STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DAN TUDOR & SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner, and WESTERN CONFERENCE OF TEAMSTERS, Intervenor.	)	No. 75-CE-34-F 3 ALRB No. 69

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

An election was held on September 8, 1975 and the unfair labor practice charges filed by the UFW arose from the organizing campaign surrounding that election.

The unfair labor practice charges and the objections to the election were consolidated for hearing but the election objections will be treated in a separate opinion.

Administrative Law Officer John B. Weldon, Jr. presided over the hearing and found that respondent had committed one unfair labor practice and recommended dismissal of the remaining charges. All parties filed timely exceptions. Having reviewed the record, we adopt the ALO's findings, conclusions and recommendations to the extent they are consistent with this opinion.

We agree with the hearing officer that under the circumstances of this case, supervisor Ruiz's statement to workers to vote for the Teamsters did not constitute an unlawful threat. The statement was apparently an isolated comment made in the course of a casual conversation.

We cannot, however, adopt the hearing officer's reasoning insofar as he bases his conclusion upon an employee-witness's testimony that he did not feel afraid or threatened by the supervisor's conduct. Such subjective testimony is not directly relevant to charges of interference with employee rights. The correct standard to be applied in analyzing such unfair labor practice charges is objective: whether the employer engaged in conduct which may reasonably be said to constitute a threat.

We adopt the ALO's finding that supervisor Meza engaged in unlawful surveillance of respondent's employees. Our dissenting colleague finds that the supervisor was legitimately present during lunchtime in the area where the organizers were conversing with workers, citing Tomooka Brothers, 2 ALRB No. 52 (1976). We note, however, that although the supervisor's presence in the area may have been legitimate, the evidence supports the conclusion of the hearing officer that Meza intentionally interjected his presence and listened to the conversations between the organizers and the workers. Thus, the standard of Tomooka Brothers is met in that the supervisor was present for the purpose of surveillance.

REMEDIES

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

(1) Respondent shall be ordered to mail copies of the attached notice to all harvest employees who were employed by respondent in 1975 and 1976;

(2) A representative of the respondent or a Board agent shall read the attached notice in appropriate languages to the assembled employees of the respondent on company time. The reading or readings shall be at such times and places as are specified by the regional director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the notice or their rights under the Act. The regional director shall determine a reasonable rate of compensation to be paid by the respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question and answer period.

ORDER

Respondent Dan Tudor & Sons, its officers, agents, successors and assigns, shall:

(1) Cease and desist from:

(a) Surveilling employees when they engage in protected activities.

(b) In any other manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Labor Code § 1152.

(2) Take the following affirmative action:

(a) Post copies of the attached notice at times and places to be determined by the regional director. Copies

of the notice shall be furnished by the regional director in the English, Spanish, Tagalog and Ilocano languages. The respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(b) Mail copies of the attached notice in all appropriate languages, within 20 days from receipt of this order, to all employees employed during the payroll periods which include the following dates: 1975 and 1976 harvest seasons.

(c) A representative of the respondent or a Board agent shall read the attached notice in the English, Spanish, Tagalog and Ilocano languages to the assembled employees of the respondent on company time. The reading or readings shall be at such times and places as are specified by the regional director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the notice or their rights under the Act. The regional director shall determine a reasonable rate of compensation to be paid by the respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question and answer period.

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

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thereafter in writing what further steps have been taken in compliance with this Order.

Dated: August 24, 1977

ROBERT B. HUTCHINSON, 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. This Board has told us to send out, and read 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 spy on you while you are talking to the union people.

Dated:

DAN TUDOR & SONS

By: _____
Representative (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

Chairman Brown, dissenting:

I disagree with the ALO's finding that the conduct of the employer's supervisor, Art Meza, on September 1, 1975, amounted to intentional surveillance of employees engaged in protected activities and for that reason would dismiss the complaint in its entirety. My reading of the record makes it clear that Meza was legitimately present in the area where the organizers tried to talk to employees during the lunch hour. In Tomooka Brothers, 2 ALRB No. 52 (1976), in a situation similar to here where an employer walked back and forth within some ten feet of organizers and workers during lunch, we held that:

> The burden is on the party alleging illegal surveillance to present evidence to warrant the conclusion that the employer was present at a time when union organizers are attempting to talk to workers for the purpose of surveillance. (Citations omitted.)

A finding of illegal surveillance must be grounded on more than a showing that the supervisor was present in an area where he was entitled to be during the time organizers are attempting to speak to workers in the same area.

The majority contends that, though Meza's presence may have been for legitimate purposes, he "intentionally interjected his presence and listened to the conversations between the organizers and the workers."[1/] The only testimony on this incident, however, consists of a UFW organizer's[2/] assertion that: 1) when they arrived to talk to employees of the ranch at the beginning of the lunch hour, the supervisor was there "walking around listening to what we were saying"; 2) a worker was nervous about talking to organizers in close proximity to a supervisor; and 3) the supervisor "kind of followed" the organizer when she moved to get away from him. None of this testimony amounts to more than a description of the inevitable problems that will emerge when organizing is conducted in the presence of supervisors; they will see what goes on, they will hear what goes on and they will most likely make both organizers

[1/]It is interesting to note that nowhere in the ALO's discussion of the evidence, and in the conclusions he draws from that evidence (ALO's Decision, pp. 18-20), does he use the word "intentional". Rather, he found the conduct of Meza violative of the Act because his "nearby presence" tended to "adversely affect the employees". (Supra, p. 19) Only at the end of his decision, in the summation of his findings, does he state that the supervisor "did intentionally follow and listed (sic) to the UFW organizers...." (Supra, p. 27) No additional evidence is adduced by the ALO to support this new finding of intentional conduct.

[2/]For the following reason, I agree with the ALO's assessment that the organizer's testimony is unclear. On cross-examination, she first said that on her arrival Meza was following her. Then when asked how close he was to her, she said she was sitting and he was standing five feet away. Only when she got up and moved away did Meza "kind of follow" her. This seems to be weak evidence upon which to conclude that Meza "intentionally interjected" himself into the area of the conversations.

and employees nervous. The presence of supervisors in such a setting, however, does not constitute an unfair labor practice,

Dated: August 24, 1977

GERALD A. BROWN, Chairman

BEFORE THE

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
DAN TUDOR AND SONS	)	DOCKET NO. 75-CE-34-F
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
and	)	
	)	
WESTERN CONFERENCE OF TEAMSTERS.	)	

DECISION

Statement of the Case

John B. Weldon, Jr., Administrative Law Judge: On September 3, 1975, the United Farm Workers of America, AFL-CIO ("UFW") and the Western Conference of Teamsters and its affiliated Locals ("Teamsters") each filed a petition for certification under Section 1156.3 (a) of the Labor Code requesting a representation election among all of the agricultrual employees of Dan Tudor and Sons {"Respondent"). On September 8, 1975, a representation election was conducted among the Respondent's agricultural employees in which the tally was: Teamsters - 106 votes, UFW - 51 votes, no labor organization - 7 votes, 13 challenged ballots, and 2 void ballots. On September 14, 1975, the UFW served the charge in this case on the Respondent and, on the following day, the charge was filed with the Fresno Regional

Office of the Agricultural Labor Relations Board ("Board"). The complaint was issued on October 8, 1975, on behalf of the General Counsel of the Board by the Regional Director of the Fresno Region. The complaint, which was amended at the commencement of the hearing, alleges that the Respondent has engaged in unfair labor practices within the meaning of Section 1153(a) and (b) of the Labor Code. The Respondent filed an answer to the complaint, which was also amended at the commencement of the hearing, denying the commission of the alleged unfair labor practices.

The hearing was held before me on November 6, 7, 18, '19 and December 8, 1975. Briefs were timely filed on February 11, 1976, by the General Counsel and by the Respondent and have been duly considered.

Upon the entire record and based upon my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. The Employer Involved

It is admitted that the Respondent was an agricultural employer within the meaning of Section 1140.4 (c) of the Labor Code at all times material hereto.

II. The Labor Organizations Involved

It is admitted that the UFW and the Teamsters have been labor organizations at all times material hereto within the meaning of Section 1140.4 (f) of the Labor Code.

III. The Alleged Unfair Labor Practices

A. The Issues

The principal issues presented in this case are:

1. Whether on or about August 28, 1975, and at all times thereafter, at its Kern County premises, the Respondent, through John Buksa, its general manager, promulgated a no-solicitation rule which was invalid in that it prohibited solicitation during non-working hours and during non-working time.

2. Whether on or about August 28, 1975, and at all times thereafter, at its Kern County premises, the Respondent, through John Buksa, its general manager, discriminatorily enforced a no-solicitation rule by granting Teamster representatives, but denying to representatives of the UFW, access to its premises for purposes of engaging in organizational activities with respect to its employees.

3. Whether on or about August 29, 1975, at its Kern County premises, the Respondent, through John Buksa, its general manager, promulgated a no-solicitation rule which was invalid in that it prohibited solicitation during non-working time and during non-working hours.

4. Whether on or about August 29, 1975, at its Kern County premises, the Respondent, through John Buksa, discriminatorily enforced a no-solicitation rule by granting to representatives of the Teamsters, but denying to representatives of the UFW, access to its premises for purposes of engaging in organizational activities with respect to its employees.

5. Whether on or about August 30, 1975, at its Kern County premises, the Respondent, through John Saylor and Jerry Tabuyo, two supervisors, promulgated a no-solicitation rule which was invalid in that it prohibited solicitation during non-working time and during non-working hours.

6. Whether on or about August 30, 1975, at its Kern County premises, the Respondent, through John Saylor and Jerry Tabuyo, two supervisors, discriminatorily enforced a no-solicitation rule by granting to representatives of the Teamsters, but denying to representatives of the UFN, access to its premises for purposes of engaging in organizational activities with respect to its employees.

7. Whether on or about August 30, 1975, at its Kern County premises, the Respondent, through Jerry Tabuyo, a supervisor, engaged in surveillance of its employees who were meeting with representatives of the UFW.

8. Whether on or about August 30, 1975, at its Kern County premises, the Respondent, through John Buksa, threatened its employees with loss of pay if they continued to speak with UFW representatives.

9. Whether on or about September 1, 1975, at its Kern County premises, the Respondent, through Art Meza, a supervisor, engaged in surveillance of its employees who were meeting with representatives of the UFW.

10. Whether on or about September 2, 1975, at Delano High School in Delano, California, the Respondent, through Fred

In accordance with *his* stated intention, Mr. Buksa sent a letter, dated August 19, 1975, to the UFW which provided:

> This is in response to your request that representatives of your Union be allowed to enter our fields in order to contact our employees for organizational purposes. We believe that such activity, even if limited to break periods, would be disruptive and a violation both of our rights and those of our workers. No other union will be granted access for such purposes and we believe our position is fully consistent with the Agricultural Labor Relations Act and is in the best interest of all concerned. (General Counsel Exhibit 2).

On August 19, 1975, the same date the letter confirming the Respondent's access policy was sent to the UFW, the following letter was mailed to the Western Conference of Teamsters by Mr. Buksa:

> This is in response to your letter dated July 28, 1975, in which you state that authorized agents of your Union will be visiting our property in accordance with Article IS of our Agreement with your Union. It is unclear from your letter what the purpose of these visits will be. However, Article 18 limits access by Union representatives to where such access is necessary "to conduct legitimate Union business." We do not believe that solicitating employees to sign petitions or cards for an election" under the new Agricultural Labor Relations Act constitutes "legitimate Union business." Accordingly, we will deny access to your representatives for such purposes.
>
> Where your representatives need to visit company properties to conduct legitimate Union business . (such as administering the contract) they will be granted access if:
>
> 1. they have notified us and we have given thorn approval before they enter into our properties;
>
> 2. their visitation is at a reasonable time and place;
>
> 3. their visitation does not interfere with or interrupt operations;

Aguino, a supervisor, lent its support to the Teamsters by attending a Teamster sponsored organizational meeting.

11. Whether on or about September 6, 1975, at its Kern County premises, the Respondent, through Frank Ruiz, instructed its employees to vote for the Teamsters.

12. Whether on or about September 0, 1975, at its Kern County premises, the Respondent, through Jerry Tabuyo, a supervisor, sponsored a Teamster meeting and urged its employees to vote for the Teamsters in the representation election conducted that day.

B. The No-Solicitation Rule and its Discriminatory Application.

As the basis for the alleged unfair labor practices set forth in Paragraphs 8(d)(l) and 8(d)(2) of its amended complaint (issues one and two listed above), the General Counsel relies upon the Respondent's stated lunch-time access policy as described to Glenn Rothner, a UFW legal worker, during a telephone conversation with John Buksa, the Respondent's general manager, on August 11, 1975, over two weeks before the California Agricultural Labor Relations Act ("Act") became effective. During this telephone conversation, Buksa informed Rothner that it was the Respondent's policy with regard to access to keep all union organizers off of the Respondent's property at all times and that this policy would subsequently be confirmed to the UFW by letter. Rother then asked Buksa if the Respondent was also sending the same type of letter outlining its access policy to the Teamsters, with whom the Respondent had a collective bargaining agreement, and Buksa replied affirmatively.

A. they do not harass or disturb our employees.

All requests for visitation should be approved in advance by one of the following individuals:

If you have any questions on this, please don't hesitate to let me know. (General Counsel Exhibit 6)(Emphasis added).

Thus, the Respondent's stated policy on access to its premises by labor organizations for organizational purposes as initially announced to the UFW during the August 11 telephone call was made equally applicable to both the UFW and the Teamsters, with no apparent distinction made between the two rival unions. As to the issue of whether the Respondent's stated access policy as set forth above was overly broad and in conflict with the United States Supreme Court's decision in Babcock and Wilcox Co., 351 U.S. 105, 76 Sup. Ct. 679, 100 L.Ed. 975 (1956), and its subsequent progeny, it must be noted that the evidence presented by the General Counsel during this hearing was devoid of meaningful testimony establishing the absence of alternative means of access available to the two competing labor organizations for meeting and talking with the Respondent's employees. It must also be noted that both letters setting forth the Respondent's access policy were drafted and mailed to the UFW and the Teamsters prior to the date that the Board conducted the public hearings on the general access question and subsequently promulgated its access regulation, Emergency Regulation 20900.

When questioned concerning the actual access policy followed by the Respondent subsequent to the letters of August 19, 1975, Buksa testified that he " ... tried to keep anything

during working hours off; campaigning is legitimate if done after working hours." (RT 113). This policy was more clearly defined by John Saylor, a supervisor employed by the Respondent, who testified that Buksa instructed him to not allow union organizers access to the Respondent's premises for campaign activity during "working hours", but he should not stand in their way if they insisted on coming onto the Respondent's property. When asked to explain the term "working hours", Saylor interpreted it to mean actual hours of work, specifically excluding the two daily break periods and lunch.

From the testimony of Lorraine Mascarinas, the organizer who had primary responsibility on the behalf of the UFW for organizing the Respondent's employees, it was established that the UFW had regularly gained access to the Respondent's property since January of 1975. Ms. Mascarinas testified that she visited the Respondent's labor camp, which functioned on a year-round basis, frequently since January of 1975 and, during the middle of July when the camp contained approximately sixty to seventy persons, she would visit the camp as often as three to four times a week. Furthermore, Ms. Mascarinas stated that during the 1975 harvesting season, she talked to the workers in the Respondent's fields "quite a few times." Concerning July of 1975, she testified that she would visit the workers in the Respondent's fields approximately two times a week and the frequency of her visits increased to maybe three times a week as the date of the Respondent's representation election neared. In. this regard, Ms. Mascarinas testified as follows:

> Q. (By Mr. Smith] So the pace picked up and you were going about two times a week in July, so would you say almost once a day:
>
> A. No, maybe about three timer; a week is probably about right. Since we could only go in at lunch time with the different crews as different day. At the very least we visited a crew at the most, maybe two times a week.
>
> Q. So each crew two times a week because they were in different locations?
>
> A. Yeah. (RT 190-191) (Emphasis added) .

Additionally, it must be noted that Ms. Mascarinas testified that the UFW organizers had never attempted to talk with the Respondent's employees on the Respondent's premises either before the work day commenced or in the afternoon following the conclusion of work as permitted under the Board's access regulation.

Despite the Respondent's initial promulgation of a solicitation policy on August 11, 1975, which precluded access to the Respondent's premises at any time by union organizers for organizational purposes, I find that the General Counsel failed to establish that such a broad policy was ever actually effectuated by the Respondent or that the announcement of such a broad policy to either the Teamsters or the UFW on August 19, 1975 adversely affected the unions' efforts to organize the Respondent's employees for collective bargaining purposes. Additionally, it appears clear from the testimony presented during the course of the hearing on these alleged unfair labor practices that both the UFW and the Teamsters recognized that 'the Respondent was not enforcing its so-called no-solicitation rule as stated in its

letters of August 19, 1975 to the respective unions, particularly following the adoption of the emergency access regulation by the Board on August 29, 1975.

As to the alleged discriminatory application of the Respondent's no-solicitation rule by granting access to the Respondent's premises to the Teamsters for organizational purposes, while denying such access to the UFW, I find that the Respondent did not discriminatorily enforce its access policy to its premises against the UFW as charged, but rather, that the UFW and the Teamsters had essentially equal opportunities for access to the Respondent's premises for organizational purposes.

With regard to the General Counsel's allegations set forth in Paragraphs 7 (a)(1) and 7(a)(2) of its amended complaint pertaining to events which allegedly occurred on August 29, 1975, including the appearance of *a* Kern County Sheriff's car at the Respondent's premises during the lunch break (issues three and four listed above), the General Counsel implicitly conceded through the introduction of General Counsel's Exhibit 14 that the incidents referred to in these paragraphs of its amended complaint occurred on August 19, 1975, prior to the effective date of the Act, Although Ms. Mascarinas, the General Counsel's primary witness as to this particular allegation, appeared quite confused as to the date of this occurrence, she did testify that "I think it was August or the end of August around the 18th . . ," (RT 157) and this was confirmed by John Saylor, a supervisor for the Respondent, who testified that the events complained of in these paragraphs of the amended complaint occurred on

August 19, 1975. As to the alleged discriminatory application of the Respondent's no-solicitation rule against the UFW on this date, the record is devoid of any testimony .establishing that the Teamsters gained access to the Respondent's premises which was denied to the UFW and, in fact, Ms. Mascarinas admitted that the UFW organizers did enter the Respondent's fields on August 19 and talk with the workers during their lunch break.

Concerning the General Counsel's alleged commission of unfair labor practices by the Respondent as set forth in Paragraphs 7(d)(l), ?(d)(2), 7(e)(l) and 7(e)(2) of its amended complaint (issues five and six listed above), it became apparent .during the course of the hearing that all of these allegations arose out of a single incident which occurred on August 30, 1975, when four or five UFW organizers arrived at approximately 11:45 A.M. at a location on the Respondent's premises where one of its four harvesting crews, which consisted of approximately forty or fifty workers, was working prior to the commencement of its lunch break.

Despite a suggestion by one of the organizers to wait until the lunch break horn was sounded for the crew before entering the field, Paul Wolf, a legal worker for the UFW accompanying the organizers, suggested that they enter the field even though the workers were still at work. Following Wolf's suggestion, the organizers attempted to enter the field at approximately 11:50 A.M. and as they approached the edge of the field where the crew was working, they were met by John Saylor, one of the

Respondent's supervisors who functioned as the "quality control man." Saylor informed the organizers thay they were not allowed **to** come onto the Respondent's property until the lunch break, which would commence in such a few minutes. In response to Saylor's statement, Wolf read to Saylor a section of the Board's emergency access regulation which had been adopted the day before and stated that the organizers had the right to. enter the Respondent's premises since the crew was going to break for lunch very soon. Wolf described the events which immediately followed in the following manner:

> A. ... He[Saylor] was frustrated. He frowned at me. He said nothing more, He just turned around and walked away.
>
> Q. Then what did you all do?
>
> A. Well, we continued to walk down the road, the dirt road, now. This is a dirt road that is on the Tudor property.
>
> We started talking to the Tudor workers, and the lunch break was called almost immediately, and we continued to talk to the workers.
>
> First we talked to the man to [sic] the small sheds where they were packing, and then when they broke for lunch, they would go on to the vines, and we followed them, and we talked to them as they ate their lunch. (RT 516).

Mr. Wolf's testimony in this regard was confirmed by both Lorraine Mascarinas, a UFW organizer accompanying him on August 30, and John Saylor.

Based on this testimony, it becomes readily apparent that neither John Saylor nor Jerry Tabuyo, the Respondent's two supervisors with this crew, promulgated an invalid no-solicitation rule which prohibited solicitation by labor, organizations during

non-working Lime and during non-working hours as alleged by the General Counsel in Its amended complaint. Indeed, it is undisputed that the UFW organizers did gain access to the Respondent's premises for the purpose of talking with the workers in this crew before, during and after the lunch break on August 30, 1975.

When the lunch break horn sounded at approximately 12:00 P.M., Tabuyo, one of the supervisors, stopped inspecting the quality of the packed boxes of grapes at the nine to twelve packing, stands spread along the "avenue" at the end of the rows of grape vines and sat down to eat his lunch in the shade underneath a grape vine with his daughter, who was one of the workers in his crew. He finished eating lunch approximately twelve to thirteen minutes later and, when he noticed that the packers in the crew were resuming work at the various packing stands (apparently since they were being paid at a premium box rate), he walked back to the stands and continued his inspection duties. Both Ms. Mascarinas and Mr. Wolf testified that they continued talking with the workers in the crew after the horn sounded which indicated the end of the lunch break and after the workers resumed harvesting and packing the grapes. When the UFW organisers left the Respondent's premises on August 30, it was approximately 12:45 P.M., thirty minutes after the workers in the crew had gone back to work.

While several witnesses did testify with little specificity as to particular dates and times of Teamster organizers talking and distributing leaflets to the Respondent's employees during working hours, it seems apparent that the UFW also

solicited support from the Respondent's workers during working hours as evidenced by the testimony pertaining to August 30, as discussed above. Based upon the confused nature of the testimony in this regard, it cannot be said with any degree of certainty that Teamster organizers talked with the Respondent's emp3oyo.es during working hours for campaigning purposes, as opposed to servicing its collective bargaining agreement with the Respondent more frequently than did the organizers for the UFW.

C. Surveillance of Protected Activity by Tabuyo

As the foundation for the alleged surveillance of protected activity by the Respondent on August 30, 1975, through the conduct of supervisor Jerry Tabuyo as set forth in Paragraph 7(f) of its amended complaint (issue seven listed above), the General Counsel complains of the activities of Mr. Tabuyo between" the time he finished eating his lunch at approximately 12:13 P.M. and the time the UFW organizers left the Respondent's premises at 12:45 P.M.

Based upon the uncontradicted testimony, it was established that the "normal" lunch break for the Respondent's harvesting crews, with the exception perhaps of the camp crew under the supervision of Fred Aguino, lasted approximately fifteen minutes and that as the individual workers would finish eating their lunch, they generally resumed working. The main thrust of the UFW organizers' contact with the employees during the lunch break occurred as the employees were spread out underneath the shade of the vines eating their lunches. While they were eating their lunches, the organizers would attempt to approach

the workers and inform them of the organizational benefits of the UFW.

Since the workers picked the grapes and then brought them periodically out to the end of the rows for packing, the packing stands where this latter function was accomplished were located at the end of the rows close to where the pickers were working. When Mr. Tabuyo finished eating his lunch, *he* noticed that several packers had returned to work at the stands, whereupon he walked over to the stands "to see to it that the people 'are packing, grading the grapes right and to see that they are cleaning the grapes." (RT IV 49).

The alleged surveillance of the UFW organizers and their conversations with the workers by Tabuyo occurred after he finished his lunch, as he was walking along in the avenue at the end of the rows where the packing stands were located. Due to the location of the packing stands in relation to where the workers were picking the grapes, it would have been nearly impossible for Tabuyo to resume his inspection duties at the packing stands as they were spread along the avenue without looking down the rows where some of the workers were finishing their lunches and where others had begun working again. Since the organizers were also in these rows talking with the workers, Tabuyo would necessarily have also noticed some of the UFW organizers, as lie so admitted.

When the fact that only two of the four or five UFV; organizers present on the Respondent's premises contended that Tabuyo' s conduct was surveillance, of protected activity is

coupled with the admission by one of these two organizers that he saw Tabuyo only twice from a distance of thirty yards, it becomes apparent that Tabuyo's actions did not amount to intentional surveillance of protected activity by the Respondent's employees. The fact that Mr. Tabuyo'5 sporadic observations occurred in the performance of his job duties was further confirmed by the testimony of Ms. Mascarinas and Mr. Wolf, both of whom testified that they were talking to employees who had resumed working when they noticed Mr. Tabuyo pass by. Additionally, any adverse impact of Mr. Tabuyo's attention upon the exercise of the worker's rights must be considered de_ minimis since the two employees with whom Ms. Mascarinas and Mr. Wolf were talking both apparently signed UFW authorization cards, notwithstanding the fact that Tabuyo apparently observed them talking with the organizers.

D. Employees' Threatened Loss of Pay

The allegation that John Buksa, the Respondent's general manager, threatened the Respondent's employees with loss of pay if they continued to speak with representatives of the UFW, as set forth in Paragraph 7 (b) of the General Counsel's amended complaint (issue eight listed above), also arose on August 30, 1975, after the four or five UFW organizers had been speaking with the Respondent's harvesting crew under the supervision of Jerry Tabuyo for nearly forty-five minutes.

At approximately 12:35 P.M., after Tabuyo's crew had resumed work following the lunch break and while the UFW representatives were still attempting to speak with the Respondent's

employees, Mr. Buksa drove up whore the crew was working. As Buksa walked into the field, he passed by Lorraine Mascarinas, one of the organizers, standing in the avenue on the Respondent’s premises and said hello. At this same time, the UFW representatives had apparently decided to leave the Respondent's premises and Annie Morales, another organizer, motioned for Paul Wolf, the UFW legal worker, to come out of the field where he had been talking with the Respondent's employees who had gone back to work. As Wolf neared the edge of the Respondent's field along the dirt road, he came upon Buksa and the two apparently exchanged introductions. While the preface to the conversation between. Buksa and Wolf could not be recalled, Wolf testified that Buksa stated in a congenial tone of voice and in terms of prospective application, "If you stay here [or if you don't leave], I won't pay my workers for the time you are here." (RT 539). The conversation apparently continued as Buksa, Wolf and Annie Morales walked toward the edge of the Respondent's property with Wolf informing Buksa that they were leaving and inquiring if Buksa was going to cut the workers' pay off for the time that the organizers had been on the premises, since there had been no prior notice of this policy. Buksa laughed and told Wolf "not to worry about it." Thereafter, the UFW representatives entered their car and left

Even though Lorraine Mascarinas was walking nearby, she testified that she did not hear Buksa say anything to Wolf More importantly, there was absolutely no evidence introduced,

assuming Buksa made the statement to Wolf, that any of the workers in the crew heard his comment or that it was, in fact, carried out by the Respondent. Contrary to the General Counsel's allegation in Paragraph 7(b) of its complaint that Buksa's threat was made to the Respondent's employees, the evidence quite clearly established that the statement was made to a

single UFW legal worker. In addition, there was no evidence establishing that Buksa's comment to Wolf deterred the UFW organizers from subsequently attempting to speak with the Respondent's employees on its property and, in fact, Ms. Mascarinas testified that the UFW organizers' visits to the Respondent's crews increased during the next week as the representation election neared.

E. Surveillance of Protected Activity By Supervisor Art Meza

As the sole basis for the allegation set forth in Paragraph 7(c) of the General Counsel's amended complaint (issue nine listed above) concerning alleged surveillance of protected activity by supervisor Art Meza on September 1, 1975, Lorraine Mascarinas testified that approximately one week before the representation election held on September 8, 1975, she and Annie Morales visited Mr. Meza's harvesting crew during the lunch break.

Despite conflicting testimony by Ms. Mascarinas, it appears that while she was talking to a worker during the lunch break, Mr. Meza was walking in the general vicinity of Ms. Mascarinas and listening to her conversation with one or more

workers. When Annie Morales noticed Meza listening, she engaged him in a conversation and distracted his attention from Ms. Mascarinas whereupon the latter attempted to continue talking to the workers and obtaining signatures on authorization cards.

Notwithstanding thin attempted summarization of Ms. Mascarinas[1] testimony, I find it conflicting in two important respects. First, Ms. Mascarinas initially testified that Mr. Meza did make numerous comments to her in a loud voice while she was attempting to talk with the workers which inhibited her efforts of speaking with the Respondent's employees. However, on cross-examination by counsel for the Respondent, Ms. Mascarinas testified that Mr. Meza did not say anything to her at all. Second, on direct examination by counsel for the General Counsel, Ms. Mascarinas testified that despite Mr.- Meza's attention, she was able to obtain the worker's signature on an authorization card and, on cross-examination, she amplified her testimony by stating that the workers informed her they would not talk with her while Meza was standing nearby.

While these events could have perhaps been clarified by the testimony of either Annie Morales or Art Meza, neither party to this proceeding chose to call these persons as witnesses and, therefore, on this issue, *I* am left with the sole testimony of Ms. Mascarinas which does establish that the nearby presence of supervisor Meza while she was talking with the employees in the crew did tend to adversely affect the Respondent's employees in the exercise of their rights provided in Section 1152 of the Labor Code. It must also be noted that

the Respondent made no attempt to explain Meza's close proximity to Ms. Mascarinas while she was talking with the Respondent' s employees.

F. Supervisor's Presence at Teamster Sponsored Organizational Meeting

In Paragraph 8(a) of its amended complaint (issue ton listed above), the General Counsel alleged that on or about September 2, 1975, the Respondent, through the conduct of Fred Aguino, a supervisor, lent support to the Teamsters by attending a Teamsters sponsored organizational meeting at Delano High School in Delano, California, in violation of Section 1153(b) of the Labor Code. After carefully reviewing the entire transcript of this hearing, together with the General Counsel's post-hearing brief, I found absolutely no evidence nor any discussion supporting the allegations contained in this paragraph of the amended complaint.

G. Instruction of Respondent's Employees to Vote For The Teamsters

In Paragraph 8(b) of its amended complaint (issue eleven listed above), the General Counsel alleged that on or about September 6, 1975, Frank Ruiz, Sr., one of the Respondent's supervisors, instructed the Respondent's employees to vote for the Teamsters in the representation election scheduled for September 8, 1975.

As the foundation for this allegation, the General Counsel relies upon the testimony of one of the Respondent's employees, Alejandron Selines, pertaining to a brief conversation among Mr. Ruiz, Sr. and four of the Respondent's employees,

David Ruiz, and Frank Ruiz, Jr., two of *the* supervisor's Sons, and Victor Corpus and Mr. Selines, which apparently occurred on September 5, 1975, a day earlier than as alleged in the complaint.

At approximately 10:30 A.M. on Friday, September 5, 1975, the four employees were talking together while waiting for Mr. Ruiz, Sr. to arrive, to give them instructions concerning the morning's work. Upon Mr. Ruiz' arrival, lie informed the four young men not to move, some empty packing boxes to another location as originally scheduled because the work would continue in the current area since the representation election was scheduled for the following Monday and the Respondent did not want the employees to have to travel any further than necessary to vote. After giving these instructions, Mr. Ruiz stated, "So when you go to the elections, you guys vote Teamsters." (RT 411). In response to this statement by his father, Frank Ruiz, Jr. asked, "What if people want to vote for the other union?" (RT 411). Mr. Ruiz replied, "I don't know." (RT 411) .

It must be noted at this point that while Mr. Selines testified during the course of the hearing that Mr. Ruiz' last statement was "I don't know. I am just telling you what to do" (RT 411), this testimony was contradicted by Mr. Selines[1] sworn declaration dated September 8, 1975, which omitted the statement "I am just telling you what to do." (RT 429). This discrepancy was explained by Mr. Selines on cross-examination by counsel for the Respondent in the following manner: "Well,

at the time [the declaration was made] I guess I thought that **is** what I had heard." (RT 429).

When questioned on re-direct examination by counsel for the General Counsel, concerning whether he felt threatened by Mr. Rui?,[1] statement, Mr. Selines testified as follows :

> Q. Did you feel threatened at all when he [Mr.Ruiz] told you that?
>
> A. No, I didn't.
>
> Q. Were you afraid of what might happen if you did vote for the Teamsters?
>
> A. No.
>
> Q. Were you afraid of what might happen if you voted for the UFWA?
>
> A. No.
>
> Q. Can you explain why that [the statement "All four of us took to mean we would be fired, if we voted for the UFWA."] was in here [the declaration of September 8, 1975] , then?
>
> A. No, I can't explain it.
>
> Q. Was that your feeling at the time that you wrote this declaration of September 8th?
>
> A. Yes, if I put it down.
>
> Q. But now that you look back on it, you don't feel that you would have been fired, is that right?
>
> A. Yeah, I don't feel that I would have been fired, no. (RT 441-442) .

Thus, from Mr. Selines' own testimony, it is clear that he did not feel threatened or intimidated by Mr. Ruiz[1] statement that the four employees should vote for the Teamsters in the upcoming representation election.

H. Respondent's Sponsorship *of.* Teamster Meeting on September 8, 1975

In Paragraph 8(c) of its amended complaint (issue twelve listed above), the General Counsel alleged that on or about September 8, 1975, the Respondent, through the conduct of Jerry Tabuyo, sponsored a Teamsters meeting and urged its employees to vote for the Teamsters in the representation election held that day. After thoroughly reviewing the transcript and the General Counsel's brief, I find that the General Counsel neither introduced any evidence during the hearing nor discussed this allegation of its complaint.

I. ANALYSIS AND CONCLUSIONS

It is clear, of course, under analogous' NLR3 precedent that in an unfair labor practice proceeding, the General Counsel has the burden of proving by a preponderance of the evidence that the allegations against the Respondent as set forth in the complaint are true. See, Robert M. Anderson d/b/a/ Anderson Plumbing and Heating Co., 203 NLRB No. 5 (1973); DSL Mfg. Inc. , 202 NLRB 970 (1973) .

From a careful review of the voluminous record in this case and of my opinions as to the credibility of the various witnesses, it became quite clear that the General Counsel failed to satisfy this burden of proof as to the allegations set forth in Paragraphs 7(d)(l), 7(d)(2), 7(e)(l), 7(e)(2), 8 (a), 8(c), 8(d) (1) and 8(d) (2) of its amended complaint. The General 'Counsel did not establish by a preponderance of the evidence that the Respondent, through the actions of its supervisorial personnel, engaged in the conduct as alleged in these paragraphs

of the complaint. Accordingly, as to these specific allegations I find that the Respondent did not violate Section;; 1153 (a and (b) of the Labor Code.

As to the allegations set forth in Paragraphs 7 (a) (1) and 7(a)(2) of the General Counsel's amended complaint, it was proven during the course of the hearing that the specific: events complained of occurred on August 19, 1975, prior to the effective date of the Act, and not on August 29,'1975, as alleged. Despite the testimony and the General Counsel's own Exhibit 14 which established that these events did take place on August 19, the General Counsel continued to argue in its post-hearing brief that the incident referred to in these paragraphs of its complaint occurred on August 29. and, therefore, the General Counsel did not address the issue of the applicability of the Act's unfair labor practice sections to conduct occurring prior to the effective date of the' Act. Not-withstanding this deficiency by the General Counsel, the Respondent's brief fully considered this issue and I find the authority cited therein controlling on the question of the "pre-effective date application" of the Act's unfair labor practice provisions.

In this regard, it is clear that the California courts have long followed the general principle that every statute will be construed to operate prospectively and will not be given retroactive effect unless the intention that it should be given such effect is clearly expressed by the legislature. See, e.g. , Reeves v. Superior Court of San Mateo County, 36

Cal. App.3d 291, 111 Cal. Rptr. 390 (1973).' Moreover, there is a general presumption that statutory changes or enactments do not apply retroactively unless; the legislature expresses an intent to the contrary. Wilke & Holzheiser, Inc. v. Dept. of Alcoholic Bev. Control, 65 Cal.2d 349, 420 P.2d 735, 55 Cal. Rptr. 23 (19G5); Parking Authority of Sacramento v. Nicovich, 32 Cal. App.3d 420, 108 Cal. Rptr. 137 (1973); Coast Bank v. Holmes, 19 Cal. App.3d 581, 97 Cal. Rptr. 30 (1971). In this instance, I find nothing which, indicates that the Legislature in adopting the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 intended for the Act's unfair labor practices provisions to have any application to conduct which occurred prior to August 28, 1975. Therefore, as to the Respondent's conduct prior to August 28, 1975, the effective date of the Act, I find that there v/as no violation of Section 1153 (a) of the Labor Code.

With respect to the alleged surveillance of protected activity by the Respondent on August 30, 1975, through the actions of supervisor Jerry Tabuyo as set forth in Paragraph 7(f) of the complaint, I find that the General Counsel failed to establish that Mr. Tabuyo's conduct was undertaken for the purpose of seeking information on UFW activity or for the purpose of interfering or creating the impression of interference with the Respondent's employees in the exercise of their rights as guaranteed by Section 1152 of the Labor Code. On the contrary, it was established during the hearing that Mr. Tabuyo's limited observation of the UFW organizers as they talked with

one or two of the Respondent's was nearly unavoidable under the particular circumstances at the time and occurred after the harvesting crew had resumed working following its lunch break. The General Counsel's reliance upon the holding of Rish Equipment Company, 169 NLRB 129 (1968) , is misplaced since that decision involved conduct by the Respondent's supervisors which v/as clearly intentional surveillance of protected activity, as opposed to the mere incidental observation by Mr. Tabuyo. As recognized by the Fifth Circuit in NLRB v. Mueller Brass Co., 509 F.2d 704 (5th Cir. 1975), not all surveillance of employee activity by the employer is precluded by the federal equivalent of Section 1153(a) of the Labor Code.

> Section 8(a)(1) of the Act [the section of the federal act corresponding to Section 1153(a) of the California Labor Code] does not proscribe all surveillance of employee activities by the employer. The only surveillance, or impression of surveillance, which the Act prohibits is that which tends to interfere with, restrain, or coerce Union activities. (Citations omitted). As we stated in Hendrix Mfg. Co. v. NLRB, 321 F.2d 100 (5th Cir. 1963),
>
> > Surveillance becomes illegal because it in<Ii-cates an employer's opposition to unionization, and the furtive nature of the snooping tends to demonstrate spectacularly the state of the employer's anxiety. From this the law reasons that when the employer either engages in surveillance or takes steps leading his employees to think it is going on, they are under the threat of economic coercion, retaliation, etc. 321 F.2d at 104-105, m. 7.
>
> * * *
>
> Until surveillance, or the impression of surveillance, tends to cause interference with or restraint of an employee in the exercise of his statutory rights, it does not assume the proportions of an

unfair labor practice under Section 8(a)(l) of the Act. 509 F.2d at 708-9.

Since there was no substantial evidence that Mr. Tabuyo's infrequent observations tended to interfere with or restrain the Respondent's employees in the exercise of their rights an provided in Section 1152 of the Labor Code, I find that his actions did not constitute an unfair labor practice within the meaning of Section 1153(a) of the Labor Code.

In contrast with Mr. Tabuyo's actions, I find that the General Counsel's allegation set forth in Paragraph 7(c) of the amended complaint with respect to surveillance of protected activity by the Respondent's supervisor, Art Meza, was established and that his conduct in closely following and listening to the UFW organizers' conversations with the Respondent's employees did cause interference with and restrain the Respondent's employees in the exercise of their Section 1152 rights. Unlike Mr. Tabuyo, Mr. Meza did intentionally follow and listed to the UFW organizers as they attempted to talk with the Respondent's employees on September 1, 1975. The evidence was uncontradicted that Meza's presence and actions in listening to the conversations did interfere with the Respondent's employees in their free exercise of the rights guaranteed by Section 1152 of the Labor Code. It is precisely this type of overt surveillance of employee activity by the Respondent which is precluded by Section 1153(a). Accordingly, I find that as a result of Mr. Meza's actions, the. Respondent did commit, an unfair labor practice within the meaning of Section 1153(a) of the Labor Code.

With respect to the General Counsel's allegation in Paragraph 7(b) of its amended complaint that the Respondent's general manager, John Buksa, threatened the Respondent's employees with loss of pay if they continued to speak with the representatives of the UFW following the conclusion of their lunch break on August 30, 1975, it was established that Buksa's statement was made to a single UFW legal worker and there was no evidence that his alleged threat was either made to or overheard by any of the Respondent's employees. Furthermore, there was no evidence that any money was deducted from the pay of the Respondent's employees as the result of this incident or that the UFW was discouraged in any manner from attempting to talk with the Respondent's employees as a result of Buksa's statement. As to the latter, the evidence was clear that following Buksa's comment, the UFW organizers visited the Respondent's premises for the purposes of talking with, its employees more frequently than before the incident. While the General Counsel correctly notes in its brief that threats to employees for engaging in union activity would be violative of Section 1153(a) of the Labor Code, see, e.g. , Southernland Lumber Co. Inc. , 452 F.2d 67 (7th Cir. 1971); American National Stores, Inc., 195 NLRB No. 3 (1972), the General Counsel ignores the controlling and uncontradicted fact that the Respondent made no such threat to its employees. Therefore, I find that the Respondent did not commit an unfair labor practice as alleged in Paragraph 7(b) of its amended complaint.

Lastly, in Paragraph 8(b) of the amended complaint it was alleged by the General Counsel that on or about .September 6, 1975, Frank Ruiz, Sr., one of the Respondent's supervisors, instructed the Respondent's employees to vote for the Teamsters in the representation election scheduled for the following Monday. While it was established that on September 5, 1975, Mr. Ruiz did tell four of the Respondent's employees, inc3.udi.iig two of his sons, to vote for the Teamsters in the impending election, I find that this statement, standing alone, does not support the conclusion that the Respondent violated Section 1153 of the Labor Code.

The conduct of the Respondent's supervisor which provides the foundation for this alleged unfair labor practice must be viewed in light o£ the limiting language of Section 1155 of the Labor Code, which provides:

> 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.

In applying the corresponding "free speech" section of the federal act, the NLRB recognized in Rold Gold of California, Inc., 123 NLRB 285 (1959):

> It is long established Board policy that an employer need not remain neutral in an election campaign, but may express a preference between competing labor organizations. Absent threats or promises of benefit such expression of preference does not warrant setting aside an election. Although the Employer's letter vigorously urges the employees to vote for the Intervenor, we find that it contains no

> threats or promises of benefit, nor material misrepresentations of fact impeding or impairing the employees' freedom of choice in the election. 123 NLRB at 286.

With this background, it becomes clear that the Respondent did not commit an unfair labor practice as a result of Mr. Ruiz' statement to the four employees on September 5, 1975. Alejandron Selines, one of these employees and the only witness who testified with respect to this incident, testified without equivocation that he did not feel threatened or intimidated by Mr. Ruiz' statement and he was not afraid of what would happen if he voted for the UFW. Based upon my review of the statement and Mr. Selines' testimony, I find that Mr. Ruiz' statement to the four employees contained no threat of reprisal or force or promise of benefit. Accordingly, I find that the Respondent did not commit the unfair labor practice as alleged in Paragraph 8(b) of the amended complaint.

Upon the basis of the foregoing findings of fact and upon the entire record, I make the following:

IV. CONCLUSIONS OF LAW

1. Dan Tudor and Sons were at all times material hereto an agricultural employer within the meaning of Section 1140.4(c) of the Labor Code.

2. The UFW and the Teamsters have been at all tines material hereto labor organizations within the meaning of Section 1140,4(f) of the Labor Code.

3. The Respondent, through John Buksa, its general manager, did not promulgate a no-solicitation rule at its Kern County premises on or about August 28, 1975, which was invalid

in that it prohibited solicitation during non-working hours, and during non-working time and, therefore, the Respondent did not commit an, unfair labor practice within the meaning of Section 1153(b) of the Labor Code.

4. The Respondent, through John Buksa, its general manager, did not discriminatorily enforce a no-solicitation rule at its Kern County premises on or about August 28, 1975, and, therefore, the Respondent did not commit an unfair labor practice within the meaning of Section 1153(b) of the Labor Code.

5. The Respondent, through John Buksa, its general manager, did not promulgate a no-solicitation rule at its Kern County premises on or about August 29, 1975, which was invalid in that it prohibited solicitation during non-working time and during non-working hours, and, therefore, the Respondent did not commit an unfair labor practice within the meaning of Section 1153(a) of the Labor Code.

6. The Respondent, through John Buksa, did not discriminatorily enforce a no-solicitation rule at its Kern County premises on or about August 29, 1975, and, therefore, the Respondent did not commit an unfair labor practice within the meaning of Section 1153(a) of the Labor Code.

7. The Respondent, through John Saylor and Jerry Tabuyo, two supervisors, did not promulgate a no-solicitation rule at its Kern County premises on or about August 30, 1975, which was invalid in that it prohibited solicitation during non-working time and during non-working hours and, therefore, the Respondent did not commit an unfair labor practice within

the meaning of Section 1153(a) of the Labor Code.

8. The Respondent, through John Saylor and Jerry Tabuyo, two supervisors, did not discriminatorily enforce a no-solicitation rule at its Kern County premises on or about August 30, 1975, and, therefore, the Respondent did not commit an unfair labor practice within the meaning of Section 1153(a) of the Labor Code.

9. The Respondent, through Jerry Tabuyo, a supervisor, did not engage in surveillance of its employees who were meeting with representatives of the UFW at its Kern County premises on or about August 30, 1975, and, therefore, the Respondent did not commit an unfair labor practice within the meaning of Section 1153 (a) of the Labor Code.

10. The Respondent, through John Buksa, did not threaten its employees with loss of pay if they continued, to speak with UFW representatives at its Kern County premises on or about August 30, 1975, and, therefore, the Respondent did not commit an unfair labor practice within the meaning of Section 1153(a) of the Labor Code.

11. On or about September 1, 1975, at its Kern County premises, the Respondent, through Art Meza, a supervisor, engaged in surveillance of its employees who were meeting with representatives of the UFW and, therefore, did commit an unfair labor practice within the meaning of Section 1153(a) of the Labor Code.

12. The Respondent, through Fred Aguino, a supervisor, did not lend its. support to the Teamsters and did not attend

a Teamster sponsored organizational meeting at Delano High School in Delano, California on or about September 2, 1975, and, therefore, the Respondent did not commit an unfair labor practice within the meaning of Section 1153(b) of the Labor Code.

13. Although the Respondent, through Frank Ruiz, instructed 'its employees at its Kern County premises on or about September 5, 1975 to vote for the Teamsters, the Respondent did not commit an unfair labor practice within the meaning of Section 1153(b) of the Labor Code.

14. The Respondent, through Jerry Tabuyo, a supervisor, did not sponsor on or about September 8, 1975, a Teamster meeting and did not urge its employees to vote for the Teamsters in the representation election conducted that, day and, therefore, the Respondent did not commit an unfair labor practice, within the meaning of Section 1153 (b) of the Labor Code.

V. THE REMEDY

Having found that the Respondent has engaged in an unfair labor practice in violation of Section 1153(a) of the Labor Code as the result of supervisor Art Meza's surveillance of the Respondent's employees who wore meeting with the representatives of the UF,7 on or about September 1, 1975, I shall recommend that it be ordered to cease and desist therefrom in the future and that it take certain affirmative action to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fad, conclusions of law and the entire record in this proceeding, and pursuant to the provisions of Section 11G0.3 of the Labor Code, I hereby issue the following recommended:

ORDER

The Respondent, Dan Tudor and Sons, its officers partners, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Engaging in surveillance of its employees while its employees are meeting and talking with union representatives at appropriate times which tends to interfere with, restrain, or coerce the Respondent's employees in the exercise of the rights guaranteed in Section 1152 of the Labor Code.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 1152 of the Labor Code.

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

(a) Post at its Kern and Tulare County premises copies of the attached Notice marked "Appendix[1/] which shall be in the English, Spanish/ Tagalog and Illocano languages. Copies of the notice on forms provided by the Fresno Regional

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[1/]In the event that the Board's Order is enforced by a Judgment of a California State Court of Appeal, the words in the Notice reading "POSTED BY ORDER OF THE CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE CALIFORNIA STATE COUKT OF APPEAL ENFORCING AN ORDER OF THE CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD."

Director, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent on July 1, 1977, and be maintained by it for a period of 90 consecutive days thereafter, in conspicuous places including all packing stands and all other places where notices to employees; are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced or covered by any other material.

(b) The supervisor of each of the Respondent's respective crews and/or John Buksa, the Respondent's general manager, shall read the attached notice in the appropriate language to a gathering of each crew twice a week during normal working hours commencing on August 1, 1977; and continuing thereafter through October 1, 1977.

(c) Notify the Regional Director for the Fresno Region, in writing, within 10 days from July 1, 1977, what steps the Respondent has taken to comply herewith; thereafter, the Respondent shall file supplemental reports in writing with the Regional Director for the Fresno Region every 20 days through October 1, 1977.

DATED this 23rd day of February, 1977.

JOHN B. WELDON, JR.
Administrative Law/Judge

NOTICE TO EMPLOYEES

Posted By Order of the California
Agricultural Labor Relations Board

After a trial at which all parties had the opportunity to present evidence, an Administrative Law Officer of the California Agricultural Labor Relations Board has found that we, Dan Tudor and Sons, violated the California Agricultural Labor Relations Act and has ordered us to post and read this Notice.

Under the California Agricultural Labor Relations Act/ you have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of your own choosing as selected by a secret ballot election, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and you also have the right to refrain from any or all such activities. It is unlawful for Dan Tudor and Sons to interfere with, restrain or coerce you in the exercise of these rights guaranteed you by the California Agricultural Labor Relations Act and WE WILL NOT in any manner interfere with, restrain or coerce our employees in the exercise of these rights.

DAN TUDOR AND SONS_____
(Employer)

DATE_____ by _____
(Representative) (Title)

APPENDIX