Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

LOUIS CARIC & SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 75-CE-39-F 4 ALRB No. 108

DECISION AND ORDER

On June 17, 1977, Administrative Law Officer (ALO) Jennie Rhine issued her attached Decision. Thereafter, the General Counsel and the Respondent each filed exceptions and a supporting brief.

Pursuant to the provisions of Labor Code Section 1146,[1/] the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[2/] and conclusions of the ALO as modified herein, and to adopt her recommended remedial Order with modifications.

[1/] All section references herein are to the Labor Code.

[2/] Respondent's and the General Counsel's exceptions relate in part to credibility resolutions which the ALO based upon demeanor. In the absence of clear error, we will not disturb such resolutions. Adam Dairy dba Ranches Dos Rios, 4 ALRB No. 24 (1977); El Paso Natural Gas Co., 193 NLRB 333, 78 LRRM 1250 (1971); Standard Dry Wall Products, Inc., 91 NLRB 544, 26 LRRM 1531 (1950). We have reviewed the record and find the ALO's credibility resolutions are supported by the record as a whole.

Respondent excepts to the ALO's conclusion that supervisor Eliseo Casabar instructed employees not to sign union authorization cards, as alleged in Paragraph 9(i) of the Second Amended Complaint. We affirm the ALO's conclusion, finding no basis in the record to overturn her credibility resolution on this matter. We also adopt the ALO's recommendation that the remaining allegations of Paragraph 9(h), (i), and (j) be dismissed, but we disagree with her discrediting UFW organizer Juan Vera based on his testimony that he was soliciting authorization cards subsequent to the UFW's intervention in the representation election. There is nothing in the record to suggest that such solicitation so departs from normal practice as to be inherently incredible.

We find merit in Respondent's exception to the ALO's conclusion that Casabar threatened Barrientos. Casica's testimony, that Casabar did not look at Barrientos while speaking to him, is neither improbable, in light of the testimony that Casabar was engaged in cleaning a bunch of grapes, nor necessarily in conflict with the testimony of Casabar and Barrientos. The absence of an appropriate credibility resolution by the ALO precludes our making a finding on this allegation.

We also find merit in the General Counsel's exception to the ALO's refusal to find that Respondent, through supervisor Simon Matias, engaged in surveillance of employees and instructed them not to talk to union representatives. The ALO erred in finding the uncontradicted testimony of Vera insufficient based on the lack of corroboration. Moreover, Respondent's failure to produce supervisor Matias to testify at the hearing gives rise to an infer-

ence that his testimony would have been adverse to Respondent. Sheldon Pontiac, 199 NLRB 950, 81 LRRM 1339 (1972). See also Locke Insulators, Inc., 218 NLRB 653, 89 LRRM 1620 (1975).

Although the complaint contained no such allegation, the ALO concluded that Respondent violated Section 1153 (a) on September 9, 1975, by threatening to call the sheriff to arrest UFW representatives who-were on Respondent's premises for organizing purposes. Because the Board was enjoined from enforcing its access rule at the time of this incident, we conclude that Respondent's action did not constitute a violation of the Act. Frank Lucich Co., Inc., 4 ALRB No. 89 (1978).

Respondent excepts to the ALO's conclusion that it discharged Alfredo Medrano, Roberto Roman, and Jesus Ocho Guerra in violation of Section 1153(c) and (a), and to the ALO's ruling permitting the General Counsel to amend the Second Amended Complaint to add an allegation that it unlawfully discharged Alfredo Medrano. We affirm the ALO's ruling on the notion to amend, noting the broad language of the original charge, the nexus between the allegation as to the discharge of Medrano and the allegation as to the discharges of Roman and Guerra in the Second Amended Complaint, the lack of any demonstrated prejudice to Respondent flowing from the belated amendment, and Respondent's failure to request a continuance of the proceeding.

We agree with the ALO that Medrano, Guerra, and Roman were discharged because of their union activity and not because their work in the Ribier grapes was unsatisfactory. As found by the ALO, the three discriminatees were discovered by supervisor

Madrid, on the day of their discharge, talking to other employees about the UFW, and Madrid thereupon told the assembled employees that he did not want any "strikers" or "Chavistas" there talking about union matters.

The Remedy

In order to remedy the effects of Respondent's unlawful assistance to the Teamsters and its interference with the UFW's communication with employees at the labor camp, we shall modify the ALO's remedial order by requiring Respondent: (1) to provide the UFW access to its employees during regularly-scheduled work hours for one hour, during which time the UFW may disseminate information to and conduct organizational activities among Respondent's employees; and (2) to allow the UFW two additional organizers per crew in addition to the number of organizers already permitted under Section 2'0900(e) (4) (A) of 8 Cal. Admin. Code.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Louis Caric & Sons, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Interfering with the right of employees to communicate with union representatives on their non-working time; and

(b) Engaging in surveillance of employees and union organizers; and

(c) Instructing or directing its employees to

refrain from signing union authorization cards; and

(d) Rendering unlawful aid, assistance or support to the Teamsters or any other labor organization, including the granting of preferential access to the job-site, the solicitation of employees to campaign for the Teamsters or any other labor organization, and threatening employees to induce support for the Teamsters or any other labor organization.

(e) Discouraging membership of its employees in the UFW, or any other labor organization, by discharging, or in any other manner, discriminating against, any employee with respect to such employee's hire, tenure of employment or any term or condition of employment; and

(f) In any other manner interfering with, restraining or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Immediately offer Alfredo Medrano and Jesus Ochoa Guerra full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay and other economic losses they have suffered as the result of Respondent's discrimination, plus interest thereon at 7 per cent per annum.

(b) Make whole the estate of Roberto Roman for any loss of pay and other economic losses suffered by him as the result of Respondent's discrimination, plus interest thereon

at 7 per cent per annum.

(c) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records, Social Security payment, records, timecards, personnel records, and other records necessary to determine the amount of back pay due and the rights of reinstatement under the terms of this Order.

(d) Provide the UFW, during its next organizational drive among the Respondent's employees, with access to Respondent's employees during regularly-scheduled work hours for one hour, during which time the UFW may disseminate information to and conduct organizational activities among Respondent's employees. The UFW shall present to the Regional Director its plans for utilizing this time. After conferring with both the UFW and Respondent concerning the UFW's plan, the Regional Director shall determine the most suitable times for such contact between UFW organizers and Respondent's employees. During the times of such contact, no employee shall be allowed to engage in work-related activities, or forced to be involved in the organizational activities. Respondent shall pay all employees their regular pay for the one hour away from work. The Regional Director shall determine an equitable payment to be made to non-hourly wage-earning employees for their lost production time.

(e) During the next period in which the UFW files a notice of intent to take access, Respondent shall allow the UFW two additional organizers per crew. These two organizers are in addition to the number of organizers already permitted.

under Section 20900(e)(4)(A) of 8 Cal. Admin. Code.

(f) Sign the attached Notice to Employees and, after it has been translated by a Board Agent into all appropriate languages, reproduce sufficient copies in each language for the purposes hereinafter set forth.

(g) Post copies of the attached Notice in all appropriate languages for 60 days in conspicuous places on its property, the timing and placement to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, or removed.

(h) Arrange for a representative of Respondent or a Board Agent to distribute and read this Notice in all appropriate languages to its employees assembled on company property, at times and places to be determined by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Regional Director within 30 days from the issuance of this Decision and Order of the steps it has taken to. comply herewith, and to continue to report periodically

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thereafter at the Regional Director's request until full compliance is achieved.

Dated: December 28, 1978

GERALD A. BROWN, Chairman

ROBERT B. HDTCHINSON, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its case, the Agricultural Labor Relations Board has found that we have interfered with the rights of our workers. The Board has told us to send out and post this Notice.

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

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

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

Because this is true, we promise that:

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

Especially:

WE WILL NOT spy on you while you are talking to union organizers or are engaged in other union related activities.

WE WILL NOT instruct you not to sign UFW authorization cards.

WE WILL NOT instruct you not to talk to UFW organizers.

WE WILL NOT unlawfully aid, assist or support the Teamsters or any other labor organization or favor one union over another.

WE WILL NOT threaten you with loss of work if you do not support the Teamsters, or any other labor organization.

WE WILL NOT let the Teamsters or any other labor organization speak to you at the job-site while preventing another union from doing so.

WE WILL NOT discharge any employee, or otherwise discriminate against any employee in regard to his or her employment, to discourage union membership, union activity, or any other concerted activity by employees for their mutual aid or protection.

WE WILL offer Alfredo Medrano and Jesus Ochoa Guerra their old jobs back, and we will pay them and the estate of Roberto Roman any money they may have lost because we discharged them, plus interest thereon computed at 7 per cent per year.

LOUIS CARIC & SONS

DATED: _____ By: _____
(Representative) (Date)

* * *

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

ALRB NO. 108 DO NOT REMOVE OR MUTILATE

CASE SUMMARY

4 ALRB No. 108

Louis Caric & Sons (UFW) Case No. 75-CE-165-M

ALO DECISION

The ALO found, based on credibility, that Respondent did not violate Section 1153(a) on August 28, 1975, by threatening to discharge employees who signed authorization cards, by interrogating workers about union activity, or by engaging in unlawful surveillance of employees. Finding the uncontradicted testimony of the Charging Party's witness to be insufficient for lack of corroboration, the ALO dismissed the allegations that Respondent's supervisor instructed employees at the Respondent's labor camp not to speak to UFW organizers and engaged in unlawful surveillance of employees. As to an incident which occurred on September 9, 1975, the ALO concluded that Respondent did not instruct employees to refrain from signing authorization cards, or engage in unlawful surveillance, or tell employees to refrain from talking to UFW organizers. However, the ALO found that Respondent restrained and coerced employees while UFW organizers were attempting to speak to them and unlawfully interfered with access taken by UFW organizers by threatening to call and calling the sheriff, in part because of a confrontation between supervisor Casabar and UFW organizer Vera. The ALO also found that supervisor Casabar on several occasions instructed employees to refrain from signing authorization cards. The allegation that supervisor Madrid interrogated employees on September 11, 1975 was dismissed by the ALO for lack of supporting evidence. Based on credibility, the ALO concluded that supervisor Casabar threatened an employee with violence because of his union activity on behalf of the UFW.

The ALO concuded that Respondent unlawfully assisted the Teamsters union by discriminatorily enforcing a no-solicitation rule in favor of the Teamsters and against the UFW, threatening employees with loss of work to induce support for the Teamsters, and soliciting an employee to campaign on behalf of the Teamsters, but that Respondent did not grant unlawful assistance by changing the employees' lunch periods and eliminating employee breaks to prevent contact, with UFW organizers, a matter which was litigated at the hearing but not alleged in the complaint. The ALO made no finding regarding the allegations that supervisor Madrid instructed employees to sign authorization cards for the Teamsters but not for the UFW.

The ALO concluded that employee Barientos was not constructively discharged by Respondent, in light of the employee's shifting reasons for quitting and conduct incompatible with a forced quit. The General Counsel's motion to amend the complaint at the hearing to allege the unlawful discharge of employee Medrano was granted by the ALO. The ALO found, based on credibility, that Respondent unlawfully discharged employees Madrid, Guerra, and Medrano as a group for their activity on behalf of the UFW, and dismissed, for lack of supporting evidence, the alleged refusal to rehire Guerra.

BOARD DECISION

The Board affirmed the dismissal of the allegations involving threats of discharge, interrogation, and surveillance on August 28. However, the Board reversed the ALO and found that Respondent instructed employees at its labor camp not to speak to UFW organizers and engaged in surveillance of employees while UFW organizers sought to communicate with them, noting that the lack of corroboration for otherwise credible and uncontradicted evidence was not a basis for finding such testimony insufficient to support a finding. The Board affirmed the ALO's recommendation with respect to the September 9 incident, except that it set aside the ALO's conclusion that Respondent interfered with job-site access because the Board's access rule was enjoined at the time of that incident. The Board also rejected the ALO's view that the testimony of a UFW organizer should be discredited because he testified that he was attempting to solicit authorization cards after the UFW had intervened in the election; nothing in the record indicated that such solicitation was inherently incredible. Finally, the Board affirmed the ALO's conclusion that Casabar instructed employees on several occasions not to sign UFW authorization cards, but reversed the ALO's finding that Casabar physically threatened an employee for engaging in UFW activities, because of the ALO's failure to properly handle the credibility issue involved.

The Board affirmed the ALO's conclusions in regard to unlawful assistance and to the discharges.

THE REMEDY

The Board ordered Respondent to: post, distribute, and mail an appropriate Notice to Employees; reinstate employees Medrano and Guerra; make whole Medrano, Guerra, and the estate of Roman; provide the UFW with one hour of company time for organizational purposes; and permit the UFW. two additional organizers during the next period in which the UFW filed a notice of intent to take access.

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

LOUIS CARIC & SONS,

Respondent,

No. 75-CE-39-F

and

UNITED FARM WORKERS OF AMERICA,
AFL-CIO,

Charging Party.

Casimiro Urbano Tolentino,
Fresno, for the General Counsel

Seyfarth, Shaw, Fairweather,
Geraldson, Kenwood C. Youmans,
Los Angeles, for the Respondent

Stephen Hopcraft, Jean Eilers,
Delano, and Glenn Rothner, Salinas
for the Charging Party

DECISION

I. STATEMENT OF THE CASE

Jennie Rhine, Administrative Law Officer: This case deals with various unfair labor practices charged by the United Farm Workers of America, AFL-CIO (hereafter, the UFW), against Louis Caric & Sons (the respondent, employer or company). The charge

was duly filed and served with the Fresno regional office of the Agricultural Labor Relations Board (The ALRB or board) on 17 September 1975, and on 11 November 1975 the general counsel issued a complaint against the company.[1]

As amended prior to and at the hearing,[2] the complaint alleges

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[1]The UFW had previously filed another charge against the same employer, the number of which (No.75-CE-27-F) was mistakenly included (and subsequently stricken and dismissed by the board) in the "consolidated" complaint filed herein. The general counsel had declined to issue a complaint on that charge.

The UFW also filed objections to the certification of the Teamsters as the collective bargaining agent for the company's employees. That case (No. 75-RC-25-F) was consolidated with this one but became moot on 10 January 1977 when the general counsel approved the Teamsters' request to withdraw its petition for certification and declared the election of 11 September 1975 null and void. It is hereby dismissed.

[2]Respondent objected at the hearing, and renewed its objections in its post-hearing brief, to the addition of Ernie Barrientos and Alfredo Medrano as two of four employees allegedly discriminatorily discharged. Barrientos was added in the second amended complaint filed 3 January 1977; Medrano was added at the hearing.

The thrust of respondent's objection is that the amendments were untimely, especially in view of that part of section 1160.2 of the Act which provides that "[n]o complaint shall issue based upon any unfair labor practice, occurring more than six months prior to the filing of the charge with the board." Respondent had actual notice of the claim regarding Barrientos in late November or early December 1976. According to all the evidence presented, Medrano was in precisely the same situation as two other alleged discriminatees named in the first complaint; the three were discharged or laid off as a group.

At the hearing I denied respondent's objections to both amendments on essentially identical grounds. Briefly summarized, they were: the criminal charge referred to "actual firings" without mentioning an, names and, given that section 1160.2 should be broadly construed (see NLRB v. Braswell Motor Freight Lines, 84 LRRM 2433 C7th Cir.) construing the identical language of NLRA section 10(b)), could include anyone subsequently named; the omissions were through no fault of the charging party, and it and the discriminatees would be unduly prejudiced by their exclusion; and respondent demonstrated no actual prejudice. Under these circumstances the amendments should be permitted pursuant to section 1140.2 of the Act and section 20222 of the board's regulations, 3 Cal. Admin. C. S 20222. No continuances to meet

violations of subdivisions (a), (b) and (c) of section 1155 of the Agricultural Labor Relations Act (ALRA or the Act--all statutory references are to the Labor Code unless otherwise stated). The allegations consist of: various acts of threatening, interrogating, and engaging in surveillance of employees, and instructing them not to talk to UFW representatives or sign UFW authorization cards; discriminatorily granting access to representatives of the Western Conference of Teamsters and its affiliated locals (collectively referred to as the Teamsters), instructing employees to sign Teamster authorization cards, and threatening loss of employment for failure to support the Teamsters; and discharging four employees for their support of and activities on behalf of the UFW, and failing to reinstate one of the four. Respondent in timely manner essentially admitted all jurisdictional allegations and denied all substantive ones.

Pursuant to an amended notice of hearing, the case was heard by me on 7 through 11 and 21 through 23 March 1977 at Delano, California. The UFW formally intervening, all parties were present and had an opportunity to present evidence and examine witnesses.

(footnote cont.) the new charges were requested. Respondent having presented no new basis for objection in its brief, I see no reason to change those rulings, the other amendments allowed at the hearing, with no objection by respondent, consisted of changing the dates of two discharges and adding three people as supervisors and agents of the respondent.

II. FINDINGS OF FACT

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

A. Jurisdictional Facts

The facts are undisputed, the evidence supports the conclusions, and accordingly I find that Louis Caric § Sons is an agricultural employer within the meaning of section 1140.4 (c) of the ALRA, and that the UFW and Teamsters are labor organizations within the meaning of section 1140.4(f) of the ALRA.

B. Background

A partnership, Louis Caric 5 Sons grows, harvests, ships and sells table grapes from four parcels of land located in the Delano area of Kern and Tulare Counties. Three parcels are within one and one half miles of each other, and the fourth, the "Home Ranch," is six to eight miles from the others. Steve Caric, Louis Caric, Sr., and Louis Caric, Jr.,[3] are the partners actively engaged in the management of the company.

During the harvest season, which begins in mid-August and continues through September, the company employees six crews to harvest one variety-of grape after another as each ripens. Each crew picks, cleans and packs grapes for fifteen packing stands. Generally, there are two or three pickers and one packer for each

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[3] Louis Caric, Jr., was the only one of the three to appear at the hearing and testify. Subsequent mention of Caric refers to him; when acts of the others are discussed, their full names are used.

stand. In addition to its foreman or crew boss, each crew also has either a checker or a second foreman. Swampers and truckers, not members of the crews, pick up full boxes of grapes and spread empty ones. Thus, there may be anywhere from 45 to 55 employees in the locale of a single crew.

The company maintains two labor camps in which workers from five of the six harvest crews may live. Three meals a day, including a lunch brought to the fields, are provided those living in the camps. Workers who live elsewhere, which includes some from those crews primarily living in the camps, supply their own lunches.

Though none live there, the crew bosses are in charge of the labor camps. Their other duties consist of the general supervision of their crews, and all hire, adjust grievances for, lay off, and discharge their own crew members. I therefore find the harvest crew bosses, Simon Matias, Alphonso Madrid, Loi Garcia, Honorato Domingo, Cecil de Castro and Eliseo Casabar, and a seventh foreman, Alfredo Fragosa, who supervises the swampers during the harvest season, all to be supervisors within the meaning of section 1140.4(j) of the Act, and respondent's agents.

Some of the crew bosses have second foremen who essentially relay messages and oversee some of the work. They do not have the authority to hire, lay off or discharge employees, or effectively to recommend such action, and I find that they are not supervisor's.

On 3 September 1975 the Teamsters petitioned the ALRB for k a representation election, and the UFW intervened the following

day. The Teamsters won the September 11 election by a large majority.[4] In 1970 Louis Caric § Sons had entered into a three-year collective bargaining agreement with the UFW. When it expired there was a strike, and instead of renewing with the UFW, the company became a party to a collective bargaining agreement between the Teamsters and an association of grape growers. Thus, from 1973 up to and through the 1975 election campaign, the company had a contract with the Teamsters.

C. Threats, Interrogations, Surveillance, Etc.

In addition to interference with employee rights of self-organization derived from violations of sections 1153(b) and (c) of the Act, the complaint contains allegations of independent violations of sections 1153(a). The following findings relate to those allegations.

The evidence does not support a finding that on or about 28 August 1975 Eliseo Casabar threatened to discharge employees who signed UFW authorization cards, interrogated employees concerning their union loyalties and activities, or engaged in surveillance of employees. It does, however, support a finding that Casabar instructed workers in his crew not to sign UFW authorization cards.

The only evidence supporting the allegations related to the 28th of August is" the testimony of Zrnie Barrientos, a picker in Casabar's crew and, unknown to Casabar, a long-time UFW adherent.

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[4]See note 1 above.

One time Casabar drove Barrientos, who was not feeling well, back to the labor camp where he lived. Barrientos said that on this trip Casabar told him to report whether UFW organizers came to the canp and whether anyone signed UFW authorization cards, and that those who did would be fired. Gasabar followed up on the subject the next day, asking whether Barrientos had seen anyone sign for the UFW, and he, not wanting anyone to be fired, untruthfully said no. No one else was present during these conversations.

Barrientos also testified that on two occasions as UFW organizers were approaching his crew, Casabar told the crew to "listen to what they have to say but don't sign anything." He placed both occurrences about a week before the election, but could not remember any details.

Eliseo Casabar has worked at Louis Caric 5 Sons on a seasonal basis as a crew foreman since 1972. His distaste for the UFV, based en what he saw as "difficulties" with the UFW contract and strike in 1972 and 1973, became apparent on cross-examination. Casabar said he never told UFW organizers to leave the fields, threatened to fire anyone who signed a UFW card, asked his crew members about their union sympathies or watched their union acti vities, or instructed them not to talk to the organizers. He also said he did not remember ever talking with Barrientos about UFW organizers, asking him to report who signed, or saying that they would be fired.

Initially, Casabar also denied ever telling everyone not to sign anything, but then said that one time he told one person, after the worker had asked was he should do, saying he did not

understand, not to sign if he did not understand. About three other workers were present at the time. On further examination by respondent's counsel, however, Casabar said he told two or three people at different times not to sign if they didn't understand, after they asked him.

I find Barrientos' uncorroborated testimony, inconsistent with Casabar[1]s testimony and my impressions of him, insufficient to support a finding that the conversations between the two took place. However, regarding Casabar's telling workers not to sign UFW authorization cards, the inconsistencies in Casabar's testimony tend to corroborate Barrientos. Two or three workers, not just one, asking Casabar what to do and his telling then not to sign if they don't understand is improbable. I conclude that Casabar tacitly admitted that he did tell employers not to sign UFW authorizations, without regard to their asking his advice, and so find.

On 11 September 1975 Eliseo Casabar threatened Ernie Barrientos with physical harm for serving as an election observer. This allegation, as well as the alleged unlawful discharge of Barrientos, arises from an incident which occurred when Barrientos and Marciano Casica, another worker in Casabar's crew, returned from the representation election with the results of the voting. Casica was an observer for the company, and Barrientos, a UFW observer. Casabar did not know until earlier that day and was surprised to learn that Barrientos, whom he had considered a friend, was a UFW supporter.

As the wo men approached the packing stand where Casabar

was, he asked about the election results. Casica replied that the Teamsters had won, and went on to tell Casabar that Barrientos had challenged the votes of some of Casabar's relatives. Casabar was cleaning grapes at the time, and had open grape clippers, with blades about 4 inches long, in his hand.

Versions of what happened at this point differ. Casica testified that he was slightly in front of Barrientos as they walked up, and thus between the two. Casabar said, not even looking at Barrientos, "You know, Ernie, you are stupid. My son and uncle have worked here the last 3 or 4 years and have the right to vote." Barrientos did not reply, Casabar told them to go back to work, they did, and that was all that happened. Casabar, who had grapes and in one hand and the clippers in the other, did not threaten Barrientos with the clippers.

Barrientos testified that Casabar came towards him (he did not remember how near), and angrily shook the open grape clippers at him, threatening to strike him. Casabar asked why he didn't let Casabar's relatives vote, and he replied that he was just following the rules of the election, to which Casabar, still angry, responded "God damned rules!" Barrientos tried to calm him down, and finally Casabar told him to go back to work, saying "I don't want any of this bullshit again."

Casabar testified that he just called Barrientos "stupid" and didn't say anything else. He said he called Barrientos stupid "lots of times," always kidding. He was kidding this time, but didn't tell Barrientos that. Asked if he was angry, Casabar said he just raised his voice a little. He did have open clippers

in one hand, but did not threaten Barrientos with them. Barrientos' only response was to ask if he should return to work.

Casica's version is discredited by his statement that Casabar didn't even look at Barrientos, which was belied by Casabar's own testimony. As indicated in my discussion of Barrientos[1] leaving his job, while I think Barrientos exaggerated somewhat and was not as frightened of Casabar as he said, I nonetheless accept his version of Casabar's reaction in general. Considering among other things his demeanor as he testified, I believe Casabar was genuinely angry and made that clear both by tone of voice and by threatening Barrientos with the clippers. I also think that Casabar's anger was not solely the result of learning of the challenges, but was partly caused by discovering to his surprise that Barrientos was a UFW supporter.

Although no direct evidence on this point was' elicited, it can be inferred that this incident was observed by other workers besides Casica. The workday was not over and Casabar was by a packing stand when Casica and-Barrientos returned. Consequently, other workers oust have been in the area, and the entire incident was of such a nature that their attention must have been engaged by it.

No evidence was introduced to support the allegation that Alphanso Madrid questioned employees about their votes, in the representation election. One of the two crew members who testified about events in Madrid's crew, Ramona Fores, left respondent's employ prior to the September 11 representation election, and therefore did not testify about Madrid's actions at the tine of

the election. The other witness, Alfredo Medrano, testified that Madrid told the crew prior to their voting to vote for the Teamsters (discussed below), but he did not say that Madrid questioned people afterwards about their votes. Nor did Madrid admit to doing this.

The allegations that at the labor camp Simon Matias engaged in surveillance of employees meeting with UFW representatives and instructed employees not to talk to the representatives are not supported by a preponderance of the evidence.

Juan Vera, a UFW organizer, testified that some of the times lie and other organizers went from door to door in one of the labor camps to talk to workers after work, Simon Matias, the crew boss in charge of the camp, preceded or followed them from door to door. When Matias went ahead,' Vera occasionally heard him tell people not to talk to them. Vera also testified that one time when Consuelo Gonzalez and Helen Delate, two other organizers, were with him, Matias stood about 20 paces away, watching, while a young Filipino man told the organizers to leave and pulled a handgun from the waistband of his pants. Matias himself told them to leave that-evening and on several other occasions.

Gonzalez and Danny Morales, another organizer, also testified about visiting workers in Matias's camp. Yet neither said anything about Matias following them door to door, telling employees not to talk with then, or telling then to leave. Nor did Gonzalez. mention the incident with the young Filipino, though according to Vera she was present.

Given the unexplained absence of corroboration from others

who apparently were present, I find that the allegations are not supported by a preponderance of the evidence.

Eliseo Casabar and Louis Caric, Jr., interfered with the UFW organizers' attempts to talk with workers during lunch time on 9 September 1975.

The "Richgrove incident" is the basis of allegations that Casabar instructed employees not to talk to UFW representatives or sign UFW authorization cards, and that he and Caric engaged in surveillance of employees while they talked to union representatives. The often contradictory accounts are only summarized here.

UFW organizers arrived at a field near Richgrove where Casabar's crew had just begun its lunch period. The two went past Caric and Casabar into the vineyard near the "avenue" (a private access road adjacent to the field) where some workers were eating. One of the two, Juan Vera, testified that Casabar followed him, and at three separate small groups of workers said something. The first two times Casabar spoke to Filipinos in a Filipino dialect and Vera did not understand what was said, but the workers then ignored him. The third time the corkers were Mexican, and Casabar, speaking English, told them not to sign anything or they knew what would happen.

Casabar said he remained is the avenue near his van, where

[5]Although accounts differ, apparently five organizers, three men and two women, arrived together. The two women went to talk to workers in a second crew in the vicinity, while the three men attempted to talk to people in Casabar's crew.

workers served themselves the food he had brought from the camp, and did not follow anyone. He did, however, tell Vera not to bother the workers while they were eating, they had only 30 minutes. At the hearing he explained that he thought reading leaflets interfered with the workers' ability to eat. By both men's accounts, he and Vera got into a heated exchange which Caric broke up. Vera said Caric told him to leave, he was trespassing, and he (Caric) was going to call the sheriff.

After the two organizers whom he recognized passed him and went into the field, according to Caric, he stopped the third, whom he did not know and later identified as Dolores "Lolo" Flores, and asked him to identify himself. Flores refused, Caric told him to either identify himself or leave, and Flores went to talk to workers eating on the other side of a line of poles that marked the boundary of the company property. Caric was talking to Vera, whom he'd seen arguing with Casabar, when Flores came back onto the property. Caric yelled at him, but Flores did not respond. Caric asked Vera who' Flores was, but Vera said he didn't see anyone. Caric then went up to Flores, tapped him on the shoulder, and asked him to identify himself, and Flores again refused. Caric said he'd have to call .the sheriff, and went to his truck, where he called the company office and told someone to get the sheriff. Flores went and talked to some workers, and all three organizers left in five to ten minutes.

Flores, a 64 year old man, testified that Caric came up from behind the organizers as they arrived, saying that they were about to enter private property. Flores stopped following the other

two men because he thought if Caric followed him into the field, the workers would be afraid to talk to him anyway. Caric spoke to him in English, which he speaks and understands but poorly. He understood Caric to be talking about trespassing and calling the police. At one point when Flores thought he was off company property Caric laid his hand on Flores' shoulder, from behind. (Flores said that Caric pushed him slightly, but he demonstrated the contact at the hearing and did not indicate any pushing.) Flores testified that Caric was very excited and that he was frightened, because Caric was white, nervous, and angry. He told Caric to take it easy, and nothing more was said by either of them. Caric followed him constantly, for about 10 minutes, about three feet behind him. Not understanding English well, he did not know whether Caric asked him for identification.

Flores did not remember whether he talked to any workers that day. Altogether the organizers were there about fifteen minutes, when they left because of the threat of arrest, and from a nearby store they saw the sheriff arrive. Flores testified in Spanish, through an interpreter.[6]

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[6]Barrientos also testified about this incident but his testimony is given little weight. He said that from where he stood about 40 feet into the vineyard he saw Caric gently push Flores twice, as Flores twice stepped onto the avenue, and heard Caric say, "The third time I'm going to radio the sheriff." Flores stepped onto the avenue again, and Caric got into his truck. From where he was, Barrientos said»he could see the front of one vehicle and the rear of another, but he described the pushing as occurring in front of the latter vehicle. He was recalled as a witness after Flores testified, and he then said he saw Caric push Flores only once. Contrary to everyone else, who said it was lunch time, Barrientos said he was working during the incident. Since it was not clear that he was present or recalled this particular day, Marciano Casica's testimony is disregarded as well.

It appears to me that Caric did not, as he said, merely go up to Flores twice, but rather did follow him around. Flores testimony is corroborated in this respect by Casabar, who said he saw Flores and Caric walking and talking in the avenue for about five minutes. I think that Flores did understand, contrary to his testimony, that Caric wanted to know who he was. While Flores' knowledge of English is limited, he said that he prepared his testimony with the general counsel in that language. This indicates sufficient proficiency to understand if someone was asking his name or for identification. It is also clear from the demonstration as well as the testimony that Caric did not push or shove Flores, but only laid a hand on his shoulder. I do not think it relevant to decide whether this happened on or off company property.

I am not convinced that Casabar followed Vera into the vineyard or threatened workers if they signed anything. Flores and Caric both saw Casabar by his pick-up. The credibility of Vera's account is also weakened because, in addition to his report of Casabar[f]s words, he said he was trying to get authorization cards signed. By all accounts these events occurred well after the UFW had intervened in the election, and Vera was not able to explain why he was still getting signatures on authorization cards.

By Casabar's own admission, however, he did call out to Vera to stop bothering the workers. Some of them must have heard him, since Vera had gone into the vines where they were eating. Additionally, as discussed above, the evidence supports a finding that Casabar did instruct workers not to sign UFW authorization cards

on other occasions, if not this one.

D. Company Support for the Teamsters

The complaint alleges that respondent gave unlawful aid, assistance and support to the Teamsters by granting access for organizing purposes to Teamster representatives while denying it to UFW representatives. The complaint also claims that Section 1153Cb) was violated by the conduct of Alphonso Madrid, who allegedly instructed employees to sign authorization cards for the Teamsters but not for the UFW, and threatened employees with loss of work if they failed to support the Teamsters.

Shortly before the representation election, respondent admittedly changed its stated position from not wanting any union to supporting a Teamster victory. Caric said this was done for business reasons: foreseeing that the workers were going to select a union, the partners wanted it to be the Teamsters union, which was easier and cheaper to work with than the UFW. Prior to that time the company conducted what Caric described as a "not very aggressive" no-union campaign by preparing and presumably distributing (no one who was asked remembered receiving any) four leaflets which implicityly urged a no-union vote.

Two days before the election Caric signed and authorized the distribution of another leaflet which, he said, he thought would help gain votes for the Teamsters. The leaflet contains a series of questions which are implicitly critical of the UFW, though without referring to the union by name. Caric said he signed the leaflet without thinking about whether the questions applied to specific experiences at Louis Caric & Sons. (This leaflet was

obtained through a growers' association to which the company belonged, unlike the others, which Caric drafted himself and submitted to the company's attorneys for approval prior to distribution.)

In spite of its "official" no-union position, the evidence indicates that individual partners and foremen supported the Teamsters by actions as well as words throughout the campaign. Caric, who returned to the company as a partner and general supervisor early in June 1975 after a prolonged absence, said he quickly learned that his father, Steve Caric, and his uncle, Louis Caric, Sr., preferred the Teamsters to the UFW [7]. In fact, the company's preference was expressed as early as 1973, when it voluntarily became a party to the multi-employer agreement with the Teamsters rather than renew its contract with the UFW. No evidence was introduced indicating the company consulted its workers in that decision, and the strong likelihood is that it did not.[8]

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[7]One day in July, Caric saw "Chavistas" on the property. The next day he had new no trespassing signs put up. Although the signs were already prepared, the proximity of the events does not appear to be a coincidence.

[8]As the ALRB "officially noticed in Eugene Acosta, 1 ALRB No. 1, slip op. p.5 (1975),the California Supreme Court found in Englund v. Chavez3i8 C.3d.572, 105 C.R. 521 (1972), that in 1970 when the Teamsters and individual growers entered into contracts, neither considered, whether the Teamsters represented a majority of the field workers to be, covered, who in fact probably desired to be represented: by the UFW The board then found it "questionable" whether the Teamsters enjoyed majority status with the workers of each grower covered by the 1973 multi-employer agreement it was considering in Acosta (slip op., p. 18). It is clear from these two decisions that pre-ALRA multi-employer agreements, such as that entered into by Louis Caric & Sons in the same year as

Respondent gave virtually unlimited access for organizing purposes to the Teamsters while severely limiting the UFW. Under the guise of the 1973 contract the Teamsters had almost unlimited access to the workers on company time and property during the 1975 election campaign. The contract required all workers to become union members. It also contained a provision which gave authorized union agents "the right to visit ... at all reasonable times and places, to conduct legitimate Union business; however, he [sic] shall not interfere with or interrupt operations."

As Caric interpreted this visitation provision, "legitimate union business" did not include organizing for a representation election, and he said he was concerned that the provision might be abused as the organizing drive picked up with the harvest season. However, the company took no effective steps to prevent its abuse. No questions were asked when at the end of July the Teamsters sent notice-that it intended to make daily visits and listed 21 authorized agents(and added a 22nd later), even though prior to this time the notice requirement had been ignored by both parties to the agreement. Nor did anyone mention this

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(footnote continued) the Acosta agreement, cannot be considered an expression of employee preference, but are probably sweetheart contracts.

No inference is intended that entering into the contract or any other of respondent's acts which occurred prior to the effective date of the ALRA in themselves constitute violations of the Act. However, they are indicative of the atmosphere which prevailed at Louis Caric & Sons, and have been considered as circumstantial evidence corroborating later events.

concern when Caric, along with other growers, net with Teamster representatives on August 1st at their request[9]

With the tacit consent of the company's agents, Teamster organizers visited the workers in the fields far more often than required to simply service the contract. According to-the foreman Eliseo Casabar, Teamsters visited his crew and talked to workers two to four times a week, in the mornings and afternoons while they were working as well as at lunch time. He did not know and was never instructed by the company to find out the purpose of their visits. He saw them distribute leaflets to the workers.

Alphonso Madrid said they were at his crew almost every day during morning work hours (8:00 or 9:00 a.m.), and sometimes cane with beer in the afternoon before the end of the workday. On one occasion, described by crew member Ramona Flores, when Madrid as present and presumably with his consent, they loaded grapes while the workers they replaced drank the beer they had brought.

Given the testimony of the foremen and the fact that he made the rounds of the property regularly, Louis Caric, Jr. is statement that he saw Teamster representatives only four or five times from

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[9]At this meeting the Teamsters discussed problems regarding the sanitation and location of toilets in the fields and medical provisions of the contract with ten to twelve representatives of growers in the Delano area, according to Caric, and the anticipated organizing drives in the area were not mentioned at all.

mid-August to September 2nd is not credible. He made them leave twice, both times when the fact that they were campaigning among working employees was flagrant. Once an agent was collecting signatures on a petition; the second time the workers were being addressed over a P.A. system.) He had to call the sheriff to get them to leave both times, which indicates that they neither anticipated his interference nor took it seriously. A third time when he believed he saw a Teamster conducting on organizing activities among working employees, he did nothing.

Accepting Caric's interpretation and excluding organizing for the representation election, the only "legitimate union business" conducted by the Teamster representatives that witnesses mentioned consisted of getting membership dues deduction authorization cards signed by new employees and servicing complaints about the location and sanitation of field toilets. Neither reason appears to justify the frequency of the visits, though there was some evidence of new employees being hired.

There is also direct evidence that the Teamsters representatives engaged in organizational activity with the knowledge of respondent's agents. . Caric found then so engaged at least three times, twice when he made them leave and once when he did nothing. Casabar saw them distributing leaflets to workers. On one occasion they were observed doing the work of loaders at Madrid's crew while he was nearby. From all of the circumstances the evidence supports the inference that they engaged in organizational activity other times as well.

Affirmative support for the Teamsters' unequal access to

workers in the fields is also inferred from statements made by the partners. UFW organizer Juan Vera testified about an encounter with Steve Caric which occurred in the presence of about 14 employees. Steve Caric arrived while Vera was talking to a woman worker, and came up to them, saying angrily something to the effect of, “You're not a good organizer, not even a good lover, because you can't even organize a girl. She's my girl, Teamster all the way." He pointed a pair of grape clippers, threateningly, inches away from Vera's throat and yelled at him, "Get out!" He also told 'Vera that if he were a Teamster, he would be allowed into the ranch. Another time when Steve Caric was telling the organizers to leave, saying they were trespassing, he took a Teamster button from his pocket and told Delate that if she put it on she could come in.

Another UFW organizer, Consuelo Gonzalez, testified that one morning she and three other organizers, including Helen Delate, were on a small road outside the vines when Louis Caric, Jr., came along in his car. She heard him say angrily to Delate, "You're on private, property. Get out of here. You'll be arrested if you don't leave right away. If you're a Teamster, I'll let you go in and talk to the workers." People were working in the first row of vines, maybe 50 feet away. A similar incident occurred the following day, around 11:30 when the organizers were waiting for the workers to stop for lunch. Caric came up and, in the course of telling them to leave, told Delate that if she were a Teamster, he'd give her a ride to go inside.

Vera's testimony about Steve Caric was uncontradicted,[10] while Louis Caric, Jr., denied making the statements attributed to him. I find that all these incidents occurred; their consonancy with the speakers admitted preference supports the witnesses who testified to them.

As these incidents indicate, access by the UFW organizers was restricted compared to that accorded the Teamsters. Three UFW organizers who visited regularly agreed that they rarely had an opportunity to talk to the workers unmolested. Danny Morales estimated that 90-95% of the time they were prevented by Caric or one of the foremen telling them to leave. Simon Matias in .particular would make them leave in the morning at 6:30 or 6:45, perhaps once soon after 7:00, but in any event before work had begun. Juan Vera also recalled being told to leave at 6:30.

Another time, according to Morales, Matias told them lunch was over and made them leave, even though the workers were still sitting down and it looked as if they were only half-way through eating. Morales testified that the organizers actually talked to the workers only once without interruption during lunch time, although they attempted to almost every day.

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[10]Respondent complained that it had no notice until Vera testified on 21 March that any actions :£ Steve Caric would be called into account, and that Steve Caric was not available to testify because he was attending a conference in San Francisco. Counsel was advised that the hearing would be continued until 24 March if that would assist him in producing his witness. He give no compelling reason why he was unable to do so, and the hearing ended on 23 March.

Consuelo Gonzalez said that though the organizers went to the ranch almost every day at lunch time, they were able to find workers eating perhaps six times in all, and perhaps four times near the beginning of their break. Even those times it was difficult to talk to them, because if the foremen were present they would tell the organizers to leave. Caric frequently told them to leave. They were often threatened with arrest, although it never actually happened. She recalled being told to leave at the time of the morning break, particularly by the foremen Eliseo Casabar and Cecil de Castro.

Vera corroborated the other two: even when the organizers found the workers eating, they were threatened with arrest and told to leave, either by Louis Caric, Jr. (whom Vera described , as "all over the place"), Steve Caric, or one of the foremen. If not made to leave, they were followed by the foremen as they talked to the workers.

Other evidence substantiates the organizers' testimony. Caric confirmed that he made the organizers leave many times, including twice while the workers were eating. (Once was the time of the "Richgrove incident," discussed above; the other was when he came upon Juan Vera arguing with one of the second foremen.) A worker in his crew, Ramona Flores, saw Alphonso Madrid escort an organizer off the premises; there is no evidence that he ever interfered with Teamster visits.

From the organizers' own testimony as well as other evidence, it is clear that often when they were told to leave, they were on the company's property at times other than those permitted

by the access rule." The Teamsters were also campaigning at times when the regulation did not authorize access. The crucial fact here is the preferential treatment accorded the Teamsters.

The evidence does not establish that lunch periods were switched or morning breaks eliminated to thwart the UFW organizers' attempts to talk to workers. Danny Morales and Juan Vera both testified that during the last week of August, when they did a survey, they had determined that the workers ate from 11:30 to 12:00, but that within a few days after August 28th the workers' lunch time became irregular. Morales said that although he didn't remember the other crews changing, at least de Castro's and Matias' crews would sometimes eat at 11:30 or earlier, sometimes at 12:00 or later, and workers in de Castro's crew said their lunch time had been changed.

Vera said that all the crews changed their lunch break, and were sometimes found eating as late as 1:00 and at least once, as early as 10:30. He also said that de Castro, telling him one time that the crew had already eaten, also said that by agreement with the Teamsters the morning break was eliminated, so the workers would get off earlier. Vera also testified that if the organizers were visible, the workers would not break for lunch. Morales said

[11]Then, as now, the access regulation gave organizers the right to enter the employer's property for an hour before the workday began, another hour at the end of the workday, and an hour during the day to talk to workers on their lunch break 8 Cal. Admin C.$20090(5), now 200900(e)(3). There is a Question, discussed below at note 20, concerning the legal effect of the access rule during most of the campaign at Louis Caric & Sons.

that since they felt the lunch break was being deliberately switched to keep them from the workers, they began spending the time from 11:00 to 1:00 trying to talk to workers, whether they were taking a lunch break or not.

Caric testified that the four crews in one vicinity-Casabar's, de Castro's, Garcia's, and Madrid's-always took their lunch break around noon. The other two crews, Matias's and Domingo's, ate at 11:30 when they worked in the Home Ranch, and at 12:00 when they worked near the other crews, which in 1975 did not happen until after the election. A hot lunch was prepared in the labor camps for the workers who lived there. The foremen would leave their crews early, go to the camps and eat, and then return with the workers' food. The lunch periods did not change during the organizing drive.

One of the organizers, possibly Vera, told Caric that because the growers in the area were switching their lunch times, the organizers were going to take their hour lunch-time access at any time. Caric replied that his company wasn't doing that. This was the only conversation he had with the organizers about the timing of the lunch break. (Vera testified that he once told Caric that the lunch tine was being switched, and Caric's only response was to tell him to get out.)

Caric’s testimony regarding lunch time was corroborated for each of their crews by Casabar, Madrid and de Castro. The only worker who testified about it, Marciano Casica from Casabar's crew, said they always ate at noon; no employee testified that the lunch time had changed. The two other UFW organizers who

testified, Consuelo Gonzalez and Dolores "Lolo" Flores, both said that lunch was at noon, though Gonzalez also said that at lunch time they frequently couldn't find the workers in the same field where they'd been in the morning, even though the work in that field appeared to be unfinished.

Regarding breaks, the contract with the Teamsters provided for a morning and afternoon rest period of ten minutes each, but since June 1975 at least, none of the crews took an afternoon break, and the two crews working at the Home Ranch didn't take a morning break either. The time thus saved reduced the length of the workday.

I find that the lunch periods were not switched, contrary to the general counsel's contention. I think Morales and Vera believed in good faith that they were, because of the different lunch period taken by the two Home Ranch crews and, perhaps, the UFW's experience at the other ranches in the area. Nor was the morning break eliminated to thwart the UFW organizers; I accept the assertion that by longstanding practice the two Home Ranch crews did not take it in order to end the workday earlier.

In addition to permitting Teamster representatives unrestricted access to his crew, crew boss Alphonso Madrid actively solicited support for the Teamsters union and threatened reprisals for failure to support it. Crew member Ramona Flores testified that Madrid told her the workers should vote for the Teamsters because they were better than the UFW, and urged her to campaign among the Spanish-speaking in the crew on behalf of the Teamsters. On the day of the election he told the crew as it was leaving for the polling place to vote for the Teamsters or there would be no more work, according to Alfredo Medrano, one of the three workers allegedly discharged from Madrid's crew for being a UFW supporter.

There was also evidence that workers in Madrid's crew were afraid to let their UFW sympathies become known. Flores testified that because she was afraid of losing her job she did not wear a UFW button nor did she see .anyone else wearing union buttons. Medrano said he was asked to be a UFW observer at the election, but declined for fear of losing his job. Madrid himself was apparently surprised at discovering the identity of the person who was the UFW observer for the crew, and, Madrid said, that man left work when the UFW lost the election. About Medrano and the other two whose leaving is in dispute, Madrid said, "I never thought they were Chavistas; as a matter of fact after the election we continued to work."

Madrid denied that he expressed a preference for the Teamsters to anyone in his crew, and said that on election day he merely

told his crew members to vote for the union of their choice. However, his initial statement of neutrality with regard to the two unions was shown to" be untrue on further examination, where the depth of his pro-Teamster, anti-UFW feelings was revealed. And, after first denying it, he admitted expressing anti-UFW views to his crew, "only to make them laugh." These factors and my adverse determination on the credibility of his testimony about the discharges (see below) contribute to my finding Madrid's denials less credible than the testimony of Flores and Medrano, in spite of weaknesses in the latter's.[12] Given Madrid's obvious bias and the other evidence of his campaigning on behalf of the Teamsters, I find it more likely than not that he told his crew there would be no more work if they didn't support the Teamsters.

H. The Discharges

The threat of physical harm from Eliseo Casabar was not the sole reason, or a major reason, Ernie Barrientos left his job. The general counsel's contention that Barrientos quit

[12]While an admitted UFW supporter, Flores was basically un-impeached. Initially saying Madrid never talked about the Teamsters, Medrano's testimony about the statement was brought out by degrees, with the fact of its having been made to the crew on the day of the election being elicited only on cross-examination. Medrano was also wrong about when he was discharged and about the type of grapes he was picking at the time (see below), His testimony that in 1976 he was discharged because he was found sitting down with a cut finger was discredited by foreman de Castrc's testimony, supported by contemporaneous employment records, that he was fired because he was found sleeping on the job.

because of his election day encounter with Casabar, described above, is not supported by the evidence.

While I believe that Casabar was genuinely angry, not merely joking, and in his anger shook the clippers threateningly at Barrientos, I do not think that Barrientos seriously feared for his physical safety more than momentarily. Casabar is much older and physically much smaller than Barrientos. Barrientos finished the day's work, but did not return the following day. When he picked up his paycheck a few days later, he said, he saw Casabar and thanked him for the job, and expressed the hope of working for him again. (Casabar said he did not see Barrientos after the day of the election until the hearing.) These are not the acts of one person fearing physical harm from another.

When he was first asked, Barrientos said the only reason he quit was that he was "disgusted, disappointed" with the workers' lack of support for the UFW. He subsequently said one reason he left was because Casabar threatened his life, and he feared for his safety. Another reason was, the lack of respect for the UFW shown by Caric and Casabar. By his own testimony Barrientos did not give high priority to his encounter with Casabar.[13]

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[13]Barrientos also testified that the evening of the day he left, as he was collecting-his belongings from his room, Rodney Casabar, Eliseo's son and-second foreman, told him that he didn't have to quit, he was already fired. This testimony was admitted over objection, on hearsay grounds, subject to Rodney Casabar's authority to speak as an agent for respondent being shown. This was not established, and I have determined that second foremen are not supervisors under the Act; I now rule that the testimony should be, and hereby is, stricken.

Alfredo Medrano, Jesus Ochoa Guerra and Roberto Roman were terminated because they were UFW supporters, not, as respondent contends, because they were unable to pick Ribier grapes satisfactorily. Alfredo Medrano was the only one of the three alleged discriminatees to appear as a witness.[14] He testified that the three men were close friends from the same small town in Mexico. They were all UFW supporters before 1975 when they obtained work together as pickers in Alphonso Madrid's crew. They had some experience, having picked grapes the previous season elsewhere.

The three were terminated two days after the election.[15] Medrano testified that on the last day they worked, around noon, the three of them were talking with three or four other workers about the relative merits of the UFW and the Teamsters when Madrid came upon them without their noticing his approach. The conversation among the workers was in Spanish, and Madrid also spoke in his limited Spanish.[16] Madrid told them that he didn't want any "strikers" or "Chavistas" there, talking about the unions. That was all he said then, but at the end of the day he told the three ofthem there was no more work.

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[14]Roberto Roman is deceased. Ochoa Guerra reportedly had difficulties crossing the U.S.-Mexico border to attend the hearing.

[15]Medrano testified that he couldn't remember but thought they ware terminated 2-1/2 to 3 weeks after the election; he, Madrid, and Madrid's wife all agreed that it was at the end of a regular 8-hour workday; however, payroll records and daily field reports made out by Madrid at. the time indicate that Medrano and Ochoa 3uerra worked 1-1/2 hours on Saturday, 13 September 1975, while Roman worked the full 5-hour Saturday workday. This discrepancy is not resolved.

[16]There was disagreement over how well Madrid understood

Alphonso Madrid testified that he did not fire the three but merely laid them off for a few days while the crew was picking the black Ribier grapes, because they were not sufficiently careful of the "bloom" on the grapes.[17] This occurred the same day he overheard them talking with other workers about "the Chavez union." Madrid at first testified that he laid off others who couldn't pick grapes along with the three, though he couldn't remember whom. He later said that the three were the only ones he stopped from picking Ribiers. He also said that in the many years he'd been a foreman, there 'hadn't been anyone whom he was unable to teach to pick grapes.

Rosie Madrid, Alphonso's wife, worked in his crew, and performed extra tasks for him, including working with inexperienced people and acting as his Spanish translator. She corroborated his reason for laying the three off, testifying that she was the

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(footnote 16 continued)and spoke Spanish; however, Madrid's own testimony showed that he understood at least that they were talking about the UFW.

[17]Medrano said that the crew was not picking the black Ribiers the day the three were terminated, but rather another green grape. This is contradicted by the daily field reports, which show that the crew" began picking Ribiers September 10th and continued at least through the 13th, as well as the testimony of the Madrids.

Many witnesses testified about grape picking. They essentially agreed that it takes a few hours for a person with no experience to learn how to properly select and pick ripe table grapes, but that additional instruction and care is necessary with Ribiers. In addition to taking more care to remove cracked or rotten grapes, one needs to be more careful not to rub the whitish dust, or "bloom," off them, because the resulting shininess reduces their market value. It does net take long to learn, however, and no one testified about any other instance when a worker was terminated for being unable to pick them properly.

one who, on his instructions, actually told them they were laid off until the crew was picking another type of grape. She also said that she had previously tried to help them learn to pick Ribiers, but the day they were terminated one of the "higher-ups," either Steve Caric or Louis Caric, Sr., came to see Madrid, and after their conversation (which she did not hear) Madrid told her, "Well, we've tried but ... [we have to let them go]."

Louis Caric, Jr., testified that he noticed that the quality of the Ribiers on one packing stand in Madrid's crew was noticeably worse than the rest. He complained to the workers (not identified) and to Madrid; he did not, however, direct that those workers be laid off. Medrano said, and the employment records indicate, that he and Ochoa Guerra worked at the same stand, but not Roman. By stipulation, the other work of the three was performed satisfactorily.

The three returned to Madrid a number of times, either individually or together, to ask for work. ,Who, when or how often was not determined with any precision. According to the Madrids, each time either the crew was still picking Ribiers or no work was available. However, Medrano testified that when he asked Madrid for work in the May 1976 tipping season, he was told there was no work, but he then got work from crew boss de Castro, who had net known him in 1975. de Castro testified that he had difficulty getting enough workers for the 1976 tipping season.

Alphonso Madrid's bias in favor of the Teamsters and against the UFW has already been mentioned. His statement, "I never thought they [the three] were Chavistas; as a matter or fact after the

election we continued to work," suggests that had he thought otherwise they would not have.

There are additional discrepancies in the testimony of respondent's witnesses. Neither Medrano nor Alphonso Madrid mentioned that Rosie Madrid was the one to actually inform the three of their termination. If, as she said, it was at the direction of either Steve Caric or Louis Caric, Sr., Alphonso Madrid's failure to mention that fact is unexplained. Nor is there any explanation of how they would have known of the unsatisfactory work. If Louis Caric, Jr., knew whose work he criticized And relayed that information to one of the other partners, he presumably would have said so.

Alphonso Madrid said there had never been anyone he was unable to teach to pick grapes, and he admitted that he did not lay off anyone else for not being able to pick Ribiers. The other work of the three was admittedly satisfactory. Finally, Medrano was apparently refused work by Madrid at least once when it was available. In this context, the coincidence of the three workers from two separate picking units being laid off for not being able to pick one type of grape on the very day they were admittedly identified as UFW supporters is too great to be credible.

I find that the purported inability of the three men to pick Ribiers was a pretext or a rationale developed after the fact, and the three were in fact discharged by Madrid because of their UFW sympathies. No evidence was introduced in support of the allegation that respondent refused to rehire Jesus Ochoa Guerra on or about 10 November 1975.

III. CONCLUSIONS OF LAW

A. Respondent has committed unfair labor practices under section 1155Ca) independent of those derived from violations of sections 1155 (b) and (c).

Employer conduct which is not unlawful under sections 1153 (b) or (c) may nonetheless violate the section 1153(a) prohibition against interfering with, restraining or coercing employees in the exercise of their rights to form, join or assist labor organizations, or to refrain from such activities. The test is whether the conduct tended to interfere with the free exercise of employee rights. D'Arrigo Brothers Co., 3 ALRB No. 31, slip op. p.2 (1977).

Of course, as with other allegations of unfair labor practices, the charges must be supported by a preponderance of the evidence. See section 1160.3. As indicated above, in some instances the general counsel has not net this burden, either because no evidence supporting the charge was introduced[18] or because evidence of questionable reliability was contradicted and/or uncorroborated.[19]

The situation is more complex with regard to the 9 September "Richgrove" encounter between Eliseo Casabar and Louis Caric, Jr., and UFW organizers Juan Vera and Dolores "Lolo" Flores, which ended

[18]The allegation that Alphonso Madrid questioned employees about how they had voted in the representation election.

[19] The allegations that OTI or about 28 August 1976 Eliseo Casabar threatened to discharge employees who signed UFW authorization cards, interrogated employees' concerning their union loyalties and activities, or engaged in surveillance of employees; and that at the labor camp Simon Matias engaged in surveillance of employees meeting with UFW representatives, and instructed employees not to talk to the representatives.

with Caric's calling for the sheriff and all the UFW organizers leaving. Causing organizers rightfully on the property under the access rule to leave is a violation of section 1153(a) because it deprives employees of their right to receive information from the organizers.[20] D'Arrigo Brothers Co., supra, slip op. p.3; also

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[20]Counsel for respondent contends that union organizers had no right of access to the employer's property during this period, since the board was enjoined from applying, implementing or enforcing its access regulation from 3 September until 18 September 1975, when the California Supreme Court issued its stay" in ALRB v. Superior Court, 16 C.3d 392., 128 C.R. 183 (1976).

In Samuel S. Vener Co., 1 ALRB No.10, slip op. p.10, n.6 (1975), the board, by way of dictum, stated:

> "During most of the relevant period here union organizers did not have an enforce able access right, either because our access regulation had not yet been adopted or be cause the Board had been enjoined from enforcing it. Consequently, we assume for purposes of argument that the employer might have sought to have the UFW organizers arrested under Penal Code, Section 602. ..."

The supreme court»of course, finally overruled all objections and determined that the* regulation was valid. ALRB v. Superior Court, supra. Under general legal principles if a law is ultimately found to be constitutional, its validity relates back to the time of its promulgation, and someone challenging it does so at his or her risk. Had the employer had organizers arrested, as the board hypothesized, any subsequent trespass conviction could not stand. Regarding the period of the injunctions, the board's statement in Vener must mean only that the access right was not enforceable as a practical matter at that time.

If someone acted in reliance on the lower court's injunction, such fact would at most constitute, a defense of good faith to liability. Assuming, arguendo, that good faith could be a defense to a section 1153(a) unfair labor practice charge (a doubtful proposition--see Jackson & Perkins Co., 3 ALRB No.36, slip. op. pp. 2-3 C1977)),such a defense does not apply here. The evidence shows that the employer did not rely on the lower court's injunctions but purported to comply with the access regulation.

see Tex-Cal Land Management, Inc., 3 ALRB No.14 (1977) ; Jack Pandol and Sons, Inc., 3 ALRB No.29 (1977). However, the employer does not violate 1153(a) by causing organizers to leave when the organizers themselves are in violation of the access rule, see V.B. Zaninovich & Sons, 1 ALRB No.22, slip op. p.4 (1975) (election certification proceeding), as long as the employer first provides an opportunity for voluntary compliance with the rule and does not use excessive force. Tex-Cal Land Management, Inc., supra, slip op. pp.8-12.

At the time of this incident the pertinent parts of the access rule provided:

> "b. In addition, organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall include such lunch break. If there is no established lunch break, the one-hour period may be at any time during the working day.
>
> "c. Access shall be limited to two organizers for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers.
>
> "d. Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent. Organizers shall also wear a badge or other designation of affiliation.
>
> "e. The, right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future

access.[21]

The organizers arrived as the workers were taking their lunch break, and consequently were within the time period authorized by the rule. Three organizers went to Casabar's crew, and two to the other crew in the vicinity. The number at Casabar's crew did not exceed that permitted by the rule for, even if the crew numbered less than 45 it clearly exceeded 30, and the rule has been interpreted to allow an additional organizer for each additional 15 workers or any part thereof. Pinkham Properties, 3 ALRB No.15, slip op. p.4 (1977); Tex-Cal Land Management, Inc., supra, slip op. p.8, n.3.

Flores' failure to identify himself by name was a violation of the rule, and resulted in Caric's physical contact with him. Caric merely laid his hand on Flores[1] shoulder. Contrary to the general counsel's contention, this is not the type of physical confrontation the board found intolerable in Tex-Cal, supra, where organizers were physically carried from the property, pushed, kicked, punched, and so on. Here, the contact was less substantial than the pushing which was found to constitute an unfair labor practice in Green Briar Nursing Home, 201 NLRB 503, 82 LRRM 1249 (1973). Caric tried to get Flores' name repeatedly,[22] and it is difficult to see what else he could do to get compliance

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[21]8 Cal. Admin. Code $ 20900(5), now SS 20900(e)(3) (B) and (e)(4).

[22]Caric testified that he asked Vera who Flores was, and Vera replied that he didn't see anyone.

with the rule other than call for the sheriff.

However, Caric's call to the sheriff was also caused by Vera's dispute with Casabar. (On another occasion Caric made Vera leave because he was arguing with a second foreman.) While disruptive conduct can be grounds for expelling the particular organizer or organizers involved, according to the regulation speech by itself is not disruptive conduct. This protection must even apply/to an argument with a foreman, particularly under circumstances such as here existed/where the verbal exchange was initiated by Casabar's telling Vera not to bother the workers. Any other conclusion would mean that an employer could manufacture an excuse for expelling union organizers by having someone provoke them into an argument.

I therefore conclude that while Flores' failure to identify himself say have been legitimate reason for expelling him, calling for the sheriff constituted a violation of section 1153(a) because it was caused by Vera's and Casabar's argument as well. The fact that the organizers left before the sheriff arrived is irrelevant.[23] The threat to call the sheriff to arrest organizers on the property for legitimate organizing purposes constitutes the unfair labor practice. D'Arrigo Brothers Co., supra, slip op. p.3.

[23]The evidence does not establish that the three organizers present in sedition to Vera and Flores were also threatened with arrest. They nay have been allowed to continue talking to workers, and no unfair labor practice was committed by their voluntary departure. See D'Arrigo Brothers Co., supra, slip op. pp.2-3.

Casabar's calling out to Vera not to bother the workers is also an unfair labor practice under section 1153(a). For workers to hear that the crew boss, whatever his reason, does not want the union organizer talking to them is inherently intimidating; it would be reasonable for them to assume they would incur his displeasure if they ignored the stricture and talked with the organizer.

The general counsel contends that Caric's and Casabar's actions during this incident amounted to surveillance of the workers while they talked to the union representatives. Observation of union activities by the employer or its agents, or even the appearance of it, is an unfair labor practice because it tends to inhibit employees' union activities. See, e.g., cases cited in J.P. Stevens $ Co. v. NLRB, 417 F.2d 533, 72 LRRM 2435, 2433 n.3 (5th C. 1969). In this instance it appears that, as was their usual practice, Caric was present to ensure that the organizers complied with the access rule, and Casabar to oversee the crew's lunch; break. The evidence does not establish that either was present for the improper purpose of keeping watch on employees' union activities. See V.B. Zaninovich & Sons, supra, slip op. pp.5-6.

I have found that Eliseo Casabar told workers in his crew on several occasions not to sign UFW authorization cards. The day of the election he also, in the presence of other, workers, called Ernie Barrientos stupid and shook grape clippers threateningly at him. Barrientos' protected activity as an election observer was the cause of Casabar's outburst which, while not the

the major reason for Barrientos' quitting, could reasonably be expected to have an intimidating effect on him and the other workers. Casabar's conduct on these occasions constitute violations of section 1153Ca).

B. Respondent's support of the Teamsters is an unfair labor practice under sections 1153(b) and Ca) of the Act.

Section 1153(b) of the Act makes it an unfair labor practice for an agricultural employer "[t]o dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." The board has stated, in the only decision to date in which it has considered a violation of this portion of the Act,[24] that such a violation "requires a finding that the degree or nature of the employer's involvement with the labor organization has impinged upon the free exercise of the employees' rights under Section 1152 of the Act to organize themselves and deal at arm's length with the employer." Bonita Packing Company, 3 ALRB No.27, slip op. p.2(1977). Such an impingement upon employees' exercise of their section 1152 rights must necessarily constitute a violation of section 1153(a) as well.

In the present case the evidence does not go to domination or. financial support of the Teamsters, but to possible interference with or non-financial support of it.[25] As in Bonita

[24]Sunnyside Nurseries, Inc., 3 ALRB No.42 (1977), concerning the formation of a grievance committee by an employer, was received after this was written. It does not affect the following discussion.

[25]In Bonita Packing, supra, an analogous situation, the board

Packing, two unions are competing for the allegiance of the employees, and "a pivotal issue" is the existence of discriminatory employer grants and denials of concessions, such as the use of company time and property, to one or the other of the unions. Where the employer acts affirmatively to promote one union over the other the natural tendency is to inhibit employees in their free exercise of section 1152 rights. Id., slip op. p.3. In Bonita Packing the board, finding no evidence of discriminatory action by the employer, determined the totality of employer conduct favoring one union to be de minimis (slip op. p.4), and the evidence insufficient to establish a violation of section 1153(b).

Even though the NLRB does not place as high a premium on access to employees at the workplace as the ALRB, granting unequal organizational opportunities to competing unions is an unfair labor practice under the NLRA. See, e.g., NLRB v. Waterman Steamship Co., 309 U.S. 206, 5 LRRM 682 (1940) (issuing passes to board a ship to one union "while denying them to another); Northern Metal Products Co., 171 NLRB 98, 70 LRRM 1228 (1968) (incumbent

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[25](continued) considered only the unlawful support aspect of section 1153(b). Id., slip op. at 2. However, in Englund v. Chavez, 8 C.3d 572, 105 C.R. 521 (1972), the supreme court stated that conduct by which an employer illustrates his favoritism for one union over another is a prime indicant of improper interference with a labor organization. Id., 8C.3d at 590, 105 C.R. at 554 (emphasis added). (The Court was there interpreting section 1117.of the Jurisdictional Strike Act, Labor C. SS 1115 et seq., in light of the parallel terminology of section 8(a)(2) of the NLRA, 29 U.S.C. S 158(a) (2). Section 8(a)(2) is substantially, identical to section 1153(b) of the ALRA, adopted by the legislature after Englund.

[26]Jackson & Perkins Co., 3 ALRB No.36, slip op. pp.6-7 (1977; "We have" found," unlike the NLRB, that access by organizers to employees on company property is vital to protecting and encouraging the rights of agricultural workers under our Act."

union permitted to solicit employees on company property while outside union restricted); H.& F. Binch Co., 168 NLRB 929, 67 LRRM 1129 (1967); Spitzer Motor Sales, 102 NLRB 437, 31 LRRM 1319 (1953), enf'd, 211 F.2d 23S, 33 LRRM 2693 (2d C. 1954); American-West African Lines. Inc., 21 NLRB 691, 6 LRRM 119 (1940); South Atlantic Steamship Co., 12 NLRB 1367, 4 LRRM 257 (1939), enf'd, 116 F.2d 480, 7 LRRM 423 (5th C.), cert., denied, 313 U.S. 582, 8 LRRM 459 (1941).

In the present case Teamster representatives were allowed to enter the employer's property and talk to employees as they worked almost without restriction, while access by UFW representatives was severely limited. The situation is analogous to the ship cases cited above, Waterman Steamship, American-West African Lines, and South Atlantic Steamship, where, as here, the employers relied upon provisions in contracts with incumbent unions to per-nit their representatives access while denying or limiting access by rival unions. In American-West African Lines, Inc., supra., 6 LRRM at 122, the NLRB rejected the contention that any favoritism was valid because the contract contained a union security clause. In NLRB v. Waterman Steamship Co., supra, 5 LRRM at 692, and South Atlantic Steamship Co., supra. 4 LRRM at 260-61, the burden was placed on the employer to show that the activities of the union visiting pursuant to the contract were restricted to the enforcement of the contract.[27]

[27]In the three cases cited, violations of what is now section 8(a)(1) of the NLRA were found. Section 8(a)(2) violations were not charged. However, the language of especially American-West African Lines, Inc., Supra, 6 LRRM at 122, cited below in the text, implies an unlawful support violation.

In the instant case the employer did not meet its burden of proving that the Teamster representatives limited their activities to "legitimate union business" authorized by the contract or that the company seriously attempted to so restrict them. There is direct and circumstantial evidence that the Teamsters conducted organizational activities with the knowledge and tacit consent of the company's agents. To grant one labor organization an opportunity to use employer property for organizational purposes when such grant is not accorded on equally favorable terms to another labor organization constitutes employer assistance and support to the first organization. American-West African Lines, Inc., supra, 6 LRRM at 122. Such discriminatory action impinges upon the free exercise of employee rights under section 1152 and is an unfair labor practice within the meaning of sections 1155 (b) and (a). See Bonita Packing Co., supra.

This conclusion is buttressed by a consideration of the situation prevailing in California agricultural and at Louis Caric & Sons prior to and at the time of the passage of the ALRA. A significant factor In the "unstable and potentially volatile condition" recognized by the legislature in the preamble to the Act[28] was the competition to represent farm workers between the UFW (and its predecessor, UFWOC[29]) and the Teamsters, and the resulting favoritism shown by many growers to the Teamsters as

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[28]Stats. 1975, 3d Ex. Sess., Ch.1, $ 1, No.3 West's Cal. Legis. Service, p. 304.

[29]United Farm Workers Organizing Committee.

the less feared union.. See Englund v. Chavez, 8 C.3d 572, 588-92, 105 C.R. 521, 532-35 C1972). In Eugene Acosta, 1 ALRB No. l, slip op. pp.16-17 (1975), the ALRB took notice o£ the facts regarding the 1970 contracts considered in Englund and the facts surrounding the 1973 multi-employer contract it was considering, and concluded that it was inherently difficult to determine the representative status of unions that had entered into collective bargaining agreements with agricultural employers during the period preceding the ALRA.[30]

By virtue of such a pre-Act agreement the Teamsters union was the incumbent at Louis Caric & Sons in 1975, and therefore had distinct advantages over the UFW in campaigning for worker support. Since the agreement contained a union security clause, Teamster membership was required as a condition of employment. Throughout the period of the agreement the union had the opportunity to become familiar to the workers. Through servicing the contract, apart from any question of abuse of the visitation clause, Teamster representatives had an unequaled opportunity to make a favorable impression upon the workers.

Given the probably collusive nature of such pre-Act collective bargaining agreements and the resulting election campaign advantage for the incumbent union, any employer expression of

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[30]Even if with a nonrepresentative union and containing a union security clause, such contacts are not illegal. Englund v. Chavez, supra, 8 C.3d ar 595, 105 C.R. at 538; Eckel Produce Co., 2 ALRB No. 25, slip op. p. 4 (1976).

preference for the incumbent union is highly suspect.[31] All of these factors support the conclusion that the grant of unequal access constitutes unlawful support of the Teamsters.

Section 1153(b) was also violated by the conduct of crew boss Alphonso Madrid. In addition to his election day statement to vote for the Teamsters or there would be no more work, with its explicit threat, Madrid actively campaigned among his crew for the Teamsters and against the UFW, and urged at least one worker to do so as well. Given the economic dependence of an employee on the employer, the former may discern & threat or promise where none is explicitly stated. NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2481, 2497 (1969); Albert C. Hansen, 2 ALRB No.61, slip op. p.14 (1976). The intimidating impact upon the workers' exercise of their right to organize and join unions is indicated by the fact that the UFW supporters in Madrid's crew were afraid that they would lose their jobs if he knew of their sympathies. Three workers were discharged when Madrid discovered their views; the workers fears were not groundless.

Given the semi-autonomous nature of the harvest crews, with the crew boss having virtually unrestricted authority to give and take away jobs, Madrid's conduct must be imputed to the company.

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[31]The UFW contends that in this context any expression of preference for the incumbent union, such as in this case the distribution of the leaflet deprecating the UFW for the purpose of getting votes for the Teamsters, violates section 1153(b). While I believe the argument has merit I do not reach the issue, because the distribution of the leaflet was not alleged in the complaint to be an unfair labor practice.

The situation is not unlike that in Spitzer Motor Sales, supra, in which the NLRB found a section 8(a)(2) violation. There the employer discriminatorily established and enforced a no solicitation rule, and a foreman permitted the favored union's representatives to solicit support and himself urged employees to join that union. The NLRB said:

> "Considering [the foreman's] unqualified supervisorial authority over the entire . . . shop, Respondent must answer for his unlawful acts of assistance.. . . We cannot say on this record, that his acts were isolated ones in conflict with any generally announced and enforced neutrality policy laid down by higher officials. . . ." Id., 31 LRRM at 1321 (citations omitted).

Here too Madrid's conduct was not isolated, and constituted an unlawful practice under sections 1153(a) and 1153 (b).

C. Respondent's discharge of Medrano, Roman and Ochoa Guerra was an unfair labor practice under sections 1155(c) and _(a) of the Act, but Earrientos' separation was not.

Section 1153(c) makes it an unfair labor practice for an agricultural employer "[b]y discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization." To establish a violation there must be discrimination, and the purpose of the discrimination must be to encourage or discourage union membership. Radio Officers' Union v. NLRB, 347 U.S. 17, 42-43, 33 LRRM 2417 (1954).[32] Specific evidence of

[32]The pertinent part of section 8(a)(3) of the NLEA is identical to the quoted portion of section 1153(c) of the ALRA.

intent to encourage or discourage is not an indispensable element of proof; where encouragement or discouragement is a natural and foreseeable consequence of the employer's action, it is presumed that the consequence was intended. Id., 347 U.S. at 44-45. Where an employee is allegedly discriminated against because of his or her union activity, it must be shown that the employer knew of the activity. NLRB v. Atlanta Coca-Cola Bottling Co., Inc., 293 F.2d 300, 309, 48 LRRM 2724 (5th Cir. 1961).

Once it has been shown that the employer engaged in discriminatory conduct which could have adversely affected employee rights, the burden shifts to the employer to prove that it was motivated by legitimate objectives. NLRB v. Great Dane Trailers, Inc., 388 U.S. 26, 34, 65 LRRM 2465 (1967); Maggio-Tostado. Inc., 3 ALRB No.33, slip op. p.4 (1977). If evidence of a business justification is introduced, it is then necessary to weigh the evidence to determine the true cause for the termination. See Morris, The Developing Labor Law 116 (1971).

Regarding Alfredo Medranoi Roberto Roman and Jesus Ochoa Guerra, respondent's agent and supervisor Alphonso Madrid discovered they were UFW supporters the same day he terminated them. I have weighed the evidence and determined for the reasons discussed above that their being UFW supporters was the real reason for their discharge, and the explanation given by the employer that they were temporarily laid off because of their unsatisfactory work picking Ribier grapes was merely a pretext or a subsequently developed rationale. Madrid's bias against the UFW was clearly demonstrated, and the intent to discourage UFW membership can be inferred. I

therefore conclude that these discharges violated section 1153(c) and, it follows, section 1153(a).[33] The general counsel has not produced evidence that Jesus Ochoa Guerra requested and was refused reinstatement on or about 10 November 1975, as alleged.

The general counsel contends that Ernie Barrientos was constructively discharged because of his union activities. In Crystal Princeton Refining Co., 222 NLRB No.167, 91 LRRM 1302, 1303 (1976), the NLRB stated:

> "There are two elements which must be proven to establish .a 'constructive discharge. V ; First, the burdens imposed upon the employee must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities."

Barrientos quit the day of the election. That afternoon his crew boss, Eliseo Casabar, angered at his challenging the votes of his (Casabar'S) relatives, had threatened him with grape clippers. As discussed above, Barrientos gave several reasons for his leaving, only one of which was the conflict with Casabar. There was no evidence of prior burdens imposed because of his union activities; in fact, his support for the UFW was not known until that day. I conclude that the evidence does not sustain the general counsel's contention.

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[33]See Maggio-Tostado, Inc., supra, slip op. p. 4; Tex-Cal Land Management, Inc., 3 ALRB No. 14, slip op. p. 5 (1977).

V. THE REMEDY

Having found that the employer committed unfair labor practices within the meaning of sections 1153(a),(b) and (c) of the ALRA, I shall recommend that respondent be ordered to cease and desist therefrom and to take certain affirmative actions as will effectuate the policies of the Act.

The attached notice should be reproduced in English, Spanish, and such Filipine dialect or dialects as the regional director finds appropriate. The notices should be posted, mailed, distributed, and read in accordance with the orders of the board in Tex-Cal Land Management, Inc., 3 ALRB No.14 (1977), Pinkham Properties, 3 ALRB No.15 (1977), and Bonita Packing Co., 3 ALRB No.27 (1977).

The general counsel and the UFW have requested that expanded access be ordered, with the UFW specifying that through the 1977 thinning, tipping, leafing and harvest seasons it should be allowed to place two organizers with each crew for the entire workday. The board has ordered expanded access as a remedy for 1153(a) violations involving denial of access in two recent cases, Jack Pandol $ Sons, Inc., 3 ALRB No.29 (1977), and Jackson & Perkins Co., 3 ALRB No.36 (1977).

While in those cases the remedy was ordered because the employers involved had systematically denied access, the reasoning is no less applicable to the instant case, where the Teamster organizers were given virtually unlimited access while the UFW was restricted. In either situation the remedy should be designed "to remedy the imbalance in organizational opportunities created by respondent's actions." Jackson & Perkins, supra, slip op. p.5.

Based on the remedies ordered in those cases, the following access will correct the imbalance which existed, yet not be unduly disruptive of the agricultural operations or property of the employer. Any time within the next 12 months that the UFW has on file a valid notice of its intention to take access, the number of organizers specified by section 20900 (e)(4)(A)[34] should be permitted to come onto respondent's property without regard to the time periods specified in section 20900(e)(3). In addition, during the same period the employer should provide the UFW with lists of employees and their current addresses without requiring the UFW to make a showing of interest, such lists to be up-dated biweekly.

The employer cannot complain that the access ordered is too burdensome, for it is if anything still less than that permitted the Teamsters during the 1975 harvest, who were apparently unrestricted in number. The Lists of names and addresses are directed in order to enable the union effectively to shift some of its organizing efforts from the employer's property to the workers' homes.

Finally, respondent should be directed to offer reinstatement to Alfredo Medrano and Jesus Ochoa Guerra, and to compensate them

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[34]8 Cal Admin. Code $ 20900 (e)(4)(A), as interpreted in Pinkham Properties, supra, and Tex-Cal Land Management, supra. All references to sections in this portion of the decision, unless otherwise specified, shall refer to Chapter 3 of the board's regulations as set forth in 8 Cal. Admin. Code $$ 20900-20910, as amended in 1976.

and the heirs of Robert Roman in the manner set forth in Resetar Farms, 3 ALRB No. 18 (1977), for the loss of wages suffered as a result of their unlawful discharge.

For the foregoing reasons, and pursuant to section 1160.3 of the Act, I recommend the following:

ORDER

Respondent Louis Caric § Sons, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Threatening employees who engage in protected activity with physical harm;

b. Directing employees not to sign union authorizations;

c. Threatening with arrest or otherwise denying access to or interfering with union organizers on its property for organizing purposes pursuant to duly promulgated regulations or orders of the board;

d. Discharging or laying off employees because of their union activities;

e. Giving unequal access to or otherwise supporting organizing efforts of the Teamsters union or any other labor organization, except as authorized by section 1153(c) of the Act;

f. In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by sections 1152, 1153(b) and 1153(c) of the Act.

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

a. Post the attached NOTICE TO WORKERS at a time

and locations designated by the regional director of the Fresno regional office. Such locations shall include each employee toilet wherever located on respondent's properties, utility poles, and other conspicuous places proximate to work areas and other locations where employees congregate. Copies of the notice shall be furnished by the regional director in English, Spanish, and appropriate Filipine dialect(s). The notices shall remain posted throughout respondent's 1977 harvest season or for 90 days, whichever period is longer. Respondent shall exercise due care to replace any notice which is altered, defaced or removed.

b. Distribute copies of the attached NOTICE TO WORKERS in the appropriate language to all current employees and to all employees hired by respondent through the 1977 harvest season, and mail copies of the notice in all languages to the last known address of all employees who worked for respondent during the period of 28 August 1975 to 12 September 1975.

c. Permit a board agent to read the attached NOTICE TO WORKERS in all languages to assembled employees on company time during respondent's 1977 harvest employment peak. The time, place and manner of the readings shall be designated by the regional director after consultation with respondent. Immediately following each reading, an opportunity shall be provided for any questions employees may have regarding the notice or their rights under ALRA. The board agent shall ascertain that only employees are present during the question and answer period. The regional director shall determine a reasonable rats of compensation to be paid by respondent to all non-hourly wages employees to

compensate them for time lost at this reading and question and answer period.

d. During any period within the next 12 months for which the UFW has filed a valid notice of intent to take access, permit union representatives in the number specified by 8 Cal. Admin. Code 3 20900(e)(4)(A) to enter its property and organize among its employees without regard to the time periods specified in 8 Cal. Admin. Code S 20900(e)(3).

e. During any period within the next 12 months for which the UFW has filed a valid notice of intent to take access, provide the union forthwith, and every two weeks thereafter, an updated list of all current employees and their addresses.

f. Offer Alfredo Medrano and Jesus Ochoa Guerra reinstatement to their former positions, beginning when the first crop activity for which they are qualified commences.

g. Make Alfredo Medrano, Jesus Cohca Guerra and the heirs of Eocene Roman whole for any loss of earnings suffered by reason of discrimination against, the three named, including interest thereon at the rate of 7% per annum. The regional director shall conduct an investigation to determine the amount of back pay, if any, due the discriminatees and shall calculate the interest thereon. If it appears that there exists a controversy between the board and the respondent concerning the amount of back pay due which cannot be resolved without a formal proceeding, the regional director shall issue a notice of hearing containing a brief statement of the matter in controversy. The hearing shall be conducted pursuant to the provisions of 8 Cal. Admin. Code $ 20370.

h. Preserve and, upon request, make available to the board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay cue and the rights of reinstatement

under the terms of this order.

i. Notify the regional director within 20 days from receipt of a copy of this "decision of the steps which respondent has taken and will take to comply herewith, and continue to make periodic reports as requested by the regional director until full compliance is achieved.

Dated: 17 June 1977

Jennie Rhine
Administrative Law Officer

NOTICE TO WORKERS

After charges were made against us by the United Farm Workers Union and a trial where each side had a chance to present its facts was held, the Agricultural Labor Relations Board has found that we interfered the right of our workers to freely decide what union they want, if any. The Board has told us to send out and post this notice.

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

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

(1) to organize themselves;

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

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

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

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

Because this is true we promise that:

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

WE WILL NOT support any particular union;

WE WILL NOT interfere with union organizers coming onto our land to talk to you about the union when the law allows it;

WE WILL NOT tell you <u>not</u> to support any union;

WE WILL NOT fire you, lay you off, or threaten you with physical harm for supporting a union or taking part in union activities;

WE WILL offer to give Alfredo Medrano and Jesus Ochoa Guerra their old jobs back, and we will pay each of them and the heirs of Roberto Roman (deceased) any money they lost because we fired them.

Dated:

LOUIS CARIC & SONS

By _____

(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE

If you have questions concerning this notice, you may contact the Agricultural Labor Relations Board, 1685 "E" Street, Fresno, California, Telephone: (209)233-7761.