STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

WHITNEY FARMS, EDUARDO ESQUIVEL AND RICARDO ESQUIVEL, dba ESQUIVEL & SONS, FRUDDEN PRODUCE CO., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	No. 75-CE-242-M 3 ALRB No. 68

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

On December 27, 1976, the administrative law officer issued his decision in this case. He recommended that the Board dismiss the complaint in its entirety. The general counsel and the charging party filed timely exceptions, and several of the respondents filed a brief in support of the decision. Having reviewed the ALO's decision and the record in this case, we agree with the ALO's finding that Esquivel & Sons was not an employer within the meaning of Sections 1140. 4 (c) and 1153 of the Labor Code and dismiss the complaint as to it; as to Whitney Farms and Frudden Produce Co., we make the following findings and conclusions:[1/]

The charging party is a labor organization.

[1/] Since our interpretation of the facts as to Whitney Farms and Frudden Produce Co. is so different from the ALO's, we will substitute our own findings and conclusions rather than attempt an extensive modification of the ALO's report. We have, of course, given that report due weight.

Respondents Whitney Farms (Whitney) and Frudden Produce Co. (Frudden) are agricultural employers.[2/] Eduardo Esquivel and Ricardo Esquivel are farm labor contractors doing business as Esquivel & Sons. Whitney employed Esquivel & Sons during the 1975 season, including the date of the unfair labor practices charged here, to supply and supervise farm workers in the harvest of chili peppers. Esquivel & Sons also managed the "Little Waco" farm labor camp belonging to Frudden and enforced Frudden's policy of prohibiting organizers from taking access to the camp.

On November 12, 1975, organizers of the UFW went to the labor camp to speak with Whitney Farms employees who lived there. They found the camp gate locked. They identified themselves to several men who were standing inside the gate, who informed them that they were not allowed to enter. The organizers then went to the union's field office. Later, they returned to the camp, having informed the sheriff's department of their intention to enter the camp. Two deputy sheriffs met them at the gate when they arrived. One of the deputies informed the gatekeepers that the organizers had a right to speak with the workers. As the gatekeepers started to open the gate, Ricardo Esquivel rode up in a truck and yelled, "Don't open the door. Don't open the door. I don't want those 'desgraciados' to come in."[3/] The organizers

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[2/] The fact that Frudden employs seasonal labor only and that on the date of the unfair labor practice it had no employees on its payroll does not, especially given the highly seasonal nature of agriculture, alter Frudden's status as an employer.

[3/] Desgraciado" is a highly derogatory insult.

were then unable to enter and again left the area without talking to workers in the camp.

Frudden held a license, Labor Code §§ 2630 et seq., to operate the Little Waco Labor Camp, where the unfair labor practice occurred. He rented the camp to Esquivel & Sons from March, 1975, to March, 1976. The lease contained covenants requiring Esquivel & Sons to provide 24-hour supervision of the camp, to provide Frudden with farm workers, and not to jeopardize the license held by Frudden. The evidence showed that Frudden determined the camp's access policy.[4/] That policy, on November 12, 1975, was to exclude all "trespassers," including organizers.

We have held repeatedly that farm workers have the right to receive communication from organizers at their homes. Silver Creek Packing Company, 3 ALRB No. 13 (1977); Henry Moreno, 3 ALRB No. 40 (1977); Sam Andrews' Sons, 3 ALRB No. 45 (1977). If an employee does not wish to speak with an organizer, that is, of course, his or her right. It is emphatically not the right of the employee's employer, supervisor, or landlord to prevent communication.[5/]

By promulgating a rule which prevented access to its labor camp, and by enforcing that rule through its agents, Frudden violated Section 1153 (a). Frudden argues that it could not have committed an unfair labor practice because it had no

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[4/] For instance, Frudden sent several letters to the District Attorney during the summer of 1975 which explained to the DA various changes it was making in the no-access rule.

[5/] The right of home access flows directly from Section 1152, and does not depend in any way on the "access rule" contained in our regulations, which only concerns access at the work place.

employees at the time of the occurrences. We have already found Frudden to be an employer, see supra at fn. 2. An employer who violates the rights of an employee, whether or not there is an employment relationship between the employer and the employee, has committed an unfair labor practice. See Austin Co., 101 NLRB 1257 (1952); Hudgens v. NLRB, 424 U. S. 507,[6/] 91 LRRM 2489 (1976).

[6/] In concluding that the Austin case and the Hudgens case are inapplicable, our dissenting colleague completely ignores the following relevant language from the Austin decision, beginning at page 1258:

> It is evident, as the Trial Examiner found, and as the General Counsel concedes, that these guards were not employees of Austin. However, Austin's defense, grounded on this fact alone, finds no statutory support. Rather, the statute, read literally, precludes any employer from discriminating with respect to any employee, for Section 8 (a) (3) does not limit its prohibitions to acts of an employer vis-a-vis his own employees. Significantly, other sections of the Act do limit their coverage to employees of a particular employer. Thus, Section 8(a)(5) makes it an unfair labor practice for an employer 'to refuse to bargain collectively with the representative of his employees . ..' and Section 8(b)(4)(B) prohibits a labor organization from striking to force or require any other employer to recognize the labor organization 'as the representative of his employees ..." [emphasis supplied]. Thus, the omission of qualifying language in Section 8 (a) (3) cannot be called accidental. Moreover, Section 2(3), in defining the term 'employee,' provides that the term '... shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise ....' The statutory language therefore clearly manifests a congressional intent not to delimit the scope of Section 8(a)(3) in the manner urged here by Respondent Austin.

and again at page 1259:

> On these facts, therefore, and on the record as a whole, we find, like the Trial Examiner, that Austin violated Section 8(a)(3) and 8(a)(l) of the Act by having the guards, Spohr, Linker, and Schuler, removed from its construction project.

[fn. 6 cont. on p. 5]

Whitney Farms is also guilty of an unfair labor practice because the denial of access was perpetrated by a farm labor contractor in its employ. Esquivel & Sons had the power to hire, fire, and direct the work of Whitney employees and was therefore a supervisor within the meaning of Section 1140.4(j). But Whitney argues that the actions of Esquivel & Sons were outside the scope of its relationship to Whitney. Although Whitney was aware that some of its employees lived in labor camps, it professed complete ignorance of the operation of those camps. It did not even know if Little Waco was open or closed, because that was "none of [its] business."

We reject this defense. Esquivel & Sons was Whitney's supervisor. The NLRB has held on many occasions that the acts of a supervisor may be imputed to an employer, even if the acts were not authorized or ratified. H. J. Heinz Co., 311 U. S. 514, 7 LRRM 291 (1941); NLRB V. Solo Cup Co., 237 P. 2d 521,

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[fn.6 cont.]

> In reaching this conclusion in the case here presented, we deem it unnecessary to delineate the extent of the area in which a respondent employer's conduct may violate the prohibition of Section 8(a)(3) despite the absence of a direct employer-employee relationship or a measure of association with the direct employer.

As to the U. S. Supreme Court's decision in Hudgens, our dissenting colleague also ignores the following footnote:

> Section 8(a)(1) makes it an unfair labor practice for 'an employer' to 'restrain, or coerce employees' in the exercise of their § 7 rights. While Hudgens was not the employer of the employees involved in this case, it seems to be undisputed that he was an employer engaged in commerce within the meaning of § 2(6) and (7) of the Act, 29 U.S.C. 152(6) and (7). The Board has held that a statutory 'employer' may violate § 8(a)(l) with respect to employees other than his own. See Austin Co., 101 NLRB 1257, 1258-1259, 31 LRRM 1189. See also § 2(13) of the Act, 29 U.S.C. 152(13).

38 LRRM 2784 (8th Cir. 1956). The employer may be liable even if the violations occurred outside the work place. For instance, in Holmes Food, Inc., 170 NLRB 376, 67 LRRM 1422 (1968), the employer was guilty of an unfair labor practice when one of its supervisors surveilled visits by organizers at the homes of employees. A fortiori, the employer is guilty when a supervisor goes to an employee's home and prevents organizers from visiting. Since this is precisely what happened here, we do not hesitate to find an unfair labor practice. As the Supreme Court said in H. J. Heinz, supra, at 295:

> The question is not one of legal liability of the employer in damages or for penalties on principles of agency or respondeat superior, but only whether the Act condemns such activities as unfair labor practices so far as the employer may gain from them any advantage in the bargaining process which the Act proscribes. To that extent we hold that the employer is within the reach of the Board's order ... quite as much as if he had directed [the unlawful acts].

The respondents offer one further defense which requires comment. They claim that on November 12, there was a preliminary injunction outstanding against Frudden Produce Co., requiring Frudden and its agents to allow access to the Little Waco camp (Monterey Superior Court Civ. No. 72085). The injunction required Frudden to allow access for four hours after the end of work to UFW organizers who "display identification." Respondents argue that the UFW organizers did not "display identification" on either of the November 12 visits, and that the second visit, at 6:00 p.m., was five, not four, hours after the end of work. It was therefore proper, claim the respondents, to deny access.

We reject this defense. First, despite some apparent confusion, the record clearly indicates that the second attempted visit was concluded by 4:30 p.m.[7/] Further, Deputy Sheriff De Leon testified that one of the two gatekeepers was a man by the name of Garcia who he knew to be Esquivel's foreman. De Leon also testified that Garcia knew who the organizers were and in fact said that he was not allowing UFW organizers in because of a new court order. Any argument that' the UFW organizers failed to display identification under these circumstances is specious at best.

Secondly, the injunction did not prohibit UFW organizers from taking access more than four hours after work; it merely stated that the superior court, in the exercise of its discretion, would extend its protection only during certain times of the day. Such a limited injunction was not improper, given that the underlying facts had not been adjudicated, and given that this Board had not yet stated that law on labor camp access. But the injunction did not and could not determine the final legal rights of the parties. That determination, at least in the first instance, is. the exclusive province of this Board. Even if the superior court had intended to define Section 1152 rights so as to limit labor camp access, which we

[7/] As pointed out by the ALO in footnote #13 of his decision, the UFW witnesses were clearly confused as to the time frame of the two visits. Both Monterey County deputy sheriffs testified that they arrived at the Little Waco camp on one occasion that day at approximately 4:00 p.m. Both had completed a field report, and one alluded to the entry on that report establishing the time as 4:00 p.m. Further, Deputy Hall testified that the officers left the camp with the organizers and that at most they were there 15 minutes. The evidence also indicates that the deputies were present only at the second visit.

do not believe is what the superior court did, such an order would not be binding on this Board, It is well established under the NLRA that neither the findings of fact, NLRB v. Acker Industries, 460 F. 2d 649, 80 LRRM 2364 (10th Cir. 1972), nor the legal conclusions, NLRB v. Denver Building Trades Council, 341 U. S. 675, 707, 28 LRRM 2108 (1951), of a U. S. District Court are binding in subsequent litigation before the NLRB, In other words, when the respondents denied access to the labor camp at dinner time, they were violating Section 1153(a), regardless of any court order that required access at other times.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board orders that the respondents, Frudden Produce Co., and Whitney Farms, their officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Preventing union organizers from entering the premises where employees live.

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

(a) Post at its premises copies of the attached "Notice to Workers". Copies of said notice, on forms provided by the appropriate regional director, after being duly signed by the respondent, shall be posted by it for a period of 90 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that

said notices are not altered, defaced or covered by any other material. Such notices shall be in both English and Spanish.

(b)(1) Respondent Frudden shall mail a copy of the notice, in both English and Spanish, to every agricultural employee who resided at the Little Waco Labor Camp on November 12, 1975.

(2) Respondent Whitney Farms shall mail a copy of the notice, in English and Spanish, to all employees supplied to it by Esquivel & Sons in November 1975.

(c) A representative of Frudden Produce Co. or a Board agent shall read the attached notice to the assembled residents of the Little Waco Camp in English, Spanish and other appropriate languages. Immediately following this reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have regarding the notice and their rights under the Agricultural Labor Relations Act. The reading shall be at a time specified by the regional director. In addition, respondent Frudden shall hand a copy of the notice to each new resident of Little Waco in 1977.

(d) Notify the regional director of the Salinas Regional Office within 20 days from receipt of a copy of this decision and order of steps the respondent has taken to comply therewith, and to continue reporting periodically thereafter until full compliance is achieved.

Dated: August 18, 1977

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

NOTICE TO WORKERS

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

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

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

(1) to organize themselves;

(2) to form, join or help unions;

(3) to bargain as a group and choose whom they want to speak for them;

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

(5) to decide not to do any of these things.

Because this is true we promise that:

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

Especially, we will not prevent or interfere with your communications with union organizers at the Little Waco Labor Camp.

Dated:

FRUDDEN PRODUCE CO.

By: _____
Representative Title

WHITNEY FARMS

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.

MEMBER JOHNSEN, Dissenting:

I dissent from the majority's conclusion that Frudden Produce Co. and Whitney Farms can be held accountable for an act alleged to have been committed by a labor contractor in a farm labor camp.

My colleagues rely on what is essentially a single incident in which union organizers were denied access to a farm labor camp. There is no evidence that under ALRB regulations access was denied at either the farm of Frudden Produce Co. or Whitney Farms in the period from the beginning of the ALRA until November 12, 1975, the date of this alleged incident. I agree with the administrative law officer, Irving Stone, who found that the general counsel failed to establish by a preponderance of the evidence that the respondents engaged in unfair labor practices and dismissed the complaint in its entirety.

There is no question that Whitney Farms and Frudden Produce Co. are agricultural employers and that they used the services of Esquivel & Sons, a licensed farm labor contractor who leased and operated the "Little Waco" farm labor camp. The majority then goes on to find that an unfair labor practice, allegedly committed by the labor contractor, was attributable to Frudden because of its status as an agricultural employer and because it owned and leased Little Waco farm labor camp to the contractor who in turn supplied workers to Whitney. Although my colleagues agree that Frudden had no agricultural employees at the time, they would nevertheless hold this employer liable for

the alleged denial of access to Whitney workers, citing Austin Co., 101 NLRB 1257 (1952) and Hudgens v. NLRB, 424 U. S. 507, 91 LRRM 2489 (1976) as support for this position. However, in the case at bar there is no evidence that Frudden had a "measure of control" over Whitney employees as occurred in Austin Co., supra.[1/] Similarly, Hudgens, supra, is not applicable to this situation.[2/]

In finding an unfair labor practice against Whitney Farms my colleagues declare that Esquivel & Sons was a supervisor of this employer. The majority's attempt to make Esquivel both a labor contractor and a supervisory employee in relation to the

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[1/] Austin contracted with the Pinkerton Detective Agency [an independent contractor] to supply guards for an Austin construction project. The Austin-Pinkerton contract provided that guards not acceptable to Austin would be removed and replaced. Austin exercised this veto power when the union local which represented Austin s construction workers objected to the guards because they were not members of the same local.

Whereas there was not a direct employer-employee relationship between Austin and the guards, there was a relationship based on Austin's significant control over the guards; i.e., its right to have them removed. Thus, when Austin exercised this control at the behest of the construction local [in order to quiet that union's dissatisfaction with the guards' particular union affiliation], it discriminated in regard to the guards' tenure of employment.

[2/] Hudgengs supra, deals with whether the owner of. a privately-owned shopping center can prohibit picketing by warehouse employees who are engaged in a labor dispute [lawful economic strike activity] with one of its retail store lessees. The Supreme Court held that the employees had no First Amendment right to picket in the shopping center's mall or parking area and remanded the matter to the NLRB for reconsideration in the context of NLRA rather than First Amendment standards. The court concluded that the rights and liabilities of the parties in this case are "dependent exclusively" upon the Taft-Hartley Act, under which the Board and the courts have the task of resolving conflicts between Section 7 rights and private property rights and "to seek a proper accommodation between the two".

same employer at the same time in order to impute Esquivel's denial of access to Whitney does not stand up to scrutiny.

Esquivel, as did two other farm labor contractors, provided workers who then worked directly for Whitney in Whitney's own fields. This is borne out by the testimony of Mel Bassetti, partner in and ranch manager for Whitney Farms, who stated at hearing that Whitney harvested chili peppers in November, 1975 at three different ranches. Each ranch foreman independently arranged for labor and supervised his own crop; "if we couldn't find Esquivel, we would find another contractor or wait until the next day". Bassetti was asked if he ever had direct contact with Esquivel in the fields and replied, "I would call him. If I had any direct contact with him it would be on the road or something to that effect ... ." In the fields with the workers, according to the witness, were the "pusher" who ran the Esquivel crew as well as the field man from Cal-Compact who "comes around and says [to workers], 'This is the color you should pick and this is how you should pick them.'" Bassetti has described what is the normal pattern in labor contractor-grower arrangements.

No evidence was presented that establishes Esquivel & Sons or any member of the Esquivel family as a supervisor for Whitney Farms at the time of the alleged unfair labor practice. Likewise, there is no evidence that, at any time, Esquivel & Sons provided services other than those of a farm labor contractor.

The majority opinion would impute actions of an independent farm labor contractor to farm employers on a 24-hour

basis. In addition the majority would extend liability over an unlimited period of time after an employer has ceased using the contractor's services. I cannot agree with such a result. Accordingly, I would, as recommended by the administrative law officer, dismiss the complaint in its entirety.

Dated: August 18, 1977

RICHARD JOHNSEN, JR., Member

STATE OF CALIFORNIA
BEFORE THE AGRICULTURAL LAGBOR RELATIONS BOARD

IN THE MATTER

-OF-

WHITNEY FARMS, EDWADO ESQUIVEL AND RICARDO ESQUIVEL, dba ESQUIVEL SONS,[1/] DENNIS FRUDEN DBA FRUDEN PRODUCE COMPANY [2/]

-AND-

UNITED FARM WORKERS OF AMERICA, AFL-CIO

CASE NO

75-CE-242-M

ROBERT W. FARNSWORTH,ESQ. AND JIM GONZALEZ, ESQ., OF SALINAS, FOR THE GENERAL COUNSEL

ABRAMSON, CHURCH & STAVE, ESQS. BY ROBERT M. HINRICHS, OF SALINAS, FOR RESPONDENTS, WHITNEY FARMS AND FRUDDEN PRODUCE, INC

JOSEPH F. SULLIVAN, ESQ. [3/] OF SALINAS, FOR RESPONDENTS EDWARD ESQUIVEL AND RICARDO ESQUIVEL DBA ESQUIVEL & SONS.

PHILIP A. BAPTISTA AND
DAVID TYKULSKER, of SALINAS,
FOR THE CHARGING PARTY

DECISION

STATEMENT OF THE CASE

Irving Stone, administrative law officer, this case was heard before me in Salinas, California, on January 14, December 8, 9 and 10, 1976.[4/] the complaint which is dated the 1st day of December alleges a violation of section 1153 (a) of the agricultural labor relations act, herein called the act, by Whitney farms Edward Esquivel and Ricardo Esquivel, dba Esquivel & Sons, and Frudden produce, Inc., The respondents herein. The complaint based on a charge filed on November 13, by the united farm workers of America, AFL-CIO. A copy of the charge duly served upon Whitney farms.

All parties were given full opportunity to participate in the hearing. Following the close of the hearing, General Counsel and the attorneys for the charging party and the respondents, Whitney Farms and Frudden Produce, Inc. field briefs in support of their respective positions.

Upon the entire record, including my observation of the demeanor of the witnesses and after consideration of the briefs filed by the parties above set forth, I make the following:

Findings of Fact

1. Jurisdiction

Frudden Produce, Inc., A California Corporation, herein called Frudden", is engaged in agriculture in monterey county, California, and is an agricultural employer within the meaning of Section 1140.4 (c) of the act, and I so find.

Whitney Farms, herein called "Whitney", is a partnership whose partners are William Whitney, Mel Bassetti and Neil Bassetti.[5/] Whitney Farms is engaged in agriculture in monterey County, California and is an agricultural employer within the meaning of section 1140.4 (c) of the act, and I so find.

The complaint alleges and respondents Eduardo Esquivel and Ricardo Esquivel and Esquivel & Sons, herein called "Esquivel Admit that they are and at all material times were farm labor contract within the meaning of section 1682 of the California labor code and I so find. Counsel for Esquivel moved, at the close of the hearing, to dismiss the complaint as to Esquivel and to xxx Esquivel as a party to the proceedings on the ground that Esquivel is a labor contractor and as such not subject to the jurisdiction of this Board by virtue of the exclusionary provisions of section 1140.4 (c) of the act.[6/]

General Counsel strenuously opposed said motion arguing that labor contractors are only excluded as "Employers" but not otherwise from the act. He took the position that Esquivel xxx properly be named as a party as a supervisor or agent General Counsel referred to paragraph "4". Of the complaint which alleges that each of the three respondents name therein "were agents and contractors of each other xxx in doing the acts herein alleged were acting within the scope of said agency and with the knowledge and permission of their co-respondents". I reserved xxx as to said motion and now consider the merits thereof xxx first consider General Counsel's contention that a xxx contractor is excluded only as an "Employer" and not otherwise. Section 1140.4 (c) of the act is very precise a provides that ". . . . the employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part "and also provides that the term "Agricultural Employer" shall", . . . exclude any person supplying agricultural workers to an employers, and farm labor contractor as defined by section 1682 and any person functioning in the capacity of a labor contractor" (Emphasis Added). Section 1153 of the act states xxx "It shall be an unfair labor practice for an agricultural employer to do any of the following . . . ." (Emphasis Added). Obviously, a condition precedent to any finding that an unfair labor practice has been committed within the meaning of

Section 1153 is a finding that the party charged is an "Agricultural Employer". However, section 1140.4 (c) of the act specifically excludes labor contractors from the definition of an agricultural employer. It must therefore follow that Esquivel is not an "Agricultural Employer" within the meaning of the act and cannot be charged as such with the commission of any unfair labor practices under section 1153. Turning now to General Counsel's other contention that Esquivel was an agent and contractor of Whitney and Frudden and that Whitney and Frudden were agents and contractors of Esquivel as well as of each other, and assuming that such allegations are supported by the credible evidence, this argument too must xxx for the reason that it presupposes that Esquivel, like Whitney Frudden, is an agricultural employer, which it is not and cannot be under the definition set forth is section 1140.4 surely, it is possible that Esquivel may commit acts which could be found to be binding upon Whitney and Frudden; or both, and by virtue thereof subject either one or both to a finding that either one or both was guilty of having committed an unfair labor practice. But the reverse cannot be true since Esquivel is not an agricultural employer and therefore cannot be charged with the commission of any xxx labor practices under section 1153 which applies only to agricultural employers. The issue is not whether Esquivel is an agent of either or both of the other respondents but whether Esquivel is an "Agricultural Employer" within the meaning of

Section 1153 of the act. I must conclude that such is not the case; That a labor contractor is not an "Agricultural Employer" within the meaning of section 1153 of the act and I so find. I therefore have no alternative but to grant the motion of the attorney for Esquivel to dismiss the complaint as to Esquivel and to strike Esquivel as a party to these proceedings.[7/] In his brief general counsel see to charge Whitney and Frudden with Esquivel's denial of xxx to the union's organizers on the ground that Esquivel was according as "Supervisor" for Whitney and "Agent" for Frudden. I seems clear to me that the definition of a "supervisor" asset forth in section 1140.4 (j) of the act refers to the supervision agricultural workers in the course of the performance of their assigned tasks in the field and not to any acts related to the operation of a labor camp. The analogy that general counsel seeks to draw is far fetched and not convincing. In the same vein, assuming Arguendo that the acts as alleged by general counsel did establish that Esquivel was acting as agent for Frudden, such agency would relate again only to the operation of the labor camp and not to any work-related activities of farm employees working in the fields. Therefore even if we were to assume that Esquivel was acting as either a "Supervisor" or "Agent" for Whitney or Frudden or both, it still would have no bearing on the issue before the herein, respondent Esquivel's attorney's motion to dismiss the complaint as to Esquivel and to strike Esquivel as a party to these proceedings is hereby granted.

The complaint alleges that the union is a labor organization within the meaning of section 1140.4 (f) of the act. In their respective answers, respondent Whitney did not deny such allegation, respondent Esquivel did deny such allegation and respondent Frudden denied any information and belief sufficient to answer the aforesaid allegation. At the hearing General Council requested that official notice be taken of the numerous certifications issued by the board certifying the unions as the collective bargaining representative of agricultural employees. This request was granted. Accordingly, I find the union to be a labor organization representing agricultural employees within the meaning of section 1140.4 (f) of the act.

II. The Agricultural Pursuits Of The Respondents

Frudden Produce Inc. is a harvester of tomatoes in monterey county. As such it picks, packs, ships and sells tomatoes in the state of California. Maynard Frudden and Dorothy Frudden are the sole stockholders. Dennis Frudden, Theirson, is the sole stockholder of Frudden Enterprises, Inc. and on November 12 was also the field superintendent for Frudden, although he testified that he was not an officer or stockholder of Frudden. Ron Frudden, another son of Maynard and Dorothy Frudden, and Dennis Frudden's brother, is the sole stock holder

of king city packing, Inc. All these corporations are located in King City in Monterey County. As in prior years, Frudden during the 1975 season, contracted with various growers, about ten or fifteen in number, for the growing of tomatoes for that season. One of these growers with whom Frudden contracted was Whitney. Under such as arrangement the grower is responsible for the planting, cultivating and growing of the tomato crops the grower's responsibility continues until the harvesting begin Dennis Frudden, as field superintendent, decides when the crop is ready to be picked. As the crops approaches harvest time he will visit the fields with increasing regularity. Shortly before the time when he feels that the crops is ready for picking he will call a labor contractor or labor contractors as the case may be, and arrange to have the supply him with the farm labor that he will need.

Dennis Frudden testified that he has been engaged in the harvesting of tomatoes since about 1972. In April he had contracted with several growers to harvest and market their tomato crop. Frudden specializes in the marketing of green tomatoes which necessitates the picking of the crop at the proper time and before they start to turn red the harvest season starts about August 1 and continues until about the middle of October. The harvest crews start picking at about 8.00 A.M. which is when the dew on the tomato has dried. They will work as long as is required to fill the orders brought in by the salesmen during the day. They

will average about six hours a day, although this will vary xxx the changing demand as determined by the daily orders the workers are paid on a piece rate basis.

Denis Frudden testified that all contracts made either with growers or labor contractors are oral agreements; that Frudden dealt only in tomatoes; that by November 1st all harvesting operations had been completed; and that at that time Frudden had no agricultural employee. Dennis Frudden testified further that on November 12 he was in Mexico.

Whitney farms grows a variety of crops such as lettuce, carrots, beets, beans, potatoes, garlic, onions, tomatoes, red and green chili. Mel Bassetti, the ranch Manager, testified that Whitney farms had leases on several ranches where the crops would be planted, cultivated and grown. Some contracts, such as those with respect to the tomato crop, would encompass only the growing phase, with another firm, such as Frudden, taking charge of the picking, packing, shipping and selling. Other crops, such as chili, would encompass not only the growing but would include the picking as well. The contractual arrangement would vary depending primarily upon the type of crop grown and the relationship with the distributor. Thus, in 1975, Whitney had a contract to grow tomatoes for Frudden on several of its leased ranches. However, Frudden was to harvest the crop. Under this arrangement

Whitney had to provide only such labor as might be required until the time when Frudden would start to pick the crop. At that point Whitney's obligations ceased and Frudden assumed the responsibility for providing the necessary labor. In many instances both ranches would employ the services of a labor contractor. As a matter of fact, Dennis Frudden testified that he had contracted with Esquivel for the harvesting of the 1975 tomato crop.[8/] Whitney, in xxx, had contracted with cal-compact to grow, pick and deliver the chili crop. In an arrangement such as this, Whitney has to provide the necessary labor to plant, cultivate, grow and pick. The crop and deliver it to cal-compact. Mel Bassetti testified that in 1975 he had called upon the services of three labor contractors, one of which was Esquivel, the other two being Juan Gomez and greenfield labor supply. Bassetti also testified that in November 1975, he believed that he had three crews of three different labor contractors picking chili for Whitney.

Esquivel is a labor contractor and also the operator of the little waco labor camp, herein called "the camp". The camp is owned by Frudden which has a permit issued by monterey county to operate the premises as a labor camp.[9/] The camp is located on the west side of cattleman's road in monterey country and is enclosed by a wire fence. Main entry into the camp is effected through a suvnging gate, made of pipes, hinged on one side, located on the

highway about 100 yards form the northern extremity of the camp inside the camp are houses and trailers.[10/] Prior to 1975, Frudden not only owned but also operated and managed the camp. On march 11, 1975 Frudden leased the camp to Esquivel for a period of one year ending march 10, 1976.[11/] This was the first time that Whitney had leased the camp to anyone. Edward Esquivel had previously worked for Frudden as a supervisor. Under the terms of the lease Esquivel was responsible for the proper maintenance of the dwellings, grounds, fences, water systems, landscaping and removal of all trasa, garbage, abandoned vehicles, junk etc. It also required Esquivel to provide 24 hour supervision of the camp.

As above noted, Esquivel not only operated the camp but also acted as a labor contractor. As such, Esquivel supplied the ranchers in the region with such farm labor. As they might request. From the testimony it appears that in 1975 Esquivel had supplied Whitney, Furdden and the Ernest Homan ranch with farm workers. Juan Huerta, an organizer for the union, testified that he knew that on November 12 there were farm workers at the camp who worked for Whitney, Homan and other ranchers.

III . The alleged unfair labor practices

The complaint alleges that respondents violated sections 1153 (a) and section 1140.04 (a) of the act by

Reason of their denial of access to the camp on two xxx on November 12 to union organizers who sought entry into the camp for the purpose of engaging in organizing activities. In accordance with section 20900 of the board's regulation.[12/]

Paragraph 7(a) of the complaint alleges that at or about 4:00 p.m. On November 12, 1975, respondents, by their agent, Marcel Garcia Rodriquez, denied access to their union organizers, Irineo Zuniga, Juanita Martinez and Lupe Silvestre for the purpose of engaging in organizing activity and further misrepresented to the said union organizers that there was a court order xxx effect denying access to the camp to them. The only testimony with respect to this allegation was that of Jose Galvez Verduzco who testified that he had been sent to the camp by the union on November 12 at about 4:00 p.m. with two other union organizers, one of whom was Irine Zuniga and the other was known to him only by the name of "JUAN" (Not the Juan Huerta who worked in the union office.) When he arrived at the camp there were about six people standing inside the gate. He and his companions requested permission to enter the camp to distribute union leaflets and speak to the farm worker about the union. Verduzco testified that he did not know who these men were; that none of them identified themselves to him; that one of the men acted as a spokes-man and told them that they had orders not to let

them in; that he did not know who the spokesman was and had never seen him before; that he did not know for whom he worked. Such evidence, the only evidence adduced by general counsel with respect to this allegation, is insufficient to support the allegations set forth in paragraph 7(a) of the complaint also I so find. Accordingly, that portion of the complaint as is contained and set forth in paragraph 7(a) of the complaint is hereby dismissed.

Respondents denied the allegations of the complaint; that they violated section 1153(a) and/or section 1140.4(a) of the act; or that they denied access to the camp to union organizers who sought admission to the camp for the purpose of engaging in organizing activities in accordance with section 20900 of the board's regulations.

1. The confrontations of November 12

Jose Galvez Verduzco testified that he is a union member and also an organizer for the union. On November 12 at about 4:00 p.m.[13/] he and two other union organizers went to camp. The purpose of their visit was to enter the camp and speak to the farm workers about an election that as to be held around that time. Verduzco stated that when he and his companions arrived at the camp they

Observed that the gate was closed and that there were six men standing inside the gate. They approached the gate and told those standing inside the gate that they were there to organize because there was going to be an election around that time and asked permission to enter the camp. They were told that they could not enter the camp and they left, returned to the union's office and told Juan Huerta what had happened. Verduzco stated that he was one of the union organizers that returned to the camp with Juan Huerta at about 6:00 p.m. Verduzco further testified that neither he nor his companions wore name tags or badges identifying them union organizers; that although he had identification cards showing him to be a member of and organizer for the union, these were in his wallet and he did not show them to the men inside the gate; that none of the men inside the gate inquired as to who he or his companions were.

Juan Huerta testified that he has been an organizer for the union for about six years and was so employed on November 12. His duties as organizer include the dispatching of other organizers to various locations for the purpose of meeting with and informing farm workers about the union and their rights. On November 12 at about 3:00 p.m. he sent three or four organizers to the camp. He wanted them to speak to the farm workers of the Homan ranch about an election to

be held there the next day and to the farm workers of the Whitney ranch about the union and to distribute union leaflets explaining the law. Irineo Zuniga, Jose Galvez, Juanita Martinez and perhaps one other was dispatched by him to go to the camp. Subsequently they returned and advised him that they had not been permitted to enter the camp. After conferring with some union officials, he together with Irineo Zuniga, Jose Galvez and Juan Alvare left to return to the camp. Before leaving, he instructed Peggy Murphy, the secretary who worked at the union's office to call and alert the Sheriff's office of the departure of union organizers for the camp and of their intent to request access to the camp and to have a deputy sheriff present. Huerta and his companions arrived at the camp at about 6:00 p.m. when he arrived there the gate to the camp was closed.[14/] Huerta saw two men standing inside the gate. There were two deputy sheriff standing on the highway outside of the gate. Huerta approached the deputies and informed them that he and his companions wanted to go into the camp and talk to the Whitney workers who were inside the camp and that he had a right to go in for that purpose. Huerta also testified that he knew that there were Whitney farm workers who lived in trailer No. 5 and No. 7 in the camp. Huerta's conversations were for the most part with deputy sheriff De Leon who knew and spoke spanish. Huerta testified that after explaining to deputy De Leon, the purpose for the union

Organizers' request for entry into the camp, the deputy then told the men inside the gate that the union organizers had the right to go into the camp. The men started to open the gate when suddenly a white pick-up truck appeared, traveling very rapidly, driven by one whom he recognized as Ricardo Esquivel, who was shouting "don't open the door; don't open the door. I don't want those 'desgraciados'[15/] to come in". Huerta testified that Ricardo Esquivel had two large and ugly looking dogs with him and that they were not on a leash. When Ricardo Esquivel get out of the truck one of the dogs came close and started to sniff at him. Huerta also observed that there was a rifle on a xxx the cab of the truck although he testified that the rifle was never at any time removed from the truck. Huerta told Ricardo Esquivel that he and his companions had a right to go into the camp. Ricardo Esquivel told Huerta that the only way for him to get into the camp was to jump over the fence adding "QUESEVALLEVAR LA CHINGADA"[16/] Huerta said that he knew the driver of the truck to be Ricardo Esquivel and that Ricardo Esquivel knew him to be a union organizer. Huerta persisted in the right of the union organizers to enter the camp. Ricardo Esquivel then told Huerta that the men had quit early and that he should have been there earlier stating "you guys missed your chance". Huerta replied that organizers from the union had been there earlier but had not been permitted to enter. Inspite of their insistence upon entering, Ricardo Esquivel persisted in his refusal to permit Huerta

and his companions to enter the camp and they left.

On cross-examination Huerta stated that on November 12 there probably were workers at the camp who worked for ranchers other than Whitney and Homan but that he was interested in the Homan farm workers because of the election that was to be held the next day and also in organizing the Whitney farm workers. Huerta further testified that not all of the farm workers who worked for Whitney lived at the camp. Huerta acknowledged that Whitney had several ranches under cultivation and that in November some of the Whitney's farm workers lived in king city, green field and other towns in the salinas valley. Huerta testified that the union had field a representation petion with respect to the Ernest Homan ranch but that no such petition had been filed with respect to Whitney. He explained that due to the inability of the union organizers to gain access to the camp the union had not been able to obtain the 50% acknowledgement that is required to file a representation petition Huerta testified that he had thereafter been asked by residents of the camp, including farm workers working for Whitney who lived at the camp, why the union had not sent organizers to the camp to try to organize the workers there. Huerta told them that they had been unable to do so because they were denied admission to the camp. Huerta stated that after the incidents of November 12 he did not send any organizers to the camp again because

he did not want to imperil their safety

Huerta testified that on and prior to November 12 he had seen Esquivel's farm workers working on the laos ranch which one of the Whitney ranches. He knew this because he saw white busses With Eddie Esquivel's name painted on both sides of the busses parkes on the road alongside the ranch.

Deputy Bob Hall testified that he is employed by the Monterey county sheriff's department at the king city sub xxx and was so employed on November 12 when while on patrol and about 1600 hours he was advised, via radio, that union organizer wanted to enter the camp and to proceed to the camp. He did xxx and upon arrving at the camp three individuals were outside the camp who identified themselves as union organizers. He also observed two individuals standing inside the gate. The union organizers explained that they sought entry into the camp. They were not hostile or threatening and no acts of violence were committed. Cross-conversation was taking place between the union organizers and the men inside the gate but it was spanish which he does not understand. One of the union organizers wore a red button with a black wing-spreal eagel on it. Deputy Hall stated that he did obtain the identity of one of the union organizers who acted as a spokesman from a document which was in the spokesman's wallet. xxx he did not remember the exact nature of the document exhibited to him, he believed that the person so identified was Irineo Zuniga deputy Hall stated that the

hire incident took about fifteen minutes.

Deputy Elias DeLeon, JR. Testified that while on patrol on November 12 he was directed to proceed to the camp arriving there at about 4:00 P.M. Deputy DeLeon testified that he has spoken Spanish for most his lifetime an speak and understand the language very well. At about, the sometime that he arrived at the camp. Deputy hall drove up. Deputy DeLeon saw three persons standing outside the camp who identified themselves as union organizers. There were two men inside the camp near the gate and some other persons a few feet away in the area of the cabins or trailers. DeLeon was told by one of the union organizers that they were there to distribute some literature regarding an election that was due to be held sometime in January and that they wanted to go into the Camp. DeLeon stated that he knew one of the men standing at the gate inside the camp to be Manuel Garcia and that he had known him for about two years having first met him in connection with a labor dispute in one of the fields; that at that time Garcia was working as a foremen for Esquivel and was still working as foremen for Esquivel. DeLeon also testified that he knows Esquivel to be a labor contractor and that Esquivel is known as a labor contractor advertising themselves as such in the region. DeLeon stated that the man standing alongside Garcia inside the gate identified himself as Jose Hernandez, the caretaker of the camp. When DeLeon first spoke to Garcia, Garcia was closing the gate.

He told DeLeon that he was enforcing orders from Esquivel to keep out union organizers because he had a court order. How ever, Garcia did not show DeLeon any court order. DeLeon heard Garcia tell Zuniga, whom DeLeon knew to be a union organizer, that he and his companions could not enter the camp because they had a new court order for bidding the from entering. Zuniga told Garcia that he and his companions wanted to enter the camp to hand out some literature about a coming election. Garcia repeated that he was told not to let in the union because of a court order. DeLeon stated that he has seen a white pick-up truck being driven in the vicinity of the gate. DeLeon testified that there was no violence and no threats. He cannot recall any of the union organizers having name tags wearing any identification nor did he remember whether any of them had any identification of any kind. He did state that Garcia was aware of the fact that Zuniga and his companion were representatives of and from the union.

2. The alleged agency of the respondents vis-a-vis one another

As was herein above noted, the complaint alleges that Frudden, Whitney and Esquivel were agents and contractor of each other and in so engaging in the acts above set forth were acting within the scope of said agency and with the knowledge and permission of there co-respondent

Dennis Frudden was examined at length by general counsel as to Frudden's relationship with Whitney and Esquivel and the formulation of policy regarding access to the camp by persons other than residents or their invited guests, in pencral, and union organizers in particular. Dennis Frudden testified that Frudden's policy prior to August 1, was to deng access to the camp to those who were not residents or invited guests. He was unable to recall how the policy had been formulated or by whom . He did not believe that Esquivel had any thing to do with the formulation of this policy. He stated that while he did not remember telling Esquivel of this policy he was fairly certain that Esquivel xxx aware of this policy explaining that Edward Esquivel had work for Frudden as a foreman before signing the lease for the operation of the camp and he knew how Frudden operated. Dennis Frudden stated that there had been a change of policy in July. This was due to an incident which took place prior to July 29. In July Chavez was making a "walk" through the Salinas valley and he, to-gether with about 300 to 400 followers had stopped in front of the camp. Some of the marchers had demanded that they be permitted to enter the camp representatives from the District Attorney's Office were there as well as a police "Riot Squad". There was loud talk in Spanish being exchanged between some of the marchers and some of the residents who were inside the camp Dennis Frudden Stated that he

refused to permit. The marchers to enter the camp because some of the resident had asked that they not to be permitted to enter. Dennis Frudden explained that following a discussion with his Attorney regarding this incident and because some uncertainty as to the legality of denying access to the camp to non-residents or stranger he and his Attorney were of the opinion that some clarification of Frudden's position would be helpful. As a consequence thereof, his Attorney prepared and sent a letter, dated July 29, 1975, to William Curtis, the District Attorney.[17/] That letter set forth the conditions under which representatives of this union were to be allowed to enter the camp. It provided xxx there be no more than five representatives at any one time; that the identify themselves to the gate keeper; that they state their affiliation; that they proceed to a specified house inside the camp and conduct their activities there; and when finished to leave in a direct line through the gate, such visitations could take place only on Mondays, Wednesdays and Fridays and only during the hours of three and four, the period during which visits as aforeside could be made would begin on August 1 and end on August 15. By a subsequent letter to the District Attorney on September 04,[18/] this arrangement was extended for an additional period of three weeks from September 26 to October 17. Dennis Frudden testified that from August 15 to September 26 and after October 17, Frudden reverted to its prior

policy which he referred to as a no trespassing "policy. In his examination of Dennis Frudden general counsel called The attention of the witness to a declaration made by him in connection with another proceeding before this board.[19/] Dennis Frudden had stated therein that "as part of my normal business activity for the company, I from time to time supervise or visit. The Esquivel and Sons labor camp ----- which is managed by Mr. Esquivel for the company, which actually owns the labor camp". Dennis Frudden state that the declaration was not correct for the person that Esquivel did not manage the labor camp for the company as set forth in the declaration; that when he made the statement he must have been mistaken as to Esquivel's relationship with Frudden. General counsel then read to the witness portions of testimony given by him in that proceeding in which the witness had testified in part that Frudden had a policy regarding access to the camp which included enforcing the policy as set forth in the letter of July 29 and that he had discussed access with Mr. Esquivel and Mr. Stave, his attorney. Prior thereto, Dennis Frudden had testified that he did not tell or discuss any policy of access or non-access with Esquivel. He persisted in his statement that he did not recall discussing such policy with Esquivel and stave but did admit that he might have talked to Esquivel about it but he did not know when.

Dennis Frudden testified that the only relationship

that Frudden had with Whitney in 1975 was the agreement where by Whitney was to grow the tomato crop for Frudden and Frudden was to pick, pack, ship and sell the crop. Whitney's responsibilities related to the growing and Frudden's to the harvesting of the crop. He stated that Whitney has nothing to do with the labor contractors that Frudden might want to or xxx engage and the same holds true for Frudden. Dennis Frudden was certain that on November 7 he had completed the harvesting of the tomato crop and that at that time Frudden had agricultural employees in its employ. He testified that on November 12 he was in mexico. November 7 may have some significance for the reason that a preliminary in junction was issued on that day by Hon. Nat. A. Agliano, out of the superior court of monterey county,[20/] Said order, among other provisions, enjoined Frudden from denying access by union organizers to respondent Frudden's employees and sets forth the conditions under which access was to be permitted Dennis Frudden stated that since he had completed the harvest of the tomato crop and since Frudden had no employees at that time he had been of the opinion that the order was no longer in effect.

Mel Bassetti, one of Whitney's partners, its Ranch Manger and supervisor, testified that Whitney had grown the tomato crop for Frudden in 1975 and that in November he believed that he had three crews of three different labor contractors picking chili and that

between November 1 and November 15 he was using crews supplied by Esquviel to pick chili on the Taylor and Reynolds ranches. He also crews of other labor contractors picking peppers on other ranches at that time. Bassetti testified that Dennis Frudden had never arranged for him to harvest chili and had never suggested that he use Esquivel's services. He did state that he had contracted with Esquivel for farm labor in 1974, as well as in 1975. Bassetti stated that he was not aware of any leasehold arrangement between Frudden and Esquivel concerning the camp; that he had never had any discussions with Edward Esquivel or any one from Esquivel regarding xxx activities, the united farm workers or the western conference of teamsters; that he did not recall any request from Esquivel as to what should be done if union organizers came on to the fields of Whitney. Bassetti further testified that he did not recall ever consulting with Dennis Frudden regarding the policy to be followed if union organizers came on to the fields. He stated that Esquivel never discuss policy regarding access to the camp with him; that it was none of his business and he never discussed such matters with Esquivel. Bassetti testified that he was aware of organizational campaigns being conducted by the united farm workers and the teamsters and was concerned as to what should be done in the event that union organizers came on to the fields. He stated that he had discussed this with his foremen

to get their thinking as to what should be done should such a situation arise. However, the thinking by all parties was confused and nothing difinite was decide upon. The foremen were told that if any such situation arose they were to call him. Bassetti testified that he did not recall any such incident taking place in 1975.

3. The Issues

It would appear that there are two questions that must be dealt with in the consideration of the merits of this proceeding;

(a) Is section 20900 of the board's regulations applicable to labor camps and is a denial of access to a labor camp base on the provisions set forth in section 20900 a violation of section 1153 (a) of the act.

(b) Is a denial of access to labor organizers who who seek entry to a labor camp a violation of section 1153 (a) of the act, irrespective of the provisions of section 20900 of the board's regulations.

4. Discussion of the Issue and Conclusions

A careful reading of section 20900 leads me to the conclusion that this section the board's regulation is not and was not intended to provide access to union organizers to a labor camp and that denial of access to a labor camp to union organizers in accordance with the provisions of section 20900 does not constitute a violations of section 1153 (a) of the Act. This is evident from the very wording of the regulation whose caption reads as follows; Access to the workers in the fields by labor organizations; (emphasis added) sub-sections 5 of said regualtion permits union organizers to enter the property of an employer 60 minutes before and 60 minutes after the "start of work" and "completion of work" and for one hour "during the working day" to talk to the employees, and also it there is no established lunch break at any time "during the working day" access is limited to two organizers "for each work crew" of 30 or less workers. Obviously, section 20900 was not intended to provide access for union organizers wherever farm workers may be assembled or reside. That the union's access rights are limited is also evident from the language of sub section 2 which reads in part as follows; ". . . .organization rights must include a Limited right to approach employees on the property of an employer. . . . ." (Emphasis added). In the benchmark case of A.L.R.B. vs pandol, the california supreme court in referring to section 20900 stated that

Among those provisions is the regulation here in issue, where grants a qualified right of access to growers' premises by farm labor organizers.... under the terms of the regulation the right of access is specifically limited in purpose, in time and in place . . . . ." (Emphasis Added)[21/] . I therefore conclude that provisions of section 20900 of the board's regulations permit access to union organization for the specified purposes and during the specified times a only upon the growers fields when and where there are farm workers who are working at their assigned tasks and not to labor camps where the farm workers reside. I find that a denial of access to union organizers to a labor camp where farm workers reside, for the purpose of engaging in permissible union activities does not constitute a violation of section 20900 of the board's regulations and in and of itself cannot and does not constitute a violation of section 1153 (a) of the act.

In his complaint general counsel alleges in xxxx that respondents, by dening access to the union's ogranizers to the little waco labor camp for the purpose "of engaging in organizing activities in accordance with section 20900 of the Board's regualtions. . . . . did interefere with, restrain and coerce. . . . . their employees in the exercise of rights guaranteed in section 1152 the act, and there by did engage. In unfair labor practice affecting agriculture within meaning of section 1153(a)

and 1140.4 (a) of the act." Having found that the provisions of Section 20900 of the Board's Regulations do not apply to Labor Camps where Farm Workers Reside and that an alleged violation of Section 20900 based upon a denial of access to union organizers to such a labor camp does not in and of itself constitute a violation of Section 1153(a) of the act, I must conclude that General Counsel has failed to establish that respondents committed any unfair Labor practices as alleged and that the complaint should be dismissed and I so find.

The other question that presents itself for attention is whether a denial of access to labor organizers who seek entry to a labor camp where Farm Workers reside constitutes a violation of Section 1153(a) of the act, irrespective of the provisions of Section 20900 of the Board's Regulations. Given the existence of unusual circumstances the N.L.R.B. has found that refusal to grant access to union organizer who sought admission to a labor camp constituted an unfair labor practice. Thus, where employees were employed at a lumber camp in one instance and in a mining camp in another instance and where the employees passed their rest period as well as their working time on the employer's premises and where the camps were isolated and largely self-sufficient, the N.L.R.B. ruled that it was in unfair Labor Practice to deny access

to union organizers to these camps.[22/] But that is not the situation that was present at the little Waco Labor Camp. There the inhabitant of the camp did not pass their work time as well as their rest time in the camp and the camp was not isolated from any town nor was it self-sufficient. A situation that is perhaps more closely related to the one at hand was present in the case of N.L.R.B. vs. S. H. Grossinged, Inc.[23/] The Employer in that case operated a large rural hotel located only one and one-half miles from the nearest town. Sixty percent of the employees lived on the premises but the remainder lived in neighboring towns and drove to xxx by car or taxi. The employer refused access to its premises by non-employer union representatives. The Circuit Court in affirming a ruling by the N.L.R.B. to the effect that this constituted interference with the employees' right of self-organization found that" . . . The Majority of the employees live on the employer's premises. . . . " (emphasis added). In the case at hand, I have already found that Esquivel, being a labor contractor, is not an agricultural employer within the meaning of the act. Dennis Frudden testified that on November 12 Frudden had no agricultural employer's its employ and General Counsel introduced no evidence what so ever to rebut this. Mel Bassetti testified that in November Whitney had three crew

of three different labor contractors working at three different ranches and that to the best of his recollection between November 1 and November 15 Esquivel's workers were picking chill for Whitney at the Taylor and Reynolds ranches. Juan Huerta, testifying for the union, stated that on November 12 Farm Workers residing at the camp were working for Whitney, Noman and other ranchers and that there were Farm Workers working for Whitney who did not live at the camp but lived in King City, Greenfield and other towns in the Salinas Valley, General Counsel has adduced no evidence as to the number of Farm Workers residing at the camp on November 12 or the number of Farm Workers working for Whitney who resided at the camp on that day. As a matter of fact, according to Huerta, one of the purposes of the intended visit to the camp was to talk to the Farm Workers of the Ernest Homan ranch about an election to be held there the next day. It is therefore appearence that General Counsel has failed to adduce any evidence that would satisfy the conditions laid down by the N.L.R.B. and the Circuit Court which would warrant a finding that an unfair labor practice has been committed. Certainly the record is devoid of any proof whatsoever that on November 12 a majority of the Farm Workers working for either Whitney or Frudden were living at the camp.

General Counsel in his closing statement and in his brief urged that inasmuch as the evidence established denial of access to the union's organizers into the little Waco labor. Camp who sought to inform the Farm Worker living there of their rights, such acts should not be permitted to go unpunished if the rights of such Farm Workers are to be protected and preserued. He quoted at length from the decision of the California Supreme Court in the case of United Farm Workers vs. William Buak Fruit Company.[24/] To the effect that "A first amendment right of access . . . belongs . . . . To union organize . . . . . who seek to visit them. . . (Labor camp inhabition whether any of the Respondents violated the constitutional rights of the union's organizers by denying them access to the camp on November 12, or the constitutional rights of any of the Farm Workers who resided there on that day is not the issue. The issue is whether General Counsel by a preponderance of the credible evidence, has sustained the burden of establishing that the Respondents, or any of them, had engaged in unfair labor practices within the meaning of Section 1153 (a) of the act by reason of their denial of access to the little Waco Labor Camp as alleged in the complaint. This he has failed to do and I so find. I will therefore recommend that the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. Whitney Farms and Frudden Produce, Inc. are no at all material times have been agricultural employers within the meaning of Section 1140.4 (c) of the act.

2. Eduardo Esquivel and Ricardo Esquivel dba Esquivel & Sons, are and at all material times have been labor contractors within the meaning of Section 1682 of the California Labor Code, and are not and at all material times were not agricultural employers within the meaning of Section 1140.4 (c) of the act.

3. United Farm Workers of America, AFL-CIO, is and at all material times was a labor organization within the meaning of Section 1140.4 of the act.

4. The General Counsel has failed to establish by a preponderance of the evidence that the Respondents engaged or are engaging in unfair labor practices within the meaning of Section 1153 (a) of the act.

Upon the foregoing findings of fact, conclusions of law and the entire record and pursuant to Section

1160.3 of the act, I hereby issue the following recommended.

ORDER

It is hereby recommended that the complaint be dismissed in its entirely.

DATED: December 27, 1976.

Iruing Stone
Administrative Law Officer

FOOT NOTES

At the close of the hearing counsel for Esquivel & Sons moved to strike Ricardo Esquivel as a party on the ground that Dennis Frudden had testified that Pal and Edward Esquivel were partners doing business as Esquivel and Sons and that Ricardo was a son of Paul Esquivel. However, attorney who first appeared for Esquivel & Sons, filed an answer in which they referred to the said Respondent as "Eduardo Esquivel and Ricardo Esquivel, individually and doing business. As Esquivel & Sons." For Furthermore, at a pre-hearing conference and on re record, substituted counsel for said Respondent admitted that Eduardo Esquivel and Ricardo Esquivel doing business as Esquivel and Sons were Farm Labor Contractors engaged in agriculture in Monterey county within the meaning of Section 1682 of the California Labor Code as set forth paragraph "2" of the complaint. In view of these admissions and absent any documentary proof to the contrary will deny the motion and fund that Eduardo Esquivel and Ricardo Esquivel are doing business as Esquivel and Sons. Said counsel also moved to strike all testimony regarding Ricardo Esquivel on the ground that he was not a partner the firm of Esquivel and Sons. For the reasons above set forth deny that motion as well.

(2) At the hearing all parties consented to the substitution of Frudden Products, Inc. As the proper party

in place and stead of Dennis Frudden d/b/a Frudden Produce Company and to conform all pleadings to indicate the same. Henceforth, Respondent Frudden Product, Inc. shall be referred to as "Frudden."

(3) At the commencement of the hearing Abramson, Church Stave, by Robert M. Hinrichs, requested leave to withdraw as attorneys for Eduardo Esquivel and Ricardo Esquivel, individual and doing business as Esquivel & Sons. For the reason that possible conflict of interest might be present in view of the fact that they are also attorneys for the other two Respondents. There was no objection thereto and request was approved. Simultaneously therewith, Joseph Sullivan moved for leave to be substituted as attorney for said Respondent in place and stead of Abramson, Church & Stave. There was no objection thereto and the motion was grant.

(4) All other dates are in 1975 unless otherwise stated.

(5) Paragraph "2" of the complaint describes Whitney Farms as a "Limited Partnership." Mel Bassetti, one of the partners, testified that said Respondent was a "general partnership" and other testimony was offered by any of the parties xxx regarded there to. However, the precise nature of the partners is not germane to any of the issues herein.

(6) Section 1140.4 (c) provide that "The term Agricultural Employee . . . . shall exclude any person supplying Agricultural Workers to an employer, any farm labor contractor as defined by section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer For all purposes under this part" (emphasis added).

(7) The complaint alleges in effect that the denial of access to a labor camp constitutes a violation of section 20900 of the board's regulations. I shall address myself to this issue later on.

(8) Paragraph 4 (c) of the lease between Frudden and Esquivel obligates Esquivel to provide Frudden with production and harvesting personnel for Frudden's contracted tomato crops" on first priority basis,"

(9) Dennis Frudden testified that such permits are issued only to the owners of a labor camp and not to any operator thereof.

(10) A map of the interior of the camp attached to General Counsel's Exhibit #6 indicated that on July 29, 1975. There were 33 houses and so 20 trailers inside the camp.

(11) The lease is in writing and set forth in General Counsel Exhibit #4.

(12) The complaint is dated December 1. Since that time the Regulation dealing with union's access rights have been revised. These revision are not applicable to these proceedings and all references to Section 20900 relate to the regulation issued by the Board on August 29, 1975 (8 Cal. Administrative Code 20900).

(13) As will be observed there were two visits to the camp by the union's representatives on November 12. The complaint alleges and Verduzco and Huerta testified that the first visit took place about 4:00 p.m. and the second visit about 6:20 p.m. The testimony established that while two Deputy Sheriffs were present at the second visit there were none present at the first visit. Both deputies testified that they arrived at the camp at about 4:00 p.m. Apparently the union's witnesses were confused with respect to the time frame of reference and the first visit probably took place before 4:00 p.m. and the second visit at about 4:00 p.m.

(14) Huerta testified that the gate was closed "with chains Verduzco testified that as he and the others approached the gate some one started to open the gate when a pick-up truck driven by Ricardo Esquivel drove up with Ricardo Esquivel shouting" don't open the gate . . . . Deputy Hall

Testified that the gate was not locked and partially open xxx arrival and closed when he left.

(15) Loosely translated to mean “Undesirable”.

(16) Three was some discussion regarding the proper translation of this phrase but apparently a very free translation would seem to be “do so at your own peril.”

(17) In General Counsel’s Exhibit # 6 it should be noted that the letter refers to King City Packing Company and the labor camp of King City Packing Company. However the only testimony in the record regarding King City Packing Company is that of Dennis Frudden who testified that Ron Frudden, his brother as the sole stock holder of King City Packing Company and that Frudden was the owner of the camp. However, Dennis Frudden, acting as field superintendent for Frudden testified that this letter resulted from his discussions with Frudden’s attorney and was sent with his knowledge and approval to the district attorney. Frudden is therefore chargeable with its contents. It is also reasonable to assume that the reference in said letter to the “Labor Camp of King City Packing Company refers to the little Waco Labor Camp, herein called “The camp this is reinforced by the fact that the letter of September 24 to the district attorney (General Counsel’s Exhibit # 7)

Makers reference to the "Labor Camp of King City Packing. Also known as Frudden Packing Company, South of San Lucas".

(18) General Counsel's exhibit #7

(19) General Counsel's exhibit #5, Case No. 75-CE-138

(20) General Counsel's Exhibit #8; A.L.R.B. vs. Frudden Produce, Inc., et ano; Case No. 72085

(21) _____CAL 3RD_____, Cert. denied U.S. Supreme Court, October 4, 1976

(22) N.L.R.B. vs. Lake Superior Lumber Co., 6th Cir. 1948, 167 F2d 147; Also Alaska Barite Company, 1972, 197 N.L.R.B. 102.

(23) 2nd Cir., 1967, 372 F2d 2b.

(24) 14 Cal 3rd 902, 1975.