

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

WESTERN TOMATO GROWERS & SHIPPERS,	)	
INC., STOCKTON TOMATO COMPANY, INC.	)	
AND ERNEST PERRY,	)	
	)	No. 75-CE-1-S
Respondent,	)	
	)	3 ALRB No. 51
xxxxxx	)	
UNITED FARM WORKERS OF AMERICA,	)	
xxxxxx	)	
	)	(xxxxxx.
	)	
	)	

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This decision has been delegated to a three-member Panel.

Labor Code S 1146.

On January 25, 1977, administrative law officer Matthew Goldberg issued his decision in this case. The respondent, 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 they are consistent with this opinion.

The original complaint named Western Tomato Growers and Shippers, Inc. and twenty-one individuals as respondents.<sup>1/</sup> At the hearing, appearances were entered by Western Tomato and two individuals only. The law officer ordered the General Counsel either to allege that the other named individuals were agricultural employers or to drop their names from the complaint. The General Counsel subsequently dropped all non-appearing individuals from

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<sup>1/</sup> The case was set for hearing on February 23, 1976. Due to the closing of the Board for lack of funds, the hearing was not held until January 3, 1977.

the complaint except Ernest Perry. Respondent Perry was present at the hearing in response to a subpoena, but refused to enter an appearance. After two days of hearing, the appearing responder entered a settlement agreement with the charging party and the General Counsel. The remaining day of hearing and the law officer's decision pertained to Ernest Perry only.

The case before us concerns events which took place in September 1, 2, and 3, 1975. <sup>2/</sup> On these three days UFW organizers were attempting to enter a field off Highway 99 on Arch Road near New Castle Road in San Joaquin County in accordance with the access rule" <sup>3/</sup> to talk to agricultural employees. Each day they were met by twelve to twenty individuals, bearing firearms and threatening them with serious bodily harm, Ernest Perry among them. The law officer found that respondent Perry violated S 1153(a) of the Act by denying access to union organizers and engaging in other coercive conduct. He recommended that this Board issue a cease and desist order against Perry and order certain affirmative acts.

Respondent Perry has filed two exceptions alleging a denial of his constitutional rights in that he was not notified of the time, place, or purpose of the hearing. The Board's official record reveals that respondent Perry was duly served by registered mail with notice of hearing. A refusal on his part to accept or read such notice yields no grounds for alleging a denial of his rights. Additionally, he had been duly served with the

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<sup>2/</sup> Unless otherwise stated all dates refer to 1975.

<sup>3/</sup> 8 Cal. Admin. Code § 20900 (1975); revised and amended 1976, compare SS 20900, 20901 (1976).

complaint to which he filed an answer. By his own admission Perry was present at the hearing in response to a subpoena. We find that respondent's constitutional rights have been fully protected by the processes of this Board.

Respondent excepts to the law officer's finding of a violation of the access rule because 1) the appearance of eight or nine union organizers was in excess of the number allowed by the access rule and 2) the access rule was not in effect until September 3, 1975. Respondent's first claim cannot be entertained here because no evidence was introduced at the hearing that the number of organizers who appeared was excessive.

Respondent argues that the access regulation was not technically in effect until September 3, 1975, the date it was filed with the Senate Rules Committee. The activities complained of occurred on September 1, 2, and 3, 1975. The law officer found the effective date of the access rule to be August 29, 1975. This date appears on the face of the published access rule and is the effective date cited by the California Supreme Court in Agricultural Labor Relations Board v. Superior Court of Tulare County, 16 Cal. 3d 392 (1976).

We find it unnecessary to decide the technical date of effectiveness of the access rule. The conduct of respondents in brandishing firearms to prevent union organizers from entering a field where employees were working was an unnecessary show of force and was coercive in itself. Such conduct bore no reasonable relationship to the proper method of asserting a claimed right and

substantially interfered with the rights guaranteed to employees by S 1152 of the Act.

Respondent Perry takes exception to the law officer's finding that he is and was an agricultural employer within the meaning of the Act.

We find that respondent Perry acted in the interests of Western Tomato Growers and Shippers, Inc. and Stockton Tomato Company and therefore is an agricultural employer as defined by S 1140.4(c) of the Act:

The term "agricultural employer" shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee...

Respondent Perry and other members of the Posse Comitatus prevented organizers from entering the fields of the employer by use of firearms, clubs and other weapons and by threats of immediate and serious bodily harm. By participating in this scheme, respondent Perry acted in the interests of the employer and by virtue of this conduct is himself chargeable with violation of the Act.<sup>4/</sup>

Such a finding has been expressed by the National Labor Relations Board and the Courts:

It is obvious and it is reasonable that the interpretation of the Act makes one who aids the immediate employer in contravening the statute an employer also. [cites] Such an interpretation is an adoption of the established common law principle that an agent is accountable for his own illegal acts even though per-

formed under conditions imposing liability on his principal.<sup>5/</sup>

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<sup>4/</sup> See NLRB v. Grower - Shipper Vegetable Association, 122 F 2d. 368, 8 LRRM 891, (9th Cir., 1941) .

<sup>5/</sup> NLRB v. Taylor Colquitt, 140 P 2d. 92, 13 LRRM 639, 640 (4th Cir., 1943}.

Respondent takes exception to the finding that he directed, controlled or ratified the acts of members of the Posse Comitatus. The law officer found that respondent Perry directed and participated in the acts of the Posse and therefore respondent approved and ratified the acts of the individual members.

On the basis of the evidence presented, we cannot conclude that respondent Perry directed and controlled the individual members of the Posse. His participation in the events of September 1 and 2 is clear, however. <sup>6/</sup> Uncontroverted evidence also establishes that he participated in the attack on a union organizer on September 2. We hold that the officer was in error in finding that Perry directed and controlled other individuals, but this error has no effect on the result, since the gravamen of the violation was Perry's participation in the events.

The charging party excepts to the law officer's order to the General Counsel to amend the complaint or to drop the eighteen other named respondents, who allegedly were members of the Posse Comitatus and participated in the incidents complained of. We reverse the law officer's order.

The complaint alleged that respondents were acting as agents of the employer and set forth the specific acts complained of. Of the 21 individuals named in the original complaint, 13

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<sup>6/</sup> Respondent Perry excepts to the finding that he was present in the fields on September 3. We agree that the record contains no evidence of his presence on that day and therefore limit the finding of his direct participation to September 1 and 2.

failed to file an answer. Applicable sections of our Regulations provide that:

The respondent shall file an answer within 10 days of the service of the complaint. (8 Cal. Admin. Code S 20230) . The answer shall state which facts in the complaint are admitted, which are denied and which are outside the knowledge of the respondent. . Any allegation not denied shall be considered admitted. (8 Cal. Admin. Code S 20232).

As to these 13 individuals <sup>7/</sup> we issue an Order to Show Cause why the Board should not enter an order against them. If no adequate response is received within 10 days we shall deem all allegations in the complaint to be true and issue an order accordingly.

There remain five individuals who were named in the original complaint and who filed answers but did not appear at the hearing. <sup>8/</sup> As to these five, we reverse the law officer's order. The General Counsel may reinstate the complaint as to them.

#### The Remedy

We modify the law officer's recommendation as follows:

1. We add the following:

A letter of apology shall be mailed, along with a copy of the attached NOTICE TO WORKERS, to each worker employed during 1975 by Western Tomato Growers and Shippers, Inc. and Stockton Tomato Company; to the United Farm Workers of America, AFL-CIO;

<sup>7/</sup> Francis Gillings, Vernon Essig, Jack Holt, James McDaniel, George E. Hill, Mary Hill, Rod Rasmussen, Louis D. Elam, Linda D. Marshall, Arthur Lowery, Anita Lowery, Robert Ryan, Leo Perry.

<sup>8/</sup> Dorothy Wood, Norman E. Brown, Steven Graves, Dennis K. Valentine, and Ronald J. Epperson.

The other three individual respondents are Ernest Perry and two individuals who signed the settlement agreement.

and to each individual organizer who was present in the fields on Arch Road on September 1, 2, or 3, 1975.

2. We replace paragraph 2(c) of the law officer's report with the following:

(a) The NOTICE TO WORKERS (to be printed in Spanish and English) shall be distributed to all present agricultural employees and to all employees employed during the remainder of 1977.

(b) The NOTICE TO WORKERS shall be read in English and in Spanish on company time to all current employees of respondent Perry by a company representative or by a Board agent at a time and place to be determined by the regional director during the next peak 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 all lost time 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.

3. We replace paragraph 2(e)(i) of the law officer's report with the following:

UFW organizers shall be allowed to take access to fields owned, operated, or managed by respondent Perry throughout the working day for the remainder of 1977. This right of access shall conform with 8 Cal. Admin. Code S 20900(e)(1) and 8 20900(e)(4).

Accordingly, pursuant to Labor Code S 1160.3, IT IS HEREBY ORDERED that the respondent Ernest Perry, his officers, his agents, successors and assigns shall:

(1) Cease and desist from interfering with, restraining or coercing agricultural employees in the exercising of their rights of self-organization and/or their right to refrain from such activities, by

(a) denying access to union representatives who appear on agricultural lands owned by him or under his supervision for the purposes of organizing the agricultural employees working thereon;

(b) assaulting or threatening with immediate bodily harm any such union organizers;

(c) forming, directing, or participating in any organization whose avowed purpose is to engage in an armed confrontation with any union organizers; and

(d) in any other manner interfering with, restraining or coercing any employee in the exercise of rights guaranteed by S 1152 of the Agricultural Labor Relations Act.

(2) Take the following affirmative actions:

(a) Post in conspicuous places in respondent Perry's places of business in San Joaquin County, California, including all places where notices to employees are customarily posted, copies of the attached NOTICE TO WORKERS. Copies of the said NOTICE in Spanish and English are to be furnished by the ALRB, and shall, after being duly signed by respondent Perry, be posted in such conspicuous places and maintained by him during the entire peak season in the tomato growing fields in 1977. Reasonable steps shall be taken by respondent Perry to insure that said NOTICE is not covered, altered or defaced by any other material.

(b) Mail a letter of apology along with a copy of the attached NOTICE (in Spanish and English) to each worker employed during 1975 by Western Tomato Growers and Shippers, Inc. and Stockton Tomato Company; to the United Farm Workers of America, AFL-CIO; and to



each individual organizer who was present in the fields on Arch Road on September 1, 2, or 3, 1975.

(c) inform the Board in writing within two weeks prior to the commencement of the 1977 peak season of the exact dates and duration of such season.

(d) Distribute the attached NOTICE (in Spanish and English) to all present agricultural employees and to all employees hired by respondent during the remainder of 1977.

(e) Have the attached NOTICE TO WORKERS read to all current employees by a company representative or a Board agent during the peak harvesting season of 1977 on company time. Following such reading, employees shall be afforded an opportunity to ask questions of a Board agent concerning the Act.

(f) Inform the Board twenty days after the commencement of peak season of the steps taken to comply with this decision.

(g) Permit access by union organizers to fields owned, Operated, or managed by respondent throughout the working day for the remainder of 1977. Such access shall conform to S 20900(e)(1) and S 20900(e)(4). Insofar as access to employees prior to the commencement of work is concerned, organizers shall be permitted access on company buses for the full one hour period.

Dated: June 27, 1977

GERALD A. BROWN, Chairman RICHARD

JOHNSEN, Jr., Member

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

I 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:

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

Especially:

I WILL NOT stop union organizers from going on agricultural fields under my ownership, control and/or management for the purpose of organizing the workers during such times as these organizers are permitted by law.

I WILL comply in all respects with the Board's Order.

Dated \_\_\_\_\_

\_\_\_\_\_  
Ernest Perry

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted throughout the peak tomato season and must not be altered, defaced or covered by any other material. Any questions concerning this notice may be directed to the Board's Office, 21 West Laurel Drive, Suite 65-M, Salinas, CA 93901.

Member HUTCHINSON, concurring:

I concur in the results reached by the majority except that I would award additional remedies.

The General Counsel and the charging party requested reimbursement for attorney's fees and litigation costs. The ALO failed to make findings or recommendations on this issue. In my opinion it is not only appropriate to grant such relief in this case but necessary if enforcement of the law is to have any meaning. Respondent Perry, in addition to engaging in flagrant and violent violations of the Act, has trifled with this Board's processes, resulting in the needless expenditure of time and money by the parties and this Board.

Respondent Perry has appealed from the ALO's decision, claiming that he was deprived of adequate notice, that he had no relationship to the two corporate employers named as respondents and that the UFW violated the access rule by having an excessive

number of organizers present at the time the events in question took place. The record reveals the frivolousness of these positions.

Respondent Perry filed an answer to the complaint indicating a P.O. Box address at the top of the pleadings. The official file reveals that notices of all proceedings were sent to that address. Moreover he was personally served with a subpoena and was present at the hearing but refused to acknowledge his presence at the time. To claim now that he was deprived of adequate notice is not only frivolous but is an insult to the integrity of the law.

His claim that there was an excessive number of organizers present during the incidents in question finds absolutely no support in the record. He has attempted to raise factual issues for the first time on appeal when he had full opportunity to do so at the hearing. It is well recognized that such conduct is improper.

With respect to the other claims there is sufficient evidence in the record to support the findings made. He had ample opportunity to refute the charges. The fact that he did not choose to do so cannot now be used to his advantage.

The corporate respondents settled their dispute with the General Counsel. Had respondent Perry participated in those proceedings this case may well have been disposed of months ago. Instead, weeks and months were wasted in procedural delay, including two extra days of hearing time. The ALO was obliged to submit a written decision and the General Counsel and charging party had to file briefs with the Board. The obvious result of respondent Perry's indifference was a needless waste of time and resources. The only appropriate remedy for such abuse of this Board's processes is the reimbursement of litigation costs

including attorneys' fees resulting from such conduct.

There is NLRB authority for the proposition that an award of attorneys' fees and litigation costs is appropriate in circumstances where a party has engaged in frivolous litigation.

In Tiidee Products, Inc. and I.E.E., 194 NLRB 1234, 79 LRRM 1175 (1972), the Board ordered attorneys' fees and litigation costs to be paid to the charging party and the Board on the ground that public policy required such action in order to discourage future frivolous litigation with its attendant drain on the resources of the agency and the parties. .

The Board's authority to make such awards was upheld in Food Store Employees, Local 347 v. NLRB (Heck's Inc.), 476 F. 2d 546, 82 LRRM 2955 (D.C. Cir. 1973). The court stated:

It would appear that the Board has now recognized that employers who follow a pattern of resisting union organization, and who to that end unduly burden the processes of the Board and the courts, should be obliged, at the very least, to respond in terms of making good the legal expenses to which they have put the charging parties and the Board. Id. at 551.

I am aware of California Civil Code § 1021 which prohibits awards of attorneys' fees except where specifically authorized by statute or private contract. However, that provision is inapposite here. Rather than seeking to include attorneys' fees as ordinary items of compensable damage in every case, I only urge that this Board use its inherent authority to impose reasonable sanctions for abuse of the Board's processes. The civil courts of our state have such power in spite of Civil Code § 1021. In Santandrea v. Siltec Corp., 56 Cal. App. 3rd 525 (1976) the trial court ordered one of the parties to reimburse the other for its time and effort in responding to a frivolous motion. The appellate court affirmed

noting the inherent power of the court to regulate proceedings before it even in the absence of specific statutory authority to impose sanctions for such misconduct.

I do not contend that litigation costs, including attorneys' fees, should be awarded the winning parties in every case. Such a rule would unduly inhibit the right to litigate legitimate questions of law or fact and would impose a special hardship on litigants with limited financial resources. However, the failure to deter the outright abuse of the litigation process will endanger the effective implementation of the policies of the Act. One of the major policies of our Act is the expeditious resolution of disputes. Crowded dockets and unnecessary dissipation of human and financial resources occasioned by frivolous litigation undermines the effectuation of that policy. Imposing reasonable sanctions when misconduct does occur is at least some insurance against future loss of time and resources. I would do so in this case.

Dated: June 27, 1977

ROBERT B. HUTCHINSON, Member

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

WESTERN TOMATO GROWERS & SHIPPERS, INC., )  
 STOCKTON TOMATO COMPANY, INC., )  
 and ERNEST PERRY <sup>1/</sup> )  
 )  
 and )  
 )  
 UNITED FARM WORKERS OF AMERICA, AFL-CIO )  
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 )

Case No. 75-CE-1-S

\_\_\_\_\_  
 Gary Williams, Esq. and  
 Dennis Sullivan, Esq., for  
 the General Counsel.

\_\_\_\_\_  
 James J. Meyers, Jr., Esq. and  
 Jan Weinberg, Esq., of  
 Littler, Mendelson, Fastiff & Tichy, for Western  
 Tomato Growers & Shippers, Inc., Stockton Tomato  
 Company, Inc., Frank Ray, and Michael E. Brown,  
 Respondents.

\_\_\_\_\_  
 George C. Lazar, Esq., for  
 United Farm Workers of America, AFL-CIO,  
 Charging Party.<sup>2/</sup>

Before: Matthew Goldberg, Administrative Law Officer



DECISION OF THE ADMINISTRATIVE LAW OFFICER

Statement of the Case

On September 2, 1975, the United Farm Workers of America, AFL-CIO (hereinafter referred to as the Union) filed the original charge in Case No. 75-CE-1-S alleging certain violations of Section 1153 of the Agricultural Labor Relations Act. Based on said charge, a complaint was issued by the General Counsel

<sup>1/</sup> The caption reflects the amendments made to the complaint, dated January 6, 1977, at the hearing.

<sup>2/</sup> Respondent Ernest Perry, although personally present on the first day of the proceedings, refused to enter an appearance or to actually participate in them.

of the Agricultural Labor Relations Board on December 16, 1975.

All of the Respondents named above have filed answers to the complaint denying in substance that they committed the unfair labor practices alleged.<sup>3/</sup>

A hearing in the matter was originally scheduled for February 23, 1976, and subsequently postponed. On November 29, 1976, a new notice of hearing was issued and said hearing was held from January 3, 1977, until January 5, 1977, in Stockton, California. The Board's General Counsel and Respondents Western Tomato Growers & Shippers, Inc., Frank Ray, Stockton Tomato Company, Inc., and Michael E. Brown appeared through their respective Counsels and all parties were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, and submit oral argument and briefs.<sup>4/</sup>

Upon the entire record, from my observations of the demeanor of the witnesses and having read and considered the briefs submitted to me since the hearing, I make the following:<sup>5/</sup>

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<sup>3/</sup> Copies of the Charge, the Complaint, and the notices of hearing in these proceedings have been duly served on all Respondents.

<sup>4/</sup> Pursuant to an order of the Administrative Law Officer, the original complaint, which included some twenty (20) individuals named as Respondents but not alleged to be agricultural employers, was amended at the hearing. The amendment stated in substance that these individuals (with the exception of Respondent Ernest Perry) were to be deleted as named Respondents in the complaint; that Respondent Stockton Tomato Company, Inc., was substituted for individual Respondent Frank Ray, and that Respondent Ernest Perry was an individual engaged in agriculture at all relevant times,

<sup>5/</sup> On the third day of hearing Counsel for Respondents Western Tomato Growers & Shippers, Inc., Stockton Tomato Company, Inc.,



## Findings of Fact <sup>6/</sup>

### I. Jurisdiction of the Board

1. Respondent Ernest Perry is and was at all material times an agricultural employer within the meaning of §110.4(c) of the Act.

2. The Union is and was at all times material herein a labor organization within the meaning of §1140.4(f) of the Act.

### II. The Alleged Unfair Labor Practices

#### A. Prefatory Statement

On August 29, 1975, the "access rule" was promulgated by the Agricultural Labor Relations Board (8 Cal. Admin. Code §20900 et. seq.). Pursuant to this rule, union organizers were granted the right to enter the property of an agricultural employer for the purposes of organizing employees during specified times of the work day.

On September 1, 2, and 3 of 1975, Jim Drake, an organizer for the Union, along with approximately eight or nine other organizers, appeared at a tomato field located on Arch Road

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<sup>5/</sup>(cont'd) and Frank Ray entered a settlement agreement with the Counsel for the General Counsel which disposed of all issues in controversy between these respective parties. Any remaining testimony which was taken and any findings made by the Administrative Law Officer pertain solely to Respondent Ernest Perry.

<sup>6/</sup> The evidence adduced by Counsel for the General Counsel through the testimony of witnesses and via documents was essentially uncontroverted and is hereby credited in all respects.

near New Castle Road in San Joaquin County, California, for the purposes of organizing the employees working in that field. On each occasion access to the field and to the workers thereon was blocked and barred by a group of individuals herein collectively referred to as the "Posse Comitatus". The group consisted of approximately ten to twenty persons at various times. Much of the Posse were dressed in similar green khaki work clothes and each member wore an identifying shiny metal badge. The group was armed with pistols, rifles, and clubs and brandished same whenever the organizers appeared on the dates mentioned above. The actions of the Posse in regard to the union organizers were done in full view of the employees in the field, who were frightened and apprehensive at the time.

On each of these dates Respondent Ernest Perry was present at the field and was seen at various times directing the members of the Posse Comitatus and giving them instructions. On September 2nd, 1975, one of the organizers, Bobby DeLaCruz, was confronted by Respondent Perry on the public roadway bordering the field in question and was physically assaulted by him. In addition, it appears that Respondent Perry was instrumental in instigating the formation of the Posse, that an organizational meeting for the Posse was held on August 31, 1975, at Respondent Perry's labor camp, and that prior to the appearance of the Posse in the field Respondent Perry initiated the contact with Frank Ray of Stockton Tomato Company, Inc., <sup>7/</sup> for the purposes of utilizing the services of the Posse.

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<sup>7/</sup> Stockton Tomato Company, Inc., was somehow connected with the agricultural operations in this particular field.

## B. Denial of Access

The effective date of the access rule appears on its face to be August 29, 1975. This date is also cited by the California Supreme Court in Agricultural Labor Relations Board vs. Superior Court of Tulare County, 16 C3d 392 (1976), fn3.<sup>8/</sup>

By forming, directing and participating in the acts of the Posse Comitatus, Respondent Perry directly interfered with the Union's right of access as set forth in the access rule, and thereby engaged in a violation of §1153(a) of the Act. It is clear that the Posse acted under Respondent Perry's control and direction, under his orders, or at the minimum, that Respondent Perry approved and ratified each act of the individual members of the Posse. Accordingly, under applicable precedent, the members of the Posse were considered to be agents of Respondent Perry and as such Respondent Perry is considered responsible for any unfair labor practices committed by such agents. See Waynline, Inc. 23 LRRM 1374, 81 NLRB No. 95 (1949).<sup>9/</sup>

## C. The Appearance of the Posse

Notwithstanding the denial of access noted above, Respondent Perry engaged in additional unfair labor practices

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<sup>8/</sup> Counsel for Respondents Stockton Tomato Company, Inc., and Western Tomato Growers & Shippers, Inc., contested the actual date when the access rule became effective. However, no evidence on this point was produced by these parties and, indeed, as noted above, all issues between the Board and these parties have been disposed of by settlement agreement. Accordingly, this contention is deemed moot.

<sup>9/</sup> Pursuant to Agricultural Labor Relations Act §1148, the Board is instructed to follow applicable National Labor Relations Act precedent.

in violation of §1153(a) of Agricultural Labor Relations Act by confronting union organizers with an armed band, threatening such organizers thereby with immediate and serious bodily harm, and by assaulting union organizer Bobby DeLaCruz. See Piedmont Wagon and Manufacturing Company, 79 NLRB 967, 22 LRRM 1470 (1948), enf'd C.A. 4, 24 LRRM 2452 (1949).

The fact that Respondent Perry committed the aforementioned unfair labor practices in the presence of employees who were not necessarily his own at that time is of no consequence in concluding that he violated the Agricultural Labor Relations Act. As stated in Austin Company, 101 NLRB No. 197, 31 LRRM 1215 (1952):

"...[the National Labor Relations] Act, read literally, precludes any employer from discriminating with respect to any employees, for Section 8(a)(3) does not limit its prohibition to acts of an employer vis-a-vis his own employees."

This principle was most recently cited with approval by the U.S. Supreme Court in Hudgens vs. NLRB, 96 S.Ct. 1029 (1976), fn3:

"The [National Labor Relations] Board has held that a statutory employer may violate Section 8(a)(1) [the section on which §1153(a) of the Agricultural Labor Relations Act is based] with respect to employees other than his own."

See also Peddle Buildings, 203 NLRB 265 (1973), enf. den. on other grds, 498 F2nd 43 (CA 3 1974).

The concept applies with particular force in the agricultural industry, as agricultural employees rotate their services between various employers in a given area during the peak season, and the actions of one employer on another's premises

may have an undesirable and illegal effects when the employees in that field move to his own premises. Confronting union organizers with an armed Posse per se interferes with, restrains, and coerces agricultural employees in the exercise of the rights to self-organization, contrary to §1153(a).

#### D. Recommended Order

Having found that Respondent Perry has engaged in unfair labor practices violative of §1153(a) of the Act, and upon the basis of the foregoing findings of fact and conclusions of law, and the entire record of this proceeding, pursuant to §1160.3 of the Act, I hereby issue the following recommended order:

Ernest Perry, his officers, agents, successors, and assigns shall:

(1) Cease and desist from interfering with, restraining or coercing agricultural employees in the exercising of their rights of self-organization and/or their right to refrain from such activities, by

(a) denying access to union representatives who appear on agricultural lands owned by him or under his supervision for the purposes of organizing the agricultural employees working thereon;

(b) assaulting or threatening with immediate bodily harm any such union organizers;

(c) forming, directing, or participating in any organization whose avowed purpose is to engage in an armed confrontation with any union organizers; and

(d) in any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by §1152 of the Agricultural Labor Relations Act.

(2) Take the following affirmative actions which I find will effectuate the policies of the Act:

(a) Post in conspicuous places in Respondent Perry's place of business in San Joaquin County, California, including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix". Copies of the said notice in Spanish and English are to be furnished by the ALRB, and shall, after being duly signed by Respondent Perry, be posted in such conspicuous places and maintained by him during the entire peak season in the tomato growing fields in 1977. Reasonable steps shall be taken by Respondent Perry to insure that said notice is not covered, altered or defaced by any other material.

(b) Respondent Perry shall inform the Board in writing within two weeks prior to the commencement of the peak season of the exact dates and duration of such season.

(c) Copies, of the aforementioned notice are to be handed to all agricultural employees employed during the year 1977 and read to the said employees once a week during the peak tomato cultivating and/or harvesting seasons.

(d) Twenty days after the commencement of the peak season, Respondent Perry shall inform the Board of the steps he has taken to comply with this decision.

(e) Permit access by union organizers to fields owned, operated, or managed by him, or under his control in addition to that available under 8 Cal. Admin. Code §20900 et. seq., as follows:

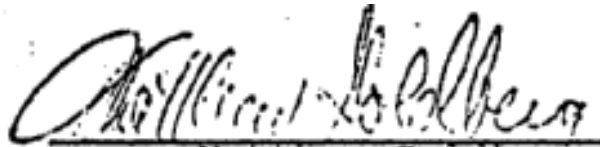
(i) One hour in addition to the hour granted for access during lunch time, for a total of two hours during the work day. This two hour organizing period is to be allowed whether or not there is an officially declared lunch hour. <sup>10/</sup>

(ii) Insofar as access to employees prior to the commencement of work is concerned, organizers shall be

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10/ Testimony was presented at the hearing to the effect that workers in the tomato fields are often not granted an officially declared lunch break.

permitted to announce their presence to employees who are still Inside transport buses at the fields one hour before work is to commence. The said employees may then disembark from these buses and meet with the organizers for the full one hour period, 11/

A handwritten signature in cursive script, reading "Matthew Goldberg", written over a horizontal line.

MATHEW GOLDBERG  
Administrative Law Officer

Dated: 1/25/77

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11/ The evidence demonstrated that tomato workers often arrive in buses at the fields several hours before work begins, and remain on the buses right up until work actually commences.



APPENDIX

NOTICE TO EMPLOYEES

Posted By Order of the

Agricultural Labor Relations Board

An Agency of the State of California

After a hearing at which all sides had an opportunity to present evidence and state their positions, the Agricultural Labor Relations Board has found that I have violated the Agricultural Labor Relations Act, and has ordered me to post this notice.

The Act gives employees the following rights:

To engage in self-organization;

To form, Join or assist any union;

To bargain collectively through representatives of their own choosing;

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection;

To refrain from the exercise of any such activities.

I WILL NOT interfere with, restrain, or coerce any employee in the exercise of any of the above rights.

I WILL NOT prevent union organizers from gaining access to agricultural fields under my ownership control and/or management for the purpose of organizing the workers thereon during such times as these organizers are permitted by law and pursuant to order of the Agricultural Labor Relations Board to do so.

I WILL comply in all respects with the Board's Order.

Dated \_\_\_\_\_

Ernest Perry

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted throughout the peak tomato season and must not be altered, defaced or covered by any other material. Any questions concerning this notice may be directed to the Board's Office, 4433 Florin Road, Sacramento, California 95823