

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ALBERT MISSAKIAN, dba)	
MISSAKIAN VINEYARDS,)	Case Nos. 75-CE-81-F
)	75-CE-82-F
Respondent,)	75-CE-83-F
)	
and)	3 ALRB No. 46
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Charging Party.)	
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Decision and Order

This decision has been delegated to a three-member panel. Labor Code § 1146.

On February 7, 1977, Administrative Law Officer Phillip V. Sarkisian issued his decision in this case. The general counsel and charging party filed timely exceptions.

Having reviewed the record, we adopt the law officer's findings, conclusions and recommendations to the extent consistent with this opinion.

The law officer granted the general counsel's motion for attorneys fees and costs incurred in enforcing subpoenas duces tecum. Though we agree that the refusal to comply with the subpoenas and order of the law officer was without substantial justification, we do not find it proper to grant the general counsel costs arising from its efforts to obtain enforcement of the subpoenas in Superior Court. Accordingly, that part of the law officer's decision and order granting fees and costs of \$150 to the general counsel is overturned.

We make the following change in the law officer's recommendations:

A) The law officer in his proposed remedy ordered the reinstatement of six employees illegally discharged by the respondent and ordered that they be made whole for any losses suffered as a result of their discharge. The law officer incorrectly limited the award of back pay, however, to the 1975 season. We modify the law officer's order of back pay to cover the period from the respondent's discriminatory action to the date, of a proper offer of reinstatement. Back pay shall be calculated on a daily basis in conformity with the method described in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

B) In conformity with our past decisions, we make further modifications of the law officer's order, including adding a provision that the NOTICE TO WORKERS be read to assembled workers. See D'Arrigo Brothers Co. of California, Reedley District #3, 3 ALRB No. 31 U977) , Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977), Resetar Farms, 3 ALRB No. 18 (1977).

Accordingly, IT IS HEREBY ORDERED that the respondent, Albert Missakian, dba Missakian Vineyards, its officers, agents, successors and assigns shall:

1) Cease and desist from:

(a) Interfering with, restraining and coercing employees in the exercise of their right to self-organization, and to engage in concerted activities for the purpose of mutual aid or protection, by way of discharge, refusal to rehire, or other discipline for engaging in such activities; and

(b) Interfering with the formation of or admans-
trition of any union or giving any unlawful assistance to any union

through intimidation, promises of improved working conditions, or otherwise;

(c) Interfering with, restraining or coercing its agricultural employees in the exercise of rights guaranteed in § 1152 of the Act.

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

(a) Offer to Antonia Villa, Maria Perez, Alberto Hernandez, Esperanza Hernandez, Raul Hernandez and Teresa Hernandez immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, beginning with the date in the 1977 season when the work in which they are qualified commences;

(b) Make each of the employees named above in sub-paragraph 2(a) whole for any loss of earnings suffered by reason of their illegal discharge, including interest thereon at the rate of 7 percent per annum, in the manner described in paragraph (A) above.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order;

(d) The respondent shall immediately notify .the regional director of the Fresno regional office of the expected time periods in 1977 in which it will be at 50 percent or more

of peak employment, and of all the properties on which its employees will work in 1977. The regional director shall review the list of properties provided by the respondent and 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 other prominent objects within the view of the usual work places of employees. Copies of the notice shall be furnished by the regional director in Spanish, English, and other appropriate languages. The respondent shall post the notices when directed by the regional director. The notices shall remain posted throughout the respondent's 1977 harvest period or for 90 days, whichever period is greater. The respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(e) A representative of the respondent or a Board agent shall read the attached NOTICE TO WORKERS to the assembled employees in English, Spanish, and any other language in which notices are supplied. The reading shall be given on company time to each crew of respondent's employees employed at respondent's peak of employment during the 1977 harvest season. 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 the time lost at this reading and question and answer period. The time, place, and manner for the readings shall be designated by the regional director after consultation by a Board agent with respondent. The reading shall be on a day in

which the normal number of employees shall be working on the crew. A Board agent shall have the right to be present for each reading. Immediately following each reading, the Board agent will indicate to the employees present his or her willingness to answer any questions regarding the substance or administration of the Agricultural Labor Relations Act, and shall answer any such questions. The Board agent shall insure that only employees be present during the question and answer period.

(f) Respondent shall hand out the attached NOTICE TO WORKERS (to be printed in English, Spanish and other languages as directed by the regional director) to all present employees, and to all employees hired in 1977, and mail a copy of the Notice to all of the employees listed on its master payroll for the payroll period immediately preceding the filing of the petition for certification in October, 1975.

(g) Notify the regional director, in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the regional director, the respondent shall notify him periodically thereafter in writing, what further steps have been taken in compliance with this order.

IT IS FURTHER ORDERED that the allegations in the complaint not specifically found herein as violations of the Act shall be, and hereby are, dismissed.

Dated: June 14, 1977

Gerald A. Brown, Chairman

Richard Johnsen, Jr., Member

Herbert A. Perry, 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 fire or do anything against you
because of the union;

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

WE WILL OFFER Antonia Villa, Maria Perez, Alberto Hernandez,
Esperanza Hernandez, Haul Hernandez and Teresa Hernandez 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.

DATED:

Albert Missakian, dba
MISSAKIAN VINEYARDS

By:

(Representative)

(Title)

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

BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:)	
ALBERT MISSAKIAN, DOING)	Case Nos. 75-CE-81-F
BUSINESS AS MISSAKIAN VINEYARDS,)	75-CE-82-F
Respondent and Employer,)	75-CE-83-F
and)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
Intervenor.)	
_____)	

PROPOSED DECISION

This matter came on regularly for hearing before Philip V. Sarkisian, Administrative Law Judge of the Office of Administrative Hearings, at Bakersfield, California, on November 5, 6, 7, 17 and 18, 1975 and December 10 and 11, 1975. The complainant, General Counsel of the Agricultural Labor Relations Board, was represented by Ronald L. Ruiz and Paul Ostroff, Staff Counsel. The respondent, Albert Missakian, doing business as Missakian Vineyards, was present and was represented by Seyfarth, Shaw, Fairweather and Geraldson, Attorneys at Law, by Jeffrey L. Madoff, Attorney at Law. A motion to intervene by the United Farmworkers of America, AFL-CIO, hereafter referred to as UFW or intervenor, was granted and said intervenor was represented by Robert A. Bush, Attorney at Law.

Preliminary motions to amend the consolidated complaint were granted. Motions by respondent to dismiss the complaint were denied. Motions to revoke certain subpoenas duces tecum and portions thereof were made by respondent and were denied.

Respondent

was ordered by the Administrative Law Judge to produce the items sought by the subpoenas, but respondent refused to comply with the order. Counsel for the complainant then petitioned the Superior Court of California, County of Kern, for an order requiring respondent to comply with the order of the Administrative Law Judge to produce items called for in the subpoenas. Prior to a hearing on the petition, respondent voluntarily furnished the material to complainant. On December 9, 1975, complainant filed a written motion with the Administrative Law Judge for costs and attorneys fees incurred in connection with enforcement of the subpoenas (exhibit 21). This motion is pending.

Oral and documentary evidence was introduced, and the hearing concluded on December 11, 1975. The record was held open to permit the parties to file briefs.

On December 24, 1975, the complainant filed a motion to amend the complaint to conform to proof (exhibit 24). This motion is pending.

Complainant's brief was received on November 18, 1976. On November 24, 1976, counsel for the intervenor notified the Administrative Law Judge by letter that he joined in the brief filed by the complainant. Respondent's brief was received on December 2, 1976, and the record was closed.

RULINGS ON PENDING MOTIONS

1. Motion for attorneys fees and costs as sanction in enforcing subpoenas duces tecum: Having reviewed the authorities cited by the parties, it is the conclusion of the Administrative Law Judge that legal authority exists for an award of attorney's fees and costs as sanction for non-compliance with the Administrative Law Judge's order to produce documents under subpoena (Valley Far and Rose J. Farms, 2 ALRB No. 41, at page 6).

It is found that the refusal to comply with the subpoenas and order of the Administrative Law Judge was without substantial justification and that a reasonable attorney's fee for legal services to enforce the subpoena is \$150.00, plus actual costs. Accordingly, the motion is granted and respondent is hereby ordered to pay these sums to complainant.

2. MOTION TO AMEND TO CONFORM TO PROOF: The proposed amendments in substance allege that since August 28, 1975 respondent required membership in the Teamsters Union before the fifth day of hire as a condition of continuing employment, as well as requiring the employees to sign authorizations for deduction of Teamster dues. These allegations are claimed to constitute (1) the rendering of unlawful aid, assistance and support to the Teamsters and (2) discrimination against the employees in regard to hiring or tenure of employment or terms and conditions of employment.

The record contains uncontradicted evidence that respondent's collective bargaining agreement with the Teamsters Union required Teamster membership within ten days of hire. Respondent admits compliance with this requirement. There was ample opportunity to litigate the issues raised by the amendments. The legal effect of the facts has been argued by respondent in its brief. No prejudice will result to respondent by permitting the amendments. Accordingly, the motion to amend is granted.

3. RENEWAL OF MOTIONS TO DISMISS: In its brief (note 4 on page 5) respondent renews "all its preliminary and other motions to dismiss the instant cases as reflected throughout the entire record herein".

Having reconsidered all the motions referred to, the Administrative Law Judge determines them to be without merit and they are hereby denied.

4. Any pending motion not specifically referred to herein is hereby denied.

FINDINGS OF FACT

I

True and correct copies of the original charges in case Nos. 75-CE-81-F, 75-CE--82-F, and 75-CE-83-F filed by the UFW on September 29, 1975, were duly served by the UFW on respondent on September 29, 1975. The Board issued an order consolidating the cases and a consolidated complaint and notice of hearing on October 15, 1975. A timely answer was filed by respondent on October 23, 1975 and the hearing commenced on November 5, 1975 and proceeded as indicated in the preamble hereto.

II

Respondent, a sole proprietorship owned by Albert Missakian and engaged in ranching and agricultural operations in Tulare County, with its principal business office in Kern County, is now and has been at all times material hereto an agricultural employer within the meaning of subdivision (c) of section 1140.4 of the Labor Code.¹

III

The UFW is now and has been at all times material herein a labor organization within the meaning of subdivision (f) of section 1140.4 of the Act.

IV

The Western Conference of Teamsters, Agricultural Division, and its affiliated locals, herein called Teamsters, are now and have been at all times material herein labor organizations within the meaning of subdivision (f) of section 1140 of the Act.

V

Albert Missakian is general manager of Missakian

¹Unless otherwise indicated, all section references are to the Agricultural Labor Relations Act, sometimes referred to as "the Act", contained in sections 1140 et seq. of the Labor Code.

Vineyards. Marcello Tamsi and Peter Pasqual are crew bosses for respondent and are supervisors within the meaning of section 1140.4, subdivision (j), of the Act. Both Tamsi and Pasqual have been employed as crew bosses by respondent for many years. Tamsi and Pasqual were authorized by respondent to hire and discharge farmworkers for Missakian Vineyards.

VI

On September 26, 1975, the Agricultural Labor Relations Board conducted a representation election at respondent's premises among its agricultural employees pursuant to a Direction and Notice of Election issued by the Regional Director.

VII

Respondent has interfered with, restrained, and coerced its employees in the exercise of rights protected by section 1152 of the Act, as follows:

COUNT 1 (paragraph 8(a) of the amended complaint)

A. On September 26, 1975, after the employees had voted at the representation election and at approximately 11:00 a.m., Peter Pasqual threatened physical injury to employees who had supported the UFW. The conduct occurred in one of respondent's fields.

Testimony of Raul Hernandez and Maria Galvan established that after the workers had voted and had returned to the fields, Mr. Pasqual was walking on a road adjacent to the row in which Raul Hernandez was working. Mr. Pasqual was aware of the unofficial UFW victory. In an angry voice, holding a shovel in a threatening manner, Mr. Pasqual looked in the direction of Mr. Hernandez and shouted: "Come out, Chavistas, you son-of-a-bitches. I'm going to kill all of you."

COUNT 2 (paragraph 3(b) of the amended complaint)

B. On September 26, 1975, prior to the election, Marcello Tamsi threatened employees with loss of employment if they voted for the UFW.

Testimony of Meguel Kardenas and Marin Fernandez shows that Marcello Tamsi, one of respondent's crew bosses, warned employees waiting to vote at the polls that there would be no more work at Missakian Vineyards if the UFW won the election.

COUNT 3 (paragraph 8(c) of the amended complaint)

C. It was not established that respondent has interrogated prospective employees as to their union sympathies and membership, as alleged in paragraph 6(c) of the amended complaint.

It is true that respondent did inform oil workers that they were required to join the Teamsters as a condition of continued employment and, further, required them to sign authorizations for check-off of Teamster dues. This was done pursuant to the union security provision contained in the collective bargaining agreement in effect between respondent and the Teamsters.

VIII

Respondent rendered unlawful aid, assistance and support to the Teamsters, as follows:

COUNT 4 (paragraph 9(a) of the amended complaint)

A. On or about September 26, 1975, prior to the election, Marcello Tamsi approached workers waiting in line to vote and informed them that if the Teamsters won the election, there would be a fiesta for everyone, but if the UFW prevailed, there would be no more work for anyone at the Missakian ranch.

This conduct occurred during the episode described in finding VII(b). Although it is true, as respondent contends, that an employer need not remain neutral in an election campaign but may express a preference between competing unions, Mr. Tamsi's conduct near the polls, considered in the total context, went beyond what is proper or permitted.

COUNT 5 (paragraph 9(b) of the amended complaint)

B. On or about September 25, 1975, at one of the properties owned by Missakian Vineyards, a UFW organizer was denied access to the fields. However, the evidence did not establish the existence of a discriminatory policy or that

the employer improperly denied access to UFW organizers.

On September 25, 1975, Guadalupe Medina and three other UFW organizers arrived at one of respondent's fields at approximately 12:00 p.m. She had been at the respondent's fields the prior day and spent time speaking to employees before being asked to leave. On the date in question (September 25, 1975) most employees had finished lunch and had returned to work. Two of the UFW organizers were permitted access, but Mrs. Medina and a companion were not permitted to enter the fields to speak with workers. This is the only evidence of a denial of access introduced and is not sufficient to establish the charge. The record reflects other occasions where UFW organizers were granted access to the workers.

COUNT 6 (paragraph 9(c) of the amended complaint)

C. It was not established that respondent maintained a policy and practice of refusing to hire employees who joined, supported or assisted the UFW as alleged in paragraph 9(c) of the amended complaint. Reference is made to paragraph. VII-C, supra, which discusses the conduct alleged to constitute a violation of the Act.

COUNT 7 (paragraphs 9(d) and 9(e) of the amended complaint)

D. Respondent has, since on or about August 28, 1975, required membership in the Teamsters Union within no more than 10 days of hire as a condition of continued employment. Employees were required to sign authorizations for check-off of Teamster dues. This was done pursuant to respondent's existing collective bargaining agreement and does not constitute the rendering of unlawful assistance to the Teamsters as alleged in paragraphs 9(d) and 9(c) of the amended complaint.

IX

Respondent has discriminated against its employees in.

regard to conditions of employment in order to discourage membership in the UFW, as follows:

COUNT 8 (paragraph 10(a) of the amended complaint)

A. On or about September 24, 25, 26, and 27, 1975, one of respondent's crew bosses, Peter Pasqual, created more onerous working conditions for Haul and Teresa Hernandez.

Packing tables were provided by respondent for workers in the vineyards. Haul and Teresa Hernandez had been working at a table on September 23, 1975, when they were recognized by a Teamster organizer, Pancho Mendoza, as UFW sympathizers. Mr. Mendoza spoke with the foreman. The next morning Mr. and Mrs. Hernandez were required to pack grapes on the ground. No other crews were packing on the ground at this time. Upon noticing the Hernandezs packing on September 24, Albert Missakian asked the crew boss why they were packing on the ground. He received a whispered reply, said "okay" and walked away. They continued to pack on the ground until they were discharged.

COUNT 9 (paragraph 10(b) of the amended complaint)

B. It was not established that respondent maintained a policy of refusing to hire employees who joined, formed or assisted the UFW (see Count 3 and Count 6).

COUNT 10 (paragraphs 10(c) and 10(d) of the amended complaint)

C. Respondent's practice of requiring employees to join the Teamsters Union and sign authorizations for dues check-offs, as set forth in paragraph VIII(d) above, was not proven to constitute illegal discrimination (see Count 3 and Count 7).

X

COUNT 11 (paragraph 11 of the amended complaint)

On or about August 28, 1975, at one of the fields of Missakian Vineyards, respondent, by his crew boss, Peter Pasqual, discharged employees Maria Perez, Alberto Hernandez, Antonia Villa and Esperanza Hernandez, because of their activities on behalf of the UFW, and to discourage membership in the UFW. Respondent has

refused to reinstate them to their former positions of employment.

Mr. Pasqual saw Antonia Villa sign a UFW authorization card before discharging her. Later the same day, Mr. Pasqual fired Maria Perez for the same reason.

While working for respondent on August 29, 1975, Alberto Hernandez and his wife, Esperanza Hernandez, signed UFW authorization cards within view of Peter Pasqual's daughter, Christina. Mr. Pasqual later conferred with his daughter and immediately thereafter, he fired Mr. and Mrs. Hernandez.

XI

COUNT 12 (paragraph 12 of the amended complaint)

On or about September 27, 1975, respondent, by his crew boss Peter Pasqual, discharged employees Raul and Teresa Hernandez because of their activities on behalf of the UFW, and to discourage membership in the UFW. Respondent refuses to reinstate them to their former jobs.

On September 27, Mr. and Mrs. Hernandez were told by Peter Pasqual that there was no more work. They were laid off the next working day, however most of Mr. Pasqual's workers continued picking and packing for respondent at a different location. Mr. Pasqual had often hired Raul and Teresa Hernandez in the past.

* * * *

CONCLUSIONS OF LAW

Count 1. Respondent violated section 1153, subdivision (a), of the Act.

Count 2. Respondent violated section 1153, subdivision (a), of the Act.

Count 3. No violation of the Act was established.

Count 4. Respondent violated section 1153, subdivision (b), of the Act.

Count 5. No violation of the Act was established.

Count 6. No violation of the Act was established.

Count 7. No violation of the Act was established.

Count 8. Respondent violated section 1153, subdivision (c), of the Act.

Count 9. No violation of the Act was established.

Count 10. No violation of the Act was established.

Count 11. Respondent violated section 1153, subdivisions (a) and (c), of the Act.

Count 12. Respondent violated section 1153, subdivisions (a) and (c), of the Act.

PROPOSED ORDER

I. Counts 3, 5, 6, 7, 9, and 10 are dismissed.

II. Pursuant to the conclusions of law as to counts 1, 2, 4, 6, 11, and 12, respondent shall:

A. Cease and desist from:

1. Interfering with, restraining, or coercing its agricultural employees in the exercise of rights guaranteed in section 1152 of the Act.

2. Interfering with the formation or administration of any union or giving any unlawful assistance to any union through intimation, promises of improved working conditions, or otherwise.

3. Discriminating in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

B. Take the following affirmative action:

1. Reinstate Antonia Villa, Maria Perez, Alberto Hernandez, Esperanza Hernandez, Raul Hernandez, and Teresa Hernandez, and make them whole for any losses they may have suffered as a result of their wrongful termination by payment to each of said employees of a sum equal to the wages they would have earned from the respective dates of discharge to and including the last date members of the Tamsi and Pasqual crews worked for

respondent during the 1975 harvest season, less any net earnings, together with interest thereon at the rate of 7% per annum.

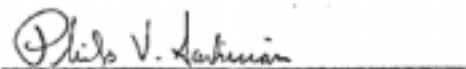
2. Preserve and make available to the Board or its agents, upon request, for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and other records necessary to analyze the back pay due.

3. Give to each employee hired up to and including the harvest season in 1977 copies of the notice attached hereto and marked "Appendix." Copies of this notice, including an appropriate Spanish translation, shall be furnished respondent for distribution by the Regional Director for the Fresno regional office. Respondent is required to explain to each employee at the time the notice is given to him that it is important that he understand its contents, and respondent is further required to offer to read the notice to each employee if the employee so desires. In addition, respondent shall mail a copy of the notice to the home address of each 1975 peak season employee.

4. Notify the Regional Director in the Fresno regional office within twenty (20) days from receipt of a copy of this decision of steps respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

C. Respondent shall pay to complainant the sum of \$150.00 plus actual costs incurred as sanction for refusal to comply with the subpoenas and order of the Administrative Law Judge.

DATED: February 7, 1977



PHILIP W SARKISIAN
Administrative Law Judge

PVS:da

APPENDIX

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we have engaged in violations of the Agricultural Labor Relations Act, and has ordered us to notify all persons coming to work for us in the next pruning, tying, and harvest seasons that we will remedy those violations, and that we will respect the rights of all our employees in the future. Therefore we are now telling each of you:

(1) We will reinstate Antonia Villa, Maria Perez, Alberto Hernandez, Esperanza Hernandez, Raul Hernandez and Teresa Hernandez to their former jobs and give them back pay for any losses that they have incurred while they were off work.

(2) We will not question any of our employees about their support of the United Farm Workers of America, the Teamsters Union, or any other labor organization, and we will not tell them not to vote or how they should vote in any election which may be ordered among our employees.

(3) All our employees are free to support, become or remain members of the United Farm Workers of America, the Teamsters Union, or of any other union. Our employees may wear union buttons or pass out and sign union authorization cards or engage in other organizational efforts including passing out literature or talking to their fellow employees about any union of their choice provided this is not done at times or in a manner that interferes with their doing the job for which they were hired. We will not discharge, lay off, or in any other manner interfere with the rights of our employees to engage in these and other activities which are guaranteed them by the Agricultural Labor Relations Act.

Signed:

MISSAKIAN VINEYARDS

By:

ALBERT MISSAKIAN

DATED: