STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

WESTERN CONFERENCE OF TEAMSTERS; TEAMSTERS LOCAL UNION 946; INTERNATIONAL BROTHERHOOD OF TEAMSTERS; and RALPH COTNER, TRUSTEE, Respondents, and SAM ANDREWS' SONS, Charging Party.	CASE NOS. 76-CL-32-E 76-CL-32-1-E 76-CL-33-E 76-CL-34-E 76-CL-34-1-E 4 ALRB NO. 46

DECISION AND ORDER

On November 2, 1977, Administrative Law Officer (ALO) Lloyd B. Egenes issued his attached Decision in this proceeding, in which he concluded that Respondents had engaged in and were engaging in certain unfair labor practices and recommended that they be ordered to cease and desist therefrom and to take certain affirmative remedial action. Thereafter, Respondents, the General Counsel and the United Farm Workers of America, ALF-CIO (UFW), as amicus curiae, each filed exceptions and a supporting brief. The UFW also filed a response to the General Counsel's exceptions.

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

[1/] All references herein, unless otherwise indicated, are to the Labor Code.

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 only to the extent consistent herewith.

The Employer was one of many signatories to a collective bargaining agreement (hereinafter called the Master Agreement or the agreement) with the Western Conference of Teamsters (WCT), which was signed on July 18, 1975, six weeks before the Agricultural Labor Relations Act (ALRA or Act) went into effect on August 28, 1975. The agreement was for a term of three years and it contained a provision for re-opening, upon proper notice, for re-negotiation of wages. Pursuant to that provision, negotiations between the Employer and the WCT began in the fall of 1976 and continued until a strike occurred on December 26 and 27, 1976, as a result of the parties' inability to reach agreement on contributions to the employees' health and welfare fund.

The General Counsel contended that Respondents violated Section 1154(h) of the Act by picketing to force or require the Employer to bargain with Respondents, concerning subjects other than wages, at a time when Respondents were not the certified collective bargaining representative of the unit employees. It was further contended that Teamsters Local 946 violated Section 1154(h) by causing the strike or picketing against the Employer at a time when Local 946 was not the certified collective bargaining representative of the employees and was not signatory to a continuing pre-Act collective bargaining

agreement protected by Section 1.5 of the Act.[2/] In addition, it was alleged that Respondents' actions in picketing the employer on December 27 and 28, 1976, restrained and coerced employees in violation of Section 1154 (a) (1).

The ALO found that the WCT lost the protection of Section 1.5 and was in violation of Section 1154(h) by picketing to force or require the Employer to bargain on health and welfare issues beyond the scope of the wage re-opener clause. We find it unnecessary to decide whether the health and welfare issue is beyond the scope of wage negotiations; even if it is, the WCT has not violated the ALRA. Under Section 1.5, the pre-Act contract was valid, and the WCT was not in violation of Section 1154 (h) either by its mutually agreed-upon bargaining with the Employer over contract terms, or by later using economic sanctions to enhance its bargaining position. The

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[2/] That section reads:

> SEC 1.5. It is the intent of the Legislature that collective-bargaining agreements between agricultural employers and labor organizations representing the employees of such employers entered into prior to the effective date of this legislation and continuing beyond such date are not to be automatically canceled, terminated or voided on that effective date; rather, such a collective-bargaining agreement otherwise lawfully entered into and enforceable under the laws of this state shall be void upon the Agricultural Labor Relations Board certification of that election after the filing of an election petition by such employees pursuant to Section 1156.3 of the Labor Code.

The agreement between the WCT and the Employer here falls within the ambit of the above exception to the prohibition against recognition of collective bargaining agreements between an Employer and an uncertified union. See Sections 1153 (f) and 1154(h).

fact that bargaining over health and welfare costs occurred during the term of the agreement does not deprive the WCT, the Employer, or the unit employees of the protection of Section 1.5, which is intended to insulate stable ongoing bargaining relationships established prior to the enactment of the Act from the prohibitions in Section 1154(h).

We reject the ALO's conclusion that Local 946 is independently liable for violating Section 1154(h) by causing the strike on December 27 and 28, 1976. The record reveals that Local 946 never had an independent role in the bargaining, the ensuing strike or the picketing, that the negotiations were conducted on behalf of the WCT, which was the party signatory to the Master Agreement and the party responsible for the contract re-opening in mid term, and that the Employer understood that it was bargaining over the terms and conditions of its 1975-1978 Master Agreement with the WCT. The fact that persons who used Local 946 stationery or were assigned to Local 946 by the WCT were involved in the negotiations or the picketing does not establish that Local 946 was attempting to secure recognition independent of that already lawfully conferred upon WCT by the Employer. Accordingly, this allegation of the complaint is dismissed.

We also disagree with the ALO's conclusion that Respondents violated Section 1154 (a) (1) on the second morning of the strike. The record reveals testimony by a company foreman that on the morning of December 28, 1976, Teamsters' organizer Enriquez approached an employee named Carmona who was

encouraging other employees to go to work and, using abusive language, told Carmona that if he continued doing that he would not "get a job anywhere else here".[3/]

Unlike Section 1153 (a), Section 1154 (a) (1) requires more than a showing of interference with employees' protected rights. There must be restraint or coercion in order to constitute an unfair labor practice under Section 1154 (a) (1). In the picket line situation herein, where rough language and strongly voiced sentiments are common, and where there is no showing that the union was in a position to effectuate the threat, we find that the statement of the union organizer did not violate Section 1154 (a) (1). Finally, we find no basis for concluding that the economic picketing herein, by a lawfully recognized collective bargaining representative, constitutes unlawful restraint or coercion.

ORDER

Pursuant to Section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that the complaint be, and hereby is, dismissed in its entirety.

DATED: July 14, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

JOHN A. MCCARTHY, Member

[3/] Contrary to the finding of the ALO, there is no evidence on the record that Enriquez threatened Carmona or anyone else with violence.

CASE SUMMARY

Western Conference of Teamsters; Teamsters Local Union 946; International Brotherhood of Teamsters; and Ralph Cotner, Trustee (Sam Andrews' Sons)	4 ALRB No. 46 Case Nos. 76-CL-32-E 76-CL-32-1-E 76-CL-33-E 76-CL-34-E 76-CL-34-1-E

ALO DECISION In December, 1976, after a breakdown in negotiations held pursuant to a wage re-opener clause contained in a pre-Act collective bargaining agreement, The Teamsters engaged in a strike and picketed the Employer for two days.

The Administrative Law Officer found that: 1) the WCT lost the protection of Section 1.5 of the Act and was in violation of Section 1154 (h) by picketing to force the Employer to bargain on health and welfare issues beyond the scope of the re-opener clause; 2) Teamster's Local 946 was independently liable for violating Section 1154 (h) by causing the two-day strike; and 3) Respondents violated Section 1154 (a) (1) by threatening and coercing employees during the strike.

BOARD DECISION The Board reversed the findings of the ALO, holding it unnecessary to decide whether the negotiations had gone beyond the scope of the re-opener clause, for even if they had, a strike resulting from the mutually agreed-upon negotiations would not have violated Section 1154(h). The Board found that the existing contractual relationship between the parties was valid under Section 1.5 and that the Teamsters' use of economic sanctions to enhance its bargaining position during the term of the contract is not violative of the Act. The Board also found that Local 946 had no independent responsibility for or role in the bargaining or the ensuing strike, and thus had not attempted to secure recognition independent of that already lawfully conferred on the WCT, and that there was no showing of unlawful threatening, restraint or coercion of employees on the picket line by the Teamsters.

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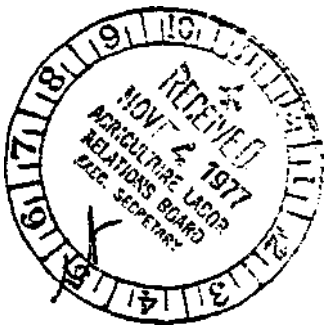
STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:

WESTERN CONFERENCE OF TEAMSTERS; TEAMSTERS LOCAL UNION 946; INTERNATIONAL BROTHERHOOD OF TEAMSTERS; and RALPH COTNER, TRUSTEE; Respondents, and SAM ANDREWS' SONS, Charging Party.	Case Nos.	76-CL-32-E 76-CL-32-1-E 76-CL-33-E 76-CL-34-E 76-CL-34-1-E

Richard Tullis, Esq. and Pat Zaharopoulos, Esq., of Sacramento, California and San Diego, California, respectively, for the General Counsel.

Ormes, Farrell, Monroy & Drost, by John J. Maloof, Esq. of Los Angeles, California, for Respondents Western Conference of Teamsters, and Local Union 946.

Brundage, Beeson & Pappy, by George A. Pappy, Esq. of Los Angeles, California, for Respondents International Brotherhood of Teamsters, and Ralph Cotner, Trustee.

Tom Dalzell, Esq., of Salinas, California for the United Farm Workers, as amicus curiae.

DECISION

STATEMENT OF THE CASE

LLOYD B. EGENES, Administrative Law Officer: This case was heard before me on September 14, 1977, in El Centro, California. Each party was represented by its counsel as shown by the statement of appearances. The United Farm Workers did not make an appearance at the hearing, but were thereafter permitted by order upon application, to file an amicus curiae post-hearing brief, limited to the record made at the hearing, and the legal issues arising therefrom.

The complaint alleges that the Respondents Western Conference of Teamsters (hereinafter "WCT") and Teamsters Local Union 946 (hereinafter "Local 946") violated Section 1154 (a) (1) and Section 1154 (h) of the Agricultural Labor Relations Act (hereinafter "the Act"). The First Amendment to Complaint adds Respondents International Brotherhood of Teamsters (hereinafter "IBT") and Ralph Cotner, Trustee.

The complaint was served on WCT and Local 946 on May 19, 1977, and is based on several charges which were served during the period December 28, 1976 through February 1, 1977, and which were recited in the complaint.

At the close of the hearing, all parties waived oral argument, relying on their opportunity to argue all points in the post-hearing briefs. Briefs by all parties were submitted. Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments in the briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

A. Employer

The Charging Party, Sam Andrews' Sons, is a partnership which is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

B. Labor Organizations

Under the particular facts of this case which are fully discussed later in this decision, I find that each of the following entities is a labor organization within the meaning of Section 1140.4(f) of the Act:

1. International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America (IBT)

2. Western Conference of Teamsters (WCT)

3. Teamsters Farm Worker Local Union 946 (Local 946)

II. The Alleged Unfair Labor Practices

The Amended Complaint alleges that the respondents engaged in three unfair labor practices:

1. That respondents committed an unfair labor practice by causing a strike and picketing in support of demands beyond the scope of the reopener clause of the pre-Act collective bargaining agreement between WCT and the Employer and therefore attempted to secure a new, post-Act recognition without certification, in violation of Section 1154(h).

2. That Local 946 caused a strike and picketing In order to force the Employer to bargain with Local 946 which was not a party to the pre-Act agreement, nor certified thereafter, in violation of Section 1154(h).

3. That respondents restrained and coerced agricultural employees in the exercise of their right to participate or refrain from participating in organizational or converted activities or other rights guaranteed by Section 1152, in violation of Section 1154 (a)(1).

III. The Facts

A. Background

Sam Andrews' Sons (Donald Andrews, Robert S. Andrews, and Fred S. Andrews) is a partnership that owns land which is used for farming of various agricultural crops in the Imperial and San Joaquin valleys of California.

On July 18, 1975, prior to the date on which the Agricultural Labor Relations Act became effective, the charging party, Sam Andrews' Sons entered into a collective bargaining agreement with the Western Conference of Teamsters (WCT). The document is entitled: "1975-1978 California Agriculture. Master Agreement, [between] Employers' Negotiating Committee and Western Conference of Teamsters, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America." That agreement consists of 54 pages. The first 30 pages contain 44 individual articles on individual subjects, page 31 contains the signatures of the parties, and the last 23 pages contains appendixes containing the names and addresses of some 80 employers who joined in the agreement (including Sam Andrews' Sons), as well as detailed Information on job descriptions and rates of pay.

The term of the agreement was for a three year period from July 16, 1975 through July 15, 1978. There was a provision which allowed the contract to be opened annually on the subject of wages.

The text of the agreement contains 44 articles. Each article deals with a specific and limited subject, for example:

Article I	--	Parties
Article II	--	Scope of Agreement
" IX	--	Leave of Absence
" X	--	Call Time
" X(A)	--	Stand-by Time
" XVII	--	No Strike No Lockout
" XXIX	--	Health and Welfare
" XXX	--	Pension
" XXXI	--	Vacation Benefits
" XXXII	--	Hours and Wages
" XXXII	--	Holidays
" XXXIV	--	Overtime
" XXXV	--	Funeral Leave
" XLIII	--	Reopener

Of particular interest is Section XLIII--the reopener clause:

"ARTICLE XLIII - REOPENER"

> "Article XXXII - Wages of this agreement may be reopened for modification by either party to this agreement on July 15, 1976, provided sixty (60) days' written notice is served on the other party, and at least thirty (30) days' written notice is given to the State Conciliation Service, or similar state agency, if any, of its desire to reopen said article for modification. The service of the thirty (30) day notice shall be necessary only in those states where such notice is required by law.
>
> Upon the service of said sixty (60) and thirty (30) day notices, the parties shall commence negotiations for said modifications.
>
> Should the parties fail to reach agreement on such modifications, either party shall have the right to take economic action, including a strike or lockout, in support of its proposals, notwithstanding any other provisions of this agreement provided that no such economic action shall be taken prior to July 16, 1976."

The reopener article explicitly refers to Article XXXII, the text of which is as follows:

"ARTICLE XXXII - HOURS AND WAGES

A. All hours on the Job, including time standing by, shall be counted as hours worked for the purpose of qualifying for all fringe benefits of this agreement.

B. Wages and additional provisions shall be set forth in the addenda attached hereto."

The California Master Agreement was signed on July 18, 1975 by sixteen persons (including Donald Andrews) on behalf of the many employers. In the column for labor signatures, the agreement was signed by three persons (including M.E. Anderson and Ralph Cotner) on behalf of the WCT, and by eight other persons as representatives of certain locals. The listed Locals included 166, 186, 274, 542, 630, 865, 890, 898, and 1973 (by Pete Baclig). Local 946 was not a signatory.

On August 19, 1975, 1ST issued a charter and thereby created Local 946, and on the same date, imposed a trusteeship upon Local 946, and appointed Ralph L. Cotner as the trustee in charge of 946. Local 946 has been in trusteeship and under the control of the IBT general president from its creation to the date of the hearing, and during that time, at the request of WCT, IBT has provided about 4100,000 per month for the salaries and expenses of 946 employees, attorneys fees, and all other expenses of 946. WCT provided at no cost to 946, the services of trustee Ralph Cotner, and Joseph Maloney (the latter maintained the books and financial records of 946).

On November 20, 1975, the Teamsters won a representation election at Sam Andrews' Sons, but the election was set aside. To date, no union has been certified at Sam Andrews' Sons.

For the first year of the Master Agreement, the parties conducted their affairs without any controversy which is relevant to the case at hand. By certified letter signed by Mr. Cotner, dated May 10, 1976, to Donald Dressier, representative of the Employers Negotiating Committee, WCT gave timely notice of its intention to reopen the Master Agreement "....for the purpose of renegotiating those items as provided for under the terms of said agreement..."

Following the reopener notice letter, on June 23, 1976, Mr. Cotner again wrote Mr. Dressler and stated very definitely that Mr. Cotner was the WCT representative for negotiations, and that WCT would not be bound by any negotiations nor agreements except as conducted with Mr. Cotner.

No negotiations took place between May through August 1976. Donald Andrews had not been able to stimulate action, and indicated that he had the impression that WCT had chosen Local 946 to service

the contract. Mr. Andrews had inconclusive contacts with representatives of Local 946 (Pete Baclig, Max Martinez, and Louis Uribe) and with Local 898 (James Ward), and thereafter Initiated a meeting in Los Angeles in September, 1976 with Harold Gibbons of IBT, and Mr. Anderson of WCT. Mr. Andrews perceived that the union was delaying, but testified that he could not determine why.

Mr. Andrews later received a letter dated October 5, 1976, upon the letterhead of Teamster Farm Workers Local Union 946, and signed by Domingo Enriquez, Teamsters Senior Business Agent. Copies of the letter were shown on its face to "Teamsters Local 946, Ralph Cotner, Don Dressier". In the letter, Enriquez gave notice that Local 946 intended to reopen the Master Agreement, and that they were prepared to negotiate immediately after October 22. The Teamsters had attempted to assign the Master Agreement to Local 946 after Local 1973 had been dissolved.

Between October 29-November 1, 1976, Mr. Andrews met with Pete Baclig, Louis Uribe, and Max Martinez, in Bakersfield. In addition to rates of pay, modification of the health and welfare program was demanded by the union.

By letter of November 11, 1976, to WCT, Mr. Dressler, on behalf of the employers, refused to agree to the assignment of the Master Agreement to Local 946. By the terms of the contract, it could not be assigned to other Locals without the prior written consent of the employers. The employers committee had considered the question of assignment, had decided 946 was unsatisfactory, and thus the Dressler letter of objection.

The parties met again on November 18, 1976, and the union representatives again demanded changes in the health and welfare program, including a change from the Western Growers Assurance Trust program that was in the Master Agreement, to the Teamsters Trust program. The fall harvest of the lettuce crop had commence in the last week of October in the Bakersfield area, and harvest in the Imperial Valley began in the first week of December. As well as negotiating on hourly rates, the parties negotiated on holidays, night shift differential, overtime, funeral leave, call time, Jury duty, health and welfare, and protective clothing.

Mr. Andrews testified that although he had voiced his objection that the only proper subject of reopened negotiations was the issue of hourly wages to numerous union representatives, he capitulated and negotiated on the other subjects "because they waited until we were harvesting and they threatened to strike...so I gave in". Initially, Harold Gibbons of IBT, and later Pete Baclig, told Andrews that Andrews would have to accept the Teamsters health and welfare plan. At first, that plan was to cost an additional 20 cents/hour, to which Andrews agreed and paid. Andrews was concerned about whether that plan had Internal Revenue Service approval, and asked the union to provide him with copies of claims forms and a written description of the Teamster program, but did not receive them.

On November 24 the parties again met, but the meeting ended abruptly when Andrews asked for the documents and Baclig did not produce them. The parties met again on November 30 and Baclig still did not produce the documents, but Baclig then demanded an additional 5 cents per hour, raising the hourly employer contribution from the then agreed 20 cents/hour to *25* cents/hour. The union men claimed that 25 cents was needed to cover the dental program, and that they had miscalculated when they demanded 20 cents/hour.

On December 10-13, the parties again met, but Andrews refused to agree to the 25 cents. Andrews had prepared an eight page document which would settle the reopened negotiations. It only provided for 20 cents/hour, and it was not signed, according to Baclig, because the extra 5 cents was not included. Andrews put it into effect at the 20 cents/hour rate.

B. The Strike of December 27-28, 1976

On December 27, 1976, there was a strike and picketing at Sam Andrews' Sons farm in Holtville. It was lead by Domingo Enriquez. The record does not reveal which, if any, union representatives apart from Enriquez authorized the strike on December 27. Since Mr. Andrews talked with officials at WCT headquarters on December 27, it is appropriate to conclude that the second day of the strike, December 28, was approved by WCT, if not the first. The farm workers were told by the union representatives that the strike was to get the company to sign a dental program for the workers.

On the second day, the strike continued to be led by Domingo Enriquez, who appeared at the early morning assembly point where the buses came to pick up the workers to transport them to the fields. Mr. Enriquez and his union assistants directed the workers not to get on the buses, and the buses did not leave for work that day.

While at the assembly point, there were discussions among the workers about whether or not to go to work. Worker Carmona tried to organize one crew to go to work, and several men had agreed with him to go to work. When Mr. Enriquez learned of Carmona's efforts, Enriquez and his assistants confronted Carmona, commenced cussing, and told Carmona that if he continued in his efforts to work and to get others to work, that Enriquez would see to it that Carmona could not get a Job anywhere, following which there were heated discussions which witness Jose Rea described as "almost fighting". Thereafter Carmona abandoned his efforts. Carmona was coerced by threats of interference with his employment, and by threats of violence.

Domingo Enriquez caused some employees (irrigators) to display picket signs on the first day of the strike.

On December 29, workers again assembled in the early morning at the bus pickup point, and Mr. Enriquez appeared and told the workers that matters were satisfactory and that they should go back to work, and work commenced.

CONCLUSIONS

I. Who are the proper respondents?

After a review of the relationships between the respondent parties, I find that all parties named by the General Counsel in his Complaint and Amended Complaint are proper parties respondent, and that each such respondent, has, by its officers and agents, engaged in one or more unfair labor practice.

I find that IBT has participated as a principal, through the acts of its agent, Trustee Ralph Cotner, and sub-agents Jacinto Roy Mendoza and Domingo Enriquez.

I find that WCT has participated as a principal, through the acts of its agents, M.E. Anderson, Ralph Cotner, George French, and its sub-agents Jacinto Roy Mendoza and Domingo Enriquez.

I find that all agents involved were acting within the scope of their authority, and that no agent acted except on behalf of his principal.

II. The violations:

A. WCT engaged in an unfair labor practice in violation of Section 1154(h) by making demands outside the scope of the terms of the reopener of the pre-Act Master Agreement. While many authorities have been cited by WCT for the proposition that "wages" includes all parts of compensation to employees, I find that in the context of the Master Agreement, the parties defined wages in a very narrow sense, and that the understanding as between the parties was that all matters (each treated in a separate article) were settled for three years, except for hourly wages, which could be re-negotiated on an annual basis upon demand. Thus, when Domingo Enriquez led a strike against Sam Andrews' Sons to enforce their demands that the employer pay more to the health and welfare program than was provided for in the Master Agreement, the protection of Section 1.5 of the Act was lost, and the action was an unfair labor practice.

B. IBT and Teamsters Farm Worker Local 946 engaged in an unfair labor practice in violation of Section ll54(h) by causing a strike and picketing at Sam Andrews' Sons on December 27-28, 1976, in support of its demands that the employer bargain with Local 946 which was not a party to the pre-Act agreement nor then certified as required by the Act. IBT and Trustee Ralph Cotner, are vicariously liable for this violation.

C. IBT, WCT, and Local 946 engaged in an unfair labor practice in violation of Section 1154(a)(l) when their agents, Domingo Enriquez and his un-named assistants, threatened Mr. Carmona with violence, and with interference with his employment relationship, coercing Mr. Carmona to act according to Enriquez's wishes.

REMEDY

General Counsel has prayed for certain remedies, which have been adopted or rejected as follows:

Cease and Desist: Having found that respondents have engaged in certain unfair labor practices within the meaning of Sections 1154(a) (1) and 1154(h) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act,

Compensate Employees: The General Counsel has demanded that respondents be ordered to compensate those employees who lost wages as a result of the wrongful conduct of respondents. General Counsel argues that since the strike was illegal, that each employee who lost wages as a result should be compensated, particularly Mr. Carmona and persons who desired to work in spite of the union's desires.

Section 1148 of the Act contains a directive from the Legislature that the ALRB follow applicable precedents of the National Labor Relations Act. While the argument of the General Counsel is very persuasive as a matter of logic and common sense, I decline his demand in the belief that the Legislature in effect adopted the policies of the National Labor Relations Board with Section 1148.

The NLRB has a policy or precedent to refuse to award backpay from the union purse to employees who lost wages due to a strike. Union de Tronquiestas de Puerto Rico, Local 901. IBT. (1973) 202 NLRB 399, CCH NLRB Cases 125, 145. The policy springs from an early decision, Colonial Hardwood Flooring Company, Inc. (1949) 84 NLRB 563, 24 LRRM 1302, in which the NLRB decided that it lacked authority to require a union to pay lost wages to employees kept from working by a strike. It may be that the NLRB was wrong in that decision, as was suggested by the Sixth Circuit decision in National Cash Register Co. v. NLRB (1972) 466 F.2d 945 (note 20 at page 965). But nonetheless, the NLRB has not made such an award unless there was a substantial interference with the employment relation, and now characterizes the Colonial rule as precedent, rather than lack of authority. Local 901, supra. That policy is based upon the view that such a strong deterent may impose the risk of inhibiting the right of employees to strike to such an extent as to substantially diminish the right to strike.

In the few cases where the NLRB has made awards of backpay, the Board has required a finding of a severance or substantial interference with the tenure or terms of employment. In National Cash Register, supra, there was a finding that the union had required that employees in the Military Division (who the union agreed

could work during the strike) had to agree to pay a third of their wages to the union, or else the union would not give them a pass to cross the picket line. The employer became aware, of this, and joined in insisting that the pass must be obtained, and the Board held them jointly and severally liable for backpay. And in Plumbers Local 525 v. NLRB (9th Cir. 1977), ____F.2d ____, 95LRRM2623, the court enforced an award of backpay against the union, where the union had raised questions of work eligibility for one employee with the employer, who in turn demanded that the employee satisfy the union, or else would not employ him. In the case before me, there was no interference in the employment relation in this required sense, although there was threat of prevention of future employment.

Compensate the Employer: General Counsel has asked that respon dents be ordered to compensate the employer for his loss of produc tion/harvest which it suffered during the two days of the strike.

General Counsel cites no compelling authority to support his request for compensation to the employer. The Act requires that the Board follow precedent of the NLRA.

The decision that the NLRB lacked authority to assess money damages against unions for damages resulting from strikes was made in an early case, and remains the position of the NLRB. National Maritime Union of America, (1948) 78 NLRB (No. 137) 971, 22 LRRM 1289. While there are some slight differences between Section l0(c) of the NLRA and Section 1160.3 of the California Act, I do not believe that such differences are authority for the award of money damages to the employer in respect to the facts of this case. If the California Legislature meant to arm the Board with such authority, the Legislature would have specifically provided it. Republic Steel Corporation v. NLRB (1940) 311 U.S. 7, 61 S. Ct. 77, 85 L. Ed 6.

Notice by Respondents: General Counsel has asked that respondents be required to sign a notice, in English and Spanish, which states that they promise not to repeat the conduct, apologize, etc., and that such notice be distributed in three ways:

1. Mail: by requiring respondents to mail such notice to all employees on the payroll of Sam Andrews' Sons, during the week of December 26, 1977. I conclude that the burden of such mailing is not justified by the benefit. Instead, I shall recommend that respondents be ordered to pass out copies of such notice to all workers who gather at bus assembly points during the week of December 26, 1977.

2. Posting: by requiring Respondents to post the notice at the commencement of the next harvest season for a period of 60 days in locations where employees of Sam Andrews' Sons will be apt to see them. This is an appropriate measure and should be ordered.

3. Read at assembly: by requiring respondents to read the notice at an assembly of workers, where an agent of the ALRB shall be present, to answer questions. I conclude that organizing such ah assembly would be too burdensome and believe that passing out notices at bus assembly points for a week will achieve the same end with far less difficulty.

Notify General Counsel of Compliance: In accordance with General Counsel's request, I shall recommend that respondents inform by letter the San Diego office of the ALRB as to the precise steps which have been taken to comply with the order, and that such letter shall be sent to the Board within 30 days after compliance has been completed.

Upon the basis or the entire record, the findings of fact, conclusions of law, and pursuant to Section 1160.3 of the Act, I issue the following recommended:

ORDER

Respondents, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) picketing, or causing the picketing, or threaten to picket Sam Andrews' Sons, in support of demands which are outside the scope of the 1975-1978 Master Agreement, unless respondent becomes the certified bargaining agent of the employees.

(b) Local 946 shall cease and desist from making demands upon Sam Andrews' Sons for negotiations with Local 946 until such time as the Master Agreement is properly assigned to Local 946, or until such time as Local 946 becomes properly certified.

(c) in any manner restraining or coercing employees of Sam Andrews' Sons in the exercise of their 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, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement of the type authorized by Section 1153(c) of the Act.

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

(a) Prepare, sign, and publish a written statement (in English and Spanish) in the nature of a public apology to the employees of Sam Andrews' Sons, and to Sam Andrews' Sons, stating that respondents have been found to have engaged in unfair labor practices. The statement shall include a recitation of the unfair

labor practices that were found to have been conducted, shall indicate a promise to comply with the law and avoid such practices in the future, and such notice shall substantially conform to the Notice to Employees, which is appended to this decision and order.

(b) Respondents shall publish the notice by (1) posting copies of it at appropriate places such as bulletin boards and other such places where all or most of the employees of Sam Andrews' Sons will likely see such notices, and that such notices shall be posted for a 60 day period including December 26, 1977; and (2) Respondents shall cause copies of said notice to be passed out to all employees who meet at bus assembly points for the week of December 26, 1977.

(c) Thirty days after compliance with this order has been accomplished, respondents shall inform the General Counsel, San Diego Regional Office, of precisely the steps which have been taken to comply with this order, as well as providing a copy of the executed notice which was distributed.

Dated: November 2, 1977

Lloyd B. Egenes
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing on September 14, 1977, in El Centro, California, where all interested parties had an opportunity to present evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that the International Brotherhood of Teamsters and, the Western Conference of Teamsters; and, Teamster Farm Workers Local 946, have each violated the Agricultural Labor Relations Act. Each of these divisions of the Teamsters have been ordered to notify you and the public of the fact of these violations of the Act, and that each division of the Teamsters will respect the rights of the employees of Sam Andrews' Sons, and the rights of the employer Sam Andrews' Sons, in the future. Therefore, on behalf of each division of the Teamsters I am now telling each of you:

1. On December 27 and 28, 1977, we initiated and led a strike and picketing at Sam Andrews' Sons, in support of our demands for a dental program. Because, those demands were outside the scope of the 1975-1978 agreement between the Teamsters and the employer, the strike and picketing were an unfair labor practice.

2. Since the strike and picketing were led by representatives of Local 946, and since Local 946 was not a party to the 1975-1978 agreement nor certified by the Agricultural Board as the proper bargaining union, Local 946 engaged in an unfair labor practice.

3. During the strike, threats and coercion were directed toward one or more employee who wanted to go to work by Teamsters representatives, who interferred with the right of those employees to participate or refrain from participating in the strike. Those threats and coercion were unfair labor practices.

4. We hereby inform you that in the future we will not engage in unfair labor practices such as Just described in the preceding paragraphs and that we will more carefully respect the rights of employees and employers in the future.

5. We hereby inform you that you are free to exercise your right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of your own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protections. We further inform you that-you are also free to refrain from any and all such activities, and in particular, that you are free to refuse to join one of our strikes.

6. We apologize for the misconduct we engaged in at Sam Andrews' Sons on December 27-28, 1976, and we regret any losses of pay or profits that may have resulted.

Dated: _____ FOR THE TEAMSTERS:

_____

Name and Title