

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

|                                |   |                     |
|--------------------------------|---|---------------------|
| ISAMU MINAMI, NOBURU IRIYAMA,  | ) |                     |
| YAICHIRO MINAMI, AND DOES I    | ) |                     |
| THROUGH V, dba SECURITY FARMS, | ) | Case Nos. 75-CE-3-M |
|                                | ) | 75-CE-122-M         |
| Respondent,                    | ) | 75-CE-148-M         |
|                                | ) |                     |
| and                            | ) |                     |
| UNITED FARM WORKERS OF         | ) | 4 ALRB No. 67       |
| AMERICA, AFL-CIO,              | ) |                     |
|                                | ) |                     |
| Charging Party.                | ) |                     |

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DECISION AND ORDER

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

On November 3, 1977, the Board issued its Decision and Order (3 ALRB No. 81) in this proceeding, adopting the Proposed Decision and Order of August 18, 1977, to which no exceptions had been filed. Subsequently, upon Respondent's Motion for Reconsideration, the Board, pursuant to 8 Cal. Admin. Code Section 20282 (c), granted an extension of time for filing exceptions. Thereafter, exceptions and supporting briefs were filed.

The Board has reconsidered the record and its Decision and Order of November 3, 1977, in light of the exceptions and briefs and has decided, to reaffirm the previous findings and conclusions and to adopt the previous Order in this matter, as modified herein.

Respondent excepts to our previous conclusion that it rendered unlawful assistance and support to the Teamsters by granting preferential access to the Teamsters, thereby violating Section 1153 (b) and (a) of the Act. Respondent argues that the record does not support such a conclusion. This argument has merit, as the record does not support a finding that preferential access was granted to the Teamsters for campaign purposes after the effective date of the Act.<sup>1/</sup> Therefore, our previous conclusion in this regard is hereby reversed.

Respondent also argues that it should not be held liable for the actions of Andres Cisneros, foreman of labor contractor Vargas, because, as a labor contractor, Vargas is an independent contractor. This Board has held that where a labor contractor is actually or constructively engaged or functioning as such, the employer engaging him is deemed the employer for all purposes under the Act. Vista Verde Farms, 3 ALRB No. 91 (1977). In the instant case, Vargas supplied workers for Respondent and Cisneros supervised them. Moreover, the record establishes that Cisneros had the authority to fire and discharge employees. We conclude therefore that Respondent is liable for the acts and conduct of Cisneros and conclude that his acts and conduct in distributing Teamster buttons to the employees on the day before the election constituted a violation of Section 1153(b) and (a) of the Act.

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<sup>1/</sup>We do not reach the question of whether the preferential access granted the Teamsters before the effective date of the Act would warrant setting aside the election, as the RC petition was dismissed by Order of the Executive Secretary on August 1, 1978.

ORDER

Accordingly, IT IS HEREBY ORDERED that the Respondent, Security Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Interfering with the right of its employees to communicate freely with and receive information from UFW or other union organizers at any place where they reside, including labor camps located on Respondent's premises or elsewhere.

(b) Threatening or assaulting union organizers who are attempting to contact or communicate with its workers.

(c) Rendering unlawful aid, assistance and support to the Teamsters or any other labor organization by soliciting its employees to wear buttons for the Teamsters or any other labor organization.

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

2. Take the following affirmative actions which are necessary to effectuate the policies of the Act:

(a) Sign the attached Notice to Employees and, after the Regional Director translates the Notice into Spanish and other appropriate languages, provide sufficient quantities of the Notice in each language for the purposes set forth hereinafter.

(b) Post copies of the attached Notice at times and places to be determined by the Regional Director. The notices shall remain posted for a period of 60 consecutive days.

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 present employees and to all employees who were employed during the payroll period(s) from August 28, 1975, through September 19, 1975.

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

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

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in writing what further steps have been taken in compliance with this Order.

Dated: September 29, 1978

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, 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 farm workers to try to get a contract or to help or protect one another; and
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 prevent UFW or other union organizers from coming to our labor camps to tell you about the unions»

WE WILL NOT threaten or assault union organizers to prevent them from contacting you or talking to you at the place you live.

WE WILL NOT unlawfully favor one union over another.

Dated:

SECURITY FARMS

By: \_\_\_\_\_  
Representative Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Security Farms

4 ALRB No.67  
Case Nos. 75-CE-3-M  
75-CE-122-M  
75-CE-148-M

PROPOSED DECISION AND ORDER

On April 28, 1977, due to the unavailability of the Administrative Law Officer (ALO) and pursuant to 8 Cal. Admin. Code Section 20266 (as revised and amended in 1976), this case was transferred to the Board for the purpose of issuance of a proposed decision and order pursuant to Section 1160.3 of the Act. On August 18, 1977, the Board issued its Proposed Decision and Order, making the following findings:

1. That Respondent had violated Section 1153 (a) of the Act by forcibly evicting union organizers from his property on two separate occasions prior to the election.
2. That Respondent had restricted access of its labor camp to union organizers and had thereby violated Section 1153(a) of the Act.
3. That the General Counsel had failed to establish by a preponderance of the evidence that alleged incidents of surveillance and interrogation, prior to the date of the election, had taken place. Accordingly, this charge was dismissed.
4. That Respondent had discriminated with respect to the amount of access accorded the UFW as opposed to that granted the Teamsters. The Board thus concluded that Respondent had rendered unlawful assistance and support to the Teamsters.
5. That Respondent had unlawfully aided the Teamsters through Andres Cisneros, foreman of Respondent's labor contractor. Cisneros passed out Teamster buttons to his crew the day before the election. Cisneros had obtained the buttons from labor contractor, Vargas.
6. That Respondent had not discriminatorily discharged Maria Trujillo. The Board found that although the record established that Respondent had knowledge of her anti-Teamster and pro-UFW sympathies, and the discharge occurred immediately following the election, the General Counsel had failed to overcome the Employer's economic justification.

## BOARD DECISION

On November 3, 1977, the Board issued its Decision and Order (3 ALRB No. 81) in this proceeding, adopting the Proposed Decision and Order of August 18, 1977, to which no exceptions had been filed. Subsequently, upon Respondent's Motion for Reconsideration, the Board granted an extension of time for filing briefs.

The Board affirmed the findings of its Proposed Decision with the following modifications:

1. The Board reversed its prior finding that Respondent had granted the Teamsters preferential access for campaign purposes. The Board found that the record failed to establish that such access occurred after the effective date of the Act. The Board did not reach the question of whether such access would warrant the setting aside of the election, as the RC petition had been dismissed on August 1, 1978, by the Executive Secretary.

2. Respondent argued that he should not be held liable for the conduct of Andres Cisneros, foreman of labor contractor Vargas, since as a labor contractor Vargas was an independent contractor. The Board found this argument to be without merit. Citing Vista Verde Farms, 3 ALRB No. 91 (1977), the Board held that where a labor contractor is actually or constructively engaged as such, the employer engaging him is deemed the employer for all purposes under the Act.

## REMEDIAL ORDER

The Board adopted the Order of its Proposed Decision (August 18, 1977), which required the Employer to cease and desist from: (1) interfering with rights of workers to communicate freely with union organizers at any place where they reside, including labor camps; (2) threatening or assaulting union organizers attempting to communicate with its employees; and (3) rendering unlawful assistance to the Teamsters. The Employer was also required to sign, post and mail to its employees a copy of a Notice to Employees explaining its actions and to arrange for a reading of the Notice and a question-and-answer period on company time.

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