STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

DAVE WALSH COMPANY, Respondent, and TEAMSTERS LOCALS 186 and 865, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 75-CE-146-M 75-CL-231-M 75-RC-177-M 4 ALRB No. 84

DECISION, ORDER, AND
ORDER SETTING ASIDE ELECTION

On May 19, 1977, Administrative Law Officer (ALO) Peter D. Coppelman issued the attached Decision in this proceeding, in which he concluded that Dave Walsh Company, herein called the Employer, and Teamsters Locals 186 and 865[1/] had each engaged in certain unfair labor practices. Thereafter, the Employer and the General Counsel each timely filed exceptions and a supporting brief. The UFW filed a brief in opposition to the Employer's exceptions. The

[1/] The complaint in Case No. 75-CL-231-M, which issued on November 20, 1975 against Teamsters Local 186, was amended on January 18, 1977, to add Teamsters Local 865 as a Respondent because Local 865 had assumed exclusive jurisdiction over all agricultural employees formerly represented by Local 186,and therefore is the successor union.

Teamsters filed no exceptions and submitted no brief.

The Board has considered the entire 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 to the extent consistent with this opinion, and to adopt his recommended Order, as modified herein.

The Employer is a corporation engaged in the agricultural production of numerous year-round crops in Ventura and Santa Barbara counties. The Teamsters filed a petition for certification on October 6, 1975 alleging the existence of a bargaining unit including the agricultural employees working on the Employer's properties in both counties. The Board determined that the petition described an appropriate unit and, after the UFW intervened on October 9, 1975, an election was held on October 14, 1975. The Tally of Ballots indicated that 64 votes were cast for the Teamsters and 45 votes were cast for the UFW. The Employer and the UFW each filed *a* petition objecting to conduct allegedly affecting the results of the election.

The Employer has excepted to the ALO's conclusion that the Employer twice violated the Board's access regulation, 8 Cal. Admin. Code Section 20900 (1975), on October 13, 1975, thereby violating Labor Code Section 1153 (a). With respect to the first alleged access violation, we affirm the ALO's finding and reject the Employer's contentions to the contrary. However, we find merit in the Employer's exception to the second finding of access denial. The Employer admits that UFW organizers Gibbs and Villegas were refused access to its fields during the lunch hour on October 13,

but contends that other UFW representatives had previously gained entrance to the fields and that, pursuant to the provisions of Section 20900 (5) (c) of the regulations, their presence precludes finding a violation. We are persuaded by the record testimony[2/] that there were, in fact, additional organizers present in the field, justifying the Employer's refusal to allow Gibbs and Villegas to enter. Accordingly, we reverse the ALO's conclusion as to the second alleged denial of access.

The ALO concluded that the Employer violated Labor Code Section 1153 (b) by granting the Teamsters greater access to its employees than it allowed to the UFW. The record clearly supports the ALO's conclusion, which we affirm, noting that the existence of the Teamsters collective bargaining contract with the Employer does not affect that determination. Unlike the situation in Bud Antle, 3 ALRB No. 7 (1977), in which we found that the Teamsters were granted greater access only to service their collective bargaining agreement, the additional access in the instant case was provided to facilitate dissemination of campaign propaganda.

We also affirm the ALO's finding that the Employer conditioned a promised party for the employees upon a Teamster

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[2/]During the course of the hearing, Villegas was asked three times whether other organizers were present in the field to which he was attempting to take access. In one response he indicated that there were other organizers present in the field. Dolores Martin, a UFW organizer called as a witness by the General Counsel, testified that she and another UFW representative were organizing in the field in question during times material hereto. The Employer's witnesses consistently testified that 18 workers and 2 UFW organizers were present in the field during the lunch period on October 13, 1975.

victory in the election[3/] and his conclusion that supervisor Garcia's actions[4/] were in violation of the Act. These independent violations of Section 1153 (a) of the Act support our conclusion that Respondent provided unlawful assistance to the Teamsters in violation of Section 1153 (b). See Bonita Packing Co., 3 ALRB No. 27 (1977), pp. 2, 3. We find that the Employer's favorable treatment afforded the Teamsters a significant campaign advantage and that the natural tendency of such assistance is to inhibit the employees in their free exercise of the rights granted in Section 1152 of the Act.

We further find, in agreement with the ALO, that by furnishing free food to its employees for a period of time immediately preceding the election the Employer violated Section 1153 (a) of the Act. NLRB v. Exchange Parts Co., 375 U.S. 405 (1964).

Respondent excepts to the ALO's conclusion that it violated Labor Code Section 1154.6 by hiring five employees for the primary purpose of voting in the election. The evidence adduced at trial relative to this charge is essentially uncontroverted. Tony Alonzo, a Teamster organizer, transported five employees from the GCD Company Ranch to the Newman Company Ranch and procured employment for them there. The employees worked for only two weeks at the Newman Ranch, during which period they participated in a

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[3/] Such action constitutes unlawful interference with employees' rights to free choice of a collective bargaining representative. NLRB v. Flomatic Corp., 347 P.2d 74 (2nd Cir., 1965).

[4/] The ALO correctly construed some of Garcia's anti-UFW activities as protected free speech under Section 1155. The ALO also found, however, that on other occasions Garcia chased UFW organizers, engaged in unlawful surveillance and generally prevented meaningful communication between the UFW and employees.

representation election conducted by the Board. Thereafter, the employees were again transported, this time to the Employer's operation, where they worked for a three-day period. During those three days, the record shows, the transported employees were not required to work full shifts, which indicates a lack of business necessity for their hire. The workers were paid by the Employer for their services and, after one week back at the Newman Ranch, they were returned to the Employer's facilities to participate in the election.

We conclude that the aforementioned acts and conduct of the Respondent Teamsters constituted a willful arrangement, in violation of Section 1154.6, to cause the Employer to hire the five employees for the primary purpose of voting in the election. Teamsters organizer, Tony Alonzo, was the protagonist in the illicit hiring because of his active participation in securing the transportation and employment for the workers at the various ranches. The testimony of the transported voters establishes that the Employer had knowledge, either actual or constructive, i.e., imputed from knowledge of its foreman, that these persons were hired for the primary purpose of voting and we therefore conclude that the Employer's acquiescence in the Union's design constitutes a separate violation of Labor Code Section 1154.6. The inevitable effect of this hiring was to dilute the employees' franchise and to interfere with employee rights guaranteed in Section 1152 of the Act. We hold, accordingly, that such conduct also constitutes a derivative violation of Section 1153 (a).

The General Counsel alleged that the Employer engaged in

unlawful interrogation of employees on two occasions. The ALO recommended dismissal of this allegation, as he considered the questioning to be innocuous because neither of the affected employees was threatened thereby. We reject this analysis. The interrogation clearly related to the employees' union activities and preferences and served no legitimate purpose. We conclude therefore that, by these acts, Respondent violated Section 1153 (a) of the Act. Rod McLellan, 3 ALRB No. 71 (1977).

On or about September 19, 1975, [5/]Respondent discharged Santos Lopez from employment. The termination occurred approximately 10 days after Lopez had a dispute with Teamster representative Tony Alonzo concerning the benefits and disadvantages of the respective union contracts. Lopez took a position in favor of the UFW, and his position was communicated to the Employer through Alonzo. The preponderance of the credible evidence supports the ALO's conclusion that Lopez was discharged because of this dispute with Alonzo. However, contrary to the ALO, we find that at the material times, Santos Lopez was a supervisor. Section 1140.4(j) of the Act is phrased in the disjunctive, and the possession of any one of the enumerated powers, if the product of the exercise of independent judgment, is sufficient to establish supervisorial status. Dairy Fresh Products Co., 3 ALRB No. 70 (1977). Here, the record shows that on two occasions Lopez exercised independent judgment in the selection of persons for hire. Moreover, the

[5/]In an Amendment to Decision issued June 2, 1977, the ALO corrected his Decision to conform it to his finding that September 19, rather than August 19, was the date of the Santos Lopez discharge.

General Counsel has admitted the supervisorial status of Lopez' successor, and absent evidence of a change of duties, this fact is probative of Lopez' status. Royal Fork of Washington, 179 NLRB No. 28, 72 LRRM 1363 (1969).

On the facts of this case, however, Lopez' supervisorial status is not a bar to a finding that by his discharge the Respondents, Union and Employer, violated the Act. Based upon the record as a whole, it is apparent to us that the discharge of Lopez was an integral part of the concerted campaign of both Respondents to undermine the Section 1152 rights of the company employees. We are elsewhere adopting: the ALO's finding that the Employer unlawfully denied access to the UFW while concurrently granting preferential access to the Teamsters during work hours for the purpose of campaigning; his finding that the Employer made unlawful promises of benefits conditioned upon a Teamster victory in the election; his finding that harvest supervisor Garcia (a position newly-created in 1975), a former Teamster organizer, engaged in various acts of interference, restraint, and coercion of employees during the pre-election period; and his finding that the Respondents, through the medium of Teamster agent Alonzo, participated in a scheme to hire employees for the primary purpose of voting in the election conducted on October 14, 1975.

The ALO expressly found that rank-and-file employees heard that Lopez was to be discharged for his public criticism of the Teamster agent. We conclude that in the context of the other violations found, the natural tendency of this discharge was to interfere with and restrain the employees in the exercise of their

right to freely choose between the two unions.

When viewed in light of the above, we conclude that the Respondent Employer's discharge of Santos Lopez, [6/] procured by Teamster agent Alonzo, was in furtherance of its general campaign of unlawful aid to, and support of, the Teamsters, and therefore constituted a violation of Section 1154(b) and (a)(1) of the Act. Consequently, we shall order that Lopez be reinstated with back pay.

We concur in the ALO's finding that Respondent's discharge of Alvaro Lopez was violative of Section 1153(c) and (a) of the Act. Accordingly, we will order that Alvaro Lopez be reinstated to his former position, or a substantially equivalent position, and that he be awarded back pay in accordance with our decision in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

The ALO also concluded that the Teamsters engaged in certain other unfair labor practices. As no exceptions were taken to these conclusions, they are hereby affirmed.

ORDER SETTING ASIDE ELECTION

On October 31, 1977, the Teamsters requested to officially withdraw their interest in Case No. 75-RC-177-M. Based upon the Teamsters' disclaimer of interest and the findings and conclusions herein, it is ordered that the election in that case be, and it hereby is, set aside.

[6/] We note that at no time has Respondent Employer contended that it discharged Lopez because his expression of support for the UFW might be viewed as improper company support of that union. In light of its own campaign for the Teamsters, such a claim would, on this record, be less than credible.

CONCLUSION AND REMEDY

According to the record and the ALO's findings in this case, the Employer and the incumbent Teamsters Union engaged in a joint course of unlawful conduct throughout the pre-election period involving, on the one hand, threats and coercion of employees who criticized the Teamsters or displayed support for the UFW and, on the other hand, economic inducements in exchange for Teamster support. This concerted anti-UFW and pro-Teamster campaign included a discharge from the company upon the advice of a Teamster organizer, threats to employees by both company supervisors and Teamster organizers, interrogations, and several incidents of tire-slashing and assaults upon UFW representatives by the Teamsters. At the same time, foremen promised their crews a party in the event of a Teamster victory and the Employer provided free food from the concession trucks for two or three days preceding the election in an admitted attempt to influence the vote. The unlawful campaign culminated in the Employer's willful hiring of employees for the purpose of voting in the election, as arranged by Teamster organizers Under these circumstances, it is clear that this conduct tended to influence employees before they could make up their own minds as to which of the competing unions, if any, they desired to represent them as their collective bargaining agent. A cease-and-desist order is an inadequate remedy here. Prohoroff Poultry Farms, 3 ALRB No. 87 (1977).

Additionally, the ALO found that during the final days of the pre-election period, from October 10 to October 14, the Employer's security guards substantially interfered with the

ability of UFW organizers to take access to company premises in order to communicate with the employees. Confusion as to the proper times for the taking of access was exploited by the guards to the detriment of the UFW and, as a result, a number of confrontations between guards and UFW organizers occurred in the presence of employees. The ALO found that the guards' conduct resulted in the creation of an atmosphere of intimidation and conveyed to employees the strong impression that the company was opposed to the UFW. UFW organizers were prevented from communicating with the company's employees. A company supervisor also engaged in a number of additional incidents of harassment and intimidation of UFW organizers, again in the presence of employees.

In order to remedy the substantial interference with employee rights which we have found here, the UFW is to be permitted an hour of company time in which to communicate with the Employer's employees during the Union's next organizational campaign. Jackson & Perkins, 3 ALRB No. 36 (1977); Anderson Farms Company, 3 ALRB No. 67 (1977); McAnally Enterprises, Inc., 3 ALRB No. 82 (1977); Prohoroff Poultry Farms, supra. Additionally, we will require that the Employer mail and post the attached Notice to Employees and that a Board Agent or a representative of the Employer read the Notice to assembled employees during work hours. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977). In accordance with our Decision in Western Conference of Teamsters, Local No. 946 (Mello-dy Ranch), 3 ALRB No. 52 (1977), we will order that the Respondent Teamsters Union distribute its attached Notice to Employees in the following manner:

- Respondent Teamsters shall post copies of the attached Notice at its business offices and meeting halls in conspicuous places, including all places where notices to its members are customarily posted. The copies of said Notice shall remain posted for a period of not less than six months.

- Respondent Teamsters shall mail a copy of the attached Notice from the Teamsters to all agricultural workers employed at Dave Walsh Co. during the pay periods encompassing the dates from August 28 through October 14, 1975. The names and addresses of said workers shall be provided by the Regional Director with the cooperation of Dave Walsh Co.

- Respondent Teamsters shall provide the Regional Director with copies of the attached Notice from the Teamsters for posting by Dave Walsh Co. at appropriate locations.

- Respondent Teamsters shall print the attached Notice from the Teamsters in any and all union news publications which it publishes and distributes to its members. Said Notice shall appear in each such publication which is issued between one month and six months following the date of the issuance of this Decision and Order.

- A representative of the Respondent Teamsters or a Board Agent shall read the attached Notice from the Teamsters to all Dave Walsh Co. employees on the Employer's premises on date(s) and at place(s) to be determined by the Regional Director with the cooperation of the Employer.

ORDER

Pursuant to the provisions of Labor Code Section 1160.3,

IT IS HEREBY ORDERED that Respondent Dave Walsh Company, 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 organizers on Respondent's premises as permitted by the terms of the access rule, 8 Cal. Admin. Code Section 20900.

(b) Interfering with, restraining, or coercing any of its employees in the exercise of the rights guaranteed in Section 1152 of the Act, by unlawful promises or grants of benefits to employees, by interrogating its employees as to their union membership and sympathies, or by engaging in surveillance of employees' union activities or other employee activities for mutual aid and protection.

(c) Discouraging membership of any of its employees in the UFW, or any other labor organization, by discharging or in any other manner discriminating against any employee with respect to such employee's hire, tenure of employment, or any term or condition of employment except as authorized by Section 1153 (c) of the Act.

(d) Rendering unlawful aid, assistance, or support to the Teamsters, or any other labor organization, in any manner, particularly by allowing representatives of one labor organization to engage in organizational activities on company premises while denying any rival labor organization (s) an equal opportunity to engage in such activities.

(e) Hiring, or arranging for the hire of, any person

as an employee for the primary purpose of voting in an Agricultural Labor Relations Board election.

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

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

(a) Offer to Santos Lopez and Alvaro Lopez immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges to which they may be entitled and, make them whole for any loss of earnings or other economic losses they may have suffered as a result of their termination from employment.

(b) Preserve and make available to the Board or its agents, for examination and copying, all payroll records and any other records necessary to determine the amount of back pay due and other rights of reimbursement under the terms of this Order.

(c) During the next UFW organizational period, the Respondent shall provide the UFW with access to its employees during regularly-scheduled work time for one hour. During such period, the UFW may conduct organizational activities among the Respondent's employees. The UFW shall present to the Regional Director its plans for utilizing the time. After conferring with both the UFW and the Respondent, the Regional Director shall determine the manner and most suitable times for such access. During this special access time, no employee shall be allowed to

engage in work-related activities, but no employee shall be forced to be involved in the organizational activities. All employees shall receive their regular pay for the time away from work. The Regional Director shall determine an equitable payment to be made to nonhourly wage earners for their lost productivity.

(d) Sign and post copies of the attached Notice to Employees at times and places to be determined by the Regional Director. The Notices shall remain posted for a period of 12 months. After translation of the Notice by the Regional Director into appropriate languages, copies of the Notice shall be provided by Respondent in sufficient numbers for the purposes set forth herein. Respondent shall exercise due care to replace any posted Notice which has been altered, defaced, or removed.

(e) Mail copies of the attached Notice to Employees in all appropriate languages, within 30 days from receipt of this Order, to all employees employed during the payroll periods from August 28 to October 14, 1975.

(f) Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice to Employees in appropriate languages to the assembled employees of Respondent on company time. The reading(s) shall be at peak season, at such time(s) and place (s) 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.

(g) Hand a copy of the attached Notice to Employees

to each of its present employees and to each employee hired during the next six months.

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

Pursuant to the provisions of Labor Code Section 1160.3, IT IS HEREBY ORDERED that Respondent Teamsters Locals 186 and 865, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Any and all actual or attempted physical attacks, physical assaults, or other acts of violence, and any conduct appearing to be such an attack, assault, or act of violence, or attempt, on or against any officer, agent, employee, representative, or organizer of the United Farm Workers of America, AFL-CIO, either: (1) on or about the Dave Walsh Co. premises; (2) in the presence of Dave Walsh Co. employees; or (3) in the course of any organizing activities conducted by the United Farm Workers with respect to Dave Walsh Co. employees.

(b) Arranging for the hire of any person as an employee for the primary purpose of voting in an ALRB election.

(c) Inducing, causing, or attempting to cause Dave Walsh Company to discharge any employee because of his/her lack of support for the Teamsters Union.

(d) By any of the actions proscribed in (a), (b), or (c) above, or by any other conduct, interfering, interrupting,

impeding or otherwise preventing or disrupting any conversations, discussions, meetings, or similar organizing activities conducted by the United Farm Workers, its officers, agents, employees, representatives, or organizers, with respect to Dave Walsh Co. employees.

(e) By any other conduct or in any other manner restraining or coercing any employee(s) of Dave Walsh Co. in the exercise of the rights guaranteed in Section 1152 of the Agricultural Labor Relations Act.

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

(a) Sign and post copies of the attached Notice to Dave Walsh Co. employees in appropriate languages, at its business offices and meeting halls at time(s) and place (s) to be determined by the Regional Director. The Notices shall remain posted for a period of six months. After translation of the Notice by the Regional Director into appropriate languages, copies of the Notice shall be provided by Respondent in sufficient numbers for the purposes set forth herein. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

(b) Mail copies of the attached Notice, in appropriate languages, within 30 days of the receipt of this Order, to all Dave Walsh Co. employees employed during the payroll periods including the dates of August 28 to October 14, 1975. The names and addresses of such employees shall be provided by the Regional Director with the cooperation of Dave Walsh Co.

(c) Respondent Teamsters shall provide copies of

the attached Notice, in appropriate languages, for posting by Dave Walsh Co. at time(s) and place(s) to be determined by the Regional Director with the cooperation of the Employer.

(d) Print the attached Notice, in appropriate languages, in any and all news publications which it publishes and distributes to its members. The Notice shall appear in each publication issued during the period from one month to six months following the date of receipt of this Order.

(e) Arrange for a representative of the Respondent or a Board Agent to read the attached Notice in appropriate languages to all Dave Walsh Co. employees. The reading(s) shall take place on the Employer's premises at the date(s), time(s) and place(s) to be determined by the Regional Director with the cooperation of the Employer. Following the reading, the Board Agent shall be given the opportunity, outside the presence of Teamster Union representatives , to answer any questions employees may have regarding the Notice or their rights under the Act.

(f) Notify the Regional Director, 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, the Respondent shall notify him or her periodically thereafter, in writing, what further steps have been taken in compliance with this Order.

Dated: October 27, 1978

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

CHAIRMAN BROWN, concurring:

I concur in my colleagues' conclusion that the discharge of supervisor Santos Lopez was in violation of the Act, on the following limited basis.

In 1947 the Taft-Hartley Amendments to the original Wagner Act specifically reversed the NLRB's practice of extending statutory protection to supervisors. This change reflected legislative concern that "management, like labor, must have faithful agents." [1/] Like Section 8(a)(1) of the NLRA, Section 1153 protects the rights of agricultural employees. For the discharge of a supervisor to be illegal under this section, a direct connection between the discharge of the supervisor and interference with the employees' Section 1152 rights is required. In my view, the majority's statement that the discharge was "in furtherance of its general campaign

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[1/] H.R. Rep. No. 245, 80th Cong., 1st Sess. (1947) at p. 16.

of unlawful aid to, and support of, the Teamsters" fails to describe such a connection and is phrased in terms too general to justify finding the discharge of a supervisor to be a violation of the Act. See Oil City Brass Works v. NLRB, 357 F2d. 466, 470; 61 LRRM 2318 (5th Cir. 1966).

My decision to find this discharge to be a violation rests on the following considerations.

In this case Respondent permitted Teamster organizers to assume managerial functions and in effect required company agents to be loyal to the Teamsters as part of its systematic and illegal efforts to discriminate against supporters of the UFW. A company supervisor participated in a plan, in cooperation with a Teamster organizer, Alonzo, to hire employees for the purpose of voting in the election. Lopez's discharge was itself procured by Alonzo, clearly because Alonzo did not expect Lopez to be cooperative in such projects. Under these circumstances Lopez's discharge had a significance which went beyond the discharge of a supervisor. It clearly manifested Respondent's ratification and support of the Teamsters to the detriment of those who opposed the Teamsters. When set in the context of the extensive and unlawful anti-UFW campaign jointly waged by both

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the Employer and Teamsters, such a discharge is a violation of Section 1153 (a) in much the same manner in which an express threat to fire pro-UFW employees would be.[2/]

DATED: October 27, 1978

GERALD A. BROWN, Chairman

[2/]While we have reversed the ALO's finding that Lopez was not a supervisor because he exercised independent authority on two occasions to hire employees, his daily duties did not make him so readily identifiable by employees as "management." The limited nature of his actual supervisory power means that employees will less readily be able to distinguish his "unprotected" management status from their own protected status as employees and could reasonably conclude that his firing was an example of what could happen to employees who spoke out in support of the UFW.

MEMBER HUTCHINSON AND MEMBER McCARTHY, concurring and dissenting:

We concur in the majority opinion in all respects except for the finding that the discharge of Santos Lopez constitutes a violation of the Act.

As Chairman Brown notes in his concurring opinion Supervisor Lopez's discharge must be found to have interfered with employees' Section 1152 rights in order, to constitute a violation of the Act. We do not believe the record in this case, considered in the light of applicable NLRB precedent, justifies such a conclusion.

The NLRB has found, in a limited number of cases, that a supervisor's discharge violated Section 8(a)(1) of the NLRA (the equivalent to Labor Code Section 1153(a), For example, it is a violation to discharge a supervisor for refusal to commit an unfair labor practice, Russell Stover Candies, Inc., 223 NLRB 84, 92 LRRM 1240 (1976), to terminate a supervisor for testifying against his employer at a Board hearing, Illinois Fruit and Produce Corp., 226 NLRB No. 27, 93 LRRM 1224 (1976), or to discharge

a supervisor, not for his own union activity, but as "an integral part of a pattern of conduct aimed at penalizing employees for their union activities." Pioneer Drilling, Inc., 162 NLRB 918, 923, 64 LRRM 1126 (1967).

In Pioneer Drilling, supra, two supervisors were discharged in order to rid the company of union adherents in their respective crews. The evidence established that it was company practice for the supervisors to hire their own crews and when a supervisor was terminated or left the company his crew was likewise terminated. The supervisors' discharges were therefore a necessary means to accomplish the proscribed goal of discriminating against the affected employees.

In a situation more closely resembling the facts before us the NLRB found no violation as the result of a super-visor's discharge. In Sibilio's Golden Grill, 227 NLRB 1688, 94 LRRM 1439 (1977), the supervisor had acted as a spokesperson for the employees in an economic dispute with management. She was also responsible for calling in the union to assist the employees, after which she was fired. The Board noted that the supervisor:

> ...was not acting to protect or vindicate employees' statutory rights; nor was she refusing to infringe on those rights; rather she was concerned only with advancing her own and the employees' job interests. Further, her discharge was not an integral part of a scheme resorted to by Respondent by which it sought to strike through her at its employees,..227 NLRB at 1688. (Emphasis added)

The Board did find that six other employees were unlawfully discharged. It's language is significant, for our purposes, in that the supervisor's discharge was not a totally isolated event.

In the case before us the majority adopts the ALO's findings that Santos Lopez was discharged as a result of an argument he and Teamster organizer Tony Alonzo had had over the relative merits of the Teamsters' and UFW's medical plans. During the course of this sometimes heated argument Lopez made known his strong support of the UFW. This argument took place sometime in late August and Lopez was discharged on September 19, 1975.

The majority concludes that because the Respondent committed other unfair labor practices, including rendering unlawful aid and assistance to the Teamsters, and because some bargaining unit employees were aware of the discharge before it occurred, employees' Section 1152 rights were violated by Lopez's termination.

Even assuming the ALO's factual findings to be correct[1/] there is no support in the record or in NLRB precedent for the

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[1/]The evidence relating to the causal connection between Lopez's discharge and his argument with Alonzo is meager. The discharge occurred approximately three weeks after the argument. The only testimony linking the two events came from Lopez. He stated that Alonzo told him that he (Alonzo) had told the bosses that Lopez was a "Chavista." Lopez also stated that Raul Ramos told him that he was being fired because of his argument with Alonzo. Both Alonzo and Ramos denied making the statements attributed to them. Ramos and Barney Cline both testified that Lopez was discharged for poor work and Lopez, himself, admitted to having been warned on several occasions about poor work.

The evidence supporting the ALO's conclusion that other employees knew that Lopez was going to be discharged for arguing with Alonzo is even weaker. Again, the only proof of this issue is from Lopez's testimony. He stated that he was told by some workers that he was going to be fired. He did not elucidate further with respect to what these workers understood to be the reasons for his discharge. Two members of Lopez's parsley crew were called as witnesses. Margarita Ceja testified, that she didn't know why Lopez had left the company and Maria Mata, called by the Charging Party, was not asked if she knew or had heard anything about Lopez's discharge. There is no other evidence in the record relating to this issue.

majority's legal conclusion that Lopez's discharge interfered with employee rights.

The mere fact that employees may experience some fear at learning that a supervisor has been discharged for union activity is insufficient grounds for a finding of a violation. As the court noted in Oil City Brass Works v. NLRB, 357 F.2d 466 (5th Cir. 1966) :

> Any time an employee, be he supervisor or not, is fired for union activity rank-and-file employees are likely to fear retribution if they emulate his example. But the Act does not protect supervisors, it protects rank-and-file employees in their exercise of rights. If the fear instilled in rank-and-file employees were used in order to erect a violation of the Act, then any time a supervisor was discharged for doing an act that a rank-and-file employee may do with impunity the Board could require reinstatement. Carried to its ultimate conclusion, such a principle would result in supervisory employees being brought under the protective cover of the Act. Congress has declined to protect supervisors and the courts should not do by indirection what Congress has declined to do directly. Id. at 470.

Weak as the majority's position is, in the context of the Oil City Brass Works case, that position is even less tenable in consideration of the fact that there is absolutely no evidence in the record relating to the impact, if any, that Lopez's discharge had on rank-and-file employees.

The circumstances attending Lopez's discharge are readily distinguishable from the factual settings found by the NLRB to justify unfair labor practice findings. Lopez's argument with Alonzo involved nothing more than the two men expressing their views concerning the two competing unions. There is no evidence in the record that Lopez had refused or resisted attempts to involve him in the commission of unfair labor

practices. Nor is there any support for the proposition that Lopez's discharge was an integral part of any scheme by Respondent to do indirectly that which it could not do directly without running afoul of the Act. The unfair labor practice charges found to have been committed by the company were isolated from the events surrounding Lopez's activities.

In advocating his own personal views concerning aspects of the organizational campaign then under way, Santos Lopez stood in no different position than the supervisor in Sibilio Golden Grill, Inc., supra. The natural consequence of the majority's holding in this case is, therefore, an extension of the full protection of the Act to supervisors, a result directly contrary to NLRB precedent and the provisions of our Act.

DATED: October 27, 1978

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, restrained, and coerced our employees in the exercise of their right to freely decide if they want a union. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and also tell you that the Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;
2. To form, join, or help unions;
3. To bargain as a group and choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help or protect one another;
5. To decide not to do any of these things.

Because of this we promise that:

WE WILL NOT say or do anything which interferes with, restrains, or coerces any employee in the exercise of the above rights. More particularly,

WE WILL NOT discharge or otherwise discriminate against any employee because such employee exercised any of such rights;

WE WILL NOT prevent, or attempt to prevent, union representatives from entering or remaining on our premises, in accordance with the ALRB's access rules, to communicate with employees for the purpose of organizing;

WE WILL NOT aid, support, or favor any labor organization by granting it more or greater access to our employees for organizational purposes than we grant to any other labor organization;

WE WILL NOT promise or grant benefits, such as free food or parties, to employees to induce them to vote against union representation or to vote for one union rather than another, or otherwise interfere in employees' free choice of a bargaining representative;

WE WILL NOT spy on, or engage in surveillance of, employees' union activities or other employee activities for mutual aid or protection;

WE WILL NOT question employees about their union activities or union preferences so as to interfere with the exercise of their rights under the Act;

WE WILL NOT hire, or arrange for the hire of, any person as an employee for the primary purpose of voting in an ALRB election.

As the Agricultural Labor Relations Board has also found that we discriminated against Santos Lopez and Alvaro Lopez by discharging them, WE WILL offer them immediate reinstatement to their former jobs or to substantially equivalent jobs, and reimburse them for any loss of pay or other economic losses they may have suffered because of our discrimination against them, together with interest as provided by the Board's Order.

DAVE WALSH COMPANY

Dated: _____ By: _____
(Representative) (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Dave Walsh Co. and
Teamsters Locals 186 and 865

4 ALRB No.84
Case Nos.75-CE-146-M
75-CL-231-M
75-RC-177-M

ALO Decision

The consolidated complaints charged Respondents with various unfair labor practices occurring during an organizing drive and election in October of 1975. The unfair labor practice complaints were, in turn, consolidated with the UFW's election objections petition. The objections petition alleged many of the same facts as constituting grounds to set aside the election. The Teamsters, who had a pre-Act collective bargaining agreement with Dave Walsh Company, had received a majority of the votes cast.

The ALO found that Respondent Dave Walsh Company substantially interfered with UFW access, allowed unequal access to the Teamsters, harassed and intimidated UFW organizers in front of company employees, hired five workers for the primary purpose of voting, provided free food to employees in order to influence the outcome of the election, promised benefits, and unlawfully discharged Santos Lopez and Alvaro Lopez.

The ALO found that the Teamsters engaged in violence and threats of violence, threatened employees with discharge, and procured the discharge of Santos Lopez.

The ALO recommended that the election be set aside based upon the above and other findings and recommended certain remedies be imposed against Respondents including reinstatement with back pay for both Santos Lopez and Alvaro Lopez.

Board Decision

The Board reversed one of the ALO's findings regarding an access denial on October 13, 1975. The Board found that when two UFW organizers were denied access other UFW organizers were in the field in numbers equaling the specifications of Section 20900(5) (c). The Employer's refusal was, therefore, justified.

The Board also reversed the ALO's dismissal of the charge of unlawful interrogation. The ALO found, since the questioning was innocuous and the two affected employees were apparently not threatened, that no violation occurred. The Board, citing Rod McLellan, 3 ALRB No. 71 (1977), rejected use of a subjective analysis", finding that interrogation of employees concerning their union preferences is a violation.

The Board affirmed the ALO's conclusion that Santos Lopez was unlawfully discharged but rejected the basis for the

ALO's decision. The Board found Santos Lopez to be a supervisor within the meaning of the Act. The Board concluded, however, that the natural tendency of this discharge, in the context of the other violations found, was to interfere with and restrain the employees in the exercise of their rights.

The Board affirmed the ALO's finding that the Teamsters violated Section 1154.6 of the Act by willfully arranging for employment of five persons primarily for the purpose of voting in the election. In addition the Board found a separate violation of Section 1154.6 by the Employer based upon its acquiescence in the scheme. The Board found that the Employer had actual or constructive knowledge of the hires because the employment could not have been procured without the cooperation of the foreman.

The Board affirmed the rest of the ALO's findings and conclusions. Because the Teamsters had officially withdrawn their interest in the representation matter and based upon the ALO's findings and conclusions, the election was ordered set aside.

Concurring Opinion

Chairman Brown filed a separate concurring opinion stating that he agreed with the conclusion that Santos Lopez's discharge violated the Act but that he did not accept the basis of the majority's finding.

Concurring and Dissenting Opinion

Members Hutchinson and McCarthy dissented only from the holding that Santos Lopez'*s* discharge was a violation stating that they did not feel that the facts justified the conclusion that his discharge affected the employees Section 1152 rights.

Remedial Order

The Board ordered reinstatement and back pay for the two discriminatees and because of the substantial interference with employee rights granted expanded access to the UFW in the form of one hour of company time in addition to the periods provided in the regulations. The Board further ordered the Teamsters to cease and desist from restraining or coercing agricultural employees and required the Teamsters to post a notice at a place to be determined by the Regional Director for a period of twelve months.

NOTICE TO DAVE WALSH COMPANY EMPLOYEES

After a trial where each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we restrained and coerced employees of Dave Walsh Company in the exercise of their right to freely decide if they want a union. The Board has told us to send out, post and publish this Notice.

We will do what the Board has ordered, and also tell you that:

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

1. To organize themselves;
2. To form, join, or help unions;
3. To bargain as a group and choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help or protect one another;
5. To decide not to do any of these things.

Because of this we promise that:

WE WILL NOT say or do anything which restrains or coerces any employee in the exercise of the above rights.

WE WILL NOT engage in violence or threats of violence against representatives of the UFW, or any other labor organization.

WE WILL NOT arrange for the hire of any person as an employee for the primary purpose of voting in an ALRB election.

WE WILL NOT induce, cause, or attempt to cause Dave Walsh Company to fire employees because they disagree with our organizers, or fail to support our union, or support the UFW or any other union.

TEAMSTERS LOCAL 186 & 865

Dated: _____By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	
DAVE WALSH COMPANY, Respondent,	CASE NO. 75-CE-146-M 75-CL-231-M 75-RC-177-M
and	
TEAMSTERS LOCAL 186 & 865, Respondent,	
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	

Joan Anderson, Esq.
of Oxnard, California,
for the General Counsel.

Dressler, Stoll & Jacobs,
by Scott Wilson, Esq.
of Oxnard, California,
for Respondent Dave Walsh Company.

Ormes, Farrell, Monroy & Drost,
by Robert B. Horner, Esq.
of Los Angeles, California,
for Respondent Teamsters Local 186,
Western Conference of Teamsters.

Duenow, Burke & Smith,
by Timothy Beresky, Esq.
of San Luis Obispo, California,
for Respondent Teamsters Local 865
and John Miranda, of Santa Maria, California.

DECISION

STATEMENT OF THE CASE

PETER D. COPPELMAN, Administrative Law Officer:

These cases were heard before me in Oxnard, California on February 14, 15, 16, 17, 18, 22, 23 and 28, and on March 1, 1977. The complaint against Teamsters Union Local 186 was issued on November 20, 1975 and alleges violations of Sections 1154(a)(l) and (b), and § 1140.4(a) of the Agricultural Labor Relations Act (hereinafter called the "Act"). The Complaint is based on charges filed by the United Farm Workers of America, AFL-CIO (hereinafter called the "UFW"), on November 4, 1975. The complaint against the Dave Walsh Company (hereinafter called the "Company") was issued on November 20, 1975. It is based on charges filed on September 30, 1975 by the UFW and alleges violations of §§ 1153(a),(b) and (c), and § 1140.4(a) of the Act.

Finally, the Petition to set aside the election held at the Dave Walsh Company on October 14, 1975 was filed by the UFW on October 19, 1975. The Order consolidating all three cases was issued on January 19, 1977. The complaint against Teamsters Union Local 186 was amended on January 18, 1977 to add Teamsters Union Local 865 as a Respondent on the grounds that this Local had assumed exclusive jurisdiction over all agricultural employees formerly represented by Teamsters Union Local 186, and was therefore the successor union to Teamsters Union Local 186. Copies of the charges were duly served upon Respondents.

All parties were given full opportunity to participate in the hearing, and after the close thereof the General Counsel, the UFW, and the Dave Walsh Company each filed a brief in support of its respective position.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Dave Walsh Company is a corporation engaged in agriculture in Ventura and Santa Barbara Counties (Lompoc) , California, and is an agricultural employer within the meaning of §1140.4(c) of the Act. The UFW, Teamsters Union Local 136, and its successor, Teamsters Union Local 865, are labor organizations representing agricultural employees within the meaning of § 1140.4(f) of the Act.

II. Allegations of the Complaints and the Petition to Set Aside the Election

An election was held at the Dave Walsh Company on October 14, 1975. The complaints issued against the Company and the Teamsters allege that they engaged in conduct immediately preceding and following the election which violated various sections of the Act. The UFW Petition to set aside the election is based primarily upon conduct which also is the basis for the unfair labor practice charges, although further acts are alleged independent thereof.

The Complaint against the Dave Walsh Company alleges numerous violations of employees' rights guaranteed in § 1152 of the Act. While the evidence regarding the specific incidents will be discussed in detail, infra, briefly the charges are the following:

Beginning on or about September 23, 1975, the Company interfered with the employees' right to self-organization by denying lawful access to the UFW. After certain isolated incidents in September, from and after October 10, 1975 until the election, the Company continuously prevented UFW organizers from engaging in lawful activity by stationing uniformed, armed guards at the entrances to its fields and promulgating an invalid no-solicitation rule. The complaint charges specific incidents where the guards, in the presence of the employees, kept UFW organizers out of the fields and in one instance assaulted a UFW organizer. While excluding the UFW, the Company allowed Teamster organizers in the fields even during working hours. The Complaint further alleges that two UFW supporters, Santos Lopez and Alvaro Lopez were discharged because of their support of the UFW. The Company unlawfully interrogated its employees regarding Union membership and sympathies, threatened to discharge employees because of their Union membership, and attempted to influence the outcome of the election by providing free lunches to the employees during the days preceding the election, promised a party for the employees if the Teamsters won the election, and hired five persons to vote in the election.

The Complaint against Teamsters Union Local 186 charges that Santos Lopez was fired by the Company at the request of a Teamster organizer, that a Teamster "organizer threatened tomato crew members that they would be fired if they didn't sign Teamster authorization cards, that twice Teamster organizers slashed the tires of UFW vehicles, that Teamster organizers threatened to assault UFW organizers in front of tomato and cucumber crew employees, and that Teamster organizers on other occasions harassed UFW organizers in front of employees.

The Petition to set aside the election relies on many of these same charges against the Company and the Teamsters. In addition, the Petition alleges that in the week before the election Eddie Garcia, a Company employee, engaged in a campaign of terror and promises to coerce employees to vote for the Teamsters, that the UFW was provided with an inaccurate or fraudulant eligibility list by the Dave Walsh Company, that the Company made false statements to the workers which affected the outcome of the election, and that the Company interfered with the election process by denying twelve strawberry crew members the opportunity to vote.

For organizational purposes, I shall discuss first the unfair labor practice charges against the Company, next the charges against the Teamsters, and finally the other incidents alleged in the Petition as grounds for setting aside the election.

III. Background

The Dave Walsh Company is a corporation engaged in agriculture in Ventura and Santa Barbara Counties (Lompoc). It grows a number of crops year around, including parsley, cherry tomatoes, cucumbers, and strawberries. On October 6, 1975, the Western Conference of Teamsters filed a petition for an election at Dave Walsh Company alleging a unit including workers at Dave Walsh Company properties in both Ventura and Santa Barbara Counties (Lompoc). The Agricultur Labor Relations Board determined that this petition described the appropriate unit. On October 9, 1975, the UFW filed a motion to intervene in the election. The pre-election conference was held on October 10, 1975 and the election was held on October 14, 1975. For a number of months preceding the election a collective bargaining agreement was in effect between the Company and the Teamsters. Prior to that time the collective bargaining agreement had been in effect between the Company and the UFW.

IV. Unfair Labor Practice Charges Against the Company

Charge: On or about September 23, 1975, the Company Restrained UFW Organizers Jesus Villegas and Jose Leyva from Engaging in Lawful Organizing Activity in the Presence of the Company's Employees.

Jesus Villegas, a UFW organizer, testified regarding this incident after having his recollection refreshed by looking at his declaration. He said that he went to the Dave Walsh Company with Jose Leyva, another UFW organizer, at noon. There were five workers at lunch. He couldn't say anything to the

workers because the supervisor, Raul Ramos, told the UFW organizers to leave because "these people belong to the Teamsters." Ramos was very mad and shouted at him. The workers were within earshot. Raul Ramos also testified regarding this incident. He said that he told the UFW organizers that the crew was already organized and that they were satisfied. His testimony was that there were five UFW organizers and that they were in the field after the lunch break as the workers were returning to work. Although Mr. Leyva testified at the hearing, he did not mention this incident.

Charge: On or About September 29, 1975, Company personnel ordered UFW organizers Jose Leyva and Tom Nagel to get off the ranch while they were lawfully engaged in organizing activity in the presence of respondent's employees.

Tom Nagel, UFW organizer, testified that on September 29th he went with Jose Leyva and one other UFW organizer to the Dave Walsh Company at approximately 11:55 in the morning to distribute leaflets and get authorization cards signed. They went to the tomato field on Rice Road. He was putting leaflets on the windshields of cars parked at the side of the road when a man later identified as Barney Cline, a Company Vice President, drove up and told the UFW organizers to "get off his ranch." Jose Leyva protested that they had a right to be there to talk to the workers and that they planned to talk to the workers on their lunchbreak. Cline made a call on *a* CB radio, shortly thereafter a couple of other cars'arrived with Teamsters Tony Alonzo and Earl Sterling. During the lunch break Nagel talked to a woman who was sitting alone. Leyva was also attempting to talk to the workers, but Teamster organizer Alonzo was following him around and talking to the workers at the same time. When Nagel and Leyva left, the car chase described below ensued. It was stipulated that Jose Leyva would testify as did Nagel.

Charge: From and after October 10, 1975, the Company promulgated and, enforced an invalid access rule, and interfered with its employees' right to self-organization by placing guards with guns and uniforms on its property for the purpose of preventing UFW organizers from engaging in lawful organizing activity.

All parties agreed that on the morning of October 10, 1975, a meeting was held between the Company, the Teamsters, the UFW, and ALRB agent Joe Blue regarding access of union organizers. The UFW was represented by Jesus Villegas and John Gardner, and perhaps others. The Teamsters were represented

by Tony Alonzo and Earl Sterling and perhaps others. The Company was represented by Barney Cline, Eddie Garcia and perhaps Raul Ramos. All parties further testified that at this meeting an agreement was reached that organizers could come on the Dave Walsh Company property during the morning, lunch and afternoon breaks. Immediately after this meeting the employer stationed uniformed, armed guards on its properties for the primary purpose of enforcing the access rules which had been agreed upon. According to Barney Cline the guards were necessary because the UFW organizers had previously appeared in groups of up to ten, sometimes during work. Witnesses called by the employer including Raul Ramos and workers Marguerita Seja, Maria Vasquez, Santos Alcala, Basilio Gomez, and Nicolas Alcala, all testified that they had seen groups of UFW organizers ranging in number from two to ten on the Dave Walsh Company property. Numerous workers who testified for the Board and the charging party, such as Maria Mata, Alvaro Lopez, Antonio Estrada and Maria Rodriguez, all said that the workers thought the guards were placed on the property in order to keep out the UFW organizers. They all contradicted the testimony of the workers called by the employer that UFW organizers appeared in groups of up to ten at a time.

There was a fundamental confusion regarding times agreed upon for access at the parking lot meeting of October 10. This confusion was exploited by the guards to the detriment of UFW organizers. Jesus Villegas testified that the times agreed upon for access were 10 a.m., 11:30 a.m. (lunch), and 3 p.m. Barney Cline agreed, except that he said the afternoon break was to be at 2 p.m., not 3 p.m. Marguerita Seja, a worker called by the Company, testified that the breaks were always at 9 a.m., 12 p.m. and 2 p.m. and never changed up to the election. Ted Kuwada, supervisor of the strawberry crew, testified that the morning break was at 9:00 a.m. and never changed. Tony Alonzo, the principal Teamster organizer, testified that the time for the breaks varied depending upon when the concession truck arrived in the fields. He said that the practice did not change at any time prior to the election. His version was confirmed by all of the workers who testified for the General Counsel and the charging party. Perhaps most importantly, John Lujano, a guard employed by the Company to enforce the access rule, and the only security guard who testified, said that he had orders, which he remembered specifically, to let organizers on the property only at 9 a.m., 12 p.m. and 3 p.m.

Cline was responsible for communicating the access agreement to his supervisors and foremen and testified that he did so. The only supervisors or foremen who testified for the Company were Raul Ramos and Ted Kuwada, both of whom denied receiving any orders about a change in break times.

Trouble began almost immediately. After the meeting in the parking lot, Jesus Villegas went to the field at Gonzales Road at 11:30 a.m. to talk to the workers. A guard told him he could not enter until the workers came out for lunch at noon. At noon Eddie Garcia arrived and told Villegas to leave because his permission to talk to the workers expired at noon.

Benjamin Chavez, a UFW organizer, testified that two or three days before the election at noon he and another UFW organizer went to the tomato field. A guard's car blocked the entrance. An Anglo guard told them to get out. The UFW organizers decided to walk around the car and did not arrive to where the workers were eating until lunch was almost over. Chavez testified that the organizers were delayed about 15 minutes because of the guard's refusal to let them in.

There are three specific incidents alleged in the unfair labor practice complaint against the Company with respect to the guards:

1. On or about October llth guards attempted to deny access to Union organizers John Gardner and Jose Manuel Rodriguez in the presence of the Company's employees;

2. On or about October 13th guards interfered with the employees' right to self-organization by assaulting Union organizer Jesus Villegas in the presence of the Company's cucumber and parsley employees;

3. On or about October 13th, guards attempted to deny access to Union organizers Jesus Villegas and David Gibbs by detaining them from engaging in lawful organizing activity until the lunch break was almost over.

With respect to the first incident, John Gardner did not testify, and although Jose Manuel Rodriguez did testify at the hearing, he did not offer any evidence on this alleged incident. Therefore, I find that there is no evidence to support this charge of an unfair labor practice.

Regarding the second incident, Jesus Villegas testified that at approximately 7 a.m. he went to the cucumber field. Guards were there. The guards told him to get out and started pushing him. Villegas said that he argued with the guard and told him that he had a right to see the workers as they were nearby getting off the bus. A guard followed him and kept pushing him on the arm and told him to get out.

One of the security guards, John Jujano, testified about this incident. He said that he and another guard, Paul Rodriguez, stood shoulder-to-shoulder to prevent Villegas from

entering the field because the workers had already begun to work. Lujano said that the only physical contact occurred when Villegas pushed him in the chest as he was blocking Villegas's path.This incident typifies the kind of confrontations which took place between the guards and UFW organizers in the period immediately preceding the election.

David Gibbs and Jesus Villegas both testified regarding the October 13th incident at the tomato field on Rice Road. Gibbs said that at approximately 11:30 he and Villegas went to the tomato crew. A security guard told him that he could not go into the field because there were only 18 workers. Gibbs said that he had received a list of 40 workers which would entitle two organizers to go into the field. He saw a few workers eating lunch. The guards told him that they couldn't go in. As Gibbs argued with one guard, Villegas started walking toward the field. Another guard stopped Villegas, pushed him, and said he could not go into the field. Then two police officers arrived and after a discussion the police let Villegas go into the field. By this time it was close to noon and the guard announced that since lunch was over, they had to leave. Gibbs testified that they could not and did not in fact talk to the workers.

John Lujano testified that he was one of the guards involved in this incident. He admitted that he and Rodriguez blocked the path of one of the organizers, but he said the reason was that there were already three organizers in the field. According to Lujano, the UFW organizer pushed him for approximately 30 yards, but then the guards decided to let the organizer in. They stepped aside but the organizer just turned around and left. Both Gibbs and Villegas testified that there were no other UFW organizers in the field.

Charge: After September 22, 1975, the Company allowed unequal access to the Teamsters by permitting them on the fields for organizing purposes during working hours while not allowing the UFW the same privilege.

In contrast to the testimony regarding the access problems which confronted the UFW, a number of employees testified that Teamster organizers were allowed in the fields at all times of the day, including working hours. Carlos Cervantes, a member of the cherry tomato crew, said that in the period just before the elections Teamsters were in the fields two to three times a day, sometimes while the workers were at work. On one occasion while he was working, he signed a showing of interest card for the Teamsters (Board Exhibit 19). He had to interrupt his work in order to discuss the matter with the Teamster organizer. Alvaro Lopez testified that during the two weeks before the election Teamster organizers came into the

fields once or twice a day, sometimes while the workers were at work. Other workers offering similar testimony were Antonio Estrada, Maria Mata and Maria Rodriguez.

In response, Tony Alonzo testified that he went to the ranch only once or twice in October. Workers called by the Company said that they saw Teamster organizers only once or twice in the month in October.

At the time of the election a collective bargaining agreement was in effect with the Teamsters. (Teamsters 186, Exhibit 1.) Aritcle 15 of that agreement allowed agents of the Teamsters on Company property at any time to conduct legitimate Union business. Alonzo's testimony regarding his understanding of whether this clause in the Union contract allowed access for the purpose of campaigning was unclear.

Charge: Eddie Garcia harassed and intimidated UFW organizers and committed other actions of employer favoritism toward the Teamsters.

Many of the witnesses for the charging party and the Board alleged that Dave Walsh Company, through an employee named Eddie Garcia, took numerous actions to intimidate and harass UFW organizers and convince the workers to vote for the Teamsters. Barney Cline testified that it was his decision to hire Eddie Garcia toward the end of September 1975. He was hired as a "harvesting supervisor," a liaison man between Barney Cline and the fields. Cline testified that there had previously been no position comparable to the position for which Garcia was hired at the Dave Walsh Company. Cline testified that at the time he hired Eddie Garcia, he did not know that Garcia's most recent job had been as a Teamster organizer. Cline said that he found out this fact two days after he hired Garcia.

Garcia was twice subpoenaed by Scott Wilson, attorney for the Dave Walsh Company, to appear at the hearings. The first subpoena was served on Sunday, February 20th. Service of that subpoena might have been faulty in that the original was given to Mr. Garcia. Therefore, I directed Mr. Wilson to serve a new subpoena. The second subpoena, directing Mr. Garcia to appear to testify on February 28th at nine o'clock, was served on Mr. Garcia on February 26th by a process server. Mr. Garcia failed to appear in response to either subpoena. When he failed to appear a second time, pursuant to Board Regulation, Section 20250, subd. (f), I asked whether any of the parties requested me to ask the Board to seek enforcement of this subpoena in Superior Court. On the record, each of the parties, through its attorney, declined to make such a request. It was, of course, possible for me, on my own initiative, to seek

enforcement. However, it was clear to me that Mr. Garcia would not testify and that to attempt to compel him to testify would merely delay the proceedings needlessly.

Under these circumstances, the testimony of witnesses for UFW and the General Counsel against Eddie Garcia is essentially uncontradicted. Jesus Villegas, a UFW organizer, testified that on numerous occasions in the few days immediately preceding the election Eddie Garcia told him to get out of the fields or not to talk to the workers. On October 13th, when Villegas was trying to talk to the workers during the morning break, Garcia followed him, calling him a "communist like Chavez," and interrupting him while he was trying to talk to the workers. After the break Garcia followed the workers and told them to vote for the Teamsters and kick out Cesar Chavez.

Alvaro Lopez, a member of the parsley crew, testified that he saw Eddie Garcia talking to the UFW organizers two days before the election and was making bad faces ("malas caras") . His impression was that Eddie Garcia did not want to see the UFW organizers. Maria Mata, a member of the parsley crew, testified that at the lunch break on October 13th Eddie Garcia told the workers to vote for the Teamsters because the Chavez union was no good. Garcia further said that the UFW would bring a lot of problems. Dolores Martin, a UFW organizer, testified that on October 13th during a break, while UFW organizer John Gardner was talking to about 30 workers, Eddie Garcia was following Gardner around and shouting so that Gardner could not talk to the workers.

Carlos Cervantes, a member of the cherry tomato crew, said that he saw Eddie Garcia "molest" UFW organizers in a parking lot. He heard Garcia tell the UFW organizers not to talk to the workers. Other workers in his crew also heard Garcia talking to the UFW people. Antonio Estrada, a member of the cherry tomato crew, once heard Eddie Garcia call UFW organizers liars. Jose Manuel Rodriguez, a UFW organizer, testified that three days before the election when Jesus Villegas was in the cucumber field talking to 15 to 18 workers during the break, Garcia hollered at Villegas calling him a liar, saying that the UFW was trying to mislead the people. When the workers were returning to work Garcia shouted: "Vote for the Teamsters, vote for the Teamsters." Theodoro Diaz del Gadillo, a UFW organizer, testified that three days before the election he went to the strawberry fields with an Anglo called Chichero (Sweet Pea). During the morning break when they were trying to talk to the workers, Eddie Garcia followed them and said in front of 12 to 15 workers that they were a bunch of liars and that although they had won a lot of elections they still didn't have any contracts.

To some extent this testimony was contradicted by Marguerita Seja, a member of the parsley crew, called by the employer, who testified that she never heard Eddie Garcia talk about the election. Barney Cline testified that he often talked to Eddie Garcia because of the nature of their jobs, but he said in response to a direct question that he didn't know whether Eddie Garcia had a preference in the election.

Charge: The Company hired workers for the sole purpose of voting in the election.

Gabriel Marinez testified that in September, 1975, he and four companions named Juan Marinez, Jesus Morales, Jose Lopez and Marcos Montiel were working at GCD Company. Sometime during that month Tony Alonzo took the five of them in his car to work at Newman Company. There was an election at Newman a week or two later in which he and his four companions voted. While he was working at Newman Company he was told by the foreman at Newman that Dave Walsh Company needed people to work. He and the four others worked for three days only, a Wednesday, Thursday and Friday, at the Dave Walsh Company, after which they returned to work at the Newman Company. On the first day that they worked at the Dave Walsh Company, they first went to the Teamsters -Office where they were told to go to Dave Walsh Company. While at the Dave Walsh Company they all worked in tomatoes. Marinez's impression was that there was not much work to do. On the first day they worked piece rate and stopped working at 1:00 p.m. If there is a lot of work, tomato workers usually work until 3 or 4 p.m. On the second day they picked tomatoes until 1 p.m. on piece rate, and then from 1 to 3:30 they picked the leaves off the tomatoes working by the hour. On the third day they again worked piece rate and stopped at 1 p.m.

On the day of the election, October 14, they went to work at the Newman Company. The foreman at the Newman Company told them to go to the Dave Walsh Company. They went in a truck belonging to one of the other men. The foreman from Newman went with them in his truck to show them where to vote. They all picked tomatoes that morning for an hour or two at the Dave Walsh Company. The foreman at Dave Walsh Company brought them out to vote, which they did at approximately 10 a.m. After they voted, they immediately went back to work at the Newman Company. Marinez testified that it was his understanding that they were sent to work at the Dave Walsh Company in order to vote in the elections. He further testified that he did not feel that he was free to vote any way he liked, because his vote was challenged so that it was sealed and marked.

Juan Marinez also appeared to testify at the hearing. It was stipulated that he would testify to the same effect as Gabriel Marinez.

This testimony was essentially uncontradicted by any witnesses for the Teamsters or the Company. Barney Cline testified that he knew nothing about hiring workers to vote, but he also testified that he had nothing to do with hiring workers directly; indeed the crew bosses did their own hiring.

Charge: The Company provided free food to the workers in order to influence the outcome of the election.

Numerous witnesses for the General Counsel and the UFW alleged, and Barney Cline, Vice President of Dave Walsh Company in charge of production, admitted that free food was given to the workers from the food trucks during their breaks for a number of days before the election. The testimony regarding the exact number of days varied from 3 days (Barney Cline) to two weeks. Barney Cline testified that he knew the free food was given and that a Company decision was made to give the food. He further admitted that the free food was related to the election. He testified that the sole purpose for providing the free food was so that the workers did not have any unhappiness toward the Company when they went to vote. While he said that he personally had no preference between the competing unions, he also said that he did not think that "no union" was a realistic possibility in the election.

The employer presented a number of witnesses who testified regarding the food. These witnesses included Marguerita Seja, a member of the parsley crew, and Andres Alcala and Nicolas Alcala, members of the cucumber crew. It was stipulated that the testimony of Basilio Gomez, a member of the cucumber crew, would be to the same effect as the testimony of Andres Alcala. All of these workers still work at the Dave Walsh Company. Nicolas Alcala has been working at the Dave Walsh Company for eight years. Andres Alcala has been working at the Dave Walsh Company for 6 1/2 years. They all testified that they have never received free food from the company before or since the election except for the few days preceding the election. They had no personal opinion as to why they were given free food. No one from the Company ever told them why they were given free food, and the free food did not influence their vote. They all further testified that the workers never discussed among themselves the free food and never speculated about why the free food might have been given. I find this latter testimony not credible. While it may be true that no one told the workers the purpose of the free food or that they had any personal opinion as to why the free food was given, it is not possible, in my view, for it to be true that the workers never discussed why suddenly the Company was providing free food when it had never done so in all the years that they had

worked for the Company. Witnesses for the charging party, on the other hand, while admitting that no one from the Company told them the purpose of the food, said that speculation among the workers was that the purpose of the free food was to get them to vote for the Teamsters, Testimony to this effect was given by Alvaro Lopez, a member of the parsley crew, and Maria Rodriguez. Carlos Cervantes, a member of the cherry tomato crew, testified that he thought the employer was trying to buy the people with free food, although he thought the boss wanted no union.

There is strong evidence, and indeed an admission of the employer through Barney Cline, that free food was given to the workers in the few days just prior to the election, and that the free food was intended to influence the outcome of the election.

Charge: The Company promised a party if the Teamsters were elected.

Maria Mata, a member of the parsley crew, testified that her foreman, Rudolfo Ramirez, said that if the Teamsters won the election there would be a big party. Similarly, Antonio Estrada, a member of the tomato crew, testified that his forewoman, Cuca, promised the tomato crew a party if the Teamsters won. Barney Cline and Raul Ramos agreed that a party actually did occur. Although Raul testified that he did'-not know why the party was held, both Cline and Linda Collins testified that the party was held in celebration of the end of the tomato season. The exact date of the party could not be pinpointed. The Company, through Linda Collins, introduced a check made out to one Ernesto Tovar, dated October 30, 1975, which Linda Collins said was in payment for catering done at the party. The Company. did not introduce a copy of the bill for the catering, although it did introduce bills for strawberry crews' parties.

Payroll records appear to contradict the statement that the party was held at the end of the tomato season. They indicate that there were as many people working in the tomato crew in November, 1975, as there were in October. (UFW Exhibit No. 4.) Raul Ramos testified that after the tomato season ends there is still work clearing the fields and that people listed on payroll records with a "T" indicating that they work in the tomato crew, also work on other crops. While the employer introduced documents indicating that parties were held at the end of the strawberry season, no evidence was introduced that a party had ever been held at the end of any other tomato season.

Charge: The Company unlawfully interrogated employees about their union preferences.

Maria Rodriguez worked for the Company picking tomatoes. She testified that she went to a pre-election conference as a representative for the UFW. The day after the pre-election conference, when she reported to work, a woman named Cuca, her supervisor, said that she would not give her a card to go to work because Maria had gone to the meeting. Although she said she would wait until Eddie Garcia came to give her her card, she did give Maria her card.

Later in the day, Maria saw Eddie Garcia who asked her why she went to the meeting. He asked: "Do we treat you badly?" Maria told Garcia that she went to the meeting because she wanted the UFW to get the contract. Rodriguez further testified that she had a number of conversations with Garcia concerning her union preferences. Garcia asked her if she was a "Chavista." Garcia asked her why she supported the UFW. On cross-examination Rodriguez testified that the conversations with Garcia were not threatening to her and that she considered them mutual expressions of opinion.

Carlos Cervantes, a member of the tomato crew, testified that the few days before the election Raul Ramos, his supervisor, asked him who he was going to vote for in the election. Ramos asked him whether he was satisfied with the Union the Company had already. Ramos asked Cervantes why they should change unions if they already had one.

These two isolated instances constitute the only evidence of unlawful interrogation against the Company.

Charge: On October 16, 1975, the Company prevented UFW organizers from speaking to employees.

On October 16, 1975, after the election, Jesus Villegas and David Gibbs, UFW organizers, went to see the Flores family who lived on Borchard Ranch, property belonging to Dave Walsh Company, at approximately 4:30 p.m. Villegas testified that while he and Gibbs were talking to the Flores family, Barney Cline and Eddie Garcia drove up. Garcia asked Villegas if he was going to leave voluntarily or if Garcia was going to have to make Villegas leave. Garcia asked the Flores family if they wanted Villegas and Gibbs there. Mr. Flores did not indicate one way or another.

Barney Cline testified that he and Garcia saw the UFW organizers drive into the ranch and followed them because he wondered why the organizers were there, since the election

was over. Cline asked the UFW organizers why they were there, and Gibbs replied that they had come to visit their friends. Cline then asked Mr. Flores if the Floras family wanted the organizers there. Mr. Flores replied that he didn't care. Whereupon no more was said, and Cline and Garcia left.

Charge: The Company fired Santos Lopez at the request of the Teamsters because of his activities in support of the UFW.

Lopez's Status. Santos Lopez was fired by the Dave Walsh Company on or about August 19, 1975. At the time of his termination, Santos Lopez's job was to "take care of" the parsley crew ("cuidar una quadrille"). There were approximately ten persons in the parsley crew supervised by Lopez. The members of the crew were paid sometimes on a piece rate basis and sometimes on an hourly basis, depending on the nature of the work. Lopez was always paid on an hourly basis. Shortly before his termination Lopez received a 50-cent per hour raise. At the start of every day, Lopez would receive orders from either Raul Ramos or Barney Cline, or a man named Don. Lopez's job was to convey these orders to the workers. He did not have the authority to countermand or question these orders. When new workers were hired, Lopez obtained the necessary forms for the new employee to fill out from Ramos and would return the forms to Ramos after they were filled out. He was in charge of quality control of the bunching of parsley. It was his job to see that the other workers bunched and packed parsley properly by seeing that the parsley was clean, that the bunches were of the proper size, and that the correct number of bunches (60) was in each box. During the day, his job would be to load boxes that had been packed by the other workers and to drive a tractor and trailer. Lopez testified that it was his understanding that he generally did not have the power to hire and fire workers for the crew. The evidence is uncontradicted that he never fired anyone during the time that he managed the crew. He and Raul Ramos both testified that during that periof of time, approximately ten persons were hired for the crew and that Lopez hired two to three people. Lopez testified that on one occasion he was specifically ordered to hire two people. He hired the wife of a trucker and her daughter. His decision as to which particular people to hire was, apparently, not subject to review, because he told them to report to work without first clearing it with Ramos. On one other occasion, Lopez asked Ramos if he could hire his sister-in-law and Ramos said that it was all right to do so.

Lopez understood that he was responsible for reporting violations or problems to Ramos, but that he had no authority to settle disputes. On some occasions, the parsley crew was assigned to work on other crops. Lopez did not take part in any such decisions. Although there was a Teamster contract in

effect at the Dave Walsh Company at the time, Lopez testified that he did not pay Teamsters' dues, thus indicating that he was not a member of the bargaining unit due to supervisory status.

After Lopez was terminated, he was replaced by Raul Ramirez. There is no evidence presented by the Board or the charging party that the duties of Raul Ramirez differed in any way from Santos Lopez's. Parenthetically, I find it a matter of some concern that the Board is taking the position that Santos Lopez was not a supervisor within the meaning of the Act and therefore entitled to the protections of the Act, while at the same time charging that Raul Ramirez was a supervisor within the meaning of the Act and that his conduct constitutes the basis of unfair labor practice charges against the Company.

The Reason for the Discharge. Santos Lopez had been a member of the UFW ranch committee during the time when the UFW had a collective bargaining contract with the Dave Walsh Company from 1969 to approximately 1970. Lopez testified that in August, 1975, he had a conversation with Tony Alonzo, Teamster organizer. He was hoeing. When he first saw Alonzo, the workers were working in the fields while Alonzo was talking to them. Alonzo was saying that the Teamsters had obtained a new contract with the Company. Alonzo said the Chavez union was no good and that there were a lot of problems with it. Lopez argued with Alonzo about whether he was telling the workers the truth regarding the wage provisions of the contract. Lopez went with Alonzo to his car where Alonzo showed him the contract. During the conversation Alonzo was shouting at Lopez. Alonzo acused Lopez of trying to convince the other workers to support the UFW, and said that he would tell the owners that Lopez was a Chavista, and that he was no good for them.

Approximately one week later, Raul Ramos, Lopez's supervisor, told him that because of the discussion he had with Alonzo, the owners called him and had given him ten days to fire Lopez. In discussions with other members of the crew about his impending discharge, Lopez said several workers told him they heard he was going to be fired. Ten days later Ramos gave Lopez his check and told him that was all. The next day Lopez confronted Alonzo and asked him if he told the bosses to fire him. Alonzo replied that he told the Company that Lopez was a Chavista and was trying to get people to vote for the UFW.

Alonzo testified that he had several conversations with Lopez about which union had better contracts. He denied ever discussing Santos Lopez with the Company and denied ever asking the Company that Lopez be fired.

The Company contends that Lopez was fired because he performed his job inadequately: he could not control his crew, and the Company received numerous complaints about the size of parsley bunches and shortages of bunches in the boxes. Lopez himself admitted on cross-examination that the Company did complain once that he couldn't keep discipline in the crew. The incident involved the fact that Lopez's wife was working in the crew. Apparently, the other workers did not like Lopez's wife and they complained to Raul Ramos.

Lopez also admitted that once Raul Ramos said that his crew was not doing enough work. Lopez denied that the Company ever complained about the way the boxes were packed. Ramos testified that Lopez was not a good foreman. He did not have control of the crew. Sometimes buyers would complain that up to ten bunches of parsley were missing. Three times he complained to Lopez that the parsley was not being packed properly. Ramos further testified that complaints from buyers were received two or three times a week over a period of six or seven months, even though Lopez had been reprimanded on several occasions. Ramos said that he did not know that Lopez was a UFW supporter at the time, and said that he still does not know it. This testimony is not credible in light of the fact that Ramos admitted knowing that Lopez was a member of the UFW ranch committee (although he testified, somewhat incomprehensibly, that Lopez was forced-to be a member of the ranch committee). It is also not credible that Ramos is totally unaware of the nature of charges against the Company regarding Lopez.

Barney Cline testified that he himself spoke to Lopez once about a short count in boxing the parsley. Lopez told Cline that he would try to do better. Cline testified that it was his decision to give Lopez a raise because he thought that maybe a raise would induce Lopez to do his work better. Cline said that he continually got complaints about Santos[1] work product.

According to testimony of Ramos and Cline, no offer was made to Lopez to work as *a* regular member of the crew rather than a supervisor, despite Lopez's seniority.

Charge: The Company fired Alvaro Lopez because of his support of the UFW.

Alvaro Lopez, brother of Santos Lopez, was also a member of the parsley crew at the time of the election at the Dave Walsh Company. He testified that on October 14, he told Rudolfo Ramirez that he wanted a few days off because of personal problems. Ramirez said that it was okay. According to Lopez[1]s own testimony, there was no agreement as to when he would return to work. On the Monday following the Dave Walsh Company elections, Alvaro told him to talk to Eddie Garcia, who told him that there was no more work at that time.

Alvaro went to the Teamsters office and talked to Tony Alonzo about his being terminated. He asked Alonzo why he was fired. Alonzo said that he would talk to the employer and let him know. The next day Alonzo told him that he did not have any work because "some people" didn't want him there. Alvaro testified that Alonzo did not tell him anything about his rights under the contract or any grievance procedure. He also testified on cross-examination that he did not ask Alonzo to institute any proceedings contesting his termination.

Records of the employee indicate that a new employee (Rosa Solorio, employee no. 768) was hired sometime during the week ending October 18, 1975 to work on the parsley crew. Employment records of the Company indicate that during the week ending October 25, the week in which Lopez was terminated, there were twelve people working in the parsley crew. (Employer's Exhibit 4) The crew usually contained eight to ten members according to the testimony of Alvaro and Raul Ramos. Further, the employer's seniority list indicates that Alvaro Lopez had greater seniority than any other person who worked on the parsley crew in the week ending October 25, 1975.

Alvaro Lopez was a UFW observer at the election held on October 14, 1975. During the period before the election he was living at the home of Rudolfo Ramirez, who was also his supervisor. Alvaro testified that he had conversations in Ramirez's home regarding Alvaro's sympathies for the UFW. Alvaro testified that Ramirez himself had been a strong UFW supporter, but that his sympathies apparently underwent a sudden change when he became a foreman in the latter part of September, 1975, upon replacing Santos Lopez, Alvaro's brother. Alvaro testified that in informal discussions with other workers, he did speak in favor of the UFW; however, he also testified that he did not at any time solicit votes for the UFW.

Neither Rudolfo Ramirez or Eddie Garcia was available to testify. The employer presented no evidence to rebut Alvaro Lopez, although it is apparent that only Eddie Garcia and Redolfo Ramirez could provide such evidence.

V. Charges Against the Teamsters.

Charge: The Teamsters engaged in violence and threats of violence against the UFW.

Four of the unfair labor practice charges against the Teamsters concern violence and threats of violence in the period immediately preceding the elections: a high-speed car chase, an assault, and two tire slashing incidents.

Car Chase. Tom Nagel, a UFW organizer, testified that on September 29,1975, at about 11:55 a.m., he went to the Dave Walsh Company to distribute leaflets and get cards signed with Jose Leyva and another man whose name he doesn't remember. As he was putting leaflets on the windshields of cars parked by the side of the tomato fields on Rice Road, a man later identified as Barney Cline drove up and told him to get off the ranch. Leyva protested that they had a right to be there. Cline returned to his car and made a call on a CB radio. Soon, two cars arrived. Nagel recognized the Teamsters' organizers Tony Alonzo and Earl Sterling. One of the cars left, but Alonzo stayed. At about this time, the workers were coming out of the fields. Leyva was trying to talk to about eight to ten workers. Alonzo followed him around and was talking to the workers at the same time. Later, as Nagel and Leyva were leaving after talking to the workers for about thirty minutes, Alonzo shouted at Leyva in Spanish, calling him an "hijo de puta" and said to him "chinga tu madra." Leyva jumped into the car and as Nagel and Leyva were leaving, Alonzo chased them in his car. Nagel testified that he was driving as fast as he could and that Alonzo was driving right on his tail. Nagel said that he was going 55 mph. Alonzo pulled up alongside and was swearing at Leyva, and said that he wanted to fight him. Nagel testified that he was frightened. As Alonzo pulled alongside for a second time, Nagel made a sharp U-turn and proceeded to go to the UFW office. Alonzo did not continue to follow.

It was stipulated that Jose Leyva's testimony would be essentially the same as Nagel's. The only testimony offered in rebuttal was the testimony of Alonzo who said that he had no recollection whatsoever of the incident. There was no evidence presented that the chase was seen by Company employees.

Counsel for the Teamsters appropriately pointed out that Nagel in appearance was a tall, strapping young man, while Alonzo was a middle-aged man of slighter build. It would seem somewhat unlikely that Alonzo alone would challenge two men like Leyva and Nagel to fight. However, I saw nothing in the demeanor of Nagel, either on direct or cross-examination, to indicate that he was not telling the truth, and Alonzo's memory on numerous points was vague or inaccurate. I therefore find that the incident happened as Nagel testified.

Assault. Jesus Villegas and Jose Manuel Rodriguez testified regarding an incident on October 13th near the strawberry field. Rodriguez was driving. Villegas was also in the car. A number of Teamsters surrounded the car. Villegas recognized Tony Alonzo, Cruz Martinez, David Ellisondo, and Ben Guerrero. There were also Anglos there whom he did not recognize.

Ellisondo stood in front of the car. Alonzo opened the passenger door and asked Villegas for a cigarette and a light. Alonzo said to Villegas: "You are saying that Cruz Martinez is an 'hijo de la chingada.'" Cruz Martinez then grabbed Villegas by the shirt collar and said to him: "If you persist, I'm going to cut your throat." Rodriguez testified that he was expecting one of the other people to hit him. .

Tony Alonzo testified that Villegas called him a "son-of-a-bitch." He confirmed that Cruz Martinez grabbed Villegas by the shirt.

The Teamsters left when a sheriff's patrol car approached.

Tire-Slashing Incidents. One of the tire-slashing incidents occurred as part of the confrontation just described. Villegas testified that Alonzo went around the rear of the car, and stopped at the left rear tire just before the sheriff's patrol car came, Villegas and Rodrigues started to drive away and noticed approximately two miles later that the tire was flat. Rodriguez says that he saw a hole one to one and a half inches long that looked like it had been made with a knife.

The other tire-slashing incident occurred on October 10, 1975. Villegas and another UFW organizer went to the tomato field for the morning break. As they were leaving, Alonzo arrived with another person. Alonzo and Villegas had an argument. Villegas then drove his car from the tomato field to the parking lot near the packing shed. He saw that the tire on his car had been slashed. That time he accused Alonzo of having slashed his tire. He reported it to the sheriff, but the sheriff took no action.

Charge: The Teamsters threatened to have employees discharged if they did not support the Teamsters.

Carlos Cervantes, a member of the tomato crew, testified that in the latter part of September, while he was working in the tomato fields, he overheard a conversation. A man threatened the worker next to him by telling him he had to sign a paper for the Teamsters or he would be fired. Although Cervantes could not see the people who were talking because of high tomato vines, he himself was immediately approached by a man of Mexican nationality. This man had the same voice as the man who was threatening his fellow worker. He told Cervantes to sign a paper for the Teamsters, and Cervantes did so because he was afraid he would be fired. Board Exhibit 19 introduced into evidence was an ALRB authorization form used by the Teamsters as a showing of interest card. Mr. Cervantes identified his signature on the paper and indicated that the date of September 24, 1975, which appeared on the card, corresponded to the time when the incident occurred. Although there was some discrepancy in his testimony about the size of the card, he

further testified that he did not sign any other paper for the Teamsters in the month of September. Cervantes said that he discussed this incident with other workers, who also indicated that they signed cards for the Teamsters because they were afraid that otherwise they would be fired.

Charge: Teamster organizers harassed UFW organizers in front of Company employees.

According to the testimony of witnesses for the General Counsel and charging party there were three instances when Teamster organizers followed UFW organizers around while they were trying to talk to workers. The Teamster organizers heckled the UFW organizers, called them names, and generally interferred with their communicating with the workers. One incident took place on September 29th just before the car chase described above. While Tom Nagel was putting leaflets on cars parked by the side of the road, Jose Leyva was trying to talk to the workers, but Tony Alonzo was following him and heckling him.

Benjamin Chavez, a UFW organizer, testified that while he and Jesus Villegas were trying to speak with the tomato workers on their lunch break in late September, Teamsters followed them around taunting them and trying to provoke a fight. Finally, Antonio Estrada, a member of the tomato crew, testified that approximately one week before the election 'during lunch break Teamster organizers ordered the UFW organizers to leave and that the UFW organizer, because of Teamster interference, was not able to talk to the workers.

VI. Additional Allegations of the Petition to Set Aside the Election Which Are Not Alleged to Constitute Unfair Labor Practices

Charge: The Company provided the parties with an inaccurate eligibility list.

A voter eligibility list on Dave Walsh Company stationery was given to the Board, and a copy was later given to the UFW. (UFW Exhibit 2.) Jesus Villegas, principal UFW organizer at Dave Walsh Company, testified about the list. According to his notations, of the 123 names on the list, thirty (30) have incorrect addresses, indicated by an "x" over the address. Twenty-seven (27) of the names listed have no addresses. As a result, 46% of the total list is inaccurate. Of the thirty (30) persons with incorrect addresses, two lived on the Company property. Six of the twenty-seven (27) names with addresses

unknown lived on the company property. Villegas testified that he and other organizers spent a great deal of time trying to find correct addresses for fifty-seven (57) persons.- He did not receive the list before October 9th; the election was held on October 14th. Villegas testified that he was actually able to contact forty-three (43) of the fifty-seven (57) employees with incorrect or unknown addresses.

Linda Collins, office manager at Dave Walsh Company, testified that she prepared the eligibility list on October 2nd or October 3rd. She prepared the list from W4 forms, computer forms and so on. The Company has no separate list of persons living on the property. With respect to change of addresses, she said that it is Company practice to update the list to reflect changes only when workers leave and then return to work. Collins also testified that foremen are told to update addresses periodically. There is a problem of maintaining a correct list of addresses because the Dave Walsh Company grows a large variety of crops and there is a large turnover of people working in these crops.

Charge: The Company refused to permit the strawberry crew to vote.

Ramona Ramirez was a member of the strawberry crew on October 14, 1975. She testified that she thought there were nine people in the crew. The foreman was Ted Kuwada. She said that a black man came with Maria Rodriguez, her daughter, and hollered to the strawberry crew to come out to vote. She did not vote and the others in the crew did not vote, she testified, because the foreman did not give her permission to vote. She further testified that she had wanted to vote. Her story was corroborated by Maria Rodriguez who was a UFW observer. According to her testimony the black man was Joe Blue, an employee of the Agricultural Labor Relations Board. Maria Rodriguez testified that Joe Blue yelled to come out and vote six times in Spanish.

Barney Cline testified that it was his understanding from Blue that Blue would tell the crews when they could vote, and that the foreman was supposed to have them ready to go to vote. Cline said he told Kuwada about these instructions. Kuwada contradicted Cline, and said that he did not receive any instructions either from the Board or from the Company as to how he should conduct himself on the-day of the election. He testified that he did not tell the workers they could vote, nor did he tell them that they couldn't vote. He said that he didn't know whether in fact the workers voted. He corroborated the testimony of Maria Rodriguez and Ramona Ramirez insofar

as he said that he saw a colored man and a lady yelling to the workers on the day of the election. He said that he could not hear what the black man was saying.

Charge: The Company made false statements affecting the outcome of the election.

The Petition to Set Aside the Election alleges as one of the grounds that the Company made certain false statements affecting the outcome of the election. Testimony to this effect was given by Dolores Martin, a UFW organizer. She said that on October 13th she and John Gardner were talking to workers on a break. Garcia followed Gardner around as he was talking to the workers. Garcia called Gardner a liar. Garcia said that the Teamsters had won the Donlon election by a vote of 102 votes to three votes. In fact, Martin said, Teamsters received three votes and the UFW received 102 votes. She said she knew the 'outcome of the election at Donlon because she had been there. On cross-examination Martin said that Garcia was laughing sarcastically while he was talking, although he was not laughing when he reported the results of the Donlon election.

DISCUSSION OF ISSUES

I. Charges Against the Company

The Company's Denial of Access to the UFW

The right of employees to communicate freely with labor unions is implicit in Section 1152 of the Act and is a key ingredient of a fair election process. (Certified Eggs, 1 ALRB No. 5 (1975). Any attempt by a Company to interfere with access rights violates the Act. As the Board noted in Oshita, Inc., 3 ALRB No. 10 (1977), at p. 6:

> "The fact that the policy [of access denial] was not completely successful is not controlling. Rather our sole concern is whether such a policy and action taken pursuant thereto, tended to impede the free choice of those eligible to vote."

In this case there are numerous allegations of interference by the Company in the lawful organizing activity of the UFW. Two incidents took place in the month of September. I find that in neither incident did the Company commit an unfair labor practice. On September 23, when UFW organizers Jesus Villegas and Jose Leyva were talking to five workers during the lunch break, Supervisor Raul Ramos apparently told them to leave

because "these people belong to the Teamsters." After carefully considering the testimony, I find that because of Mr. Villegas's extremely vague memory of the incident, and the failure of Mr. Leyva to offer any testimony on the incident despite the fact that he testified on other incidents at the hearing, there is insufficient evidence to uphold the charge of an unfair labor practice.

The second incident in September occurred on September 29th when, it is alleged, Company personnel ordered Union organizers Jose Leyva and Tom Nagel to get off the ranch. Nagel was putting leaflets on the windshields of cars parked by the side of the road, and Leyva attempted to talk to the workers. The Company contends that even if the incident happened as Nagel testified, no unfair labor practice was committed because at the lunch break Nagel and Leyva were allowed to talk to the workers without interference from the Company; nor was the leafletting process halted. I agree and I so find.

However, serious access problems did begin on October 10th after the meeting in the parking lot among all parties concerned. Supposedly specific times for access were agreed upon. The Company placed guards on its property to enforce the access agreement. I find it unnecessary to resolve the conflict in testimony as to whether placement of the guards was justified by previous excesses by UFW organizers. I also do not find that, as a general proposition, placement of security guards is per se an unfair labor practice. (See Tomooka Brothers, 2 ALRB 52 (1976) and Samsell, 2 ALRB 10 (1976).)I do, however, find under the circumstances of this case that, beginning on October 10th until the day of the election on October 14th, the presence of security guards did substantially interfere with the right of access of UFW organizers and the ability of UFW organizers to talk to employees of the Dave Walsh Company. There were a number of confrontations between the guards and UFW organizers within the sight of the workers. These confrontations had the effect of keeping UFW organizers from talking to the workers, created an atmosphere of intimidation, and conveyed the strong impression that the Company was opposed to the UFW.

A principal source of difficulty appears to be the confusion among the participants as to the agreed upon times for access. While the Company cannot be held completely responsible for this confusion, testimony indicates that the Company took advantage of the confusion and perhaps even fostered it. Although Barney Cline testified that the foremen were given instructions regarding the change in break times in order to conform with the access agreement, both Raul Ramos and Ted Kuwada, foremen who testified for the Company, said that they

never received any instructions regarding a change in break times. Because the guards understood that their job was to enforce the access agreements strictly, a number of confrontations took place between the guards and DFW organizers. Both the UFW organizers and John Lujano, a guard called as a witness by the Company, acknowledged that there were heated exchanges between the organizers and the guards, sometimes involving pushing and shoving, although evidence is, of course, in conflict as to who was doing the pushing.

With respect to the three specific incidents alleged as unfair labor practices, I find that no evidence was offered regarding an incident on October 11 involving an alleged denial of access to John Gardner and Jose Manuel Rodriguez, and that therefore no unfair labor practice was committed as to the incident. On October 13th, the evidence is insufficient to establish that a guard assaulted UFW organizer Jesus Villegas, but is sufficient to establish a denial of lawful access before employees started work. Finally, I find that on October 13th, David Gibbs and Jesus Villegas were denied lawful access: since the solution which all parties agreed upon after the arrival of police during this incident was that Villegas and Gibbs had a right to be in the field, I find that the incident happened substantially as Villegas and Gibbs testified.

I do not, however, find that the employer promulgated an access rule which was invalid on its face as alleged in the complaint. To the contrary, the rule allowing access during the morning and afternoon breaks and during the lunch break is consistent with the Board's access rule then in effect, and was agreed upon by all parties.

Unequal Access

The testimony is in sharp conflict regarding the relative access permitted to Teamsters and UFW organizers during the period immediately preceding the election. Teamster organizer Tony Alonzo and numerous workers called by the Company testified that Teamster organizers were in the fields only once or twice during the entire month of October. In contrast, numerous witnesses called by the General Counsel and the charging party testified that the Teamsters were in the fields two or three times a day during the period before the election, even while workers were at work.

I am inclined to resolve this conflict and testimony in favor of witnesses called by the General Counsel and the charging party for the following reasons. First, it is apparent that witnesses called by the Company had trouble recollecting

the events of October 1975. They did not give written statements at the time, and their memory was faulty on crucial points for which there was adequate rebuttal evidence. For example, Marguerita seja and Nicolas Alcala testified that they never saw guards in the fields at the Dave Walsh Company before the election despite agreement by other witnesses for the Company that guards were in fact placed in the fields beginning on October 10, and that one of the functions of the guards was to count workers as they entered the field. Second, the workers called by the Company were still employed by the Company, and they all appeared to be extremely nervous and ill at ease about testifying at the hearing. Third, there is something inherently not credible about the testimony of Alonzo and the workers that the Teamsters appeared in the fields of the Dave Walsh Company only once or twice during the entire fourteen days of the month of October preceding the election. The question obviously arises when did the Teamsters campaign? Further, although Alonzo testified that he was in the fields only once or twice during the month of October at the Dave Walsh Company, he said he saw UFW organizers in the fields every day. Fourth, Dolores Martin, a UFW organizer, gave damaging testimony regarding a meeting just before the hearing with Marguerita Seja and Maria Vasquez in which they contradicted virtually all of their testimony under oath. Such prior inconsistent statements are admissible as substantive evidence. Finally, witnesses for the charging party and the General Counsel for the most part gave written statements soon after the events of October 1975 occurred. Their testimony was consistent and thorough, and withstood detailed cross-examination.

I therefore find that the credible evidence indicates that the Company committed an unfair labor practice by allowing unequal access to the Teamsters.

Harassment and Intimidation
of UFW Organizers by Eddie Garcia

Section 1155 of the Act is the equivalent of Section 8(c) of the NLRA. It is known as the "free speech" provision of the Act and provides:

> "The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute evidence of an unfair labor practice under the provisions of this part, if such expression contains no threat of reprisal or force, or promise of benefit."

To the extent that Eddie Garcia was merely expressing his opinion by calling UFW organizers "communists," or a "bunch

of liars," Garcia's conduct would appear to be protected by Section 1155 as the expression of views or opinions. However, Garcia's conduct went far beyond mere statements of his opinion. On a number of occasions Garcia followed UFW organizers around while they were trying to talk to the workers, shouting and harassing the organizers so that they could not communicate with the workers. Also, Garcia was overheard by workers to tell UFW organizers that they could not talk to the workers.

I find that harassment and intimidation of UFW organizers in front of the workers by a high ranking company supervisor is not conduct which is protected by Section 1155, since such conduct is inherently coercive and intimidating to workers who observe it. (See, NLRB v. Kropp Forge Company, 178 F.2d 822 (CA 7, 1949), cert. den'd, 340 U.S. 810 (1950).)

Hiring Workers to Vote

Section 1154.6 of the Act provides:

> "It shall be an unfair labor practice for an employer or labor organization, or their agents willfully to arrange for persons to become employees for the primary purpose of voting in elections."

The uncontradicted testimony of Gabriel Marinez is that he and four companions during the months of September and October, 1975, were taken first to the Newman Company where they voted in an election, and then to the Dave Walsh Company where they also voted in an election. They worked at the Dave Walsh Company for only three days. They all worked in tomatoes despite the fact that there did not seem to be much work to do. They returned to work at the Newman Company, but on the day of the Dave Walsh Company election they were escorted by a foreman from the Newman Company to the Dave Walsh Company and told where to vote. Immediately after voting they went back to work at the Newman Company. The testimony of Marinez was essentially confirmed by documents of the Dave Walsh Company. Under the circumstances, I find that there is no interpretation that can be placed on these facts other than that these five workers were taken to the Dave Walsh Company for the primary purpose of voting in the elections, and that the arrangements which were made to qualify them to vote were made wilfully. Consequently I find a violation of Section 1154.6 of the Act.

Free Food

Section 1153(a) of the Act prohibits an employer from interfering, restraining or coercing agriculture employees in the exercise of rights guaranteed in Section 1152, including

the right to self-organization. It is unlawful to provide benefits to workers directly before an election with the intention of inducing employees to reject a Union. (NLRB v. Pan-del-Bradford, 89 LRRM 3195 (CA 1, 1975)) In light of Barney Cline's admission that free food was provided in order to influence the outcome of the election, there is no question that the Company committed an unfair labor practice in violation of Section 1153 (a) of the Act, and I so find.

General Counsel further maintains that providing free food violated Section 1153(b) of the Act which prohibits an employer from contributing financial or other support to any labor organization, in that the food was intended to influence workers to vote for the Teamsters as opposed to the UFW. However, none of the workers who testified for the General Counsel and the UFW said that anybody from the Company told them that the purpose of the free food was to convince them to vote for the Teamsters. Although witnesses such as Alvaro Lopez and Maria Rodriguez, testified that this was the speculation among the workers, Carlos Cervantes, also called by the General Counsel, testified that he thought the Company wanted no union. Therefore, although I find that provision of free food violated Section 1153(a) of the Act, I find that the evidence is insufficient to establish a violation of Section 1153 (b) of the Act.

Promise of a Party If the Teamsters Won the Election

NLRB case law is clear in holding that an employer violates the rights of employees by promising benefits dependent on the outcome of an upcoming election. (The Mandarin, 90 LRRM 1494 (1975); Pan-Del-Bradford, 89 LRRM 3195 (CA 1, 1975) I find that the credible evidence establishes that a party was promised by the Company if the Teamsters won the election. Unlike the provision of free food, there is direct testimony by Maria Mata and Antonio Estrada that supervisors of the Company promised a party if the Teamsters won. Credible testimony belies the Company's contention that the party was held to celebrate the end of the tomato season. Indeed, Company records indicate the tomato season had not yet ended when the party took place. Therefore, I find a violation of both Section 1153 (a) and Section 1153(b) of the Act.

Unlawful Interrogation of Employees

Employer interrogation concerning Union sympathies may or may not be an unfair labor practice depending upon the surrounding circumstances. "The test is whether the questioning tends to be coercive, not whether the employees are in fact coerced." (NLRB v. Huntsville Mfg. Co., 89 LRRM 2592 (CA 5,

1975)) There is no allegation in this case that the employer conducted a systematic polling of the workers. To the contrary, there are only two instances of alleged employer interrogation. The first involves a series of conversations between Maria Rodriguez, a strong UFW supporter, and Eddie Garcia. Rodriguez testified that Garcia often questioned her about her support of the UFW. On cross-examination she testified that she did not feel threatened by these conversations with Garcia and she considered them mutual expressions of opinion. On the basis of her own testimony, I find that the questioning of Maria Rodriguez by Eddie Garcia does not constitute the kind of coercive interrogation which would justify a finding of an unfair labor practice.

The only other instance of interrogation involved a conversation between Raul Ramos and Carlos Cervantes, a member of the tomato crew. According to Cervantes, a few days before the election Ramos asked him who he was going to vote for in the election and asked him whether he was satisfied with the Union the Company already had. Cervantes himself did not testify that he felt threatened or intimidated by this conversation, and I find, once again, that this isolated conversation does not constitute unlawful interrogation by the Company.

October 16th Incident

Witnesses for the Board and charging party as well as witnesses for the Company testified regarding an incident on October 16th after the election, wherein it is alleged that the Company prevented UFW organizers from speaking to employees. The confrontation took place between Company officials Barney Cline and Eddie Garcia on the one hand and UFW organizers David Gibbs and Jesus Villegas on the other, when Gibbs and Villegas went to visit the Flores family.

Cline and Garcia inquired of the Flores family whether the presence of Union organizers was authorized and desired. Upon being told that Flores did not object to the presence of the UFW organizers, Cline and Garcia departed, leaving Villegas and Gibbs free to talk to the Flores family. Given the essentially consistent testimony of Cline and Villegas, I find that no unfair labor practice was committee by the Company on October 16, 1975.

The Discharge of Santos Lopez

The firing of Santos Lopez on or about August 19, 1975, raises two issues: (1) was Santos Lopez a "supervisor" within the meaning of the Act (Section 1140.4(j)) and therefore not entitled to the protections afforded persons classified as

"employees"; and (2) was the discharge of Santos Lopez discriminatorily motivated in that the reason for the discharge was Lopez's support of the UFW?

Lopez's Status

The ALRB has decided a case ruling upon the alleged supervisory status of a worker having substantially the same duties as Santos Lopez. (Yoder Brothers, 2 ALRB 4 (1976).) There the Board notes at pages 11-12:

> "The evidence reflects that the employees in question here are mainly crew leaders responsible for quality control within each crew. They do not have independent authority to hire, fire or discipline workers. They are paid on an hourly basis, at a higher rate than regular workers. There are salaried supervisors who have overall control of the work force, who direct the crew and the crewleaders where to work, and who investigate any complaints made by a crewleader with regard to an individual worker. On this record it cannot be concluded that the employees are supervisors within the meaning of the Act."

NLRB case law further buttresses the conclusion that Lopez is not a "supervisor" within the meaning of the Act and is therefore entitled to the Act's protections. Each case appears to be decided on a case by case basis looking at a number of possible factors. (See Labor Relations Expediter, pages 773, et seq.) The critical question appears to be whether or not an employee exercises independent judgment carrying out his duties or merely passes on orders relayed from supervisors. (Teledyne-Allvack, Inc., 217 NLRB No. 157 (1975) ; Wirtz Mfg. Co., Inc., 215 NLRB No. 50 (1974)) Lopez's job of taking care of the crew, while it involved responsibility for quality control, appears primarily to have consisted of relaying daily orders given to him from his supervisors, and seeing that the crew carried out these orders. The sole instance where Lopez exercised what might be called independent judgment was in hiring two persons for the crew without having the specific persons approved. However, the decision whether to hire two people was not his (he was specifically told to hire two people). The credible testimony indicates that Lopez ordinarily did not have authority to hire, this one instance being the exception that proves the rule. I therefore, find that Lopez was not a "supervisor" within the meaning of Section 1140.4(j) of the Act.

The Reason for Firing Santos Lopez

It is an unlawful labor practice to discriminate "in regard to the hiring or tenure of employment, to encourage or discourage membership in any labor organization." (Act, Section 1153 (c)} In this case Santos Lopez testified that he was fired at the request of Tony Alonzo because of an argument he had with Alonzo regarding the Union contract. Lopez had later conversations with Raul Ramos, his supervisor, as well as Alonzo, which confirmed the reason for his firing was his vocal support of the UFW. Lopez's version of the event stood up under cross-examination.

In contrast, Barney Cline and Raul Ramos testified that the reason for Lopez's firing was that he performed his job as crew leader inadequately. I find that the reasons given by the employer for firing Santos Lopez were pretextual. I agree with General Counsel and charging party that the Company's version of events is not consistent with the known facts. If Lopez were doing his job as badly as Cline and Ramos testified, then they showed remarkable patience in putting up with a stream of complaints as long as they did. It is also unusual that an employee would receive a raise, as did Santos Lopez, shortly before he was terminated. I find Cline's explanation that the raise was given to Lopez in the hopes that he would do better insufficient. Finally, complaints about Santos Lopez related only to his work in managing the crew and not to his ability to perform as a regular member of a crew. Nonetheless, he was not given the option of staying on at the Company as a regular member of the crew, despite his seniority. Failure to provide alternative employment for which an employee is qualified can indicate unlawful motivation. (See Riley Stoker Corp., 92 LRRM 1110 (1976))

I find that the evidence supports the charge that Santos Lopez was fired because of his vocal support of the UFW.

Discharge of Alvaro Lopez

The only evidence regarding the firing of Alvaro Lopez was presented by Alvaro Lopez himself. Upon listening to his testimony, I was not convinced that he had made out a strong case. The sole evidence of his support of the UFW was that he was a UFW observer at the election on October 14th, and that he had informal discussions with Rudolfo Ramirez, his supervisor, in whose home he was residing prior to the election. Alvaro's testimony was that Ramirez had been a strong UFW supporter but that his sympathies suddenly changed when he became a foreman for the Company in September, 1975. This apparently remarkable shift in sympathy could not be explained by Alvaro Lopez and was

not explained by any other witness. My impression was that although Alvaro Lopez sympathized with the UFW, he was neither a strong nor a vocal supporter of the UFW. He testified that he did not solicit any votes for the UFW among his fellow workers. The only evidence that he could present on the grounds for his termination was a conversation with Alonzo who told him that there was no more work for him because "some people" didn't want him there. Lopez further testified that he lost his job after he told Rudolfo Ramirez that he wanted a few days off because of personal problems. There was no agreement with Ramirez as to when he would return to work, and the fact that he lost his job could be consistent with an understanding by Ramirez that Lopez was quitting for an indefinite period of time.

General Counsel, in its brief, apparently recognizing the absence of strong direct testimony establishing the discriminatory firing of Alvaro Lopez, relies primarily upon legal points regarding the burden of proof. General Counsel contends that it has established a prima facie case through the testimony of Alvaro Lopez. Consequently the burden of going forward with evidence of a proper motive shifted to the Company. Since the Company did not present any evidence regarding the reasons for firing Alvaro Lopez, General Counsel contends I am compelled to find that the discharge was discriminatorily motivated and violated Section 1153 (c) of the Act. In support of its position, General Counsel cites numerous cases such as NLRB v. Great Dane Trailers, Inc., 65 LRRM 2465 (U.S. Sup. Ct.,1967); NLRB v. Shedd Brown Mfg. Co., 34 LRRM 2286 (CAT 1954); Pratt & Whitney Aircraft, 48 LRRM 1614 (1961). I find that the evidence regarding the firing of Santos Lopez, although not compelling, is sufficient to establish a prima facie case, and that the cases cited by General Counsel do indeed require the Company to come forward with some evidence establishing a non-discriminatory motive. The Company not having done so, I am compelled to find a violation of Section 1153(c) of the Act.

II. Charges Against the Teamsters

Violence and Threats of Violence

There is no question that violence and threats of violence by one Union against another violate the Act. As the Board has said in Phelan and Taylor, 2 ALRB No. 22 (1976) at p.10:

> "Violence or threats of violence by representatives of parties is objectionable for several reasons . . . Representatives of other parties may be deterred from campaigning for fear of safety of their representatives or fear of getting employees unwillingly

into a dangerous or threatening scene . . . Violent acts may provoke retaliation . . . [and create an] atmosphere not conducive to an expression of free and untrammeled choice of a bargaining representative."

Further, the California legislature has stated that one of the purposes of the Act is "to seek to insure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations." (Act, § 1) Four incidents of violence or threats of violence are alleged to have been committed by the Teamsters: high speed car chase on September 29, 1975, wherein Tony Alonzo pursued UFW organizers Tom Nagel and Jose Leyva; confrontation between Teamsters and UFW organizers involving an assault by Cruz Martinez, a Teamster organizer, in grabbing Jesus Villegas by the shirt collar and threatening to cut his throat; and finally, two tire slashing incidents, one on October 13, the other on October 10. As indicated above, I find that these incidents occurred substantially as testified by witnesses for the Charging Party. I therefore find that in each instance the Teamsters have committed an unfair labor practice.

Threats of Discharge

The uncontradicted evidence of Carlos Cervantes, a member of the cherry tomato crew, is that in the month of September he overheard a Teamster organizer threaten a worker next to him with loss of his job if he did not sign a paper for the Teamsters. Cervantes signed the paper, because he was afraid that if he did not do so he would be fired. Since a union's threats during an election campaign are barred by the Act just as much as are an employer's threats, I find that the Teamsters committed an unfair labor practice by threatening to have workers fired if they failed to sign showing of interest cards for the Teamsters. (Red Ball Motor Freight Inc., 157 NLRB 1237 (1966), enforced, 379 F.2dl37 (C.A.D.C., 1967))

The Firing of Santos Lopez

The circumstances surrounding the firing of Santos Lopez are discussed in detail above. One of the unfair labor practice charges against the Teamsters is that Santos Lopez was fired at the request of Tony Alonzo after an argument between Alonzo and Lopez regarding the Teamster contract at the Dave Walsh Company. I have already found that Santos Lopez was discharged by the Company because of his Union sympathies. I now further find that the discharge of Santos Lopez constitutes an unfair labor practice against the Teamsters as well as the Company, because Lopez was fired at the request of Tony Alonzo, in violation of Section 1154(a)(1).

Harassment of UFW by Teamsters

Section 1154 (a) (1) makes it an unfair labor practice for a labor organization to restrain or coerce agricultural employees in the exercise of rights guaranteed by Section 1152. It is alleged in the complaint against the Teamsters that on three occasions Teamsters were present in the fields with the workers at the time that UFW organizers were trying to talk to the workers, and further, that the Teamster organizers followed UFW organizers around taunting them and verbally harassing them.

I am reluctant to find that mere verbal exchanges between rival unions in a hotly contested election constitute conduct which is sufficient to sustain an unfair labor practice charge. Rival unions must be given broad leeway in the kinds of words they use during the course of an election campaign. The General Counsel has cited no case, not even a case decided by the NLRB, which would provide precedent for finding that verbal harassment of UFW organizers by the Teamsters constitutes an unfair labor practice. Charging party, in its brief, does not discuss these incidents at all. Nor has independent research uncovered any case in point. Therefore, I find that no unfair labor practices were committed in the three instances alleged.

III. Additional Allegations of the Election Petition

Inaccurate Eligibility List

Agricultural employers are required to keep an accurate list of names and addresses of their employees and to furnish this list to the Board in connection with election proceedings. The list performs a number of vital functions in an election, including aiding communication between petitioning unions and eligible voters. In Yoder Brothers, 2 ALRB No. 4, at p.4 (1975), the Board notes:

> "The National Labor Relations Board's "Excelsior Rule" requires the employer to file with the regional director, within seven days after approval of an election agreement or direction of election, a list of names and addresses of all eligible voters; and the regional director makes this list available to all parties in the election proceeding. Excelsior Underwear, Inc., 156 NLRB 1236 (1966). The employer's failure to comply substantially with the Excelsior Rule is ground for overturning an election. Ponce Television Corp., 192 NLRB No. 20 (1971); Sonfarrel,

Inc., 188 NLRB No. 146 (1971); Pacific Gamble Robinson Co., 180 NLRB No. 84 (1970). The rule is not applied mechanically, however, and an election will not be set aside for an insubstantial failure to comply in the absence of gross negligence or bad faith. The Lobster House, 186 NLRB No. 27 (1970); Telonic Instrument, 173 NLRB No. 87 (1968)."

Essentially the Company is required to exercise due diligence to ensure the list is as accurate as possible.

I find that the Company, under the circumstances of this case, did not exercise due diligence to obtain an accurate eligibility list. Fully 46% of the addresses are either inaccurate or listed as unknown. In fact, the Company had every reason to know, given its ordinary practices, that the list supplied to the Board and the UFW would be inaccurate. The Company knew that it obtained addresses only when an employee was first hired, and the Company further knew that the employees often moved. The testimony indicates that no special effort was made to correct the known deficiencies in the Company's practice in order to obtain an accurate list of addresses. Office Manager Linda Collins testified that she never received instructions that the employer had a legal obligation to maintain an accurate list of addresses. The Company easily could have had each crew boss check the lists of addresses of the people in his crew to make sure that the addresses were current in a matter of minutes. Even though there was some testimony that the crew bosses were asked to check the addresses with the employees, there is no evidence that the crew bosses actually did so, or that any attempt was made to make sure that they had done so. To the contrary, the fact that almost half of the addresses are inadequate is testimony in itself to the inadequacy of the Company's attempts to obtain an accurate list. I therefore find that the Company's failure to provide accurate addresses of a substantial number of employees is the product of bad faith or gross negligence.

Refusal to Permit the Strawberry Crew to Vote

According to the testimony of Ramona Ramirez and Maria Rodriguez, the strawberry crew was not permitted to vote even though Joe Blue, an employee of the Agricultural Labor Relations Board, and Maria Rodriguez specifically yelled to the strawberry crew to come out to vote a number of times. The testimony of Barney Cline and the foremen of the strawberry crew, Ted Kuwada, conflicted as to whether Kuwada was given any instructions to let the strawberry crew vote. Cline said he gave such instructions, but Kuwada denied receiving them. In any event, it is undisputed that the nine members of the crew did not vote because they sere not permitted to do so.

False Statements Affecting the Outcome of the Election

The charge that the election should be set aside, in part because the Company made false statements affecting the outcome of the election is based upon the testimony of Dolores Martin, a UFW organizer, that Eddie Garcia told workers in her presence and the presence of John Gardner, another UFW organizer, that in an election at Donlon Company the week before the Teamsters had obtained 102 votes and the UFW only 3. In fact, Martin testified, the UFW received 102 votes and the Teamsters received only 3.

Charging party in its brief cites NLRB v. Santee River Wool Combing Company, 92 LRRM 2922 (CA 4, 1976) for the proposition that in order to set aside an election for misrepresentation, a three-pronged test must be met: there must be (1) a material misrepresentation of fact, (2) coming from a party who has special knowledge or is in an authoritative position to know the true facts, and (3) no other party has a sufficient opportunity to correct the misrepresentations. In my view, the charge that the election should be set aside in part on the grounds that Eddie Garcia made a false statement about the Donlon election cannot be taken seriously. Eddie Garcia made the statement to a group of workers in the presence of two UFW organizers. If the statement were false, all the UFW organizers had to do was tell the workers that the statement was false. Clearly the third element of the Santee River Wool Combing Company case is not satisfied. Therefore I find that Garcia's statements regarding the Donlon election add nothing to possible grounds for overturning the election.

THE REMEDY

Remedy Against the Company

Having found that the Company has engaged in certain unfair labor practices within the meaning of Sections 1153(a), (b) and (c) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

In order to more fully remedy the Company's unlawful conduct, I also recommend that the Company publish and make known to its employees that it has been found in violation of the Act in order not to engage in future violations of the Act. Attached hereto is a Notice to Employees setting forth the information the Company must transmit to its employees and others.

The available means for publication of the Notice to Employees are many. The ones I have selected as appropriate are the following:

1. The Notice to Employees, translated into Spanish, with the approval of the Oxnard Regional Director, shall be mailed to all employees of the Dave Walsh Company who were employed between August 1 and November 1, 1975. The Notices are to be mailed to the employees' last known addresses, or more current addresses if made known to the Company. (See Valley Farms and Rose J. Farms, 2 ALRB No. 41 (1976)}

2. The Company must also post the Notice to Employees for a period of six months on its bulletin boards where other notices and information are available for its employees.

3. The Notice to Employees must be given to all current employees of the Dave Walsh Company and to all employees hired and employed by the Company in the next six months.

Having found that the Company unlawfully discharged Santos Lopez and Alvaro Lopez, I will recommend that the Company be ordered to offer them immediate and full reinstatement to their former or substantially equivalent jobs. I shall further recommend that the Company make whole Santos Lopez and Alvaro Lopez for any losses they may have incurred as the result of their unlawful discriminatory action by payment to them of a sum of money equal to the wages they would have earned from the date of their discharge to the date they are reinstated or offered reinstatement, less their net earnings, together with interest thereon at the rate of 7% per annum, and that that loss of pay and interest be computed in accordance with the formula used by the National Labor Relations Board in F. W. Woolworth Company, 90 NLRB 289 (1950) and Isis Plumbing and Heating Company, 138 NLRB 716 (1962).

General Counsel and Charging Party also request reimbursement for expenses incurred in the investigation, preparation, presentation and conduct of this case, and attorneys' fees. Typically, the NLRB has not imposed costs in an unfair labor practice proceeding unless the respondent engages in frivolous litigation by raising frivolous defenses. See Heck's, Inc., 80 LRRM 1049 (1974) on remand from 417 U.S. 1. The Agricultural Labor Relations Board has indicated that it "has discretion to grant attorneys' fees and costs in appropriate cases ..." Valley Farms, 2 ALRB No. 41 (1976) at p.6. I have concluded that such relief is not warranted in this case. Although I have found that the Company and the Teamsters have committed unfair labor practices, in most cases resolution of the question whether an unfair labor practice has been committed has involved a close weighing and balancing of conflicting

testimony. Indeed, in numerous instances I have concluded that the facts as presented do not warrant a finding of an unfair labor practice. Further, the defense presented by both the Company and the Teamsters has, in my view, been anything but frivolous.

The Remedy Against the Teamsters [1/]

Having found that the Teamsters have engaged in certain unfair labor practices within the meaning of Section 1154 (a) (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

In order to more fully remedy the Teamsters' unlawful conduct, I also recommend that the Teamsters publish and make known to the employees of the Dave Walsh Company that it has been found in violation of the Act and it has been ordered not to engage in future violations of the Act. Attached hereto is a Notice to Employees setting forth the information which the Teamsters must transmit to the Dave Walsh Company employees and others. The means of publication shall be the same as those enumerated above with respect to the notice requirements imposed on the Dave Walsh Company. In addition, the Teamsters must post the Notice for a period of six months on its bulletin boards where other notices and information are available for its members.

For the reasons stated above, I believe that costs and fees should not be awarded against the Teamsters.

The Remedy With Respect to the Election

The NLRB has stated in General Shoe Corporation, 21 LRRM 1337 (1948), at pp. 1340-1341:

> The criteria applied ... in a representation proceeding . . . need not necessarily be identical to those employed in testing whether an unfair labor practice was committed. ... In election proceedings it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. . . . (Emphasis added.)

[1/] Although the violations were committed by Teamsters Local 186, the remedies must be imposed upon Local 865, as the successor in interest of Local 186.

I believe that the course of events delineated above leaves no doubt that the requisite "laboratory conditions" were not present in the election at the Dave Walsh Company, and that the election should be set aside and a new election conducted. On the part of the Company, the election was tainted by failing to rpovide an accurate voter eligibility list, hiring five workers to vote, preventing nine members of the strawberry crew from voting, harassing and interfering with UFW organizers by Eddie Garcia, posting of armed guards who exploited a confusing access agreement, providing free food for the workers before the election, promising a party in the event of a Teamster victory, permitting unequal access to Teamster organizers, and discharging a UFW sympathizer before the election. Similarly, violence and threats of violence by the Teamsters constitute grounds for setting aside the election because those incidents "created a general atmosphere among the employees of confusion and fear of reprisal." (Texas Plastics Inc., 88 LRRM 1472 (enforced, __ F.2d ___ , 91 LRRM 2240 (CA 6, 1975).

ORDER

Respondent Dave Walsh Company, its officers, agents and representatives shall:

1. Cease and desist from:

(a) In any manner restraining and coercing employees of the Dave Walsh Company in their 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.

(b) Discouraging membership of any of its employees in the UFW, or any other labor organization by discharging, laying off, or in any other manner discriminating against individuals in regard to their hire or tenure of employment or any term or condition of employment, except as authorized in subsection 1153(c) of the Act, harassing or interfering with UFW organizers properly exercising their right to communicate with employees of the Dave Walsh Company, providing unequal access to Teamsters, providing free food or any other benefit for employees in order to influence the outcome

of any election, preventing employees from voting in any election, failing to maintain and provide to the Board an accurate voter eligibility list, or wilfully hiring employees for the sole purpose of voting in an election.

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

(a) Post and distribute the attached Notice to Employees in the manner described in the preceding section entitled "The Remedy Against the Company."

(b) Offer to Santos Lopez and Alvaro Lopez immediate and full reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges, and make them whole for any losses they may have suffered as a result of their termination in the manner described above in the section entitled "The Remedy Against the Dave Walsh Company."

(c) Preserve and make available to the Board or its agent, upon request, for examination and copying payroll records, social security payment records, time cards, personnel records and reports, and other records necessary to analyze the back pay due.

(d) Notify the Regional Director in the Oxnard regional office within 20 days from the receipt of a copy of this Decision of steps respondents have taken to comply therewith, and continue to report periodically thereafter until compliance is achieved.

Respondents Teamsters Union Locals 186 and 865, their officers, their agents and representatives, shall:

1. Cease and desist from:

(a) In any manner restraining and coercing employees of the Dave Walsh Company in their exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own chosing, 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) to the Act.

b) Engage in conduct in regard to the Dave Walsh Company employees of the following type:

Threatening violence or committing such violence, threatening damage to UFW vehicles or committing such damage, threatening employees with loss of job for failure to support the Teamsters, asking the Dave Walsh Company to fire supporters of the UFW, or committing any of the foregoing acts in regard to other persons either in the presence of Dave Walsh Company employees or where it is reasonably certain that such employees will learn of such conduct.

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

(a) Post and distribute the attached Notice to Employees in the manner described in the preceding Section entitled "The Remedy Against the Teamsters."

(b) Preserve or make available to the Board or its agent upon request for examination and copying all membership records or other records necessary to determine whether the respondent has complied with this decision and order to the fullest extent possible.

(c) Notify the Regional Director of the Oxnard Regional Office within 20 days of receipt of a copy of this decision and order, of the steps respondent has taken to comply therewith, and to continue reporting periodically thereafter until full compliance is achieved.

It is further ordered that the results of the election at the Dave Walsh Company on October 14, 1975 are hereby set aside, and that dates for a new pre-election conference and election be set.

Dated: May 19, 1977.

AGRICULTURAL LABOR RELATIONS BOARD

By: 

PETER D. COPPELMAN
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, the Agricultural Labor Relations Board has found that Teamsters Local 186, violated the Agricultural Labor Relations Act, and sanctions have been imposed upon its successor union, Teamsters Local 865. The Teamsters have been ordered to notify you and others that we have violated the Act and that we will respect the rights of employees of the Dave Walsh Company in the future. Therefore, in behalf of the Teamsters, I am now telling each of you:

1. Prior to the election at the Dave Walsh Company on October 14, 1975, we unlawfully threatened violence against organizers for the United Farm Workers of America - AFL-CIO, threatened employees of the Dave Walsh Company with loss of their jobs for failure to support the Teamsters, asked the Dave Walsh Company to fire a supporter of the- UFW, and committed property damage to UFW vehicles.

2. We hereby inform you that we will not engage in future unlawful actions similar to those described in the preceding paragraph.

3. We 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 protection. We also want to inform you that you are free to refrain from any and all such activities.

4. We apologize for the unlawful conduct we engaged in during the election at the Dave Walsh Company during September and October of 1975.

Dated: _____

_____

FOR THE TEAMSTERS

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we have engaged in violations of the Agricultural Labor Relations Act, and has ordered us to notify all persons coming to work for us in the next six months and all persons who worked for us between August 1, 1975 and November 1, 1975, that we will remedy those violations, and that we will respect the rights of all our employees in the future. Therefore we are now telling each of you:

1. Prior to the election at the Dave Walsh Company on October 14, 1975, we harassed and interfered with organizers for the United Farm Workers - AFL-CIO who were properly exercising their right to communicate with employees of the Dave Walsh Company, provided unequal access to our employees to the Teamsters, provided free food in order to influence the outcome of the election, prevented some of our employees from voting in the election, failed to maintain and provide to the Agricultural Labor Relations Board an accurate voter eligibility list, and hired some employees for the sole purpose of voting in an election. We also terminated Santos Lopez and Alvaro Lopez because of their support for the UFW.

2. We hereby inform you that we will not engage in future unlawful actions similar to those described in the preceding paragraph.

3. We will not discourage membership of any of our employees in the United Farmworkers of America - AFL-CIO, or any other labor organization by discharging, laying off, or in any other manner discriminating against individuals in regard to their employment. We will reinstate Santos Lopez and Alvaro Lopez to their former jobs and give them back pay for any losses they had while they were off work.

4. We inform you that you are free to exercise your right to self-organization, to form, join, or assist labor organizations, 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 protection. Also, we want to inform you that you are free to refrain from any and all such activities.

5. We apologize for the misconduct we engaged in during the election campaign at our company in October of 1975.

Dated: _____

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FOR THE DAVE WALSH COMPANY