STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PROHOROFF POULTRY FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 75-CE-38-R 3 ALRB No. 87

DECISION AND ORDER

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

On March 16, 1977, Administrative Law Officer (ALO) Michael Schmier issued his Decision for this case. The Respondent, General Counsel, and Charging Party filed timely exceptions.[1/]

Having reviewed the record, we adopt the Administrative Law Officer's findings, conclusions, and recommendations to the extent consistent with this opinion.

On September 19, 1975, Respondent announced a program of wage increases and vacation and holiday benefits made immediately available to at least 117 of 140 employees. It is undisputed that a program of such far-reaching dimensions was unprecedented at Prohoroff Poultry Farms. Three weeks later, Respondent was served

[1/]After the Decision was transferred to the Board, the UFW moved to consolidate this case with Prohoroff Poultry Farms, No. 76-CE-26-R. We deny this motion.

with a petition for certification by the United Farm Workers. On October 24, 1975, an election was held in which no labor organization received a majority of the votes.[2/]

Promises and Grants of Benefits

The gist of Respondent's exceptions is that its promises and grants of wage increases and vacation and holiday benefits were made without knowledge of UFW organizing. The Respondent also argues that these increases were justified by legitimate business considerations as part of a long-term effort to upgrade conditions. We disagree and support the ALO, who found that the increases were made in direct response to a UFW organizational effort.

The ALO found that the Employer had knowledge of an impending union election by September 15, four days before the benefits were announced to the workers. We agree, in light of the following factors: the employees' openness about union activities; conversations of management representatives with the workers and among each other, including a conversation between a management representative and an employee about one month before the election in which the union was discussed because "there was no way of avoiding it"; and Personnel Director Victor Kolesnikow's testimony that he had heard rumors of union organizers' presence

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[2/] Final election results were as follows:

UFW	57
No Union	69
Unresolved Challenged Ballots	5
Void	0

on the ranch before September 15 and that the purpose of attending the meeting at the San Diego Employers' Association on September 18 was "[t]o get help, maintain the ranch union free." He also said that at this time "[e]verybody was very ... certain that there might be an election."

Respondent contends that the increases were part of a general effort to better working conditions, pointing to changes required by health and safety, minimum wage, and child labor statutes and regulations. Respondent testified that there were some wage changes in 1974. We agree with the ALO that these changes were minor and had little effect, if any, on work conditions. Prior to the September 1975 pre-election increases, there was no vacation plan, no fully-paid insurance for employees, no holidays, no regular days off, and no provisions for time-and-a-half pay for any work. Hence, the increases announced on September 19, and in fact granted before the election, constituted a significant change of working conditions. Respondent has offered no persuasive reasons why the benefits were announced just a few weeks before the representation election. A few weeks after John Prohoroff, Jr. met with the employees to announce the benefits, he held meetings to discuss the company position on unionization. At those meetings, he told the employees that "the union did not give benefits to its members. Benefits come only from me, from the business." This statement coming so soon after the granting of extensive benefits supports our determination that the purpose of announcing the benefits on September 19 was to dissuade the employees from joining the union. We find that Respondent

violated Section 1153(a) of the Act by the grant of benefits.

Interrogations

The ALO found that the conversations between John Prohoroff, Jr. and Jesus Gonzales, Sr., and between Rogelio Garcia and Arnulfo Jimenez, constituted interrogation. Respondent contends that its behavior was not in violation of the Act because the exchanges were trivial and ambiguous, and the Employer was not hostile. We disagree. A violation may be found even if the conversation in dispute was "conducted under the guise of a good-natured exchange." Safeway Cabs, Inc., 146 MLRB 1334, 1335, 56 LRRM 1061 (1964). Without demonstrating a valid purpose and without assurance against reprisal, General Manager Prohoroff, Jr. and Supervisor Garcia initiated conversations with employees, asking them to reveal their union sentiments. Such behavior is unlawful interrogation. We agree with the ALO, who concluded that these conversations were coercive and in violation of Section 1153(a) of the Act.

Promises of Favoritism

The ALO found that the exchange between Garcia and Jimenez contained an illegal promise of favoritism. Garcia promised money, a better job, and more status on the job in return for Jimenez's relinquishment of his union support. Garcia also promised to help Jimenez financially in case of a strike. Respondent claims that the incidents should be discounted because Jimenez was a second cousin of Garcia. However, there was no

evidence presented to establish that Garcia's promises were unrelated to his supervisory position. In parting, Garcia told Jimenez to notify him if he changed his mind and decided to vote for no union so "the boss could count on" his vote. This clearly infringed upon Jimenez's rights under the Act, even though Garcia was a distant relative.

Incidents Not Charged in the Complaint

The ALO considered threats which were litigated at the hearing as "background" for the charges of unfair labor practices framed in the complaint but refused to consider them as separate allegations because they had not been charged in the complaint. These threats were all made by persons named in the complaint and were introduced without objection through testimony and exhibits offered by all three parties. Each was fully litigated. They were threats made in one instance through one of the Respondent's supervisors and in other instances through leaflets and speeches of the Employer.

The leaflets in evidence are entitled "Someone was Shot", "Attacks", and "Fights and Beatings". These consisted of copies of newspaper stories of violent labor strikes along with Spanish translations. The newspaper clippings are not dated and at the bottom of these leaflets, which describe beatings with lead pipes, at least two separate shootings, and more attacks with pipes, clubs, belts, tire irons and machetes, appears in large printing the slogan "VOTE NO, SO THAT THIS WILL NOT HAPPEN AT THE PROHOROFF RANCH."

The message these clippings carried was reinforced in a speech given by John Prohoroff, Jr. on the day before the election in which he told his employees:

> The newspapers are filled with the horrible stories of what can and does occur when the UFW strikes ...
> People have been shot!
> People have been beat up!
> People have been killed!
> Your "No" vote would insure that this will not and could not occur to you and your family.

At this point in the speech, company officials distributed posters to the employees depicting one man strangling another. The poster says in Spanish:

> VIOLENCE ON THE PICKET LINE
> VOTE "NO"
> SO THAT THIS WILL NOT HAPPEN ON
> THE PROHOROFF RANCH

Letters to the employees, dated three days before the election, say, "The newspapers are full of accounts of violence when the farm and the UFW aren't in agreement." These letters and the Respondent's speech also conveyed to employees the probability that they would lose company housing if the union should come in.

Further, it is undisputed that Respondent's supervisor, Roberto Jimenez, threatened employee Jesus Gonzalez, Jr. with the loss of jobs through replacement by machines if the union was selected by the employees.

We are not precluded from finding fully litigated conduct to be additional violations of the Act solely because they were not included in the complaint. Anderson Farms Co., 3 ALRB No. 67 (1977). Accordingly, we find the threats of violent strikes, loss of company housing and jobs to be additional

violations of Section 1153(a) in that they tended to interfere with, restrain and coerce Prohoroff employees in the exercise of the rights guaranteed under Section 1152.

The Remedy

In fashioning an appropriate remedy in this case, it is important to note the large number of meetings that the Respondent held with his employees. These meetings commenced on September 19 and initially dealt with the announcement of new benefits. Workers from various departments were convened and addressed by John Prohoroff, Jr. and his aides. By September 23, seven to nine such meetings had been held. An additional eight to ten departmental meetings designed to foster the Respondent's anti-union position took place between October 10 and 13. At these meetings the employees were told, as the ALO found,

> that Respondent would replace them if they went out on strike, that unions brought vandalism and violence, that they might be required by the Union to travel and work far away from their houses to support labor union activities elsewhere, that if they left their jobs, they would lose the benefit of the low rent charged by Respondent for its employee housing on the ranch facility, that union fines were enforceable in courts of law, that union dues were onerous, ... and that a terrible confrontation between the UFW and Teamsters had occurred at "Egg City", a competing egg farm.

When these meetings are considered in the context of the promising and granting of benefits and wage increases, of the threats and interrogations, and of the Respondent's intense anti-union animus, it is clear that the Employer's acts influenced the employees before they could make up their minds about unionization. Under these circumstances, a cease and desist order is inadequate.

In similar cases, the NLRB has granted union speeches on company time. Scotts, Inc., 159 NLRB 1795, 62 LRRM 1543 (1966), Crystal Lake Broom Works, 159 NLRB 429, 62 LRRM 1406 (1966). We deem that remedy to be appropriate here. The UFW is to be permitted one hour of company time in which to communicate with the workers. Further, the Employer is ordered to provide the UFW with space on company bulletin boards.

The ALO recommended that a representative of Prohoroff Poultry Farms explain employee rights under the Act to each worker receiving a copy of the Notice who requested further explanation. While we agree that these employees need explanation of their rights and assurance directly from their Employer that these rights will be protected, we find it impractical to require that a representative of the Employer be available to each employee who may request explanation at the time the Notice is distributed. Accordingly, we order that a Board Agent read the attached Notice in both Spanish and English to the assembled employees of Prohoroff Poultry Farms during work hours. This reading is to be followed by a question-and-answer session conducted by a Board Agent during the work hours.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board orders that the Respondent, Prohoroff Poultry Farms, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership of any of its employees in the UFW, or any other labor organization, by unlawful promises and grants of increased wages and benefits to employees.[3/] By interrogating its employees as to their union membership and sympathies and by promising any employee favored treatment if that employee refrains from supporting or voting for a union. By threats of violent strikes, loss of company housing and jobs if a union were selected by the employees.

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

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

(a) Hand out the attached Notice to all present employees and to all employees hired during a one-year period following the date of the implementation of this Order. Copies of the Notice shall be furnished by the Regional Director in appropriate languages.

(b) Mail copies of the attached Notice in all appropriate languages, signed by an authorized representative of Respondent, within 20 days from the receipt of this Order, to all employees employed between September 1, 1975, and the date of the implementation of this Order.

(c) Post copies of the attached Notice in all

[3/] Nothing herein shall be construed as requiring Respondent to revert to wage and benefit levels below those now in force. Hen House Market No. 3, 175 NLRB 596, 71 LRRM 1072 (1969).

appropriate places at times and places to be determined by the Regional Director. The Notices shall be posted immediately upon receipt and be maintained for 90 consecutive days thereafter. Respondent shall exercise due care to replace any Notice which has been altered, defaced or removed.

(d) A Board Agent shall read the attached Notice in appropriate languages to the assembled employees of the Respondent on company time. The 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 these readings and the question-and-answer period.

(e) During the next 12 months, make available to the UFW reasonable space on company bulletin boards, at the time clocks and other places at the ranch where employees congregate.

(f) During the next organizational period, the Respondent shall provide the UFW with access to its employees during regularly scheduled work hours for one hour. During such time, the UFW may conduct organizational activities among the Respondent's employees. The UFW shall present to the Regional Director its plans for utilizing the time. After conferring with both the UFW and the Respondent, the Regional Director shall determine the manner and most suitable times for the special

access in conformity with 8 Cal. Admin. Code Section 20901(a)(2) (1976). During this time, no employee shall be allowed to engage in work-related activities. No employee shall be forced to be involved in the organizational activities. All employees shall receive their regular pay for the time away from work. The Regional Director shall determine an equitable payment to be made to nonhourly wage earners for their lost productivity.

(g) Notify the Regional Director in writing, within 20 days from the date of the receipt of this Order, of steps that Respondent has taken to comply with it and continue to report periodically thereafter in writing until full compliance is achieved.

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

Dated: November 23, 1977

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found we have engaged in violations of the Agricultural Labor Relations Act and has ordered us to notify all of our employees that we will remedy those violations, and we will respect the rights of all employees in the future. Therefore, we are now telling each of you that:

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

   (a) To organize themselves.

   (b) To form, join or help unions.

   (c) To bargain as a group and choose whom they want to speak for them.

   (d) To act together with other workers to try to get a contract or to help or protect one another.

   (e) To decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT promise or give unlawful benefits and/or wages in order to discourage membership in the UFW or any other labor organization.

WE WILL NOT ask employees about their union activities or sympathies.

WE WILL NOT give any employee favored treatment if she/he refrains from supporting or voting for a union.

WE WILL NOT threaten employees with violent strikes, loss of company housing and/or jobs if a union is selected by the employees.

WE WILL NOT in any other manner interfere with the rights of our employees to engage in these and other activities, or refrain from engaging in such activities, which are guaranteed by the Agricultural Labor Relations Act.

Dated: PROHOROFF POULTRY 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

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD[1/]

In the Matter of:	
PROHOROFF POULTRY FARMS,	Case No. 75-CE-38-R
Respondents	
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO	
Charging Party	

A. Paul Griebel, Esq.
of Sacramento, California for the General Counsel

Gray, Gary, Ames & Frye, by
James K. Smith, Esq.
of San Diego, California for the Respondent

James Rutkowski, Esq.
of Los Angeles, California for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL K. SCHMIER, Administrative Law Officer; This case was heard before me on February 7 through February 11, 1977 in Oceanside, California and on February 12 through 15 and February 22 through 24, 1977 in San Diego, California; all parties were represented. The charge was filed by the United Farm Workers of America, AFL-CIO (herein called "UFW") on October 10, 1975. The complaint[2/] issued November 21, 1975, and alleges violations by Prohoroff Poultry Farms, (herein called, "Respondent") of Sections 1153(a) and 1154.6 of the Agricultural Labor Relations Act (herein called the "Act"). Copies of the charges and complaint were duly served on Respondent. The parties were given the opportunity at the trial

1/ Herein called the Board.

2/ The complaint was amended by the General Counsel at the hearing. The major amendment concerned a request for a bargaining order which the General Counsel subsequently abandoned.

to introduce relevant evidence, examine and cross-examine witness and argue orally, briefs in support of their respective positions were filed after the hearing by all parties.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments and briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent is a partnership engaged in agriculture in San Diego County, California, as so admitted by Respondent. Accordingly, I find that Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

Further, it was stipulated by the parties that the UFW is a labor organization representing agricultural employees within the meaning of Section 1140.4(f) of the Act, and I so find.

II. The Alleged Unfair Labor Practices

The complaint alleges that Respondent discouraged employees from joining, assisting, supporting and voting for the UFW during the UFW's[1] organizational campaign in violation of Section 1153(a) of the Act by: (1) promising its employees increases in wages, paid vacation time, paid holidays and insurance; (2) granting its employees increases in wages, paid vacation time, paid holidays, and insurance; (3) offering its employees material inducements, including, but not limited to, a lunch party, food, and other gifts; (4)interrogating its employees regarding their UFW membership activities and sympathies; (5) creating the impression of surveillance of its employees' activities on behalf of the UFW; (6) promising favoritism to its employees and (7) including in its payroll for the voting eligibility period names of persons represented to be eligible voters, which persons were included in said payroll for the primary purpose of voting in said election. Additionally, the last alleged violation of Section 1153 (a), regarding wilfully including in its payroll for the voting eligibility period names of persons represented to be eligible voters added for the primary purpose of voting, [{7) above], is also alleged as a violation of Section 1154.6 of the Act.

Respondent denies that it engaged in any unlawful activities.

III. The Facts

Respondent operates an egg farm in San Marcos in San Diego County. The farm is comprised of many buildings which house approximately two million chickens. Respondent utilizes the latest mathematical, computer and engineering techniques in maximizing egg production. Careful statistical control is rigorously adhered to and the chickens subject thereto are regarded by management as "machines."

The business began over 30 years ago when John Prohoroff, Sr.

began raising chickens in San Marcos. Over the years, it steadily expanded in geographic size and employee complement. By September[3/] 1975 approximately 140 employees worked for Respondent in some 24 departments, the major ones of which included, feed mill, egg production, force molt, aisle cleaning, fertilizer plant, baby chicks and grain unloading. There was also a trucking department.

During 1974 and 1975, John Prohoroff Sr. had *a* major illness, recuperated and took a long trip. More and more authority for operating the ranch was then gradually transferred to his son, John Prohoroff, Jr., a trained engineer. In September 1975, John Prohoroff, Jr.'s chief operatives were Greydon Koellman , the accounting controller with responsibility for personnel management and Victor Kolesnikow, a computer specialist. Both Prohoroffs, Koellman and Kolesnikow were admitted by Respondent to be management employees[4/]

Sometime between June and August, through bulletins in a trade publication called "Ag Alert" and other newspaper articles the Respondent became aware of the then newly enacted Act. As Respondent believed the Act would become effective on September 1, it was quite concerned about the possibility of union activity at its premises. This concern was exacerbated by reports that nearby ranches were being organized by the UFW.

Soon after the Act became effective, Respondent's employees began their organizing effort. There was talk among employees, a series c meetings with representatives of the UFW and eventually, distribution and collection of Union authorization cards.

Respondent contends that the timing of the beginning of this organizational activity is critical. Respondent admits that in September it promised employees, increased wages, paid vacation time, paid holidays, health insurance and other benefits and soon thereafter fulfilled these promises. However, Respondent contends that as the decision to grant these benefits was made prior to the inception of the UFW organizational effort, then it must have been for a legitimate, non violative business purpose. As a second tier position, Respondent asserts that even if the decision to promise and grant the new benefits were made after the organizational activity began, it was still a non violative legitimate business decision because it was decided before Respondent had actual knowledge of the UFW organizational effort at its premises. Respondent's contentions are first reviewed as to the facts and then as to the law.

At the outset, it is noted that the 17 months between the occurences and the trial, among other things, made the testimony of several non-English speaking witneses not conducive to fathoming precise dates for occurrences. Nevertheless, a composite picture emerges. It does not appear necessary to discuss here the testimony of the many witnesses with respect to each person's recollection and then engage in reconciliations thereof. Respondent asserts that testimony of several of General Counsel's witnesses established

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3/ Unless otherwise indicated, all dates herein refer to calendar year 1975.

4/ The Board has determined that Rogelio Garcia, Francisco "Poncho" Perez, Tomas Padilla and Robert Jiminez were supervisors within the meaning of the Act. Prohorduf Poultry Farms, 2 ALRB No. 56.

that organizational meetings began in late September or early October. Respondent admits that on September 19, Respondent distributed a letter to all employees promising and granting a pay raise. Thus, the first issues are whether on September 19, the time Respondent promised and granted the benefits, had the UFW organizational activity began and, if so, did Respondent know about it. As General Counsel's witnesses do not establish clarity in this area,[5/] the testimony of Respondent's representatives is used to provide the key. Respondent's computerman, Victor Kolesnikow, testified that although at first he had no "knowledge" of UFW activities at Respondent's premises and never saw UFW organizers there, he heard "rumors" from his fellow management representative, Bob Lauffer, that the UFW had begun to organize at Respondent's farm. It was established that Bob Lauffer was fired on or about September 15. Based upon this and Hernandez' September 14 to 26 parameters as well as the general plausibility that in the context of the fact that a great many employees, as well as supervisors and management representatives lived in Respondent's housing on Respondent's premises all within very close proximity to each other where news obviously traveled fast, I find that by September 15, management had knowledge that the UFW had begun its attempt to organize Respondent's employees.[6/]

5/ Raymondo Hernandez testified that he signed an authorization card 20 to 30 days before the election and that 8 to 10 days before that, UFW organizers were meeting with employees. I credit his testimony, but it fails to establish an exact date. The time when Hernandez observed organizational meetings was thus between September 14 and 26. Jesus Gonzales, Jr., testified that some of the workers had begun union meetings at their homes on Respondent's premises at the beginning of September. Supervisor Tomas Padilla testified he had seen employee Jose Ortiz distributing union leaflets to some employees "a month or two" before the election (August 24 to September 24) and that "nobody was hiding the fact hat the workers wanted a union."

6/ Lauffer, presumably available to testify, was never called by Respondent to refute the statement imputed to him by Kolesnikow, Koellman also referred to these "rumors'' as if to indicate they were distinguishable from "hard knowledge". However to the extent that Kolesnikow's testimony differs from that of Koellraan and Prohoroff, I credit the former.

Having the knowledge, Respondent commenced a series of actious designed to combat the UFW organizational activities.[7/]

On September 18, Prohoroff, Jr., Koellman and Kolesnikow drove to San Diego for their first meeting at the San Diego Employers' Association (herein called "Association). At that meeting, Respondent paid a fee and joined the Association.[8/] The very next day, on September 19, the employer began holding meetings with employees and supervisors to promise new benefits at the ranch. A statement of these benefits was distributed to all employees and included; 1) one or two paid vacation(s) per year, 2) medical insurance paid by Respondent, 3) six (6) paid holidays per year, 4) time and a half if paid holidays were worked, 5) review of wages twice a year. This meeting and the statement delivered to the employees was the result of the discussion the previous day at the Association. It was the first time in the thirty years of Respondent's operation that such a range of benefits was promised all employees.[9/]

7/ Although I have found that General Counsel established Respondent's knowledge as of September 15, even were this knowledge not so established, the result would be the same, Oshita Inc., 3 ALRB 10 discussed, infra. Prohoroff, Jr. and Koellman admitted that the promised and granted benefits were a response to "possible" organizing activity. Time and again they both admitted that the spectre of organization was one of the reasons for the raises. However, Kolesnikow testified that at the September 18 meeting at the San Diego Employers' Association, Prohoroff, Jr. told the Association's Director, "we will be shortly confronted with union elections and we want advice as to how we best can keep our ranch union free."

8/ Koellman and Prohoroff, Jr. testified that there were business purposes behind this meeting other than obtaining advice to combat union activity while Kolesnikow, whom I here credit, testified combatting union activity was the only purpose.

9/ Koellman testified that the insurance program had been decided upon prior to September 11 and communicated to employees on that date. As the "memorandum[11] of September 11 is in English, even were Koellman credited,, the testimony does not establish such an announcement nor distribution of the "memorandum" , Moreover, Jesus Gonzales and other witnesses testified that they first learned of the insurance when Prohoroff, Jr. announced it on September 19 and the pamphlet was distributed that same day. Whether or not Koellman had been working on checking out providing insurance benefits for several months proceeding the September 19 announcement of those benefits, the timing of the announcement, during the organizational campaign, is too much for mere coincidence. Moreover, the expressed concern to increase benefits quickly because of the recent effective date of the Act is inpersuasive because the Act was no surprise and its effective date must have been anticipated for at least three months subsequent to its approval by the Governor in June.

Each of the promised benefits was actually granted prior to the election. Twelve checks for these new benefits were handed out within a day of the October 24 election.

The same day the new benefits were announced, September 19, Respondent informed the employees that these benefits were made effective immediately. The wage increases were granted to all but 23 employees in the payroll period ending September 21 and were actually received by employees on September 26.[10/]

The majority of employees worked in Department 5, egg production. This was the first wage increase granted to this group of piece-rate employees at least since 1969.[11/]

On the morning of September 19, Prohoroff, Jr. announced to his supervisors that he had gone to the Association the day before and as a result decided to implement the new benefits. That afternoon began the first in a series of department meetings where Prohoroff, Jr. Koellman and Kolesnikow convened the workers of the departments in groups of departments and Prohoroff, Jr., announced in Spanish the new benefits to employees. By September 23, seven to nine meetings announcing the benefits had been held.

At several of the meetings, Kolesnikow passed out photocopies of a letter, in Spanish, itemizing the benefits.[12/] At one meeting Kolesnikow handed extra copies to Roberto Salas, Sr. so Salas could give them to his son and daughter. Kolesnikow told Salas that if the union did not win, the employees would get more wages and benefits. Kolesnikow told Jose Gallegos that because of all those benefits, the employees did not need a union[13/]

10/ Most of the employees were paid on the basis of a rate per unit of work except where the speed caused by such pay inducement concomitantly caused an increase in the breakage rate where either a penalty rate was applied or a straight hourly rate was substituted. It is unnecessary for purposes of this decision to particularize the details of these increases, e.g. $.55 to $.57 ($.02 increase) per house of chickens, as Respondent has admitted promising and making the changes.

11/ Although in 1974, there had been a change in the method of computation of the rates and a bifurcation of the formerly joined operations of egg gathering, feeding and removal of dead birds, there was no evidence presented that this was an increase in the wage rate, but rather appears to be merely a change in the method of payment or the calculation thereof.

12/ Further revealing the anti-union tenor and purpose in granting the benefits is Prohoroff's testimony that at these meetings he told employees he wanted them to have the chance to speak out openly with someone in top management.

13/ Kolesnikow never clearly denied this imputation. Salas, Sr., his son, daughter and Gallegos, I find to be employees within the meaning of the Act, as I do for all persons named herein who are not otherwise identified.

The employer had embarked on an intense anti-union campaign. The second step of this campaign was a second series of departmental meetings beginning the first week in October. Again, Prohoroff, Koellman and Kolesnikow met with the employees. Prohoroff, Jr. addressed the employees in Spanish. Kolesnikow also addressed the employees in Spanish and all of the foremen of the particular departments were present.

Between October 10 and 13, a third series of meetings, eight to ten in number, were held according to the same departmental breakdown as in the second series. Prohoroff, Jr. told the employees in Spanish at each of the meetings that he was opposed to unionization. Both Kolesnikow and Koellman followed Prohoroff, Jr. in addressing the employees. The employees were told, inter-alia, that Respondent would replace them if they went out on strike, that unions brought vandalism and violence, that they might be required by the Union to travel and work far away from their houses to support labor union activities elsewhere, that if they left their jobs, they would lose the benefit of the low rent charged by Respondent for its employee housing on the ranch facility, that union fines were .enforceable in courts of law, that union dues were onerous, that Koellman had once lost his job and home due to a labor dispute and that a terrible confrontation between the UFW and Teamsters had occurred at "Egg City", a competing egg farm. Newspaper articles with photographs and drawings depicting violence were translated, photocopied and distributed. Moreover, typical of employer anti-union campaigns, certain distributions of employer propaganda were made.

Part of Respondent's campaign was a voluntary employee lunch, given on October 22, two days before the election, at the “Red Barn," a local community meeting center not on Respondent's premises where Respondent provided, at no cost to the employees, Kentucky Colonel fried chicken and soft drinks. John Prohoroff, Sr., father of Prohoroff, Jr., addressed the employees about his confidence in his son whom he had just promoted to General Manager of Respondent. Prohoroff, Sr. said he knew the employees would have a good relationship with Prohoroff, Jr.

Prohoroff, Jr. addressed the employees and accepted his father's appointment as General Manager. At the end of the lunch, an anti-union propaganda pamphlet was distributed to many employees.[14/]

The General Counsel and Charging Party contend that Respondent's free distribution of the fried chicken and soda pop were unlawful inducements as well as small bags of candy given to employees.

14/ Although the Act permits uncoercive statements and meetings to be conducted by employers, Koellman and Prohoroff, Jr. insisted the purpose of this meeting, two days before the election, was only to announce formally the appointment of Prohoroff, Jr. Later, Prohoroff, Jr. admitted "one of the reasons" for the lunch was the impending election.

About a month before the election, Prohoroff, Jr. took small bags of candy, the retail purchase price of each being approximately $.75, to a neighbor who lived next to Arnulfo Jiminez. Koellman testified that a few days before the election, he attempted to visit all 40 employee residential houses on Respondent's premises to give bags of candy to the children and talk to the adults. Teams of two of Respondent's representatives visited each home. They did not enter unless invited to do so. Salas testified that when Koellman and supervisor Tomas Padilla were in his home, one of them said, "thank you, we expect you will vote no union.[15/]

During the campaign several management representatives and/or supervisors on various occasions had conversations with employees which the General Counsel alleged were proscribed interrogations. During the campaign, Jesus Gonzalez, Sr. was approached at his work site by Prohorof f, Jr. Prohorof f, Jr. asked Gonzalez if Gonzalez was a Union member. Prohoroff then told Gonzalez that he (Prohoroff Jr.) expected Gonzalez to cooperate with the company. Prohoroff explained the benefits Gonzalez had and promised that he would receive more benefits if he voted "no Union."[16/]

Approximately four to five days before the election, Rogelio Garcia confronted Arnulfo Jiminez near Jiminez' house at about 5 or 6 p.m. in the evening. Garcia asked Jiminez what side he was on. Jiminez said he was on the side of the union, Garcia said to "get on the side of the boss" because the boss would give him a better job and he would be well-established if the boss won, Jiminez said he was concerned about what his co-workers would say if he sided with the "boss" to which Garcia replied, "never mind your co-workers, mind your children." Garcia told Jiminez that if he changed his mind/ he should so inform Garcia one hour before the election so that the boss could count on Jiminez[1] vote.[17/]

One to two weeks before the election, a little before 10 a.m., Kolesnikow approached employee Rafael Grave at his place of work as a chicken feeder. Kolesnikow told Grave the election was close by, to think carefully about what he was going to do because Kolesnikow could help him with better wages.

Kolesnikow told Grave that if he sided with Respondent, he would get better jobs where he would make more money and a bonus. Kolesnikow promised to see what he could do about getting a company house for Grave. Kolesnikow told Grave that if Grave did not get on the side of the boss, he would have difficulties getting the vacations he had been promised. Kolesnikow also told Grave that if Grave voted for the Union, it would be harder for him to advance. Although these last words

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15/ Outside of the allegation that the candy was an illegal inducement, the General Counsel's complaint did not allege that these home visits by management and/or supervisors were independent unfair labor practices.

16/ To the extent that Gonzalez[1] testimony differs from that of Prohoroff, JJ the former is credited. An affidavit given by Gonzalez to an investigator for the Board which may have omitted Prohoroff's question as to Gonzalez' Union sympathies does not destroy Gonzalez' credibility.

are susceptible to another interpretation – Kolesnikow merely opining that the structure of a union contract would impede advancement -- the impression it left Grave with was that if Grave voted for the UFW, the Respondent would not advance him.

After one of the meetings Respondent had with employees, Roberto Jiminez, a supervisor, told Jesus Gonzalez, Jr. that there were lots of ways of defeating the Union like bringing in automatic machines.[18/]

The last company meeting was held within 24 hours of the election. Prohoroff, Jr. spoke in Spanish about his background and requested the employees to vote against the UFW citing many reasons. Among the reasons Prohoroff mentioned were, Respondent now (because of the recent increases and changes) had better benefits than many other employers with UFW contracts, Respondent's recently granted 6 paid holidays were better than other employers who allowed fewer or none and union hiring halls might dispatch members to the Imperial Valley to pick grapefruit while the worker's spouse was dispatched for days at a time to Chula Vista for tomato picking causing family break ups. A photograph depicting violence and a statement associating this violence with the Union was distributed.

A list of employees was submitted to the Board after it was requested. Although the list contained some names of persons not currently working, there was little or no evidence presented supporting the allegation that such inclusions were wilful. Respondent's given list is an annual list. There was great time pressure for production of the list by the Board. Moreover, Respondent was not certain as to which names were desired or required.

16/ Continued.

The one to one dimension of the conversation is noted as adding to the force of the effect of the conversation.

17/ Arnulfo Jiminez is the son of Rogelio Garcia's cousin. However, Garcia's denial that he asked Jiminez whether or not he was for the Union is not credited.

18/ This is not specifically alleged in the complaint as a separate violation(threat).

DISCUSSION AND CONCLUSIONS

That Respondent had knowledge of the UFW organizing effort on its premises before September 15, the day Lauffer was fired, was strongly denied. Respondent would have it that its September 18 visit to the San Diego Employers* Association was prompted by its concern about many management matters one of which was potential UFW organization. To the contrary, Kolesnikow testified that Lauffer had informed him of the "rumors" that the organizational effort had begun. This was never clearly denied. Most of the management representatives, supervisors and employees lived on Respondent's property, in houses rented by Respondent, all in very close proximity. They saw each other in the evenings after work as well as during work. Supervisor Tomas Padilla testified that there was no attempt to hide the union activity. In this background, and based on the credibility of the respective *witnesses,* I conclude that before September 15, Respondent knew of the organizational intent.

This knowledge caused Respondent on September 18 to seek the counsel and to join the membership of the San Diego Employers' Association. The Association immediately provided much literature, anti-union campaign propaganda and strategic advice as to the conduct of the anti-union campaign. It was a strong campaign.

The day after the first meeting at the Association, Respondent began implementing its strong campaign as planned at the Association meeting. Respondent precipitously promised 1) increased wages or rates, 2) paid vacation time/ 3) paid holidays, including tine and a half if employees were asked to work on a holiday, and *a* health insurance plan. Respondent told the employees that these promises were granted and by September 26, the next payroll period, they were implemented. These precisely timed promises and subsequent grants were not coincidental, nor were they based on some vague apprehension of possible organizational effort, in futuro. They were clearly directed to the existing organizational effort about which Respondent was well informed.

Even were the promises of benefits and grant thereof not based on knowledge of an actual union organizational effort, Respondent's representatives admitted that they were concerned about "possible" future organizing efforts. There had. been such activities at near by ranches and farms and much talk in the news media about organizing. Respondent admitted seeking advice from the Association about combatting future union organizing. The day following the Association meeting and, at the suggestion of the Association, the unprecedented employee benefits were promised and soon granted. Even were the Respondent without knowledge of the actual organizing, given its admitted motivation of protecting against imminent organization, benefits of significant value were granted which tended to affect the ability of workers who received them to vote freely and intelligently. Under the circumstances, the unprecedented promise and grant of significant benefits "cannot be reasonably dismissed as a mere expression of noblesse oblige." Oshita, Inc. 3 ALRB 10. However, I find that

these actious were intended to, and did, substantially interfere with the free expression of the employees.

The increased benefits were then expressly used as a campaign tool when Respondent compared its increased benefits to the lower benefits under a neighboring farm's UFW contract and delivered 12 vacation checks within one day of the election.

This conduct can bear "no shield of privilege solely from the standpoint of timing." NLRB v. Douglas and Lomason, 142 NLRB 320, 333 P. 2d 570, 56 LRRM 2577 (8th Cir,, 1964). Although here I have found the intent to interfere, the test does not require intent but only that the act tends "to interfere with the free exercise of employee rights (§1152) under the Act." Cooper Thermometer Co., 154 NLRB 502, 503, n.2. 59 LRRM 1767.

Section 1153 (a) proscribes not only intrusive threats and promised, but also conduct immediately favorable to employees which is undertaken with the express purpose of impinging upon their freedom of choice for or against unionization and is reasonably calculated to have that effect." Promises and grants of benefits thus constitute a classic "fist inside a velvet glove. . . employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which, may dry up if it is not obliged." NLRB v. Exchange Parts 375 U,S. 405, 55 LRRM 2048 (1964) With respect to the health insurance, which Respondent contends was contemplated a few months earlier and again on September 11, the record is inconclusive, in part due to credibility problems, Therefore I make no findings as to whether health insurance was decided upon in May or on September 11, as contended. Even were such a decision made before the advent of the union campaign and not in response to the organizing effort, the nature of the timing of the announcement about health insurance, together with the other benefits, on September 19', was in response to the UFW effort and therefore coercive Montgomery Ward and Company 220 NLRB 60, 90 LRRM 1430 (1975) Respondent" by promising the aforementioned benefits and also by granting them, as alleged, violated Section 1153(a) of the Act.

The General Counsel contends that Respondent unlawfully induced employees by giving them free Kentucky fried chicken and soft drinks at an employee luncheon, held October 22, and by passing out small bags of candy at other times. There is no question of fact here as Respondent admits giving the employees the fried chicken lunch and small bags of candy. The General Counsel cites Renmuth Inc., 195 NLRB 298, 79 LRRM 1291 and Medline Industries, Inc., 218 NLRB 1404, 89 LRRM 1829, 1831 as authority for such conclusions. Renmuth, however, is clearly distinguishable from the instant cause as it involved a future promise, not a contemporaneous gift, of social parties, picnics and a company sponsored bowling team. In Medline Industries, the Administrative Law Judge, brushing aside the same contention Respondent made here, and that I, too,, reject, that the past practice of Christmas parties established a precedent for free lunches, held that the free lunch was part of a developing pattern of special benefits and violative of the Act. The National Labor Relations Board panel did not expressly review these comments and left them unmodified in the published decision. However,

where the National Labor Relations Board, rather than an Administrative Law judge, expressly considered this issue, the law appears to be to the contrary. The Zeller Corporation, 115 NLRB 762; Lloyd A. Fry Roofing Company, 123 NLRB 86. In The Food Mart, 158 NLRB 1294, the National Labor Relations Board, (herein called NLRB), reiterated its position. "(I)t has certainly been established since the landmark case of Peerless Plywood, 107 NLRB 427, that the granting of free dinners and beverages to the employees by either the employer or the Union during an election campaign constitutes legitimate campaign activities..." On this basis, I conclude that giving the employees the free fried chicken and soft drinks at the Red Barn did not interfere with employee protected rights. In the same vein, I regard Respondent's gifts of a small big of candy valued at no more then *15* cents to each employee. Although obviously given to foster goodwill toward Respondent, the gift of a bag of candy does not constitute such *a* substantial benefit to the employees as to impair their voting choice. The benefit was minimal and the effect was insignificant, remote and speculative. TRW, Inc., 169 NLRB 21, Revonah Spinning Mills, Inc., 174 NLRB No. 75. Based on this authority, I conclude that the gifts of candy bags did not interfere with employee rights and, I will, therefore, recommend dismissal of this allegation.

General Counsel alleged that two interrogations took place which violated the Act. As indicated, between October 2 and 9 Prohoroff, Jr. approached Jesus Gonzalez, Sr. , at his work station where he feeds chickens and asked Gonzalez if Gonzalez was a Union member and told him to cooperate with Respondent and vote against the Union. Likewise, four to five days before the election, supervisor Rogelio Garcia confronted Artiulfo Jiminez near Jiminez house and asked Jiminez what side he was on. Upon being advised Jiminez was pro-UFW, Garcia told Jiminez to inform him one hour before the election if he changed his mind. I conclude that Prohoroff, Jr., interrogated Gonzalez, Sr. and that Garcia interrogated Jiminez about their union activities. Whether these interrogations were technical oversights or intentional interferences I do not opine as such determination would not affect the fact that the interrogations did interfere with protected employee rights and are therefore violative of Section 1153(a) of the Act. Joy Silk Mills, Inc. 85 NLRB 1265, 24 LRRM, 1548, enfd. 185 F. 2d 732, 27 LRRM 2012, State Center Warehouse, 90 NLRB 2115, 26 LRPM 1441, enfd. 193 F. 2d. 156, 29 LRRM 2209.

Moreover, Garcia promised Jiminez better treatment in exchange for his support during that same conversation. Again, October 23, the night before the election, in response to Garcia's earlier direction that Jiminez notify Garcia at least an hour before the election if Jiminez changed his mind, Jiminez told Garcia he would vote for Respondent. Garcia shook Jiminez[1] hand and hugged and thanked him. Garcia said if there was a strike, Jiminez could go to Mexico and Garcia would loan him money to take care of himself. I conclude that during these two conversations,- Respondent's supervisor promised favoritism to one employee which interfered with that employee's rights in violation of Section 1153(a) of the Act. Texas Transport and Termir Co., Inc. 187 NLRB 466, 76 LRRM 1057 (1970). However, the record will not support the allegation in the complaint that supervisor

Roqelio Garcia intended to, or did, create the impression of surveillance, or engage in unlawful surveillance of employee union activities. Neither General Counsel nor Charging Party argue this in their briefs and neither brief provides authority for such, contention nor do I so find. *I* will, therefore, recommend dismissal of this allegation.[19]

Regarding the allegation that Respondent wilfully included in its payroll for the voting eligibility period names of persons represented to be eligible voters, which persons were included for the primary purpose of voting, the only evidence pertaining to this was a stipulation, superceding some limited testimony that eight persons whose names were in the list were not employed during the pertinent payroll week. This, standing alone, is wholly insufficient to support the allegation. Moreover, as neither General Counsel nor Charging Party mentioned this allegation in their respective briefs, they cannot be deemed to be pressing the allegation,, Failing to find evidentiary support for the contention, I will recommend dismissal of this allegation of violation of Section 1154.*6* of the Act as well as dismissal of allegation that placement of names on the eligibility list also interfered with rights guaranteed by Section 1152 of the Act in violation of Section 1153(a) of the Act.[20/]

19/ Although mention was made on the record about the possibility of amending the complaint to conform to the proof, General Counsel never moved to amend the complaint to allege that Respondent, through Roberto Jiminez, threatened Jesus Gonzalez, Jr., that a union would cause loss of jobs because the Respondent would bring in automatic machines to replace workers, or, to allege threats by Kolesnikow, or to allege that certain campaign literature may have threatened violence, Therefore, testimony as to these matters, although creating background against which, the allegations of the framed complaint are weighed, has not been considered in terms of separate allegations, Even were such allegations made and sustained, they would have little effect on the disposition of this case considered as a whole or the recommended remedy.

20/ As it was stipulated that none of the eight persons on the list who were not current employees voted, there was no substantial deteterious effect.

CONCLUSIONS OF LAW

1. Respondent, Prohoroff Poultry Farms, is an agricultural employer within the meaning of Section 1104.4(c) of the Act.

2. United Farm Workers of America, AFL-CIO is a labor organization within the meaning of Section 1140.4(b) of the Act.

3. By promising its employees increases in wages, paid vacation time, paid holidays and insurance; by granting its employees increases in wages, paid vacation time, paid holidays and insurance; both for the purpose of discouraging its employees from joining, assisting, supporting, and voting for the UFW, by interrogating its employees regarding their UFW membership, activities and sympathies; and by certain promises of favoritism to its employee, for the purpose of discouraging said employee from joining, assisting, supporting and voting for the UFW, the Respondent engaged in unfair labor practices within the meaning of Section 1153 (a) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 1153 (a), of the Act, I shall recommend that it cease and desist from infringing in any manner upon the rights guaranteed in Section 1152 of the Act and take certain affirmative action designed to effectuate the policies of the Act.

In addition to the standard remedies, the General Counsel, in his complaint, urges much more extensive relief, some of which has NLRB precedent, some of which does not. The General Counsel urges that Respondent be ordered to: make a public apology to its workers in a method to be decided by the Board and a public statement that it will not engage in the conduct complained of; post the terms of the Board's order; mail the notice to the last known home address of each employee; compensate emotional distress and losses to employees; submit compliance reports; grant the UFW access to the Respondent's bulletin boards for purpose of posting notices and reimburse the UFW and Board for costs incurred because of this litigation.[21/] In his brief, the General Counsel revised these requests so as to conform in part to the remedy recently granted by the Board in Tex-Cal Land Management , Inc. 3 ALRB No. 14 (1977). These requests are now discussed. At the outset, it is noted that fashioning these remedies involves a delicate balance. The desired end is to eradicate the effects of the unfair labor practices while respecting Respondent's rights. This entails assessing the magnitude and pervasiveness of the unfair labor practices as well as the individual character of Respondent's operation and its employee work force. Although agricultural employment is generally unusual as it

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21/ General Counsel stated on the-record he was abandoning his request for a bargaining order.

is seasonal and employees do not always return from year to y Respondents egg production operation is not seasonal and affords much more regular and steady employment than most farm operations. However, from the testimony of employee witnesses, it is clear that many employees have little or no facility with the English language and many employees are illiterate in both English and Spanish. Thus posting typical NLRB notices could be almost meaningless. Therefore, it is my view that special steps have to be taken to insure that employees are apprised of their rights. Accordingly, I recommend that the attached notice be translated in both English and Spanish, with the approval of an authorized representative of the Board, and, as printed, in both Spanish and English, that copies be handed by Respondent, to each employee employed during the period beginning on September 1, 1975 and ending on the date this is done. This is in addition to the usual posting of this notice. I shall recommend that Respondent mail said notice to all former employees who worked during the aforementioned period, to their last known mailing addresses* Further, I shall recommend that each new employee hired within the one year period subsequent to the above distribution, be handed a copy of said notice at the time that person is hired. Simultaneously with handing out such notices, Respondent shall advise each employee, or groups of employees congregated, that it is important that each understands the contents of the Notice and to offer, if any employee so desires, to read the notice to him, or to the group, in either English or Spanish as the employee wishes.

The General Counsel also requests that Prohoroff, Jr. be required to read the notice to all congregated employees and that questions be answered at this meeting by a Board agent, that the Respondent grant the UFW access to all bulletin boards at the time clocks and other places on the ranch where employees congregate, that the Respondent shall forward to the UFW one payroll list for the first week in each period during which there is on file a current Notice of Intent To Take Access pursuant to Chapter 9 of the Board's Regulations, and that the Respondent grant increased access to its "non-employee"[22/] property to UFW organizers for twice the number of organizers and twice the number of months now permitted by Chapter 9 of the Board's Regulations. Counsel for the Charging Party, both at the hearing[23/] and in his brief, strongly urged expanded access although he did not specify the dimensions of his request as did General Counsel.

22/ This is construed to mean property where business and/or farming operations take place. As many workers live on the premises, the usual avenues of non–business property contact (drive ways, parking lots and sidewalks) practically are not available. It is not clear from the record whether or not outsiders have untrammeled access to the 40 homes on Respondents premises which Respondent rents to its employees. Were it necessary to resolve the question as to availability of different avenues of access, this might be considered, cf. NLRB v. Babcock & Wilcox 351 U.S. 105, 38 LRRM 2001 (1956).

I have carefully reviewed and considered Chapter 9, Section 20900, of the Boards Rules and Regulations as well as the cases cited by Charging Party's Counsel in his brief. It is true that the NLRB has issued remedies which include provision by the employer of employee lists to be kept current access to bulletin boards, as well as unrestricted access during non-working time on plant approaches and parking lots for a one year period, Garwin Corp. 169 NLRB 1030, J.P. Stevens 183 NLRB 25, 75 LRRM 1407. In Hecks, 191 NLRB 886, in addition to the above remedies, the NLRB a1lowed the use of company facilities for a one hour union meeting to dispel the effects of the unfair labor practices found there of Crystal Lake Broom Works, 159 NLRB, 429, 62 LRRM 1406, Scotts, Inc. 159 NLRB 1795, 62 LRRM 1543. No case has been cited or found which provides for expanded access, or access, which indeed the NLRB, unlike the Board, does not allow unless in the extraordinary circumstances that no other alternative or method of contact is available. cf. Babcock & Wilcox, supra.

The standard NLRB type remedies are herein recommended. The question then becomes whether the violations found herein are so extraordinary so as to require extraordinary relief both precedented in NLRB ceases and non-precedented. As stated above, this involves delicately assessing the degree of the seriousness, intensity and effect of the violatious, comparing this with the degree of seriousness of the violatious in the NLRB cases deemed by the NLRB to warrant taking unusual and extraordinary relief and balancing these considerations against the purposes of the existing Board access rules and property rights. There is the added consideration that this balance be compatible with the existing access regulation and the intended development thereof and not be an encumbrance to same. Although I do not intend to avoid any responsibility, properly mine, to hear and decide this matter, and although I would be willing to make these judgements and balances without guidance or authority and without concern for possible reversal, these are policy matters which the Board has yet to consider. For me to make a recommendation in this regard would appear not only *to* be beyond my mandate, but would place an unfair onus on one party or the other to take the initiative to have my recommendation reviewed by the Board, With respect to the prayer for costs, the NLRB has only granted same in the rare instance of clearly frivolous litigation where the unfair labor practices were of an aggravated and pervasive magnitude involving flagrant repetition of conduct, Tiidee Products, Inc. 194 NLRB No. 198, 79 LRRM 1175, 196 NLRB No. 27, 79 LRRM 1692 (1972), enforced as modified, 502 F. 2d 349, 86 LRRM 2093 (C.A. D.C. 1974),

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23/ Pursuant to the Board's Rules and Regulations/ Section 20262 (f) and to separate direction from the Executive Secretary, the Administrative Law Officer, with the consent of the parties, on many occassions throughout the hearing, spent considerable time off the record, to hold conferences for the settlement of this matter. Although such participation had, and has, no affect on this decision, it is noted that the requests for the expanded access were the principal reasons the case did not settle. The time and effort spent in litigating this matter were directed, obviously, to this end, certainly a legitimate purpose. All parties expressed awareness that there was little available existing authority to provide guidance as to the disposition of this relief request.

cert. den. ,421 U.S. 991. Although I find there is no flagrant repetition of conduct as to fit within the ambit of Tiidee, the subject of costs again is a policy matter which the Board has yet to consider. Assessment thereof is not the general practice of the NLRB. Based on the foregoing, with respect to all the remedies requested, but not recommended, *I* see 'no reason to strike out on a new course of remedial orders without prior direction from the Board. I would therefore deem it inappropriate for me to characterize the comparative degree or pervasiveness of the violations, to make the aforesaid policy or to make a recommendation at this time and will not do so.

Upon the basis of the entire record, the findings of fact, and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended:

ORDER

Respondent, its partners, its officers, its agents, and representatives, shall:

1. Cease and desist from:

(a) Discouraging membership of any of its employees in the UFW, or any other labor organization, by unlawful promises of increased wages, paid vacation time, paid holidays and insurance to employees, by unlawful grants of increased wages, paid vacation time, paid holidays and insurance to employees[24/] by interrogating its employees as to their union membership and sympathies and by promising any employee favored treatment if that employee refrains from supporting or voting for a union.

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

24/ Nothing herein shall be construed as requiring Respondent to revert to wage and benefit levels below those now in force. E.g. Hen House Market No. 3, 175 NLRB 569 (1969).

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

(a) Hand to each employee employed during the period beginning September 1, 1975 and ending on the date of the implementation of this ordered distribution, mail to each former employee employed who worked during this period at the last known mailing address and hand to each new employee hired during a one year period of time beginning at the conclusion of the aforesaid former period, copies of the notice attached hereto and marked "Appendix," Copies of this notice, including an appropriate Spanish translation, shall be furnished Respondent for distribution by the Regional Director for the San Diego Regior al Office. The copies are to be signed by an authorized representative of Respondent. Respondent is required to explain to each employee at the time the notice is given to him or her that it is important that he or she understand its contents, and Respondent is further required to offer to read the notice to each employee if the employee so desires.

(b) Post at its place of business in San Marcos, California, copies of the attached notice marked "Appendix", including the appropriate Spanish translation as referred to in paragraph (a) above, the copies to be signed by an authorized representative of Respondent. Said notices shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered by other material.

(c) Notify the Regional Director in the San Diego Regional Office within twenty (20) days from receipt of a copy of this Decision of steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

It is further recommended that the allegations of the complaint alleging violations of Section 1153(a) of the Act by offering material inducements, including but not limited to a lunch party,, food and other gifts for the purpose of discouraging said employees from engaging in protected activities, by engaging in surveillance and/or acts creating the impression of surveillance and by wilfully including in its payroll for the voting eligibility period names of persons represented to be eligible voters, which persons were included in said payroll for the primary purpose of voting in said election be dismissed, and that the allegations of violation of Section 1154.6 of the Act by wilfully including in its payroll for the voting eligibility period names of persons represented to be eligible voters, which persons were included in said payroll for the primary purpose of voting in said election also be dismissed.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges unfair labor practices other than those found herein.

Dated: March 16, 1977.

Michael K. Schmier
Administrative Law Officer

APPENDIX

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 hand out or 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 another7

(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 WIL NOT promise you increases in wages, paid vacation time", paid holidays, insurance, or other benefits for the purpose of discouraging you from joining,, helping or voting for any union.

WE WILL NOT give you increases in wages, paid vacation time, paid holidays, insurance, or other benefits for the purpose of discouraging you from joining, helping or voting for any union.

WE WILL NOT, in any event, take away any increases in wages, paid vacation time, paid holidays, insurance or other benefits, already given to you which, you are now receiving.

WE WILL NOT ask you whether or not you belong to any union, or do anything for any union or how you feel about any union;

WE WILL NOT promise favorite or special benefits or treatment to any worker to encourage that worker not to help or vote for any union.

Signed:

Dated:

PROHOROFF POULTRY FARMS

By: _____
(Representative) (Title)