STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TENNECO WEST, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 77-CE-2-C 77-CE-16-C 77-CE-21-C and 77-RC-6-C 3 ALRB No. 92

DECISION AND ORDER AND

PARTIAL DECISION ON CHALLENGED BALLOTS Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this proceeding [1] to a three-member panel.

On April 14, 1977, Administrative Law Officer (ALO) Mark E. Merin issued the attached Decision in Cases Nos. 77-CE-2-C, 77-CE-16-C, and 77-CE-21-C. [2] Thereafter Respondent and the Charging Party each filed timely exceptions [3] and a supporting brief.

The Board has considered the record and the attached

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[1] The Board hereby orders Cases Nos. 77-CE-2-C, 77-CE-16-C, 77-CE-21-C, and 77-RC-6-C consolidated for decision.

[2] On June 24, 1977, Respondent filed a motion to dismiss the proposed decision of the ALO based on a decision by the Riverside County Superior Court (ALRB v. Laflin et al, Decisions No. 23881 and 23566) in which Respondent alleges the Court found a lack of authority in the ALRB to require employee lists. In Case No. 23881 Judge Metheny refused to grant the General Counsel's petition for a temporary restraining order enforcing the pre-petition list regulation. Thus Judge Metheny did not rule on the

(fn. 2 cont. on p. 2)

Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO to the extent consistent with this opinion.

The ALO found that Respondent violated Labor Code § 1153(a) by failing on two separate occasions to comply with 8 Cal. Admin. Code § 20310(a) (2) as required by 8 Cal. Admin. Code § 20910 (c). The ALO based his finding of Respondent's failure to provide complete pre-petition lists on the fact that current street addresses for the vast majority of the workers listed were omitted and that certain employees in the bargaining unit designated by the Charging Party employed by Respondent were not included in the lists. The ALO further found that Respondent violated Labor Code § 1153(a) by the actions of supervisor Leland Hall and Gil Contreras [4/] in

(fn. 2 cont.)

ALRB's authority; rather, he denied the General Counsel the relief requested. The judge also denied the Employer's motion that the ALRB be restrained from enforcing this regulation. We note further that the General Counsel has succeeded in obtaining an alternative Writ from the Court of Appeal in Case No. 23566. Finally, Respondent in the instant case was not a party to either case. We do not believe for the above reasons that these cases -in any way affect our enforcement of this regulation. Accordingly we deny the Respondent's motion.

[3/] We deny Respondent's motion to strike the UFW's exceptions to the decision of the ALO for its failure to cite to the transcript. 8 Cal. Admin. Code § 20282(a) states that exceptions to ALO decisions "shall state the grounds for the exception, including citations to the portions of the record which support the exception." Although it is extremely helpful to the Board to have transcript citations this is not required by § 20282(a). What is required by this section is a description of specific testimony of particular witnesses or reference to particular exhibits.

[4/] Although we are unable to resolve the supervisorial status

(fn.4 cont. on p. 3)

interrogating Respondent's employees concerning their union support and union activities.

Respondent excepted to the ALO's failure to provide a detailed analysis relating to the business and working relationship between Tenneco West, Inc., and Santiago Reyes. Based on our review of the record, we find the ALO's analysis of the relationship between the Respondent and Reyes was sufficient on which to base a finding that under our Act, §1140.4(c), [5] Respondent is the agricultural employer of the workers in Mr. Reyes' crews. The evidence established that Reyes is a licensed contractor who provides the labor required to complete the citrus harvest.[6] Respondent supplies the equipment

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(fn. 4 cont.)

of Gil Contreras on the basis of the record in these ULP proceedings or the challenged ballot report of the ARD discussed infra, we uphold the ALO's finding that Gil Contreras was acting as an agent of supervisor Leland Hall when he approached workers and told them if they wanted a union representative to visit them at their homes, to put down their addresses by their names.

[5] Labor Code §1140.4 (c) states "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."

[6] The Respondent excepted to the ALO's finding that Santiago Reyes harvests grapes grown on Tenneco property. The record shows that this is not true. Accordingly, we overrule this finding of the ALO. This error in the ALO's decision, however, is insufficient to affect

(fn. 6 cont. on p. 4)

used to harvest the citrus and determines the rate to be paid to Reyes' workers. As is the standard procedure for paying labor contractors, Reyes receives from Respondent an amount sufficient to cover the cost of the labor, plus a commission or fee for his services.[7] The evidence also shows that with regard to Respondent's arrangements to harvest the citrus on fields it does not own, Reyes and his crews are used to accomplish the same work they perform on land owned or leased by Tenneco.

Therefore, on the totality of this evidence we find that Respondent is the agricultural employer of the workers in Reyes' crews. The names and addresses of the workers supplied by Reyes were available to Respondent from Reyes. We have previously found that under Labor Code § 1157.3 the agricultural employer is responsible for maintaining and making available to the Board upon request accurate and current payroll lists containing the names and addresses of workers supplied by a labor contractor, as well as those employed directly. Yoder Brothers, 2 ALRB No. 4 (1976). We

(fn. 6 cont.)

our determination of the relationship between Respondent and Reyes with regard to the citrus harvest and the workers provided by Reyes for that task.

[7]Based on these facts, this case can be distinguished from Kotchevar Brothers, 2 ALRB No. 45 (1976). The custom harvester in Kotchevar, supra, "received a percentage of the crop harvested and supplied the equipment necessary to harvest the crop. Respondent points out that Reyes also works as a hauler. The record shows that the only equipment supplied by Reyes is his truck, which he uses to haul the citrus to the Tenneco packing shed. Reyes is paid an additional fee for this service and acknowledged that his trucking operation is separate from his labor contractor services. We find this additional and separate hauling service does not change the fact that his relationship to Respondent is that of a labor contractor, making Respondent the agricultural employer of Reyes' crews.

adopt the ALO's finding that Respondent violated Labor Code §1153(a) in failing to provide an accurate list of its employees and their addresses. See Henry Moreno, 3 ALRB No. 40 (1977). See also Yeji Kitagawa, et al, 3 ALRB No. 44 (1977) where we determined that 8 Cal. Admin. Code §20910 and §20310 (a) (2) together provide that if the employer questions the unit named in the Notice of Intention to Organize, it shall submit a list based on the unit it contends to be correct, in addition to the list covering the unit requested, and a written description of the unit it contends to be correct.

Respondent excepts to the ALO's finding that the employees were interrogated in violation of Labor Code §1153 (a) and contends that there was no interrogation beyond asking employees for their addresses and that the employees were not intimidated. The evidence showed that Gil Contreras, acting on instructions from supervisor Leland Hall, approached the workers and asked them for either their home addresses if they desired to be visited by UFW representatives, or a written refusal based on their desire not to be so visited. We adopt the ALO's finding that this conduct is clearly coercive interrogation in that the workers were in effect being asked to disclose their attitudes for or against the union by giving or refusing to give their addresses. See NLRB v. Historic Smithville Inn, 71 LRRM 2972 (CA3 1969).

Remedies

The ALO recommended that economic strikers who would have been eligible to vote in a representation election which could have been conducted at the company before February 28, 1977, had the company not obstructed the UFW's organizing activities, be permitted

to vote in the first such election held at the company in the future. The acceptability of this remedy is discussed infra at page 11 in our decision regarding challenged ballots.

In accordance with our decision in Henry Moreno, 3 ALRB No. 40 (1977) we order that:

1. During the next following access period which the Charging Party elects to take pursuant to 8 Cal. Admin. Code §20900(e) et seg., as many organizers as are entitled to access under §20900(e)(4)(A) may be present during working hours for organizational purposes and may talk to workers and distribute literature, provided that such organizational activities do not disrupt work.

During those access periods before and after work and during lunch specified in §20900(e)(3)(A) and (B), the limitations on numbers of organizers specified in §20900 (e) (4) (A) shall not apply.

2. For each one-month access period during which Respondent refused to provide an employees' list as set forth in 8 Cal. Admin. Code §20910(c), the Charging Party shall have one additional such access period during the Employer's next peak season, whether in this or the following calendar year.

ORDER

Respondent, TENNECO WEST, INC., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to provide the ALRB with an employee list as required by 8 Cal. Admin. Code § 20910 (c) (1976).

(b) Interrogating employees concerning their union affiliation or sympathy or their participation in protected activities.

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

(a) Post copies of the attached notice for a period of ninety consecutive days to be determined by the Regional Director at places to be determined by the Regional Director. Copies of the notice shall be furnished by the Regional Director in appropriate languages. Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(b) Mail copies of the attached notice in all appropriate languages, within twenty days from receipt of this Order, to all employees employed in the time period during which the ULP's continued, e.g., from January 4, 1977 to February 3, 1977.

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

(d) Provide the ALRB with an employee list forthwith, as required by 8 Cal. Admin. Code Section 20910 (c) (1976).

(e) Provide the UFW with an employee list when the 1978 harvest begins and every two weeks thereafter.

(f) During the next period in which the UFW has filed a notice of intent to take access, Respondent shall allow UFW organizers to organize among its employees during the hours specified in 8 Cal. Admin. Code Section 20900 (e) (3) (1976) without restriction as to the number of organizers. In addition, during the same period, the UFW shall have the right of access during working hours for as many organizers as are permitted under Section 20900(e)(4)(A).

Such right of access during the working day beyond that normally available under Section 20900(e) (3) may be terminated or modified if, in the view of the Regional Director, it is used in such a way that it becomes unduly disruptive. If, after the overruled challenged ballots are opened and counted, the election results indicate a victory for the UFW., the above ordered expanded access shall be limited as provided by 8 Cal. Admin. Code § 20900(e)(1) (c).

(g) Upon filing a written notice of intent to take access pursuant to Section 20900Ce) CD (B), the UFW shall be entitled to one access period during the 1977 or 1978 calendar year in addition to the four periods provided for in Section 20900(e)(1)(A).

(h) 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/her periodically thereafter in writing what further steps have been taken in compliance with this Order.

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

NOTICE TO WORKERS

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out and post this Notice.

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

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

(1) to organize themselves;

(2) to form, join, or help unions;

(3) to bargain as a group and choose whom they want to speak for them;

(4) to act together with other workers to try to get a contract or to help or protect one another;

(5) to decide not to do any of these things.

Because this is true we promise that:

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

Especially:

WE WILL NOT 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 refuse to provide the Agricultural Labor Relations Board with a current list of employees when the UFW or any union has filed its "Intention to Organize" the employees at this ranch.

TENNECO WEST, INC.
(Employer)

DATED: ____________________ 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.

PARTIAL DECISION ON CHALLENGED BALLOTS In

Case No. 77-RC-6-C

On April 21, 1977, an election was conducted at Tenneco West, Inc. The Tally of Ballots showed the following results:

UFW	177
No Union	120
Challenged Ballots	100

Since the challenged ballots determine the outcome of the election, the Acting Regional Director (ARD) of San Diego Region, Coachella Field Office, conducted an investigation and issued a report on challenged ballots on July 8, 1977. No Identification

The ARD recommended that the challenge to the ballot of David M. Taylor be overruled. The Employer excepted to this recommendation, contending that the voter was unable to produce any identification at the time he voted. The ARD's report indicated that David Taylor's name appeared on the eligibility list, that he presented identification subsequent to the election and that his signature on the affidavit he signed at the challenge table matched the signature on the declaration he gave after the election. We find these facts are sufficient to establish the identity and eligibility to vote of David Taylor. We therefore overrule the challenge and order that the ballot of David Taylor be opened and counted.

Alleged Supervisors

The ARD recommended that the ballots of the first five voters listed in Schedule B be sustained on the basis of evidence indicating these persons were supervisors. The Employer excepted

to the ARD's recommendation and findings regarding the status of these individuals. However, the Employer failed to submit any evidence which would indicate these workers are not supervisors. We accept the ARD's recommendation and order that the challenges to the ballots of the voters listed in schedule B be sustained.

Gil Contreras and Trinidad Macias were challenged on the ground they are supervisors. As the ARD indicated, there is contradictory evidence regarding their status. For this reason we are unable to resolve the challenges to their ballots at this time. If these ballots become outcome-determinative the Regional Director shall conduct such further investigation as may be necessary to resolve these challenges.

Not on List - Economic Strikers

Daniel Reyes Delgado, Juana R. Delgado, Socorro Delgado, and Francisco de Leon Gonzales were challenged by the Board Agent because they were not on the eligibility list. The UFW contends that these individuals are economic strikers. The ALO recommended, as a remedy to the unfair labor practices found supra, that in order to prevent the company from benefiting from its illegal acts, economic strikers who would have been eligible to vote in a representation election which could have been held among the Employer's employees before February 28, 1977, if the Employer had not obstructed the UFW's organizing activities, should be permitted to vote in the first such election conducted among the Employer's employees in the future. Neither the evidence from the unfair labor practice hearing nor the ARD's report is sufficient for us to determine whether the Employer was at 50% of peak employment between

January 3[8/] and February 28, 1977. Furthermore, the ARD's report failed to make any findings as to whether these voters are economic strikers pursuant to the standards we established in George Lucas and Sons/ 3 ALRB No. 5. [9/]For these reasons we will not decide now whether these voters are eligible to vote under Labor Code § 1157 which states that pre-Act economic strikers are not eligible to vote in elections held after February 28, 1977. In the event the ballots of these voters prove to be outcome-determinative, we shall order a further investigation 'by the Regional Director to clarify the unresolved issues discussed above.

Not on the List

The ARD's report indicated that thirteen [10/]voters were challenged on the basis that their names did not appear on the eligibility list. The ARD recommended that the ballots of Rafaela Arellano, Hector Gutierrez, Antonio Herrera, Robert Monroy, Silvia Morales, Elena Zendejas, and Luis Angel Becerra Flores be counted. He found that although these workers' names were not on the payroll

[8/] January 3, 1977 is the date the Employer first failed to comply with our pre-petition list regulation.

[9/]Our dissenting colleague proposes to sustain the challenges to the ballots of these four individuals on the basis of a declaration submitted by the Employer. We can see no basis for sustaining these challenges because, as indicated above, the ARD made absolutely no findings on this issue. Under such circumstances it would be inappropriate to resolve these challenges solely on the basis of the factual allegations of the Employer's exceptions.

[10/]The ballot of one of these thirteen, Andres Gallegos, has already been counted. The ARD's report indicated that Mr. Gallegos failed to place his ballot in a challenge envelope before depositing it in the ballot box. The ARD's report indicated that even though Gallegos[1] name was not on the eligibility list, he was in fact working during the appropriate payroll period and was eligible to vote. We note that because this ballot has already been counted the number of challenged ballots is 99 rather than 100.

they were working along with their families during the appropriate payroll periods. With regard to Rafaela Arellano, Luis A. Becerra Flores, Robert Monroy, and Elena Zendejas, the ARD's recommendation was based on declarations of family members of each of these voters stating the voter had worked along with a family member or under a family member's name during the eligibility period. In the case of Hector Gutierrez the ARD based his recommendation on Hector Gutierrez's statement that he worked under his brother's name, Enrique Gutierrez, during the eligibility period and on the company's payroll records which showed the production output of Enrique Gutierrez at twice the rate of other workers in the crew. The ARD's recommendation that the challenged ballot of Antonio Herrera be counted was based on Antonio Herrera's declaration that he worked during the eligibility period under Eliseo Herrera's name, company payroll records which indicate that Eliseo Herrera worked April 4-7, 1977, for a total of thirty hours during which time the total hours worked by other members of the same crew ranged from eighteen to twenty-four hours, and the declaration of an employee who stated he personally saw Antonio Herrera. work during the eligibility period. In the case of Silvia. Morales, the ARD's recommendation is based on her declaration stating she worked under the name of her husband, Ruben Morales, during the eligibility period, company payroll records indicating Ruben Morales' production output was slightly higher than the overall crew average, and declarations from four employees stating they personally observed Silvia Morales working during the eligibility period.

The Employer excepted to the ARD's recommendation, alleging

that the holding in M. V. Pista & Co., 2 ALRB No. 8 (1976), is inapplicable here because these names were not left off the payroll "for purposes of mutual convenience," but rather because the Employer has a strict rule against more than one person working under one name. We do not find the existence of that rule to be sufficient evidence to contradict the findings of the ARD. Furthermore, we find that M. V. Pista, supra, requires us to count the ballots of these voters. Although these voters' names were not on the Employer's payroll, they should have been included on the eligibility list. 8 Cal. Admin. Code § 20310 (a)(2) states that the eligibility list must contain the "names, current street addresses, and job classifications of persons working for the employer as part of a family or other group for which the name of only one group member appears on the payroll." Our policy with regard to this issue is that family or other group members who work during the appropriate period, but who do not appear on the employer's payroll, are eligible to vote. M. V. Pista, supra. See Valdora Produce, 3 ALRB No. 8 (1977) and Yoder Brothers, supra. We therefore adopt the recommendation of the ARD, overrule these seven challenges and order that these ballots be opened and counted.

The ARD's report indicated that the ballot of Graciano Becerra, Sr. was challenged even though his name was in fact on the eligibility list. However, it appears his name was crossed off when his son, Graciano Becerra, Jr. voted. Clearly Graciano Becerra, Sr. was eligible to vote. The fact that his son voted a non-challenged ballot is not significant in light of the fact that he was working during the appropriate payroll period under

his father's name. We therefore overrule this challenge and order that the ballot of Graciano Becerra, Sr. be opened and counted.

The ARD's report indicated that Sylvestre Lopez Gonzales could not be located after the election and that no evidence was obtained from other employees regarding his eligibility. In the event his ballot proves to be outcome-determinative, we shall order the ARD to investigate further the eligibility of Mr. Gonzales.

The ARD recommended opening and counting the ballot of Eleuterio Muniz. The evidence indicated that Mr. Muniz did not work during the applicable payroll period because of an injury. The UFW excepts to the ARD's recommendation, contending that there is no evidence as to his job classification or type of work performed, or whether he was a seasonal or permanent employee. The UFW failed to challenge this voter on additional grounds, such as being a supervisor, or not being an agricultural employee. Furthermore, the UFW has failed to present any evidence contradicting the ARD. The mere fact that the ARD failed to make these findings is not sufficient grounds for exception. See Sam Andrews' Sons, 2 ALRB No. 28 (1976). Based on our decision in Rod McLellan Co. , 3 ALRB No. 6 .(1977) we adopt the ARD's recommendation, overrule the challenge and order that Eleuterio Muniz's ballot be opened and counted.

The ARD recommended sustaining the challenge to the ballot of Concepcion Nunez, and no party excepted to that recommendation. We therefore adopt the ARD's recommendation and sustain this challenge.

The ARD recommended counting the ballot of Juan Salmeron.

Although the eligibility list contained the name Juan Salmeron, the evidence shows his full name is Juan Salmeron Hernandez. The social security number listed by this employee in his declaration matched that of Juan Salmeron on the eligibility list. What occurred here was only confusion regarding the name and not the eligibility of this voter. Accordingly, we overrule this challenge and order that the ballot of Juan Salmeron be opened and counted.

Not in the Appropriate Unit

Seventy-five voters were challenged on the ground they did not work in the appropriate unit.[11/] The ARD found that these voters are employees of Cal-Date Co., a division of Tenneco West. These employees work in the pollination, irrigating, thinning, and harvesting of numerous date groves in the Coachella Valley. The ARD further found that these workers are employed in an

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[11/]The ARD placed asterisks beside the names of four of these employees: Elisa N. De Herrera, Francisco Lopez, Rosenaldo Salazar, and Refugio Torrez. He then indicated that the asterisks meant these workers were challenged on another ground. In listing the four employees again, he omitted Francisco Lopez and added Rosa Jimenez. The report contains no discussion of what the other ground is, nor does it clarify the confusion as to the listing of Francisco Lopez and Rosa Jimenez. Because of this confusion, we are unable to reach a conclusion concerning their eligibility. In the event their ballots become outcome-determinative, we - will order the Regional Director to conduct an investigation and provide us with a report concerning their voting eligibility.

In its brief in support of exceptions, the Employer alleges that Rafael Cortez, Elisa N. De Herrera, Salvado Moreno, Ramon Gonzales, Juan Tansies, Refugio Torrez, and Rosa Jimenez were not listed on the eligibility list. The ARD's report is unclear on this point. We therefore will not now resolve the eligibility of these voters. We note that no Juan Tensies is listed in the ARD's report. A Juan Tenoles is listed. Keeping in mind the possibility of a clerical or spelling error, we will consider for the time being that both names refer to the same person. In the event their ballots prove to be outcome-determinative, the Regional Director will be ordered to' conduct an investigation and provide us with a report concerning their voting eligibility.

area geographically contiguous to that of other Tenneco West properties in the Coachella Valley. He concluded in finding that they should be considered part of the same bargaining unit, and recommended that their ballots be opened and counted.

The Employer excepted to the ARD's findings and recommendations, contending that the Cal-Date Company is an independent operation within Tenneco West and that it has no geographical contiguity, connection, or interdependence with other Tenneco West, Inc. agricultural operations in Coachella. The ARD found that the Cal-Date employees are all employed in the Coachella Valley, as are the Tenneco West, Inc. employees who work in the citrus and grape operations. His report indicated that the valley is approximately forty miles long and fifteen miles wide. The climate does not vary significantly from one end of the valley to the other, and the source of irrigation water for all Coachella Valley agriculture is the Colorado River (via the Coachella Valley County Water District). We find, on the basis of the evidence presented by the ARD (and not contradicted by the Employer other than its blanket denial of geographical contiguity), that Tenneco West's citrus and grape operations and the Cal-Date operations occur in a single definable agricultural production area. See John Elmore Farms, 3 ALRB No. 16 (1977). The fact that the Cal-Date Company is an independent operation within Tenneco West, Inc. does not detract from the obvious conclusion that Gal-Date's agricultural employees are in fact the agricultural employees of Tenneco West, Inc. Our concern is not with the business and managerial structure of the company, but rather with

the proper determination of who is the agricultural employer for purposes of collective bargaining with agricultural employees. In this situation/ Labor Code § 1156.2 [12/] requires us to find that the Cal-Date workers are part of the same bargaining unit as Tenneco West, Inc's. other agricultural employees in the Coachella Valley. We therefore overrule these challenges and order that the ballots of the voters listed in schedule D be opened and counted.

DATE: December 1 6 , 1977

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

[11/]Labor Code § 1156.2 states in pertinent part: "The bargaining unit shall be all the agricultural employees of an employer."

Schedule A - Challenges

Overruled

Ballots to be Opened and Counted

1. David M. Taylor
2. Rafaela Arellano
3. Luis Angel Becerra Flores
4. Hector Gutierrez
5. Antonio Herrera
6. Robert Monroy
7. Silvia Morales
8. Elena Zendejas
9. Graciano Becerra, Sr.
10. Eleuterio Muniz
11. Juan Salmeron

Schedule B - Challenges Sustained

1. Valeriano Caraan
2. Honorato Domingo
3. Mariano Maldonado
4. Simon Matias
5. Beatriz Vizcarra
6. Concepcion Nunez

Schedule C - Unresolved Challenges

1. Gil Contreras
2. Trinidad Macias
3. Daniel Reyes Delgado
4. Juana R. Delgado
5. Socorro Delgado
6. Francisco de Leon Gonzales
7. Sylvestre Lopez Gonzales
8. Elisa N. De Herrera
9. Francisco Lopez
10. Rosenaldo Salazar
11. Refugio Torrez
12. Rosa Jimenez
13. Rafael Cortez
14. Salvado Moreno
15. Ramon Gonzales
16. Juan Tenoles

Schedule D - Challenges Overruled

Ballots to be Opened and Counted

1. Leonardo Avila
2. Alfredo Avina
3. Loreto Beltran
4. Liborio Boyas
5. Roberto Carillo
6. Rafael Cortez
7. Silviano Cortez
8. Juan Ayala Curiel
9. Ignacio De La Cruz
10. Alberto Esqueda
11. Jose Jesus Esqueda
12. Manual Esqueda
13. Miguel Esqueda
14. Broilan Fernandez
15. Leonardo Fernandez
16. Simon Fernandez
17. Pedro Garcia
18. Glenn Erby Gillean
19. Carlos S. Gonzalez
20. Bill Gray
21. Antonio Gutierrez
22. Pablo Gutierrez
23. Efrin Ruiz Herrera
24. Gabriel Hernandez
25. Jesus Hernandez
26. Jose Hernandez
27. Juan Hernandez
28. Jose Herrera
29. Juan Herrera
30. Rosalio Ibarra
31. Jeff Jones
32. Santiago Maciel
33. Arturo Martinez
34. Nazario Meraz
35. Jesus Mongella
36. Alfredo Montoya
37. Fidel Rangel Morales
38. Arturo Munguia
39. Raymond Ochoa
40. Jose Ortiz
41. Jose de Padilla
42. Arturo Perez
43. Ooroteo Ramirez
44. Cesar Rios
45. Jose Luis Rios
46. Hector Rocha
47. Jaime Rocha
48. Luis Rocha
49. Rodolfo Rocha
50. Ruben Rocha

Schedule D continued ---------

51. Pilar Rodarte
52. Arnulfo Rodriguez
53. Florentine Rodriguez
54. Francisco Rodriguez
55. Mosies Rodriguez
56. Pablo Rodriguez
57. Arturo Romero
58. Javier Sarbia
59. Ernesto Silva
60. Alberto Cobian Solis
61. Gonzalo Solis
62. Margarito Torrez
63. Fidel Torrez
64. Jose Torrez
65. Juan Sanchez Venigas
66. Jesus R. Verdusco

Member HUTCHINSON, dissenting in part:

I disagree with the remedy afforded the Charging Party in the ULP portion of the opinion and with portions of the Partial Decision on Challenged Ballots.

While I agree that some form of expanded access will, in most cases, be required to remedy a violation of our pre-petition list requirement, I do not find the extent of that remedy afforded in this case to be warranted,

We declared in Henry Moreno, 3 ALEB No. 40 (1977), cur intention to apply identical remedies "in any such case in the future. . . " Upon reflection I think such a broad rule is inappropriate. Each case must be considered in light of its own particular facts. Violation of the regulation can, of course, vary in degree. The consequences of non-compliance can vary widely in terms of their impact on an organizational campaign.

In the case before us an election was held and currently the UFW holds a 57 vote lead creating the strong likelihood that it will eventually be declared the winner. The Respondent's actions did not, therefore, operate as a complete denial of its employees' organizational rights. Accordingly, I think 30 full days of work-time access is inconsistent with our obligation to be remedial as opposed to punitive.[1/]

I also take issue with the majority's failure to provide the same limitation in section 2(g) of the Order as is provided in section 2(h). I would terminate all additional access upon a UFW certification leaving for future resolution any questions concerning post-certification access rights.

Part of my disaffection with this remedy is the realization that Respondent's failure to promptly and completely comply with the regulation had consequences far beyond the ability of expanded access to rectify.

The direct result of a series of partial and/or inadequate lists is a substantial increase in time and effort by both the union and this agency. Administrative and litigation costs are incurred in attempting to enforce compliance, communicate with employees, and prepare for or resolve the issues relevant to the timing and scope of an election. The only way to compensate

[1/] I have general concerns with expanded access to this extent in any case. Permitting organizers on the property throughout the work day for extended periods has too great a potential for disrupting work as well as increasing tensions between the employer and the union, the employer and its employees, and the union and the employees. Moreover, it places a heavy burden on the Regional Director who is required to police the situation. It should, therefore, be used only in cases where employees' right to receive information has been completely or nearly completely frustrated.

for these losses is with monetary awards, The ALO recommended an award of attorneys' fees to the UFW. I would follow his lead and order an investigatory hearing to determine the appropriate sums to compensate the union for unnecessary litigation as well as organization costs occasioned by the Respondent's violation. In such a proceeding the respondent's degree of compliance as well as the union's efforts to mitigate the consequences of incomplete compliance would be relevant issues.

I disagree with the majority's, resolution of two issues in the Challenged Ballot portion of the decision.

The majority reserves for possible further investigation the question of the eligibility of four persons claiming economic striker status. I think these persons are clearly ineligible and would so rule at this time. Several issues are relevant to this determination including the jurisdiction of this Board to extend the statutory limitations contained in Labor Code Section 1157 on equitable principles and the factual question of whether or not a causal connection exists between the employer's pre-petition list violation and the inability of the union to trigger an election prior to February 27, 1977.

I see no reason to reach these issues. The employer has submitted the declaration of its manager of employee relations stating that three of the four persons worked for the employer after the strike commenced for substantial periods of time. The fourth person was alleged to have never been employed by the company at any time. The union submitted no contrary declaration arguing only that further investigation is warranted. Under our holding in George Lucas & Sons, 3 ALRB No. 5 (1977), I would

sustain the challenges to these ballots at this time.

The majority opinion overrules the challenges to seven persons whose names did not appear on the eligibility list. The majority relies on the holding in M.V, Pista & Co., 2 ALRB 8 (1976), because declarations were submitted by and on behalf of each of the seven indicating that they actually worked during the relevant payroll period but worked under someone else's name. The case here may be distinguishable from that in M.V. Pista, supra., and I would order further investigation of these challenges.

If the employer had actual or constructive knowledge that these people were working and failed to take action, then M.V. Pista and Co., supra., and Valdora Produce, 3 ALRB No. 8 (1977), would apply.

If, on the other hand, the employer could show that a strict policy against group working arrangements existed and all reasonable efforts were made to enforce such a policy then I would sustain the challenges. Failure to do so leaves too much room for abuse. Any party to an election can effectively pad the voting list by having known supporters recruit others to work under their name during the eligibility week.

Labor Code Section 1157 provides that "All agricultural employees of the employer whose names appear on the payroll... shall be eligible to vote." (Emphasis added) We cannot presume that the legislature was ignorant of the not-uncommon practice of agricultural workers to work in groups under one name. It is logical to presume that the legislature intended to avoid the administrative difficulties associated with determining eligibility 'except by reference to the payroll records, Unless the Board

establishes some limits to our Regulation, 8 Cal. Admin. Code S 20310(a)(2), that legislative intent will be seriously frustrated.

Dated: December 16, 1977

ROBERT B. HUTCHINSON, Member

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

In The Matter of: TENNECO WEST, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 77-CE-2-C 77-CE-16-C 77-CE-21-C PROPOSED DECISION OF THE ADMINISTRATIVE LAW OFFICER

Gary Williams, Esq., Coachella Sub-Regional Office, Agricultural Labor Relations Board, 49-849 Harrison Boulevard Coachella, CA 92236, for the General Counsel

Jerry Shuford, Shuford & Lee, 81-730 Highway 111, Indio, CA 92201, and David B. Stanton and David N. Herstam, 201 New Stine Road, P.O. Box 9380, Bakersfield, CA 93309, for the Respondent.

Douglass Adair and Ellen Greenstone, P.O. Box 1049, Salinas, CA 93901, for the Charging Party

DECISION

STATEMENT OF THE CASE

MARK E. MERIN, Administrative Law Officer: This case was heard before me on March 23, 1977, in Coachella, California. By order dated March 8, 1977, the subregional director of the Agricultural Labor Relations Board for the Coachella Subregion consolidated three complaints for hearing. The First Amended Consolidated Complaint was dated March 8, 1977, and charged Respondent with certain alleged unfair labor practices, The Respondent filed its First Amended Consolidated Answer on March 17, 1977 and therein denied that it had committed the alleged unfair labor practices. At the outset of the hearing, Respondent

filed a hearing brief and a Motion for Prehearing Discovery and Request for Issuance of Subpoenas Duces Tecum. The motion for discovery was denied except that the Charging Party (hereinafter sometimes referred to as the "UFW") and the General Counsel were required to supply, pursuant to Section 20274(a) of the Regulations, statements of witnesses as they were called at the hearing and to provide, in conformance with the Board's opinion in Gitimarra Vineyards, 3 ALRB 21, copies of documents to be introduced as evidence at the hearing and the names of non-employee witnesses. The General Counsel moved to compel production of documents requested by two subpoenas served on Respondent (hereinafter sometimes referred to as "the company" or "Tenneco") on March 16, 1977, in response to which there had been no timely petitions to revoke pursuant to Section 20250 (b) of the regulations and only partial compliance with said subpoenas. This motion was taken under submission and, at the close of the taking of testimony, denied. [1/] Briefs in support of their respective positions were timely filed by the General Counsel, the

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[1/] Compliance with the subpoenas was partial and while the company claimed at the hearing that its incomplete compliance was a result of the over-broad and ambiguous language in the subpoenas, the proper way to resolve the questions about the propriety of the subpoenas is through the petition to revoke.

Since it is the policy of the Board to hold hearings when scheduled, if at all possible, and to resist attempts to continue hearings, I denied the general counsel's request to enforce the subpoenas by using the procedure specified in Section 20250(f) because that procedure would have required a continuance of the hearing and because I did not consider the material sought to be essential to the re solution of the unfair labor practice charges, not because I believed there had been substantial compliance with the subpoenas.

company and the UFW at the conclusion of the taking of testimony.

Upon the entire record, including my observations of the demeanor of the witnesses, after a review of the applicable law, and after consideration of the arguments and briefs submitted by the respective parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent, TENNECO WEST, INC., is a corporation engaged in agriculture in the county of Riverside as well as in other counties in California, and is an agricultural employer within the meaning of Section 1140.4(c) of the Agricultural Labor Relations Act (hereinafter sometimes referred to as "the Act").

Charging party, the UNITED FARM WORKERS OF AMERICA, AFL-CIO, is a labor organization within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The Amended Complaint charges that Tenneco West, although required by Section 20910(c) of the Regulations, failed on two occasions to submit to the regional office of the Agricultural Labor Relations Board (hereinafter sometimes referred to as "the Board") a complete and accurage list of the complete and full names, current street addresses and job classifications of all agricultural employees, including employees hired through a labor contractor in the bargaining unit sought by the UFW. By this failure to provide complete and accurate lists, the complaint alleges, the company violated rights guaranteed to agricultural employees by Section 1152 of the Act and thereby committed unfair

labor practices in violation of Section 1153(a) of the Act.

The complaint further alleged that supervisors at the company, Leland Hall and Gil Contreras, interrogated employees concerning their union support and union activities and that the company thereby committed a violation of Section 1153(a) of the Act by denying to its workers the rights guaranteed to them under Section 1152 of the Act.

In its Answer, the company admitted that it was the employer only of the people whose names, it supplied to the Board on lists delivered on January 4 and February 3, 1977, and denied that it was the agricultural employer of workers associated with labor contractor Santiago Reyes, of some employees of the company 's Cal-Date Division, and of employees working in its Ten-neco Farming Division. The company also denied that its attempts to obtain addresses from some of its workers constituted prohibited interrogation.

III. Statement of Facts

a. The Company:

Tenneco West, Inc. is among the largest of corporate farmers in California. At present in the Coachella Valley it owns property in its own name, manages the property of others with whom it enters into one or more of a number of form contracts —- samples of which were provided to the General Counsel (G.C. Exhibits 4, 8 and 9) -— and markets the produce of still other owners with the harvesting of the produce contracted either to another entity within its corporate structure or to an independent harvester,

The company owns its own acres of citrus and grapes the

produce of which it harvests using a labor contractor, Santiago Reyes. The company supplies the equipment to harvest the citrus, sets the price to be paid the workers, negotiates a rate payable to Reyes, and pays Reyes an amount sufficient to cover the cost of the labor and Reyes[1] "commission."

For some fields which it does not own, the company contracts to harvest the citrus and uses Reyes' crews to accomplish on those properties the same work Reyes performs for the company on its owned or leased land. Reyes has no direct contact with the owners of those properties and receives his orders from Frank Mendoza, a company supervisor.

Cal-Date, as revealed by study of the standard Grower Service, Equipment and Supplies Contract, is a division of Ten-neco West, Inc. which conducts a service business for the owners of date gardens. For cost plus a percentage over cost, Cal-Date supplies all of the labor and materials necessary to tend and harvest the produce from these gardens.

Tenneco West provides marketing services, in accordance with Marketing Agreements (e.g. 6.C. Exhibit 4) entered into with land owners by which it receives, packs, grades, delivers to market and sells citrus under brand names it selects. For these services the company charges cost against the revenue from sales and, in addition, receives a 10% commission.

b. Employee lists;

On December 27, 1976, the UFW served and filed a Notice of Intention to Organize pursuant to Section 20910 of the Regulations and designated as included in the proposed bargaining unit

"all agricultural employees of the employer (Tenneco West, Inc.) in the Coachella Valley; Riverside County." On January 4, 1977, the company delivered to the Board a cover letter (G.C. Exhibit 3) and six pages of names and addresses. The first attached page of addresses contained 29 names of workers on "Thermal - Labor Contractor Operations on Owned Property." For 22 of these names Post Office box numbers were provided; addresses in Mexico were provided for 2 workers. On the following pages the addresses of 29 of 44 workers were listed as Post Office boxes.

On January 28, 1977, the UFW filed and served a second Notice of Intention to Organize, and the company submitted to the regional office on February 3, 1977, ten pages of names and addresses of workers. The first two pages (G.C. Exhibit 5a) contained the names and street addresses of members of two crews of Santiago Reyes, except that addresses of a few workers were out of State, in northern portions of the State or Post Office boxes. Post Office box addresses were provided for 11 of the 19 members of the company's grape tying crew (G.C. Exhibit 5b). Post Office box addresses were given for 36 of the remaining 62 workers.

c. Alleged interrogation of employees;

Mr. Leland Hall, superintendant for company farming, testified that he was asked in late January, 1977, to complete a list of employees and to include their names and street addresses. He said he asked Gil Contreras [2/] and two time-keepers to obtain

[2/] There was a dispute as to whether or not Contreras was a supervisor but insofar as he was acting as the agent for Hall in this instance, there is no need to determine if he was indeed a supervisor within the meaning of Section 1140.4(j) of the Act.

the information. Hall did not recall telling Contreras that the addresses would be given to Cesar Chavez. He testified that he told Contreras that Board rules required home addresses of employees.

Gil Contreras testified, after reviewing his declaration (G.C. Exhibit 7), that Hall told him the UFW asked the company for a list of workers on the company's Mar-Vel ranch and that he should tell "those workers that if they wanted a Chavez union representative to visit them at their homes, to put down their address by their names. If they didn't want a Chavez union representative to visit their homes, to write 'refuse[1] next to their name and to sign their name next to 'refuse' on the same line." (See G.C. Exhibit 7). Only two or three people gave their home addresses underthose circumstances.

One of the workers Contreras contacted, Fernando Guillen, testified that he was told to write down his address if he wanted "Chavistas" to visit his home, but to put only his name down if he did not want to be visited. He testified that he got the impression from Contreras that the company was interested in who supported the union.

Information about workers in crews of Santiago Reyes who were picking on land managed, but not owned or leased, by Tenneco West was not supplied. Reyes testified that he would have given the information about his workers to the company had it asked for it. Ninety per cent of Reyes[1] income comes from Tenneco West and he would

cooperate with them fully.[3]

Also not supplied were names and addresses of workers employed by Tenneco's Cal-Date division to work on date properties not owned or leased but merely managed by it pursuant to contract. The company's reason for not supplying this information was its belief that the company was not the "agricultural employer" of those workers since the owners of the property fit the definition of the employer.

CONCLUSIONS

a. Obligations to Provide Complete and Accurate Pre-Petition Employee Lists;

The employee lists which the company provided to the regional director on January 4 and February 3 were not in substantial compliance with the requirements of Section 20310(a)(2) as required by Section 20910(c) of the regulations in two important respects: current street addresses for the vast majority of workers listed were absent; and certain workers in the bargaining unit designated by the charging party employed by the company were not included in the lists.

While some errors in pre-petition lists required to be produced by the employer pursuant to Section 20910(c) of the

[3] At the hearing Reyes testified that he did not refuse to divulge the names and addresses of his workers who worked on land not owned or leased by Tenneco even though this defense was advanced by the company in its pre-hearing brief. Reyes' attorney was called by the company and testified that he had a conversation with the company's General Counsel, Mr. David Stan-ton, during which he indicated that Reyes would supply the names and addresses only of workers employed on land owned or leased by Tenneco.

regulations would not substantially interfere with the employee's rights guaranteed by Section 1152 of the Act, the lack of current street addresses for a majority of the work force prevents contact between the workers and the union attempting to organize them and therefore interferes with the employees right to "form, join or assist labor organizations" in violation of Section 1152 of the Act. Where meaningful contact between union organizers and workers cannot be arranged at the site of the work, it is especially important for the organizers to be able to contact the workers at their residences. It is the Board's responsibility to adopt Regulations to implement the Act's purpose of "promoting collective bargaining" (Giumarra, 3 ALRB 21, page 5) and it was to advance that purpose that the Board adopted regulations requiring the employer to supply "current street addresses" of all agricultural employees in the designated bargaining unit.

Although employers may be obligated to maintain a registry of the current street addresses of its employees (Section 1174 (c) of the Labor Code and Order No. 14-76 of the Industrial Welfare Commission require employers to maintain "addresses" and "home addresses", respectively) the obligation to provide such current street addresses in the appropriate circumstances imposes on the employer the responsibility, when asked for a list, to gather such information if he does not already have it. Clearly the employer is in a position to obtain the current street addresses of its employees without, in the process, interrogating employees as to their sentiments in relation to any particular union and thereby committing a violation of Section 1153(a) of the Act. It would be

sufficient, for example, for the company to explain that it was required by law to obtain the requested information. In view of the foregoing, I find that by failing to supply current street addresses of a substantial number of its agricultural employees, the company committed an unfair labor practice in violation of section 1153(a) of the Act.

The company did not disclose the names and street addresses of workers on property other than that which it owned or leased, thereby eliminating some of the crews of Santiago Reyes whom the company employed to harvest citrus on property which it managed but did not own. The company maintained that it was prevented by Santiago Reyes from disclosing the names of workers in his crews working on such property and threatened by Reyes with suit if such names were required. Reyes, however, testified that he gave the company whatever lists it requested, that he would give the company whatever list it requested in the future, and that he did not threaten to sue the company. He further testified that about 90% of his income is derived from business he does with the company. David E. Smith, was called by the company and testified that he is Reyes' attorney and that he had a conversation with the company's general counsel, David B. Stanton, whom he advised that Reyes would not disclose the names and addresses of certain workers. Weighing the conflicting testimony, I conclude that the information required by Section 20310(a)(2) of the Regulations was available to the company as to all of Santiago Reyes' workers.

The company did not disclose the names and addresses of workers employed by Tenneco Farming Company, a licensed labor

contractor according to the company's general counsel; neither did the company provide information about workers hired by the company's Cal-Date division to work on land owned by private parties with whom Cal-Date has management or grower contracts (see G.C. Exhibits 4, 8 and 9). The company asserted that it was not the agricultural employer either of the workers in the Reyes crews, as to whom it supplied no information or of the workers employed on land which it did not own or lease. Since this was its position, the company wrote the regional director of the Board and asked that its relationship to the workers be settled "prior to consideration of the lists . . . " (G.C. Exhibit 3, page 4).

Section 1140.4(c) of the Act 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 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.

Under the Act's broad definition of "agricultural employer" there

is no doubt that even the workers in Reyes[1] crews who work on land managed by Tenneco West are agricultural employees of the company and should have been included in lists provided to the regional director. Similarly, workers employed by Gal-Date to work on land managed by it are agricultural employees of Tenneco West under the Act. Employees of Tenneco Farming Company are deemed the agricultural employees of the company to which it supplies agricultural labor and since it appears that Tenneco West employs Tenneco Farming Company to perform work on land it manages and/or owns or leases, Tenneco West is the agricultural employer of the workers in Tenneco Farming Company's crews. See the discussion of a similar situation in Napa Valley Vineyards, Co., 3 ALRB No. 22.

There is no doubt that the failure to provide pre-petition lists of agricultural employees interferes with the right of employees guaranteed to them by Section 1152 of the Act "to form, join, or assist labor organizations." Employees not identified to the regional director may not be contacted during an organizational drive; the efforts of a union to organize the workers and therefore the workers' right to join a union are obstructed; and the determination *of* the 10% showing of interest is hindered.

Even though the company may believe it is not the agricultural employer of some workers, Section 20310(a)(2) of the Regulations requires the employer to submit a list of employees in the bargaining unit sought by the petitioner. The regulation further provides a procedure by which the nature of the employment relationship can be later determined if it is in doubt. The employer may

object at the time of supplying the requested list to the propriety of the bargaining unit and supply his own list of employees in a different bargaining unit (presumably eliminating those workers as to whom he maintains he is not the agricultural employer). There is no provision for withholding the list or for submitting a partial list until the nature of the employment relationship with some workers is specifically determined. If the correct composition of the bargaining unit had to be finally determined before the pre-petition list could be obtained/ energy would be consumed in addressing possibly moot questions of considerable difficulty even before the level of the workers' interest in a representation election were ascertained .

Because the failure to submit complete and accurate pre-petition lists of employees may totally prevent organization of workers, such failure is a serious interference with the workers' rights and constitutes an unfair labor practice in violation of Section 1153(a) of the Act. The employer, therefore, proceeds at his risk when he fails to comply with the disclosure requirements of Section 20910(c) of the Regulations. In this case where the broad definition of "agricultural employee" was known to the company, it should have recognized that it did not have an adequate basis for refusing to submit the names of employees in some of Reyes' crews and the names of workers employed by its Cal-Date division and Tenneco Farming Company. I find, therefore, that the company committed an unfair labor practice by refusing, on two occasions, to disclose the names and current street addresses of the above-described agricultural employees of the company.

b. Interrogation of Employees:

Mr. Contreras could not have known the purpose of the lists he was sent out to gather unless he was informed by his superior, company supervisor Leland Hall. He approached workers and asked them for their home addresses or their written refusal based on their desire not to be visited in their homes by UFW representatives. The workers knew that the list was being compiled for the company and further that their sentiments in relation to the union could be ascertained by noting if they listed their addresses or refused to provide that information.

The company asserts that the interrogation could not be illegal since Contreras' statements as to the purpose of the list were substantially correct. What this reasoning overlooks, however, is that the information as to the purpose of the list was not offered to the employees for their mere enlightenment; the employees were given a choice of indicating their support for the union by writing in their addresses, or of indicating their opposition to the union by writing "fcefused" beside their names. This type of survey which elicits a pro or anti-union response in the midst of an organizing drive and where the company has committed other unfair, labor practices tends to be coercive and is an unfair labor practice. See NLRB v. Varo, Inc. 74 LRRM 2096,

enforcing 172 NLRB No. 236.[4/]

I therefore find that the questioning of workers by Gil Contreras at the direction of Leland Hall in a manner which indicated to the workers that their union sentiments would be revealed to the company when other, non-coercive methods were available to obtain the required street addresses, constituted illegal interrogations and was violative of Section 1153(a) of the Act.

IV. Remedy

Having found that the company committed the alleged unfair labor practices, I find that the following remedies are appropriate to effectuate the purposes of the Act:

1. The company shall supply substantially accurate lists as required by Section 20310(a)(2) to the regional director within five days of the service upon it of any Notice of Intention to Take Access. Information shall be supplied by the company as to all workers in the designated bargaining unit on property owned, leased, managed, and/or harvested by the company and/or any of its divisions, subsidiaries or affiliates and any labor contractor hired by the company or its divisions, subsidiaries or affiliates. Said lists shall contain the current street addresses for all names appearing thereon.

2. Since the UFW was obstructed in its attempt to

[4/] That the survey was conducted by Contreras who may not have been a supervisor is irrelevant since he was acting on express orders from a company supervisor, Leland Hall, and informed those questioned that the information was going to the company.

organize the company's workers during the suspected peak employment period by being supplied lists deficient in the particulars described herein, and consumed two access periods provided by Section 20900(e)(l) of the Regulations in that attempt, those access periods will be reinstated and two access periods in addition to those remaining in the 1977 calendar year will be ordered.

3. Since equity prohibits the company from benefit-ting from its own illegal acts, economic strikers who would have been eligible to vote in a representation election which could have been held at the company before February 28, 1977, if the company had not obstructed the UFW's organizing activities, will not be barred from voting in the first such election held at the company in the future.

4. Notices shall be posted by the company at all places where workers in the proposed bargaining unit customarily congregate and at all places where notices are usually posted, informing the workers that they will not be penalized in any way for showing interest in, joining or assisting any labor organization and explaining that the company was found guilty of an unfair labor practice for telling people that their home addresses, if supplied, would be used by the UFW to send organizers to their homes.

5. The company shall pay to the UFW a sum equal to costs and the reasonable attorneys' fees associated with preparing for and participating in the hearing on the unfair labor practices complaints it filed, which amount shall be determined by the Board

after a request for such fees together with supporting documentation has been submitted to the Board.

Upon the entire record, the findings of fact, and the conclusions of law herein, and pursuant to Section 1160.3 of the Act, I hereby recommend the following

ORDER

Respondents, their officers, agents and representatives shall

1. Cease and desist from in any manner interfering with, restraining and coercing employees in the exercise of their right to self organization, to form, join or assist labor organizations, 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.

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

(a) Supply substantially accurate lists as required by Section 20310(a)(2) to the regional director within five days of the service upon it of any Notice of Intention to Take Access. Information shall be supplied by the company as to all workers in the designated bargaining unit on property owned, leased, managed, and/or harvested by the company and/or any of its divisions, subsidiaries or affiliates and any labor contractor hired

by the company or its divisions, subsidiaries or affiliates. Said lists shall contain the current street addresses for all names appearing thereon.

(b) Permit the UFW access to property owned, leased and/or managed by it during two access periods in addition to those remaining in the 1977 calendar year.

(c) Permit to vote in the first election of workers in the bargaining unit and not challenge the votes of economic strikers who would have been eligible to vote in a representation election which could have been held at the company before February 28, 1977, if the company had not obstructed the UFW's organizing activities.

(d) Immediately post notices in the form attached hereto in English and Spanish at all places where workers in the proposed bargaining unit customarily congregate and at all places where notices are usually posted, informing the workers that they will not be penalized in any way for showing interest in, joining or assisting any labor organization and explaining that the company was found guilty of an unfair labor practice for telling people that their home addresses, if supplied, would be used by the UFW to send organizers to their homes. Said notices should remain in place throughout the 1977 calendar year.

(e) Pay to the UFW a sum equal to costs and reasonable attorneys' fees associated with preparing for, participating in the hearing on the unfair labor practices complaints it filed, and briefing the issues for the ALO, which amount shall be determined by the Board after a request for such fees together with

supporting documentation has been filed with the Board by the UFW.

Dated: April U, 1977

MARK E. MERIN
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing on March 23, 1977, in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board found that Tenneco West, Inc. committed prohibited unfair labor practices by 1) failing to submit to the ALRB regional director a complete and accurate list of the company's employees together with their current street addresses, and 2) questioning employees about their home addresses in such a way as to indicate to them that the company was attempting to discover whether or not they sympathized with the UFW.

In order to remedy the unfair labor practices committed by the company, we have been required to post this notice and to assure our employees that we will not in any manner interfere with their rights to support or become or remain members of the United Farm Workers of America, AFL-CIO, or any other union.

Dated: Signed:

TENNECO WEST, INC.

By: ______________________________

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DECLARATION OF SERVICE BY MAIL I AM A CITIZEN OF THE UNITED STATES AND EMPLOYED IN SACRAMENTO, CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN YEARS ACTION. MY BUSINESS ADDRESS IS 1014 • 9th STREET. SACRAMENTO CALIFORNIA. ON THIS DATE I SERVED THE FOREGOING DOCUMENT BY PLACING A TRUE COPY THEREOF ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON FULLY PREPAID IN THE UNITED STATES POST OFFICE MAIL BOX AT SACRAMENTO. CALIFORNIA ADDRESSED IN THE MANNER SET FORTH IMMEDIATELY ABOVE THIS DECLARATION. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. DATED AT SACRAMENT CALIFORNIA ON 4/14/77