

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SALINAS LETTUCE)	
FARMERS COOPERATIVE,)	
)	Case Nos. 77-RC-10-M
Employer,)	77-CL-12-M
and)	
)	
)	
INDEPENDENT UNION OF)	5 ALRB No. 21
AGRICULTURAL WORKERS,)	
)	
Petitioner and)	
Respondent,)	
and)	
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Intervenor and)	
Charging Party.)	
)	

DECISION AND ORDER
AND ORDER SETTING ASIDE ELECTION

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

Following a petition for certification filed by the Independent Union of Agricultural Workers (IUAW) on September 2, 1977, and a petition for intervention filed by the United Farm Workers of America, AFL-CIO (UFW), on September 6, 1977, a representation election was conducted on September 8, 1977, among the agricultural employees of Salinas Lettuce Farmers Cooperative (SLFC). The official tally of ballots showed the following results:

IUAW	79
UFW	57
No Union	69
Challenged Ballots	<u>6</u>
Total	211

As none of the choices on the ballot had received a majority of the valid votes cast, a runoff election was held on September 15, 1977, which yielded the following results:

IUAW	110
No Union	86
Challenged Ballots	<u>3</u>
Total	199

On September 15, 1977, the UFW filed six objections to the election, three of which were set for hearing. Subsequently, on September 22, 1977, the UFW filed an unfair labor practice charge against the IUAW. The election objections and the unfair labor practice case were thereafter consolidated for hearing, and the hearing was conducted on May 1, 2, 31, and June 1 of 1978.

On July 14, 1978, Administrative Law Officer (ALO) Joel Gomberg issued the attached Decision, recommending that the election be set aside and that the IUAW be found in violation of Labor Code Section 1154(a)(1). Thereafter, the IUAW filed exceptions with a supporting brief, and the UFW filed a brief in reply to the IUAW's exceptions.

The Board has considered the record and the ALO's Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO only

to the extent consistent herewith.

The ALO concluded that the conduct of Oscar Gonzales, an IUAW organizer, in the camp kitchen on the day before the election, constituted a violation of Labor Code Section 1154(a)(1), based on his finding that Gonzales used abusive language towards Victor Gonzalez, a UFW organizer, and challenged him to a fight, all in the presence of several SLFC employees.

Our review of this case included consideration of both ALRB and NLRB decisions involving threats and violence by union organizers. Those cases indicate that an unfair labor practice is established where there has been an actual physical attack or a threat of bodily harm or violence that reasonably tends to coerce or restrain employees in the exercise of protected rights. See, e.g., Teamsters Union Local 865, 3 ALRB No. 60 (1977); Western Conference of Teamsters, Local No. 946 (Mello-Dy Ranch), 3 ALRB No. 52 (1977); NLRB v. United Mine Workers, 429 F. 2d 141, 74 LRRM 2938 (3rd Cir. 1970); and General Truck Drivers, Chauffeurs, Warehousemen, and Helpers v. NLRB, 410 F. 2d 1344, 71 LRRM 2311 (5th Cir. 1969). Although we do not condone Gonzales' belligerent behavior, we find that it was not the kind of misconduct generally deemed sufficient to support a finding of an unfair labor practice under ALRB and NLRB precedent. Accordingly, we reverse the ALO's finding of a Section 1154(a)(1) violation on this issue, and the related allegation of the complaint is hereby dismissed.

The ALO found that Oscar Gonzales visited SLFC employee Jose Coria's home in April of 1978 for the purpose of intimidating

Coria, to discourage him from testifying at the hearing set for this matter, and concluded that such conduct constituted a violation of Section 1154(a)(1). We do not agree. Coria testified that upon the occasion in question Oscar Gonzales met him briefly in the driveway adjacent to his apartment, and merely "greeted" him. Although Coria admitted that he was afraid of the IUAW, he testified that Gonzales did not threaten him or his family at any time during the campaign. As there is insufficient evidence in the record to support a finding that Gonzales threatened, coerced or restrained Coria in any manner on that occasion, this allegation of the complaint is dismissed.

We affirm the ALO's findings and conclusions with respect to the inadequacy of the pre-election employee list provided by the Employer and we therefore adopt the ALO's recommendation to set aside the election on that basis.

ORDER

It is hereby ordered that the election in this matter be, and it hereby is, set aside, and that the complaint herein be, and it hereby is dismissed in its entirety.

Dated: March 23, 1979

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Salinas Lettuce Farmers Cooperative
(IUAW) {UFW)

Case Nos. 77-RC-10-M
77-CL-12-M
5 ALRB No. 21

ALO DECISION

With respect to the representation issues in the case, the ALO found that 81 of 236 employees on the list submitted by the Employer to both unions were unreachable -because the Employer failed to exercise due diligence in obtaining current street addresses, as required by ALRB regulations. Seventy to 80 employees did not work at all on the two days immediately preceding the election, and could only have been contacted at their homes. Given the closeness of the election results, the ALO concluded that the faulty list affected the outcome of the election. Having found that the defects in the list constituted sufficient grounds for setting aside the election, the ALO concluded it was not necessary to reach the question of whether the Acting Regional Director abused her discretion in scheduling the election on the sixth day following the filing of the petition for certification, rather than the seventh day.

As to the unfair labor practice complaint, the ALO found that Oscar Gonzales, an IUAW organizer, used abusive language towards a UFW organizer in the presence of employees and challenged him to fight. He also found that Gonzales had visited the home of a SLFC employee for the purpose of restraining him from testifying at the hearing in this matter. The ALO concluded that each of these incidents constituted a violation of Labor Code Section 1154(a)(1). He concluded that Gonzales' use of abusive language to another UFW organizer was not a violation of the Act, as there was no competent evidence to support a finding that employees heard the comments.

BOARD DECISION

The Board affirmed the rulings, findings, and conclusions of the ALO with the exception of the following:

The Board reversed the ALO's conclusion that Gonzales' conduct in the camp kitchen on the day prior to the election, i.e., using abusive language and challenging a UFW organizer to fight, was an unfair labor practice, as it was not the kind of conduct generally deemed sufficient to support a finding of restraint or coercion under applicable ALRB and NLRB precedent.

The Board also reversed the ALO's conclusion that Gonzales' presence at Jose Coria's apartment house in April of 1978 constituted unlawful restraint or coercion, and held that Gonzales' conduct on that occasion was not a violation of Labor Code Section 1154(a)(1). Coria's testimony indicates that Gonzales did nothing more than greet him on the occasion in question, and that Gonzales never threatened Coria or his family.

* * *

This case 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:)
)
SALINAS LETTUCE FARMERS)
COOPERATIVE,)
)
Employer,)
)
and)
)
INDEPENDENT UNION OF)
AGRICULTURAL WORKERS,)
)
Petitioner and)
Respondent,)
)
and)
)
UNITED FARM WORKERS OF)
AMERICA, AFL-CIO,)
)
Intervenor and)
Charging Party.)
)

Case Nos. 77-RC-10-H
77-CL-12-M

DECISION OF ADMINISTRATIVE
LAW OFFICER

Jim Gonzalez of Salinas, California,
for the General Counsel

Paul D. Gullion, Abrarason, Church,
and Stave of Salinas, California,
for the Employer

Martha Cano of Salinas, California,
for the Petitioner and Respondent

Kirsten Zerger of Salinas, California,
for the Intervenor and Charging Party

STATEMENT OF THE CASE

JOEL GOMBERG, Administrative Law Officer: These cases,
consolidated pursuant to an order of the Executive Secretary

dated April 10, 1978 (Bd. Ex. 1-K), were heard by me on May 1, 2, and 31, and June 1, 1978, in Salinas, California.

In the representation case, a petition for certification (Bd. Ex. 1-A) was filed on September 2, 1977, by the Independent Union of Agricultural Workers (hereafter IUAW). The United Farm, Workers of America, AFL-CIO (hereafter UFW) filed a timely petition for intervention (Bd. Ex. 1-B) and an election was held on September 8, 1977, among all the agricultural employees of the employer. At the election, no choice received a majority of the votes. The Tally of Ballots (Bd. Ex. 1-D) discloses that 214 of approximately 243 eligible voters cast ballots. There were 79 votes for the IUAM, 57 for the UFW, 69 for no union, six unresolved challenged ballots, and three void ballots.

Thereafter the UFW filed a timely petition pursuant to Section 1156.3(c) of the Agricultural Labor Relations Act¹(hereafter the Act) objecting to the certification of the election on six separate grounds. (Bd. Ex. 1-E.) Three of the objections, and a portion of a fourth, were dismissed by the Executive Secretary on January 11, 1978, pursuant to Section 20365 of the Board's regulations.² (Bd. Ex. 1-F.)

Evidence taken at the hearing was limited to the three issues which were not dismissed:

1. All statutory references herein are to the California Labor Code, unless otherwise indicated.

2. All references to the Board's Regulations are to 8 Cal. Admin. Code.

1. Whether Oscar Gonzales, organizer of the IUAW, threatened physical violence against two UFW organizers in front of the workers, thereby affecting the outcome of the election;
2. Whether the employer turned over an employee list to the Board that was inaccurate and contained substantial numbers of post office boxes for addresses and addresses outside the area, preventing UFW organizers from reaching many of the employees, who were thereby prevented from exercising their organizational rights; and
3. Whether, in light of the alleged inadequacies of the list provided by the employer, it was an abuse of discretion for the acting regional director to deny the UFW's request that the election be held on Friday, September 9, 1977.

The Complaint in the unfair labor practice case (GC Ex. 1-B) issued on April 10, 1978. The Complaint was amended once during the hearing (GC Ex. 1-D). The Complaint is based upon a charge filed by the UFW on September 22, 1977, and duly served upon the Respondent (GC Ex. 1-A).

All parties were represented at the hearing and were given full opportunity to participate in the proceedings. The UFW intervened in the unfair labor practice case as a matter of right, pursuant to Section 20266 of the Board's regulations. The employer did not intervene in the unfair labor practice matter. The General Counsel, UFW, and IUAW filed post-hearing briefs on the issues presented in the unfair labor practice case, pursuant to Section 20278 of the Regulations.³

3. Despite my repeated statements to the parties, both on and off the record, that I would not permit the filing of briefs on the issues raised only in the representation case, pursuant to Section 20370 (e) of the Regulations, the UFW filed such a brief. After determining the brief's subject matter, I stopped reading it. I have not considered this brief in making my decision.

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

FINDINGS OF FACT

I. Jurisdiction.

Respondent, which has never before been a party at a Board hearing and which is not represented by an attorney, did not file an answer to the Complaint. Because of these unusual circumstances, I permitted the Respondent to make an oral answer on the record. Respondent admits that both the IUAW and the UFW are labor organizations within, the meaning of Section 1140.4 (f) of the Act, and I so find. Respondent also admits, and the employer's attorney confirmed, that the employer is an employer within the meaning of Section 1140.4 (c) of the Act and I so find.

II. The Employee List Objections.

The IUAW filed a petition for certification on August 30, 1977. This petition was withdrawn on September 2, apparently to avoid having the representation election on Tuesday, September 6, the first working day after the Labor Day week-end. The instant petition was filed on September 2. On September 2, the UFW filed a Notice of Intent to take access and an informal notice of intention to intervene. The UFW's formal petition for intervention was filed on Tuesday, September 6.

The employer had filed an employee list with the Board after the initial petition for certification, on Thursday, September 1 (Employer Ex. 1). This list was given to the UFW on September 2, even though the UFW had not yet formally intervened. A second employee list was submitted to the Board on September 6 (UFW Ex. 1).

The second employee list contains the names of 236 employees. The addresses listed for 47 of these employees are clearly far beyond commuting distance to the employer's fields. The bulk of these addresses is from Mexico and the Imperial Valley. Another 33 of the addresses within or near the Salinas Valley consist of post office boxes alone. One employee has no address listed adjacent to his name. There is, then, a total of 81 employees for whom no current street address appears on the employee list.

Leland F. Rianda, the employer's general manager, testified that the two employee lists in evidence were compiled from information provided by employees on two forms (Employer Ex. 2 and 3) and subsequently transferred to the employee's earning record (Employer Ex. 4). Both forms have been in use by the employer since well before the effective date of the ALRA. Both forms call for the employee's address; neither specifically asks for a street address. Mr. Rianda testified that he was unaware at the time the lists were submitted that Board Regulations required that employee lists contain current street addresses. He became aware of this fact at the pre-election conference, but at the time of the hearing no change

had been made in the employer's procedures. The employer made no effort to obtain current street addresses if an employee gave a post office box or a distant location as his address. Nor were addresses updated during the season. The employer simply accepted whatever address was given

Marshall Ganz, a UFW official in charge of the union's organizing effort for this election, testified that home visits were especially crucial in this case because of the long holiday weekend. There were only two days, September 6 and 7, to campaign in the fields. The parties stipulated that 70 to 80 employees did not work on either of these two days. Because the UFW received the first list on September 2, it was able to contact some employees at home over the weekend and obtain enough support to intervene on the following Tuesday.⁴

Because of the defects in the list and the limited time for campaigning, the UFW urged the Acting Regional Director of the Board's Salinas office to schedule the election for September 9, the seventh day after the filing of the petition for certification, rather than on September 8. The Acting Regional Director refused the UFW request. Although the record is bare concerning the reasoning of the Acting Regional Director, other than to indicate that an agreement to hold the election on September 8 had already been reached by the

4. Ganz also testified that he was told by organizers that 20 of the addresses were inaccurate. Because this hearsay evidence is uncorroborated, it is insufficient to sustain a finding on this allegation. Regulations Section 20370(c).

time of the pre-election conference, I note that the Executive Secretary dismissed a related UFW election concerning the scheduling of the election on the ground that the original agreement on the date of the election was entered into to allow the UFW's intervention. (Bd. Ex. 1-F.) Indeed, if the first IUAW petition for certification had not been withdrawn, there would have been even less time for the employees to be-come informed about the election issues.

III. The Alleged Unfair Labor Practices.

The Complaint, as amended, alleges that the Respondent has restrained and coerced employees in the exercise of the organizational rights guaranteed then in Section 1152 of the Act, in violation of Section 1154(a)(1) of the Act, by the conduct alleged in the first objection to certification set for hearing, by allegedly threatening Nellie Ruvalcaba, a UFW organizer, on September 8, 1977, in the presence of employees, and by sending a letter to a group of employees for the purpose of intimidating them. The Respondent generally denies that it has violated the Act in any way.

A. The Alleged Assault of September 7, 1977.

Oscar Gonzales, President of the IUAW, and Juan Cantu, an IUAW organizer, went to the employer's labor camp on Somavia Road in Salinas early in the afternoon of September 7, 1977. They went into a trailer converted for use as a kitchen and dining area where they ate with some workers and discussed the

representation election to be held the following day.

Several hours later, at about 5.30 p.m., Victor Gonzalez, a UFW organizer, drove up to the labor camp with Jose Antonio Coria, a worker in the employer's celery crew, who was to be a UFW election observer. According to Victor, upon arriving at the labor camp, he spoke to an employee, Leonardo Arimas, in English, for a few moments. Coria, who speaks no English, confirmed that Victor had spoken to a worker in English. Arimas' testified that he had been in Salinas, not at the camp, on the afternoon before the election, and that he had spoken to Victor perhaps a week before the election, not the day before. Arimas' testimony was earnest, but vague, characterized by uncertainty about dates and times. According to Victor, Oscar called to him from the door of the trailer, and invited him in to join the group. Oscar denied speaking to Victor before Victor actually entered the trailer. Arimas stated that he never saw Oscar and Victor at the same time.

Whether invited by Oscar or not, Victor and Coria entered the kitchen trailer where they found a group of about a half dozen Filipino workers, who were English-speaking, in addition to Oscar and Cantu. There was a bottle of liquor, about 3/4 empty, on a long table in the trailer. Coria testified that some workers, but not Oscar, drank liquor from the bottle. Oscar, after initially being unsure whether there was a bottle in the trailer, agreed that some of the workers had probably been drinking, but that he had refused an offer from the workers to join them.

Victor testified that, almost immediately after entering the trailer, Oscar unleashed a steady stream of invective at him in English. According to Victor, Oscar said that the UFW was controlled by a bunch of motherfucking whites, that he hated all whites, especially that Jew, Marshall Ganz, and that Roberto Garcia, the director of the UFW Salinas office, sold dispatches. Oscar then called Victor a Judas. Victor testified that he replied, in Spanish, that he and Oscar had the same last name, and denied Oscar's charges.

Oscar then picked up a leaflet from the table and said that the ALRB was in bed with the UFW. Oscar paced up and down as he read from the leaflet in English. As he read in a loud, shouting voice, Oscar gestured violently. When he finished reading the leaflet, Oscar crumpled it into a ball and threw it at Victor, from a distance of less than a foot. Oscar threw the leaflet with a full swing. Victor testified that he could smell alcohol on Oscar's breath. According to Victor, Oscar assumed a fighting stance, with fists clenched, and said: "Come on, motherfucker. Let's get it on right now." Victor said that he was sure that Oscar was going to hit or kick him. He could see the workers move away from the two of them. He also saw Coria, who looked frightened, edge away. After a few seconds, Victor said that he didn't want to fight and would not fight. Just at this moment, one of the workers said that a car was coming. Three ALRB agents knocked on the door and entered to distribute election notices.

Jose Coria corroborated Victor's testimony in large part.

Upon entering the trailer, Oscar began to speak in English. He first spoke in a normal tone, but soon began to yell. The only thing that Oscar said in Spanish to Victor was: "You're not a Mexican. You're a Jew." Victor replied: "We have the same last name." Coria heard Oscar say the names of Marshall Ganz and Roberto Garcia, as well as the phrases "motherfucker," "son of a bitch," and "goddammit." Coria described Oscar crumpling the leaflet and throwing it at Victor, but remembered the distance between the two men as being about five feet. Coria said that after throwing the leaflet, Oscar stood with his hands at his sides. He testified that the workers were talking and laughing during the time he was in the trailer.

None of the witnesses to the incident mentioned it to the ALRB agents who departed after a few minutes. Victor and Coria left several minutes later. Oscar had begun to swear at Victor again. Victor said that since he could not speak to the workers he would leave. After stopping at another trailer at the camp for a few minutes, Victor and Coria drove away. They noticed Oscar following them in his car for a short distance.

Oscar's version of the events of September 7 is in almost total conflict with the testimony of Victor and Coria. Oscar testified that he first saw Victor and Coria when they entered the kitchen trailer. Victor, speaking in Spanish, immediately accused Oscar of being paid by the employer. Oscar calmly replied that this was not true and that if Victor had proof of such pay-offs he should come forward with the evidence. Oscar

accused the UFW of being in bed with the ALRB and gave him a leaflet to read. This discussion took several minutes. Afterwards/ Victor began talking to some workers, at the table. Victor and Coria left after the ALRB agents had come and gone. Oscar denied throwing the leaflet at Victor and denied following Victor and Coria in his car. According to Oscar, he and Victor spoke only in Spanish.

Jose Coria was subpoenaed by the General Counsel. He did not come to the hearing on May 1 in compliance with the subpoena. (GC Ex. 4.) Only after he was served with a court order requiring him to testify did Coria appear. (GC Ex. 9.) Coria testified that he was afraid to testify because he believed that the IUAW might have a grievance against him and harm him or his family. He said that Oscar Gonzales had been parked in the driveway at Coria's apartment building on Church Street, in Salinas one day in April, 1978. Oscar greeted him and said that he lived in an apartment in the front of the building. Coria said that he had seen Oscar near his home only on this one occasion. Oscar testified that he had lived on Church Street several years ago, but now lived in his office. He denied that the alleged incident occurred.

During his examination by the General Counsel, Oscar denied that he had told Luis Viniegra, a Board agent assigned to investigate the UFW charge in this case, that Victor was a perfect fighting match for Oscar. Viniegra subsequently testified that Oscar had made the statement during an interview at the IUAW office on March 27, 1978. On cross-examination,

Viniegra conceded that he had told Oscar that he looked like a wrestler. Later, during the IUAW's case-in-chief, Oscar testified that it was Viniegra who said that he and Victor were a perfect fighting match. Oscar's testimony was corroborated by several IUAW members who were in the IUAW office during Viniegra's interview of Oscar.

Based largely on my observation of the demeanor of Oscar and Coria, I find the General Counsel's witnesses on this issue to be credible and the IUAW's witnesses not credible. When called as an adverse witness by the General Counsel on the first day of the hearing, Oscar showed himself to be an extremely hostile person, reluctant to answer questions, often evasive and vague, and, most strikingly, quick to anger. For example, Oscar testified that on the morning of the election he told a UFW organizer, Nellie Ruvalcaba, to leave the fields because she had no right to be there. The following exchange occurred:

Q. (By the General Counsel) Did anybody from the company ask you to tell her that?

A. What do you mean by that?

Q. I'm asking you a question.

A. No, sir.

Q. Did anybody from the company ask you to tell her that?

A. No, sir. You talk real sweet. No, sir.

The bare words of the transcript, of course, do not convey the hostility and anger in Oscar's voice. He barely restrained himself from rising out of his seat in a situation where he

obviously was intent on making an impression as a calm, even-tempered man, not given to sudden bursts of anger. Yet, Oscar testified that when Victor allegedly accused him of being paid by the company, a charge such more serious than anything which might be implied in the General Counsel's question, he remained calm and was not disturbed.

Jose Coria appeared to be a truthful but reluctant witness who was dearly afraid of Oscar. While he did not testify that Oscar assumed a fighting stance, and indicated that Oscar was further from Victor than Victor testified, he corroborated Victor's testimony regarding the throwing of the leaflet, and Oscar's swearing and yelling. I also credit his testimony concerning Oscar's appearance by Coria's house in April.

Oscar's charge of bias against Luis Viniegra is a serious one. The context in which Viniegra remarked that Oscar looks like a wrestler is not clear. However, it seems virtually certain to me that had Viniegra told Oscar that he and Victor were a perfect fighting match, rather than the other way around, that Oscar would have made his countercharge as soon as the issue was raised by the General Counsel. Yet, during his testimony on the first day of the hearing, despite repeated questioning on this point, Oscar merely denied making the statement. It was not until he was called as a witness by the IUAW that he charged Viniegra with making the statement. I find that Viniegra testified truthfully.

B. The Incident of September 8, 1977.

On the morning of the election, September 8, workers in one of the employer's celery crews were transferred by bus from one field to another. Nellie Ruvalcaba, a UFW organizer, followed the bus in her car. Upon arriving at the second field, the crew began working/ but took a break after a short time. Oscar Gonzales, Martha Cano, the IUAW vice-president, and Ruvalcaba began talking to the workers. Lourdes Vasquez, one of the workers, and Ruvalcaba questioned Oscar about the IUAW medical plan. Ruben Acevedo, another worker, told Oscar that Nellie had been harassing him and that she was a UFW organizer. Sons words were exchanged and then the crew returned to the fields.

Oscar and Martha Cano left the area, but Ruvalcaba stayed in her car waiting for the arrival of the voting booths. Several minutes later, according to Ruvalcaba, Oscar returned with a megaphone to speak to the crew, which was at least 50 feet away. Oscar walked over to Ruvalcaba's car and began screaming at her, saying, among other things, that she was big and fat and nothing but a motherfucking dog after the bus. Ruvalcaba rolled up her car window and told Oscar to be quiet. Oscar replied: "I'll stick them (my balls) up you along with ray prick." Frightened, Ruvalcaba locked her car door.

The General Counsel produced no evidence to show that any workers heard Oscar's statements. The only evidence that any workers heard about the incident was hearsay. Ruvalcaba tes-

tified that Lourdes Vasquez told her that she had been told that Oscar had been yelling at Ruvalcaba. Lourdes Vasquez also told Ruvalcaba that she was afraid of Oscar.

Oscar admitted telling Ruvalcaba to leave the field, but denied that he swore at her or threatened her. As in the case of Luis Viniegra, Oscar turned the accusation around and claimed that it was actually Ruvalcaba who had been swearing at him. Oscar testified that when Ruvalcaba started swearing he walked away without replying.

I credit the testimony of Ruvalcaba and discredit that of Oscar. Nellie Ruvalcaba was a quiet, firm witness whose testimony was consistent and convincing. I have previously discussed the reasons for giving Oscar's testimony little weight. In addition, when asked if he knew Ruvalcaba, Oscar testified: "More or less. She's ugly and fat," corroborating Ruvalcaba's testimony about Oscar's insulting remarks.

C. The IUAW Letter to Members of the Celery Crew.

When Luis Viniegra interviewed Oscar Gonzales on March 27, he told Oscar that the IUAW would have to present its evidence in opposition to the UFW charge by 6 p.m. the following day. The IUAW was angry about having to comply with such a short deadline and sent a number of telegrams and letters to ALRB and legislative officials complaining about what it perceived as bias toward the UFW by the Board. (IUAW Ex. 1, 2, and 3.) The IUAW also sent a letter to all the members of the celery thinning crew near which Oscar and Nellie

Ruvalcaba had their argument on the day of the election.

The letters, translated from Spanish into English, read as follows:

We want to know if you would do us the favor of coming to our office as soon as the opportunity presents itself. It is very urgent to be able to talk to you.

Our office is located at 903 E. Alisal, Salinas, we give you thanks for your attention to this matter and your time.

One of those to whom the letter was sent was Lourdes Vasquez. Mrs. Vasquez was subpoenaed by the General Counsel (GC Ex. 5), but did not come to the hearing on May 1. Nor did she respond to the court order requiring her to testify on May 31. (GC Ex. 6.) The General Counsel declined to petition the Monterey County Superior Court to have Mrs. Vasquez held in contempt for her failure to comply with its order. According to Maurilio Urias, an organizer for the UFW, Mrs. Vasquez was afraid of Oscar and perceived the letter as a threat to her and a warning not to testify.

Oscar Gonzales testified that the letter was sent to all members of the thinning crew. Its purpose was to alert the crew members that there was to be a hearing in this matter and to tell the members of the crew to tell the truth if called to testify. Oscar stated that he did not know Lourdes Vasquez. Urias and Lorenzo Vasquez, Lourdes' husband, went to the IUAW office on April 1, 1978, to complain to Oscar about the letter. Oscar explained the purpose of the letter and said that it was not intended to be threatening. Oscar testified that he wanted

to get to the potential witnesses before the Board did, because 99% of the Board agents were prejudiced in favor of the UFW.

DISCUSSION, ANALYSIS, AND CONCLUSIONS

I. The Employee List Objections.

Section 20310 (a) (2) of the Board's regulations requires an employer upon whom a petition for certification has been served to provide the Board with "a complete and accurate list of the complete and full names, current street addresses, and job classifications of all agricultural employees ... in the payroll period immediately preceding the filing of the petition." (Emphasis supplied.) Section 20313 directs the Regional Director to make a copy of the list available to the petitioner and intervenor (if any) once a showing of interest has been determined.

The Board has consistently declared that one of the primary purposes of the employee list is to give unions the opportunity to contact workers at their homes in the course of an election campaign. In Yoder Brothers, Inc., 2 ALRB No. 4 (1976), the Board found the NLRB's Excelsior Rule to be applicable in the agricultural context. The Board held in Yoder that :

We reaffirm that it is the employer's obligation to supply an accurate, up-dated list of names and addresses of workers in accordance with the applicable statutory provisions and regulations. The burden of explaining defects or discrepancies in the list is consequently

upon the employer. Where it appears that the employer has failed to exercise due diligence in obtaining and supplying the necessary information, and the defects or discrepancies are such as to substantially impair the utility of the list in its informational function, the employer's conduct will be considered as grounds for setting the election aside. ... 2 ALRB No. 4 at 15-16.

In Mapes Produce Co., 2 ALRB No. 54 (1976), the Board set aside a representation election where the employee list supplied by the employer contained a large number of addresses consisting of post office boxes and addresses from outside the area where the employees were working. In Mapes, as in the present case, the employer made no effort to update its employee lists or to change its practices in order to obtain street addresses instead of post office boxes. In setting aside the election, the Board relied explicitly on the Excelsior rule and underscored the importance to the employees of having the opportunity of hearing the election arguments of all the parties.

Recently, in interpreting the meaning of the phrase "current street addresses" in its pre-petition list regulation (Section 20910 (a) (2)), the Board rejected the argument that the phrase is ambiguous. Rather, the regulation means exactly what it says: "The phrase obviously refers to the place where the employee resides while working for the employer." Laflin & Laflin, 4 ALRB No. 28 (1978), at p. 5.

In this case, 81 of 236 employees on the list submitted to the UFW were unreachable because the employer failed to exercise due diligence in obtaining current street addresses. Seventy to eighty employees did not work at all on the two days

immediately preceding the election, and could only have been contacted at their homes. In an election as close as this one, where a shift of only seven votes from "no union" to the UFW, out of 211 votes cast, would have placed the UFW in a run-off election with the IUAW, or where a shift of 12 votes from the IUAW to the UFW would have eliminated the IUAW from the run-off, it is clear that the employer's failure to exercise due diligence affected the outcome of the election. Because the election must be set aside on this ground alone, I find that it is unnecessary to determine whether the Acting Regional Director abused her discretion in scheduling the election on September 8 rather than September 9. What effect another day of campaigning would have had on the election results is impossible to determine, but an extra day would not have corrected the employee list's deficiencies. It still would have been open to either union failing to reach a run-off election to object to certification because of the employer's misconduct.

B. The Alleged Violations of Labor Code Section 1154(a)-(1).

Section 1154 (a) (1) of the Act makes it an unfair labor practice for a labor organization to restrain or coerce agricultural employees in the exercise of the organizational rights guaranteed them in Section 1152 of the Act. The NLRB and the courts, in construing Section 8(b)(1)(a) of the NLRA, which is virtually identical to Section 1154 (a) (1), have held that "(a) union can be guilty of a violation ... on the basis of threats alone, without actual violence or destruction of property."

NLRB v. Georgetown Dress Corp., 537 F.2d 1239, 1242 (4 Cir., 1976).

Further, "threats directed against a non-employee can constitute a . . . violation if they occur in contexts in which employees are likely to learn of them. . ." NLRB v. Union Nacional de Trabajadores, 540 F.2d 1, 6 (1 Cir., 1976). Nor is it necessary for the threats to have actually coerced employees to establish a violation: "A violation is established if the natural tendency of the coercive misconduct is to deter the exercise of (Section 1152) rights by the employees who either witness it or learn of it. . ." NLRB v. Union Nacional, supra, 540 F.2d at p. 7.

These NLRA precedents have been applied by the Board in one previous case involving a physical attack by agents of one union on organizers of a second union in the context of a representation election. In Phelan and Taylor Produce, 2 ALRB No. 22 (1976), the Board set aside an election based upon the physical attack. The same conduct was held to constitute a violation of Section 1154(a)(1) in Teamsters Union Local 865, 3 ALRB No. 60 (1977).

Here, the evidence establishes that Oscar Gonsales, in the context of a barrage of obscenities and insults against Victor Gonzalez, a UFW organizer, threw a leaflet at Victor and with words and threatening gestures tried to provoke Victor into a fight. I conclude that Oscar's conduct constitutes a violation of Section 1154(a)(1). In coming to this determination, I have carefully considered the context of Oscar's behavior and his demeanor at the hearing. Were Oscar's threats not so clearly

unprovoked by Victor, and were Oscar not so obviously capable of intimidation, it might be possible to interpret this incident as falling below the level of misconduct necessary to establish an unfair labor practice. But, it is obvious that words and gestures coming from an angry/ muscular man can be intimidating, while the same behavior on the part of a calm man of ordinary build might seem more innocuous. My personal observation of Oscar at the hearing established that he looks very powerful and has a quick, violent temper. There is no doubt whatever that Jose Coria was in fact very frightened by Oscar's words and conduct on September 7.

In Phelan and Taylor, supra, the Board held that it would set aside an election where violence or threats of violence created an atmosphere of fear among the workers. Because this incident occurred shortly before the election and was witnessed by a very small proportion of the eligible voters, I do not find that the election was conducted in an atmosphere of fear. However, because the election was such a close one, Oscar's threat is a factor to be considered, along with the far more serious defects in the employee list, in deciding that this election must be set aside.

I also conclude that Oscar's visit to Jose Coria's home in April, 1978, was made for the purpose of intimidating Coria into not testifying at the hearing, in violation of Section 115-4 (a) (1). Oscar's testimony that this incident never occurred was unconvincing.

Although Oscar's threats against Nellie Ruvalcaba were,

by their nature, even more intimidating than those made against Victor, I conclude that the General Counsel has failed to establish a violation of the Act. At the time the threats were made, the workers were at least 50 feet away from Oscar. According to Ruvalcaba, Oscar was using a megaphone to be heard by the workers. The only evidence about whether employees heard the threats or heard about them was a hearsay statement attributed to Lourdes Vasquez. Even were this evidence admissible to establish Vasquez state of mind, her statement indicates that she did not hear the threats. At most, she heard that Oscar had been yelling at Ruvalcaba. Yelling, by itself, cannot constitute an unfair labor practice. Labor Code Section 1155. See Bud Antle, Inc., 3 ALRB Ho. 7 (1977). Accordingly, I will recommend that Section 6(b) of the Complaint be dismissed.

I conclude that the Respondent did not violate the Act by sending a letter to the members of the crew working near the incident involving Ruvalcaba and Oscar. There is nothing in the letter which could reasonably be expected to intimidate anyone. Nor is there any evidence that any recipient of the letter who contacted the IUAW was coerced or intimidated. Although admissible hearsay evidence establishes that Lourdes Vasquez was afraid of Oscar, I can find no causal relationship between the fear and the letter. Many, if not most, people are uneasy about testifying absent any intimidation. I will recommend that Section 6(c) of the Complaint be dismissed.

RECOMMENDATION IN THE REPRESENTATION CASE

Because more than one-third of the names on the employee list provided by the employer lacked current street addresses, substantially impairing the utility of the list to the UFW, because 70 to 80 employees were not working for two days before the election, making an accurate employee list even more essential, and because Oscar Gonzales, President of the IUAW, threatened physical violence against a UPW organizer in the presence of agricultural employees, I find that misconduct occurred which affected the outcome of the election, and I recommend that the election be set aside.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 1154 (a) (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I shall further recommend that the Respondent be required to post and mail the attached notice to employees of the employer, in the manner adopted by the Board in Western Conference of Teamsters, 3 ALRB No. 57 (1977), and Teamsters Local 865, supra.

ORDER

Respondent Independent Union of Agricultural Workers, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner restraining or coercing employees of Salinas Lettuce Farmers Cooperative (hereafter SLFC) in their exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement of the type authorized by Section 1153 (c) of the Act.

(b) Engaging in conduct in regard to SLFC employees of the following type: Threatening violence or committing such violence, threatening persons who are potential witnesses at hearings conducted by the Board, or committing any of the foregoing acts in regard to other persons either in the presence of SLFC employees or where it is reasonably certain that such employees will learn of such conduct.

2. Take the following affirmative action:

(a) Post the attached Notice to Workers on bulletin boards in its Salinas office where other notices and information are available for its members. Such posting shall continue for a period of six consecutive months during the twelve-month period following the issuance of this decision or its enforcement, if necessary. The Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(b) "Mail the attached Notice to Workers, translated into Spanish and appropriate Phillipine languages, to be determined by the Regional Director, to all employees of SLFC employed during the payroll periods ending August 24 and 31, 1977. The notices shall be nailed to the last known addresses of the employees, such addresses to be determined by the Regional Director with the cooperation of SLFC.

(c) Provide sufficient copies of the attached Notice to Workers, in appropriate languages, to SLFC so that, if it consents, a copy may be distributed to its employees hired during the next peak season.

(d) Designate a representative or representatives to read, or be present while a Board agent reads, the attached Notice to Workers in appropriate languages to the assembled employees of SLFC, during the next peak season, provided the employer consents to such a reading on its property. The Respondent shall compensate SLFC for any labor costs incurred by it as a result of the provision of such an opportunity to address its employees.

(e) Preserve and make available to the Board or its agent, upon request, for examination and copying, all membership records or other records necessary to determine whether the Respondent has complied with this Decision and Order to the fullest extent possible.

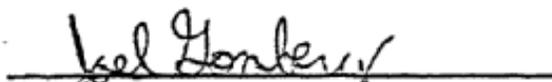
(f) Notify the Regional Director of the Salinas Regional Office within 20 days from receipt of a copy of this Decision and Order of steps the Respondent has taken to comply therewith, and to continue reporting periodically thereafter until full compliance is achieved.

IT IS FURTHER ORDERED that allegations contained in the Complaint, as amended, not specifically found herein as violations of the Act shall be, and hereby are, dismissed.

DATED: July 14, 1978.

AGRICULTURAL LABOR RELATIONS BOARD

By:

A handwritten signature in cursive script, appearing to read "Joel Gomberg", is written over a solid horizontal line.

JOEL GOMBERG

Administrative Law Officer

NOTICE TO WORKERS OF SALINAS LETTUCE

FARMERS COOPERATIVE

After a hearing where each party had a chance to present evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act by threatening an organizer for the United Farm Workers with physical violence in the presence of workers and by intimidating an employee who was going to testify at the hearing. 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 threaten or commit any acts of violence, nor will we interfere with potential witnesses at Board hearings.

We will not restrain or coerce you in any way in the exercise of your rights under the law, including your right to form, join, or assist any labor organization.

INDEPENDENT UNION OF AGRICULTURAL
WORKERS

By: _____
(Representative) (Title)

APPENDIX

The following exhibits ARE in evidence:

1. Board Exhibits 1-A through 1-H, inclusive.
2. General Counsel Exhibits 1-A through 1-D, inclusive,
2, 3(E) and 3(S), 4, 5, 8, and 9.
3. Employer Exhibits 1 through 4, inclusive.
4. IUAW Exhibits 1 through 3, inclusive.
5. UFW Exhibit A.

The following exhibits ARE NOT in evidence:

1. General Counsel Exhibits 6(S) and 7(S).