

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ISAMU MINAMI, NOBURU IRIYAMA,)
YAICHIRO MINAMI, AND DOES I)
THROUGH V, dba SECURITY FARMS,) Case Nos. 75-CE-3-M
Respondent,) 75-CE-122-M
and) 75-CE-148-M
WESTERN CONFERENCE OF TEAMSTERS,) 3 ALRB No. 81
Petitioner,)
and)
UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)
Intervenor and)
Charging Party.)

DECISION, ORDER AND
ORDER SETTING ASIDE ELECTION

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authorities in this matter to a three-member panel.

On August 18, 1977 the Board issued the attached Proposed Decision and Order in this proceeding. The parties were informed that the Proposed Decision and Order would become final if timely exceptions were not filed. As no timely exceptions were filed, it is ordered that the attached Proposed Decision and

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Order in this proceeding be and is hereby made the Board's
Decision, Order and Order Setting Aside the Election.

DATED: November 3, 1977

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ISAMU MINAMI, NOBORU IRIYAMA,)	
YAICHIRO MINAMI, AND DOES I)	
THROUGH V, dba SECURITY FARMS,)	Nos. 75-CE-3-M
)	75-CE-122-M
Respondent,)	75-CE-148-M
)	75-RC-58-M
and)	
)	PROPOSED DECISION
WESTERN CONFERENCE)	AND ORDER
OF TEAMSTERS,)	
)	
Petitioner ,)	
)	
and)	
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Intervenor and)	
Charging Party.)	

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

This case was heard by administrative law officer Dawn B. Girard on November 19, 1975, and January 5 and 6, 1976, in Santa Maria, California. All parties were represented and given full opportunity to participate in the proceedings. On April 28, 1977, due to the unavailability of the administrative law officer and pursuant to 8 Cal. Admin. Code § 20266 (as revised and amended in 1976), said matter was transferred to the Board for the purpose of issuance of a proposed decision and order pursuant to § 1160.3.

On September 19, 1975, an election was held at Security Farms. The tally of ballots showed the following results :

Teamsters	115
UFW	39
No Union	6
Challenged Ballots	22

The UFW filed timely objections.

The general counsel alleges in his complaint that the respondent: 1) violated § 1153(a)^{1/} by denying UFW organizers access to its employees in the fields, assaulting organizers attempting to gain such access, interrogating employees about their union sympathies, conducting surveillance upon employees while they were with union organizers, and denying UFW organizers access to employees in its labor camps; 2) violated § 1153(b) by unlawfully rendering assistance and support to the Western Conference of Teamsters (hereafter "Teamsters"); 3) and violated SS 1153(a) and (c) by discharging employees because of their support of the UFW.

Having reviewed the entire record in this case, we make the following findings and conclusions.^{2/}

1. The charging party is a labor organization. The respondent is an agricultural employer.

2. Farm labor contractor Ezequiel Vargas and his foreman, Andres Cisneros, are supervisors of the respondent within the meaning of S 1140.4(j) of the Act.

3. Interference, Restraint and Coercion - The general counsel contends that Roy Minami, part owner and general field superintendent of the company, assaulted UFW organizers during

^{1/}All references, unless otherwise indicated, are to the Labor Code.

^{2/}If no exceptions are filed within 20 days after service upon the parties of this proposed decision and order, it shall become final.

the pre-election campaign on August 28, September 5 and September 6. All three incidents occurred on company premises in the presence of the lettuce crews during working hours.

The evidence presented by the general counsel concerning the August 28th incident is virtually uncontested. Paulino Pacheco testified that at about noon on that date he and other UFW organizers went to respondent's property and had begun distributing leaflets to piece-rate lettuce workers when Roy Minami pushed him very hard, so that he almost fell. Minami then pushed Pacheco repeatedly for a distance of about 150 feet toward the organizers' car, yelling, "Out, God damn it, out. God damn it, this is my property, get out of here." Workers were within two feet of Pacheco during the incident.^{3/}

Organizer Peter Velasco testified that at about 10:30 a.m. on September 5 he drove to respondent's property and parked his car on an access road while waiting for the lettuce crews' lunch break, because he could not see the crew from the public road and could not determine when they stopped working. UFW inquiries of the company regarding the time of piece-rate workers' lunch break had met with no response.^{4/} Velasco parked about 120 feet from a

^{3/}The complaint also alleges an assault upon organizer Fred Ross in connection with this incident. The evidence does not support a finding for the general counsel on that allegation which is therefore dismissed.

^{4/}Respondent's piece-rate lettuce crew had no established lunch hour. The lunch break varied from as early as 10:00 a.m. to 1:00 p.m. Acevedo testified that the hour changed from 11:00 to 1:30 to 10:30, and at times it was 10:00. Supervisor Leonardo Manuel testified that he feeds his workers whenever they are hungry, be it 9:00, 10:00 or 1:00. UFW organizer Fred Ross indicated that the union had difficulty in its attempts to visit the property at lunch hour because of such disparities. In fact, Peter Cohen, UFW legal assistant, testified that at Velasco's request he phoned the company several times in late August and

lettuce crew. Roy Minami came to the car with a company security guard, ordered Velasco to leave the property, and threatened to call the sheriff. A discussion of the Board's access rule ensued. At some point, Velasco stepped out of the car and Minami pushed him back into the car and slammed the door. Velasco left the property shortly thereafter and the sheriff in fact arrived.

A third incident involving Minami and UFW organizer Fred Ross occurred at about noon on September 6, 1975. Ross testified that when he attempted to enter the respondent's fields, Minami first blocked his path and then pushed him to the ground. Workers were nearby. A police officer testified that, as he expected that the confrontation might become heated, he watched Minami and Ross closely and he did not see Minami push Ross when he fell. Neither of the general counsel's corroborating witnesses was able to say unequivocally that they saw Minami push Ross. We find that the general counsel has failed to prove that the fall of Ross on September 6 was caused by Minami pushing him.

As to the other two incidents on August 28 and September 5, we find Minami's actions to be in violation of the Act.^{5/} Respondent: contends that it is permissible to use force

[fn. 4 cont.]

early September in order to discuss the union's desire to take access and to make arrangements concerning the time of the lunch hour. Though he left several messages asking Minami to return his calls, the calls were not returned.

^{5/} As the Board was enjoined from enforcing its access regulation, 8 Cal. Admin. Code § 20900 (1975), revised and amended in 1976, between September 3rd and 18th, we do not consider whether respondent's conduct during this pre-election period was violative of that rule. The Security election was held September 19. We note that the UFW was permitted to enter respondent's premises on the one occasion in which testimony revealed they came during nonworking hours in accordance with the access regulation, on September 3, 1975.

to evict a trespasser; that Minami only used the force necessary to keep the organizers out of the work area; and that the organizers were not subjected to "unreasonable" force.

We are convinced that physical confrontations with union organizers such as respondent repeatedly engaged in here must be avoided if the bitterness and chaos which has historically characterized the situation in agricultural labor is to be alleviated. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977). The record demonstrates no compelling justification for respondent's conduct and, in fact, the actual presence or prompt arrival of sheriff's deputies on two of the three occasions demonstrates that resort to self-help was not necessary to insure the organizers' prompt removal from the property. We conclude that respondent's conduct violated § 1153(a) of the Act.

4. Labor Camp Access - Testimony revealed that the employer attempted to restrict access to its labor camps to a one-hour period in the early evening six days a week. Guards were posted every day except Sunday at the entrances to the camps for this purpose. UFW organizers were turned away by guards on September 13 and 14, 1975. They were able to gain access to employees in the camps on numerous other occasions, particularly on Sunday.

Interfering with contact between a union and employees at the employees' homes by posting guards at the entrance to labor camps or promulgating rules controlling the times of such contact is clearly a violation of § 1153(a). Merzoian Brothers Farm Management Company, Inc., 3 ALRB No. 62 (1977). We so find.

5. Interrogation and Surveillance - The complaint alleges that on or about August 29, 1975, respondent through

its agent interrogated employees about their union sympathies. The testimony of most witnesses dates this alleged incident of interrogation in reference to a speech by UFW President Cesar Chavez. There was evidence of one such Chavez speech on September 5, 1975. It was also alleged that this same agent conducted surveillance by taking photographs of UFW organizers with employees. The surveillance occurred two to three weeks before the election.

The general counsel was unable to establish by a preponderance of the evidence that the alleged incidents of Interrogation^{6/} and surveillance occurred after the Act went into effect on August 28, 1975. These charges are dismissed.

6. Discriminatory Enforcement of a No-Solicitation Rule - The record establishes that the Teamsters made approximately four visits to respondent's premises during the pre-election period. On at least two of these visits they engaged in organizational and campaign activity with Security workers rather than administering the Teamsters' existing contract with the company. The evidence shows that the Teamsters came at least once, during work hours, to solicit signatures; once during work hours to distribute campaign buttons; once to distribute copies of a collective bargaining agreement; and once to invite employees to a union picnic. Clearly the authorization card solicitation and distribution of buttons was activity of an organizational nature.

The solicitation of election authorization cards was established by testimony of three employee-witnesses for the

^{6/}The record is silent as to whether the September 5 Chavez speech was the same speech referred to by witnesses attempting to establish the date of the interrogation, or even if it was the only speech by Chavez in that area at that time.

general counsel and was further corroborated by one of respondent's witnesses, foreman Leonardo Manuel. Neither the Teamsters, who formally intervened in the proceeding, nor the employer came forward with a single witness to rebut this testimony though both had ample opportunity to do so.^{7/} Nor did respondent successfully impeach the general counsel's witnesses. The cards were signed during work hours in the fields and in the presence of Roy Minami, who in no way interfered with the Teamsters' activities.

On a second visit, also during work hours, the Teamsters passed out Teamster buttons to the entire crew in the presence of Roy Minami and Security guards. Again, there was no company interference with the Teamsters' activities; nor was the sheriff called. Foremen Johnny Gregarian and Leonardo Manuel both received buttons that day and wore them. These facts were established by the testimony of three employee witnesses for the general counsel, whose testimony is unimpeached and unrebutted.

It is apparent that equal access opportunities were not provided to the UFW. UFW legal assistant Cohen testified that he attempted to contact Minami several times to notify the company of the UFW's desire to take access and to arrange for lunch hour solicitation of Security employees. His calls were not returned. Several UFW organizers testified that on most occasions when they sought to engage in organizational activity at the ranch, they were forced to leave by security guards or company officials. Their testimony was confirmed by Arsenio Tumamao, a Security employee called by the respondent. Tumamao agreed that every

^{7/} There was an interim of over six weeks between the time the general counsel presented its case on this issue in November and the reconvening of the hearing in January.

time that he saw the UFW come on the property, somebody from the company or a security guard told them to leave.

While the UFW sometimes succeeded in "sneaking" onto the ranch, the evidence shows that equal access was not afforded the two competing unions. As the NLRB has stated:

Access to employer's vessels for organizational purposes was granted exclusively to the union with which the employer had entered into a contract requiring membership in that union as a condition of employment. Representatives of the rival union were given no permits or 'passes' to board the ships and, although the evidence shows that they informally boarded the ships for union purposes without being ordered to leave, freedom of access to the employer's ships was not afforded, equally to the two unions.

To grant one labor organization an opportunity to use the employer's property for organizational purposes when such grant is not accorded on equally favorable terms to another labor organization, constitutes employer assistance and support to the first organization, and an unfair labor practice, within the meaning of section 8(1). American West African Lines, Inc., 21 NLRB 291, 6 LRRM 19 (1940). (Emphasis added.)

The record before us establishes extensive campaign activity, far beyond mere oral solicitation, conducted in the presence of supervisory personnel and a high company official, Roy Minami. There is no indication that the company made any effort to limit such activity. We conclude that respondent rendered unlawful assistance and support to the Teamsters.

7. Additional Unlawful Assistance - Andres Cisneros was a foreman and supervisor for labor contractor Vargas. Vargas supplied workers for Security and Cisneros supervised them. Cisneros admitted that he passed out Teamsters buttons to all his employees the day before the election. He stated that the buttons were given to him by Vargas for this purpose. It is

clear that Cisneros had independent authority to hire and fire workers. We find that the company is responsible for the acts of Cisneros, and that his conduct in distributing Teamsters buttons constituted unlawful aid and assistance to the Teamsters in violation of § 1153(b) and (a) of the Act.

8. The Alleged Discriminatory Discharges - Maria Trujillo

worked one week for labor contractor Vargas' crew under the supervision of Andres Cisneros. She was discharged or laid off on September 20, 1975, the day after the election. Though Trujillo and Cisneros offered accounts of the discharge which are, for the most part, in direct conflict, several uncontested factors were established. Both Cisneros and Trujillo testified that the day before the election, and two days prior to the discharge, Cisneros went around to members of his crew handing out Teamsters buttons which he had obtained from Vargas for this purpose. Only three persons refused to accept the buttons. They were Trujillo, Maria Elena Gonzales, and Maria Belen Gonzales.^{8/} Cisneros admitted that only those three employees declined to accept the buttons and further admitted that he called the three "Chavistas", or UFW supporters at the time. The morning after the election, Trujillo had a conversation with Cisneros concerning her continued work at Security which both agreed ended with a mutual understanding that she would continue work until such time

^{8/}The complaint alleges that Maria Elena Gonzales and Maria Belen Gonzales were also discriminatorily discharged. One of the two women testified at the hearing. She admitted that they were both reprimanded for poor work the one day they worked for respondent and that the next day they missed their ride to work with Cisneros. The general counsel, in its post-hearing brief, did not argue that the cessation of the work relationship in these two cases amounted to a violation of the Act. We find that there was no discriminatory discharge as to these two women.

as the work ran out. Later that morning, Cisneros had a conversation with Vargas, after which he informed Trujillo that she was being discharged or laid off.

The testimony hence established Cisneros' knowledge of Trujillo's anti-Teamsters and pro-UFW sympathies. In light of Cisneros' active and unlawful assistance of the Teamsters, the record in this case supports an inference of the supervisor's anti-UFW animus. Also, the timing of the discharge or layoff immediately following an election which was won by the rival Teamster union further supports the general counsel's contention that the layoff or discharge was in fact discriminatory.

However, Cisneros testified that Trujillo was laid off because of lack of work. According to the supervisor, he concluded from his conversation with Trujillo that she did not really need the work. When he realized that there would only be two or three days of work left at the ranch, he laid off Trujillo, along with two other workers, so as to save the remaining work for the people with more seniority on the contractor's crews. Cisneros stated that work at the ranch in fact ended on September 23rd or 24th.

While this economic justification does not alleviate all of the inferences supporting a discriminatory discharge arising from the evidence, on the other hand, the general counsel has failed to produce sufficient evidence to overcome it. On the record before us, we cannot say that a preponderance of the evidence supports the general counsel's position. This allegation is dismissed.

9. Conclusion and Remedy - We have concluded that the respondent rendered unlawful support and assistance to the Teamsters in violation of the Act. Such conduct is grounds for setting aside an election. Oshita, Inc., 3 ALRB No. 10 (1977). Additionally, we have found two instances of assaults by a high company official upon UFW organizers, and interference with communication between employees and organizers at the company labor camps. Such conduct warrants the setting aside of this election. It is unnecessary for us to consider the union's additional objections to the election.

In order to remedy the effects of respondent's unfair labor practices, we will require the respondent to cease and desist from continuing to violate the Act and give notice of this order and decision by mailing, posting, and reading the attached notice to its employees. We have found these remedies to be necessary and desirable in the agricultural setting in order to remedy the effects of unfair labor practices, see Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977).

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

1. Cease and desist from:

(a) Interfering with the right of its employees to communicate freely with and receive information from organizers at their homes in labor camps located on respondent's premises.

(b) Assaulting union organizers who are attempting to communicate with its workers.

(c) Rendering unlawful aid, assistance and support to the Teamsters or any other labor organization by allowing its representatives to engage in organizational activities on company premises while denying solicitation on equal terms to a rival labor organization, and by soliciting its employees to wear buttons 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 Section 1152.

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

(a) 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.

(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 including the time period of August 28, 1975 through September 19, 1975.

(c) 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 nonhourly 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 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: August 18, 1977

GERALD A. BROWN, Chairman

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. The Board has told us to send out and post this notice.

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

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

- (1) to organize themselves;
- (2) to form, join or help unions;
- (3) to bargain as a group and choose whom they want to speak for them;
- (4) to act together with other workers to try to get a contract or to help or protect one another;
- (5) to decide not to do any of these things.

Because this is true we promise that:

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

Especially:

WE WILL NOT prevent union organizers from coming to our labor camps to tell you about the unions.

WE WILL NOT assault union organizers.

WE WILL NOT unlawfully favor one union over another.

SECURITY FARMS

By: _____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.