STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VISTA VERDE FARMS, (DMB PACKING CORP. d/b/a), Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 75-CE-5-S, 75-CE-23-S, 75-CE-49-S, 75-CE-50-S 3 ALRB No. 91

DECISION AND ORDER

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

On March 26, 1977, Administrative Law Officer (ALO) Beverly Axelrod issued the attached Decision in this proceeding. Thereafter, Respondent and the Charging Party each filed exceptions and a supporting brief, and the General Counsel and Charging Party filed briefs in response to the Respondent's exceptions.

The Board has considered the record and the attached Decision[1/] in light of the exceptions and briefs and affirms the rulings, findings and conclusions of the ALO to the extent consistent with this opinion and adopts her recommended order as

[1/] We note the following clerical errors: (1) In the second paragraph on page 2, the discussion clearly concerns a second, amended charge, not "complaint"; (2) in line 3 of footnote 1 on page 3, substitute "allegation" for "testimony"; (3) in the next-to-last paragraph on page 23, the reference is apparently to NLRB, rather than ALRB, precedent.

modified herein.[2/]

1. Respondent excepts to the ALO's conclusion that employees Levid Torres and Edmundo Gandarilla were laid off earlier in the 1975 season than in prior years because of their union activities. Respondent's exception has merit. Although the union activities of these employees, and Respondent's knowledge thereof, are clear, the evidence is inadequate to establish that the 1975 winter-season layoffs in fact deviated from Respondent's usual practice.

Torres and Gandarilla were laid off on about November 21, 1975, along with other tractor drivers and irrigators. Torres returned to work at Vista Verde on or about January 6, 1976; Gandarilla went to work for another company shortly after the layoff. It is apparent from the record that the timing of Respondent's winter-season layoffs varies markedly from year to year, depending largely upon weather conditions. Employee testimony concerning Respondent's past practice with respect to the winter layoffs is confused, inconclusive, and marked by internal inconsistencies. The payroll-record evidence related to only a few employees, and only for the 1974-75 and 1975-76 seasons. The record does not warrant the conclusion that a November rather than a December layoff date was unusual. Also, the payroll records and testimony indicate there were past winter layoffs of well over

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[2/] We are in agreement with the ALO's conclusion that the evidence is insufficient to support a finding that employees Torres, Correa, Gandarilla and Calderon suffered a reduction in work hours after the election because of their union activities, despite any variations in employee work hours reflected in the company payroll records.

six weeks' duration for these employees.

Gandarilla testified that he generally worked from February through November or December. The evidence does not establish that he ever engaged in the winter "mothballing" of company machinery. Torres could not recall Gandarilla's participation in that activity, and Gandarilla's own testimony concerning machine work is too vague to establish the fact.

Although Torres testified that he was usually laid off for two to three weeks beginning in December, both the payroll records and his own testimony indicate that the actual practice was not so definitely fixed as to either date or duration. Torres' past layoffs were for longer than a three-week period. Torres also testified that he was usually laid off with such "year-round" employees as Joaquin Correa. Correa testified that his work with the company ran from about February through November or December. Torres testified that he generally worked until such time as the ranch was, as he put it, "closed". However, he admitted that other workers remained working at the ranch after it "closed" each year. There was no showing that the employees retained at the ranch after the November 1975 layoffs of Torres and Gandarilla were not customarily retained to work after the layoff of other employees. Although Torres testified that he had previously worked in the machine shop at the end of the year, the record does not establish that he did such work regularly each year for a fixed period or at a set time.

On the basis of the entire record, we conclude that the General Counsel has failed to establish by a preponderance of the

evidence that the 1975 winter-season layoffs deviated from Respondent's usual practice or that Torres and/or Gandarilla suffered disparate or discriminatory treatment at that time. Accordingly, the allegation with respect to these layoffs is dismissed.

2. The ALO found that Respondent violated Section 1153 (a) of the Act by the actions of De Dios, its labor contractor, in interfering with the right of Respondent's employees to receive information from organizers at their homes in the contractor's labor camp, and by other coercive conduct. Respondent contends that: (1) the labor contractor's conduct did not amount to interference with, or restraint or coercion of employees in the exercise of their rights to self-organization which the Act guarantees to all agricultural employees under Section 1152; and (2) in any event, Respondent is not responsible for any interference with, or restraint or coercion of its employees by its labor contractor. We disagree.

On September 13, the day before the Board election among Respondent's employees, three UFW organizers visited the labor contractor's camp in order to talk to Respondent's employees about the coming election. In the presence of about 15 workers, the labor contractor ordered the UFW organizers out of the camp, pushed and shoved the two male organizers, and challenged one of them to fight. Law enforcement officers later arrived and, after an argument concerning the organizers' legal rights to remain on the property, they issued citations to two of the organizers. Sylvester Dumlao, Respondent's ranch manager, was present at the

time the organizers were cited. Dumlao had also come to the camp to speak with Respondent's employees about the next day's election. After the organizers left the camp, the labor contractor assisted Dumlao in assembling a group of about 30 workers and Dumlao addressed the workers.

We find that the contractor's conduct on September 13 constituted interference with and restraint and coercion of Respondent's employees in the exercise of their statutory rights. We have repeatedly held that farmworkers have the right to be contacted by, and to receive communications from, organizers at their homes and that such communications are not only legitimate but crucial to the proper functioning of the Act. Silver Creek Packing Company, 3 ALRB No. 13 (1977); Henry Moreno, 3 ALRB No. 40 (1977); Merzoian Brothers Farm Management Co., Inc., 3 ALRB No. 62 (1977); Whitney Farms, 3 ALRB No. 68 (1977); Anderson Farms Co., 3 ALRB No. 67 (1977). The fact that the organizers may not have been specifically invited to visit employees at the camp does not warrant a contrary inference. Certainly, if an employee declines, or does not wish, to speak with an organizer, that is his or her right. But it is not the right of the employee's employer, supervisor, labor contractor, or landlord to prevent such communication.[3/] Whitney Farms, supra. See also, Anderson Farms, Co., supra.

Additionally, we are convinced that labor camp access denials have a coercive effect on the exercise of protected rights

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

and are therefore unlawful even apart from the fact that they cause prohibited interference with necessary communications between employees and organizers. When an employer, or, as here, an employer's contractor, uses his power as landlord to dictate to employees that they cannot receive union visitors in their own homes, that action is in itself an awesome display of power which cannot but chill enthusiasm for union activity. The normal effect of such a showing of control over employees' lives is to give workers a sense of futility and thereby restrain the exercise of self-organizational rights in violation of the Act.

We also find, in agreement with the ALO, that in pushing, shoving and challenging UFW organizers to fight, in the presence of employees, the labor contractor, on September 13, 1975, engaged in further conduct coercive of employees. The effect of the contractor's conduct, which forcibly demonstrated to employees the intensity of his opposition to the union, is to restrain them in the exercise of the rights guaranteed by the Act. Tex-Cal Land Management Company, 3 ALRB No. 14 (1977).

Respondent contends that even if its labor contractor interfered with the protected rights of its employees, Respondent should not be held responsible for its labor contractor's actions. While Section 1140. 4 (c) excludes labor contractors from the definition of agricultural employer, in certain circumstances, it also provides that "The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this

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part."[4/]

The ALO reasoned that the latter provision was an unconditional attribution of liability to the employers 'for actions of their labor contractors, necessitated by the exclusion of labor contractors from sanctions imposed by the act. Accordingly, she found that it was not necessary to look to traditional agency principles, but rather to determine solely whether Respondent was the employer engaging De Dios as a labor contractor.

While we agree that the Employer is liable for the contractor's acts, we base our conclusion on a different, though not incompatible, analysis of the law from that used by the ALO.

Section 1140.4(c) of the Act does not in all cases preclude a labor contractor from being an employer under the Act. It is only when such a person is actually or constructively "engaged" as a labor contractor, or, in the words of the statute, is "supplying agricultural workers to an employer" or "functioning in the capacity of a labor contractor", that this section precludes the labor contractor from being considered an employer and requires

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[4/]Section 1140.4(c) provides:

> The term "agricultural employer" shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part.

that the entity engaging him be "deemed the employer for all purposes under this part". (Emphasis supplied.)

According to Section 1140.4 (c), the term agricultural employer applies to " ... any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee". This definition is clearly broad enough to include a person, sometimes functioning as a labor contractor, who commits an unfair labor practice at a time when he is not actually or constructively engaged, or functioning, as a labor contractor. In such circumstances, the labor contractor could be charged as an agricultural employer and, if found in violation of the Act, an appropriate remedial order would be supplied to him.

Under this interpretation of the statute, in no event will unfair labor practices committed by a labor contractor go unremedied. When the labor contractor is actually or constructively engaged or functioning as such, the employer engaging him is the employer for all purposes under the Act and is therefore liable for the contractor's unfair labor practices, just as the employer would be liable for the unfair labor practices of its officers, agents and supervisors. On the other hand, a labor contractor who commits unfair labor practices at a time when he is not actually or constructively engaged or functioning as a labor contractor is, under the Act, "liberally construed" to be an agricultural employer and therefore chargeable as a party respondent in an unfair labor practice proceeding.

The fact that De Dios, the labor contractor herein, was not charged as a party respondent in this matter does not relieve

the Employer of its liability for the acts committed by De Dios. In the present case, the Employer is liable for De Dios' acts on the basis of either of two theories.

First, under Section 1165 (b), " ... any agricultural employer shall be bound by the act of its agents." It is undenied that Sylvester Dumlao, the Employer's manager, was present at the camp during the time the UFW organizers were expelled. Dumlao spoke with the labor contractor's foreman, Bobby De Dios, and the police, and was seen by the employees who were at the camp at the time the organizers were expelled. Notwithstanding the ALO's comment[5/] that the conduct of Bobby De Dios on September 13 was not encouraged, authorized, abetted, participated in or ratified by the Employer, we find, based on the record evidence, that there was in fact an agency relationship between the Employer and its labor contractor. Although there is no evidence that the specific acts committed by Bobby De Dios were originally authorized by the Employer, there is substantial evidence that those acts were impliedly ratified by Dumlao at the time they occurred, and implied ratification is sufficient to attribute those acts to the Employer. NLRB v. Cherokee Hosiery Mills, 196 F2d 286 (CA 5, 1952), 30 LRRM 2077.

It is clear that Dumlao was aware of what De Dios was

[5/] Her comment was clearly obiter dictum because, according to her theory of liability, it was unnecessary to look to agency principles once it was determined that the labor contractor was "engaged" by the Employer. Thus her statement about the relationship between the labor contractor and the Employer, beyond the finding that the former was "engaged" by the latter, was merely the expression of an opinion not necessary to support her decision.

doing, conferred with him while he was doing it, and neither objected to the imminent expulsion nor disavowed De Dios' actions after they occurred. The Employer cannot escape liability by claiming that it was powerless to interfere. The De Dioses had for many years provided services to the Employer. Their operation of the labor camp was part of the service they provided to employers, including Vista Verde; thus the Employer would have a continuing and compelling interest in the operations of that camp. It is logical to assume that if Dumlao had objected to the expulsion of the organizers by De Dios, the latter would have as willingly obliged Dumlao by permitting the organizers to stay as he later obliged Dumlao by assembling the Vista Verde employees so Dumlao could address them. The Employer's silence as to the labor contractor's actions and his failure to repudiate those actions could only be interpreted by De Dios, the employees present, or any reasonable person, as an implied ratification of those actions. Accordingly, we find that De Dios was acting as the Employer's agent and his conduct is therefore attributable to the Employer.

Second, even absent an agency relationship, the acts of the labor contractor herein would be attributable to the Employer on the basis of the actual or constructive engagement which existed at the time. Section 1140.4(c).

In the instant case, the acts of the labor contractor occurred during a brief interval between periods during which De Dios provided agricultural workers to the Employer in accordance with its needs. It is clear from the record that the

Employer had utilized the services of De Dios for many years, on a continuing albeit intermittent basis related to the varying seasonal requirements in agricultural work. Moreover, De Dios was actually engaged (i.e., supplying workers to the Employer) during the pre-election eligibility period toward the end of August, and resumed that function on September 18. Although the acts of De Dios occurred on September 13, during the short interval between these periods, it is clear that the relationship between the Employer and De Dios had been merely interrupted, and not severed. In these circumstances, that brief interruption was no more disruptive of the Employer-contractor engagement relationship than the temporary interruptions occasioned by weekends, holidays or periods of inclement weather. In view of the ongoing and continuing relationship here, it is clear, and we hold, that at all times material herein, especially with respect to the events of September 13, De Dios was at least constructively engaged by the Employer. Accordingly, the Employer is liable for the unfair labor practices of its labor contractor.

In view of our finding that Respondent is liable for the acts of its labor contractor, we do not adopt the ALO's recommended remedial order insofar as it is directed to the labor contractor. In accordance with our usual practice, the order herein is directed to "the Respondent, its officers, agents, successors, and assigns" (emphasis supplied), requiring them to cease and desist from the violations found to have occurred and to take appropriate affirmative action to remedy such violations.

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ORDER

Accordingly, pursuant to Labor Code Section 1160.3, IT IS HEREBY ORDERED that the Respondent, Vista Verde Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner, preventing union organizers from entering, or expelling them from, labor camps or other premises where employees live; assaulting union organizers who are attempting to communicate with its workers? or committing any other acts of interference, restraint or coercion either in the presence of employees or where it is reasonably likely that employees will learn of such conduct.

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

(a) Execute the Notice to Workers attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent, shall reproduce sufficient copies in each language for the purposes set forth hereafter.

(b) Post copies of the attached Notice at times and places to be determined by the Regional Director. The Notices shall remain posted for 90 consecutive days thereafter. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

(c) Mail copies of the attached Notice in all appropriate languages, within 20 days from receipt of this Order, to all employees employed during the payroll periods which include the following date: September 13, 1975.

(d) Arrange for a representative of the Respondent or a Board Agent to distribute copies of, and 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.

(e) 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 allegations contained in the complaint not specifically found herein as violations of the Act shall be, and hereby are, dismissed.

Dated: December 14, 1977

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO WORKERS

After a trial in which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide whether they want a union. The Board has ordered 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 of the State of California which gives farm workers these rights:

1. To organize themselves.
2. To form, join, or help unions.
3. To choose, by secret ballot election, a union to represent them in bargaining with their employer.
4. To act together with other workers to try to get a contract or to help and 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 interferes with those rights or forces you to do, or prevents you from doing, any of the things listed above.

Especially, WE WILL NOT:

1. Prevent or interfere with your communications with union organizers at our labor contractor's labor camps or premises where you live.
2. Shove; push, or otherwise assault union organizers who are visiting, or attempting to visit, workers at the labor camps or premises where they live.

Dated:

VISTA VERDE FARMS

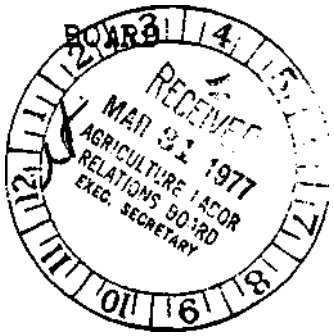
By: _____
Representative Title

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



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In the Matter of:		
VISTA VERDE FARMS,		
Respondent,		
and	Case Nos.	75-CB-5-S 75-CE-23-S 75-CE-49-S 75-CE-50-S
UNITED FARM WORKERS OF AMERICA, AFL-CIO,		
Charging Party		

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Daniel G. Stone. Esq. of Sacramento, Calif., for the General Counsel

Littler, Mendelson, Fastiff & Tiohy. by Randolph C. Reader, Esq., of San Francisco, Calif., for Respondents

Curt Ullman and Linton Joaquin. Esg. Of Tracy, Calif, and Salinas, Calif, respectively, for the Charging Party

DECISION

Statement of the Case

BEVERLY AXELROD, Administrative Law Officer: These cases were heard before me in Tracy, California on February 16, 17, 18, 23, 24, 25, 1977; in San Francisco, California on March 2, 1977; and in Stockton, California on March 7, 1977. The order consolidating cases issued on February 6, 1976. The complaints allege violations of Section 1153(a) and (c) of the Agricultural Labor Relations Act, herein called the Act, by Vista Verde Farms,

herein called Respondent. The complaints are based on charges and amended charges filed on September 16, 1975. October 14, 1975, November 28, 1975 and January 12, 1976, by United Farm Workers of America, AFL-CIO, herein called the Union.

Respondent acknowledged receipt of the charges with the exception of the second amended charge in complaint 75-CE-49-S. Proof of service of said second amended charge by certified mail was filed, but General Counsel was unable to produce the return receipt therefor. Said second amended complaint was served upon Respondent at the opening of the hearing. Even if Respondent did not initially receive this second amended complaint, no motion to dismiss was made on that basis, and furthermore I find that Respondent was not prejudiced thereby.

All parties were given full opportunity to participate in the hearing, and after the close thereof the General Counsel and Respondent each filed a brief in support of its respective position, together with proposed findings of fact and conclusions of law.

At the opening of the hearing, it was stipulated:

1)that Paragraph 6d of Complaint 75-CE-49-S be stricken as unintelligible;

2}that the title of these cases be amended to reflect that Respondent Vista Verde Farms is a sole proprietorship wholly owned by DMB Packing Corporation, a corporation licensed to do business in the state of California;

3)that the Union is a labor organization representing agricultural employees within the meaning of Section. 1140, 4 (f) of the Act.

After General Counsel and the Union rested, Respondent moved for a dismissal. All of the parties were given full opportunity .

to argue said motion, both orally and in writing. The Administrative Law Officer, pursuant to Section 20242 of the Regulations of the Agricultural Labor Relations Board, granted said motion as to the acts described in Paragraphs 6a, 6b and 6c of Complaint 75-CE-49-S,[1] and denied said motion as to the remaining portions. Since the motion dealt with the entire complaint, the Administrative Law Officer informed the parties that their arguments in support of and in opposition to the motion would be considered as included with closing briefs in reaching a final decision.

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

Findings of Fact

I. Jurisdiction

Vista Verde Farms is wholly owned by DMB Packing Corporation, a corporation licensed to do business in the State of California. It is engaged in agriculture near Tracy, California, and is an agricultural employer within the meaning of Section 1140(c) of the Act.

The Union is a labor organization representing agricultural employees within the meaning of Section 1140.4 (f) of the Act.

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1. These paragraphs alleged discriminatory treatment by Respondent in providing housing to employees Edmundo Gandarilla and Joaquin Correa. There was no testimony that Respondent engaged in any discriminatory treatment prior to September 14, 1975, the day of the Vista Verde representative election. Nevertheless, both Mr. Gandarilla and Mr. Correa testified that Respondent informed them that such changes would be made in their housing accommodations at least several months prior to that date.

II The Alleged Unfair Labor Practices

Complaint 75-CE-5-S alleges unlawful Interference violative of Section 1153(a) by Respondent with the rights guaranteed by Section 1152 of the Act, by conduct of its alleged agent Bobby De Dios on September 13, 1975, which amounted to enforcement of an invalid no-solicitation rule, causing the arrest of Union organizers, threatening them with great bodily harm, and physically striking one of them.

Respondent denies the agency of Bobby De Dios and denies that his actions were violative of the Act.

Complaints 75-CB-23-S, 75-CB-A9-S and 75-CB-50-S allege that Respondent violated Section 1153(c) of the Act through its agents Sylvester Dumlao and Cliff Dumlao by discriminatorily assigning reduced hours of work to Levid Torres, Juan Correa, Edmundo Gandarilla and Gildardo Calderon during specified weeks and by discriminatorily laying off the first three of said employees. The allegations concerning housing were dismissed as set forth supra.

Respondent denies any discriminatory reduction of hours or discriminatory lay-off.

A. The Operation of the Farms

The property that constitutes Vista Verde Farms has been operating as an entity since 1954, under various names and with different ownership. It is composed of a group of ranches near Tracy in San Joaquin County totalling approximately 2294 acres. Vista Verde Farms is presently owned by DMB Packing Corporation.

Sylvester Dumlao is general manager and in complete charge of Vista Verde. Ha has worked on the Vista Verde property since 1954, when he was a labor foreman. He testified that he works

16-22 hours a day in the fields, and is familiar with and personally directs every aspect of the Vista Verde operation. There are up to 600 employees in the peak season. The ranch-operations normally close for a few weeks during the rainy season.

There are generally 10 to 12 permanent employees who work the full period that the ranch is open. They are primarily tractor drivers who do clean-up, "mothballing" work on the machinery and miscellaneous work after most other workers have been laid off. Sylvester Dumlao knows each of them personally, and has known them for many years.

A variety of crops are grown, Including bell peppers, cauliflower, fresh market tomatoes, processing tomatoes, cabbages, chile peppers, cucumbers, melons, onions, corn and cereal grains. When crews are needed for harvesting, Vista Verde, through its general manager Sylvester Dumlao, hires labor contractors. One of these labor contractors is Alphonso De Dios, whose son Bobby is his head foreman. The De Dios's also run a nearby labor camp, which was the site of the incidents alleged to have occurred in Complaint 75-CB-5-S. Many Vista Verde workers live at this camp. The services of De Dios in providing labor for the Vista Verde property harvesting have been used annually since the 1950’s. During the period at issue here, De Dios was used at Vista Verde during the last week of August, 1975 and again beginning September 18, 1975.

There is no claim that Vista Verde has any ownership interest in the De Dios labor contracting business or in its labor camp. De Dios crews have their own foramen, keep separate records, and

have separate payrolls. Vista Verde Farms has nothing to do with the operation of the De Dios labor camp, and the camp is not on Vista Verde property.

Sylvester Dumlao has five sons who work for Vista Verde Farms. The eldest, age 24, Cliff Dumlao, is a Vista Verde ranch foreman, authorized to give orders to workers and assign men to crews.

Employee classifications pertinent to these cases are tractor drivers, who also do some irrigating (Levid Torres and Edmundo Gandarilla), and irrigators who also do some tractor driving (Joaquin Correa and Gildardo Calderon). Tractor driving includes a wide variety of operations, requiring varying skills and use of diversified machinery. The work done on the farm is constantly fluctuating, depending on the crop and the different stages of land preparation required. The number of hours worked by the employees is continually fluctuating. Tractor drivers in particular do very diversified work. When they work with harvest crews, their hours depend on the hours that the crew works, which in turn depend on a number of variables. It is not possible to determine at the beginning of any given day how long a particular crew will work.

B. Vista Verde farms and the Union

Jan Peterson coordinated the Union's election campaign at Vista Verde Farms. Other Union organizers worked with her. In July, 1975, she and another organizer went to Vista Verde Farms and began handing out leaflets to the workers. There were 40-50 workers in her vicinity, and four supervisors, including Lloyd Dumlao, Alphonso De Dios and Bobby De Dios. Bobby De Dios told the organizers to get out of there; Lloyd Dumlao tore up a leaf-

let with a knife. Lloyd Dumlao also took leaflets away from workers, saying in a loud voice that they were no good, and he would tear them up.

Sylvester Dumlao was not present at this incident, but testified that he heard there was an incident involving the Union in July. He did testify that on four other occasions he asked Union organizers to leave, and on two of these occasions he called the sheriff to put them off. All of these incidents occurred when many Vista Verde workers were in the vicinity.

Sylvester Dumlao also testified that he didn't want the Union to win the election, and that he had written and distributed material stating this viewpoint. He also stated that he had spoken to Bobby De Dios about the election, and that Bobby De Dies was against the Union. In describing the results of the election, Mr. Dumlao said "the union beat us."

From all of the above, I infer that Vista Verde Farms and its labor contractor De Dios were hostile to the Union, that Vista Verde Farms and De Dios were aware of each other's hostility, and that this anti-Union animus was known to the employees of Vista Verde Farms.

All four of the complaining witnesses were active Union supporters. They all testified for the Union at an Agricultural Labor Relations Board hearing in October, 1975. All except Mr. Calderon were observers for the Union at the election on September 14, 1975. They all attended Union meetings. Some of them went to conventions, handed out Union authorization cards, and talked to other workers about the Union. Mr. Torres attended a preelection conference at which Sylvester Dumlao was present. Given

the small number of permanent year-round workers, which included all four, and Sylvester Dumlao's intimate knowledge of everything that happened at Vista Verde Farms, it must be presumed he knew their position with respect to the Union. He certainly knew who the Union's observers at the election were, and who testified for the Union at the Agricultural Labor Relations Board hearing. In any event, Sylvester Dumlao does not deny knowing the Union allegiance of any of them except Mr. Calderon.

Did this knowledge cause Vista Verde Farms or its agents to treat the four any differently? Sylvester Dumlao denies this, but the four witnesses believe it did, and they all believe the difference in treatment began after the Union received a majority vote in the election.

They all say that after the election, Cliff Dumlao was put in charge of them and Sylvester would have little to do with them anymore. Mr. Correa and Mr. Calderon testified that on two or three occasions they had to "chase after" their paychecks instead of simply being handed them, and this had never happened before. Mr. Calderon said Sylvester Dumlao hardly greeted him anymore, Mr. Gandarilla said "after the elections, they wouldn't look at me very much" and his conversations with Cliff and Sylvester Dumlao were different, hard to describe, but "I can tell when a person wants to talk to me and when they don't." Mr. Torres said that after the election, "Cliff would talk to me like a dog," whereas before he was kind.

C. The Issue of Reduced Hours

The testimony regarding the number of hours worked by the complaining witnesses is substantially uncontroverted, and is

reflected in the payroll records entered Into evidence as Joint Exhibits 1A through 1G and 2A through 2G.

Gildardo Calderon seeks to show that there was a discriminatory reduction after the election, by comparing the hours worked by these witnesses with hours worked by other permanent employees of similar skill and seniority, and records of hours worked prior to the election in 1975, and in 1974. (See Apperndix I and II of General Counsel's post-hearing brief, and Appendix III submitted at the hearing, all of which are also attached hereto as Appendix I, II and III).

Torres, Correa and Gandarilla are compared with Arteaga and Delgado, neither of whom is known to be a Union supporter, and Calderon is compared with Parocua, who is not known to be a Union supporter.

The charges involve only certain weeks of the post-election period. There was no testimony to indicate why these particular weeks were selected, but I must presume they were chosen because they generally involve the lowest number of hours worked by the witnesses for the period from the election to lay-off in 1975. Although the testimony indicates a general anti-Union animus by the employer, there is nothing to indicate that it varied from week to week, or that it expressed itself in the number of hours assigned.

In the ten payroll periods of 1975 subsequent to the election, each of the complaining witnesses worked more hours during at least one of those periods than at least one of the non-Union activitists with whom he is compared:

In the week ending September 28, 1975, Correa worked more hours than Arteaga and Delgado.

In the week ending November 9, 1975, Gandarilla worked more hours than Arteaga and Delgado.

In the week ending September 28, 1975, Torres worked more hours than Delgado.

In the week ending September 28, 1975, Calderon worked more hours than Parocua.

The 1974 payroll records for the same period show similar variations in the number of hours worked by the employees.

There was some testimony by Mr. Correa that past practice had been to pay for ten hours work per day during the chile harvest even if less hours were worked, and that was not followed after the election in 1975. But there was no evidence as to how many days, if any, he or anyone else worked in the chile harvest, nor any evidence that the change applied only to the Union activists. Mr. Correa also said that he doesn't believe he was given less hours because of his Union activity.

In view of all of the above, it is unnecessary to review the evidence concerning the seniority and skills of the complaining witnesses. There is insufficient evidence to support a finding that there was a change in the assignment of-working hours subsequent to the election of September 14, 1975. Accordingly, I shall recommend that these allegations of the complaint be dismissed.

D. The Lay-Offs

Complaint 79-CE-49-S alleges that Sylvester Dumlao and Cliff Dumlao discriminatorily laid off Levid Torres, Edmundo Gandarilla and Joaquin Correa around November 21, 1975. The payroll records in evidence show that the last week these three were paid in 1975 was the week ending November 23, 1975, whereas Arteaga and Delgado,

who were not active in the Union, were on the payroll until the week ending December 21, 1975.

It has been the custom of Vista Verde Farms to lay off workers in the rainy season when the land preparation and harvesting for the year was completed, but to retain certain permanent, year-round employees longer, for other work done during this period. In general, this other work consisted of "mothballing" equipment for the winter—breaking down and cleaning the machinery--and miscellaneous shop work. In 1975, this work included the total dismantling of the hydraulic tomato harvester, a machine unique to the Vista Verde operation and designed by Sylvester Dumlao. Respondent claims that none of the three claimants had any experience with this machine, and were not qualified to work on it. Another Job done after December 1, 1975, was demolition of the house formerly occupied by Edmundo Gandarilla. Sylvester Dumlao testified that only his sons did this work, on a part-time basis, because a substantial portion of the material was to be salvaged, and he needed to maintain close supervision over the work. This work, he says, was different from that done on a barn which was previously demolished, because the latter did not require salvage.

Other work done at Vista Verde Farms in this post-November 21, 1975 period was six hours work on an experimental sixteen acres, and two weeks leveling, discing and planting on property acquired by Vista Verde Farms after December 5. 1975. Respondent's position is that Torres, Gandarilla and Correa had never done the kind of leveling and planting involved, and there was insufficient machinery to use them for the discing.

A number of employees were retained by Vista Verde Farms after

the November 21, 1975 lay-off. In addition to Sylvester Dumlao's sons, there were his brother Frank Dumlao, Arteaga, Delgado, and at least three others who were named. It is admitted by Respondent that at least some of these workers had less seniority than the three who claim premature lay-off, and no showing was made as to their qualifications.

Only the payroll records of Arteaga and Delgado are in evidence for this period (Joint Exhibits 2A and 2D). These records show they both earned $3.25 per hour during this period, and they both worked until the payroll period ending December 21, 1975. For the week ending November 30, 1975, Arteaga worked sixty-eight hours and Delgado worked sixty-six hours. In the weeks ending December 7, 1975 and December 14, 1975, they each worked seventy hours per week, and they each worked seventy-two hours in the week ending December 21, 1975. These records lead to an inference that, unlike the prior period, the retained employees worked an approximately equal number of hours per week.

Joaquin Correa testified that prior to 1975 he stopped work "when it was wet," and others would stay to take care of the machines. This was corroborated by Mr. Gandarilla. Joint Exhibit 1C shows that Mr. Correa was not retained after the general lay-off in 1974. Therefore, the failure to continue Mr. Correa's employment after November 21, 1975 does riot appear to be a change from past practice, and I shall accordingly recommend that this allegation with respect to him be dismissed.

Levid Torres states that he has been working continuously for Vista Verde Farms since 1957. Sylvester Dumlao denies this, saying that he began in 1972, because the ranch he worked on in the years

prior to 1972 was not part of the Vista Verde operation, although Sylvester Dumlao was in charge of both the Vista Verde property and the ranch where Torres worked earlier. In any event, there is no dispute that at least beginning In 1972 Mr. Torres was considered a year-round employee, and always offered work after the general lay-off. Joint Exhibit 1G shows that he vas in fact retained for this period in 1974. Although Torres admits he has not disassembled an hydraulic tomato machine, or worked with the new four-wheel tractors, he says he has always, prior to 1975* worked in the shop at the end of the year, carrying tools and helping others who take machines apart. He also helped demolish the barn, and in 1976 helped in the final stages of demolishing the house, when no salvage work was required. Mr. Torres, although laid off in 1975 was rehired at the beginning of the 1976 season, and is presently employed by Vista Verde Farms.

Edmundo Gandarilla is also a permanent, year-round employee, having worked on Vista Verde property since I960 except for a two-year absence prior to 1973. Prior to 1975, he customarily was offered work after the general lay-off. Joint Exhibit IE shows that he was in fact retained for this period in 1974.

Two or three weeks after he was laid off, and in anticipation of the house he lived in being torn down, Mr. Gandarilla sought and obtained housing at a neighboring farm, owned by a Mr. Graham. *A* condition of his being given this housing was that Gandarilla agree to work for Graham. The record does not indicate when Gandarilla actually started working for Graham. Gandarilla did not return to Vista Verde Farms in 1976, and is presently employed by Graham.

E. The Incidents of September 13, 1975

Jan Peterson had been to the labor camp operated by Alphonso De Dios and Bobby De Dios on several occasions and knew that a number of Vista Verde workers lived at the camp. On September 13, 1975, she learned that the representative election for Vista Verde Farms was to be held the next day. She sent Union organizers to various places to notify the Vista Verde workers. The two organizers who were sent to the De Dios labor camp returned soon, and as a result Ms. Peterson accompanied them back to the camp, arriving at about 3:30-4:00 P.M. All three wore Union badges. They began talking to workers about the election. After about twenty minutes, Bobby De Dios and another person drove up, began shoving and pushing the two male organizers, and told them all to get out. Ms. Peterson attempted to get between them, and told Bobby De Dios that they were there to talk to the Vista Verde workers about the next day's election. Bobby De Dios continued the shoving, asking one of the organizers to fight. There were about fifteen workers in the vicinity at the time this incident occurred. After a short time during which this argument continued, Bobby De Dios and the person with him left the area. Ms. Peterson and the other organizers split up, and began going to the homes of Vista Verde workers who lived inside the camp.

At about 6 P.M., Ms. Peterson was informed that law enforcement officers had arrived, and she thereupon went to the area of the camp where they were. She saw several officers, two of whom were with Bobby De Dios and Sylvester Dumlao.

One of the officers told Ms. Peterson that Mr. De Dios had something to say to her, whereupon Bobby De Dios informed her that

this was his property and he wanted her to leave. A discussion ensued between Ms. Peterson and the officer as to her legal right to remain. She and another organizer were eventually cited, and left. All of this occurred in the vicinity of a number of workers. Ms. Peterson was later convicted of trespass, and said conviction is being appealed.

On September 13, 1975, Sylvester Dumlao also first learned of the representative election to be held the following day at Vista Verde Farms. After notifying those workers who were in the field that afternoon, he set out to inform others. He went to labor contractor camps for this purpose, and the De Dios camp was the third he visited that day. He arrived there about 6 or 6:30 P.M. The sheriff's cars had just arrived. One of the officers and Bobby De Dios told him they were trying to get the Union organizers to leave. He heard arguing but saw no physical contact. He saw an officer hand papers to the organizers, and saw the organizers then leave. He did not participate in any of these events.

After the organizers left, Bobby De Dios helped Sylvester Dumlao gather about twenty-five or thirty Vista Verde workers for an impromptu meeting about the election. Mr. Dumlao spoke to the workers, but Bobby De Dios did not, although he was present. After about one-half hour, Mr. Dumlao left the camp.

F. Discussion of the Issues and Conclusions

Although the evidence is not sufficiently clear to show a change in the number of hours assigned to Levid Torres and Edmundo Gandarilla prior to November 21, 1975, the situation is different subsequent to that date.

It is uncontradicted that at least seven employees continued

working until December 21, 1975, and that some of them had less seniority than Torres and Gandarilla. It is also uncontradicted that past practice had been to retain these two until the operations of the ranch closed for the year.

Respondent asserts a business reason for not retaining Torres and Gandarilla in 1975, namely that neither of them had disassembled hydraulic tomato harvesters before, neither was experienced in salvage operations, and there was insufficient machinery to use them on the new acreage acquired by Vista Verde Farms. I find no merit in these contentions.

Sylvester Dumlao testified that hydraulic tomato harvesters were unique to Vista Verde Farms, so presumably any employee working on their disassembly learned that procedure under his supervision No evidence was given concerning the degree of experience of the retained employees for this operation, nor how they obtained it. Mr. Gandarilla stated that he had worked on these machines. There was no showing that it was necessary for an employee to be able to break down the entire machine unassisted in order to participate in the operation.

Furthermore, although Respondent argues that this was the primary job in the weekend of November 22 and November 23 and the following week, it does not assert it was the only job. Torres and Gandarilla worked during the "mothballing" operations in 1974 and in prior years. There is nothing in the evidence to indicate that similar work was not available in 1975.

As to the house demolition, Sylvester Dumlao testified that only his five sons worked on it, because the salvage operations required his close supervision. But no showing was made as to why Syl-

vester Dumlao, as Vista Verde's ranch foreman, could not supervise Torres and Gandarilla in this work in the same manner that he supervised the work of his sons, who are also employees of Vista Verde Farms.

As to the work on the newly acquired acreage, I am not persuaded by Sylvester Dumlao's testimony that there was insufficient machinery for more than two workers, Delgado and Arteaga. A variety of operations were performed on that land, and Gandarilla, at least, was experienced in the use of all the equipment.

In view of the above, I find that there was a change in the employment of Torres and Gandarilla after November 21, 1975 and the change was not compelled by business considerations. Therefore, we must look elsewhere for the motive.

Where at least part of the motivating force behind an employer's discriminatory conduct is the desire to discourage union membership, then such conduct constitutes an unfair labor practice, regardless of coinciding business considerations. Berland Paint City, Inc. v. NLRB (7th Cir., 1973) 478 F 2d 1405, 83 LRRM 2263, cert denied 414 U.S. 856, 84 LRRM 2422. Circumstantial evidence regarding the employer's motive is sufficient, since it is usually the only type of evidence available. NLRB v. Putnam Tool (6th Cir., 1961) 290 F 2d 663, 48 LRRM 2263. "Although the need for a lay-off may be generally Justified on economic grounds, this fact alone will not preclude a finding that motivation for the inclusion of union adherents within those to be laid off or discharged arose from the employer's anti-union animus." Tex-Cal Land Management, Inc. (1977) 3 ALRB NO. 14, slip. p. 5.

Both Torres and Gandarilla testified persuasively that Sylves-

ter Dumlao's and Cliff Dumlao's attitude toward them changed markedly after the election on September 13, 1975. Both exhibited a disinclination to behave toward Torres and Gandarilla in their formerly friendly manner, or to talk to them at all. Since Vista Verde Farms' anti-Union position was clear, and since Torres and Gandarilla were prominent Union supporters, known to be such by Respondent, it may be inferred that the hostility of Sylvester Dumlao and Cliff Dumlao expressed itself in a desire not to have Torres and Gandarilla be a part of the markedly reduced work force after November 21, 1975. The employees during this period worked in closer quarters in the shop, and their individual contact with Sylvester Dumlao would necessarily have been greater than when they were working in the fields.

Since both Torres and Gandarilla were among the vary few longtime, permanent, year-round employees of Vista Verde Farms, out of a work force that numbered approximately 600 in peak time, Vista Verde Farms' failure to retain them in 1975 would have a special significance in the ayes of other employees. Their active pro-Union stance, in contrast to the company's anti-Union animus, could not have gone unnoticed by the other workers. The natural consequence of Vista Verde's conduct would be to discourage Union membership not only of the particular discriminatees, but of all Vista Verde employees who observe or hear of the discriminatory treatment. Once it is shown that such discouragement is the natural consequence of an employer's conduct, it is presumed such a consequence was intended. Radio Officers Union v. NLRB (1954) 347 U.S. 17, 33 LRRM 2417.

For the foregoing reasons; I find that Torres and Gandarilla were laid off on November 21, 1975 because of their organizational activities on behalf of the Union, and that by such lay-off Respon-

dent has discriminated against Torres and Gandarilla, thereby violating Section 1153 (c) of the Act.

The allegations concerning the conduct of Bobby De Dios on September 13, 1975 raise two issues: l)Can his conduct be imputed to Respondent, and 2)Were his actions a violation of the Act?

Respondent argues that no agency relationship has been established between Bobby De Dios and Vista Verde Farms on September 13, 1975, and that De Dios cannot be considered an agricultural employer because Section 1140.4(c) specifically excludes labor contractors from its definition of agricultural employers.

It is uncontradicted that the business operations of Vista Verde Farms and the labor contracting business of De Dios are separate. It is also clear that the conduct of Bobby De Dios on the morning *o-f* September 13, 1975 was not specifically encouraged, authorized, abetted, participated in or ratified by Vista Verde Farms. Because of this, Respondent argues that "What goes on in. these labor camps is simply of no concern to Vista Verde Farms." I do not agree.

Section 1140.4(c) provides;

> The term "agricultural employer" shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor shall be deemed the employer for all purposes under this part.(emphasis added)

All persons acting as agents of agricultural employers are themselves defined as agricultural employers by this section. But labor contractors are specifically excluded from this definition. Therefore, whether or not De Dios was acting as an agent of Vista Verde Parma is simply not relevant. The Act provides that with respect to labor contractors, the employer engaging the labor contractor shall be deemed the employer for all purposes under the Act, Thus it is not necessary to look to the laws of agency, nor to the National Labor Relations Act, which has no analagous provision, but only to determine whether Vista Verde Farms was the employer engaging De Dios as a labor contractor.

To view this section otherwise would be to reduce substantially the effectiveness of the Act in its stated purpose, since labor contractors would be excluded from its regulations. Labor contractors occupy a unique role In agriculture, not analagous to that found In Industry. Because of the seasonal and varying needs of agricultural work, they provide *a* substantial and regular, though intermittent, supply of labor to agricultural employers. Although the functions of agricultural employers and labor contractors may occasionally be concurrent (see Napa Valley Vineyards, Co., 3 ALRB No. 22) they are more often, as in the instant case, Independent business operations, as defined in Section 1682. The services of labor contractors are an integral part of California farming operations, and to exclude them from the purview of the Act would defeat its purpose as stated in Section 1:

> "In enacting this legislation the people of the State of California seek to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations."

> This enactment is intended to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state."

The legislature, in desiring to stabilize labor relations in agriculture, could not have intended to exclude from this process so important a segment of agricultural labor as the labor contractors, and indeed it did not "do so. On the contrary, it removed the necessity for showing a specific agency relationship by deeming the employer of such labor contractors to be the employer for all purposes under the Act. Were this not so, the door would be open to massive undermining of the purposes of the Act. Employers would be encouraged to select labor contractors who, shielded from the sanctions of the Act, could restrict the rights of employees under Section 1152. Furthermore, unless employers are held responsible for unfair labor practices of labor contractors engaged by them, irrespective of a showing of specific agency, employees of a labor contractor would have no remedy under the Act for unfair labor practices of a labor contractor. This would conflict with Section 1160.9, which provides, "The procedures set forth in this chapter shall be the exclusive method of redressing unfair labor practices."

In its stated purpose of intention to bring stability to agricultural labor relations, as set forth in Sec. 1 of the Act, the legislature expressed "...the belief the people affected desire a resolution to this dispute and will make a sincere effort to work through the procedures established in this legislation." This is a further indication of a legislative intent to bring all disputes involving agricultural labor relations under the coverage of the Act. The raison d'etre of farmlabor contractors presupposes the existence of agricultural employers as defined in Sec. 1140.4(c). Every busi-

ness function of the farm labor contractor inures to the benefit of one or more agricultural employers. • To exclude farm labor contractors from the sanctions of the Act without a concomitant, unconditional attribution of liability to the agricultural employers who engage them would thwart the legislative purpose of establishing a uniform state labor relations policy under the Agricultural Labor Relations Act. See Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal 3d 392.

In the Instant case, it must be determined whether Vista Verde Farms engaged the labor contractor De Dios so as to deem it the employer with respect to the conduct of Bobby De Dios on September 13, 1975. Respondent admits using the services of De Dios annually for many years. In 1975, it used De Dios prior to August 29th and again beginning September 18th. Respondent argues, inter alia, that since De Dios was not working on Vista Verde property on September 13, 1975, it can have no liability for his conduct on that date. I do not find this argument persuasive. The relationship between Vista Verde and De Dios had not been severed, and clearly all parties were aware that the employment of De Dios on Vista Verde property would continue, as it did in fact on September 18, 1975. Furthermore, the events of September 13, 1975 at issue here directly Involved Respondent and no other employer. The Union organizers stated to Bobby De Dios at their first confrontation on that day that their purpose in being at the labor camp was to inform Vista Verde workers of the election to be held the following day. De Dios's purpose was to prevent their doing this, although he later cooperated with Respondent's agent Sylvester Dumlao who stated the identical purpose. Therefore, with respect to the conduct charged, I find

Respondent to be the employer who engaged the labor contractor within the meaning of Section 1140.4(c) of the Act.

Having determined that conduct by Bobby De Dios with respect to activity protected by the Act is attributable to Respondent, it remains to be determined whether his conduct was in fact violative of Section 1153(a).

Denial of access to a labor camp is an unfair labor practice under the Act. In Silver Creek Packing Company, 3 ALRB No. 13, the Board stated: "This Board has tried to assure the right of communication by opening and keeping open all legitimate avenues between labor organizations and employees. We have determined that communication at the homes of employees is not only legitimate, but crucial to the proper functioning of the Act. See 8 Cal. Admin. Code Sections 20310(a)(2), 20313, and 20910 (1976); Mapes Produce Co., 2 ALRB No. 54, slip pp. 7-8 (1976). An employer may not block such communication. The fact that an employer is also a landlord does not give him license to interfere with the flow of discourse between union and worker. As the California Supreme Court said in United Farm Workers of America, v. Superior Court (Buak Fruit Co.), 14 Cal. 3d 902, 910 (1975), 'A labor housing facility is not, of course, the equivalent of a prison isolation block, impervious to visitation...'" This view is amply supported by ALRB precedent. Lake Superior Lumber Corp. (1946) 70 NLRB No. 20 enf'd 167 F 2d 147 (6th Cir. 1948); Alaska Barite Company (1972) 197 NLRB No. 170; S & H Grossingar's Inc. (2nd dr., 1967) 156 NLRB No. 233, enf'd 372 F 2d 26.

The use of law enforcement officers to remove the organizers does not provide insulation from unfair labor practice violations. Tex-Cal Land Management, Inc. 3 ALRB No. 14, citing Central Hardware Co., 181 NLRB No. 74, 73 LRRM 1422 (1970); Priced-Less Discount Foods. Inc.

162 NLRB No. 872, 64 LRRM 1065 (1967). Nor is the trespass conviction of two of the organizers in the Municipal Court, which is being appealed, of probative value.

The conduct of Bobby De Dios in ordering the Union organizers off his property, and his use of the sheriff's deputies to effectuate their removal, was an unlawful interference with the rights of Respondent's workers to obtain information from the Union. His pushing, shoving and offering to fight in his attempt to accomplish their removal were also unlawful, and cannot be countenanced. Tex-Cal Land Management, Inc., supra. In the Tex-Cal case, at slip p. 10, the Board also stated, "...it is our view that physical confrontations between union and employer representatives are intolerable under our Act. Absent compelling evidence of an imminent need to secure persons against danger of physical harm or to prevent material harm to tangible property interests, resort to physical violence of the sort revealed herein shall be viewed by this Board as violatlve of the Act. Such conduct has an inherently intimidating impact on workers and is incompatible with the basic processes of the Act."

For the foregoing reasons, I find that the conduct of Bobby De Dios on September 13, 1975 constituted a violation of Section 1153 (a) of the Act by Respondent.

III The Remedy

Having found that Respondent engaged in certain unfair labor practices within the meaning of Section 1153(a) and (c) of the Act, I shall recommend that it cease and desist therefrom and take cer tain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully laid off Levid Torres and Edmundo Gandarilla from November 21, 1975 through December 21, 1975, I recommend that Respondent make them whole for any losses they may have incurred as a result of its unlawful discriminatory action by payment to them of a sum of money equal to the wages they would have earned from November 21, 1975 through, December 21, 1975, less their net earnings if any, together with Interest thereon at the rate of seven percent per annum, pursuant to the decision in Valley Farms and Rose J. Farms, 2 ALRB No. 41 (1976). In accordance with the decision in Tex-Cal Land Management Inc.. 3 ALRB No. 14, I shall recommend that the Regional Director of the Agricultural Labor Relations Board shall conduct an investigation to determine the amount of back pay, if any, which is due the discriminatees and shall calculate the Interest thereon. If it appears that there exists a controversy between the Board and Respondent concerning the amount of back pay due which cannot be resolved without a formal proceeding, the Regional Director shall issue a notice of hearing containing a brief statement of the matter in controversy. The hearing shall be conducted, pursuant to the provisions of section 20370 of the Regulations, 8 Cal. Admin. Code Section 20370.

In order to effectuate the purposes of the Act, it is necessary that labor contractors engaged by Respondent be aware of Respondent's responsibility with respect to the labor contractors' conduct. It is also necessary for Respondent's employees to be aware of its position with respect to its labor contractors, in order that they may assert their rights under Section 1152 of the Act without fear of reprisal or intimidation from it. The Board has indicated the need to fashion remedies that will be effective.

in compensating for the effects of unfair labor practices. . (Valley Farms and Ro«e J. Farms 2 ALRB No. 41 at slip pp. 5, 6,) In Re-setar Farms 3 ALRB No. 18, at slip p, 3, the Board stated: "Undoubtedly, some of our remedies will be traditional, but others will not. Given the uniqueness of agricultural labor and the breadth of our law, we will not be regimented by NLRB precedent in fashioning effective remedies."

The De Dios's were not parties to'this action and there is no jurisdiction to make any order directly to them. We can, however, require that the Respondent communicate with them, and inform them of the Board's decision. Accordingly, I shall recommend that a letter directed to Alphonso De Dios and Bobby De Dios in the form attached hereto be signed by Respondent and delivered to Alphonso De Dios and Bobby De Dios, and that printed copies of this letter, together with a Spanish translation thereof, be read, mailed and posted In the same manner and at the same time as the NOTICE TO WORKERS next referred to.

In order to achieve the objective of notifying the employees that the employer has been found to have engaged in unfair labor practices, has remedied such violations, and will not engage In future violations, with respect to them, I shall recommend that the NOTICE TO WORKERS attached hereto be read in English and Spanish to assembled employees on company time and property at the commencement of the 1977 peak harvest season, by an Agricultural Labor Relations Board agent, accompanied by a company representative, and that the Board agent be accorded the opportunity to answer questions employees might have regarding the notice, letter and their rights under the Act. The Regional Director is to determine a

reasonable rate of compensation to be paid by Respondent to its piece-rate employees to compensate for time lost at the reading and in the question period.

Additionally, I shall recommend that the NOTICE TO WORKERS, together with the letter to Alphonso De Dios and Bobby De Dios previously referred to, be mailed to all present employees and to all employees who have worked for Respondent since September 13, 1975, and that the Notice be posted, at the commencement of the 1977 harvest season, for a period of not less than sixty days, at appropriate locations proximate to employee work areas, including places where notices to employees are customarily posted.

General Counsel, in his latter of March 11, 1977 to the Administrative Law Officer, states that expanded Union access to Respondent's workers "Is perhaps the only effective remedy for Respondent's dramatic eviction of the UFW in 1975." Union access to the labor camp is not limited by the access rule. It is protected by both the United States and the California Constitutions (United Farm Workers of America, AFL-CIO v. Superior Court (Wa. Bual Fruit Co., supra) and no ruling by the Board is necessary to enlarge that right. With respect to the property owned by Respondent, there has been no showing of unlawful denial of access to the Union, and I therefore do not deem expanded access an appropriate remedy.

Following the precedent set by the Board in Resetar Farms, 3 ALRB No. 18, at slip p. 8, I conclude that the awarding of litigation costs and attorney's fees 'in this case will not effectuate the purposes of the Act. I believe the remedies I have recommended are sufficient to correct the harms done.

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 officers, agents and representatives, shall:

1. Cease and desist from:

(a)Threatening employees with lay-off because of their Union activities.

(b)Discouraging or otherwise discriminating against employees because of their Union activities.

(c)Denying access by Union organizers for the purpose of organizing pursuant to law.

(d)Assaulting or threatening to assault union organizers who are attempting to communicate with its workers.

(e)In any other manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed by Sections 1152, 1153(a) and 1153 (d) of the Act.

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

(a)Make Levid Torres and Edmundo Gandarilla whole for any loss of earnings suffered by reason of discrimination against them, including interest thereon at the rate of 7% per annum.

(b)Preserve, and upon request make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all

other records necessary to analyze the amount of back pay due under the terms of this Order.

(c)Deliver the attached letter to Alphonso De Dios and Bobby De Dios, and have printed copies together with a Spanish translation thereof, read, mailed, and posted in the same manner and at the same time as the NOTICE TO WORKERS, as set forth below.

(d)Mail the attached NOTICE TO WORKERS, in English and Spanish, together with a copy of the letter referred to above, to all present employees and to all employees who have worked for Respondent since September 13, 1975, and post said Notice and letter, in English and Spanish, at the commencement of the 1977 harvest season for a period of not less than sixty days at appropriate locations proximate to employee work areas, including places where notices to employees are customarily posted.

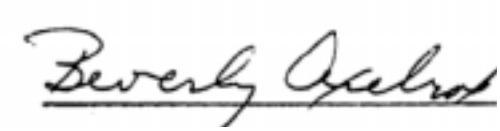
(e)Have the attached NOTICE TO WORKERS, together with a copy of the attached letter, read in English and Spanish to assembled employees on company time and property at the commencement of the 1977 harvest season, to all those then employed, by a Board agent accompanied by a company representative. Said Board agent is to be accorded the opportunity to answer questions which employees may have regarding the notice and letter and their rights under Section 1152 of the Act.

(f)Notify the Regional Director in the Sacramento Re-

gional Office within twenty days from receipt of a copy of this decision of the steps which Respondent has taken and will take to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

It is further recommended that allegations in the complaints not specifically found herein as violations of the Act be dismissed.

Dated: March 26, 1977



Beverly Axelrod
Administrative Law Officer

To Alphonso De Dies and Bobby De Dios:

After a trial at which all parties had the opportunity to be heard, the Agricultural Labor Relations Board has found that conduct by you which interferes with the rights of our employees to select their own bargaining representative, if such should be their desire, is attributable to us.

The Board has ordered us to write this letter to you, asking you to refrain from denying lawful access by union organizers to your premises for the purpose of organizing our employees; to refrain from assaulting or threatening union organizers who are lawfully attempting to communicate with our workers; and to refrain from any other action that would interfere with, restrain or coerce our employees in the exercise of their right guaranteed by sections 1152, 1153 (a) and 1153(c) of the Agricultural Labor Relations Act.

Dated: _____

Vista Verde Farms

By:_____

(Representative) (Title)

NOTICE TO WORKERS

After a trial where each aide had a chance to present its 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 lay you off because of your feelings about, actions for, or membership in any union.

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

WE WILL NOT assault or threaten union organizers who

are trying to talk with you.

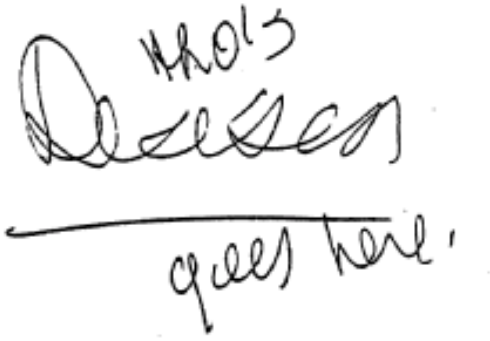
WE WILL PAY Levid Torres and Edmundo Gandarilla any money they lost because we laid them off.

Dated:

Vista Verde 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.



75-CE-23-S Para 6a, b, c. (1)
T CE-49-S Para 6c

Vista Verde Farms

1974

Working Hrs/Week

Payroll Period Ending:	Arteaga	Correa	Delgado	Gandarilla	Torres
7/14/74	91	89	76	88	72
7/21	97	72	93½	105	93½
7/28	93	94	87	88	97½
8/4	99	89	84	89	90
8/11	89	72	98	88	96
8/18	101	84	103	95½	89
8/25	86	89	82	82½	72
9/1	72	72	72	72	72
9/8	72	112	72	72	72
9/15	93½	112	98½	72	98½
Time of '75 Election					
Total	875½	860	956	952	917½
Avg	87.6	86.0	85.6	85.2	91.8
9/22	89	105	89	75	89
9/29	89	105	94	94	89
10/6	94	105	89	72	89
10/13	80	89	89	x9	89
10/20	76	93	70	89	89
10/27	78	93	80	89	72
11/3	73	70	75	70	70
11/10	72	66	83	78	89
11/17	99	89	89	99	79
11/24	79	61	30	73	62
Time of '76 Election					
Total	799	871	758	728	728
Avg	79.9	87.1	75.8	72.8	72.8
Δ Avg.	-8.2	+1.1	-9.8	-12.4	-6.0

FINAL PAY PERIOD, 1974 (75-CE-49-S, Para 6f))

Arteaga	12/22/74
Correa	11/24/74 → Asked to leave early for trip to Mexico
Delgado	12/22/74
Gandarilla	12/22/74
Torres	12/22/74

(2)

VISTA VERDE FARMS

75-E-23-S Para 6a, b, c.
75-CE-49-S Para 6a

1975 WORKING HOURS / WEEK

PAYROLL PERIOD ENDING:	ARTEAGA	CORREA	DELGADO	GANDARILLA	TORRES
7/13/75	84	74	74	84	74
7/20/75	83½	89	94	84	86
7/27	84	84	92	89	89
8/3	87	91	86	89	89
8/10	84	91	86	80	70
8/17	93	78	79½	86½	60
8/24	90½	87	98½	78½	98
8/31	89	91	79	78	84
9/7	93	119	87½	86	109
9/14	96	82	87½	80	69
ELECTION					
PRE-ELECTION TOTAL	879	991	897	825	782
PRE-ELECTION AVG.	87.9	89.1	89.7	82.5	78.2
9/21/75	77	97	85	89	68
9/28	98	115	75	82½	82
10/5	84	84	70	70½	94
10/12	109	99½	98	86	50
10/19	82	73	78	71	77½
10/26	70	43	65	58	53½
11/2	79	30	80	91	56
11/9	73	57½	84	95	73
11/16	76	82	84	87	73½
11/23	81	56	80	60	53
DISCHARGE					
POST-ELECTION TOTAL	839	739	799	733	630½
POST-ELECTION AVG.	83.9	73.9	79.9	73.3	63.1
Δ AVG.	−3.5	−15.7	−9.9	−9.2	−15.1

FINAL PAY PERIOD, 1975 (75-CE-49-S, PARA 6(f))

ARTEAGA	12/20/75
CORREA	11/23/75
DELGADO	12/21/75
GANDARILLA	11/23/75
TORRES	11/23/75

VISTA VERDE FARMS 75-CE-50-5

1975 WORKING HOURS / WEEK

PAYROLL PERIOD ENDING:	CALDERON	PAROCHA
8/3/75	89	98
8/10	72	84
8/17	72	82
8/24	66½	50
8/31	84	51½
9/7	89	79
9/14	84	92
ELECTION		
TOTAL	546½	536½
AVG	78.07	76.64
9/21	79	87
9/28	72	67½
10/5	99	68
10/12	66	99
10/19	65	86
10/26	43	59½
11/2	31	97
TOTAL	909	493
AVG	58.92	70.42
Δ AVG	−19.65	− 6.22