

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

JASMINE VINEYARDS, INC.,)	
)	
Respondent,)	
)	
and)	Case No. 75-CE-64-F
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
Charging Party.)	3 ALRB No. 74
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This decision has been delegated to a three-member panel. Labor Code § 1146.

On March 3, 1977, administrative law officer George Marshall, Jr. issued his decision in this case.^{1/} The respondent, the General Counsel, and the charging party filed timely exceptions.

Having reviewed the record, we adopt the law officer's findings, conclusions and recommendations to the extent consistent with this opinion.^{2/}

^{1/}This case was originally consolidated for hearing with the objections to the election in Case No. 75-RC-53-F. The Teamsters received a majority of the votes cast in this election. During the course of the hearing, on December 29, 1976, the Teamsters withdrew the petition for certification. The Fresno Regional Director approved the request and declared the election null and void on January 3, 1977. We uphold the decision of the Regional Director.

^{2/}We did not receive General Counsel Exhibits 1(U)-1(Z) and Exhibit 1AA. These exhibits, as identified, were: 1(U) - UFW's Motion for Intervention, 1(V) - Notice and Direction of Election, 1(W) - Tally of Ballots, 1(X) - Certification on Conduct of Election, 1(Y) - UFW's Petition to Set Aside Election, 1(Z) - UFW's Further Specifications re Petition to Set Aside Election, and 1AA - UFW's Detailed Statement of Facts re Petition. Although it is unclear why these exhibits were not submitted, we find these exhibits not relevant to the issues presently before us. Each of these exhibits are related to the election, which was declared null and void. (See Footnote 1).

The respondent excepted to the ALO's finding that the meeting at the box shed, during which Vincent Zaninovich threatened the employees with a loss of employment if the UFW won the election, took place after the effective date of the Act. It is clear from the ALO's decision that there was conflicting testimony regarding the date of this meeting. The ALO credited the testimony of Santana Piniero who related the date of the meeting to the second picking of the muscatel grapes which took one and one-half weeks. The ALO noted the respondent's records indicated that the harvest of the muscatel grapes was completed on September 12, 1975. Thus the record does support a finding that the meeting took place after the effective date of the Act.^{3/}

The ALO stated he could not reconcile Santana Pinieros' testimony on cross-examination that the box shed meeting took place two to three weeks after the Clifford Ince incident, "which would make the meeting fall around August 27 or 28, 1975." The Act went into effect on August 28, 1975. We find this portion of Mr. Pinieros¹ testimony at most to be inconclusive rather than in conflict with his other testimony. We find more striking the conflicting testimony of respondent's witness, Vincent Zaninovich. Vincent Zaninovich testified that he recalled the box shed meeting occurring in September 1975, and that the purpose for the meeting was because there was going to be an election^{4/} and he wanted to meet with the

^{3/}Chairman Brown dissents because in his view the evidence does not support a finding that the box shed meeting occurred after the Act went into effect. For this reason, he would not reach the question of whether or not the content of the speeches made by Vincent and Martin Zaninovich violated § 1153(a).

^{4/}Vincent Zaninovich testified he did not know the date of the election when he had the meeting.

workers. However, after the evening meal break of the hearing, and upon cross-examination by his own counsel, Vincent Zaninovich changed his testimony and testified the box shed meeting occurred August 18, 19, or 20, 1975. On the basis of the record as a whole, the ALO's conclusion is supported. We uphold the ALO's finding that the meeting was held after the effective date of the Act.

The ALO found that Martin Zaninovich's speech at this meeting was protected under this Act even to the extent he may have inferred a preference for the Teamsters by reference to the boxes with the Teamsters' labels. This reference concerned Martin Zaninovich's statements that if the UFW won they would not be able to use the boxes they already had because of the Teamsters' labels on them, and that this would be a big loss. The U.S. Supreme Court stated in NLRB v. Gissel Packing Co. (1969) 71 LRRM 2481 at 2497:

[A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.' He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control...

Martin Zaninovich was stating that one precise effect a UFW victory would have on his company would be the destruction of, or inability to use boxes with Teamsters' labels. Such a comment is protected

under Labor Code § 1155.^{5/} We uphold the ALO's finding that this comment is protected.

The General Counsel excepted to the ALO's failure to find that Vincent Zaninovich's statements to Maria Aleman were threats of reprisal. The ALO found that Vincent Zaninovich approached Maria Aleman in the fields, solicited her support for the Teamsters and indicated he was afraid if the UFW won, he would have to pull up the vines. The ALO found this was not a threat, but rather an expression of opinion by Vincent Zaninovich as to what respondent's future might be if the Teamsters did not win. We disagree. The ALO found the same comment made by Vincent Zaninovich at the box shed meeting to be a threat because it inferred that respondent would not negotiate with the UFW to reach a mutually acceptable "collective bargaining agreement. It is for this same reason that Vincent Zaninovich's statement to Maria Aleman was a threat in violation of Labor Code § 1153(a). In Jerry Roth Chevrolet (1971) 194 NLRB No. 57, 78 LRBM 1604, the NLRB found the employer violated § 8(a)(1) (equivalent to Labor Code § 1153(a)) of the NLRA when it threatened an employee that it would not negotiate with the union, would close its doors before negotiating with the union and that there would be no work if the employees selected the union as their representative.

The respondent excepted to the ALO's finding that the respondent discriminated against its employees in the terms and

^{5/}Labor Code § 1155 States:

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.

conditions of employment by shortening the lunch break and reducing the working hours. The respondent's exception is based primarily on the fact that the ALO's finding is based on hearsay testimony of Santana Piniero. Piniero testified that Justo Mendes told him that the crew was taking a shorter lunch to avoid having problems with the UFW. Justo Mendes was never called to testify. At the hearing respondent objected to the admission of this hearsay statement and moved to strike this statement from Piniero's testimony. In his decision the ALO found that Mendes is a supervisor, making his statement admissible as an exception to the hearsay rule, and denied the respondent's motion to strike.

We find the evidence is insufficient to conclude that Mendes is a supervisor. The evidence showed that Mendes worked as a second boss in Raul Irrizarry's crew and that he was paid at a different rate than other workers. We disagree that these factors in and of themselves indicates supervisory status.^{6/} The General Counsel failed to show that Mendes was a supervisor within the meaning of Labor Code § 1140.4(j). The General Counsel also failed to establish that Mendes was acting as an agent for the employer. We therefore overturn the ALO's finding that Mendes is a supervisor, and his denial of respondent's motion to strike the hearsay statement of Mendes from Piniero's testimony.

^{6/}The ALO also based his finding of supervisory status on the alleged fact that Mr. Mendes is not a member of the bargaining unit. In light of the fact that the parties agreed to set aside the election, we are unable here to resolve the issue of Mr. Mendes' inclusion or exclusion in the appropriate bargaining unit.

It was Piniero's hearsay statement on which the ALO based his finding that respondent was discriminating in its working conditions and that there was an improper purpose for shortening the lunch period which assisted and supported the Teamsters. Because we have determined that this statement is inadmissible, and because the General Counsel has otherwise failed to sustain its burden of proving an improper purpose for shortening the lunch hour, we overturn the ALO's findings regarding the shortened lunch hour being a violation of the Act.

The Remedy

We modify the recommended order of the ALO on posting and mailing of notices to the extent necessary to clarify the respondent's obligation. We order that the notice be read to employees and that immediately following this reading a Board agent be given an opportunity to answer employees' questions regarding their rights and the Act. We also order that during any period in its next organizational campaign in which the UFW has filed a notice of intent to take access, the respondent shall provide the UFW with an updated list of its employees and their current street address for each payroll period. No showing of interest shall be necessary to receive this list. During this same period the respondent shall allow UFW organizers to organize among its employees during the hours specified in 8 Cal. Admin. Code § 20900(e)(3) without restriction as to the number of organizers.

ORDER

By authority of Labor Code § 1160.3, the Agricultural Labor Relations Board orders that the respondent, Jasmine Vineyards, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

a. Denying access to its premises to organizers engaging in organizational activity in accordance with the Board's access regulations.

b. Threatening employees with a loss of employment because of their protected activities or choice of bargaining representative.

c. Rendering unlawful aid, assistance and support to the Teamsters or any other labor organization by discriminatorily enforcing a no-solicitation rule, and urging and soliciting its employees to sign authorization cards for the Teamsters or any other labor organization.

d. In any other manner interfering with, restraining, or coercing employees in the exercise of those rights guaranteed them by § 1152.

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

a. During any period in its next organizational campaign in which the UFW has filed a notice of intent to take access, the respondent shall allow UFW organizers to organize among its employees during the hours specified in 8 Cal. Admin. Code § 20900 (e) (1976) without restriction as to the number of organizers.

b. During the same period in which the UFW has filed a notice of intent to take access during its next organizational campaign, the respondent shall, each payroll period, provide the UFW with an updated list of its employees and their current street addresses. No showing of interest shall be necessary to receive this list.

c. Post copies of the attached notice at times and places to be determined by the regional director. The notices shall remain posted for a period of 60 consecutive days following the issuance of this order. Copies of the notice shall be furnished by the regional director in appropriate languages. The respondent shall exercise due care to replace any notice which has been altered, defaced or removed.

d. 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 including the time period of August 28, 1975 through September 17, 1975.

e. 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.

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

It is further ORDERED that all allegations contained in the complaint and not found herein are dismissed.

Dated: September 7, 1977

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

RONALD L. RUIZ, 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.

Especially:

WE WILL NOT threaten employees with loss of employment in order to discourage union activity.

WE WILL NOT prevent union organizers from coming onto our land to tell you about the union when the law allows it.

WE WILL NOT change your working conditions *or shorten your lunch hour because of the union.

Dated:

JASMINE VINEYARDS, INC.

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 !!!

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD



4	JASMINE VINEYARDS, INC. ,)	
5)	
5	Respondent,)	
6	and)	Case No. 75-CE-64-F
6)	
7	UNITED FARM WORKERS OF)	
7	AMERICA, AFL-CIO,)	
8)	
8	Charging Party.)	
9)	

DECISION AND RECOMMENDATIONS

I.

STATEMENT OF THE CASE

The General Counsel, pursuant to an unfair labor Practice charge, filed September 23, 1975 by the United Farm Workers, Inc. [herein "UFU"], issued a complaint November 3, 1975. The complaint alleged that on or about August 28, 1975 and continuing to September 17, 1975, the date upon which a representation election was conducted in Case No. 75-RC-46-F, that Jasmine Vineyards, [herein "Respondent"] discriminatorily enforced a "no-solicitation" rule, urged and solicited its employees to sign Teamsters' authorization cards, created the impression of and engaged in surveillance of its employees' union activities, improper threats against UWF supporters, and discriminating against its employees in regard to hire, or tenure of employment, or terms or working conditions of employment by reducing the working hours and the lunch period.

Respondent denied the substantive allegations of the complaint.

Pursuant to an order of the Agricultural Labor Relations

1 Board [herein "Board"], dated November 4, 1975, this case was con-
2 solidated for hearing with objections to the election filed by the
3 UFW. The Teamsters having received, according to the Tally of
4 Ballots, a majority of the votes cast, petitioned for certification
5 on September 10, 1975 and elected during the course of the hearing
6 to withdraw its petition on December 29, 1976. The Fresno Re-
7 gional Director approved the request and declared the election
8 null and void on January 3, 1977: The hearing, in this matter was
9 conducted on December 6 and 7, 1976, January 3, 4, 5, 17, 18, and
10 19, 1977, at which time the parties were given ample opportunity
11 to present both testimonial and documentary evidence relating to
12 the issues. Post-hearing briefs were received from the General
13 Counsel, Respondent and the Charging Party.

14 II.

15 DISCUSSION AND FINDINGS

16 The No-Solicitation Rule.

17 According to the complaint issued by the General Counsel,
18 Respondent on or about August 28, 1975 began enforcing dis-
19 criminatorily a No-Solicitation Rule through Clifford Ince, Martin
20 Zaninovich, Raul Irrizarry, Vincent Zaninovich, Elias Bristol and
21 Andy Zaninovich.

22 Respondent had a pre-act contract (GC-Exhibit 6) with the
23 Teamsters' Union, which provided in Section 18 that the Teamsters
24 could visit the Respondent's property at all reasonable times to
25 conduct legitimate union business. On August 20, 1975 Martin
26 Zaninovich wrote a letter (GC-Exhibit 2b) to the Teamsters in
27 response to notification from them on July 28, 1975 that "Union
28 Agents will henceforth visit properties of your company on a daily

1 basis until the date of expiration of this Collective Bargaining
2 Agreement. . . .", advising them that access would be granted the
3 Teamsters to conduct legitimate Union business on condition that
4 advance notification and approval of the visits were obtained, the
5 visits were at a reasonable time and place, did not interfere or
6 disrupt operations and did not harass or disturb employees of the
7 company. The letter indicated that advance approvals were to be
8 obtained from either Martin J. Zaninovich, Vincent M. Zaninovich,
9 Eli as Bristol or Raul Irrizarry.

10 Respondent, in response to a request from the UFH, seeking
11 access to Respondent's fields during break times for organizational
12 purposes, denied the UFW request by letter dated August 20, 1975
13 (GC-Exhibit 3). Respondent indicated in the letter its opinion
14 that to honor the request-as stated would be disruptive and vio-
15 lative of both Jasmine's rights and those of their workers. The
16 letter further stated that no other Union would be granted access
17 for organizational purposes.

18 It is the application of Respondent's access policy, as
19 reflected in the two Exhibits, which is under attack in this instance.
20 Respondent contends that it soon became evident that they could
21 not control the stated policy because UFW organizers, both prior to
22 and subsequent to the effective date of the Act, "trespassed" on
23 Respondent's property repeatedly for organizational purposes despite
24 requests to leave and advice that they had no right to be there.
25 UFW organizers visited the property on a daily basis between August
26 29, 1975 and September 11, 1975 and it is Respondent's opinion that
27 UFW made more visits to the property than any other Union. Not-
28 withstanding Respondent's opinion and content ion in this regard,

1 the evidence indicates that although perhaps more visits were made
2 to Respondent's property, very few opportunities permitted the UFW
3 to talk with Respondent's employees and explain their programs and
4 solicit the support of the employees for UFW representation.

5 According to witnesses of the General Counsel the
6 Teamsters made regular visits to Respondent's property at all hours
7 of the day, while UFW organizers came only at break or lunch times,
8 and there was no evidence that they were asked to leave or advised
9 that they had no right to be there. Various workers in the fields
10 were asked to sign authorization cards or petitions on behalf of the
11 Teamsters. On the day before the election, leaflets and other
12 materials were handed to the workers in the presence of either
13 Elias Bristol, Raul Irrizarry or Vincent Zaninovich.

14 Although Respondent contends that it had no knowledge of
15 the purpose of the Teamsters' visits, assuming they were all for
16 "legitimate union business" in accordance with their Collective
17 Bargaining Agreement, the record will reflect that most visits, if
18 not all, subsequent to the August 20th letter, were made without
19 conforming to Respondent's policy re: organizational activity.
20 Neither Elias Bristol, Raul Irrizarry nor Vincent Zaninovich inquired
21 into the Teamsters' purposes nor requested them to leave when it was
22 apparent legitimate union business was not being conducted. Vir-
23 tually all of the testimony concerning the application of the policy
24 was controverted, raising credibility issues. The Administrative
25 Hearing Officer [herein "ALO"] resolves the credibility issues
26 in favor of the General Counsel's witnesses on this issue.

27 Although the UFW organizers according to the evidence,
28 may have made more visits to Respondent's property, it is quite

1 apparent from the testimony of Consuelo Gonzalez and other wit-
2 nesses that equal access to the fields to talk with the workers
3 was not accorded the two campaigning unions in such manner as to
4 give spirit and meaning to the then newly-enacted Agricultural
5 Labor Relations Act, and the ALO concludes that the company policy
6 was in effect a "no solicitation" rule which encompassed both
7 company time and break time with reference to organizational ac-
8 tivity, was applied in a discriminatory manner so far as the UWF
9 was concerned. The access rule of the Board is not applicable to
10 the foregoing policy because of its effective date of September 2,
11 1975 and the issuance of an injunction restraining enforcement to
12 a date beyond the date of the election held in the Jasmine matter.

13 Solicitation of Teamsters Authorization Cards.

14 The complaint alleges that on or about September 3, 1975
15 and September 11, 1975, Respondent, by Vincent Zaninovich, urged
16 and solicited its employees to sign Teamsters Authorization Cards.
17 Santana Piniero, a General Counsel witness, testified that Vincent
18 Zaninovich asked him at least on two occasions to sign an authori-
19 zation card for the Teamsters. Vincent Zaninovich admits to asking
20 Santana Piniero to sign an authorization card on at least one
21 occasion and telling Piniero to sign the authorization before the
22 10th. Vincent Zaninovich denies talking to members of Santana
23 Piniero's family and cannot recall whether he asked other employees
24 to sign or vote for the Teamsters.

25 Respondent argues that the September 11, 1975 solicitation
26 is fabrication in that the petition of the Teamsters was filed on
27 September 10th. There is insufficient evidence in the record to
28 indicate that the September 11th date was fabricated, and the ALO

1 concludes that either Santana Piniero was mistaken as to the date
2 since Vincent Zaninovich in direct recanted testimony on January
3 1977 stated he told Piniero to sign before the 10th which is some
4 indication that he would check again with Piniero to have him sign
5 an authorization card. There is also some evidence that neither
6 Vincent Zaninovich nor Respondent was in such close contact with
7 the Teamsters to indicate that they would have immediate or advanced
8 knowledge as to the date the petition would be filed.

9 Surveillance.

10 It is alleged in Paragraphs 8(i) and 8(j) of the complaint
11 that Raul Irrizarry engaged in surveillance and/or created the
12 impression of surveillance of Respondent's employees. There is
13 testimony in the record of Irrizarry being present in the fields
14 and upon seeing UFW organizers, asked them to leave. Irrizarry,
15 being a crew boss, had a legitimate purpose for being in the
16 fields and there is no evidence from which an unlawful purpose
17 could be inferred.

18 Clifford Ince is alleged to have engaged in surveillance
19 in Paragraph 8(h) of the complaint. The mere observation of UFW
20 organizers on Respondent's property, asking them to leave as in-
21 dicated by the evidence adduced at the hearing, without more, is
22 insufficient to sustain a charge of surveillance. In addition, it
23 is some what doubtful if the alleged surveillance by Ince occurred
24 subsequent to the effective date of the Agricultural Labor Re-
25 lations Act.

26 The ALO concludes that there is insufficient evidence to
27 sustain surveillance or the creation of surveillance on the part of
28 Raul Irrizarry and Clifford Ince.

1 Threats Against Employees.

2 Paragraph 8 of the complaint alleges various threats
3 being made to Respondent's employees if they join, supported or
4 assisted the UFW, or if the UFW won the election.

5 Subparagraph (a) alleges that on or about September 16,
6 1975 that Martin and Vincent Zaninovich threatened employees with
7 loss of employment if the UFH won the election. Such threats,
8 according to testimony, was to have occurred at a meeting called by
9 Respondent at its box shed on or about quitting time for the day.
10 The exact date of this meeting is in dispute. Respondent contends
11 that it occurred prior to the effective date of the Act as indica-
12 ted in testimony by Martin Zaninovich and confirmed generally by
13 Raul Irrizarry and Elias Bristol, neither of whom were as sure of
14 the date as Martin Zaninovich who positively testified that the
15 meeting occurred on August 20, 1975. Vincent Zaninovich testified
16 on January 3, 1977 that he recalled the box shed meeting in
17 September 1975 and that the purpose for the meeting was because the
18 election was being held September 17, 1975 and there was no other
19 date available to talk to the workers. In reviewing this testi-
20 mony and recalling the Mien of Mr. Vincent Zaninovich, this testi-
21 mony about the shed meeting was the most positive of all his testi-
22 mony except where he was denying statements and other conduct
23 attributable to him. Zaninovich's testimony about the September
24 meeting at the box shed, however, was recanted after the evening
25 meal break and upon cross-examination by Respondent's counsel.

26 Santana Piniero, a General Counsel witness, who admitted
27 he could no longer remember exact dates because of the passage of
28 time, but could relate the date of the meeting to the work he was

1 doing at the time, testified that he was doing the second picking
2 of the muscatel grapes. The parties stipulated that the picking
3 of muscatel grapes commenced on August 27, 1975. Piniero testified
4 that he commenced picking red malagas on August 14, 1975, taking
5 approximately one and one-half to two weeks to complete the picking
6 and started the first picking immediately thereafter of muscatel
7 grapes and upon completion started the second picking. Each picking
8 took one and one-half weeks and the second picking was concluded
9 three to four days prior to the election on September 17, 1975.

10 It is not possible for the ALO to reconcile Santana
11 Piniero's testimony on cross-examination that the box shed meeting
12 took place two to three weeks after the Clifford Ince incident
13 which would make the meeting fall around August 27 or 28, 1975.
14 it is interesting to note that Respondent's records for the
15 harvesting of the muscatel grape are not carried in terms of first
16 and second picking as the other grapes which are grown apparently
17 in larger quantities.

18 Respondent's records do, however, reflect that the harvest
19 of muscatel (aka Italian muskat) grapes was completed on September
20 12, 1975 or five days prior to the election.

21 The testimony of Raul Irrizarry who was quite nervous did
22 substantiate that the date was either the 18th or 19th of August
23 as testified by Martin Zaninovich whom the ALO finds to be the most
24 credible of Respondent's witnesses.

25 In view of the many discrepancies in testimony and the
26 apparent accuracies of Respondent's records which cast doubt on the
27 testimony of all of Respondent's witnesses as to the date in question
28 the ALO concludes that the box shed meeting took place after the

1 effective date of the Act although it is impossible to establish
2 the correct date.

3 The meeting was held at the end of the work day and to the
4 extent that Martin Zaninovich related the purpose of the meeting,
5 Respondent's experience with both the Teamsters and the UFW, the
6 caveat as to promises, his speech was protected under the Act,
7 even to the extent that he may have inferred a preference for the
8 Teamsters by reference to the boxes with Teamsters labels. The
9 ALO is of the opinion, however, that Vincent Zaninovich did speak
10 at the meeting and did state that Respondent would pull out the
11 vines in the event the UFW won the election, for he inferred that
12 Respondent would not negotiate with the UFW to reach a mutually-
13 acceptable collective bargaining agreement.

14 The ALO concludes that Respondent, through Vincent
15 Zaninovich, did threaten a loss of employment at the box shed
16 meeting.

17 There is also evidence that on September 16th Vincent
18 Zaninovich threatened Santana Piniero with a loss of employment
19 in a conversation described by Piniero in his testimony of January 5,
20 1977. This testimony in substance was that Vincent Zaninovich
21 indicated to Santana that tomorrow was the day of the election and no
22 matter how long Piniero or his family had been working with
23 Zaninovich, if any of the Piniero family double-crosses me, referring to
24 himself, that you will be fired. This conversation, coupled with earlier
25 conversations between Piniero and Vincent Zaninovich, inquiring as to
26 whether the Pinieros were with Vincent, would indicate a threat of a loss
27 of employment, and the ALO so concludes that such a threat was in fact
28 made on the day before the election.

1 On or about September 4, 1975 Vincent Zaninovich is
2 alleged to have threatened Respondent's employees with a loss of
3 employment and/or a reduction in pay if they joined or supported
4 the UFW or talked to the UFW.

5 The evidence solicited from employee-witnesses would
6 indicate that Vincent Zaninovich approached Maria Aleman in the
7 fields and solicited her support of the Teamsters for Vincent
8 Zaninovich was afraid that if the UFW won, he would have to pull up
9 the vines. The ALO does not find that a threat was made within
10 the context of this conversation but was merely an expression of
11 opinion by Vincent Zaninovich as to what Respondent's future
12 conduct might be if the Teamsters did not win. His statement,
13 however, clearly points up a bias against the UFW and active support
14 for one of two campaigning unions.

15 Neither does the ALO find that the reduction-of-pay-
16 threat in asking UFW organizers if they are going to be responsible
17 for paying the workers for time lost during discussions with
18 organizers which tend to interfere with the employees' work. There
19 was no time lost for the organizers left, and no loss or reduction
20 in pay was directed at the employees. The entire conversation was
21 between organizers and Zaninovich and overheard by the workers.

22 Subparagraph (f) of the complaint alleges threats to
23 employees with loss of employment by Elias Bristol on or about
24 September 16, 1975. The substance of the statement made by Elias
25 Bristol was that in the event the UFW won the election, it would
26 be impossible for Respondent to hire friends of already-employed
27 workers because of the instigation of a hiring hall through which
28 all employees would have to be hired rather than the hiring of em-

1 ployees as it exists under the Teamsters. The Administrative Law
2 Officer finds no threat in this conversation—merely an expression
3 of what would likely be the attitude of the company in respect to
4 new hires. The ALO concludes that there is insufficient evidence in
5 the record to show a threat on the part of Elias Bristol.

6 The ALO based on the foregoing discussion, finds that
7 threats were made by Vincent Zaninovich at the box shed meeting, to
8 Santana Piniero in the fields on September 16, 1975 and that no
9 threats were made with reference to a reduction in pay or to Maria
10 Aleman and William Delvalle.

11 Reduction in the Working Hours and the Lunch Break.

12 Paragraph 10(a) and (b) alleged that Respondent, through
13 Vincent Zaninovich, discriminated against its employees in the terms and
14 conditions of employment by reducing the length of the lunch period and the
15 number of hours in the work day.

16 There is evidence that the lunch period was reduced fifteen
17 minutes approximately one week prior to the election, and according
18 to the testimony of Raul Irrizarry and Vincent Zaninovich, the
19 reduction was made at the request of the employees in Raul's crew
20 in order that they might leave work earlier at the end of the day.
21 According to Raul, several crew members requested the change and
22 he thereafter polled some 45 or 50 members of the crew who agreed
23 to the change. None of General Counsel's witnesses who testified and
24 were members of Raul's crew were asked if they desired a change in
25 the lunch period.

26 Santana Piniero testified that he was aware of the change
27 in the lunch break because he was working in a field adjacent to
28 Raul's crew. His ability to so observe, however, is in dispute.

1 Santana Piniero testified that when he asked Justo Mendes, the
2 second crew boss on Raul's crew, why the crew was taking a shorter
3 lunch period. He stated that the people were taking a shorter lunch
4 period to avoid having problems with the UFW. Respondent objected
5 and moved to strike that portion of Piniero's testimony on the
6 basis of hearsay and that Justo Mendes was not authorized to speak
7 for Respondent. The General Counsel in response indicated that
8 Justo was a supervisor under the Agricultural Labor Relations Act
9 and that in accordance with National Labor Relations Board precedent,
10 which the Board is required to follow, Justo Mendes would be con-
11 sidered a supervisor and as such, his statement would be admissible
12 as an exception to the hearsay rule. The ALO reserved ruling on
13 the motion pending receipt of points and authorities from the
14 General Counsel indicating that a failure to receive such authori-
15 ties would result in granting the motion. Points and authorities
16 were received. In view of the evidence adduced at the hearing as
17 to the duties of Justo Mendes in-signaling the start and close of
18 breaks, to oversee and instruct and correct the workers in the
19 absence of Raul, the fact that he is not a member of the bargaining
20 unit and is paid at a different rate than the other workers, the
21 ALO concludes that Justo Mendes is a supervisor within the meaning
22 of the Act. The Respondent's motion to strike the hearsay state-
23 ment of Justo Mendes from Santana Piniero's testimony is denied.

24 With the statement admitted the ALO concludes that the
25 Respondent was discriminating in its working conditions because
26 other employees were not afforded the opportunity to have a
27 reduced lunch break in order to leave work early and that there was
28 an improper purpose for shortening the lunch period which assisted

1 and supported the Teamsters in their drive to represent Respondents
2 workers.

3 Supervisory Status of Raul Irrizarry and Elias Bristol.

4 Based on the testimony of Vincent Zaninovich and of Raul
5 Irrizarry and Elias Bristol the Administrative Law Officer concludes
6 that both Raul and Elias are supervisors within the meaning of
7 Section 1140.4(j) of the Act because they have the power to hire and
8 discharge employees as well as the responsibility to direct them.

9 Miscellaneous.

10 To the extent that the Administrative Law Officer has not
11 discussed the other allegations of the complaint he has concluded
12 that there is insufficient evidence to support a finding in favor
13 of the allegation.

14 For example, no evidence was offered on the hiring of
15 employees after August 28, 1975 where Respondent required payment
16 of dues and initiation fees to the Teamsters prior to the fifth day
17 of hire as required by the Act. The record will reflect that evi-
18 dence introduced dealt with pre-act activities which was consistent
19 with the pre-act contract between the parties. The same is true of
20 the attempted interrogation of Santana Piniero as to the sympathies
21 of various workers either employed or requested to be employed by
22 Respondent.

23 The foregoing evidence in the record points up sufficient
24 anti-UFW bias to assist the ALO in making the credibility determi-
25 nations made above but are insufficient to support a violation of
26 the Act.

27 III.

28 FINDINGS

Based upon the foregoing discussions the ALO makes the

1 following findings:

2 (1) Respondent established a No-Solicitation policy
3 which it enforced and applied in a discriminatory manner against the
4 United Farm Workers of America, Inc. and in favor of the Teamsters.

5 (2) Respondent called a meeting of its employees at its
6 box shed on a date subsequent to the effective date of the Act for
7 the purpose of informing its employees of the passage of the Agri-
8 cultural Labor Relations Act and during that meeting Respondent,
9 through Vincent Zaninovich, threatened its employees with a loss of
10 employment if the UFW won the election.

11 (3) Respondent, through Vincent Zaninovich, urged and
12 solicited its employees to sign Teamsters authorization cards on
13 more than one occasion.

14 (4) Respondent did not engage or create the impression
15 of surveillance of its employees as alleged.

16 (5) Respondent did threaten, through Vincent Zaninovich,
17 Santana Piniero with a loss of employment if Zaninovich learned that
18 Piniero had double crossed him and voted for the UFW.

19 (6) Respondent did not threaten through Vincent Zanino-
20 vich its employee Maria Aleman with loss of employment if the UFW
21 won the election, and did not threaten its employees with a reduction
22 in pay.

23 (7) There was insufficient evidence to support a finding
24 that Elias Bristol threatened Respondent's employees.

25 (8) There was insufficient evidence to support a finding
26 that Respondent had engaged in interrogation of its employees in
27 violation of the Act.

28 (9) The Respondent admits and the ALO finds that Martin

1 and Vincent Zaninovich, Vice President and President of Respondent
2 respectively, are agents of Respondent within the meaning of Section
3 1165.4 of the Act.

4 (10) That Raul Irrizarry, Elias Bristol and Justo Mendes
5 are supervisors within the meaning of Section 1140.4(j) of the Act.

6 (11) That Respondent by virtue of the conduct as found
7 in Paragraphs 1, 2, 3 and 5 above, has been engaging in unfair labor
8 practices within the meaning of Section 1153.of the Act.

9 (12) Respondent admits and the ALO finds that Respondent
10 is a corporation organized under and by virtue of the laws of the
11 State of California and engaged in agriculture in Kern County,
12 California, is now and has been at all times material to this pro-
13 ceeding, an agricultural employer within the meaning of Section
14 1140.4(c) of the Act.

15 IV.

16 DECISION

17 Upon the basis of the above findings and conclusions and
18 the evidence adduced at the hearing, it is the Administrative Law
19 Officer's decision that:

20 (1) That each and every allegation of the complaint re-
21 lating to the surveillance or the creation of the impression of
22 surveillance by Respondent of its employees shall be and is hereby
23 dismissed.

24 (2) That each and every allegation contained in the
25 complaint relating to threats by Respondent through Vincent Zaninovich
26 and Elias Bristol on or about September 13 and 16, 1975, respectively
27 shall be and is hereby dismissed.

28 (3) That the allegation relating to Respondent's interro-

1 gation of its employees shall be and is hereby dismissed.

2 The Respondent, Jasmine Vineyards, Inc., its officers
3 and agents, successors and assigns shall:

4 (1) Cease and desist from:

5 (a) Interfering with, restraining and coercing its
6 employees by threatening them with the loss of employment if the
7 UFW won the election, or if they assisted, supported or joined the
8 UFW.

9 (b) Rendering unlawful aid, assistance and support
10 to the Teamsters by discriminatorily enforcing a no-solicitation
11 rule, and urging and soliciting its employees to sign authorization
12 cards for the Teamsters.

13 (c) Discriminating against its employees in regard
14 to hire, tenure of employment or terms of conditions of employment
15 by reducing the time permitted for lunch and reducing the number of
16 hours in the work day.

17 (2) Take the following affirmative action which the
18 Administrative Law Officer finds and recommends on behalf of the
19 Board will effectuate the policies of the Agricultural Labor
20 Relations Act:

21 (a) Respondent shall be ordered to post a written
22 notice in English and Spanish of the disposition of this proceeding
23 and the terms and conditions thereof which may be ordered by the
24 Board, in a conspicuous place on Respondent's property.

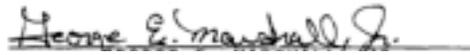
25 (b) Respondent shall be ordered to give expanded
26 rights of access to Respondent's property prior to and during the
27 next peak season to the U for purposes of engaging in organiza-
28 tional activity – such expanded access to include at least one addi-

1 tional organizer per crew in addition to the rights of access granted
2 pursuant to the Board's amended regulations.

3 (c) Respondent shall be ordered not to assist nor
4 contribute support to the Teamsters or to any other labor organiza-
5 tion.

6 (d) Respondent shall make periodic reports to the
7 designated agent of the Board illustrating compliance with the
8 Board's order.

9 Dated at Los Angeles, California this 3rd day of March
10 1977.

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12 
13 GEORGE E. MARSHALL, JR.
14 Administrative Law Officer
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