STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TOM BENGARD RANCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 75-CE-143-M 75-RC-40-M
	)	4 ALRB No. 33

FINAL DECISION AND ORDER

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

On March 23, 1978 the Board issued the attached Proposed Decision and Order in this proceeding. The parties were informed that the Proposed Decision and Order would become final if timely exceptions were not filed. As no timely exceptions were filed, it is ordered that the attached Proposed Decision and Order in this proceeding be and is hereby made the Board's Decision and Order.

DATED: May 26, 1978

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TOM BENGARD RANCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 75-CE-143-M 75-RC-40-M

PROPOSED 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.

Following a petition for certification filed by United Farm Workers of America, AFL-CIO (UFW), an election was conducted on September 17, 1975 among the agricultural employees of Tom Bengard Ranch, Inc, The tally of ballots furnished to the parties at that time showed that there were 30 votes for the UFW, 29 votes for no union and 5 challenged ballots, which were sufficient in number to determine the outcome of the election.

On November 26, 1975, the Interim Regional Director of the Salinas Region issued a Report on Challenged Ballots in which it was recommended that the five challenges be sustained. On December 29, 1975, the Board overruled the Regional Director's recommendation and ordered a hearing on the challenged ballots, which was conducted on May 23 and 24, 1977. Subsequently,

Investigative Hearing Officer (IHE) Michael Weiss issued his initial decision, in which he recommended overruling four of the challenges and sustaining one.

The parties, all of whom, were represented by counsel and given full opportunity to participate in the proceedings, filed no exceptions to the IHE's Decision. By Order of the Executive Secretary, dated October 20, 1977, the IHE's Decision became the Decision of the Board. Subsequently, a revised tally of ballots issued, indicating that a majority of the votes had been cast for no union. Petitions objecting to the conduct of the election which had been filed by the Respondent and the UPW, were dismissed by Order of the Executive Secretary on November 15, 1977, as moot; because the election was held more than a year earlier and resulted in a majority vote for no union, a new election could be held at any time upon the filing of an appropriate petition,

A consolidated hearing was held in this matter on-December 9, 1975, before Administrative Law Officer (ALO) Leo J. O'Brien. The issues litigated during that hearing were based on the unfair labor practice allegations in the General Counsel's complaint in Case No. 75-CE-143-M and the Respondent's and UFW's objections to the conduct of the election in Case No. 75-RC-40-M. As the ALO has failed to issue a decision in this matter, the Executive Secretary transferred the matter to the Board for decision on November 28, 1977 pursuant to 8 Cal. Admin. Code Section 20266.

This proposed decision relates to the unfair labor practice allegations, the only issues of this case yet to be resolved.

In the complaint, as amended, [1/] the General Counsel alleged that Respondent violated Section 1153(a) of the Act by interrogating employees about their union sympathies and promising benefits to the employees in order to induce them to vote against the union.

Having reviewed the entire record in this case, including the post-hearing briefs of the parties, we make the following proposed findings and conclusions [2/]

1. There is no issue with respect to the Board's jurisdiction or the status of the parties in this case. The Charging Party, United Farm Workers of America, AFL-CIO, is found to be a labor organization within the definition in Labor Code Section 1140(b) and Respondent, Tom Bengard Ranch, Inc., is found to be an agricultural employer within the definition in 'Labor Code Section 1140.4(c).

2. Lino Finatti, Jr. was Respondent's superintendent in charge of operations during 1975, and a supervisor within the definition

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[1/] In the original complaint, only one unfair labor practice was alleged, but the complaint was amended at hearing to include a second unfair labor practice allegation. Subsequently, the General Counsel argued the commission of a third unfair labor practice, involving the conduct of employer agent Jim Albertson, which was neither alleged in the complaint nor added by amendment at trial. As the issues concerning the third unfair labor practice were fully litigated by the parties at hearing, they will be resolved herein along with the other issues in the case, Montgomery Ward and Co., Inc., 225 NLRB No. 15, (1976) 93 LRRM 107TI

[2/] If no exceptions are filed within 20 days after service upon the parties of this Proposed Decision and Order, it shall become the final Decision and Order of the Board in this, matter.

of Labor Code Section 1140.4(j) . [3/]

3. At all times material herein-, Jim Albertson was a field representative for Salinas Valley Independent Growers Association. Although not directly employed by Respondent, Albertson counselled Respondent's employees concerning various aspects of labor-management relations. Albertson was escorted about the ranch by Respondent's supervisors and was ostensibly, and actually, allied with management. Accordingly, we conclude that at times material herein Albertson acted as an agent of Respondent and therefore any illegal conduct on his part is attributed to Respondent absent a prompt disavowal of his actions by management. Sewell Inc., 207 NLRB 325 (1973), 84 LRRM 1453.

4. Unlawful Interrogation - On September 13, 1975, supervisor Lino Finatti, Jr. approached employee Francisco Zavala, a member of the thinning crew, and initiated a discussion with him concern-ing the UFW. After the first ten minutes of the conversation. during which Zavala and Finatti spoke privately, they were joined by employee Minerva Parra, who acted as an interpreter at Finatti's request. Although what transpired during portions of the discussion is disputed, [4/] the evidence establishes that Finatti's purpose in initiating the conversation was, at least in part, to ascertain Zavala's feelings concerning the UFW.

[3/] In its answer, Respondent denied Finatti's supervisorial status. The evidence establishes however that Finatti exercised independent judgment in the performance of various statutory supervisory functions,

[4/] Zavala testified that Finatti offered him a wage increase of ten cents per hour more than the employees at Interharvest , Inc. were earning if he voted no union in the upcoming election. Finatti

(continued on p. 5)

Questioning an employee as to his or her union sym-pathies and, activities is a, violation of the Act, Rod McLellan, 3 ALRB No. 71(1977), as such questioning tends- to interfere with employee rights guaranteed under Section 1152 especially where, as here, the interrogation occurs immediately prior to a representation election. Although the conversation was amicable, we conclude that it constituted a violation of Section 1153(a) of the Act.

5. Unlawful Promise of Benefits by Finatti - As noted above, the General Counsel amended the complaint at trial to include the following allegation:

> On or about September 15, 1975, Respondent by Lino Finatti, Jr., at its Spreckles Ranch, Monterey County, premises offered its employees benefits of health insurance if they voted for'" no union at the ALRB election scheduled for September 17, 1975.

An examination of the relevant testimony discloses, and we find, that Lino Finatti did not make any such promises to employees on or about the day in question. There is testimony, however, from two employees who asserted that Jim Albertson, in the presence of Lino Finatti, offered a small group of employees maternity insurance benefits immediately prior to the election, which conduct is discussed below.

The amendement to the complaint which relates to the alleged promise of benefits by Finatti is hereby dismissed,

(Footnote 4 continued)

admitted inquiring about the interharvest pay rate because inter-harvest had a collective bargaining agreement with the UFW, but flatly denied any reference in the conversation to a pay increase, conditional or otherwise. In view of the unresolved credibility matter, we make no finding as to whether Finatti promised Zavala a wage increase,

6. Unlawful Promise of Benefits by Albertson - On September 16, 1975, the day before the election, Jim Albertson approached employees after being introduced to them by supervisor Jose Villareal, and solicited grievances from small groups of workers. During the course of one of these small-group discussions, and in the presence of Lino Finatti, Albertson allegedly promised two female employees company-paid maternity insurance. Albertson admits that he solicited grievances and discussed some insurance problems with the workers, but denies that he promised any benefits or even discussed the topic of maternity insurance. Maria Louisa Lopez and Irene Zavala, the two witnesses to whom the benefits were allegedly promised, were unable to describe any specifics of the proposals. Indeed, on cross-examination, Mrs. Zavala admitted that Albertson expressly stated that he could not promise them anything.

In light of the foregoing, we find that Albertson did not unlawfully promise employment benefits to the-employees in order to induce them to vote against the union.

However, the record reflects that on the same day, September 16, Albertson solicited employee grievances and promptly relayed them to supervisor Finatti. Thereafter, Finatti, in the presence of employees, began to remedy some of the problems they had complained of. For example, upon receiving a complaint about unsanitary toilet conditions, Finatti inspected the area and arranged for an immediate cleaning. As the evidence reveals that despondent had never before expressed such a concern for its employees' complaints, it may be inferred that it did so in this instance because an election was approaching.

The solicitation of employee grievances within a few days of a scheduled election coupled with promises, express or implied, to remedy such complaints impinges upon the free exercise of employee rights and is violative of the Act. Montgomery Ward & Co., Inc., 225 NLRB No. 15 (1976), 93 LRRM 1077. We find that Respondent's eleventh-hour solicitation of employee grievances and its hasty attempt to remedy unsatisfactory working conditions on the eve of the election constitute unlawful interference under Section 1153(a) of the Act, because there is an inference inherent in such well-timed generosity that " . . . the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." NLRB v. Exchange Parts Co., 375 U.S. 405 (1964), 55 LRRM 2098.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 1153 (a) of the Act, we propose to issue the following Order:

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ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board orders that the Respondent Tom Bengard Ranch, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union affiliation, union sympathy or their participation in other protected concerted activities; and

(b) Soliciting employees' grievances, or promising to remedy, or effectuating remedies for, unsatisfactory working conditions for the purpose of discouraging employees' free choice of a collective bargaining representative; and

(c) In any other manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Labor Code Section 1152.

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

(a) Post copies of the attached Notice to Employees at times and places to be determined by the Regional Director. The notices shall remain posted for 60 days. After translation into appropriate languages by the Regional Director, copies of the Notice shall be provided by Respondent in sufficient numbers for the purposes set forth herein. Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(b) Mail copies of the attached Notice to Employees in all appropriate languages, within 20 days from receipt of this Order, to all present employees; to all employees employed during the payroll periods which include the following dates; September 13, 16, 17, 1975; and to all employees hired by Respondent during the period provided herein for the posting of the Notice. The Notices are to be mailed to each employee's last known address, or more current address if made known to Respondent.

(c) Have the attached Notice to Employees distributed ^and read in all appropriate languages on company time to the assembled employees of Respondent by a company representative or by a Board Agent, at times and places specified by the Regional Director, and accord said Board Agent the opportunity, outside the presence of supervisors and management, to answer questions which employees may have regarding the Notice and their rights- under Section 1152 of the Act.

(d) Notify the Regional Director at the Board's Salinas Regional office within twenty (20) days from receipt of this Decision and Order of the steps Respondents have taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

Dated; March 23, 1978

ROBERT Bo HUTCHINSON, Member

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

NOTICE TO EMPLOYEES

After a trial where 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 question any employee(s) about their union membership or union sympathy or their acting with other employees to help or protect one another.

WE WILL NOT solicit employees' complaints about working conditions, or promise to correct, or correct such conditions, for the purpose of influencing the employees about their choice of a union to represent them.

TOM BENGARD RANCH, INC,

By: _____

CASE SUMMARY

Tom Bengard Ranch, Inc. (UFW) 4 ALRB No. 33
Case Nos. 75-CE-143-M
75-RC-40-M

PROPOSED BOARD DECISION

On March 23, 1978, the Board issued its Proposed Decision and Order, in which it concluded that:

1. Respondent violated Section 1153(a) of the Act by interrogating an employee about his union sympathies, even though the conversation was amicable;
2. The General Counsel failed to prove that Respondent promised employees health insurance benefits if they voted "no-union";
3. The General Counsel failed to prove that the Respondent promised employees company-paid maternity insurance to induce them to vote "no-union"; and
4. Respondent violated Section 1153(a) of the Act by soliciting employee grievances a few days before a scheduled election and promised, expressly or impliedly, to remedy such complaints.

PROPOSED REMEDIAL ORDER

As a remedy for the violations noted above, the Board ordered the Employer to cease and desist from such conduct, and to .post and mail to its employees *a* copy of a Notice explaining .its actions and to arrange for the distribution and reading of the Notice to employees on company time.

BOARD DECISION

No timely exceptions having been filed by the parties to the Proposed Decision and Order, it became the final Decision and Order of the Board.

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