (ALRA) by picketing to force UV to assign vineyard management work to UFW members employed by Napa Valley Vineyards (NVV). UV later sought to withdraw the jurisdictional picketing charge and filed other charges alleging recognitional and secondary picketing. The Regional Director denied the request to withdraw and a hearing was held pursuant to ALRA section 1160.5. The Investigative Hearing Examiner (IHE) bifurcated the hearing to isolate the issue of whether section 1154(d)(4) applied to the subject disputes and issued a report to the Board on that issue alone, leaving evidence on factors relating to an actual award of the work to future proceedings. The Board found the dispute not subject to resolution under sections 1160.5 and 1154(d)(4) and quashed notice of the hearing. The Board based its decision on a finding that the object of the UFW's picketing was the preservation for its members of work previously performed by them, under NVV's long-standing management agreement with UV and other Heublein subsidiaries. The Board also concluded that the Charging Party's attempt to withdraw the charge and its contest of Board jurisdiction indicate that the instant dispute is not the sort of dispute which was intended to be resolved by sections 1154(d)(4) and 1160.5.

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