Arvin, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

RANCH NO. 1, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 77-CE-110-D 5 ALRB No. 3

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 November 3, 1977, Administrative Law Officer (ALO) Sanford Jay Rosen issued the attached Decision in this proceeding. He found that Respondent had engaged in an unfair labor practice within the meaning of Labor Code Section 1153(a) by its failure and refusal to submit the required pre-petition list of its employees' names, addresses and job classifications within five days following the filing of a notice of intention to organize by the United Farm Workers of America, AFL-CIO (UFW). 8 Cal. Admin. Code 20910(c), 20310(a)(2)(1976). Thereafter, Respondent timely filed exceptions and a supporting brief.[1] Neither the General

[1] General Counsel has moved the Board to strike Respondent's exceptions for failure to serve copies on all parties to this proceeding in conformity with applicable regulations. Respondent served a copy of its exceptions and supporting brief on the

[fn. 1 cont. on p. 2]

Counsel nor the Charging Party filed exceptions.

The Board has considered the attached Decision in light of Respondent's exceptions and brief[2] and has decided to affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order as modified herein.

Consistent with our order in Henry Moreno, supra, to remedy that employer's failure to comply with Section 20910, the ALO herein recommended that Respondent be ordered to permit UFW

[fn.1 cont.]

Charging Party but omitted to serve the General Counsel. The motion is hereby denied. General Counsel would be prejudiced only to the extent that he was precluded from submitting an answer to Respondent's exceptions within the required 10-day period following the filing of exceptions; he has not alleged that he was harmed thereby nor has he moved the Board for an extension of time in which to file an answer.

[2] In furtherance of its constitutional challenge to Section 20910, Respondent questioned whether pre-petition lists are necessary in order for unions to conduct organizational activity and "whether the experience to date ... justifies the invasion to the privacy of employees resulting from a union's obtaining the employees' names and home addresses". Accordingly, Respondent sought and was granted a subpoena duces tecum calling for the Board's Executive Secretary to bring to the hearing data as to the number of cases in which employers failed to comply with the pre-petition list requirement, and the number of cases in which elections had been held despite the unavailability of pre-petition lists. The ALO granted the Executive Secretary's motion to revoke the subpoena duces tecum on the grounds that service was improper and that he lacked power to entertain the constitutional question in view of the Board's Decision in Henry Moreno, 3 ALRB No. 40 (1977). Respondent excepted to the ruling.

We affirm the ALO's ruling on the motion to revoke the subpoena, but on a different basis than that relied upon by the ALO. Section 20250(d) of our regulations provides that a subpoena for the production of Board records shall be revoked if the evidence required to be produced does not relate to any matter at issue in the proceeding. As the matter at issue herein relates solely to the particular conduct of Respondent and not to that of any other employer, whether or not similarly situated, the requested data are clearly irrelevant to the issues.

organizers to meet with its employees during working hours and to permit an unlimited number of organizers on its premises during normal access periods.

Respondent concedes that this remedy may have been appropriate in Moreno, where the union was unable to qualify for an election following the employer's refusal to submit the pre-petition list. But it would distinguish Moreno from situations in which, as here, the union succeeded in winning an election notwithstanding the withholding of the employee list by the employer. The UFW filed a petition for certification on August 8, 1977, received a majority of the votes cast in an election held on August 13, 1977, and was certified on January 3, 1979. Ranch No. 1, Inc., 5 ALRB No. 1 (1979). Under these circumstances, we find it unnecessary to order the expanded-access remedies recommended by the ALO. Laflin & Laflin, AKA Laflin Date Gardens, et al., 4 ALRB No. 28 (1978).

As we affirm the ALO's conclusion that Respondent's failure and refusal to submit the pre-petition list constituted unlawful interference with employees' Section 1152 rights, we shall order Respondent to cease and desist from failing or refusing to provide such a list as required by 8 Cal. Admin. Code 20910(c) (1976), or in any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Act.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent,

Ranch No. 1, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Failing or refusing to provide the ALRB with a pre-petition employee list as required by 8 Cal. Admin. Code 20910(c)(1976).

b. In any other manner interfering with, restraining, or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Agricultural Labor Relations Act.

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

a. Sign the Notice to Employees attached hereto. After its translation by a Board Agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth hereinafter.

b. Post copies of the attached Notice for a period of 90 consecutive days, at times and places to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

c. Mail a copy of the Notice in all appropriate languages, to each of the employees in the bargaining unit, at his or her last known address, not later than 31 days after the Notice is required to be posted on Respondent's premises.

d. Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and

places as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly-wage employees to compensate them for time lost at this reading and the question-and-answer period.

e. Notify the Regional Director in writing, within 31 days from the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: January 22, 1978

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCarthy, Member

NOTICE TO EMPLOYEES

After a hearing 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 to represent them. 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 fail or refuse to provide the Agricultural Labor Relations Board with a current list of our employees' names, addresses and job classifications, within five days after the UFW or any other union has filed a notice of intention to organize our agricultural employees.

Dated:

RANCH NO. 1, 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.

CASE SUMMARY

Ranch No. 1, Inc. (UFW) Case No. 77-CE-110-D
5 ALRB No. 3

BACKGROUND

On July 28, 1977, the UFW filed with the Board and served on Respondent a notice of intention to organize Respondent's employees. Respondent failed and refused to provide the Board's Regional Office with the required list of its employees' names, addresses and job classifications, on the grounds that the pre-petition list requirement was an invalid exercise of the Board's statutory authority. The UFW nevertheless succeeded in petitioning for and winning an election which was held on August 13, 1977. The Board denied Respondent's petition to set aside the election and certified the UFW on January 3, 1979. See, Ranch No. 1, Inc., 5 ALRB No. 1 (1979). Prior to the election, the UFW had filed an unfair labor practice charge based on Respondent's refusal to submit the pre-petition list required by Section 20910 (c) of the Board's regulations.

ALO DECISION

The ALO found that Respondent, by its failure to submit the required pre-petition list, interfered with employees' Section 1152 rights and thereby engaged in an unfair labor practice within the meaning of Section 1153(a) of the Act. His recommended remedial order included provisions that Respondent permit UFW organizers to meet with its employees during working hours and that an unlimited number of UFW organizers be allowed on its premises during normal access periods.

BOARD DECISION

Rejecting Respondent's contention that the Board lacks jurisdiction over an agricultural employer prior to the time a labor organization has filed a valid petition for certification, the Board affirmed the ALO's finding of an unfair labor practice, but modified his proposed remedial order by deleting the expanded-access provisions described above, noting that the question concerning representation had been resolved and that the UFW had been certified prior to the issuance of the Board's Decision in this proceeding. 5 ALRB No. 1 (1979).

REMEDIES

Respondent was ordered to cease and desist from failing or refusing to submit pre-petition lists to the Board's Regional Office as required by Section 20910(c), or in any other manner interfering with, restraining, or coercing any agricultural employee in the exercise of rights guaranteed by Section 1152 of the Act.

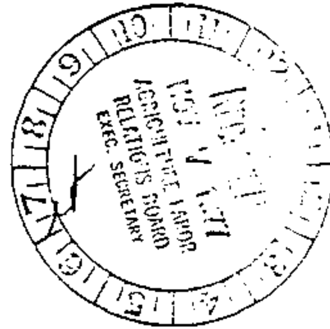
* * *

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

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	
RANCH 1, INC., Respondent,	Case No. 77-CE-110-D
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	



Deborah Davis, Esq.,
of Fresno, California,
for the General Counsel

Dressier, Stoll & Jacobs,
by Peter M. Jacob's, Esq.,
of Bakersfield,California,
for Respondent.

Coet Bonthius
of Lamont, California,
for the Charging Party.

DECISION

Statement of the Case

SANFORD JAY ROSEN, Administrative Law Officer: This case was heard before me in Bakersfield, California, on September 6, 1977. The Notice of Hearing and Complaint issued on August 9, 1977. (GC Ex. IB.) The complaint alleges a violation of Sections 1153(a) and 1140.4 of the Agricultural Labor Relations Act (hereinafter the "Act"), by Ranch 1, Inc. (hereinafter "Respondent"). The complaint is based upon a charge filed on August 6, 1977 (GC Ex. 1A; ¶ 8 of Stipulation of Parties) by the United Farm

Workers of America, AFL-CIO (hereinafter "UFW"). A copy of the charge was duly served upon Respondent on August 5, 1977.

All parties were given full opportunity to participate in the hearing, and, after the close thereof, the General Counsel and Respondent each filed a brief, additional exhibits and signed stipulations.

At the hearing the parties orally entered into stipulations of fact. Thereafter, these stipulations were reduced to writing, signed by representatives of each party and submitted to the Administrative Law Officer. No evidence was taken in addition to the stipulations and the various exhibits.

On August 31, 1977, the attorney for the Respondent executed a subpoena duces tecum addressed to the Executive Secretary of the Board, and directing that he bring to the hearing:

> "any and all records, documents or other memoranda which reflect the total number of Notices of Intent to Organize filed by labor unions, the number of such cases in which the employer failed to comply with 8 CAC 20910(c) by submitting to the ALRB an employee list meeting the requirements of that section, the number of cases in which the employer failed to comply where the union filed a Petition for Certification, the number of cases in which the employer failed to comply where the union did not file a Petition for Certification, the number of cases in which the employer did comply where the union filed a Petition for Certification, and the number of cases in which the employer did comply in which the union did not file a Petition for Certification; the number of cases in which a Petition for Certification was filed but no Notice of Intention to Organize was filed; all such documents shall reflect information from the period November 1, 1976 to the present."

This subpoena, which had been signed in blank by the ALRB's chairperson, was supported by a declaration of Respondent's attorney which asserted that:

> "3. The described records, documents and other memoranda are relevant to the issue of whether it is

> necessary for a union to obtain employees names and addresses for purposes of organizational activity prior to its filing a Petition for Certification, and, particularly, whether the experience to date under section 20910(c) justifies the invasion to the privacy of employees resulting from a union's obtaining the employees names and home addresses."

At the hearing, on September 6, 1977, the attorney appearing for the General Counsel entered a special appearance on behalf of the Board's Executive Secretary and submitted a written petition that the Administrative Law Officer revoke the subpoena duces tecum. Two grounds were asserted in support of the petition.

First, service of the subpoena failed to comply in several respects with the requirements of section 2025(a) of the Board's Regulations and section 1987 of the Code of Civil Procedure. In particular, the subpoena was defective for want of personal service, tender of fees and service sufficiently in advance of the time to appear.

Second, the documents requested did not relate to any matter properly in question in the proceedings. The Respondent could not challenge before the Administrative Law Officer the validity, either on its face or as applied, of section 20910(c) of the Board's Regulations.[1/]

[1/] Section 20910 had been adopted pursuant to appropriate rulemaking procedure and had been sustained by the Board in Henry Moren , 3 ALRB No. 40, pp. 4-6 (1977). Section 20910(c) provides: (c) Within five (5) days from the date of filing of the notice of intention to organize the employer shall submit to the regional office an employee list as defined in section 20310(a)(2). Upon its receipt in the regional office, the regional director shall determine if the 10% showing of interest has been satisfied and, if so, shall make a copy of the employee list available to the filing labor organization. The same list shall be made available to any labor organization which within 30 days of the original filing date files a notice of intention to organize the agricultural employees of the same employer. No employer shall be required to provide more than one employee list pursuant to this section in any 30 day period.

At the hearing, Respondent opposed the Petition to Revoke and continued to press its subpoena duces tecum. The Administrative Law Officer provisionally granted the Executive Secretary's Petition to Revoke on both the grounds he asserted. The Administrative Law Officer, however, granted Respondent leave to brief the matter further and otherwise to preserve the issues.

Upon the entire record, and after consideration of the parties' briefs, I make the following:

FINDINGS OF FACT

I. Jurisdiction

1. Respondent is a corporation organized under and existing under the laws of the State of California; its principal place of business is Kern County. (¶ 1 of Stipulation of Parties.)

2. Respondent is now, and at all times material herein has been, an agricultural employer within the meaning of section 1140.4(c) of the Act. (¶ 2 of Stipulation of Parties.) Respondent produces grapes and other agricultural commodities. (See GC Ex. 1A.)

3. The Charging Party, the United Farm Workers of America, is now, and at all times material herein has been, a labor organization within the meaning of section 1140.4 (f) of the Act. (¶ 3 of Stipulation of Parties.)

II. The Alleged Unfair Labor Practice

The complaint alleges that the Respondent failed and refused to provide, and continues to fail and refuse to submit to the Board's DeLano office, an employee list as required by sections 20910(c) and 20310(a)(2) of the Board's Regulations. The complaint further alleges that, by these acts, the Respondent did interfere with, restrain or coerce and is interfering with, restraining or

coercing its agricultural employees in the exercise of their rights guaranteed under section 1152 of the Act, and Respondent thereby did engage in and is engaging in unfair labor practices affecting agriculture within the meaning of sections 1153(a) and 1140.4 of the Act. (GC Ex. IB.)

1. On July 18, 1977, the UFW duly filed with the Board and served on Respondent copies of a written Notice of Intent to Obtain Access, in Case No. 77-NA-15-D, on the property of the Respondent in conformity with section 20900(e)(1)(b) of the Board's Regulations. (1f 4 of Stipulation of Parties; See GC Ex. 2.)

2. On July 28, 1977, the UFW duly filed with the Board and served on Respondent copies of a Notice of Intention to Organize Employees of Respondent in Case No. 77-NO-6-D, in accordance with section 20910(a) of the Board's Regulations. (If 5 of Stipulation of Parties; See GC Ex. 3.)

3. On July 28, 1977, the UFW presented the Board's Delano Field Office with seventy-four authorization cards in support of the Notice of Intention to Organize. (If 6 of Stipulation of Parties; See GC Ex. 4.)

4. As of July 28, 1977, Mr. Robert Konjoyan was notified by telephone by the Board that the Notice of Intent to Organize had been docketed at approximately 4:30 P.M. on that date. ('I 7 of Stipulation of Parties.) At all times material herein, Mr. Robert Konjoyan was general manager of the Respondent and was an agent of Respondent acting on its behalf in all matters relevant to this unfair labor practice proceeding. (fl 9 of Stipulation of Parties September 6, 1977.)

5. On or about August 3, 1977, the Respondent, through its agent Robert Konjoyan, failed to and refused to and continues to fail to and refuse to submit to the Board's Delano Field Office an employee list as required by sections 20910(c) and 20310(a)(2) of the Board's Regulations. (¶ 10 of Stipulation of Parties.)

6. An election was held on Ranch 1, Inc., on August 13, 1977, which was won by the UFW. On August 22, 1977, a Petition to Set Aside the Election pursuant to section 1156.3 of the Act was filed by the Respondent, and remains pending. (¶ 11 of Stipulation of Parties.)

III. The Scope of the ALRB's Rulemaking Authority

Respondent contends that section 20910 exceeds the Board's rulemaking authority in that it alters or enlarges the scope of the statute on which it is based and that this defect renders the regulation void. Respondent further argues that the defeat of Initiative Measure 14 on the November 2, 1976, General Ballot "refutes any argument that such a provision [section 20910] could be implied from the existing statutes." (Resp. Br. at 3.)

This argument cannot prevail in the face of Henry Moreno, 3 ALRB No. 40 (1977), which expressly affirmed section 20910 as within the Board's rulemaking authority. That decision is binding on this Administrative Law Officer.

In Henry Moreno, the Board traced the history of section 20910, noting that it was promulgated at the same time as section 20900 was modified to limit access by union organizers onto an employer's property to four one-month periods per employer in any calendar year. To offset the reduction in access and insure

that necessary information was adequately available to employees during the organizing period, the Board provided that unions are to receive pre-petition lists. The Board described its twin decisions as "two complementary solutions" necessary to accommodate the interests of both the employer and the employee. 3 ALRB No. 40 at 4-6. The Board further noted "the critical role of these sections, and particularly of § 20910, as an aid to the Board's regulation of the election process itself." 3 ALRB No. 40 at 6. The Board stated unequivocally that "we remain convinced that the Board had the authority pursuant to its rulemaking powers under Labor Code § 1144 to enact this section, and that § 20910 is necessary to effectuate the purposes of the Act." 3 ALRB at 2-3.

The decision in Henry Moreno is binding on this Administrative Law Officer. 8 Cal. Admin. Code § 20262(i). Even if it were not, the arguments marshalled in Henry Moreno are persuasive. They demonstrate convincingly that the rule is necessary both to insure employee access to necessary information concerning organizational efforts and to assist the Board in its statutory duty to regulate union elections. The rule is grounded on both Labor Code section 1157.3, which requires that employee lists be maintained and that they be made available to the Board upon request, and on Labor Code section 1152, which guarantees agricultural employees "the right to self organization and to form, join or assist labor organizations.... "

Respondent argues that section 20910 canot be implied from the existing statutes and points to the rejection of Initiative

Measure 14 [2] as evidence of that fact. This argument mistakes the proper standard for the exercise of the Board's rulemaking authority. A rule need not be "implied" by a statute before the Board may promulgate it; it is sufficient that it be necessary to carry out the provisions of the Act. Labor Code section 1144.

Nor may Respondent argue that the decision of the electorate in rejecting the Initiative precludes the promulgation of section 20910. Initiative Measure 14 proposed a number of changes in the Act, of which the section concerning employee lists was one. [3] One cannot determine from a general vote against the Measure whether the electorate was rejecting all or only part of the proposition. The Board's decision that section 20910 is a valid exercise of the ALRB's rulemaking authority is binding in the instant action and Respondent's first contention must be dismissed.

IV. The Constitutionality of Section 20910 And the Proper Scope of This Proceeding.

Respondent next urges that section 20910 is void in that it violates the fundamental rights of privacy of the employer and the employee. In order to pursue this argument, Respondent sought and was granted a subpoena duces tecum against the Executive Secretary of the ALRB, ordering him to produce documents containing statistical information concerning employer compliance with section

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[2] The provision in Initiative Measure 14 concerning employee lists read as follows: "Make such lists available to any person who filed a Notice of Intent to Petition for an election accompanied by a reasonable showing of interest. The Board shall, by regulation, determine what constitutes a reasonable showing for purposes of this paragraph."

[3] The text of the proposed law in Initiative Measure 14 covered over seven single-spaced pages in the ballot information pamphlet distributed to voters for the 1976 General Election.

20910. Respondent desires this information for the purpose of challenging the necessity for section 20910. Respondent argues that furnishing employee lists is not the least-intrusive means available for ensuring employee access to union organizing information and that, since a constitutional right is infringed, the provision is void.

In reply, the General Counsel contends, first, that service of the subpoena was defective and, second, that the constitutionality of section 20910 may not be considered in this proceeding, and that, therefore, the subpoena is irrelevant and should be revoked.

I find for the General Counsel on both questions. Service of the subpoena was defective because personal service and tender of witness fees, both of which are required by section 1987(a) of the Code of Civil Procedure, were lacking.

Even if service of the subpoena were not defective, however, the subpoena must be revoked because "the evidence required to be produced does not relate to any matter under investigation or in question in the proceedings." Board Regulations section 20250 (d).

An Administrative Law Officer's adjudicative powers are limited by section 20262 of the Board regulations and by the decisions of the ALRB, which are binding upon him or her. Section 20262(i) provides that an Administrative Law Officer has the authority "[t]o make and file decisions in conformity with the Act and the regulations of the Board." The Act, of course, includes its interpretation by the Board in decisions of cases arising under it. Further, unless a party appeals an Administrative Law Officer's determination, his or her findings of fact and conclusions of law become binding.

See 8 Cal. Admin. Code § 20286(a). Like any inferior tribunal, the Administrative Law Officer is bound by the opinions of the next-higher adjudicative body, in this case the Board. Given the Board's carefully-reasoned affirmation of the validity of section 20910 in Henry Moreno, supra, the question of the constitutionality of the regulation cannot be entertained here, and the subpoena duces tecum requesting information pertinent to that question must be revoked.

It may well be, however, that in any future Board rulemaking proceeding which reconsiders the subject of union access, it will be appropriate for the Board to produce, receive and consider such information as the Respondent requested in its subpoena duces tecum. Under the Act and the Board's existing regulations, it may treat such material in rulemaking. Labor Code section 1144; Agricultural Labor Relations Board v. Superior Court, 16 Cal.3d 392, 411-418, 546 P.2d 687, 128 Cal.Rptr. 183 (1976).

V. Refusal to Supply Employee Lists Constitutes an Unfair Labor Practice.

Respondent argues that refusal to supply employee lists cannot constitute an unfair labor practice under Labor Code section 1153(a) because it is not listed among the practices enumerated in Chapter Four of the Act. Once again, the Board's decision in Henry Moreno, 3 ALRB No. 40, controls:

> "We hold that it is a violation of Labor Code § 1153(a) for an employer to refuse to supply a list of his employees as required by § 20910 of our regulations. Such a refusal in itself interferes with and restrains employees in their exercise of § 1152 rights."

Respondent argues that the decision in Henry Moreno runs counter to NLRB precedent as set forth in the "Excelsior rule,"

which provides that employee lists must be supplied after a consent-election agreement has been approved by the Regional Director, or an election has been directed by the Regional Director or the Board. Citing section 1148 of the ALRA, which provides that "[t]he board shall follow applicable precedents of the National Labor Relations Act, as amended," Respondent argues that requiring employee lists before an election is ordered exceeds the Excelsior rule, which was established primarily because organizers under federal law generally are not allowed access to an employer's private property. Since organizers are allowed access under the ALRA, Respondent argues that the major premise of the Excelsior rule is absent under the ALRA and that employee lists should only be made available "when an election is imminent, if at all." Resp.Br. at 10.

Whether the Excelsior rule is binding in this context must depend on whether it is an "applicable" NLRB precedent within the meaning of Labor Code section 1148. In construing section 1148, the California Supreme Court has said, "From this language the Board could fairly have inferred that the Legislature intended it to select and follow only those federal precedents which are relevant to the particular problems of labor in the California agricultural scene." Agricultural Labor Relations Board v. Superior Court, 16 Cal.3d 392, 413, 128 Cal.Rptr. 183, 546 P.2d 687 (1976).

The Board's decision in Henry Moreno clearly demonstrates the unique difficulties inherent in providing access to organizational information for agricultural workers.

> "[S]easonal employment patterns in agriculture and a largely migratory labor force establish conditions under

> which it is difficult if not impossible for union organizers to discover and contact the employees of a particular employer to discuss the advantages and disadvantages of unionization within the short seasonal peak during which an election may be held under our statute.
>
> 3 ALRB No. 40 at 4.

The decision in Henry Moreno illustrates the unusual nature of agricultural employment and the Board's attempts to accommodate the property interests of the employer on the one hand and the organizational interests of the employee on the other. The unique context in which agricultural labor relations must operate makes the Excelsior rule inapplicable here, and the Board's decision in Henry Moreno controls. The Board noted in that case, "[w]e cannot conceive of any relevant defenses to a flat refusal to comply" with section 20910. 3 ALRB No. 40 at 10. I hold, therefore, that Respondent's failure to provide an employee list pursuant to section 20910 is an unfair labor practice under Labor Code section 1153 (a).

Respondent argues that the election victory of the UFW in the instant case renders the question of pre-petition employee lists moot. It is well-settled that even voluntary abandonment by an employer of an unfair labor practice does not moot the controversy Consolidated Edison Co. of New York. Inc., 305 U.S. 197, 230 (1938), and that the discontinuance of unfair labor practices does not dissipate their effect or obviate the need for a remedial order. Sheet Metal Workers International Association Local 141, 153 NLRB 537, 544; 59 LRRM 1512 (1965). In the instant case, the union prevailed despite Respondent's flat refusal to follow the ALRB's regulation.

Employers cannot be allowed to throw unlawful obstacles in the way of union organizing and then argue that the controversy is moot should the unions prevail.

VI. Remedies

Consistent with the remedies ordered in Henry Moreno and other precedents, I will recommend to the Board that Respondent be ordered to:

1. Cease and desist from refusing to provide the ALRB with an employee list as required by section 20910(c) of the Regulations of the Agricultural Labor Relations Board.

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

(a) During the next-following access period which the Charging Party elects to take pursuant to 8 Cal.Admin.Code § 20900(e) et seq., as many organizers as are entitled to access under § 20900(e)(4)(A) may be present during working hours for organizational purposes and may talk to workers, and distribute literature, provided that such organizational activities do not disrupt work.

During those access periods before and after work and during lunch specified in § 20900(e)(3)(A) and (B), the limitations on numbers of organizers specified in § 20900(e)(4)(A) shall not apply.

(b) For each one-month access period during which an employer refuses to provide an employees' list as set forth in 8 Cal.Admin.Code § 20910(c), the Charging Party shall

have one additional such access period at a time determined by the Regional Director during the employer's next peak season, whether in this or the following calendar year.

(c) Respondent shall post in writing, in conspicuous places as determined by the Regional Director, the terms of the Board's order, an enumeration of employees' rights guaranteed by Labor Code section 1152, and Respondent's assurances that the conduct herein complained of will not occur in the future. Posting shall continue for 90 consecutive days, commencing at a time determined by the Regional Director to coincide with a period of peak employment. The posting should include translation of the notice in all languages understood by the Respondent's employees, as determined by the Regional Director.

(d) Respondent shall conduct a public reading of the Notice, either by Respondent or a Board agent, in the presence o.f a Board agent, to its employees at a time to be determined by the Regional Director. In addition, Respondent shall provide for a period of time during which its employees may ask questions of a Board agent, out of the presence of Respondent.

The General Counsel has submitted a request for litigation fees and costs incurred with respect to this proceeding. I would be disposed to award such fees and costs if I were persuaded that Respondent's attack on section 20910 were wholly frivolous and represented no more than an obdurate refusal to comply with the law. As regards these proceedings, such an argument might be

made because the constitutional issues and questions concerning the Board's rulemaking powers extend beyond the scope of this hearing officer's authority. However, these are issues that have not yet been passed upon by any court. Respondent may very well be unable to bring these issues to a court's attention unless it has exhausted its administrative remedies. Labor Code sections 1160.8 and 1160.9. Because Respondent is required to raise these matters in this forum before it may do so before the Board or the Court of Appeal, Respondent's argument may not be said to be wholly frivolous, and costs and fees will be denied.

ORDER

Respondent, Ranch 1, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from refusing to provide the ALRB with an employee list as required by section 20910(c) of the Regulations of the Agricultural Labor Relations Board.

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

(a) During the next-following access period which the Charging Party elects to take pursuant to 8 Cal.Admin. Code § 20900(e) et seq., as many organizers as are entitled to access under § 20900(e)(4)(A) may be present during working hours for organizational purposes and may talk to workers, and distribute literature, provided that such organizational activities do not disrupt work.

During those access periods before and after work and during lunch specified in § 20900(e)(3)(A) and (B),

the limitations on numbers of organizers specified in § 20900(e)(4)(A) shall not apply.

(b) For each one-month access period during which an employer refuses to provide an employees' list as set forth in 8 Cal.Admin.Code § 20910(c), the Charging Party shall have one additional such access period at a time determined by the Regional Director during the employer's next peak season, whether in this or the following calendar year.

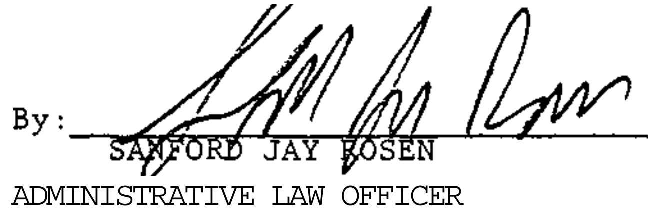
(c) Respondent shall post in writing, in conspicuous places as determined by the Regional Director, the terms of the Board's order, an enumeration of employees' rights guaranteed by Labor Code section 1152, and Respondent's assurances that the conduct herein complained of will not occur in the future. Posting shall continue for 90 consecutive days, commencing at a time determined by the Regional Director to coincide with a period of peak employment. The posting should include translation of the notice in all languages understood by the Respondent's employees, as determined by the Regional Director.

(d) Respondent shall conduct a public reading of the Notice, either by Respondent or a Board agent, in the presence of a Board agent, to its employees at a time to be determined by the Regional Director. In addition, Respondent shall provide for a period of time during which its employees may ask questions of a Board agent, out of

the presence of Respondent.

DATED: November 3, 1977.

AGRICULTURAL LABOR RELATIONS BOARD

By: 
SANFORD JAY ROSEN
ADMINISTRATIVE LAW OFFICER

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE AGRICULTURAL LABOR RELATIONS BOARD,

An Agency of the State of California.

After a trial at which all sides had the opportunity to present their evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to post this notice, and we intend to carry out the order of the Board.

The Act gives all employees these rights:

To engage in self-organization;
To form, join or help unions;
To bargain collectively through a representative of their own choosing;
To act together for collective bargaining or other mutual aid or protection; and
To refrain from any and all these things.

WE WILL NOT do anything that interferes with these rights. More specifically,

WE WILL NOT interfere with your rights of self-organization, to form, join or assist any labor organization by refusing to provide the ALRB with a current list of employees when, as in this case, the UFW or any union has filed its "Intention to Organize" the employees at this ranch.

You, and all our employees are free to become members of any labor organization, or to refrain from doing so.

RANCH 1, INC. (Employer)

DATED: ____________________ By: ____

(Representative) (Title)