STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROYAL PACKING COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party, and ROYAL PACKING COMPANY, Employer-Respondent, and AGRUPACION DE TRABAJADORES INDEPENDIENTES DE LA ROYAL PACKING COMPANY, Petitioner, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor and Charging Party, and INDEPENDENT UNION OF AGRICULTURAL WORKERS, Intervenor.	CASE NOS.	76-CE-101-E 76-CE-102-E 76-CE-103-E 76-CE-104-E 76-CE-108-E 76-CE-112-E 76-CE-119-E 76-CE-121-E 76-CE-122-E 76-CE-129-E 76-CE-137-E 76-CE-2-E 76-CE-11-E 76-CE-23-E 76-CE-31-E 76-CE-36-E 76-CE-66-E
	CASE NOS.	77-RC-11-E 76-CE-137-E 77-CE-36-E 77-CE-73-E 77-CE-111-E 77-CE-131-E
	5 ALRB No. 31	

DECISION AND ORDER

On April 23, 1977, Administrative Law Officer (ALO) Robert A. D'Isidoro issued the first attached Decision (ALOD I)

in this case, based upon the record made at hearings in February and March, 1977. Pursuant to the General Counsel's motion dated September 7, 1977, to reopen the record and remand to the ALO, and the Board's Order dated October 12, 1977, the ALO issued, on March 16, 1978, the second attached Decision (ALOD II), entitled "Supplement to Decision Dated April 23, 1977." Thereafter, General Counsel and Respondent each filed exceptions to ALOD I and ALOD II and a supporting brief.

On March 31, 1978, the ALO issued the third attached Decision (ALOD III) in this matter, based upon the record made at hearings in June, July and September, 1977, and upon the record made at the previous hearings in 1977. Thereafter, General Counsel and Respondent each filed exceptions to the third Decision of the ALO.

The Board has considered the record and the attached ALO Decisions 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.

BACKGROUND

Royal Packing Company (herein called Respondent or Royal) has its principal office in Salinas, and harvests lettuce year round in the Salinas, San Joaquin and Imperial Valleys of California and the Yuma area of Arizona.

Royal relies principally on the "naked" or "dry pack" method of packing lettuce by crews in the field. It used

machines to wrap lettuce in the past, but had not done so for many years prior to 1976, when it added two lettuce-wrapping machines to its harvest operation.

Royal, as a member of Employers' Negotiating Committee, a multi-employer bargaining unit, has been a party to a collective-bargaining agreement with the Teamsters covering its agricultural employees since 1975.

In February 1976, the Board set aside a September 1975 run-off election between the Teamsters and the United Farm Workers of America, AFL-CIO (herein called UFW), at Royal, which was won by the Teamsters. The Board's action was based on threats by Royal's representatives, addressed to employees, that Royal would cease its Salinas operations in the event of a UFW victory. Royal Packing Company, 2 ALRB No. 29 (1976).

In the fall of 1976, when Respondent moved its harvesting operations to Arizona, organizational activity by both the UFW and the Teamsters resumed and continued among Respondent's employees at the jobsite. Both unions and the Respondent anticipated that there would be election activity soon after Respondent's harvesting operations moved into the Imperial Valley area of California in December.

In late December 1976, a Teamsters local filed a petition for certification as representative of Royal's agricultural employees. The UFW and a group of employees called Trabajadores de la Royal Packing Company (herein called Trabajadores) intervened. On December 30, 1976, the petition was dismissed by the Board's El Centro office. On December 31,

1976, a petition for certification was filed by the UFW; this petition was withdrawn on January 4, 1977.

The first hearings on the unfair labor practices in this matter began in February 1977. A third election petition was filed by Agrupacion de Trabajadores Independientes de la Royal Packing Company (herein called Agrupacion), and both the UFW and the Independent Union of Agricultural Workers (herein called IUAW) intervened. The election was held on March 3, 1977, and was won by Agrupacion.[1/] Both intervenors filed objections to the conduct of the election.[2/]

I. Respondent's Access Policy (ALOD I)

Respondent excepts to the ALO's conclusion that it violated Labor Code Section 1153(b) and (a) by affording the Teamsters more and better opportunities for access to its employees at the work site than it afforded to the UFW.

The ALO, after considering whether Respondent accorded disparate treatment to the competing unions, found that although neither union was prevented from fully exercising its right to take access to Respondent's property pursuant to 8 Cal. Admin. Code 20900, et seq., Respondent permitted the Teamsters to visit employees for organizational purposes during

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[1/]The tally of the ballots showed the following results:

Agrupacion	108
UFW	62
No Union	14
IUAW	2

[2/]The objections to the conduct of the election filed by the IUAW were dismissed by order of the Executive Secretary on May 18 1977.

working hours. The ALO concluded that Respondent's conduct violated Labor Code Section 1153(b) and (a).

The ALO found that the Teamsters and Respondent were at the time parties to a collective bargaining agreement which permitted non-disruptive entry by Teamsters agents to Royal's property at any time for the purpose of conducting "legitimate union business". The ALO found the Respondent knowingly permitted the Teamsters to use their contract visitation rights for organizational purposes not consistent with administering or implementing its contract.

The record supports the ALO's conclusion that in two instances Respondent unlawfully aided the Teamsters in taking access for organizational purposes. In December 1976, Teamsters organizers went to the fields during work time to solicit signatures from the crews of Respondent's two lettuce-wrap machines in support of an election petition. At each machine, Respondent's supervisory personnel permitted an organizer to mount the machine and to replace an employee who then solicited and obtained signatures from the other employees present.

Respondent contends that if such incidents occurred, its supervisors thought the Teamsters were conducting legitimate union business. Respondent also asserts that the incidents were de minimis. The record does not support the former contention, as the substitution of the organizers for employees, and the solicitation by employees, was done openly in the presence of the crew supervisors. These incidents clearly demonstrated to employees Respondent's assistance to and

cooperation with one of two competing unions in its organization activities, and cannot be deemed de minimis. Accordingly, we affirm the ALO's conclusion that Respondent violated Section 1153(b) and (a) by granting preferential access to the Teamsters for organizational purposes.

II. The Discharge of Manuel Camacho (ALOD I)

Manuel Camacho began working for Respondent in May 1976, as a field hand performing thinning and weeding in Supervisor Esteban Duran's crew. He continued working in that crew until he was discharged on November 11, 1976. The ALO found that Camacho was not discharged for engaging in protected activities and recommended dismissal of the allegation that Respondent violated Section 1153 (c) and (a) by discharging him. We do not agree. Rather, we conclude that Respondent's discharge of Camacho constituted a violation of the Act.

Camacho was an active spokesman for his fellow employees concerning their work-related problems. He acted as a spokesman for a group of employees who went to the Teamsters' office to demand a raise, notwithstanding supervisor Duran's remarks to the employees that Camacho was "crazy" and that they should not listen to him. Camacho persisted in attempting to obtain disputed pay for a fellow employee, despite continuing admonitions by Duran, addressed to Camacho and other crew members, about their work performance.

On October 26, about two weeks before he was discharged, the Teamsters appointed Camacho union steward for his crew. Respondent received notice of the appointment, and

thereafter Duran and Camacho attempted to work together on crew problems.

The ALO found that Camacho was a good worker, but that the General Counsel had failed to meet its burden of proving by a preponderance of the evidence that Camacho was discharged for engaging in union activity or other protected concerted activity. The ALO found that Camacho frequently challenged Duran's authority by confronting him about work-pace issues, disobeyed Duran's orders, used profanity when addressing Duran, had received reprimands,[3/] and that Camacho was discharged for encouraging two fellow workers in their heated argument with Duran.

The reasons given by Respondent for discharging Camacho revolve around the incidents of November 11, when, the ALO found, Camacho admittedly interfered in Duran's

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[3/]Although Duran wrote up four disciplinary notices on Camacho prior to the final notice on November 11, Camacho did not sign any of the notices and denied that he had received them. All of these notices concerned Camacho's work after he became a union steward. Three of the notices were issued on November 9, two days before the discharge. The four notices dated prior to November 11 were all of questionable validity. One notice stated that Camacho drank on the job, and Camacho denied ever having done so. Another notice concerned taking breaks to eat, which Camacho claimed was a common practice when employees were ahead in their work. The other two notices stated that Camacho did not pay attention to Duran's orders, but gave no specific details about his conduct.

admonition of two employees.[4/] However, the facts surrounding the events on that day are not clear, and the extent of Camacho's role in the heated confrontation between Duran and the two employees (the Jacobos) is in dispute. Duran claimed that he discharged Camacho because he did not obey orders, told others not to obey orders, and used profanity. It is not clear from Duran's testimony whether Camacho was discharged for not following orders as to his own work on November 11, or for interfering with Duran's orders to the Jacobos. Duran testified that he discharged Camacho without being told to do so by his supervisor, David Hart.

On the other hand, Hart testified that he discharged Camacho on November 11 because he felt that Camacho was threatening Duran's life during the argument. Hart stated that when he arrived at the fields that day, he observed that Camacho was not working, and was trying to pick a fight with Duran. He testified that he heard Camacho encouraging one of the Jacobos, who was holding a hoe, to kill Duran. Hart admitted he understood little of what he heard, as the employees were speaking Spanish, but claimed he understood the threats by their hand motions. No one else who testified, including Duran, mentioned threats being made to kill Duran, either by words or physical gestures. Hart testified that he was upset

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[4/]There is no record evidence that Camacho admitted intervening in the dispute between Duran and the employees on November 11. Camacho did admit that in speaking on behalf of the crew he told Duran to leave one of the two employees alone as he was doing his work well, but there is no evidence that this occurred on November 11.

over the continuing confrontations between Camacho and Duran. This was the first time he acted to correct the problems in the crew, which he attributed to Camacho's conduct.[5/]

We credit the testimony which establishes that Camacho was involved in the dispute on November 11 (as opposed to other testimony to the effect that he was not involved at all), as it is consistent with his prior actions in defending his fellow employees in work-related arguments or grievances with their supervisors. This confrontation between supervisor Duran and union steward Camacho over work performance was not unlike other previous confrontations, many of which caused work disruptions, were heated, and involved strong language. On the basis of the entire record, we find that Camacho was discharged not for using profanity, for disobeying orders, or for threatening to kill his supervisor, but, rather, because of his union activities, including his vigorous and persistent representation of employees. Accordingly, we conclude that Respondent violated Section 1153(c) and (a) by discharging Manuel Camacho. See, e.g., NLRB v. Bowman Transportation, Inc., 314 F. 2d 497 (5th Cir. 1963); Schiavone Construction Company, 229 NLRB No. 85, 95 LRRM 1124 (1977); Max Factor & Co., 239 NLRB No. 99, 100 LRRM 1023 (1978); Morrison-Knudsen Co., 213 NLRB 280, 87 LRRM 1655 (1974), enforced 521 P. 2d 1404 (8th Cir. 1975).

[5/]Hart did not deny the testimony of Rosalia Camacho, that at the end of the day on November 11, when she asked him why he had discharged her husband, he replied, "If I get rid of him, I get rid of all my problems."

III. Institution of the New Medical Plan (ALOD I & III)

In mid-January 1977, Respondent announced to its employees that it was instituting a new medical benefits plan. Although the announcement was made after the UFW's withdrawal of its late-December 1976 petition for certification, organizational activities were still in progress. The ALO found that the timing of the announcement was based upon the ongoing organizational campaign rather than other factors.

Respondent was a party to a multi-employer collective bargaining agreement, under which it was obligated to pay the premiums for a medical plan which contained the same benefits as those set forth in Western Growers Assurance Trust Plan 22 (Plan 22). Although the contract did not expire until July 1978, the Teamsters re-opened the contract as to wages and benefits in mid-1976. In September 1976, a resolution of the re-opened issue was reached, including termination of Plan 22 medical coverage, and provisions for a new medical plan, which was to become effective November 1, 1976, entitled the Labor-Management Trust Fund (Trust Fund). This plan, which was to be established by the Teamsters, was never implemented.

In mid-January 1977, Don Hart, an original partner in Royal, announced to employees the advent of a new medical plan, which was to provide the same benefits as Western Growers Assurance Trust Plan 23 (Plan 23). Plan 23 increased benefits for treatment in a doctor's office and for pregnancy. It also provided for an extensive dental plan. Plan 22 did not cover dental expenses. Plan 23 was the subject of a Memorandum

of Understanding signed by Respondent and the Teamsters on January 21, 1977, which provided that the plan was to be effective February 1, 1977.

Hart testified that he began thinking about a new medical plan, to include dental benefits, in May 1976. He began his planning because a rival lettuce grower had a plan including dental benefits. He stated that rumors of the Teamsters' withdrawal from agriculture, which were circulating in December 1976 and January 1977, did not influence his decision to implement a new and improved medical plan.

While Hart contemplated the new medical plan, he campaigned among his employees for a no-union vote in the election which was anticipated as a result of the UFW's then-pending petition for certification, which had been filed on December 31. He testified that, in his speeches to groups of employees, he asked them only to give him one year of no-union and that they would continue to get the same benefits. He testified that he answered employees' questions about benefits (they were particularly interested in pensions and medical benefits, as the result of the rumored withdrawal of the Teamsters), by stating that he could make no promises. At least once, however, he mentioned giving them a dental plan. In addition, through his Spanish interpreter, he talked of "betterment" and good wages, and emphasized good benefits in his answers to employees' questions.

Within a few days to a week after his campaign efforts among the employees (and after the withdrawal of the UFW's

petition for certification), Hart formally announced to employees the new medical plan, Plan 23. Along with a copy of the promised plan, Hart gave each employee a copy, in English and in Spanish, of a letter to him from his insurance carrier. The letter began, "The improved group employee benefit program recently requested is now available to your employees effective January 15, 1977."

We conclude that, by granting employees a new medical plan during the course of organizing efforts, Respondent violated Section 1153(a). Despite Hart's testimony that he had considered the new plan since May 1976, and that he waited to announce it to the employees until after the withdrawal of the UFW petition, when no petition was currently pending, it is clear from the record that the withdrawal of the election petition did not alter or diminish the organizing efforts of the UFW or other unions among Respondent's employees, and that the timing of the announcement had a natural tendency to influence an anticipated election. It is an unfair labor practice to grant economic benefits "while union organizational efforts are underway, or while a representation election is pending." (emphasis added) Crown Tar and Chemical Works, Inc. v. NLRB, 365 F 2d 588 (10th Cir. 1966); see also, NLRB v. Exchange Parts Company, 375 U.S. 405 (1964). In addition, on at least one occasion during the time the UFW petition was pending, Hart mentioned the forthcoming dental-benefits plan in connection with his request for a no-union vote.

Respondent claims that it felt obligated under its

collective bargaining agreement with the Teamsters to provide its employees with another medical plan. However, we find that the timing of the announcement of the new plan demonstrates that it was calculated to interfere with the employees' free choice of a bargaining representative, rather than to discharge any contractual obligation to the Teamsters. See Performance Measurements Co., 149 NLRB 1451, 58 LRRM 1037 (1964), supplementing 148 NLRB 1657, 57 LRRM 1218 (1964).

As we consider that Section 1156.7(a) of the Act[6/] reflects a legislative intent that pre-Act contracts should not interfere with elections conducted pursuant to the Act, we conclude that unlawful interference and assistance occurs where, as in the instant case, a pre-Act contract is amended, during an election campaign between the incumbent and a rival union, to provide substantially increased benefits.

IV. The Hiring of the Wrap Machine Crews (ALOD I & II) Respondent purchased two lettuce wrap machines in the summer of 1976. When it began operating the machines during that summer and fall in Salinas and Huron, it experienced difficulties in staffing them with foremen and crews. As a result, two substantially new crews were hired to operate the machines when Respondent began its Yuma, Arizona, operation in November, 1976. The same two crews continued to work on the machines when Respondent moved into

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[6/]Section 1156.7(a) provides: "No collective-bargaining agreement executed prior to the effective date of this chapter shall bar a petition for an election."

the Imperial Valley in December 1976. The General Counsel contends that Respondent collaborated with the Teamsters to staff both of the crews with known Teamster supporters, in anticipation of an upcoming election, in violation of Section 1154.6.[7/]

The ALO found that Respondent violated Sections 1154.6 and 1153(a) by the manner in which foreman Manuel Alcantar hired his lettuce-wrap crew, but not by the manner in which foreman Tony Ayala hired his lettuce-wrap crew. Respondent excepted with respect to ALO's conclusion concerning the Alcantar crew, and the General Counsel excepted with respect to the ALO's conclusion concerning the Ayala crew and concerning the ALO's recommended remedy.

Unlike many of the unfair labor practice sections in the ALRA, Section 1154.6 has no direct counterpart in the NLRA. Moreover, as the General Counsel has noted, there are very few cases under the NLRA dealing with employer efforts to affect the outcome of elections through the hiring process. The ALRA contains numerous sections whose purpose is to adapt the secret-ballot-election process to the conditions of seasonal agricultural labor.[8/] It is reasonable to conclude

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[7/]Section 1154.6 reads as follows: It shall be an unfair labor practice for an employer or labor organization, or their agents, willfully to arrange for persons to become employees for the primary purpose of voting in elections.

[8/]See for example: Section 1156.3(a) (7-day election requirement); Section 1156.4 (requirement that elections be held at 50% of peak employment); and Section 1157 (enfranchising employees on the payroll immediately preceding the filing of the petition.)

that the Legislature's purpose in enacting Section 1154.6 was to protect the integrity of the election process under these conditions and that, in its broadest sense, this section recognizes the real possibility that agricultural employers or unions may frustrate employees' exercise of their rights to choose a bargaining representative by selective hiring. We further note that, to constitute a violation of Section 1154.6, it is necessary to establish that the employer and/or the union willfully arranged for persons to become employees for the primary purpose of voting in an ALRB election. It is on the basis of this general framework that we approach the application of Section 1154.6 to the facts of this case.

This case is distinguishable from our two earlier decisions involving Section 1154.6. In both Adam Farms, 4 ALRB No. 12, and Dave Walsh Company, 4 ALRB No. 84, enf. 2 Civ. 54934, it clearly appeared that the employer's primary purpose in hiring particular persons at a particular time was to have them vote in an ALRB representation election. In both of these cases, the employees in question worked only for brief periods and performed insubstantial amounts of work at times when other employees were working on a more regular basis. In the present case, Respondent needed two new crews for its lettuce-wrap machines, it hired employees to fill those crews on a permanent basis, and the employees hired were qualified for, and have performed, the work for which they were hired. In the instant case, to establish that the hiring of these employees was in violation of Section 1154.6 would

require proof that they were selected for hire primarily on the basis of their preference for the Teamsters, with a view towards their anticipated participation in an ALRB election. In that respect, we do not think the General Counsel has met his burden of proof. Concerning the crew of Manuel Alcantar, we reach this conclusion on a somewhat different basis than is set forth in the ALO's decision.[9/]

The record shows that Alcantar hired the members of his crew primarily on the basis of personal acquaintance. The ALO reasoned that he would be familiar with their union background through his prior experience as a Teamster organizer, and inferred that he used this method of hiring in order to staff his crew with loyal Teamsters. However, the record also shows that Alcantar had worked for other employers as a supervisor or foreman of a wrap machine, and that he hired

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[9/]The ALO found that the Teamsters were closely involved in Respondent's hiring of Alcantar. However, the events which he recites all occurred after the initial discussions between Respondent's president and Alcantar which resulted in the latter's hiring. Although the Teamsters were eager to insure that Alcantar was hired and later to exploit his position, the record indicates that the decision to hire Alcantar was based on discussions between Respondent and Alcantar, and there is no evidence of Teamsters interceding with Respondent on his behalf until after these discussions.

employees who had previously worked under him.[10/] Thus, the record adequately supports an inference that Alcantar's purpose in hiring his previous co-workers to staff his crew was to secure a permanent position with Respondent as wrap-machine supervisor by successful performance as foreman of a wrap-machine crew. As there is no evidence that Alcantar questioned prospective employees concerning their union preferences, and in view of the context in which these events occurred, [11/] there is insufficient evidence to establish that Alcantar's primary purpose in hiring his crew from among persons he knew was to select Teamster supporters primarily to vote in an anticipated election. Accordingly, we conclude that Respondent did not violate Section 1156.4 by the manner in which Alcantar

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[10/]Alcantar testified and the ALO found, that 70% of the employees on his crew had worked under his supervision for employers Bud Antle, Bruce Church, and D'Arrigo, all of whom had Teamster contracts at the time. Although Alcantar worked among Bruce Church and D'Arrigo employees as a Teamster organizer or business agent, he had previously been supervisor or foreman of wrap-machines for the three said employers. Alcantar's denial that he screened prospective crew members on the basis of union sympathies is uncontradicted; moreover, he hired three persons whom he knew or believed to be UFW supporters on the basis of their previous employment at Interharvest, which had a UFW contract. The remainder of his crew included persons referred by the Teamsters, among them UFW supporters who sought work through the Teamster's office.

[11/]We note that the hiring of Alcantar and later of his crew took place at a time when discussions concerning a jurisdictional pact between the Teamsters and the UFW were in progress. It is apparent throughout this entire matter that both Respondent and the various Teamster representatives involved in this case were aware that the Teamsters' departure from the agricultural scene was a real possibility, and in particular that certain of the organizers sought both to pursue their organizing activities and to carve out individual places for themselves in the event of a successful pact.

hired his crew. We further conclude, as did the ALO, that Respondent did not violate Section 1156.4 by the manner in which Tony Ayala hired the members of his crew.

V. The Promotion of Manuel Alcantar (ALOD III)

The ALO found that Manuel Alcantar, a foreman in charge of one of Respondent's two lettuce-wrap machines, was promoted to supervisor in violation of Section 1153 (a). We disagree. Although employer conduct involving supervisors may, in certain circumstances, constitute a violation of Section 1153(a), such violations are based upon a finding that the employer's conduct tended to interfere with statutory rights of the employees. See, e.g., Dave Walsh Company, 4 ALRB No. 84 (1978) enf. 2 Civ. 54934; NLRB v. Talladega Cotton Factory, (5th Cir. 1954) 213 F 2d 209; NLRB v. Better Monkey Grip Company, (5th Cir. 1957) 243 F. 2d 836, cert, denied, 355 U.S. 864 (1957). As there is no showing in the instant record that Alcantar's promotion tended to interfere with the employees' Section 1152 rights, this allegation of the complaint is hereby dismissed.

VI. The Status of Agrupacion (ALOD III)

The ALO found that Agrupacion was not a labor organization within the meaning of Section 1140.4(f).[12/]

[12/]Section 1140.4(f) provides: The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for agricultural employees.

The question of Agrupacion's status as a labor organization bears on two other issues: whether Respondent violated the Act by dominating and assisting a labor organization; and whether the Board may certify Agrupacion as a labor organization. We find that Agrupacion meets the statutory definition of a labor organization.

The statutory definition of labor organization requires only that there be employee participation and that the group have a purpose of "dealing with" the employer concerning employees' wages, hours, and working conditions. Section 1140.4(f) is identical to Section 2(5) of the NLRA, which has been broadly construed. NLRB v. Cabot Carbon Company, 360 U.S. 203, 213 (1959).

Although there is little record evidence of employees' participation beyond their support of Agrupacion's petition for certification, and although employee witnesses gave varying versions of the nature and purpose of Agrupacion, including the suggestion that it was the equivalent of "no union," we find that Agrupacion has met the minimal requirements for status as a labor organization. In reaching this conclusion, we rely on NLRB precedent that status as a labor organization does not require either formal organizational structure (see, e.g., NLRB v. Ampex Corporation, 442 F 2d 82 (7th Cir. 1971), cert. denied 404 U.S. 939; NLRB v. Clapper's Manufacturing, Inc., 458 F. 2d 414 (3rd Cir. 1972)), or that the proposed representational activities have come to fruition. See Advance Industrial Security, Inc., 225 NLRB 151, 92 LRRM 1449 (1976).

VII. Alleged Domination of and Assistance to Agrupacion (ALOD III)

As the ALO found that Agrupacion was not a labor organization, he found that it was unnecessary to determine whether Agrupacion was unlawfully dominated or assisted by Respondent. Nevertheless, he concluded that, in the event the Board disagreed with him as to Agrupacion's status as a labor organization, it had been unlawfully assisted (but not dominated) by Respondent in violation of Section 1153(b) and (a). We disagree with this conclusion, and find that Respondent did not unlawfully dominate or assist Agrupacion.

There is no showing in the record that Respondent accorded any benefit or special treatment to employee organizers of Agrupacion that was not available to or received by employee organizers of the UFW and the IUAW. The record does, however, support the ALO's conclusion that Agrupacion was not a successor to the Teamsters. Therefore, Agrupacion did not reap the benefit of the unlawful assistance which Respondent granted to the Teamsters on two occasions in December 1976. Contrary to the ALO, we conclude that Agrupacion was not and is not the successor to a workers' group (Trabajadores) which apparently had a purpose of ridding the employees of any bargaining agent in the attempted elections in December 1976 and January 1977. Even if such a successorship were established on this record, there is no showing that Respondent either dominated or assisted Trabajadores. Accordingly, the allegation that Respondent dominated or assisted Agrupacion, in violation of Labor Code Section 1153(b) and (a) is hereby dismissed.

VIII. The Remaining UFW Objections to the Election (ALOD III)

Several of the post-election objections filed by the UFW require that we set aside the results of this election.

The first is our conclusion that Respondent interfered with its employees' rights by promising and granting improved medical benefits to employees during the organizational campaign which preceded the election. The improved benefits were announced approximately six weeks before the election, and were promised to take effect one month following the election. The benefits were also promised when Respondent campaigned during the pendency of an earlier election petition.

We conclude that Respondent, by linking the promised benefits to the employees' no-union vote, and by announcing substantially better fringe benefits at a time when there was extensive organizing among its employees, engaged in objectionable conduct which tended to interfere with the employees' free choice. Oshita, Inc., 3 ALRB No. 10 (1977).

We also find that the deficiencies in the lists of employees' names and addresses, which Respondent submitted to the Board after the election petition was filed, constitute additional grounds for setting aside the election.

Although Respondent did make efforts to comply with the requirements of 8 Cal. Admin. Code 20310(a)(2) after it was informed of the deficiencies in its first list, this tardy response did not remedy the hardship imposed upon the unions by the first list, which contained usable addresses for only about half of the employees. Mapes Produce Company,

2 ALRB No. 54 (1976).

Finally, we agree with the ALO that Respondent gave the impression of surveillance and thereby interfered with its employees in the exercise of their Section 1152 rights when supervisor Alcantar read aloud to his crew the names of UFW supporters. Such conduct further contributed to an atmosphere which tended to make free choice by employees impossible.

On the basis of these objections, and the atmosphere of coercion created by the promise and granting of benefits and the suggestion of surveillance, we conclude that Respondent's conduct substantially interfered with the free choice of the employees in the selection of a collective bargaining representative. Accordingly, the election conducted on March 3, 1977, among the agricultural employees of Royal Packing Company is hereby set aside.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Royal Packing Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discharging, laying off, or otherwise discriminating against any of its agricultural employees because of their union membership, union activities, or other concerted activities for mutual aid or protection.

(b) Making promises and/or grants of improved

working conditions or fringe benefits to employees in order to discourage any of its employees from joining or supporting any union.

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

(d) Giving employees the impression that their union activities are under surveillance by reading aloud to employees the names of alleged union members and/or union sympathizers, or otherwise interfering with any employees in the exercise of their Section 1152 rights.

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

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

(a) Immediately offer Manuel Camacho full reinstatement to his former position or a substantially equivalent position, without prejudice to his seniority or other rights and privileges to which he is entitled, and make him whole for any loss of earnings or other economic losses he has suffered as a result of his discharge, plus interest thereon computed at seven per cent (7%) per annum.

(b) Preserve and make available to the Board

or its agents, for examination and copying, all payroll records and any other records necessary to determine the amount of back pay and other rights of reimbursement due Manuel Camacho under the terms of this Order.

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

(d) Mail copies of the attached Notice to Employees in all appropriate languages, within 30 days after issuance of this Order, to all employees employed at any time during the payroll periods encompassing the dates of November 11, 1976, through March 3, 1977.

(e) Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice to Employees in appropriate languages to the assembled employees of Respondent on company time. The reading(s) shall be at peak season, at such time(s) and place(s) as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under

the Act.

(f) Hand a copy of the attached Notice to Employees to each of its present employees and to each employee hired during the six months following issuance of this Order.

(g) Notify the Regional Director in writing, within 30 days after 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/her periodically thereafter in writing what further steps have been taken in compliance with this Order.

DATED: May 3, 1979

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

MEMBER McCARTHY, Dissenting in Part:

I dissent from the majority's holding that Respondent discriminatorily discharged Manuel Camacho, as it is not established in the record that Camacho's discharge was related to either his status as a union steward or his vigorous performance of the legitimate duties and functions of that office.

Union activity of any kind, including duty as a shop steward, does not insulate an employee from discipline for insubordination. Pathe Laboratories, Inc., 141 NLRB 1290, 52 LRRM 1514 (1963); Pinellas Paving Co., 132 NLRB 1023, 48 LRRM 1475 (1961). On the basis of the entire record, I would find that Camacho was terminated for his continued disregard of his supervisor's work instructions to him and his disruptive confrontations in the field which caused frequent work stoppages.

Dated: May 3, 1979

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its case, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. The Board has told us to send out and post this Notice.

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

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

1. To organize themselves;

2. To form, join, or help unions;

3. To bargain as a group and choose whom they want to speak for them;

4. To act together with other workers to try to get a contract or to help or protect one another; 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 discharge, lay off, or in any other way discriminate against, any employee because he or she joins, assists or favors any labor union.

WE WILL NOT promise or grant better working conditions or a better health plan to discourage employees from joining or assisting a labor union or from choosing a labor union to represent them.

WE WILL NOT give unfair assistance to the Teamsters or any other labor union, such as allowing representatives of one labor union to organize employees on our property while denying other labor unions an equal opportunity to do so.

WE WILL NOT give the impression of spying on employees' union activity by reading aloud, or otherwise making public, the names of members and supporters of the UFW or any other labor union.

WE WILL NOT in any way, or at any time, Interfere with, or re-strain, or coerce any employee in the exercise of the rights described above,

WE WILL immediately offer MANUEL CAMACHO reinstatement to his old job and will pay him any money he has lost, plus interest at 7%, because we discharged him.

ROYAL PACKING COMPANY

Dated: _____ _____

(Representative) (Title)

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

5 ALRB No. 31 DO MOT REMOVE OR MUTILATE.

CASE SUMMARY

Royal Packing Company 5 ALRB No. 31
Case Nos. 76-CE-101-E 77-CE-11-E
76-CE-102-E 77-CE-23-E
76-CE-103-E 77-CE-31-E
76-CE-104-E 77-CE-36-E
76-CE-108-E 77-CE-66-E
76-CE-112-E 77-RC-11-E
76-CE-119-E 76-CE-137-E
76-CE-121-E 77-CE-36-E
76-CE-122-E 77-CE-73-E
76-CE-129-E 77-CE-111-E
76-CE-137-E 77-CE-131-E
77-CE-2-E

ALO DECISION I

These cases were litigated at two hearings and reported in three ALO decisions. In the first of his decisions, the ALO found that Respondent violated Sections 1153(b) and (a) of the Act by allowing the Teamsters greater access to its employees at the work-site fields than it allowed to the UFW. Although the UFW was not prevented from fully exercising its right to take access under the Board's access rule, 8 Cal. Admin. Code Section 20900 et seq., Respondent permitted the Teamsters additional access for organizing purposes during the workday, purportedly under the terms of the collective-bargaining agreement between the Teamsters and Respondent which permitted access for "legitimate union business."

The ALO found that Respondent violated Section 1153(a) by the conduct of a supervisor reading aloud to his crew the names of UFW supporters in the crew.

The ALO concluded that Respondent violated Sections 1154.6 and 1153(a) by hiring one crew of Teamsters' supporters for the primary purpose of voting in an election, finding that the foreman of the crew, Alcantar, a former Teamsters' organizer, was hired with the aid of the Teamsters and, in turn, hired Teamsters' supporters he knew from previous work.

The ALO concluded that Respondent did not violate Section 1153(a) by forcing an employee to sign a declaration for use against the UFW. The ALO found that the employee willingly signed the declaration, knowing that it would be used against the UFW.

The ALO recommended dismissal of an allegation that Respondent violated Section 1153(a) by a supervisor's coercive statement to a crew member. The ALO found that the foreman said, in effect, that the employee could complain to the UFW or any other

union and that the union could not tell him what to do, and that this statement did not constitute a violation of the Act.

The ALO concluded that Respondent did not violate Section 1153(c) and (a) by creating more onerous working conditions for a crew because of its support of a union. It was alleged that the foreman made the crew use knives rather than hoes; the ALO found that the requirement was not made in retaliation for union activity, and that there was a sufficient business justification for the use of knives.

The ALO concluded that Respondent did not violate Section 1153(c) and (a) because its discharge of an employee was not for engaging in union or protected activities. The ALO found that the worker frequently disobeyed his foreman's instructions, confronted and challenged the foreman's authority, used profanity, was reprimanded on several occasions, and encouraged two fellow-workers in their heated argument with the foreman, and that his discharge was based on that conduct and not on his union activities

The ALO concluded that Respondent did not violate Sections 1154.6 and 1153(a) as its hiring of the Ayala crew was not for the primary purpose of voting in an election. The foreman was employed by Respondent prior to the formation of the new crew, and the hirings were necessitated by business considerations.

ALO DECISION II

In this Supplementary Decision, the ALO affirmed his previous recommendation to dismiss the allegations with reference to the Ayala crew.

ALO DECISION III

The ALO concluded that Respondent violated Section 1153(a) and (b) by instituting a new and improved medical plan at a time of intense organizational activity preceding the filing of a representation petition.

The ALO also concluded that Respondent violated Section 1153(a) by promoting foreman Alcantar to the position of supervisor, finding that the promotion interfered with the employees' right of free choice by implying to employees that a person's support of a union favored by Respondent, or of a no-union position, would result in work advancement.

The ALO concluded that Respondent did not violate the Act by promoting two employees to the position of foreman. There was adequate business justification to promote these employees, and neither engaged in any unfair labor practices during their tenure as foremen.

The ALO concluded that Agrupacion, an organization of Respondent's employees which won the representation election, was not a labor organization and therefore could not be

certified. The ALO based this conclusion on the organization's lack of structure and form, its "vote neither" aspect and the alleged fraud in its campaign.

The ALO concluded that Respondent did not violate Section 1153(b) and (a) by unlawfully assisting Agrupacion, based on his conclusion that the organization was not a labor organization within the meaning of the Act. The ALO provided, however, that if the Board should find that Agrupacion is a labor organization, it should also find that Respondent violated Section 1153(b) and (a) by aiding the formation and administration of Agrupacion.

The ALO further found that the following objections to the election constituted additional grounds for setting the results aside: (1) Respondent granted the Teamsters access in excess of that granted the UFW; (2) Respondent created the impression of surveillance by its foreman reading aloud the names of UFW supporters; (3) Respondent unlawfully increased its employees' medical benefits to discourage support for the UFW; (4) Agrupacion, if a labor organization, was assisted and interfered with by Respondent; and (5) the employee list provided by Respondent was substantially incomplete. The ALO declined to consider an objection that hiring two new crews made a fair election impossible, since that objection had been dismissed by the Executive Secretary.

BOARD DECISION

The Board affirmed the ALO's conclusion that Respondent violated Section 1153(b) and (a) by granting preferential access to the Teamsters for organization purposes. In two instances, Respondent permitted Teamsters' organizers to substitute for lettuce-wrap-machine operators while those employees solicited signatures.

The Board, reversing the ALO, concluded that Respondent violated Section 1153(c) and (a) by discharging an employee who was an active spokesman for his fellow employees concerning their work-related problems, finding that the employee was discharged because of his union activities, including his vigorous representation of employees.

The Board affirmed the ALO's conclusion that Respondent violated Section 1153(a) by granting employees a new medical plan during the course of organizing efforts. Even though the plan was announced after the withdrawal of the UFW's election petition, the Board found that organizing efforts were still in progress and that the timing of the announcement had a natural tendency to influence an anticipated election. The Board rejected Respondent's claim that no violation had occurred because the new plan was the result of negotiations with the Teamsters.

The Board concluded that Respondent did not violate the Act by hiring either of the new crews, finding that Respondent did not .hire the crews for the primary purpose of having them vote in an election. Respondent needed the crews for its lettuce-wrap machines, it hired the employees on a permanent basis, and the employees were qualified for, and did perform, the work for which they were hired.

The Board, reversing the ALO, concluded that the promotion of a foreman to the position of supervisor did not violate Section 1153(a), finding that the promotion did not tend to interfere with the employees' Section 1152 rights.

The Board, reversing the ALO, concluded that Agrupacion was a labor organization within the meaning of Section 1140.4(f) The Board relied on NLRB precedent that status as a labor organization does not require formal organizational structure or that the proposed representational activities have come to fruition.

The Board further concluded that Respondent did not unlawfully dominate or assist Agrupacion. The Board based its conclusion on the lack of evidence that Respondent accorded any benefit or special treatment to Agrupacion and that Agrupacion was not the successor to any assisted labor organization.

The Board set aside the representation election based on the following findings: (1) Respondent promised and granted improved medical benefits during the organizational campaign; (2) the employee list originally supplied by Respondent was substantially deficient, and a subsequent list did not remedy the hardship imposed upon the unions; and (3) Respondent gave the impression of surveillance by the conduct of its supervisor in reading aloud the names of UFW supporters.

REMEDY

The Board ordered Respondent to cease and desist from its unlawful practices, to rehire and make whole the employee it unlawfully discharged, and to post, mail and distribute an appropriate remedial Notice to Employees.

DISSENT

Member McCarthy dissented from the Board's conclusion as to an unlawful discharge, and would find that the employee was terminated for his continued disregard of his supervisor's authority and his disruptive confrontations in the field.

* * *

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

ROYAL PACKING COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party,	)	Case Nos: 76-CE-101-E 76-CE-102-E 76-CE-103-E 76-CE-104-E 76-CE-108-E 76-CE-112-E 76-CE-119-E 76-CE-121-E 76-CE-122-E 76-CE-129-E 76-CE-137-E 77-CE-2-E 77-CE-11-E 77-CE-23-E 77-CE-31-E 77-CE-66-E

Byron S. Georgiu, Esq., Legal Counsel and David Arizmendi, both of El Centro, California for the General Counsel

Dressier, Stoll & Jacobs by Wayne A. Hersh, Esq. and Robert P. Roy, of Salinas, California and Newport Beach, California, respectively, for Respondents

Susan Alva, of Calexico, California, for the Charging Party.

DECISION

Statement of the Case

ROBERT A. D'ISIDORO, Administrative Law Officer: These cases were heard before me in El Centro, California, commencing on February 10, 1977, and terminating on March 25, 1977. The parties have stipulated that the above-referenced complaints were properly served and consolidated for hearing and that case number

76-CE-137-E (paragraph 16 of General Counsel Exhibit 13a) was severed and continued to a future date.

The complaints allege specific unfair labor practices within the meaning of the California Agricultural Labor Relations Act (ALRA) committed by Royal Packing Company (Respondent). The allegations are based on charges filed by United Farm Workers of America, AFL-CIO (UFW) duly served upon Respondent.

All parties were given full opportunity to participate in the hearing, and after the close thereof, General Counsel and Respondent filed briefs in support of their respective positions.

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

I

JURISDICTION

Royal Packing Company is an Arizona corporation qualified to do business in California, with its principal office in Salinas, California. Jack and Don Hart, brothers, are the principal stockholders and officers of the corporation. The primary business of Royal Packing Company is the growing, packing, and shipping of fresh lettuce. The company carries on its business operations within California and Arizona. It employs approximately 240 people, including supervisorial personnel. Ordinarily, there are four ground crews, two wrap machine crews, and two weeding/ thinning crews.

In California, the operations are carried out in the Salinas Valley, the San Joaquin Valley (Huron area) and the Imperial Valley (El Centro area). In Arizona, operations are conducted in the Yuma area. The crews generally follow the growing season, i.e., Salinas Valley from May to October? Yuma area from November to December; Imperial Valley from December through February. In February, they go back to the Yuma area for the spring harvest "deal" which lasts through April, then on to the Huron area for completion of their spring San Joaquin "deal," which is from April to May; and in May, they return to the Salinas area, completing the cycle. All of the "deals" have an overlap of approximately one week.

Royal Packing does not own the land upon which it grows and harvests its crops. It leases the land from various growers. Prior to 1974, it conducted its operations in California and Arizona from its Phoenix office. In 1974, it moved its headquarters to its present location at 680 East Romie Lane, Salinas, California, which is also the home of Jack Hart and his son, Don. Since 1972, Royal Packing Company has been a member of a multi-employer bargaining unit called Employers' Negotiating Committee. As such, Royal Packing Company entered into a contract with the Teamsters that continues to the present.

The principal harvest method used by Respondent prior to 1976 was the "naked pack" or "dry pack" procedure of packing lettuce in the field. In order to compete more effectively with other lettuce packers, Respondent purchased two lettuce wrap machines in the summer of 1976. One machine has 10 wrapping

stations and the other machine has 12 wrapping stations. The cutters and wrappers in each crew produce cartons of trimmed and cellophane wrapped heads of lettuce in the field.

The growing operations precede the harvesting operations. The weeding and thinning crews remove any weeds that develop after the use of herbicides, and they separate and remove small lettuce plants to facilitate maximum growth. Occasionally, "double" plants develop where two seeds have been planted in the same hole. In such case, the thinning crew separates such "doubles" and removes one plant, lest both be lost because of insufficient room to develop to maturity.

In accordance with the admissions of the parties and with the above, I find Respondent to be an agricultural employer within the meaning of Section 1140.4(c)[1/] of the ALRA and the UFW to be a labor organization within the meaning of Section 1140.4(f)[2/] of the ALRA. Respondent acts through various agents and

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1/ "1140.4(c) The term 'agricultural employer' shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, any farm labor contractor as defined by Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part."

2/ "1140.4(f) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for agricultural employees."

supervisors within the meaning of Section 1140.4(j)[3/] of the ALRA, for whose actions Respondent is responsible under Chapter 4 of the ALRA dealing with unfair labor practices. By stipulation of the parties, these supervisors include Don Hart, David Hart, Mark Simis, Manuel Alcantar, Antonio Ayala, Esteban Duran, Ricardo Ramirez, Gilberto Ramirez, Jesus Lorenzana at all times relevant herein, and also Garbriel Castillo, but only during the time that Castillo served as replacement foreman for Ayala's wrap crew while Ayala was on vacation.

II

THE ALLEGED UNFAIR LABOR PRACTICES

At the hearing's inception, numerous motions culminated in the stipulation by the parties that General Counsel's initial Complaint be amended as shown in "First Amended Complaint" (GC 13a). Likewise, General Counsel's later Complaint was amended as shown in GC 22a after it became consolidated by stipulation during the course of General Counsel's case in chief.[4/] Therefore, all of the charges with which we are here concerned are contained in GC Exhibits 13a and 22a.

_3/ "11.40.4(j) The term 'supervisor' means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

4/ See 8 Cal. Administrative Code, Section 20242 and 20262.

Motions upon which Rulings Were Reserved. Respondent moved to dismiss the charges regarding the use of the lettuce knife (Paragraphs 17 (a) and 18 (c) of GC 13a) and the Camacho firing (paragraph 18(a) of GC 13a), arguing that the ALRB should have deferred to the grievance and arbitration machinery of the Teamster contract pursuant to the doctrine of Collyer Insulated Wire, 192 NLRB 837, 77 LRRM 1931 (1971). Those motions were taken under submission and rulings thereon will be set forth in this decision in the subsequent Sections E, Firing of Camacho, and F, Use of Lettuce Knives Instead of Hoe, etc.

Motions to Dismiss—Granted. At the completion of General Counsel's case in chief, the charges contained in the following paragraphs were dismissed:

1. 17(a), on page 6 of GC 13a--Duran's threat to lay off crew members complaining to the UFW about use of the lettuce knife—General Counsel's motion granted;

2. 18(b), on page 7 of GC 13a--Refusal to rehire Bienvenido Mercado—General Counsel's motion granted;

3. 10(c) on page 4 of GC 22a--Changing of conditions of loading process—General Counsel's motion granted;

4. 10(d), on page 4 of GC 22a--Lorenzana's threat to fire a crew member if he voted for UFW—General Counsel's motion granted;

5. 10 (c), on page 5 of CG 22a--Replacement of the Duran crew because of their union activity—General Counsel's motion granted;

6. 17(b), on page 6 of GC 13a--Alcantar's threat to employees of loss of employment of $30 fee deduction if they failed to sign Teamster authorization cards—Respondent's motion granted since there had been no evidence presented that the events occurred in California.[5/]

Motions to Amend the Pleadings to Conform to the Proof--[6/] Granted. At the completion of General Counsel's case in chief, the charges contained in the following paragraphs were amended pursuant to General Counsel's motion:

1. 17(d), on page 6 of GC 13a--Regarding the exact words used by Duran to Alicia Lopez Garcia per the testimony of

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5/ At the outset of the hearing, the parties stipulated that conduct of the parties that occurred in Arizona could not constitute an independent unfair labor practice under the ALRA.

6/ Amendments are freely permitted in labor cases to conform to proof. As no substantial discovery is permitted in these hearings, amendments are frequently necessary which would seem tardy in a civil court case. It has frequently been held by the NLRB to be error not to permit amendments to conform to proof. Community Convalescent Hospital, et al., 206 NLRB No. 124, 84 LRRM 1421 (1973); Sunrise Manor Nursing Home, 199 NLRB No. 154, 82 LRRM 1186 (1972); Lion Knitting Mills, 160 NLRB 801, 63 LRRM 1041 (1966). It is not evidence of bias for a hearing officer to permit the General Counsel to amend the complaint after a hearing begins. NLRB v. Frazier, Inc., 411 F.2d 1161, 71 LRRM 2466 (8th Cir. 1969). Courts have even permitted amendments in some cases after submission of the entire case. Preiser Scientific Inc., 387 F.2d 143, 67 LRRM 2077 (4th Cir. 1967).

Of course, where some undue advantage was taken of respondent, amendment will not be permitted. Great Scott Supermarkets, Inc., 206 NLRB No. Ill, 84 LRRM 1563 (1973) (General Counsel was aware of facts upon which he premised his requested amendments well before close of hearing, but did not file motion until after hearing was closed).

But this was not such a case. There was no prejudice to Respondent, even with respect to the last motion. Ayala did not testify until the defense case and the motion to amend was made shortly thereafter. Ayala had already denied wrongdoing and was available for recall. Respondent had ample time to call any other witnesses and, moreover, although objecting to the motion to amend, did not request additional time to respond to the amendment.

the witnesses;

2. 10 (a), on page 4 of GC 22a--Regarding the improper procurement of employee declarations per the testimony of Jesus Ramirez;

During the course of Respondent's case in chief, the charge contained in the following paragraph was amended pursuant to General Counsel's motion.

3. 10 (f), on page 5 of GC 22a--Regarding the addition of Antonio Ayala and his crew.

Motions to Dismiss--Denied. Respondent moved to dismiss the remaining charges of the consolidated complaints, arguing that General Counsel had failed to meet the burden of proof in his case in chief. The motions were denied in that prima-facie cases had been established with respect to those charges. Therefore, the unfair labor practice charges remaining at issue are identified, discussed, and decided as follows:

A. Organizational Assistance to the Teamsters

Paragraph 15 of the First Amended Complaint (GC 13a) charges Respondent with committing certain acts in the State of California which allegedly have interfered with, restrained and coerced the exercise of its employees' rights guaranteed in Section 1152[7/] of the ALRA, thereby engaging in unfair labor

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[7/] "1152. Employees shall have the 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, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a. condition of continued employment as authorized in subdivision (c) of Section 1153."

practices affecting agriculture within the meaning of Sections 1153(a) and (b)[8/] and 1140.4(a)[9/] of the ALRA. Those acts consist of:

> (a) . . . showed favoritism to the Teamsters by allowing the Teamsters full and unlimited access to the employer's property and employees during working hours, for the purpose of campaigning and organizing, while denying similar access to UFW organizers.
>
> (b) . . . has dominated, assisted, and interfered with the organizational efforts of the Teamsters by: (1) urging workers to sign Teamsters authorization cards in Antonio Ayala's crew through Gabriel Castillo and in Gilberto Ramirez' crew and Manuel Alcantar's crew through Manuel Alcantar. [See GC 13a, page 4, paragraph 15.]

I find no evidence that any of the events alleged in the latter charge [15(b)] occurred in California. The parties do not dispute the absence of such evidence. In accordance with the stipulation of the parties that conduct occurring in Arizona could not constitute an independent unfair labor practice under the ALRA, we need no further discussion on this issue. Therefore,

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8/ "1153. It shall be an unfair labor practice for an agricultural employer to do any of the following:
(a) Interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.
(b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . .

9/ "1140.4. As used in this part:
(a) The term "agriculture" includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market."

I recommend that the charge contained in paragraph 15 (b) of GC 13a be dismissed in accordance with Section 1160.3 of the ALRA.[10/]

We now address the more complex issue presented by paragraph 15(a). In California, did the Respondent allow the Teamsters full and unlimited access for the purpose of campaigning and organizing, while denying similar access to UFW organizers?

The parties agree that the UFW took access frequently pursuant to the terms of the ALRA access rule. The ALRB access rule is found at 8 Cal. Admin. Code Section 20900, et. seg., and provides in pertinent part, Sections 20900(e)(3) and (5):

> (3) Time and place of access.
>
> (A) Organizers may enter the property of an employer for a total period of one hour before the start of work and one hour after the completion of work to meet and talk with employees in areas in which employees congregate before and after working. Such areas shall include buses provided by an employer or by a labor contractor in which employees ride to and from work, while such buses are parked at sites at which employees are picked up or delivered to work. Where employees board such buses more than one hour before the start of work, organizers may have access to such buses from the time when employees begin to board until such time as the bus departs.
>
> (B) In addition, organizers may enter the employer's property for a single period not to exceed one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an

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10/ "1160.3. . . . .If, upon the preponderance of the testimony taken, the board shall be of the opinion that the person named in the complaint has not engaged in or is not engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint. ..."

established lunch break, the one-hour period shall encompass such lunch break. If there is no established lunch break, the one-hour period shall encompass the time when employees are actually taking their lunch break, whenever that occurs during the day.

(5) Violations of Section 20900.

(A) Any organizer who violates the provisions of this part may be barred from exercising the right of access under this part in any one or more of the four geographical areas currently designated by the Board as regions, for an appropriate period of time to be determined by the Board after due notice and hearing.

Any labor organization or division thereof whose organizers repeatedly violates the provisions of this part may be barred from exercising the right of access under this part in any one or more of the four geographical areas currently designated by the Board as regions, for an appropriate period of time to be determined by the Board after due notice and hearing.

(B) Violation by a labor organizer or organization of the access regulation may constitute an unfair labor practice in violation of Labor Code Section 1154(a)(1) if it independently constitutes restraint and coercion of employees in the exercise of their rights under Labor Code Section 1152.

Violations by a labor organizer or organization of this part may constitute grounds for setting aside an election where the Board determined in objections proceedings under Section 1156.3 (c) of the Act that such conduct affected the results of the election.

General Counsel contends that the UFW complied with the access rule limitations in California while the Teamsters came to the fields whenever they felt like it, whereas Respondent contends that UFW organizers sought and were actually allowed excess access in violation of the rule.

Evidence relevant to UFW California access was as follows: Defense witness Jose Aguilera Morales testified that,

except for the day of December 30, 1976, [11/] the UFW came to talk to workers in his crew (Lorenzana's) only before work. Respondent Foreman Jesus Lorenzana testified that the UFW organizers waited for employees to finish their work and start eating before commencing to talk. Defense witness Maria N. Diaz, a member of Ayala's crew, testified that the UFW came nearly every day, but they waited for the workers at the edge of the field until lunch began. Defense witness Jose Lucero Jacobo, a member of Alcantar's crew, said he saw UFW organizers in Holtville, Brawley, El Centro and Heber, but only at the edge of the fields where they talked

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11/ The parties concede that on December 30, 1976, representatives of the Teamsters, UFW, and the ALRB were in the fields speaking to Respondent's employees regarding ALRA procedures, organizational rights and liabilities, etc. Respondent's ALRA election history has been complex, particularly when considered in light of the Act's relative youth. On September 5, 1975, the UFW filed a petition for certification in the Salinas Regional Office. The Teamsters intervened. On September 17, 1975, an election was conducted which the UFW won by a plurality, but not a majority, of the votes cast. Pursuant to a written stipulation, signed by all parties, a run-off election was held between the UFW and the Teamsters on September 25 and 26, 1975. The Teamsters won the run-off election. The election was set aside on February 5, 1976, when the Board upheld UFW objections. See Royal Packing Company, 2 ALRB No. 29 (1976). The next day, February 6, 1976, the ALRB closed its regional offices and no election petitions were accepted until December 1, 1976, when the offices reopened. On December 23, 1976, two Respondent employees attempted to file a petition for certification on behalf of a group of employees called "Trabajadores de la Royal Packing Company." The ALRB rejected the petition as defective. On December 24, 1976, the Somerton Teamsters office, Local 274, filed a petition for certification, 76-RC-26-E. The UFW and the "Trabajadores ..." intervened on December 29, 1976. An administrative investigation into the integrity of the petition's authorization cards resulted in the dismissal of the petition on December 30, 1976. On December 31, 1976, the UFW filed a petition for certification, 76-RC-27-E, which was withdrawn on January 4, 1977. On February 23, 1977, a petition for certification was filed on behalf of a group of employees called "Agrupacion Independiente de los Trabajadores en la Royal Packing Company," 77-RC-11-E. The UFW and a group called the Independent Union of Agricultural Workers (IUAW) intervened. On March 3, 1977, an election was held. The results were Agrupacion 108, UFW 62, No Union 14, IUAW 2. The UFW and the IUAW filed petitions (now pending) to set the election aside pursuant to Section 1156.3(c) of the ALRA.

to workers at lunch and, occasionally, on breaks. Defense witness Guadalupe Zamudio saw the UFW come to her crew once in the Imperial Valley for an hour or so at the border of the field. Defense witness Victor L. Astorga said he saw the UFW near Heber and near Westmorland, and that they usually came before work (one time at lunch), except for one day, presumably December 30, when both the UFW and the Teamsters were in the fields during work time. David Hart, Respondent's growing operations supervisor, testified that he saw the UFW in the fields during work time only once and that the other times he saw them were at lunch. Supervisor Ricardo Ramirez testified that when he saw the UFW in the Imperial Valley, they would stay at the edge of the fields and sometimes talked to workers as they were rounding a row. The testimony of General Counsel witnesses Lydia Silva, Luis Loza, Victor Manuel Lopez, Nemecio Duarte, and Carlos Ordaz also generally confirmed General Counsel's position that UFW organizers enthusiastically and regularly pursued their organizational access rights under the ALRA but did not violate its limitations. Respondent points to testimony that UFW organizers would meet the employee buses at the pickup points in the morning (Pete's Cafe was the pickup point for Alcantar's crew and the rest of the crews met at the Chevron station in Calexico) and would follow the crews to the field, sometimes remaining at the sides of the field all day. Respondent argues that these "sides of the fields" were actually private dirt roads, not accessible to the general public. Based upon all the evidence as set forth above, I am

persuaded that the Respondent's proffered affirmative defense of UFW "excess access" is not supported by a preponderance thereof, and, in accordance therewith, I find against said affirmative defense.

Regarding Teamster access, we note that Respondent has been operating subject to a Teamster contract since 1972. ARTICLE XV-VISITATIONS, Respondent's exhibit labeled R-1, page 13, states:

> All agents of the Union shall have the right to visit properties of the Company at all times and places, to conduct legitimate Union business; however, he shall not unduly interrupt operations.

The parties conceded that the "Visitations" paragraph above does not give the Teamsters the right to campaign and electioneer on an unequal basis with other unions.[12/] However, General Counsel contends that Respondent knowingly permitted the Teamsters to use their contractual visitation rights for improper purposes in violation of Sections 1153(a) and (b).

12/ The enactment of the ALBA did not automatically void all pre-Act contracts. ALRA, Section 1.5. On the other hand, pre-Act contracts do not operate as a bar to the holding of a secret ballot election among the workers to choose a union [Section 1156.7(a)], and generally occupy a second-class status under the Act. Teamster visitation pursuant to the contract must be limited to legitimate acts of servicing the contract. It does not permit the Teamsters to campaign and electioneer among the workers during work time, while other unions are limited to the hours provided in the access rule. To permit otherwise would render the ALRA ineffective, since the pre-Act contract not ratified by the workers would thus undermine the post-Act choice of the workers. After all, the keystone of the ALRA is free worker choice of a union, or no union.

The ALRB access rule permits voluntary agreements to provide additional access, but any such agreement must permit access on equal terms to any labor organization which agrees to abide by its terms. Chapter 8, Cal. Admin. Code Section 20900(e)(2).

Evidence relevant to Teamster California access, both quantitatively and qualitatively was as follows: Defense witness Oscar Arvizo testified that the Teamsters came to the fields to get signatures during work, sometimes all day, sometimes for a short time. The Teamsters would come to talk to the people "about whether they were going to vote for them or not." David Hart testified that he had seen the Teamsters in the fields during work time about five times. Respondent's personnel coordinator, Joe Chavez, testified that the workers at Royal felt that the Teamster representative (Oscar Gonzales) appeared to be eager to listen to the problems of the people exclusively around election time.[13/] Foreman Manuel Alcantar testified that he saw Teamster organizers Roy Mendoza, Sammy Rivera, Ernesto Lizarraga and Ismelda Lopez come to the fields in California during work time for two or three days near the end of December, 1976. Alcantar testified that he had worked for the Teamsters prior to his employment by Respondent, and that he had served at the same time as both a business agent and an organizer, as did his fellow Teamster employees. Alcantar stated that Oscar Gonzales also performed both functions for the Teamsters at Royal, and that in December Gonzales had collected authorizations for the election petition as well as talked to the workers about other matters.

13/ General Counsel points out that this tends to support his argument that, even when the Teamsters visited the fields purportedly for the purpose of servicing the contract, they also talked about authorization cards and elections, so that each and every one of their visits contained a significant organizational component.

However, Gonzales didn't identify himself as a business agent or an organizer when he came. When asked how then he would know whether to let Gonzales take access during work time, Alcantar testified, "Well, if I saw him organizing, I would tell him to get out." When asked if he ever did that, Alcantar answered, "No." Alcantar further testified that the authorization cards Gonzales had in the fields were the Teamster ALRA election authorization cards (R-3) as distinguished from the dues and initiation fee authorization cards (GC 41).

Teamster organizer Oscar Gonzales was regularly in Duran's thinning crew during work time in December. Mario Busta-mante testified that he observed Duran kick out UFW organizers and let Gonzales stay during work time on one particular occasion, and that Gonzales would "come and go" as he pleased during working hours. Rosalia Camacho confirmed generally the free rein given to Gonzales and to Martha Cano (the other Teamster Royal representative) and remembered a specific occasion when Gonzales, while allegedly servicing the contract, solicited her vote for the expected election by saying, "You do for me and I'll do for you." Foreman Duran testified that he asked Gonzales to wait outside until break time on one occasion, but that Gonzales was at the fields in his crew during work time on many more occasions. Both Martha Cano and Oscar Gonzales testified that they were generally given greater access at Royal and were allowed to do things UFW organizers could not do. Cano testified that she visited both wrap machines and most of the ground crews during work time in December to

solicit signatures and campaign for the petition filed by Somerton Teamster Local 274. On one occasion, during work, she went to the wrap machine of foreman Alcantar, whom she had known when Alcantar had worked with her as a Teamster as recently as a month or so previous. Cano gave Teamster authorization cards to two of the workers on the machine, Paula and Floro Olivas, and took one of their places wrapping lettuce while the two of them collected signatures of the crew members. Alcantar said nothing, and made no attempt to prevent Cano's organizational activity. Cano further testified that supervisor David Hart came by about 9:30 a.m., noticed her on the machine, and did nothing more than joke with her and tease her about being too slow. He observed the workers signing the cards which were being passed around and, like Alcantar, did nothing to stop it. At that time, Oscar Gonzales, Manuel Alcantar, and David Hart were merely standing around talking near the machine.

Oscar Gonzales confirmed the above events in his testimony, and further stated that while the signatures were being collected, he chastised Alcantar, who was then a supervisor, for still wearing a Teamster patch on his pants. Gonzales testified that, from his experience with the Teamsters, Alcantar was very familiar with authorization cards, R-3, and was well aware of what they were used for, that Gonzales even told Alcantar at the time that he and Cano were there to get signatures for the Teamster Local 274 petition, and that Alcantar told them only to "hurry up and get it done."

Defense witness Guadalupe Zamudio confirmed that Cano took over either Floro or Paula Olivas' spot wrapping on the machine while two Respondent workers collected signatures and that Alcantar made no attempt to stop it. Zamudio testified that she had never seen a UFW organizer working on Respondent's machine or collect signatures while a machine was working. Even Alcantar himself testified that he remembered Gonzales and Cano coming to the crew to get signatures for the Local 274 Teamster petition and that Paula and Floro Olivas took the cards around to get them signed. David Hart testified that he had seen Cano in the Royal fields in the Imperial Valley on numerous occasions, both before the first of January, 1977 (when Martha Cano was organizing for the Teamsters) and after (after the first of January, 1977, Martha Cano and Oscar Gonzales formed the IUAW and were organizing on its behalf). Hart, in his testimony, recalled seeing Cano working at the Alcantar machine on one occasion and teasing her about her wrapping not being too good. He didn't know how long she was there, but didn't at any time tell her to leave. Hart admitted that he never saw UFW organizers wrapping lettuce on a Royal machine.

Cano testified that she followed a similar procedure to secure the signatures of the workers on the Ayala machine, this time replacing one of the packers and moving the packer to the wrap station of a worker named Josefina Natal, thereby freeing Natal to obtain the crew members' signatures while the machine was still working. Again, the foreman in charge did not interfere

in any way. Defense witness Maria Cuevas confirmed seeing Natal collect signatures on the machine during work time and that she gave them to Cano who was waiting there.

Gonzales and Cano confirmed that Respondent's supervisors would not let UFW organizers come and go as the Teamster organizers did in the Respondent fields. Gonzales testified to one instance when he went to a Respondent ground crew and collected seven signatures for the Teamster election petiton, and that no one tried to kick him out. He further testified that in all his time at Royal he had never seen the UFW collect signatures during work time.

Respondent argues that General Counsel's case regarding preferential treatment to the Teamsters relies heavily on the testimony of Teamster business representatives Martha Cano and Oscar Gonzales, and that their testimony should not be given great weight because they are both presently officers of the Independent Union of Agricultural Workers (IUAW) which made an unsuccessful bid in the election at Royal on March 3, 1977. They further contend that the general consensus of the witnesses testifying was that Gonzales and Cano were seen in the fields seeking signatures on petitions while they were officers of the IUAW rather than during the month of December when they were in the fields as Teamster business representatives servicing the Teamster contract. I disagree. Respondent cites the case of Bud Antle, 3 ALRB No. 7, as similar to ours. In that case the employer had a contract with the Teamsters which allowed them on

the property for legitimate union business. In upholding the Teamsters' election victory, the Board stated in relevant part:

> This record establishes that Teamster organizers had freer access to the employees than did the UFW organizers. However, it does not appear that the Teamsters were permitted access for campaign purposes which was significantly, if at all, beyond what they were normally permitted for contract purposes. Moreover, it is clear that the Teamsters were, in fact, engaged in servicing their contract during much of the time they spent in the fields ....

Respondent also cites Souza and Boster, 2 NLRB No. 57. In that case the employer was charged with illegal aid and support to the Teamsters by consistently stopping work in the fields in order to allow Teamster organizers individually to pressure workers in the signing of authorization cards. The only evidence offered to establish the fact that the employer consistently stopped the work to allow Teamsters access to the workers was the testimony of the owner, Souza. He described one incident in which he was approached by Teamsters' representatives who told him that they had "union business to conduct" with their members on the ranch. He said he did not inquire into the nature of the Teamsters' business that day nor did he subsequently learn what the Teamsters did or said during their visit. No evidence was introduced to support the contention that the Teamsters did more than service their contract that day. The Board held that this one incident, where the grower permitted the Teamsters to exercise their contractual right of access to the workers, did not constitute evidence of improper aid and support of the Teamsters.

The Bud Antle and the Souza cases are distinguishable

from our case in that I find the evidence in our case establishes by a preponderance thereof that Teamsters' representatives Gonzales and Cano went significantly beyond that which they were normally permitted for servicing of the contract. Granted that it is difficult to keep an organizer/business agent confined to contract servicing while out in the fields (supervisor David Hart, foreman Manuel Alcantar, and defense witness Oscar Arvizo all testified to that effect); however, when the testimony establishes, as Arvizo specifically stated, that when the Teamsters came to the fields they came to talk to the people about whether the people were going to vote for them or not, and further establishes that supervisorial personnel treated such activity with, at best, benign neglect, I then further find that Respondent's conduct in knowingly permitting the Teamsters to use their contractual visitation rights for improper purposes (campaigning and organizing) constitutes a violation of Sections 1153(a) and (b). In addition to the advantage the Teamsters had by having a greater quantity of access to Respondent's fields during working hours, the access they were permitted by Respondent was also qualitatively different from that afforded to the UFW. Sometimes when the Teamsters came, they were expressly endorsed by Respondent supervisorial personnel in the presence of workers. But, even when no vocal endorsement was given, an implied endorsement was inherent in the tacit acceptance by Respondent of the presence of Teamster organizers at times and under circumstances clearly not available to UFW organizers. This failure by Respondent to take corrective

action when it was clearly called for, and when no such advantage was offered the UFW organizers, was apparent to the workers.

Section 1148 of the ALRA directs the Board to consult federal precedent under the NLRA for guidance in determining what conduct constitutes an unfair labor practice. Sections 1153 (a)-(e) of the ALRA are essentially identical to Sections 8(a) (l)-(5) of the NLRA.

Respondent's having allowed the Teamsters to campaign in the fields during periods when the UFW was denied access violates Sections 1153(a) and 1153(b) insofar as it tends to interfere with, restrain, or coerce employees in the exercise of their rights under Section 1152.

The following cases support my findings on this issue. Employers have been found to have unlawfully assisted one of two competing unions by (1) supervisors' active support of one union in its organizing campaign, and (2) disparate treatment of two unions, Corning Glass Works, 100 NLRB 444, 30 LRRM 1307 (1952) and by supervisors' participation or assistance in campaigning and soliciting, Mission Tire & Rubber Co., 208 NLRB 12, 85 LRRM 1550 (1974).

Employers have been found to have unlawfully assisted one of two rival unions by conduct which included denying a rival union the same organizational rights they had awarded the favored union. NLRB v. Waterman Steamship Corp., 309 U.S. 206 (1940), reversing 103 F.2d 157 (issuance of passes to board a ship to one rival union while denying passes to another held unlawful);

American-West African Lines, Inc., 21 NLRB 291, 6 LRRM 19 (1940) (unequal access constitutes unlawful assistance); South Atlantic Steamship Co. of Delaware, 12 NLRB 1367 (1939); Majestic Molded Products Inc. v. NLRB, 330 F.2d 603 (2nd Cir. 1964) (failure to answer union's letter requesting equal access in itself constitutes denial thereof); H&F Binch Co., 168 NLRB 929, 67 LRRM 1129 (1967) (disparity in access accorded rival union constitutes unlawful aid, assistance and support); Spitzer Motor Sales, Inc., 102 NLRB 437, 31 LRRM 1319, 33 LRRM 2693 (1953); Checker Taxi Co., Inc., 131 NLRB 611, 40 LRRM 1110 (1961). Consolidated Edison of New York, 132 NLRB 1502, 48 LRRM 1541 (1961); I. Posner, Inc., 133 NLRB 1573, 49 LRRM 1062 (1961).

The instant case is similar to the situation in Northern Metal Products Co., 171 NLRB 98 (1968) in which an employer disparately applied a no-solicitation rule by permitting officers of an incumbent union to solicit employees on company property while restricting similar activities by representatives of an outside union. The board found that the:

> record clearly establishes that respondent disparately applied such rule by permitting and acquiescing in oral solicitations during working hours . . . the distribution of campaign material . . . during working times in both working and nonworking areas by PMI agents, while . . . prohibiting similar activities by known IAM adherents . . . . 171 NLRB at 110.

On the basis of the unequal enforcement of the no-solicitation rule, the Board found violations of Section 8(a)(2) as well as 8(a)(1).

As the NLRB long ago concluded in American-West African Lines, Inc., supra,:

> to grant one labor organization an opportunity to use employer property for organizational purposes when such grant is not accorded to another labor organization, constitutes employer assistance and support to the first organization, and is an unfair labor practice within the meaning of Section 8(1).

I conclude that the ALRA guarantees to agricultural employees the right to select a bargaining representative of their own choosing, free from employer interference, restraint or coercion. Section 1153(a). When, as in the present case, employees are the target of a heated organizational campaign in which two or more rival unions vie for their allegiance, it is even more imperative that an employer refrain from any activities which might reasonably tend to coerce the employees in the exercise of the rights guaranteed them by Section 1152. In such cases, the employer's duty to refrain from acts of favoritism is essential. NLRB v. Hudson Motor Car Co., 128 F.2d 528 (6th Cir. 1942); Corning Glass Works, 100 NLRB 444, 30 LRRM 1307, 32 LRRM 2136 (1952); Sunbeam Corp., 99 NLRB 546 (1952); and International Association of Machinists, Tool and Dye Makers, Lodge No. 35, etc, v. NLRB, 311 U.S. 72 (1940).

Accordingly, the preponderance of the evidence in this case persuades me that Respondent breached its duty to refrain from acts of favoritism by according greater and qualitatively more beneficial access to the Teamsters for the purpose of campaigning and organizing, while denying and interfering with equal such access by the UFW. As indicated above, I find this conduct violative of Sections 1153(a) and (b) of the Act.

B. Improper Procurement of Employee Declaration

Paragraph 10(a) of GC 22a, as amended to conform to proof, charges Respondent with procuring a declaration under the penalty of perjury from employee Jesus Ramirez under coercive circumstances violative of Section 1153(a) of the ALRA.

Jesus Ramirez testified that one day in January, 1977, in the fields, during work, he executed the declaration admitted into evidence as GC 56. The declaration refers to an occasion when a UFW organizer by the name of Rosa entered the fields to talk to the workers while they were working, and although she was told she couldn't do that, she "didn't pay any attention and she proceeded talking with us." The parties stipulated that this declaration was submitted in support of two unfair labor practice charges which the Respondent filed against the UFW in January of 1977 (77-CL-10-E and 77-CL-15-E). General Counsel contends that this declaration was improperly procured from Ramirez in a manner that interfered with, restrained and coerced him in the exercise of his Section 1152 rights, all in violation of Section 1153(a) of the ALRA.

Ramirez testified that he worked as one of the four lettuce cutters in front of the smaller wrap machine. On the day he signed the declaration, Ayala, his foreman, had approached him and his three nearby co-workers during work and told them that he had a paper (GC 56) to keep the UFW out. "He told us what it said in there and that it was to prevent the Chavistas from being in the field." He stated that he signed his name beneath the

words that had been written on the declaration, and that although he saw the writing there, he did not actually read the words contained therein. He admitted that he had the opportunity to do so, however, he chose not to. He denied feeling pressured, intimidated, threatened, or otherwise forced into signing the document.

In response to probing by the attorneys and the hearing officer regarding the circumstances under which the declaration was signed, Ramirez was rather vague and sometimes inconsistent in his testimony. He made no coherent explanation as to why he willingly signed the document without reading it, other than to say that Ayala had told them what was in it. He, in fact, denied having personally observed the event described in the declaration. However, whether the result of poor communication during the hearing, or otherwise, Ramirez' testimony in that regard and, moreover, taken as a whole was unconvincing regarding General Counsel's contention on this issue.

The only other witness to testify regarding the events surrounding the preparation and signing of the specific declaration with which we are here concerned was foreman Tony Ayala. At first, Ayala testified that he had prepared the declaration himself and although admitting that he hadn't asked the four workers any questions about what they had seen before writing the declaration, when asked if the four cutters who signed were witnesses to the incident described in the declaration, he responded, "Of course," and when asked how he knew that, he responded,

"When I write a declaration I know what's happening and they're the one's that will be witnesses." The next day, Respondent recalled Ayala who then testified that he had not, in fact prepared GC 56, as he was on vacation at the time it was signed. He then identified other declarations (R 12) as declarations that he wrote and that the employees asked him to write, and that he read them to the workers before they signed. The remainder of Ayala's testimony contained additional contradictions and inconsistencies, and, taken as a whole, was no more convincing than the testimony of Ramirez. A perusal of the documents introduced into evidence clearly shows that the handwriting contained in the declaration portion of GC 56 is substantially different from that which appears in R 12. Ramirez was never recalled to explore the possibility of whether someone other than Ayala had prepared the declaration and/or whether he could have been mistaken about whether it had been Ayala or temporary foreman Castillo who had presented the declaration to him. In any event, the vagaries, inconsistencies, and lack of clear and convincing proof mitigate against General Counsel's having met his burden of proof.

General Counsel argues that in this case, the foreman presented an already filled out declaration to a worker and told him to sign it to get rid of the Chavistas. He further argues that the worker signed without knowledge of the contents, purportedly under the penalty of perjury, and that the company submitted the declaration in support of an unfair labor practice charge against the UFW. General Counsel then contends that in

light of these facts and the enormous discretionary authority over job security and working conditions that foremen wield generally in agriculture, and also in light of Ramirez' knowledge of Ayala's avowedly anti-UFW, pro-Teamster, and later pro-Agrupacion stance, Ramirez realistically never had any choice but to sign. General Counsel concludes that "this type of action by supervisors cannot be countenanced under Section 1153 (a) of our Act." Although no authority has been presented directly on point, I agree with General Counsel that such coercive procurement of a declaration would violate the ALRA. As General Counsel points out, Section 1152 provides that employees shall have the right "to form, join or assist labor organizations," or to refrain from doing so. When an employer "interferes with, restrains or coerces the exercise of rights guaranteed in Section 1152," Section 1153(a) is violated. However, in the case at hand, I find insufficient evidence to tip the scale in favor of General Counsel's contention. Although it appears that Ramirez probably had never been made to understand that he was signing a declaration under penalty of perjury for the purpose of filing an unfair labor practice charge against the UFW, I am not convinced that he did not know its contents and/or had not been a percipient witness to Rosa's presence in the fields (during the course of the hearing, many witnesses testified that they had occasion to see a UFW organizer by the name of Rosa in the fields), and lastly, and most importantly, Jesus Ramirez had ample opportunity to explain in this hearing how, to any extent, he had felt pressured,

intimidated, threatened or otherwise forced into signing such a document. Rather, he specifically denied feeling any such compulsion. In view of the evidence presented on this issue, I find that Ramirez willingly signed the declaration, knowing its contents and knowing that it was to be used to keep the UFW from bothering them in the fields. Under the circumstances, I further find that General Counsel failed to prove by a preponderance of the testimony taken, the charges contained in paragraph 10(a) (of GC 22a as amended to conform to proof), and in accordance therewith, I recommend that said charge be dismissed pursuant to Section 1160.3 of the ALRA.

C. Introduction of New Medical Plan

Paragraph 10(b) of GC 22a alleges that Respondent interfered with the workers' right of free choice by instituting a new medical plan for the purpose of affecting the election by discouraging support of the UFW in violation of Section 1153(a).

The parties agree that the facts establish that a new medical plan with increased benefits was instituted by Respondent during the latter half of January, 1977. The new plan increases daily benefits for treatment in a doctor's office, increases pregnancy benefits, and it provides extensive dental benefits, whereas the old plan provided no dental benefits at all. Thus, the only factual question to be resolved here is whether Respondent instituted the new medical plan for the purpose of "affecting the election by discouraging support of the UFW." (Emphasis added.)

The facts are undisputed that there was neither a petition for an election pending nor an election pending at the time GC 22 was filed. The hearing on the first complaint (GC 13) commenced on February 10, 1977. General Counsel had filed and served GC 22 on February 9, 1977. During the following week (the week of February 14th), by stipulation of the parties, GC 22 was amended, answered and consolidated with the hearing in progress.

As set forth in footnote 11 of this Decision, a petition for certification had been filed by the UFW on December 31, 1976, and withdrawn on January 4, 1977. The next petition for certification was filed on February 23, 1977, and on March 3, 1977, the election was conducted.

The UFW and the IUAW filed petitions to set the election aside pursuant to Section 1156.3 (c) of the ALRA. A portion of the allegedly objectionable conduct by the employer cited as grounds for holding a new election may well include the charge that introduction of the new medical plan referred to above interfered with the workers' right of free choice. If so, that issue should properly be framed and decided in the pending objections and/or any unfair labor practice hearings appropriate thereto.

In any event, I recommend that the charge set forth in paragraph 10(b) of GC 22a be dismissed on the narrow factual ground that I find there was no election as alleged in the specific language of the charge (the complaint contains the definite article "the" in front of the word "election"). I make no finding regarding motives or purpose for the institution of the plan or

its effect, as these issues need not be reached here.

I further recommend that the dismissal of the charge contained in paragraph 10(b) of GC 22a be without prejudice to the filing and disposition of any subsequent charge regarding the medical plan referred to in paragraph 10(b) of GC 22a as it relates to any relevant election or organizational campaign.

D. Duran Statement of December 3, 1976

Paragraph 17(d) of GC 13a, as amended to conform to proof, charges foreman Duran with making a statement to employee Alicia Lopez Garcia on or about December 3, 1976, in the presence of other employees of the thinning crew, which statement allegedly violated Section 1153(a) in that it coercively warned the employees that no matter what union they brought in, even Chavez, no one could prevent Duran from doing whatever he wanted to the workers.

Several witnesses testifed that on December 3, 1976, the Duran thinning crew was working in the Imperial Valley, at which time a dispute arose between foreman Duran and employee Alicia Lopez Garcia, culminating in the alleged anti-union statement of Duran that is the subject of this charge.

General Counsel's witnesses established that the Duran thinning crew was pro-UFW by virtue of the fact that all but two of the workers in the crew had signed UFW authorization cards. Alicia Lopez Garcia testified that she had signed a UFW authorization card in the field three days before the incident referred to above. She further testified that she signed in front of

foreman Duran who was less than 10 feet away at the time. General Counsel's witnesses further testified that Garcia was a good worker, and that Duran had not criticized her work from the date she was hired on October 12, 1976, until after she began to work with Rosalia Camacho. Garcia testified that Duran got mad at her for talking to Rosalia Camacho, and that he told Garcia not to work with her. General Counsel witness Bustamante testified that he heard Duran on more than one occasion tell Garcia not to work with ("take rows with") or talk with Rosalia Camacho.

Garcia testified that on the morning of December 3, 1976, as she began working, Duran became angry with her because she was alone with Rosalia Camacho, and he told her to be sure to do her work well and not to work too fast and not to get along with Rosalia, but just to do her work. The aggravation continued during the morning until she finally told Duran that if he didn't stop, she would bring in the union. She stated that Duran responded "that I could go and complain to the union of Chavez and that the union could not do anything to him."

General Counsel witness Bustamante testified that he heard Duran say words to the effect that it did not matter who she brought in, what union she brought in, he would still do whatever he wanted to here. General Counsel witness Rosalia Camacho testified that, finally, after putting up with much hassle, Garcia told Duran that she would bring in the union. He responded, "Bring anyone you want, even Chavez won't tell me what to do." On cross-examination, Mrs. Camacho elaborated that Duran

said, "You can do whatever you want to, can go wherever you want to, no one is going to defend you out here."

Defense witness Victor Astorga testified that he had never heard Duran make any statement to the above effect, but he admitted that most of the time he worked a full row length away from Garcia, often more than 100 yards. Duran himself testified that he did not recall insulting Garcia in front of the crew, he denied pressuring her, and denied telling her that he could do whatever he wanted no matter what union was brought in, testifying, "No, I never said anything like that."

It is clear that Mr. Duran's statement was made in response to Garcia's threat that she would bring in the union. The antagonism between Garcia and Duran escalated to the point of an exchange of threats, neither of which could realistically be understood by the other employees to have significant coercive weight. The friendship between Garcia and Mrs. Camacho obviously rankled Duran. Garcia testified that after she started "going around with Rosalia," Duran began treating her poorly. He used to ask her to sweep the bus, criticize her, etc. In view of the animosity between Duran and the Caraachos (see Section E, Firing of Manuel Camacho later in this decision), I am not persuaded by General Counsel's argument that Duran picked on Garcia because she had signed a UFW authorization card three days before the day he uttered the statement alleged to be a violation of the ALRA.

I find that the preponderance of the evidence supports General Counsel's contention that on December 3, 1976, foreman

Duran stated to Garcia words to the effect that she could go complain to Chavez or any other union and that they wouldn't be able to tell him what to do. However, the evidence does not preponderate in favor of a finding that the statement was made to Garcia because she had been a UFW supporter and/or that his statement conveyed to her or the employees who heard it the feeling that self-organization was futile. Indeed, as a foreman with Royal Packing Company, Duran had been working under the terms of a union contract since 1972 (the Teamsters contract referred to hereinbefore), and, raoreoever, there was no evidence that he was speaking with the authority of Respondent or that it was anything more than an isolated utterance of an individual's views, not authorized by his employer and not of such a character or made under such circumstances as to justify a finding against the Respondent.

An employer is not normally charged with responsibility for isolated or sporadic instances of anti-union conduct by its supervisors, at least where there has been no approval of the conduct by the employer (NLRB v. Dauch Paper Company, 171 F.2d 240, 23 LRRM 2197 [1948]).

In the Dauch case, supra, a minor supervisory employee made a statement to another employee that if the plant was organized, and the union called for a strike, the owner would close the plant down and forget about it. The Board found the employer guilty of an unfair labor practice and sought a petition to enforce an order to cease and desist. The Fourth Circuit Court

of Appeals dismissed the petition on the authority of its decision in NLRB v. Mathieson Alkali Works, 114 F.2d 796, 802, 7 LRRM 393 [4th Cir. 19], where the court stated in relevant part:

> There is some evidence of sporadic and occasional expressions of anti-union sentiment on the part of a few foremen including one or two in addition to those heretobefore mentioned, but, without reviewing this in detail, it is sufficient to say that it furnishes no proof of any unfair attitude on the part of the Respondent, and was not of a character to justify a cease and desist order on the ground that the expressions were attributable to Respondent under the doctrine of Respondent superior.
>
> If there were evidence that these foremen were speaking with the authority of Respondent, or if their expressions of sentiment were so numerous or of such a character as to justify the inference that they were made with Respondent's approval in furtherance of an anti-union policy, an order directing Respondent to cease and desist from interfering with its employees in the exercise of the rights guaranteed by Sec. 7 of the Act would be proper, even though it should not appear that anyone's affiliation had been changed thereby; for each employee has the right to be let alone in this respect by the employer and his representatives. Humble Oil & Refining Co. v NLRB, supra.
>
> But mere isolated expressions of minor supervisory employees, which appear to be nothing more than the utterance of individual views, not authorized by the employer are not of such a character or made under such circumstances as to justify a finding against him.
>
> As was said in the case of National Labor Relations Board v. Whittier Mills Co., 5 Cir. Ill F.2d 474, 4'79 [6 LLRM 799] 'Isolated speeches like these made by underlings, though haying some authority, in casual conversation with fellow employees, which are not authorized or encouraged or even known to the management, ought not to be too quickly imputed to the employer as his breaches of the law. When not made in the exercise of authority, but in personal conversation, they do not appear to be the sentiments of the employer nor his acts, and to make them such the circumstances ought to show some encouragement or ratification or such repetition as to justify the" inference of a policy which they express.

In accordance with my findings set forth above, and for the reasons set forth above, I conclude that Duran's statement of December 3, 1976, does not violate the ALRA, and, therefore, I recommend that the charge contained in Paragraph 17 (d) of GC 13a be dismissed.

E. Firing of Manual Camacho

Paragraph 18(a) of GC 13a charges violations of Sections 1153(a) and (c) regarding the allegedly discriminatory firing of Manuel Camacho during the month of November, 1976, for engaging in union activity.

Before discussing and deciding this issue on its merits, I will rule on Respondent's motion made during the course of the hearing that this charge should have been dismissed on the grounds that the ALRB should have deferred to the grievance and arbitration machinery of the Teamster contract pursuant to the doctrine of the Collyer Insulated Wire case.

Respondent points to ARTICLE XXV of the California Agricultural Master Agreement (R-1) which provides that the company will not discharge or suspend any employee without just cause, but in respect to discharge or suspension, shall give at least one warning notice before such action is taken, except in the case of dishonesty, flagrant insubordination or intoxication, when no warning notice will be required. There is further language contained in ARTICLE XXV regarding the procedure for issuance of the warning notice and its effect. Respondent then

points to ARTICLE XXVII of the above-mentioned agreement, which provides for a dispute-resolving mechanism entitled "Grievance and Arbitration Procedure." The Grievance and Arbitration Procedure generally sets up a mechanism to facilitate settlement and, ultimately, arbitration.

Respondent contends that the NLRB has adopted the policy of deferral in cases involving unfair labor practice charges where the dispute in question essentially is a dispute over the terms and meaning of a collective bargaining contract, and that the parties should be required to resolve the dispute pursuant to the grievance-arbitration provisions of their contract. Respondent cites Collyer Insulated Wire, 192 NLRB No. 150, 177 LRRM 1931 (1971).

Respondent extracts the following language from the Collyer case (177 LRRM at 1936):

> [I]t will not effectuate the statutory policy of encouraging the practice and procedure of collective bargaining for the Board to assume the role of policing collective .contracts between employers and labor organizations by attempting to decide whether disputes as to the meaning and administration of such contracts constitute unfair labor practices under the Act. On the contrary, we believe that parties to collective contracts would thereby be encouraged to abandon their efforts to dispose of disputes under the contracts through collective bargaining or through the settlement procedures mutually agreed upon by them, and to remit the interpretation and administration of their contracts to the Board. We therefore do not deem it wise to exercise our jurisdiction in such a case, where the parties have not exhausted their rights and remedies under the contract as to which this dispute has arisen.

Respondent contends that whether or not Manuel Camacho was discharged for "just cause" is a question that should properly

be delegated to the grievance-arbitration machinery under the collective bargaining contract. As such, the ALRB should defer its jurisdiction on the issue as to whether or not the employer committed an unfair labor practice until such time as the dischargee has exhausted his rights and remedies under the contract.

I disagree.

The holding of Collyer is that, under certain circumstances the Board will defer disputes concerning conduct that arguably violates both the Act and the contract to the dispute resolution mechanisms of the contract. The Board will defer prior to arbitration where:

> "(1) the dispute arose 'within the confines of a long and productive collective bargaining relationship' and there was no claim of 'enmity by Respondent to employees' exercise of protected rights';
>
> (2) Respondent has . . . credibly asserted its willingness to resort to arbitration under a clause providing for arbitration in a very broad range of disputes and unquestionably broad enough to embrace "the dispute before the Board'; and
>
> (3) The contract and its meaning lie at the center of the dispute."

I agree with General Counsel that none of the above factors are found in our case. With respect to (1), Respondent and the Teamsters have had a contract only since 1973 or 1972 at best, and there was no evidence that it was "a long and productive collective bargaining relationship." Don Hart testified that his company signed as a member of a multi-employer bargaining unit and that no Royal management played a role in the negotiations. Furthermore, as indicated previously in this Decision, while pre-

Act contracts were not invalidated by the ALRA, Preamble Section 1.5, they do not bar a petition for an election, ALRA Section 1156.7(a). General Counsel asserts that pre-Act contracts enjoy a barely tolerated status under the Act because they were signed before secret ballot elections were available to farm workers and frequently were executed without an inquiry into whether the majority of the workers desired the signatory union as their exclusive collective bargaining representative. General Counsel also points out that with respect to precondition number (1), there is clearly a claim in our case of "enmity by Respondent to employees' exercise of protected rights."

With respect to precondition number (2), although Respondent asserts its willingness to arbitrate the Camacho firing dispute, the evidence was that the Teamsters, the union upon which Camacho would have to rely to present his grievance, has not been very efficient in pursuit thereof. David Hart, Martha Cano, and Oscar Gonzales all testified that Gonzales filed a grievance on the Camacho discharge, but no one really knows what happened to it, with Gonzales speculating that Roy Mendoza must have dropped it after Gonzales was fired from the Teamsters. The evidence persuades me that the effectiveness of the present contractual dispute resolution machinery between Royal and the Teamsters is questionable, at best. With respect to precondition number (3), it does not appear that "the contract and its meaning lie at the center" of any of the disputes litigated at this hearing, and I so find. I further find that the Collyer case is

not applicable to the facts of our case. Accordingly, I deny Respondent's motion made during the course of the hearing to defer the Camacho firing issue to the grievance-arbitration provisions of the Teamster contract. Of course, I find against that same contention set forth by Respondent in its post-hearing brief.

We now consider the resolution of the Camacho firing issue on its merits as construed in accordance with Sections 1153 (a) and (c) of the ALRA. The evidence established that Camacho began working for Respondent in May of 1976 in Salinas. He worked in Duran's thinning and weeding crew, the backbone of which was formed by the 12 persons who traveled with Duran from Salinas to Avenal and on to the Imperial Valley. Camacho was fired on November 11, 1976. Duran testified that he fired Camacho because earlier in the morning of Camacho's discharge, Duran had told Camacho to leave more room between the lettuce, and Camacho told him to "get fucked." Additionally, there was testimony that a dispute arose during the day between Duran and two members of the Jacobo family (father and son) who worked in his crew. Camacho admitted in his testimony that he had intervened in the Duran/Jacobo dispute. He specifically recalled telling Duran, "Leave him [Jacobo] alone, he is doing his work." Camacho also admitted that he had used profanity on occasion to Duran on the job. There was credible evidence by the witnesses that the Duran/Jacobo dispute became heated and that Duran was threatened with physical violence by the Jacobo son. David Hart, Respondent's field supervisor,

witnessed a portion of the Duran/Jacobo dispute, and testified that following the incident, he discovered that the rear lights on the company bus had been broken. He had noticed that they were in working condition the day before the incident, and concluded that the broken lights were the product of the Jacobo aggression. The events of November 11, 1976, resulted in Respondent's firing both the Jacobos and Manuel Camacho. With respect to Camacho, it was the culmination of several weeks of disruptive confrontations between foreman Duran and Camacho. Although Duran and the other witnesses indicated that Camacho was a good worker Duran felt that Camacho was insubordinate and offensive when Duran attempted to explain the company policy regarding the spacing of the lettuce with respect to different fields, and the speed at which the thinners should work. Camacho and his wife, Rosalia, Alicia Garcia, and Mario Bustamante continually worked ahead of the remainder of the crew, and Duran felt that it was detrimental to the quality of work of his crew. Camacho frequently disputed Duran's instructions regarding the work procedures and advised his fellow workers not to pay attention to Duran's instructions and admonitions. The evidence established that Duran had written out various warnings against Camacho for not following instructions, drinking alcoholic beverages in the field, stopping to eat at the side of the fields when other workers were working, and using profane language.

General Counsel contends that Manuel Camacho was fired for being a union activist, for vigorously asserting his rights

and those of his co-workers, and he cites the following evidence in support thereof. Mario Bustamante, Rosalia Camacho, and Manuel Camacho testified that in August, 1976, near the end of one work day, the crew members picked Manuel Camacho in the fields as their representative to speak to the Teamsters about a pay raise to which they felt they were entitled. After their ride from the fields to the pick-up/drop-off point, Duran stopped the bus, and before opening the door, told the crew not to go to the union because they would get their raise retroactively with a subsequent pay check. About 20 workers went anyway to the Salinas Teamster office, with Duran following. Camacho inquired about the pay as the spokesman of the workers, and was apparently assured by Oscar Gonzales, the Teamster representative for Respondent, that the raise would indeed be paid retroactively. Duran was present during the conversation and urged the workers not to listen to Camacho, saying that Camacho was crazy. Another incident was related by Teamster representative Martha Cano when she testified that she recalls Camacho attempting to obtain a full day's pay for a 16 year old boy who had been working with the crew, but, apparently because of his age, was required to sit in the bus for half a day and was docked for that time. Cano further testified that because Camacho was a leader of the crew, and on the advice of Oscar Gonzales, and with the consent of the Camachos, Martha Cano appointed Camacho as the shop steward of Teamster Local 946 for the Duran crew on or about October 26, 1976. Cano testified that there were more than the usual amount

of problems with Duran as foreman of that thinning crew, so she thought it was necessary to have a union representative there full time. Thus, Manual Camacho became the shop steward for the Teamsters in the Duran crew. As shop steward, Camacho's principal duty was to help resolve grievances between the workers and management.

Camacho testified that because he was shop steward, Duran had asked him to help control the workers when there were problems and that Duran had even asked him to speak to the Jacobos on occasion. He further testified that at one point Gonzales, Camacho, and Duran had a conversation outside the bus near the Calexico pick-up point, where Duran told Camacho that he would respect him as the shop steward. Camacho testified that Duran treated him differently after he was appointed shop steward, that Duran more frequently solicited Camacho's help with problems, that Duran was much more willing to acknowledge that the workers went to Camacho with their problems, and that Duran began to try positively to utilize the influence Camacho had with the members of the crew. General Counsel points to the above testimony elicited from his witnesses to bolster his argument that Duran lied when he denied being aware of Camacho's union activism and that he had fired Camacho for that reason. Whether or not Duran was a truthful or cooperative witness during the hearing, the testimony of General Counsel's witnesses regarding the above mitigates against General Counsel's argument that Camacho's union activism was an irritant to both Duran and David Hart.

I find that although Camacho was characterized as a good worker when he chose to be, he frequently refused to obey foreman Duran's instructions regarding performance of the work, confronted and challenged Duran's authority within the view and hearing of the other crew members, occasionally using profanity, was reprimanded by Duran on several occasions for such conduct, and on his last day of employment, encouraged two fellow workers in the throes of a heated argument with foreman Duran. Not only Camacho was fired at the end of that day, but both Jacobos, as well. We are compelled to conclude that General Counsel has not met the burden of proving by a preponderance of the evidence that Camacho's discharge was in retaliation for union activity within the meaning of Sections 1153(a) and (c). Those Sections provide that it shall be an unfair labor practice for an agricultural employer to do any of the following:

> (a) To intefere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152.
>
> (c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

The United States Supreme Court, in analyzing the elements of an 8a(3) violation under the NLRA, the counterpart of Section 1153(c) of the ALRA, has held:

> Section 8a(3) prohibits discriminating in regard to tenure or other conditions of employment to discourage union membership. Under the words of the statute there must be both a discrimination and a resulting discouragement of union membership. American Ship Building Company, 380 U.S. 300; 58 LRRM 2672, 267 (1965).

I agree with Respondent's assertion that General Counsel has the burden of proving by a preponderance of the evidence that Camacho's discharge was motivated by anti-union animus. DSL Mfg. Inc., 202 NLRB 970, 82 LRRM 1812 (1973); Industrial Products, Inc., 216 NLRB No. 24, 88 LRRM 1648 (1975). Mere suspicion will not do. Schwob Mfg. Company v. NLRB, 297 F.2d 864, 49 LRRM 2360 (C.A.5th 19).

In proving such motivation, the General Counsel is not required to produce direct proof of the employer's state of mind, but may rely upon circumstantial evidence. Lapeer Metal Products Co., 134 NLRB 1518, 49 LRRM 1380 (1961); Standard Dry Wall Products, Inc. (C.A.3rd [1961]) 188 F.2d 362, enforcing 91 NLRB 544. However, such indirect circumstantial evidence must be substantial and sufficient to support an inference of discriminatory motivation of the employer charged with having violated the Act. NLRB v. Ford Radio & Mica Corp. (C.A.2nd [1958]) 258 F.2d 457, 42 LRRM 2620, denying enforcement to 115 NLRB 1046; European Cars Ypsilanti, Inc., 136 NLRB 1595, 50 LRRM 1058 (1962); Phillips & Buttorff Mfg. Co., 96 NLRB 1091 (1951).

The discharge of an employee for his continuing leadership in a union has been held lawful where, even though there is evidence of anti-union animus on the part of the employer, there was evidence that the discharge was based upon the ultimate of a series of disciplinary infractions. Cleveland Pressed Products Corp., 85 LRRM 2864 (1974). It has been held that insubordination is not a protected activity. Florida Steel Corp. v. NLRB, 92

LRRM 2040 (1976). Furthermore, an employer does not violate the LMRA where the evidence shows that an employee's discharge was due to his having a poor attitude and refusing to comply with a supervisor's request that he perform work in question. Friendly Markets, Inc., 92 LRRM 1584 (1976); Altman Camera Co., 85 LRRM 1053 (1973); American Ship Building Co., 226 NLRB No. 113, 92 LRRM 1422 (1976). The fact that the employer has been guilty of other unfair labor practices during the same general time period does not supply the requisite evidence of unlawful motive. Chemvet Laboratories, Inc. v. NLRB, 86 LRRM 2262 (1974).

General Counsel argues that the requirements for establishing the unlawfulness of a discharge under Section 8(a)(1) [Section 1153(a)] are even less stringent than those under Section 8(a)(3) [Section 1153(c)]. However, under either Section, the conduct of the dischargee must lie within the protection of Section 7 of the NLRA, which parallels Section 1152 of the Agricultural Labor Relations Act. It has long been held that presentation of grievances over terms and conditions of employment, including wages, is a protected activity. NLRB .v. Kennametal, Inc., 182 F.2d 817, 26 LRRM 2203 (3rd Cir. 1950). An employer cannot lawfully discharge employees out of resentment for their pressing of their rights under the Act. Gullett Gin Co. v. NLRB, 175 F.2d 499, 25 LRRM 2340 (5th Cir. 1950), reversed on other grounds, 340 U.S. 361, 27 LRRM 2230 (1951).

As indicated above, I find insufficient evidence to prove that Camacho was fired because he was presenting grievances

over terms and conditions of employment and/or because the employer resented Camacho's pressing of employees' rights under the ALRA. General Counsel cites the case of Martin Sprocket & Gear, Inc. v. NLRB, 329 F.2d 417, 55 LRRM 2739 (5th Cir. 1964), which held that a meritorious record free of work-related complaints is, of course, persuasive evidence that the discharge was based on protected activities. As indicated above, Camacho's record was not free of work-related complaints and was less than meritorious in view of his heated exchanges with Duran regarding the manner in which the work should be performed.

I am persuaded that an irreparable personality conflict between Duran and Camacho made Camacho's ultimate discharge or voluntary termination inevitable. The fact that Camacho was a Teamster (not UFW) appointed shop steward, and, as Camacho himself testified, the fact that Duran had specifically expressed a desire to work with him in resolving any crew-foreman problems, flies in the face of General Counsel's charge that Camacho was fired for his union activity. It must be remembered that General Counsel has charged and proved that Respondent favored and fostered the Teamsters during 1976 (see Section A of this Decision) and, in fact, discriminated in favor of the Teamsters in regard to hire or tenure of employment, etc., as we shall see in Section H of this decision. The testimony of Duran and Hart was inconsistent in some areas regarding the manner in which the discharge was accomplished and/or the reasons given therefor, and Camacho was given little opportunity to explain and/or respond to the

reasons for the discharge; however, the presence of those facts does not necessarily prove a violation of the ALRA. If Camacho has a remedy for his firing, he must look elsewhere. For all of the reasons set forth above, I recommend that the charge contained in paragraph 18(a) of GC 13a regarding the allegedly discriminatory firing of Manuel Camacho during the month of November, 1976, for engaging in union activity be dismissed.

F. Use of Lettuce Knives Instead of Hoe for Thinning and Weeding in Puran Crew

Paragraph 18(c) of GC 13a charges that Respondent violated Sections 1153(a) and (c) of the ALRA by virtue of its having changed the conditions of employment by having workers of Duran's crew use knives instead of hoes, in order to discourage support and membership in the UFW.

As in the previous Section dealing with the firing of Manuel Camacho, before discussing and deciding the present issue on its merits, I will rule on Respondent's motion made during the course of the hearing that this charge should have been dismissed on the grounds that the ALRB should have deferred to the grievance and arbitration machinery of the Teamster contract pursuant to the doctrine of the Collyer Insulated Wire case.

Respondent points to ARTICLE XII of the California Agricultural Master Agreement (R-1) which deals with, among other things, general working conditions and provides that any disagreement between the union and the company with respect to this

matter shall be subject to the grievance procedure. Respondent then points to ARTICLE XXVII of the above-mentioned agreement, which provides for the dispute-resolving mechanism entitled "Grievance and Arbitration Procedure" referred to in the previous portion of this Decision dealing with the firing of Manuel Camacho.

Respondent repeats the contentions, reasoning and case authorities set forth in its deferral argument on the Camacho firing. My response to Respondent's assertions in the Camacho firing issue is the same for this issue. That is, I again find that none of the factors set forth in the Collyer case as preconditions are found in our case, and that the Collyer case is not applicable to the facts of our case. Accordingly, I deny Respondent's motion made during the course of the hearing to defer this issue to the grievance-arbitration provisions of the Teamster contract. I find against that same contention set forth by Respondent in its post-hearing brief on this issue.

I now consider the resolution of this issue on its merits as construed in accordance with Sections 1153(a) and (c) of the ALRA.

On four days in December, 1976, at two locations in the Imperial Valley, the crew of Duran was required to use lettuce knives for thinning work, weeding work, or for doubling (removing one of two young lettuce plants growing together). The lettuce knife is a short-handled tool approximately one foot long that requires workers using it to bend over close to the ground to thin, weed, or double as distinguished from the more upright

position characterized by the use of a long-handled hoe. This type of stoop labor has been determined to be significantly more tiring and much more likely to cause back problems than work performed in an upright position. See Carmona v. Division of Industrial Safety, 13 Cal.3d 303, 118 Cal. Rptr. 473, 530 P.2d 161 (1975).

General Counsel in his post-hearing brief helps us focus on the precise issue by succinctly stating:

> It is undisputed that the knife was used in December at Royal and that it is more onerous and burdensome on the worker to bend over than to stand up straight and work. However, it is not the province of this agency to determine whether the knife use violates California worker health and safety laws; that issue will be litigated before the Division of Industrial Safety. Use of the knife constitutes an unfair labor practice under the ALRA only if this more onerous type of work was imposed upon the Duran crew because of their open and nearly unanimous support of the United Farm Workers Union.

The evidence established that most of Duran's workers had signed UFW cards on November 30, 1976, and that the UFW has on file cards from all but two of those named in the Duran crew list. General Counsel points to the fact that the first occasion of knife use occurred less than two weeks after the signing of the cards. Some of the workers complained about the use of the knife to the Teamsters, as well as to the UFW, which in turn called the ALRB, which in turn referred the matter to D.I.S. On December 13, 1976, national television reporters and camera crews came to Respondent's field to interview the workers as to the use of the knives. Additionally, an ALRB investigator came to the

field on that day and conversed with Duran about the use of the knives. Subsequent to the conversation, Duran voluntarily decided to cease the use of the knives.

General Counsel argues that the use of the lettuce knife at Respondent company and in agriculture generally is rare and that there was an insufficient valid business reason for its use on the two occasions with which we are here concerned, and that the real reason for the use of the knife rather than the long-handled hoe was to punish the crew for their open support of the UFW, and to deter them from doing so in the future. General Counsel also points to the fact that on one occasion a number of workers of the Duran crew complained to the company to make sure that they would be paid for the contractually provided minimum four hours' work on a day they were asked to present themselves, but there was no work to do. On another occasion, they questioned Duran and other supervisory personnel about why they weren't being paid for the time they sat in the buses in the fields in the morning waiting for the ice to melt before work could begin. These last two incidents do not seem to me to be relevant to the precise issue defined by General Counsel, i.e., "... this more onerous type of work was imposed upon the Duran crew because of their open and nearly unanimous support of the United Farm Workers Union." I find that the evidence does not preponderate in favor of General Counsel's specific charge on this issue for the reasons set forth below.

There was significant evidence that Respondent's thinning

Crews used the lettuce knife on more than just the two occasions with which we are here concerned. Although the normal method of weeding was to use a long-handled hoe, on those occasions when the weeds were very light and large, the knife had been used to cut them faster. Also on occasions when there were a number of double plants in the fields, the knives were used to separate them in order to preserve one of the plants. The basic operation of the thinning and weeding crews was to remove any weeds that developed after the use of herbicides and also to separate young lettuce plants to insure maximum growth and to take remedial action in the event that planting had produced double or twin plants. Although there was some testimony that the same procedures could normally be performed by using the long-handled hoe, Respondent points out that the procedure sometimes is a delicate one, and that the use of the knife is not unknown where circumstances are such that the operation calls for delicacy. Testimony from a D'Arrigo Brothers worker revealed that knives were being used on small tomato plants in order to preserve them in their delicate stage of development at the time this hearing was in progress. The testimony of Duran crew member Astorgas supported the fact that Duran told the workers to use the knives in order to preserve the plants, i.e., referring to doubles, because he felt the use of the long-handled hoe would not only separate the plants but possibly destroy them. Obviously, there is less eye-hand coordination with the long-handled hoe as compared with the short knife. Field supervisor David Hart testified that the use of the

knives was necessary in circumstances where there were a number of large weeds or to separate double plants. The testimony of the witnesses further indicated that there were large weeds and double plants in the fields on the two occasions with which we are here concerned. No individual employees of the Duran crew were singled out for the use of the knives. David Hart testified that those employees who objected to the use of the knives were given the opportunity to use hoes.

The testimony of General Counsel's witness Mario Bustamante, a UFW supporter, adds significant weight to Respondent's defense that the use of the knives was not intended to discourage support and membership in the United Farm Workers Union. That testimony was as follows:

> Question: "As far as you knew, the reasons they wanted you to use the knives was to do the work, and it didn't relate to the unions or not?"
>
> Response: "Yes, that's the way I see that."
>
> Question: "Did you have any reason to believe that Mr. Duran or any member of the Royal Packing Company organization wanted you and your crew members to use knives instead of hoes in order to discourage you from supporting membership in the UFW?"
>
> Response: "I don't know."
>
> Question: "As far as you yourself are concerned, did you ever feel that you were asked to use the knives because you were supporting the UFW?"
>
> Response: "I don't know, I thought it was just to go faster."

General Counsel asserts that it is well established that the imposition of more onerous working conditions in retaliation for union activity constitutes discrimination in violation of Section 8(a)(3) of the NLRA, which is essentially identical to 1153(c) of the ALRA. Trumbull Asphalt Co. v. NLRB, 314 F.2d 382, 52 LRRM 2570 (7th Cor. 1963) (assignment to disagreeable work because of union activities constituted discrimination in violation of Section 8(a) (3)); Fashion Fair, Inc., 173 NLRB No. 28, 69 LRRM 1252, 1253 (1968) (union supporter no longer permitted to sit down while working, which she had previously done 15 to 20 percent of time); Cavalier Olds, Inc., 172 NLRB No. 96, 68 LRRM 1554, 1556 (1968) (more onerous conditions of employment imposed in retaliation for strike). I find all of the above distinguisable from our case based upon my conclusion that the evidence does not preponderate in favor of finding that the use of the knives on the two occasions with which we are here concerned was ordered as a retaliation for union activity by the Duran crew, and, further, that there was significant evidence regarding sufficient business justification for its use on those two occasions. A suspicion of discriminatory motivation cannot substitute for the requisite proof of unlawful motivation. J. W. Mays, Inc., 213 NLRB 619 (1974); Schwob Manufacturing Company v. NLRB, 297 F.2d 864, 49 LRRM 2360 [C.A.5th 19]. In accordance with my findings and reasons set forth above, I recommend that the charge contained in paragraph 18(c) of GC 13a be dismissed.

G. Alcantar Reading of Chavista List

Paragraph 17(c) of GC 13a charges that foreman Manuel Alcantar interrogated the employees in his crew and attempted to intimidate them by maintaining that the company knew which ones supported the UFW and by claiming to have a list of supporters of the UFW.

I find that the relevant testimony and evidence elicited in this hearing establishes the following. One day during the first week of January, 1977, in the field during work time, Jorge Rascone Aguirre, a worker in Manuel Alcantar's wrap machine crew, found a notebook in a portable toilet, which was thought to have been dropped by a UFW organizer named Haul. The book apparently contained the names of five or six persons in Alcantar's crew deemed to be sympathetic to the UFW* When Rascone returned to the machine, Alcantar asked him what he had. Rascone handed the book to Alcantar, who held it up, and proceeded to read the names out loud in front of the whole crew, saying, "Aha, now I know who the Chavistas are."

Alcantar testified that he remembered the following names as being on the list: Jose Lucero, Lupe Olmeda, Miguel Zazueta, and Eva Flores. Alcantar had possession of the book and he told Rascone that he would return it to its owner. Rascone was not in accord with that idea, so he retrieved the book from Alcantar and tore it up in front of the whole crew in order "to avoid more problems." Rascone testified that though he still doesn't know who the owner is, he didn't give the book back

to Alcantar because he didn't want problems for the book's owner or himself. When Alcantar was asked if Rascone was laughing while he was tearing up the book, Alcantar testifed, "I can't remember, but he looked afraid." Alcantar further testified that, in effect, the crew responded to the incident by laughing it off. However, the evidence, taken as a whole, compels a conclusion that the incident significantly interfered with, restrained, and coerced employees in the exercise of their rights in violation of Section 1153(a).

Additional evidence in that regard was presented by defense witness Rascone when he testified that one girl in the crew asked him if her name was on the list, and he told her yes, that it was, along with five or six others. When Rascone was asked if the inquiring girl was laughing, he said no. Was she worried? "Yes, a little." When asked by Respondent's counsel on redirect if tearing up the book ended the problems, Rascone replied, "No, there were already some problems because the names had been read, but so I wouldn't be accused, I tore it up." Defense witness Jorge Antonio Elias Pinuelas testified that many persons teased Eva Flores (one of the workers whose name was on the list) about being a coordinator for the UFW. They asked her why she was red-boned ("hueso Colorado"), referring to her being a zealot as a Chavista. Lydia Silva testified that to avoid problems, she tried not to pay too close attention to the list reading incident because, since the crew members made fun of other Chavistas, she knew work would be tougher for her if they

knew she was a Chavista. She testified that before the list incident, the crew got along well. Afterward, the crew members yelled at the five or six Chavistas whose names Alcantar had read off the list, causing more fights and trouble within the crew. Alcantar himself chided the people whose names were on the list. After the incident, because of the pressure from Alcantar and the others in the crew, the few UFW supporters who had been vocal were reticent to talk freely about unions in front of Alcantar. Silva testified that after their names were found on the list, Alcantar pressured Eva Flores, Yolanda and Lupe much more about their work. The quit shortly thereafter. Miguel Zazueta generally confirmed Silva's testimony, listing the same persons whose names were read out of the book by Alcantar. Although Alcantar denied it, Zazueta convincingly testified that Alcantar loudly accused him in front of the whole crew of being the chief UFW organizer. The day after the list incident, Alcantar intensified the work-related pressure on Zazueta by sometimes criticizing him for cutting too many leaves and the next minute too few.

In order to assess the coerciveness of the incident related above, relevant evidence surrounding its context must be examined. That evidence includes the following. Alcantar was a Teamster organizer until shortly before he was hired by Respondent. According to defense witness Rascone, Alcantar more than once told his crew members that the Teamsters were better than Chavez, especially as speculation increased that the Teamsters were pulling out. Even Alcantar, who claimed he didn't talk to the

crew about unions, admitted that he had used the word Chavista in the crew many times, but when pressed, he "couldn't remember" any of the incidents. While Alcantar's history and actions are discussed further in Section H of this Decision, suffice it to say that he was anti-UFW in his union views, and his crew members knew it.

In this context, we agree with General Counsel's position that the list incident was no laughing matter, at least not for the UFW supporters. At the time Alcantar read their names from the list, they had no way of knowing the source of the information and/or whether they had been the subject of observations and recordations regarding their union activities. When confronted in front of the whole crew with the reading of their names on some Chavista list, there appeared to be some anxiety on their part whether they should deny it or make some other response appropriate thereto (defense witness Elias testified that Flores responded to their gibes by commenting that she did not authorize her name to be in the book). It is relevant to note that there was testimony that this same crew had mocked Zazueta and Silva when they left the fields to testify at this hearing. They had accused the witnesses of being sellouts ("vendidos") and thieves ("barberos"), and said they would "die starving" if they came to testify for Chavez. As set forth at length in Section H of this decision, Alcantar had hired this crew and he well knew that they were almost unanimously anti-UFW. The testimony and the demeanor of Alcantar and the other witnesses persuade me that Alcantar in-

tended the response he knew the list reading incident would generate from his crew members, that is, harassment and increased pressure on the UFW supporters, both then and in the future. The manner in which Alcantar had accused the people whose names were on the list not only taunted them as being Chavistas but further created the impression of surveillance. I find that it was coercive for the UFW supporters, because of their union sympathies, to be subjected, by the incitement of their foreman, to the mockery and needling of their anti-UFW co-workers. Accordingly, I find that the reading of the Chavista list under the circumstances and within the context related above violated Section 1153(a) of the ALRA.

The interrogation of employees regarding their union sympathies and activities constitutes unlawful interference with protected activities, unless taken by secret ballot with stated assurances against reprisals for the express purpose of determining the validity of a union's claim to majority status. NLRB v. Berggren & Sons, Inc., 406 F.2d 239, 70 LRRM 2338 (8th Cir. 1969), cert, den., 396 U.S. 823, 72 LRRM 2431 (1969), approving NLRB rules set out in Struksnes Construction Co., 165 NLRB No. 102, 65 LRRM 1385 (1967). The court stated in Berggren;

> "'When an employer inquires into organizational activity whether by espionage, surveillance, polling, or direct questioning, he invades the privacy in which employees are entitled to exercise the rights given them by the Act. When he questions an employee about Union orgnization or any concerted activities he forces the employee to take a stand on such issues whether or not the employee desires to take a position or has had full opportunity to consider the

> various arguments offered on the subject. * * * Moreover, employer interrogation tends to implant in the mind of the employee the apprehension that the employer is seeking information in order to affect his job security and the fear that economic reprisal will follow the questioning. * * * Interrogation thus serves as an implied threat or a warning to employees of the adverse consequences of organization and dissuades them from participating in concerted activity. It thereby undermines the bargaining agent chosen by the employees, thwarts self-organization, and frustrates employee attempts to bargain collectively.' These adverse effects can follow interrogation regardless of the employer's motive." 70 LRRM at 2341, internal quotation from the dissent in Blue Flash Express, Inc., 109 NLRB 591, 596-97, 34 LRRM 1384 (1954).

Under the NLRA, where no union has formally requested recognition, interrogation can serve no legitimate purpose. Union News Co., 112 NLRB No. 57, 36 LRRM 1045 (1955). Under the ALRA, requests of recognition on the basis of alleged majority status are not permitted, since exclusive collective bargaining rights are only available to unions certified by the ALRB as the representative of a majority of the employees after a fair, secret ballot election. Hence, it appears that under no circumstances is interrogation permissible under the ALRA.

By reading the list, Alcantar effectively interrogated the UFW supporters regarding their union activities. They were placed in a position like that of a criminal suspect who, when confronted with an accusation, must either deny the charge or be deemed to have admitted it by his silence. Alcantar's placing the UFW supporters in this unnecessary dilemma constituted interrogation violative of Section 1153(a).

Surveillance of employees or giving the impression of

surveillance is violative of Section 1153(a) in that it interferes with, restrains and/or coerces employees in the exercise of their protected rights. Following union organizers who are engaging in protected activity from place to place and observing their conversations with employees is coercive per se. E-Z Mills, Inc., 101 NLRB 164, 31 LRRM 1149 (1952). Observing union activity has been held to be unlawful surveillance from a distance of 150 feet. Northwest Propane Co., 197 NLRB 87, 80 LRRM 1430 (1972). Even if respondents were unable to overhear the specific conversations, the mere creation of the impression of surveillance is also violative. Brennan's, Inc., 368 F.2d 1004, 63 LRRM 2019 (5th. Cir. 1966); Mitsubishi Aircraft International, Inc., 212 NLRB No. 124, 87 LRRM 1656 (1974); Taylor-Rose Mfg. Co., 205 NLRB 41, 84 LRRM 1017 (1973); Sayers Printing Co., 185 NLRB No. 20, 75 LRRM 1276 (1970). Actual surveillance of union activities has been held to violate the NLRA in a number of contexts. See, e.g. Allied Drum Service, Inc., Astro Container Co. Div., 180 NLRB No. 123, 73 LRRM 116 (1970); Standard Forge & Axle Co., Inc., 427 F.2d 344, 72 LRRM 2617 (5th Cir. 1970); cert, den., 400 U.S. 903 (1970). The fact that surveillance is not surreptitious does not make it any the less unlawful. NLRB v. Collins and Aikman Corporation, 146 F.2d 454 (4th Cir. 1944).

At the very least, Alcantar created the impression of surveillance by reading names of alleged Chavistas while holding up a book, thereby making it appear that he maintained a list of UFW supporters.

Based upon all of the findings of fact, authorities, and reasoning set forth above, I conclude that Alcantar's reading of the Chavista list violated Section 1153(a) of the ALRA, whether viewed as interrogation, surveillance, or simply as conduct which, without a specific label, interfered with, restrained and coerced employees in the exercise of their rights.

H. Hiring of Members of Alcantar and Ayala Wrap Machine Crews

Paragraph 10 (f) of GC 22a, as amended to conform to proof, charges Respondent with violations of Sections 1153 (a) and 1154.6 for the manner in which it hired employees on the two wrap machine crews supervised by Manuel Alcantar and Antonio Ayala. "Such hiring was done willfully for the purpose of arranging for persons to become employees for the primary purpose of voting in elections."

General Counsel contends that foremen Manuel Alcantar and Tony Ayala stacked their machine crews with Teamster supporters by a method of hiring calculated to insure that the Teamsters would win an election at Royal during the 1976-1977 Imperial Valley winter season, and that these hiring practices violated Sections 1153(a) and 1154.6 of the ALRA. Section 1154.6 provides:

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

The evidence established that the two wrap machines each contained crews of between 30 and 35 people. Alcantar has

been a Respondent employee since December 4, 1976, at which time he was hired as a foreman of one of the wrap machines. He now is supervisor of both wrap machines. He was a Teamster organizer for a year and three months, from August 16, 1975, two weeks before the ALRA went into effect, until November of 1976, just prior to his employment by Respondent. While with the Teamsters, Alcantar orgnized at a number of companies, including Bud Antle, Bruce Church, and D'Arrigo Brothers. During this period, he came to know many workers who were Teamster supporters and UFW supporters. He utilized this knowledge when he hired his crew at Royal, most of whom came from these three companies. Alcantar served as the Teamster business agent at D'Arrigo for seven months and also assisted at Bruce Church. Alcantar testified that he had never previously organized at Royal for the Teamsters, but it was established that he was actively involved in the Teamster organizing in Salinas in the fall of 1975, and that he knew Oscar Gonzales well, a fellow Teamster organizer who was in charge of the Teamster campaign at Royal during the two elections held in September of 1975.

Alcantar was hired by Royal with the support and enthusiastic assistance of the Teamsters, who, at the time, expected to file for an election at Royal and were anxious to have a fellow organizer there to assist them generally and, in particular, to hire sympathetic employees. Oscar Gonzales testified that Mark Simis, supervisor of Royal's harvest operations, had talked to him (Gonzales was the Teamster business agent at Royal

at the time), and asked about Alcantar's whereabouts and whether he could be assured of a solid Teamster crew if he hired Alcantar. Gonzales assured him that he could. From the Calexico Teamster office, Roy Mendoza, the head of Teamster Local 946 operations in Salinas and Calexico, and Gonzales called Alcantar, who at the time was in Watsonville. Alcantar admitted that Mendoza called to tell him that Alcantar had the job at Royal. The next day Sammy Rivera, another Teamster organizer, called Alcantar in Watsonville to tell him where to report for his job at Royal. Rivera told him to go to Yuma, but Alcantar first stopped at the Calexico Teamster office to check in with Mendoza and Gonzales. Gonzales then directed Alcantar to the location in Yuma where he was to report to Mark Simis to begin work. The extensive Teamster involvement in the hiring of Alcantar is significant, particularly in light of the testimony of Martha Cano (another Teamster organizer/business agent at Royal) that she has never seen another Teamster organizer become a company supervisor.

In his testimony, Alcantar maintained that he did not engage in pro-Teamster activities at Royal, that during the short hiatus between jobs, he apparently modified his attitude to that required of a neutral company supervisor. But the demeanor of Alcantar on the stand, the composition of his crew, and the actions he has been involved in at Royal show the opposite. Alcantar's reading of the Chavista list has already been discussed (Section G). During his first days at Royal, the machine was not yet ready, so Alcantar took a turn at collecting signatures

from workers for dues deducation authorizations. GC 29 and 41. He was experienced in obtaining signatures in these types of books as, by his own testimony, he had regularly done so during his 15-month stint as a Teamster organizer. Gilberto Ramirez, the foreman in whose crew Alcantar collected the signatures, testified that many people didn't want to sign the cards, and that as Alcantar continued to try to get signatures, the workers became more upset. One worker, Pelipe Bravo, asked Ramirez why the man from the Teamsters was there signing up the people. Luis Loza testified that Bravo asked Alcantar if he was representing Royal or the Teamsters. Alcantar told Bravo that if he didn't like it, he could leave the company. Victor Manuel Lopez confirmed that everyone in Ramirez' crew thought Alcantar was a Teamster organizer. Lopez wouldn't sign. He told Alcantar that he would sign with whichever union won the election. As Ramirez testified, by then, about half the workers in the crew had stopped work, so Ramirez had to tell Alcantar to quit taking signatures and to let Joe Chavez try to do it. Alcantar testified that when the workers expressed reluctance to sign, he told them that unless they signed right away, it would cost them more later since in January of 1977, the Teamster dues would be raised and the initiation fee would go up. According to Joe Chavez, Royal personnel coordinator, Respondent never collected any Teamster initiation fees, whether workers signed up before or after January. There was no testimony to refute the fact that Alcantar had never represented himself as being anything other than a Teamster

organizer, which is how the workers knew him. We note that GC 41 shows that Alcantar signed his name in the space marked "Business Rep" on the cards he collected. (See GC 41, card signed by man named Abel.)

Alcantar testified that he didn't talk about unions with his crew, yet he admitted that he used the word "Chavista" many times in his crew, but "didn't remember" the incidents. Miguel Zazueta remembered them, though. He testified that more times than he could remember Alcantar had told him that he doesn't like Chavistas and doesn't want them on his crew. Lydia Silva testified that one day she called out "Viva Chavez," or "Viva la causa." Alcantar responded that he didn't want Chavistas on his machine. Silva told him that he couldn't say that because he was a foreman. He told her that if the Chavistas "had a little shame," they wouldn't be there.

When the Teamster petition was dismissed in late December, Alcantar testified that he told his crew that there wasn't anything wrong with the Teamster petition, that he knew the cards weren't forged as he had seen all the people, or at least 90 to 95 percent of them, sign. As further evidence of Alcantar's avid interest in and support of the Teamsters, we recall the testimony of Gonzales that Alcantar, during his tenure as a foreman at Royal, still wore to work a Teamster patch on his pants. When it became clear that the Teamsters were leaving agriculture, Alcantar informed Silva of the fact. Silva testified that she told him in the presence of other workers that they

needed a union, some union, to protect them. Alcantar said that since the Teamsters were out, they should have no union.

There was testimony in this hearing that shortly before it began, Alcantar announced in front of all the workers that those who testified for the company would get paid for the time they lost, but the gossipers ("chismosos") or fingers ("dedos"), would not. By "dedos", he referred to those persons who would testify in support of the UFW, in particular, Silva and Zazueta. He had told Zazueta directly that he knew that Zazueta and Silva were the chismosos. There was further testimony that on Friday, February 11, 1977, upon his return to the crew after a half day of testimony at this hearing, Alcantar told the crew members not to talk to any lawyers from the State if they should come, that the State might come to the crew on Saturday, the next day, and that only those persons who wanted to get in trouble should talk to the State. That same afternoon, he told the crew that he knew who was going to be testifying for the state and that Silva was one who would be testifying the following Monday.

The above-related extensive findings of Alcantar's pro-Teamster, anti-UFW actions after he came to Royal serve to establish his continuing support for the Teamsters and his attitude during the period of time within which he hired his crew. Teamster representatives Oscar Gonzales and Martha Cano both testified in this hearing that Royal and the Teamsters had an agreement to stack the machine crews in favor of the Teamsters. They testified that Roy Mendoza, the head Teamster, had told them of a verbal

agreement or "understanding", and ordered them to help Alcantar stack his crew by referring strong Teamster supporters. At the Calexico Teamsters' office, they heard Mendoza give the same instructions with respect to the Ayala machine crew to Ricardo Garcia and Fermin Cano, Teamster organizers in the Somerton, Arizona Teamster Local 274. Gonzales testified that their understanding was that Royal would hire the employees the Teamsters sent to them and would give the Teamsters necessary work time for organizational access. When asked on cross-examination if it was true that Alcantar's crew was short a few people when she recommended workers, Martha Cano replied that it was not surprising Alcantar was a few short because "there were not that many hyper-strong Teamsters around."

The evidence established that Alcantar basically used two methods in hiring his crew. One was to hire strong Teamsters whom he knew from other companies. The other was to hire those persons his fellow Teamster organizers recommended. Alcantar testified that he knew 70 percent of the members of his crew from previous work at three other companies, Antle, Church, and D'Arrigo, at all three of which he had worked as a Teamster organizer, and all three of which had pre-Act Teamster contracts. At Bruce Church, Alcantar had been active in the January, 1976 election contest, working under Sammy Rivera, one of the fellow-Teamster organizers who helped him get the job at Royal. At D'Arrigo, Alcantar was the Teamster business agent for seven months. Alcantar told Gonzales in early December, 1976 that he intended

to hire solid Teamsters from D'Arrigo and Church for his machine.

Martha Cano testified that Alcantar told her that he had many solid Teamster supporters as crew members, and asked her to recommend more. She sent him Guadalupe Zamudio and Lucina Losoya, whom Cano knew to be strong Teamsters from the time she was a business agent at Arena-Imperial Company. Cano testified that Teamster Local 946 was preparing well for the election by sending Teamster voters to work at Royal Packing Company.

Alcantar also hired workers out of the Calexico Teamster office. When asked on cross-examination if it was reasonable for Alcantar to ask for workers from the Teamsters, Cano said no, they didn't normally operate a dispatch or hiring hall. She testified that it was only reasonable because Royal wanted and had requested pro-Teamster employees. Defense witness foreman Gilberto Ramirez testified that the normal practice at Royal is for a foreman to be given great, almost unfettered, discretion in the hiring of his crew, and that the normal procedure he followed when he needed workers was to go to the "hole", the EDO pickup point in Calexico to look for and hire workers. On cross-examination, Ramirez admitted that during his tenure at Royal, he had never called the Teamsters to obtain crew members.

Cano testified to the extraordinarily high level of support the Teamsters had on the wrap machines, with all but two employees signing authorization cards. Gonzales confirmed that the 60 to 65 workers on both wrap machines were almost completely pro-Teamster, which she said was unusually high. Cano testified

that under normal circumstances, this would be an unusual level of Teamster support, but it was not unsual in this case because "we set it up that way." By comparison, Gonzales testified that he was able to get only seven signatures from the ground crew he visited on behalf of Local 274 when they were desparate for signatures due to a deficient showing of signatures and a deadline of 24 hours given by the ALRB to secure more signatures.

I find that the evidence establishes that the Alcantar wrap machine crew was definitely pro-Teamster, anti-UFW. There was testimony that when Lydia Silva and Miguel Zazueta departed from Alcantar's crew to come to the hearing to testify, the crew members called them "barberos", thieves, and "vendidos", sellouts, and shouted that if they went to testify, they would "die starving." The pro-Teamster, anti-UFW compositon of the Alcantar crew was not coincidence, and not necessarily the normal product of the Royal-Teamster contract. As Martha Cano testified, in the elections held by the ALRB between September 1975 and February 1976, the Teamsters lost well over half of the elections to the UFW even in those companies where they had pre-Act contracts, including, for example, Bruce Church and D'Arrigo Brothers.

Respondent argues that Alcantar's hiring has been justified by his improvements in production. It is true that the production of the newly-acquired wrap machines improved substantially between the time they were first put into service in the late summer of 1975 and now; however, that fact, in and of itself, does not necessarily justify Alcantar's hiring or refute the

substantial evidence presented by the Teamster representatives and others that Alcantar was engaged in hiring persons in his crew for the primary purpose of voting in elections.

With respect to Ayala's crew, I find that the evidence is significantly less compelling that the hiring of his crew was done willfully for the purpose of arranging for persons to become employees for the primary purpose of voting in elections. Ayala had been employed by Royal prior to the acquisition of the wrap machines, and since he had some experience with them in his previous employment, when management looked within the ranks of its personnel to meet the supervisorial need on the wrap machines, it chose Ayala. Respondent had serious problems getting sufficient production out of the expensive machines to justify their acquisition. Ayala was under pressure to make the machines more productive, and for that reason, as well as the other factors distinguishing Ayala's situation from Alcantar's I am persuaded to find that General Counsel has been unable to meet his burden of proof regarding establishing that Ayala's crew was willfully hired for the primary purpose of voting in elections. There was credible evidence that Ayala had arrived in Somerton, Arizona from the Huron area, with approximately six employees who had been working on his wrap machine in Huron. He had two or three days to secure an experienced crew for his machine. It does not seem unreasonable, in view of the previous hiring practices at Royal and in the agricultural industry and the fact that Royal had been under an existing Teamster contract since 1972, that

Ayala went to the Teamsters' office in Yuma in an effort to find the necessary workers.

To the best of my knowledge, Section 1154.6 of the ALRA has no predecessor under the NLRA. No decisions have yet been issued by the ALRB dealing with Section 1154.6 violations.

It is well established under NLRB precedent that the commission of an unfair labor practice by an employer under any subdivision of Section 8(a) [Section 1153] of the NLRA constitutes per se a so-called "derivative" violation of Section 8(a)(1) [Section 1153(a)]. See Morris, The Developing Labor Law, page 66 (1971). General Counsel argues that, by analogy, hiring practices found to violate Section 1154.6 would also "derivatively" violate Section 1153 (a) in that they "interfered with, restrained and coerced" employees in the exercise of their rights. I agree. I also agree with General Counsel's contention that, even if for some reason no violation of Section 1154.6 is found, a so-called "independent" violation of Section 1153 (a) can be found on the same facts. A great deal of unlawful employer conduct, e.g., interrogation, threats and surveillance, interferes with Section 1152 rights, but is not specifically prohibited by some other section of the Act, and therefore violates only Section 1153 (a). The well-established test of the NLRB has been that:

> "Interference, restraint, and coercion under Section (a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may be reasonably said, tends to interfere with the free exercise of employee rights under the Act."

I conclude that even if no violation of Section 1154.6 is found, the stacking of the Alcantar crew "interfered with, restrained, and coerced" Royal employees in their rights to organize freely and fairly and choose a collective bargaining representative, thereby violating Section 1153(a).

With respect to the word "willfully" contained in Section 1154.6, I conclude that no specific intent to violate the law is required by the use of that term, but that it requires only a showing of general intent within the legal concept of intentional torts, and that Prosser's definition of "willful" should govern. The element of "willfulness" in this case is easily established in the case of Alcantar and his crew. Alcantar 's pro-Teamster, anti-UFW attitudes and the testimony of the Teamster representatives establish that they knew and intended that Alcantar's crew composition would have a pro-Teamster, anti-UFW impact on the expected election. Again, on this issue, there was less compelling evidence regarding Ayala and his crew.

Regarding the element of "primary purpose", as indicated earlier in this Section, I conclude that General Counsel was unable to prove by a preponderance of the evidence that Ayala's crew was hired for the primary purpose of voting in elections; however, I find that the evidence does preponderate in favor of the General Counsel on this issue with respect to Alcantar for the many reasons set forth above. I do not question Royal's desire to expand and diversify its operations by introducing wrap machines and that it was vitally interested in having both machines

produce efficiently and economically. I further find that the evidence did establish that Alcantar and his crew did operate their machine satisfactorily; however, there is little question that Alcantar's crew was chosen with an eye more to the anticipated Teamster support they could provide than to the expected work product. The evidence was substantial that there had been an agreement and a concerted effort by the union and the Respondent to make Alcantar's crew solidly Teamster supporters. Thus, in this case, Royal's "controlling" criterion for choosing Alcantar, and Alcantar's controlling criterion for choosing his crew rather than some other workers who were equally or better suited to perform the job, was the knowledge of the pro-Teamster, anti-UFW sentiments of the persons hired.

Here, where Respondent's primary purpose for hiring Alcantar and Alcantar's primary purpose for hiring his particular crew workers, as opposed to other equally qualified and available workers, was the expected support the workers would provide to the Teamsters, I find that an 1154.6 violation has occurred. Additionally, I conclude that the stilted hiring of the Alcantar crew significantly interfered with, restrained and coerced the employees in the exercise of their Section 1152 rights. I find that at the very least, the actions Respondent took to subvert the secret ballot election process established for farm workers by the ALRA violates Section 1153 (a).

Regarding the charge against Ayala's crew, in accordance with my findings and reasons set forth above, I recommend

that it be dismissed.

III

THE REMEDY

Upon the basis of the entire record, the findings of fact, and conclusions of law, and pursuant to Section 1160.3 of the ALRA, and having found that Respondent has engaged in certain unfair labor practices within the meaning of the ALRA, I hereby issue the following recommended:

ORDER

Respondent, its officers, its agents, and representatives shall:

1. Cease and desist from infringing in any manner upon the rights guaranteed to employees by Section 1152 of the ALRA and specifically from repeating in the future any of the unfair labor practices found to have been committed in this Decision.

2. Publish and make known to its employees that it has violated the ALRA and that it has been ordered not to engage in future violations of the ALRA, as specified in the proposed Notice to Employees, appended to this Decision as Appendix I. The Notice, in English and Spanish, shall be mailed to all employees of the Respondent whose names appear on its payroll between October 1, 1976, and the time of mailing, if they are not then employed by Respondent. For all current employees, and for those hired by Respondent for six months following its initial

compliance with the Order, Respondent shall provide with their first pay check the attached Notice and its Spanish translation. A representative of Respondent shall further be required to read the Notice to Employees, in English and Spanish, during work time in the presence of an ALRB agent, who will remain available to answer employee questions after departure of the Royal representative. For the same six month distribution period, Respondent shall post the Notice and the Spanish translation conspicuously at all offices of Respondent, in all buses used by Respondent, and at any other locations where employees congregate or where a substantial number of employees are likely to see it.

3. Require Manuel Alcantar to read the statement entitled "Apology of Manuel Alcantar", appended to this Decision as Appendix II, to the wrap machine crews in the presence of an ALRB Field Examiner and a representative of the charging party.

4. In the event the election held on March 3, 1977, at Royal Packing Company is set aside, Respondent shall grant one full day per week access for one organizer per crew to any union recognized by the ALRB that desires to attempt to organize the Royal employees, such access to commence when the election is set aside and to continue until such time as another election is held.

5. Compensate (if it has not already done so) the agricultural employees who testified for the General Counsel in this hearing for the loss of wages they incurred in testifying or waiting to testify.

6. Make periodic reports to the ALRB, illustrating the steps it has taken to comply with the Board's Order.

Dated: April 23, 1977.

ROBERT A. D'ISIDORO

APPENDIX I

N O T I C E T O E M P L O Y E E S

Issued and Posted by Order of the
AGRICULTURAL LABOR RELATIONS BOARD
An Agency of the State of California

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has decided that the Royal Packing Company violated the Agricultural Labor Relations Act, and has ordered us to notify you that we have violated the law and that we will respect the rights of all our employees in the future.

Royal Packing Company recognizes that its employees have the right to choose whichever union they want or no union, and promises that no retaliatory action will be taken no matter how the employees vote. In fact, the company urges all employees to take part in the election process.

The law provides that all employees have the right to organize and choose any union they desire or no union. This right cannot be interfered with by anyone, including the company or its foremen, or any union. The employees also have the right to talk with representatives of any union and sign authorization cards for any union as long as it does not interfere with their work. The company intends to comply with the law and hereby encourages the employees to exercise their rights under the law. The company recognizes that because it is necessary for the company to have foremen in the fields and on the buses, some workers might believe that they are being watched by the foreman when the employees are speaking with union organizers or signing union authorization cards. The company wants to make it clear that employees are free to sign union cards, speak with union organizers, and vote for the union of their choice and that no retaliation will be taken against them for doing so.

The company cannot and will not pressure you, watch you, threaten you, or question you in connection with union activities, The right to choose which union the employees want is their right and no one else's.

WE WILL NOT do anything that interferes with, restrains or coerces you with respect to these rights. More specifically,

WE WILL NOT in any manner show favoritism to the Teamsters, by, inter alia, allowing the Teamsters full and unlimited access to the employer's property and employees during working hours, for the purpose of campaigning and organizing, while denying similar access to UFW organizers.

WE WILL NOT threaten or intimidate employees by maintaining a list of UFW supporters, claiming to have a list of UFW supporters, reading employee names from a list of UFW supporters, or otherwise giving the impression that the company knows who is or is not a supporter of the UFW.

WE WILL NOT iterrogate or question employees regarding their union membership, activities or sympathies.

WE WILL NOT engage in surveillance or create the impression of surveillance of our employees' union activities.

WE WILL NOT willfully arrange for persons to become employees for the primary purpose of voting in union representational elections.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any and all such activities.

WE WILL pay all our employees for the time they spent testifying or waiting to testify at the ALRB hearing held in this matter.

DATED:_____ ROYAL PACKING COMPANY

By _____

_____

This is an Official Notice and must not be defaced by anyone.

APPENDIX II

"APOLOGY OF MANUEL ALCANTAR"

Royal Packing Company recognizes that its employees have the right to choose whichever union they wish or no union, and promises that no retaliatory action will be taken, no matter how the employees wish to vote.

I, Manuel Alcantar, promise not to interfere with or threaten any employees who exercise their rights under the ALRA.

To all of those who were affected by my reading of the Chavista list in January of 1977, I ask you to accept my apologies. I also apologize to Miguel Zazueta and Lydia Silva for any discomfort I have caused them.

I recognize that you have the right to choose a union if you desire one.

As a foreman of Royal, I will not participate in any activity in violation of your rights under the ALRA.

If at any time you observe that I am not complying with the promises I have made here today, please remind me, the Royal Packing Company, and the ALRB so I can correct my actions.

Thank you,

_____

MANUEL ALCANTAR

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROYAL PACKING COMPANY,	Case Nos.:	76-CE-101-E
		76-CE-101-E
Respondent,		76-CE-103-E
		76-CE-104-E
and		76-CE-108-E
		76-CE-112-E
UNITED FARM WORKERS OF AMERICA, AFL-CIO,		76-CE-119-E
		76-CE-121-E
		76-CE-122-E
Charging Party,		76-CE-129-E
		76-CE-137-E
		77-CE-2-E
		77-CE-11-E
		77-CE-23-E
		77-CE-31-E
		77-CE-36-E
		77-CE-66-E

Byron S. Georgiu, Esq., Legal Counsel, and David Arizmendi, both of El Centro, California, for the General Counsel

Dressier, Stoll & Jacobs by Wayne A. Hersh, Esq. and Robert P. Roy, of Salinas, California and Newport Beach, California, respectively, for Respondents

Susan Alva, of Calexico, California, for the Charging Party.

SUPPLEMENT TO DECISION DATED APRIL 23, 1977

ROBERT A. D'lSIDORO, Administrative Law Officer:

STATEMENT OF THE CASE

On May 2, 1977, the Executive Secretary of the ALRB issued my Decision dated April 23, 1977, with respect to the above-captioned cases. On September 7, 1977, General Counsel

filed with the ALRB a motion to reopen the record and remand certain issues to the Administrative Law Officer for the taking of further evidence and reconsideration of the Decision. On October 12, 1977, the Executive Secretary issued an order granting General Counsel's motion in part as follows:

> "1. The record as to the substantive issue of whether the machine wrap crew of Antonio Ayala was discriminatorily hired in violation of Labor Code Sections 1153(a) and (c) and 1154.6 is reopened to allow taking of oral testimony of Richard Garcia. The employer will be allowed to present reasonable rebutting evidence as to Richard Garcia's testimony. The record is also reopened to allow the submission of the documents identified as Appendices A, B, and C of the General Counsel's motion and reconsideration by the Administrative Law Officer of his factual findings concerning the alleged violations in light of these documents. The parties will be allowed reasonable argument in regard to these documents. . . .
>
> 3. The motion of the General Counsel to reopen the record for reconsideration of the proper remedy, if a violation is found in the allegedly discriminatory hiring of the Ayala crew is granted. ..."

On December 2, 1977, General Counsel filed with the Executive Secretary a "Stipulation and Agreement" signed by the parties and the Administrative Law Officer wherein it was agreed that Appendices A, B, and C would be admitted into the record as General Counsel Exhibits GC58, GC59, and GC60. The introduction of further evidence was waived by all parties, and all parties agreed to present written arguments "with respect to the two issues reopened by the Board's order of October 12, 1977, possible reconsideration by the Administrative Law Officer of his factual findings concerning the alleged discriminatory hiring violations involving the wrap machine crew of Antonio Ayala, and reconsideration

of the proper remedy for the discriminatory hiring found in the Alcantar crew and which may be found in the Ayala crew."

CONCLUSION

After careful consideration of the additional evidence and the posthearing briefs submitted by General Counsel and Respondent:

A. I herewith affirm the dismissal contained in my Decision dated April 23, 1977, with respect to General Counsel's charge that Antonio Ayala's crew was willfully hired for the purpose of arranging for them to become employees for the primary purpose of voting in the elections.

B. Because of the Alcantar crew discriminatory hiring and its effect on the election of March 3, 1977, I herewith modify the remedy contained in my Decision dated April 23, 1977, to add the following to the recommended ORDER: "The election conducted on March 3, 1977, is set aside, and until such time as another election is held, Respondent shall grant to the UFW two full days per week access for two organizers to each wrap machine crew working at that time."

My affirmation of my Decision dated April 23, 1977, and my recommended additional remedy are based upon the following findings of fact and analysis:

FINDINGS OF FACT AND ANALYSIS

Reference is hereby made to the Findings of Fact, Analysis and Conclusions contained in my Decision dated April 23, 1977, which thereby makes it unnecessary to repeat here much of the extensive discussion contained in that Decision. The Decision

did not expressly state that conduct committed in Arizona may constitute an unfair labor practice where it has impact on protected activity in California; however, I herewith unequivocally assert that my dismissal of the Ayala crew discriminatory hiring charge was and is based upon my scrutiny of all relevant evidence bearing on that charge, including Arizona conduct.

I agree with General Counsel that conduct committed in Arizona may constitute an unfair labor practice where it has impact on protected activity in California, as for example an offense committed during a California organizing drive which temporarily crosses over into Arizona. The discriminatory hiring charge involving the Ayala crew raises that precise issue because if the hiring was unlawfully discriminatory, it had and continues to have a significant impact on the organizational process and protected activity here in California. Royal Packing Company employees spend almost 90 percent of their working year in California. Discriminatory hiring in Arizona could have substantial impact on the right of the workers and unfavored unions to petition for an election in California. The California ALRA permits unions and employers to lawfully negotiate contracts only after the ALRB has certified a bargaining representative that has received a majority of the votes of the bargaining unit employees in a secret ballot election. Therefore, unlawful discriminatory hiring in Arizona could be a prime example of the type of Arizona activity over which the Board can and must assert jurisdiction in order to preserve and protect the rights of California employees

from infringement east of the Colorado River. However, I find that the admissible and relevant evidence (including Arizona and California conduct) presented in this case does not preponderate in favor of General Counsel's charge regarding the Ayala crew.

The unlawful discriminatory hiring of the Alcantar crew was proved by a preponderance of the relevant and admissible evidence, which evidence included conduct in Arizona and in California. Ex-Teamster organizer Oscar Gonzales testified that he was under instructions to make sure that Alcantar's crew was filled with solid Teamster supporters. He recalled conversations with Respondent supervisor Mark Simis relating to the hiring of Manual Alcantar with a view to filling the wrap machines with 100 percent Teamsters. The conversations took place in Yuma, Arizona. This evidence substantially contributed to the total evidence preponderating in favor of the charge that the Alcantar crew was discriminatorily hired.

On the other hand, with respect to the Ayala crew, the evidence did not directly implicate Antonio Ayala in any conspiracy to fill Ayala's crew with 100 percent Teamsters. Oscar Gonzales and ex-Teamster organizer Martha Cano testified that they overheard conversations between Teamster supervisors Roy Mendoza and Richard Garcia pertaining to a plan to provide Ayala's wrap machine with pro-Teamsters. However, there was no credible direct evidence that Ayala or any other company representative willfully helped the Teamsters to implement that plan. The testimony of Ayala that he utilized the Teamsters' office in

Somerton, Arizona to help fill his crew when he arrived there bears on the issue inferentially. But, as I indicated in my previous decision, that conduct on the part of Ayala was not unreasonable under all of the circumstances and should not constitute an unfair labor practice. The above-mentioned telephone conversations between Mendoza and Garcia relating to Ayala's crew were between Teamster supervisorial personnel only and did not include Ayala and/or any other Respondent supervisor. That evidence does not support an unfair labor practice charge against Respondent. It was not trustworthy evidence with respect to proving the truth of the matters asserted in the alleged conversations. They were considered as statements offered to prove that they imparted certain knowledge, information, or belief to the declarants (see People v. Roberson (1959) 167 CA2d 529, 334 P2d 666). Also, uncorroborated hearsay does not constitute substantial evidence upon which a finding may be based. NLRB v. Amalgamated Meat Cutters & B. W. (9th Cir. 1953) 202 F2d 671; NLRB v. Yutana Barge Lines, Inc. (9th Cir. 1963) 315 F2d 524; ALRB Regulations 20272.

Alcantar came to Respondent from the Teamsters with the intent to fill his wrap machine crew with pro-Teamster employees, whereas Ayala had already been a Royal supervisorial employee when he was chosen to supervise a wrap machine. He had no discernible Teamster connections, and he had reasonable business purpose for seeking help from the Somerton Teamster office to fill his crew.

REMEDY

By virtue of the Board's order to reopen and remand and the parties' agreement entered into on December 2, 1977, I have modified the remedy of my previous Decision so as to provide that the election be set aside and for expanded access for the UFW to Respondent's wrap machine crews in an effort to remedy the unfair labor practice committed by Respondent with respect to the discriminatory hiring of the Alcantar crew. Although the evidence did not support a finding that the Ayala crew was similarly unlawfully hired, it did establish that both wrap machine crews were largely pro-Teamster and anti-UFW.[1/] Although that, in and of itself, does not constitute an unfair labor practice, the magnitude of the unfair labor practice committed with respect to the unlawful discriminatory hiring of the Alcantar crew and its effect on the election justifies extending expanded access to the UFW with respect to any Respondent wrap machine crews working at the time. Further, expanding UFW access to any wrap machine crew working at the time will serve to discourage efforts to thwart the remedy by juggling wrap machine supervisors and/or crew members.

General Counsel suggests that Respondent be required to hire a number of pro-UFW employees equal to the number of pro-

1/ The wrap machine crews consist of 60-65 employees. A change in only 15 votes would have resulted in a run-off election and a change in 32 votes would have given the UFW a clear majority.

Teamster, anti-UFW employees hired in the wrap machine crews and that the ALRB decline to accept an election petition filed by any party until the appropriate number of neutralizing employees have been hired. I do not adopt General Counsel's suggested remedy because it seems to achieve ends other than those which can fairly be said to effectuate the policies of the ALRA. In Virginia Electric and Power Company v. NLRB, 319 US 533, 12 LRRM 739 (1943), the United States Supreme Court upheld an NLRB remedial order; however, the Court sets a standard that must be adhered to as follows:

> "It should stand unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." Virginia Electric, 12 LRRM at 742.

The recent opinion filed on February 21, 1978, in the Court of Appeal of the State of California, Fifth Appellate District (5 Civ. 3446), in the case of Pandol and Sons v. Agricultural Labor Relations Board and United Farmworkers of America, affirmed that with respect to the NLRB and the ALRB, the relation of remedy to policy is peculiarly a matter of administrative competence and that the ALRB has authority to devise remedies to further the policies of the ALRA. The opinion also affirmed the philosophy that the remedy should be consistent with the policies of the Act. Thus, the Court struck one of the remedies ordered by the Board on the following grounds:

> "However, the Board's order granting access unlimited as to the number of UFW organizers is contrary to the policies of the ALRA and the access regulation itself. . . . Access without restriction might result in interference with

petitioner's farming operations and create a volatile situation. It also could result in undue coercion of employees. Obviously, the number of organizers allowed on an employer's premises must bear some reasonable relationship to the number of employees on the premises. Thus, the Board should have specified the number of additional organizers it believed necessary to compensate the UFW for the denial of access. If this had been done, we could review the propriety of the order.

The portion of the order allowing access without regard to the date of election certification also is contrary to the rationale of the access rule--to allow unions to organize employees with the aim of being elected and becoming their certified bargaining agents. As petitioner points out, this portion of the order serves no purpose and conflicts with the Board's regulation barring access shortly after the election ballots are counted. ..."

I conclude that the implementation of General Counsel's suggested remedy that Respondent be required to hire pro-UFW employees would achieve ends other than those which can fairly be said to effectuate the policies of the Act. This would be so because its implementation by the ALRB would, in effect, require an agricultural employee to swear allegiance to a particular union as a condition of employment at Royal Packing Company. Thus, the secret ballot election becomes a mockery, and the highest form of protected activity under the ALRA (the worker's right to choose any union or no union) is undermined. The Act's intent to bring certainty and a sense of fair play to the agricultural fields of California would be frustrated by such a "remedy." Indeed, "two wrongs don't make a right."

Dated: March 16, 1978.

Respectfully submitted,

_____

ROBERT A. D'ISIDORO
Administrative Law Officer, ALRB

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of:

ROYAL PACKING COMPANY,

Employer-Respondent,

and

AGRUPACION DE TRABAJADORES INDEPEN-DIENTES DE LA ROYAL PACKING COMPANY,

Petitioner,

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Intervenor and Charging Party,

and

INDEPENDENT UNION OF AGRICULTURAL WORKERS,

Intervenor.

Case Nos. 77-RC-11-E
76-CE-137-E
77-CE-36-E
77-CE-73-E
77-CE-111-E
77-CE-131-E

Byron S. Georgiou, Esq., Legal Counsel, and David Ariziuendi, both of El Centro, California, for the General Counsel

Dressier, Stoll & Jacobs by Wayne A. Hersh, Esq., of Salinas, California, for Royal Packing Company

Alfredo Soria and Florentino Olivas, of Chualar, California,for Agrupacion de Trabajadores

Tom Dalzell and Sue Alva, of Salinas, California, for United Farm Workers of America

DECISION

Statement of the Case

ROBERT A. D'ISIDORO, Administrative Law Officer: This case was heard by me in Salinas, California, commencing on June 27, 1977, and terminating on September 29, 1977. The case involves several unfair labor practice charges which were consolidated for hearing with election objections filed by the United Farm Workers of America, AFL-CIO (hereafter "UFW"). The unfair labor practice allegations decided in this case are contained in General Counsel's First Amended Complaint, dated June 24, 1977 (S-GCX-5),[1/] as clarified by the Bill of Particulars Concerning Paragraph 10d of First Amended Complaint, dated June 28, 1977 (S-GCX-6).

The election objections decided in this case are contained in the Board's "Order Granting Motion to Consolidate; Amended Notice of Hearing; Order of Partial Dismissal; and Order of Total Dismissal" (S-UFW-9), "Order Dismissing Objections" (S-UFW-11), and "Order Granting in Part Request for Review of Order of Partial Dismissal of Objections Petition (S-UFW-12).

Findings of Fact and Analyses and Conclusions

I. Jurisdiction.

The parties do not challenge the Board's jurisdiction in this matter. Accordingly, I find that the employer is an agricultural employer within the meaning of Labor Code Section

1/ Exhibits in the Salinas hearing are distinguished from those admitted in El Centro by the letter S preceding the letter designations indicating the party who offered the exhibit, i.e., GC is General Counsel; R is Respondent; UFW is United Farm Workers; A is Agrupacion.

1140.4(c), that the UFW is a labor organization within the meaning of Labor Code Section 1140.4(f), and that a representation election was conducted within the meaning of Labor Code Section 1156.3.

II. Alleged Misconduct.

Royal Packing Company (hereinafter "Royal") grows, packs, and ships lettuce in California and Arizona. It acts through various agents and supervisors within the meaning of Section 1140.4 (j) of the ALRA, for whose actions Royal is responsible under Chapter 4 of the ALRA dealing with unfair labor practices. By stipulation of the parties, the pleadings, and a preponderance of the evidence, I find that these supervisors include Don Hart, Mark Simis, David Hart, Ricardo Ramirez, Esteban Duran, Gilberto Ramirez, Antonio Ayala, Manuel Alcantar, Jesus Lorenzana, Gabriel Castillo (during the period in December of 1976, when Ayala was on vacation and Castillo served as foreman of that wrap machine crew), Jose Alfaro, Frank Solorio, Linda Lira (while she was functioning as foreman of a wrap machine), Carlos Rosas (while he was functioning as foreman of a wrap machine), and Joe Chavez.

I will first discuss and decide the unfair labor practice charges brought by General Counsel and then I will discuss and decide the election objections presented by the UFW. A. Institution of the New Medical Plan.

Paragraph 10(a), in combination with paragraphs 11 and 12 of the First Amended Complaint, alleges that Respondent violated Sections 1153 (a) and (b) of the ALRA by instituting a. new medical plan. General Counsel charges that Royal:

> "On or about January 11 and 12, 1977, and continuing to date, through its agents, Don Hart, Mark Simis, and Joe Chavez, interfered with the workers' right of free choice by instituting a new medical plan for the purposes, singly and in combination, of impeding UFW organizational efforts, discouraging support for the UFW, encouraging support for the organization assisted, interfered with, and dominated by the company, and rendering more likely a no union victory or a victory for the company controlled labor organization in any election conducted after the increase in medical benefits." Paragraph 10(a) of the First Amended Complaint (S-GC-5).

All parties agree that the evidence introduced at the El Cento hearing conducted during February and March of 1977 (case nos. 76-CE-101-E, et al) was admissible in support of their respective positions on the medical plan allegation, and no further evidence was presented on behalf of any party at the Salinas hearing.

A new medical plan was instituted at Royal effective February 1, 1977. Royal had been and still is a party to a pre-ALRA collective bargaining agreement with the Western Conference of Teamsters covering the period from July 16, 1975 through July 15, 1978; that collective bargaining agreement contains an article entitled "Health and Welfare" which obligated Royal to pay the premiums for a medical plan which contained the same benefits as those set forth in Western Growers Assurance Trust Plan 22 (see GC-57, 57a). Subsequent to the execution of the above-mentioned collective bargaining agreement, Royal executed a "Resolution of Reopener of Wages" (R-2), in September of 1976, which provided that the Plan 22 medical coverage was to be terminated, and effective November 1, 1976, the employees would henceforth be covered under the provisions of a Health and Welfare Trust Fund to be established by the Teamsters, into which Royal would pay 20 cents per compensible hour per covered employee. According to the evidence presented in our hearing, this trust fund

was never established. Royal then entered into another agreement with the Teamsters entitled Memorandum of Understanding (R-13) under which Royal agreed to provide a medical plan "providing the same benefits as Western Growers Assurance Trust Plan 23" (GC-42, 42a). A Memorandum of Understanding was signed January 21, 1977, and provided that benefits would be effective February 1, 1977. Sometime in January of 1977, Royal employees were given Spanish language copies of the new medical plan (G-42) and a letter to Don and Jack Hart, from their insurance agents, complimenting them for their "on-going concern toward their employees' happiness and security" (GC-43, first sheet).

The "Plan 23" instituted by Royal, effective February 1, 1977, is clearly a better plan than Plan 22. Plan 23 pays $8.00 as compared with $6.00 daily benefits toward treatment in a doctor's office. Plan 23 also provides for pregnancy benefits to a maximum of $700 as compared with Plan 22's $500. Additionally, Plan 23 provides for extensive dental care, whereas Plan 22 provided no dental benefits at all. Accordingly, I find that the institution of the new medical plan by Royal clearly increased the benefits to its workers.

NLRB precedents, as well as ALRB decisions, unambiguously establish that a wage increase or an increase in benefits can be a violation of the law if its intent or effect is to interfere with the organizational rights of workers, and it is not necessary for there to be any threats made at the time of the increase, or for the increase to be conditioned upon nonparticipation of employees in union activity NLRB v. Exchange Parts, 375 U.S. 405, 55 L.R.R.M. 2098 (1964); Rupp Industries, NLRB, 88 L.R.R.M. 1603 (1975); International Shoe, NLRB, 43 L.R.R.M. 1520 (1959). Violations have been found whether the

increased benefits occurred prior to the representation election, during the union organizational drive, or after an election. See NLRB v. Gary Aircraft Corp., 468 F2d 562, 81 L.R.R.M. 2613 (5th Cir. 1972); NLRB v. WKRG-TV, Inc., 470 F2d 1302, 82 L.R.R.M. 2146 (5th Cir. 1973); NLRB v. Furnas Electric Co., 463 F2d 665, 80 L.R.R.M. 2836 (7th Cir. 1972). The ALRB precedents will be cited and discussed below.

The cases indicate that the institution of an increase in wages or benefits during an organizational campaign is presumed to have been done with the intent to interfere with the employees' right of free choice. Therefore, when such an increase is instituted by the employer during an organizational campaign, the employer has the burden of explaining and justifying its institution. In Hansen Farms, 2 ALRB No. 61 (1976), the ALRB adopted the "economic realities" analysis found in NLRB cases in addressing the issue of the effect of an employer's increase of benefits to his employees made during a vigorous organizational campaign in an election case. That is, was the increase an unfair use of the employer's economic position? If so, did it interfere with protected employee rights?

Application of the "economic realities" analysis to the facts in our case is useful in determining whether the increase in medical benefits at Royal interfered with employees' Section 1152 rights in violation of Section 1153 (a), and/or assisted the Agrupacion, in violation of Section 1153(b). The context within which the increase was instituted compels me to conclude that it was instituted during an organizational campaign and that it tended "to interfere with the free exercise of employee [Section 1152] rights under the Act." See Prohoroff Poultry Farms, 3 ALRB No. 87 (1977), quoting

Cooper Thermometer Co., 154 NLRB 502, 503, n. 2, 59 L.R.R.M. 1767 (1965). The above-mentioned context within which the increase was provided is as follows: On September 5, 1975, the UFW filed a petition for certification at Royal. The Teamsters intervened. On September 17, 1975, an election was conducted which the UFW won by a plurality, but not a majority of the votes cast. Pursuant to a written stipulation signed by all parties, a run-off election was held between the UFW and the Teamsters on September 25 and 26, 1975. The Teamsters won the run-off election. The UFW objected, and on February 5, 1976, the Board found that certain company statements made between the first and second elections constituted threats of reprisal for supporting the UFW and therefore set the election aside. See Royal Packing Company, 2 ALRB No. 29 (1976) (GC-16). On December 23, 1976, Royal employees Juan de Dios and Javier Noriega attempted to file a petition for certification on behalf of a group of employees called "Trabajadores de la Royal Packing Company" (GC-52, S-GC-30). The petition was defective in certain respects, and therefore was rejected. On December 24, 1976, the Teamsters filed a petition for certification (76-RC-26-E) and the UFW intervened on December 28. The above-mentioned "Trabajadores" intervened on December 29, 1976 (GC-54, GC-55, S-GC-30). On December 30, 1976, the Teamster petition was dismissed because of the fraudulent procurement and filing of the forged authorization cards (GC-17). On December 31, 1976, the UFW filed a petition for certification (76-RC-27-E), which was withdrawn on January 4, 1977 (GC-18, S-GC-30). During the months of January and February, 1977, organizational activity continued by the UFW, as well as by another group called the Independent Union of Agricultural

Workers (hereinafter IUAW), formed by two former Teamster organizers, Oscar Gonzales and Martha Cano. The Teamsters were not overtly active during this period because of UFW-Teamster jurisdictional negotiations in progress at the time. During this period of intense organizational activity, i.e., January and early February, 1977, Royal engaged in a no-union campaign which was initiated by a series of discussions or talks between the workers and Don Hart wherein Mr. Hart endeavored to answer worker questions and explain to the workers the company position with respect to Royal's desire to have the workers try a year of "no union." During this series of talks which occurred in January, Royal also distributed company leaflets informing the workers that Royal would soon be substantially improving its medical benefits plan (GC-42, GC-43). The new medical plan did, indeed, go into effect on February 1, 1977. During this same period (January and early February, 1977), vigorous organizational activity was conducted by a worker group called "Agrupacion de Trabajadores Independientes and Royal Packing Company." This organizational activity culminated in a petition for an election which was filed on February 23, 1977 (77-RC-11-E). On February 25, 1977, the UFW and the IUAW intervened (S-UFW-2 and 3). A pre-election conference was held on February 28, and on March 3, 1977, the election was held. The results were Agrupacion, 108; UFW, 62; no union, 14; IUAW, 2 (S-UFW-5). The UFW and the IUAW filed petitions to set the election aside pursuant to Section 1156.3(c) of the Act (S-UFW-6 and 7).

Significant testimony and other evidence supporting my conclusion that the institution of the new medical plan interfered with the workers' rights under the Act consists of the following: Don

Hart testified that he knew the Teamsters were in the process of withdrawing from agriculture, and that he had preferred the Teamsters to the UFW, since they had already been working under a Teamster contract. Since they were now leaving the fields, he felt it was appropriate to suggest to the workers that they try "no union" for one year. Mr. Hart, with Joe Chavez translating, visited the crews, sometimes trio by trio, and engaged in discussions and question and answer repartee. Witness Lydia Silva (a Royal wrap machine worker) testified that Don Hart, Joe Chavez, and Mark Simis went to the fields sometime in January to campaign for no union. They said that if the workers would help them by voting no union, for one year after no union won, the workers could work out a contract with the company (TR 5:427), and that benefits like the medical plan would continue (TR 5: 428:1). But one week later the plan was significantly improved (TR 5: 428:16-19, and 5:429:5-9). Manuel Alcantar (a wrap machine supervisor) told Lydia's crew that there would be two new plans they did not have before (TR 5:428:20-25). As Alcantar handed her a copy of the new plan (GC-42), he said to Lydia, "Here, so you can vote for Chavez, and you learn it by heart so you don't be asking" (TR 5:432: 2-5). Immediately thereafter, he gave her a copy of the letter to the Harts from Marsh and McLennan (insurance brokers) (GC-43) (TR 5:432: 6-16). Luis Loza, a member of the Gilberto Ramirez ground crew, testified that, in response to a question by a fellow worker regarding the benefits of having no union, Don Hart said that the workers would be getting a better medical plan and a dental plan (TR 6:567:1-10). Nemecio Duarte, a member of the Alfaro ground crew, testified that Don Hart went to each trio in his crew and asked the workers to please

help him in the election by voting no union (TR 7:659:14-16). Hart told Duarte that the Royal Packing Company and its workers didn't have anything to do with the Teamsters any more (TR 7:659:18-23). Hart also said that he would promise them betterment, good benefits, and good salary or good wages (TR 7:660-9-12 and 7:685). In particular, Hart promised a good medical plan for all the workers (TR 7:661:1-5). Don Hart specifically told the workers that the Teamsters were leaving agriculture, and that an election was going to be held in the near future (TR 7:675:4-9), and told the workers to vote for no union (TR 7:675:15). A few days later, Melquiados Barrios, the foreman's helper in the Alfaro crew, distributed copies of GC-42 and 43 to Duarte and his fellow crew members (TR 7:662-663). General Counsel witness Carlos Ordaz was asked on cross-examination by Respondent's counsel, "Didn't Don Hart through the translation by Joe Chavez indicate repeatedly that he could not make any promises about a non-union election?" (TH 7:693:3-5), to which Ordaz replied, "All I heard was the promise of the working plan and the medical plan" (TR 7:693:17-21). Wrap machine supervisor Alcantar testified regarding the medical plan and the no union campaign conducted by Royal (TR 4:291 ff.) and confirmed that Don Hart spoke to the people using Joe Chavez as interpreter and that, among other things, he asked the workers to provide the opportunity to work for the company for one year without the union. Don Hart testified that he first went to speak to the workers about the no union choice sometime in January of 1977, shortly after Royal was "petitioned by the UFW" (TR 20:1444:3), and during the period when there were "a lot of rumors going around about whether the Teamsters were going to be in the picture" (TR 20:1442:8110). He

further testified that on January 21, 1977, he and the Teamsters agreed that Royal could institute its own medical plan and that the plan went into effect on February 1, 1977 (TR 20:1460, 1508). Prior to that time, Royal, like all companies with Teamster contracts, was operating under a plan established by the Teamster reopener (R-2) (TR 20:1456-1458). Prior to the signing of the reopener, Royal had its own medical plan (TR 20:1459). Hart testified that he began thinking about expanding the medical program in May of 1976 (TR 20:1462-1463). However, the first overt action he took in regard to the new medical plan was approximately January 7, 1977, when he went to the Teamsters, about two weeks before the signing of the "Memorandum of Understanding" dated January 21, 1977 (TR 20:1463-1464). He entered into the Memorandum of Understanding because "Royal wanted to improve our medical plan" and "incorporate a dental program into our medical plan" (TR 20:1459: 18-20). Therefore, Royal went to the Teamsters, negotiated an agreement relasing Royal from its contractual obligation to contribute to the Teamster medical plan and proceeded to establish its own improved plan (TR 20:1459-1460). Hart further testified that one of his strongest competitors, Bud Antle, had a dental program; therefore, he felt that Royal should have an improved medical plan including a dental program in order to be competitive in the industry (TR 20:1463). The Bud Antle dental plan had been in effect sometime before May of 1976 (TR 20:1464).

Respondent takes the position that it instituted the improved medical plan because of its contractual obligations with the Teamsters to provide a health and welfare plan for its employees and their families with the same benefits as Western Growers Assurance

Trust Plan 23, and that the timing of the institution of the improved medical plan did not interfere with the organizational activities and the subsequent election because the improved plan was not instituted until "after the withdrawal by the United Farm Workers of America of their petition for certification for the agricultural employees at Royal and with the belief that all organizational activity had ceased." I disagree. I find that Respondent was under no contractual obligation to provide the increased medical benefits to its workers. Indeed, Respondent had to negotiate a "Memorandum of Understanding," releasing it from its contractual obligation under the Teamsters contract to contribute to the Teamsters trust plan, in order to proceed with its own plan for its workers. Additionally, the evidence clearly established that there were vigorous organizational activities occurring among Royal's workers during the months of January and February 1977 by the UFW, workers' organizations, the IUAW, and on behalf of "no union." In view of the continuous and intense organizational activity among Royal's workers by various groups during the months preceding the March 3, 1977 election, it is unreasonable to adopt the position that the withdrawal of the UFW petition signalled a cessation to organizational activity, thereby making it appropriate only three days later (January 7, 1977) to commence overt action by discussing the new improved medical plan and formally announcing and instituting it on January 21, 1977, effective as of February 1, 1977.

General Counsel takes the position that Royal kicked off its short-lived no union campaign by substantially increasing

the medical benefits to its workers, effective February 1, 1977, to a level higher than the workers had received under the Teamster contract, thereby attempting to show the workers that they would be better off sticking with the company and voting no union than they had been even with the company's favorite union, the Teamsters, let alone than they would be with the UFW. I find that General Counsel's position is supported by a preponderance of the evidence. As Justice Harlan stated in NLRB v. Exchange Parts, 375 U.S. at 490, 55 L.R.R.M. at 2100:

> "The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged."

The fact that the benefits are not conditioned upon voting against the union is not controlling if the purpose is that of "impinging upon . . . freedom of choice for or against unionization, and is reasonably calculated to have that effect." Id.

The ALRB cases which have addressed the issue of an effect of an increase in benefits on organizational activities are the above-cited Hansen Farms, supra; Prohoroff Poultry Farms, supra, Oshita, Inc., 3 ALRB No. 10 (1977); Anderson Farms Co., 3 ALRB No. 67 (1977); McAnally Enterprises, Inc., 3 ALRB No. 82 (1977) (ALOD at 10-12). The Prohoroff case presents facts similar to those in our case. The Board adopted the findings and conclusions of the Administrative Law Officer, who reasoned as follows:

> "With respect to the health insurance, which Respondent contends was contemplated a few months earlier and again on September 11, the record is inconclusive, in part due to credibility problems. Therefore I make no findings as to

whether health insurance was decided upon in May or on September 11, as contended. Even were such a decision made before the advent of the union campaign and not in response to the organizing effort, the nature of the timing of the announcement about health insurance, together with the other benefits, on September 19, was in response to the UFW effort and therefore coercive. Montgomery Ward and Company, 220 NLRB 60, 90 L.R.R.M. 1430 (1975). Respondent by promising the aforementioned benefits and also by granting them as alleged, violated Section 1153(a) of the Act." Prohoroff, supra, ALOD at 11. Accord, Montgomery Ward and Company, 220 NLRB 60, 90 L.R.R.M. 1430, 1432 (1975).

The cases cited by Respondent in support of its position are distinguishable from the facts in our case. NLRB v. Tommy's Spanish Foods, Inc., 463 F2d 116, 80 L.R.R.M. 3039 (9th Cir. 1972), dealt with an employer who was found to have initially considered the insurance plan increases before the union's appearance on the scene, and therefore, the increase could not be characterized as simply a stratagem in response to the threat of unionism. The facts in our case do not support such a conclusion. The case of Drug Fair, 162 NLRB No. 72, 64 L.R.R.M. 1079 (1967), is also distinguishable from the facts in our case by virtue of Drug Fair's employer having first considered changes in its stock option plan and its sick leave plan prior to the union's initial organizing efforts, and the decision to institute those benefits was made before the union had resumed its organizing efforts after a period of inactivity. Additionally, the employer delayed announcing and implementing the plan because of legitimate business reasons unrelated to the union organizational campaign. In our case, I find an absence of sufficient showing that the timing of the announcement was governed by compelling factors other than the organizational campaigns being waged at Royal. The burden of showing "other factors" is on the employer, as pointed

out by Respondent in its brief.

> "[T]he granting of employee benefits during the period immediately preceding an election is not per se ground for setting aside an election. However, in the absence of a showing that the timing of the announcement was governed by factors other than the pendency of the election, the Board has set aside elections on the grounds that the granting of benefits at that particular time was calculated to influence the employees in their choice of a bargaining representative. The burden of showing these other factors is on the Employer." International Shoe Co. (1959) 123 NLRB 682, 684.

Based upon all of the above, I conclude that the institution of the new medical plan, with its obvious improvements, at a time of intense organizational activity preceding the Agrupacion's election petition and March 3rd victory, effectively interfered with the organizational rights of Royal's workers in violation of Sections 1153(a) and (b) of the Act.

B. Promotions of Alcantar, Lira, and Rosas.

Paragraph 10(c) of the First Amended Complaint (S-GC-5) alleges that Respondent violated Section 1153(a) of the ALRA by promoting Manuel Alcantar, Linda Lira, and Carlos Rosas because of their support for the Agrupacion. General Counsel argues that, by analogy to the discharge cases, the promotions should be found to violate Section 1153(a) in that, "by implying to workers that support of the Agrupacion over the UFW will result in work advancement, the promotions of these persons to supervisory positions interfere with the workers' right of free choice under the act."

1. Alcantar.

The preponderance of evidence establishes that Alcantar was promoted from foreman to supervisor of the two Royal

wrap machines shortly before the March Agrupacion election victory. He was a former Teamster organizer who, when hired by Royal, had continued to manifest favoritism to the Teamsters and had engaged in discriminatory crew hiring and unlawful interrogation (the coercive reading of the Chavista list), all of which conduct was found to be in violation of the Act as set forth in my Decision issued by the Board on May 2, 1977. In addition to the above, the evidence establishes that Alcantar's bias in favor of the Teamsters was transferred to no union/Agrupacion after the Teamsters formally withdrew from organizational activities in the field. During the week of February 10, 1977, just before the Agrupacion filed its election petition, Alcantar told all the workers on the bus that the reason he had been campaigning for no union was because the company asked him to do so (TR-5:416-417). He also told Lydia Silva and several other workers that if no union wins the election, he was going to be promoted to supervisor, and that Gabriel Castillo would take Alcantar's place as foreman (TR-5:417). Alcantar testified that he had known Soria (an ex-Teamster organizer and an Agrupacion organizer) for two or three years, and that they had met when they were both Teamster organizers in Salinas and worked together organizing Bud Antle in Salinas and several grape companies in the Coachella Valley and Bruce Church for the January, 1976 election held in the Imperial Valley (S-TR-VIII:5-6). Roy Mendoza, Alcantar's boss when he worked for the Teamsters, testified to his continuing relationship with Alcantar and the Agrupacion while Alcantar was a Royal supervisor (S-TR-XVI: 57-60, 70, 103, 128-129). Alcantar was a frequent visitor to the

home of Florentine Olivas, the leader of the Agrupacion, testifying that sbetween December of 1976 and March of 1977, he went there a lot of times, perhaps more than 20 times (S-TR-VIII:23;6-19). Alcantar testified that he went to Florentine Olivas' house the night of the ballot count (S-TR-VIII:7ff), and that he was the only Royal foreman or supervisor there during the celebration of the Agrupacion election victory (S-TR-VIII:52).

Respondent argues that Alcantar was promoted because of his expertise as a lettuce wrap machine supervisor. It is true that the evidence established that Alcantar was the only foreman/supervisor at Royal who consistently produced sufficient lettuce to make the operation of the wrap machines economically feasible; however, that does not justify the timing of his promotion. I find that the timing of Alcantar's promotion implied to workers that active and overt support of the Agrupacion and/or no union would result in work advancement, and, therefore, Alcantar's promotion interfered with the workers' right of free choice under the Act. I agree with General Counsel's position that such interference can be found through the line of cases involving the discharge of supervisors by extracting from that line of cases the general principle that employer manipulation of supervisory status which interferes with employees' rights under the Act violates Section 8(a)(1) of the NLRA or Section 1153(a) of the ALRA. Although the NLRA does not protect supervisory personnel, the National Labor Relations Board has held that the discharge of a supervisor violates Section 8(a)(1) of the NLRA where the discharge is considered an "interference with the employees'

right to seek vindication of their own statutory rights in Board proceedings." NLRB v. Leas & McVitty, Inc., 384 F2d 165, 66 L.R.R.M. 2353 (4th Cir., 1967) (citing authority). Generally, the cases involve supervisors who were discharged either for testifying against their employers or refusing to engage in coercive activity at the request of their employers.

The case of NLRB v. Talladega Cotton Factory, Inc., 213 F2d 209, 34 L.R.R.M. 2196 (5th Cir., 1954), involved two supervisors who were discharged for failure to prevent unionization of the employer's plant. The Board stated:

> "In these circumstances, where, as here, the discharges followed immediately on the heels of the union's victory in the Board-conducted election, the discharges plainly demonstrated to rank and file employees that this action was part of its plan to thwart their self-organizational activities and evidenced a fixed determination not to be frustrated in its efforts by any half-hearted or perfunctory obedience from its supervisors. In our opinion, the net effect of this conduct was to cause nonsupervisory employees reasonably to fear that the Respondent would take similar action against them if they continued to support the Union. For this reason, we find that the discharges violated Section 8(a)(l) of the Act." 34 L.R.R.M. at 2199, n. 4.
>
> See also, Casino Operations, Inc., 169 NLRB No. 43, 67 L.R.R.M. 1177 (1968); Oil City "Brass Works v. NLRB, 147 NLRB 627, 56 L.R.R.M. 1262 (1966); NLRB v. Dal-Tex Optical Co., 310 F2d 58, 51 L.R.R.M. 2608 (5th Cir., 1962); NLRB v. Better Monkey Grip Co., 243 F2d 836, 40 L.R.R.M. 2027 {5th Cir.) cert. den. 355 U.S. 864, 41 L.R.R.M. 2007 (1957).

Based upon all of the above, I conclude that Alcantar's promotion was made at a time and under circumstances so as to violate Section 1153(a) of the ALRA in that it interfered with the workers' right of free choice under the act by implying that support of the Agrupacion or no union would result in work advancement.

2. Lira.

Linda Lira began functioning as foreman of one of the wrap machines by February 22, 1977, which was before the Agrupacion filed its election petition (S-R-22; S-GC-30; S-TR-VIII: 53-54). She continued as foreman until sometime early in the summer of the 1977 Salinas run (S-TR-VII:40). She had worked as a wrap machine foreman at Mel Finnerman's for two years, prior to her coming to work for Royal (S-TR-VIII:84). Mark Simis, Royal's harvest supervisor and the management official who promoted Lira, testified that he had observed her work in the fields and that he considered her to be the unofficial foreman on Ayala's wrap machine because she was very vocal if the work was not done correctly (S-TR-II:25-26). Alcantar testified that Lira was not his selection for wrap machine foreman, but that Mark Simis wanted a female foreman since no other woman was a foreman for Royal even though the majority of workers on the lettuce wrap machine were women (S-TR-VIII:48-50). General Counsel argues that Lira was promoted because of her pro-Teamster, pro-company, pro-Agrupacion stance. It is true that the evidence establishes that Lira could be fairly characterized as pro-Teamster, pro-Agrupacion, pro-company prior to her promotion; however, that, in and of itself, does not estabish a violation of the Act. I find that there was sufficient reasonable basis on the part of Royal to make Lira wrap machine foreman during the period she functioned as such, and, moreover, her "political" activities prior to her promotion were not comparable to the reprehensible conduct of

Alcantar. It is noteworthy that we have no evidence that Lira engaged in any unfair labor practice activity during her tenure as foreman.

Based upon all of the above, I conclude that General Counsel has not proven by a preponderance of the evidence that the promotion of Linda Lira was made at a time and under circumstances so as to violate the Act.

3. Rosas.

Carlos Rosas began functioning as foreman of one of the wrap machines by February 22, 1977, which was before the Agrupacion filed its election petition (S-R-22; S-GC-30; S-TR-VIII: 53-54). He continued to function as a foreman of one of the wrap machines until early May of 1977 (S-TR-VII:39). Rosas was the personal selection of Alcantar to be wrap machine foreman under him. Alcantar testified that he selected Rosas because Rosas had worked as his second at the Bruce Church Company and had taken over the machine when Alcantar was sick (S-TR-VIII:27-28). Allowing a supervisor to pick his foreman is not uncommon in the lettuce industry (TR-13:665-666).

As in the case of Lira, I again find that although Rosas could be fairly characterized as pro-Teamster, pro-Agrupacion, pro-company prior to his promotion, there was sufficient reasonable basis on the part of Royal to make Rosas wrap machine foreman during the period he functioned as such, and, moreover, his "political" activities prior to his promotion were not comparable to the reprehensible conduct of Alcantar. As in the case of Lira, we again find it noteworthy that there was no evidence

that Rosas engaged in unfair labor practice activity during his short tenure as foreman.

Based upon all of the above, I conclude that General Counsel has not proven by a preponderance of the evidence that the promotion of Carlos Rosas was made at a time and under circumstances so as to violate the Act.

C. Should the Agrupacion be Certified?

General Counsel asserts that his position on the status of the Agrupacion is not inconsistent with UFW's contention that the Agrupacion is not entitled to Board certification, because it is not a labor organization within the meaning of the ALRA. General Counsel states, "If, however, the Administrative Law Officer makes the preliminary finding that the Agrupacion has a sufficient corpus to permit certification in an appropriate case, the General Counsel maintains that certification should not issue in this case because the Agrupacion has been unlawfully assisted by the employer."

Respondent asserts, "Should the Administrative Law Officer adopt the argument . . . that the Agrupacion is not a labor organization within the statutory definition, he must dismiss any violation of Section 1153(b) alleged against the Company. (NLRB v. Cleveland Trust Co. (1954) 214 F2d 95, 100-101.)

Based upon the assertions of General Counsel, UFW, and Respondent as set forth above, it is now appropriate for me to decide whether the Agrupacion is a labor organization within the meaning of Labor Code Section 1140.4(f). Thereafter, I will address myself to the issue of whether "the Agrupacion has been

unlawfully assisted by the employer."

UFW and General Counsel contend that only a labor organization may be certified by the Agricultural Labor Relations Board, and that the Agrupacion does not qualify as a labor organization within the meaning of the ALRA and applicable NLRB precedent,

I agree. My conclusion is based upon the following analysis, much of which adopts the language of and relies upon the reasoning and authorities set forth in UFWs post-hearing brief in support of its election objections.

The ALRA defines a labor organization in terms nearly identical to the NLRA.

> "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for agricultural employees." ALRA, Section 1140.4 (f).

In considering whether a group is a labor organization within the meaning of the NLRA, the Board inquires whether there is employee participation in an organization which exists for the purpose of dealing with an employer concerning working conditions. The Board has, on occasion, refused to permit employee groups which do not constitute labor organizations within the meaning of Section 2(5) of the NLRA to participate in Board elections. Section 2(5) is the comparable Section to the ALRA's Section 1140.4(f). Some of these earlier NLRB cases are as follows:

In Rossie Velvet Co., 3 NLRB No. 82, 1A L.R.R.M. at 218 (1937) an affiliate of the Congress of Industrial Organizations had filed a petition for an election at two plants producing

transparent velvet. A similar petition, but limited to the employees of one of the two plants, was filed by an employee, Charles B. Rayhall, purportedly on behalf of the "Willimantic Independent Velvet Workers." The Board dismissed the Independent petition, stating as follows:

> "The evidence discloses that the 'Willimantic Independent Velvet Workers' had not yet been organized at the time of the hearing. It had no members, officers, constitution, bylaws, membership cards, nor provisions for the payment of initiation fees or dues." 1A L.R.R.M at 219.

In Solar Varnish Corporation, 36 NLRB 1101, 9 L.R.R.M. 191 (1941), six individual employees had filed a petition alleging that a question concerning representation had arisen. The Board dismissed the petition, without prejudice to the filing of a new petition, on the ground that the group could not be certified under the NLRA inasmuch as it was not an organized group. The Board held as follows:

> "Thus, certification under the Act is clearly appropriate only when the process of collective bargaining is to be carried on not by the majority of the employees themselves, but by individuals or a labor organization whom the majority designates. In the case before us, the six employees have not formed and designated as their representative 'any organization, or any agency, or employee representation committee or plan.'" 36 NLRB at 1103, 9 L.R.R.M. at 191.

In Tabardrey Mfg. Co., 51 NLRB 246, 12 L.R.R.M. 284 (1943), the Board dismissed a representation petition filed by a self-appointed employees' committee which did not constitute a formal organization. The committee existed for the basic purpose of testing the asserted claim of a C.I.O. affiliate to be the exclusive representative of the employer's employees. The Board held that the intimation that the committee might at some future

time form a labor organization and seek to bargain with the company was not a cure for its present infirmity in status.

In Automatic Instrument Co., 54 NLRB 472, 13 L.R.R.M. 197 (1944), an individual employee, claiming to represent an independent union was denied a place on the ballot. The Board dismissed the intervention petition because (1) the employees formed no organization, and (2) because their sole design was to gain the rejection of the C.I.O. at the polls.

If we determine that the Agrupacion is not a "labor organization" within the meaning of Section 1140.4(f), it cannot be certified, because Labor Code Section 1156 specifies, "Representatives designated or selected by a secret ballot for the purpose of collective bargaining by the majority of the agricultural employees in the bargaining unit shall be the exclusive representative of all the agricultural employees in such unit ..." The term "representatives" is defined by Section 1140.4 (e) to include "any individual or labor organization." Although it would appear that individuals, as well as labor organizations, may appear on the ballot and be certified by the Board, other provisions of the ALRA compel the conclusion that only labor organizations may be certified. The Act's provisions for intervention (§1156.3(b)), de-certification because of racial discrimination (§1156.3 (e)), certification bar (§1156.6), contract bar (§1156.7(b)) and de-certification (§1156.7 (c)), all refer to labor organizations. Section 1159 unequivocally provides that "only labor organizations certified pursuant to this part shall be parties to a legally valid collective bargaining agreement."

The UFW asserts, "The Act's entire scheme leads to the conclusion that only bona fide labor organizations, and not individuals or employee groups which do not qualify as labor organizations, may be certified by the Board." Based upon all of the above, I agree. Following is a discussion of the evidence that establishes that the Agrupacion is not a "labor organization" within the meaning of the Act.

Florentine Olivas, a Royal lettuce cutter, asserted that he was the representative of the Agrupacion. He testified that he conceived of the name "Agrupacion" one morning while walking to work (S-TR-XI:82-83). He denied any connection with Juan de Dios and the Teamsters; however, Roy Mendoza, head Teamster agricultural organizer, told a different story. He testified that the Teamsters had planned a winter organizational campaign in the Imperial Valley for 1976-1977 built around a strategy of infiltrating key organizers and large blocks of Teamster supporters into target companies (S-TR-XVI:57). The first such target company was Royal, and others included Growers Exchange, Arakelian, and N.A. Pircola (S-TR-XVI:57).

At Royal, the Teamsters had succeeded in placing former organizer Manuel Alcantar in a supervisory position, and with his help were able to fill most of the jobs on the two machine crews with Teamster supporters from other companies (S-TR-XVI:98-128). When the ALRB began to accept petitions on December 1, 1976, Mendoza was directed by his supervisors not to file any petitions, pending jurisdictional talks between the Teamsters and the UFW (S-TR-XVI:56). However, Somerton, Arizona Teamsters Local 274

signed up Royal workers with the help of organizers from Mendoza's California Local 946 (S-TR-XVI:64-65) and filed a petition for an election at Royal. At the same time, Mendoza was assisting Juan de Dios with his efforts to file a petition (S-TR-XVI:73-74). In January, 1977, former Teamster organizers formed two off-shoot organizations, the Independent and International Unions of Agricultural Workers (S-TR-XVI:66-67). Mendoza and the organizers with whom he had worked for several years considered their options, and decided to "let people do their own thing for awhile, and we will hold them like that and then affiliate them with somebody and see where all the hell this is going to" (S-TR-XVI: 67). Mendoza envisioned that the groups would be dependent upon a parent organization, unable to stand on their own (S-TR-XVI: 68-69). The Teamsters knew that they could count on support from the two machine crews "because we had put the people in there" and they were controlled by Paula Olivas (S-TR-XVI:70, 71). The Teamsters, after discussions with Alfredo Soria (an ex-Teamster organizer working for Royal in a ground crew), decided on Florentine Olivas as the natural leader for the group, in the ground crews, because he was a quiet person and his opinions were respected (S-TR-XVI:71, 72, 76). They intended that Soria not assume an open leadership role in the Agrupacion (S-TR-XVI:75). The Teamsters' plans for the birth of the Agrupacion included discussions regarding the "whys and how we could go around the ALRB and get in our group organizers within there and force the ALRB, because we had some experience with the Trabajadores en Royal and how you could force the ALRB and outsmart Marshall Ganz and

get on the ballot. And that was our main thing" (S-TR-XVI:73}. Soria continued to draw upon counsel from Mendoza and other Teamster organizers as they implemented their plan to form the Agrupacion. Additionally, Soria used the Teamster office and supplies for printing Agrupacion leaflets. He also received help from Teamster organizers in typing and printing the leaflets, as well as art work (S-TR-XVI:77-78, 87-89). On several occasions, Soria brought Olivas into the Teamster office so that Mendoza could explain some aspects of the law as it related to their plans for the Agrupacion (S-TR-XVI:86-87; 107-113).

Mendoza testified that he didn't think Olivas "really understands how the Agrupacion really came about through some evolution of ideas of organizers such as you and I that have had a lot of experience on how to get workers headed ... in the direction that a majority of people have to take to accomplish a goal" (S-TR-XVI:105, 106).

After reviewing all the testimony and documentary evidence, I find that Mr. Mendoza's observation is correct. Mr. Olivas appeared, during the course of the hearing, to be a sincere man. Despite his good intentions, he was unable to appreciate fully the extent to which he had been used by the more sophisticated Teamster and ex-Teamster organizers, Mendoza and Soria. I find that although the Agrupacion appealed to a number of Royal workers, it was not a grass roots movement. The Agrupacion was engineered by a small group of experienced and sophisticated Teamster and ex-Teamster union organizers whose plan was to create an image which would appeal to Royal workers while creating

a group that once it had "gwotten around" the ARLB would be unable to stand on its own and would be forced to affiliate with a larger parent organization. In short, the Agrupacion was created by the Teamster and ex-Teamster organizers as a contingency plan to jurisdictional talks with the UFW, not by workers as an alternative to existing labor organizations.

Many witnesses testified that they were in favor of the Agrupacion and/or no union (many times the concepts appeared to be overlapping or confused within the minds of the witnesses); however, the evidence also established that there was little "employee participation" (within the meaning of National Labor Relations Board precedent) in the affairs of the Agrupacion. Olivas testified that the Agrupacion began activities several weeks before the election was held on March 3, 1977, and that the Agrupacion had done nothing since the election because it "hasn't been able to do anything else" (S-TR-XIV:43-44). The Agrupacion did not issue any leaflets during the Salinas lettuce harvest season (May through September, 1977) and has not gathered authorization cards since the election (S-TR-5:20). During the pre-election period, the Agrupacion 's activities were limited to the Imperial Valley; there was no activity among Royal's employees in Huron (S-TR-V:11). Olivas was not aware of the state of the law regarding Royal's continuing contract with the Teamsters in Arizona (S-TR-V:11-12, 18). The Agrupacion held no marches, rallies, demonstrations, meetings, either formal or informal before or after the election (S-TR-V:71-72; S-TR-II:89), had no financial participation from employees, either in the form of dues (S-TR-IV:40-41), or collections (S-TR-III:61;

V:9), and there was never any election of representatives or officers (S-TR-III:107). Olivas succinctly summed up the Agrupacion's activities in the following exchange:

"Q Was the only thing that the Agrupacion did to get cards for the election?

A That's it." (S-TR-V:11.)

The solicitation of the authorization cards was not a complicated process, according to Olivas. He testified that he only gave the workers a "few notions" or "I just asked them to sign, spontaneous" (S-TR-III:135; V:108).

The Agrupacion had very little structure, vague membership requirements, and required virtually no participation on the part of the workers. It had no treasury (S-TR-III:61; S-TR-V:9), no constitution (S-TR-IV:37), no organizers (S-TR-V:40), no medical, vacation, or pension plans (S-TR-V:1-4), and no office (S-TR-V:9). There was no membership list of the Agrupacion (S-TR-IV:38-40), and Mr. Olivas did not know which crews supported the Agrupacion the most (S-TR-IV:32). When asked whether there was any procedure for a worker to join the Agrupacion or whether it was purely a sentiment, Olivas testified that "it is just a sentiment for each worker" (S-TR-IV:40). Throughout the hearing, Agrupacion supporters described the Agrupacion as consisting of all workers at Royal, regardless of their union preference. See testimony of Florention Olivas (S-TR-II:109, S-TR-IV:41-42; S-TR-VI:102), Ramon Aguilera (S-TR-XIII:18), Gustavo Ramirez (S-TR-XIII:32), Cruz Valderas Lira (S-TR-XIII:57), Graciela Avita (S-TR-XIII:90), Facundo Baca (S-TR-XV:59), and Carlos Alvizo (S-TR-XV:87).

The Agrupacion's designation of representatives was as esoteric and ill-defined as was its concept of membership. At the beginning of the hearing, Florentine Olivas was, by the sentiment of the workers, the sole representative of the Agrupacion, with Soria serving as a representative of Olivas but not the Agrupacion (S-TR-II:43-44, 49). Later, Soria, by the sentiment of the people, also became a representative of the Agrupacion (S-TR-III:107). When the hearing reconvened in September, Soria was no longer present at the counsel table for the Agrupacion, and his place was taken by Facundo Baca until the last day of the hearing when Soria again appeared at the hearing and asked for permission to represent the Agrupacion for the purpose of cross-examining Roy Mendoza. Throughout the hearing, the witnesses testifed that the Agrupacion had no representatives except Olivas and at times Soria. Crews had representatives, but they were crew representatives elected before the advent of the Agrupacion, and they did not claim to represent the Agrupacion (S-TR-IX:43; S-TR-V:77-78; S-TR-XIII:25, 27). On the next to last day of the hearing, Facundo Baca testified that the Agrupacion had coordinators in several of Royal's ground crews (S-TR-XV:54); however, Baca's testimony was inconsistent with Olivas and the other witnesses' testimony, and was outweighed by it. Mr. Baca manifested bias against the UFW, and his demeanor while testifying made him less credible than Olivas and the other witnesses who had denied the existence of crew coordinators.

The Agrupacion's lack of structure was explained by

Olivas when he said, "The permit or certification is first. Afterwards would be the Agrupacion" (S-TR-V:94). Roy Mendoza testified that when the Agrupacion was formed it was with the idea that there would be no leaders who would be visible targets for UFW organizing and legal attacks (S-TR-XVI:74-75) and that the group should be unable to stand on its own, dependent on a parent, umbrella organization (S-TR-XVI:68).

Thus, I find that the Agrupacion was without structure because those who originally conceived of it and brought it into being (the Teamster and ex-Teamster organizers) planned to create a structureless, anti-organization which would be dependent upon a parent organization to survive. The parent organization was never provided, and so the Agrupacion remained a "spirit of idealism" among the workers at Royal, but not an organization. Although Florentine Olivas lent his signature and respectability to the group, ex-Teamster organizer Alfredo Soria was the guiding force. Pursuant to the Teamsters' plan (S-TR-XVI:74-75), Soria kept a low profile, and even some of the more agressive Agrupacion supporters did not know that he had been involved (S-TR-VIII:68-80), In the eyes of the workers who testified, Florentine Olivas was the respected representative of the Agrupacion, which was according to Soria and Mendoza's plan (see S-TR-XVI:71-72); however, it was Soria who wrote the Agrupacion's leaflets, got most of them printed, spoke for Olivas when they visited the offices of the ALRB, spoke at the pre-election conference, read and explained to Olivas mail which the Agrupacion received, filled out forms for the Agrupacion, told Olivas when he had to sign papers,

borrowed the wording for the Agrupacion"s authorization cards, got the cards printed, got the forms for the petition, filled out the petition, made up the symbol for the Agrupacion, solicited signatures on Agrupacion authorization cards, and told Olivas what items he should bring to the hearing to comply with an ALRB subpena duces tecum (S-TR-V:21-24). It is doubtful that the Agrupaction could have existed without ex-Teamster organizer Soria's know-how and experience.

With respect to the purpose of the Agrupacion, Royal workers frequently testified that they supported the Agrupacion in order to avoid paying dues to either the United Farm Workers or the Teamstersc Florentine Olivas (S-TR-IV:42), Linda Lira (S-TR-VIII:76-77), Ramon Aguilera (S-TR-XIII:14), Carlos Alvizo (S-TR-XV:85-86), and Flora Lopez (S-TR-XV:106) all testified that a primary purpose for the Agrupacion was to stop paying dues. Linda Lira (S-TR-VIIIs 62), Ramon Aguilera (S-TR-VIII:6) and Jesus Tarazon (S-TR-XIV:117) all testified that the purpose of the Agrupacion was the same as that of Juan de Dios. By and large, in the eyes of workers at Royal, the position of Juan de Dios was the same as that of no union (S-TR-VIII:107), and de Dios did serve as a company observer during the 1977 Royal election (S-TR-XIV:56). Linda Lira testified that the workers had decided to support the Agrupacion so as "not to have a union" (S-TR-VIII:56-57), and witness Carlos Alvizo, an Agrupacion supporter, stated that he didn't want any union (S-TR-XV:87). Witness Bertha Alicia Rodriguez testified that she had been bothered by UFW organizers so she signed with the Agrupacion (S-TR-XIII:112-113) .

On January 28, 1977, Oscar Gonzales and Martha Cano of the Independent Union of Agricultural Workers attended a meeting at the home of Florentine Olivas. At this meeting, the IUAW representative sought the support of influential Royal employees Florentine Olivas, Paula Olivas, and Juan de Dios. Olivas' statements at this meeting reveal that in his mind the purpose of the Agrupacion was to free the workers of unions (see TR-9:85-108). It is true that witnesses called by Respondent testified that they thought that the workers would be able to negotiate a contract with the company if the Agrupacion were certified; however, taking their testimony in context and as a whole, I find that the emphasis and moving spirit of the Agrupacion were to get rid of the Teamsters and keep the UFW out so that they would not have to share their earnings with such organizations.

The preponderance of evidence in this case when applied to NLRB precedent supports the conclusion that the Agrupacion is not a labor organization within the meaning of the ALRA and, therefore, may not be certified. As was the case in Rossie Velvet, supra, the Agrupacion had not been organized at the time of the election in that it had no members, officers, constitution, bylaws, membership cards, nor provisions for the payment of initiation fees or dues. As was the case in Solar Varnish, supra, the Agrupacion consisted of individuals who had not formed or designated as their representative any organization, agency, or employee representation committee. As was the case in Tabardrey Mfg. Co., supra, and Automatic Instrument Co., supra, the Agrupacion was an amorphous employee group whose common theme

was to get rid of outside unions. Whether we consider the Agrupacion a spirit of idealism among the workers at Royal or the unfinished product of Teamster organizers' plans, the Agrupacion, as of the termination of this hearing, has yet to evolve into a bona fide labor organization within the meaning of the Act, and therefore cannot receive the Board's certification. Sound policy reasons support my conclusion that the Agrupacion should not be certified. Olivas testified that he had no experience in administering contracts (S-TR-V:3), and that the Agrupacion did not have a constitution because constitutions are only for republics or states (S-TR-IV.-37) and that the Agrupacion had not filed any reports with the Department of Labor because it did not intend to reach all the way to Washington (S-TR-IV: 44-45). Olivas' perceptions of the process of arbitration (S-TR-V:5) and Baca's belief that the State would help the Agrupacion negotiate a contract (S-TR-XV:59-60, 72) demonstrate the Agrupacion's naivete. Olivas admitted under examination that he did not understand the meaning of the expression "under penalty of perjury" and his testimony concerning service of the petition for certification revealed a remarkable lack of understanding or candor (S-TR-III:121-126).

In the case of Schultz v. NLRB (1960) 46 L.R.R.M. 2956, the court held that the NLRA's definition of a labor organization "contemplates the group as a whole participating in the formulation of policy and procedures to be carried out in the organization, thus providing a democratic form of organization wherein the members have full voice and power to enforce their views." Such

is clearly not the case with the Agrupacion. With bona fide labor organizations, formalized standards are available to protect employees, such as are found in the constitution and bylaws of the union and in statutes and decisions of the courts. With the Agrupacion, however, there are no formalized standards, no mechanics for initiating censure or penalty, and for all practical purposes, no workable standards for any control. A bona fide labor organization within the meaning of the NLRA or the ALRA has permanency and continuity whereas, the Agrupacion appears to be subject to the vicissitudes and frailty of shifting "representatives."

The ALRA recognizes the right of individual workers or amorphous employee groups to press their grievances against the employer, regardless of the existence or nonexistence of a collective bargaining agreement. Royal workers, despite the existence of a Teamster contract, had crew representatives (S-TR-IV:43) and they carried out concerted activity, such as their Memorial Day demand for overtime pay (S-TR-II:42). This sort of activity is permissible under the Act, but it does not raise what would otherwise not be considered a labor organization to bona fide labor organization status within the meaning of the Act for purposes of certification.

An additional policy reason for not certifying the Agrupacion, in addition to all of the above, is that the Agrupacion's development was the product of extraordinarily deceptive planning and conduct. In its campaign propaganda, the Agrupacion steadfastly attacked the Teamsters and disclaimed any support from the

Teamsters or any established union (see S-GC-11, 12, and 14). As indicated earlier in this Decision, however, the Agrupacion was not only conceived of by the Teamsters, but its campaign was managed and supported (with in-kind contributions) by the Teamsters. The Teamster involvement was so well hidden that it was not suspected even by Facundo Baca, a staunch supporter of the Agrupacion, who testified as follows:

> "Q To the best of your knowledge, the Teamsters had nothing to do with the Agrupacion?
>
> A Not only to the best of my knowledge, but they didn't have anything to do." (S-TR-XV:70.)

Charging party urges in its post-hearing brief that, "the Agrupacion, because of its structureless character and its 'Vote Neither' quality, and because of the substantial fraud involved in its campaign, may not be certified by the Board. To certify the Agrupacion would be to approve of the fraud which Soria perpetrated on Olivas and the workers at Royal and to give the Board's stamp of legitimacy to a group which is without form or essence. The purposes of the Act will be effectuated only if the election is set aside." I agree with charging party's contention, and I so recommend to the Board.

D. Royal's Involvement with the Agrupacion.

Paragraph 10(d) of the First Amended Complaint as clarified by the Bill of Particulars alleges many acts by Royal, some of which General Counsel asserts as sufficient basis to find that

> "the involvement of Royal Packing Company with the roots, formation, direction and administration of the Agrupacion, taken as a whole violates Sections 1153 (a) and (b) of the ALRA. Whether the evidence supports a finding of domination, or the lesser included findings of interference,

assistance or support, the overall effect was to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152, in violation of Section 1l53 (a), and to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, in violation of Section 1153 (b)."

As set forth in the beginning of my discussion of Paragraph C. above, General Counsel contends that the Agrupacion is not entitled to Board certification because it is not a labor organization within the meaning of the ALRA; however, as noted above, General Counsel further contends that if it is determined that the Agrupacion has a sufficient corpus to permit certification in an appropriate case, that certification should not issue because the Agrupacion has been unlawfully assisted by the employer.

Respondent argues that if it is determined that the Agrupacion is not a labor organization within the statutory definition, we must dismiss any violation of Section 1153 (b) alleged against the company. In support thereof, he cites the following case:

"Another Court decision which has dealt with a similar factual setting is NLRB v. Associated Machines (6th Cir. 1955) 219 F2d 433. The Court in Associated Machines considered a situation in which an employee committee held discussions with an employer over individual as opposed to collective complaints. The Court ruled that the comittee did not satisfy the statutory terms of a 'labor organization' under the NLRA, and therefore dismissed the Section 8(a)(2) violation against the employer (219 F2d at 437). Additional authority for this position can be found in that line of cases which has dismissed unfair labor practice charges against various groups because they did not satisfy the statutory definition of a labor organization. (See DiGiorgio Fruit Corp. v. NLRB, (D.C.Cir. 1950) 191 F2d 642 at 647 and William Poultry Co., Inc. v. Jones (1977) 430 F.Supp. 573 at 557.)"

Since I have concluded that the Agrupacion should not be certified by virtue of the fact that is is not a labor organization within the meaning of the Act, it would appear that it is unnecessary for me to determine whether the Agrupacion has been unlawfully assisted by the employer. However, in the event the Board or any other reviewing body determines that my findings and conclusions regarding Agrupacion's status are not soundly based, I submit the following findings of fact (pointing to the bases therefor) and conclusions regarding the issue of unlawful assistance to the Agrupacion.

Firstly, I reject Respondent's argument that a subjective test ought to be applied in deciding that question (see Respondent's Brief at pages 42-43), and I agree with General Counsel's contention that an objective, rather than a subjective, test is appropriate here, based upon the ALRB decision in Dan Tudor & Sons, 3 ALRB No. 69 (1977).

Application of the objective test to the voluminous testimony and documentary evidence persuades me to make the following findings:

1. Royal gave favored treatment to the Teamsters as compared with the UFW, until it became apparent that the Teamsters were leaving agriculture, after which Royal bestowed its favored treatment upon the Trabajadores and the Agrupacion.

My finding relative to the Teamsters is based upon the specific evidence and relevant law set forth on pages 8 through 24 of my Decision dated April 23, 1977, in the case of Royal and UFW, case nos. 76-CE-101-E, et al, and upon the

testimony identified and/or set forth on pages 61-63 of General Counsel's post-hearing brief in the instant case. My finding relative to the Trabajadores and the Agrupacion is based upon the specific evidence identified and/or set forth on pages 41-46 and 55-61 of General Counsel's post-hearing brief.

2. The Trabajadores and the Agrupacion's message was essentially that of the company, i.e., "no union."

This finding is based upon the specific evidence identified and/or set forth on pages 47, 48, and 52-55 of General Counsel's post-hearing brief.

3. The Agrupacion was a successor group to the group named "Trabajadores de la Royal Packing Company" within the meaning of the NLRB precedents.

This finding is based upon the specific evidence identified and/or set forth on pages 48-52 of General Counsel's post-hearing brief.

4. The Trabajadores and the Agrupacion groups are not successors to the Teamsters within the meaning of the NLRB precedents.

The preponderance of the evidence does not support General Counsel's allegation that the Trabajadores and the Agrupacion groups are successors to the Teamsters within the meaning of the NLRB precedents. Head Teamster organizer Roy Mendoza's testimony set forth in S-TR-XVI weighs heavily against General Counsel's contention.

5. The Teamsters assisted the Trabajadores and the Agrupacion groups in their organizational efforts at Royal.

This finding is based upon the specific evidence identified and/or set forth on pages 46, 47 and 61-65 of General Counsel's post-hearing brief.

Based upon all of the above findings and my findings set forth earlier in this Decision in Section "A. Institution of the New Medical Plan," in Section B. (regarding Alcantar's unlawful promotion), and in Section C. (regarding the Agrupacion's origin and status), as well as in my earlier Royal Packing Company Decision dated April 23, 1977, including the Supplement thereto dated March 16, 1978, with respect to the unlawful hiring of the employees in the Alcantar machine crew and the coercive reading of the Chavista list by Alcantar, I conclude that Royal has effectively interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 1152 of the ALRA, in violation of Section 1153(a) thereof, and has interfered with and aided the formation and administration of the Agrupacion in violation of Section 1153(b).

My conclusion that Royal violated Sections 1153(a) and (b) rests, in large part, upon the well-reasoned analysis and supporting authorities set forth on pages 65 through 81 of General Counsel's post-hearing brief in the instant case. I adopt General Counsel's reasoning and rely upon the legal authorities set forth in Section "C. Direct Application of Domination/ Interference/Support/Assistance Analysis to the Agrupacion," modified, however, by my conclusion that only Alcantar's promotion was proved to be unlawful, and that I have not found that Royal "dominated" the Agrupacion within the meaning of Section

1153(b) of the ALRA.

With respect to General Counsel's Section "B. Agrupacion as Heir to the Taint of its Ancestors—the Trabajadores and the Teamsters" (page 65 of General Counsel's post-hearing brief), I point out that I have specifically found and concluded that the Agrupacion was not a successor to the Teamsters. However, the Agrupacion was heir to the taint of its ancestor, the Trabajadores, and the cases dealing with "successor unions" contain language which provides additional bases for my conclusion that Royal violated Sections 1153(a) and (b) of the Act by unlawfully assisting the Agrupacion.

E. The Remaining UFW Election Objections.

UFW's objection that the Agrupacion is not a labor organization within the meaning of Labor Code Section 1140.4(f) has been discussed and sustained in this Decision in Section "C. Should the Agrupacion Be Certified?" The remaining UFW election objections assigned to me for decision are as follows:

1. Royal granted the Teamsters access in excess of that granted the United Farm Workers.

I sustain the objection based upon the findings and conclusions previously set forth in this Decision and my previous Royal Decisions referred to above, regarding Royal's favoritism to the Teamsters, the Trabajadores, and the Agrupacion as opposed to the UFW. Oshita, Inc., 3 ALRB No. 10 (1977), and Sam Andrews' Sons, 3 ALRB No. 45 (1977), provide authority for the proposition that access favoritism constitutes grounds for setting an election aside.

2. Royal created the impression of surveillance by Alcantar's reading of the Chavista list.

I sustain the UFW objection based upon the findings and conclusions set forth in my previous Royal Packing Company Decision dated April 23, 1977, referred to above. Supervisor Alcantar's singling out of UFW supporters demonstrates the continuity of Royal's efforts to interfere with and assist the groups opposing the United Farm Workers, and is sufficient grounds to set aside the election. See Merzoian Bros., 3 ALRB No. 62 (1977).

3. Royal unlawfully increased its medical benefits to discourage support for the United Farm Workers.

I sustain the UFW objection based upon the findings and conclusions set forth earlier in this Decision in Section "A. Institution of the New Medical Plan." As indicated in that Section, the increase of benefits in the midst of an organizing campaign constitutes grounds for setting an election aside. Hansen Farms, 2 ALRB No. 61 (1976); Anderson Farms Co., 3 ALRB No. 67 (1977); Oshita, Inc., supra.

4. The Agrupacion was dominated and interfered with by Royal.

I sustain this objection with respect to the UFW's contention that the Agrupacion was interfered with by Royal based upon my previous findings and conclusions regarding the extent to which Royal interfered with and aided the formation and administration of the Agrupacion in violation of Sections 1153(a) and (b), justifying setting aside the election; however, I find

insufficient evidence to support the "domination" charge. The cases of Kansas City Power & Light Co. v. NLRB, 111 F2d 340 (1940) and Marks Products Co., 36 NLRB 1254, 9 L.R.R.M. 196 (1941), provide authority for the proposition that the Agrupacion is not entitled to Board certification.

5. The Excelsior list provided by Royal was substantially incomplete.

I sustain the UFW objection based upon the following findings, analysis, and conclusion:

On Saturday evening, February 26, 1977, the UFW received from the Board the eligibility list for the Royal election (S-UFW-17). The list contained 243 names and addresses. Eighty-five names had no addresses whatsoever, three had only general delivery or post office box addresses, and 25 were listed with permanent, not temporary and current addresses. Forty-four were listed with incomplete addresses, such as Mexicali addresses where the Colonia is not given, thus rendering the address virtually useless. On Tuesday, March 1, 1977, approximately 36 hours before the election, Royal provided an additional 58 addresses (S-UFW-18). Of these, 15 were Mexicali addresses without Colonias, 10 were permanent addresses, and one was incomplete.

Under NLRB and ALRB precedent, the substantial incompleteness of Royal's Excelsior list justifies setting the March 3, 1977, election aside. By providing an incomplete list (33 percent no addresses, 17 percent incomplete addresses, and 10 percent useless permanent addresses), Royal deprived the UFW of the opportunity to communicate with 50 percent of Royal's work

force away from the job. Royal demonstrated by its second list that it was capable of gathering more addresses than the original list contained, but nevertheless, the updated list provided on March 1st, contained a total of 35 permanent addresses, 56 Mexicali addresses without Colonias, four incomplete addresses, three with no street addresses, and 27 with no addresses whatsoever, The case of Mapes Produce Co., 2 ALRB No. 54 (1976), provides ALRB standards by which this lack of compliance with Board regulations justifies setting the election aside.

6. The hiring of the two machine crews made a fair election at Royal impossible.

This objection was dismissed by the Executive Secretary; however, the UFW, in its post-hearing brief, argues that the dismissal makes the objection no less serious, and "the Board has on several occasions taken upon itself to set aside an election on grounds not set forth in the election objections petition. See Pacific Farms, 3 ALRB No. 75 (1977)." I decline to consider and decide this election objection because it has been dismissed by the Executive Secretary and it was not assigned to me for my decision. However, I point out that the Remedy contained in my "Supplement to Decision Dated April 23, 1977" in the Royal case nos. 76-CE-101-E, et al, recommends that the election be set aside and that the UFW be permitted expanded access to Royal's wrap machine crews in an effort to remedy the unfair labor practice I found with respect to Royal's discriminatory hiring of the Alcantar crew.

Summary

I have concluded in this Decision that:

With respect to the election objections, the Agrupacion is not a labor organization within the meaning of the ALRA and therefore should not be certified. Additionally, the election of March 3, 1977, should be set aside because: Royal granted the Teamsters access in excess of that granted the UFW; Royal created the impression of surveillance by Alcantar's reading of the Chavista list; Royal unlawfully increased its medical benefits to discourage support for the UFW; the Agrupacion was interfered with and aided by Royal; and the Excelsior list provided by Royal was substantially incomplete.

With respect to the unfair labor charges, Royal has violated the ALRA by instituting the new medical plan, promoting Alcantar, and interfering with and aiding the Agrupacion (assuming sufficient corpus). Any remaining unfair labor practice charges are hereby dismissed.

Remedy

Regarding the appropriate relief, I agree with General Counsel's suggestion that the inherent difference between the NLRA and the ALRA, in addition to California legislative concern, compel the conclusion that under the ALRA, a finding of interference, as well as one of domination, should result in disestablishment of the assisted organization (see General Counsel's post-hearing brief, pages 82-84). Therefore, I submit the following Recommendation:

Recommendation

Based upon all of the above findings of fact, analyses and conclusions, and the entire record in these consolidated cases, I recommend that the election of March 3, 1977, be set aside, and that the following order be issued:

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, Royal Packing Company, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Unlawfully promising and/or granting to employees increased benefits (especially improved medical plans) so as to discourage membership in the UFW or any other labor organization;

Unlawfully promoting any of its employees and/or supervisorial personnel under circumstances which imply that support of a particular union, group, or no union will result in work advancement;

Unlawfully interfering with and/or aiding and assisting in the formation and administration of any labor organization in violation of Section 1153 (b) of the ALRA.

(b) In any other manner interfering with, restraining and coercing any of its employees in the exercise of rights guaranteed by Section 1152 of the ALRA.

2. Take the following affirmative actions which shall effectuate the policies of the Act:

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

(b) Post copies of the attached Notice to Employees at times and places to be determined by the Regional Director. The notices shall remain posted for 60 days. Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(c) 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 period January 1, 1977, through March 31, 1978.

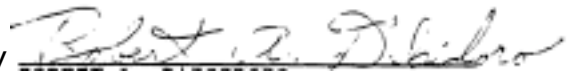
(d) Have the attached Notice distributed and read in appropriate languages to the assembled employees of the Respondent on company time. The distribution and reading, by a representative of Respondent or a Board Agent, shall be at such times and places as are specified by the Regional Director. Following 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 the 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 20 days of the date of the receipt of this Order, what

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

Dated: March 31, 1978.

AGRICULTURAL LABOR RELATONS BOARD

By 

ROBERT A. D'ISIDORO
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing at which all sides had an opportunity to present evidence and state their positions, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by instituting a new improved medical plan during an organizational campaign so as to effectively interfere with the organizational rights of Royal workers, and by promoting Manuel Alcantar to supervisor of the wrap machines at a time and under circumstances so as to imply that support of the Agrupacion or no union would result in work advancement, and by unlawfully interfering with and aiding the formation and administration of the group known as Agrupacion de Trabajadores Independientes de la Royal Packing Company, and has ordered us to post this notice.

The Act gives employees the following rights:

(a) To organize themselves;
(b) To form, join or help any union;
(c) To bargain as a group and to choose anyone they want to speak for them;
(d) To act together with other workers to try to get a contract or to help or protect each other; and
(e) To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL NOT do anything in the future that interferes with your rights under the Act, or that forces you to do, or stop doing, any of the things listed above.

Dated:

ROYAL PACKING COMPANY

By: _____

(Representative) (Title)

This is an official notice of the Agicultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.