STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TENNECO WEST, INC, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 77-CE-51-C 4 ALRB No. 16

DECISION AND ORDER

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

On January 4, 1978, Administrative Law Officer (ALO) Matthew Goldberg issued the attached Decision in Case No. 77-CE-51-C. Thereafter the Respondent filed timely exceptions and a supporting brief to the ALO's decision.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the ALO's rulings, findings, and conclusions and to adopt his recommended order, as modified herein.

As the ALO noted, the one issue presented in this case is identical to that previously presented to the Board by the same parties in Tenneco West Inc., 3 ALRB No. 92 (1977). In that decision we found, as we find here, that the Respondent violated Labor Code § 1153(a) by failing to submit to the Board a complete pre-petition employee list in accordance with 8 Cal. Admin. Code §§ 20310 (a)(2) and 20910(c), in that the list submitted did not

contain the names and addresses of workers supplied to Respondent by its labor contractor, Santiago Reyes.

The Respondent excepted to the ALO's recommendation that the General Counsel and the United Farm Workers of America, AFL-CIO, be reimbursed for litigation costs. At the time this case was heard, our decision in Tenneco West, Inc., supra, had not yet issued. As we consider Respondent's defense in this matter, that it was not the employer of the workers supplied by Reyes, was debatable rather than frivolous, we decline to award litigation costs in this case. See Western Conference of Teamsters, 3 ALRB No. 57 (1977).

ORDER

Respondent, Tenneco West, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

Refusing to provide the Agricultural Labor Relations Board with an employee list as required by 8 Cal. Admin. Code S 20910(c) (1976).

2. Take the following affirmative actions which we find are necessary to effectuate the policies of the Act:

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

(b) Mail copies of the attached Notice in all appropriate

languages, within 20 days from receipt of this Order, to all employees employed in the time period during which the unfair labor practice was committed, e.g., March through April, 1977.

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

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

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

(f} Allow UFW organizers to organize among its employees during the hours specified in 8 Cal. Admin. Code § 20900(e)(3) (1976) during the next period in which the UFW has filed a notice of intent to take access. The UFW shall be permitted, in addition to the number of organizers already permitted under § 20900(e)(4)(A), one organizer per fifteen employees.

(g) Upon filing a written notice of intent to take access pursuant to § 20900(e)(1)(B), the UFW shall be entitled to one access period during the 1978 calendar year in addition to the four

periods provided for in § 20900(e)(1)(A) and also in addition to the extra access period ordered by the Board in 3 ALRB No. 92.

(h) Notify the Regional Director in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him/her periodically thereafter in writing what further steps have been taken in compliance with this Order.

DATED: April 5, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

NOTICE TO WORKERS

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

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

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

(1) to organize themselves;

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

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

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

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

Because this is true we promise you that:

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

Especially:

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

TENNECO WEST, INC.
(Employer)

DATED: _____ By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Tenneco West, Inc.

Case No. 77-CE-51-C
4 ALRB No. 16

ALO DECISION

A hearing was held on a complaint filed against Tenneco West, Inc., an agricultural employer, after which the Administrative Law Officer issued his decision finding that the Employer had violated § 1153(a) of the Act by failing to submit to the Board a complete pre-petition employee list in accordance with $$ 20310(a)(2) and 20910(c) of the Regulations in that the list submitted by the Employer did not contain the names and addresses of workers supplied through labor contractor Reyes.

BOARD DECISION

The Board affirmed the ALO's finding of a violation of § 1153(a) of the Act. However, it declined to uphold the ALO's recommendation that the General Counsel and the United Farm Workers of America, APL-CIO, be reimbursed for litigation costs. While noting that the one issue presented in that case was identical to that presented to the Board by the same parties in Tenneco West, Inc., 3 ALRB No. 92 (1977), the Board also noted that at the time this case was heard its decision in Tenneco West, supra, had not yet issued. The Board characterized the Employer's defense of this unfair labor practice as being debatable rather than frivolous and therefore declined to award litigation costs.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARDS

TENNECO WEST, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	CASE NUMBER: 77-CE-51-C

Robert Farnsworth, Esq., for the General Counsel.

Jerry Shuford, Esq., of Shuford & Lee, for the Respondent.

Douglas Adair, Esq., for the Charging Party.

Before: Matthew Goldberg, Administrative Law Officer

DECISION OF THE ADMINISTRATIVE LAW OFFICER

STATEMENT OF THE CASE

This case was heard before me on May 11, 1977, in Coachella, California. It involved the failure and/or refusal of Tenneco West, Inc., Respondent herein, to submit to the Board an employee list as required by Sections 20910(c) and 20310(a)(2) of the Regulations.

On March 8, 1977, the United Farm Workers of America, AFL-CIO (hereinafter referred to as the "Union"), served a Notice of

Intention to Take Access (No. 77-NA-23-C) on Respondent, and filed same with the Board on March 14, 1977. On March 30, 1977, the Union filed with the Board a Notice of Intention to Organize, No. 77-NO-22-C, and served said notice on Respondent on the same date.

A charge in case number 77-CE-51-C, was filed by the Union and served on Respondent on April 6, 1977. A complaint based on this charge, alleging, in substance, a violation of Section 1153(a) of the Act, was filed by the General Counsel of the Board and served on Respondent on April 8, 1977. Said complaint was amended by the General Counsel on April 26 and on April 29, 1977, the amendments also being served on Respondent on the respective dates when they were issued.

Respondent has filed an answer essentially denying the unfair labor practice alleged.

On May 11, 1977, a duly noticed hearing in the matter was held. Respondent, the Charging Party, and the General Counsel for the Board appeared through their respective counsels. All parties were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, and submit briefs.

Upon the entire record, from my observation of the demeanor of the witnesses, and having read and considered the briefs submitted to me since the hearing, I make the following:

I

FINDINGS OF FACT

A. Jurisdiction of the Board

1. Respondent: is and was, at all times material, an agricultural employer within the meaning of Section 1140.4(c) of the Act.

2. The Union is and was at all times material a labor organization within the meaning of Section 1140.4(f) of the Act[1/]

B. The Unfair Labor Practice Alleged

The parties stipulated that on April *5, 1977,* pursuant to the filing of a Notice of Intention to Organize, number 77-NO-22-C (General Counsel Exhibit No. l(g)), Respondent submitted a list of employees to the Board which did not contain the names of workers procured through one Santiago Reyes, a licensed labor contractor; and that the Reyes crews performed the same, duties for Respondent at the same time as the employees whose names appeared on the list which it did submit (General Counsel Exhibit No. 2).

Mr. Reyes was called as the sole witness at the hearing. He testified that as a licensed labor contractor, he supplied crews of workers to perform agricultural labor for Respondent throughout the 1977 season. The crews were principally involved in the picking and hauling of citrus and were not utilized in the grape harvesting operations of Respondent. Reyes stated that both he and the field foreman (employed by the Respondent) hire workers for his crews, although the ultimate responsibility for hiring rested with him.

[1/] Respondent admitted in its answer that the Union was a labor organization, and also admitted that it was an agricultural employer "as to those ranches which are owned or leased" by it, "except as to situations in which [Respondent] utilizes the services of 'custom harvesters' or other agricultural employers..." Respondent also denied that it was an agricultural employer in any situation wherein individuals worked on lands that were not owned or leased by it. However, Respondent produced no evidence or argument which would support these contentions as they might apply, if at all, to the instant situation. Accordingly, I find that insofar as this case is concerned, Respondent is and was an agricultural employer within the meaning of the Act.

The field foremen are also empowered to terminate employees.

Reyes further testified that he does not provide any equipment to the Respondent, save trucks: rather, Respondent provides ladders, picking bags, fork lifts, and empty containers for the picking work. The workers themselves furnish their own gloves.

These workers are paid once a week, on a piece rate basis, by Reyes. Respondent does not issue them checks, but pays Reyes a lump sum from which he deducts a commission. The balance is distributed to the respective workers, after further individual deductions are taken for taxes, social security and insurance.

Rates of pay for the workers vary from orchard to orchard. They are principally set by fieldmen for the companies (such as Respondent) to which the crews are supplied. In this particular instance, Prank Mendoza, an employee of Respondent, established the pay scale. In addition, Mendoza was responsible for directing Reyes foremen concerning the quality and size of the fruit to be picked. It is Respondent which decides where crews will be sent to work, as well as how many bins will be filled during a given work period.

Reyes testified that he did not have any written agreement for harvesting with Respondent, although he did have an agreement with it concerning the hauling of harvested crops.[2/] During the period in question, Reyes supplied between one and four work crews to the Respondent. For the most part, their work was performed on land owned by Respondent, although in some instances Respondent did

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[2/] Reyes testified that his trucking operation was completely separate from his labor contracting business, although there exists only one bank account for both.

not own the particular property on which Reyes' crews were sent by it. Regardless of who owned the land, the actual work performed by the crews was the same, as was Mr. Mendoza's responsibility concerning them.

II

CONCLUSIONS OF LAW

This identical issue, with the same parties involved was presented to the Board in Tenneco West, Inc., 3 ALRB No. 92. In that case, unfair labor practice charges alleged, inter alia, that Respondent had failed to submit to the Board a complete pre-petition employee list in accordance with Sections 20310(a)(2) and 20910(c) of the Regulations, in that there, as here, the list submitted by the Respondent did not contain the names and addresses of workers supplied through labor contractor Reyes.[3/] The instant situation is yet another refusal by this Respondent on still another occasion to comply with the clear dictates of the Board's Regulations.

No reason was advanced by Respondent (if any there can be) for questioning the Board's holding in 3 ALRB No. 92. There the Board held that, given the same facts present herein, "under our Act, Section 1140.4(c), Respondent is the agricultural employer of the workers in Mr. Reyes' crews"[4/] and that Reyes was a licensed labor

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[3/] At the hearing, the parties informed me that the identical issue was currently before the Board, whereupon I stated that I would hold my decision in abeyance until the Board made its determination. Why this case was not consolidated with the prior one for decision by the Board escapes me.

[4/] The Board noted that pursuant to this section of the statute, "[T]he employer engaging [a farm labor contractor] or person shall be deemed the employer for all purposes under this part."

contractor who provided to Respondent the labor required to complete the citrus harvest. The Board went on to state:

> "The names and addresses of the workers supplied by Reyes were available to Respondent from Reyes. We have previously found that under Labor "Code Section 1157.3 the agricultural employer is responsible for maintaining and making available to the Board upon request accurate and current payroll lists containing the names and addresses of workers supplied by a labor contractor, as well as those employed directly. Yoder Brothers, 2 ALRB No. 4 (1976). We adopt the ALO's finding that Respondent violated Labor Code Section 1153(a) in failing to provide an accurate list of its employees and their addresses. See Henry Moreno, 3 ALRB No. 40 1977). See also Yeji Kitagawa,et al., 3 ALRB No . 44 (1977) where we determined that 8 California Administrative Code Section 20910 and Section 20310(a)(2) together provide that if the employer questions the unit named in the Notice of Intention to Organize, it shall submit a list based on the unit it contends to be correct, in addition to the list covering the unit request, and a written description of the unit it contends to be correct." 3 ALRB No. 92, pp. 4 and 5.

As such, the Board has made it unquestionably clear that it is a violation of Section 1153(a) of the Act to fail to 'supply a complete list of employees under Sections 20910 and 20310(a)(2) of the Regulations where that list does not include the names and addresses of agricultural employees procured for an employer via a labor contractor, and I so find such a violation in the instant case.

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III

RECOMMENDED ORDER – THE REMEDY

In addition to recommending those remedies established by the Board in Henry Moreno, 3 ALRB No. 40 and Tenneco West, Inc., 3 ALRB No. 92, as a response to Section 1153(a) violations of the instant type, I will recommend that the General Counsel and the Union be reimbursed for litigation costs.

As noted by the Board in Henry Moreno, 3 ALRB No. 40, p. 10, "[W]e cannot conceive of any relevant defense to a flat refusal to comply with [the requirements of Section 20910 of the Regulations], and none is offered here." Member Hutchinson has written:

> "The direct result of a series of partial and/or inadequate lists is a substantial increase in time and effort by both the union and this agency. Administrative and litigation costs are incurred in attempting to enforce compliance, communicate with employees, and prepare for or resolve the issues relevant to the timing and scope of an election. The only way to compensate for these losses is with monetary awards..." Tenneco West, Inc. 3 ALRB No. 92, pp. 26 & 27, dissenting opinion. See also Western Tomato Growers and Shippers, et al., 3 ALRB No. 51, concurring opinion of Member Hutchinson; Tiidee Products, Inc. and I.E.E, 194 NLRB 1234, 79 LRRM 1175 (1972).

This remedy is particularly appropriate where, as here, the Respondent has engaged in a series of identical unfair labor practices, and the remedies provided for those violations of the Act necessarily eventuate in a duplication and overlap. Despite the fact that the Respondent has committed a separate and distinct unfair labor practice on each occasion that it has failed to supply a complete and accurate employee list where mandated by the Regulations,

Respondent would be in no worse position, without the imposition of attorneys' fees and litigation costs herein, than it would have been had it committed a single violation of the Act.[5/] In effect, providing a duplicate remedy for an additional refusal to supply a complete employee list is akin to providing no remedy at all for the additional violation.

Recommended Order:

Respondent,. Tenneco West, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

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

2. Take the following affirmative actions which I find are necessary to effectuate the policies of the Act:

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

[5/] Although the Board has ordered in 3 ALRB No. 92 that the Union be entitled to one access period in addition to the four periods provided for in Section 20900(e)(1)(A) to remedy the prior list violation, and I shall recommend that due to the instant violation the Union shall be entitled to a further additional access period, the practical effect of these added access periods is open to question. Whether or not Respondent's agricultural operations are so extensive as to make fruitful a total of six one month access periods (i.e., whether peak employment is maintained throughout such periods) during calendar year 1978 has not been established by the record evidence herein.

(b) Mail copies of the attached notice in all appropriate languages, within twenty days from receipt of this Order, to all employees employed in the time period during which the ULP was committed, e.g. March through April, 1977.

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

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

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

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

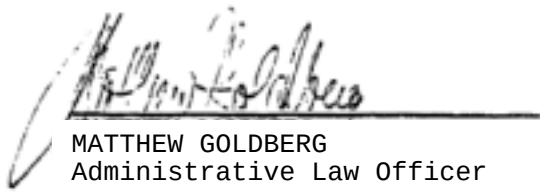
Such right of access during the working day beyond that normally available under Section 20900(e)(3) may be terminated or modified if, in the view of the Regional Director, it is used in such a way that it becomes unduly disruptive. If, after the overruled challenge ballots are opened and counted pursuant to case number 77-RC-6-C and 3 ALRB No. 92, the election results indicate a victory for the UFW, the above ordered expanded access shall be limited as provided by 8 Cal. Admin. Code §20900(e)(l)(c).

(g) Upon filing a written notice of intent to take access pursuant to Section 20900(e)(1)(B), the UFW shall be entitled to one access period during the 1978 calendar year in addition to the four periods provided for in Section 20900(e)(l)(A) and also in addition to the extra access period ordered by the Board in 3 ALRB No. 92.

(h) Notify the Regional Director in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him/her periodically thereafter in writing what further steps have been taken in compliance with this Order.

(i) Reimburse the Union and the ALRB for all reasonable sums expended for or incurred in connection with the investigation and litigation of this case, which amount shall be determined by the Board after submission to it by the parties of evidence in support thereof.

DATED: January 4, 1978



MATTHEW GOLDBERG
Administrative Law Officer

NOTICE TO WORKERS

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

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

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

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

Because this is true we promise that:

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

Especially:

WE WILL MOT refuse to provide the Agricultural Labor Relations Board with a current list of employees when the UFW or any union has filed its "Intention to Organize" the employees at this ranch.

TENNECO WEST, INC.
(Employer)

DATED:_____ By: _____
(Representative; (Title)

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

DO NOT REMOVE OR MUTILATE.