

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS)	Case Nos.	2013-CL-002-SAL
OF AMERICA,)		2016-CL-004-SAL
)		2016-CL-006-SAL
Respondent,)		2016-CL-007-SAL
)		
and,)		
)		
SANDRA OLVERA and JOSE)		
LUIS MAGAÑA,)	44 ALRB No. 5	
)		
)	(May 14, 2018)	
<u>Charging Parties.</u>)		

DECISION AND ORDER

On August 4, 2017, Administrative Law Judge William L. Schmidt (the “ALJ”) issued a decision in Case Nos. 2013-CL-002-SAL et al. The ALJ found that the respondent herein, the United Farm Workers of America (the “UFW”), a labor organization certified under the Agricultural Labor Relations Act (the “ALRA” or the “Act”) as the bargaining representative of the agricultural employees of Monterey Mushrooms, Inc. (“Monterey Mushrooms”), violated Labor Code section 1154, subdivision (a)(1) by threatening employees for engaging in activities protected by Labor Code section 1152, interrogating employees concerning activities protected by Labor Code section 1152, engaging in surveillance of an employee engaged in activity protected by Labor Code section 1152, and creating the impression that an employee’s activities protected by Labor Code section 1152 would be placed under surveillance. The ALJ dismissed additional allegations that the UFW violated Labor Code section 1154,

subdivision (a)(1) by placing additional employees under surveillance, excluding employees from a crew meeting, and instructing employees to ignore or not trust an employee that the UFW believed was engaged in an effort to decertify the UFW.

The UFW and the General Counsel of the ALRB (the “General Counsel”) filed exceptions to the ALJ’s decision pursuant to Labor Code section 1160.3 and California Code of Regulations, title 8, section 20282, subdivision (a). The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the ALJ’s rulings, findings, and conclusions as modified in this Decision and Order.¹

Factual Background

Monterey Mushrooms grows, harvests, and distributes varieties of mushrooms at its Royal Oaks facility in Monterey County, California. The UFW was originally certified to represent the agricultural employees (“employees”) of Monterey

¹ The UFW took exception to a number of the ALJ’s credibility determinations. The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of all the relevant evidence demonstrates that they are in error. (*Sabor Farms* (2015) 42 ALRB No. 2 at p. 1 fn. 1; *United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 3; *P.H. Ranch* (1996) 22 ALRB No. 1; *Standard Drywall Products* (1950) 91 NLRB 544.) In instances where credibility determinations are based on factors other than demeanor, such as reasonable inferences, consistency of witness testimony, or the presence or absence of corroboration, the Board will not overrule the ALJ’s credibility determinations unless they conflict with well-supported inferences from the record considered as a whole. (*Sabor Farms, supra*, 42 ALRB No. 2, p. 1, fn. 1; *S & S Ranch, Inc.* (1996) 22 ALRB No. 7.) In addition, it is both permissible and not unusual to credit some but not all of a witness’s testimony. (*Sabor Farms, supra*, 42 ALRB No. 2, p. 1, fn. 1; *Suma Fruit International (USA), Inc.* (1993) 19 ALRB No. 14, citing 3 Witkin, *Cal. Evidence* (3d ed. 1986) § 1770, pp. 1723-1724.) We have carefully examined the record in this case and, except as specifically stated in this Decision and Order, we find no basis to overturn the ALJ’s credibility determinations.

Mushrooms in 1979, but was decertified in 1991. The UFW became certified again in 1995 and has remained the bargaining representative since that time. At all relevant times, there was a collective bargaining agreement in effect, the effective dates of which were April 29, 2012 through April 29, 2017.

In early 2012, the UFW assigned Casimiro Alvarez as “contract administrator” for the Monterey Mushrooms bargaining unit. By March 2013, certain employees had become dissatisfied with Mr. Alvarez’ performance as contract administrator and decided to circulate a petition addressed to the president of the UFW seeking to force Mr. Alvarez to resign. Charging Party Sandra Olvera drafted the petition (the “Olvera Petition”). Ms. Olvera and other employees, including Maria Edith Ruiz and Lorena Perez participated in circulating the petition. Around the same time, another employee named Javier Martinez drafted and circulated his own petition seeking the removal of Mr. Alvarez as contract administrator (the “Martinez Petition”).

Mr. Alvarez became aware of the Olvera Petition after it began circulating.² UFW crew representatives and members of the UFW “Ranch Committee” also became aware of this activity.³ Thereafter, Mr. Alvarez convened a meeting with the crew representatives. Although the ALJ did not make a finding as to what transpired during

² The ALJ found that Mr. Alvarez was aware of the purpose of the petition, discrediting testimony that he and other UFW representatives were unaware of the petition’s purpose and believed it to be a decertification petition.

³ Crew representatives at Monterey Mushrooms are the equivalent of union stewards. The Ranch Committee is composed of five bargaining unit employees, one of whom (Justo Tovar) is designated Secretary General. Some individuals simultaneously hold positions on the Ranch Committee and as crew representatives.

this meeting, the record reflects that Mr. Alvarez instructed the crew representatives to speak to their crews about the petitioning activity. In particular, crew representative Francisco Contreras testified that the crew representatives received an instruction from Mr. Alvarez to discuss the petition with their crews.

Mr. Alvarez also met in mid-to late May 2013 with Elsie Morales, Monterey Mushrooms' Human Resources Manager. Ms. Morales testified that Mr. Alvarez was very concerned about the petition and asked her to "do something." Ms. Morales offered to issue a memorandum to "see if we can discourage the behavior." She testified that she did this to assuage Mr. Alvarez' concern by "discourag[ing] whatever these petitions were that were out there." Accordingly, on or around June 3, 2013, Ms. Morales issued a memorandum to employees stating the company's policy on employee solicitation. The memorandum stated that "persons may not solicit or distribute literature in the workplace at any time" and that a violation "will result in disciplinary action up to and including termination."

The UFW's discovery of petitioning activity by unit employees precipitated a series of meetings during which, as the ALJ found, UFW representatives interrogated and issued threats to employees who were circulating the petitions.

After receiving instructions from Mr. Alvarez, Mr. Contreras, the crew representative for Crew 4, held a meeting with his crew, which was attended by Ms. Olvera. According to Ms. Olvera's credited testimony, Mr. Contreras told the crew that there were people circulating a petition to remove Mr. Alvarez and that employees should not sign it because, if the company found out, they would be fired.

Lorena Perez helped circulate the Olvera Petition, doing so on her lunch break in the presence of crew representative Susana Ramirez. The next day, Ms. Perez was approached by Ms. Ramirez and told that “they” wanted to speak to her. Ms. Perez was led to another room where Mr. Alvarez and Ranch Committee Secretary General Justo Tovar were waiting. According to Ms. Perez’ credited testimony, Mr. Alvarez spoke to her “rather brusquely” and asked “are you collecting signatures?” Ms. Perez untruthfully denied collecting signatures “out of fear” whereupon Mr. Alvarez told her, “If you’re collecting them you’re going to . . . Well, because you’re alone, what are you going to do if you end up with no work?” Ms. Perez interpreted the reference to her being “alone” as pertaining to her status as a single mother. Employee Julietta Reyes saw Ms. Perez after this event and testified that Ms. Perez was crying and appeared to be nervous and scared. Ms. Perez told her that Mr. Alvarez had threatened her job. Maria Edith Ruiz testified that Ms. Perez also told her of the threat, and this caused Ms. Ruiz to cease circulating the petition.

A couple of days after he circulated the petition he had drafted, Javier Martinez was approached by his supervisor and told that some people wanted to talk to him outside. Outside the room, Mr. Martinez was confronted by Mr. Alvarez and Mr. Tovar along with two crew representatives, Gerardo Leon, and Juan Jesus Gonzalez. Mr. Martinez testified that he had never before been approached by more than two union representatives at a time. According to Mr. Martinez, whose testimony the ALJ credited, Mr. Alvarez angrily asked why Mr. Martinez was collecting signatures. Mr. Martinez responded that a friend had asked him to do so, whereupon Mr. Alvarez asked to know

the friend's name. When Mr. Martinez, who had promised to keep his friend's name confidential, refused to give it, Mr. Alvarez stated, "Well, tell me who it is because the thing is that I need to find out who she is because I need to tell her that they could fire her and then they can also fire you for collecting signatures." Mr. Martinez insisted that he could not give his friend's name. Mr. Alvarez then told him, "Stop gathering signatures. You can't do it during your break. You can't do it during your lunch hour. And you can't do it while you're at work. And you can't do it outside of work either." Mr. Alvarez then turned to the crew representatives and said, "Make sure, watch him to make sure he doesn't collect any other signatures."

Maria Edith Ruiz testified that, after Mr. Alvarez' meeting with the crew representatives, she found her signature collecting under increased scrutiny. She observed that, as she collected signatures after work in the company parking lot, Justo Tovar would drive around the lot, patrolling "like a policeman." She also observed that crew representative Vicente Pizano would park his car near where she parked and would remain until she left. She testified that neither Mr. Tovar nor Mr. Pizano engaged in such behavior before she began gathering signatures.

On April 10, 2013, Sandra Olvera filed the unfair labor practice charge in case number 2013-CE-002-SAL. In June 2015, the General Counsel issued a complaint in the matter, followed in January 2016 by an amended complaint alleging, among other things, that the UFW threatened to terminate employees who engaged in protected activity, interrogated employees, and placed employees under surveillance. In February 2016, the UFW and the General Counsel executed an "Informal Bilateral Settlement

Agreement.” The settlement agreement required the UFW to cease and desist from interfering, restraining, and coercing employees in their exercise of rights under the ALRA and required posting, mailing, and reading of a notice. The agreement further provided that if the General Counsel came to believe that the UFW violated the agreement, and the matter could not be resolved within seven days, “this Agreement is void and the General Counsel retains authority to prosecute the charges underlying the Complaint.” The notice reading was carried out on March 16 and 17, 2016.

Vicente Pizano was the long-time crew representative for Crew 3. Some Crew 3 employees became unsatisfied with Mr. Pizano’s performance as crew representative and sought his ouster. In 2012, a group of employees circulated a petition seeking Mr. Pizano’s removal as crew representative. This petition was presented to Mr. Alvarez, but he declined to take action on it. In 2016, there was a renewed effort among some Crew 3 employees to have Mr. Pizano removed. Another petition was circulated, signed by a majority of the crew, and submitted to the UFW. Mr. Pizano was aware that a group of employees wanted him removed as crew representative. He testified that members of this group were repeatedly disrupting his crew meetings, interrupting and attempting to silence him. Mr. Pizano identified five employees as members of this dissident group.

In late March 2016, Mr. Pizano was planning to hold a crew meeting. He decided that, due to the disruptiveness of the dissident group, he would hold two meetings, a first meeting from which the dissidents would be excluded, and a second meeting only for the dissidents where the same information would be delivered. Mr.

Pizano attempted to provide notice of the first meeting only to those who were invited, but the dissidents became aware of the meeting. When they presented themselves at the meeting and tried to attend, Mr. Pizano refused to admit them. Charging Party Jose Luis Magaña was among those who had been invited to the meeting. However, when he saw the dissidents barred from the meeting, he questioned Mr. Pizano. Mr. Pizano responded that the dissidents were “causing a lot of conflict” and he did not have much time to hold the meeting. Mr. Magaña objected but Mr. Pizano would not relent. The next week, Mr. Magaña filed an unfair labor practice charge with the ALRB alleging that the exclusion of the employees from the meeting violated the ALRA.

According to Mr. Magaña’s credited testimony, two days after he filed the charge, he was approached while on the way to the bathroom by Mr. Alvarez and Mr. Tovar. Mr. Alvarez had with him a copy of the charge and a form for withdrawing the charge and asked Mr. Magaña if he wanted to withdraw his charge voluntarily. Mr. Magaña responded that he would not withdraw the charge because Mr. Alvarez “was not doing his job.” Mr. Alvarez responded, “well, you know that with this signature . . . that you are hurting the union.” Mr. Magaña retorted that Mr. Alvarez was hurting the union by not responding to the crew’s desire for a new crew representative. Mr. Alvarez then said, “you know that with this signature you know that I can put you on the burn list.” Mr. Magaña testified that he did not know what Mr. Alvarez’ reference to a “burn list” meant, but that he perceived it as a threat.

After her involvement with the 2013 petition, Ms. Olvera continued to oppose the UFW’s local leadership at Monterey Mushrooms. In May 2013, she

circulated a petition accusing Mr. Contreras of misrepresenting the nature of a document he had employees sign, thereby betraying the employees' trust, and further accusing Mr. Alvarez of doing nothing about it. She submitted this petition to the president of the UFW. She testified that, after this, Mr. Alvarez gathered the crew and stated that Ms. Olvera had lied in the petition. In late 2014, Ms. Olvera circulated another petition seeking to convert bargaining unit employees to "fair share" (agency fee) status. She testified that she did this because she did not agree with the way the UFW was representing the bargaining unit. She submitted this petition to the UFW's main office in La Paz, California. Ms. Olvera testified that, after she did this, the crew representatives gathered the crew and stated that those who became agency fee payers could lose some UFW benefits and encouraged employees to reinstate their membership. In April 2016, Ms. Olvera joined a group of 20 to 25 Monterey Mushrooms employees who went to the UFW's regional office to ask to have crew representatives and Ranch Committee members changed.

Mr. Alvarez testified that he believed that Ms. Olvera wanted to decertify the UFW. He further testified that in 2015 Ms. Olvera's husband, former UFW organizer Armando Lopez, and another former UFW organizer, Francisco Cerritos, had participated in a successful effort to decertify the UFW at another Monterey County mushroom grower called Mushroom Farms, Inc. ("Mushroom Farms"). He believed that Mr. Lopez and Mr. Cerritos were now attempting to decertify the UFW at Monterey Mushrooms and

Ms. Olvera was helping them.⁴

In May 2016, Mr. Alvarez convened a meeting with the crew representatives. Among the topics discussed at the meeting was the suspected effort to decertify the UFW. Mr. Alvarez referred to the 2015 decertification at Mushroom Farms and noted that workers there had experienced drastic changes to their medical plan as a result. He stated that Mr. Lopez and Mr. Cerritos had been involved in that decertification, were now seeking to decertify the UFW at Monterey Mushrooms, and that they were visiting employees' homes to gather signatures for a decertification petition. Mr. Alvarez testified that someone in the meeting stated that Armando Lopez was the husband of Sandra Olvera. Mr. Alvarez wanted the crew representatives to speak

⁴ The ALJ took administrative notice of the online docket of a Monterey County Superior Court case involving a lawsuit brought by the UFW against various defendants, including Mr. Lopez and Mr. Cerritos as well as an unpublished opinion of the Sixth District Court of Appeal arising out of that litigation. The ALJ also took notice of the Board's decision in *Dole Berry North* (2013) 39 ALRB No. 18. The General Counsel contends that reliance on the unpublished appellate court opinion violates California Rule of Court 8.1115. The Rules of Court apply to practice before California's appellate courts, not practice before the ALRB. (Cal. Rules of Court, rule 8.4 [defining application of Rules of Court].) In any event, under Rule 8.115 unpublished opinions may be cited "to explain the factual background of the case and not as legal authority." (*K.G. v. Meredith* (2012) 204 Cal.App.4th 164, 172, fn. 9.) The General Counsel also argues that the noticed matters were irrelevant. We disagree. While the appropriate weight to be given to these matters may be argued, they were not irrelevant. (Evid. Code, § 201.) However, we reach a different conclusion with respect to the ALJ's citation to "widespread post-hearing publicity" concerning a judgment in a wage and hour suit against the UFW. We fail to see any relevance in this evidence and agree with the General Counsel that it should not have been considered. However, we find that this error caused no prejudice, as we find that this evidence would not impact the outcome of any material issue in this case. (*Certified Egg Farms and Olson Farms, Inc.* (1993) 19 ALRB No. 9, p. 2, fn. 2 [ALJ's error did not require reversal where there was no prejudice to the objecting party].)

to their crews about the benefits of union representation and the importance of “protecting the contract.”

After this meeting, crew representatives held meetings with their crews. There was testimony concerning meetings in five different crews, including Ms. Olvera’s crew. Ms. Olvera testified that in her crew, the crew representative, reading from a paper, said that “there were some people like Sandra Olvera, Armando Lopez, and Francisco Cerritos, that they had been going around saying that they wanted to . . . remove the union and they were trying to damage the contract we had with Monterey [Mushrooms]” and if “any of us saw them to please not speak with them, don’t pay any attention to them, because the only thing they wanted was to hurt the workers.”

Testimony concerning meetings in four other crews recounted similar statements. Crew representatives told their crews that people, including Ms. Olvera specifically, “wanted to remove the union.” There was testimony that crew representatives made statements that Ms. Olvera and the others “wanted to take away the benefits” or that employees “would lose a lot of benefits” if the UFW were decertified. Finally, there was testimony that crew representatives encouraged employees not to engage with Ms. Olvera if she approached them regarding a decertification petition, telling them to “be careful,” to “not believe” or “not trust” her or to not sign anything she gave them. Ms. Olvera testified that after the meeting in her crew some coworkers who had previously been friendly seemed to no longer want to pay attention to her.

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Discussion

Status of the February 2016 Settlement Agreement

The UFW contends that the February 2016 settlement agreement, which settled the allegations in case number 2013-CL-002-SAL involving alleged interrogation, threats, and surveillance occurring in 2013, was not breached and precludes litigation of those allegations. The ALJ found that the UFW breached and voided the settlement agreement by threatening Mr. Magaña on or around March 30, 2016.⁵ Because, as discussed below, we affirm the ALJ's conclusion that Mr. Alvarez threatened Mr. Magaña, the settlement agreement was voided and did not preclude the litigation of case number 2013-CL-002-SAL.

Agency Status of Crew Representatives and Ranch Committee Members

The UFW takes exception to the ALJ's conclusion that crew representatives and members of the Ranch Committee were agents of the UFW for purposes of unfair labor practice liability. We agree, for the reasons stated by the ALJ, that those crew representatives and Ranch Committee members who engaged in violations of the Act were acting as agents of the UFW exercising both actual and apparent authority when they engaged in such conduct.⁶ (See *Tyson Fresh Meats, Inc.* (2004) 343 NLRB 1335,

⁵ The UFW does not contest that, if Mr. Alvarez did threaten Mr. Magaña as alleged, such conduct would void the settlement agreement.

⁶ Most of the unlawful conduct found in this case was perpetrated directly by Mr. Alvarez, whose agency status is not disputed. As will be discussed herein, we are affirming the ALJ's dismissal of the allegations that the UFW violated the Act by placing Sandra Olvera, Lorena Perez, and Javier Martinez under surveillance, by excluding employees from the March 2016 crew meeting, and by making the statements alleged to

1337-1338; *International Brotherhood of Teamsters, General Drivers, Chauffeurs and Helpers, Local Union No. 886 (Lee Way Motor Freight, Inc.)* (1977) 229 NLRB 832, 833.)

Labor Code section 1154, subdivision (a)(1) – Interrogation, Threats, and Surveillance

Labor Code section 1152 states in relevant part that agricultural employees “shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .” The circulation of a petition advocating for a change in union personnel constitutes protected activity. (*United Steelworkers of America Local 1397 (United States Steel Corp.)* (1979) 240 NLRB 848, 849 [“That an employee’s right to engage in intraunion activities in opposition to the incumbent leadership of his union is concerted activity protected by Section 7 is, of course, elementary”].)

Labor Code section 1154, subdivision (a)(1) states that it is an unfair labor practice for a labor organization to “restrain or coerce . . . [a]gricultural employees in the

have been made in the May 2016 crew meetings. Accordingly, the individuals whose agency status is at issue are Mr. Tovar and Mr. Pizano when they surveilled Ms. Ruiz in the parking lot and Mr. Contreras when he threatened employees with termination. The UFW argues that crew representatives serve a “dual role” and sometimes deliver information from company management during crew meetings, acting as “surrogate[s] to the company” at these times. Even if this were true, they were clearly not acting in this capacity at the relevant times. The surveillance activity pertained to a petition to remove Mr. Alvarez as contract administrator, an issue that related to the internal functioning of the UFW, but not Monterey Mushrooms. Mr. Contreras’ meeting also pertained to this issue and, in fact, Mr. Contreras testified he was acting under instructions from Mr. Alvarez at the time.

exercise of the rights guaranteed by in Section 1152.” The Board has held that the legal standard in Labor Code 1154, subdivision (a)(1) cases is “[w]hether the union’s conduct reasonably tends to coerce or restrain employees in their statutory right to engage in, or refrain from engaging in union activities or other protected concerted activities.” (*United Farm Workers of America (Admiral Packing Co.)* (1981) 7 ALRB No. 3, p. 5.) The test is an objective one and “neither a union’s intent nor the subjective effect of its conduct on employees is relevant to a determination as to whether the union’s conduct constituted an unfair labor practice.” (*Ibid*; *United Farm Workers of America (Triple E Produce Corp.)* (1997) 23 ALRB No. 4, p. 4 [“Our evaluation of the alleged misconduct [under Labor Code section 1154, subdivision (a)(1)] must be tested by an objective standard”].) Allegedly coercive union conduct must be evaluated “in context in order to determine if under all the circumstances it would have a tendency to restrain and coerce employees.” (*American Postal Workers Union, (Johnson)* (1999) 328 NLRB 281, 282; *International Brotherhood of Electrical Workers, Local 6 (Butcher Electric)* (1995) 318 NLRB 109, 109 [analysis should take into account “all the circumstances in which the statement is made”].) Where a union is alleged to have made a threat of adverse employment action against an employee, the fact that the union lacks the ability to actually carry out the threat is not dispositive. Rather, a union’s threat of loss of employment is coercive where it is “reasonably calculated to have an effect on the listener without regard to the question of the Union’s ability to carry out the threat.” (*International Brotherhood of Electrical Workers, Local No. 396 (Central Telephone Co.)* (1977) 229 NLRB 469, 470.)

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Allegation of Threat Made During Francisco Contreras Meeting

The ALJ found that crew representative Francisco Contreras threatened employees with termination in 2013 for engaging in protected activity. The UFW excepts to the ALJ's conclusion, arguing that the ALJ should not have credited the testimony of Ms. Olvera concerning the conduct of the meeting. As stated above, after careful review of the record, we find no basis to overturn the ALJ's credibility determinations, and we affirm the ALJ's conclusion concerning this allegation.

Allegations of Interrogation and Threat Made to Lorena Perez

The ALJ found that Mr. Alvarez, who was accompanied by Mr. Tovar and Susana Ramirez, confronted Lorena Perez, interrogated her regarding her signature gathering, and threatened her. The UFW's arguments concerning this allegation are limited to challenging the ALJ's decision to credit the account of the meeting given by Ms. Perez over that given by the UFW's witnesses. We find no basis to overturn the ALJ's credibility determinations, and we affirm the ALJ's conclusion concerning this allegation.⁷

⁷ The UFW argues that Ms. Perez' testimony was inconsistent in that she testified that she continued collecting signatures after being interrogated and threatened by Mr. Alvarez. This is based on the ALJ's finding that employee Julietta Reyes "observed Perez soliciting signatures in the lunchroom and in the parking lot later that day" and then Ms. Perez told her about her meeting with Mr. Alvarez. In fact, Ms. Reyes testified that she observed Ms. Perez gather signatures in the lunchroom and "the day after she collected signatures" they spoke and Ms. Perez told her about the Alvarez meeting. Ms. Perez herself testified that she gathered signatures only on one day during her breaks and during lunch. She testified that the day after she collected signatures, was the day that Mr. Alvarez spoke to her, and that, after this meeting, she stopped collecting signatures. There was no basis for the ALJ's factual finding that Ms. Perez continued collecting signatures after the meeting with Mr. Alvarez and we overturn that finding.

Allegations of Interrogation and Threat Made to Javier Martinez

The ALJ found that Casimiro Alvarez, along with Justo Tovar, Gerardo Leon, and Juan Jesus Gonzalez, met with Javier Martinez and, during the meeting, Mr. Alvarez unlawfully interrogated Mr. Martinez concerning his signature gathering activities. The UFW took exception to this conclusion. The General Counsel excepted to the ALJ's failure to find that Mr. Alvarez also threatened Mr. Martinez with termination during the meeting. We affirm the ALJ's conclusion concerning the interrogation allegation and find that Mr. Alvarez also threatened Mr. Martinez.

The ALJ credited Mr. Martinez' testimony over that of Mr. Alvarez and Mr. Tovar based upon his conclusion that Mr. Martinez' testimony was "persuasive" and had an "internal consistency" both when the ALJ observed the live testimony and when later reading the transcript. The UFW argues that, in fact, the testimony was "uncorroborated and improbable." The UFW highlights that Mr. Martinez claimed that the meeting with Mr. Alvarez lasted for 25 to 35 minutes and that he was asked four times for the name of the friend who had asked him to circulate the petition. While Mr. Martinez' estimation of the duration of the meeting seems somewhat improbable, this does not justify reversing the ALJ's credibility determination. That Mr. Alvarez repeatedly demanded the friend's name is not inherently improbable, given that Mr. Martinez was refusing to provide it and, according to Mr. Martinez, Mr. Alvarez became increasingly angry over the course of the conversation. The UFW also argues that the ALJ should have discredited Mr. Martinez because he refused to give the name of his friend at the hearing. When asked for the name on cross-examination, Mr. Martinez explained that he had promised his friend that he would not give her name to anyone. Thus,

Mr. Martinez was not being evasive but forthrightly explained why he was refusing to disclose his friend's name.⁸

The UFW emphasizes that its own witnesses' testimony was corroborated. However, while the testimony of Mr. Tovar and Mr. Leon was consistent with Mr. Alvarez' testimony, the testimony of Mr. Gonzalez conflicted with that testimony and corroborated aspects of Mr. Martinez' account. Mr. Alvarez testified that he asked Mr. Martinez if he knew about the signature gathering and Mr. Martinez denied that he did, which was the extent of the conversation. Mr. Gonzalez, however, testified that Mr. Alvarez asked for the name of the individual who had given Mr. Martinez "authorization" and Mr. Martinez responded that he did not want to say. Mr. Gonzalez also testified, contrary to the other UFW witnesses that Mr. Alvarez told Mr. Martinez that he should not be collecting signatures. Thus, the UFW's own witness disputed critical aspects of Mr. Alvarez' testimony and corroborated Mr. Martinez' account.

Furthermore, the UFW did not address the ALJ's discussion of the UFW witnesses' failure to explain the decision to confront Mr. Martinez with four individuals: the contract administrator who was the subject of Mr. Martinez' petition, the secretary general of

⁸ The ALJ remarked that when Mr. Martinez refused to give his friend's name at the hearing, counsel for the UFW "wisely chose not to press for compulsory disclosure or sanctions." The transcript reveals that, after Mr. Martinez would not give the name on cross-examination, the UFW's counsel stated, "Your honor, I'm having difficulty figuring out how to deal with this issue" and then stated, "Well, let me see if I can do it this way," whereupon he asked if the friend was Ms. Olvera, a question that Mr. Martinez answered in the negative. Counsel did not pursue the matter further. We find no reason to believe that disclosure of this individual's name at the hearing would have had any material impact on the outcome.

the Ranch Committee and two crew representatives. The ALJ found the attempt by Mr. Alvarez and Mr. Tovar to explain the decision by referencing the need to have witnesses present at grievance meetings to be “evasive.” None of the UFW’s witnesses adequately explained why it was necessary to have so many union representatives confront Mr. Martinez.

Although the UFW did not raise this issue in its exceptions brief, the ALJ erroneously stated that crew representative Gerardo Leon did not testify when, in fact, he did testify and generally corroborated the testimony of Mr. Alvarez and Mr. Tovar. However, we find that this error was not prejudicial. The ALJ did not draw an adverse inference from what he believed was Mr. Leon’s absence as a witness. In fact, he assumed that he would have testified consistently with Mr. Alvarez and Mr. Tovar. What the ALJ found significant was that the witnesses who did testify did not claim that Mr. Leon said anything when Mr. Martinez purportedly denied having circulated a petition although it was Mr. Leon’s report of such activity that had instigated the meeting. Mr. Leon testified that Mr. Martinez denied circulating a petition and that Mr. Leon did not speak during the meeting. Therefore, when Mr. Leon’s testimony is taken into account, it supports the same conclusion. Additionally, while the ALJ did not specifically discuss the testimony of Juan Jesus Gonzalez, as discussed above, that testimony conflicted in significant respects with the testimony of the other UFW witnesses and further supports the ALJ’s conclusion.

With respect to the General Counsel’s exception on this issue, the General Counsel is correct that the ALJ failed to rule on the allegation that Mr. Alvarez threatened Mr. Martinez. However, the ALJ made a general credibility finding with respect to the conflicting testimony concerning the content of the conversation, fully crediting Mr. Martinez’ version of

the conversation insofar as it differed from the version testified to by Mr. Alvarez and Mr. Tovar. The statement, which explicitly referenced possible termination, was more direct than the statements made to Mr. Magaña and Ms. Perez, both of which the ALJ found would be reasonably interpreted as threats. Additionally, the coercive nature of the statement was enhanced by the context in which it was made. Specifically, the statement was made when the UFW's contract administrator, accompanied by three other union representatives, took Mr. Martinez aside, interrogated him in an angry tone of voice, repeatedly pressured Mr. Martinez to disclose the name of his friend, instructed him to cease gathering signatures, and told the union representatives present to watch Mr. Martinez. Accordingly, we conclude that the UFW, through Casimiro Alvarez, unlawfully threatened Javier Martinez with termination in violation of Labor Code section 1154, subdivision (a)(1) for engaging in conduct protected by Labor Code section 1152.

Allegation of Threat Made to Jose Luis Magaña

The ALJ found that Mr. Alvarez, while accompanied by Mr. Tovar, unlawfully threatened Jose Luis Magaña with termination when he told Mr. Magaña that he could be placed on a "burn list" for filing a charge with the ALRB and/or for refusing to withdraw the charge. The UFW argues that Mr. Alvarez did not make the "burn list" statement and, even if he did, the statement could not reasonably be interpreted as a threat under the circumstances.

The ALJ did not set forth an analysis of the credibility of the witnesses who presented conflicting testimony concerning the conversation between Mr. Alvarez and Mr. Magaña. However, it is clear from the ALJ's decision that he credited Mr. Magaña's version of events. We find that this conclusion was supported by the record and the UFW fails to

justify its contention that the ALJ's credibility determination should be overturned.

The UFW argues that Mr. Magaña should have been discredited because he was untruthful in his testimony. It argues that he testified that fellow Crew 3 employee Alma Ayala did not miss crew meetings while Ms. Ayala herself testified that she did. Ms. Ayala testified that she began refusing to attend Mr. Pizano's crew meetings unless Marcelino Infante (the second crew representative) was also there.⁹ She did not state how many meetings she missed or when those meetings occurred. Mr. Magaña was asked if he "noticed" whether Ms. Ayala was absent from crew meetings and he responded "No, I don't know about that." The testimony is consistent with Mr. Magaña not noticing or not remembering whether Ms. Ayala missed crew meetings and is insufficient to establish that he testified untruthfully.

The UFW also argues that Mr. Magaña claimed that he did not attend a meeting that Mr. Alvarez remembered him attending. Mr. Magaña was asked if he attended a meeting in 2015 where Ranch Committee members were selected. He responded, "No. No. No. I don't remember." During follow up questions, he repeatedly emphasized his lack of memory about the meeting. Mr. Alvarez claimed that there was an election meeting on September 24, 2015, and that Mr. Magaña attended along with roughly 100 other employees and asked questions during the meeting about health benefits. He claimed that he wrote Mr. Magaña's name on the attendance sheet and, although the sheet itself was not offered into evidence, the General Counsel did not contest that Mr. Magaña's name appeared on the sheet. It seems improbable that Mr. Magaña would simply forget that he was present for such a large meeting.

⁹ There was testimony that crews normally have a main crew representative and a second crew representative who serves as a back-up.

However, it is also unclear why Mr. Magaña would believe that it was in his interest to lie about being at the meeting. On the whole, given that Mr. Magaña's testimony was equivocal, and given that his attendance at the meeting was a collateral issue, Mr. Magaña's possible evasiveness on this issue is not sufficient justification for overturning the ALJ's credibility determination.

Mr. Magaña testified that he considers both Mr. Alvarez and Mr. Pizano to be friends. Mr. Alvarez testified that he and Mr. Magaña are from the same area of Mexico, are currently neighbors, and that they "were like family." The UFW also argues that Mr. Magaña's personal relationship with Mr. Alvarez and Mr. Pizano makes it unlikely Mr. Alvarez would threaten him for filing a charge. This would depend, of course, on the precise nature of the friendship, particularly between Mr. Magaña and Mr. Alvarez, which was not explored in depth during the testimony. Additionally, the relationship cuts the other way as well, as it lends credence to Mr. Magaña's accusation against a person he claimed to still regard as a friend. As the General Counsel points out, it is unlikely that Mr. Magaña would accuse a friend of having unlawfully threatened him were it not true. In sum, this factor does not undermine the ALJ's credibility determination.

Finally, there are inconsistencies in the testimony of the UFW witnesses that undermine their account. For example, Mr. Alvarez claimed that he had not intended to meet with Mr. Magaña and that he and Mr. Tovar encountered him coincidentally. Yet, Mr. Alvarez admitted that he had a copy of the charge with him and showed it to Mr. Magaña. Mr. Tovar, however, denied that Mr. Alvarez had a copy of the charge with him. Furthermore, while Mr. Alvarez testified that Mr. Tovar happened to be with him when he encountered Mr. Alvarez,

Mr. Tovar testified that Mr. Alvarez asked him to be present when he met with Mr. Magaña. This discrepancy is particularly significant as it undermines Mr. Alvarez' claim that the encounter with Mr. Magaña was unplanned. Mr. Alvarez and Mr. Tovar also gave different versions of the conversation. Mr. Tovar claimed that Mr. Magaña stated that he was angry, that his coworkers had asked him to file the charge, and that he did not want to have problems with those coworkers. Mr. Alvarez did not mention any of these statements.

Based on the foregoing, we believe that the ALJ's crediting of the testimony of Mr. Magaña over that of Mr. Alvarez and Mr. Tovar was supported by the record.

The UFW argues in the alternative that, even if the "burn list" statement had been made, there was no basis for the ALJ to conclude that a reasonable employee would have construed the statement as a threat. However, the ALJ's conclusion was amply justified. It is difficult to imagine an employee being told he or she was being put on something called a "burn list" and regarding it as anything other than ominous. (See *Apple Tree Chevrolet, Inc.* (1978) 237 NLRB 867, 872 [employer's statement that employees "should not get their names on the 'wrong list'" was an implied threat]; *American Building Co., Inc.* (1975) 221 NLRB 769, 769, fn. 3 [supervisor's statement to employee who was distributing union literature that the employee's name had been put on "a list" constituted an unlawful threat].) Furthermore, the context in which the statement was made enhanced its coercive nature. Mr. Magaña had recently filed the charge and found himself confronted at work by the UFW's contract administrator and the head of the Ranch Committee, who pressured him to withdraw the charge. It was only after he refused to withdraw the charge that Mr. Alvarez told him that "with this signature" (i.e., Mr. Magaña's signature on the charge), Mr. Magaña could be placed

on the “burn list.” In these circumstances, a reasonable employee would perceive the statement as a threat.

Allegations of Surveillance

The ALJ concluded that the UFW unlawfully placed the protected activity of Maria Edith Ruiz under surveillance. Apart from contesting the ALJ’s credibility determination, the UFW argues that Mr. Tovar and Mr. Pizano had a “legitimate purpose” for watching Ms. Ruiz’ after-work signature gathering in the company parking lot insofar as Ms. Ruiz’ conduct was in violation of Monterey Mushrooms’ solicitation policy. However, there was no evidence that crew representatives or Ranch Committee members had any responsibility over enforcing Monterey Mushrooms’ solicitation policy, nor does the record support the conclusion that Mr. Tovar and Mr. Pizano were watching Ms. Ruiz in order to ensure compliance with the policy.¹⁰ We agree with the ALJ that the record supports a finding of unlawful surveillance of Ms. Ruiz. We also agree, for the reasons stated by the ALJ, that the remaining allegations of surveillance were not proven. Finally, we agree with the ALJ that the record supports the conclusion that the UFW, through Mr. Alvarez, created the impression that Javier Martinez’ protected activities would be placed under surveillance.

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¹⁰ In fact, a policy that prohibited employees from soliciting on non-working time would be presumptively unlawful. (*Republic Aviation Corp. v. NLRB* (1945) 324 U.S. 793, 803, fn. 10; *UPS Supply Chain Solutions, Inc.* (2011) 357 NLRB 1295, 1296.) Furthermore, Monterey Mushrooms’ policy does not facially prohibit off-duty employees from accessing its parking lot. (*Tri-County Medical Center, Inc.* (1976) 222 NLRB 1089, 1089 [“except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside nonworking areas will be found invalid”].)

Allegation of Unlawful Exclusion From Crew Meeting

The General Counsel argues that the ALJ erred in concluding that the UFW did not violate Labor Code section 1154, subdivision (a)(1) when its agent, Vicente Pizano, excluded a group of employees from a crew meeting allegedly in retaliation for the employees' having engaged in conduct protected by Labor Code section 1152. While we agree with the ALJ that, under the particular facts presented in this case, the UFW's conduct did not violate the Act, we reach this conclusion based upon the following legal analysis.

Labor Code section 1154, subdivision (a)(1) makes it an unfair labor practice for a labor organization to "restrain or coerce" employees in the exercise of their Labor Code section 1152 rights but also contains a "proviso" that "[t]his paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." This language is based upon Section 8(b)(1)(A)¹¹ of the National Labor Relations Act ("NLRA"), which contains an identical prohibition and proviso. (*United Farm Workers of America (Conchola)* (1980) 6 ALRB No. 16, p. 7 ["Sections 1154(a)(1) and (b) are modeled after Sections 8(b)(1)(A) and (2) of the NLRA"].) Accordingly, we are guided by NLRA precedent in analyzing this issue. (Lab. Code, § 1148.)

In *Office and Professional Employees International Union, Local 251 (Sandia Corp.)* (2000) 331 NLRB 1417, the National Labor Relations Board ("NLRB") undertook a detailed examination of the scope and limits of NLRA Section 8(b)(1)(A) in the context of union discipline of members. The NLRA found that the prohibition against union "restraint

¹¹ 29 U.S.C. § 158(b)(1)(A).

and coercion” was to be narrowly construed and was intended “to regulate the use of threats and violence by unions in the employment context.” (*Sandia Corp., supra*, 331 NLRB 1417, 1419.) Outside of these core areas, “Section 8(b)(1)(A) and its proviso precluded interference with the internal affairs of a labor organization in the absence of an effect on employment.” (*Ibid.*) Generally, discipline has an “effect on employment” when it “interfere[s] with the employer-employee relationship” or the member’s “status as [an] employee[.]” (*Id.* at pp. 1423-1424.) Thus, in *Sandia Corp.*, the NLRB overruled prior decisions that utilized a more expansive interpretation of the scope of Section 8(b)(1)(A). For example, the NLRB overruled *Laborers’ International Union of North America, Local 652 (Southern California Contractors’ Association)* (1995) 319 NLRB 694 finding that the union discipline in that case, which consisted of discriminatorily ejecting dissident union members from a union meeting due to their allegedly disruptive behavior, was not unlawful because the discipline did not “pertain[] to the members’ status as employees.” (*Sandia Corp., supra*, 331 NLRB 1417, 1423; see also *Conchola, supra*, 6 ALRB No. 16, pp. 7-8 [union rule did not violate Labor Code section 1154, subdivision (a)(1) because there was no “attempt or threat by the [union] to affect [the employee’s] relationship with his employer”].)

There are significant exceptions to the general rule that Section 8(b)(1)(A) and Labor Code section 1154, subdivision (a)(1) prohibit only union discipline that has an impact on employment. First, union discipline involving “unacceptable methods of union coercion” such as threats and violence are unlawful, even in the absence of an effect on employment. (*Sandia Corp., supra*, 331 NLRB 1417, 1424; *Laborers’ International Union of North America, Local Union No. 91 (Council of Utility Contractors, Inc.)* (2017) 365 NLRB No. 28,

p. 1; *United Food and Commercial Workers, Local 7R (Conagra Foods, Inc.)* (2006) 347 NLRB 1016, 1016.) Second, unions may not discipline members in a manner that impairs access to board processes. (*Sandia Corp., supra*, 331 NLRB 1417, 1424; *Council of Utility Contractors, Inc., supra*, 365 NLRB No. 28, p. 1.) Third, union discipline is unlawful where it impairs policies “imbedded” in the Act. (*Sandia Corp., supra*, 331 NLRB 1417, 1424; *Council of Utility Contractors, Inc., supra*, 365 NLRB No. 28, p. 1.) However, even if the union discipline falls within one of these exceptions, a violation will be found only if the interest in the employee’s protected rights outweighs the legitimate union interest at stake in the particular case. (*Local 254, Service Employees International Union (Brandeis University)* (2000) 332 NLRB 1118, 1122; *Council of Utility Contractors, Inc., supra*, 365 NLRB No. 28, p. 1.)

To the extent that the employees who were excluded from the March 2016 meeting participated in circulating petitions seeking Mr. Pizano’s removal as crew representative or otherwise advocated for his replacement, that conduct was clearly protected by Labor Code section 1152. (*United States Steel Corp., supra*, 240 NLRB 848, 849.) However, even if Mr. Pizano excluded the dissident employees from the March 2016 meeting on the basis of this protected conduct, which we will assume for present purposes,¹² we

¹² As noted above, Mr. Pizano claimed that the dissidents were disruptive during meetings. However, the employees who testified generally denied having been disruptive. The ALJ did not resolve this dispute of fact and we likewise find it unnecessary to do so. Regardless of whether Mr. Pizano was motivated by the employees’ dissident activities or their alleged disruptive behavior, exclusion from the meeting did not affect their status as employees.

conclude that exclusion from the meeting did not affect their status as employees.¹³ There is no allegation or evidence that the excluded employees suffered a loss in pay, employment opportunity, or any other employment benefit as a result of being excluded from the meeting, nor does it appear to have affected their relationship with Monterey Mushrooms in any way. The content of the meeting from which they were excluded pertained exclusively to intraunion matters.¹⁴

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¹³ The General Counsel cites the following cases in support of her argument that exclusion from the meeting violated the Act: *Carpenters District Council of Kansas City and Vicinity (Daniel Construction Co.)* (1976) 227 NLRB 72, *Local Lodge No. 707, International Association of Machinists and Aerospace Workers (United Technologies Corp.)* (1985) 276 NLRB 985, and *Helton v. NLRB* (D.C.Cir. 1981) 656 F.2d 883. However, each of these cases predate *Sandia Corp.* In fact, all three rely upon the NLRB's decision in *Carpenters Local Union No. 22, United Brotherhood of Carpenters and Joiners of America (Graziano Construction Co.)* (1972) 195 NLRB 1, which *Sandia Corp.* overruled.

¹⁴ There was testimony that Monterey Mushrooms sometimes used crew meetings to transmit information from management to employees. In particular, Ms. Morales testified that management would convey information to the UFW with the knowledge that the crew representatives would then convey the information to employees via crew meetings. Had the UFW excluded employees from this type of meeting based on their protected activity, a different result might pertain. However, the record reflects that the meeting was used exclusively to discuss intraunion matters. Mr. Pizano confessed to not having a clear recollection of what was discussed at the meeting but remembered that the recent decertification of the UFW at Mushroom Farms was discussed. He initially testified that he also discussed topics from the UFW constitutional convention but later admitted that the convention might have actually occurred after the March 2016 meeting. Both Mr. Infante and Mr. Magaña testified that Mr. Pizano discussed the Monterey Mushrooms decertification but not the convention topics. Mr. Magaña also claimed that Mr. Pizano talked about the petition seeking his removal. The salient fact, however, is that none of these witnesses claimed that Mr. Pizano used the meeting to discuss anything other than intraunion matters.

Although exclusion from the March 2016 meeting did not affect the excluded employees' status as employees, we must still consider whether the UFW's conduct impaired a policy imbedded in the ALRA.¹⁵ The General Counsel argues that exclusion from the meeting contravened the ALRA's prohibition of discrimination and retaliation against employees who engage in protected activity and frustrated employees' Labor Code section 1152 rights to join together with other employees during the crew meeting for mutual aid and protection. However, it is clear that the fact that union discipline may be aimed at activity protected by Labor Code section 1152 is not a sufficient basis to meet the exception for conduct contrary to policies imbedded in the Act. As discussed previously, in *Sandia Corp.*, the NLRB stated that ejection of dissident union members from a union meeting for disruptive behavior was not unlawful even though the union had previously permitted similar disruptive conduct in its meetings. (*Sandia Corp.*, *supra*, 331 NLRB 1417, 1423, overruling *Southern California Contractors' Association*, *supra*, 319 NLRB 694.) In *Textile Processors, Service Trades, Healthcare, Professional & Technical Employees, Local 311 (Mission Industries)* (2000) 332 NLRB 1352, 1354, the NLRB addressed this issue directly, stating, "[s]imply put, we will not scrutinize a union's [i]nternal discipline of its members, even for allegedly discriminatory reasons, so long as the action does not restrict access to the Board's processes or invoke any aspect of the employment relationship." Likewise, the NLRB has upheld union discipline that took the form of exclusion from union meetings, although such discipline would necessarily

¹⁵ The other exceptions to the general rule stated in *Sandia Corp.* are clearly not applicable. Exclusion from the meeting did not impair the employees' ability to access the Board's processes, nor was the exclusion accomplished by means of threats or violence.

impact the ability of the excluded members to engage in protected activity at those meetings. (See *International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers (Kaiser Cement Corp.)* (1993) 312 NLRB 218 [union did not violate Section 8(b)(1)(A) by suspending a dissident member from union office and banning him from attending union meetings for five years in response the member's attempt to undermine and oust the union].)

Citing *Scofield v. NLRB* (1969) 394 U.S. 423, the General Counsel argues that the issue of whether union discipline is prohibited by Labor Code section 1154, subdivision (a)(1) turns, in part, on whether the discipline meted out by the union was pursuant to a "duly adopted" union rule as opposed to the "arbitrary fiat" of a union agent. In *Scofield*, the United States Supreme Court approved the NLRB's interpretation of Section 8(b)(1)(A) as not applying to the internal application of union rules, but potentially prohibiting enforcement of union rules when they impact members' employment. (*Scofield v. NLRB, supra*, 394 U.S. 423, 428.) The Court noted that the NLRB's interpretation leaves a union free to enforce a "properly adopted rule" that is "reasonably enforced." However, in *NLRB v. Boeing Co.* (1973) 412 U.S. 67, the United States Supreme Court rejected an interpretation of Section 8(b)(1)(A) under which the lawfulness of union fines would depend upon their reasonableness, finding that the discussion in *Scofield* on that issue was dicta. (*NLRB v. Boeing Co., supra*, 412 U.S. 67, 72-73.) The same conclusion appears to apply to the *Scofield* decision's references to "duly adopted" rules. This is confirmed by the NLRB's decision in *Mission Industries* where the NLRB, considering an allegation that a union refused to accept a former member's dues, rendering her ineligible for union office in retaliation for her oppositional

activities, held “we find it unnecessary to decide whether the Respondent acted pursuant to a duly adopted rule because the [NLRA] does not contain any proscription against Respondent’s refusal to accept d[u]es on account of [the former member’s] purely internal activity.”

(*Mission Industries, supra*, 332 NLRB 1352, 1354.)¹⁶

We conclude that, under the particular facts presented by this record, the exclusion of dissident employees from the Crew 3 meeting in March 2016 did not violate Labor Code section 1154, subdivision (a)(1).

Allegations of Unlawful Statements Made in May 2016 Meetings

The General Counsel argues that the ALJ erred in not finding that statements made at a series of crew meetings in May 2016 violated Labor Code section 1154, subdivision (a)(1). The General Counsel presented testimony from multiple witnesses that crew representatives at these meetings stated that Ms. Olvera was trying to decertify the union, that

¹⁶ There are circumstances when the Board may appropriately consider the reasonableness of internal union discipline. Labor Code 1153, subdivision (c) authorizes unions and employers to negotiate “union security” provisions in collective bargaining agreements that require employees to maintain union membership as a condition of employment. However, “membership” for these purposes is defined as “satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.” (Lab. Code § 1153, subd. (c); *Pasillas v. ALRB* (1984) 156 Cal.App.3d 312.) Where the union imposes discipline that results in loss of membership or good standing, potentially putting the employee at risk of termination, the Board has the authority to determine whether the Labor Code section 1153, subdivision (c) standards were satisfied. (*Pasillas v. ALRB, supra*, 156 Cal.App.3d 312, 352.) However, where, as here, the discipline does not include loss of membership or good standing, the standards outlined in *Sandia Corp.* apply. (*Ibid.*)

employees might lose benefits as a result, and that employees should ignore or not trust Ms. Olvera. The ALJ concluded that, assuming these statements were made, they did not violate the Act. We agree that, assuming as the ALJ did that the statements were made, they were not unlawful.

Preliminarily, the General Counsel raised an issue of fact concerning whether Ms. Olvera was actually engaged in an effort to decertify the UFW. Ms. Olvera denied that she was but the ALJ discredited those denials.¹⁷ We conclude that the ALJ's credibility determination on this issue conflicts with well-supported inferences from the record considered as a whole. No witness claimed to have seen Ms. Olvera circulate a decertification petition or advocate for decertification, and Ms. Olvera herself denied having done so. While the record reflects that Ms. Olvera was quite willing to openly oppose the UFW's local leadership at Monterey Mushrooms, including by circulating petitions, there is no direct evidence that she or anyone else was circulating a decertification petition. The ALJ's extrapolation that Ms. Olvera must have been engaged in more anti-UFW activities, principally based upon her association with people like Mr. Lopez and Mr. Cerritos, is not sustainable in light of the lack of evidence of such activities.

Nevertheless, our conclusion concerning the lawfulness of the statements alleged to have been made in the May 2016 meetings does not depend on whether Ms. Olvera was

¹⁷ The ALJ did not explicitly find that Ms. Olvera took any particular steps to decertify the UFW but stated that she was involved in efforts to "persuade [employees] away from the UFW" and that, while the UFW was aware of some of these efforts, there was "reasonable cause to believe there was more." Thus, the ALJ appears to have, at least implicitly, found that Ms. Olvera was involved in some capacity in an effort to cause the UFW to be decertified.

actually trying to decertify the UFW. To the extent that the UFW's motivation in having its agents make the alleged statements would be relevant, the record supports the conclusion that, in the context of events since 2013, and particularly since 2015, Mr. Alvarez genuinely came to believe that Ms. Olvera was working with people who were trying to decertify the UFW and that action was necessary to counter this threat. The UFW had been decertified at Monterey Mushrooms before and members of the bargaining unit were active in circulating petitions opposing the UFW's local leadership. Ms. Olvera was particularly active in this regard and she was married to one of two former UFW organizers whom Mr. Alvarez believed were responsible for the UFW's decertification at Mushroom Farms in early 2016.¹⁸ Furthermore, by 2016, the "contract bar" that insulated the UFW from decertification petitions at Monterey Mushrooms had expired.¹⁹ The record also reflects that, when presented with petitions that it knew not to be decertification petitions, the UFW responded directly to the content of those petitions rather than falsely claiming that they were decertification petitions. Thus, while we find the evidence insufficient to conclude that Ms. Olvera was actually engaged in a decertification campaign, we find that the UFW believed that she was, and that belief was genuine.

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¹⁸ There was significant animosity between these former organizers and the UFW and another individual connected to those organizers, Jose Aguilar, had filed a decertification petition at Dole Berry North in October 2013.

¹⁹ Although the collective bargaining agreement was, by its terms, to remain in effect until April 2017, a collective bargaining agreement with a fixed duration of longer than three years does not bar an election after the expiration of its third year. (Lab. Code, § 1156.7; *Phelan & Taylor Produce Co.* (1981) 7 ALRB No. 8, p. 4; *General Cable Corp.* (1962) 139 NLRB 1123, 1124-1125.)

Labor Code section 1155 states that “[t]he expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.” In this case, the statements that are alleged to have been made in the meetings were not promises of benefits, nor would they reasonably have been interpreted as threats under the circumstances. (See *Air La Carte, Inc.* (1987) 284 NLRB 471, 473 [union’s statement that employees would lose the benefit of the contract and could have wages and benefits reduced if they voted to decertify the union was not coercive because the union had no control over what the employer would do if the union was decertified]; compare *Healthcare Employees Union, Local 399 (City of Hope National Medical Center)* (2001) 333 NLRB 1399 [union violated Section 8(b)(1)(A) when it told employees that the union would negotiate to have jobs outsourced if employees supported a decertification petition].)

The NLRB has held that “[a] union has the right to defend itself against a decertification petition, which attacks its very existence as the exclusive bargaining agent.” (*International Brotherhood of Teamsters, Local 705 (K-Mart)* (2006) 347 NLRB 439, 442.) Furthermore, as discussed above, the NLRB has emphasized that Section 8(b)(1)(A) does not grant the NLRB the authority to interfere with intraunion matters that do not affect the employment relationship. However, it is also clear that a union may not engage in conduct that interferes with the right of employees to access Board processes, including the decertification process. (*Molders Local 125 (Blackhawk Tanning Co.)* (1969) 178 NLRB 208 [union violated

Section 8(b)(1)(A) by fining employee who filed decertification petition because it interfered with the statutory right to invoke the election process].)

The statements alleged to have been made in the May 2016 meetings did not purport to prohibit Ms. Olvera from pursuing decertification or deny her the right to do so. Rather, those allegedly making the statements implicitly assumed that Ms. Olvera would continue to advocate for decertification. The evident purpose of the statements was to persuade other employees not to support Ms. Olvera's efforts. None of the crew representatives are alleged to have stated that there would be any punishment for anyone who cooperated with Ms. Olvera nor that any reward would be given to those who refrained from such cooperation. The only consequences that were cited were the loss of the collective bargaining agreement that would result from decertification and wage and benefit losses that might follow. These were consequences that would flow from post-decertification actions taken by Monterey Mushrooms at a time when it would not be possible for the UFW to influence events. (*Air La Carte, Inc.*, *supra*, 284 NLRB 471, 473.) The statements alleged to have been made in the meetings were not threats of reprisal or force, or promises of benefit within the meaning of Labor Code section 1155, nor did they impermissibly infringe on the right of employees to utilize the Act's decertification process.

The General Counsel cites *Harry Carian Sales v. ALRB* (1985) 39 Cal.3d 209 in which the California Supreme Court found that employer statements comparing union organizers to prostitutes, although they were neither threats nor promises of benefits, were not protected by Labor Code section 1155 because that section "was not . . . designed to permit either a union or employer to maliciously libel [its] opponents." (*Harry Carian Sales v. ALRB*,

supra, 39 Cal.3d 209, 350.) The Supreme Court further stated that such conduct designed to “insult and degrade union organizers” interfered with employees’ protected rights because they had “a natural tendency to cause employees to shun and avoid the union.” (*Ibid.*) The General Counsel argues that the case supports the proposition that union statements that cause employees to “shun and avoid” a fellow employee also violate the Act. We disagree that *Harry Carian Sales* can be read so broadly, otherwise a union’s legitimate non-coercive statements of opinion that bargaining unit employees should oppose decertification could be unlawful if they caused employees to “shun and avoid” decertification supporters. Here, the statements alleged to have been made did not resemble the “slandorous” and “degrading” language at issue in *Harry Carian Sales*.

The General Counsel also cites *Local 235, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (General Motors Corp.)* (1993) 313 NLRB 36 in which a unit employee asked a question in a union meeting about an expense item and a union official responded that the employee had cost the union over \$1,000 resulting from a NLRB charge he had filed. When the employee attempted to respond, he was told to sit down or be thrown out. The NLRB found that statements by union officials suggesting “unpleasant repercussions” for those who participate in NLRB processes constitute unlawful restraint and coercion. The union official’s message that those who filed charges or testified in NLRB proceedings would be “subject to humiliation and blame” violated Section 8(b)(1)(A).

General Motors Corp. was decided before the NLRB clarified in *Sandia Corp.* that union discipline that does not have an effect on employment does not fall within the scope

of conduct prohibited by Section 8(b)(1)(A). Furthermore, later cases have not read *General Motors Corp.* as standing for the proposition that a union commits a violation simply by making members feel humiliated. Rather, the NLRB’s subsequent precedent emphasizes that the conduct in that case was unlawful because it constituted the making of a threat for participating in NLRB processes. (*International Brotherhood of Teamsters, Local 391 (Sawyers)* (2012) 357 NLRB 2330, 2330 [“statements that ‘suggest unpleasant repercussions’ against employees participating in Board processes violate Section 8(b)(1)(A)”]; *Amalgamated Transit Union, Local Union No. 1433 (Veolia Transportation Services, Inc.)* (2014) 360 NLRB No. 44, p. 28 [distinguishing *General Motors Corp.* and finding that union official’s statement that those who provided information to a charging party should be “ashamed” was not unlawful because the statement did not “mention[] or even allude[] to the possibility of retaliation”].) The statements alleged to have been made in the May 2016 meetings would not reasonably have been construed as threats.²⁰

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²⁰ See *Local 466, International Brotherhood of Painters and Allied Trades (Skidmore College)* (2000) 332 NLRB 445, 446 [no violation of Section 8(b)(1)(A) where union officials filed internal charges against dissident members accusing them of slander, disloyalty, and disrupting union meetings, because the internal charges “arose entirely within the confines of internal union affairs, had no impact on the relationship of those involved to any employer, and impaired no policy of the Act”; but separate allegation that one incumbent union officer stated he would later “retaliate” and that “someone’s going to get hurt” could be viewed as not limited to internal union disciplinary action and thus was unlawful]; see also *Conagra Foods, Inc., supra*, 347 NLRB 1016 [organizer’s statement that if dissident member came to another union meeting he would “grab her by the hair and take her out” was unlawful as a threat of physical violence].

Remedies

The General Counsel excepts to the remedies ordered by the ALJ and argues in favor of certain extraordinary remedies, which the ALJ denied. These include a notice reading to UFW organizers, noticing via radio broadcast, an extended noticing period, and Board-ordered training for UFW personnel. We affirm the ALJ's denial of these extraordinary remedies. Without diminishing the seriousness of the unlawful conduct found in this case, the standard remedies developed by the Board are designed to remedy these types of violations and the ALJ's conclusion that this is not a case that calls for extraordinary remedies designed for the most egregious of cases is correct.

ORDER

Pursuant to Labor Code section 1160.3, Respondent United Farm Workers of America ("UFW"), its officers, agents, and representatives shall:

1. Cease and desist from:
 - (a) Threatening employees for filing unfair labor practice charges with the Agricultural Labor Relations Board ("ALRB"), or for engaging in other activities protected by section 1152 of the Agricultural Labor Relations Act ("Act"), including activities seeking to select different union representatives.
 - (b) Coercively interrogating employees about their activities protected under section 1152 of the Act, including activities seeking to select different union representatives.

- (c) Engaging in surveillance of activities by employees protected under section 1152 of the Act, including activities seeking to select different union representatives.
 - (d) Creating the impression that its agents or representatives will engage in surveillance of activities by employees protected under section 1152 of the Act, including activities seeking to select different union representatives.
 - (e) In any like or related manner restraining or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.
2. Take the following affirmative actions that are deemed necessary to effectuate the policies of the Act:
- (a) After its translation by the ALRB into all appropriate languages, post signed copies of the attached Notice to Agricultural Employees (“Notice”) at the Salinas Regional Office of the UFW for a period of 60 consecutive days at locations where notices to workers who visit that office are normally posted, exercise due care to replace any Notice which has been altered, defaced, covered, or removed, and grant ALRB agents access to that location to ensure compliance with this requirement.
 - (b) Within 30 days of the date of this order, in a manner directed by the ALRB regional director, mail copies of the Notice in all appropriate

languages to the last known address of all bargaining unit employees who worked at Monterey Mushrooms, Inc. (“Monterey Mushrooms”) at any time since April 10, 2013.

- (c) Cooperate with the ALRB regional director in arranging with Monterey Mushrooms to conduct two meetings of current Monterey Mushrooms bargaining unit employees as specified in the remedy section, above, during worktime compensated by the UFW at which a UFW official will read the Notice to the employees followed by a period for ALRB agents to answer questions concerning this matter and their rights under the Act in the absence of any paid UFW official or any owner, manager, supervisor, or foreperson employed by Monterey Mushrooms.
- (d) Upon request, sign copies of the Notice, in whatever languages specified, and promptly transmit them to the ALRB regional director in Salinas for use in the event that Monterey Mushrooms chooses to post the Notice on its premises where the bargaining unit employees work.
- (e) Provide a copy of the Notice to each agricultural employee hired to work in the Monterey Mushrooms bargaining unit during the twelve-month period following the issuance of this order.
- (f) Notify the ALRB regional director in writing, within thirty days after the date of this order, of the steps that the UFW has taken to comply

with the terms of this order and, upon request, notify the regional director periodically in writing of all further actions taken to comply with the terms of that order.

IT IS FURTHER ORDERED that all other allegations in the complaints in this consolidated proceeding found without merit be and hereby are **DISMISSED**.

DATED: May 14, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall III, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating unfair labor practice charges filed in the Salinas Regional Office of the Agricultural Labor Relations Board (“ALRB”), the Regional Director, on behalf of the General Counsel of the ALRB, issued a complaint alleging that we, the United Farm Workers of America, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we had violated the Agricultural Labor Relations Act (“Act”) by threatening employees for engaging in activities protected by the Act, including filing a charge with the ALRB, coercively questioning employees about their activities protected by the Act, and by engaging in surveillance and giving the impression that we would engage in surveillance of employee activities protected by the Act. Because it found we did those things in violation of the Act, the ALRB has ordered us to post and publish this Notice to you.

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help a labor organization or bargaining representative;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the ALRB;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because you have these rights, we promise that:

WE WILL NOT threaten you in order to restrain you from engaging in activities protected by the Act, including your right to file an unfair labor practice charge with the ALRB, or your efforts seeking to change union representatives within your present union.

WE WILL NOT question you in a place or way that makes you fearful of engaging in activities protected by the Act, including your efforts to change the union representatives within your present union.

WE WILL NOT engage in surveillance of your activities protected by the Act, including your efforts seeking to change the union representatives within your present union.

WE WILL NOT say or do anything to make you believe we engaging in surveillance of your activities protected by the Act, including your efforts seeking to change the union representatives within your present union.

WE WILL NOT in any like or related manner coerce or restrain you from engaging in activities protected by the Act.

DATED: _____

**UNITED FARM WORKERS OF
AMERICA**

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. One office is located at 342 Pajaro Street, Salinas California. The telephone number is (831) 769-8031.

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

UNITED FARM WORKERS OF AMERICA
(Olvera)

44 ALRB No. 5
Case No. 2013-CL-002-SAL et al.

Background

On August 4, 2017, Administrative Law Judge William L. Schmidt (the “ALJ”) issued a decision finding that, in 2013, Respondent United Farm Workers of America (the “UFW”) unlawfully interrogated and threatened employees who circulated a petition seeking the removal of the UFW’s contract administrator. The ALJ further found that the UFW placed petitioning activity under surveillance and created the impression of surveillance of such activity. While the 2013 allegations had been settled in a February 2016 settlement agreement, the ALJ found that the UFW voided the settlement agreement when it unlawfully threatened an employee who had filed a charge against the UFW in March 2016. While sustaining the charge alleging the March 2016 threat, the ALJ dismissed additional allegations that the UFW unlawfully excluded employees from a crew meeting for engaging in protected dissident union activity and unlawfully instructed employees to ignore and/or not trust an employee whom the UFW believed was engaged in decertification activity.

Board Decision

The Board upheld the ALJ’s conclusion concerning the 2013 interrogation, threat, and surveillance allegations and also found that the UFW made a threat against an additional employee, a violation not found by the ALJ. The Board agreed with the ALJ that the UFW threatened an employee in March 2016 and that this conduct voided the agreement to settle the 2013 charges. The Board agreed that the exclusion of dissident employees from the crew meeting did not violate the Act. Labor Code section 1154, subdivision (a)(1) generally does not prohibit intraunion discipline that does not affect members’ status as employees, and does not involve threats or violence, prevent members from accessing Board processes, or conflict with policies imbedded in the ALRA. The exclusion from the crew meeting, where only internal union matters were discussed, did not affect the dissidents’ status as employees. Finally, the Board agreed with the ALJ that the UFW instructions to employees concerning suspected decertification activity did not violate the Act. Labor Code section 1155 protects speech that does not contain threats or promises of benefits and unions are entitled to defend themselves against suspected decertification activity.

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

UNITED FARM WORKERS
OF AMERICA,

Respondent,

and

SANDRA OLVERA,

and

JOSE LUIS MAGAÑA,

Charging Parties.

Case Nos.: 2013-CL-002-SAL
2016-CL-004-SAL
2016-CL-006-SAL
2016-CL-007-SAL

**ADMINISTRATIVE LAW JUDGE
DECISION AND RECOMMENDED
ORDER**

Appearances:

For General Counsel: *Jimmy Macias and Kenia Acevedo,*
Assistant General Counsels.

For Respondent: *Edgar Aguila-socho, Atty.*
(Martinez, Aguila-socho, and Lynch PC), Bakersfield, California.

DECISION

William L. Schmidt, Administrative Law Judge. This consolidated proceeding presents three basic issues for resolution. The first is whether workers who function essentially as unpaid local union officials and as unpaid shop stewards are agents of the United Farm Workers (UFW, Union, or Respondent). The second is whether the General Counsel justifiably voided an informal settlement agreement she entered into with the UFW on February 12, 2016, that ostensibly resolved Case No. 2013-CL-002 because the Union breached its terms. And the third is whether the UFW violated Agricultural Labor Relations Act (Act) by restraining and coercing agricultural employees (employees or workers) at the Royal Oaks Facility of Monterey Mushrooms, Inc. (MMI or Company),

because of their protected concerted activities, including the filing of charges under the Act. Apart from claiming that the evidence fails to support the unfair labor practice allegations, the UFW charges that the activities of at least some of the dissident workers involved here amounted to a front for an on-going effort to decertify the UFW as the employee bargaining representative at MMI and other nearby farming operations.

STATEMENT OF THE CASE

Sandra Olvera (Olvera) filed a charge with the Agricultural Labor Relations Board (ALRB or Board) in Case No. 2013-CL-002-SAL on April 10, 2013, alleging that UFW violated Labor Code § 1154(a)(1) on or about April 5, 2013, when UFW agent, Casimiro Alvarez, made threatening and coercive statements to three or more Company workers. On June 19, 2015, the Regional Director for the Salinas Regional Office of the ALRB issued a complaint in that case with two causes of action (allegations). The first allegation asserts that the UFW violated § 1154(a)(1) by threatening an employee for engaging in activities protected under Labor Code § 1152. The second allegation asserts that the UFW violated the same section by threatening to request the Employer to terminate an employee for engaging in similar protected concerted activities. On January 21, 2016, the Regional Director issued a first amended complaint containing two additional allegations. In addition to the original allegations, the amended complaint alleged: (1) that the UFW engaged in unlawful interrogation and surveillance; and (2) that it distributed and enforced “policies” which improperly restrained employees.

The parties concluded an informal bilateral settlement agreement in Case 2013-CL-002-SAL on February 12, 2016 (Settlement), that provided for the UFW to cease and desist certain conduct and take affirmative action designed to effectuate the purposes of the Act. (GCX 4: GC 013-018)¹

¹ In this decision “RT” preceded by a number refers to the volume of the transcript. The number(s) that follow refer to the transcript page. “GCX” and “RX” designate the exhibits of the General Counsel and Respondent exhibits, respectively. Numbers following exhibit reference denote the exhibit number followed by the party’s Bates number identifying a specific page(s) if the exhibit is a multiple page document. The references “GCB” and “RB” followed by numerals refer to pages in the parties’ briefs. Some citations to the record’s transcript are included to aid review but they are not necessarily exclusive or exhaustive.

Thereafter, on March 25, 2016, Jose Luis Magaña (Magaña) filed the charge in Case No. 2016-CL-004-SAL alleging that UFW agent Vicente Pizano “interfered with the employees’ right to engage in protected concerted activities under the Act and breached the duty of fair representation by excluding particular employees from a meeting where union and work issues were discussed.

On April 8, 2016, Magaña filed the charge in Case No. 2016-CL-006-SAL alleging that UFW Contract Administrator, Casimiro Alvarez and UFW agent Justo Tovar restrained and coerced him by interfering with his right to file a charge under the Act and to engage in concerted activities protected by the Act.

On May 27, 2016, Olvera filed the charge in Case No. 2016-CL-007-SAL alleging that Alvarez and other unnamed agents of the UFW “restrained, harassed and coerced” her for expressing views critical of the UFW and for her participation in ALRB proceedings “against the UFW and its representatives.” It also alleges that UFW agents interfered with, restrained, and coerced workers to prevent them from engaging in protected concerted activities.

On August 17, 2016, the Regional Director, by separate order, consolidated Case Nos. 2016-CL-004-SAL and 2016-CL-006-SAL. She then issued a consolidated complaint containing two allegations. The first allegation avers that the UFW, through the conduct of its agent, Vincente Pizano, violated Labor Code § 1154(a)(1) when he “ostracized and humiliated” six members of the bargaining unit by excluding them from a crew meeting because of their protected concerted activity. The other allegation charges that Alvarez threatened Magaña because he engaged in protected activities by participating in an ALRB process.

On September 21, 2016, the Regional Director submitted a request to the ALRB Executive Secretary on behalf of the General Counsel to put Case No. 2013-CL-002-SAL back on the trial calendar “following a breach and voiding of (the February 12, settlement agreement) in this matter.” As a basis for that request, the Regional Director averred:

- The General Counsel notified the UFW on April 6, 2016, of the filing of three new unfair labor practice charges against it containing alleged violations, which if true, would constitute a breach of the February Settlement.
- Subsequently the General Counsel found reasonable cause to believe that the UFW violated the Act based on the evidence disclosed by her investigation of those three charges and that the UFW had breached the February Settlement.
- On August 3, 2016, the Regional Director notified the UFW of the General Counsel's conclusions and requested to immediately meet and confer in an effort to resolve the alleged breach informally. The same notification advised that failing a resolution of the breach within 7 days, the General Counsel intended to void the February Settlement and prosecute the underlying complaint.
- The UFW failed to respond to the General Counsel's request to meet and confer about the alleged breach of the February Settlement.

On September 22, 2016, the Regional Director, on behalf of the General Counsel, consolidated all four cases involved for hearing. The Executive Secretary issued a notice of hearing in this consolidated proceeding on November 15, 2016.

Respondent filed a motion for partial summary adjudication dated January 23, 2017, seeking the dismissal of the complaint in Case No. 2016-CL-007 because the alleged did not support the cause of action. The General Counsel opposed the motion arguing that any ruling on the cause of action should be based on the circumstances as a whole rather than the evidence in that case alone. I deferred ruling on the motion until issuing my decision in the consolidated proceeding.

I took testimony in this matter over the course of 7 days between February 28 and March 9, 2017 at Salinas, California. Having now carefully considered the entire record, including the demeanor of the witnesses who appeared and testified,² and the helpful

² In general, the following factors informed my credibility resolutions: the opportunity of the witness to be familiar with the matters covered by the testimony given, established or admitted facts, the degree of bias likely harbored by the witness, testimonial consistency, corroboration, the strength of rebuttal evidence if any, the inherent probabilities, reasonable inferences available from the record as a whole, the weight of the evidence, and witness demeanor. (See, e.g., *Daikichi Corp.* (2001) 335 NLRB 622, 633, *enfd.* (D.C. Cir. 2003) 56 Fed. Appx. 516; and *New Breed Leasing Corp. v. NLRB*, (9th Cir. 1997) 111 F.3d 1460, 1465, *cert. denied* (1997) 522 U.S. 948.) Certain critical credibility resolutions are discussed in more detail below.

briefs filed on behalf of General Counsel and the UFW, I find Respondent violated the Act in certain respects alleged in the complaints but not others:

FINDINGS OF FACT

A. Background

The MMI grows, harvests, packages and distributes various varieties of mushrooms at its Royal Oaks facility in Monterey County. It employs approximately 670 agricultural employees at the Royal Oak location.³ Since 1995, the UFW has served continuously as the ALRB certified representative of the Royal Oak employees.⁴ At the time of the hearing, the term of the collective-bargaining agreement between the Company and the UFW covered the period from April 29, 2012, through April 29, 2017. The record contains no evidence of a successor agreement.

The UFW services this unit of about 660 employees at the Company from its regional office in Salinas. Casimiro Alvarez, a UFW internal coordinator assigned to the Salinas Regional Office, serves as the contract administrator for the Monterey Mushrooms unit as well as two other smaller bargaining units in the area where the ALRB certified the UFW as the exclusive employee representative. In addition to administering UFW contracts, Alvarez's principal responsibilities also include assisting in negotiating collective-bargaining agreements and overseeing the work of internal organizers who administer contracts at other companies. Alvarez assumed current responsibilities at the Salinas Regional Office in April 2012 after serving as the Regional Director in charge of the UFW's North Coast Region located in Santa Rosa, California.

In addition to his duties as a contract administrator after returning to Salinas in 2012, Alvarez' duties also included overseeing the work of two organizers in particular whose employment with the UFW ended the following year on less than favorable terms. (2RT: 74-75) Alvarez said one of these two organizers, Francisco Cerritos, already

³ MMI and another mushroom grower, Mushroom Farms, Inc. (MFI) are said to be "sister" operations. As described below, worker activities at MFI under the Act figure in the relevant circumstances of this case.

⁴ The UFW was first certified to represent this unit in 1979. *Monterey Mushrooms, Inc.* (1979) 5 ALRB No. 2. It was decertified in 1991. *Monterey Mushrooms, Inc.* (1994) 20 ALRB No. 5. It became the certified representative again in 1995. *Monterey Mushrooms, Inc.* (1995) 21 ALRB No. 2.

worked at the Salinas office when he left for his assignment in Santa Rosa. After returning in 2012, Alvarez became involved in Cerritos' training. Alvarez said he recruited the other, Armando Lopez, to work on the UFW's paid staff at Salinas after his return in 2012. However, Lopez is married to Charging Party Olvera and she asserted that he worked as a UFW organizer from 2007 to 2013.

Cerritos and Lopez figure prominently in Case No. 2016-CE-007-SAL as Olvera herself. But for whatever reason, counsel for the General Counsel labored mightily to deflect evidence concerning these two former UFW organizers when counsel for Respondent propounded questions about their activities. (See e.g., 1RT: 92-98; 4RT: 51, 55, 56-57) In my judgment, without at least some knowledge and consideration of this very pertinent ancillary matter, decisions in this administrative proceeding will take on a sterile, ivory-tower quality at the expense of the pursuit of truth.

During Respondent's questioning of Maria Edith Ruiz, a key player Case No. 2013-CL-002-SAL filed by Olvera, further detail emerged concerning the concurrent internal dispute at the UFW's Salinas office. Thus, Ruiz disclosed the existence of a legal action initiated by the UFW in connection with a concurrent internal union dispute. (4RT: 46-61) In my judgment, that internal union dispute bled over in to this dispute at MMI and elsewhere. As such, I find it of significant relevance in understanding and deciding the issues in this case.

By Ruiz' account, in late 2012 or early 2013, she met Jose Aguilar, a Dole Berry North (Dole) worker, when she came upon a protest by happenstance at the UFW's Salinas office. After speaking with Aguilar for a while, she concluded that she shared some of the same views as the protesting Dole workers concerning the quality of the union's representation. For that reason, Aguilar agreed to let her know of future meetings this group held so Ruiz could attend. Thereafter, Ruiz attended several meetings with members of that group as well as others dissatisfied with UFW representation. In addition, Ruiz recalled taking a day off from work to accompany Aguilar to a court hearing in Monterey dealing with a lawsuit brought by the UFW that dealt with a later protest at the UFW office.

An unpublished opinion of the Sixth District Court of Appeal concerning an issue that arose the Monterey County Superior Court Case No. M123292 provides these facts about an internal union dispute at the UFW's Salinas office in May 2013:

I. TRIAL COURT PROCEEDINGS

Plaintiff is an unincorporated labor organization which represents agricultural employees in California and other states. Some of plaintiff's nonsupervisory employees formed defendant La Union Es Para Todos Staff Union (La Union) in 2013 and, after mediation, the parties entered into a collective bargaining agreement on May 1, 2013, which plaintiff formally recognized by letter dated May 20, 2013. On May 16, 2013, plaintiff terminated defendant Francisco Cerritos's employment. Cerritos is an officer of La Union and, before his termination, was allegedly responsible for administering plaintiff's collective bargaining agreement with strawberry grower Dole Berry North in Monterey County. That day, defendants allegedly "openly picketed, entered onto [plaintiff's] office structures, and demanded reinstatement of ... Cerritos."

Plaintiff filed a complaint alleging breach of contract against La Union, Cerritos, two individuals employed under plaintiff's union contract with Dole Berry North, and Armando Lopez, who worked for plaintiff and was an officer of La Union. Plaintiff complained that defendants' picketing violated the "No Strike Clause" of the collective bargaining agreement between plaintiff and La Union and sought an injunction to enforce that clause.

(United Farm Workers of America v. La Union Es Para Todos Staff Union, et al, (CA 6, 2015) H039997 (unpublished), slip op at 2) An online search of the Monterey County Superior Court records shows the UFW filed Case No. M123292, a breach of contract action, on May 22, 2013, involving Aguilar and others. The online record lists five defendants, one organization and four individuals: La Union Es Para Todos Staff Union, Francisco Cerritos, Armando Lopez, Doroteo Lopez, and Jose Aguilar.⁵

I find the online record of the Monterey County Superior Court in Case No. M123292 and the appellate court's factual description of the basis for that case of significant relevance to this proceeding. Accordingly, I have considered the foregoing information from Case No. M123292 in making my findings below. (*K.G. v Meredith*

⁵ See <https://portal.monterey.courts.ca.gov/case/TTEyMzI5Mg==#info>. Last visited on June 23, 2017.

(2012) 204 Cal App 4th 169, 172, fn. 9, citing *Conrad v. Ball Corp.* (1994) 24 Cal.App. 4th 439, 443-444, fn. 2 (citation to an unpublished appellate opinion to explain the factual background of a case does not violate California Rules of Court 8.1115 rule that, in general, prohibits courts and parties from “citing or relying on opinions not certified or ordered published.”)

Further, I take administrative notice of the ALRB’s own decision in *Dole Berry North* (2013) 39 ALRB No. 18. It shows Jose Aguilar filed the decertification petition in ALRB Case No. 2013-RD-001-SAL on October 18, 2013. I further notice the ALRB’s MMI decisions cited in footnote 4, above. Finally, I take administrative notice of the widespread post-hearing publicity about a large monetary judgment Cerritos and 23 other UFW organizers received from a lawsuit they prosecuted against the UFW in Monterey County Superior Court seeking overtime and mealtime pay.⁶

B. The Agency Issue

1. Relevant Facts

In its answers to the General Counsel’s complaints, the UFW admitted Alvarez’ UFW agency status but denied the General Counsel’s allegations claiming the ranch committee members and the crew representatives are UFW agents. In the pre-hearing phase, the union based this denial primarily on the fact that these persons are not paid employees of the UFW. Respondent’s brief continues to claim that these two groups are not “per se” agents of the UFW (RB: 25, n 32) and that their agency status has not been proven in this case. (RB: 30, n 37)

In servicing the needs of the unit here, Alvarez works through a network of Company employees who serve as ranch committee officers and crew representatives (crew reps). It is true that these are not paid positions. The ranch committee consists of five individuals headed by a “Secretary General.”⁷ At all relevant times, Justo Tovar, held that position. As described in more detail below, the crew representatives serve as

⁶ See <http://www.latimes.com/business/la-fi-ufw-lawsuit-20170328-story.html>. Site last visited May 17, 2017.

⁷ Under Article 68, Section b of the UFW Constitution, the other four members of the ranch committee occupy specific secretariats. (GCX 8: GC 0143)

the first line contact between the workers and their union. Typically, each harvesting crew (a work group typically consisting of 25 to 28 workers) has two representatives, a primary and a backup who serves as the representative when the primary is absent. Other crews have from one (see e.g. packing night shift) to three representatives (see e.g., packing day shift). (GCX 6(a): GC 021)

Although the nomenclature used to describe the persons who serve on the ranch committee and as crew representatives is unique to this particular location, the UFW's Constitution and its Uniform Rules (Rules) as well as the collective bargaining agreement between the UFW all address the particular responsibilities of these positions. (GCX 7: GC 041; GCX 8: Part H; GCX 9: Parts C, D, and E) The UFW's Constitution and Rules use the terms "workers board" and "union stewards" to describe these positions. At this company, the workers board is the equivalent of the ranch committee and the crew rep is the equivalent of the union steward described in the UFW's governing documents.⁸ As provided in Part H, Article 68, Sections a thru d of the UFW Constitution assigns the ranch committee (nee workers board) to govern the membership unit "as provided in this Constitution and the Uniform Rules." Alvarez admitted that the ranch committee at the Company amounts to the workers board referred to in the UFW constitution. (1RT: 145)

Under Article 17 of the UFW's Rules, the ranch committee "is responsible to ensure effective negotiations, proper administrative of the contract and maintain an active and organized membership." (GCX 9: GC 0159) Article 20 provides for the election of the ranch committee "(e)very three years." (GCX 9: GC 0160) By contrast, the crew reps (nee union stewards) need not be elected and have no specified term of office. Part E of the UFW's Rules provides for the appointment of the crew reps by the ranch committee Secretary General with the approval of the ranch committee and the Union

⁸ As indicated by UFW Constitution Article 70, Section a, this union appears to honor the nomenclature unit employees adopt locally. (GCX 8: GC 0144) At the Company, employees label the workers board as the ranch committee and union stewards as crew representatives. (2RT: 72 – where it is also noted that at another nearby location employees refer to the union stewards as "crew captains.") By inference, Alvarez also admitted that the workers covered by the collective bargaining agreement between the UFW and the Company constitutes a "Membership Unit" described in Part H of the UFW's constitution. (GCX 8: GC 0142-0144)

President. If the Union President rejects or removes a steward, then the Union President may appoint a steward.⁹ (GCX 9: GC 0161-0162)

In providing the required notices to the Company in accord with Article 8, section 8.F.2 of the collective-bargaining agreement, Alvarez stated the following in a letter to the Company's Royal Oaks Human Resources Manager on January 30, 2014:

This serve to notify you that the following workers are the official UFW representatives in Monterey Mushrooms Farm Facility, this include ranch committee members and crew representatives, the union recognize as representatives to lead with all concern in represent the co-workers in all concerns that involve the CBA and all this until new notice. (sic)

Alvarez' letter then goes on to list each individual by name. (GCX 6(c): GC 023) In subsequent notices to the Company on January 30, 2017, and November 3, 2015, Alvarez used nearly identical language. (GCX 6(a): GC 021, and 6(b): GC 022, respectively) The last notice of this sort lists five ranch committee members and thirty-one crew reps. Each of the current ranch committee members also serve as a crew rep.

On occasion, the UFW conducts two or three-day training courses for the ranch committee members and crew reps at the Salinas Regional Office. These courses serve to familiarize them with the collective-bargaining agreement, grievance handling, union rules and policies, and the like. UFW Vice President Armando Elenes, Salinas Regional Director Lauro Barajas, and Alvarez conduct these training sessions. The UFW compensates the ranch committee and the crew reps for their work time lost to participate the training sessions it conducts.

When Alvarez visits the Company's property to meet with management officials, he also frequently arranges to meet with the ranch committee and the crew reps during their lunch break periods. At those times, Alvarez may provide the crew reps with information that the union wants the employees to know. When this occurs, the crew

⁹ It is fair to infer from the facts of this case that the responsibilities of the Union President in connection with the approval or removal of union stewards has effectively be delegated to Alvarez in his role as the contract administrator. No evidence shows that the UFW President became involved in any aspect of this case. However, the evidence shows that Alvarez effectively vetoed the removal of Ranch Committeeman and Crew Rep Vicente Pizano from his union offices as sought by the petition Alma Ayala spearheaded in the spring of 2016.

reps in turn seek permission from the crew supervisors to conduct a short meeting (typically no more than 15) on work time to pass along information to the crew workers just obtained from Alvarez. (1RT: 30.) Using this arrangement, the crew reps keep workers updated on union policies regarding the bargaining agreement, announcements of significance to the employees, and other information. As detailed below, the manner in which the crew rep conducted one such crew meeting led to the filing of the first Magaña charge.

Workers depend initially on their crew rep to provide answers for questions about the collective bargaining agreement, for assistance in filing a contract grievance, and for representation during at the first and second steps of the contractual grievance procedure, and for news about union initiatives. Under the collective bargaining agreement, the first step of the grievance procedure involves an effort by the worker's crew rep and crew supervisor to confer orally for an acceptable resolution of an employee grievance. If that fails, the crew rep requests the secretary general of the ranch committee to file a written grievance that initiates the second step of the grievance procedure. (1RT: 28-29.) During the second step, the secretary general seeks to negotiate a grievance resolution with management officials. Typically, the contract administrator gets involved at this step as an advisor to the secretary general. (1RT: 107-108; 2RT: 32-36.) A crew rep and/or a ranch committee member also serves as an employee's representative at potential disciplinary conferences conducted by management officials.

2. Analysis and Conclusions

Both the ALRB and its federal counterpart, the NLRB, apply the common law principles of agency as found in the Restatement – Agency when called upon to resolve agency issues in the cases that come before them. (*Furukawa Farms, Inc.* (1991) 17 ALRB No. 4, slip op. 16; *Allegany Aggregates* (1998) 311 NLRB 1165) The existence of an agency relationship is a fact question. (*Overnight Transportation Co. v. NLRB* (DC Cir. 1998) 260 F.3d 259, 265-66).

An agency relationship arises when the principal manifests assent for another person to act on the principal's behalf subject to the principal's control, and that other

person manifests assent or otherwise consents so to act on behalf of the principal. (Restatement 3d – Agency § 1.01) A manifestation of assent or intent may be made “through written or spoken words or other conduct.” (Restatement 3d – Agency § 1.03)

An agency relationship may be based upon actual or apparent authority. (*Furukawa Farms*, supra, p. 15) Under Restatement 3d – Agency § 2.01, an agent acts with actual authority when:

“[A]t the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act.”

Under Restatement 3d – Agency § 2.03, an agent acts with apparent authority when an agent or “other actor” has the power to affect the principal’s legal relations with third parties when “a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations.” To find an individual possesses apparent authority to act on behalf of the principal there must be: (1) a manifestation by the principal to a third party; and (2) the third party must believe the extent of the authority granted to the agent encompasses the prospective activity. *Service Employees Local 87 (West Bay Maintenance)* (1988) 291 NLRB 82. Apparent authority is found when a principal places an individual “in a position where employees could reasonably believe that (the individual) spoke on behalf of management.” *Progressive Electric v. NLRB* (DC Cir. 2006) 453 F.3d 538.

I find that the UFW ranch committee members and the crew reps at the Company exercise both actual and apparent authority when dealing with Company employees. With respect to actual authority, the UFW’s organic documents together the collective-bargaining agreement it negotiated with the Company effectively establish the ranch committee positions and the crew rep positions and define in broad terms the responsibilities the incumbents of those positions. These documents contain the grant of authority by the union to the incumbents of those positions that is essential to carrying out the UFW’s main mission under the ALRB’s certification, i.e., the representation of employees in the workplace. Moreover, the responsibilities assigned to the ranch

committee member and the crew reps are vital to the UFW's core mission of serving as the bargaining unit representative. Alvarez' formal written notices to the Company identifying the members of the ranch committee and the crew reps that will serve as "the official UFW representatives in Monterey Mushrooms Farm Facility" constitutes an express authorization for the named persons to act on behalf of the UFW.

As for apparent authority, virtually all employees who testified in this proceeding look to the ranch committee and the crew reps to pass along important information and announcements the UFW, their bargaining agent, feels they need to know. On many occasions, these announcements involve changes in workplace procedures the union has agreed to during the on-going collaboration meetings union officials have with management. Employees regularly witness the ranch committee persons and the crew reps meeting with union officials during break periods that are followed crew reps seeking permission from management for the use work time to convey needed information about union affairs or union/management agreements affecting the employees' working conditions. The regularity if such occasions reflected in this record simply cannot be overstated. Moreover, the employees regularly use to crew reps and the ranch committee as an intermediary to obtain information from the union's regional officials about benefit programs or other matters of interest to them.

Based on the foregoing, I reject the Respondent's claim that the General Counsel failed to prove the agency status of the ranch committee and the crew reps. The findings I have made above establish that the ranch committee and the crew reps are certainly not, as suggested in the one of the cases cited in the union brief, merely active proponents of the union. Additionally, the fact that members of these two groups are not monetarily compensated for the work they do on behalf of the UFW is of no moment. The Restatement defines persons who serve a principal without compensation as "gratuitous agents," but otherwise it provides no particular exemptions for these types of agents. (Restatement 3d – Agency § 1.04(3)) Finally, workers who serve their labor organization

as union stewards or shop stewards are rarely compensated for this underappreciated yeoman's work.

C. The Alleged Unfair Labor Practices

1. The 2013 petition effort to get Alvarez fired or replaced

The Principal Anti-Alvarez Petition: In the early part of 2013, Charging Party Olvera worked at the Company as a cleaner assigned primarily to Crew 4. During this period, a group of employees that included Julietta Reyes, Yolanda Urbano, Lorena Perez, Ruiz, and Olvera discussed their common sense of dissatisfaction with Alvarez' style of representing employees. They ultimately decided to draft and circulate a petition addressed to UFW President Arturo Rodriguez seeking Alvarez' resignation from his union position. Olvera actually drafted the petition forms that she and the other workers in this circulated. The anti-Alvarez petition prepared by Olvera read:

Mr. Arturo Rodriguez President of the Farmworkers Union UFW

Through this letter we ask for your attention to the problems we are having at Monterey Mushrooms company and we demand the RESIGNATION of Mr. CASIMIRO ALVAREZ because of the lack of attention to our issues and the lack of representation towards us makes us think that Mr. Casimiro Alvarez is in cahoots [alternative translation: is in agreement] with the company in the MISTREATMENT THAT WE RECEIVE AND THE DISRESPECT TOWARDS US WORKERS. Also, Mr. Casimiro has refused to give us a phone number where we can locate him when we have a problem and when we call the office in Salinas we can never reach him. Arturo Rodriguez we demand your attention and that you ask for the resignation of Mr. Casimiro Alvarez because we do not have worthy representation from Casimiro, nor from the committee members, nor from the crew representatives.

SINCERELY: WORKERS OF MONTEREY MUSHROOMS COMPANY
WATSONVILLE CA

(GCX 1a)

Olvera and her allies solicited signatures from their fellow workers for the anti-Alvarez petition in the Company parking lot before and after work, in the lunch room

during breaks, and at nearby businesses that the Company workers frequented.¹⁰

Ultimately, Olvera and those aligned with her abandoned this petition drive after gaining a number of supporting signatures. They never submitted it UFW President Rodriguez as originally intended.¹¹ Still, the incidents described below occurred the form the basis for the complaint in Case No. 2013-CL-002-SAL.

Several ranch committee members and crew reps observed employees circulating a petition around the Company's premises. Nearly all either professed ignorance of its content and purpose or asserted their belief that the solicitation activity sought the union's decertification.¹² I discount these claims of ignorance concerning the purpose of the petition Olvera and her allies promoted. Ranch Committeeman Contreras, who was also Olvera's crew rep at the time, called a meeting on the work floor in which he told the crew about a petition going around that sought to remove Alvarez, and cautioned them against signing it "because if the company found out about it they'd fire us."¹³

Ruiz actively solicited signatures for the anti-Alvarez petition. She recalled an occasion while soliciting signatures at the nearby El Chile Verde store when Javier Valenciano, the crew rep for Crew 6, saw and approached her shortly after entering the store. Apparently unfazed, she told Valenciano outright what she was doing and showed him the anti-Alvarez petition. After looking at it, Valenciano began yelling at her.

¹⁰ Ranch Committeeman and Crew Rep Francisco Contreras claimed to have been told that that Cerritos and Lopez were observed in the parking lot during this period of 2013 when the employees solicited signatures for the anti-Alvarez petition after work. (7RT: 64, 101)

¹¹ However, Olvera continued to oppose the UFW administration at the Salinas office. She and others associated with her circulated another petition dated May 22 addressed to the UFW President complaining that Alvarez had failed to do anything about the allegedly deceitful actions by Francisco Contreras a week earlier. (GCX 2) In 2014, Olvera and Ruiz admittedly solicited employees to resign their membership in the UFW and provided them with the form used for this purpose. Some of the UFW supporters charged that Olvera, along with her husband and Cerritos, supported the UFW decertification efforts at other locations that led to the action taken by the UFW in 2016 and her charge in Case 2016-CL-007-SAL.

¹² A few pro-Alvarez workers claimed that some of the dissidents circulated the petition at work during worktime but I find that evidence inconclusive and without significant import for the issues involved here. There is no evidence the Company disciplined any worker for violating its no-solicitation policy and, even if it had, I would find that fact largely irrelevant.

¹³ I base this finding on Olvera's testimony that I credit. (1RT: 41) Contreras admitted that he held three such meetings concerning this subject. When confronted with whether he warned employees that they could be fired if they solicited on behalf of the petition, Contreras failed to clearly deny that he had done so. (7RT: 67) His failure to forcefully and clearly deny the statement Olvera attributed to him about the potential firing of employees serves, in my judgment, to strongly support her account of what he said.

Regardless, Ruiz continued speaking with Valenciano about the petition. Toward the end of their discussion, he told Ruiz "we're fine," to which Ruiz responded that the crew reps might be fine but the employees were not. Ruiz continued to talk with Valenciano gave no indication that their further discussion concerned the petition or her solicitation activity.¹⁴ (4RT: 16-17) Shortly afterward, Ruiz spoke to a coworker about signing the petition but that worker declined saying that he wanted to first check with Francisco Contreras, his crew rep. (4RT: 18-19) Contreras confirmed that on one occasion a worker approached him to ask about the purpose of the petition. (7RT: 66)

Ruiz recalled that not long after these two incidents, Alvarez conducted a meeting with the ranch committee and the crew reps during work time. Although she admittedly did not know what transpired at this meeting, shortly afterward she began noticing some of these union agents paid much closer attention of her soliciting activities. Ruiz described the added scrutiny she perceived in this manner:

Q Ms. Ruiz, did you see any crew representatives present while you were collecting signatures in the parking lot, after work?

A Well, after that meeting, yes.

Q Okay, who did you see?

A Well, Justo Tovar.

Q And what was Mr. Tovar doing when you saw him?

A Well, he was driving around. I call it like he was patrolling, because he was like a policeman, driving around the parking lot.

Q And for how long was Mr. Tovar driving around the parking lot?

A It was while workers were leaving work.

Q And was it while you were collecting signatures?

A Yes. It was also -- I started noticing that there was another one of the representatives and he was always close to where I always parked.

Q And who was this representative?

A That one's called -- well, his surname is Pizano.

Q Okay. And would Mr. Pizano park near you, before you were collecting signatures?

A No.

Q And would Mr. Tovar patrol the parking lot before you were collecting signatures?

A No. And this guy, always stuck around until I

¹⁴ Valenciano did not testify nor was his absence explained. For this reason, and as Ruiz made no apparent attempt to embellish her account of what occurred at the El Chile Verde store, I credit this story.

left, this Pizano. Vicente is his name.

Q Was there anyone else that you saw?

A Yes, his wife. Well, when he wasn't there, his wife was there. They both were looking out for me.

Q I'm sorry, whose wife?

A Vicente Pizano's wife.

Q And what happened after you noticed that Mr. Tovar and Mr. Pizano were watching you collect signatures?

A Well, I thought that they already knew what I was doing. And I also found out that some other people, in other crews, were told that if they signed, that they were going to have problems. That they could get fired.

(Intervening discussion concerning an objection omitted)

Q Did you notice a change from the coworkers after noticing that Mr. Tovar and Mr. Pizano were watching you collect signatures?

A Yes.

Q What change did you notice?

A Well, some just didn't want to be anywhere near me. And they would leave work and leave quickly. I also remember that they gave us a letter and it said that we could not be there collecting signatures, and that also we couldn't have any literature or sell at work.

Q And who gave you this letter?

A That was the foreman gave us that.

(4RT: 20-22)

Elsie Morales, the Company's human resources manager at its Watsonville location, provided the background for the rule distribution alluded to by Ruiz. Morales recounted that at some unspecified time, which I find to be most likely to have been in mid to late May 2013, Alvarez met with her to discuss the ongoing petition activity.¹⁵ Although they regularly met for management/union "collaboration" meetings, or to arrange such meetings between Alvarez and other managers, Morales said that Alvarez sought her assistance during this meeting to deal with the petitions that were a "real concern for him." As a result, Morales decided to distribute a memorandum to all employees reminding them of the Company's solicitation policy contained in the employee handbook. (GCX 12) Morales explained her motivation this way:

Q And why was this memo drafted?

¹⁵ The distribution of the Company's no-solicitation rule she set in motion is dated June 4, 2013. (GCX 12)

A We did this because it was such a big concern to Casimiro that people were collecting signatures for whatever they were collecting them for. So I felt that this was the only thing that I could do to discourage whatever these petitions were that were out there.

Q Did Mr. Alvarez ask you to prepare this memo?

A He did not ask me to prepare this memo. He asked me to do something and never specified what the something was. So I said the only thing I can do maybe is put out a memo.

* * * * *

Q And what gave you that impression that Mr. Alvarez was concerned about these signatures?

A Because he sounded concerned to me. I mean, it was -- he -- what I got from it is that I needed to do something. And I don't know what the signatures were for. And I never did go out and ask what they were for. So my answer to that was -- and many times my answer is -- "Let's put out a memo and see if we can discourage the behavior."

Q And do you recall -- and, again, I know it's been a while. Do you recall what Mr. Alvarez told you during this meeting regarding the signatures?

A I don't remember exactly. Just that they were collecting signatures.

Q Okay. Would you have drafted this memorandum if Mr. Alvarez had not spoken with you?

A Probably not.

(2RT: 132-134) Based on the uncontradicted testimony showing Crew Rep Valenciano read the petition given him by Ruiz and Morales account described above, I discount the various claims made by union representatives who testified that they harbored a belief that the anti-Alvarez petition, drafted by Olvera and circulated with the aid of her associates, to be a union decertification petition. Moreover, Morales' account reflecting Alvarez' considerable concern over the solicitation occurring around this time tends to undercut his claims discussed below that he had a legitimate purpose for approaching and questioning some of the petition supporters.

Lorena Perez works on Crew 2 as a mushroom picker and a general laborer. She originally started working at the Company in 1998. Although Perez did not aid in the drafting of the Alvarez petition, she too felt dissatisfied with Alvarez so she obtained one of the Alvarez petition forms from the Olvera group and began soliciting other employees

to sign it.¹⁶ Perez first attempted to collect signatures during her lunch break. At the time, her crew rep, Susana Ramirez, was nearby, perhaps ten to twenty feet away. Perez said 10 or 11 employees signed the petition for her on this occasion. (2RT: 146-148)

The following day Crew Rep Ramirez approached Perez at her work area and told her that "they" wanted to speak with her. Ramirez then led Perez off to another room. When she entered, Alvarez and Secretary General Tovar were present. Ramirez remained in the room so the three union officers and Perez were present.¹⁷ Perez related what happened then:

Q And what happened once you arrived in the room?

A When I went into the room, Casimiro spoke with me in a -- rather brusquely, and he said, "Are you collecting signatures?"

And out of fear, I said no.

He said, "If you're collecting them, you're going to..." and he said, "Well, because you're alone, what are you going to do if you end up with no work?"

And so I told him, "Just because I'm a single mother does not give you the right to ... (humiliate me like that.)"¹⁸

(2RT: 149-150) Perez said she quit soliciting signatures soon thereafter that out of fear that Alvarez might arrange to have her discharged by the Company, or that he would not defend her if she did lose her job. (2RT: 160)

Julietta Reyes, a former ranch committee person and a former crew rep, observed Perez soliciting signatures in the lunchroom and in the parking lot later that day. When Reyes spoke with Perez, she learned that Alvarez asked Perez about the petition and had asked whether she was afraid of losing her job. Reyes said Perez appeared "very nervous and scared" at the time. Reyes later met with Ruiz and Perez after work. Reyes said that Perez and Ruiz talked about going to seek help at the ALRB's Salinas Regional Office. Reyes said she too quit soliciting signatures for the anti-Alvarez petition after learning

¹⁶ Perez said she received a copy of the Alvarez petition form from a retired employee named Olivia whose surname she could not remember. However, she acknowledged she met a few times at restaurants with Olvera and the others active in this petition drive. (2RT: 154-155)

¹⁷ Edith Ruiz recalled that Perez recounted to her during an afternoon telephone conversation that a foreman named Cipriano told her that Alvarez wanted to speak with her. (4RT: 23)

¹⁸ The material within the parenthesis represents Perez' correction to the interpretation provided during the course of her answer. The intervening discussion over the proper English interpretation of her answer in Spanish is omitted.

about Perez' experience with Alvarez that day. (3RT: 147-148) Ruiz confirmed that she made an after-hours appointment for Perez and her to meet with an agent at ALRB office after learning of what occurred between Alvarez and Perez that day.¹⁹ (4RT: 23)

Ramirez painted a much different picture of the Alvarez/Perez exchange. By her account, she along with Alvarez and Justo Tovar were talking outside the building where she worked when Perez emerged on her way to lunch. Ramirez claims that Perez approached and began speaking with Alvarez about her son's situation at the Company and, during the course of their exchange, Alvarez briefly inquired of Perez if she knew of any signature gathering. Purportedly, Perez replied that she knew of nothing such as that, but if she heard anything, she would let Alvarez know. By Ramirez' account, Alvarez said nothing further about signature gathering. (7RT: 46-49)

Justo Tovar also acknowledged being present when Alvarez spoke with to Perez. Unlike Ramirez however, Tovar made it clear that the Alvarez-Perez exchange did not result from a chance encounter. He testified:

Casimiro went to look for her to talk about some discipline issues with her son. And he also asked her about the signatures. But then after he asked her about the discipline issues with her son, she told him that her son was no longer working there. That her son was in jail. She said, my son, well, forget it, he's going to be there a year. And, so, Casimiro said, told her that he was there to help her with whatever he could help with regarding her son and his job.

(3RT (J Tovar): 125) Tovar denied that Alvarez spoke to Perez at all about a risk of discharge because she solicited signatures for a petition. (3RT: 113)

Alvarez admitted that he spoke with Perez the presence of Tovar and Ramirez questioning her about the signature solicitation among the Company's workers. He claimed that he went to speak with Perez about her son, Cesar, a Company whose disciplinary record "worried" him. Although he acknowledge that Perez started crying during their discussion, he took advantage of the moment to ask if she knew anything about workers collecting signatures. She told him that she did not. (1RT: 161)

¹⁹ Ruiz had the day off from work. She learned of the Alvarez-Perez exchange when Perez called her at home.

I find the accounts of these three union representatives concerning the Alvarez/Perez exchange irreconcilably inconsistent. By contrast, I find no basis for discounting Perez' story particularly where, as here, Reyes and Ruiz lend a degree of credible corroboration for her account with their testimony concerning her post-event demeanor and actions. Accordingly, I do not credit the accounts of Alvarez, Ramirez, and Tovar about this incident to the extent that their explanations are inconsistent with Perez' recollection of the event.

The Martinez Petition: Javier Martinez asserts that he encountered a rebuff by his union representatives similar to that claimed by Perez when he initiated his own short-lived petition drive seeking Alvarez' removal. Martinez started working at the Company in 1999. At the relevant time in 2013, he worked in the Packing Department along with three others. His principal duties involves unloading trucks at the receiving dock and warehousing arriving materials.

A female friend asked Martinez for help in petitioning to have Alvarez removed as their contract administrator and he agreed to help. To that end, Martinez prepared a petition in his own handwriting dated March 15, 2013, that stated simply "To change Casimiro as the representative of Monterey Mushrooms." (GCX: 11) Martinez signed it himself and, in his two or so days of solicitation effort, he succeeded in getting one other employee to sign. Others he claims to have approached chose not to sign, some supposedly out of a fear of discharge and others who simply decline to sign anything.

Ranch Committeeman and Packing Department Crew Rep Gerardo Leon called Alvarez to report that some of the department employees told him about Martinez circulating a petition in the department. Alvarez claimed that he did not know what the Martinez' petition concerned but he suspected that it might be a decertification petition and that concerned him. In Alvarez' mind, he had a right to investigate such matters. (1RT: 157)

According to Martinez, his supervisor approached him about one in the afternoon during his worktime and told him that Alvarez, Justo Tovar, and a couple of others wanted to speak with him outside. When he went outside, he saw Alvarez, Tovar, Leon

and Packing Department Crew Rep Juan Jesus Gonzales, and approached them. Martinez said that he never had so many union representatives come to speak with him all at once.

Martinez recalled that Alvarez did all the talking for this group. He began by asking Martinez why he was gathering signatures. Martinez said that Alvarez spoke with an angry tone of voice. Martinez answer Alvarez saying that he was doing so because a friend asked him to solicit the signatures for her. He said Alvarez next asked him for the name of his friend and where she worked but Martinez declined to provide him with that information. Martinez said it appeared his response made Alvarez even angrier. Alvarez, Martinez said, then told him "Well, tell me who it is because the thing is that I need to find out who she is because I need to tell her that they could fire her and then they can also fire you for collecting signatures." Still, Martinez stood his ground and refused to provide the information Alvarez requested.²⁰

With that, Martinez said Alvarez told him, "Stop gathering signatures. You can't do it during your break. You can't do it during your lunch hour. And you can't do it while you're at work. And you can't do it outside of work either." Martinez said Alvarez then turned to the others and said, "Make sure, watch him to make sure he doesn't collect any other signatures." Martinez believed Alvarez' assertion that he could be fired for soliciting at any time or place so he ceased doing so. (2RT: 92-97)

Alvarez admitted speaking to Martinez after learning about the workers' soliciting activities from Leon. More particularly, Alvarez admits that he asked Martinez directly if he had been soliciting signatures for a petition. He also acknowledged that he brought Tovar, Leon, and Gonzalez along as "witnesses" when he went to speak with Martinez. Beyond that, Alvarez contradicted every aspect of Martinez' account about the content of their discussion on that occasion. To begin, Alvarez said he spoke to Martinez during a break period rather than his work time. Next, Alvarez claimed that Martinez told him he

²⁰ Martinez felt he had given a solemn promise not to disclose the identity of his friend. On cross-examination, he said Alvarez may have pressed him as many as four times for her identity but he continued to refuse to identify her. Counsel for Respondent also pressed Martinez his friend's identity but he again stood his ground. Counsel wisely chose not to press for compulsory disclosure or sanctions. In my judgment, her identity lacks any critical quality for the case of either party beyond providing a slight degree of unneeded corroboration for Martinez' account.

knew nothing about a petition drive when asked if he engaged in soliciting signatures for a petition. Alvarez also denied that he told Martinez that he could be fired for soliciting or that he directed the other union representatives present to keep watch on Martinez' soliciting.

Justo Tovar acknowledged that he accompanied Alvarez when he went to speak to Martinez and that he heard from Leon that Martinez had been collecting signatures on a petition. Tovar said he accompanied Alvarez on that occasion in order to be a witness. In agreement with Alvarez, Tovar claimed that Martinez told the union representatives that he knew nothing about a petition going around. Tovar denied that the group of union representatives spoke to Martinez during his worktime, that Alvarez told Martinez to quit his soliciting activity, that Alvarez told the other union representatives to keep a watch on Martinez, or that Martinez said anything about a female friend. (3RT: 102-107)

Gerardo Leon, the ranch committeeman and crew rep who allegedly reported Martinez to Alvarez and Tovar in the first place, did not testify. Additionally, there is no evidence from any of the union agents present that Leon spoke up in any manner when Martinez allegedly denied knowing about any petition activity as Alvarez and Tovar claim. Given the role Leon purportedly played in motivating the Martinez inquiry, I find his apparent silence when they spoke to Martinez as well as at the hearing significant in resolving the credibility issue presented concerning this incident. More troubling is the obvious, evasive pivot to a grievance situation made by both Alvarez and Tovar when asked to explain the need for the presence of four union representatives on this occasion. By contrast, I find the account provided by Martinez had an internal consistency to it, both when I listened and watched him testify, and when I later carefully read his testimony. Apart from the two of the four union representatives present – three of whom it is claimed were there as witnesses – disputing Martinez' account, I have little basis to discredit that worker's persuasive testimony. Accordingly, to the extent that the testimony of Alvarez and Tovar conflicts with that of Martinez, I credit the latter.

2. The 2016 cases

Ayala Petition and Magaña's ALRB Charges: Vincent Pizano has been the crew rep for Crew 3 for 27 years. As a witness, he expressed views reflecting his ardent support for representation by the UFW and he projected his beliefs with an articulate voice, self-confident bearing, and an engaging personality. He also takes considerable pride in the improvements in the working conditions at the Company that he feels the UFW achieved for the workers over the years with its successive collective bargaining agreements.

However, some of his fellow crewmembers strongly object to what they perceive as his disrespectful treatment of the Crew 3 workers. Alma Ayala, for example, recalled that during a crew meeting, Pizano became upset and referred to her a "dog." She also remembered that he called another woman "crazy" and yet another something very ugly which she professed not to remember. On another occasion, Pizano allegedly called Ayala a "clown." Ayala spoke to Justo Tovar about Pizano's conduct on several occasions but failed to receive any form of redress she considered satisfactory.

Several Crew 3 workers, including Ayala, also believe that Pizano suffers serious conflicts of interest arising from two different situations. One perceived conflict involves his recent promotion by the Company to the newly established lead person position, which requires him to substitute for the foreperson during the frequent absences by the incumbent Crew 3 foreman. Pizano's detractors believe that service as a crew rep and as the leadperson are not compatible. The other perceived conflict concerns his alleged refusal to recuse himself as the crew rep when issues arise concerning his wife who also works on Crew 3. Several employees believe he displays undue favoritism toward his wife in these situations and feel resentment toward him for this reason.

In 2012, Pablo Mejia, Alma Ayala and others from Crew 3 circulated a petition seeking to replace Pizano as the crew rep for Crew 3. Although the petition gained majority support among the crewmembers, Alvarez rejected this petition because those leading the petition effort failed to provide "just cause" for removing Pizano. Mejia recalled Alvarez told him at first that he needed three letters providing a basis for

stripping Pizano of his crew rep position but after Mejia said he would get them, Alvarez told him he would not accept them because "it was personal."²¹ (5RT: 109)

Following the settlement of Case No. 2013-CL-002-SAL in early 2016 (GCX4: GC 013-018) and the reading of the Notice to Employees as required by that settlement as well as the question-and-answer sessions the ALRB staff conducted with the Company employees, some of the Crew 3 workers renewed the effort to replace Pizano.²² Alma Ayala prepared another petition seeking Pizano's replacement and, with help from some fellow crew members, circulated the petition throughout most other crewmembers.²³ Ultimately, 22 of the Crew 3 workers, approximately 70 percent, signed Ayala's 2016 petition. On one occasion when a group of Company workers went to the UFW office in Salinas, Ayala delivered the petition to the UFW's Salinas Regional Director, Lauro Barajas. (4RT: 105-112) As of the time of the hearing, the local officials have not acted to provide the Crew 3 members with an opportunity to select a new crew rep.

About a week after the signature-gathering effort began, Pizano called a crew meeting. However, he departed from the ordinary practice by arranging for the crew to meet in a separate room away from the work floor and by going from worker to worker to inform them of the meeting. He deliberately avoided telling Ayala, her sister Maria, Salvador Alvarez, who helped Ayala circulate the petition, Salvador Zuniga, Rosalba Ramirez, and Elvia Carrasco about the meeting he was about to hold. He justified the exclusion of these six workers from the main meeting by claiming that they frequently disrupted the crew meetings, and on this particular occasion, he wanted to pass along very important union information without their interruptions.

However, when the excluded workers found out about his plan to hold a meeting when they ask other leaving the work area where they were going. The excluded workers followed along to the meeting room but when Pizano noticed, he called out to them

²¹ Similarly, the UFW's brief suggests that Ayala's 2016 petition seeking to replace Pizano's may well have arisen from a personal conflict between Pizano and Ayala. (RB: 12)

²² These remedial steps took place on March 16 and 17, 2016.

²³ The petition provided simply "Signatures to Change the Representative of Crew 3." (GCX 16)

saying they could not attend that meeting, that he would meet with them separately. Several of the excluded group and a few of those invited to the meeting protested this unusual arrangement. Among the latter, Jose Luis Magaña, a worker who over the years had been a close, personal friend of both Casimiro Alvarez and Pizano, argued adamantly that all crewmembers must be permitted to attend the crew meetings. Despite these protests, Pizano remained resolute about excluding the six workers and went on with the meeting only after they left. Magaña said that Pizano briefly discussed the fact that the workers at Mushroom Farms, Inc., would be losing their UFW health benefit because they recently selected another union in the recent decertification election and then began discussing the petition to replace him as the crew representative.²⁴ (5RT: 23)

Pizano's persistence in conducting a segregated crew meeting either provoked Magaña to such a degree that he filed an ALRB unfair labor practice charge in Case No. 2016-CL-004-SAL or he did so because Ayala asked him to file the charge.²⁵ That charge alleges that the exclusion of particular workers from the crew meeting violated Labor Code § 1154(a)(1).

A couple of days after he filed the charge, Magaña received a visit at work from Alvarez and Tovar. Alvarez, who had the charge form in his hand, said to Magaña, "[L]ook, I want to know if this is your signature or if this is your son's." Magaña told him it was his signature. Alvarez then told Magaña that he had papers with him so that he could revoke his signature but Magaña responded saying he would not do that. The two continued talking about the crew's desire to replace Pizano until they seemingly came to a stalemate over the issue. According to Magaña, Alvarez finally said to him "with this signature you know that I can put you on the burn list." Although Magaña was not familiar with a "burn list," he interpreted Alvarez' remark as a threat. Alvarez ended

²⁴ Shortly afterward, the excluded workers complained about it to Ranch Committee Secretary General Justo Tovar. Tovar told them he would meet with the group on the following Monday. However, Tovar together with Alvarez apparently came to meet with them on Good Friday, March 25, 2016, during their work time. The group refused to meet purportedly because they were receiving premium holiday pay working that day and did not want to lose the money by stopping work at that time. (4RT: 120-122; 145-148)

²⁵ Despite Ayala's initial denial that she asked Magaña to file his initial charge, based on her subsequent dialogue with Respondent's counsel I do not discount that possibility. (4RT: 148)

this meeting by telling Magaña that they could talk about it later. (5RT: 30-32) Magaña then filed Case No. 2016-CL-006-SAL charging the burn-list remark violated 1154(a)(1).

UFW's Warning about Olvera and Others: Olvera said she joined a group of 20 to 25 Company's workers who went to the UFW office in Salinas "more or less in April" 2016 to seek new elections for the ranch committee and the crew reps. She said that the group sought to speak with Regional Director Barajas but they were told he was not there. However, they did speak with UFW agent Martin Alvarez before leaving.²⁶ (1RT: 74-76)

For his part, Casimiro Alvarez claimed that he received reports from several workers that Cerritos, Lopez, Olvera, and Ruiz had been visiting the homes of Company employees to discuss decertify the UFW at Monterey Mushrooms. Alvarez even claimed to have received reports from Company workers that Olvera's original petition to get him fired back in 2013 had as its unstated purpose the eventual decertification of the UFW at the Company. (1RT: 189-196)

Olvera adamantly denied that she ever intended to decertify the UFW at MMI or worked to that end. For a number of reasons, I harbor considerable skepticism about her disclaimers. Although she acknowledged knowing Cerritos, she attempted to give the impression that he was merely a person she greeted when they crossed paths. Throughout the events here, she maintained close contact with Edith Ruiz who openly admitted to sharing views similar to those of Jose Aguilar, the decertification petitioner in the Dole Berry North decertification case and to attending meetings of those with whom he associated. Further, I found Olvera's claim that she did not know how to go about decertifying a union quite disingenuous given the resource available to her in her own home. Martinez' disclosure that he had received a home visit by Olvera provides some support for the reports Alvarez received that she had been making house calls to other

²⁶ Alma Ayala also indicated that a similar number of employees went to the UFW office around this time to speak to the Regional Director Lauro Barajas about an election for crew reps. Whether Olvera accompanied the Ayala group or simply piggybacked on the dispute initiated by Ayala is not clear as neither identified the other as a part of their group. Moreover, Ayala said she and those with her eventually met with Barajas when they went to the UFW office whereas Olvera said her group only spoke with Martin Alvarez.

workers. Her professed innocent intention also struck me as inconsistent her 2014 campaign to solicit employees to resign their UFW membership, an equally sophisticated undertaking. Although she claimed the motive for her 2013 anti-Alvarez petition was merely a desire for better representation, its call for the UFW president to demand Alvarez's resignation struck me as unusual overkill where, as here, other UFW organizers who worked out of the Salinas office who could have replaced Alvarez as the MMI contract administrator. These and other lesser circumstances when considered against the background of her husband's significant involvement in the internal turmoil at the Salinas office of the UFW that began in 2013 and continues to date convinces me that Olvera attempted to hide the true extent of her anti-UFW activities from 2013 onward while testifying in this proceeding.

Regardless, the evidence shows that at some point in May 2016 Alvarez met with the crew representatives and instructed them to hold a crew meeting in short order to warn the employees that they should avoid meeting with or signing documents distributed by Cerritos, Lopez and Olvera. The crew representatives promptly complied with Alvarez' instruction. The various employee witnesses called to testify about this episode provided accounts that varied widely as to the persons included in the warning even though they all recalled uniformly asserted that their crew representative appeared to be reading a prepared statement. Alvarez' warning met with a variety of reactions.

Pablo Mejia, a Company employee for over 40 years who said he supports his union "100%," recalled his crew representative, Juan Carlos, read a written statement to the crew in May 2016 that said employees should not "trust Sandra" or "not to follow Sandra (Olvera) because we would lose a lot of benefits." (5RT: 99) Mejia equated this statement cautioning the workers to statements Alvarez himself made earlier to a group of workers at a lunchroom meeting. During that meeting, according to Mejia, Alvarez sought to identify those workers present with friends or relatives working at MFI. Alvarez explained that some workers a MFI sought to remove the UFW and he wanted the MMI workers to urge their friends and relatives working at MFI to stay with the UFW because they could lose many benefits if they did not. (5RT: 102-105)

Erasto Leon, another long terms MMI worker who does not “agree with what the union is doing,” recalled that Esteban Tovar, his crew rep, held a meeting in 2016 at which he had a written message that he ask one of the other workers to read to the crew. The message, according to Leon, said that the workers should not “believe this Ms. Ruiz, and Sandra (Olvera), Cerritos, (and) Sandra’s husband because they wanted to take away the benefits, they wanted to remove the union.”²⁷ (5RT: 167) He said the statement added that the persons named “wanted to remove the union” and urged the workers not to believe “her” because “they’ll take away your benefits.” This made Leon angry because he felt it was an attempt by the union to pit one group against another.

Octavio Hernandez accompanied the Olvera group to the UFW’s office in 2016 when she went there seeking elections to select new ranch committee members and new crew reps. Hernandez recalled that Justo Tovar held a meeting with Crew 7 where he works sometime after his visit to the UFW office. At this crew meeting, Tovar read a statement warning workers to be careful of Sandra Olvera and “another woman,” whose name escaped him, because they wanted to get another union. Hernandez argued at length with Tovar, claiming Olvera just wanted to change representatives, not unions.

Maria Bucio Lopez remembered a meeting in 2016 at which Juan Carlos, her crew rep, read a statement to the crew saying that Olvera, her husband, and Cerritos were going door-to-door collecting encouraging people to change unions. The statement, she claimed, cautioned the crewmembers against opening their doors to these persons or paying attention to them as they risk losing benefits by changing unions. (6RT: 24-25)

3. Analysis and Conclusions

Labor Code § 1154(a)(1) provides that it is an unfair labor practice for a labor organization to restrain or coerce:

(1) Agricultural employees in the exercise of the rights guaranteed in Section 1152. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

²⁷ Although Octavio Hernandez remembered his crew rep included “another woman” in the warning, Leon is the only employee witness who specifically recalled that Edith Ruiz was included in the union’s warning.

In pertinent part, Labor Code § 1152 provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and *shall also have the right to refrain from any or all of such activities . . .*” [Emphasis added]

Both provisions track their federal counterparts found in NLRA §§ 7 and 8(b)(1)(A).

Often the claim is made that Congress sought to impose the *same* restrictions upon unions that the Wagner Act imposed on employers when it added § 8(b)(1)(A) to the NLRA in 1947. However, it should not be assumed that the analytical approach to the restraint on employer conduct found in Labor Code § 1153(1) and NLRA 8(a)(1), and the restraint on union conduct found in Labor Code § 1154(a)(1) and NLRA 8(b)(1)(A) are identical. The distinctly different roles played by employers and unions in the workplace context make a significant difference when analyzing claims of interference with employee protected activity by employers and unions. (See e.g., *Randell Warehouse of Arizona, Inc.* (1999) 328 NLRB 1034) Where, as here, the General Counsel’s allegation all deal with the UFW’s reaction to the activities by dissident members of the bargaining unit involved, the analysis used in 1153(1) cases and 1154(a)(1) cases do become comparable because of the adversarial relationship arising in those situations. The conduct that the General Counsel alleges as unlawful all arises from employee activity seeking changes in the union or unit leadership, or in Magaña’s case, from an ALRB charge by a worker generally supportive of the union leadership seeking to uphold a perceived principle related to worker solidarity. In this context, I find the all of this activity protected by section 1152. (See *Retail Clerks, Locals 698 and 298* (1966) 160 NLRB 709 (finding unlawful interrogation and surveillance of dissident worker activity seeking an NLRB union deauthorization vote.)

In her brief the General Counsel argues that the evidence in this case supports findings that Respondent UFW violated Labor Code § 1154(a)(1) by threatening workers for their protected activities, engaging in surveillance of their activities, coercively interrogating their activities, and by unlawfully restraining and coercing worker when it

excluded a few from a crew meeting and when it “shunned and ostracized” Olvera. Respondent UFW argues that it did not violate the Act in any manner. Some of its arguments are based on witness credibility while its arguments concerning the exclusion of workers from a crew meeting and the warning to workers about Olvera are built its claim that it can rightfully exclude disruptive workers in an effort to conduct orderly meetings, and a right to free speech if it lacks threats or promises of benefit.

In *Office and Professional Employees International Union Local 251, AFL-CIO (Sandia Corporation)* (2000) 331 NLRB 1417 (the *Sandia* case), the NLRB overruled a number of its prior cases and established the following standard for use in deciding 8(b)(1)(A) cases:

[I]nternal union discipline may give rise to a violation only if the union’s conduct: (1) affects the employment relationship, (2) impairs access to the Board’s processes, (3) pertains to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or (4) otherwise impairs policies imbedded in the Act.

(See also *Laborers International Union of North America, Local 91* (2017) 365 NLRB No. 28, slip op. 1.) Although the cases here do not technically involve a form of formal “internal union discipline” as such, no rational basis exists for finding other forms of censure by union agents against employees for engaging in disfavored protected activity should be judged by a different standard. In deciding whether a violation of the basic prohibition against union conduct toward employees found in § 8(b)(1)(A) has occurred, the NLRB balances the employees’ Section 7 rights against the legitimacy of the union interest purportedly at issue. (*Service Employees Local 254 (Brandeis University)* (2000) 332 NLRB 1118, 1122 (*Local 254 (Brandies)*))

If the conduct at issue involves a question as to whether a union agent’s oral or written statement constitutes a threat, the ALRB and the NLRB apply an objective test to determine if it violates 1154(a)(1) or 8(b)(1)(A), i.e., whether a reasonable person would interpret what was said or written as a threat. (*Consolidated Bus Transit, Inc.* (2007) 350 NLRB 1064, 1066, enfd. 577 F.3d 467 (2nd Cir. 2009).) Under an objective test, a union agent’s subjective intent as well as the subjective state of mind of any employee who

heard or read the statement is not determinative. (*T. Ito & Sons Farms* 11 ALRB No. 36; *Smithers Tire* (1992) 308 NLRB 72; *Steelworkers Local 1397 (U.S. Steel Corp.)* (1979) 240 NLRB 848, 849.)

The Alleged Threats and Interrogations: Because instances of interrogation and threats occurred during the same situation, I have lumped these two categories together. Three situations arose from Case No. 2013-CL-002-SAL. The fourth arises from Magaña's evidence presented in support of Case No. 2016-CL-006-SAL.

First, I find in agreement with the General Counsel that Ranch Committeeman Contreras told workers at a crew meeting he conducted that the Company would fire them if it found out about the petition going around. In my judgment the record warrants the inference that Contreras deliberately couched his statement in terms of what the Company would do in order to raise the specter that employees risk losing their jobs by being involved with the petition. The lack of any instruction to employees about the Company's no-solicitation rule accompanied by a caution about the times and places employees might risk losing their job over the petitioning activity precludes any finding that Contreras uttered this remark for any legitimate purpose. Accordingly, I find this Contreras statement violates Labor Code § 1154(a)(1), as alleged.

Next, I find that Alvarez unlawfully interrogated and threatened Leona Perez in the presence of Justo Tovar and Crew Rep Ramirez. Crediting Perez as I have concerning this incident, I find that Alvarez' brusque questioning of Perez about her knowledge of the petition seeking his removal during her work time isolated in a separate room away from all other employees and in the presence of only two other union agents was coercive and intimidating. Her denial to Alvarez that she had heard anything about the petition in circulation at the time reinforces my conclusion concerning the coercive nature of this questioning.²⁸ Accordingly, I find he violated the Act, as alleged, by doing so. Similarly, I find Alvarez's rhetorical question that followed immediately asking

²⁸ Arguably, the questioning of Martinez failed seven of the eight *Bourne* tests commonly used to evaluate coercive interrogation. See e.g. *Bourne v NLRB* (2nd Cir. 1964) 332 F.2d 47.

Perez what she would do as a single mother if she lost her job constitutes, in this context, an unlawful threat as it unmistakably implied that he either might arrange her discharge with MMI or would not defend her if she were discharged. Accordingly, I conclude Alvarez also violated the Act, as alleged, by uttering this threatening statement.

Third, for reasons similar to those considered in Perez' situation, I also find that Alvarez's interrogation of Javier Martinez also violated the Act. Again, based on the evidence I have credited, the questioning of this employee about his own anti-Alvarez petition occurred after being called from work time to an isolated location outdoors away from other employees and in a harsh manner. As with the Perez situation, Martinez denied that he knowledge of his own petitioning activity. As I find this evidence sufficient to establish the coercive character of the interrogation Alvarez' inquiry into Martinez' petitioning activities, I have concluded that it also violated the Act, as alleged.

And fourth, I find that Alvarez unlawfully threatened Magaña by telling this worker that he could be put on a "burn list" because he signed the ALRB charge in Case No. 2016-CL-004-SAL. Magaña reasonably interpreted this remark as an attempt to intimidate him for filing an ALRB charge in defense of the employees Pizano excluded from a crew meeting conducted to address Ayala's petition even though I find below that this charge lacks merit. Accordingly, I conclude that this post-settlement threat violated the Act, and justified the Regional Director acting to void the Settlement Agreement.

Surveillance: The General Counsel begins its argument about surveillance with the claim that Tovar, Contreras, and Pizano, all ranch committee members, "followed and watched Sandra Olvera and other workers collecting signatures and attempted to eavesdrop on *her* conversations. (GCB: 30) To the degree that the General Counsel believes that the record supports a finding that the UFW engaged in unlawful surveillance of Olvera's activities, I disagree. To be sure, Olvera harbored a personal belief that union agents were watching her but I find the evidence insufficient to find surveillance as to Olvera. Instead, the General Counsel appears to have combined Olvera's vague testimony with admissions unspecific as to individuals by these three union officials that

they saw some of the 2013 petition activity taking place in at work and concluded that they were engaged in unlawful surveillance of Olvera's activities. Accordingly, I find this type of subjective evidence insufficient to conclude that these union officials were engaged in surveillance of Olvera's petition activity.

Ruiz is another matter. Her testimony providing specific, graphic conduct by Tovar excessive patrolling the parking lot along with Pizano and his wife hovering close by while she attempted to solicit employees after work at this location forecloses the existence of any other legitimate purpose for their conduct. Accordingly, I find the evidence sufficient to conclude that Tovar and Pizano engaged in unlawful surveillance of Ruiz' protected activities in the Company parking lot in 2013.

The First Amended Complaint in Case No. 2013-CL-002-SAL alleges that Respondent UFW engaged in unlawful surveillance of Lorena Perez and Javier Martinez' protected solicitation activity. I find the evidence insufficient to conclude Respondent's agents actually engaged in unlawful surveillance of the protected activities in which either of these employees engaged. However, I find that Alvarez' admonition to the other three union officials present while Martinez was still present during his interrogation to keep watch on Martinez to make sure he did not collect any signatures, while not actual surveillance, was none the less unlawful. This statement alone clearly served to create the impression with Martinez that his solicitation activity would be kept under surveillance in the future. Whether it was, or not, is immaterial. By signaling an anxiety concerning his protected activity to Martinez, Alvarez' message would tend to inhibit such activity. (NLRB v Prince Macaroni, Co. (1st Cir. 1964) 329 F.2d 803) Accordingly, for this reason, I conclude that Alvarez' "watch out" statement in Martinez' presence violated the Act.

Other Alleged Restraint: The General Counsel argues that the UFW violated the Act by Pizano's conduct in excluding Ayala and a few others from the meeting he conducted largely in response to her 2016 petition seeking his ouster as crew rep. That matter arises out of Case No. 2016-CL-004-SAL, filed by Magaña. The UFW argues that

this exclusion was justified because the particular individuals had a history of disrupting crew meetings he conducted. That may well be but regardless, I conclude that the proviso to Labor Code § 1154(a)(1) serves to insulate unions from government intrusion into the operation of their internal affairs the degree sought here. In my judgment, fundamental construction given to the comparable NLRA § 8(b)(1)(A) proviso by U.S. Supreme Court in the *Scofield* decision²⁹ included a union's right to adopt reasonable rules designed to advance legitimate union objectives.

The crew meetings at MMI are an essential staple for the communication of union policy and information to bargaining unit employees, a core objective of the ALRA. Plainly, the UFW's ability to conduct such meetings, the vast majority of which occur on work time, has been a subject of the collective-bargaining process between the union and employer, and represent a highly valued device for the UFW to communicate with the bargaining unit employees it represents. The General Counsel attempted to adduce any evidence suggesting that the UFW's arrangement with MMI ever included any content-based limits on this negotiated privilege. Likewise, the General Counsel points to no provision in the UFW's organic documents that would require all meetings open to some member be open to all and I find no such requirement.

The ad hoc arrangement Pizano devised for the crew meeting under scrutiny obviously sought to avoid any disruption by the strong proponents of his replacement as crew representative. I grant that. Self-serving as it obviously was, I do not find it so far out of bounds as to trample on protected employee rights especially where, as here, no evidence reflects any independent union interference with this employee initiated campaign. If one assumes that *Scofield* protects a union's right to establish rules for meetings with the employees it represents, as I do, I think more is required to establish a violation than merely a single ad hoc meeting akin to this one.

²⁹ *Scofield v. NLRB* (1969) 394 U.S. 423.

Pizano's meeting arrangement included an offer to meet with him separately where they could air their views. The excluded group not only refused his arrangement, they refused a subsequent offer to meet about the issue with the Ranch Committee Secretary General and Alvarez. Even assuming they may have had a reasonable basis for rejecting this specific meeting, no evidence shows they sought another occasion to meet. Based on the foregoing, I conclude that the UFW did not violate the Act as alleged in this case. Accordingly, my order recommends dismissal of Case No. 2016-CL-004-SAL.

Next, the General Counsel argues the 2016 crew meetings at which the UFW agents cautioned workers not to have dealings with Olvera, Lopez, Cerritos, and perhaps Ruiz sought to shame and ostracize Olvera. Even if so, I find in agreement with the UFW this allegation implicates the "free speech" provision in the Act and that the General Counsel failed to prove that its agents said anything that removed their admonitions about Olvera that would remove from the Act's free speech protection.³⁰

In effect, the union claims its warning amounted to a matter of self-defense, that it had a right to respond to a long series of actions on the part of Olvera and her allies. As I concluded above, Olvera convinced me that she sought to understate all that she had done in opposition to the UFW at MMI. The Union obviously knew of many and I find it reasonable cause to believe there was more, some on going at the time of the warning. This is not to say that Olvera had no right to engage in those activities. However, the Act does not require a union or its agents to stand by idly without defending itself while dissident members of the bargaining unit seek its destruction. All the Act requires is that a union make no threats or promises of benefit in its own self-defense. (See *Abatti Farms, Inc. v. ALRB* (1980) 107 Cal.App.3d 317 and *Merrill Farms v. ALRB* (1980) 113 Cal.App.3d 176 (construing the application of Labor Code § 1155 in comparable situations involving employer conduct))

³⁰ The Act's free speech provision is set forth in Labor Code § 1155 which provides:

The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit.

Additionally, in the final analysis the entire basis for the conclusion that the UFW sought to shame and ostracize Olvera rests entirely on her own subjective perceptions, which are insufficient to sustain a violation of section 1154(a)(1). The legitimate purpose for warning workers to avoid Olvera and her allies against their efforts to persuade them away from the UFW rested essentially on its effort to “protect the contract,” a phrase used by several witnesses, including some who were not union agents. In *Service Employees Local 254 (Brandeis University)*, *supra*, the NLRB held that the union there did not violate the NLRA by removing a unit steward from his position because of his dissident activities. I conclude that the UFW’s threat-and-promise-free warning to the MMI workers about the activities of Olvera and her allies amount to a substantially lesser response to dissident employee activity than that found in the *Local 254* case. Accordingly, my order recommends dismissal of Case No. 2016-CL-007-SAL.

CONCLUSIONS OF LAW

Respondent, a labor organization within the meaning of Labor Code § 1140.4(f), engaged in unfair labor practices within the meaning of Labor Code § 1154(a)(1) by:

1. Threatening an agricultural employee within the meaning of Labor Code § 1140.4(b) (hereafter employee(s)), in order to restrain him from filing an unfair labor practice with the Agricultural Labor Relations Board;
2. Coercively interrogating employees about their activities protected by Labor Code § 1152;
3. Engaging in surveillance of the activities by employees that are protected by Labor Code § 1152;
4. Creating the impression of that the activities of employees that are protected by Labor de § 1152 will be kept under surveillance;
5. General Counsel failed to prove that Respondent engaged in any further unfair labor practices.

REMEDY

Having concluded that Respondent UFW engaged in certain unfair labor practices, the recommended order requires that it cease and desist therefrom and take certain affirmative actions designed to remedy those violations.

Pursuant to a direction in my February 7, 2017, Prehearing Conference Order, the General Counsel filed a Consolidated Request for Relief dated February 14. In her consolidated request, the General Counsel detailed the affirmative relief sought:

1. Provide ALRB agents access to all of the UFW's offices within 90 days of the date of the Order, to read the Notice to all of the UFW's organizers in the Salinas Region and inform them of Respondent's violation of the Act and the agricultural employees' rights under the Act.
2. Provide for UFW Regional Director, Lauro Barajas, to read the Notice to all of the agricultural employees of Monterey Mushrooms within 90 day of the date of the Order, or as soon thereafter as peak employment occurs, and inform them of Respondent's violation(s) of the Act and the agricultural employees' rights under the Act. The Notice shall include a clear and explicit repudiation of UFW agent's assertions that Sandra Olvera attacked workers' benefits and harmed the union contract. The Notice must also explicitly state that it is within worker's rights to speak to and otherwise engage Ms. Olvera without fear of reprisal. The UFW will reimburse Monterey Mushrooms for the time spent conducting the reading of the Notice and a subsequent question and answer period. If Monterey Mushrooms does not allow ALRB access to the property to conduct the noticing during work time, as an alternative, the UFW will be required to pay for fifteen (15) commercial radio time slots to be aired at a time selected by the General Counsel to reach a maximum number of agricultural workers to provide them notice via radio of the charge, the Board Order and agricultural employees' rights.
3. Provide for ALRB agents to post the Notice within 90 days of the Order on all UFW bulletin boards. The Notice shall remain posted for six months. Provide the ALRB stamped envelopes addressed to all UFW organizers that worked for the UFW at any time from January 1, 2013 through December 31, 2013 and from March 1, 2016 through the present so that a copy of the Notice can be mailed to them.
4. Provide to the ALRB, within 90 days of the Order, with stamped envelopes addressed to all Monterey Mushrooms agricultural employees that worked for Monterey Mushrooms at any time from January 1, 2013 through December 31,

2013 and from March 1, 2016 through the present so that a copy of the Notice can be mailed to them.

5. Require the UFW to post a copy of the Notice on any social media account through which the UFW communicates with agricultural employee members beginning no later than 30 days after the date of the Order. The Notice shall remain posted on the UFW's social media accounts for a period of six months.

6. Require the UFW to post a copy of the Notice on any website through which the UFW communicates with agricultural employee members beginning no later than 30 days from the date of the Order. The Notice shall remain on the UFW's website for a period of six months.

7. Require all supervisory personnel who work for the UFW in the Salinas Region, including Contract Administrator Casimiro Alvarez, Salinas Regional Director Lauro Barajas, UFW Vice President Armando Elenes and/or their successors, to attend a training regarding workers' rights under the Act, conducted by ALRB personnel no later than 90 days from the date of the Order.

8. Require the UFW to appoint a second contact person, besides Casimiro Alvarez, who is empowered by the UFW to address questions, concerns, complaints and grievances about the UFW and/or their employment at Monterey Mushrooms no later than 15 days from the date of the Order.

9. Require the UFW to notify the Monterey Mushrooms employees about the appointment and role of the second UFW representative (as provided above) within 20 days from the date of the Order.

10. Provide ALRB agents access to ensure compliance with the Order.

I reject the first request seeking a reading of the notice to the UFW organizers on the ground that the basic purpose of the notice is to inform the agricultural employees, not union organizers, of the outcome in the proceeding and inform them of their rights. No justification has been provided for *requiring* the reading this notice to the UFW's organizers and no precedent for this requirement has been provided. In view of the failure to prove the underlying allegation, I find the portion of the second remedial request above addressing Sandra Olvera unwarranted. As for the mailing notice requirement contained in my recommended order, the Regional Director shall have discretion to decide whether the UFW must provide stamped and addressed envelopes to

the Regional Office for mailing or whether some other means of monitoring the mailing requirement will suffice to ensure compliance with this mailing requirement. The posting on the UFW's social media and web sites is denied as unwarranted in view of the other means of notifying the employees involved. The seventh request providing for educational training is also denied. The eighth and ninth remedial requests are well beyond remedies the Board has ordered in the past and arguably beyond the Board's authority in view of the proviso to Labor Code § 1154(a)(1). Furthermore, any such requirement seeks an unjustifiable modification of the collective bargaining agreement between the UFW and MMI. Accordingly, requests eight and nine are denied for those reasons. The tenth request is granted as to the posting required at the UFW's Salinas Regional Office.

The recommended order below provides for a standard 60-day notice-posting period. If the employer permits a notice reading to employees on its premises, that reading must be made by either the UFW's Salinas Regional Director or its contract administrator assigned to the MMI bargaining unit.

Without diminishing the seriousness of the violations that occurred here, these cases, even when considered together, are not as egregious or widespread as to require the kind of extraordinary relief sought by the General Counsel. The violations in Case No. 2013-CL-002-SAL are widely spaced over the span of approximately a month or, at best, two. The General Counsel's argument that the 2013 violations stifled the protected activities by the employees lacks the support from the record evidence. On the contrary, the evidence shows that the dissident employees voluntarily chose not to send their anti-Alvarez petition to the UFW president but soon thereafter circulated another petition that was sent to the UFW president complaining of alleged transgressions by Contreras. Both petitions were circulated in the same general period but there is no evidence of unlawful conduct connected to the circulation of the Contreras petition. Moreover, the union-membership resignation campaign many of these same dissident workers promoted in 2014, arguably an activity far more damaging to the union than the anti-Alvarez or Contreras petitions combined, apparently drew no type of unlawful retaliation from the

paid union staff, the ranch committee members, or the crew representatives. To be sure, a few violations occurred in connection with their anti-Alvarez activities but they are far from a scale ever characterized by either the ALRB or the NLRB as so flagrant or extensive as to warrant the kind of extraordinary remedial action sought here. In addition, the single violation I have found resulting from the 2016 events under scrutiny here amounted to a one-time affair affecting a single employee who, from all that is known, had no connection whatever to the 2013 dissident activities. For these reasons, I find no need for the extraordinary relief the General Counsel seeks.³¹

The recommended order provides for a single reading in two stages with a question and answer period at each. This requirement is grounded on the record evidence indicating that on each workday at least two of the Company's harvesting crews have the day off. Whether a unique scheduling process controlled by the employer would cause the absence of workers in other departments during the regular Monday through Friday workweek is unknown. However, as even this built-in scheduling scheme for the harvesters would result in the absence of a number of workers on any day the General Counsel and the union might arrange with the employer for the notice reading and the question time, the recommended order provides for a notice reading and question time on two separate occasions. The first reading and question time will be for those employees regularly scheduled to work on the day chosen. The second reading and question time will be limited to that group of workers scheduled off work by the employer on the day of the original reading. The UFW must compensate employees for worktime lost to attend the notice reading followed by the question and answer period.

Based on these findings of fact, conclusions of law, and the entire record in this matter, I hereby issue the following recommended:

³¹This is not my first encounter with startling remedial requests in the General Counsel's complaints. Unorthodox remedial proposals, untethered from established ALRA precedent and unaccompanied by rational policy arguments providing a basis for their adoption, become easy targets for bias claims by respondents and forage for reviewing courts sensitive to arbitrary and punitive actions by administrative agencies.

ORDER

Pursuant to Labor Code section 1160.3, Respondent, United Farm Workers of America (UFW), its officers, agents, and representatives shall:

1. Cease and desist from:

(a) Threatening employees for filing unfair labor practice charges with the Agricultural Labor Relations Board, or for engaging in other activities protected by section 1152 of the Agricultural Labor Relations Act (Act), including activities seeking to select different union representatives.

(b) Coercively interrogating employees about their activities protected under section 1152 of the Act, including activities seeking to select different union representatives.

(c) Engaging in surveillance of the activities by employees protected under section 1152 of the Act, including activities seeking to select different union representatives.

(d) Creating the impression that its agents or representatives will engage in surveillance of activities by employees protected under section 1152 of the Act, including activities seeking to select different union representatives.

(e) In any like or related manner restraining or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

2. Take the following affirmative actions that are deemed necessary to effectuate the policies of the Act:

(a) After its translation by the ALRB into all appropriate languages, post signed copies of the attached Notice to Agricultural Employees (Notice) at the Salinas Regional Office of the UFW for a period of 60 consecutive days at locations where notices to workers who visit that office are normally posted, exercise due care to replace any Notice which has been altered, defaced, covered or removed, and grant ALRB agents access to that location to ensure compliance with this requirement;

(b) Within 30 days of the date of a final order in this proceeding, in a manner directed by the ALRB regional director, mail copies of the Notice in all appropriate

languages to the last known address of all bargaining unit employees who worked at Monterey Mushrooms, Inc. (MMI), at any time since April 10, 2013.

(c) Cooperate with the ALRB Regional Director in arranging with MMI to conduct two meetings of current MMI bargaining unit employees as specified in the Remedy section, above, during worktime compensated by the UFW at which a UFW official will read the Notice to the employees followed by a period for ALRB agents to answer employee questions concerning this matter and their rights under the Act in the absence of any paid UFW official or any owner, manager, supervisor, or foreperson employed by MMI.

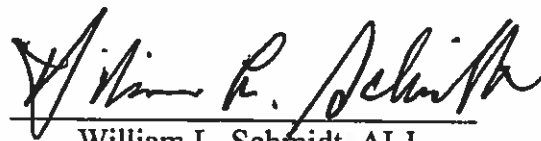
(d) Upon request, sign copies of the Notice, in whatever languages specified, and promptly transmit them to the ALRB Regional Director in Salinas for use in the event MMI chooses to post the Notice on its premises where the bargaining unit employees work.

(e) Provide a copy of the Notice to each agricultural employee hired to work in the Monterey Mushrooms bargaining unit during the twelve-month period following the issuance of a final order in this matter.

(f) Notify the ALRB Regional Director in writing, within thirty days after the date of the final order in this matter, of the steps Respondent UFW has taken to comply with the terms of that order and, upon request, notify the Regional Director periodically in writing of all further actions taken to comply with the terms of that order.

IT IS FURTHER ORDERED that all other allegations in the complaints in this consolidated proceeding found without merit be and hereby are DISMISSED.

Dated: August 4, 2017.


William L. Schmidt, ALJ
Agricultural Labor Relations Board

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating unfair labor practice charges filed in the Salinas Regional Office of the Agricultural Labor Relations Board (ALRB), the Regional Director, on behalf of the General Counsel of the ALRB, issued a complaint alleging that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the ALRB found that we had violated the Agricultural Labor Relations Act (Act) by threatening an employee for filing a charge with the ALRB, coercively questioning employees about their activities protected by the Act, and by engaging in surveillance and giving the impression that we would engage in surveillance of employee activities protected by the Act. Because it found we did those things in violation of the Act, the ALRB has ordered us to post and publish this Notice to you.

The Agricultural Labor Relations Act is a law giving California farm workers these rights:

1. To organize themselves;
2. To form, join or help a labor organization or bargaining representative;
3. To vote in a secret ballot election to choose or reject a union at work;
4. To bargain with their employer about wages and working conditions through a union chosen by a majority of the employees and certified by the ALRB;
5. To act together with other workers to help and protect one another; and
6. To decide that they do not want to do any or all of these things.

Because you have these rights, we promise that:

WE WILL NOT threaten you in order to restrain you from engaging in activities protected by the Agricultural Labor Relations Act (Act), including your right to file an unfair labor practice charge with the Agricultural Labor Relations Board, or your efforts seeking to change the union representatives within your present union.

WE WILL NOT question you in a place or a way that makes you fearful of engaging in activities protected by the Act, including your efforts seeking to change the union representatives within your present union.

WE WILL NOT snoop on your activities protected by the Act, including your efforts seeking to change the union representatives within your present union.

WE WILL NOT say or do anything to make you believe we are snooping on your activities protected by the Act, including your efforts seeking to change the union representatives within your present union.

WE WILL NOT in any like or related manner coerce or restrain you from engaging in activities protected the Act.

DATED: _____
AMERICA

UNITED FARM WORKERS OF

By: _____
(Representative) (Title)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. One office is located at 342 Pajaro Street, Salinas, California. The telephone number is (831) 769-8031.

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
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

UNITED FARM WORKERS
OF AMERICA,

Respondent,

and

SANDRA OLVERA,

and

JOSE LUIS MAGAÑA,

Charging Parties.

Case Nos.: 2013-CL-002-SAL
2016-CL-004-SAL
2016-CL-006-SAL
2016-CL-007-SAL

**ERRATA TO ADMINISTRATIVE
LAW JUDGE DECISION AND
RECOMMENDED ORDER**

Make the following corrections to my Administrative Law Judge Decision and Recommended Order dated August 4, 2017.

- P. 2, 1st full paragraph, 2nd line: Insert "the" between "that" and "UFW".
- P. 4, 2nd full paragraph, 3rd line: Insert "conduct" after "alleged".
- P. 5, 1st full paragraph, 1st line: Delete "The".
- P. 5, 1st full paragraph, 2nd line: Change "670" to "660".
- P. 5, 1st full paragraph, 3rd and 4th lines: Change "Oak" to "Oaks."
- P. 5, 2nd full paragraph, 8th line: Insert "his" after "assumed".
- P. 6, 1st full paragraph, 1st line: Insert "as" after "figure".
- P. 7, 1st full paragraph, 2nd line: Replace "the" with "in".
- P. 9, 1st full paragraph, 9th line: Insert a comma after "d" and delete "of".
- P. 9, Replace "nee" with "née" at 1st full paragraph, line 10, and 2nd full paragraph, line 5.
- P. 10, 2nd line of fn. 9: Replace "be" with "been."
- P. 11, 2nd line: Insert "minutes" after "15".
- P. 11, 1st full paragraph, 2nd line: Delete "and".
- P. 11, 1st full paragraph, 3rd line: Delete "at".

- P. 13, 1st line: Change “member” to “members”.
- P. 13, 1st full paragraph, line 7: Insert “by” after “followed”.
- P. 13, 1st full paragraph, line 10: Change “if” to “of”.
- P. 14, 1st full paragraph, line 8: Delete “in this” appearing before “circulated”.
- P. 15, 3rd line: Insert “to” before “UFW”.
- P. 15, 4th line: Replace “the” with “and they” between “occurred” and “form”.
- P. 15, fn. 10, 1st line: Delete “that” appearing before “Cerritos”.
- P. 16, 3rd line: Insert “but she” following “Valenciano”.
- P. 17, 1st full paragraph, 3rd line: Delete “to be”.
- P. 20, last paragraph, 1st and 2nd lines: Change “Ramirez questioning” to “Ramirez, and questioned”.
- P. 20, last paragraph, 3rd line: Insert “employee” after “Company”.
- P. 21, 2nd paragraph, 2nd line: Replace “claimed” with “described”.
- P. 22, 1st full paragraph, 3rd line: Replace “answer” with “answered”.
- P. 22, fn. 20, 3rd line: Insert “for” after “Martinez”.
- P. 24, 2nd paragraph, 3rd line: Insert “as” after “her”.
- P. 25, last paragraph, 1st line: Delete “when”.
- P. 25, last paragraph, 2nd line: Change “other” to “others”.
- P. 27, 2nd full paragraph, 3rd line: Change “decertify” to “decertifying”.
- P. 29, 3rd paragraph: Align left to conform formatting.
- P. 29, 3rd paragraph, 3rd line: Delete “collecting”.
- P. 30, last line: Insert “workers about” following “interrogating” and replace “worker” with “workers” after “coercing”.
- P. 32, fn. 28: Change “Martinez” to “Perez”.
- P. 33, 1st full paragraph: Delete the next to last sentence.
- P. 33, 1st full paragraph, last sentence: Insert “by” before “Alvarez,” replace the apostrophe after “Alvarez” with a comma, and delete “inquiry into Martinez’ petitioning activities,”.
- P. 34, 1st full paragraph, 2nd line: Change “Tovar” to “Tovar’s” and insert “of” after “patrolling”.
- P. 34, 2nd full paragraph, 12th line: Italicize case name in the case citation.
- P. 35, 1st full paragraph, 6th line: Insert “never” before “attempted”.
- P. 36, 2nd paragraph, 4th line: Insert “that” after “UFW”.

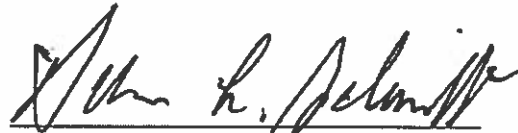
P. 36, 2nd paragraph, last line: Delete “that would remove” following “Olvera”.

P. 37, Conclusion of Law No. 4: Delete “of” following “impression” and spell out “Code”.

P. 40, end of 6th line: Replace “Boards” with “Board’s”.

P. ii, Notice: Correct formatting of the UFW’s full name.

Dated: August 15, 2017.


William L. Schmidt, ALJ
Agricultural Labor Relations Board