STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BELRIDGE FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 75-CE-80-F 75-CE-80-2-F 4 ALRB No. 30

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 October 21, 1977, Administrative Law Officer (ALO) Leo Weiss issued the attached Decision in this proceeding. Thereafter, Respondent, the Charging Party and the General Counsel each filed exceptions and a supporting brief.[1/]

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided

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[1/]Respondent's brief was filed pursuant to an extension of time granted by the Executive Secretary on the day before the exceptions were due and is directed in part at the exceptions previously filed by the General Counsel and the Charging Party. Charging Party moved to strike Respondent's brief because the request for extension of time was not received by the Charging Party in time for it to delay the filing of its exceptions. It is claimed by the Charging Party that Respondent has thereby gained an unfair advantage. The motion to strike was accompanied by an answering brief to Respondent's exceptions.

Charging Party's motion to strike is hereby denied as we perceive no real prejudice to either the Charging Party or the General Counsel.

to affirm the rulings, findings and conclusions of the ALO and to adopt his recommended Order, as modified herein.

The ALO found that Respondent: violated Section 1153(a) of the Act on September 28, 1975, by preventing union representatives from speaking to its employees residing at a labor camp on its premises; violated Section 1153(a) on September 30, 1975, by interfering with communication between union organizers and its employees at another residence for workers on its premises; and violated both the access rule and Section 1153(a) in two separate work area incidents on September 30, 1975, involving acts of surveillance and obstruction of union efforts to communicate with employees. The ALO recommended dismissal of allegations concerning acts of surveillance on October 1, 2, and 3, and dismissal of allegations as to denials of access on September 23 and 25. No exceptions were taken to the latter recommendation.

The Charging Party excepted to the ALO's treatment of the October 1-3 surveillance allegations, contending that they were dismissed without adequate discussion of the evidence, the credibility of the witnesses, or the legal contentions of the parties.[2/] This Board has rejected an ALO Decision for

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[2/]The following is the complete statement of the ALO with regard to the October 1-3 allegations:

> The events of October 1, 2, and 3, 1975, may be considered together because of the similarity of the evidence concerning them. On all three days, union representatives' came on to the Respondent's premises before the start of work and spoke to the employees.

[fn. 2 cont. on p. 3]

essentially those reasons, S. Kuramura, Inc., 3 ALRB No. 49 (1977), but, unlike the situation in that case, the evidence relating to the allegations here in question was meager at best and did not demand extensive exposition and analysis. We affirm the ALO's finding that General Counsel failed to establish by a preponderance of the evidence that Respondent engaged in unlawful surveillance on October 1-3, 1975.

With regard to the September 30 work area incidents, Respondent concedes that some interference in violation of Section 1153 may have occurred but denies that such interference can be deemed a denial of access since organizers were not prevented from entering Respondent's premises. It is clear, however, that compliance with the access rule cannot be achieved when the communication which the rule is designed to facilitate is thwarted after the organizers' entry upon the property. Therefore, Respondent's interference with protected activities may also be considered a denial of access for which appropriate remedies may be imposed.

[fn. 2 cont.]

> The General Counsel alleges that Flores once again 'stood close to the organizers as they were talking to workers.' It is also alleged that his tape recorder was operating at the time. Finally, it is alleged that he instructed the employees not to sign anything presented to them by union representatives.
>
> Evidence in the record concerning these matters is conflicting and I find that the General Counsel has failed to establish by 'the preponderance of the testimony taken' that the Respondent committed an unfair labor practice on October 1, 2, and 3, 1975. That is the standard required by Section 1160.3 of the Act and it has not been met in this case. I will, therefore, recommend that these three allegations be dismissed.

Respondent contends that the central figure in the September 28 labor camp incident, Sylvester Primus, was neither a supervisor nor an agent of Respondent, and that therefore his efforts to prevent organizers' access to the labor camp cannot be attributed to Respondent. We find sufficient basis in the record for concluding that Primus was an official acting on behalf of the Tony and Susan Alamo Christian Foundation, which in turn was Respondent's agent for the operation of a labor camp owned and utilized by Respondent and situated on its property. Under these circumstances the acts of Primus can be, and are, attributed to Respondent.

REMEDIES

The General Counsel and the UFW dispute the adequacy of the ALO's recommended remedial Order, which included cease-and-desist provisions and affirmative provisions for the mailing, reading and posting of a notice to workers. Both the General Counsel and the UFW urge the Board to grant expanded access as a means of rectifying the denials of access which were found to have occurred. The UFW requests that the remedial Order herein require Respondent: to furnish the union with a list of names and addresses of Respondent's employees; to cease taking pictures and making recordings of conversations between workers and union organizers; and to surrender to the ALRB the pictures and recordings already made. The General Counsel seeks, in addition to expanded access, only the provision of bulletin board space for union notices.

We find it appropriate for the Order to include a

specific proscription against taking pictures and making tape recordings of protected activities. In addition we shall order Respondent to turn over to the Board those pictures and tape recordings already made.

With regard to the question of expanded access, Respondent contends that such *a* remedy is unnecessary because the denials of access were minimal compared to the access which did in fact occur. This argument overlooks the fact that Respondent's blatant acts of surveillance involving use of cameras and tape recorders in close proximity to the workers, had a substantial chilling effect on the workers' receptivity to information from the union organizers. Thus, we cannot conclude that any meaningful access occurred prior to October 1. Even after that date, the effects of the established acts of surveillance undoubtedly lingered.

In view of this impact on the union's organizing effort at Belridge Farms, we deem it appropriate to order expanded access in the form of an increase in the allowable number of organizers during the regular access periods. The union will be permitted during those times to use twice the number of organizers that would normally be allowed under Section 20900(e)(4) of our regulations. This expanded access may be utilized during the next 30-day period for which the union has filed a notice of intent to take access. In addition, as in other cases involving aggravated denials of access, see, e.g., Anderson Farms Company, 3 ALRB No. 67 (1977), we shall order that Respondent provide the union with an employee list to be updated bimonthly during the

union's next organizing drive. No showing of interest shall be necessary for the union to receive this list.

We consider these remedies, along with our standard notice requirements, to be sufficient to overcome the disadvantages incurred by the union in its initial organizing effort.

ORDER

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

1. Cease and desist from:

(a) Preventing or attempting to prevent union representatives from having access to its premises for the purposes of organizing the employees, in violation of Section 20900 of the emergency regulations, known as the Board's "access rule".

(b) Preventing or attempting to prevent union representatives from having access to employees at the places where they reside on the Respondent's premises.

(c) Engaging in surveillance of employees and union organizers, including the taking of pictures and the making of tape recordings, while said employees and organizers are engaged in protected activities.

(d) In any other manner interfering with, restraining or coercing employees in the exercise of their rights to self-organization, to form, join, or assist labour 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, or to refrain from engaging in such activities.

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

(a) Post copies of the attached Notice at times and places to be determined by the Regional Director. The notices shall remain posted for a period of 60 consecutive days following the issuance of this Order. Copies of the Notice shall be furnished by the Regional Director in appropriate languages. The 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 during the payroll periods including September 28 to September 30, 1975.

(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 or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by the Respondent to all nonhoufly wage employees to compensate them for time lost at this reading and

the question-and-answer period.

(d) For the next period in which the UFW has filed a notice of intent to take access, the Respondent shall allow UFW organizers to use, during the hours of access specified in 8 Cal. Admin. Code Section 20900 (e) (3), twice the number of organizers that would normally be allowed by 8 Cal. Admin. Code Section 20900(e) (4)

(e) During the time that the UFW has on file a valid notice of intent to take access during its next organizational campaign, provide the UFW once every two weeks with an updated employee list of its current employees and their addresses for each payroll period. Said lists shall be provided without requiring the UFW to make any showing of interest.

(f) Deliver to the Regional Director all tape recordings, motion pictures, and photographs, including negatives, which were made or taken during Respondent's surveillance of workers and union organizers. Said recordings, pictures and negatives are to be destroyed by the Regional Director.

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

It is further ordered that the complaint herein be

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dismissed insofar as it alleges violations of the Act by the Respondent on September 23, 25, and October 1, 2, and 3, 1975.

Dated: May 23, 1978

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. MCCARTHY, Member

NOTICE TO EMPLOYEES

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. This Board has told us to send out, post, and read 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 interfere with union organizers who lawfully come to visit you where you work or where you live.

WE WILL NOT take pictures or make tape recordings of your contacts or conversations with union organizers; any existing pictures or tape recordings of such contacts or conversations with union organizers will be turned over to the ALRB for destruction.

Dated:

BELRIDGE FARMS

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

Belridge Farms (UFW) 4 ALRB No. 30
Case Nos. 75-CE-80-F
75-CE-80-2-F

ALO DECISION

Belridge Farms was charged by the UFW with having denied access to its organizers on various occasions and having engaged in acts of surveillance. Denials of access in violation of the access regulation and Section 1153(a) of the Act were said to have occurred on September 23, 25 and 30, 1975; denials of access to Respondent's labor camps, constituting violations of Section 1153(a), were said to have occurred on September 28 and 30, 1975; and surveillance of workers and union organizers, in violation of Section 1153(a), was said to have occurred on September 30, and on October 1, 2 and 3, 1975. Respondent filed unfair labor practice charges against the union alleging violations of the access regulation on September 25 and 30, 1975. The General Counsel elected not to issue a complaint based on those charges and Respondent took the matter into the state courts. It is now pending before the Supreme Court. Respondent's motion to suspend the administrative proceedings until a decision is made by the courts was denied by the ALO, who found that breach of the access regulations by the union does not absolve the employer from abiding by those regulations.

The ALO recommended dismissal of the September 23 and 25 denial of access charges and the October 1, 2 and 3 surveillance charges. A denial of access to Respondent's labor camp on Respondent's premises was found to have occurred on September 28. The ALO rejected Respondent's argument that the central figure in the denial of access was neither a supervisor nor an agent of Respondent. Respondent was also found to have interfered with communication between union organizers and employees on September 30, by denying the union access to workers in the fields and employees at another residence on Respondent's premises and by engaging in acts of surveillance which included the use of a tape recorder and *a* camera. The ALO did not agree with Respondent that the union representatives had refused to identify themselves and forced their way on to Respondent's premises. No merit was found in Respondent's argument that organizers were present in excessive numbers because organizers were not asked by Respondent to reduce their numbers. Violation of the access rule was repeated as a defense to the September 30 interference at a worker's residence since home access does not depend in any way upon the access rule.

The ALO recommended the standard remedy of posting, mailing and reading a notice to employees.

BOARD DECISION

The Board affirmed the rulings, findings and conclusions of the ALO, but modified his recommended Order. No exception was taken to the dismissal of the September 23 and 25 charges. Distinguishing S. Kuramura, Inc., 3 ALRB No. 49 (1977), the Board found that the ALO's treatment of the October 1-3 surveillance allegation was adequate.

In response to Respondent's contention that Section 1153 violations cannot be considered denials of access when organizers are not prevented from entering Respondent's premises, the Board stated that access rule compliance is not achieved when worker-organizer communication is obstructed after the organizers' entry upon the property.

The central figure in the September 28 incident was found by the Board to be an official acting on behalf of a nonprofit group which was in turn Respondent's agent for operation of a labor camp owned and utilized by Respondent and situated on Respondent's property. Under such circumstances, the acts of the individual in question could be attributed to Respondent.

REMEDIAL ORDER

In order to overcome the disadvantages incurred by the union in its initial organizing effort at Belridge, the Board adopted some of the affirmative forms of relief urged by the union and the General Counsel. Respondent was ordered to turn over to the Board tapes and pictures made during the course of surveillance, permit organizing by twice the allowable number of organizers during regular access periods, and provide the union with updated employee lists.

This summary is furnished for information only and is not an official statement of the Board.

BEFORE THE AGRICULTURAL LABOR RELATION BOARD

OF THE STATE OF CALIFORNIA

BELRIDGE FARMS, Respondent and UNITED FARM WORKERS OF AMERICA AFL-CIO, Charging Party	)	Case No. 75-CE-80-F 75-CE-80-2-F

Zachary Wasserman and
Deborah J. Warren, Esqs.
for the General Counsel.

Everett F. Meiners, Esq., of
Parker, Milliken, Kohlmeier,
Clark & O'Hara, for the
Respondent

Richard Potack, Esq.,
for the Charging Party

DECISION

Statement of the Case

LEO WEISS, Administrative Law Officer: The United Farm Workers of America, AFL-CIO (hereinafter called "the Union"), having filed a charge in this matter with the Agricultural Labor Relations Board against Belridge Farms (hereinafter called "the Respondent"), the Board issued a Complaint and Notice of Hearing, dated October 7, 1975. The Complaint alleges that the Respondent engaged in various acts of interference with, and restraint and coercion of, its employees in the exercise of their rights

guaranteed in Section 1152 of the Agricultural Labor Relations Act, thereby violated Section 1153(a) of the Act. Such interference, restraint, and coercion are alleged to have occured as a result of the Respondent's denial "to representatives of the Union access to its premises for the purposes of engaging in organizational activity with respect to its employees in accordance with Section 20900 of the Board's regulations." Additional interference, restraint, and coercion are alleged to have occured as a result of the Respondent's agents engaging in surveillance of its employees and engaging in activities which created the impression of surveillance.

The Respondent filed an Answer to the Complaint, denying its substantive allegations and the commission of unfair labor practices.

Pursuant to the Notice of Hearing, this case was tried before me in Bakersfield, California, on November 3, 4, 5, 14, and 15, 1975. Upon the entire record made in this proceeding and my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following:

Findings of Fact

I. The Respondent

The Respondent admitted that it is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

The Respondent further admitted at the hearing that the labor camp operated by the Christian Brothers was located on property owned by the Respondent and that all persons who inhabited the camp were employees of the Respondent .

II. The Union

The record shows that the Union is a membership organization, that it has labor contracts with employers under which it represents their employees for the purposes of collective bargaining and grievance handling. I find that the Union is a labor organization

within the meaning of Section 1140.4(f) of the Act.

III. The Alleged Unfair Labor Practices

On August 29, 1975, The Board adopted the above-described emergency regulation, which reads, in part, as follows: 1/

"5. ...the Board will consider the rights of employees under Labor Code Sec. 1152 to include the right of access by union organizers to the premises of an agricultural employer for the purposes of organizing, subject to the following limitations:

"a. Organizers may enter the property of an employer for a total period of 60 minutes before the start of work and 60 minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after working.

" b. In addition, organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall include such lunch break. If there is no established lunch break, the one-hour period may be at any time during the working day.

" c. Access shall be limited to two organizers for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers.

" d. Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent. Organizers shall also wear a badge or other designation of affiliation.

"e. The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. Speech by itself shall not be considered disruptive conduct'. Disruptive conduct by particular or-

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1/ 8 Cal. Adm. Code, Part II, Ch. 9, Sec. 20900(5).

ganizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.''

The Complaint alleges that the Respondent violated this emergency regulation on September 23, 25, and 30, 1975, when it sought to prevent representatives of the Union from entering its premises for the purpose of engaging in organizational activity with respect to its employees, thus "...interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 1152 of the Act," all in violation of Section 1153(a) of the Act. 2/

The Complaint further alleges that the Respondent violated Section 1153(a) of the Act on September 28 and 30, 1975, when it barred Union organizers from entering its labor camps to contact employees who resided there.

The Complaint likewise alleges that the Respondent violated Section 1153(a) of the Act on September 30, October 1, 2, and 3, 1975, by creating the impression of surveillance and actually engaging in surveillance of its employees on the cited dates.

On January 28, 1976, I received from the General Counsel a Motion to Correct the Transcript in 12 places. No opposition having been received from the Respondent, and it appearing to me that the corrections requested

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2/ Among its defenses to this charge, the Respondent argues that the Board's previously-quoted emergency regulation -- commonly known as the access rule -- is invalid in that it violates the Constitution of the United States, the Constitution of the State of California, Section 602 of the California Penal Code (the trespass statute), and the Agricultural Labor Relations Act itself. It further argues that the General Counsel failed to prove that alternative means of access were not available to the Union.

Subsequent to the filing of briefs in this matter by the parties, these contentions were considered by the California Supreme Court and rejected. The Court's rulings control here and I therefore, reject the Respondent's defenses described above. Agricultural, Labor Relations Board v. Superior Court, 16 C. 3d (1976) cert. den. U.S. Sup. Ct., 10-4-76.

are appropriate, the motion is hereby granted. The transcript is corrected in the following respects:

Vol., P., L.	Change	To
I, 166, 7	blocking	belonging
II, 79, 25	sisters	workers
III, 58, 7	charge	charged
III, 58, 9	complaint	complaints
III, 93, 25	BX	BQ
III, 95, 4	stipulation	petition
III, 110, 19	Luna Sourbis	Linda Sourbis
III, 124, 4	at	and
III, 135, 10	intend	are intent
IV, 10, 10	ranch	map
IV, 57, 24	packing	picking
V, 105, 3	clock	lock

Prior to the hearing in this case, the Respondent filed unfair labor practice charges against the United Farm Workers Union, alleging that the Union was in breach of the access regulation on September 25 and 30, 1975. The Regional Director dismissed these charges and the Respondent appealed to the General Counsel. The hearing in this matter was held while the General Counsel had the appeal under consideration.

The Respondent filed a pre-hearing motion for a continuance until such time as the General Counsel would act on the appeal. This motion was denied by the Board. The Respondent renewed the motion at the hearing and it was denied by the Administrative Law Officer. Subsequently, the General Counsel upheld the Regional Director's dismissal of the charges against tie Union and the Respondent went in to the state courts in an attempt to reverse the dismissal.

Its appeal is now pending before the Supreme Court of the State of California. In its brief, the Respondent renews its motion and asks me "to stay all proceedings herein until there is a final determination as to the ALRB's responsibility to proceed on unfair labor practice charges filed by Respondent."

The motion is hereby denied. For one thing, it has already been denied by the Board itself and the Respondent has shown no new factors which might henceforth persuade the Board to change its mind. For another, the issues in the two matters are not identical and may have no relevance to each other. I have been cited to no authority which holds that breach of the access regulation by a Union automatically justifies an employer in violating it as well. If the Respondent merely seeks to use the Union's misconduct to mitigate its own conduct, the proper place to do that is in this proceeding, which it has done. Its allegations against the Union are in the record and they will be carefully considered hereafter in determining whether the Respondent has committed an unfair labor practice.

On September 23, 1975, three Union organizers came on to the Respondent's property and were stopped by a guard. They identified themselves and were escorted to the office of Richard Myer, the Respondent's Personnel Manager. A 15-minute discussion then took place between the Union representatives and two officials of the Respondent. The organizers gave Myer a copy of the access rule, which he had never seen before, and he made copies for his own use.

At this meeting, Myer told the Union representatives that most of the Respondent's employees worked on a piece-rate basis and had no set lunch period. He stated that he would like to have a meeting with Union officials to work out a schedule for visits by organizers to talk to the employees "so that this could be done in an orderly fashion without interference to our operation or hindrance to the workers." He was informed by the organizers that they would transmit his request for a meeting to Union headquarters and that somebody would get in touch with him. The Union representatives then left the premises.

There is no evidence in the record that the Union organizers sought access to the premises or to the employees, on September 23, 1975, and that such access was

barred by the Respondent. I find, therefore, that no unfair labor practice was committed by the Respondent on that day and will recommend that this allegation be dismissed.

The following description of the events of September 25, 1975, is taken from the brief of the General Counsel:

> At approximately 6:00 AM, four carloads of UFW representatives, including about 12 organizers and 8 nuns and priests who came as observers, drove onto Respondent's premises...The two cars carrying the religious people drove a-round the property but had not found any workers when they were stopped by a security guard just before 7:00 AM..around 7:10 AM, Richard Myer arrived and talked to the priests and nuns. When one of the nuns asked if she could go in to talk to the workers, Myer told her "no, because you wear a badge, one of those UFW badges, 1975, and maybe you belong to the Union, too." Myer informed Father Sotelo, one of the priests, that he was trespassing and had to leave, and that the employees were working and it was not right to bother them. The organizers and religious people were then detained at this location for about 45 minutes...
>
> Shortly after 7:00 AM, Robert Flores (Respondent's Assistant Personnel Manager) spotted another one of the UFW cars as he was driving on the property. Flores followed the car until it stopped...Ray Casey, one of the Respondent's supervisors, was already in the avenue when Flores arrived. Flores approached the 6-7 people in the car and asked them if they had identification. He received no response; instead, some of the organizers got out and walked into Block 2, where about 38 employees were working, and others walked down the avenue between Blocks 1 and 2. Flores was close to them and took pictures of them. He then...parked his car, and walked up and down the avenue taking pictures of the organizers in the avenue and passing as close as 10 feet to the organizers. During this period, the organizers were engaged in walking up and down talking to the workers.

> (Some time later) The organizers were attempting to leave the premises but found the intersection blocked by company cars. Shortly after the organizers arrived in the intersection, approximately 5-6 supervisors, each in a separate car, arrived in the intersection. At this point, all four of the organizers' cars were in the intersection, surrounded by about 13 company cars. The organizers, priests and nuns walked around the intersection but did not go into the fields, and Flores took more pictures of them. On Flores' orders, the sheriffs had been called, and arrived some time after the organizers were surrounded in the intersection. However, no arrests were made.

This statement of facts and the evidence in the record clearly establish that the Union's organizers spent a full hour on the property that morning (between 6:00 and 7:00 a.m.) without 'interference by any representative of the Respondent. It was only after work had started and the employees were in the fields that the Respondent's supervisors began to deny Union organizers access to the workers.

Section 5(a) of the access rule states:

> Organizers may enter the property of an employer for a total period of 60 minutes before the start of work and 60 minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after working.

That morning, the Union organizers were accorded the rights to which they are entitled under the access rule and no violation by the Respondent has been established. Without regard, then, to the Respondent's other arguments concerning the Union's alleged disregard of the access rule provisions relating to permissible numbers of organizers and their proper identification, *I* will recommend that the allegation that the Respondent violated Section 1153(a) of the Act on September 25, 1975, be dismissed.

On September 28, 1975, which was a Sunday, two Union representatives visited a labor camp operated by the Tony and Susan Alamo Christian Foundation (also known as The Christian Brothers), at which employees of the Respondent lived. When they came on to the property, they were met by a man named Sylvester Primus. They gave their names and stated they were from the UFW.

Primus testified as follows:

> When I found out that they was from the Union, I told them they had to leave: that the people here did not want anything, and I didn't want anything to do with the Union or—or with any organization who—that we didn't want to be bothered.

The organizers did not leave but, instead, went about the camp attempting to speak to the employees. Primus followed the Union representatives around and told the workers not to speak to them. He then called a guard and further testified that "when the security came up, I told the security guard that we didn't want these people and if he could remove them off the property." When the guard arrived, he told organizers they would have to leave the premises or be placed under a citizen's arrest. Thereupon, the two Union representatives left the labor camp.

The General Counsel contends this incident constitutes a denial of access by the Respondent and, therefore, an unfair labor practice. The Respondent contends that it did not deny Union representatives access to the premises or to the employees. It argues that Primus was not a supervisor and that the employees merely decided for themselves that they did not wish to speak to the organizers. The guard "only came in response to a specific request by the residents of that camp."

I find the Respondent's contentions to be without merit. The labor camp was located on its property and, at the time of the incident, only the Respondent's employees resided there. Primus considered himself in charge of the labor camp, acted on this and other occasion as though he were in charge, and gave the employees

and the Union organizers the impression that he was in charge. Nor has the Respondent ever done anything to vitiate that apparent authority to run the labor camp. His position was recognized both by the Respondent and the Foundation which was permitted by the Respondent to operate the camp. The record establishes that if Primus was not one of the Respondent's supervisors, he certainly was its agent in management of the camp and the employees who resided there. Under such circumstances, it is liable for his conduct.

The same is to be said for the conduct of the security guard. He was employed by the Respondent, wore a distinctive uniform belonging to the Respondent, and was in all respects an agent of the Respondent, carrying out the Respondent's instructions. His conduct, too, is to be attributed to the Respondent.

What Primus and the security guard did that day was to prevent Union representatives from speaking to the employees. Contrary to the Respondent's claim, there was no failure to identify the organizers. On the contrary, as soon as they identified themselves, steps were taken to remove them from the premises. They were repeatedly told they were trespassing, their conversations with the employees were interrupted, finally, they were threatened with arrest if they did not leave. By engaging in such conduct, Primus and the security guard violated Section 1153(a) of the Act. Their conduct being attributable to the Respondent, it, too has violated Section 1153(a) of the Act.

I am unpersuaded by the Respondent's efforts to paint a picture of the employees rising up to demand that the Union representatives be excluded from the camp. As the Board has recently stated:

> We have held repeatedly that farm workers have the right to receive communications from organizers at their homes...if an employee does not wish to speak with an organizer, that is, of course, his or her right. It is emphatically not the right of the employee's employer, supervisor, or landlord to prevent communication.3/

The latter is precisely what happened here.

3/ Whitney Farms, et al. 3 ALRB No. 68 (1977). In that case, the Board also observed, "The right of home access flows directly from Section 1152, and does not depend in any way on the access rule contained in our regulations, which only concerns access at the work place." The instant case likewise falls within this statement of the law.

On September 30, 1975, at around 6:15. a.m., approximately 20 Union representatives, in five cars, sought and obtained access to the Respondent's property for the purpose of speaking to the employees. After they entered the premises, however, Robert Flores, the Respondent's Assistant Personnel Manager, engaged them in arguments about their presence, told the employees who were being approached by the organizers not to believe what they had to say, and asked the Union representatives if they were not ashamed to be there, since the people did not want to have anything to do with them. As he circulated around the area in which employees and organizers had congregated, Flores wore a tape recorder around his neck and carried a camera with which he took photographs. While all this was going on, a supervisor wrote down the license number of an automobile belonging to one of the organizers and a security guard 'wrote down the plate number of a truck belonging to an employee who had just signed a Union authorization card.

The Respondent seeks to justify its conduct on the morning of September 30, 1975 by pointing to the allegations in its own charge filed against the Union for its conduct that day. This is the charge previously discussed, which has been dismissed by the General Counsel and is now pending before the Supreme Court of California. The evidence in the record does not support the Respondent's accusations that Union representatives refused to identify themselves or that they forced their way on to the Respondent's premises.

It seems that some Union representatives came on to the Respondent's premises by driving their cars through the employee entrance, where the guards who were posted failed to ask for identification. It may be that the guards thought the organizer's cars contained more employees arriving for work. Whatever the reason, there is no requirement that a Union representative insist on identifying himself when not requested to do so by a representative of management. Section 5(d) merely requires that:

> Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent.

Neither this nor any other conduct of the Union organizers on that morning justified the actions taken by the Respondent. These actions may be divided into two categories. There was conduct which interferred with free access to the employees. This consisted of Assistant

Personnel Manager Flores following Union representatives around the property, arguing with them, and meddling in their conversations with the workers. An employer may scarcely be said to have complied with the access rule by not hindering organizers' attempts to come on his property, if, after they arrive, he hounds them and obstructs their efforts to communicate with the employees. I find that such conduct of the Respondent violated both the access rule and Section 1153(a) of the Act.

There was also conduct which amounted to unlawful surveillance of the Respondent's own employees and the representatives of the Union who had come on to the property. This consisted of Assistant Personnel Manager Flores keeping the organizers under frequent observation, especially while talking to the employees. He remained within earshot of such conversations and overheard them. By carrying a tape recorder around his neck, he indicated to both employees and organizers that their conversations might not only be overheard, but taped for future use against them. He capped this off by taking pictures of that morning's events. The taking down of license numbers also falls within this category.

Such conduct has for years been considered a violation of the National Labor Relations Act and this Board has adopted the same view. 4/ It has also faced the argument, presented here by the Respondent, that the offending supervisor was legitimately present on the occasions of his surveillance of the employees and that, therefore, his conduct could not be held unlawful. The Board has rejected that contention. 5/ Because surveillance constitutes interference, restraint, and coercion of employees in the exercise of rights guaranteed by Section 1152 of the Act, I find that the Respondent's conduct violated Section 1153 (a) of the Act.

4/ Tomooka Brothers, 2 ALRB No. 52 (1976). On the specific questions of use of cameras and tape recorders, see Anderson Farms Company, 3 ALRB No. 67 (1977).

5/ Dan Tudor & Sons, 3 ALRB No. 69 (1977).

Again on September 30, 1975, this time at noon, Union representatives went on to the Respondent's premises to contact its workers while they were eating lunch. There were four of them, and they attempted to obtain signed authorization cards from a group of 15-20 employees. After approximately ten minutes of conversation, they were approached by a security guard named Sidney Mahan, who asked them if they were Union organizers. When they identified themselves as such, Mahan stated they must leave or be arrested, that they had no right to be there because it was private property. He then called the sheriff.

While awaiting the sheriff's arrival, Mahan announced that the four organizers were under citizen's arrest. A few minutes later, Richard Myer, the Respondent's Personnel Manager, arrived on the scene and took approximately three or four minutes of motion pictures. He likewise attempted to make a citizen's arrest of three of the organizers. When the sheriff's deputies arrived, they issued citations to the four Union representatives, based on Mahan's citizen's arrest.

The Respondent claims not to have violated the access rule on this occasion mainly because the Union had too many representatives on the premises. Section 5 (c) of the access regulation requires the employer to allow only two organizers to approach a work crew of fewer than 30 employees. It is the Respondent's argument that, the Union having violated the access rule, the Respondent was free to compel all its representatives to leave the property.

I find no merit in this contention because no mention was made during the entire incident concerning the excessive number of organizers. The reasons given to them for their removal were that they were on private property and that they were trespassing. Had they been told that the Respondent insisted on the Union complying with the regulation, two of the organizers might have left, thereby bringing the Union into compliance.

There is no rule which prohibits an employer from allowing more than the minimum number of organizers on his property. Until told that the employer objects to the presence of too many Union representatives, they cannot know whether they are violating their obligations under the Act. Were they to persist after being notified of the employer's desire to limit the number of organizers on his property, a different situation might result.

I find, therefore, that the Respondent violated both the access rule and Section 1153 (a) of the Act, when it placed the organizers under citizen's arrest and removed them from the premises at noon, on September 30, 1975.

I find also that Myer's taking of motion pictures of the organizers while they were engaged in lawful activity in communicating with the employees on the same date, constituted unlawful surveillance and violated Section 1153 (a) of the Act.

Another incident occurred on September 30, 1975, this one at approximately 2:30 p . m . It took place at a location known as the Bachelor's Quarters (B . Q .) Annex. This dormitory is on the Respondent's premises and one end of it is used as the Personnel Department office. Most of the building consists of housing for the Respondent 's employees.

Work had already ended for the day and employees were driving into the area. Four cars of Union organizers came in as well. Assistant Personnel Manager Flores observed them arriving at the B . Q . Annex and proceeded to take both still photographs and motion pictures of the Union representatives. He then remained in the area as the organizers sought to communicate with the workers who lived at the Annex.

Flores prevented the organizers from going into the building, stating that they could not do so unless they were invited in by the employees who lived there. He and two security guards stood at the entrance. When the organizers stated that the Union had been invited to come there, Flores told them to ask the employees who were inside whether they still wanted the Union representatives to come in. Throughout this entire incident, which took approximately 40 minutes, Flores carried with him a motion picture camera, an instamatic still camera, and a tape recorder, all of which could be clearly seen by the workers who congregated both inside and outside the building.

The Respondent's defense against the charge that its conduct in this instance violated Section 1153(a) of the Act is that the, Union violated the access regulation in two respects. at claims.) that the organizers failed to properly identify themselves and that they exceeded the

allowable number of Union representatives in relation to the number of employees who were present.

This defense is misconceived because the right of the Union to visit employees at home and the right of employees to receive home visits from Union representatives does not depend on the access regulation. That rule deals only with' access at the work place. As the Board held in Whitney Farms, _6/ "The right of home access flows directly from Section 1152, and does not depend in any way on the access rule." Thus, the fact that the Union representatives may not have complied with the access rule while visiting the workers at their place of residence is irrelevant.

Another thing the Board made clear in Whitney Farms is that " . . . if an employee does not wish to speak with an organizer, that is, of course, his or her right. It is emphatically not the right of the employee's employer, supervisor, or landlord to prevent communication." Thus, the responsibility assumed by Flores, to prevent Union representatives from speaking to the employees after working hours at the place where they resided, finds no legal support whatever. The actions of Flores and the guards constituted unlawful surveillance and interference with legitimate Union activity, thereby violating Section 1153(a) of the Act.

The events of October 1, 2, and 3, 1975, may be considered together because of the similarity of the evidence concerning them. On all three days, Union representatives came on to the Respondent's premises before the start of work and spoke to the employees.' The General Counsel alleges that Flores once again "stood close to the organizers as they were talking to workers." It is also alleged that his tape recorder was operating at the time. Finally, it is alleged that he instructed the employees not to sign anything presented to them by Union representatives.

Evidence in the record concerning these matters is conflicting and I find that the General Counsel has

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6/ Supra, n. 3.

failed to establish by "the preponderance of the testimony taken" that the Respondent committed an unfair labor practice on October 1, 2, and 3, 1975. That is the standard required by Section 1160.3 of the Act and it has not been met in this case. I will, therefore, recommend that these three allegations be dismissed.

IV. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

In addition, the General Counsel has filed a "Prayer for Relief," in which he requests twelve items of affirmative relief in order to remedy the unfair labor practices committed by the Respondent. Each of these specific requests will be treated hereafter.

The General Counsel proposes that the Board's notice in this case be communicated to the employees in three different ways.

- Posting of the notice.
- Mailing of the notice to employees' homes.
- Reading of the notice to employees.

All three of these methods of communicating the contents of Board notices to employees are now available.7/ They make it more likely that each individual employee will be reached in at least one, or perhaps more, of the ways. This is a desirable result. I find, therefore, that these remedies are appropriate in this case and are necessary to effectuate the policies of the Act; I will, accordingly, recommend that the Board adopt the General Counsel's proposed remedies in these respects.

In addition, the General Counsel requests that the Respondent be ordered "to make a public statement...that the Respondent will not engage in the conduct herein complained of." I reject this proposed remedy as being already covered by the requirement that the Board's notice be read to the employees.

7/ Tex-Cal Land Management, Inc., 3ALRB No. 14 (1977).

I likewise reject the General Counsel's request that the Respondent be required "to make a public apology to the Respondent's employees..." No justification appears in the record for this extraordinary request.

The General Counsel's request that the Respondent be ordered to furnish the Union with a list of the names and addresses of its employees is rejected for the reasons given by the Board in D'Arrigo Brothers Co. of California, 3 ALRB No. 31 (1977):

> Sec. 20910 of 8 Cal. Admin. Code, as amended in 1976, already requires that such lists be provided upon a 10 percent showing of interest if and when an election campaign is begun. We decline to order that any lists be provided the charging party as part of the remedy for the violations of 1153(a) in this case.

The General Counsel further requests the following two items of relief:

- Expansion of the Union's rights of access to the Respondent's premises prior to and during the next peak season.

- Access by the Union to the Respondent's bulletin boards for the purpose of posting notices.

Violations of the Board's access rule by the Respondent occurred herein during the course of two incidents on a single day. Its conduct, while unlawful, was not so wide-spread or pervasive as to warrant the extreme remedies proposed by the General Counsel. Both of these requests are rejected.

Three additional remedies are requested by the General Counsel and they are quoted below in full.

> 9. An Order requiring the Respondent to cease taking photographs, including moving pictures of union organizers in or adjacent to the field when they are talking to, meeting with, or attempting to talk to or meet with workers and also cease taking

tape recordings of union organizers talking or attempting to talk to workers in or adjacent to the fields; and/or

10. An Order requiring the Respondent to provide the Board with all photographs, moving pictures, and tapes taken of union organizers talking to, meeting with, or attempting to talk to or meet with employees in or adjacent to the fields, including negatives and all copies of said photographs, moving pictures and tapes; and/or

11. An Order requiring the Respondent to seek, request and use all diligent efforts to have criminal complaints for trespass issued against John Gibson, Sylvestre Galvan, Carnello Salinas and Roberto Acuna, all of whom are U.F.W. representatives, dismissed without further penalty to said organizers.

Insofar as these items of relief are included in the usual cease-and-desist order to be issued herein, the General Counsel is entitled to, and will receive, these remedies. However, no evidence has been introduced into this record, nor have any arguments been presented to me, to support the separate treatment of these items in the order. Insofar as such separate treatment is asked for, the three requests are rejected.

Finally, the General Counsel requests reimbursement by the Respondent to the Union and the Board for litigation expenses connected with this case. In Western Conference of Teamsters, 3 ALRB No. 57 (1977), the Board announced that such a remedy is available in an appropriate case. It found authority for issuing such an order in Section 1160.3 of the Act and adopted "the NLRB's approach to this question."

What this referred to was the NLRB's policy of imposing litigation expenses only upon those respondents whose litigation posture is "frivolous." The Board stated it would approach this question on a case-by-case basis. In the Western Conference case, the Board refused to accept the General Counsel's prayer fox; relief by way of litigation.

expenses. It pointed out that, at the time of the hearing, no unfair labor practice decision had yet been issued by the Board. It also pointed out that the complaint requested "extraordinary" remedies, "certainly as judged by NLRB precedent," And, lastly it pointed out that the ALO had dismissed a number of the allegations against the Respondent.

All of these factors are present in the case at bar. Because this was one of the first unfair labor practice cases to come before an ALO, the Respondent had no Board guidance concerning the litigation. The Complaint, as can be seen from this Decision, likewise requested extraordinary remedies. And, of course, a number of the allegations against the Respondent have been dismissed by the ALO. In the meantime, the Respondent filed its own unfair labor practice charges against the Union and has pursued that matter to the California Supreme Court.

Meritorious or not, the Respondent's position in this proceeding cannot, by any stretch of the imagination, be termed "frivolous." I must, therefore, reject the General Counsel's request for reimbursement of litigation expenses by the Respondent.

Upon the basis of the foregoing findings of fact and upon the entire record in this case, I hereby make the following:

Conclusions of Law

1. The Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

2. The Union is a labor organization within the meaning of Section 1140.4(f) of the Act.

3. By preventing Union representatives from having access to its premises for the purpose of organizing the employees, in violation of Section 20900 of the Board's emergency regulations, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 1153(a) of the Act.

4. By preventing Union representatives from having access to employees and communicating with them at the places where they reside on the Respondent's premises,

and by preventing its employees from communicating with and receiving information from Union representatives at such places, in violation of rights guaranteed the employees by Section 1152 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 1153(a) of the Act.

5. By engaging in surveillance of employees and Union organizers while they are engaged in protected activity, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 1153(a) of the Act.

6. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 1152 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 1153(a) of the Act.

7. Respondent did not engage in unfair labor practices in violation of the Act by virtue of its conduct on September 23, September 25, October 1, 2, and 3, 1975.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended: 8/

ORDER

Respondent, Belridge Farms, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Preventing or attempting to prevent Union representatives from having access to its premises for the purposes of organizing the employees, in violation of Section 20900 of emergency regulations, known as the Board's "access rule."

8/ In the event no exceptions are filed as provided by Section 1160.3 of the Act, the findings, conclusions, and recommended Order herein shall become the findings, conclusions, and Order of the Board and become effective as herein prescribed.

(b) Preventing or attempting to prevent Union representatives from having access to employees at the places where they reside on the Respondent's premises.

(c) Engaging in surveillance of employees and Union organizers while they are engaged in protected activities.

(d) In any other manner interfering with, restraining or coercing employees in the exercise of their rights 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, or to refrain from engaging in such activities.

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

(a) Post copies of the attached notice at times and places to be determined by the regional director. The notices shall remain posted for a period of 60 consecutive days following the issuance of this order. Copies of the notice shall be furnished by the regional director in appropriate languages. The Respondent shall exercise due care to replace any notice which has been altered, defaced or removed.

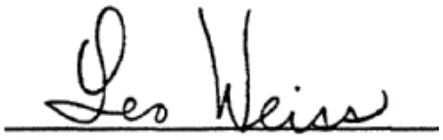
(b) Mail copies of the attached notice in all appropriate languages, within 20 days from receipt of this order, to all employees employed during the payroll periods including September 28 through September 30, 1975.

(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 or their rights under the Act. The regional director shall determine a reasonable rate of compensation to be paid by the Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question and answer period.

(d) 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 periodically thereafter in writing what further steps have been taken in compliance with this order.

IT IS FURTHER ORDERED that the Complaint herein be dismissed insofar as it alleges violations of the Act by the Respondent on September 23, 25, and October 1, 2, and 3, 1975.

Dated: October 21, 1977



Leo Weiss
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. This Board has told us to send out, post, and read 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 wantto 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 interfere with union organizers who lawfully come to visit you where you work or. where you live.

WE WILL NOT spy on you while you are talking to the union organizers.

BELRIDGE FARMS

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.