El Centro, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

THE GARIN COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 76-CE-13-E(R) 76-CE-15-E 76-CE-22-E 5 ALRB No. 4

DECISION AND ORDER

On August 31, 1978, Administrative Law Officer (ALO) Arie Schoorl issued the attached Decision in this matter. Thereafter, Respondent and the General Counsel each filed timely exceptions and a supporting brief, and Respondent and the General Counsel each filed a reply brief.

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[1/]

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

ORDER

Pursuant to Labor Code Section 1160.3, Respondent, The Garin Company, its officers, agents, successors, and assigns,

1/Member McCarthy did not participate in this decision.

is hereby ordered to:

1. Cease and desist from:

(a) In any manner preventing UFW or other union organizers from entering, or expelling them from, labor camps or other premises where employees live, or in any other manner interfering with, restraining or coercing UFW or other union agents either in the presence of employees or in circumstances in which it is reasonably likely that employees will learn of such conduct.

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

(a) Sign the Notice to Workers 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 in conspicuous places at its places of business in the State of California, the times and places of posting to be determined by the Regional Director; the Notices shall remain posted for a period of 60 consecutive days. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(c) Mail copies of the attached Notice in appropriate languages, within 30 days after receipt of this Order, to all of its employees, including former employees who were employed by Respondent during January 1976 and employees of Cactus Distributors who were employed in Respondent's fields in the Imperial Valley during January 1976.

(d) Arrange for a representative of the Respondent or a Board Agent to distribute copies of, and read, the attached Notice in appropriate languages to the assembled employees of the Respondent on company time. The reading or readings shall be at such times and places as are 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 non-hourly employees to compensate them for time lost at this reading and the question-and-answer period.

(e) Notify the Regional Director in writing, not later than 30 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: January 23, 1979

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a hearing in which all parties had a chance to present evidence and state their positions, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act because we and our labor camp operator interfered with and prevented UFW organizers from communicating with our employees who resided at a labor camp. The Board has told us to post and mail this Notice and to take certain other action.

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

1. to organize themselves;

2. to form, join, or help any union;

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

4. to act together with other workers to try to get a contract or to help or protect each other; and

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

Because this is true we promise you that:

WE WILL NOT in the future prevent or interfere with the right of UFW representatives, or any other union representative, to contact, visit and speak with our employees in any labor camp or other place where they reside.

THE GARIN COMPANY

DATED: _____ By: _____

(Representative)

* * *

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

The Garin Company (UFW)

5 ALRB No. 4
Case Nos. 76-CE-13-E(R)
76-CE-15-E
76-CE-22-E

ALO DECISION

The ALO found that Respondent had violated Labor Code Section 1153 (a) by interfering with UFW organizers and/or preventing them from visiting and conversing with Respondent's employees at a labor camp. Access was denied through the conduct of the labor camp operator, who, although not a supervisor, was found by the ALO to have been cloaked with apparent authority to act on Respondent's behalf. A significant portion of the labor camp housed Respondent's crews and the crews of a company providing Respondent with harvesting services. The ALO found that the company engaged by Respondent to help in the harvest was a labor contractor thereby making its supervisor and crew members the employees of Respondent. In determining that the labor camp operator had apparent authority to act on behalf of Respondent, the ALO found, inter alia, that Respondent arranged and paid for services in addition to housing and that many of the workday's activities were centered at the labor camp under the direction of the camp operator.

BOARD DECISION

The Board affirmed the rulings, findings, and conclusions of the ALO and adopted his recommended Order.

REMEDY

The Board ordered Respondent to cease and desist from preventing union organizers from entering, or expelling them from, premises where employees live, or in any other manner interfering with, restraining or coercing union agents, and further ordered the posting, mailing, distribution and reading of an appropriate Notice to Employees.

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case Nos. 76-CE-13-E(R)
	)	76-CE-15-E
GARIN COMPANY,	)	76-CE-22-E
	)	
Respondent,	)	
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	
	)	
Charging Party.	)	

Steven Nagano and
Michael Auclair-Valdes for the General Counsel

Lori Laws and Wayne Hersh for the
Respondent

DECISION OF ADMINISTRATIVE LAW OFFICER

ARIE SCHOORL, Administrative Law Officer: This case was heard by me on June 19, and 20, 1978, in El Centro, California and on June 22, 23, and 27, 1978, in Salinas, California. The complaint herein which issued on May 12, 1978, was based on charges filed by the United Farm Workers of America, AFL-CIO (hereinafter called UFW) and duly served on Respondent Garin Company on January 9 and 13, 1976. It alleges that Respondent committed various violations of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act). The General Counsel and Respondent were represented at the hearing but the Charging Party did not participate. The General Counsel and Respondent filed timely briefs after the close of the hearing.

Upon the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent admitted in its answer, and I find, that it is an agricultural employer within the meaning of Section 1140.4(c) of the Act and that the UFW is a labor organization within the meaning of Section 1140.4 (f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleged inter alia, that Respondent violated Section 1153 (c) and (a) of the Act by causing its employee JESUS GUZMAN to resign and thereafter refusing to reinstate him to his former, or an equivalent, position because he had engaged in union organizing activities. As the General Counsel failed to present any evidence at the hearing to establish this allegation, I granted Respondent's motion to dismiss that allegation.

The complaint also alleged that Respondent violated Section 1153(a) of the Act by interfering with UFW organizers and/or preventing then from visiting and conversing with Respondent's employees on January 5, 8, 13 and 15 at the Danenberg Labor Camp. In its answer, Respondent denies committing the alleged unfair labor practices and, as an affirmative defense, states that it had "no control" or "right to control" the operators and/or operation of the Danenberg Labor Camp, contending that the Camp was operated by an independent contractor.

At the hearing, Respondent did not dispute the facts which allegedly constitute the unfair labor practices, i.e. the interference by the Camp operator, Al Droubie, and others, with UFW representatives who entered the Camp to converse with Respondent's employees. Rather, Respondent presented evidence intended to show that Droubie was an independent contractor rather than an agent of Respondent, that in connection with his operation of the Camp, Droubie had minimal contacts with Respondent's supervisors and foremen, and that Respondent was therefore not responsible for Droubie's acts and conduct at the camp.

III. Background Information

Respondent is a California corporation which has its headquarters in Salinas, California, and is engaged in growing lettuce in both the Salinas and San Joaquin valleys. Until 1977 it also raised lettuce in the Imperial Valley near El Centro.

In December of 1975, Respondent began to prepare for the early 1976 lettuce harvest on its land in the Imperial Valley. As it needed a labor camp to house its employees during the lettuce harvest, Respondent contracted with Al Droubie for the use of the lodging and kitchen facilities at the Danenberg Labor Camp which he operated just outside of El Centro.

Respondent also contracted with Cactus Distributors (hereinafter called Cactus), an Arizona corporation, to harvest, pack and transport to coolers part of Respondent's lettuce crop, and arranged to have Cactus employees lodge at the Danenberg Labor Camp. Pursuant to this contract, Respondent was to pay Droubie for the Cactus employees' lodging and Cactus was required to reimburse Respondent therefor.

About 12 of Respondent's employees were housed at the Camp, along with about 40 of the Cactus employees. Al Droubie, the operator of the Camp, was in charge of the entire premises and employed a security guard who was stationed at the only entrance to the Camp. Although employees of three other employers lived at the Camp, the employees of Respondent and Cactus stayed in an area apart from where the employees of the other companies were lodged.

On January 5, 8 and 13, UFW organizers entered the Camp and talked to employees of Respondent and/or Cactus. On each occasion, either Droubie, his security guard, or Osorio, a foreman of Respondent, prevented and/or interfered with such conversations or had the UFW organizers arrested for trepass. On January 15, Droubie's security guard prevented the organizers from gaining access to the premises. At or about that date the UFW abandoned its organizing efforts among Respondent's employees.

IV. The Events At The Danenberg Labor Camp

On January 5, 8, 13 and 15, 1978,UFW organizers entered the Camp and talked to "Garin workers" or attempted to do the same. The UFW organizers who testified explained that by "Garin workers" they mean workers they had seen working in Respondent's fields. It would appear that the "Garin workers" could have been employees of either Respondent or Cactus.

On January 5, at about 7:00 p.m., Liza Hirsch and Armando Morales, UFW organizers, went to the Camp to talk to some of the Respondent's employees. They entered the Camp and talked to the employees in the barracks. After 30 minutes, Felipe Cosio, the camp security guard, entered the barracks and informed the two organizers that they would have to leave because "their time

was up". Hirsch told Cosio they had been invited and the workers confirmed this. Cosio left and a few minutes later Al Droubie and two deputy sheriffs arrived. Droubie said he did not want any union organizers there and asked the deputies to arrest Hirsch and Morales. The deputies arrested them for trepass.

On January 8, Hirsch and Morales returned to the Camp to talk to the employees about the UFW. The camp security guard followed them as they went from group to group and warned them he would call the sheriff unless they left. He made fun of the UFW organizers and told the workers not to talk to them because they had no right to be there. He asked the organizers to leave. Soon, two deputy sheriffs arrived and one of them told the employees not to talk to the organizers and advised them not to defend the organizers. Approximately 15 workers were shouting at the deputy sheriffs in protest. The deputies threatened the organizers with arrest if they did not leave. The two organizers decided it would be wiser to leave and they did so. Approximately 30 of the workers observed this incident.

On January 13, UFW organizers Liza Hirsch, Armando Morales and Herminio Mojica, and two UFW legal workers, Tom Dalzell and Carol Schoenbrunn, went to the Camp to talk to the workers about the UFW and also to secure signatures for a declaration regarding the right of UFW organizers to visit the workers at the Camp. They talked to approximately 30 employees in different groups throughout the barracks at the Camp for about 20 minutes. Five minutes after their arrival, one of Respondent's foremen,

Nicolas Osorio, told Dalzell and Morales to leave the dormitory.[1/] The two left and joined other organizers in another part of the barracks. Tom Dalzell and Hirsch went to the kitchen, where they attempted to talk to ten of Respondent's employees, Johnny Hernandez, a Cactus foreman, was present. However Al Droubie stood outside, observing them through a window. The employees appeared frightened and would not talk to the two organizers.

The two organizers then went to talk to several employees who were watching television. Al Droubie followed and shouted at them to the effect that they had no right to disturb the employees, after which he left and called the sheriff. Dalzell and Hirsch left the building and went outside where they joined the other three organizers and talked to some employees who were standing around inside the Camp enclosure.

Droubie returned from his office, confronted the organizers and shouted threats at them: that he would break their legs, and that he had beaten up Marshall Cans (a UFW organizer) before and could do it again. He accused them of being "Commies" and stated that it didn't matter to him that some of the UFW organizers were "broads" because "broads" didn't mean anything to him, and then threatened to break their legs too. When speaking of "broads" he pushed Liza Hirsch in the chest. He also expressed his complete disdain for the ALRB and the Governor. All these threats and comments were abundantly punctuated with vulgar epithets expressing his complete contempt for the organizers.

1/ At the hearing, Osorio denied ever making this statement or anything similar. However he was a very unconvincing witness. The General Counsel's witness Tom Dalzell, the UFW organizer, was straightforward in his testimony and remembered well the details of the incident. I therefore credit his account over Osorio's.

The five organizers began to leave and Droubie followed them. Upon leaving the Camp premises, Carol Schoenbrunn and Herminio Mojica were arrested for trepassing by a deputy sheriff whom Droubie had called. About 30 to 40 workers, mostly Respondent's employees, witnessed Droubie's tirade and threats as well as the arrest of the UFW representatives.

On January 15, Liza Hirsch and Armando Morales returned to the Camp to talk to some of Respondent's employees and found that the entrance gate was closed and locked with a padlock. The security guard told them that they could not enter because no union people were allowed, and added that he would permit them to enter only if an employee informed the guard that he wanted a union organizer to visit him. The two organizers left but returned 30 minutes later and asked to see some employees of one of the other three companies whose employees resided at the Camp. Liza Hirsch testified that some of these workers were UFW supporters and she was confident they would invite the UFW agents into the Camp. However the guard refused to contact these workers and refused entrance to the UFW representatives, who thereupon left the area.

V. Analysis And Conclusions Re Events At The Camp

It is well established that union organizers have the right to visit workers in labor camps. Labor camps are considered the homes of the employees. In Silver Creek Packing Company, 3 ALRB No. 13 (1977) the Board held that "communication at the homes of employees is not only legitimate, but crucial to the proper functioning of the Act". It is evident from the record that Al Droubie, by his own acts and conduct and through the acts of his employees and agents, the security guards, like Osorio, Respondents foreman, did interfere with and prevent the UFW organizers'

attempts to communicate with employees at their homes, in this case the Danenberg Labor Camp.

On January 5, communication between UFW agents and employees was disrupted when Al Droubie caused two of the organizers to be arrested as they were engaged in peaceful conversation with workers inside the Camp. On January 8, such communication was again interfered with and effectively prevented by the security guard who followed two organizers and ridiculed them in the presence of the workers and then called in the sheriff's deputies, who engaged in a shouting match with the workers.

On January 13, Nicolas Osorio, Respondent's foreman, interfered with two UFW organizers who were communicating with the workers when he told them to leave the dormitory. On the same date, Al Droubie also interfered with and discouraged such communications by his surveillance, his threats of bodily harm to the organizers and his causing the arrest of two UFW organizers. Finally, also on January 15, the security guard effectively prevented any communication between the UFW and the workers by twice denying UFW organizers admittance to the Camp.

Respondent is clearly liable for its foreman Osorio's interference with the UFW organizers' attempts to talk to Respondent's workers. The Board held in Whitney Farms, 3 ALRB No. 68, that an employer was liable for the conduct of a supervisor who went to an employee's home and prevented organizers from entering. As a labor camp is in effect the worker's home or residence, the Whitney case is applicable to the incident herein. I therefore find Respondent violated Section 1153(a) of the Act based on the acts and conduct of its foreman

Osorio.

On four separate occasions, Droubie acting by himself or through his agents, the security guards in his employ, committed acts which constitute violations of Section 1153 (a) of the Act, by interfering with the UFW organizers' attempts to communicate with the workers of the Danenberg Labor Camp. It is necessary to determine whether those four violations are to be attributed to Respondent. To aid in this determination, we shall resolve the issue of whether Cactus was a farm labor contractor or a custom harvester, and the issue of whether Droubie was acting as Respondent's agent when he prevented and interfered with communication between UFW agents and employee-residents of the Camp.

VI. The Status Of Cactus Distributors

Respondent contends that Cactus is a custom harvester rather than a labor contractor. As a custom harvester, Cactus would be considered the employer of its employees working in Respondent's harvest. On the other hand, if Cactus is a labor contractor, then Respondent would be considered the employer for all purposes under the Act. It would follow from this that Cactus supervisors would be considered Respondent's supervisors and that all employees contacted by the UFW organizers at the Camp would be considered Respondent's employees with no need to distinguish between Respondent's and Cactus employees.

Cactus has been in the business of harvesting, packing, shipping and selling lettuce for itself and other agricultural entities since 1972. It is an Arizona corporation with three principal stockholders, Thomas George, Jim Dorsey and Frank Cannata, who rotate as its officers and operate the business.

Thomas George had previously been a foreman with Respondent, but left in 1972 to start up Cactus. William Garin testified that one of the reasons he decided to contract with Cactus was because he and his supervisory personnel knew George and had a good working relationship with him.

Jim Dorsey testified that Cactus has always considered itself a grower-shipper rather than a labor contractor. When it provides services to other growers, it generally includes harvesting, packing, shipping and selling. In the harvest and packing operation it may provide, in addition to workers, packing equipment and supplies, miscellaneous small tools, stitcher trucks, pickups, water cans and trucks to transport the crates of lettuce to the coolers. It does not own or operate any coolers.

Under the terms of its working agreement with Respondent, Cactus supplied field workers, hired, supervised and discharged them, and provided them with free housing and provided their meals (at $2.15 per meal, deducted from the employees' pay-checks) at the Danenberg Labor Camp. As Respondent had contracted with Droubie for the housing at the Camp and paid him for it, Cactus reimbursed Respondent therefore except for two occasions when Cactus paid Droubie directly. Cactus furnished stapler guns, staples, and water cans in the fields.[2/] It also rented from Respondent trucks, which it used to transport the boxed lettuce

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2/ It would appear from the testimony of Jim Dorsey that Cactus furnished stitcher trucks in addition to staple guns and water cans, in view of his affirmative response to a long list of items. On the other hand, Jerry Soule specifically testified that Cactus only supplied staple guns and water cans. William Garin testified as to providing only staple guns and water cans. I credit their specific testimony over Dorsey's general affirmation.

to coolers owned by Respondent or, at times, to a commercial cooler. Cactus also rented from Respondent buses, which it used to transport workers between the Camp and Respondent's fields. When there was a shortage of trucks or a breakdown, Cactus contracted through Respondent's supervisor, Soule, with a third party to provide trucks on a temporary basis.

Jerry Soule was Respondent's harvesting supervisor. He testified that the Cactus supervisors and foremen directed their own employees in the cutting, packing and transporting of the lettuce. Nevertheless, Soule was the one who decided when to do the last watering of the lettuce just previous to harvesting, and when and-where both Respondent's and Cactus crews would harvest. He also observed how the lettuce was being packed by Respondent's and Cactus crews and if the letter's crews were not doing an adequate job he would point this out to Thomas George, who would straighten it out with the Cactus crew which was at fault.

There was no written contract between Respondent and Cactus. The informal arrangement between the two entities provided for Respondent to pay Cactus $1.05 for every box packed and transported to the coolers. Respondent added the rental charges for the trucks and buses, the $3.00 per day for Cactus employees who resided at the Danenberg Labor Camp, and the $2.15 per meal for Cactus workers who ate at Respondent's kitchen, and deducted the sum thereof from monies paid (at $1.05 per box) by Respondent to Cactus for its harvesting and transportation services. Jim Disney, treasurer for Cactus, testified that of the $1.05 per box received by Cactus, 60 ¢ was for labor costs, 12 ¢ for hauling costs, 10 ¢ for payroll tax and insurance, 3 ¢ for

supplies, 5 cent for per diem travel expenses and the rest for overhead and profit. It is noted that Respondent pays a piece rate of 47 cent per box to its own harvest workers.

Cactus had to hire employees of Respondent to drive the trucks it rented from Respondent. A Teamster representative insisted this be done to comply with a seniority clause in the collective bargaining contract, covering Respondent's truck drivers, then in force between Respondent and the Teamsters' Union. Cactus paid wages to the truck drivers directly but paid the fringe benefits to Respondent which, in turn, paid them into the appropriate Teamsters' trust funds for pension, vacation etc. Cactus kept an office in the El Centro area where it did its own bookkeeping and issued its payroll checks.

VII. Analysis And Conclusions Regarding Status of Cactus

The General Counsel contends that Cactus was a farm labor contractor and that its supervisors and employees should therefore be considered the supervisors and employees of Respondent. Respondent denies this, contending that Cactus was more than a farm labor contractor, that it was a custom harvester. Respondent points out that Cactus provided a complete harvesting service to Respondent in addition to supplying and supervising farm laborers, noting that Cactus packed the lettuce and was responsible for transporting it to the coolers.

The Board in various cases has distinguished between a farm labor contractor and a custom harvester. Generally, a farm labor contractor supplies and supervises farm laborers for a fee while a custom harvester does the same and also provides specialized equipment and essentially complete control of the

harvesting process. According to the criteria established in prior Board cases, Cactus neither provided specialized equipment nor exercised complete control over the harvest.

In Kotchevar Bros., 2 ALRB No. 45 (1976) the agricultural entity was found to be a custom harvester based on two factors: (1) that it provided specialized equipment (40 pairs of tractors and gondolas plus several fork lifts); and (2) that it delivered the grapes to the winery.

I cannot equate Cactus[1] provision of such simple items as staple guns, staple wire and water cans with the provision of major, specialized equipment [3/] as found in the Kotchevar case, nor Cactus' function of delivering crates of lettuce to the cooler with Kotchevar's responsibility for delivering grapes to the winery, especially in view of the fact that Cactus utilized trucks rented from the Respondent and driven by drivers borrowed from the Respondent.

In Napa Valley Vineyards, 3 ALRB No. 22 (1977), Jack Stowells, Jr., 3 ALRB No. 93 (1977) and Gourmet Harvesting and Packing, 4 ALRB No. 14 (1978) the "complete control over the harvest" required by the Board to qualify as a "custom harvester" has been described, variously, as: complete and continuing performance of all major farming duties throughout the year; irrigation, tractor driving and pruning for a per-acre management fee; and exercising complete managerial responsibility over post-harvest operations including transportation, cooling and marketing, Cactus clearly did not exercise control to such a degree.

3/ I do not consider Respondent's trucks which were used by Cactus to transport lettuce to the coolers as specialized equipment provided by Cactus to Respondent.

In a case [4/] involving circumstances somewhat similar to the instant matter, the Board found one Jose Ortiz, to be a farm labor contractor based on the fact that he supplied only workers for the manual harvesting of vegetables, although he was paid on a pack-out basis of so much per crate of vegetables, the same manner in which Cactus was paid herein. However, the latter factor did not deter the Board from finding that Ortiz was a farm labor contractor.

The instant case presents additional factors, that do not appear in the cited cases concerning custom harvesters, which show that Cactus provided little more than workers to the Respondent. For example, Respondent rented to Cactus the buses which were used to transport workers between the Camp and the fields. Respondent contracted for the Camp in which Cactus lodged its workers and also fed an entire Cactus crew, for both of which items Respondent was reimbursed by Cactus.

In summary, Cactus did not provide any major items of specialized equipment. Clearly, stapler guns, staple wire and water cans cannot be so characterized. Nor did Cactus have the complete control of the harvesting operation that was characteristic of the Board cases [5/] where entities were found to be custom harvesters and were described in such terms as: "exercized managerial judgment", "complete managerial responsibility".

4/ Cardinal Distributing Company, 3 ALRB No. 23 (1977).

5/ Napa Valley Vineyards, Jack Stowells, Jr., and Gourmet Harvesting and Packing, supra.

"hired to exercise its own initiative, judgement and foresight". A situation, as here, where Cactus supervisors and crews worked in the fields alongside Respondent's crews, with the Respondent's harvesting supervisors constantly present and coordinating Cactus crews with Respondent's crews, does not represent the separate and independent control characteristic of a custom harvester.

As Cactus does not satisfy the basis criteria of a custom harvester, and as it does fulfill all of the requirements of a farm labor contractor, I find it to be the latter. Accordingly, it follows, and I find, that Respondent shall be deemed the employer, for all purposes under the Act, of the Cactus crews and their supervisors who worked on Respondent's farmlands in the Imperial Valley in January 1976.[6/]

VIII. The Status Of Droubie

Al Droubie was in overall charge of the Camp and had his business office located there. He employed the security guards who were answerable to him for maintaining safety and order within the Camp. An individual employed by Respondent, Refugio Serna, was Respondent's labor camp supervisor but he was a subordinate to Droubie in the general supervision of the Camp

6/ Even if Cactus were found to be a custom harvester, Respondent's interference with communications between the UFW and Cactus agricultural employees would still constitute a violation, of Section 1153 (a), as all agricultural employees are entitled to the protection of the Act, not merely the employees of Respondent, or any particular employer. The definition of agricultural employee in Section 1140.4(b) of the Act is not limited to the employees of a particular agricultural employer, and it is well settled that in the context of labor law, the term employees means members of the working class generally and not employees of a particular employer. Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 8 LRRM 438.

area occupied by Respondent's employees. He was responsible for, and cleaned, the barracks area used by Respondent's employees, He employed Respondent's cook, bought the food for Respondent's kitchen and brought meals to Respondent's crews and to one Cactus crew in the fields every work day.

The Danenberg Labor Camp is located one mile outside El Centro and is surrounded by an 8-foot high chain-link fence. One entrance gate to the Camp was manned by a security guard. Housed at the Camp were about 12 of Respondent's employees and about 40 Cactus employees. Both Respondent and Cactus had kitchens at the Camp where their respective crews ate their meals.

In the morning, both Respondent's and Cactus's supervisors and foremen would arrive at the Camp and sit around and talk to the field laborers before the buses left for the fields. Most of the employees who did not live at the Camp would drive to the Camp in their own cars and then ride the same buses to the fields as the employees residing at the Camp. It is clear that the Camp was a meeting place for both Respondent's and Cactus's employees before the bus trip out to the fields. In the afternoon, after work, the buses would bring the workers back to the barracks, after which both Respondent's and Cactus's foremen would stay at the Camp for an hour or two talking and playing cards with the workers.

IX. Analysis And Conclusion Regarding Status of Droubie

Respondent contends that it cannot be responsible for Droubie's actions because he was an independent contractor and that it had no control over his actions.

This may be an effective defense in situations where an independent contractor was engaged by an employer to perform

a certain task and had little or no contact with the employer's employees. However, there is case law holding that when the independent contractor, in performing its task, comes in contact with such employees, and has apparent authority in a particular area, the employer will be liable for the acts and conduct of the independent contractor in that particular area. See Sterling Faucet Co., 203 NLRB 1031 (1973), 83 LRRM 1530.

In Montgomery Ward & Co., 228 NLRB 89, the Administrative Law Judge found that the interrogation of an employee by an outside placement specialist did not violate Section 8 (a) (1) of the NLRA (equivalent of Section 1153(a) of the ALRB) because she was not an agent of the Respondent. The Board overruled the Administrative Law Judge and found that the outside placement specialist was an agent of Respondent and that her interrogation of, and threats to, the employee violated Section 8(a)(1). The Board pointed out that the record established that the outside placement specialist performed a service for Respondent in counseling employees, often on company time and premises. Employees were aware of her role in placing employees in jobs, and her appearance during working hours to aid management in handling personnel problems put her in a position to be identified with management in the eyes of the employees. Consequently, her statements could be interpreted by employees as those of management.

In an ALRB case [7/], which follows the same reasoning as the two cited NLRB cases, where a field representative for a growers' association, although not directly employed by the em-

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7/ Tom Bengard Ranch, Inc., 4 ALRB No. 33 (1978)

ployer, counseled the employer's employees concerning various aspects of labor-management relations, the Board concluded that the field representative had acted as an agent of the employer and that his illegal conduct should be attributed to the employer absent a prompt disavowal of his actions by the latter.

The circumstances in the instant matter are similar to the above-mentioned cases. Respondent put Droubie in charge of some very important working conditions of its employees: their living and eating quarters, the staging area for the bus transportation to and from the fields, and a business and social meeting place for supervisors and employees. He had his office at the Camp and the employees residing there were fully aware he had complete authority to manage the Camp. They looked upon him as part of management, and it was reasonable for them to interpret his statements and actions in respect to the UFW organizers as those of Respondent. With respect to such statements and actions, there never was a disavowal by the Respondent. Accordingly I find that Droubie was an agent of Respondent and thus his interference with, restraint and coercion of the UFW organizers' communications with employees of Respondent and Cactus in the Danenberg Labor Camp constituted violations, attributable to Respondent, of Section 1153(a) of the Act.

The Remedy

Having found that Respondent engaged in various unfair labor practices which are violations of Section 1153 (a) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

The General Counsel prays for the relief of expanded access. Of course, access to workers' homes, including labor camps, is protected by the Federal and State constitutions. United Farm Workers of America, AFL-CIO v. Superior Court (Wm. Bual Co.) 14 Cal. 3d 902, 910 (1975) and no ruling by this agency is necessary to provide that right. As Respondent has prevented Union access only to employees' homes, and not to their work site, on the facts of this case, I consider that expanded access is not an appropriate remedy herein.

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ORDER

Respondent Garin Co., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

In any manner preventing union organizers from entering labor camps or other premises where agricultural employees live, or otherwise interfering with, restraining, or coercing employees in their right to receive communications, from any labor organization or its agents, where they reside.

2. Take the following affirmative action which is necessary to 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 hereinafter.

b. Post copies of the attached Notice in conspicuous places at its work locations throughout the State of California, such places to be determined by the Regional Director, The notices shall remain posted for a period of 60 consecutive 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, not later than 30 days from receipt of this Order, to all of its employees, including former employees who were employed by Respondent during January 1976 and employees of Cactus Distributors who were employed in Respondent's fields in the Imperial Valley during January 1976.

d. Arrange for a representative of the Respondent or a Board Agent to distribute copies of, and read, the attached Notice in appropriate languages to the assembled employees of the Respondent on company time. The reading or readings shall be at such times and places as are 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 non-hourly employees to compensate them for time lost at this reading and the question-and-answer period.

e. Notify the Regional Director in writing, not later than 30 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

DATED: August 31, 1978

ARIE SCHOORL
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing in which all parties had a chance to present evidence and state their positions, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act because we and our labor camp operator interfered with and prevented UFW organizers from communicating with our employees who resided at a labor camp. The Board has told us to post and mail this Notice and to take certain other action. We will do what the Board has ordered, and also tell you that:

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

1. to organize themselves;

2. to form, join, or help any union;

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

4. to act together with other workers to try to get a contract or to help or protect each other; and

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

Because this is true we promise you that:

WE WILL NOT in the future prevent or interfere with the right of UFW representatives, or any other union representative, to contact, visit and speak with our employees in any labor camp or other place where they reside.

GARIN COMPANY

DATED: By: _____
Representative

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

DO NOT REMOVE OR MUTILATE.