STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ANDERSON FARMS COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	Nos. 75-RC-15-S 75-CE-9-S 3 ALRB No. 67

DECISION AND ORDER

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

Introduction

"Andco", or Anderson Farms, is a partnership engaged in agriculture upon 35,000 acres located in Solano, Yolo, Sutter, and Colusa Counties. In 1975, the company had 8,962 acres planted in tomatoes, more than 6,000 of which were harvested. Henry Stone and Jack Anderson are the partners in Andco: Stone functions as the company's "inside man", responsible largely for business operations, and Jack Anderson, the company's "outside man", rides daily circuit throughout the company fields during the harvest season. Andco 's acreage embraces tomato ranches at four locations: Dixon (Collier Ranch), Davis (Mace II Ranch and central headquarters), Woodland, and Knight's Landing (Sutter Basin).

While the company grows such other crops as rice, beans, lettuce, and milo, the crop necessitating the employment of a large number of seasonal farm workers is tomatoes. On the highest single day of employment during the 1975 tomato harvest, Andco employed approximately 900 employees. The turnover rate at peak was

estimated by Stone to be two and a half to one; that is, if the company had 600 positions during peak period, they would be filled by 1,500 employees. Some of Andco's seasonal tomato sorters are employed directly by the company, others are hired through labor contractors. Five such contractors supplied the company with temporary farm labor, which constituted 25 to 35 percent of the total labor force during the 1975 harvest. The harvest began at the Sutter Basin Ranch on about August 28 and was completed throughout the company by October 20. At peak, which fell in the first two weeks of September, both day and night crews operated at some of the ranches, notably Sutter Basin and Mace II.

The temporary farm labor force is comprised chiefly of tomato sorters. The sorters stand on opposite sides of a harvester machine which moves down the rows of tomatoes, cutting the plants and sucking them up into the machine. The sorters separate the good tomatoes from the green and rotten tomatoes, dirt clods, and plant debris. Work shifts vary up to about 12 hours, and the machines are equipped with lights for night harvesting.

In June of 1975, the UFW began an organizational campaign among Andco employees. The campaign was directed by Al Rojas, who led a strike of an estimated 350 to 450 farm workers at Andco in 1974. Much of the union's organizational activity concentrated upon contacting workers at homes provided by the company at labor camps at Collier Headquarters, Davis, and Woodland. Additionally, the union attempted to contact workers in the respondent's fields.

On September 15, the union filed an election petition with the ALRB's Sacramento Regional Office. An election was

conducted on September 24 and *25* with polling sites at four of respondent's ranches." The UFW filed both objections to the election and unfair labor practice charges, which were consolidated for hearing.

On March 16, 1976, administrative law officer (ALO) Robert N. Covington issued his decision in the consolidated proceeding. The ALO found that respondent had engaged in a number of unfair labor practices, recommended dismissal of other charges, and recommended that the election be set aside on the grounds that certain pre-election conduct of the employer had affected the results thereof. The respondent took no exception to the findings and recommendations of the hearing officer. The general counsel and charging party, however, filed extensive exceptions to the decision, and the respondent filed its answer to those exceptions.

The Board has considered the ALO's decision, the exceptions and briefs, and has carefully reviewed the entire record in the case, and adopts the ALO's findings, conclusions, and recommendations only to the extent consistent with this opinion.

The present consolidated case was lengthy and complex, involving numerous unfair labor practice charges and many objections to pre-election and election day conduct of both the employer and the Board. The record is massive. At times the

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[1]/The results of the election were:

No Union	370
UFW	290
Unresolved Challenged Ballots	9
Void Ballots	17

The election was held beyond the seven-day period at the agreement of the parties [Labor Code Section 1156.3(a)(4)], and the issue has not been raised here as an objection.

ALO's decision fails to rule on some of the allegations of the complaint; the evidentiary basis for certain determinations are frequently absent; too often there is a failure to consider pertinent evidence on the issues. Moreover, the Board had decided only one unfair labor practice case at the time the ALO issued his decision. Inapplicable legal standards were applied to certain issues. We have therefore found it necessary to set out facts and rules of law in greater detail than we might otherwise do. For the sake of clarity, we discuss the incidents of alleged violations at each ranch separately and in turn.

REGINO GARCIA'S HARVESTERS

Labor contractor Regino Garcia Quintana supplied and supervised an average of 90 workers, sorters on three tomato harvesters, at the Mace II Ranch. The union charged Garcia with making numerous coercive and threatening statements to his workers during the pre-election campaign. We do not agree with the ALO's conclusion that most of the contents of Garcia's speeches were within the realm of protected employer free speech.[2/]

Garcia admitted making many of the statements charged as unlawful. He testified that at lunch hour on approximately the 9th of September, he witnessed a worker named Perez sign a union authorization card. The contractor immediately asked the workers

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[2/]Section 1155 of the ALRA is identical to Section 8(c) of the NLRA and provides that:

> The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

who was giving Perez a ride to work. He then ordered the driver not to bring Perez to work any more. Contrary to Garcia's express order, the driver continued to bring Perez to work, and Garcia took no further action against him. Though the contractor did not follow through on the discharge, his initial order, made in the presence of a number of workers, was direct and unequivocal and tended to restrain workers in the exercise of the rights guaranteed by the Act. The ALO did not consider this incident. The incident constituted a clear violation of Section 1153(a), and we so find.

Garcia also admitted making speeches to his employees on the morning of the Mace II election, moving from machine to machine and assembling and addressing the workers of each harvester in turn. According to Garcia's own testimony, he told the workers that if the union won the election, the rancher would' bring in electric machines. Garcia testified that 90 percent of the workers would then be without jobs. He explained to his sorters "what the union was and what the rancher was." That is: "that they already had everything in the ranch and to pay attention to what they were doing and to think about it first"; that "the rancher is the one that gives us everything. The ones that gives us something to eat. The ones that give us work"; that "we are living out of the rancher. Living off the rancher."

These statements threaten loss of employment in the event of a union election victory and as such are a violation of Section 1153(a). See Albert C. Hansen dba Hansen Farms, 2 ALRB No. 61 (1976).

Additionally, Garcia admitted that he boarded the bus

transporting a group of his workers to the polls and explained the general layout of the ballot. The contractor reminded his workers, in language identical to that used in his morning speeches, to "think about what they were going to do" and to "pay attention." This too was a violation of Section 1153(a) . [3/]

MACE II HEADQUARTERS

The UPW has excepted to the hearing officer's conclusion that the September 12 conduct of supervisor Trini Savala did not constitute an unfair labor practice. While we reject the ALO's reasoning on the issue,[4/] we do not find evidence on this record that the conduct complained of violated the Act. The allegation is dismissed accordingly.

THE WOODLAND RANCH DISCHARGES

The ALO found that the allegation of a discriminatory discharge of the Terrazas family was not supported by a preponderance of the evidence. We disagree.

On September 8, the Terrazas, a family of three, remained in the field after work to gather tomatoes. One other employee, Celia Conrique, was also present, awaiting a ride home. A union representative came to the fields and spoke with the workers, who took union cards in the presence of the company's ranch superin-

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[3/]The UFW further excepted to the ALO's failure to find that Garcia's statements that the union would separate families violated the Act. The ALO did not determine whether or not such statements were in fact made. Garcia himself at first confirmed making the statement, then later specifically denied having done so. Various employees testifying at the hearing offered widely disparate versions of the wording of the alleged statement. On the record before us, there is insufficient proof of a violation of Section 1153 (a) .

[4/]See discussion this opinion infra, at page 9.

tendent. About 20 minutes after the family returned home, one of the foremen came to their home and told them that they were discharged. Celia Conrique, who was not named as a discriminatee in the complaint, was also discharged.

Three of respondent's supervisors testified that the layoffs were only temporary, until a third harvester could be started, and were necessary due to lack of work. One supervisor, the foreman, explained that the greener, cleaner tomatoes being harvested at the time required fewer sorters per machine. He stated that the number of sorters" per machine fluctuates accordingly between 19 and 25 workers. The foreman explained that the Terrazas family was selected for layoff because they were a small family group, and the grower wished to avoid dividing the larger families.

The foreman's explanation is contradicted by respondent's payroll records. These time sheets consist of a daily page for each harvester, setting forth the names and number of workers employed. Contrary to the foreman's testimony that the number of sorters per machine varies from 19 to 25, depending upon the ripeness of the tomatoes, the time sheets demonstrate that approximately the same number of sorters, 23, worked on each machine on each day of the season between September 3 and 15. On September 8, the day of the alleged "layoff", there were 23 sorters on machine #70, including Esperanza and Alicia Terrazas and Celia Conrique. On September 9 there were again 23 sorters on machine #70, including four workers by the name of Ayala. These workers' names appear on the time sheets for the first time

on that date and it may therefore be presumed that they were first hired at that time. The foreman expressly denied that any new sorters were hired immediately following the "layoff". On September 8, there were 22 sorters, including Samuel Terrazas, on machine #64. On September 9 there were 23 sorters on the same machine. The actual increase of one sorter belies the "lack of work" justification for the "layoff". The hearing officer did not discuss and apparently did not consider this payroll record evidence.

The respondent's explanation of the "layoff" is riddled with inconsistencies. Its supervisors contradict one another and are further contradicted by other witnesses testifying on the respondent's behalf. These inconsistencies and contradictions have not been explained by the administrative law officer. It is clear that lack of work did not justify the "layoffs" and that union activity was, in fact, the motivating reason therefor. Accordingly, we find that the discharge of the Terrazas family violated Sections 1153 (c) and (a) of the Act.

THE EVENTS AT SUTTER BASIN

The ALO concluded that the denial of access to UFW organizer Albert Escalante at Sutter Basin on September 17, 1975, did not involve excessive force on the part of the employer. We do not agree.

On the afternoon of September 17, Escalante entered the. ranch and drove directly to the center of the field where the foremen were gathered to find out when work would be ending for the day. Chuck Sakurada, head supervisor of the ranch's tomato

operations, spoke with Escalante, called the sheriff's department and proceeded to "block" the organizer's apparently frantic efforts to leave the premises. As the UFW car had no reverse gear, Escalante and his companion attempted to push the car out of the fields while Andco supervisors and mechanics sped across the field in company pickup trucks to encircle and "block" the organizers. The organizers were detained on the premises until the arrival of the sheriff some 45 minutes later. Two Andco tomatO sorters from the night shift and, at a greater distance, the sorters on another1 harvester, witnessed the incident, which climaxed in the arrest of the organizers and the search and towing of their car by sheriff's deputies.

The hearing officer found that, given the demeanor of Escalante on the stand, the organizer's allegation that he acted in a 'carefully restrained manner" on this occasion could not be. credited. The ALO incorrectly characterized the access regulation as a limited privilege, not a right, and reasoned that an employer may resort to forceful ejections of obstreperous organizers present on the property outside of the rule's limitations. The hearing officer concluded that the employer's supervisors did not "overreact" during the September 17 incident.

Accepting, as we must, the hearing officer's findings insofar as they are based upon his observations as to the demeanor of the witnesses, it is nevertheless clear that the administrative law officer developed and applied an incorrect legal standard in his analysis of the incident. Physical confrontations between union and employer representatives are intolerable under our Act.

Resort to physical violence is normally violative of the Act. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977). The effect of Sakurada's conduct, which demonstrated to Andco's employees the intensity of his opposition to the union, was to restrain the workers in the exercise of the rights guaranteed by the Act and constituted a violation of Section 1153 (a).

The record also establishes similar employer conduct on two occasions when the access regulation, Section 20900, was in full force. Though analyzed in accordance with a legal standard which we have rejected, the hearing officer correctly concluded that an incident on September 19 constituted both an unlawful denial of access and involved "unduly vigorous" treatment of the organizers in the presence of employees, thus interfering with protected employee rights.

A similar incident occurred on September 24, the day before the Sutter Basin election.[6/] The employer's conduct again involved the "blocking" tactic.

On that date, organizers attempted to enter the fields shortly before the arrival of the lunch wagon. As the organizers

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[5/]As the Board was enjoined from enforcing its access regulation on the date of this incident, we do not consider whether respondent's action was violative of that rule.

[6/]While the incident was not specifically alleged in the complaint, it was fully litigated by the parties. In fact, the basic facts of the incident are not in dispute, but were largely admitted by supervisor Sakurada. Also, this access incident is related to the subject matter of the complaint, which alleged identical conduct by the same supervisor on two other occasions. It is therefore incumbent on the Board to determine whether or not this conduct violated the Act. Monroe Feed Store, 112 NLRB 1336. See also, Omark-CCI, Inc., 208 NLRB 469 (1974); Rochester Cadet Cleaners, Inc. 205 NLRB 773 (1973).

attempted to gain access at various entrances to the field, supervisory personnel and mechanics sped from entrance to entrance across the field to "block" them. The sheriff was called, arriving at approximately the same time that the lunch wagon arrived. Wagon, sheriff and organizers entered the field together. The organizers then proceeded in their attempt to engage in organizational activities with respondent's employees, who gathered about the lunch wagon along with sheriff's deputies and Andco supervisory personnel.

The presence of sheriff's deputies on the property when workers are engaging in protected organizational activity has an intimidating and chilling effect upon the full exercise of their rights. Calling the sheriff when organizers appeared five minutes before the beginning of an unestablished lunch break resulted in unwarranted interference with employee rights, and is a violation of Section 1153(a).

There was another incident that, while not charged as an unfair labor practice in the complaint, was the subject of one of the union's objections to the election. It involved the surveillance by Andco supervisors of employee organizational activities. Much evidence was introduced by union organizers on the issue of surveillance in general but this particular act of surveillance was admitted by supervisor Chuck Sakurada. Sakurada testified that on or about the 24th of September, he photographed and tape-recorded Andco employees and UFW organizer Albert Escalante while Escalante was conversing with a group of approximately 40 Andco workers gathered together at lunch. The incident was fully litigated at the hearing and therefore it is appropriate for the

Board to consider whether the evidence introduced established a new and separate violation of the Act. See Monroe Feed Store, 112 NLRB 1336; Omark-CCI, Inc., 208 NLRB 469 (1974). We find this surveillance to be in violation of Section 1153 (a).

We next consider the September 2 discharges of six Sutter Basin farm workers, commonly referred to throughout the hearing as the "paragraph 9 group". The hearing officer found, with no exception taken, that the paragraph 9 group was unlawfully discharged for engaging in protected concerted activity in violation of Section 1153 (a). We agree with that finding but disagree with his conclusion that the evidence did not establish that the group was discharged because of its union activities.

Aside from dischargee witnesses, UFW organizer Al Rojas testified that he arrived at Sutter Basin shortly before the lunch hour began on September 2 and was greeted by Sakurada's immediate order to "get the hell out" or be arrested. The paragraph 9 group spent the entire lunch hour talking with Rojas and another UFW organizer at the employees' cars, with Sakurada and other Andco personnel parked within hearing range. According to Rojas, the organizers solicited authorization card signatures from 15 or 16 farm workers, six of whom were fired within seconds of signing the cards. At the close of the lunch hour (which, according to Rojas, was called off early), Rojas, beginning to walk to his car, heard Sakurada say, "Yes, you're ail fired." At that point Sakurada "lunged" toward Rojas and said, "And you get the hell out of here, you son of a bitch." Rojas met the sheriffs on the road as he was leaving Sutter Basin and they told him they had been called because

the UFW was "creating a disturbance".

Sakurada himself testified that the lunch hour began with Rojas present in the parking area, that he followed the organizer and reminded Rojas and the group that they only had a half hour for lunch, and that he suggested they be sure to eat and get back on the machine. The supervisor admitted talking to the group from his pickup and being present, within hearing range, during the lunch hour. He stated that he observed the workers talking with Rojas throughout the lunch hour.

There is no question that the paragraph 9 group workers were discharged immediately after Sakurada observed them talking with UFW organizers throughout their lunch hour. Sakurada was obviously angered on September *2,* at least in part, by the spectacle of Andco employees engaging in organizational activity with union organizers on Andco property. Sakurada 's intense anti-union animus was manifested on numerous occasions in connection with precisely this type of union activity. We conclude that the paragraph 9 group was discharged because of union activity in violation of Section 1153 (c) and (a) of the Act.

There were two incidents involving threats by alleged supervisor Manuel Chappa. We disagree with the ALO in both instances. In one case we disagree with his finding; in the other we make a finding he failed to make. In both cases, the hearing officer neither discussed nor decided the issue of Chappa 's supervisory status. It is clear from the record that Chappa is a

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supervisor within the meaning of Section 1140.4(j) . [7/]

Chappa assigns the workers on the machines, making sure that the proper number of workers is on each machine. Chuck Sakurada, who hired Chappa, testified that Chappa's duties include overseeing the sorters to insure that they are sorting tomatoes the way that Sakurada wants them to be sorted. Taking his instructions directly from Sakurada, Chappa gets on the machines to check the sorters' work and the quality of the tomatoes, reporting any problems to Sakurada. Sakurada stated that Chappa would report a worker to him if the worker is not working properly and Sakurada himself would then talk to the worker. If Chappa reports that the worker is still not performing his job properly after being given a second chance, the worker would be fired by Sakurada. Chappa accordingly has the authority to recommend discharge and the responsibility to direct the work of the tomato sorters. Labor Code Section 1140.4 (j) . Chappa's own conflicting and evasive descriptions of his job duties cannot be credited in light of the direct admissions of his immediate supervisor. Chappa's conduct is hence attributable to the respondent.

The hearing officer did not consider Chappa's alleged

[7/] Section 1140.4 (j) provides that:

> The term 'supervisor' means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively *to* recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

intimidation of tractor driver Raul Hernandez. Hernandez testified that about the 19th of September, Chappa approached him as he was working alone on his tractor and told him not to vote for Chavez because it was "going to be bad" for him. Shortly thereafter, as Raul was passing one of the harvesters, the crew began throwing tomatoes at him and calling him a Chavista. Raul did not return to work after the 19th because he was afraid that "something bad" would happen to him. Chappa did not deny making the statement. We find that these words were spoken in a threatening manner; and, given the supervisors' anti-union animus at Sutter Basin, we find that the statement tended to intimidate workers and hence constituted an unlawful threat in violation of Section 1153 (a) .

Chappa was also charged with threatening tractor driver Alejandro Sanchez on the morning of September 24. The ALO found only that Chappa and Sanchez had a heated argument. As the ALO did not determine Chappa's supervisory status, he did not consider the incident anything other than an argument between co-workers.

Sanchez testified that Chappa asked him how he felt about the union and how he was going to vote, Chappa told him not to talk to employees about the union and also "to be careful, to be very careful of the steps he was taking." Chappa repeated the warning to "be careful" several times in a loud voice. The incident occurred in the presence of a harvester's crew. One of these workers, Margarita Felix, corroborated Sanchez's testimony stating that he heard Chappa tell Sanchez not to vote for the union and that Chappa became very angry and yelled at Sanchez several times to "be careful". Chappa conceded that he argued loudly with

Sanchez, but said that he merely told Sanchez not to talk to workers about the union. We find that the evidence preponderates in the general counsel's favor and conclude that Manuel Chappa threatened Alejandro Sanchez in violation of Section' 1153(a) of the Act.

The ALO also found that if any such threat was made it was mitigated by the subsequent assurances of Chuck Sakurada. We disagree. Sakurada did not repudiate Chappa's conduct, but simply told both Chappa and Sanchez to stop arguing and get back to work. Additionally, when Sanchez advised the organizers who arrived at noon that he was afraid to continue working at Andco, Sakurada permitted two community workers to remain with Sanchez for the remainder of the day. This latter action was taken in the presence of Sheriff's deputies. Since Sakurada did not specifically repudiate Chappa's conduct, and in light of the coercive practices which continued unabated at the ranch after the incident, we can not conclude that the coercive effects of the incident were dispelled. We find that Chappa's threats to Sanchez were a violation of Section 1153(a).

THE CONDUCT OF PAUL GUTIERREZ

The general counsel charged that respondent, through Paul Gutierrez, made a promise of medical benefits shortly before the election for the purpose of inducing its employees to vote against the union. The charging party has taken exception to the limited nature of the ALO's finding on this issue. Gutierrez made identical speeches, discussing the company's new medical insurance benefits, both to crews of employees supplied by labor contractors

and crews of workers employed directly by Andco. Labor contractor employees were not eligible for coverage under the company policy. The hearing officer found only that Gutierrez had made what amounted to a substantial, though unintentional, misrepresentation to the labor contractor crews, warranting setting aside the election. The charging party argues that the respondent's conduct was intentional. We agree.

Gutierrez, owner of a Sacramento firm providing interpretive services to Spanish-speaking persons, was retained by Andco to "explain the company's benefits" to its employees. Between September 20 and 22, during work hours, Gutierrez was driven to the fields at each of respondent's four tomato ranches. At each harvester, the foreman in charge stopped the machine and assembled the farm workers to listen to Gutierrez[1] speech. Speaking in both English and Spanish, Gutierrez' address in all cases included an explanation of Andco's new medical insurance benefits. The contents of Gutierrez' speeches were dictated by Jack Anderson and other management representatives.

It is clear that Gutierrez' announcement of the insurance benefits constituted an unlawful promise of benefits to all of Andco's temporary employees under the ALRA.[8/] It is well established that an employer's bestowal of benefits at a time closely preceding an election, when made with the intention of inducing employees to vote against the union, is a coercive exercise of the

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[8/] The labor contractor crews were in effect promised benefits which did not exist. Stone openly admitted that the policy did not cover labor contractor crews, which constituted an estimated 25 - 35 percent of the respondent's peak work force.

employer's economic leverage violative of protected employee rights. NLRB v. Exchange Parts, 375 U.S. 405, 55 LRRM 2098 (1964). It is immaterial that the benefits are put into effect unconditionally and on a permanent basis: absence of conditions or express threats does not remove the inference to employees that the source of benefits conferred is the source from which future benefits must flow. Exchange Parts, supra.

Henry Stone testified that the company considered various medical insurance plans for its seasonal workers early in 1975.[9/] Mr. Stone had seen early drafts of the ALRA, and, in light of the intense union activity at the ranch in 1974, the company was clearly aware of the possibility of an approaching representation election long before the Act went into effect. Stone testified that the company's decision to upgrade the employee benefits was founded upon legitimate business considerations; that it was undertaken in order to remain competitive in the employment of experienced workers.

However, the benefits were not announced until after the harvest was well under way, certainly too late to have served the avowed purpose of inducing experienced sorters to seek reemployment at Andco. Though the benefits went into effect on June 1, and the harvest began on August 28, Stone admitted that Andco's employees were unaware of their existence until Gutierrez' addresses on September 20 through 22. Also, despite his claim that the company

[9/] There was no company medical insurance plan covering seasonal workers prior to the 1975 policy. Permanent employees had been receiving medical insurance through the company for many years.

wanted to retain workers familiar with Andco's own way of doing things, Stone admitted that the seasonal work force is essentially unskilled and subject to a notoriously high turnover rate. Finally, the fact that the benefits were not actually available to a large percentage of the work force who were informed of the plan and the respondent's established anti-union animus further support the inference that the company's conduct had the purpose, as well as the effect, of influencing employee choice at the election.

We find that the grant of benefits announced at the peak of the pre-election campaign, in an employer propaganda speech made just two days before the election, was made to induce employees to vote against the union. The conduct amounted to substantial interference with employee rights and constituted an unfair labor practice in violation of Section 1153(a).

The hearing officer also found that Gutierrez' post-election "interrogation" of Andco workers constituted unlawful intimidation of employees in violation of Section 1153(a), reasoning that the circumstances surrounding the solicitation of employee signatures tended to intimidate workers. Additionally, we find that the nature of this petition and the statements which employees were requested to affirm therein, are unlawful in themselves, irrespective of the circumstances under which the signatures were obtained. The NLRB has permitted employers to carry out a limited amount of questioning of employees in order to prepare a defense to hearings before the Board. For such questioning to be lawful, however, it must be relevant to the charges of unfair labor practice and of sufficient probative value to justify the risk of

intimidation which interrogation as to union matters necessarily entails. Joy Silk Mills v. NLRB, 185 F.2d 732, 27 LRRM 2012. The conduct before us does net constitute a limited investigation for the purpose of preparing a defense. The petition in question was not aimed at obtaining answers to questions in the course of a pre-trial investigation. Indeed, it posed no questions at all, but merely sought blanket, mass-employee corroboration of a general legal conclusion: that the company did not threaten workers. Affirmations of such conclusionary statements are clearly of no probative value.

The petition also requested workers to confirm that they had voted "any way they wanted". The NLRB has held that questions as to purely subjective matters, such as whether employees felt intimidated or whether they voted freely and without coercion, are not directly relevant to charges of interference with employee rights. The issue confronting the Board is not whether the employee actually felt intimidated, but whether the employer engaged in conduct which may reasonably be said to tend to interfere with the free exercise of employee rights under the Act. Joy Silk, supra, 185 F.2d 732 at 744, citing NLRB v. Link-Belt Co., 311 U.S. 584, 588, and NLRB v. Ford, 170 F.2d 735, 738. Accordingly, the evidence gathered from such questioning is of so little probative value as not to warrant the risk of infringing upon employee rights. Joy Silk, supra. This conduct violated Section 1153(a).

INTERFERENCE WITH VISITS TO EMPLOYEE HOMES

In finding that the employer unlawfully denied access to

its labor camp, the ALO stated that the employer has the right to place "reasonable" limitations on labor camp access and amended the employer's rule to restrict such access to the hours of 2:30 to 8:30 p.m. We decline to impose such a limitation. On September 23, when organizers sought entry at the Woodland camp, a carload of farm workers drove up to the gate and engaged these organizers in conversation when Andco security guard Don Kline charged his car at the farm workers, who fled into the camp. The organizers were denied entry to the camp. On September 30, UPW organizers attempted to visit night crew employees after work, that is, at 7:45 in the morning. Al Rojas testified that the organizers generally tried to speak with the night crew workers when they returned home to dinner in the early morning. They were prevented from doing so on this occasion.

We have held that Section 1152 of the Act guarantees the right of employees to converse with organizers at home, wherever that home is. Silver Creek Packing Company, 3 ALRB No. 13 (1977). Because we recognize that accommodation must be made for the rights of not just the owner and the organizers, but also for the tenant who has a basic right to control his own home life, we have stated that "It is our duty to balance these rights and a heavy burden will lie with the owner or operator of a camp to show that any rule restricting access does not also restrict the rights of the tenant to be visited or have visitors." Merzoian Brothers, et al., 3 ALRB No. 62 (1977). Respondent has not met that burden here.

Andco justified its rule as necessary to protect employees from being "pestered" by organizers. If an employee does not wish

to speak with *an* organizer, that is, of course, his or her right. The owner or operator of a labor camp cannot exercise that right for the worker. Merzoian, supra. We cannot vest in an employer, embroiled in the midst of a heated organizational campaign, the blanket authority and responsibility for "protecting" workers from visits by union organizers by means of such general time restrictions. Accordingly, we find that the denials of entry to the camps on September 23 and September 30 constituted unlawful interference with the free exercise of rights guaranteed to employees by the Act, in violation of Section 1153 (a).

THE EMPLOYER'S CAMPAIGN AND THE ELECTION

It is apparent that the election must be set aside in light of the employer's pervasive unfair labor practices. The employer's reply brief states that it does not oppose the ALO's recommendation to set aside the election. The ALO based this recommendation solely upon the pre-election speeches of Gutierrez, which he found to be a substantial misrepresentation. We have concluded that Gutierrez' speeches constituted an unlawful promise of benefits. Such conduct is grounds for setting aside an election. Oshita, Inc., 3 ALRB No. 10 (1977). Additionally, we have found numerous discriminatory discharges, threats of loss of employment and interference with communication between employees and organizers in company fields and at its labor camps; these also are grounds for setting aside the election and it is unnecessary for us to consider the union's additional objections to the election. We do not adopt the hearing officer's arguments, findings or conclusions on these additional issues.

Finally, the ALO found that the employer desired only a vigorous, lawful anti-union campaign and did not tacitly consent to the unlawful conduct of its agents and supervisors. He found no "pattern" of unlawful employer conduct.

Henry Stone testified that his partner, Jack Anderson, rode circuit throughout the company's ranches speaking with supervisory personnel sometimes as often as twice a day. Anderson himself did not testify. Stone, the "inside man", admitted that any incidents of access "blocking" generally filtered back to him. Yet the company took no action whatsoever to restrain its supervisors. According to Stone, the communications between high management and company field personnel rather concerned the company's desire to be informed at all times whether or not the union was complying with the limitations of the Board's access regulation. While it is true that the various supervisors subverted the union's campaign in different ways, there was nevertheless a pattern of unlawful employer conduct. Upon consideration of the repeated, egregious misconduct of the various supervisors, it is apparent that they engaged in interference with employee rights, unrestrained by Andco management, throughout the entire pre-election period. The company's tacit consent to and responsibility for its supervisors' actions is clear. Further, Andco's high management directly initiated softie of the unfair labor practices, such as Gutierrez[1] promise of benefits and interrogation of employees and the interference with visits by organizers to employees' homes at the labor camps.

The parties and the hearing officer have placed

considerable emphasis upon the question of respondent's intent, or good or bad faith, in committing the violations involved in this case. This issue is largely irrelevant. Our primary concern is not whether the employer specifically intended to interfere with, restrain and coerce its employees in the exercise of protected organizational rights. We must rather evaluate the nature and extent of the misconduct itself, which was, in this case, substantial. In order to remedy the effects of the employer's unlawful conduct, we modify the ALO's recommended remedies as follows:

(1) The parties have acknowledged that suspension of the Board's operations in 1976 and consequent delays in litigation prevented the holding of a new election in 1976 and have placed serious time constraints upon the possibility of holding an election at peak season of 1977. For that reason, unless otherwise specified below, the remedies, which follow are available to the union during its next organizational period.

(2) We order that the respondent offer full reinstatement to their former positions to the following discriminatees, effective in the 1977 season:

1. Michael Blank
2. Stephanie Blank
3. Esparanza Terrazas
4. Samuel Terrazas
5. Alicia Terrazas
6. Ima Jean Stewart
7. Robert Clark
8. Rodney Robertson
9. Rhonda Eddings
10. Lorraine Allen
11. Arlie Wilson

(3) The above named discriminatees are to be made whole for any losses suffered by reason of their unlawful discharges. We order that the back pay of the discriminatees be calculated on

a daily basis in accordance with our decision in Sunnyside Nurseries , Inc . , 3 ALRB No. 42 (1977), as specifically set forth below. Interest shall be computed at a rate of 7 percent per annum.

(4) In addition to the law officer's recommendation that respondent distribute by hand the notice to workers, we shall require the mailing, posting and reading of the notice as detailed below. We have previously decided that these remedies are necessary and warranted in the agricultural setting. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977) . Such notification by posting and reading of the notice shall take place during the upcoming 1977 peak season.

(5) The administrative law officer ordered that respondent file with the regional director a statement of the period during which it anticipates its peak employment, and that respondent develop an effective method for maintaining accurate lists of employee names and addresses. No exception to such recommended remedies was taken. In light of the difficulties concerning both employee lists and determination of peak, which the record established to have existed during the 1975 election campaign, we find that the hearing officer's recommendation is appropriate .

(6) The law officer further recommended, without exception taken, that the UFW be permitted to petition for an election among respondent's employees without being required to make the showing of employee support ordinarily required by Section 1156. 3 (a). The purpose of the showing of interest require-

ment is to demonstrate to the Board that there is reasonable cause to believe that a bona fide question of representation exists. Nishikawa Farms v. Mahoney, et al., 66 Cal.App.3d 781 (1977). In the present case, we have found it necessary to set aside a relatively close election, with high voter turnout, because of the respondent's extensive unfair labor practices. The record establishes that the union engaged in extensive organizational activity among the respondent's employees even prior to the enactment of the ALRA. Under these circumstances, there is no doubt but that an ongoing question of representation exists. We consider the remedy appropriate.

(7) We decline to adopt the law officer's recommendation that the eligibility period for all of respondent's employees be the payroll period applicable to respondent's tomato sorters. Determination of the applicable payroll period or periods is left to the discretion of the regional director.

(8) In accordance with our decision here, we will modify the ALO's recommended remedy to order that the respondent cease and desist from interference with the right of its employees to communicate with and receive information from union organizers at their homes in labor camps upon the respondent's premises.

(9) We find that the law officer's recommended remedies are inadequate to dispel the effects of respondent's interference with its employees' rights to receive information from union organizers under the access rule. Accordingly, we will order the following additional remedies:

(a) During the time that the union has filed a

valid notice of intention to take access, we will remove any restrictions on the number of organizers allowed to come on the respondent's property under 8 Cal. Admin. Code Section 20900(e)(4)(A), as amended in 1976. In addition to the three one-hour time periods permitted under Section 20900 (e) (3), supra, access to employees on the respondent's property shall also be available under the above terms during any established breaks, or, if there are no established breaks, during any time employees are not working,

(b) We order that during any 30-day period in which the UFW exercises its right to take access the respondent shall provide the union with an updated list of its current employees and their addresses for each payroll period. We further order that such lists shall be provided without requiring the UFW to make a showing of interest.

(c) Further, in order to redress the imbalance created by respondent's interference with its employees' right to receive information from union organizers, we shall require the respondent to provide the employees with one hour of regular working time during which the union can disseminate information to and conduct, organizational activities with the respondent's employees. The union shall inform the regional director of its plans for utilizing this time. After conferring with both parties concerning the implementation of the-union's plans for use of this time, the regional director shall determine the most suitable times and manner for such contact. Although no employee shall be forced to be involved in the activities, no employee will be allowed to work during the activities. The regional director will

insure that employees receive their regular pay for the time spent not working. He or she shall also determine an equitable payment to be made to nonhourly wage earners, if any, for their lost productivity.

The remedy of granting union organizers' company time to disseminate information is designed to remedy the imbalance in organizational opportunities created by the respondent's actions. Jackson & Perkins Company, 3 ALRB No. 36 (1977).

(10) We order that the regional director be notified, in writing, within 20 days from the date of service of this Order, what steps have been taken to comply herewith. Upon request of the regional director, the respondent shall notify him thereafter, in writing, what further steps have been taken to comply herewith.

ORDER

Accordingly, pursuant to Labor Code Section 1160.3,

IT IS HEREBY ORDERED that the respondent Anderson Farms Company, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement of the type authorized by Section 1153(c) of the Act.

(b) Engaging in conduct with respect to its employees of the following type: Denying access to respondent's premises to organizers engaged in organizational activity in accordance with the Board's access regulations; engaging in surveillance of its employees engaged in organizational activities; interfering with the right of its employees to communicate freely with and receive information from organizers at their homes in labor camps located on respondent's premises; unlawfully interrogating employees, particularly concerning their vote at and feelings the election; threatening employees with layoff, termination or loss of employment because of their union activities; discharging or otherwise discriminating against employees because of their union activities; assaulting union organizers who are attempting to communicate with its workers; threatening employees with retaliation because of their union support and making an unlawful promise of benefits to its employees, or committing any of the foregoing acts in regard to other persons either in the presence of Andco employees or where it is reasonably certain that such employees will learn of such conduct.

2. Take the following affirmative action:

(a} Offer Michael Blank, Stephanie Blank, Esparanza Terrazas, Samuel Terrazas, Alicia Terrazas, Ima Jean Stewart, Robert Clark, Rodney Robertson, Rhonda Eddings, Lorraine Alien, and Arlie Wilson full reinstatement to their former or equivalent positions, without any prejudice to their seniority or other rights and privileges, beginning with the date in the 1977

season when the crop activity in which they are qualified commences.

(b) Make each of the employees named above, in subparagraph 2(a) whole for all losses suffered by reason of their termination. Loss of pay is to be determined by multiplying the number of days the employee was out of work by the amount the employee would have earned per day. If on any day the employee was employed elsewhere, the net earnings of that day shall be subtracted from the amount the employee would have earned at Andco for that day only. The award shall reflect any wage increase, increase in work hours or bonus given by respondent since the discharge. Interest shall be computed at the rate of 7 percent per annum.

(c) 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 to the foregoing named employees.

(d) Immediately notify the regional director of the Sacramento 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 determine and designate the locations where the attached notice to workers shall be posted by the respondent. Copies of said notice, on forms provided by the appropriate regional director, after being duly signed by the respondent, shall be posted by respondent for a period of

90 consecutive days during the 1977 peak harvest period, in conspicuous places, including all places where notices to employees are customarily posted.

The respondent shall exercise due care to replace any notice which has been altered, defaced or removed. Such notices shall be in English and Spanish and in any other languages that the regional director may determine to be appropriate.

(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 season.

The regional director shall determine a reasonable rate of compensation to be paid by the respondent to all nonhourly wage employees, if any, to compensate them for 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. The Board agent is to be accorded the opportunity to answer questions which employees might have regarding the notice and their rights under the Act.

(f) Respondent shall, hand out the attached notice to workers to all present employees and to all hired in 1977, and mail a copy of the notice to all employees listed on its master payroll for the payroll period immediately preceding the filing of the petition for certification on September 15, 1975.

(g) Respondent shall develop an effective method

obtaining and maintaining accurate lists of the names and addresses of all employees, whether paid directly by Anderson Farms or indirectly through labor contractors.

(h) During any period during its next organizational campaign in which the UFW has filed a valid notice of intent to take access, the respondent shall allow UFW organizers to organize among its employees during the three one-hour time periods specified in Section 20900(e)(3), of 8 Cal. Admin. Code, and during any established breaks, without restriction as to the number of organizers allowed entry onto the premises. If there are no established breaks, then the UFW organizers shall be allowed to organize among its employees during any time in which the employees are not working. Such right to access during the working day beyond that normally, available under Section 20900 (e) (3), supra, can be terminated or modified if, in the view of the regional director, it is used in such a way that it becomes unduly disruptive. The mere presence of organizers on the respondent's property shall not be considered disruptive.

(i) The respondent shall, during the time that the UFW has on file a valid notice of intent to take access during its next organizational campaign, provide the UFW once every two weeks with an updated employee 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.

(j) The respondent shall provide its employees with one hour during which to meet with union organizers, during regularly scheduled work hours and on the employer's premises,

during which time the UFW can disseminate information to and conduct organizational activities with the employees. The union shall present to the regional director its plans for utilizing this time. After conferring with both the union and the respondent concerning the union's plans, the regional director shall determine the most suitable times and manner for such contact between organizers and respondent's employees. During the time of such contact, no employee will be allowed to engage in work-related activity. No employee shall be forced to be involved in the organizational activities. All employees will receive their regular pay for the hour away from work. The regional, director shall determine an equitable payment to be made to nonhourly wage earners, if any, for their lost productivity. Such meetings shall be provided during the union's next organizational campaign.

(k) Upon the filing of a petition for certification by the UFW the Board shall direct a representation election without requiring a showing of majority interest.

(l) The respondent shall 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 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.

IT IS FURTHER ORDERED that allegations contained in

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the complaint not specifically found herein as violations of the Act shall be, and hereby are, dismissed.

Dated: August 17, 1977

GERALD A. BROWN, Chairman

RONALD L. RUIZ, 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 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 of the State of California which gives farm workers these rights:

1. To organize themselves.
2. To form, join, or help unions.
3. To choose, by secret ballot election, a union to represent them when bargaining with the company.
4. To act together with other workers to try to get a contract or to help and 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 do any of these things:

1. Firing workers because of their support of the UFW.
2. Threatening to fire workers who signed union authorization cards.
3. Keeping union organizers from visiting workers at the labor camps.
4. Keeping union organizers from talking with workers on the ranch at lunchtime and before and after work.
5. Using pickup trucks to block organizers from entering the ranch.
6. Photographing, tape-recording, and otherwise watching workers while they talk with union organizers.
7. Asking workers how they voted in the election.
8. Asking workers to sign petitions for the company confirming that the company had not threatened them about the election.
9. Announcing a new company health insurance program, that did not in fact cover labor contractor crews, immediately before the election to influence employees to vote against the union.
10. Threatening workers with retaliation if they supported or voted for the UFW.

Also, we will offer the following workers their old jobs back, if they want them, and will give them back pay for the time they were out of work: Michael Blank, Stephanie Blank, Esparanza Terrazas, Samuel Terrazas, Alicia Terrazas, Ima Jean Stewart, Robert Clark, Rodney Robertson, Rhonda Eddings, Lorraine Alien, and Arlie Wilson.

Dated:

ANDERSON FARMS COMPANY ("Andco")

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	)	
	)	
ANDERSON FARMS COMPANY Respondent,	)	CASE NO. 75-RC-15-S 75-CE-9-S
	)	
and	)	
	)	
	)	Administrative Law Officer's Decision
UNITED FARM WORKERS OF AMERICAN, AFL-CIO,	)	
	)	
Petitioner-Intervenor .	)	

These matters came on regularly for consolidated hearing before Robert N. Coving ton, administrative law officer duly appointed by the Agricultural Labor Relations Board. The hearing was held beginning October 21, 1975.

Oral and documentary evidence was introduced at the hearing: The record was held open to permit the parties to file briefs. Briefs were filed by all parties. The case was then submitted and the record was closed.

The administrative law officer, upon the entire record, his observation of the demeanor of the witnesses, and upon consideration of the briefs, now makes the following decision:

I.

General Findings

Anderson Farms is a partnership engaged in farming, and is a grower within the meaning of the Agricultural Labor Relations Act.

The United Farm Workers of America, (UFW), petitioner and intervenor herein, is a labor organization within the meaning of the Agricultural

Labor Relations Act.

On September 15, 1975, the UFW filed with the ALRB a petition for an election among employees at certain Anderson Farms ranches, those known as Sutter Basin, Woodland, Callier (sometimes referred to-as the Dixon site), and Mace. ALRB agent Mike Vargas was placed in charge of further proceedings. Agent Vargas held meetings with representatives of the grower and of the UFW during the next several days to discuss the details of the election. The election was held on September 24 and 25, 1975 (at Mace and Collier on September 24; at Woodland and Sutter Basin on September 25). Except at Mace, split-day polling was used, the polls being open in the morning, closed in the early afternoon, re-opened in late afternoon. Balloting at Mace was permitted throughout the day.

Following the election, the -UFW filed the petition to set aside the election involved in case 75-RC-15-S, and the Office of General Counsel issued the complaint in case 75-CE-9-S, copies of which were served on respondent.

II.

Conduct of Board Agents

The petitioner urges that the ALRB agent in charge of the election and his associates were guilty of serious misconduct in the holding of the election itself. In particular, it is urged that the agent in charge improperly rejected the suggestion made by the petitioner that the election be held off the employer's ranches that the polls were opened prejudicially late; that challenge's to employer observe's were treated improperly; that there was a failure of proper security in the case of the opening of a ballot box after it had been sealed; and that, in general, the agents

failed properly to police polling areas.

So far as the question of conducting the elections on or off ranches is concerned, the matter addresses itself to the discretion of the designated representative of the Agricultural Labor Relations Board. In the absence of a showing that the decision by agent Vargas was capricious and arbitrary in this respect, that decision should be regarded as conclusive. Given the large size of the farm involved in this election, the number of employees working, and the difficulties of transport which would be inherent in holding elections off the ranches, as well as the difficulty in communicating information about the election in those-conditions, it would seem that the decision of agent Vargas to hold the election on the ranches was permissible.

So far as challenges to employer-designated observers is concerned, the various agents seem*8»to have "exhibited unusual patience in the face of an onslaught of challenges, some of which had validity, others of which reflected a position about who should and should not be in the bargaining unit held only by the UFW. (While the UFW position may seem strained, the lack of prior Board decisions must be remembered.) Of all of the employer designated observers permitted to participate in the election proceedings, the only observer with regards to whom the hearing officer would express doubt is one Charlotte Morris, a secretary at Woodland; Ms. Morris could possibly be regarded as a "confidential" employee because of her service of grower management officials. However, on the basis of the full scope of duties listed in her testimony, it seems more likely that Ms. Morris is not a "confidential" employee as that term is utilized by the National Labor Relations Board, so that it was proper for her to be permitted to serve. Certainly the objections to one James Gallagher, to Jess Flores,

and a number of others on the ground that they were not themselves field workers were properly denied.

Apparently, the voting began behind schedule on several occasions during the Anderson Farm election. However, in only one instance was there an indication that voters might have been discouraged from voting because of lateness: the delay in commencing the afternoon voting session at Woodland. Unfortunately, the identity of the individuals who presented themselves at the Woodland office and indicated an interest in voting (at a time after the scheduled opening of polls but before the polls actually reopened) was never established. The only identification of this group was of their vehicle. It is quite possible that the individuals involved left their vehicle and walked across the' fields to the polls. Many voters did this at Woodland. Without more specific evidence, this incident does not appear to be of sufficient dimension to justify setting aside the election.

The incident involving the opening of the previously sealed ballot box so that it could be re-used is indeed disturbing. That this was done despite a specific protest makes the incident even more disturbing. However, it does not appear that the ballot box left the custody and control of the agents of the Agricultural Labor Relations Board, so that the ballot box was hot subject to the possibility of being "stuffed" or otherwise tampered with. While this act of the Board's agent mist be regarded seriously, it does not justify setting aside the election.

Of the remaining charges of Board misconduct, few are of sufficient dimension to require comment. One is that Board agents permitted employees to wear hats bearing Anderson Farms Logos at a time when they were serving as employer-designated observers. The practice was indeed question-

able. However, the "AF" logo involved was not a symbol which would appear on the ballot in this election, and the heat and sun on the day in question were intense. Under the circumstances, permitting the wearing of these hats does not appear to be a sufficient cause to set aside the election. It is also true that at the Mace 2 elections the site selected was at first not well enough blocked off, with the result that vehicles and farm equipment moved through the polling areas itself with the effect of creating noise and dust during the early period of the election. Certainly these conditions are not desirable but Board agents acted with promptness in seeking assistance in blocking the area off more completely. In the absence of proof of specific disturbance of particular voters, no setting aside of the election is justified.

It is also alleged that the Agricultural Labor Relations Board agents in charge of the election were unduly obsequious to management suggestions with regard to the places at which polling booths would be set up. From the testimony, it appears that representatives of the union and representatives of management both had considerable input in the selection of the polling sites, and that the agents considered the suggestions of all parties before making a final determination. Accordingly, no violation is found.

It is further alleged that the use of a company-owned bus, and of company-owned pick-up trucks to transport voters to the polls was prejudicial. The bus, however, seems to have been used only at the Mace 2 ranch, a very large complex at which the use of this form of transportation seems appropriate. In the case of the other ranches, the largest number of employees seem to have arrived in personal vehicles, company trucks

being used only for those workers who did not have ready access to private transport. Inasmuch as the equipment utilized at the polling sites themselves was clearly that provided by the Agricultural Labor Relations Board, the hearing officer does not find that the employment of this grower-owned equipment prejudiced the outcome of the election.

It is, therefore, the conclusion of the hearing officer that while certain irregularities did occur in the conduct of the election by the representatives of the Agricultural Labor Relations Board, these irregularities, considered both singly and as a whole, have not been demonstrated either to have prejudiced the outcome of the election or to have had so clear a potential to prejudice the outcome of the election that they should be treated as having affected the result.

III.

Employer Misconduct During Election Proper

There are also a number of charges of employer misconduct during the day of the election, including charges that supervisorial employees of the grower appeared at polling sites with frequency. Most of the vistis by supervisorial employees were demonstrated to have been to areas at a sufficient distance from the actual place of voting so that they would not have an intimidatory effect. However, the frequency with which one Chris Rufer appeared at certain polling sites does appear to be excessive. Mr. Rufer was not, at the time of the election, a supervisorial employee at Anderson Farms in the view of the hearing officer. He was, however, a "confidential" employee, as that term is utilized by the National Labor Relations Board. As a result, it was proper for Board agents to deny him a position as an observer, and it was proper for them to restrict his

visits to the sites, as the Board agents sought to do. Given the vigor with which the Board agents instructed Mr. Rufer to stay away from the polls at times when actual polling was going on, it would not appear to the hearing officer that his visits prejudiced the outcome of the voting. However, in any future election, the grower must be required to designate individuals for the purpose of providing coffee, water, changing observers and the like who are not so closely identified with central management.

One other incident should be mentioned. At the Collier ranch, one Clifton Davis, a night foreman, came to the voting place for the purpose of bringing there two eligible voters. Mr. Davis, once he had brought these voters, went with one of them to the desk in front of the balloting place, to check to make sure that the social security number was correct. While it is true that Mr. Davis should not have been this close to the polling area, there seems no likelihood that his visit had any untoward effect on the voting, and that indeed he was seeking insofar as possible to cooperate fully with the Agricultural Labor Relations Board in maximizing voter turn-out.

During the elections at Mace 2, two voters were brought to the polls in a helicopter, which landed some distance 100 feet from the polls. The helicopter was one that was often used by Anderson FArms management personnel to get back and forth from one ranch to another. Certainly the noise and wind gusts created by this helicopter must have been momentarily disturbing. However, the hearing officer does not find that the arrival of the helicopter had an intimiditory effect on employees waiting to vote. These employees were quite accustomed t o seeing helicopter in operation in the Anderson Farm Ranches. There is no

evidence of fear or intimidation generated by the arrival of the machine which would justify setting aside the election. None the less, in any future election on Anderson Farms property the use of the helicopter should be restricted in such a manner that the helicopter does not land near a polling place.

IV.

The Employer-Submitted Employee List

The petitioner-intervenor in this case insists that the grower failed to comply with the requirements of Section 1157.3 of the Agricultural Labor. Relations Act, and regulations adopted pursuant thereto, (ALRB Reg. 20310 (d), (e) .) in that the grower intentionally submitted to the Agricultural Labor Relations Board agent, Mike Vargas, an employee list (Exhibit 50) that (1) failed to include the names of individuals entitled to vote, (see exhibit 61) (2) included the names of individuals ineligible to vote, (see exhibit[1] 60) and (3) failed to include complete addresses and related information which would enable the Union to exercise its privileges pursuant to the statute. Exhibit 50 was used as the eligibility list for the election.

On the basis of the testimony put forward, it is clear that: (1) The petition filed by the United Farm Workers should be treated as filed on September 15, 1975 (an abortive attempt to serve the petition on the preceding Friday was ineffective); (2) On the 17th of September, 1975, the grower provided to agent Vargas a computer-printed list which included the names of employees working directly for Anderson Farms during various payroll periods, each period being that applicable to the subclassification of workers involved (truckers for example being paid on a different payroll period basis from harvest workers) which had most recently expired prior

to the 15th of September 1975; (3) On Wednesday, September 17, and the succeeding two days, the grower presented to agent Vargas supplementary lists of employees not paid directly by Anderson farms through labor contractors. It is also clear that in the lists of names and addresses, there appeared various inaccuracies, such as omissions of addresses, and inaccurate spellings of names.

In order to treat these issues adequately, it is necessary to understand the way in which payroll inforamtion is kept by the grower. When an individual applied for employment at Anderson Farms in 1975, that individual was to write his or her name, social security number, temporary address (if a migrant worker in the area temporarily for the harvest period) and. permanent address on a card. This information was then stored in a computer owned and operated by the grower. The original card was also maintained in a file. On each day when work was performed in the fields, a time sheet was kept by a designated, timekeeper on each harvest machine, showing the names of the individuals working on the machine on that day, and the hours worked. It was on the basis of these timesheets that payrolls were ultimately made up. Prior to 1975, individual time cards were used for employees, but for a variety of reasons this practice had proven unsatisfactory. The use of timesheets did not occur with regard to office workers, and other non-field workers such as truck drivers.

In the case of contractors, information concerning names and addresses of workers, and with regard to the number of hours worked, was kept by the labor contractor in question, rather than by Anderson Farms. Each contractor would submit to Anderson Farms, weekly or bi-weekly as was the practice of the particular contractors, a bill for services. This bill might or might not include individual names, according to the practice of the individual contractors. Thus, on the 15th of Septmber, the grower

had in its custody the names (and in most cases addresses) of all those individuals being paid directly by Anderson Farms, but did not have complete information with regard to those individuals hired by labor contractors. The grower, through its partner Henry Stone, and its agents-Roy Canela and Floyd Ross, solicited this inforamtion from contractors on the 15th, 16th, and 17th of September, 1975. As soon as the information was obtained from each contractor, it was relayed by the grower to agent Vargas, according to grower witnesses.

At the conclusion of the hearing of oral testimony in this proceeding, the hearing officer went to the offices of Anderson Farms. By the use of a random number table, the hearing officer selected certain entries in exhibits 60 and 61 (these lists were prepared by UFW investigators and allegedly included names of persons included on the employer-submitted eligibility list [exhibit 50] who had not worked during the eligibility period - list 60 - or who worked during that period and yet did not appear on the eligibility list - list 61) to be checked against exhibit 50 and other records, principally the 1975 payroll records which had been produced by the grower in response to a subpoena. Employees ordinarily working in the payroll department of Anderson Farms were directed by the hearing officer to locate information concerning the names appearing on lists 60 and 61 insofar as those names involved individuals on Anderson Farms[1] payroll. Without making the payroll office employees aware of it, the hearing officer permitted no more than three minutes for the location of the information with regard to any item, after allowing approximately 5 minutes for the first two or three items so that the payroll clerks involved could become acquainted with the process. In the majority of instances, information supporting the grower's contention that names were

properly contained in or omitted from the eligibility lists submitted by the employer on September 17 was produced. (It became obvious that the practice of many employees of using two surnames interchangably had caused difficulty to the UFW organizers and investigators.)

Following the examinination at the offices of Anderson Farms, the hearing officer inspected data submitted by labor contractors, and was able in a number of instances to determine why a given name had been included upon or omitted from the lists sent to the Agricultural Labor Relations Board.

In light of these circumstances, and more particularly in light of the fact that most of the harvest employees of Anderson Farms were hired By the grower within the last ten days or so before the filing of the petition in this case, it is the conclusion of the hearing officer that Anderson Farms was not guilty of "bad faith" or "gross negligence", as those terms have been defined by the Agricultural Labor Relations Board in the opinion in Yoder Brothers, Inc., 2 A.L.R.B. #4. Indeed, the grower went further than required by the regulations of the Agricultural Labor Relations Board in making these lists available at the Sacramento Regional Office of the Board, rather than making them available solely in the county in which the grower operated its business, the requirement In effect under ALRB regulations in mid-September.

Having so concluded, however, it is necessary to go further to point out that the defects in the lists are more than trivial. Over 10% of the entries on the eligibility list lacked proper addresses. One of the lists supplied by a contractor contained addresses which should have been regarded by agent Vargas, and others, as suspect, because they indicated on the surface that members of different families and ethnic backgrounds were

all residing at the same place. Moreover, steps must be taken to reduce the difficulties to which Board agents and others are subjected by virtue of the practice of many employees of utilizing two surnames. (Examples of the confusion created by this practice appear in the brief of petitioner on page 35.) Finally, it is necessary that there be a clearer understanding on the part of the grower and of any interested labor organizations about the impact of having more than one payroll period for different classes of employees at Anderson Farms.

These matters are dealt with further in the order below.

V.

The Employer Campaign in General

It is alleged by the petitioner that the grower in this election formulated in August and early September a general scheme for harassment and intimidation of employees for the purpose of frustrating the exercise by employees of rights guaranteed to them by the Agricultural Labor Relations Act. It is urged that Jack Anderson and Henry Stone, the partners in Anderson Farms, either explicitly directed a campaign of fear and intimidation of employees, or at the very least passively consented to the conduct of such a campaign (while fully aware that it was being conducted) by subordinate managerial employees.

The chief grower witness on such matters, Henry Stone, stated forthrightly that it was the desire of management to "win" the election, that is, it was the hope of Anderson Farms management that the ultimate outcome of the election would be a vote for "no union". It is also clear that the management of Anderson Farms instructed its supervisors to exercise the privilege of free speech granted them under the statute for the purpose of achieving this result, written Instructions, prepared

by a law firm, (exhibit 54) were given to supervisors so that they would know how to carry out this desire on the part of managment. Other witnesses, such as the witness Ronald Timothy, testified that they, as supervisors, received such instructions from the Anderson Farms ownership. The management of Anderson Farms also retained the services of a firm which prepared for them a leaflet (exhibit 7) to be handed to employees, in the pages of which appear various criticisms of the United Farmworkers of America. Anderson Farms management also retained the services of one Paul Gutierriez, not ordinarily an employee of Anderson Farms, to make speeches to Anderson Farms workers as the election campaign neared its close.

Did any one of these acts, or did these acts as a whole, interfere with the rights and privileges granted by the Agricultural Labor Relations Act in such a fashion as to justify setting aside the election? Instructions directly given to Anderson Farms supervisors appear carefully calculated to call for the exercise of privileges guaranteed to employers by the terms- of the statute itself. While the techniques of argumentation suggested by the instructions to supervisors are, to a degree, subtle and clever, they did not require conduct which is unlawful as harassment and intimidation.

Of course, written instructions might be given to supervisors to one effect, while "secret" oral instructions might be given of quite a different type. After a review of the testimony of the many witnesses in this matter, it is clear to the hearing officer that the nature of the conduct engaged in by the foremen, labor contractors, and sub-foreman varied tremendously. If the calculated indifference of Ronald Timothy, the ideological indignation of Manuel Sandoval, and the variable attitudes of Chuck

Sakurada all stem from the same set of management instructions, those instructions must have Been a true marvel. It is the conclusion of the hearing officer that the desire of the partners in Anderson Farms, Henry Stone and Jack Anderson, as conveyed to supervisorial employees, was to "fight the union" vigorously, actively, but at all times lawfully within the confines of the terms of the Agricultural Labor Relations Act.

Having given such orders, however, it is nonetheless possible that the ownership of Anderson Farms could have sat by day after day watching foremen and other supervisors go about a campaign of harassment and by tacit consent be considered participants in such a campaign. The hearing officer does not find that such tacit consent was in fact given. As will appear below, it is the conclusion of the hearing officer that in a significant number of instances, individual representatives of Anderson Farms infringed on the rights of employees, by discriminatory discipline, by improper statements, and by wrongful denials of access. It should be noted, however, that this wrongful conduct does not conform to any clear pattern. The wrongful discharges, for example, flowed from entirely different concerns, one directed against union organizing activity, one triggered by a supervisor's indignation in having his judgment questioned, without any regard to union organizing at all. Of the improper statements made to groups of employees, misleading statements about benefits were made without the intention of the speaker to mislead anyone, and resulted from a. misunderstanding on his part of to whom such benefits were available. All in all, the number of incidents of misconduct found to have occurred during the course of the campaign, and the nature of those incidents, convince the hearing officer that so far as the central management of Anderson Farms was concerned, A vigorous lawful campaign was desired.

This is not to condone the failure of Anderson Farms management to caution

its supervisors more carefully with regard to their activities. In particular, the constant surveillance of employees and organizers is most likely to occur in circumstances in which organizing is conducted in the field itself. Obviously enough, management must be required in any future election to caution its supervisorial employees to maintain whatever distance is feasible between themselves and groups of employees who are conversing with properly admitted representatives of labor organizations.

The speeches of Paul Gutierrez are dealt with elsewhere in this opinion. It will be clear, in that portion, that the infringement of employee rights involved in Mr. Guterriez speeches were substantial but unintentional.

In light of the foregoing, the hearing officer finds that the charges that the management of Anderson Farms directed or consented to a general campaign of fear and intimidation of its employees is not supported by the evidence.

VI.
Discriminatory Discharges

There are three separate allegations of employee discharge for discriminatory reasons made in this case. One such allegation relates to the Terrazas family, one to a group o-S employees to be referred to as the "paragraph 9 group," (the number of the paragraph of the complaint in which the discriminatory practice is alleged); and one to a husband and wife discharge, that of Michael and Stephanie Blank.

The discharge of the Terraz's family allegedly occurred because one member of the family signed a union authorization card within the view of a supervisorial employee of the grower. The employer urges, on the other hand, that in putting together a harvest crew for the next day or two, it was necessary to eliminate a few workers from crews (because of limits on permitted deliveries, to canneries) and that in order not to break up other large family groups, the decision was made to "lay off" the Terrazas for a brief period. Mrs. Terrazas maintains stoutly that she was not simply laid off, but that she was fired, and that this must have been for anti-union reasons.

The explanation tended by the grower seems reasonable. It is clear that from time to time in 1975 it was necessary to enlarge and diminish crews, to add and delete night work, and otherwise to make temporary changes in the work force. The reason given for the handling of the Terrazas family, a desire not to split up a family group, seems generally consistent with grower policies. The failure to "rehire" the Terrazas later is accounted for by their rapid obtaining of work elsewhere. Moreover, the belief that the grower had become motivated by strong feelings against the Terrazas family, as a result of observing one member of that family

sign a union card, conflicts markedly with the fact that the Terrazas continued to live in a grower labor camp, and were the recipients of a replacement refrigerator unit for their use subsequent to the "discharge." It is therefore found that the allegation of a discriminatory discharge of the Terrazas family is not supported by a preponderance of the evidence.

The "paragraph 9 group" present a more complex picture. It is the allegation of the General Counsel that this group of workers was discharged because of their execution of union authorization cards in the presence of Manual Chapa, a supervisor for Anderson Farms. It is the, grower's theory, very candidly put forward, that these workers were instead discharged because as a group they protested the treatment of a fellow employee, one Bohannon. The grower insists, as one would anticipate, that it was not the protest of the Bohannon treatment that lead to the discharge of the "paragraph 9 group," but rather the insistence of the members of the "paragraph 9 group" that they be .allowed to pursue this matter when they should have been working.

The hearing officer does not find that the evidence justifies the conclusion that the "paragraph 9 group" members were discharged because of pro-union sympathies. To a measure, this reflects the view of the hearing officer with regard to the nature of the testimony put forward by the "paragraph 9 group" as witnesses. Although the hearing officer does not doubt for a moment the desire[1] of this group to speak the truth, it was readily apparent at the time they gave testimony that the members of the group had discussed their discipline at the hands of Manual Chapa and Chuck Sakurada so often, that the testimony that they were giving reflected no longer so much their own personal observations and recollections, as group recollections hashed out in conversations among themselves in the period preceding the holding of hearings.

Instead, the hearing officer finds that the protest by these workers of the disciplining of the employee Bohannan was regarded by foreman Chuck Sakurada as unseemly, and as an improper Interference with his prerogatives. The protections of concerted activity afforded by the Agricultural Labor Relations Act are not limited to union activity.

Joint protest o£ the treatment of a fellow worker is found by the hearing officer to be clearly within the protection of the statute. Therefore, a discharge or other disciplining of employees because of a group protest of this sort constitutes a violation of the statute. This leads one finally to the question whether it was content of the paragraph 9 group protest, or their consequent tardiness in resuming work that led to their discipline. The issue is not without difficulty. In view of testimony concerning the general easygoing personnel policies of the employer, the infrequency of employee discipline, and the manner in which Mr. Sakurada ordinarily comported himself the hearing officer concludes it was Mr. Sakurada's' momentary indignation at having his decision questioned, rather than the temporary laggardliness of the "paragraph 9 group", which lead to the discipline of this group. Accordingly, this discipline is found to have been discriminatory within the meaning of the statute.

One more matter needs to be discussed with respect to the paragraph 9 group. It is apparent to the hearing officer that only one member of the group, **Ms.** Stewart is broader in scope than that afforded to other members of the group. (It should also be noted that the employer contends that the "paragraph 9 group" was not discharged at all, but simply laid off for the afternoon. It seems to the hearing officer that this very well may have been the subjective intent of Mr. Sakurada, and that it is possible that workers who had been employed by Anderson Farms for a longer, period of time

of time might have so understood this disciplinary action. However, the members of the "paragraph nine group" were relatively recently hired. In as much as their discharge was unlawful, it was surely the ancillary responsibility of the grower to see to it that they understood clearly that their discipline constituted a lay-off either than a discharge. It is concluded that it was not unreasonable for these workers to take the instruction they received, "go home", as being a discharge).

The discharge of Michael and Stephanie Blank is in many ways the simplest charge in this case of which to dispose. The making out of the prima facie case of discriminatory discharge is clear. The Blanks were observed engaging in activity on behalf of a labor organization. They were clearly not laid off temporarily, but were fired outright. Moreover, the Blanks are he very type of pro-union sympathizers who are likely to be effective. They are individuals of zeal, as indicated by their past history of involvement with the Peace Corps.

They demonstrated as witnesses that they are persistent and articulate individuals. The employer in this case came forward with no credible explanation why the Blanks were selected for discharge. It is therefore concluded that the discharge of Michael and Stephanie Blank was a discriminatory discharge unlawful under the Agricultural Labor Relations Act.

VII.

Penials of Access

Many charges in the complaint and the petition involve denials of access. Before turning the individual charges, it is advisable first to set out some general conclusions concerning the privileges of access properly available to representatives of the United Farm Workers, and second to articulate certain principles about the way in which denials of access may appropriately be viewed.

Two types of access are involved in this proceeding: access to harvest fields, and access to labor camps. So far as access to fields is concerned, this access should be viewed in light of a specific Agricultural Labor Relations Board regulation in effect from August 29 through September 3, and from September 19, 1975, forward, ALRB Regulation 20900. During the period September 4, 1975, to September 18, 1975, enforcement of the ALRB field access rule was restrained by the orders of courts of general jurisdiction of the State of California. The privilege of access provided by ALRB regulation 20900 is not an absolute privilege but is rather a privilege limited in time, and conditioned upon willingness of organizers to identify themselves. The privilege of access to labor camps, on the other hand, ought to be judged in light of principles developed by the National Labor Relations Board in cases involving company towns and the like. See, e.g. NLRB v. Lake Superior Lumber Co., 167 F.2d 147 (1948); NLRB v. Stowe Spinning Co., 336 U.S. 226 (1949); NLRB v. Grossingers, 372 F.2d 1149 (1969). Under those precedents, the employer must permit access to labor camps by representatives of labor organizations, but may regulate such access in terms of the number of organizers to be admitted, reasonable hours of entry, identification, and the like.

Regulations imposed by the grower in this case, limiting access to the hours 5:30 to 8:30 PM appear to the hearing officer to have been reasonable for those days on which only day harvesting crews were operating. Given the early hour that harvest operations begin at Anderson Farms, having 8:30 PM as a cut off point for visitors to the camp does not seem an unreasonable limitation. On those days when night" crews were operating, however, these hours appear to the hearing officer to be unduly restrictive. Accordingly, the order in the case will require somewhat expanded time period for access to labor camps.

The reasonableness of a limit or denial for access must be viewed primarily in terms of circumstances of each individual occasion. This is made explicit in the case of the ALR3 regulation concerning access to harvest fields. See ALRB Reg. 20900 paragraph 5e. This, however, does not make past conduct of labor organization representatives or of employer representatives totally irrelevant. For example, whether a grower request for identification is reasonable must surely at times be judged in light of how often the particular employer representative and the particular labor organization representative have confronted one another. Similarly, the credibility of a labor organization representative with regard to how many fellow workers he has with him (or her) must surely be viewed in terms of the past record of that organizer in speaking the truth.

The level of force utilized by an employer to oust labor organization representatives who have sought access at a time when not entitled, or who have in some other fashion abused a privilege of access, must be viewed in light of the response of that representative to the employer's denial.

The impact of an employer's denial of access should in some degree be Judged in terms of the manner in which a denial of access is carried out,

and whether the denial is or is not readily observable by employees. For example, to combine *the* two principles Just stated in a given hypothetical situation: An organizer appears on grower property at a time when the organizer should not be present. An employer representative asks the organizer, who has been on the property once before, first to identify himself and his purposes, and also to leave. The organizer refuses to produce identification, other than a union badge, and also observers that he has every right to be on the grower's property. The employer representative then asks the organizer a second time to leave. The organizer raises his voice, and proclaims that the employer is discriminating against him. At this stage, it would seem clear that the grower representative may call upon the assistance either of fellow employees, or of police forces, to eject the organizer. Even then, however, the employer representatives should not engage in further vituperation of the organizers trespass unless the organizer himself continues to insist loudly on being allowed to continue activities on the grower property, if employees are present.

On the basis of these principles, it is concluded that in some instances UFW organizers (1) were denied access to Anderson Farms property when access should have been permitted, and (2) denied access with unnecessary force at times when a less* forceful denial would have been proper.

One of the alleged denials of access which involved excessive force on the part of the employer occurred on September 17, 1975, and involved UFW organizer Albert Escalante at Sutter Basin. It allegedly occurred in the presence of a number of workers. Another incident allegedly occurred on September 12, 1975, in which Mr. Escalante went on the

growers property at the Mace 2 site and went "to find out where the workers were working." He was allegedly forced off the road without any advance warning by one Trino Savala, a supervisor for the grower. Mr. Escalante recalls himself as acting in a carefully restrained fashion on both these occasions. It is, at best, difficult for the hearing officer to envision Mr. Escalante acting in such a fashion. Even in the relatively cool confines of the hearing chambers, he demonstrated himself as an unusually provocative young man, one capable of becoming hostile at an instant's notice, and inclined to believe the very worst of the motiviations and conduct of anyone associated with interests other than those represented by Esoalante. In short, the hearing officer does not find that the evidence justifies a conclusion that representatives of the growers over-reacted to either of these entries onto grower property by Mr. Escalante.

The denial of access to organizer William Chorneau on September 19, 1975, by Chuck Sakurada and others, was improper. Mr. Chorneau's conduct on that occasion was unexceptionable. When he arrived at the field, work was still going on. He and his fellow organizer left promptly on request, *1$* returning only when the lunch period had begun. At that point, he was challenged by grower representatives, who apparently were not aware that the regulation concerning access to harvest fields was once again in effect. The statements and conduct of grower representatives on the 19th were unduly vigorous, and occurred within the range of observation of employees.

Similarly, the denial of entry to the Woodland Labor camp on the night of September 23 by grower guard Don Kline was accompanied by *a* use of force on the part, of Mr. Kline which was excessive, and which occurred in the presence of employees. This conclusion is based on the assumption that the UFW representatives reached, the entrance to the Woodland Ranch at a relatively late hour of the evening, when a restrained denial

of access would have been proper. The allegation that the grower made use of a "trained watch dog" in this incident is, however, not supported by credible evidence.

Another denial of access occurred on September 20, 1975, and involved Juan Esparsa, a UFW organizer. The incident appears to have occurred outside the times during which access, would be allowed to the fields pursuant to the Agricultural Labor Relations Board regulation and at a time when the employer might reasonably restrict access to its labor camps so that employees working at night could have a chance to sleep. Given these circumstances, no violation by the grower is found in this incident.

VIII

Harassment of Alejandro Sanchez

It is alleged on the 24th of September 1975, employer representatives Manuel Chapa and Chuck Sakurada threatened and harassed one Alejandro Sanchez, an employee of the grower, because of the latter's advocacy of pro-union sentiments. The testimony concerning this incident is not wholly satisfactory. Both the witness Chapa and the witness Sanchez were notably nervous on the witness stand. The witness Sanchez experienced some difficulty in hearing. The witness Chapa, for whatever reasons, was not forthcoming or particularly cooperative. The ability of bystanders to report accurately on the exchange is prejudiced by the fact that noisy machinery was operating at the time, and quite obviously the witness Sakurada cannot speak of his own knowledge concerning the initial conversation between Chapa and Sanchez, for he was absent at that time. It is the conclusion of the hearing officer that during the period when work was going on in the harvest, Chapa and Sanchez engaged in an argument about the merits of unionization, and that this exchange became quite heated. It is further the conclusion of the hearing officer that shortly thereafter Chuck Sakurada, a supervisor of both these individuals, came to the Sanchez machine and then instructed both Mr. Sanchez and Mr. Chapa to cut out such arguing during the time when the work was going on. Mr. Sanchez remained upset because of his argument with Mr. Chapa, and when he requested that he be permitted to have other individuals not employed by Anderson Farms to stay with him during the remainder of the day's work,

Mr. Sakurada acquiesced. Given the totality of these circumstances, does not appear that the grower violated Mr. Sanchez's rights under the Agricultural Labor Relations Act. Indeed, it would appear that the ranch foreman, Sakurada, did all he could to reassure Mr. Sanchez.

IX.

Eviction Threat by T. Savala

It is alleged that Trino Savala, supervisor, threatened employees living in grower labor camps with eviction if they voted for the union. The testimony supporting this allegation was largely hearsay, and was not of sufficient worth to support a finding for the general counsel on this issue.

X.

Conduct of Paul Guterriez

It is alleged that the grower violated the rights of its employees both prior to the election and subsequent to the election by the grower's utilization of the speech-making services of one Mr. Paul Gutierrez. The ubiquitous Mr. Gutierrez demonstrated his ability to cover a suprising amount of territory in a brief span of time on each occasion. In speeches he made to crews of harvest workers prior to the election, he spoke generally concerning wages, working conditions, and benefits provided by the grower. He talked about the mechanics of the election to be held, and spoke critically of union practices with regard to hiring halls. Because these speeches were delivered more than 24 hours prior to the election, it is not necessary to consider the applicability of the Peerless Plywood rule of the National Labor Relations Board. In general, it is clear that the content of Mr. Gutierrez pre-election speeches fell well within the

appropriate area of employer free speech. However, in one respect, the election speeches must be regarded as misleading. In briefing Mr. Gutierrez before he went to the field, no one in management at Anderson Farms told Mr. Gutierrez that the insurance benefits about which he was speaking did not apply to crews supplied through labor contractors. Nonetheless, Mr. Gutierrez seems to have made the same speech about those insurance benefits to all employees, including those on the labor contractor crews. The scope of these benefits is of sufficient importance so that this must be regarded as a material misrepresentation which would justify setting aside the election.

Subsequent to the election, Mr. Gutierrez returned to the fields. "At this stage, the grower had learned that unfair labor practice charges and a petition to set aside the election could be anticipated in the Immediate future. The grower had been informed that one of the charges leveled would be a charge that the grower had engaged in a general campaign of harassment and intimidation. Mr. Gutierrez went into the fields to tell employees that these charges would be forthcoming, and to ask that they sign a statement, on the penalty of perjury, that they had not been harassed and intimidated by the grower prior to the election. When he made these speeches, Mr. Gutierrez took certain steps to avoid an impression that he was totally entangled with the grower. Mr. Gutierrez asked foremen to leave the area when he spoke. He also assured employees that no retaliation would result against any employees, and told them that he lacked the power to engage in such retaliation. However, when he passed out the petitions, Mr. Gutierrez quite obviously followed the course of the petition among the employee groups carefully with his eyes, and tried to make sure that everyone present signed the petition. One should remember

that when Mr. Gutierrez addressed employees before the election, he at times had representatives of Anderson Farms management at his side, and that the nature of his task was such that employees would likely regard him as affiliated with the central management of the grower. In the light of all these circumstances, it appears to the hearing officer that these post-election group meetings should be regarded as at least mildly intimidatory and an unfair practice. In doing so, the hearing officer specifically finds principles developed by the National Labor Relations Board applicable to post-charge investigation by an employer see c. Morris, Developing Labor Law at 104.

XI

Conduct of Luis Serrano

It is alleged that one Luis Serrano instructed a time keeper, Darla Sanchez, to tell employees working on "her" machine that if they expressed pro-UFW sentiments they would be discharged. The testimony on this matter is directly in conflict. It was plain to the hearing officer that there existed among the witnesses involved an unusual degree of personal enmity. The hearing officer finds that there is not sufficient evidence to justify a finding for the Officer of General Counsel on this allegation.

XII.

Conduct of Regino Garcia

The largest number of charges of misconduct by an Anderson Farms representative involved one Regino Garcia. As one responsible for supplying laborers to the grower, Mr. Garcia is a supervisor within the meaning of the Agricultural Labor Relations Act.

Much of the alleged misconduct of Mr. Garcia relates to his making of speeches. For the most part, the content of these speeches was within the realm of protected employer free speech: calling attention to employer wage levels, arguing that the grower is better situated than the union to provide jobs and benefits. Pointing out the chance that unionization will lead to dues checkoffs and the use of hiring halls (see also exhibit 7) was more dangerous, because of the opportunity for misrepresentation. However, the most extreme statement attributed to Mr. Garcia, that hiring hall use might lead to members of families working on different farms, is not so palpably unreasonable as to take Mr. Garcia beyond the protection of the act.

One statement, however, which it is found that Mr. Garcia made on or around the 9th of September (the recollection of precise dates is not of immense importance on this issue) must be viewed as coercive: the statement that a union victory would lead to the adoption by the grower of the use of electric harvest machines and a consequent drastic cut in the number of harvest jobs. It is one thing for an employer representative to say "bad things" about a union—employees surely may be expected to take such statements with a grain of salt, and also the union has the chance to counter such statements in its own literature. When an employer representative makes statements about what the employer will do in the event of a union victory, employees may reasonably assume that the speaker has access to information

not available to the union, nor to the public generally. See NLRB v. Gissel Packing Co., 395 U.S. 575, 618-19.

On the day of the election, Mr. Garcia prevented two employees from going to the polls with his crews for the purpose of voting. Taken by itself, this conduct would appear clearly to violate the Act. However, in the circumstances in which the conduct occurred, it is concluded that there was no such violation. As noted before, both the number of employees and the size of the ranches involved in this election were quite large. As a result, the grower, in cooperation with agent Vargas, had sought to develop a sequence of bringing the voters to the polls which would avoid any unusual delays and would minimize confusion. As part of this plan, Mr. Garcia was instructed to have bus loads of voters from his crews to be sent to the polls. To assist him in this, he was given a portion of the eligibility list prepared by the employer. The employees with whose transport to the polls Mr. Garcia interfered, did not appear on his list. These individuals' were not members of Mr. Garcia's own crews. He explained to the employees involved that the reason he was interfering with their transport was because they were not on his list, and the employees obviously understood this reasonably well. One of those whose transport to the polls was delayed by Mr. Garcia appeared as a witness in this matter, Manual Lopez Chavez, and Mr. Chavez testified that he did indeed vote later in the election.

Next, it is appropriate to turn to the assault committed by Mr. Garcia on Manuel Lopez Chavez. It is not disputed that Mr. Garcia and Mr. Lopez Chavez had a fight. Similarly, it is not disputed that prior to this fight, the two exchanged heated remarks, which began with vulgarity and descended through obscenity to profanity. What is not so clear is whether the fight had anything to do with the exercise by Manual Lopez Chavez of rights

guaranteed by the Agricultural Labor Relations Act. The site of the fight was a labor camp operated by Mr. Garcia, a camp where there lived a young lady to whom Mr. Chavez was directing some of his attention. On the 27th of September, 1975, Mr. Garcia asked Mr. Chavez to leave the camp. After an argument, Mr. Chavez did do so. The fist fight occurred on a second visit by Mr. Chavez, *a* visit which occurred on the 29th of September. It should be noted that the young lady whom Manuel Lopez Chavez wished to see was not present at the labor camp at the time, to indicate to Mr. Garcia whether Mr. Chavez was or was not a welcome guest. Without more, the fist fight would seem a personal matter. There are two possible causes for finding in this fight an assault based upon anti-union sentiments. Mr. Chavez testified that in the course of the heated verbal exchange, Mr. Garcia spoke of Mr. Chavez as a follower of Chavez. Mr. Garcia denied this. Two women who served as observers to the exchange did not testify to such language, although they testified to other language in the exchange. One notes that the surname of the assaulted employee and the surname of a prominent leader in the United Farm Workers of America are the sama. In sum, there is not sufficient evidence that at the time of the fight there was in progress an argument of more than a personal nature. The other chain of inference that might lead one to regard this as a labor organization-employer fight would be (1) to note that Manuel Lopez Chavez was one of those with whose voting Mr. Garcia had temporarily interfered a few days before, (2) to infer from that confrontation that Mr. Garcia had identified Mr. Chavez as an undesirable individual, a union supporter, and (3) to conclude from this that the cause for Mr. Garcia's assault on Mr. Chavez was Mr. Garcia's dislike of Mr. Chavez's union principles. This chain of inference is not unreasonable. However, against it are: the fact that despite Mr. Garcia's strong anti-union animus he seems never to have engaged in violence of

this sort at any other time, (2) the fact that the election was several days past at the time of the incident, and (3) that the motive of Mr. Garcia in maintaining control over his labor camp is at least as credible a motive as that of anti-union animus. In the circumstances, the hearing officer does not find that the evidence justifies finding this assault to constitute a violation of the Act.

Mr. Garcia unduly infringed on rights guaranteed by the statute on the day of the election at Mace 2 by asking how employees had voted. He did not ask this question in the course of a casual conversation or in the pursuit of any privileged investigation. The interrogation was unlawful. (Although, if isolated, it might not be regarded as of first importance. See C. Morris, ed., Developing Labor Law at 102-03.)

Allegations that Regino Garcia and Teresa Chavarria, supervisorial employees, boarded busses earning voters to the polls on election day and delivered anti-union speeches are not supported by the evidence. It is found that each did get on the bottom .front step of the bus briefly to encourage employees to vote and to explain to them the general nature of the election process. While it would have been preferable for such information to come directly from representatives from the Agricultural Labor Relations Board, the conduct cannot be regarded as a reason to void the election.

XII

Summary of Violations Found

In summary, it is therefore found that the grower, Anderson Farms, infringed on the rights of employees guaranteed to those employees by the Agricultural Labor Relations Act in the following conduct:

(1) Statements by Regino Garcia that a union victory in the election at Anderson Farms would result in replacement of existing equipment with

electrical harvest machines, and a consequent loss of employment.

(2) The improper interrogation by Mr. Garcia of employees' concerning the way in which they had voted in the election held at Mace 2.

(3) The discriminatory disciplining of those employees listed in paragraph 9 of the complaint in this matter.

(4) The discriminatory discharge of Michael and Stephanie Blank.

(5) Denial of access to William Chorneau et al, through Supervisor Chuck Sakuradp and others, at Sutter Basin on September 19.

(6) Undue use of force in the presence of employees in denying access to the Woodland Labor Camp on the night of September 23.

(7) Misleading employees of labor contractors into thinking that they might be the beneficiaries of the health insurance program of Anderson Farms, at a time when employees of labor contractors were not so eligible.

(8) Conducting an investigation of alleged charges of misconduct on the part of the grower in an intimidatory fashion through one Paul Guiterrez on the 2nd of October, 1975.

(9) Unduly restricting hours of access at labor camps maintained by the grower.

ORDER

In light of the foregoing, it is hereby ordered: (1) That the elections held on Andersons Farms on the 24th and 25th of September, 1975 be set aside.

(2) That on the 1st Tuesday of July 1976, and each Tuesday thereafter, the grower Anderson Farms file with such regional office of the Agricultural Labor Relations Board as may be appropriate a statement of the-period during which grower anticipates it will experience its peak employment during the 1976 season.

(3) That the United Farm Workers be permitted to file a petition for

an election among Anderson Farms employees in 1976 without being required to make the showing of the extent of employee support that would ordinarily be required pursuant to Section 1156.3(a)l of the Agricultural Labor Relations Act.

(4) That the grower, Anderson Farms, develop prior to July 1976 a method fir obtaining and maintaining accurate lists of names and addresses of all its employees, whether paid directly by Anderson Farms or through labor contractors, and that this information be maintained in such a fashion that the identity of employees working on any given day can be supplied by the grower within a 48 hour period following a request by the ARLB.

(5) That the grower cease and desist from refusing to employ any individual because of the exercise by that individual of rights guaranteed to him or her by the Agricultural Labor Relations Act.

(6) That the grower pay to Ima Jean Stewart the amount which she would have earned by working as a field harvest worker for Anderson Farms for 280 hours.

(7) That the grower pay each individual other than Ima Jean Stewart designated in paragraph 9 of the compalint of the General Counsel in this matter the amount which each such individual would have earned as a field harvest laborer for Anderson Farms for a period of 100 hours.

(8) That the grower pay to Stephanie Blank and also to Michael Blank the sum which each of them would have earned by working for Anderson 'Farms as field harvest workers for a period of 175 hours.

(9) That at the time each employee is hired during the 1976 season, (and on the 1st Tuesday in July in case of those employees who have already been hired), each such employee, whether hired by Anderson Farms or hired through a labor contractor, be handed a copy of the following statement, in both English and Spanish: "An election was held on Anderson Farms by

the Agricultural Labor Relations Board in 1975, in order to enable employees of Anderson Farms to determine whether they wished to be represented by a union. Because of the conduct of certain individuals, including some supervisors employed by this company, the election held in 1975 was set aside. It appears likely that a new election will be held in 1976. We are required, by the order setting aside the 1975 election, to inform you of your rights as employees under the Agricultural Labor Relations Act.

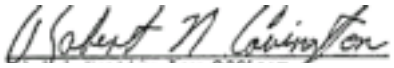
First, you are entitled to vote for a union of your choice or for no union as you think best. Anderson Farms cannot require you to vote one way or the other, and cannot fire you or discipline you for voting the way you wish. The election, when it is held, will be by secret ballot and no one will tell how you voted. We of Anderson Farms management are forbidden by law from asking you how you voted. Second, during certain times, organizers for unions are permitted by law to come into our fields and into our labor camps for the purpose of talking with you about unions. This is *a.* privilege guaranteed by the Agricultrual Labor Relations Act. You may speak with these individuals or not according to your individual preference. Third, during times when you are not working, that is during lunch periods and breaks, you are free to talk among yourselves about unions, either for or against, freely and without fearing any retaliation on our part. Fourth, if you think that any rights under the Agricultural Labor Relations Act have been denied to you in any way by a representative of Anderson Farms, you are entitled to complain about that to a representative of the Agricultural Labor Relations Board. You may reach the Board by telephoning the following number: _____ or by writing to the following address: _____"

When this statement is given to employees, it should not be accompanied by any other material prepared by the employer with respect to the

desirability of unionization.

(10) Unless the Agricultural Relations Board issues in the interim a regulation requiring a different result, it is the hearing officer's opinion that the "payroll period" to be used in determining eligibility to vote in 1976 is the payroll period applicable to Anderson Farms harvest workers, who constitute the most numerous single group of employees of the grower. This period should be used to determine the eligibility of voters in all payroll periods, so that any individual who works during the payroll period applicable to harvest workers should be considered eligible to vote, and no others. It is the conclusion of the hearing officer that this practice will most nearly carry out the intent of the legislature.

(11) Labor camp access in 1976 is to be from 2:30 PM to 8:30 PM.



Administrative Law Officer

March 16, 1976,