

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

GEORGE LUCAS & SONS,)	
)	
Employer/Respondent,)	Case Nos. 75-RC-37-F
)	75-CE-45-F
and)	
)	
WESTERN CONFERENCE OF TEAMSTERS,)	
AGRICULTURAL DIVISION, AND ITS)	4 ALRB No. 86
AFFILIATED LOCALS,)	
)	
Petitioner/Intervenor ,)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Intervenor/Charging Party.)	
_____)	

DECISION, ORDER AND
ORDER SETTING ASIDE ELECTION

On July 25, 1977, Administrative Law Officer (ALO) Louis M. Zigman's Decision in this matter was transferred to the Board. Thereafter, the Employer/Respondent, the General Counsel, and the Intervenor/Charging Party, United Farm Workers of America, AFL-CIO, hereinafter called the UFW, each filed exceptions and a supporting brief.

Pursuant to the provisions of Section 1146 of the Labor Code ^{1/}the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached

^{1/}/All section references herein are to the Labor Code.

Decision in light of the exceptions^{2/}and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO as modified herein, and to adopt his recommended remedial Order with modifications.

The Unfair Labor Practice Case

We affirm the ALO's conclusion that the Section 1153(a) violations alleged in paragraphs 8(C) and (D) of the complaint should be dismissed. In view of unresolved credibility questions, we are unable to find on this record that Respondent on August 30, 1975 unlawfully denied access to its job site ^{3/}and created the appearance of surveillance, as alleged in paragraphs 8(C) and (D) respectively.

We agree with the ALO that Respondent did not, as alleged in paragraph 8(G), violate Section 1153(a) when George Lucas Jr. shoved UFW attorney Alan Ramo at the ballot-counting site after the election. The record indicates that Lucas Jr.'s conduct was provoked by Ramo's vulgar remark, that the incident terminated quickly without further confrontation, and that the assault occurred in the context of a heated argument. Under these circumstances, we find no substantial connection between Respondent's conduct and

^{2/}Respondent's exceptions relate in part to credibility resolutions which the ALO based upon demeanor. In the absence of clear error, we will not disturb such resolutions. Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1977); El Paso Natural Gas Co., 193 NLRB 333, 78 LRRM 1250 (1971); Standard Dry Wall Products, Inc., 91 NLRB 544, 26 LRRM 1531 (1950). We have reviewed the record and find the ALO's credibility resolutions are supported by the record as a whole.

^{3/}Unlike the ALO, we make no finding regarding the effective date of the Access Rule.

the employees' exercise of protected rights, noting that Respondent's conduct was not likely to be interpreted by employees as demonstrating the Respondent's intense opposition to the union. See Pleasant Valley Vegetable Co-op, 4 ALRB No. 11 (1978).

In his proposed order, the ALO recommends dismissal of paragraphs 8(F) and 9(B) of the complaint, which allege that Respondent caused a crew to arrive at the voting place after the polls had closed, and discriminatorily enforced a no-solicitation rule. This recommendation was apparently based on his determination that the General Counsel had withdrawn these allegations. We affirm the ALO's recommendation regarding paragraph 8(F) in the absence of any exception thereto by a party.

The record also fails to show that Respondent discriminatorily enforced a no-solicitation rule as alleged in paragraph 9(B). There is insufficient evidence to establish that Respondent was aware that the Western Conference of Teamsters, hereinafter called Teamsters, was campaigning at times it was ostensibly on Respondent's property to service its contract.

Respondent excepts to the ALO's conclusion that it violated Section 1153(a) by interfering with an attempt by UFW organizers to take access to its labor camp on August 28, 1975. It argues that its denial of access should be characterized as de minimis, like that in Mitch Knego, 3 ALRB No. 32 (1977). We disagree. In the instant case, the atmosphere surrounding the denial was highly charged and coercive, decidedly unlike the casual denial of access over a card game found in Mitch Knego. The employees observed: Respondent's owners and supervisors

confronting organizers; a number 'of organizers leaving the camp after the arrival of a deputy sheriff; and six organizers handcuffed and arrested for remaining on the premises to talk to employees. Two supervisors took photographs of the incident and at least one supervisor asked employees whether they had invited the organizers. Such conduct not only interfered with the farmworkers' right to receive communications from organizers at their homes, but also constituted restraint and coercion of employees in the exercise of protected rights. Vista Verde Farms, 3 ALRB No. 91 (1977).

It is also argued by Respondent that the employees' right to receive communication at the labor camp from organizers is somehow predicated on the job-site access regulation, which it contends was not in effect on the date of the incident. However, as we stated in Vista Verde Farms, supra;

The right of home access flows directly from Section 1152 and does not depend in any way on the "access rule" contained in our regulations , which only concerns access at the work place.

We are unpersuaded by Respondent's contention that it lacked notice of any obligation to permit access to organizers. In this regard, it is sufficient to note that the rights enumerated in Section 1152 are necessarily broadly defined and that the Supreme Court of California has recognized a constitutional right of access to labor camps. See United Farm Workers v. Superior Court, 14 C.3d 902 (1975) .

Although not alleged in the complaint, the ALO found that Camacho's interrogation of Dolores Chavez on September 10,

1975 was a proper basis for an unfair labor practice finding and included a reference to it in his proposed order. Respondent contends that the ALO did not in fact make a finding on this interrogation. Regardless of whether the ALO made such a finding, however, we have the power to do so even where 'the conduct is not alleged in the complaint where, as here, the matter has been fully litigated and is sufficiently related to allegations in the complaint. Anderson Farms Company, 3 ALRB No. 67 (1977); Machine Tool and Gear, Inc., 237 NLRB No. 172 (1978). The uncontradicted and undenied testimony that, several days before the election, Camacho questioned Chavez as to her union sympathy, and then suggested to her that a UFW victory would be bad for the foremen, ' warrants a finding that, through Camacho, Respondent violated Section 1153(a) , and we so conclude.

While we agree with the ALO's conclusion that Respondent, by the totality of its conduct, rendered unlawful assistance to the Teamsters, we so find without relying on the evidence which establishes that supervisor Dolores Mendoza wore a Teamster button and jacket on the job during the pre-election period. We base our conclusion on the evidence that Respondent's supervisor Joe Bacerra Morales and Teamster organizer and business agent Frank Mendoza jointly spoke in favor of the Teamsters at two crew meetings and at one of these meetings, threatened employees with reprisals if the UFW won the election, and on the evidence that Yolanda Silva, wife of supervisor Rodolfo Silva and co-operator of the Respondent's labor camp, solicited authorization cards at the labor camp on behalf of the Teamsters.

The Representation Case

The Employer excepts to the ALO's recommendation that the election be set aside, and Intervenor UFW excepts to the failure of the ALO to address each of its objections to the election. The ALO recommended that the election be set aside based on his conclusion that the Employer committed unfair labor practices by denying access to the labor camp and by rendering unlawful assistance to the Teamsters. We agree that such actions also constituted objectionable conduct affecting the results of the election and warrant setting aside the election. Oshita, Inc., 3 ALRB No. 10 (1977). Moreover, the misrepresentation regarding the ballot choices and the disenfranchisement of the Ramon Rangel crew, the size of which exceeded the Teamsters' present majority margin,^{4/} constitute additional bases for setting aside the election.^{5/}

The Remedy

In order to remedy the effects of the Employer's unlawful conduct, we modify the ALO's recommended remedial order as follows :^{6/}

- (1) In light of the interference with and imbalance

^{4/} The Amended Tally of Ballots, issued on February 10, 1977 reflects 192 votes for the Teamsters, 152 votes for the UFW, and 6 unresolved challenged ballots, for a total of 350 ballots cast.

^{5/} The UFW's objections based on an allegedly deficient employee list, the alleged hiring of ineligible voters, and the alleged inadequate notice of election were withdrawn by the UFW at the hearing. The UFW's other objections are dismissed.

^{6/} We find that the cease-and-desist order set forth infra is a sufficient remedy for the violation found with respect to the treatment of Ramona Rivera Chavez.

in communication with employees created by Respondent's unlawful assistance to Teamsters and denial of access by UFW agents to the labor camp, we shall order Respondent to provide the UFW access to its employees during regularly-scheduled work hours for one hour, during which time the UFW may disseminate information to and conduct organizational activities among Respondent's employees.

(2) The ALO's recommended remedial Order and Notice to Employees will be modified to conform to our findings and conclusions herein.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, George Lucas & Sons, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Preventing union organizers from entering, or expelling them from, labor camps or other premises where employees live; and

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

(c) Rendering unlawful aid, assistance and support to the Teamsters or any other labor organization; and

(d) Discouraging membership of its employees in the UFW or any other labor organization by imposing more onerous working conditions or in any manner discriminating against employees in regard to their hire, tenure, or terms and conditions

of employment, except as authorized by Labor Code Section 1153(c); and

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

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

(a) Sign the Notice to Employees attached hereto which, after translation by the Regional Director into Spanish and other appropriate languages, shall be provided by Respondent in sufficient numbers in each language for the purposes set forth hereinafter; and

(b) Within 31 days from receipt of this Order, mail a copy of the attached Notice in the appropriate language to each of the employees on its payroll during its 1975 grape harvest season as well as to all its 1973 peak-season employees; and

(c) Post copies of the attached Notice in all appropriate languages in conspicuous places on its property, including the office-shed area and places where notices to employees are usually posted, for a 60-day period to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered or removed; and

(d) Arrange for an agent of the Board or a representative of Respondent to distribute and read the attached Notice in all appropriate languages to its employees assembled on company time and property, at times and places to be determined 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 the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage earning and combined hourly and bonus earning employees to compensate them for time lost at this reading and the question-and-answer period; and

(e) Provide, during the UFW's next organizational drive among the Respondent's employees, the UFW with access to Respondent's employees during regularly-scheduled work hours for one hour, during which time the UFW may disseminate information to and conduct organizational activities among Respondent's employees. The UFW shall present to the Regional Director its plans for utilizing this time. After conferring with both the UFW and Respondent concerning the UFW's plan, the Regional Director shall determine the most suitable times for such contact between UFW organizers and Respondent's employees. During the times of such contact, no employee shall be allowed to engage in work-related activities, or forced to be involved in the organizational activities. Respondent shall pay all employees their regular pay for the one hour away from work. The Regional Director shall determine an equitable payment to be made to nonhourly wage-earning and combined hourly and bonus-earning employees for their lost production time.

(f) Notify the Regional Director in writing, within 31 days from the date of the receipt of this Order, what

steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him/her periodically thereafter in writing what further steps have been taken to comply with this Order.

It *.is* further ORDERED that the election be set aside and the petition for certification be dismissed.

DATED: October 31, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out and post this Notice.

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

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

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

Because this is true we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT interfere with union organizers who come to visit you where you live.

WE WILL NOT question any employee(s) about their union membership or union sympathy or their acting with other employees to help or protect one another.

WE WILL NOT unlawfully aid, assist or support the Teamsters or any other labor organization or favor one union over another.

WE WILL NOT harrass you or change your working conditions because of your union membership, sympathy, or activity.

GEORGE LUCAS & SONS
(Employer)

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

George Lucas & Sons, (UFW)

4 ALRB No. 86

Case Nos. 75-RC-37-F
75-CE-45-F

ALO DECISION

The ALO found that Respondent violated Labor Code Section 1153(a) by preventing UFW organizers from taking access to its labor camp on August 28, 1975, the effective date of the Act, but did not violate Section 1153(a) by denying access to its job site on August 30, 1975 because the Board's access rule was not yet in effect. The ALO found that Respondent did not enforce an invalid no-solicitation rule, did not discriminatorily enforce a no-solicitation rule, and did not engage in surveillance during the UFW's August 30 attempt to take access.

As to the alleged unlawful discharges, the ALO found that the General Counsel failed to carry his burden of proof, where the record showed that one of the four alleged discriminatees had expressed anti-Teamster sentiments in the presence of a supervisor on the day of their layoff, two days after being hired, and there was no other substantial evidence of union activity. The ALO noted that other employees in the same crew had expressed their opinions about the contending unions (UFW and Teamsters) at the same meeting at which the alleged discriminatee expressed her opinion, that she was told after the meeting that she would not be eligible to vote in the forthcoming election, and that the evidence adduced indicated that the midweek layoff of the alleged discriminatees was not unusual.

The ALO credited the testimony of three witnesses that one of Respondent's supervisors misrepresented to a crew of employees that there would not be a no-union choice on the ballot to be used in the election, but he found no legal basis for concluding that such conduct constituted a violation of Section 1153(a).

The ALO found that Respondent did not violate the ALRA by the conduct of one of its partners in grabbing and shoving a UFW attorney at the ballot-counting site after said attorney made a derogatory and profane remark about Respondent's and the Board's role in the disenfranchisement of a crew of workers.

Finding the issue to have been fully litigated, the ALO concluded that the undenied interrogation of one of the alleged discriminatees by Respondent's supervisor was a proper basis for an unfair labor practice finding.

The ALO concluded that Respondent violated Section 1153(c) by changing the working conditions of a UFW observer, where the record showed that a supervisor dumped the grape boxes she had

packed on the ground, took her packing table away, and required her to repack boxes unnecessarily because of short weight.

The ALO found that Respondent rendered unlawful assistance to the Teamsters, based on the evidence that Respondent's supervisor assembled a crew of employees on two occasions for meetings at which a Teamster organizer and one of Respondent's supervisors impliedly urged the employees to vote for the Teamsters, that at one of these meetings the Teamster organizer and the supervisor threatened that Respondent would turn the ranch into a winery and refuse to negotiate with the UFW if the UFW won the election, that a supervisor wore a Teamster button much of the time, and that the spouse of a supervisor solicited Teamster authorization cards.

Noting attempts by the General Counsel in his post-hearing brief to withdraw the allegations that Respondent caused a crew to arrive after the polls closed and discriminatorily enforced a no-solicitation' rule, the ALO made no finding on these allegations, and recommended dismissal of them in his proposed order.

The ALO found that, based on the above findings of unlawful assistance and unlawful denial of access, the election should be set aside.

BOARD DECISION

The Board affirmed the ALO's finding that Respondent violated Section 1153(a) by denying access to its labor camp to UFW organizers, rejecting Respondent's contentions that the violation was de minimis, that Respondent lacked notice of its duty to permit access, and that the right to labor-camp access was tied to the Board's job-site access regulations.

In view of unresolved credibility questions, the Board declined to find whether Respondent engaged in unlawful surveillance or unlawfully denied access to its job-site on August 30, 1975. The Board made no finding regarding the effective date of the job-site access rule. The Board affirmed the ALO's finding that there was insufficient evidence to support a conclusion that Respondent enforced an invalid no-solicitation rule, noting that there was insufficient evidence to establish that Respondent knew that Teamster agents were engaged in organizing at times they were ostensibly servicing a Teamster contract.

The Board affirmed the ALO's conclusions: that the General Counsel failed to establish that Respondent unlawfully discharged four employees; that Respondent did not violate the Act by misrepresenting to its employees the contents of ALRB ballots; and that Respondent unlawfully changed the working conditions of a UFW election observer.

The Board affirmed the ALO's conclusion that Respondent did not violate the Act by the conduct of one of its partners in assaulting a UFW attorney, finding that the assault was in response to a vulgar remark by the attorney, that employees would not likely interpret the assault as demonstrating Respondent's intense opposition to the UFW, and that there was no substantial connection between Respondent's conduct and the employees' exercise of protected rights.

The Board concluded that Respondent unlawfully interrogated one of the alleged discriminatees on the day of her layoff, although this matter was not alleged in the complaint, inasmuch as the matter was fully litigated and sufficiently related to the allegations in the complaint, without regard to whether the ALO made a specific finding concerning the interrogation.

The Board affirmed the ALO's conclusion that Respondent unlawfully assisted the Teamsters, but disavowed any reliance on the wearing of a Teamster button by Respondent's supervisor.

Finally, the Board adopted the ALO's recommendation to dismiss the allegation that Respondent caused a crew to arrive after the polls closed.

As to the representation case, the Board ordered that the election be set aside based on the objections that Respondent denied access to its labor camp to UFW organizers, that Respondent granted the Teamsters unlawful assistance, that Respondent misrepresented the contents of the Board's election ballot, and that a crew was disenfranchised by the improper closing of the polls.

REMEDIAL ORDER

Respondent was ordered to cease and desist from preventing union organizers from taking access to labor camps, from interrogating employees, from rendering unlawful assistance to the Teamsters or any other labor organization, from discouraging membership of its employees in the UFW or other labor organizations by imposing more onerous working conditions or in any other manner discriminating against them, and from in any other manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 1152.

Additionally, Respondent was ordered to provide the UFW access to its employees during regularly-scheduled work time for one hour, and to comply with the standard remedial provisions with respect to posting, mailing, distribution, and reading of an appropriate Notice to Employees.

* * *

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

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of :)	
)	
GEORGE LUCAS & SONS,)	
)	
Employer)	
and)	CASE NO. 75-RC-37-F
)	75-CE-45-F
WESTERN CONFERENCE OF TEAMSTERS,)	
AGRICULTURAL DIVISION AND ITS)	
AFFILIATED LOCALS,)	
)	
Petitioner,)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Intervenor and)	
Charging Party.)	

R. Zachary Wasserman, Esq.
for the General Counsel

Seyfarth, Shaw, Fairweather S Geraldson, by
Robert Mignin, Esq.
for Respondent

Glenn Rothner and Alan Ramo, Esq.
for the Charging Party

DECISION

Statement of the Case

Louis M. Zigman, Administrative Law Officer: This case was heard before me in Delano, California on November 19, December 9, December 10, December 11, December 12, 1975, January 14, January 15, January 16 and 19, 1976.

The complaint alleges violations of Section 1153 (a) , (b) and (c) of the Agricultural Labor Relations Act, herein the Act, by George Lucas & Sons, herein called Respondent. The complaint is based upon charges filed by the United Farm Workers of America, AFL-CIO, herein UFW on September 18, 1975.

On October 25, 1975, pursuant to Objections filed independently and separately by the UFW and the Western Conference of Teamsters, Agricultural Division and its affiliated locals, herein Teamsters, the Agricultural Labor Relations Board, herein Board, issued an order consolidating the objections in Case No. 75-RC-37-F, together with the unfair labor practices in Case No. 75-CE-45-F for hearing.

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

I. Findings of Fact

Respondent, a partnership, is engaged in agriculture in Tulare County, California and is now and has been at all times material herein an agricultural employer within the meaning of Section 1140.4(c) of the Act.

II. Labor Organizations Involved

United Farm Workers of America, AFL-CIO and Western Conference of Teamsters are labor organizations within Section 1140.4(f) of the Act, as they exist for the purpose of bargaining with employers, on behalf of employees, for wages, hours and working conditions.

III. The Alleged Unfair Labor Practices

The complaint alleges that Respondent violated Section 1153(a) by harassing and intimidating employees; surveillance of union activities; misrepresenting the election ballot; causing a crew of workers to be late and disenfranchised at the polls; physically assaulting a UFW representative; and by enforcing an invalid no-solicitation rule. The complaint also alleges that Respondent violated Section 1153(b) of the Act by unlawfully supporting and assisting, the Teamsters. The complaint furthermore alleges that Respondent violated Section 1153(c) of the Act by terminating employees Catalina Chavez, Dolores Chavez and Martha Chavez because of their sentiments in favor of the UFW.

Respondent denies that it has engaged in any conduct-- violative of the Act.

IV. Background of Respondent's Operation

Respondent is engaged in the raising and harvesting of grapes at its ranch in Delano, California. Respondent is a partnership owned by George Lucas, George Lucas, Jr., and Louis Lucas. George, Sr. and George, Jr. actively participate in the daily activities of the ranch. The Lucas' immediate subordinate is Raymond Major, ranch superintendent, and Major has two assistant superintendants Rolando Ramos and Joseph Becerra.^{1/} During the late summer and fall of 1975 Respondent had nine crews and the size of the individual crews could vary from as low as thirty to as high as sixty. Several crew bosses included Otila. Herrera, Ernest Comancho, Delores Mendoza, Ramon Rangel and Rudy Silva.

Respondent also owns, operates and manages labor camps in Tulare County, California, including a labor camp known as the Silva Camp, wherein their employees reside.

V. Organizational Activity

A Petition for Certification was filed by the Teamsters on September 9, 1975 and the UFW subsequently interviewed in that matter. Pursuant to Notice and Direction of Election, a representation election was conducted at Respondent's premises on September 12, 1975. In addition to the instant Objections, challenges to ballots were also raised. Those challenges were resolved on February 10, 1977 when the Board issued its Amended Tally of Ballots. Said Tally shows that the Teamsters received 192 votes, the UFW 152 votes while 6 ballots remained unresolved.

VI. Sequence of Events

The UFW began its organizational efforts on or about August 28, 1975 when several of its organizers went to the Silva Camp to talk to the workers.^{2/} Shortly after entering the Camp the UFW organizers were met with resistance by various supervisors and finally George Lucas and George Lucas Jr. arrived. The sheriff was also called and the organizers were told to leave the premises as they were trespassing on private property. Some left and some others were arrested. This incident incorporates the allegations in paragraphs 8(H) of the Complaint.

- 1/ The time frame concerned the months of August through November, 1975.
- 2/ The Teamsters were the incumbent union and they had a collective bargaining agreement covering Respondent's employees.

Also on August 28, 1975, Teamster organizer Prank Mendoza, accompanied by supervisor Joe Becerra, had a meeting with employees during their working hours in the field. The subject of this meeting will be covered infra and incorporates paragraph 9(A) of the Complaint.

On August 30, 1975, several UFW organizers entered the fields near supervisor Camacho's crew to speak with the workers. There was some resistance by Comacho and eventually the organizers left. This incident incorporates paragraph 8(C) and (D) of the Complaint.

On various occasions between August 30 and September 12, 1975, supervisor Otila Herrera held meetings with employees at which she extolled the benefits of the Teamsters over the UFW. Furthermore, Supervisor Comancho allegedly assisted the Teamsters by enforcing an invalid no-solicitation rule on or about September 4, 1975. Said allegation is contained in paragraph 9(B) of the Complaint.^{1/}

On or about September 9, 1975, Catalina Chavez, Delores Chavez, Martha Chavez and Jose Palacios were hired. The next day Catalina, Delores, and Martha Chavez were laid off. Prior to their layoff, at a meeting earlier in the day, Comacho allegedly told the employees that the no-union designation on the ballot was removed and the employees had only to choose between the two unions. These incidents refer to paragraphs 10 and 8(E) of the Complaint.

Two days later the election was held. The original hours for polling were to be from 6:00 a.m. until 11:00 a.m. but the polls did not open until 6:30 or 6:45 a.m. Because of other problems the polls were kept open until approximately 2:30 p.m. However, after the polls were closed, Ramon Rangel's crew arrived but were not permitted to vote. When the parties began discussing this problem, UFW representative, Ramo, began cursing George Lucas Jr. and Lucas Jr. promptly grabbed him and began pushing him away. These incidents incorporate paragraphs 8(F)^{2/} and 8(G) of the Complaint.

Beginning on September 13, 1975, supervisor Becerra began to make Ramona Chavez' working conditions more difficult. Ramon Chavez had acted as an observer for the UFW the day before during the election. Said allegations refer to paragraph 8(A) and (B) of the Complaint.

It also appeared that supervisor Delores Mendoza

- 1/ The General Counsel withdrew this allegation in his brief.
- 2/ The General Counsel withdrew this allegation in his brief.

wore a Teamster button at work at various times before the election and this allegation of assistance appears in paragraph 9(C) of the Complaint.

VII. The Unfair Labor Practices

A. The Silva Camp Incident (Complaint Paragraph 8(H))

The essential facts are not in dispute. Union representatives Alan Ramo and Edward Green testified that about eight UFW organizers went out to the Silva camp at about 3:30 p.m. in order to talk to employees who lived there. When the organizers arrived, they noticed Rudy Silva's wife soliciting workers to sign authorization cards for the Teamsters. The organizers were told to leave by the supervisors then present and after a short time George Lucas Sr. and Jr. arrived. The Lucas' told the organizers to leave as they were trespassing on private property. The organizers stated that they had a right to be there pursuant to the Board's new right of access and a further right based upon the Constitution.

The organizers told Lucas Sr. that they had been invited to the camp by the workers but when Lucas asked which ones, the organizers replied that they wanted to keep their names secret. Lucas Sr. then told them to leave and if they did not he would have the sheriff arrest them. Those organizers that remained were then arrested.

The General Counsel asserts that Respondent violated Section 1153 (a) of the Act when Respondent prevented UFW organizers from speaking to the workers. The General Counsel concedes that even though the access regulation was not yet in effect, the UFW had a right to enter the Silva camp because of the practical inaccessibility of the workers. *NLRB v. S & H Grossinger's, Inc.*, 372 F.2d 26 (2nd Cir. 1967); *NLRB v. Lake Superior Lumber Corp.*, 167 F.2d 147 (6th Cir. 1943). The General Counsel also asserts that the UFW had a legal right to enter the property based on the decision in *UFW v. Superior Court*, 14 Cal.3d 902, 910.

Respondent asserts that the denial of access to non-employee labor organizers is governed by the Supreme Court decision in *NLRB v. Babcock and Wilcox Co.*, 351 U.S. 105 (1956). Inasmuch as the General Counsel did not demonstrate that the UFW did not have other available means of access to the workers, Respondent asserts that it did not violate the Act by refusing access to its property.

The Board has passed on the question of the union organizers' rights to meet workers living in labor camps and has found that organizers have such rights. Mitch Knego, 3 ALRB No. 32. See also cases cited therein. In addition, the right of access to such labor camps was upheld under the First Amendment of the United States Constitution- U.F.W. v. Superior Court, 14 Cal.3d 902,910. Based upon the foregoing and the record as a whole, I conclude that Respondent violated Section 1153(a) of the Act when it denied the UFW access to that facility and also by causing the arrest of the organizers at the labor camp. D'Arrigo Brothers Co. of California, Reedley District #3, 3 ALRB No. 31.

Although I note that this was the only incident concerning a denial of access at the Silva Labor Camp and although I note that Respondent did permit access to its ranch subsequent to the adoption of the access rule, I still conclude that this incident was more than a de minimus occurrence in light of other unfair labor practices, and therefore unlike the situation in Mitch Knego, supra; it requires a remedy.

B. The August 30, September 4 and 5 incidents concerning Comacho (Complaint paragraph 8C, 9B)

The facts with respect to this allegation are not in dispute. Edward Green, UFW organizer, testified that he and three others went to Respondent's property on August 30, 1975 to hand out leaflets. He stated that they arrived during the lunch hour and as they went into the field to talk to employees who were eating lunch, Comacho told the organizers to leave the field and to talk to the employees on the side of the road. Comacho agreed to that testimony and he also asserted that he followed the organizers around after 12:30 p.m. because the lunch break was over and he was trying to get the organizers to leave. Comacho further testified that UFW organizers came on other days and were permitted to talk to employees. Although the UFW organizers had a right to speak to employees in the fields during lunch if the employee ate their lunch in the field, that right did not accrue until September 2, 1975 when the Board's emergency access regulation actually went into effect. Therefore, I cannot find a denial of access based upon Comacho's instructions that the organizers should stay on the road. The only evidence adduced was that that admonition took place on August 30.

with respect to the specific allegation of surveillance the evidence did not establish that Comacho acted in violation of the Act. Rather, it appeared that

Comacho began following the organizers after 12:30 p.m. when the organizers were to leave and the employees to return to work. And finally, I found the evidence insufficient to establish a finding that Comacho caused to be enforced an invalid no solicitation rule or any discriminatory enforcement of such a rule as alleged in paragraph 8(D).

C. The Terminations (Complaint Paragraph 10)

On Monday, September 8, 1975, Ray Major stopped on the road near a work crew and Delores Chavez approached him and asked him if he would hire her, her sister and her mother. Major recognized her because she had worked at the ranch in the past and he told her to report to the ranch the next day. The following day the three Chavez women were hired along with a man named Palacious.

The next day, September 10, 1975, according to Delores Chavez, Comacho told her about the election and he asked her which union she would prefer.^{6/} Chavez answered that it didn't matter to her and Comacho said that if the UFW won it would be different for the foremen.

Later that same day about 2:00 p.m. Comacho called the employees together at their break and he told the employees that Lucas had said that they had only two choices on the ballot, Teamsters or UFW, because the no union choice had been deleted. Delores Chavez asked Comacho if she and her mother would be able to vote and Comacho replied no because they hadn't been there long enough. A few minutes later the employees began talking to themselves about which union to vote for. One man, a swamper, told the group that he was going to vote for the Teamsters because they had more benefits. The people continued talking and one person said it looked like they had better vote for the Teamsters otherwise they would have to go back to Mexico sooner than planned. At that point, Delores' sister, Martha Chavez got up and said that she didn't care and that she wasn't going to vote for the Teamsters. Someone asked the swamper

6/ The General Counsel alleged in his brief that the interrogation was violative of the Act. Blue Flash, Inc., 109 NLRB 591; Quality Transport Co., 211 NLRB No. 27. Inasmuch as this matter was fully litigated it is a proper basis for an unfair labor practice finding. Stokely-Van Camp, Inc., et al., 130 NLRB 869

which way he was going to vote and he replied that he was going all the way with the Teamsters. Delores and her mother were both silent at the meeting and didn't express any preferences.

At about 4:20 p.m., supervisor Rolando De Ramos told Delores Chavez that Respondent was laying the Chavez women off because they had too many workers and they had been the last three hired. Palacios was also laid off with them.

Although the General Counsel very ably cross-examined Respondent's witnesses and although it appeared that Respondent was hiring workers in some crews shortly before and after the Chavez layoffs, the evidence fails to demonstrate that the workers were terminated for unlawful reasons. There was no evidence that any of the three women had participated in any union activities and the only evidence from which one could infer their sentiments occurred in the meeting on September 10 wherein Martha Chavez said she wouldn't vote for the Teamsters.

Based upon the evidence presented and the testimony of the witnesses, I cannot conclude that the General Counsel has sustained his burden. It was apparent that other workers expressed their opinions during that meeting and I further note that after Martha Chavez made her remark Commacho told her that she was inelligible to vote in the election because of her hire date. Contrary to the General Counsel's assertion, the evidence did demonstrate that it was not an unusual practice to lay workers off in the middle of the week. Therefore, I cannot find as the General Counsel asserts that the layoff shortly after the meeting with Commacho was unlawfully motivated.

D. The Statement Concerning the Ballot (Complaint Paragraph 8 (E))

The three Chavez women testified that at the September 10, 1975 meeting Comacho told the employees that the no-union choice had been taken off the ballot. Comacho denied this and testified that he told the workers that the UFW would be designated by the Eagle and the Teamsters by the Horse.

The General Counsel asserts that when Commacho told the workers that they would have to choose between the Teamsters and the UFW, "the isidious message was that the workers were being told to vote for the Teamsters." This inference was based by the General Counsel's assertion of Respondent's favoritism for the Teamsters.

Although I credit the testimony of the three women I cannot find that such a statement is violative of Section 1153 (a) of the Act and moreover I note that the General Counsel has failed to cite any authority for his proposition.

E. The Physical Assault (Complaint paragraph- 8 (G))

On September 12, 1975, at approximately 2:30 p.m., the ALRB Agent officially closed the polls and sealed the ballot box. All parties were notified that the polls had been closed and were told to assemble near the packing shed to watch the official counting of the ballots. George Lucas, Jr., along with several other management representatives, was in attendance. Allan Ramo, a volunteer legal assistant for the UFW, was standing next to Lucas, who was sitting on the dock of the package shed.

Before the counting began, Ramo made a derogatory and profane remark regarding the ALRB Agent's conduct of the election and George Lucas' role in preventing a crew of workers from voting.^{7/} Lucas, who heard these comments, told Ramo that he didn't want to hear that type of language used on his ranch in the presence of ladies. Lucas then grabbed and pushed Ramo away from him.

The National Labor Relations Board has considered cases similar to the instant one and has determined that mere physical violence between an Employer representative and a union representative does not violate an employee's Section 7 rights absent any evidence showing that the representative was engaged in protected activity and that the Employer representative intentionally assaulted him for such activity.

In Huber S Huber Motor Express, 167 NLRB 632 (1967) the Board found no violation of Section 8(a)(1) where a manager physically assaulted a union shop steward when the latter refused to leave the manager's office after an argument. In Central Engineering & Construction Co., 200 NLRB 558 (1972), a case involving a threatened assault but

7/ Ramo testified that, when all the parties had gathered at the parking shed for the counting of ballots, Lucas asked why the last crew was not allowed to vote and he responded, in a moment of anger, "because you fucking didn't tell the Board about the extra crew".

no physical contact, the Board found no violation of Section 8 (a) (1) where the threatened assault was not the result of anti-union feelings, but rather occurred because an employee called his supervisor a " liar . "

Based upon the following, I cannot conclude that Respondent violated Section 1153(a) of the Act when George Lucas, Jr. grabbed and pushed UFW representative Ramo.

F. Harassment, Intimidation and Changing of Working Conditions of Ramona Chavez (Complaint paragraph 8(A) and 8(3))

Ramona Rivera Chavez testified that she has worked for Respondent during the harvest seasons since 1968. Her most recent date of hire was August 1975. She explained that she worked as a team with her mother and that her mother would pick grapes in the vineyard while she would pack them on a table adjacent to the vines. There were about 15 teams in total consisting of either two or three persons and there were about 15 tables, one for each team. She stated that she worked on a table with just her mother and that she and her mother could pick and pack as many grapes as those teams with three persons. She explained that they picked and packed essentially two different varieties of Thomson grapes and each variety would be packed in a separate box. The Number One grapes were large grapes usually in big bunches. The Number Two grapes were smaller grapes and oft-times were loose.

Ms. Chavez testified that she acted as an observe: for the UFW during the ALRB election and on the day after, September 13, 1975, her supervisor Josphe Becerra began harassing her. She credibly^{8/} testified that on September 13, 1975 Becerra came over to her table; opened all twelve boxes; told her that the grapes were mixed up and dumped all of the boxes and grapes on the ground. He then rather harshly ordered her to repack the boxes. Ms. Chavez stated that the regular checker told Becerra that the grapes were packed properly and that Becerra told the checker to keep quiet.

8/Becerra testified that upon inspection of Ms. Chavez' boxes he found that she had mixed the two varieties together and that he carefully laid the grapes on the ground and asked her to repack them.

Ms. Chavez testified that she was quite embarrassed by Becerra's actions and that she had never before been humiliated in this fashion in eight years with Respondent.

The following day when she reported to work she was told that her work table had been taken away and that the teams were to work three or four to a table. Notwithstanding that order, according to Ms. Chavez, several teams consisting of two workers still had their own tables. Ms. Chavez indicated that Becerra came to her table on September 14, 1975; weighed each of her boxes; and if a box was a quarter of a pound short he made her repack the entire box.

She stated that the checker had already weighed the boxes and that they were fine. She also testified that in the past a 1/4 pound margin had always been acceptable.

Ms. Chavez became upset and asked another supervisor, Rolando De Ramos, why Becerra was so upset with her and if it was because she had acted as an observer. De Ramos replied that that wasn't the reason and that he'd speak to Becerra. A short time later, Becerra returned and told the employees in a group that if they wanted to work for Respondent they had to do what he said. Ms. Chavez stated that she "begged" Becerra for forgiveness and she apologized for going to De Ramos. He asked her if she would obey the rules and she said yes.

Ms. Chavez further testified that she made her own table and brought it to the fields on or about September 16, 1975. She stated that she did so because she wanted to continue working as a team with her mother on a separate table because it was difficult to pack on the new table with another worker because the other workers slowed her down and this meant she made less money.

Each time that the crew moved to a different part of the vineyard Respondent would transport all of the tables except for Ms. Chavez¹. Ms. Chavez carried her own table for ten days and at that time she was given back a company table. She stated that she worked two more days had a serious accident and at the time of the hearing she had not returned to work.

Based upon the foregoing, I find that the facts establish that Respondent violated Section 1153 (a) and (c) of the Act by such conduct. Schwab Food, Inc., 92

G. Unlawful Assistance to the Teamsters
(Complaint Paragraph 9 A, 9 B, 9C)

The facts with respect to this allegation are in dispute. Ramona Chavez credibly testified that Otila Herrera assembled her crew of between 40 and 50 workers and that Joe Becerra, and Frank Mendoza, Teamster business agent, told the crew that the Teamsters were a good union and that they had a lot of money. During that conversation, the men impliedly urged the employees to vote for the Teamsters. Ramona Chavez also credibly testified^{9/} that there was another meeting the day before the election and that Becerrera and Mendoza again reminded the employees about the Teamsters. In addition, the two told them that if the UFW won the election the Respondent would not negotiate with that union and it would simply turn the ranch into a winery.

- 9/ Although in Respondent's brief its counsel asserts that Ms. Chavez' testimony should not be credited in light of the direct denials by Herrera and Becerra and more particularly because the initial meeting could not have taken place as early as August 28- I found Ms. Chavez a very honest and sincere witness. Although she was rigorously cross-examined and although there were some inconsistencies in her testimony as to the dates of the conversations, I did not find those inconsistencies substantial or that her recall was poor. In carefully observing her demeanor, I found her to be a very honest witness and it was obvious to the undersigned that the witness was nervous and quite fatigued inasmuch as she had to testify on three successive nights sometimes as late as 10:00 p.m. Nevertheless in my overall evaluation of her testimony, particularly in the significant areas as to what was said about the Teamsters and UFW I found her recall sharp, even though she was slightly confused as to actual dates. Based on the foregoing and upon my observation of the demeanor of the other witnesses I have credited Ramona Chavez' account.

The evidence also indicated that supervisor Delores Mendoza wore a Teamster button much of the time she worked. Based on the foregoing, the General Counsel and the UFW assert that Respondent has breached the rules of neutrality and has aided the Teamsters by the granting of speech-making privileges to Teamster organizer Mendoza, participation in joint speechmaking by Mendoza and Becarra the daily wearing of a Teamster button by Mendoza, the solicitation of signatures on Teamster authorization cards by the wife of supervisor Rudy Silva at the labor camp and by the harassment of UFW organizers prior to September 1975.

I agree that the circumstances in the instant case are more akin to the facts in Robert S. Andres et al. dba Sam Andrews Sons, 3 ALRB No. 45 and Albert Missakian, dba Missakian Vineyards, 3 ALRB No. 46. & therefore constitute a violation of Section 115.3 (b) of the Act. The incidents are more serious and numerous than as found in Bonita Packing Company, 3 ALRB No. 27 and therefore, are distinguished from that case.

VIII. The Remedy

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

The General Counsel urges that Respondent furnish the UFW with a list of names and addresses of Respondent's employees prior to and during the next peak season. The General Counsel also urges that Respondent grant the UFW access to Respondent's bulletin boards and all portable bathrooms for the purpose of posting notices. In addition, the General Counsel requests that Respondent post a notice apologizing for its conduct and that said notice be posted, read to employees and distributed to each employee with their paychecks. Said notice should also be mailed to each employee employed during the 1975 harvest season.

The General Counsel also requests back pay and reinstatement for Martha, Delores and Catalina Chavez, an apology from Joe Becerra to Ramona Chavez and compensation for emotional distress for all four of the Chavez women. And in conclusion, the General Counsel seeks reimbursement for the preparation and trial of the instant case.

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

ORDER

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

1. Cease and desist from:

(a) Discouraging membership of any of its employees in the United Farm Workers of America, AFL-CIO, or any other labor organization, by imposing more onerous working conditions 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 Section 1153(c) of the Act.

(b) Encouraging or in any other manner giving assistance or support to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen of America or any other labor organization.

(c) Refusing access to union organizers subject to the Board's rules and regulations.

(d) Interrogating employees concerning their union sentiments.

(e) In any other manner interfering with, restraining and coercing employees in the exercise of their right to self organization, to form, join or assist labor organizations, 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 requiring membership in a labor organization as a condition of continued employment as authorized in Section 1153 (c) of the Act.

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

(a) Post in conspicuous places, including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix". Copies of said notice shall be posted by Respondent immediately upon receipt thereto and shall be signed by Respondent's representative. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by

any other material. Said notice shall be posted for a period of sixty days and shall be in English and Spanish.

(b) Issue to each current employee and mail to all employees on the payrolls for the period August 28, 1975 to November 1, 1975, a copy of said Notice in Spanish and in English.

(c) Have the attached Notice read in English and Spanish, and any other language deemed appropriate by the regional director at the commencement of the 1977 harvest season on company time by a company representative or by a Board agent, the regional director to determine a reasonable rate of compensation for piece-rate workers, if any, in attendance, and following the reading, accord said Board agent the opportunity to answer questions which employees may have regarding the Notice, and their rights under Section 1152 of the Act.

(d) Notify the regional director of the Fresno regional office, within 20 days from receipt of a copy of this decision of steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

IT IS FURTHER ORDERED that all allegations of the complaint, not specifically found herein shall be, and hereby are, dismissed.

IX. The Objections

Inasmuch as the objections with respect to unlawful assistance to the Teamsters and the denial of access to UFW organizers are congruent to the unfair labor practices and inasmuch as I have found merit to those allegations, I find that those objections are sustained and constitute sufficient misconduct which affected the results of the election.

Accordingly, the undersigned recommends that the election be set aside and a new election ordered. Robert S. Andrews et al. dba Sam Andrews Sons, supra; NLRB v. National Container Corp., 211 F.2d 525; 33 LRRM 2661 (1954) .



Louis M. Zigman
Administrative Law Officer

APPENDIX

NOTICE TO WORKERS

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. The Board has told us to send out and post this NOTICE.

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

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

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

Because this is true we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing any of the things listed above.

Especially:

WE WILL NOT ask workers about which union they support or whether they support any union at all.

WE WILL NOT make your work harder or more difficult because of your union feelings.

WE WILL NOT support or give assistance to the Teamsters or any other union.

WE WILL NOT refuse to let union organizers enter our property so long as they do so under the Agricultural Labor Relations Boards rules and regulations.

DATED:

GEORGE LUCAS & SONS

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!