

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SALINAS GREENHOUSE COMPANY)	
and CARMEL GREENHOUSE,)	Case Nos. 75-CE-137-M
)	75-CE-158-M
Respondent)	75-CE-160-M
)	75-RC-222-M
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	4 ALRB No. 64
AFL-CIO, and JESUS TOPETE)	
RODRIGUEZ ,)	
Charging Parties.)	

DECISION AND ORDER

On August 12, 1977, Administrative Law Officer Joe H. Henderson (ALO) issued the attached decision^{1/} in this proceeding. Thereafter, Respondent and the United Farmworkers of America, AFL-CIO, (UFW) filed exceptions and briefs.

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

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

1. The record reveals that on September 23, 24, and 25, 1975, security guards at the gate to Respondent's Carmel

^{1/} Case No. 75-RC-222-M, objections to the conduct of the election, was dismissed by the Board on December 9, 1976.

Greenhouse nursery operation fully or partially denied access to UFW organizers, although the UFW organizers were complying with the provisions of 8 Cal. Admin. Code Section 20900 (1975) (the "access regulation") at the time they sought to enter. Contrary to the ALO,^{2/} we find that the actions of the security guards, in fully denying access on September 23, and 24 and partially denying access on September 25 to union organizers acting in compliance with the access regulation, violated the employees' rights to receive information from the organizers. Accordingly, we find that Respondent violated Section 1153(a) by these denials of access. We also find, contrary to the ALO, that the use of physical restraint and assaults against organizers by security guards on September 23 is a violation of Labor Code Section 1153(a).

2. On the basis of the entire record, we conclude that the General Counsel failed to establish by a preponderance of the evidence that Respondent engaged in surveillance of union activities at a local high school. The evidence reveals only that at some unspecified time during the union's organizing campaign an employee, the wife of a part-owner and supervisor of Respondent, several times drove past a high school where a union meeting was being held, the school being

^{2/}The ALO mistakenly assumed that the motives of the organizers in seeking entrance under the access regulation were "questionable". We find that their attempted entry was in furtherance of the union organizational campaign then being conducted amongst the employees and that there existed at the time no reason justifying Respondent's denial of access to organizers.

located near Respondent's premises on a main thoroughfare. These facts do not establish unlawful surveillance of employees' union activities.

3. The ALO's recommended remedial order is modified to reflect the findings and conclusions herein.

ORDER

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

1. Cease and desist from:

a. Denying access to its premises to organizers, or assaulting organizers who are lawfully engaged in organizational activity.

b. Engaging in surveillance of employees' union activities or other protected concerted activities.

c. Compiling lists of employees engaged in union activities or other protected concerted activities.

d. Interrogating employees concerning their union affiliation, union sentiments, or participation in union activity or other protected concerted activities.

e. 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 actions which are deemed necessary to effectuate the policies of the Act:

a. Sign the attached Notice to Employees.

After the said Notice is translated by a Board Agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth hereinafter.

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

c. Mail copies of the attached Notice in all appropriate languages, within 30 days from receipt of this Order, to all employees employed during the payroll periods which include the following dates: August 28 through September 25, 1975.

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

e. Notify the Regional Director in writing, within 30 days from the date of receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken to comply with this Order.

DATED: September 21, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to meet and bargain about a contract with the UFW. The Board has ordered us to post this Notice and to take certain other actions. We will do what the Board has ordered, and also tell you that:

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

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

this is true, we promise you that:

WE WILL NOT deny access to our premises to organizers, or assault organizers, who are lawfully engaged in organizational activity.

WE WILL NOT spy on you while you are participating in union activities.

WE WILL NOT keep lists of those of you who participate in union activities.

WE WILL NOT ask you about your feelings about unions or your participation in union activities.

SALINAS GREENHOUSE COMPANY and CARMEL
GREENHOUSE

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

Salinas Greenhouse Company
and Carmel Greenhouse

4 ALRB No. 64
Case Nos. 75-RC-222-M
75-CE-137-M
75-CE-158-M
75-CE-160-M

ALO DECISION

The UFW engaged in an organizational campaign at Respondent's nurseries in the fall of 1975. During that campaign, the ALO found, Respondent violated Section 1153 (a) of the Act by engaging in surveillance, compiling lists of active union sympathizers and unlawfully interrogating its employees.

The ALO recommended dismissal of allegations that Respondent violated the Act by: (1) surveillance of a person who was found to be a supervisor within the meaning of the Act; (2) promise of benefits to employees if they refrained from supporting the Union; (3) statements made to employees during its campaign against a union vote; (4) use of security guards at the entrances of its greenhouses; (5) actions of a supervisor who aided an employee in having his signed authorization card returned to him; (6) transfer of an employee to a job that afforded him less freedom of movement; and (7) denial of access and assaults by security guards against organizers.

BOARD DECISION

The Board affirmed most of the ALO's findings and conclusions, but rejected his conclusions on the denial of access and assault charges. It found that security guards unlawfully prevented union organizers from entering the work site before September 25, that there was no justifiable reason for denying access, and that the ALO's reliance on the motives of the organizers was improper. The Board concluded that the use of physical restraint and assaults against organizers constituted a violation of Section 1153(a).

The Board found also that surveillance was not proven to have occurred where the wife of a supervisor several times drove by a Union meeting being held on a main thoroughfare near Respondent's premises.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *



1 IN THE MATTER OF THE ARBITRATION BETWEEN
 2
 3 SALINAS GREENHOUSE COMPANY No's 75-RC-222M
 and CARMEL GREENHOUSE COMPANY 75-CE-137M
 4 vs. 75-CE-158M
 5 75-CE-160M
 6 UNITED FARM WORKERS OF AMERICA
 AFL-CIO

7
 8 The above cited cases were consolidated for hearing purposes
 9 in accordance with Section 20245 (a) (2) of the Act, in accordance
 10 with the Board's request of October 17, 1965. All hearings were
 11 held in Salinas. The proceedings were opened on November 21, 1975,
 12 and continued to December 15, 16, 17, 18 and 19, 1975. Due to
 13 internal difficulties of the ALRB, the hearings were not resumed
 14 until January 10, 11, 12 and 13 of 1977. Upon the completion of
 15 the ten days of hearings, all parties filed briefs and arguments.

16 Appearances:

17 Joe H. Henderson, Administering Law Officer
 18 General Counsel

19 Guy Jinkerson 1975
 20 Robert Comacho 1975
 Ruth Friedman 1977
 21 James Gonzalez 1977

22 United Farm Workers:

23 Jeff Kupers 1975
 Jeffery Lewis 1977

24 Salinas & Carmel Greenhouse:

25 Frederick Morgan 1975
 26 Eoward Vickery 1975
 Thomas W. Reavley 1975
 27 Robert J. Stumpf 1977

28 ///

The election challenge case 75-RC-222M, was dismissed by the Board on December 9, 1976, and severed from the other cases. Therefore, I will not address myself to the election challenge issues.

Statement of Case

These cases were heard before me on November 21, December 15, 16, 17, 18, and 19 of 1975, and January 10, 11, 12 and 13 of 1977. The complaint alleges violations of Section 1153 (a) and 1140.4 (a) of the Agricultural Labor Relations Act, herein called the Act by Salinas and Carmel Greenhouse Complaints, herein called the respondents.

The original charge in Case No. 75-CE-137-M was filed by the U.F.W. on September 24, 1975. Said complaint was served by the U.F.W. on the respondents on September 24, 1975. The original charge in Case No. 75-CE-158-M filed by the U.F.W on October 1, 1975. A copy was served by the U.F.W. on respondents on October 1, 1975. The original charge in Case No. 75-CE-160-M was filed by RODRIQUEZ on October 2, 1975. A copy was served by the Board on Respondents on October 16, 1975. The complaints were consolidated October 17, 1975. The consolidated complaints set forth fifteen (15) unfair labor charges. Copies of the consolidated complaint was duly served upon respondents.

Finding of Fact

1. Jurisdiction

A. Salinas and Carmel Greenhouses are owned by a partnership consisting of Yoshimi Shibata, Yoshito Shibata, Yoshikuni Shibata, and Juro Uchida. Said partnership is



IN THE MATTER OF THE ARBITRATION BETWEEN

1
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4 and CARMEL GREENHOUSE COMPANY 75-CE-137M
75-CE-158M
vs. 75-CE-160M
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Finding of Fact

1. Jurisdiction

A. Salinas and Carmel Greenhouses are owned by a partnership consisting of Yoshimi Shibata, Yoshito Shibata, Yoshikuni Shibata, and Juro Uchida. Said partnership is

1 an agricultural employer in Monterey County, California, and is
2 an agricultural employer within the meaning of Section 1140 (c)
3 of the Act. The two greenhouses are owned by the partnership and
4 are located approximately one-quarter of a mile apart. The
5 greenhouses are used for growing carnations and both are managed
6 and operated on a joint basis by the partnership. There is an
7 interchange of employees between the greenhouses. The Respondent
8 in his answer of October 17, 1975, admitted that it was an
9 agricultural employer within two meaning of Section 1140.4 (f) of
10 the Act.

11 FINDING: The Carmal and Salinas Greenhouse are agricultural
12 employers under Section 1140.4 (c) of the Act.

13 Respondent also admitted that the United Farm Workers, AFL-
14 CIO, is a labor organization within Section 1140.4 (f) of the Act.

15 FINDING: United Farm Workers, AFL-CIO, is a labor organization
16 representing agricultural employees within the meaning of Section
17 1140.4 (f) of the Act.

18 C. The Respondent stipulated that the following
19 persons were supervisors within the meaning of Section 1140.4 (j)
20 of the Act, and are agents of the Respondent.

21 Yoshimi Shibata, owner
22 Juro Uchida, owner-general manager
23 Arcadio Ortiz, Supervisor

24 FINDING: The persons listed above are supervisors within the
25 meaning of Section 1140.4 (j) of the Act.

26 D. Paragraph seven (7) of the complaint, alleges that
27 Frank Huerta, Esther Huerta, Roberto Chavez and Jesus Topets
28 Rodriguez were and are agricultural employees within the meaning
of Section 1140.4 (j) of the Act.

1 For the reasons stated below, I find that:

2 FINDING: Esther Huerta, Roberto Chavez and Jesus Topate
3 Rodriquez were and are agricultural employees within the meaning
4 of Section 1140.4 (j) of the Act.

5 FINDING: As to Frank Huerta, I find that he was a supervisory
6 employee within the meaning of the Act for the reasons stated
7 below, and therefore, not subject to the protection provided an
8 employee under the Act. Frank Huerta is not an agricultural
9 employee within the meaning of Section 1140.4 (b) of the Act.

10 Alleged Unfair Labor Practices

11 The complaints in paragraphs 3 (d), (e), (f), (g), (h), (i),
12 (j), (k), (l) and (m), allege that respondents, by conduct which
13 amounted to threats, unlawful interrogation, unlawful surveillance
14
15 and promises of increased benefits, all acts alleged to be in
16 violation of Sections 1153 (a) and 1140.4 of the Act. The Union
17 alleges that the Respondent hired security guards for the purpose
18 of interfering with restraining and coercing employees engaged in
19 Union activity. Denial of access to . . . U.F.W. represent-
20 atives pursuant to Section 20900 of the Board's Emergency
21 Regulations is alleged on two (2) different incidents, in
22 paragraph 8 (a) and (c).

23 Paragraphs 3 (b) and (c) of the complaint allege that the
24 Respondent, through his agents and employees, "assaulted and
25 battered" U.F.W. representatives who were attempting to gain
26 access to Respondents premises. Said acts are alleged to be a
27 violation of the Emergency Access Regulations of the Board,
28 Section 20900.

1 Respondents deny that the access denial was in violation of
2 the Emergency Regulations, since the dates when access was denied
3 occurred prior to the Supreme Court's decision permitting access.

4 Respondents deny that they engaged in unlawful interrogation
5 The employer admits that Frank Huerta was placed under
6 surveillance. The Respondent justifies this surveillance on the
7 grounds that Huerta was a supervisor and not in the class of
8 employees protected by the Act. The Respondent denies surveillance
9 of any other employees.

10 Respondents denies that the guards were hired to intrude
11 and coerce employees. The reason stated, was to protect Frank
12 Huerta after a death threat call was received by Huerta. Also
13 the guards were to protect the Respondent's property.

14 The Greenhouse Operation

15 The two greenhouses as noted above, are physically removed
16 from one another. Carnations are grown in both of the large
17 greenhouses. The carnations are disbudded, (a form of pruning),
18 cut, bunched, tinted and refrigerated on the site. Shipments
19 are made to the bay areas on a daily basis. To accomplish the
20 above described tasks, respondent employs, approximately 80
21 full-time employees, year round.

22 The Carmal Greenhouse has under roof, 390,000 squares feet,
23 Salinas Greenhouse has 545,000 squares feet. Carnations are grown
24 in long rows in the greenhouses. The greenhouses are divided
25 into "ranges" based upon geographic areas within the greenhouses.
26 There is a supervisor responsible for material, production, and
27 employees for each range.

28 In addition to the greenhouses, there are two tinting

1 buildings, separate from, but in close proximity to the green-
2 houses. In the tinting sheds, the flowers are graded for
3 quality, separated as to grade, bunched and tied for shipment.
4 The flowers are also tinted, a process where by the flowers are
5 given a color treatment with the use of dyes. One of the tinting
6 sheds was ran by Prank Huerta.

7 Denial of Access
8 and Assault Charges

9 Paragraph 8 (a) and (c), relate to the denial of access by
10 Respondent of the Union organizers.

11 The Respondent is charged with assaulting, Frank Huerta and
12 Esther Huerta in paragraph 8 (b), and U.F.W. representatives
13 seeking access in paragraph 8 (c).

14 The Respondent openly stipulated to the basic acts under-
15 lying the charges dealing with the assault and denial of access.

16 The Respondent stated that they made a reasonable and good
17 faith effort to comply with the access rule. Early in the
18 proceedings, the Respondent admitted that access was denied when
19 it was requested until the 25th of September. The employer stood
20 ready at all times to stipulate as to the persons who were denied
21 access on the occasions when denial occurred. The basic facts
22 are not in dispute, access was denied to Dennis Roirdan, Kenneth
23 Fugimoto, and certain others on September 10th, 23rd and 24th
24 of 1975. Respondent represents that it is also not disputed
25 that the full access was provided United Farm Workers on
26 September 25th and from that date forward until the present time.

27 1. It is clear that Mr. Shibata, made a good faith attempt
28 to ascertain what the meaning of the new access rule was.

1 The Company complied fully with the rule immediately after the
2 California Supreme Court lifted the injunctions.

3
4 On the morning on which the organizers first attempted to
5 gain access, Mr. Shibata called the Agricultural Labor Relations
6 Board to find out what court cases were outstanding, concerning
7 the access rule.

8 Mr. Shibata then attempted to verify this information. He
9 testified that he first conferred with his counsel and then had
10 an employee check with the Farm Bureau and the Farmers League,
11 in Delano about the access rule. He later received a call
12 informing nisi that, "the State Court had taken over and sustained
13 the trespass law, because the Federal Courts did not have
14 jurisdiction.

15 Two of the persons denied access, had questionable motives
16 for their access.

17 1. Robert Thompson, testified that at least one of his
18 purposes in trying to obtain access, was to gather information to
19 be used in support of the United Farm Workers position that
20 Salinas and Carmel Greenhouses were a single employer under the
21 agricultural Labor Relations Act.

22 2. Ken Fugimoto testified that Dennis Roirdan's purpose,
23 and his for seeking access, was very specifically, "to cite the
24 law to the people of the company."

25 FINDING: The denial of access of Mr. Thompson, Mr. Roirdan and
26 Mr. Fujimoto, were not a violation of the Act, because of their
27 stated purpose for access.

28 There is no dispute over the facts that after September 25 th,

1 1975, at least one month after the law went into effect, and a
2 month prior to the certification election, full access and re-
3 entry was permitted to the Union organizers.

4 FINDING: There was a technical violation of the access rule as
5 alleged in paragraphs 8 (a), 8 (d) and a violation of Sections
6 1152, 1153 (a) and 1140.4 (a) as alleged in paragraph 9, as the
7 access rule relates to company employees.

8 Further: The Hearing Officer, finds that there was reasonable
9 doubt in the minds of the property owners as to the legal status
10 of the access rule. A diligent effort was made by the Respondents
11 to determine whether or not the access of the organizers was legal
12 under the Act. Upon being informed that the organizers had a right
13 to access, there was no resistance made by Respondent or their
14 agents. Because of the dates of the Court Hearings and the
15 appeals on the access question, there was a technical violation
16 of the law in that the access was not granted after September 18,
17 1975. Because of the questions in the law at that time, and other
18 matters involved, it is the opinion of the Hearing Officer, that
19 the technical violations of the Respondent on September 23rd and
20 24th, were mitigated and cured by his subsequent assent to free
21 and clear access after he was informed of the organizers right
22 to enter upon his property. Prior to that 23rd date, the
23 Respondent was acting in the manner of any land owner in tones of
24 resisting trespass, and attempting to protect the rights associa-
25 ted with property ownership.

26
27 Assault

28 Associated with the access issue, are the allegations of
paragraphs 3 (b) and (c) that the agents of Salinas Greenhouse

1 assaulted various employees and outside organizers who attempted
2 to gain access before September 25, 1975.

3 The Respondent admitted that Robert Thompson, a reported
4 organizer for the United Farm Workers was physically restrained
5 from entering by uniformed security guards, who were Respondent's
6 agents. (See finding above, regarding Thompson.)

7 As to organizer, Fugimoto, who testified that he was
8 physically shoved by the security guards, "like they were playing
9 football or something of that nature", at least three other
10 witnesses said that he stumbled and fell in a small ditch. I
11 find Mr. Fugimoto's testimony hard to believe, because of his
12 gross exaggeration in the matter. He testified that he was
13 thrown down by one of the security guards, perhaps as many as
14 fifty (50) times. He admitted in his testimony that he attempted
15 to force his way through. The Respondent was clearly entitled
16 to use reasonable force to prevent trespassers from entering
17 while the Court Orders were in effect.

18 Mr. Roirdan's statement to the sheriff also raises doubts
19 in the mind of the Hearing Officer, He stated that he wanted all
20 information to be carefully preserved to assist the Union in
21 filing an unfair labor practice charge. It appeared that
22 Fugimoto, Thompson and Roidan, were intentionally aggressive in
23 their efforts to place the Respondent, Salinas and Carmel Greenhouse
24 in an awkward position as it relates to the access matter.

25 Dennis Roidan testified that he was pushed back firmly, but
26 also said that he continued to attempt to enter. Under cross-
27 examination, he re-affirmed that his statement was correct, that
28 he attempted to re-enter. Though the Respondent's agents, the

1 security guards, did restrain the parties from entering the
2 property, and the use of physical force was necessitated and
3 precipitated by the conduct and attitude of the organizers.
4 Roidan, Thompson and Fugimoto achieved precisely the incident
5 that were hoping to create, that is to place the Respondent
6 in a bad light.

7 As to the other allegations of assault, the Hearing Officer
8 did not find that there was sufficient evidence and testimony
9 presented to substantiate such allegations.

10 FINDING: There is not a sufficient showing of the allegations.

11 FRANK HUERTA

12
13 One of the primary questions was whether Frank Huerta was
14 a supervisory employee, therefore, outside of the protection of
15 the Act. Under the standards established by the National Labor
16 Relations Board, and within the meaning of Section 1140.4 (j) of
17 the ALRA, I reviewed the duties of Frank Huerta to determine his
18 status as a supervisory employee. Frank Huerta's duties included
19 attending supervisory meetings, which existed before August of
20 1975. He was given a job description of his supervisory duties.
21 On at least one occasion, he recommended to his employer that an
22 individual be fired, and the individual was fired. He directed
23 the employees where to go, directed their work in the packing
24 shed and directed them from the packing shed to the greenhouse
25 for cutting purposes. He corrected problems between packers
26 and graders in the greenhouse, trained new workers, instructed
27 employees to stop talking too much and helped make storage
28 decisions. Mr. Huerta made decisions whether to discard low-grade

1 flowers, gave permission to employees to leave early, made
2 decisions in the inspection and grading of flowers, kept records
3 of various types of flowers. Traveled to Mountain View on at
4 least two occasions to consult with the sales manager. On at
5 least one occasion, he called a meeting of the workers in the
6 Salinas, Carmel Greenhouse. He was paid substantially more than
7 the employees that worked under him.

8 In his testimony, he testified that he attended around
9 is (6) or seven (7) supervisory meetings. He occasionally made
10 decisions where the people would work, he received a copy of his
11 supervisory duties, he trained workers that come to the packing
12 shed. He signed a statement given to the Board in which he
13 described himself as a foreman.

14 FINDING: Frank Huerta was a supervisor within the meaning of the
15 Act. The Company's conduct in following him, did not constitute
16 an unlawful surveillance of an employee under the terms of the
17 Act.

18 It was admitted by the employer, that Frank Huerta was
19 followed by one of the owners wherever he traveled in the Salinas
20 Carmel Greenhouse area. This came about after Mr. Huerta received
21 a telephone call which threatened his life. He was himself con-
22 cerned about the threat, as was the employer. This threat was
23 allegedly to have been by someone that sounded like a Japanese
24 person, and for that reason the employer Mr. Shibata, ordered
25 Jun Yoshito, to follow Frank Huerta. "Be sure nothing happens
26 to [Huerta] because the Japanese will get blamed." There is no
27 dispute in the testimony that all the parties took the threat on
28 Frank Huerta's life seriously. Huerta himself, was adamant about
28

1 carrying a weapon. To prevent this type of conduct by an
2 employee, the employer retained the security guards.

3 Because of Frank Huerta's organizational efforts and his
4 wife, Esther Huerta's organizational efforts, the surveillance
5 of Frank Huerta, did have a tendency to stifle organizational
6 efforts of his wife, Esther. Because of Company's surveillance,
7 of their "Supervisor", this conduct, did have a tendency to
8 thwart the organizational efforts of those employees in Frank's
9 presence, and tended to intimidate other employees who raised
10 speaking to anyone in Frank's presence.

11 FINDING: I find that the Company's surveillance activities, did
12 violate the Act in Section 1153 (a) as to employees other than
13 Frank Huerta, in that the surveillance conduct interfered with,
14 restrained and/or coerced its employees in the exercise of their
15 protected rights. As set forth in paragraphs 8 (d), 8 (h) and
16 8 (k) of the Complaint.

17 FINDING: The surveillance of Frank Huerta, is found not to be a
18 violation of Section 1153 (a), as alleged in paragraph 8 (b),
19 8 (d) and 8(h).

20 FINDING: There was not a violation of the Section 1153 (c),
21 "promise of benefits", as alleged in paragraph 8 (e).

22 There is substantial confusion in terms of what Mr. Shibata
23 and Mr. Ortiz said to the employees as the employer was attempt-
24 in to inform them of their rights and his position in terms of
25 Union organization. Every effort was made by the Respondent to
26 provide an interpreter and assist the parties involved, in under-
27 standing.

28 It is clear to the Hearing Officer after having sat through

1 the hearings, that the interpretation problems were significant
2 and substantial to the employer. The Hearing Officer, in one day,
3 heard testimony in four (4) different languages; English, Spain,
4 Japanese and Philippino. In each case, particularly the Phillippino
5 and Japanese, it was difficult, even for the interpreter to make
6 it understandable to the other parties, the position of the wit-
7 nesses. Because of my observation of the interpretation problems,
8 I can readily see where the comments made by the employer, could
9 have easily been misinterpreted by the employees, because of the
10 necessity of interpreting from a Japanese-American, whose
11 principal language is Japanese; speaking English to a Chicano,
12 whose primary language is Spanish, hearing it in English and
13 interpreting it into Spanish, and a third party who speaks
14 primarily Philippino, hearing the message in English and inter-
15 preting it into Philippino. Anyone who has been involved in
16 hearings of this nature, where several languages are involved,
17 will realize that the communication aspects are horendous.

18 The allegations or promises of benefits, all arise from an
19 alleged misinterpretation of statements made by the employer.

20 FINDING: The Hearing Officer finds that there were no violations
21 of the Act in terms of promises of benefits or threats of dis-
22 missal reprisal and/or deportation, or the interrogation of
23 employees as set forth in paragraphs 8 (e), 8 (g), 8 (i), 8 (j)
24 and 8 (l) of the compalint.

25 It was alleged by the Petitioner that the Respondent violated
26 Section 1153 (a), by transferring employees from the Carmel
27 Greenhouse to the Salinas Greenhouse. Even through the complaint
28 did not allege that certain transfers were in violation,

1 substantial evidence was presented at the hearing by all parties
2 relative to this issue. The Hearing Officer addresses this issue
3 simply because of the magnitude of the testimony in evidence
4 received on this issue. The employer transferred approximately
5 seven (7) employees from one greenhouse to the other. There was
6 substantial evidence placed before the Hearing Officer by the
7 employer, to indicate that it was necessitated by the work load.
8 The employees that were transferred, testified on two separate
9 occasions, that after being in the Salinas Greenhouse for a
10 period of one to two weeks, they requested to be transferred back
11 to Carmal. They were transferred back without any resistance on
12 the part of the employer.

13 FINDING: The employment of security guards was not a violation
14 of Section 1153 (a), except as their surveillance of Frank Huerta
15 caused concern in other employees.

16 The security guards conduct in their surveillance of Huerta,
17 as it related to the other employees in his proximity, did
18 violate the Act as stated above, and I hold that as to all other
19 employees, the surveillance conducted upon Huerta was and did
20 tend to intimidate and coerce the employees away from the Union
21 organizational activities, and therefore, is a violation of a
22 Section 1153 (a).

23 It is alleged as part of paragraph 8 (j) that Juan Yoshito
24 interrogated Bernardo Lopez in violation of Section 1153 (a).

25 FINDING: There was a technical violation of Section 1153 (a),
26 in this questions asked of Bernardo Lopez, which violated the
27 above-stated Section.

28 Regardless of how innocent the conversation between the

1 parties may have been, it was a technical violation of the Act,
2 and it is the finding of the Hearing Officer, that said violation
3 did occur.

4 FINDING: The security guards, in stopping the automobiles of
5 the employees who were moving from Carmel to Salinas Greenhouse,
6 and from Salinas to Carmal Greenhouse, and prohibiting their
7 free access within the company work area, was a coercive and
8 intimidating act on the part of the employer, which constitutes
9 a violation of their right to organize as protected under Section
10 1152 (a) of the Act. As alleged in paragraphs 8 (b) and 8 (k).
11 In this respect, Esther Huerta, alleged that she was assaulted
12 when the vehicle was stopped at noon on September 23rd, by the
13 guards while the vehicle was on the Respondent's property. The
14 guards did restrain Esther Huerta and Frank Huerta on the day
15 in question. The restraint of Esther Huerta did involve contact
16 of her person, and therefore, is a technical battery. There
17 was certainly no violent force nor any other acts of violence
18 against her in any matter. Just the touching necessary to stop
19 her movement. There was a technical violation of the Act on
20 the part of the guard as it related to Esther Huerta, which
21 would be a violation of Section 1152 (a).

22 The Respondent, resisting the employees movement, from one
23 work area to the other, was a restraint upon their movement in
24 their organizational activities, which would constitute a
25 violation of Section 1152 (a) of the Act.

26 A list of employees, who were traveling between and two
27 plant locations, was made by a representative of the employer.
28 There was alleged confusion on the part of one of the foremen as to

1 the instructions from the employer. The employer characterized
2 his testimony that he was concerned that employees traveling from
3 one plant location to another were not returning within their
4 lunch time. It was stated that the employees were not punching
5 their time cards. One of the foreman was asked to make sure that
6 the employees sign their own cards at the end of the pay period.
7 These instructions were apparently misunderstood by the foreman,
8 and instead, he had the employees sign a separate sheet of paper
9 after they had returned from an organizational effort in the
10 Carmel Greenhouse. Through the list was destroyed, and apologies
11 were made, this is a technical violation of the Act which would
12 tend to intimidate and coerce the employees in their Union
13 organizational efforts and therefore, the list constitutes a
14 violation of Section 1152 (a), of the Act.

15 FINDING: The list constituted a violation of said Section as
16 alleged in paragraph 8 (h).

17 In paragraph 8-M of the complaint, the General Counsel charged
18 that the Respondent forced one of his employees to ask for the
19 return of the signed United Farm Workers Association, authorization
20 card from a Union organizer. The card was given to Mr. Delfino
21 Tubera, by Mr. Rodriquez, a Union organizer. Mr. Rodriquez
22 testified that he gave the card to Mr. Tubera, who signed the card.
23 Mr. Tubera, a short time later, asked that the card be returned.
24 Mr. Rodriquez refused, "I wouldn't give it back to him". Mr.
25 Tubera, then went away. Mr. Tubera spoke Philippino only, and
26 Mr. Rodriquez spoke broken English and Spanish. There was a
27 communication problem between the two parties. Mr. Tubera sought
28 the assistance of Benito DeGuzeman. DeGuzeman, also being

1 Philippino and speaking Spanish, English and Philippino, asked
2 Mr. Topete Rodriguez to return the card to the worker. Mr. Tubera
3 testified that the incident involved a misunderstanding. The
4 incident having taken place on his first day of work. He
5 testified that he did not know that he had signed. He further
6 testified, that no one from the Company ever told him to get the
7 card back from Mr. Rodriguez. Mr. Tubera testified, "I go to my
8 foreman to help me because I do not understand Spanish, I went
9 to DeGuzeman and Topete Rodriguez outside in the car, and Topete
10 opened his car and gave back the card to DeGuzeman."

11 FINDING: The conduct of the employer and his agent in this matter
12 did not constitute a violation of the Act, as set forth in para-
13 graph 8 (m).

14 It was obvious from the testimony, that there was a
15 communication problem with Mr. Tubera. There was difficulty
16 with the interpreter communicating to him and understanding what
17 the circumstances were at the hearing. Because of the language
18 difficulties between the parties, it was apparent to the Hearing
19 Officer, that there was a misunderstanding. This was not an act
20 or conduct on the part of the employer. The supervisory personnel
21 who spoke Philippino, was called upon by the employee to assist
22 him in the language barrier that existed between the parties.

23 In paragraph 8 (f) of the complaint, the Respondent is
24 charged with changing the employment duties of Roberto Chavez, to
25 discourage and interfere with his Union activities.

26 There was limited testimony in this respect, and it involved
27 a move from driving a small electric car which transported flowers
28 from place to place, as the old job; to the new job of working
full time inside the packing shed.

1 The alleged apparently stems around the fact, that Mr. Chavez
2 was not permitted the movement with the greenhouse he had when he
3 was driving the electrical car. He was confined to the packing
4 shed. Mr. Chavez not have a right to organize on Company
5 time. It is also noted, that he die not get a reduction in pay.
6 The new position in fact, was more responsible than the old. The
7 new job provided him with an increased opportunity in terms of his
8 employment. Work schedule change, actually increased his oppor-
9 tunity to spread the Union Word among the employees, in that he
10 was more closely associated with a larger group of employees. Mr.
11 Chavez, himself, testified that his transfer was made by the
12 Company, "Because they didn't have anybody also to place there."
13 [the packing shed]

14 FINDING: Mr. Chavez' transfer was not a violation of the Act as
15 alleged in paragraph 8 (f).

16 Recommended Remedies

17 Because of the passage of time, most any remedy proposed by
18 the Hearing Officer, would appear to be substantially dilluted
19 from the effect it would have had, had there been a remedy in
20 early 1976. Keeping in mind that the Act is to insure the indus-
21 trial peace and promote the free flow of commerce, communication
22 and freedom of association.

23 Having found that Respondents have engaged in certain unfair,
24 labor practices within the meaning of Section 1153 of the Act, I
25 shall recommend that they cease and desist from said conduct and
26 take certain affirmative action designed to effectuate the policies
27 of the Act.

28 It is recommended that Respondents cease and desist from

1 interfering in any manner with the rights of employers, guaran-
2 ted in Section 1152 of the Act.

3 I shall recommend that each current employee, and each
4 employee hired for the next six months, be handed a copy of the
5 proposed attached notice. Such notice to be available in English,
6 Spanish, Philippino and Japanese, so that employees can read the
7 notice in their Native language.

8 It is further recommended, that said notice be posted in
9 conspicuous places, in both greenhouses, i.e. (the timeclock areas)
10 and in the packing sheds for a period of not less than sixty (60)
11 days.

12 The General Counsel has requested costs to the General
13 Counsel and Charging Party. I would deem it inappropriate to
14 make a recommendation in this respect.

15 Upon the record, the findings of fact and conclusions of law,
16 pursuant to Section 1160.3 of the Act, I hereby recommend the
17 following:

18 ORDER

19 Respondent, their officers, agents and representatives shall:

20 I. Cease and desist from:

21 (a) Discouraging membership of any of its employees
22 in the Union, by surveillance or by unlawful interrogation or in
23 any other manner engaging in acts against individuals in regard
24 to their right to self-organization, to form, join or assist a
25 labor organization, to bargain collectively through representatives
26 of their choosing, and to engage in other concerted activities
27 for the purpose of collective bargaining or other mutual aid or
28 protection, or to refrain from any such activities except to the

1 extent such right may be permitted the Respondent, under the Act.

2 2. Take the following action to notify the employees:

3 (a) Give such employee, currently in the Respondent's
4 hire, and all new employees hired in the next six (6) months, a
5 copy of the "Notice" attached hereto.

6 Copies of the notice, with appropriate translations, shall
7 be furnished to Respondents for distribution by the Regional
8 Director of the Salinas office.

9 (b) Respondents shall bear the expense of the prep-
10 ation and printing of said notices in an amount not to exceed
11 \$500.00

12 (c) Notify the Salinas area Regional Director within
13 thirty (30) days from the receipt of this Decision and the Notice
14 of Action taken to comply with these recommendations.

15 Dated: August 12, 1977

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JOE H. HENDERSON
Administrative Law Judge

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NOTICE TO EMPLOYEES

As a result of certain conduct upon the part of Salinas and Carmal Greenhouse owner, and agents in 1975, your employer has been found to be in violation of portions of the Agricultural Labor Relations Act.

The Board has ordered us to notify each employee, and those coming to work for us for the next six (6) months that:

We will respect the rights of each individual employee in the future.

Therefore,

1) All our employees are free to support, become, or remain members of United Farm Workers, or any other union.

2) Our employees may wear Union buttons, pass out Union literature and sign authorization cards in other organizational efforts in accordance with the Act, provided this is not done at times or in a manner that interferes with your doing the job for which you are hired.

3) We will not discharge, lay off, transfer, follow, or in any other way, interfere with your rights as an employee, to engage in these and other activities which are guaranteed you by the Agricultural Labor Relations Act.

Carmel and Salinas Greenhouse

Signed by: _____