

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

LAFLIN & LAFLIN, aka LAFLIN DATE)
GARDENS,)

Respondent,)

and)

UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)

Charging Party.)

Case No. 77-CE-52-C

RICHARD PETERS FARMS,)

Respondent, and)

UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)

Charging Party.)

Case No. 77-CE-47-C

Case Nos. 77-CE-26-C
77-CE-46-C
77-CE-59-C

HARRY CARIAN,)

Respondent, and .)

UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)

Charging Party.)

Case No. 77-CE-58-C 4

HENRY MORENO,)

Respondent,)

and)

UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)

Charging Party.)

ALRB NO. 28

DECISION AND ORDER

On June 6, 1977, Administrative Law Officer (ALO) Matthew Goldberg issued his decision in this proceeding. Thereafter each of the Respondents^{1/} filed exceptions and a supporting brief. The Charging Party and the General Counsel each filed a brief responding to Respondents' exceptions.

Pursuant to the provisions of Section 1146 of the Labor Code,^{2/} the Agricultural Labor Relations Board has delegated its authority in this proceeding to a four-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, and conclusions of the ALO and to adopt his recommended Order, as modified herein.

The ALO found that each of the four Respondents violated Section 1153(a) by failing to submit, in accordance with 8 Cal. Admin. Code Section 20910 (c), a complete list of employees, their current street addresses and job classifications to the Board following the service by the Charging Party on each Respondent of a Notice of Intention to Organize. The ALO found that as to Respondent Moreno, there was an outright refusal to submit the required list, and that the lists submitted by Respondents Laflin and Laflin (Laflin), Richard Peters Farms (Peters), and Harry Carian (Carian) did not contain all of the information required by 8 Cal. Admin. Code Section 20910(a)(2). The ALO further found

^{1/} Respondents' request for oral argument is hereby denied.

^{2/} A statutory references herein, unless otherwise indicated, are to the Labor Code.

that Respondents Carian and Peters violated Section 1153(a) by the use of "employee information" cards,, that the use of these cards constituted an attempt by Carian and Peters to ascertain which of their employees desired to be visited by union organizers, and that Carian and Peters were thus engaging in surveillance of their employees to determine their attitudes toward union organization.

Respondents Carian, Laflin, and Peters excepted to the ALO's finding that they submitted incomplete lists and thereby violated Section 1153(a). The record supports the ALO's detailed findings that the lists provided by these three Respondents did not satisfy the requirements of 8 Cal. Admin. Code Section 20910. Supplying lists of names with either post office boxes or street addresses outside the Coachella Valley clearly interferes with employees' Section 1152 rights, which include the opportunity of workers to communicate with-and receive information from labor organizations about the merits of self-organization. See Henry Moreno, 3 ALRB No. 40 (1977). A labor organization's ability to have any sort of effective communication with workers employed at such places as these where the workers are present only four and a half days to two weeks, only once or twice a year, is severely impeded by the task of locating and talking with workers through post office' boxes or addresses beyond commuting distance from the Coachella Valley. We affirm the ALO's conclusions concerning these violations of Section 1153(a).

Respondents argue that the ALO failed to consider what they contend is a patent ambiguity inherent in the term "current

street address", as that term is used in 8 Cal. Admin. Code Section 20310(a)(2). Respondents argue that given the migratory nature of the agricultural workers involved it is not inconceivable or unreasonable to think that the request for a current street address would be interpreted as a request for their permanent street address rather than the address of their temporary residence. Respondents further allege that its employees' permanent addresses should be considered their current street addresses, rather than the address of a temporary residence.

As we have already explained in Henry Moreno, *supra*, the purpose of 8 Cal. Admin. Code Section 20910 is to protect employees' Section 1152^{3/} rights. Implicit in these rights is the opportunity of workers to communicate with and receive communication from labor organizers about the merits of self-organization. It is precisely because of the transient and mobile nature of agricultural employment that a labor organization's only opportunity for effective communication with the workers, at home or on the job, is when the employees are working for the employer. In Silver Creek Packing Co., 3 ALRB No. 13 (1977) we held that communication at the homes of employees is not only legitimate, but crucial to the proper functioning of the Act. In this context we reject Respondents' argument that the phrase "current street address" contains a

^{3/}Section 1152 states in pertinent part: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities"

patent ambiguity. The phrase obviously refers to the place where the employee resides while working for the employer. Common sense dictates that if an employee is living in a labor camp which does not have a street address, a statement that the employee is a resident of a specific labor camp, and giving the name and location of that labor camp would meet the requirement of the regulation.

We note that Respondents raised the issue of a "patent ambiguity" for the first time in their exceptions to the ALO's decision. This defense to the inadequacy of the lists they provided was never raised at the unfair labor practice hearing, nor was any evidence presented to support it. We also take administrative notice of the proceedings in ALRB v. Harry Carian, Indio No. 23504 and ALRB v. Laflin, Indio No. 23566. In those cases we sought enforcement of subpoenas duces tecum seeking lists complying with our pre-petition list regulation or, in the alternative, payroll documents containing such information. After being served with the subpoenas, neither Laflin nor Carian petitioned us to revoke the subpoena; a course of action which would have raised the issue of a possible ambiguity to the Board. We find that the Respondents' "patent ambiguity" defense lacks merit and, when viewed in context, the timing of its advancement indicates that the Respondents' non-compliance with the pre-petition list regulation was in bad faith. On the basis of the above and the entire record, we affirm the ALO's conclusion that Moreno, by its refusal to provide any pre-petition list, and Laflin, Peters, and Carian, by their supplying of inadequate lists, violated Section 1153 (a) of the Act.

All four Respondents allege that the enactment of 8 Cal.

Admin. Code Section 20910 (c) was invalid and that any order based on a violation thereof would be void. This issue has already been decided in Henry Moreno, supra, holding that the Board had the authority pursuant to its rulemaking powers under Labor Code Section 1144 to enact this section, and that Section 20910 is necessary to effectuate the purposes of the Act. Section 20910 also serves as an aid to the Board's regulation of the election process itself, and as such is intrinsic to that part of the Act which allows us to investigate representation case matters.^{4/}

Respondents Carian and Peters except to the ALO's conclusion that their use of "employee information" cards constitutes an independent violation of Section 1153 (a). These Respondents assert that the statement on the card, "I am not willing to supply any information that I have not written on this card" is inserted only to protect the employer. We consider this argument unconvincing, California State law requires employers to keep accurate records of

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^{4/}See Labor Code Section 1151 which states in pertinent part: "For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Chapters 5 ... and 6 ...: (a) The board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The members of the board or their designees or their duly authorized agents shall have the right of free access to all places of labor. The board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application."

the addresses of its employees,^{5/} so it is not optional with employees whether they wish to disclose their addresses to the employer. Although we agree with the ALO's finding that the use of such cards was an attempt to ascertain which employees wished to be visited by union organizers, we do not agree with his conclusion that this constitutes surveillance. Rather, we conclude that such conduct constitutes interrogation in violation of Section 1153(a) in that the workers were in effect being asked to disclose their attitudes for or against the union by giving or refusing to give their addresses. See Tenneco West, Inc., 3 ALRB No. 92 (1977).

In Henry Moreno, supra, we established standard remedies for unfair labor practices involving the refusal to provide a pre-petition list as required by Section 20910 of our regulations. As we held in that case, "the refusal to provide the list required in Section 20910 substantially impedes the ability of employees to exercise their Section 1152 rights,

^{5/} Labor Code Section 1174 (c) states in pertinent part "every person employing labor in this State shall keep a record of the names and addresses of all employees employed." Section 1175(d) states: "Any person, officer, or agent who fails to keep any of the records required by Section 1174 is guilty of a misdemeanor."

We believe these same sections of California's Labor Code illustrate the invalidity and misplaced concern of Respondent Moreno's contention that the ALO's decision imposes a "condition of employment." Respondent Moreno argues that if an individual did not wish to disclose his current address, an employer would have to refuse that individual employment. This regulation adds nothing to the obligation already imposed by other portions of the Labor Code. See Sections 1174 (c) and 1157.3. Thus, to the extent it can be argued that giving an address constitutes a condition of employment; that condition exists independently of the ALO's decision or 8 Cal. Admin. Code Section 20910.

and it further impedes the reasonable attempt of the Board to carry out its statutory duties to protect those rights in a manner which is realistically responsive to the setting in which these rights are exercised." 3 ALRB No. 40 at p. 10. Considering the workers' Section 1152 rights, the importance of compliance with Section 20910 of our regulations, and the effect of the employer's non-compliance with that regulation, we believe certain changes in the Moreno remedies are necessary to counteract employer interference with employees' rights guaranteed under the ALRA. We are cognizant, as well, of the Court's language in Pandol & Sons v. ALRB, 77 Cal. App. 3d 822 (1978) (rehearing granted on issue of remand to Board, March 21, 1978), pointing to the potential for coercion of employees where unrestricted numbers of organizers are present on an employer's property, and the possibly disruptive nature of working-time access.

With the above considerations in mind, we shall proceed to modify the standardized remedial approach to these pre-petition list violations which we set forth in Henry Moreno, supra, in the following fashion. As to Respondents Laflin and Peters, where there was no petition for an election, and as to Respondent Carian, where final election results have not yet been determined, our remedial order, infra, is intended to redress those Respondents' unfair labor practices which clearly interfered with their employees' rights to self-organization. Accordingly:

1. Respondents Laflin, Peters, and Carian will be ordered to allow UFW organizers to organize among their employees during the hours specified in 8 Cal. Admin. Code Section 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 Section 20900 (e)(4)(A), one organizer for each fifteen employees.

2. Respondents Laflin, Peters, and Carian will be required to permit the Union, during one hour of regular working time, to disseminate information to and conduct organizational activities among said Respondents' employees. We believe that a one-hour meeting constitutes a fair method of compensating the Charging Party and the employees for Respondents' prior interference, which prevented the meaningful communication which the Act and the regulation seek to promote. Moreover, a one-hour meeting on company time does not contain the potential for interference with production present in a grant of working-time access.

3. If during the 1978 season the UFW files a Notice of Intent to take Access as described by 8 Cal. Admin. Code Section 20900 (e) (1) (B), Respondents-Laflin, Peters, and Carian will be required to provide the UFW with an employee list on a weekly basis until the conclusion of the harvest.

Despite Respondent Moreno's clear interference with its employees' Section 1152 rights, we note that the Union was, nonetheless, able to communicate successfully with enough Moreno employees to make the requisite showing of interest to petition for an election. We also note that the Union won the election, thus a majority of the employees who voted designated the Union as their collective bargaining representative. Although we do not condone this Respondent's conduct, we find it unnecessary here to order the same remedies providing for expanded access that we ordered applied to Respondents

Laflin, Peters, and Carian. We therefore shall order that Respondent Moreno cease and desist from refusing to provide a list as required by 8 Cal. Admin. Code Section 20910 (c) (1976) and in any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Act.

ORDER

Respondent, Laflin & Laflin, aka Laflin Date Gardens, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

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

b. In any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Agricultural Labor Relations Act.

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

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

b. Post copies of the attached Notice for a period of 90 consecutive days, to be determined by the Regional Director, at places to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

c. Mail a copy of the Notice, in all appropriate languages, to each of the employees in the bargaining unit, at his

or her last known address, not later than 31 days after the receipt of this Order.

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

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

f. Provide the ALRB with an employee list as described by 8 Cal. Admin. Code Section 20910 (c) (1976) if, during the 1978-1979 growing season the UFW files a Notice of Intent to take Access as described by 8 Cal. Admin. Code Section 20900(e) (1)(B). The list shall be provided within 5 days after service on Respondent of the Notice of Intent to take Access.

g. Allow UFW representatives, during the next period in which the UFW files a Notice of Intent to take Access, to organize among Respondent's employees during the hours specified in 8 Cal. Admin. Code Section 20900 (e) (3) (1976), and permit the UFW, in addition to the number of organizers already permitted

under Section 20900 (e) (4) (A), one organizer for each fifteen employees.

h. Grant to the UFW, upon its filing a written Notice of Intent to take Access pursuant to Section 20900(e)(1)(B), one access period during the 1978 calendar year in addition to the four periods provided for in Section 20900 (e) (1) (A).

i. Provide for the UFW to have 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 Union and Respondent concerning the Union's plans, the Regional Director shall determine the most suitable times and manner for such contact between organizers and Respondent's employees. During the times of such contact no employee will be required to engage in work-related activities, or forced to be involved in the organizational activities. All employees will receive 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 earners for their lost production time.

j. Notify the Regional Director in writing, within 31 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 to comply with this Order.

ORDER

Respondent, Richard Peters Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

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

b. Interrogating, polling, or otherwise interfering with its employees concerning their union affiliation or sympathy or their participation in protected activities.

c. Utilizing "employee information" cards which state that the information provided by employees thereon may be given to union organizers.

d. In any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Agricultural Labor Relations Act.

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

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

b. Post copies of the attached Notice for a period of 90 consecutive days, to be determined by the Regional Director, at places to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

c. Mail copies of the attached Notice in all

appropriate languages, within 31 days from receipt of this Order, to all employees employed in the period during which the employee information cards were utilized.

d. Preserve and, upon request, make available to the Board or its Agents, for examination and copying, all payroll records, all signed employee information cards, and all other records necessary to determine which employees were employed during the time the employee information cards were utilized.

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

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

g. Provide the ALRB with an employee list as described by 8 Cal. Admin. Code Section 20910(c) (1976) if, during the 1978-1979 growing season the UFW files a Notice of Intent to take Access as described by 8 Cal. Admin. Code Section 20900(e)(1) (B). The list shall be provided within 5 days of the service

on Respondent of the Notice of Intent to take Access.

h. Allow UPW organizers to organize among its employees during the hours specified in 8 Cal. Admin. Code Section 20900 (e) (3) (1976) during the next period in which the UFW files a Notice of Intent to take Access. The UFW shall be permitted, in addition to the number of organizers already permitted under Section 20900 (e) (4) (A), one organizer for each fifteen employees.

i. The Respondent shall provide for the UFW to have 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. The UFW shall present to the Regional Director its plans for utilizing this time. After conferring with both the Union and Respondent concerning the Union's plans, the Regional Director shall determine the most suitable times and manner for such contact between organizers and Respondent's employees. During the times of such contact, no employee will be required to engage in work related activities, or forced to be involved in the organizational activities. All employees will receive 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 earners for their lost production time.

ORDER

Respondent, Harry Carian, his officers, agents, successors, and assigns shall:

1. Cease and desist from:
 - a. Refusing to provide the ALRB with an employee list

as required by 8 Gal. Admin. Code Section 20910(c) (1976).

b. Interrogating, polling, or otherwise interfering with employees concerning their union affiliation or sympathy or their participation in protected activities.

c. Utilizing "employee information" cards which state that the information provided by employees thereon may be given to union organizers.

d. In any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Agricultural Labor Relations Act.

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

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

b. Post copies of the attached Notice for a period of 90 consecutive days, to be determined by the Regional Director, at places to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

c. Mail copies of the attached Notice in all appropriate languages, within 30 days from receipt of this Order, to all employees employed in the period during which the employee information cards were utilized by Respondent.

d. Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll

records, all signed employee information cards, and all other records necessary to determine which employees were employed during the time these employee information cards were utilized by Respondent.

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

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

g. Provide the ALRB with an employee list as described by 8 Cal. Admin. Code Section 20910 (c) (1976) if, during the 1978-1979' growing season the UFW files a Notice of Intent to take Access as described by 8 Cal. Admin. Code Section 20900 (e) (1) (B). The list shall be provided within 5 days of the service on Respondent of the Notice of Intent to take Access.

h. Allow UFW organizers to organize among its employees during the hours specified in 8 Cal. Admin. Code Section 20900 (e) (3) (1976) in the next period in which the UFW

files a Notice of Intent to take Access. The UFW shall be permitted, in addition to the number of organizers already permitted under Section 20900(e)(4)(A), one organizer for each fifteen employees.

i. Respondent shall provide that the UFW have 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. The UFW shall present to the Regional Director its plans for utilizing this time. After conferring with both the Union and Respondent concerning the Union's plans, the Regional Director shall determine the most suitable times and manner for such contact between organizers and Respondent's employees. During the times of such contact, no employee will be required to engage in work related activities, or forced to be involved in the organizational activities. All employees will receive 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 earners for their lost production time.

ORDER

Respondent, Henry Moreno, his officers, agents, successors, and assigns shall:

1. Cease and desist from:

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

b. In any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by

Section 1152 of the Agricultural Labor Relations Act.

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

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

b. Post copies of the attached Notice for a period of 90 consecutive days, to be determined by the Regional Director, at places- to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

c. Mail a copy of the Notice in all appropriate languages, to each of the employees in the bargaining unit, at his or her last known address, not later than 31 days after the Notice is required to be posted on Respondent's premises.

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

and-answer period.

e. Notify the Regional Director in writing, within 31 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: May 19, 1978

GERALD A. BROWN, Chairman ROBERT

B. HUTCHINSON, Member

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

NOTICE TO EMPLOYEES

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 if they want a union. The Board has told us to send out and post this Notice.

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

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

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

Because this is true we promise that:

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

Especially:

WE WILL NOT ask you whether or not you belong to any union, or do anything for any union, or how you feel about any union; and

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

RICHARD PETERS FARMS
(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.

NOTICE TO EMPLOYEES

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 if they want a union. The Board has told us to send out and post this Notice.

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Because this is true we promise that:

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

Especially:

WE WILL NOT ask you whether or not you belong to any union, or do anything for any union, or how you feel about any union; and

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

HARRY CARIAN
(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.

NOTICE TO EMPLOYEES

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 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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- (3) to bargain as a group and choose whom they want to speak for them;
- (4) to act together with other workers to try to get a contract or to help or protect one another;
- (5) to decide not to do any of these things.

Because this is true we promise that:

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

Especially:

WE WILL NOT 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.

HENRY MORENO
(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

4 ALRB No. 2 8

Laflin & Laflin, aka Laflin Date Gardens	77-CE-52-C
Richard Peters Farms	77-CE-26-C 77-CE-46-C 77-CE-59-C
Harry Carian	77-CE-47-C
Henry Moreno	77-CE-58-C

ALO's DECISION

Because each of these cases involved issues concerning pre-petition employee lists and presented factual situations which varied only slightly, they were heard consecutively and decided together in one ALO decision. Each of the Respondents was charged with violation of Section 1153 (a) of the Act for failing to submit a list of employees to the Board as required by Section 20910(c) of the Board's regulations. As to Respondent Moreno, there was an outright refusal to submit such a list. The other Respondents submitted lists which did not contain all of the data required by Section 20310(a)(2) of the Regulations. The lists failed to indicate the payroll period during which the employees had worked, failed to give accurate job classifications for the workers, and failed to give street addresses for the workers. The ALO found each Respondent violated Labor Code Section 1153 (a) by refusing to supply a list of employees as required by Section 20910 of the Regulations.

The ALO further found Respondents Peters and Carian violated Section 1153 (a) of the Act by their use of "employee information" cards. Peters and Carian each distributed cards to their employees which requested the following information: name, mailing address, current street address, Social Security number, and birthday if under 18 years of age. The Employer stated that the information could be given by the ALRB to union organizers and that the employee had the option of refusing to supply the information requested on the card. The ALO found this constituted surveillance and that the use of the cards constituted an independent violation of Section 1153 (a) of the Act.

BOARD DECISION

The Board affirmed the ALO's findings with regard to the failure to provide complete pre-petition lists. However, the Board found the use of "employee information" cards did not constitute surveillance,

but rather constituted unlawful interrogation in violation of Section 1153 (a).

REMEDIAL ORDER

As to Respondents Laflin, Carian, and Peters, the Board ordered the UFW be allowed one extra organizer per fifteen employees during regular access hours. It also ordered that each of these Respondents provide one hour of company time for the UFW to communicate with and disseminate information to its employees. The Board, noting that the UFW had won a representation election among the employees of Moreno, issued only a cease and desist order against that Respondent.

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



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LAFLIN & LAFLIN, a/k/a LAFLIN)
DATE GARDENS,)
Respondent,)
and)
UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)
Charging Party.)

CASE NUMBER: 77-CE-52-C

RICHARD PETERS FARMS,)
Respondent,)
and)
UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)
Charging Party.)

CASE NUMBERS: 77-CE-26-C
77-CE-46-C
77-CE-59-C

HARRY CARIAN,)
Respondent,)
and)
UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)
Charging Party.)

CASE NUMBER: 77-CE-47-C

HENRY MORENO,)
Respondent,)
and)
UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)
Charging Party.)^{1/}

CASE NUMBER: 77-CE-58-C

^{1/}As each of these cases involve issues concerning pre-petition employee lists and present factual situations which vary only (con't)

1
2 Robert W. Farnsworth, Esq.,
for the General Counsel of the
3 Agricultural Labor Relations Board;

4 Ellen Greenstone, Esq., for the
United Farm Workers of America,
5 AFL-CIO, Charging Party; 5

6 David E. Smith, Esq., for each
of the above-named Respondents
7 Before: Matthew Goldberg, Administrative Law Officer

8 DECISION

9 STATEMENT OF THE CASES

10 A. Laflin and Laflin:

11 On March 14, 1977, the United Farm Workers of America, AFL-CIO
12 (hereinafter referred to throughout as "the Union"), pursuant to
13 §20900(e)(1)B of the Board's Regulations filed a Notice of Intention to
14 Take Access, No. 77-NA-31-C, with the ALRB and served said notice on Laflin
15 and Laflin (hereinafter referred to as "Respondent Laflin"). On March 30,
16 1977, the Union filed a Notice of Intention to Organize, No. 77-NO-20-C,
17 with the Board and served this notice on Respondent Laflin on the previous
18 day, March 29, 1977. On April 6, 1977, an original charge in case number
19 77-CE-52-0, alleging a violation of §1153(a) of the Agricultural Labor
20 Relations Act, was filed by the Union with the Board and served on
21 Respondent Laflin. Based on this charge, a complaint was issued and served
22 on Respondent Laflin by the General Counsel of the Board, dated April 14,
23 1977. Amendments to the complaint were filed and served

24 ^{1/}(con't) slightly from one another, it was concluded that the cases
25 be decided jointly and that the conclusions of law and remedies
26 hereinafter set forth apply to each of the respondents.

1 on April 26, 1977, and April 29, 1977

2 Respondent Laflin has filed an answer to the complaint,
3 denying in substance that it has committed the unfair labor practice
4 alleged.

5 B. Richard Peters Farms:

6 Notices of Intention to Take Access were filed by the Union
7 with the Board and served on Respondent Richard Peters Farms
8 (hereinafter referred to as "Respondent Peters"), on February 10,
9 1977, and March 14, 1977 in case numbers 77-NA-21-C and 77-NA-35-C,
10 respectively. The Union filed Notices of Intention to Organize on
11 February 10, 1977 (No. 77-NO-13-C) and March 29, 1977 (No.
12 77-NO-17-C).

13 On February 17, 1977, an original charge in case number
14 77-CE-25-C was served on Respondent Peters; this charge was filed
15 with the Board on February 18, 1977. An original charge in case
16 number 77-CE-46-C was filed with the Board on April 5, 1977 and
17 served on Respondent Peters on that same date.

18 The charge in case number 77-CE-59-C was filed by the Union
19 on April 12, 1977, having been served on Respondent Peters the
20 previous day.

21 Each of the aforementioned charges alleged violations of
22 §1153(a) of the Act.

23 Case numbers 77-CE-26-C and 77-CE-46-C were consolidated and
24 a complaint based on the charges therein was issued by the General
25 Counsel and served on Respondent Peters on April 11, 1977. On
26 April 13, 1977, a complaint was issued in case number 77-CE-59-C,

1 grounded on the charge filed therein. On the same date, this case
2 was ordered consolidated with the two previous cases, and the
3 complaint and order were served on Respondent Peters. An amended
4 complaint in case numbers 77-CE-26-C and 77-CE-46-C was served on
5 Respondent Peters on April 26, 1977, and filed with the Board on
6 April 28, 1977. On April 29, 1977, a further amendment to both
7 complaints was filed and served. Answers were filed by Respondent
8 Peters in the above matters on April 20, 1977, basically denying
9 the commission of any unfair labor practices.

10 C. Harry Carian:

11 A Notice of Intention to Take Access, case number 77-NA-26-C
12 was served on Respondent Harry Carian (hereinafter referred to as
13 "Respondent Carian") on March 8, 1977, and filed by the Union on
14 March 14, 1977- On March 29, 1977, the Union filed and served
15 on Respondent Carian a Notice of Intention to Organize, case
16 number 77-NO-18-C.

17 An original charge in case number 77-CE-47-C, alleging a
18 violation of §1153(a) of the Act, was filed by the Union and
19 served on Respondent Carian on April 5, 1977, giving rise to the
20 issuance of a complaint in the case by the General Counsel on
21 April 8, 1977. Service on Respondent Carian of the complaint
22 took place on the same date. The complaint was subsequently
23 amended twice and served on Respondent Carian on April 26 and 29,
24 1977, respectively.

25 Respondent Carian filed an answer to the aforementioned
26 complaint on April 21, 1977, denying in essence that it had

1 committed the unfair labor practice alleged.

2 D. Henry Moreno:

3 On March 14, 1977, the Union served Respondent Henry Moreno
4 (hereinafter referred to as "Respondent Moreno") with a Notice of
5 Intention to Take Access, case number 77-NA-33-C. This notice
6 was filed with the Board on March 15, 1977. A Notice of Intention
7 to Organize, case number 77-NO-25-C was filed by the Union on
8 April 1, 1977, having been served on Respondent Moreno the
9 previous day.

10 An original charge in case number 77-CE-58-C was filed by the
11 Union with the Board and served on Respondent Moreno on April 8,
12 1977. It alleged a violation of §1153(a) of the Act. Based on
13 this charge, the General Counsel for the Board issued and served
14 on Respondent Moreno a complaint on April 11, 1977, which was
15 subsequently amended on April 26 and April 29, 1977.

16 Respondent Moreno filed an answer denying, in substance,
17 that it had committed the unfair labor practice alleged in the
18 complaint.

19

20 Hearings in each of the above matters were noticed and held
21 on a "trailing" calendar format commencing May 9, 1977. The
22 General Counsel for the Board, each of the Respondents, and the
23 Union appeared through their respective counsels. All parties were
24 afforded full opportunity to adduce evidence, examine and cross-
25 examine witnesses and submit oral arguments and briefs.

26 /////

1 Upon the entire record, from my observations of the demeanor of the
2 witnesses, and having read and considered the briefs submitted to me since
3 the hearing, ^{2/}I make the following:
4

5 I. FINDINGS OF FACT

6 A. Jurisdiction of the Board

7 1. Respondents, and each of them, are and were at all times
8 material agricultural employers within the meaning of §1140.4(c) of the
9 Act.

10 2. The Union is and was at all times material a labor
11 organization within the meaning of §1140.4(f) of the Act.^{3/}

12 B. The Evidence Presented

13 1. The Pre-Petition Employee Lists.

14 Each of the Respondents has been charged with a violation of
15 §1153(a) of the Act for failing, in accordance with §20910(c) of the Board's
16 Regulations, to submit a complete list of employees, their current street
17 addresses and job classifications to the Board following the service by the
18 Union on each Respondent, respectively, of a Notice of Intention to
19 Organize. In one instance, that involving Respondent Moreno, there was an
20 outright refusal to submit any list whatsoever. In the others, lists were
21 submitted by the Respondents which did not fully contain the information
22 required by §20310(a)(2) of the Board's Regulations. ^{4/}

23 ^{2/}No post hearing brief was submitted on behalf of any of the
24 Respondents.

25 ^{3/}The jurisdictional facts noted were admitted by each Respondent
26 in their respective answers.

^{4/}Section 20310(a)(2) defines what information is required in a pre-
petition employee list and provides in pertinent part: (con't)

1 For example, a Notice of Intention to organize was served on
2 Respondent Laflin on March 29, 1977. On April 5, 1977, this Respondent
3 submitted a list of seventy-seven (77) names to the Board (case number 77-
4 CE-52-C, GC Exh. #2). An examination of this list reveals that post office
5 box numbers, not "current street addresses" were set forth as addresses for
6 thirty (30) of the employees named. In addition, two addresses located
7 outside of the Coachella Valley area, where Respondent Laflin conducts its
8 agricultural operations, were stated for two (2) of Respondent Laflin's
9 employees.

10 After Respondent Laflin had submitted this list, he was informed by
11 Board, agents that the list did not comply with the requirements set forth
12 in the pertinent Board Regulations. Respondent Laflin, testifying through
13 Ben Laflin, owner, stated that the workers whose names appeared on the list
14 were furnished to him pursuant to an arrangement with Sun World, another
15 agricultural employer in the area; that cards setting forth the names,
16 addresses

17
18

^{4/}(con't)

19 "A complete and accurate list of the complete and full names,
20 current street addresses and job classifications of all
21 agricultural employees, including employees hired through
22 a labor contractor, in the bargaining unit sought by
23 the petitioner in the payroll period immediately preceding
24 the filing of the petition. The employees list shall
25 also include the names, current street addresses
26 and job classifications of persons working for the employer
as part of a family or other group for which the name
of only one group member appears on the payroll. If the
employer contends that the unit sought by the petition is
inappropriate, the employer shall additionally...provide
a complete and accurate list of the names and address of
the employees in the unit the employer contends to be
appropriate, together with a written description of that unit."

1 and social security numbers of each employes were given him by
2 Sun World; and, that the list he submitted to the Board was a
3 compilation of the information provided to him by Sun World.

4 After being informed by the Board that the April 5th list was
5 inadequate, Laflin allegedly contacted Robert Bianco, a field man
6 at Sun World, and requested further employee information from that
7 employer. Subsequently according to Laflin, additional documents
8 containing employee addresses were furnished Laflin by Sun World,
9 who took them to David Smith, his attorney, for compilation and
10 re-submission to the Board along with any employee information the
11 attorney was able to gather.

12 It was not until May 3, 1977, that a supplemental list was
13 furnished to the Board by Respondent Laflin (77-CE-52-C, GC Exh.
14 #3). Of the sixty-nine (69) employee names appearing on this list,
15 only twenty (20) have actual "street" addresses, while forty-
16 eight (48) have post office box numbers set forth opposite their
17 names, and one (1) has no address stated whatsoever.

18 Neither list submitted by Respondent Laflin provides a
19 date or states the payroll period during which the employees on the
20 list worked for that employer; ^{5/} nor does either list furnish
21 employee job classifications other than "general labor" or "farm
22 laborer."

23 Witness Ban T. Laflin stated the particular crew in question
24 worked on his lands for approximately four and one-half(4-1/2)

25 _____
26 ^{5/} On cross-examination, witness Laflin admitted that the two
lists covered different payroll periods.

1 days, and that when the employee list was requested, the crew had
2 gone elsewhere. Since he was thus unable to get the information
3 needed directly from his employees, he sought it from Sun World.
4 The delay between the submission of the first and second list was
5 due, according to Mr. Laflin, to his awaiting the receipt of the
6 proper information from Sun World. Tony Gonzalez, the labor contractor
7 who was the crew boss of the workers supplied to Respondent Laflin
8 during the period in question, was also allegedly contacted for the
9 additional employee information.

10 Counsel for the General Counsel called as an additional witness
11 in the Laflin case one Robert Nies, Executive Vice President for
12 Sun World Packing. Nies testified that it requires employees
13 to fill out cards containing-their name, address and social security
14 number if the employees do not work for a licensed labor contractor
15 and will be paid directly by the company. Under no circumstances would
16 Sun World release such cards to another agricultural employer to whom
17 a crew is lent, since the burden is on that employer to obtain this
18 information. Nies stated that he did not know of any instance where a grower
19 such as Respondent Laflin had requested employee information in the custody
20 of Sun World, and that even if it had, Sun World's policy was not to release
21 its records.

22 I find that Respondent Laflin's explanation concerning its failure
23 and delay in supplying employee names and addresses to the Board, in light
24 of Nies' testimony, to be without merit and discredit fully the testimony of
25 Ben Laflin in this regard. Laflin's facile and inaccurate explanations, the
26 fact that the second list

1 this Respondent submitted to the Board was even more incomplete than the
2 first, and the fact that it consulted an attorney before submitting this
3 second list all provide additional evidence of Respondent Laflin's bad
4 faith in dealing with the whole question of the submission of employee
5 lists to the Board.

6 Similarly, Respondent Peters, after having been served with a Notice
7 of Intention to Organize on February 10, 1977, neglected to submit any
8 employee list to the Board until March 1, 1977. That list was also inadequate
9 on its face: of the fifty (50) names listed thereon, thirty (30) had post
10 office boxes stated as addresses, while an additional nineteen (19) names set
11 forth addresses outside the Coachella Valley (77-CE-26-C, et al., GC Exh.
12 #2).^{6/}

13 An additional Notice of Intention to Organize was served by the Union on
14 Respondent Peters on March 29, 1977. On April 4, 1977, this Respondent, acting
15 by and through his attorney, David Smith, submitted another list which was also
16 woefully inadequate: of the forty-three (43) employee names listed, fully
17 twenty-one (21) had post office boxes as addresses, while another thirteen (13)
18 employees had addresses outside of the Coachella Valley from such
19

20
21 ^{6/}This list was submitted by Respondent Peters after a charge in case
22 number 77-CE-26-C had been filed. Accompanying the list was a letter from
23 Respondent Peters' attorney, David Smith, which contained the incredible
24 statement "this employee list is being delivered to you on the condition that
25 the charge [in case number 77-CE-26-C] be withdrawn and no complaint be
26 issued." Once again, the bad faith of this employer in complying with the
Board's Regulations is evident, as a plainly inadequate list was presented to
the Board after Respondent Peters sought the advice of his attorney, who then
made the submission of the list "conditional," as if some sort of compromise
was necessary for this employer to proffer the incomplete information that it
did supply at that point.

1 far-flung locales as South San Francisco and Jalisco, Mexico (77-CE-26-C,
2 et al., GC Exh. #3).

3 This second list contained twenty-seven (27) of the same employees
4 names as the first. Despite the fact that the second list included
5 employees in a payroll period which was more than one month later than that
6 on the previous list, and that Respondent Peters was presumably acting on
7 the advice of his attorney, no effort had been made in the interim by
8 Respondent Peters to obtain "street" addresses from these twenty-seven (27)
9 employees.

10 Further, Respondent Peters had a number of his employees fill out
11 certain ."information" cards in response to a representation petition
12 (77-CE-26-C, et al., GC Exh. #4).^{7/} Although most of these cards were dated
13 March 30 and March 31, prior to the submission of the second list, the
14 "street" address information contained on many of the cards was not
15 transferred to the list which was submitted. This Respondent's
16 intransigence and bad faith in the matter of employee lists is thus readily
17 apparent.

18 Likewise, Respondent Carian submitted a list of two hundred and
19 seven (207) employee names to the Board on April 6, 1977, eight (8) days
20 after a Notice of Intention to Organize was served on this employer. No
21 payroll period was stated on the list, and no job classifications were set
22 forth. Fifty-four (54) of these names had post office boxes given as
23 addresses, while an additional ninety-two (92) had addresses located
24 outside of the Coachella Valley (77-CE-47-C, GC Exh. #2).

25
26 ^{7/} The use of these cards will be more fully discussed below.

1 At the hearing, Respondent Carian stipulated that approximate: fifty
2 percent (50#) of the employees listed in 77-CE-47-C, GC Exh. #2, were
3 residents at one of the three labor camps owned by this Respondent. Once
4 again, the bad faith of this Respondent is evident, as it would have been a
5 simple matter for it to have set forth as current "street" addresses the
6 labor camp addresses for the great bulk of its employees.

7 Respondent Carian submitted two (2) additional employee lists to
8 the Board, one on April 22nd entitled "Supplemental Report" (77-CS-47-C,
9 GC Exh. #4) and the other on May 2, 1977-Neither of these lists sets
10 forth the payroll period during which the employees listed thereon had
11 worked. Only one job classification is provided -- that of "general
12 labor."

13 Exactly what the "Supplemental Report" is supposed to supplement is
14 difficult to perceive. Of the one hundred forty (140) employee names
15 listed, thirty-one (31) have post office boxes for addresses; eighty-four
16 (84) have addresses outside of the Coachella Valley; three (3) have no
17 address stated.

18 The May 2nd list is not much better. One hundred eighty-two (182) of
19 the two hundred and seven (207) names listed thereon have the same address
20 stated as that on the April 6th list. All-in-all, this list provides only
21 two (2) additional "street" addresses where none had been submitted
22 previously.

23 In addition, a comparison of the three lists reveals that the
24 composition of the work force has changed substantially during the period
25 when the lists were prepared. For example, seventy-one
26

1 (71) new names appear on the supplemental report which did not
2 appear on the previous list. Without a reference to a specific
3 payroll period, it is impossible to ascertain when this turn-over
4 in personnel occurred, whether there was in fact a turn-over, or
5 whether these names represent an addition to the size of the work
6 force.

7
8 Additional testimony received at the respective hearings
9 demonstrated the exceedingly short periods of time during which
10 each Respondent experiences "peak" employment. As noted earlier,
11 testimony in the Laflin case indicated that the workers for whom
12 an employee list was sought were employed by Respondent Laflin for
13 a total of four and one-half (4-1/2) days. Respondent Peters
14 employs between two hundred fifty (250) and two hundred seventy
15 (270) workers for a one or two week period once, perhaps twice a
16 year, after which the work force is reduced to approximately ten
17 (10) employees. Respondent Carian utilizes the services of 400 or
18 more employees for one week once or twice during a given year.
19 Respondent Moreno has a maximum number of between seven hundred
20 (700) and eight hundred (800) employees for one or two weeks twice
21 a year.

22 2. The "Employee Information Cards." ^{8/}

23
24 8/ The use of these cards was originally alleged by the General
25 Counsel in case number 77-CE-59-C to be a violation of §1153(a) of
26 the Act in that "the cards were so worded that...the request for
addresses on such cards constituted an unlawful interrogation of
employees about their union sympathies." A similar (con't)

1 Two of the employers herein, Respondent Carian and Respondent Peters
2 currently utilize cards which request that employees provide certain
3 information. The cards are worded as follows:

4 THE COMPANY MUST REQUEST THE FOLLOWING INFORMATION FROM EACH
5 EMPLOYEE UNDER THE LAW OF THE STATE OF CALIFORNIA. THIS
6 INFORMATION MUST BE SUPPLIED TO THE AGRICULTURAL LABOR
7 RELATIONS BOARD UNDER CERTAIN CIRCUMSTANCES AND MAY BE GIVEN
8 BY THE AGRICULTURAL LABOR RELATIONS BOARD TO UNION
9 ORGANIZERS:

10 EMPLOYEE'S FULL NAME: _____

11 EMPLOYEE'S MAILING ADDRESS: _____

12 EMPLOYEE'S CURRENT STREET ADDRESS: _____

13 EMPLOYEE'S SOCIAL SECURITY NUMBER: _____

14 BIRTHDAY IF UNDER 18 YEARS OF AGE: _____

15 DATE: _____

16 I AM NOT WILLING TO SUPPLY ANY INFORMATION
17 THAT I HAVE NOT WRITTEN ON THIS CARD.

18 _____
19 EMPLOYEE'S SIGNATURE

20 (See 77-CE-59-C, GC Exh. #4 and 77-CE-47-C, GC Exh. #5.) While Respondent
21 Carian utilizes both an English version and a Spanish translation of this
22 card, Respondent Peters merely uses an English
23 card.

24 Counsel for Respondent Peters stipulated at the hearing that
25 the aforementioned cards were distributed among its employees in
26

_____ ^{8/} (con't) allegation was added to the complaint in case number 77-CE-47-
C by amendment at the hearing. Counsel for Respondent Carian had no
objection to this amendment.

1 restrains employees in their exercise of §1152 rights." (lei., p. 9)

2 The instant situation involving Respondent Moreno is in no
3 way different from that decided by the Board in 3 ALRB No. 40:
4 both involve an outright refusal by an agricultural employer to
5 submit a pre-petition list as per §20910 of the Regulations. At
6 this point it would be fruitless to re-examine, re-analyse and
7 re-litigate the policy considerations inherent in 3 ALRB Mo. 40.
8 It is clear therefore, that by again refusing to submit a pre-
9 petition list in case number 77-CE-5S-C, Respondent Moreno has
10 committed an additional violation of the Act, for which a remedy
11 as set forth below should issue.

12 What of the remaining cases herein, where Respondents have
13 submitted employee lists, but where those lists were neither
14 submitted in timely fashion ^{10/} nor did they fully contain current
15 "street" addresses for each employee listed thereon? As the
16 Board stated in footnote 12 of its Henry Moreno decision, supra,
17 "[W]e note that our finding that refusal to supply a pre-petition
18 list interferes with employees Section 1152 rights follows from the
19 factual findings underlying Section 20900 et seq. Thus the only
20 relevant factual issue here is whether or not respondent refuses
21 to comply with Section 20910(c)..."

22 Nothing could be more clear than the explicit dictates of
23 that section. The phrase "current street addresses" means exactly

24 _____

25 ^{10/} As noted above, under Section 20910(c), an agricultural
26 employer must submit this list within five days after a Notice of
Intention to Organize has been filed.

1 what it says: street addresses, not post office boxes; current
2 addresses, not ones from such places that it would be impossible to
3 maintain daily employment in the Coachella Valley area, and reside in
4 locales many miles distant.

5 The stated goals of requiring employers to submit pre-petition
6 employee lists are to "intensify employee access to information during the
7 period when that information is most relevant [i.e., during an
8 organization campaign]" (Henry Moreno, supra, p. 6), and to "aid the
9 Board's regulation of the election process itself." (id., pp. 6 and 7.)
10 Submitting a list which as provides/addresses for many employees post
11 office boxes or street addresses from which daily commuting to the
12 situs of employment would be altogether impossible in no way furthers
13 these ends and in fact frustrates and impedes their realization. I
14 specifically hold that supplying the Board with lists of these
15 types, as Respondents Carian, Laflin and Peters have done in the
16 instant cases, is tantamount to refusing to provide any list at all,
17 and constitutes per se "interference" and "restraint...of employees in
18 their exercise of their rights under Labor Code Section 1152." (See Reg.
19 §20900(e)5(c).)

20 To re-iterate the Board's position in Henry Moreno, " we
21 hold that it is a violation of Labor Code §1153(a) for an
22 employer to refuse to supply a list of employees as required by
23 §20910 of our regulations." (id., p. 9, emphasis supplied.)
24 Clearly, the lists submitted by the above named Respondents do
25 not meet the requirements of Sections 20910 and 20310(a)(2) of the
26 Regulations,

1 as they were neither timely nor did they provide meaningful job
2 classifications or "current street address-as."

3 Violations of §1153(a) of the Act flow naturally from this type of
4 conduct.

5 The Board concluded in Henry Moreno, supra, at p. 6, that the
6 furnishing of pre-petition employee lists is inextricably interwoven
7 with a union's access rights as defined in Regulations §20900 et seq.,
8 in that both are designed to "maximize employee access to information."
9 " Under §20900(e)(5)(c), "interference by an employer with a labor
10 organization's right of access which include the requirement of the
11 submission of pre-petition employee lists]... may constitute an unfair
12 labor practice in violation of Labor Code Section 1153(a.)
13 if it independently constitutes interference with restraint, or
14 coercion of employees in the exercise of their rights under Labor
15 Code Section 1152." As the Board stated in Moreno, supra,
16 P. 3, "[i]mplicit in these [§1152] rights is the opportunity of
17 workers to communicate with and receive communication from labor
18 organizations about the merits of self-organization." The conclusion
19 thus reached subsumes that the failure of an employer to furnish
20 a complete list as defined in Regulation §20910(c) in a timely
21 fashion interferes with and restrains the exercise by
22 employees of their §1152 rights.

23 B. The "Employee Information" Cards

24 The cards distributed by Respondents Peters and Carian, as noted
25 above, state that the information supplied thereon "may be
26 given by the Agricultural Labor Relations Board to union organizers"

1 and that an employee has the option of refusing to supply the
2 information requested on the card.

3 I find that the use of such cards to be an altogether
4 inappropriate means of gathering the employee information required
5 by §.20310(a)(2) of the Regulations. The burden of acquiring such
6 information rests squarely with the employer (see Labor Code
7 §1157-3), and cannot be shifted to the employee by giving that
8 individual the choice of whether or not he or she wishes to supply
9 it. Indeed, in analagous situations under the NLRA, the National
10 Labor Relations Board has applied its available remedies to cases
11 where employers have attempted to grant to employees the option of
12 non-disclosure of their names and address to that Board and to
13 petitioning unions. British Auto Parts, Inc., 160 NLRB No. 40,
14 62 LRRM 1591 (1966); see also, Montgomery Ward & Co., 160 NLRB
15 No. 88, 63 LRRM 1107 (1966).

16 The question remains, however, as to whether the utilization
17 of these cards constitutes an unfair labor practice. Notably,
18 other state and federal statutes require that employers maintain
19 particular records concerning their employees' (see, e.g., Labor
20 Code §1174(c); Industrial Welfare Commission Order No. 14-76,
21 item 7). No evidence was presented by Respondent Peters or Carian
22 that they informed their employees when these or other similar records were
23 prepared, of the uses to which the records might be put. In addition, these
24 Respondents might simply have chosen to fulfill their obligations under the
25 Act by utilizing a more neutral, nocuous device. The inference is quite
26 strong, therefore

1 that by specifying that the information "may be given...to union
2 organizers" and the employees might choose whether or not to
3 divulge such information, these employers were attempting to
4 ascertain which of their employees desired to be visited by union
5 organizers, and thus were engaging in surveillance of their
6 employees vis-a-vis their attitudes toward union organization. ^{11/}

7 Polling of employee union sympathies is narrowly confined
8 under NLRA to situations where an employer is attempting to decide
9 whether to extend voluntary recognition to a bargaining representative
10 or to utilize the election process to determine the issue.

11 Strict safeguards must be observed under this circumstance to insure
12 the protection of employee rights. Where these safeguards are not
13 observed, a violation of §8(a)(1) of the NLRA is found. (See
14 Struksnes Construction Co., Inc., 165 NLRB 1062, 65 LRRM 1385
15 (1967).) As voluntary recognition is not available to unions
16 under the ALRA as a means for obtaining full representative status
17 from which the obligation to bargain collectively flows (Labor
18 Code §1153(e) and (f)), any polling of employee support of a
19 collective bargaining representative or of their wishes to participate
20 in organizational activities, other than by a secret ballot
21 election conducted by the Board, per se interferes with, coerces
22 and restrains the exercise of employee rights under Labor Code §1152

24 ^{11/} This inference is given added weight when it is considered
25 that Respondent Peters solely utilized an English language card
26 which might be susceptible of mis-interpretation by its Spanish
speaking employees.

1 See, generally, NLRB v. Historic Smithville Inn, ?1 LRRM 2972 (C.A. 3 1969).
2 Since it is concluded that the use of the "employee information" cards
3 constitutes an attempt to discover which employees have chosen to be visited
4 by union organizers, it naturally follows therefore, that the utilization of
5 these cards by Respondent Peters and Carian constitutes an independent
6 violation of §1153(a) of the Act.

7 III. THE REMEDY

8 In addition to providing the remedies set forth in 3 ALRB Mo. 40 for
9 the pre-petition list violations found above, it is concluded that to
10 further effectuate the purposes and policies of the Act, I will recommend,
11 as prayed for by the General Counsel, that the Board issue an order
12 requiring each of the Respondents to severally reimburse the ALRB and the
13 Union for all costs incurred in the investigation and trial of each of their
14 separate cases, including, but not limited to, attorneys' and investigators'
15 salaries. It is felt that this remedy is appropriate for a number of
16 factors.

17 The refusal by each of the Respondents to furnish to the
18 Board when warranted the information required by §§20910 and 20310(a)
19 (2) of the Regulations is nothing short of blatant contumacy by
20 these parties. Each of them knew or should have known what their
21 specific obligations under the Act were regarding the lists. As noted
22 above, the pertinent regulations are clear and explicit on their face
23 and do not admit to varying interpretations. Each Respondent sought
24 the advice of an attorney who should have counseled them as to their
25 responsibilities in this
26

1 regard. Instead, each Respondent willfully and in bad faith chose
2 not to obey the clear dictates of the law and to employ tactics
3 which were dilatory and irresponsible. ^{12/}

4 In so doing, each of the Respondents succeeded in thwarting
5 the organizational efforts of the Union (at least for the time
6 being), frustrating the rights of their employees guaranteed in
7 §1152 of the Act by denying them access to organizational information,
8 and impeding the efforts of the Board to discharge its responsibilities
9 to oversee the election process in general, and to protect the
10 exercise of §1152 rights. They have, by their acts, precipitated a
11 colossal waste of time, energy and money by the Union and by the agents of
12 the Board.

13 Merely ordering these Respondents to relinquish the information
14 that they should have relinquished weeks or months ago, and granting
15 additional access periods as per Moreno would hardly compensate
16 the Union or the Board for the resources they have expended in
17 attempting to obtain what they were obviously entitled to by law
18 and should have received without resorting to litigation. Reimbursing
19 the ALRB and the Union for their expenses herein more effectively
20 returns these parties to the status quo which existed before each
21 of the respective organizational campaigns began. Furthermore,
22 noting the relative ease by which an agricul-

23
24 ^{12/} As the Board noted in the Moreno case, supra, "we cannot
25 conceive of any relevant defenses to a flat refusal to comply
26 with the [pre-petition list] requirement, and none is offered
here."

1 tural employer might forestall any organization of its employees
2 by simply delaying the submission of a complete and accurate pre-petition
3 employee list until after the exceedingly short "peak" season
4 has elapsed, it is hoped that the reimbursement by these Respondents
5 of Board and Union expenses incurred in these cases may act as
6 a deterrent to similar conduct which might occur in the
7 future.

8 IV. RECOMMENDED ORDER

9 Having found that Respondents Laflin, Peters, Carian and Moreno have
10 engaged in unfair labor practices violative of §1153(a) of the Act,
11 and upon the basis of the foregoing findings of fact and conclusions
12 of law, and the entire record of this proceeding, pursuant to
13 §1160.3 of the Act, I hereby issue the following recommended order:

14 Respondents Laflin and Laflin, a/k/a Laflin Date Gardens,
15 Richard Peters Farms, Harry Carian, and Henry Moreno, and each of them, their
16 officers, agents, successors and assigns shall:

17 1. Cease and desist from:

18 (a) Refusing to provide the ALRB with an employee list
19 as required by Section 20910(c) of the Regulations of the Agricultural
20 Labor Relations Board.

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

23 (a) Respondents Laflin and Moreno shall post at their
24 respective premises copies of the attached "Notice to Employees" marked
25 "Appendix A." Respondents Peters and Carian shall post at
26

1 their respective premises copies of the attached "Notice to
2 Employees" marked "Appendix 3." Copies of said notice, on forms
3 provided by the appropriate Regional Director, after being duly
4 signed by the Respondent, shall be posted by it for a period of
5 90 consecutive days thereafter, in conspicuous places, including
6 all places where notices to employees are customarily posted.
7 Reasonable steps shall be taken by the Respondent to insure
8 that said notices are not altered, defaced or covered by any other
9 material. Such notices shall be in both English and Spanish.

10 (b) Mail a copy of the notice, in both English and
11 Spanish, to each of the employees in the bargaining unit, at his
12 or her last known address, not later than 30 days after the notice
13 is required to be posted on the Respondent's premises.

14 (c) Read a copy of the notice, in both English and
15 Spanish, to gatherings of its bargaining-unit employees, at a
16 time chosen by the Regional Director for the purpose of giving
17 such notice the widest possible dissemination.

18 (d) Provide the ALRB with an employee list as required by Section
19 20910(c) of the Regulations of the Agricultural Labor Relations Board.

20 (d) Grant expanded access to the UFW as defined by the
21 Board on the employer's property during this and the next
22 harvest season.

23 (f) Provide the UFW with an employee list when the
24 1977 harvest begins and every two weeks thereafter.

25 (g) Notify the Regional Director, in writing,
26

1 within ten (10) days from the date of the receipt of this order,
2 what steps have been taken to comply herewith. Upon request of
3 the Regional Director, the Respondent shall notify him or her
4 periodically thereafter, in writing, what further steps have been
5 taken to comply herewith.

6 (h) Severally reimburse the ALRB and the UFW for all
7 costs incurred in the investigation and trial of their respective cases
8 involving the refusal to submit a pre-petition employee list as
9 required by Section 20910(c) of the Regulations of the Agricultural
10 Labor Relations Board. ^{13/}

11 In addition, Respondents Peters and Carian, their officers, agents,
12 successors and assigns shall:

13 1. Cease and desist from:

14 (a) Interfering with, restraining or coercing
15 agricultural employees in the exercise of their rights of self-
16 organization and/or their right to refrain from such activities
17 by:

18 (1) Interrogating, polling, or carrying on any
19 type of surveillance of their employees in order to determine
20 employee attitudes toward unionization;

21 (2) Utilizing "employee information" cards which state in
22 general the purposes for which the information contained

23 _____
24 ^{13/} As each separate refusal to submit a complete employee list
25 after a separate Notice of Intention to Organize has been filed and served
26 constitutes a distinct violation of the Act, Respondent Carian is ordered to
reimburse the ALRB and the Union for all costs incurred in both case number 77-
CE-26-C and in case number 77-CE-46-C.

1 on the cards may be used, and in particular that the information
2 contained thereon may be given to union organizers; and

3 (3) In any other manner interfering with, restraining, or
4 coercing any employee in the exercise of rights guaranteed by §1152 of the
5 Agricultural Labor Relations Act.

6 2. Take the following affirmative action which is deemed
7 will effectuate the policies of the Act:

8 Obtain the employee information required by §§20910 and
9 20310 (a) (2) of the Board's Regulations by a neutral means which
10 does not indicate in any manner the particular employees'
11 attitudes toward unionization or whether or not the individual
12 wishes the information to be given to union organizers.

13
14 DATED: June 6, 1977
15

16
17 
18

19 MATTHEW/GOLDBERG
20 Administrative Law Officer

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD

An Agency of the State of California

After a trial at which all sides had the opportunity to present their evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to post this notice and we intend to carry out the order of the Board.

The Act gives all employees these rights:

To engage in self-organization;
To form, join or help unions;
To bargain collectively through a representative of their own choosing; To act together for collective bargaining or other mutual aid or protection; and To refrain from any and all these things.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT interfere with your rights of self-organization, to form, join or assist any labor organization by refusing to provide the ALRB with a current list of employees when, as in this case, the UFW or any union has -filed its "intention to Organize" the employees at this ranch.

WE WILL respect your rights to self-organization, to form, join or assist any labor organization, or to bargain collectively in respect to any term or condition of employment through United Farm Workers of America, AFL-CIO, or any representative of your choice, or to refrain from such activity, and WE WILL NOT interfere with, restrain or coerce our employees in the exercise of these rights.

You, and all our employees are free to become members of any labor organization, or to refrain from doing so.

(Employer)

DATED _____ BY _____

(Representative) (Title)

N O T I C E T O E M P L O Y E E S

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An Agency of the State of California

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WE WILL NOT interfere with your rights of self-organization, to form, join or assist any labor organization by refusing to provide the ALRB with a current list of employees when, as in this case, the UFW or any union has filed Its "intention to Organize" the employees at this ranch.

WE WILL NOT carry on any type of surveillance of employees, nor interrogate or poll them in order to determine their attitudes toward unionization, nor solicit any information from employees which gives any indication of such attitudes.

WE WILL respect your rights to self-organization, to form, join or assist any labor organization, or to bargain collectively in respect to any term or condition of employment through United Farm Workers of America, AFL-CIO, or any representative of your choice, or to refrain from such activity, and WE WILL NOT interfere with, restrain or coerce our employees in the exercise of these rights.

You, and all our employees are free to become members of any labor organization, or to refrain from doing so.

(Employer)

DATED _____ BY _____
(Representative) (Title)