Delano, CA

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

FRANK LUCICH CO., INC., Employer, and WESTERN CONFERENCE OF TEAMSTERS, Petitioner, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor.	)	Case Nos. 75-CE-19-F 75-RC-52-F[1/] 4 ALRB No. 89

DECISION AND ORDER

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

On December 5, 1977, Administrative Law Officer (ALO) Leo V. Killion issued the attached Decision in this matter. Thereafter, the Frank Lucich Co., Inc. (Respondent), and the United Farm Workers of America, AFL-CIO (UFW), each filed exceptions and a supporting brief. Respondent also filed a brief in reply to the UFW' s exceptions.

The Board has considered the record and the ALO's

[1/] Although the ALO's Decision deals with election issues raised in Case No. 75-RC-52-F, it is unnecessary for us to consider those issues, as the Executive Secretary issued an Order Closing Case on November 7, 1977, following the withdrawal of interest by the Teamsters.

Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings and conclusions of the ALO and to adopt his recommended order as modified herein.

Respondent excepts to the ALO's granting of General Counsel's Motion to Conform the Pleadings to Proof, The motion, which alters some of the complaint's allegations was made approximately two months after the conclusion of the hearing. It was served only upon the ALO in contravention of 8 Cal. Admin. Code Section 20240(a), which, in pertinent part, requires that motions made after hearing be served upon the other parties. The ALO indicates that a lack of opposition to the motion was, in part, a basis for the granting of the motion. We overrule the ALO's granting of the General Counsel's Motion to Conform the Pleadings to Proof.

The ALO found that Respondent violated Labor Code Section 1153(a) by denying union organizers access to labor camps and its work sites, and causing them to be arrested. Respondent argues that because the Board was enjoined from enforcing the access rule during the time of the violations, Respondent could not have violated the Act by excluding organizers. We accept this argument in part. We conclude that the incidents which occurred at Respondent's work sites during the period when the injunction was in effect are not violations of the Act. However, the incidents at the labor camp are violations and we so find. We have previously held: "[t]he 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." Whitney Farms, 3 ALRB No. 68 (1977); accord, Ernest J. Homen, 4 ALRB No. 27 (1978).

Respondent argues that the September 14, 1975, denial of access to its labor camp is not a violation of the Act because Respondent's supervisor specifically told the UFW organizers that they did not have to leave the camp and merely ordered them to not enter the kitchen and barracks. We disagree. Because the supervisor barred the organizers from the employees' home, the barracks, the Act was violated.

Respondent contends that it is not liable for the conduct of George Lucas on August 28, 1975 at the Lucas labor camp. This contention is in error. Instigated by Yolanda Silva, Respondent's supervisor, George Lucas summoned the police who subsequently arrested the UFW organizers. Under these circumstances we conclude that Lucas was acting in the interest of Respondent within the meaning of Labor Code Section 1140.4(c), and Respondent is liable for his actions.

Respondent excepts to the ALO's finding that it is liable for the conduct of Rudy Silva on September 16, 1975; on that date Rudy Silva physically evicted UFW organizers from the Lucas labor camp. Although the record does not support the finding that Rudy Silva was a supervisor of Respondent within the meaning of Labor Code Section 1140.4(j) on September 16, 1975, nevertheless, we conclude that Respondent is liable for his actions.

Rudy Silva and his wife, Yolanda Silva, Respondent's supervisor, lived at the labor camp. He was paid by Respondent to manage the camp. Payment was made in the following manner:

Respondent deducted money from the checks of its employees and gave it to Rudy Silva for the purchase of groceries and supplies. The balance remaining after making such purchases was retained as profit by Rudy and Yolanda Silva. Respondent had hired Rudy Silva in August 1977, as a foreman to supervise the crew he had brought with him. Under these circumstances and considering the fact that Silva was aware of Respondent's preference for the Teamsters, we find that at all times material herein, Rudy Silva acted as an agent of Respondent and his illegal conduct is attributed to Respondent absent a prompt disavowal of his actions by Respondent. See Tom Bengard Ranch, Inc., 4 ALRB No. 33 (1978)

Respondent excepts to the ALO's finding that its distribution to its employees of a pre-election leaflet violated Labor Code Section 1153(a). We find no merit in this exception. As the leaflet contained a statement which was threatening on its face, the burden in on Respondent to prove its objective basis in fact. It has failed to make such a showing. In finding a violation of Labor Code Section 1153(a) we also deem significant the following: the Respondent committed independent unfair labor practice violations and the leaflet was distributed immediately before the election.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board orders that the Respondent, Prank Lucich Co., Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

a. Preventing or interfering with communication between UFW or other union organizers and employees at the places where employees live;

b. Assaulting union organizers?

c. Threatening employees with layoff or other loss of employment, or with an adverse change in working conditions, because of their choice of bargaining representative;

d. Aiding or assisting Western Conference of Teamsters or any other labor organization, or contributing financial or other support to such labor organization, except as authorized by Labor Code Section 1153(c);

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

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

a. During the next four periods in which the UFW has filed a notice of intent to take access, Respondent shall allow the UFW one additional organizer per fifteen employees. This organizer is in addition to the number of organizers already permitted under Section 20900(e)(4)(A). Such additional right of access may be terminated or modified if, in the view of the Regional Director, it is used in such a way that it becomes unduly disruptive.

b. Provide the UFW with access to its employees for one (1) hour during regularly-scheduled work hours during which time the UFW may conduct organizational activities among the 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, the Regional Director shall determine the manner and most suitable times for this special access. During the special access period, 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 non-hourly wage earners for their time away from work.

c. During the next four periods in which the UFW has filed a notice of intent to take access, Respondent shall, each payroll period, provide the UFW with an updated list of its employees and their current street addresses. No showing of interest shall be necessary to receive this list.

d. Sign the attached Notice to Employees and, after it has been translated by a Board Agent into all appropriate languages, reproduce sufficient copies in each language for the purposes herein after set forth.

e. Post copies of the attached Notice at times and places to be determined by the Regional Director, such notices remain posted for a period of 60 consecutive days following the receipt of this order. Respondent shall promptly replace any notices which are altered, defaced, covered, or removed.

f. Mail copies of the attached Notice in all appropriate languages, within 20 days from reciept of this Order to all employees employed during the payroll period(s) from

August 28, 1975 through September 19, 1975.

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

DATED: November 7, 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 unlawfully aid, assist or support the Teamsters or any other labor organization or favor one union over another.

WE WILL NOT threaten you because of your union membership, sympathy, or activity.

FRANK LUCICH CO., INC.
(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

Frank Lucich Co., Inc.

4 ALRB No. 89
Case Nos. 75-CE-19-F
75-RC-52-F

ALO DECISION

The events in this case occurred during an election campaign in August and September 1975. A hearing was held pursuant to a complaint filed against Frank Lucich Co., Inc., Respondent.

The ALO found that the following constituted violations of Section 1153(a) of the Act: (1) On August 28, Respondent denied access to and caused the arrest of UFW organizers at a labor camp. Respondent was liable for the actions of George Lucas, who acted in its interest when he summoned the police; (2) On September 3, Respondent denied access to and caused the arrest of UFW organizers at its fields. Although the Board was enjoined from enforcing the access rule on the above date, the ALO found that the arrest of organizers, in the presence of employees, was coercive; (3) On September 14, Respondent denied UFW organizers access to the kitchen and barracks at its labor camp. As the right to home access is derived directly from Section 1152 of the Act, it is immaterial that the Board was enjoined from enforcing the access rule at the work-site; (4) On September 16, Respondent assaulted UFW organizers and denied them access to a labor camp. The ALO found that Rudy Silva, who physically evicted the organizers, was a supervisor within the meaning of the Act; (5) Respondent promulgated and enforced a no-solicitation rule that was invalid because it prohibited organizers from soliciting and campaigning at the labor camps; and (6) Respondent, on September 16, distributed an unlawful campaign leaflet. The ALO found that the pre-election leaflet contained a threat to employees of loss of employment when read in the context of Respondent's conduct.

The ALO also concluded that the General Counsel failed to prove that Respondent committed an unfair labor practice on September 15, by prematurely terminating the employees' lunch period and thereby preventing communication between the employees and UFW organizers.

The ALO found that Respondent rendered unlawful assistance and support to the Teamsters by discriminatorily enforcing its no-solicitation rule in violation of Section 1153(b) of the Act. However, the ALO found that there was insufficient evidence to establish that Respondent required new employees to join the Teamsters before the fifth day of hire in violation of Section 1153(b) and (c) of the Act.

BOARD DECISION [1/]

The Board decided to affirm the findings, rulings, and conclusions of the ALO and to adopt his recommended order with some modifications.

[1/] Although the ALO's Decision dealt with election issues raised in Case No. 75-RC-52-F, it was unnecessary for the Board to consider those issues, as the Executive Secretary issued an Order Closing Case on November 7, 1977, following the withdrawal of interest by the Teamsters.

The Board overruled the ALO's granting of the General Counsel's Motion to Conform the Pleadings to Proof served subsequent to the end of the hearing, as General Counsel failed to serve the motion on Respondent as required by 8 Cal. Admin. Code Section 20240(a).

The Board rejected the ALO's conclusion that a denial of access, during the period when the access rule was enjoined, violated the Act, but held that denials of access which occurred at the labor camps violated the Act irrespective of any injunction affecting access at the work-site. Whitney Farms, 3 ALRB No. 68 (1977).

The Board rejected Respondent's contention that it was not liable for the September 14, denial of access at its labor camp because the organizers were not denied access to the camp but only to the kitchen and barracks. As the organizers were barred from the employees' residence, the barracks, the Board concluded that Respondent thereby violated the Act.

The Board adopted the ALO's conclusion that Respondent was liable for the conduct of George Lucas on August 28. Lucas, upon the instigation of Respondent's supervisor, summoned the police and thus acted in the interest of Respondent within the meaning of Section 1140.4(c) of the Act.

Although the Board rejected the ALO's finding that Rudy Silva was a supervisor within the meaning of the Act, it concluded that he was an agent of Respondent and that Respondent is liable for his conduct, physical ejectment of organizers from a labor camp, absent a prompt disavowal of his actions. Tom Bengard Ranch, Inc., 4 ALRB No. 33 (1978).

The Board adopted the ALO's conclusion that the distribution of a pre-election leaflet violated the Act, holding that as the leaflet contained a statement, threatening on its face, Respondent had the burden to prove its objective basis in fact. The Board, in concluding that distribution of the leaflet was a violation of the Act, also considered the timing of the distribution and Respondent's total conduct.

REMEDIAL ORDER

In addition to a cease-and-desist order, the Board's order required Respondent to grant the UFW expanded access, to provide the UFW with an updated employee list and to post, read, and mail a notice to employees.

* * *

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

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of FRANK LUCICH CO., INC., Employer, and WESTERN CONFERENCE OF TEAMSTERS, Petitioner, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor.	CASE NOS. 75-CE-19-F 75-RC-52-F

Zachary Wasserman and Robert J. Bezemek and Leslie Dalog for the General Counsel

Seyfarth, Shaw, Fairweather & Geraldson and Stacy O. Sharton and Kenwood C. Youmans for Respondent

David Gomez and Jay Dee Patrick for Intervenor and Charging Party, UFW

Pete Maturino for Teamsters

ADMINISTRATIVE LAW OFFICER'S DECISION

LEO V. KILLION, Administrative Law Officer: This case was heard before me at Delano, California on December 4, 5, and 8, 1975 It was consolidated for hearing with case 75-RC-52-F by order of the Board of November 12, 1975. At the hearing the parties stipulated that the two cases were consolidated for hearing.

The Complaint in the unfair labor practice case No. 75-CE-19-F was filed on November 12, 1975. It alleges violations of Section 1153(a) and 1153(b) of the Agricultural Labor Relations Act of 1975 (herein "ALRA" or "ACT") by Frank A. Lucich Co., Inc. (herein "Employer", "Respondent", "Lucich"). The Complaint is based on charges and amended charges filed by United Farm Workers of America, AFL-CIO (herein "UFW").

Respondent had a contract with the UFW from 1970-73 and with the Western Conference of Teamsters, Agricultural Division, IBT (herein "Teamsters") from 1973. On September 10, 1975, the Teamsters filed a petition for Certification under Section 1156.3 ALRA seeking to be designated as collective bargaining representative of the agricultural employees of Respondent. The UFW filed a Motion for Intervention on September 12, 1975. On September 17, 1975 the ALRA conducted a representation election among the Respondent's employees. The results of that election were 99 votes in favor of the Teamsters, 62 votes in favor of the UFW, 4 votes in favor of No Union, 20 unresolved challeneged ballots and one void ballot.

Subsequent to the election, the UFW filed a Petition to Review and Set Aside Election. Commencing on December 4, 1975, as stated, a Hearing was held before me to take testimony on the issues raised by the Petition to Review and Set Aside Election as amplified by the Further Specifications in Support of Petition in Case No. 75-RC-52-F as well as on the unfair practice issues raised by the allegations in case No. 75-CE-19-F. A record of the

testimony there given was made and there is on file a three volume transcript of some 848 pages. All parties were given a full opportunity to participate in the Hearing and after its close the General Counsel and Respondent each filed a brief in support of its respective position.

After the close of the Hearing and on February 26, 1976, the General Counsel filed a Motion to Conform the Pleadings to Proof. There was no opposition thereto. I find support in the record for the Motion and it is hereby granted and the Pleadings are conformed to proof as requested in the Motion, as follows: (1) the date September 16, 1.975, is substituted for the date August 28, 1975 in paragraph 9(b) of the Complaint, (2) the name of Yolanda Silva is added to paragraphs 9(c) and 9(d) of the Complaint, and (3) the facts alleged in paragraph 9(d) of the Complaint are considered Us allegations of a violation of Section 1153(b) as well as a violation of Section 1153(a) of the Act.

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 AND DISCUSSION

I Jurisdiction.

Respondent and employer Frank Lucich d/b/a Frank Lucich Co., Inc. is engaged in agriculture and the production of grapes in Tulare County, California and is an agricultural employer within the meaning of the Act.

The UFW and the Teamsters are labor organizations representing agricultural employees within the meaning of the Act.

II The Alleged Unfair Labor Practices.

The Complaint issued by the Board on November 12, 1975, alleges, in substance, that Respondent, through its agents, violated section 1153(a) of the Act [Section 9(a) of the Complaint] in promulgating an invalid no-solicitation rule at a labor camp known as the Lucas Camp, by [9(b)] denying access to the UFW while allowing access to the Teamsters, by[9(c)] promulgating an invalid no-solicitation rule on its premises, which prohibited solicitation during non-working time and during non-working hours, by [9(d)] discriminatorily enforcing a no-solicitation rule by granting to representatives of the teamsters but denying to representatives of the UFW, access to its premises for purposes of engaging in organizational activities with respect to its employees [violation alleged of both 1153(a) and 1153(b)], by [9(e)] arresting UFW representatives who were engaged in organization activities on its premises, by [9(f)] causing to be arrested UFW representatives at the Lucas Labor Camp, by [9(g)] physically attacking a UFW representative at the Lucas Camp.

Respondent was alleged to have violated section 1153(b) of the Act in giving unlawful assistance to the Teamsters by [10(a) and 10(c)] instructing its employees to vote for the Teamsters, by [10(b) and 10(c)] disseminating unlawful campaign literature to its employees during" working time and working hours, by [10(c)] distributing Teamster authorization cards to its employees and by [order granting Motion to Conform to Proof allowed allegation; of 9(d) to be considered also a violation of 1153(b)] discriminatorily granting the Teamsters access to its premises.

In Its answer, respondent admitted jurisdictional facts and conclusions concerning its agricultural practices and that Abarquez, Fetelvero, Schlitz and Yolanda Silva were Supervisors within the meaning of section 1140 (j) of the Act. Respondent denied that George Lucas and Rudy Silva were its agents, that it managed and operated a labor-camp known as "Silva Camp" or "Lucas Camp" or that it had committed any unfair labor practices as alleged.

It is thus the Employer's position that it did not engage in any conduct which constitues an unfair labor practice under the Act and that it did not commit any acts which would warrant the Board in setting aside the election and ordering a new election.

III. General Statement of the Case

Respondent Frank Lucich d/b/a Frank Lucich Co., Inc. is a two-person partnership engaged in growing grapes upon some 500 acres in Tulare County. Two hundred field workers were there employed by Lucich during the 1975 grape harvest season. There was one labor camp on Lucich property which houses his workers

exclusively. Another crew working for Lucich lived in a camp located on property owned by a neighboring agricultural concern, George Lucas and Sons.

Frank Lucich was the "active managerial partner and bossed the day-to-day operations. When there was work in the fields, he split his time between overseeing work there and handling office matters. The task of supervising fieldwork was shared by a small group of employees. Gerald Schlitz, Lucich's son-in-law, had no specific title within the company structure, but answered only to Lucich himself. His duties were similar to Lucich's; overseeing most operations in the field and doing office work. Schlitz, who was the immediate supervisor of the crew foremen, disciplined, and instructed the field" workers by communicating through the crew foreman. Alex Fetelvero ("Alex" or "Fetelvero") and Sammy Abarquez ("Sammy") were two of the three crew foremen who were used during the harvest season in 1975. They were both full-time, year-round, employees of Lucich. Fetelvero was the head foreman and the only one who had a full year-round crew. He was paid more than the other foremen and was also the manager of the Lucich labor camp. Sammy was a foreman and a bus driver. During the busier seasons he had a crew of his own; but when there was only one crew he worked as a subordinate to Alex. Though both Fetelvero and Sammy had frequent occasion to be at the Lucich camp, as manager and bus driver, respectively, neither actually lived there. Other regular Lucich employees who enjoyed some degree of supervisorial status but whose actual positions in the hierarchy were less clear were Mike Vidak ("Vidak") and Mike Turnipseed ("Turnipseed").

Vidak was the superintendent and a supervisor. Turnipseed's job was to make sure "everything was going fine". This meant going from crew to crew checking to see if they had the proper supplies, and then ordering employees to bring the proper supplies to the field. He also enforced the respondent's no-soliciation rule, along with Lucich and Schlitz. If workers were not doing their work properly, in his opinion, he would warn them that Lucich would not like it.

He and two other employees, Schlitz and Vidak, were the only persons authorized to drive company vehicles home after work.

In previous years, according to Lucich, he had hired an extra crew at harvest time. In the year 1975, upon the recommendation of Mr. Benji Kickorian of El Rancho Farms in Arvin, Ca., Lucich hired Rudy Silva (hereinafter "Silva"), a crew of fifty employees provided by Silva and two flatbed trucks owned by Silva to help harvest his grapes. Negotiations between Lucich and Silva occurred at the end of the Arvin harvest in mid-August and Silva began work with him about the 20th of August. Lucich' rented a camp for Silva’s crew from another grape grower, Jake Cesare, Rudy Silva and his crew had worked for the respondent and lived in the Cesare camp for no more than one week when George Lucas approached Lucich with a proposal that the Silva crew move to a camp owned by Lucas and that half of Silva's workers work for Lucas, while the other half would continue to work for the respondent under the supervision of Rudy Silva's wife, Yolanda Silva ("Yolanda").

Silva was to bring in more workers to "fill-out" both crews and the respondent was to continue to rent and use two of Silva's trucks. On August 27th, Silva, Yolanda and all their workers moved from the Lucich Cesare Camp to the Lucas Camp at Avenue 184 and 48th. This move coincided with a division of the crew. Silva and about thirty of the workers immediately began working for George Lucas and Sons, while the remaining twenty-five workers continued working for the Respondent. The latter crew commuted daily from the Lucas camp to the respondent's fields in their own cars. These new arrangements were pursuant to an oral agreement made by George Lucas Jr. and Lucich. Lucich did not (at least prior to the Hearing) pay Lucas anything for the housing of Lucich workers" at the camp. The transaction was considered an exchange of workers for camp living space, a common-practice among farmers in the area. Rudy Silva even switched some of the workers back and forth between the two crews.

Rudy Silva was normally the manager of the Lucas camp. His duties in this capacity included "taking care of the people, breaking up fights and repairing things that were broken". Yolanda shared and assisted in these responsibilities. She would intervene where there was trouble between women crew members. The older workers in the original crew paid special attention to Yolanda because they had known her longer than her husband and she took care of them, and it was along these lines that the crew

was divided. Yolanda also did the daily food and supplies shopping for the camp. Both Lucas and the Respondent deducted a total of twenty-eight dollars per week from the check of each employee living in the camp and made out one food check to the Silvas. The Respondent made that weekly food check out to Yolanda Silva. Yolanda and Rudy Silva had a joint bank account and they shared the bank account and everything else relative to the running of the camp. What was not spent for food and supplies from the checks was the Silvas' profit for running the camp. The cook was paid directly by Lucich.

Organizational campaigns were begun by the Teamsters and UFW in June or July, 1975. At the very outset of these campaigns, after the Act was enacted on August 28, 1975, Lucich took the position that his employees should support "no union"; however, he early abandoned that company policy in favor of his pro-Teamster position.

As previously stated, the Respondent had entered into contracts with both unions, the UFW from 1970-73 and the Teamsters since 1973. Lucich had been very dissatisfied with the union administration of the UFW contract and the bad relationship was aggravated by an incident sometime during the term of the UFW agreement when UFW members picketing a different ranch attacked Lucich's car, causing him to fear for his life. Lucich told all of his supervisors, including Yolanda, that he wanted the Teamsters to be the union representing his ranch. He did this in the hope that the supervisors would convey his wishes to the workers. It became

"common knowledge" that Lucich was against the UFW.

Gerald Schlitz, Lucich's son-in-law and top assistant, described the company policy as basically more anti-UFW than pro-Teamster. The policy and leaflets publicizing it were generated by a great hatred for the UFW and the intent "to go against Chavez and the UFW, whoever they are". Schlitz's notion of the ultimate company policy was to tell the workers that respondent was against the UFW and to ask and encourage them to vote for the Teamsters.

According to Schlitz, everybody knew that the Lucich management was against the UFW and thus there was never any need to say anything to the workers about these sentiments. Frank Lucich authored, signed and reproduced and coused his supervisors to distribute, among all the employees, two leaflets so that the company's anti-UFW, pro-Teamster policy would be clear. One leaflet was distributed the day before the election.

By the terms of the union security clause of the collective bargaining agreement between Lucich and the Teamsters, all employees were required to become Teamster members on the tenth day following the beginning of such employment. Employees were required to complete a "Membership Application and Authorization for Representation and Deductions of Union Dues and Initiation Fee". To avoid the disruption of work that would occur when Teamster representatives came into the fields to fill out these cards, it had been, the uninterrupted standard operating procedure for the respondent's supervisors to complete this task since the

* Section 1153 (c) of the Act provides that an employee shall not be required to become a member of a union before the "fifth" day following the beginning of such employment.

harvest season of 1974. This standard operating procedure was the result of an agreement with the Teamsters.

Yolanda Silva was given these cards by Lucich or Schlitz and she would have her workers sign the cards. On August 23, 1975, UFW organizer Lorraine Mascarinas observed Yolanda signing up workers at the Lucas camp. In response to a worker's question, Yolanda told them they had to sign to work. The workers who were signing on this same occasion were new workers living in town, whom Yolanda had instructed to come to the camp specifically to fill out the cards. These workers had been hired that week.

Sammy referred to the cards as authorization cards, the likes of which he had been getting signed for a year or so. He would have new employees sign the cards on the first day they reported to him for work.

There were apparently multiple purposes for which the Teamsters used the cards. The second part of the first paragraph is an authorization for union representation. Management became concerned about the implications of their agents completing these cards, and following the instructions of a growers' organization, the South Central Farmer's Committee, began a policy in late July, for three or four weeks, of scratching out the first paragraph of the English version in the left hand column. The scratching out was apparently discontinued when the Teamsters promised not to use

the cards to petition for an election.

Respondent claimed to have a long standing policy of no access to its property. The UFW first learned of the extent to which this policy was to be applied with regard to union organizers when two of its representatives had a conversation with Lucich in late July. They were told that union organizers could not go onto respondent's fields even during non-working time. Furthermore, they could not visit the camp unless they had written permission from a resident which they had to show to Lucich. The "no field-access" policy was already in effect when it was formally stated in a letter to Jim Oswald of the UFW Legal Department in Delano, dated August 20, 1975. Respondent's supervisors were all informed of the "no field-access" policy. The camp access policy was always in effect and Alex Fetelvero was informed of it by Lucich. UFW organizer Mascarinas encountered regular enforcement of the no access policy by supervisors in the fields and at the camp. In connection with the no access policy, respondent's supervisors caused arrests and the threat of arrest.

On August 28,1975, at approximately 12:30 P.M., or later, Mascarinas, Annie Morales, and Tom Cincone, three UFW organizers, entered a field owned by the respondent to talk to the workers about the upcoming election at the Lucich ranch. The organizers began discussing the ALRB election with the 20 to 25 workers in the area. Soon after their arrival, Yolanda Silva,

the foreperson, approached the organizers and demanded to know what they were doing.

The workers were reluctant to talk with the organizers and some of the workers told the organizers that they could not sign UFW authorization cards with the foreman present. Yolanda Silva remained approximately 10 to 12 feet away from the organizers for the five or ten minutes the organizers were in the field. After approximately five minutes, Ms. Silva blew the horn signalling the end of the lunch break, the workers went back to work and the organizers left the field.

On August 28, 1975, sometime between 3:00 and 4:00 P.M., eight to eleven UFW organizers arrived at the "Lucas" or "Silva" labor camp situated at Road 184 and Avenue 48. They intended to talk to the employees, among whom were about 25 working for respondent, about the UFW, to pass out union literature, and attempt to get UFW authorization cards signed. At the time the organizers arrived, only Lucich workers were in the camp, as Lucas employees worked later in the day and had not yet finished work or returned to the camp.

The organizers, who were wearing UFW buttons, entered the labor camp and proceeded to pass out literature and talk to the workers. After about fifteen minutes, two of the organizers, Paul Wolf and Edward Green, entered the dining area

and continued passing out leaflets. In the kitchen area, they encountered Yolanda Silva, who was assisting workers in filling out Teamster dues and initiation fee cards." Yolanda was telling them they had to sign these cards to work for respondent. The organizers began to explain to Ms. Silva that, under the Act, no one who had the power to hire or fire could favor a particular union or assist in getting its cards signed. Yolanda ordered the organizers out of the kitchen and then left the kitchen to request a mechanic who worked for George Lucas, to call Mr. Lucas.

A short while later a slender Filipino supervisor for George Lucas, named either Ray or Rolando, arrived and told the organizers to leave the property. Green responded that they had a right to visit the workers in their homes. The supervisor went to his pickup truck, spoke into a two-way radio, and then returned with a camera which he then used to photograph the activities of the organizers and the residents of the camp. Several minutes after the arrival of the supervisor, George Lucas arrived and demanded that the organizers leave the camp, threatening them with arrest if they refused.

Approximately 20 to 25 minutes later, the sheriff arrived and spoke with Mr. Lucas and Pablo Lopez, a UFW organizer. The sheriff then announced that the organizers had five minutes to leave the camp if they did not wish to be arrested. Either 4

or 6 organizers remained, and at about 5:00 P.M. they were arrested, handcuffed, and placed in a police station wagon in which there was a German shepherd police dog. The arrests took place in the presence not only of the Lucich crew, but also in the presence of the Lucas crew which, by the time of the arrests, had arrived from the Lucas fields.

Shortly before noon on September 3, 1975, two UFW organizers, Lorraine Mascarinas and Annie Morales, and legal worker Bob Ream, approached a field owned by the Respondent about a half mile north of Avenue 40 and Road 200. They parked their car on the county owned road outside the field and began a discussion with a Lucich employee about the UFW.

They were soon interrupted by Mike Turnipseed, a supervisor for Frank Lucich. Turnipseed and the UFW people exchanged introductions. The UFW representatives explained that they intended to enter the field and talk to the workers, citing the ALRB's regulation on access as giving them authority to do so. Turnipseed stated that if they entered the field, they would be trespassing and then left to inform Lucich of their presence.

When Turnipseed returned, about five minutes later, the car containing the UFW organizers was driving into the field. Ream, who was driving, let the two UFW organizers out of the car on a road in the field and drove back out to the county road

where he remained. The two women remained on the private road, jointly owned by Vincent B. Zaninovich and Lucich.

At noon, Gerald Schlitz drove up and told the organizers they were trespassing. The organizers explained their rights under the access regulation brut Schlitz replied the grower had not received notice of such a law in the mail and therefore was not bound by it. A sheriff arrived shortly thereafter and told Schlitz he could not arrest the organizers because the road on which they were standing was owned by Vincent B. Zaninovich as well as by Frank Lucich.

Approximately 5 or 10 minutes after noon, Yolanda called the workers for lunch. At this point the organizers walked onto the respondent's property and began talking to the workers of whom there were approximately 40 to SO. Within two or three minutes, the organizers were handcuffed by the sheriff, in the presence of the workers, and taken to jail.

On Sunday, September 14, 1975, Mascarinas went with two other UFW organizers to the "Lucich" labor camp, that is, the labor camp owned by and located on Lucich property. When the organizers arrived, they went inside the kitchen and began talking to the workers about the union. The organizers left the kitchen and were approached by Alex Fetelvero, the manager of the camp and head foreman for Lucich, who ordered them in a very loud voice to stay out of the kitchen and the barracks.

When they heard Mr. Fetelvero loudly order the organizers to keep out of the buildings, all of the Filipino workers who were

standing in the courtyard walked inside the building. A number of Arabian workers remained outside and continued talking with the organizers. They explained that some of the Filipino workers were afraid to talk to the UFW organizers.

Shortly before noon on September 15, 1975, two UFW organizers went to the Lucich property at Avenue 40 and Road 184 to speak to workers in the crew supervised by Yolanda Silva. Their purpose in going there was to hand out leaflets and to talk to the workers about the upcoming election. Soon after the organizers began talking to the 50 workers, Yolanda approached them, asked if they had permission to be on the property, and informed them that they needed permission. When the two organizers persisted in communicating with the workers, Ms. Silva went to the truck and blew the horn which signaled the end of the lunch break.

At the sound of the horn, one organizer glanced at her watch and noted to the others that the lunch period had ten more minutes remaining of the usual thirty minute break. It was 12:20 P.M. and the workers had told the organizers that the lunch break that day had started exactly at noon. When the workers went back to work, the organizers left the field.

Yolanda Silva testified that she had never cut her workers' lunch period short. She expressly denied that she had ended a lunch period early when UFW organizers came into the field.

On September 16, 1975, around noon, Mascarinas sent either three or four organizers to a field belonging to the

Respondent. The organizers had intended to speak with the workers hut were stopped at the entrance road by Gerald Schlitz. Mascarinas and another UFW representative drove by the property at about 12:20 P.M. to check on the progress of the organizers. They found that Schlitz was attempting to block the organizers' access to the field. When Mascarinas arrived, all the organizers went into the field and began passing out leaflets to the 80 or 90 workers in the field who had already stopped work to eat lunch. As the organizers entered the field, Mr. Schlitz went to the radio in his car and radioed to Lucich, who ordered him to call the sheriff. Not wanting to be arrested again, the organizers left the fields after spending five to ten minutes therein.

On September 16, 1975, Mascarinas and another UFW organizer, Concepcion Carusco, again drove to the labor camp owned by George Lucas, where Silva's crew of Lucich's workers lived. They intended to speak to Respondent's workers about the UFW, since this was the night before the election and they had been having difficulty reaching the workers elsewhere.

As the organizers entered the gate to the labor camp, Rudy Silva, manager of the camp, ordered them to leave and threatened them with arrest if they refused. Confronted by the threat of arrest, the organizers left the camp to telephone the UFW attorney, Barry Winograd. Winograd advised them that he had received a letter from the District Attorney assuring the UFW

that no arrests would be made in labor camps, and thus, the organizers should return to the camp. The two women returned to the labor camp where they met ten or fifteen workers and began passing out leaflets and talking with the workers.

Silva returned while the organizers were thus engaged, and once more ordered them out of the camp, saying, "get the hell out of my camp". Mascarinas replied that they had a right to be in the camp. Silva and Mascarinas each repeated their positions several more time, culminating with Silva verbally threatening Mascarinas. When the organizers still refused to leave, Silva grabbed Mascarinas by the arm and threw her across the lawn. Then he began to push her and continued to do so until she was out of the camp. This confrontation occurred in the presence of the Lucich workers. The organizers then left the camp.

Although the Employer's strict "no access" policy allegedly applied to and was to be enforced equally against all union organizers, there is substantial evidence to show that the Teamster representatives were in fact present on the Employer's property during working hours for organizational purposes. The Teamsters were allowed in the fields and the camp during working and non-working time for the purpose of organizing and electioneering. They were never assaulted or arrested and only once actually threatened with arrest.

Both Sammy and Alex gave the Teamsters free, unharrassed access to their respective crews and the camp. Alex escorted the Teamster from his to Sammy's crew and on one occasion the latter stopped work, called the workers out of the field and told them to listen carefully to a Teamster organizer's speech deriding Chavez and the UFW. The Teamster organizers distributed "Vote Teamster" buttons and various supervisors encouraged the workers to accept them. Teamster organizer Ernesto Tafalla generally went to the Respondent's ranch once or twice a week and the camp once a week. During the three or four weeks before the election when he went to service the contract, he talked with the workers about the election, told them that the Teamsters were best and told them to vote for the Teamsters.

On the morning of August 28, 1975, three UFW organizers, entering the Respondent's fields at Avenue 56 and Road 168, met two Teamster organizers leaving. The time was approximately 11:45 A.M. and the lunch break had not yet begun. Tafalla told Mascarinas that he was there on Teamster business. A short but heated discussion ensured and the UFW organizers did not reach Sammy's crew until lunch had begun. They found the Teamster shop steward, Angelica Mendoza, distributing Teamster buttons, leaflets and authorization cards which Tafalla and the other organizer had just brought to her. While the Teamsters were there they had had a chance to talk to the workers.

Schlitz saw Teamsters in Lucich fields a total of three times all summer. Two of those occasions were on July 30, 1975, before the Act became law. Twice that day Tafalla came to the fields alone with Teamster authorization cards. On both occasions the Tulare county sheriff was summoned and arrived. Tafalla was almost arrested, but he finally relented because the crew was leaving and he left with them. The final occasion was on September 13, 1975. Mike Turnipseed told Schlitz where there were Teamsters in the field. There were four handing out leaflets but by the time that Schlitz and the sheriff's deputies, whom Turnipseed had called, arrived the organizers were gone.

Turnipseed spotted Teamsters in the field campaigning on one; other occasion. It was the day before the election, September 16, 1975. When Turnipseed arrived there were two cars and seven to nine Teamsters already in fields at Avenue 48 and Road 176, passing out literature. He told organizer Frank Mendoza that they should not be there. On- assurances that they would be gone soon, he waited five minutes for the group to leave without notifying the sheriff or his superiors. Turnipseed had no idea how long the Teamsters were there altogether.

Turnipseed saw Tafalla in the fields conducting union business five or six times. On those occasions he would observe, not standing close enough to hear what was said in conversations with workers but making sure that Tafalla was not signing authorization cards.

IV. Judicial Notice of Temporary Restraining Orders.

The Administrative Law Officer takes official notice of the acts of certain Federal and State Courts in issuing Orders purporting to enjoin the Board from "applying, implementing and/or enforcing" (from September 3, 1975 through September 18, 1975) the "access regulations" issued by the Board on August 29, 1975.

The facts surrounding the issuance of these Temporary Restraining Orders are set forth in the "Post-Hearing Brief of Employer". Copies of the Orders, which are now received as part of the record of the instant case, and a copy of Employer's Attorney's Letter of Transmittal of December 10, 1975, are set forth as Appendixes to said Brief.

The following is summarized from the Employer's Brief.

At 11:35 a.m. on September 3, 1975, the United States District Court for the Eastern District of California at Fresno issued a Temporary Restraining Order enjoining the Board from enforcing its access regulations. That order was issued in a case which involved other growers with property in the Tulare, Kern, and Fresno County area, and specifically involved a grower with land in Delano, California. Thus, the geographical scope of the Temporary Restraining Order applies to the Employer herein.

Based upon the showing made in that case, the Federal Court issued its order that the Board and its General Counsel Designate and:

> "[T]heir agents and employees who receive actual notice of this Order be enjoined and restrained from applying, implementing, and/or enforcing Emergency Regulations of the Agricultural Labor Relations Board, Chapter 9 - Access to Workers in the Fields by Labor Organizations."
>
> It is further ordered:
>
> "[T]hat the defendants notify all their employees or agents administering the Agricultural Labor Relations Act of this Order and that the application, implementation and/or enforcement of said Emergency Regulations are hereby enjoined and restrained."

In its Order, the Court specifically noted that unless enforcement of the access regulations were enjoined, the failure of employees to comply therewith:

> "[C]ould result, inter alia, in unfair labor practice proceedings before the Board; the issuance by the Board of orders . . . ; the invalidation of Board-conducted elections; and possible injunctive litigation against [employers] by the Board in State courts to enforce these Emergency Regulations."
>
> The Order of the Federal District Court was continued in effect

until 12:00 noon on September 10, 1975, by order of a three-judge federal panel. On September 10, 1975, an Order to Show Cause and Temporary Restraining Order identical in terms to the above-quoted Order of the Federal Court was issued by the Superior Court of California, County of Tulare. That Order also "enjoined and restrained" the Board, its General Counsel and all their "agents and employees" from "applying, implementing and/or enforcing" the access regulations.

The Order of the California Superior Court continued in effect until it was stayed by Order of the California Supreme Court on September 13, 1975.

V. Findings and Conclusions on the Unfair Labor Practices Issues:

A. Lucich was responsible for the actions of George Lucas, on August 28, 1977, in ejecting or arresting UFW organizers at the Silva (Lucas) labor camp.

The evidence shows that Lucas was called to the labor camp at the special instance and request of Yolanda Silva, a conceded Lucich Supervisor, for the specific purpose of preventing the UFW organizers from talking to Lucich employees residing at the camp. At the time of the call on behalf of Yolanda and the time of Lucas' arrival at the labor camp, the only workers then at the camp were the Lucich employees who were members of Yolanda's crew. Lucas was called in by Yolanda because he was the owner and landlord of the property on which the camp was located. He was a person who had authority under California trespass law [1/] to remove alleged trespassers. Rudy Silva was, at that time, still working in the Lucas fields with his crew, and Yolanda Silva, because of language difficulties, did not feel competent to call the Sheriff herself.

[1/] Penal Code section 602 provides "Every person who wilfully commits a trespass by any of the following acts is guilty of a misdemeanor . . . (n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by a peace officer and the owner, his agent, or the person in lawful possession thereof."

A Lucas Supervisor responded to Yolanda's call for assistance and ordered the organizers to leave the camp. Upon their refusal, he called Lucas and the Sheriff. Lucas also ordered the organisers to leave and upon the refusal of some to leave, caused their arrest and their forcible physical removal from the Camp by Deputy Sheriffs in the presence of a group of farm workers.

It is my findings and conclusion that Lucich, as the Agricultural Employer whose employees were being contacted by these organizers for the purpose of informing them and soliciting their votes in the upcoming September 17, 1975 Lucich election, was responsible, under the Act, for the actions of Lucas in physically removing these UFW organizers from the Silva (Lucas) labor camp and thus enforcing the commonly known Lucich no-soliciation, no-access policies. Lucas' actions were outright violations of Lucich employees' §1152 rights and were violations of §1153(a) as there is no evidence in the record of any imminent need to have these organizers arrested in order to "secure persons against danger of physical harm or to prevent material harm to tangible property interests...." Tex-Cal Land Management, Inc., 3 ALRB No. 14 at page 11. Yolanda Silva, as a Lucich Supervisor, had been directly informed of these policies and was acting on behalf of her employer in their enforcement when she called in Lucas. Lucas was presumably informed of these policies at the time of Yolanda's call for help or knew of them as a matter of "common knowledge". In thus preventing soliciation by the UFW organizers of Lucich employees, it is my finding and conclusion that he was acting either directly or indirectly as a representative of Lucich in the enforcement of his said policies and was acting in his behalf. Lucas' unfair labor practices

are therefore imputed to Lucich, for whose benefits they were committed and for which Lucich is responsible under the Act [2/].

The fact that Lucich did not specially authorize or ratify the specific acts performed by Lucas is not deemed here controlling. Labor Code Section 1165.4 provides:

> "For the purpose of this part, in determining whether any person is acting as an agent of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

And, it is settled that traditional Agency Law principles are not to be applied in deciding vicarious responsibility for acts constituting unfair labor practices. The Board in Whitney Farms et al., 3 ALRB No. 68 (1977), quoted with approval, the following from H. J. Heinz Co. 311 U.S. 514, 7 LRRM 291, 295 (1941). I deem this holding to be in point in determining the responsibility of Lucich for the acts of Lucas in this peculiar California agricultural employment context. This quotation reads:

> "The question is not one of legal liability of the employer in damages or for penalties on principles of agency or respondent superior, but only whether the Act condems such activities as unfair labor practices so far as the employer may gain from them any advantage in the bargaining process, which the Act proscribes. To that extent we hold that the employer is within the reach of the Board's order. quite as much as if he had directed [the unlawful acts]."

2/ These same unfair labor practices would also be unfair labor practices committed by Lucas for his own account as he was also an Agricultural Employer under the Act. The fact that they were committed against Lucich's employees would not relieve him of liability. It is settled that an employer who violates the rights of an employee, whether or not there is an employment relationship between the employer and the employee, has committed an unfair labor practice. See Whitney Farms, supra.

The "advantage" here gained by Lucich, through the actions of Lucas, lies in the fact that the Lucich employees stationed at the Lucas labor camp were not "freely" solicitated by UFW organizers before the September 17, 1975 election (which was won by the Teamsters). Thus, Lucich became subject to the Board's process herein "quite as much as if he had directed" the unlawful actions of Lucas personally.

The decisions of the Board have made it clear that employees, such as the Lucich employees residing at the Lucas labor camp, have a §1152 protected right to receive communication from organizers at their homes. In Whitney Farms et al., supra, the Board stated:

> "The evidence showed that Frudden determined the camp's access policy. That policy, on November 12, 1975, was to exclude all 'trespassers', including organizers.
>
> We have held repeatedly that farm workers have the right to receive communication from organizers at their homes. Silver Creek Packing Company, 3 ALRB No. 45 (1977). If an employee does not wish to speak with an organizer, that is, of course, his or her right. It is emphatically not the right of the employee's employer, supervisor, or landlord to prevent communication.
>
> By promulgating a rule which prevented access to its labor camp, and by enforcing that rule through its agents, Frudden violated Section 1153 (a)."

As stated, the unlawful acts of Lucas occurred on August 28, 1975, a date prior to the effective date of the Board's "access rule". This fact, however, is not here relevant as the

Act itself and Sections 1152 and 1153(a) thereof became effective on August 28, 1975. In a footnote to the above Whitney Farms quotation, the Board made it plain that the right to labor camp access derives not from decisions or Administrative regulations of the Board but from §1152 of the Act itself:

> "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."

Hence, the evidence shows that Respondent was guilty of unfair labor practices because of the Lucas acts of evicting and arresting organizers at the Lucas (Silva) labor camp on August 28, 1975, that is, by and through the said acts of Lucas, Lucich violated Section 1153(a), and I so find. Causing the arrest of some of these Union organizers and confronting the others with arrest, in the presence of these workers, and thereby causing the organizers to leave the premises, per se interferes with, restrains and coerces "agricultural employees in the exercise of the rights guaranteed in Section 1152".

B. Rudy Silva was an agent (supervisor) of Lucich and Lucich is responsible for Silva's unlawful acts occurring on September 16, 1975, in evicting organizers at the Silva (Lucas) labor camp and in committing an assault and battery on an organizer.

Rudy Silva provided Lucich with the farm workers making up the crew directly supervised in the fields by Yolanda. He hired these workers for Lucich and had the power, in the interest of Lucich, to assign them to their places of work, to transfer them between his two crews, to adjust their grievances and to

generally direct their work. In doing all this he, of course, used his independent judgment. Lucich determined how many workers he wanted in the crew; but it was Silva who determined which one of Silva's crew members was assigned to a particular job.

Rudy. Silva also supplied a crew to George Lucas. All of the Silva crew members, both those forming the Silva-Lucas crew and those forming the Silva-Lucich crew, resided at the labor camp located on Lucas property.

The sum of $28 a week was taken from the pay check of each worker employed by Lucich and was given to Silva for the purchase of groceries and supplies. This money was paid to Yolanda, who deposited it in the joint account of the Silvas. Any money not spent for the provisions was kept by the Silvas. The cook was paid directly by Lucich. Rudy Silva managed the labor camp. He considered the workers to be members of his crew and deemed the labor camp to be his labor camp.

Upon the foregoing and upon a preponderance of the evidence it is found that Rudy Silva was a supervisor within the meaning of Section 1140.4(j) and, as such, was an agent of Lucich as alleged in paragraph 8 of the Complaint. See Whitney Farms, supra, and cases there cited; Dairy Fresh Products Company, 3 ALRB No. 70.

The evidence shows that in the evening of September 16, 1975, the day before the Lucich election, two UFW organizers, Lorraine Mascarinas and Concepcion Carusco, were at the Silva-Lucas labor

camp for the purpose of campaigning among the Lucich workers. As they entered the gates, Rudy Silva ordered them to leave and threatened them with arrest if they refused. They left and telephoned the UFW office in Delano. They were told that the UFW legal department had received a letter from the District Attorney informing them that there would be no arrests made at labor camps. They were told to return to the camp. This they did, and returned to the camp to find the front gate closed. They went around to another opening to the camp and walked into the courtyard and began talking to some 15 workers and passing out leaflets. They all then sat down where there were benches on the lawn and began talking. Rudy Silva came up to them and told the two organizers to "Get the hell out of my camp.". He was angry. Mascarinas told him that they had a legal right to be there with the workers. He repeated his order in the same language several times during their conversation in front of the workers who just sat there. When Mascarinas repeated that she did not have to leave, Silva grabbed her by the arm and picked her up out of the chair and threw her across the lawn. The two organizers then left the camp and as they were leaving, Silva pushed Mascarinas out with both of his hands.

Upon the foregoing and upon a preponderance of the evidence, I find that the acts of Rudy Silva in (1) denying these organizers access to Lucich employees at this labor camp, (2) in threatening their arrest, and (3) in physically removing Mascarinas and thereby scaring Carusco from these premises constituted unfair

labor practices chargable against Lucich in violation of the Act. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977). It has been found that Silva was a supervisor and agent of Lucich and it is 'my further finding that Lucich is responsible for his acts here detailed. Lucich had informed Silva of his policy of non-solicitation of his employees by union organizers at a Lucich labor camp and of his position and desires relative to the upcoming election. Silva was thus "in a strategic position" to translate these policies and desires of Lucich into action by removing organizers from the labor camp. Although Silva was himself a "Teamster man", it was Lucich who was having the representation election the following day and it was Lucich who was Silva's "boss". Lucich employed part of Silva's crew and employed his wife and hired his two trucks and his partner to drive them.

These facts justify the inference that Silva had the apparent authority to act for Lucich in keeping the organizers out of the camp and was here so acting.

The "advantage" gained by Lucich from Rudy Silva's actions is identical to that gained by him from Lucas' actions set forth in section "B" above.

The Respondent interposes the further defense that the violations did not occur on his property and that he gave no instructions to Rudy Silva or to anyone else regarding access of union organizers to the Lucas camp. He stated that he never discussed

access to this camp with George Lucas. The following Lucich testimony was quoted in the Brief of the Respondent (p. 60):

> "We have never discussed anything. I figure it is his camp and what he does over there is his own business."

Lucich also testified that he never even set foot in the camp.

I reject this defense, as was specifically done by the Board in Whitney Farms, supra, when it stated (pp 5 and 6):

> "But Whitney argues that the actions of Esquivel § Sons were outside the scope of its relationship to Whitney. Although Whitney was aware that some of its employees lived in labor camps, it professed complete ignorance of the operation of those camps. It did not even know if Little Waco was open or closed, because that was 'none of [its] business.'
>
> We reject this defense. Esquivel § Sons was Whitney's supervisor. The NLRB has held on many occasions that the acts of a supervisor may be imputed to an employer, even if the acts were not authorized or ratified. H. J. Heinz Co., 311 U.S. 514, 7 LRRM 291 (1941); NLRB v. Solo Cup Co., 237 F. 2d 521, 38 LRRM (8th Cir.1956). The employer may be liable even if the violations occurred outside the work place. For instance, in Holmes Food, Inc., 170 NLRB. 376, 67 LRRM 1422 (1968), the employer was guilty of an unfair labor practice when one of its supervisors surveilled visits by organizers at the homes of employees. A fortiori, the employer is guilty when a supervisor goes to an employee's home and prevents organizers from visiting. Since this is precisely what happened here, we do not hesitate to find an unfair labor practice."

It should, also be here observed that Lucich's responsibility for Rudy Silva's acts is in no way dependent upon the Board's "access rule". The rights of the Lucich employees residing at the Silva-Lucas camp to have visits from union organizers is a right flowing directly from Section 1152 of the Act. Hence, the fact that there

may have been a Temporary Restraining Order in effect on September 16,_ 1975, against the enforcement of the Board's "Access Regulation" is here irrelevant, as the conduct (1) took place at a labor camp and not at the "work place" and (2) involved the "forcible physical ejection" of a union organizer in the presence of farm workers. Tex-Cal Land Management, Inc., supra, at p. 12.

C. Respondent committed an unfair labor practice on September 3, 1975 in having two organizers arrested in his fields, in the presence of workers.

It has already been here officially noticed that the Board was enjoined by the Federal and State Courts from enforcing the "Access Regulation" from 11:35 a.m. on September 3, 1975 through September 18, 1975.

At a time shortly after noon of September 3, 1975 and consequently at a time after 11:35 a.m. of said date, Respondent had two organizers arrested Who deliberately entered its property (vineyards) after being warned by Supervisor Jerry Schlitz and a deputy sheriff that to do so would subject them to arrest. The evidence establishes that these two organizers, Lorraine Mascarinas and Annie Morales, were forcible and physically ejected from Respondent's fields by being handcuffed, forced into a sheriff's vehicle and taken to jail. The arrests were made in the view of some 40 or 50 workers who were on their lunch break.

There is no evidence that the arrests were made because of "an imminent need to secure persons against the danger of physical harm or to prevent material harm to tangible property interests". Hence, this physical confrontation, in itself, constituted an unfair labor practice in violation of Section 1153(a) and I so find.

In defense of its actions in causing these arrests, the Respondent relies on the facts that the organizers had no legal right of access into its vineyard because (Post-Hearing Brief of Employer, p. 71):

> "(1) The Board has been enjoined from finding that employers committed unfair labor practices, and from setting aside elections, on the basis of alleged violations of its access regulations occurring between 11:35 a.m. on September 3, 1975, and September 18, 1975; and
>
> (2) These incidents do not amount to an unlawful denial of access under applicable NLRB precedents."

Neither of the above defenses is here deemed valid. Each is irrelevant. For even though access rights may not have existed in the organizers, there nevertheless here occurred an Act violation for the simple reason that each of the arrests, on our facts, constituted a "forcible physical ejection" of an organizer from an Employer's property in the presence of workers. Such use of physical force constitutes an unfair labor practice on the part of the employer regardless of the lack of an access right on the part of an organizer. And an employer is not provided insulation from such a Section 1153(a) violation by reason of its resort to law enforcement officials for the removal of the organizers. This

is so because the normal effect of the employer's conduct, in forcibly ejecting organizers, demonstrates to the workers present the intensity of the employer's opposition to the Union represented by the organizers. This effect, then, is to restrain these "agricultural employees in the exercise of the rights guaranteed in Section 1152". Such conduct "has an inherently intimidating impact on the workers and is incompatable with the basic processes of the Act". (See, Tex-Cal Land Management, Inc., supra, and cases there cited)

D. Respondent committed an unfair labor practice on September 14, 1975 in ordering three UFW organizers out of the kitchen and barracks at the Lucich labor camp.

The evidence establishes that on Sunday, September 14, 1975, Lorraine Mascarinas and two other organizers went to the labor camp located on Respondent's property and which housed some of his employees. The organizers were ordered by a Supervisor, Alex Fetelvero, the manager of the camp and head foreman of Lucich, to stay out of the kitchen and the barracks. The evidence further shows that at the time the order was given, there were Filipino workers standing in the courtyard. After they heard the order, they walked inside. Some of the Arabian workers, who remained in the courtyard talking to the organizers, explained that these Filipino workers were afraid to be seen by the Supervisor talking to the UFW organizers

Upon a preponderance of the evidence, the Administrative Law Officer (ALO) finds that Lucich, by this act of his Supervisor,

prevented access to these workers in their homes in violation of Section 1153(a). By the acts of the Respondent, these workers' 1152 rights to be visited in their homes by Union organizers were directly violated. Thus, it is immaterial that said Temporary Restraining Order was in effect on this date; the rights of the workers derive from Section 1152 and not from the Board's "Access Regulation". See Silver Creek Packing Company, supra.

E. There is a failure of proof that Respondent committed an unfair labor practice on September 15, 1975 by cutting short the workers' lunch-period and thereby preventing communication between them and UFW organizers.

UFW organizer, Lorraine Mascarinas, testified that she was with her fellow organizers at the Lucich field, located near Avenue 40 and Road 184, when Supervisor Yolanda Silva came up to them and told them that they needed permission to be on the property. When two organizers persisted in communicating with the workers, Yolanda went to the truck and sounded the horn which signaled the end of the lunch break although it was only 12:20. Mascarinas, herself, had not arrived at this field until this incident occurred- at 12:20. She, however, testified over objection, that some of the workers told her that the lunch period had-started at 12:00 that day. Mascarinas therefore concluded that Yolanda had deliberately cut the lunch period short in order to prevent the organizers from

communicating with her workers.

Opposing this hearsay testimony of Mascarinas, is the direct testimony of Yolanda Silva that she did not cut the lunch-period short.

The testimony establishes that Mascarinas did not know of her own knowledge what time the lunch period had commenced and therefore did not know of her own knowledge that the lunch period was actually shortened by Yolanda. On this state of the evidence, it is the finding and conclusion of the ALO that the preponderance of the evidence is with the Respondent and that the General Counsel has failed in his proof on this issue. (Cf. Patterson Farms, Inc., 2 ALRB No. 59 (1976); Apollo Farms, 2 ALRB No. 39 (1976).

F. The promulgation and enforcement of the Lucich no-soliciation rule constituted an unfair labor practice.

The General Counsel concedes in his Brief that the Board's "access rule" was not in effect during the period between September 3 and September 18, 1975 when its enforcement was enjoined by Federal and State Courts.

Regardless of this concession, the Employer's no-solicitation rule is nevertheless a violation of §1153(a) as the rule prohibits organizers from soliciting for organizational purposes and campaigning with farm workers at their homes located in labor camps. The Board has consistently held that agricultural employees have a §1152 protected right to be visited by union organizers at labor camps. See Whitney. Farms, supra.

Since the Lucich no-solicitation rule applied to all of its property, including its labor camps, it interfered with its employees' §1152 rights in violation of §1153(a) and I so find. The Employer is not insulated from this violation by reason of the conceded fact that the Board was enjoined from enforcing its "access rule" from September 3 through September 18, 1975. The workers' rights to have Union organizers come to their homes and to there communicate with them, as has been heretofore stated, flow directly from §1152 and are not dependent upon the "access rule" for their existence.

G. Respondent, by discriminately enforcing its no-solicitation rule, rendered unlawful aid, assistance and support to the Teamsters in violation of Section 1153(b).

There is substantial evidence in the record showing that Teamster organizers were continuously allowed to be on Respondent's property during the weeks immediately prior to the election, without having the Respondent's no-solicitation rule enforced against them. The General Counsel's witnesses testified that the Teamster organizers were frequently electioneering in the fields during working hours and were in the labor camps. I credit these witnesses. There is credible evidence that Respondent's Supervisors, Sammy Abarquez and Alex Fetelvero gave the Teamster organizers free access to their respective crews. They knew that Teamster organizers were using the pretext of servicing their contract as a means to coming onto the property to campaign. The Teamster organizers were never arrested or assaulted. One

Supervisor even escorted Teamster organizers to another Supervisor's crew where the workers were told to stop work and to listen to a Teamster organizer's speech.

Where, as in the instant case, the record shows a totality of conduct which includes denial of access to UFW organizers, an illegal no-solicitation rule enforced against them, their arrests in the presence of the workers, an assault and battery against one of them, again in the presence of the workers, the admitted preference of Lucich for the Teamsters and his expressed hatred for the UFW, a discriminatory motivation may properly be inferred from the evidence on this issue. By a preponderance of the evidence, it is found that the Employer discriminatorily enforced the no-solicitation rule against the UFW and in favor of the Teamsters in violation of Sections 1153(b) and 1153(a) of the Act.

H. The distribution to the employees of the pre-election leaflet [General Counsel's Exh. #2] violated Section 1153(a) of the Act.

It is here found by the ALO that the Employer prepared and had distributed to his workers', on the eve of the September 17, 1975 election, the following leaflet:

TO OUR EMPLOYEE

An election has been set for tomorrow morning between 6:30-10:00 a.m. at the ranch headquarters; Avenue 40, 1/2 mile east of Road 184.

We will pay you your normal wages while you vote so we hope you vote. Your vote will determine whether or not the Teamsters or Chavez's UFW will be your representative.

You have lived under both unions and we have dealt with both unions. It has been our experience that the Teamsters are the better union. The Teamster contract has excellent benefits and provides the employer the flexibility we need to be sure that we can keep our employees fully employed

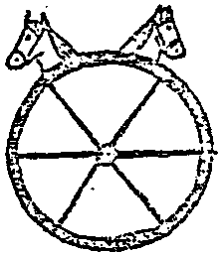
Compare what the Teamsters have obtained for you with what you received under the UFW contract. Ask yourself:

1. Which union charged you dives when you were, not working?
2. Which union split up your families and friends and discriminated against you in the hiring halls?
3. Which union fined members for not leaving their jobs to go on union marches?

We hope that Chavez's hiring hall remains a thing of the past. We hope that you who wish to continue working here can do so without going through a hiring hall.

These symbols will appear on the ballot tomorrow. If you wish to vote for the Teamsters, mark the box on the left.

TEAMSTERS	NO UNION	UFWA



We urge you to vote Teamsters! We urge you to vote:

Sincerely,

Frank Lucich

This election propaganda leaflet not only urged the workers to vote for the Teamsters but also told them:

> "The Teamster contract . . . provides the employer the flexibility we need to be sure that we can keep our employees fully employed."

The General Counsel contends that this statement that a Teamster contract would provide the employer with the "flexibility we need to be sure that we can keep our employees fully employed" was nothing more than a veiled threat of retaliatory action if the employees did not vote for the Teamsters. I agree.

Under decisions construing the NLRA, it is established that an employer has the right to express opinions or predictions of unfavorable consequences which he believes may result from a certain Union becoming the employees' representative. Such predictions or opinions are not Act violations if they have some reasonable basis in fact and provided that they are in fact predictions or opinions rather than veiled threats on the part of the employer to visit retaliatory consequences upon the employees in the event that a particular Union prevails in the election.

The authoritative case on the question of whether employer language is a "threat" or a "prediction" is NLRB v. Gissel Packing Co., 395 U.S. 575, 89 S. Ct. 1913, 71 LRRM 2481 (1969) There the Court stated (395 U.S. 575, 618):

"Thus, an employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.' He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective facts to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. See Textile Workers v. Darlington Mfg. Co., 380 U.S. 263, 274, n. 20, 85 S. Ct. 994, 13 L.Ed. 2d 827 (1965). If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment, We therefore agree with the court below that '[c]onveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof.' 397 F.2d 157, 160. As stated elsewhere, an employer is free only to tell 'what he reasonably believes will be the likely economic consequences of unionization that are outside his control,' and not 'threats of economic reprisal to be taken solely on his own violation.' N.L.R.B. v. River To gs, Inc., 382 F.2d 198, 202 (C.A. 2d Cir.. 1967) ."

The opinion in Gissel thus sets forth two standards by which employer's writings may be objectionable. In NLRB v. Lenkurt Electric Company, 438 F. (2d) 1102, 76 LRRM 2625 (9th Cir. 1971) the Court set these out as follows (p. 1106):

> "We read this opinion as establishing two standards by which an employer's utterances may be objectionable. It appears clear that an employer may not make predictions which indicate that he will, of his own volition and for his own reasons, inflict adverse consequences upon his employees if the union is chosen. This would constitute a threat of retaliation. Also, an employer may not, in the absence of a factual basis therefor, predict adverse consequences arising from sources outside his volition and control. This would not be a retaliatory threat, but would be an improper restraint nevertheless. N.L.R.B. v. C. J. Pearson Co., 420 F.2d 695 (1st Cir. 1969). Thus, an employer may not impliedly threaten retaliatory consequences within his control, nor may he, in an excess of imagination and under the guise of prediction, fabricate hobgoblin consequences outside his control which have no basis in objective fact."

Hence, the Company's communication here in issue, must be assessed by application of these principles as well as by the established NLRB rule that such messages must be evaluated in their total context. Accordingly, the Employer's statement, here, must be assessed in the context of Lucich's pattern of conduct. This is also stated in Lenkurt Electric, supra, (at p. 1107)-:

> "In determining whether an employer's communications constitute permissible argument or prohibited threats, the statements must be considered in the context of the factual background in which they were made and in view of the totality of employer conduct."

It is my finding that there is no evidence entered in the record that supports the statement in issue. There is "no basis in objective fact" in the record for the making of this statement. There is no evidence that while under the UFW contract from 1970 to 1973, the Employer was not able to keep his employees fully employed. At the Hearing the Employer testified that he didn't "quite recall" why he prepared and sent this leaflet [Cl.C. Exh. It2] out to his employees. He did, however, testify that he was in favor of the Teamsters; that he indicated to his Supervisors how he felt and that he would like to have the Teamsters as the representative and that he would like his Supervisors to convey his preference to his employees.

Other Employer conduct has already been reviewed in "Section G" of this Decision. It establishes strong anti-UFW animus on the part of the Employer.

Counsel for the Employer argues that the Employer did not commit an unfair labor practice by the questioned statement as this was language that has been approved by the NLRB (Post-Hearing Brief of Employer, p. 88):,

"Thus, the Stewart-Warner decision not , only underscores employer's right to accompany his expression of preference with noncoercive reasons, hut also recognizes and applies a respect for the intelligence of employees to digest the campaign information which they receive. In Alley Construction Co. (1974) 210 NLRB No. 75, the general principles of Stewart-Warner were applied by the Board to validate the following expression of preference in which the employer supported its preference by making specific comparisons of other contracts executed by one union with those of the rival union:

> "'I wish to go on record that I favor the Christian Labor Association, and ask you to vote for it. I believe the contract they have with other construction companies in Minnesota is better all around for both employees and employers than the Local No. 49 contract. It has excellent fringe benefits and provides the company the flexibility we need to be sure that we can keep our employees fully employed.'"

The Board found the above statement to be within the protection afforded by Section 8(c)."

Section 8(c), NLRA, referred to by Employer's Counsel is identical in all substantive respects to its counterpart "free speech" provision of the ALRA which is Section 1155 and reads:

> "1155. 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."

The cited Alley Construction case involved, inter alia, the validity of a letter sent to the employees of Alley Construction Company, Inc. of Fairboult, Minnesota and in which the Company

endorsed one of two competing unions and asseted that its area contract was better in that: "[I]t has excellent fringe benefits and provides the company the flexibility we need to be sure that we can keep our employees fully employed."

In Alley Construction Company, Inc., 1974 CCH NLRB 1 ¶26,535 it is stated in relevant part:

> "The regional director found that the employer, prior to the election, talked to its employees about the election. The employer talked about the advantages of the Christian Labor Association over Local 49 with respect to work available, break-down of equipment, the possibility of increased overtime work, and insurance coverage as spelled out in the respective contracts. The employer also suggested to employees to urge other employees to vote for the Christian Labor Association over the other union. The regional director found that the statements were opinions and predictions of events. He also found that the employer's expressed preferences for the one union were unaccompanied by promises of benefit or threats of reprisal, but were predictions based on objective facts to convey to employees the employer's belief as to the consequences beyond the employer's control. The regional director concluded that the remarks did not exceed the bounds of legitimate campaign propaganda and did not provide a basis for setting aside the election."
>
> * * *
>
> "The regional director found that the employer sent a letter to the employees prior to the election. In the letter, the employer stated that it was in favor of the Christian Labor Association and asked

the employees to vote for it because the employer believed that the contract that the Association had with other construction companies was better for both the employees and the employers than the Local. 49 contract in that it was more flexible to insure the full employment of the employees. The regional director concluded that the remarks in the letter did not constitute promises of benefit or otherwise exceed the bounds of legitimate campaign propaganda. The Board specifically agrees. The letter merely pointed out that based on a reading of both contracts, the possibility of more employment existed under the Christian Labor Association's contract because of its flexibility.

Finally, Local 49 objected to the employer's alleged interrogations of employees concerning whether they favored one union or the other. On two occasions, employees spoke with the employer's president concerning the outcome of the election. The president stated that it did not matter which union won, but that everyone should vote. Although there was some dispute as to what actually was said, the regional director concluded that the remarks were made in an atmosphere free of coercive conduct and that the objections were without merit."

In a 2-1 split decision, the Board held (36 LRRM 1316)

"Contrary to our dissenting colleague, we are of the view that the Employer's letter was merely pointing out that based upon a reading of both contracts,,, the possibility of more employment existed under the CLA contract because of its flexibility. Local 78 of CLA is certified."

Member Jenkins filed the following dissenting opinion (86 LRRM 1316):

> "Unlike my colleagues, I would direct a new election on the basis of the evidence adduced by the Regional Director in connection with his investigation of Objection 9. This evidence that during the election campaign to which Local 49 (International Union of Operating Engineers, Local No. 49, AFL-CIO) and the CLA (Highway Construction Workers Local No. 78, affiliated with the Christian Labor Association of the United States of America) were competing for the right to represent the employees of this Employer, a letter was sent to all employees by the Employer which contained the following statement:
>
> I wish to go on record that I favor the Christian Labor Association and ask you to vote for it. 1 believe the contract they have with other construction companies in Minnesota *is* better all around for both employees and employers than the Local No. 49 contract. It has excellent fringe benefits and provides the company the flexibility we need to be sure that we can keep our employees fully employed.'
>
> In my judgment, this statement goes far beyond any legitimate comparison of the Unions' anticipated contractual demands as evidenced by their respective collective-bargaining agreements. The statement is not only a flat endorsement by the Employer of one of the two competing Unions, but this endorsement is coupled with the dire predication that a vote for the CLA offers >the guaranty of continued job security. Of course, such a statement by its very nature leaves the implication that the employees would be endangering their jobs by voting for

> Local 49, and it thereby destroys the true freedom of choice we both expect and require in our election process. Accordingly, I would find that the Employer's July 27 letter to employees constituted an impermissible interference with the employees' freedom of choice in the election and direct that a new election be conducted."

Although this statement was taken from Alley Construction and transplanted into the Lucich's pre-election leaflet almost word for word, it is my finding and conclusion that it exceeds permissible employer free speech in that it contains a threat of loss of employment when read and viewed in the context of the totality of this Employer's pre-election conduct which is in contrast to the Regional Director's finding in Alley Construction that some of the alleged objectional statements were made "in an atmosphere free of coercive conduct".

Although it was here permissible for the Employer to endorse the Teamsters, it is my conclusion that it was not permissible for him to couple that endorsement with the prediction that "voting in" the Teamsters Union would guaranty continued job security.

I would recommend the adoption of the reasoning of the dissenting opinion in Alley Construction as being more "applicable" to the facts of the instant case.

I agree with the assessment of the General Counsel that the Employer's statement that it needed a Teamster contract to provide the flexibility to keep the employees fully employed had no basis

in objective fact and was designed to impliedly create fear among the employees that their jobs would be endangered if the Teamsters did not win the election. The statement may reasonably be said to constitute a threat, and I so find. There are no facts in our record to support a conclusion that more employment would exist under the Teamster contract than under the UFW contract. Nor is there any evidence that a contract "flexibility" issue had ever even been discussed by any of the parties to this proceeding. There is no evidence whatsoever as to the meaning of the term "needed Employer flexibility" as it is used in the statement. Hence, in my view, the statement is unprotected by Section 1155, and I so find. It is therefore my further finding and conclusion that the distribution of this leaflet [G, C. Exh. #2'] violated Section 1153(a) of the Act. Cf. Royal Packing Company, 2 ALRB NO. 29 (1976); Hansen Farms, 2 ALRB No. 61, p. 15.

I. There is no substantial evidence to support General Counsel's contention that Respondent "required" new employees to join the Teamsters before the fifth day of hire in violation of Sections 1153(b) and 1153(c).

The evidence is undisputed that since 1974 it has been standard operating procedure for the Employer's supervisors to have new employees sign Teamster membership and dues and initiation fees checkoff authorizations. This was done pursuant to an oral agreement between the Employer and the Teamsters. By signing the card, the new employee both joined the union and authorized his dues and initiation fee to be deducted from his pay check by the employer.

In the Post Hearing Brief of the General Counsel it is stated that Supervisor Yolanda Silva told her crew members to come to the Silva-Lucas labor camp to complete these cards "within a couple of days" of when they were hired. I find no evidence, however, to support this contention. I find no evidence that Yolanda required her workers to sign these cards before the fifth day of employment. Yolanda testified (R. 63:16-64:12):

"Q. And you told the workers that they had to sign the cards if they wanted to work?

A. No, I never did.

Q. Did any worker ever refuse to sign the card?

A. No.

Q. Did they ever ask you whether or not they had to sign?

A. No, they never asked me.

Q. They never asked you why they had to agree to give up eight dollars every month?

A. No, they didn't have to ask, because they had been paying so long with Chavez and with Teamsters.

Q. Were any of the workers that you signed up people who had just come from Mexico?

A. I don't say they come from Mexico, but they're Mexicans.

Q. Did you sign up some people on your crew who had not worked in the Delano area before?

A. Many people come from Texas, from Indio (from California) from Oregon."

The General Counsel further argue. Chat the evidence shows that "the workers believed that they had to sign the cards if they wanted to work". In support of this statement the following testimony of Lorraine Mascarenes is cited (R. 188:16-189:11):

"Q. Did you hear what Yolanda Silva was saying to the workers about the cards?

A. She was telling the workers, you know, that they were going to sign the cards to go to work. And she was explaining to them that there was an initiation fee of twenty-five dollars. And it would only come out of their check one time, then from then on it would be eight dollars a month union dues. * * * And the workers were signing the cards.

Q. Did you hear any of the workers — anything any of the workers said to Yolanda concerning the cards?

A. Well, just at that point when someone asked what the cards were for, when she explained to them.

Q. Did any organizer say anything to Yolanda?

A. One of the organizers asked her why she was signing the cards, since they were for the Teamsters, and she was supposed to be representing the Company; and here she is signing Teamster authorization and initiation dues."

The General Counsel then argues (Brief p.47):

"This practice is a violation of 1153(c) of the ALRA, in that, pursuant to the agreement between the respondent and the Teamsters, the workers were required, as a condition of continued employment, to join the Teamsters before the fifth day of employment, the 'grace period' required by the statute.

The NLRA provides that new employees have a

> minimum of 30 days to become members of the union. An agreement which allows nonmembers less than 30 days to join is invalid, and enforcement of it constitutes an unfair labor practice. NLRB v. Hrihar Trucking, Inc., 337 F. 2d 414, 57 LRRM 2195 (7th Cir. 1964) Similarly, the General Counsel contends that enforcing a de_ facto requirement that requires employees to join a union before five days of employment constitutes an unfair labor practice under the ALRA, in violation of Sections 1153 (b) and (c)."

I agree, of course, that this practice of the Employer would be a violation of the Act if there was proof that new employees were required by the employer to join the union before the fifth day following the beginning of employment. Such a practice would exclude new workers "at the threshold of employment" if they are not union members and would be a direct violation of the terms and principles of the Act. The Employer's agreeing to a union-security provision which would require the signing up of memberships before the fifth day would be unlawful support to the Teamsters in violation of Section 1153(b). But the necessary facts upon which to base a violation are not in the record. There is proof that Sammy Abarquez signed up new workers on their first day of hire. But there is no proof that these workers were required to sign on the first day rather than on the fifth day. There is proof that Yolanda signed up new workers; but there is no proof that she required them to sign before the fifth day as a condition of employment.

I credit her testimony quoted herein.

In his closing argument, Counsel for the General Counsel admitted that the necessary ingredients for a violation might be lacking in the direct evidence but argued that they a re there by implication (R. 821:13 - 823:12):

'O of the last legal issues that I think you will have to confro s the legality of what Yolanda Silva was doing. There's e question on date. It is clear that the Company was worr at some time that the first paragraph on the dues chaff card might well constitute an authorization for an elec on behalf of the Teamsters.

erald Schlitz told you that the company took steps to prevthat. We don't know because the time is uncertain by Gerschlitz' own memory. What Yolanda Silva knew or did now when she was signing cards on August the 28th, Mr. Schlit thought by that time the agreement had been reached, becaus thought there was only about a week when there was a probduring picking season, and that picking season started aroun 18th or the 20th. We're just not certain.

In the kind--again the volatile context of farm worke ections where there is a lot of fear, a lot of uncerta where many things are communicated without the words stated, if you have supervisors signing dues checand union initiation cards in the midst of an elec campaign, telling the workers in effect--whether the are stated clearly or not--'if you don't sign, you get a job', that imposes a duty upon the company to at very clear to those workers that signing that duekoff, signing that membership, has nothing to do witir vote, because otherwise you have clearly implied coe.

If the company does not come forward and make itsey clear, it is only reasonable that when Yolanda

Silva signs up a new worker and tells him, in effect -- or doesn't have to tell him because he knows -- that if he doesn't sign a Teamster card, he can't get a job. And then two weeks or three weeks later, there's an election in which there is a choice between those three symbols, it's not very hard to make the connection that you've been told that you had to support the Teamsters or you can't get a job, having the implication that when you go in the voting booth, you vote Teamsters or there won't be any job.

No, it's not direct. There is not an immediate line. But given the kind of communication that goes on, that all the witnesses have testified to, I think that line is inescapable unless the company takes some positive action to stop it.

When the company agreed to have its supervisors sign up dues authorization and initiation forms and then came into the context of an election, they had to assume a duty of taking positive steps to inform the employees that they had real freedom. They didn't do that. They did just the opposite with those Teamster support leaflets, with those anti-UFW leaflets.

In sum, I think you have a clear campaign to support the Teamsters against the United Farm Workers; to deprive the United Farm Workers of fair access to the workers at the Frank Lucich ranch. I think if you take these in context, you'll find that the charges have been made out; they have been proved. Most of them have not been contradicted."

I do not agree that coercion can be implied from these facts for the purpose of proving this claimed Act violation. The General Counsel's burden is to prove an unfair labor practice charge by a preponderance of the evidence. It is the sense of the ALO that there has been a failure of proof on this issue, and it is so found. Cf. Wagner Iron Works. 104 NLRB 445, 489 (1953); Keller Plastics Eastern, Inc. 157 NLRB 583 (1966).

VI. Recommendation re the objections to the Election.

The Representation Petition was filed on September 10, 1975, and I so find.

It is the recommendation of the ALO that the conduct of the Respondent found herein and occuring after September 10, 1975 warrants the setting aside of this Election.

VII. Conclusion and Remedy.

The motion of the UFW to incorporate into the RC Complaint, the allegations of the Complaint in the CE Case is granted.

Any motion made in the case by any party and not granted herein or on the record-and still pending, is hereby denied.

In order to remedy the effects of Respondent's unfair labor practices, the Board should require the Respondent to cease and desist from continuing to violate the Act and give notice of the following order by mailing, posting and reading the attached' notice to its said employees.

IT IS HEREBY ORDERED that the respondent, Frank Lucich Co., Inc., 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 organizers at their homes in labor camps.

(b) Assaulting union organizers who are attempting to communicate with its workers.

(c) Threatening or causing the arrest of union organizers who are attempting to communicate with its employees and who are not by their conduct causing the respondent "an immenent need [to cause their arrest] to secure persons against the danger of physical harm or to prevent material harm to tangible property interests".

(d) Rendering unlawful aid, assistance and support to the Teamsters or any other labor organization by allowing its representatives to engage in organizational activities on company premises and labor camps while denying solicitation on equal terms to a rival labor organization.

(e) Preventing union organizers from gaining access to its agricultural fields and labor camps during times such access is allowed by the Act and the Board's Regulations.

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

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

(a) Post copies of the attached notice at .times and places to be determined by the regional director. The

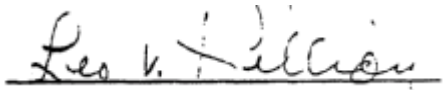
notices shall remain posted for a period of 60 consecutive days following the issuance of this order. Copies of the notice shall be furnished by the regional director in appropriate languages. The respondent shall exercise due care to replace any notice which has been altered, defaced or removed.

(b) Mail copies of the attached notice in all appropriate languages, within 20 days from receipt of this order, to all employees employed during the payroll periods occuring during the time period of August 28 through September 19, 1975.

(c) A representative of the respondent or a Board agent shall read the attached notice in appropriate languages to the assembled employees of the respondent on company time. The reading or readings shall be at such times and places as are specifies by the regional director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisiors and management, to answer any questions employees may have concerning the notice or their rights under the Act.

(d) Notify the regional director in writing, within 20 days from the date of the receipt of this order, what steps have been taken to comply with it.

It is further ORDERED that all allegations contained in the complaint and not found herein are dismissed.



ADMINISTRATIVE LAW OFFICER

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 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;

(5) to decide not to do any of these things.

Because this is true we promise that:

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

Especially:

WE WILL NOT prevent union organizers from coming to our labor camps to tell you about the unions.

WE WILL NOT assault union organizers. WE WILL NOT unlawfully favor one union over another.

FRANK A. LUCICH CO., INC.

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.