

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

| | | | |
|---|---|------------|-------------|
| ROBERT S. ANDREWS, FRED S. ANDREWS, and |) | | |
| DONALD S. ANDREWS doing business |) | Case Nos. | 75-CE-32-R |
| as SAM ANDREWS SONS, |) | | 75-CE-36-R |
| |) | | 75-CE-40-R |
| Employer-Respondent |) | | 75-CE-2-E |
| |) | | 75-CE-4-I |
| and |) | | 75-CE-7-I |
| |) | | 75-CE-17-I |
| WESTERN CONFERENCE OF TEAMSTERS, |) | | 75-CE-19-I |
| |) | | 75-CE-24-I |
| Petitioner-Respondent, |) | | 75-CE-35-I |
| |) | | 75-CE-39-I |
| and |) | | 75-RC-131-F |
| |) | 3 ALRB No. | 45 |
| UNITED FARM WORKERS OF AMERICA, |) | | |
| AFL-CIO, |) | | |
| Intervenor-Charging Party |) | | |

On November 20, 1975, an election was held at Sam Andrews' Sons. The Tally of Ballots showed the following results:

| | |
|--------------------|-----|
| Teamsters | 142 |
| UFW | 135 |
| No Union | 2 |
| Void | 4 |
| Challenged Ballots | 10 |

After the Tally of Ballots had been served on the parties, pursuant to Labor Code § 1156. 3 (c) and 8 Cal. Admin. Code § 20365, enacted August 1975, the UFW timely filed an objections petition to set aside the election.

On April 22, 1977 an amended Tally of Ballots was issued. The amended Tally showed the following results:

| | |
|--------------------|-----|
| Teamsters | 146 |
| UFW | 135 |
| No Union | 2 |
| Void | 4 |
| Challenged Ballots | 5 |

By stipulation of the parties, the objections to the election were consolidated for hearing with the above listed charges of unfair labor practices. At this hearing, the request of the Western Conference of Teamsters to intervene as a respondent was granted. On March 16, 1977, administrative law officer Armando M. Menocal, III, issued his decision in this case, finding respondents guilty of certain unfair labor practices. He also included in this decision a summary of evidence on the objections to the election. Thereafter, the employer-respondent, the General Counsel, and the UFW each filed exceptions and supporting briefs to the decision.

The Board has considered the ALO's decision, the exceptions and briefs, and the entire record in the case, and with the limitations and modifications set forth herein adopts the findings of fact and conclusions of law made by the ALO.^{1/} The ALO found the respondent committed numerous and egregious unfair labor practices shortly before and on the date of the election. In the face of such conduct, which included eight employees being discharged during the course of the union's organizing campaign and the observer for the UFW being demoted the day of the election, we find that a fair election could not be held. We find it unnecessary to consider individually the other objections to the election. Based upon our independent review of the record we find the majority of the objections are supported by the same evidence proving the unfair labor practices, which are sufficient misconduct

^{1/}On May 9, 1977, the Board received a request from the respondent that it be given the opportunity for oral argument.

Because we find the briefs and exceptions to the ALO' decision to be sufficient, we deny this request.

affecting the results of the election. Accordingly, we set aside the election.

We do not find it necessary to comment on each of the many exceptions filed by all parties. Many of these exceptions concerned the ALO's supposed failure to find facts which would be, in any case, cumulative or which related to alleged unfair labor practices which were never formally charged.^{2/}

The ALO found the respondent effectively denied UFW organizers access to its labor camp. We have already held that Labor Code Section 1152 includes the right of workers to be visited by union organizers at their homes, regardless of where their homes are located or who their landlords are. Silver Creek Packing Company, 3 ALRB No. 13 (1977). Accordingly, interference with that right is a violation of Labor Code Section 1153(a).

The ALO further found the respondent violated the Act by retaliating against a crew of workers after the date of the election: on November 24 and 25/ 1975, respondent ordered crew No. 2 to weed one of the fields with a six-inch knife, called a

^{2/}One example of this is the UFW¹'s exception to the ALO's failure to summarize certain evidence relating to the demotion of Antonio Zamora from foreman and bus driver for crew No. 2 to thinner, This occurred on October 29, 1975 after Mr. Zamora permitted on his bus UFW organizers and a worker who had been discriminatorily discharged. While under 'the NLRA supervisors are generally not protected, the NLRB has held that the discharge of a supervisor is a Section 8(a) (1) violation (the equivalent of a violation of Labor Code Section 1153(a)) because of its alleged impact on unit employees, See Talladega Cotton Factory, 32 LRRM 1479, 106 NLRB 295 (1953), enforced 213 F. 2d 391, 34 LRRM 2196 (CA 5, 1954). However, because Mr. Zamora's demotion was not specifically charged in the complaint as a violation of the Act we make no findings of fact and reach no conclusions of law regarding the respondent's treatment of him.

grape knife,^{3/} rather than the usual long-handled hoe. The ALO found that in order to weed around the lettuce with a grape knife, the workers in crew No. 2 had to work in a stooped, bent over position, that additionally crew No. 2 was ordered to weed four rows of lettuce at a time, rather than the customary two rows, thus requiring the workers to bend and reach further in order to cover the additional area. Furthermore, respondent shortened the work day of crew No. 2 on November 24 to five hours and accordingly the pay of each worker.

The ALO found that the orders to use the grape knife, weed four rows and quit work early were reprisals for the supposed UFW activities of some members of crew No. 2. Crew No. 1 also spent most of November 24 and 25 weeding, but was allowed to use the long-handled hoe. The fields in which crew No. 1 worked on November 24 and 25 were essentially in the same condition as the fields worked by crew No. 2. The ALO discredited the testimony of respondent's witnesses that the use of the grape knife was justified in terms of differences in the speed and quality of work between crew No. 1 and crew No. 2.

The ALO found these orders were perceived by the employees to be reprisals for their union activities and that the natural consequence of these orders was to discourage workers from participating or supporting the UFW. We uphold the ALO's

^{3/}The ALO found the grape knife is a hand tool approximately six inches shorter than the short-handled hoe. He further found that its intended use is for cutting the grapes off the vines at harvest time and that it is infrequently used to cut tall weeds spaced over a large area.

findings of treatment of crew No. 2 to be an unfair labor practice in violation of Labor Code Sections 1153 (a) and 1153 (c).

The ALO found that Marcelino (Mario) Espinoza was laid off because of his affiliation with the UFW. We agree. We note the record shows that while crew No. 3 was terminated, six other members of that crew with less seniority than Espinoza were transferred to crew No. 2. We also note the record shows that after Espinoza was laid off the company hired four new workers for crews No. 1 and No. 2. We find these facts, along with the fact that the other discharges of employees in violation of Labor Code Sections 1153(a) and (c) was also occurring at this time, support a finding that respondent violated Labor Code Sections 1153 (a) and (c) in laying off Espinoza.

The Remedy

We modify the terms of the ALO's recommended remedies in the following respects:

(1) The attached "Notice to Workers" shall be posted at respondent's premises for two periods of 90 consecutive days each within the following 12 months. One of these periods is to commence within several days following the service of this decision, The second period is to be determined by the regional director. This notice shall be posted in respondent's buses at the places specified as appropriate by the regional director after a review of the respondent's properties.

(2) We order the respondent to mail a copy of the notice, in English, Spanish, and any other native languages spoken by respondent's employees to all of the employees listed

on its master payroll for the payroll periods beginning with the unlawful termination of Miguel Chavez on October 13, 1975, up to and including the payroll period immediately preceding the filing of the petition for certification on November 13, 1975. These notices shall be mailed within seven days following the service of this decision.

(3) We modify the ALO's proposal regarding the reading of this notice to order that this notice be read on company time, in English and Spanish, to all the employees employed at the time the regional director determines the notice shall be read, by a company representative or by a Board agent, and that the Board agent be accorded the opportunity to answer questions which employees might have regarding the notice and their rights under Section 1152 of the ALRA.

(4) We order that upon the UFW's filing of a written notice of intention to take access pursuant to 8 Cal. Admin. Code Section 20900(e) (1) (B) the UFW may have up to two organizers in the fields during working hours for organizational purposes for each crew and may talk to the workers and distribute literature, provided:

a) that said organizational activities do not interfere or disrupt the work, and

b) that no more than two organizers may be with any one crew at any one time, except as provided by the Access Rule, 8 Cal. Admin. Code Sections 20900 (e) (3) and (4). This right of access shall encompass four thirty-day periods within the twelve months following the issuance of this decision or

until such date as the results of an election are certified for respondent's employees, whichever occurs sooner.

(5) During any of these four thirty-day periods in which the UFW exercises its right to take access, the respondent shall provide the UFW with an updated list of its current employees and their addresses for each payroll period. These lists shall be provided without requiring the UFW to make a showing of interest.

(6) We modify the ALO's proposed remedy permitting the UFW to speak to respondent's employees on company time for one hour three times a week for four weeks preceding and then during peak season, to permit the UFW to meet with respondent's employees on company time for two hours during respondent's next harvest season.

(7) We modify the ALO's proposal that Mario Contreras be reinstated with back pay with interest to specify that he be reinstated to his position as assistant foreman and receive as back pay with interest the difference between what he would have earned as assistant foreman and that which he in fact earned as a thinner.

(8) We order that all members of crew No. 2 working on November 24, 1975, are to be paid three hours pay for work lost on that day as a result of respondent's violations of Labor Code Sections 1153(a) and 1153(c).

(9) The respondent shall notify the regional director, in writing, within 14 days from the date of the receipt of this Order, what steps have been taken to comply herewith. Upon

request of the regional director, the respondent shall notify him periodically thereafter, in writing, what further steps have been taken to comply herewith.

ORDER

Respondent Sam Andrews' Sons, its officers, agents, successors, and assigns, shall:

1) Cease and desist from:

a) Denying access to respondent's buses and premises, including labor camps, to organizers engaging in organizational activity in accordance with Board's access regulations. 8 Cal. Admin. Code Sections 20900 and 20901 (1976).

b) Interrogating its employees regarding their union membership, activities, and sympathies.

c) Surveilling and creating the impression of surveillance of its employees' union activities.

d) Interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 1152 of the Act.

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

a) Post immediately at respondent's premises copies of the attached NOTICE TO WORKERS for a period of .90 consecutive days. The regional director shall review a list of the properties provided by the respondent to him and shall designate the locations where the attached NOTICE TO WORKERS shall be posted by the respondent. Such locations shall include, but not be limited to, each bathroom wherever located on the properties, utility poles, buses used to transport employees, and on other prominent objects within the view of the usual work places of

the employees. Copies of the notice shall be furnished by the regional director in English, Spanish, and any other native languages spoken by respondent's employees. The regional director shall determine a second period of 90 consecutive days within the next 12 months when these notices shall again be posted at respondent's premises.

b) Have the attached notice read in English and in Spanish on company time to all the employees employed at the time the regional director determines the notice shall be read, by a company representative or by a Board agent at a time the regional director determines appropriate. The regional director will determine a reasonable rate of compensation to be paid by the respondent to all non-hourly wage employees to compensate them for time lost at this reading and question and answer period. The Board agent is to be accorded the opportunity to answer questions which employees might have regarding the notice and their rights under Labor Code Section 1152.

c) Mail a copy of the attached notice, in both English and Spanish, to all of the employees listed on its master payroll for the payroll-periods including the dates of October 13, 1975 through the payroll period immediately preceding the filing of the Petition for Certification on November 13, 1975. These notices shall be mailed within seven days following the service of this decision.

d) Upon the UFW's filing of a written notice of intention to take access pursuant to 8 Cal. Admin. Code Section

10900 (e) (1) (B), the UFW may have up to two organizers in the fields during working hours for organizational purposes for each crew and may talk to the workers and distribute literature, provided 1) that said organizational activities do not interfere or disrupt the work; and 2) that no more than two organizers may be with any one crew at any one time, except as provided by the Access Rule, 8 Cal. Admin. Code 20900 (e) (3) and (4). This right of access shall encompass four thirty-day periods within the twelve months following the issuance of this decision or until such date as the results of an election are certified for respondent's employees, whichever occurs sooner.

e) During any of these four thirty-day periods in which the UFW exercises its right to take access, the respondent shall provide the UFW with an updated list of its current employees and their addresses for each payroll period. Such lists shall be provided without requiring the UFW to make any showing of interest.

f) The respondent shall provide that the UFW have access to its employees during regularly scheduled work hours for two hours, during which time the UFW can disseminate information to and conduct organizational activities with the respondent's employees. The UFW shall present to the regional director its plans for utilizing this time. After conferring with both the UFW and the respondent concerning the UFW's plans, the regional director shall determine the most suitable times, to occur during respondent's next harvest season, and manner for such contact between UFW organizers and respondent's employees.

During this time, no employee will be allowed to engage in work related activities. No employee shall be forced to be involved in the organizational activities. All employees will receive their regular pay for the two hours away from work. The regional director shall determine an equitable payment to be made to non-hourly wage earners for their lost productivity.

g) Reinstate with back pay with 7% interest the following employees: Miguel Q. Chavez, Marcelina Espinoza, Jose Flores, Eduardo Godoy, Ricardo Medina, Francisco Orozco, Eva Quesada, Raul Quesada, and Jesus Zamora.

h) Reinstate Mario Contreras as assistant foreman and pay him the sum of the difference he earned after being demoted to thinner and that which he would have earned had he continued working as assistant foreman. This sum is to include 7% interest.

i) Respondent shall pay each member of crew No. 2 working on November 24, 1975 three hours pay plus 7% interest.

j) The respondent shall notify the regional director, in writing, within 14 days from the date of the receipt of this Order, what steps have been taken to comply herewith. Upon request of the regional director, the respondent shall notify him periodically thereafter, in writing, what further steps have been taken to comply herewith.

k) It is further ordered that allegations contained in the consolidated complaint not specifically found herein as violations of the Act shall be and hereby are, dismissed.

3) IT IS FURTHER ORDERED that the election held in case 75-RC-131-F on November 20, 1975 be and hereby is, set aside.

Dated: June 10, 1977

Gerald A. Brown, Chairman Richard

Johnsen, Jr., Member Herbert A.

Perry, Member

Ronald L. Ruiz, Member

NOTICE TO WORKERS

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and also tell you that :

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

- (1) to organize themselves;
- (2) to form, join or help unions;
- (3) to bargain as a group and choose whom they want to speak

for them;

(4) to act together with other workers to try to get a contract or to help or protect one another;

(5) to decide not to do any of these things. Because this is true we promise that:

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

Especially:

WE WILL NOT ask you whether or not you belong to any union, or do anything for any union, or how you feel about any union;

WE WILL NOT threaten you with being fired, laid off, or getting less work because of your feelings about, actions for, or membership in any union.

WE WILL NOT change your working conditions or shorten the working day because of the union;

WE WILL NOT fire or do anything against you because of the union;

WE WILL NOT prevent union organizers from coming onto our property and buses to tell you about the union when the law allows it.

WE WILL NOT assault union organizers who are trying to talk to you;

WE WILL NOT interfere with your rights to get and keep union papers and pamphlets;

WE WILL OFFER Mario Contreras his job back as assistant foreman, if he wants it, beginning in this harvest and we will pay him any money he lost because we demoted him to thinner;

WE WILL OFFER Miguel Q. Chavez, Eva Quezada, Eduardo Godoy, Ricardo Medina, Raul Quezada, Jose Flores, Francisco Orozco, Marcelino Espinoza and Jesus Zamora their old jobs back if they want them, beginning in this harvest and we will pay each of them any money they lost because we laid them off.

WE WILL PAY those persons working in crew No. 2 on November 24, 1975 three hours pay because we shortened their working day by three hours.

Dated:

SAM ANDREWS' SONS

By: _____

(Representative) (Title)

This is an official Notice of the Agricultural Labor Relations Board,
an agency of the State of California. DO NOT REMOVE OF MUTILATE.

Member Hutchinson, separate concurring opinion:

I concur in the results reached by the majority except for their failure to order reimbursement for litigation costs, including attorneys' fees, to the Board and Charging Party as a remedy.

The ALO made specific findings with respect to the respondent's litigation posture on a number of issues. As to several defenses raised by the respondent the ALO found them to be "flimsy pretexts and patently frivolous."

I do not think the respondent should be relieved of the responsibility of compensating the General Counsel and Charging Party for needless litigation effort simply because it also raised some defenses which are legitimate or others which are "debatable".

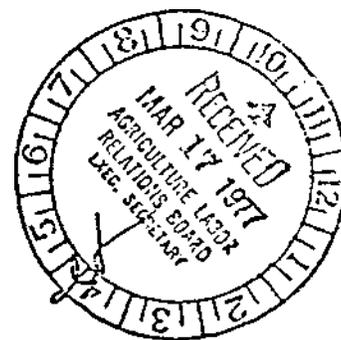
Consistent with the NLRB's holding in Tiidee Products,

Inc. and I.E.E., 194 NLRB 1234, 79 LRRM 1175 (1972) and what I view to be the inherent power of this Board to regulate the proceedings before it, see Santandrea v. Siltec Corp., 56 Cal. App. 3rd 525 (1976) , I would remand the case to the ALO for further findings. I would require the ALO to make specific findings as to the extent the respondent's "patently frivolous" defenses wasted the resources of the General Counsel and Charging Party and assess costs and attorneys' fees commensurate with those findings.

Date: June 10, 1977

Robert B. Hutchinson, Member

AGRICULTURAL LABOR RELATIONS BOARD OF
THE STATE OF CALIFORNIA



In the Matter of:)
)
 ROBERT S. ANDREWS, FRED)
 S. ANDREWS, and)
 DONALD S. ANDREWS doing)
 business as SAM ANDREWS' SONS,)
)
 Respondents,)
)
 and)
)
 WESTERN CONFERENCE OF TEAMSTERS,)
 Respondent- Intervenors ,)
)
 and)
)
 UNITED FARM WORKERS OF AMERICA,)
 AFL-CIO,)
)
 Charging Party.)
)

Case Nos. 75-CE-32-R
 75-CE-36-R
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 75-CE-19-I
 75-CE-24-I
 75-CE-35-I
 75-CE-39-I
 75-CE-131-F

ADMINISTRATIVE LAW OFFICER'S

(1) FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDED ORDER ON
UNFAIR LABOR CHARGES, AND (2)
SUMMARY OF EVIDENCE ON OBJECTIONS
TO ELECTION.

The above-listed charges of unfair labor practices and objection to election were consolidated for hearing by stipulation of the parties. The request of the Western Conference of Teamsters to intervene as a respondent was granted. A hearing on the charges and election challenge was held in El Centro, California, on December 8, 15, 16, 17, and 19, 1975, and January 5, 6, 7, and 8, 1976.

FINDINGS OF FACT AND SUMMARY OF EVIDENCE

The following constitute the findings of fact with regard to, and summary of the evidence presented on, the consolidated charges of unfair labor practices and petition to set aside the election:

1. A true and correct copy of the original unfair labor charges, above set forth in the caption of this case, were furnished to respondent in a timely fashion.

2. Sam Andrews' Sons (hereinafter referred to as "respondent") is a partnership engaged in agriculture in Imperial County and Kern County and is now and has been at all times material herein an agricultural employer within the meaning of section 1140.4(c) of the Agricultural Labor Relations Act ("ALRA").

3. The United Farm Workers of America, AFL-CIO ("UFW") is now and at all times relevant herein has been a labor organization • within the meaning of section 1140.4(f) of the ALRA.

4. The Western Conference of Teamsters ("Teamsters") is now and at all times relevant herein has been a labor organization within the meaning of section 1140.4(f) of the ALRA.

5. At all times relevant the following named persons were supervisors within the meaning of section 1140.4 (j) of the ALRA:

RUBEN ANGULO RUDY
ANGULO EDDIE
CALIP
JUAN LIRA
JOSE MAGANA
PHILIPPE JACOBO OROZCO
MANUEL ORTIZ
EDDIE RODRIGUEZ
ANTONIO ZAMORA

6. At all times relevant the following named persons were organizers with the UFW and engaged in organizational activities:

JULIA ARISIAGA TOMAS
BARRIOS
PABLO CARRILLO ANGEL
GARZA DONACIANO GARZA
WILLIAM KIRKLAND
ALVERADO SALDANA

7. At all times relevant the following named persons were organizers for the Teamsters and engaged in organizational activities

MANUEL ALCANTAR
DOMINGO ENRIQUEZ ROY
MENDOZA
DANNY OLIGARIO

8. At all times material, Gilbert Reyes Cruz was employed by the Teamsters and was also a practicing medical physician in Mexicali.

DISCHARGES

9. Miguel Q. Chavez commenced work for respondent on October 6, 1975, and was laid off on October 13th, the same day he signed a UFW card. He signed during the lunch period, within view of foreman Lira. Lira then terminated the lunch period, which still had 10 minutes to go. Foremen Lira and Ortiz gave conflicting testimony on whether or not Ortiz had directed that Chavez be laid off. With the other incidents and evidence of respondent's anti-UFW animus, there is sufficient evidence to conclude that Miguel Q. Chavez was laid off because of his affiliation with the UFW.

10. Eva Quezada commenced work for respondent on October 27, 1975, and was laid off on October 28th. She had been asked to sign a Teamster card by an employee of the respondent, Jose Rea, but she refused to do so. On that same day, she had discussions with other workers in the fields about the UFW within the presence of foreman Ortiz. Ortiz had been scolding a worker, and Quezada said,

"See, you're in the Teamsters, what protection do you have? If you were in Chavez's union you would have more protection." That night, at the end of work, she was told by her foreman, Antonio Zamora, not to return to work the next day. Zamora testified that he had been told by Ortiz to get her off the bus, that she was a Chavistas, and to get her off. When Quezada and UFW organizer Pablo Carrillo confronted Ortiz the day after her discharge, Ortiz said that he had laid her off because she was a woman. Zamora told them that Quezada had been laid off because she had refused to sign a Teamster authorization card and because Ortiz had said she was a bad element or bad influence on the crew. Ortiz admitted that the morning after the discharge, Zamora had asked Ortiz why he hadn't told her the truth – that Ortiz fired her because she was a Chavistas. Ortiz testified that Zamora was lying.

Eva Quezada was laid off because of her affiliation with the UFW.

11. Eduarda Godoy commenced work for respondent on October 28, 1975, and was laid off on October 30th. She signed a UFW card, but admitted that her foreman, Jose Magana, did not see her do so. However, at the time she was discharged, respondent was still employing new workers, either as replacements of additions to crews. This, coupled with respondent's consistent pattern of discharging UFW members or actual or supposed sympathizers and respondent's anti-UFW statements and conduct, is sufficient evidence to conclude that Eduarda Godoy was laid off because of her affiliation with the UFW.

12. Richardo Medina commenced work for respondent on October 29, 1975, and was laid off on October 30th. Although Medina signed

a UFW authorization card, there was no direct evidence that respondent was aware of it. However, as with Godoy, at the time Medina was discharged, respondent was still employing new workers, either as replacements or additions to crews. Again, this coupled with respondent's consistent pattern of discharging UFW members or actual or supposed sympathizers and respondent's anti-UFW statements and conduct, is sufficient evidence to conclude that Richard Medina was laid off because of his affiliations with the UFW.

13. Raul Quesada commenced work for respondent on October 28 or 29, 1975, and was laid off in the afternoon of October 30th. While working in respondent's field, Quesada was accused by Teamster organizers of being a UFW organizer, and thereafter the organizers talked to foremen Ortiz and Magana. Again, at the time Quesada was discharged, respondent was still employing workers, either as replacements or additions to crews. There is simply no credible reason for his discharge, and coupled with respondent's consistent pattern of discharging UFW members or actual or supposed sympathizers and respondent's anti-UFW statements, the evidence permits only one inference: Raul Quesada was laid off because of his alleged affiliation with the UFW.

14. Jose Flores commenced work for respondent on October 8, 1975, and was laid off October 29th. Flores had worked for respondent in 1973 and 1974. On the day of his discharge, Flores signed a UFW authorization card in view of Rea and foreman Lira. Flores had missed some days of work, but was not absent on the two days preceding his lay-off. Coupled with the company's anti-UFW animus, there is sufficient evidence to establish that Jose Flores was laid off because of his affiliation with the UFW.

15. Francisco Orozco commenced work for respondent on October 29, 1975, and was laid off on November 12, 1975, when crew No. 3 was terminated. Orozco had worked seasonally for the respondent for three or four years. On October 12th, Orozco was asked by a Teamster organizer – Domingo Enriquez – to sign the Teamster's petition for election. Orozco refused to do so. Orozco wore a UFW card in his hat while working in the fields, and Ortiz admitted that he had been told by the foreman that Orozco was wearing a UFW card in his hat. Neither the disbandment of Orozco's crew, nor the seniority provisions of the respondent's collective bargaining agreement with the Teamsters adequately explains the discharge of Orozco.

Francisco Orozco was laid off due to his affiliation with the UFW.

16. Marcelino Espinoza (also known as Mario Espinoza) commenced work for respondent on October 16, 1975, and was laid off on November 12, 1975, when crew No. 3 was terminated. Espinoza had signed a UFW card at a UFW meeting in Calexico. On November 12th, Espinoza refused to sign the Teamster petition for election given him by Domingo Enriquez. Espinoza wanted to read it first; Enriquez refused. Espinoza saw a Teamster organizer give foreman Magana a Teamster button. Magana put it on, and later gave it to Espinoza, although he did not order him to wear it. Espinoza had known Magana for about 15 years, and it was Magana who told Espinoza that Ortiz said to lay Espinoza off. On that day, Espinoza talked to UFW organizers during the lunch break, about 10 or 15 feet in front of the bus. At the time, Magana was sitting in the driver's seat, and Rea was there also.

Marcelino Espinoza was laid off because of his affiliation with the UFW.

17. Jesus Zamora was employed by the respondent on or about the week of October 10 through 15, 1975. On November 25, 1975, he refused to use a grape knife to thin lettuce as ordered by the respondent. As set forth hereinafter, 'the order to work with the grape knife was imposed to punish crew No. 2 because of its alleged UFW sympathies. Jesus Zamora's refusal to work in those circumstances was proper and his discharge was wrongful and caused by his affiliation with the UFW.

18. Mario Contreras. On the day before the election, respondent demoted Mario Contreras from assistant foreman of a thinning crew, to a thinner because of his affiliation with the UFW.

THE RESPONDENT'S SENIORITY SYSTEM

19. At the hearing, the respondent's witnesses presented three different versions of its seniority system:

- (a) Crew-by-crew. Ruben Angulo, respondent's supervisor for the Imperial Valley, stated that the respondent's seniority system was on a crew-by-crew basis. Angulo, however, did not hire and fire the thinning crews; this was done by Manuel Ortiz. Respondent's first post trial brief relied, in part, on this theory of seniority to justify the lay-offs.
- (b) Company-wide. On both occasions he testified, foreman Ortiz stated that the respondent's seniority system was company-wide and cut

across crew lines. This in fact appears to be the system used by the respondent.

(c) The Teamster contract. None of the foremen were even aware of or followed the Teamster contract provision recognizing seniority only to those workers who had worked thirty days within a ninety-day period. The Teamster contract was invoked as a pretext to justify the lay-offs.

After the second part of the hearings, the respondent admitted that the evidence showed that workers were laid-off even though other persons on their crews and in other crews had worked for the company fewer days than they had.

The respondent's changing version of its seniority system is itself evidence that there is no credible explanation based upon seniority for the lay-offs of UFW supporters or suspected sympathizers

Denial of Access to the Buses

20. It was stipulated that respondent denied UFW organizers access to respondent's buses at all times.

21. In Imperial County, respondent employed buses to pick up workers in the pre-dawn hours at the parking lot of Fazio's Shopping Bag, Calexico. The workers, most of whom lived in Mexicali, Mexico, would come to Fazio's, board their respective buses, and wait to-be taken to the fields. Since the thinning season came during the fall and winter, it was dark and generally cold when the workers arrived; thus, the workers did not congregate outside, but instead went straight onto the buses and waited there to leave for the fields. When the workers were returned to Fazio's after work, they

generally did not remain in the area, and immediately began the journey to Mexicali. Workers tended to eat their lunches on the buses. There were no other shelters or facilities available at lunch-time

22. The result of placing the buses off-limits to UFW organizers was to deny the UFW the opportunity to reach respondent's workers during the periods of the day covered by the ALRB's access regulation.

23. The respondent's justification -- although legally irrelevant in view of the Board's order with regard to applicability of the access rule to buses and the conclusions of law, infra -- that non-workers were not covered by insurance was not supported by any credible evidence. The failure to present evidence reasonably available to respondent, such as the insurance policies themselves, gives rise to the inference that respondent's insurance policies contain no exclusion of coverage for non-workers.

Respondent's Unlawful Support of the Teamsters.

24. Respondent permitted Teamster Union organizers access to its fields at all-times. Teamster organizers were permitted access onto the company's real property during periods other than the times provided for in the access regulation for the purpose of engaging in electioneering and interrogation of workers, with the view towards obtaining their vote and talking to them about the benefits of a Teamster contract and the detriments of a UFW contract. This activity occurred prior to the election of November 20, specifically, the 30th day of October, November 10, November 12, November 15, and the morning of November 20, the day of the

election. During this period, UFW organizers were not permitted onto the fields except for an approximate one-half hour lunch period. Respondent was aware that Teamster organizers were entering the fields to engage in campaigning and organizing.

25. Respondent did not permit UFW organizers onto its fields during working hours.

26. Respondent's supervisors made statements to its employees supporting the Teamster Union and critical of the UFW. Similarly, in Kern County, respondent's supervisors told each tractor driver and irrigator that if the UFW won the election there would be problems, loss of jobs, and possible shutdowns, and that therefore they knew how to vote.

27. During the time that Teamster organizers were being permitted access onto respondent's field, UFW organizers were denied access to respondent's buses; UFW organizers were subject to respondent's surveillance while attempting to talk to workers during the times provided for in the access regulation. The net result of respondent's policies and practices was to support the organizing efforts of the Teamsters.

Anti-UFW Animus

28. The totality of respondent's conduct and statements established that respondent opposed its workers affiliating with or supporting the UFW. The respondent's employees were aware of respondent's anti-UFW animus, and the natural consequence was to discourage employees from affiliating with or supporting the UFW.

Surveillance of Employees

29. UFW organizers were not permitted onto respondent's buses at any time or in fields during working hours. The infrequent

discussions outside the buses, at the pick-up area or during the lunch break, between union organizers and employees were within the view of respondent's supervisors.

30. From the beginning of the lettuce thinning season until shortly after the election, respondent employed a security guard. The guard was present when UFW organizers attempted to speak with employees in the morning outside of the buses. The guard followed crew No. 1 each day and remained with the crew during the day and lunch period; the guard was present whenever UFW organizers attempted to speak with employees in crew No. 1.

31. Neither the guard, nor the foremen told the organizers or employees that they could not speak in the morning, pre-work hours, or during the lunch break.

32. On at least two occasions, foreman Ortiz (once with supervisor Angulo) stood within hearing distance of UFW organizers who were 'attempting to talk to workers during the lunch break and refused to leave when asked to do so by the organizers. Ortiz in-particular tended to watch organizers who were in the vicinity of the buses in the morning and at lunch.

33. The intended and natural consequence of the respondent's surveillance was to discourage employees from affiliating with or supporting the UFW.

Interrogation of Employee's Union Affiliation and Activities

34. Foreman Ortiz questioned employees about their union affiliations and activities. At least one of these interrogations was in the presence of other employees.

35. The intended and natural consequence of the interrogation was to discourage employees from affiliating with or supporting

the UFW.

Retaliation by Employer Following Election

36. On November 20, 1975, a representation election was held at respondent's ranches in Kern and Imperial counties. The Teamsters received a plurality by a narrow margin.

37. Thereafter, Mamiel Ortiz announced to the workers that the Teamsters had won and bought beer for the thinning crews; at that time, Ortiz stated that any Chavistas who drank the beer had no shame. Ortiz had not bought beer for the crews before.

38. Many members of crew No. 2 had been identified as UFW supporters. On November 24 and November 25, 1975, crew No. 2 was ordered to weed one of the respondent's fields. Instead of the usual long-handled hoe, crew No. 2 was issued a six-inch knife, called a grape knife. The grape knife is a hand tool approximately six inches shorter than the short-handled hoe. Its intended use is for cutting of grapes off vines at harvest time; however, it is infrequently used to cut tall weeds spaced over a large area.

39. In order to weed around lettuce with a grape knife, the workers in crew No. 2 had to work in a stooped, bent-over position. Additionally, crew No. 2 was ordered to weed four rows of lettuce at a time, rather than the customary two rows; this required the workers to bend and reach farther in order to cover the additional area.

40. The grape knife is not commonly used to weed lettuce. It is inefficient for the task of weeding and thinning lettuce, particularly for lettuce of the maturity, size, and spacing of the lettuce in respondent's fields on November 24th and 25th. The lettuce in those fields could have been effectively weeded without damage

to the lettuce by use of the long-handled hoe, the customary, more practical, and less onerous tool for weeding lettuce. Crew No. 1 also spent most of November 24th and November 25th weeding, but was allowed to use the long-handled hoe. The fields in which crew No. 1 worked on November 24th and 25th were essentially in the same condition as the fields worked by crew No. 2.

41. In addition to ordering the use of the grape knife and expanding the work area of each worker, respondent shortened the work day (and accordingly the pay of each worker) of crew No. 2 on November 24th to five hours. The explanation that it was too windy to work was a pretext. There was no appreciable wind, and no other crew quit work early that day because of the wind.

42. Use of the grape knife was not justifiable in terms of any alleged differences in the speed or quality of work between crew No. 1 and crew No. 2. The testimony of respondent's witnesses Jose Fergoso, Josefina Casada, and Consuelo Magana could not be and was not believed.

43. The orders to use the grape knife, weed four rows, and quit work after five hours were reprisals for the supposed UFU activity of some members of crew No. 2. These orders were perceived by the employees to be reprisals for their union activities and the natural consequence of these orders was to discourage workers from participating or supporting the UFW.

Access to Lakeview Camp

44. Respondent's labor camps for its Kern county agricultural operations was located at Lakeview, which is 12 miles from Metier and 28 miles from Lament. Respondent's Exhibit N is a layout of the camp, which generally consisted of two barracks (separate ones

for Mexicans and Filipinos), kitchen and dining areas for Mexicans and Filipinos, shop area (enclosed by fence), trailers for permanent residents, and a park with trees and picnic tables. The entire camp was enclosed by a fence and had two entrances.

45. The barracks had bunk beds, no separate rooms or partitions; showers, sinks, and toilets were separated from, the living quarters only by an open doorway. There were no separate lights; a single switch controlled all of the overhead lights. There was no storage area for the workers' personal belongings.

46. Respondent prepared and posted camp rules which excluded from the barracks and kitchen of the camp the families and friends of the workers, and prohibited alcoholic beverages, gambling, and prostitution.

47. It was the respondent's policy to exclude union organizing from the barracks, kitchen equipment and shop yards, and the surrounding areas; organizers were told to go to the park, and the workers would be informed that they could go to the park to talk to the organizers.

48. In the morning before work and in the evening after work, workers tended to congregate in the barracks, kitchen, and their surrounding area; workers did not usually go to the park at those times. Non-resident workers congregated before work in the areas near the kitchen and barracks and equipment and shop yards.

49. On two occasions when the UFW held rallies or gatherings in the park, a small group of workers did come to the park, although one of the gatherings was disrupted by Teamster organizers and Eddie Calip, a foreman or foreman's assistant for the respondent. Except for these occasions, workers did not go to the park when told that organizers were there to talk to them.

50. On two occasions, November 14th and 17th, respondent had UFW organizers (Julia Arisiaga on the 14th and Ancel and Donaciano Garza and Alverado Saldana on the 17th) arrested for refusing to leave the barracks and kitchen. Arisiaga was released by the Sheriff. Saldana and the Farzas were cited for trespassing.

51. The Sheriff's office informed respondent that, despite the policy of exclusion, organizers would not be arrested if they were in the barracks or kitchen at the invitation of a worker.

52. Respondent did not change its policy of exclusion after said notification from the Sheriff's office. Supervisors and guards would still, order organizers to leave the barracks and kitchen and tell them to go to the park; workers would then be questioned to determine if one had invited the organizers to enter. Even if an organizer was there by permission, it was a violation of respondent's rules, and the organizer would still be ordered to leave.

53. Respondent consistently maintained its policy of denial of access to the barracks, kitchens, and surrounding areas, even though, in part because of the Sheriff's position, enforcement was not always effective.

54. In the week before the election, UFW organizers entered the barracks and kitchens every day. Usually they were ordered to leave; some obeyed, others ignored the orders, and four were arrested as set forth in paragraph 50 above. After the election, organizers were permitted into the barracks and kitchens.

55. The respondent's stated reason for its policy of limited access was to protect its equipment in the camp and its concern for the workers' privacy. The equipment area was fenced in. The barracks permitted no privacy to workers, with or without the

presence of organizers. No justification was given, for exclusion from the kitchen.

56. Before 1975, respondent had not employed guards at the camp; beginning with the melloon season that year, respondent employed armed guards. The guards were stationed at the entrances to the camp and consistently, although not always effectively, enforced respondent's policy of limited access.

57. It was stipulated that the guards were always armed with guns.

58. An incident did occur on November 19th, where a guard unbuttoned his gun in preparation to draw it from the holster. He claimed he felt threatened by UFW organizers; the organizers claimed the guard threatened to use the gun if they attempted to enter the barracks.

59. Before 1975, respondent had not issued identification cards for its workers; beginning with the lettuce season that year, respondent required all employees to have identification cards and show them to enter the camp.

60. The respondent's practices effectively denied UFW organizers access to workers during the periods of day before and after work covered by the access regulation.

Angulo Brothers' Threats to Drivers and Irrigators

61. In the several days before the election, supervisors Ruben Angulo and Rudy Angulo sought out and talked to the company's tractor drivers and irrigators, telling them essentially that if the UFW won the election there would be problems, loss of jobs, and possible shut-down, and that therefore they knew how to vote.

Ruben Angulo admitted that he gave no further explanation of these remarks or of his intentions.

62. Ruben Angulo told Ortiz to give the same message to the thinning crews.

63. All of the workers talked to by the Angulo brothers who testified stated that they had not changed their vote because of Angulo's remarks. The effect of the Angulo brothers' comments is difficult to judge, for it was not evident whether the workers' denials of feelings of intimidation were real or bravado.

64. Some of the tractor drivers and irrigators had told other workers of Angulo's remarks.

65. Regardless of their impact, the conduct of the Angulo brothers gave respondent's workers the impression that the respondent favored the Teamsters and that if the workers did not vote for the Teamsters there would be possible reprisals and no work.

The Exclusion of Kern County Mechanics

66. The mechanics employed at respondent's Santiago and Lake-view ranches in Kern County were excluded from the voting eligibility list and, except for one challenged ballot, not given the opportunity to vote.

67. Prior to the election, respondent had employed 12 to 15 mechanics to work on machinery used by respondent in its agricultural operations.

68. The voting eligibility list was delivered to the UR-7 on November 19, 1975, as its organizers were leaving for the preelection conference. The UFW organizers did not inspect the list and left it with their office staff. This list included the names respondent's employees in Kern and Imperial counties. It was

stipulated that the list was not received in El Centro until 8:00 P.M. on the 19th of November and that the list did not include the workers' addresses or Social Security numbers.

69. At the time of the pre-election conference, the UFW was not aware that the list did not include the mechanics, but the organizers did ask the ALRB agent, Josie Maez, if shop workers would be permitted to vote. Ms. Maez stated that anyone involved in respondent's agricultural operations would, be allowed to vote.

70. It was not until after the conference that the UFW organizers reviewed the list and learned that the mechanics had been excluded.

71. The mechanics had expected to participate in the election, and some of them had attended a UFW meeting the night before the election.

72. On November 20th, the mechanics were not taken to the voting places or permitted to leave work. Apparently one mechanic, Vidal de Los Santos, did cast a challenged ballot.

73. The issue of the exclusion of the mechanics from the voting eligibility list was not raised in the petition to set aside the election. Evidence on the issue was presented subject to the Board's ruling on the question of admissibility. Respondent was not prejudiced by the omission of the issue from the petition. At the close of the hearing, the UFW made a motion to amend the petition to conform to proof. It is recommended that the petition be granted.

Findings With Regard to Remedies (a)

Discharges:

74. The employees wrongfully discharged because of their alleged UFW activities or sympathies can be compensated by an award of backpay and an order for reinstatement.

(b) Denial of Access, Interrogation, and Surveillance:

75. The respondent has demonstrated a pattern of discharges, punishment, and retaliation against suspected UFW members and sympathizers. Respondent's supervisors, both in Imperial and Kern Counties, intimidated the workers and created an atmosphere of fear and reprisals. In these circumstances, expanded access for the union unlawfully excluded, orders to cease and desist from interrogation and surveillance, and posting of appropriate notices are insufficient to overcome the pervasive impact of respondent's conduct. Further, because many of respondent's workers do not read English or Spanish, are migrants, and, when in the area, reside in Mexicali, Mexico, mailing of notices will probably be ineffective; similarly since workers are employed for short periods of time and have no fixed places to congregate, posting of notices alone will not reach most of respondent's workers. To remedy respondent's violations and create an atmosphere for the free exercise of the rights to organize and vote, a public statement must be made in speeches and in posted and delivered notices, and published in a local newspaper and broadcast over a local bilingual radio station.

(c) General Counsel Request for Costs Investigation and Suit.

76. The following findings are made for purposes of the Board's determination of whether or not to grant the General Counsel's request for attorneys fees, witness fees, and other items of costs.

(i) Respondent's acts of discharging UFW sympathizers, anti-UFW statements (both in Imperial and Kern Counties), intimidation by interrogation, surveillance, and employment of armed guards, and retaliatory orders to use a hazardous working tool were flagrant violations and done with malice. Further, the defenses of such acts on the basis of respondent's changing versions of its seniority system, fears of violence, and conditions of the weather and fields after the election were flimsy pretexts and patently frivolous. (ii) The questions of access to the buses and parts of the Lakeview camp and unlawful support of the Teamsters by allowing campaigning in fields were not frivolous; however, in the context of respondent's other acts and its anti-UFW motive, it cannot be said that the defense of these issues was in good faith. Whether in good or bad faith, their defense was not patently frivolous.

RECOMMENDED CONCLUSIONS OF LAW
ON UNFAIR LABOR PRACTICES CHARGES

I

Any paragraph or portion of a paragraph heretofore set forth as a finding of fact, which should more appropriately be set forth as a conclusion of law, is hereby declared to be a conclusion of law and incorporated herein as such be reference.

II

Respondent's discharge of Miguel Q. Chavez, Eva Quesada, Eduarda Godoy, Richardo Medina, Raul Quesada, Jose Floras, Francisco Orozco, Marcelina Espinoza, and Jesus Zamora was in violation of sections 1153(a) and 1153(c) of the ALRA.

III

Respondent's demotion of Mario Contreras was in violation of sections 1153(a) and 1153(c) of the ALRA.

IV

The denial of access to respondent's buses in October and November, 1975, violated the access regulation, 8 Cal. Admin. Code, section 20900, as then in force.

V

Respondent violated section 1153(a) of the Act by engaging in surveillance of employees union activities and by giving the impression of surveillance.

VI

Respondent violated section 1153(a) of the Act by interrogating its employees regarding their union membership, activities, and sympathies.

VII

The totality of respondent's conduct constituted unlawful assistance to a labor organization in violation of section 1153(b). Respondent's contract with the Teamsters required respondent to permit the Teamsters onto the property at any time. Article XV read:

"ARTICLE XV - VISITATIONS

All agents of the Union shall have the right to visit properties, the Company at all times and places, to conduct legitimate Union business; however, he shall not unduly interrupt operations."

The visitation provision in respondent's contract is valid to the extent it permits the Teamsters on respondent's property for the purpose of servicing the contract. The ALRA does not prohibit access for purposes of campaigning and organizing. Allowing Teamsters to campaign in the fields pursuant to the visitation provision was not by itself unlawful support or assists to the Teamsters. However, Teamster access to fields for campaigning, when at the same time, the UFW Was denied access to fields and excluded from buses, which is where the workers congregated before commencement of work and during lunch, effectively blocked the employees from the exercise of their rights under section 1153(a) and (b) and unlawfully assisted the Teamsters in violations of section 1153(b).

VIII

Respondent violated section 1153(c) of the Act by requiring crew No. 2 to work with the grape knife and by cutting short their work-day in retaliation for their suspected UFW sympathies.

RECOMMENDED ORDER ON UNFAIR

LABOR PRACTICES CHARGES

The following named employees are to be reinstated with back pay with interest:

Miguel Q. Chavez Kario
Contreras Marcelina
Espinoza Jose Flores
Eduarda Godoy
Richardo Medina
Francisco Orozco
Eva Quesada
Raul Quesada
Jesus Zamora

The method of their reinstatement and calculation of the amount of back pay shall be determined after this order is final.

To remedy the denial of access, interrogation, and surveillance,

- (a) Respondent shall permit the UFW to speak to its workers on work-time for one hour, three times a week for four weeks preceding and then during peak season;
- (b) Respondent shall permit the UFW access to its buses during the times permitted by the access regulation, 8 Cal. Admin. Code Section 20900;
- (c) Respondent shall cease and desist interrogation of its employees regarding their union membership, activities, and sympathies;
- (d) Respondent shall cease and desist the surveillance of its employees' union activities and the impression of surveillance;

The malicious nature of some respondent's act, such as the grape knife incident, and the pervasiveness of the anti-UFW animus

evidenced by respondent's supervisors, require that special steps be taken to overcome the intimidation and coercion of employees. Accordingly, respondent shall in speeches to employees and notices, make a public statement to its workers in the following form:

"After a trial in which all parties had the opportunity to present their evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we, San Andrews; Sons, violated the Agricultural Labor Relations Act, and has ordered us to make this statement; and keep the promise that. I make in this statement."

The statement shall then state the employees' rights under the ALRA, and the obligations of the respondent to cease and desist from proscribed conduct. The statement shall be in English and in Spanish; shall be read to employees once a week for four weeks during the peak season; shall be delivered to present employees; and to reach those workers who were employed when these unfair labor practices occurred, shall also be published in a local newspaper and broadcast on a local radio station once a week for four weeks during the peak season. Posting shall be at those places most likely to reach employees and shall include respondent's buses. Unlike the circumstances in Tex-Cal Land Management, 3 ALRB 14 (1977), and Valley Farms and Rose J. Farms, 2 ALRB 41 (1976), mailing of the employer's statement to past employees will not reach the majority of respondent's employees who are not literate in English or Spanish and who reside in Mexicali, Mexico.

Dated: March 16, 1977



Armando M. Menocal, III
Administrative Law Officer