Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACK T. BAILLIE CO., INC., Employer, Respondent, and INDEPENDENT UNION OF AGRICULTURAL WORKERS, Petitioner, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Intervenor, Charging Party.	Case Nos. 77-RC-14-M 78-CE-102-M 5 ALRB No. 72

CERTIFICATION OF REPRESENTATIVE,
DECISION AND ORDER

On July 24, 1978, in Case No. 77-RC-14-M, a runoff election was held in a unit of the agricultural employees of Jack T. Baillie Co., Inc. (Employer). Appearing on the ballot were the Independent Union of Agricultural Workers (IUAW) and the United Farm Workers of America, AFL-CIO (UFW). The tally of ballots showed the following results:

IUAW	104
UFW	95
Challenged Ballots	3
Total	202

Pursuant to Labor Code Section 1156.3(c), the UFW

timely filed post-election objections, seeking to have the Board set aside the election on the grounds, inter alia, that the Employer's late filing of an employee name-and-address list with defective addresses hampered organizers in their efforts to communicate with employees in their homes. This same conduct was asserted as the basis of an unfair labor practice charge and was alleged in the complaint in Case No. 78-CE-1Q2-M to be a violation of Labor Code Section 1153(a).

The two aforesaid matters were consolidated for hearing and heard before Administrative Law Officer (ALO) Mark E. Merin. Thereafter, the ALO issued the attached Decision. As to the post-election objections, he concluded that the Employer's failure to exercise due diligence in maintaining a complete and accurate list of employee addresses prevented the UFW from establishing home contact with prospective voters and thereby affected the results of the election. He recommended that a new runoff election be held. The ALO also concluded that Respondent's failure to submit a complete and accurate list of its employees' current street addresses, as required by Labor Code Section 1156.3 and 8 Cal. Admin. Code Section 20310(a)(2), constituted interference with its employees' Section 1152 rights, and therefore was a violation of Section 1153(a).

The Employer filed exceptions to the ALO's Decision with a brief in support of its exceptions and the General Counsel filed a brief in opposition to the Employer's exceptions.

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority

in this matter to a three-member panel.

The Board has considered the objections, the hearing record, and the ALO's Decision in light of the exceptions and briefs of the parties and has decided to affirm the rulings, findings, and conclusion of the ALO only to the extent consistent herewith.

Post-Election Objection Issue

On July 17, 1978, one week before the runoff election, the Employer provided the Regional Director with the names and addresses of the 266 employees who had worked during the applicable payroll eligibility period.[1/] The ALO determined that that list included approximately 11 nonlocal addresses and 34 post-office-box addresses.[2/] Twenty-nine of the postal-box addresses were attributed to 29 workers supplied by labor contractor Secundino Garcia. Both unions received identical copies of this list and all subsequent revisions.

[1/] The first election was held on October 31, 1977, with the following results: IUAW, 67; UFW, 64; No Union, 5; and Challenged Ballots, 13. On July 17, 1978, the Board concluded that no party had received a majority of the votes in that election and directed the 'Salinas Regional Director to conduct a runoff election between the IUAW and the UFW. Jack T. Baillie Company, Inc., 4 ALRB No. 47 (1978). Because of the time lapse between the two elections and in view of the likelihood of substantial turnover in unit personnel, the Board ruled that voting eligibility would be based on the payroll period immediately preceding the issuance date of the order for the runoff election. On the same date, the Board telegraphed its Decision to the parties and the Regional Director notified the Employer by telephone that he had scheduled the election for July 24 and requested a list of employees' names and addresses for the payroll period of July 9 to 15.

[2/] According to the General Counsel's calculations, the list contained four nonlocal addresses and 24 postal-box addresses, 20 of the latter attributed to the labor contractor's crew.

The Employer submitted a second, revised list prior to the July 18 pre-election conference. All of the out-of-town addresses had been replaced by local addresses, and 10 of the postal-box addresses had been converted to street addresses.

The remaining 24 postal-box addresses were those of employees in the Garcia crew. Responding to requests of the Employer and Board Agent Ben Romo, Garcia and his wife developed a list of their employees' current home addresses by July 21, the deadline set by Romo. We find, in these circumstances, that the availability of current home addresses three days prior to the election afforded organizers or representatives of both unions which appeared on the ballot an adequate opportunity to make home contact with the employees in the Garcia crew.[3/]

As did the ALO, we reject the UFW's contention that Board agent failure to distribute election notices to the Garcia crew, combined with the late filing of the address list, accounts for the fact that only 12 crew members participated in the election. Unable to serve the crew members at the work site because they were not employed during the week preceding the election, Board agents arranged instead for a series of spot announcements of the impending election on two local and predominantly Spanish-audience radio stations. Additional

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[3/] For example, the UFW was able to assign one full-time and two part-time organizers exclusively to home canvassing of the 29-person Garcia crew. One crew member testified that he had been visited at home four days prior to the election by two representatives of the UFW. Moreover, the number of home sites was considerably less than the number of workers as the crew included several family groups.

notification was supplied by means of the IUAW's mailing of election notices to each employee, the union agents' home visitations, and the Garcias' personal contacts with the members of their crew.

With respect to the Employer's address roster for the lettuce, celery, irrigator and tractor-driver crews, UFW organizers Robert Everts and John Brown testified that 47 of 97 employee addresses were incorrect or inadequate. [4/] It was not asserted that names of any eligible voters had been omitted from the list.

Everts began canvassing homes of the lettuce-wrap, irrigator, and tractor-driver crews on July 17 or 18. He detected most of the address deficiencies on his list by July 19. Meanwhile, UFW agent Brown was attempting to make home contact with employees in the lettuce-cutting and celery crews. Although he encountered 31 incorrect addresses, he succeeded eventually in contacting 21 employees at either a new home address, a local hotel, or at work. He was unable to testify as to whether he made any contact with the 10 remaining workers. The Employer supplied an undetermined number of address updates in the week preceding the election and, in addition, kept the Regional Director apprised of the work schedules and locations of the various crews in order to assist the organizers in their attempt to meet with employees at their work sites.

[4/] In some instances a general street address was not useful in locating workers who lived in trailer parks or apartment complexes.

This Board does not take lightly the list requirement of Labor Code Section 1156.3 and 8 Cal. Admin. Code Section 20310. As the National Labor Relations Board (NLRB) has stressed, the list is critical because:

> ... it [is] the Board's function to conduct elections in which employees have the opportunity to cast their ballots for or against representation under circumstances that are free not only from interference, restraint, or coercion violative of the Act, but also from other elements that prevent or impede a free and reasoned choice. Among the factors that undoubtedly tend to impede such a choice is a lack of information with respect to one of the choices available. In other words, an employee who has had an effective opportunity to hear the arguments concerning representation is in a better position to make a more fully informed and reasonable choice. [Excelsior Underwear, Inc., 156 NLRB 1236, 1240, 61 LRRM 1217 (1966).]

The list serves this function by enabling representatives of labor organizations to visit eligible voters in their homes. Home visits provide an opportunity for in-depth discussion of the issues which is not present when union representatives contact voters at the work place; home visits are private and not subject to the same time constraints as work place visits. Henry Moreno, 3 ALRB No. 40 (1977).

The importance we give to the list requirement equals or exceeds that given it by the NLRB. Yoder Brothers, Inc., 2 ALRB No. 4 (1976). We have consistently held that:

> ... where an employer fails to exercise due diligence in obtaining and supplying an accurate, updated list of names and addresses, of workers, and the defects or discrepancies are such as to substantially impair the utility of the list in its informational function, the employer's conduct will be considered as grounds for setting the election aside. [Valley Farms, Maple Farms & Rose J. Farms, 2 ALRB No. 42 (1976).]

This is a position we intend to maintain. The full and free communication of information is essential to the election process.

The fact situation presented by this case is unique. The competitive organizing efforts of the rival unions for the election were intense. Voter turnout was large. Even allowing for employee turnover, there was a residual sensitization of the work force to representation issues from the election contest between the same unions nine months earlier. These unusual circumstances persuade us that the communication so essential to the election process did take place. [5/] We therefore find that the deficiencies in the lists the Employer provided did not influence the outcome of the election. Accordingly, we decline to set the election aside, noting that to do so would further delay the start of collective bargaining, thereby penalizing the employees and rewarding the Employer for its failure to provide completely accurate lists.

The UFW's objections are hereby dismissed, the election is upheld, and certification is granted to the IUAW.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the Independent Union of Agricultural Workers (IUAW), and that, pursuant to Labor Code Section 1156, the said labor organization is the exclusive representative of all

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[5/] Neither Sonfarrel, Inc. 138 NLRB 969, 76 LRRM 1497 (1971) nor any other NLRB case we have encountered on the issue of adequate lists presents a comparable fact pattern.

agricultural employees of Jack T. Baillie Co., Inc., in the State of California, for the purpose of collective bargaining, as defined in Labor Code Section 1155.2(a), concerning employees' wages, working hours, and other terms and conditions of employment.

Unfair Labor Practice Issue

Acts or conduct asserted as the basis of post-election objections may constitute unfair labor practices if they independently violate the Act.[6/] Respondent contends that it cannot be held responsible for inaccuracies in the master list which it submitted to the Regional Director on July 17 because its employees are required to keep it apprised of their current street addresses.

It is well established that an employer who fails or refuses to submit a substantially accurate pre-petition list of employees' names and addresses, as required by 8 Cal. Admin. Code Section 20910(c), engages in unlawful conduct within the meaning of Labor Code Section 1153(a). Henry Moreno, 3 ALRB No. 40 (1977) and Laflin & Laflin, et al., 4 ALRB No. 28 (1978); Tenneco West, Inc., 4 ALRB No. 16 (1978); Ranch No. 1, Inc. , 5 ALRB No. 3 (1979); Paul W. Bertuccio and Bertuccio Farms, 5 ALRB No. 5 (1979). The pre-petition list is designed to serve some of

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[6/] Labor Code Section 1157.3 requires agricultural employers to maintain accurate and current payroll lists containing the names and addresses of all their employees, and to make such lists available to the Board upon request. The term "address" as used in this provision has been construed to mean the street address where the employee is living while working for the employer. Laflin & Laflin, et al., 4 ALRB No. 28 (1973).

the same purposes as the post-petition list required by 8 Cal. Admin. Code Section 20310(a)(2), i.e., to permit union organizers to communicate with employees in their homes, to inform them of union proposals and positions, and to promote an informed electorate. It is clear that a post-petition list with inaccurate addresses can interfere with employees' Section 1152 rights just as much as an inaccurate or incomplete pre-petition list and we so hold.

There is ample record evidence to support the ALO's finding that Respondent's failure to provide a substantially accurate list initially was due to the fact that it had not instituted a meaningful address update procedure in the nine-month period immediately preceding the election. Respondent was not able to timely provide names and addresses of the Garcia crew because it had not assembled such a list at the time it engaged the services of the labor contractor. Mapes Produce Company, 2 ALRB No. 54 (1976). Moreover, Respondent did not timely obtain or submit residence addresses for all of its regular employees who were listed on its records as having postal-box addresses or nonlocal addresses.

Despite Respondent's failure to submit a legally sufficient names-and-addresses list at the outset, the record as a whole establishes, and we have concluded, supra, that a majority of the defects therein were subsequently corrected and therefore did not tend to affect the outcome of the election. Nevertheless, we find that Respondent's violation of its statutory obligation to maintain and produce complete and accurate address data delayed

organizers in their effort to communicate with employees in their homes. Accordingly, we conclude that by that conduct, Respondent interfered with employees' Section 1152 rights and thereby violated Section 1153(a) of the Act, notwithstanding the fact that such conduct did not, in this particular case, tend to affect the results of the election. Ranch No. 1, Inc., 5 ALRB No. 3 (1979).

As was amply demonstrated in the instant case, constant employer attention to the gathering of the required data is crucial where elections are held on short notice. Respondent's good faith effort to correct errors which were brought to its attention by the Regional Director does not excuse its failure to obtain full and correct data to replace patently defective addresses, such as post-office-box addresses. Therefore, we shall order that Respondent cease and desist from failing or refusing to maintain, or to provide upon request of the Board, an accurate, complete and current payroll list containing the names and residence street addresses of all its employees as required by Labor Code Section 1153.7 and 8 Gal. Admin. Code Section 20310(a)(2).

ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Jack T. Baillie Co., Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Failing or refusing to maintain or to provide the ALRB with an accurate, complete, and current payroll list,

including names and residence street addresses of all employees, as required by 8 Cal. Admin. Code Section 20310(a)(2) and Labor Code Section 1153.7.

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

2. Take the following affirmative actions which are deemed 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 thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

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

c. Provide a copy of the attached Notice to each employee currently employed and to each employee hired during the 12-month period following the date of issuance of this Order.

d. Mail copies of the attached Notice in all appropriate languages, within 31 days after issuance of this Order, to all former employees whose names appear on its payroll lists for payroll periods subsequent to July 9, 1978, at his or her last known address.

e. Arrange for a representative of Respondent

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

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

Dated: December 12, 1979

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

MEMBER RUIZ, Dissenting in part:

I dissent from the majority's decision to certify the results of the election notwithstanding the substantial inadequacies in the Excelsior list. The facts are not in dispute. On July 17, 1978, a Board agent informed the Employer that the Board would conduct a representation election among the Employer's agricultural employees during the coming week. The Board agent requested the Employer to provide a list of its employees' names and addresses as required by 8 Cal. Admin. Code Section 20310. Although the Employer complied with the request that afternoon, the list contained several obvious defects. The Board agent requested the Employer to provide a corrected list which it did the following day. This second list also failed to meet the requirements of the Board's Regulations because it contained' post office boxes, out-of-town addresses and incorrect local street addresses; in fact, at least 25 percent of the addresses on the list were defective. Although the Employer provided additional corrections on

July 21, 1978, three days before the election, at least 18 percent of the total list remained inadequate. The Board conducted the election on July 25, 1978. Two hundred two people voted, including three voters who cast challenged ballots. The Independent Union of Agricultural Workers (IUAW) defeated the United Farm Workers of America, AFL-CIO (UFW) by a nine-vote margin.

The majority finds that the Employer failed to substantially comply with the list requirement of 8 Cal. Admin. Code Section 20310 and concludes that, by this conduct, the Employer violated Labor Code Section 1153(a). While paying lip service to the importance of the list requirement, however, the majority casts it aside by certifying the election notwithstanding the Employer's unfair labor practice. The majority bases this decision upon the following assumption: that the general atmosphere surrounding the election, as revealed by the high voter turnout and the vigorous election campaign waged by the two unions, remedied any negative impact upon our election process occasioned by the Employer's failure to provide an adequate list. In essence, the majority looks behind the Excelsior list to determine whether eligible voters were sufficiently exposed to the issues notwithstanding the unions' inability to use the list for home visits.

I believe that the majority embarks upon a complicated, time consuming and unnecessary approach when it looks behind the list to determine whether the employees acquired sufficient information about the issues despite the Employer's objectionable conduct. The National Labor Relations Board has explicitly

rejected the rationale adopted by the majority in this case:

> As the Employer points out, our adoption of the Excelsior requirement was rooted in the hope of insuring a fair and informed' electorate. An employer's submission to the petitioning union of a list of names and addresses of all eligible employees was deemed to be a proper administrative mechanism to achieve that end. To look beyond the question of the substantial completeness of the lists, however, and into the further question of whether employees were actually 'informed' about the election issues despite their omission from the list, would spawn an administrative monstrosity. The Excelsior rule imposes a simple duty upon employers which can be satisfied by the application of a reasonable amount of diligence. We perceive no sound basis for granting the opportunity of prolonged litigation to an employer whose more attentive concern with the rule would have obviated the need for any such litigation in the first place. We shall therefore presume, as the' Excelsior case intended, that the Employer's failure to supply a substantially complete eligibility list had a prejudicial effect upon the election, without inquiry into the question of whether the Union might have obtained some additional names and addresses of eligible employees prior to the election or whether the omitted employees might have garnered sufficient information about the issues to have made an intelligent choice. Sonfarrel, Inc., 188 NLRB 969, 76 LRRM 1497 (1971).[1/]

The "administrative monstrosity" foreseen by the national Board is readily apparent in this case. To look beyond the inadequacies of the list, we would have to determine: (1) which employees enjoyed contact with the unions' notwithstanding the omission of their addresses from the list; (2) the circumstances

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[1/] The majority attempts to distinguish Sonfarrel because its fact pattern is not identical to the one we face in this case. Excelsior list cases present a wide variety of fact patterns. The Sonfarrel approach is generally applied to all list cases despite factual variations (see, e.g., American Petrofina Co., 203 NLRB 1055, 83 LRRM 1252 (1973) in which the NLRB applied the Sonfarrel approach to a case which, like the present case, involved two unions campaigning against each other).. Although the NLRB has carved out exceptions to the Sonfarrel approach, those exceptions are not applicable here. See, e.g., Kentfield Medical Hospital, 219 NLRB 714, 89 LRRM 1697 (1975) and Nathan's Famous of Yonkers, 186 NLRB 131, 75 LRRM 1321 (1970).

under which the contact occurred; and (3) whether those circumstances approximated conditions often present with home visits. The construction of such a record would be very difficult, particularly in cases such as this where a large number of employees were eligible to vote and the employer's lack of diligence resulted in an extremely deficient list.

The majority attempts to avoid this "administrative monstrosity" by assuming that other factors insured voter exposure to the issues. I do not believe we can make such an assumption. First, the majority emphasizes that a high percentage of the eligible voters cast ballots in the election. This voter turnout, however, merely indicates that a high percentage of employees knew of their eligibility; it does not indicate that the voters were exposed to the in-depth discussion of issues which may occur during home visits. The policy goal behind the list requirement is a well-informed electorate, not simply a voting electorate.

Second, the majority believes that the voters must have been exposed to the issues because the election was a runoff and the unions waged vigorous campaigns. Although these factors could conceivably result in high voter awareness of the issues, we cannot assume that this is the case; there must be some evidence in the record to support the proposition. The majority emphasizes the fact that the election was a runoff because it believes that the voters experienced a "residual sensitization" to the issues from the campaign in the prior election. Any such "residual sensitization" is significantly diminished, however, by the passage of time, the use of labor contractors during the

eligibility period, the migratory nature of the work force, and high turnover of employees characteristic of California agriculture. See Agricultural Labor Relations 3d. v. Superior Court, 16 Cal. 3d 392, 128 Cal. Rptr. 183 (1976); Highland Ranch and San Clemente Ranch, Ltd., 5 ALRB No. 54 (1979). As regards the vigorous campaigns waged by the unions, there is no showing that the entire electorate actively followed the campaigns. Acute interest in the issues on the part of some voters is not a guarantee of interest on the part of all voters.

In sum, there is no showing that a significant number of the voters whose addresses were omitted from the list enjoyed exposure to the issues under circumstances approximating home visits. The majority's assumption that such exposure occurred is a leap of faith used to replace evidence in the record. Were we to regularly make such leaps, there would be no Excelsior list requirement whenever unions wage vigorous campaigns.

The Employer failed to diligently collect the information required by the Labor Code and the Board's Regulations. This conduct substantially impaired the informational value of the list which the Employer did provide and prevented the unions from utilizing the list to visit all eligible voters in their homes. In view of the very narrow margin separating the IUAW and the UFW, I do not believe the prejudicial impact of the Employer's unfair labor practice can be denied. Therefore, the collective bargaining

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rights of the employees would best be protected by setting this election aside and holding a new election.

Dated: December 12, 1979

RONALD L. RUIZ, Member

NOTICE TO EMPLOYEES

After a hearing at which each side had a chance to present its evidence, the Agricultural Labor Relations Board has found that we have interfered with the rights of our employees. The Board has ordered us to post this Notice and to take other actions.

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 to choose whom they want to speak for them;

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

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

Because this is true, we promise that:

WE WILL MOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE will maintain an accurate, complete, and current list of the names of our employees and the street addresses where they live while in our employ, and provide a copy of same to the Agricultural Labor Relations Board on request.

Dated:

JACK T. BAILLIE CO., INC.,

By: _____
Representative Title

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Jack T. Baillie Co., Inc. (IUAW) (UFW)	5 ALRB No. 72 Case Nos. 77-RC-14-M 78-CE-102-M

BACKGROUND

Following a representation election and resolution of challenged ballots, the Board concluded that no party had received a majority of the votes cast and ordered a runoff election between the International Union of Agricultural Workers (IUAW) and the United Farm Workers of America, AFL-CIO (UFW). In the runoff election, the IUAW received 104 votes, the UFW 95 votes, and there were three challenged ballots. Thereafter, the UFW moved to set aside the election, contending primarily that the Employer's failure to submit an accurate roster of its employees' home addresses prevented UFW organizers from making home contact with prospective voters sufficient in number to have affected the outcome of the election. This conduct was also alleged as the basis of an unfair labor practice charge filed by the UFW.

ALO DECISION

The ALO found that the Employer had submitted a substantially defective address list and recommended that a new runoff election be held. He also concluded' that the failure to submit a list as required by Labor Code Section 1156.3 and 8 Cal Admin. Code Section 20310(a)(2) constituted interference with its employees' Section 1152 rights and therefore was a violation of Section 1153(a).

BOARD DECISION

The Board affirmed the ALO's finding as to the unfair labor practice but concluded that notwithstanding defects in the list, the alleged misconduct did not warrant the setting aside of the election. The Board noted, inter alia, that there was a residual sensitization of the work force to representation issues from the election contest between the same unions nine months earlier and, that the evidence indicated that the UFW had been able to communicate with nearly all voters in some manner prior to the election. The Board found, on this basis, that the deficiencies in the Employer list did not tend to affect the results of the election. Accordingly, the IUAW was certified by the Board as the exclusive bargaining representative of all the agricultural employees of Jack T. Baillie Co., Inc., As to the finding-of an unfair labor practice, the Board ordered the Employer to cease and desist from failing or refusing to submit current street addresses for its employees upon request of Board agents.

DISSENTING OPINION

Member Ruiz would find that the 13 to 25 percent error rate in the list was sufficient to have affected the results of the election, particularly in view of the narrow margin of votes separating the two contending unions, and would therefore set aside the election.

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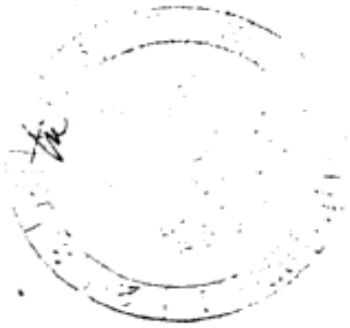
STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of

JACK T. BAILLIE CO., INC. Case Numbers 77-RC-14-M
78-GE-102-M

Employer, Respondent,

and

INDEPENDENT UNION OF
AGRICULTURAL WORKERS,

Petitioner,

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Intervenor, Charging Party.
_____/

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For the General Counsel

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DECISION

MARK E. MERIN, Administrative Law Officer:

This case was heard before me in Salinas, California, between and including October 24, 1978, and October 27, 1978.

With neither the Independent Union of Agricultural Workers (hereinafter "IUAW") nor the United Farm Workers of America, AFL-CIO (hereinafter "UFW"), receiving a majority of the votes cast in a representation election held on October 31, 1977, the Agricultural Labor Relations Board, on July 17, 1973, ordered a run-off election to be held when the employer, Jack T. Baillie Company, Inc. (hereinafter sometimes referred to as "The Company", "The Employer", or "Baillie") was at 50 percent or more of peak employment. (See Jack T. Baillie Company, Inc., 4 ALRB No. 47). The results of the election held on July 24, in which eligible voters were those appearing on the employer's payroll list for July 9 through 15, the period immediately preceding the date of issuance of the notice of the run-off election, were as follows:

IUAW	104
UFW	95
Unresolved Challenges	3

The UFW filed a timely petition to set aside the runoff election pursuant to §20365 of the Board's regulations. The Executive Secretary set for hearing the following objections:

1. Whether the Employer denied many workers their right to receive information from the UFW, by submitting a late and severely deficient employee list;

2. Whether by keeping lettuce workers away from, work on the day of the election, July 24, 1978, the Company discouraged

these workers from participating in the election;

3. Whether in 1977 and 1978, the Company supported, assisted, and interfered with the IUAW;

4. Whether the Board failed to give notice of the election to one crew of eligible workers, the crew of labor contractor Secundino Garcia;

5. Whether at the Watsonville polling place on the day of the election ALRB agents forgot to bring ballots and the opening of the polls was delayed. As a result of this delay, some workers who had come to the polling place left before it opened.

On October 16, 1978, the regional director' served a Complaint on the Employer charging that on or about July 17, 1978, it engaged in an unfair labor practice by failing to provide an employee list in conformity with Board regulation §20910(c) and §20310(a)(2) and thereby, in violation of §1153(a) of the Act, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in §1153(a) of the Act.

The Employer answered the Complaint on October 17, 1978, denying that it committed an unfair labor practice and raising two affirmative defenses: first, that it provided an employee list in compliance with ALRB regulation 20310(a)(2); and second, that ALRB regulation §20901(c) is not applicable as the pre-petition employee list need only be supplied after a Notice of Intent to Organize is filed and the Regional Director failed to allege the filing of such notice.

The executive secretary consolidated the hearing on the UFW's objections to the run-off election with the hearing on the

unfair labor practice Complaint.

The IUAW and the UFW were represented at the consolidated hearing as were the Employer and the General Counsel, the latter two limiting their participation to those portions of the hearing relating to the unfair labor practice Complaint. At the conclusion of the hearing, all parties submitted post-hearing briefs.

Based upon the entire record, including my observation of the demeanor of the witnesses, and after considering the arguments of the parties, I make the following findings of fact, conclusions, and recommendations.

FINDINGS OF FACT

I. JURISDICTION

Respondent and Employer, Jack T. Baillie Company, Inc., is a corporation engaged in agriculture in the County of Monterre and is an agriculture employer within the meaning of §1140.4 (c) of the Agriculture Labor Relations Act. (Hereinafter sometimes referred to as "The Act").

Charging party and intervenor, the United Farm Workers of America, AFL-CIO, is a labor organization within the meaning of §1140.4(f), of the Act.

II. OBJECTIONS TO RUN-OFF ELECTION'

A. EMPLOYEE LISTS

On July 17, 1978, a telegram from the Board was read to the Employer informing it that a run-off election between the IUAW and UFW was to be scheduled for a time when the Employer was at 50% or more of peak employment and that eligible voters would be those on the Employer's payroll list for

the period immediately preceding the date of issuance of the Notice of Runoff Election. The Notice was issued on July 17. On the same day the Regional Director of the ALRB in Salinas informed the Employer that the election would be held within seven days, and requested lists of employees on the Employer's payroll for the week July 9 through July 15. On the afternoon of July 17, the Employer provided to the Regional Director a payroll list for the applicable period. The July 17 list contained 266 names, including 12 persons identified as supervisors, foremen, and row bosses. Twenty-nine of the 266 were identified as members of the crew of labor contractor Secundino Garcia who had worked three days for the Company during the eligibility period.

After receiving the payroll list and noting some deficiencies, Ben Romo, field examiner for the Board, telephoned the Employer's attorney, Wayne Hersh, and requested a revised list with correct street addresses, eliminating post office boxes and out of area addresses. Romo asked that the correced list be delivered to him by the pre-election conference scheduled for the evening of July 18. A second list, corrected to eliminate 10 of the 34 post office box addresses, was delivered to Romo by 5:30 p.m. on July 18. Additional corrections were made in handwriting on the amended list. Twenty of the remaining 24 post office box addresses were contained in the list of members of the labor contractor's crew. Both the Employer and Romo had contacted him and requested a list with complete and accurate street addresses but it had not yet been delivered.

Representatives of the IUAW and the UFW received the revised lists at the pre-election conference having earlier

received the Employer's initial submission. At the ore-election conference the election was scheduled for July 24, 1978, and copies of the Notice of Election was distributed to all parties.

Beginning on July 17 UFW organizers started contacting Baillie workers eligible to vote, Robert Everts, a UFW organizer, testified that he received a list of workers in the wrap lettuce crew and in the irrigation and tractor crews, but that many of the street addresses were wrong. He reached that conclusion from his experience of being unable to locate the workers at the listed addresses, and from conversations he had with people at some of the addresses listed. In one instance he was unable to locate the eligible voter because only a Post Office Box was given (Carmen Subia); and in another instance the employee was listed as residing in Santa Paula (Ignacio Hernandez). Everts testified that of the 37 persons on the lists assigned to him, he was unable to locate at the addresses listed, sixteen of the individuals In the cases of David Ford, Jose Vargas, and Antonio Vargas, Everts testified that the addresses in Salinas at which they were supposed to be living did not exist. Baillie employees Alfredo Ramos, Antonio Retteguin, and Felipe Torres had moved from the addresses supplied by the Company. In the rest of the cases where he was unable to find the listed employees, Everts was told by persons he spoke with at the residences that the employees did not live there. According to Evert, one-quarter to one-half of his time was spent searching for people he never found.

UFW organizer John Brown testified that he was assigned to contact at their residences members of the Employer's lettuce cutting crew. Of 60 persons on his portion of the payroll lists,

Brown testified at least 29 of the addresses were incorrect. Jesus Cervantes, Jose Fonsela, Ruben Hurtado, Isidro Marrujo, Luis DeLaRosa, Javier Espinosa, and Antonio Diaz were listed as living at various addresses which, according to Brown,[1] do not exist. In the balance of the cases where Brown was unable to locate the listed employees, persons at those addresses informed him that the persons he sought did not live there. In the case of Javier Lopes, no apartment number was provided although there were eight units at the addresses listed. Mr. Brown testified that he knocked on many doors but was unable to locate Mr. Lopez. Eleno Luna was listed at an address on Bertin Avenue, a D'Arrigo camp at which he was told no Baillie workers reside.

After being repeatedly requested to provide current street addresses for his crew, labor contractor Secundino Garcia supplied to Ben Romo on Friday, July 21, a hand written list of crew members with street addresses and intersections. Gretchen Laue, a UFW organizer assigned to make home visits to the labor contractor's crew, obtained the list in the evening of July 21 and began attempting to locate the employees. While having difficulty locating ranches listed as fronting on rural roads, Ms. Laue did locate the ranches and spoke with some of the persons listed at those locations. Ms. Laue was unable to locate Graciela Zarco, whose address was given as the intersection of Camino Reale and 12th Street or Marguerita Raya, listed at 7th and Oak Streets in Greenfield. Both intersections had several houses in the area. Gretchen Laue did not visit the crew in the fields because she was told that Secundino Garcia's crew did not work at any time between the Notice of Election and the July 24 election.

Everts visited the lettuce wrap crew at its work site on Tuesday through Friday or Saturday and Monday morning, spendir approximately 10 to 20 minutes with the crew on each visit. He did not know, however, if he spoke at the machine location with employees he was unable to locate at their homes. Brown also visited work sites to organize for the UFW but he, also, did not know how many of the persons he was unable to find at their homes he spoke with in the fields.

Marilyn Gunkle, the Employer's Office Manager, testified to the procedures the Company used to gather and maintain information relating to the employees' addresses. According to Gunkle, as an employee is hired he or she is requested to complete a pre-numbered sign-up slip. That number continues to identify the employee throughout the period of employment. The card in use at the time of the run-off election called for the employee's name, permanent address, not street address. Address update slips were sent out in June, 1977, and in October, 1977. These slips called for the employees' address as well as an address to which W-2 forms could be mailed following a specified date.

Gunkle testified that the foremen are asked to obtain address up-dates from the employees and are supplied up-date slips for that purpose, She does not keep track of the number of slips delivered to the foremen nor the number of slios returned to the office by them. If post office box addresses are indicated, there is no Company policy to require further information. She testified, however, that it was the Company's practice to ask the foremen to obtain from employees in their crews residence addresses.

Additional sources for up-date information and address

corrections were identified by Ms. Gunkle. When an employee picks up his or her check in the office, he or she may specify a new residence address in which case the records are altered to reflect the change. Furthermore, if employee requests that his checks be mailed to an address different from that indicated in the Company's records, the new address is substituted in the records. Whenever a check is returned because of an incorrect mailing address, a notation is made on the employee's sign-in card. Similarly, the records are amended to reflect a new address when an employee writes to the Company requesting an address change

B. KEEPING LETTUCE WORKERS FROM WORKING ON ELECTION DAY

Called by the UFW, Arturo Miranda, a member of the Employer's lettuce crew, testified that at the times he worked with the celery crew when there was no work for the lettuce crew. Prior to the election, Miranda testified, he worked for about three days in celery but did not work on election day. He did work in celery the day after the election. This was the only testimony offered in support of this objection and alone would not be sufficient to establish that the employer kept the lettuce crew from work on the day of the election in order to discourage members from participating in the election. The Employer, however illicited from Ben Romo, the ALRB Board agent, that the Company had requested an election date before the 24th since it did not anticipate having enough work to keep all of its crews working on July 24. In view of this disclosure and in absense of any other evidence to support this objection, I am recommending that it be dismissed.

C. UNLAWFUL COMPANY SUPPORT, ASSISTANCE, AND INTERFERENCE WITH THE IUAW.

No evidence was presented in support of the UFW's election objection that the Company, in 1977 and 1578, supported, assisted and interfered with the IAUW. A Motion to Dismiss this objection was granted at the hearing.

D. ALRB FAILURE TO NOTIFY THE CREW OF LABOR CONTRACTOR SECONDING GARCIA OF THE RUN-OFF ELECTION.

According to the Employer, the 29 member crew of labor contractor Secondino Garcia worked for three days during the eligibility period but was not employed on July 17 when the Employer received notice of the Board's decision to hold a runoff election. Since Ben Romo learned from Secondino Garcia on July 19 that Garcia's crew was not then working, Romo did not distribute eleciton notices to the labor contractor's crew. Romo did arrange for radio announcements of the impending election and asked the parties, pursuant to Section 20350(c) of the Board's regulations, to assist him in notifying eligible voters of the election.

Ms. Cano of the IUAW testified that she placed radio announcements, specifically directed to Secondino Garcia[1]s crew, informing the crew of its eligibility to vote and the details of the run-off election. She further testified that she mailed to each of the members of the labor contractor's crew a letter informing them of the date, time and place of the election. Witnesses from the labor contractor's crew testified both that they received such notices from the IUAW and that they voted.

Only 12 of the 29 eligible crew members voted in the election, the lowest percentage turnout for any crew which was eligible to vote.

No member of the labor contractor's crew who did not vote testified as to the information he or she received prior to the date of the election and no other evidence was offered to establish whether or not the non-voting members of the labor contractor's crew actually had notice of the election.

E. LATE OPENING OF THE WATSONVILLE POLLING PLACE.

The Watsonville polling site was scheduled to be open from 4:00 p.m. until 8:00 p.m. Ben Romo arrived at the Dolling site at approximately 3:30 but discovered that he had not brought the printed ballots with him and telephoned his office in Salinas to arrange to have the ballots delivered to the Watsonville site. The ballots arrived and the voting began at approximately 4:50 p.m. To compensate for the delayed opening, Mr. Romo kept the polling place open until approximately 8:30.

Romo testified that one worker came to the site to vote at approximately 4:10 and another worker came at approximately 4:45'. He informed both workers of the delay in the balloting. The first worker became upset and left the area. Romo did not see him return to vote, The second voter remained in the area and did cast a ballot. Arturo Miranda, an eligible worker, testified that he arrived at the polling place, was informed that the polls would be late in opening, and returned to cast his vote. Although he had indicated in a declaration that he observed other workers leave the voting site, while testifying he stated that he did not see any other workers leave and only heard that workers had

left without voting.

III. ANALYSIS

A. EMPLOYEE LISTS.

The employee list which the Company submitted on July 17, contained 34 post office box addresses and 11 addresses outside of the Salinas Valley. The corrected list delivered on July 18, eliminated some post office boxes and out of town addresses. The bulk of the post office addresses were not corrected until July 21 when the amended list was received from the labor contractor. Even the street addresses, however, as testified to by the UFW organizers who sought to locate the workers on the Employer's lists were inaccurate in many cases, According to UFU organizers Brown and Everts, for instance, addresses for 45 out of the 97 persons they were assigned to locate, were incorrect.[1/]

The Employer is obligated, pursuant to Section 1157.3 c the Act, "to maintain accurate and current payroll lists containing the names and addresses of all their employees" and to make such lists available to the Board upon request. There can be little doubt that "addresses" as used in the statutes means "street addresses," since the lists serve "as information to the Unions participating in the election for the purpose of enabling them to attempt to communicate with eligible voters. . ." (Yoder Brothers,

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[1/] While it could be argued that the evidence offered by UFW organizers of erroneous addresses was either based on hearsay or not dispositive, in view of the number of examples, the time lapse between the last up-date and the run-off election and the failure of either the Employer or the IUAW to offer rebuttal evidence. I have credited the testimony of UFW organizers Everts, Brown and have to prove inaccuracies in the street addresses furnished.

2 ALRB No. 4) and such personal communication in the agricultural setting, requires local street addresses, not out of town addresse or post office boxes.

Despite its familiarity with its obligation to maintain current street addresses for its employees (the Employer not only had a representation election among its employees and previously supplied payroll lists, but admitted through its office manager that it was aware of its obligation), prior to being requested on July 17, to produce lists in fulfillment of its obligations, it did not have current and accurate street addresses for a substantial portion of its employees eligible to vote in the run-off election. Where the Employer knew of its obligation to maintain current street addresses, but prior to July 17, 1978, had not requested any address updates from its employees since October, 1977, the Employer did not exercise due diligence in complying, with the statutory requirements, The Company's procedures were not sufficient to ensure the maintenance of the required up-to-date street address information. Although after being requested to provide the current street addresses of its employees, the Employer did take steps expeditiously to provide the requested Information, it faced'a task made considerably more difficult by virtue of its earlier disregard of its obligations to maintain the information requested on July 17.

In Yoder, the Board indicated that "employers will be expected to exercise due diligence obtaining and supplying names and addresses of workers as required," "Due diligence" must mean at least taking necessary and timely steps to obtain the current street addresses of its employees, Since employment at the Company is seasonal, with the number of workers and tasks

varying with the season, it would be most appropriate for the Employer to obtain from its employees at the time of hire the information sought and to request up-date information periodically.

The procedure used by the Company to "obtain information from its employees was not calculated either to produce street addresses or to insure up to date data. Post office addresses were provided by employees on the sign-up cards and up-date sheets used prior to the run-off election, out the Company made no effort to ascertain street addresses for those workers who gave post office box addresses.

Since the Employer only attempted .to correct post office box addresses and out of town addresses the deficiencies called to its attention out of date and erroneous street addresses it maintained for a number of its employees were not corrected in time for the lists to be fully utilized. Regardless of what efforts were made by the Employer following the Board agent's request for current street addresses of its eligible employees, only efforts which succeeded in producing lists in substantial compliance with the obligations imposed by the statute and the applicable regulations could compensate for the Employer's lack of earlier due diligence in the gathering and maintaining of information which it knew was required.

Nine votes separated the IUAW from the UFW in the runoff election. Had five persons whom the UFW organizers were unable to contact because of inaccurate addresses supplied by the Employer switched their votes from the IUAW to the UFW: or had nine persons who failed co vote in the run-off election been contacted by the UFW, persuaded to vote for the UFW and voted

that day, the results of the election would have been different. Not only was the utility of the employee lists substantially impaired by the Employer's lack of due diligence in maintaining accurate lists of the employees' current addresses, but it is quite possible that the election results were affected by the deficient lists, Even if the UFW organizers succeeded in contacting workers in the fields whose addresses were incorrect and therefore not reachable at their actual residences, such would not remedy the effects of the deficient lists. The intimacy of a home visit permits an exchange not generally possible in a visit to the workers in the fields where time restraints and other pre-occupations interfere with the most efficient exchange of information and sentiments.

For the above reasons, I am recommending that the objection to the employee lists be sustained and the election set aside.

B. FAILURE OF THE ALRB TO NOTIFY THE CREW OF LABOR CONTRACTOR SECONDING GARCIA OF THE RUN-OFF ELECTION.

The responsibility to notify eligible employees of their right to vote, and the time and place of an election rests primarily with the Regional Director and the Board agents. The parties themselves also have an obligation to attempt to notify employees, Lu-Ette Farms, 2 ALRB 49; see also Section 20350 (c) of the Board's Regulations. Being unable to notify directly the employees of the labor contractor of the specifics of the runoff election, the Board agent asked the parties to help him provide that notice, The Board agent and the IUAW both placed radio spots announcing the details of the election. The IUAW

also mailed notices to the addresses given for members of Secondino Garcia's crew. Although only 12 of 29 eligible members of the labor contractor's crew actually voted, in the absence of any testimony that any particular person failed" to receive notice of the election and for that reason did not vote, I do not find that any eligible voters were disenfranchished by lack of notice. Accordingly, I am recommending that the objections based on lack of notice be dismissed. Jack or Marion Radovich, 2 ALRB 12; Sun World Packing Corporation., 4 ALRB 23.

C. LATE OPENING OF THE WATSONVILLE POLLING PLACE.

It is undisputed that the ALRB agent forgot to bring the ballots with him to the Watsonville polling site and that its opening was delayed approximately 50 minutes as a result of this negligence, The evidence also establishes that one person who was present at the time the polling place was scheduled to open was annoyed at the announced delay, left and did not return to cast his ballot.

Late opening of polls in represenation elections held pursuant to the Act are not unknown as attested by the following cases: D'Arrigo, 3 ALRB 37; H & M Farms, 2 ALRB 19; Admiral Packing Company, 1 ALRB 20. The rule which the Board has followed in such cases is that an election will not be set aside unless a number of workers sufficient to affect the outcome of the election is disenfranchised. Here, the only worker who was possibly disenfranchised could not have affected the results of the election were there no other questions relating to notice of the election and the utility of the employee lists. Were this objection the only objection made to the certification of the re-run election,

therefore, I would dismiss it since there is no reasonable possibility that that disenfranchisement could have affected the results of the election. Taken together with the inadequacy of the employee lists, however, the disenfranchisement of even one worker has added significance and, on that basis and given the totality of the circumstances, I am recommending that the objection be sustained and that the election be set aside.

IV. UNFAIR LABOR PRACTICE COMPLAINT.

The inaccuracies in the employee lists furnished by the Company, as stated more fully in the findings of fact (Sec. II A of this Opinion) substantially impaired their utility for at least one of their intended functions "enabling [participating unions] to attempt to communicate with eligible voters. . ." Yoder, 2 ALRB No. 4; Mapes Produce Co., 2 ALRB No. 54.

The right to self organization guaranteed to employees by Sec. 1152 of the Act, necessarily includes the opporturnity to recieve information from unions competing for the employees' votes in a representation election, and it is to promote that access to information that the Act requires the employer to maintain addresses of employees. Mapes, supra, 2 ALRB No. 54.

Where, as here, an employer furnishes an inaccurate list containing a significant number of post office boxes instead of street addresses, out of "own addresses, non-existent street addresses and out of date addresses, the burden is upon the Company to show that it maintained such rigorous and systematic procedures as are reasonably calculated to produce comliance with the Act and Board regulations and that it is due only to the uncontrollable acts of third parties that the

deficiencies exist.

In attempting to discharge its burden, the Employer actually revealed the inadequacies of its system. Street addresses were not specifically requested from employees, no updates of information submitted by employees were requested in the nine months before the run-off elections, and there was no procedure to verify the accuracy of information submitted by the employees.

By failing to maintain the rigorous and systematic procedures necessary to enable it to provide a substantially accurate list of the employees' complete names and street addresses, the Employer interfered with the rights of its employees to "form, join, or assist labor organizations" (Sec. 1152 of the Act), which rights necessarily include the right to be contacted by and to receive information from competing labor organizations.

Having determined that the Employer's failure to maintain the information sought by the Board interfered with important rights of its employees, I have concluded that the Employer violated Section 1153(a) of the Act.

In attempting to avoid responsibility for its failure to provide complete and accurate lists of its employees together with their current street addresses, the Employer argues that in relation to the run-off election ordered by the Board, neither the IHAW nor the UFW filed notices of Intent to Organize and therefore the requirements found in ALRB regulations Section 20910 (c) were not activited. The Employer overlooks, however, that it is a statutory obligation of the Employer to "maintain accurate and current payroll lists containing the names and addresses of

all of their employees," and to "make such lists available to the Board upon request." (Sec. 1157.3) Furthermore, sections 20310(a)(2) and 20910(c) specify when information must be provided but do not preclude the Board from specifically ordering that some or other information necessary to the discharge of its function be provided in accordance with a designated schedule. Where both the statute and regulations 20310(a)(2) require the maintenance of current street addresses for all employees, the Board properly ordered the Employer to provide such information for the re-run elections. It would be absurd to interpret the regulations as requiring the filing of new Notice of Intent of Organize or a new Petition for Certification before payroll lists could be demanded from an employer incident to a run-off election since both documents were essential pre-requisites to the original election.

V. REMEDY

At the time the Company was asked by Board agent Ben Romo to provide complete and accurate payroll lists containing the complete and accurate names and street addresses of all its employees, the Company did not have in force a system adequate to ensure that the information sought could be gathered and provided expeditiously. The Company did make genuine efforts to obtain the information sought following the request but was hampered in complying with that objective by its earlier failure to have implemented a systematic and reliable procedure for gathering information required by Section 1157.3 of the Act and Section 20310(a)(2) of the Regulations. The Company's system was inadequate in at least the following respects:

1. Employees were not required Co provide a local street address.

2. No mechanism was provided by which the information supplied was checked for accuracy. Addresses clearly not street addresses and/or out of the local area were accepted with no routine follow-up.

3. There was no provision for regular, comprehensive up-dates of the necessary information, scheduled at times rational related to the Employer's seasonal operations.

4. Labor contractors, as a condition of employment by the Company, were not required to supply the complete and accurate informaton which the Company itself was obligated to maintain.

In this case the Company's failure to implement a system designed to yield the necessary information resulted in the election being set aside and the employees who over-whelmingly voted for a collective bargaining representative being denied such a representative. Furthermore, substantial inconvenience and expense has been caused to both participating unions as well as to the ALRB.

In view of the substantial impact of the Employer's failure to implement a rigorous and systematic procedure for gathering and maintaining the information sought by the Board, I will recommend to the Board that the Employer be required

a. To adopt such procedures as will reasonably assure the maintenance of up-co-date and complete lists of the full names and current street address of its employees, including employees hired through a labor contractor; and

b. Pay to the unions an amount determined to represent

the costs incident to the run-off election, the result of which will be set-aside, and such other expenses as are determined in a subsequent special damages hearing to be proximately caused by the employer's lack of due diligence in maintianing the required information and by its supplying deficient lists; and

c. Notify its employees of this Order in an appropriate fashion.

Upon the entire record, the findings of fact, and the conclusions of law herein, and pursuant to Section 1160.3 of the Act, I hereby recommend the following:

0 R D E R

Respondent Employer, its officers, agents and representatives shall

1. Cease and desist from in any manner interfering with restraining and coercing employees in the exercise of their right to self organization, to form, join, or assist labor organizations and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in Section 1153(c) of the Act.

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

a. Implement a systematic and rigorous procedure designed to ensure that' the Company has the complete names and complete street addresses of all of its employees whether hired

directly or through a labor contractor, that Company records are kept up to date and that they are accurate;

b. Supply substantially accurate lists as required by Section 20310 (a) (2) to the Regional Director upon request.

c. Immediately post notices in the form attached hereto in English and Spanish at all places where workers employed by the Company and eligible to vote in a representation election customarily congregate and at all places where notices are usually posted, informing the workers that they will not be penalized in any way for showing interest in, joining, or assisting any labor organization and explaining to the workers that the Company was found guilty of unfair labor practice for not having systematic and rigorous procedures designed to ensure that the complete names and current street addresses of its employees are on file with the Company and able to be supplied to the Regional Director of the ALRB upon request. Said notices should remain in place throughout the twelve month period following their posting.

d. Pay to the IAUW and to the UFW sums, such as are determined in a subsequent special hearing on damages, as will compensate the unions for costs and expenses incured in connection with the election held on July 24, 1978, which, as a result of the Company's actions is not being certified.

Dated:

MARK E. MERIN, Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing on October 24 through 27, 1978, in which all parties presented evidence, an Administrative Law Officer of the ALRB found that Jack T. Baillie -committed a prohibited unfair labor practice by failing to use due diligence to maintain and to submit to the ALRB Regional Director upon request, a complete and accurate list of the Company's employees together with their current street addresses.

As a result of the Company's lack of due diligence, the run-off representation election held on July 24, 1978, has been set aside and a new election will have to be held.

In order to remedy the unfair labor practice committed by the Company, we have been required to post this notice, to assure our employees that we will not in any manner interfere with their rights to support or become or remain members of a union, and to pay to both the IUAW and the UFW the costs and expenses relating to the run-off election.

Dated:

JACK T. BAILLIE

BY:_____

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

COACHELLA IMPERIAL DISTRIBUTORS Respondent and UNITED FARM WORKERS OF AMERICA, AFL-CIO Charging Party and Petitioner	)	Case Nos. 77-CE-140-C 77-CE-177-C 77-CE-l80-C 77-CE-182-C 77-CE-204-C 77-RC-17-C

Appearances:

Robert W. Farnsworth, of Salinas,
for the General Counsel;

David E. Smith, of Indio, for
the Respondent;

Ellen Greenstone, of Salinas,
for the Charging Party

DECISION

STATEMENT OF THE CASE

David C. Nevins, Administrative Law Officer: This consolidated case was heard by me between January 11 and January 18, 1973, in Coachella, California. The complaint, entitled the First Amended Complaint, is dated November 25, 1977, and is based on five unfair labor practice charges filed by the United Farm Workers of America, AFL-CIO (hereafter the "UFW"), between June and October of 1977.[1/] These charges, duly served, allege various violations of the Agricultural Labor Relations Act (hereafter the "Act") against the Respondent, Coachella

1/ Unless otherwise specified, ail dates refer to 1977.

Imperial Distributors (sometimes referred to herein as "CID"). The hearing was held pursuant to an order consolidating the various unfair labor practice charges and an election objections petition filed by the UFW. This order of consolidation, signed by the Executive Secretary, is dated November 29.2/

All the parties were represented at the hearing and were given a full opportunity to participate in the proceedings. The General Counsel, the UFW, and the Respondent all filed post-hearing briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the parties arguments, I make the following:

FINDINGS AMD CONCLUSIONS

I. Jurisdiction.

Respondent CID was alleged in the original complaint (dated October 28) to be an employer engaged in agriculture in Riverside County, California. Respondent did not deny this allegation. The evidence likewise establishes that CID is engaged in agriculture in California, and I accordingly find that it is an agricultural employer within the meaning of §1140.4(c) of the Act.

Similarly, I find that the UFW is a labor organization within the meaning of §1140.4(f) of the Act.

II. The Allegations Against The Respondent.

The complaint charges CID with several violations of the Act. It charges that Respondent violated Section 1153(a) by promising and granting certain benefits, such as health insurance benefits, soda drinks, and wages; by failing or refusing to submit an accurate employee list in response to the UFW's election petition; by threatening to and calling in police officers against UFW organizers; and by sponsoring a party for employees on the eve of the Board-conducted election.

The UFW's election objections that were set for hearing include the allegations found in the unfair labor practice complaint. In addition, the UFW objects that CID threatened employees regarding their support for the UFW; failed to provide timely and accurate lists of employees in response to UFW organization notices; denied access to UFW organizers in violation of an outstanding order of the Board; intimidated workers by calling police officers to its ranch on election day; failed to

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2/The Executive Secretary's order of consolidation set forth nine election objections for hearing, dismissing several others. After the evidentiary hearing was held, the UFW formally withdrew Objection No. 3 and a portion of Objection No. 5-This formal withdrawal was dated May 8, 1978.

comply with an unfair labor practice settlement agreement; and unduly influenced the election by having supervisors in the immediate voting area.

The Respondent generally denied it engaged in any unfair labor practices and argues it did not; engage in conduct that warrants setting aside the employee election.

III. Background.

CID grows and harvests grapes on a number of ranches in the Coachella Valley. Its general manager was Robert Melkesian. On June 1, CID expanded its operations by acquiring Coachella Vineyards, a. similar farming operation, whose products sold under the label of Country Boy (hereafter referred to as "CV"). Ross Cariaga continued to act as the general supervisor over what had been CID operations, and Donald Salazar continued to act as general supervisor over what had been CV operations. Both men were admitted supervisors under the Act.

When CID operated alone, it had a collective bargaining agreement with the Western Conference of Teamsters (hereafter the "Teamsters Union"). That contract, beginning in 1973, expired on April 14, 1977.

The UFW began its organizational campaign initially at the CV fields, prior to CV's acquisition. On January 25 the UFW filed a notice of intent to organize at CV, a notice denominated as 77-NO-7-C.3/ In March and May, the UFW filed additional notices of intent to organize, involving both the CID and CV fields. In early June, another organization, the Independent Union of Agricultural Workers, filed two election petitions at CID, but both petitions were subsequently withdrawn. On June 22, the UFW filed its representation petition at CID, and an employee election was held on June 29. Presumably, the UFW lost.

During the organizational campaign at CID, several labor relations consultants were employed. Initially, in approximately March or April, a group known as Labor Relations Associates was employed and assisted in devising a handbook for employees, setting forth CID's employment policies. Then, in early May, Ed Colon from that group began working with CID, conducting approximately 48 employee meetings wherein he explained CID policies to employees. In early June, Steve Highfill of Ag-Relate, another entity, was employed in behalf of CID to devise personnel programs for employees. Highfill assisted Colon in conducting many of the numerous employee meetings.

3/CV's response to the UFW's notice led to unfair labor practice proceedings. In Yeji Kitagawa, 3 ALRB No. 44 (June 5, 1977), the Board held "hat CV failed to comply with Regulation 2091C(c) by failing to- provide the Board with a timely and accurate employee list. The Board ordered CV, inter alia, to cease and desist from refusing to provide the Board with an employee list; as required by chat regulation.

IV. The Benefits Granted By Respondent.

Between April and June, during the union organizing campaign, CID began instituting a number of new or different employee benefits. These benefits involved such things as medical insurance, wages, refreshments, and others, 3oth the General Counsel and UFW complain that by granting or promising these benefits CID violated the Act and substantially disturbed the election atmosphere.

One of the initial benefits granted by CID was its medical insurance program. CID's employees had been covered by a medical insurance program under the Teamsters Union contract, and CID's own insurance program, though through a different Insurance carrier and though providing somewhat different benefits, began as the Teamsters' program ended. CID argues forcefully that it did not violate the Act when instituting its medical insurance program, inasmuch as it merely wished to continue the insurance coverage employees enjoyed under the expired contract.

Typically, an employer is held to unlawfully interfere with its employees' rights when granting benefits to employees when such benefits are granted proximate to an employee election and when he has knowledge of an ongoing organization campaign. See Prohoroff Poultry Farms, 3 ALRB No. 87 (1977); Andersen Farms Co. , 3 ALRB No. 67 (1977) Recognizing that employees "may well be induced by favors bestowed by the employer as well as by his threats or domination" 4/ and recognizing that a beneficial inducement to employees creates "the suggestion of a fist inside the velvet glove," 5/ the Board has held that the granting of medical insurance benefits during the time of intense union activity and an employee election constitutes substantial interference with the free expression of voters . Oshita, _Inc . , 3 ALRB No. 10, p. 8 (1977).

The timing of and circumstances surrounding CID's new medical insurance plan are highly suspect. For one thing, it d not become effective until after the UFW had filed its notice of intent to organize at CID, on March 29 (77-NO-16-C), although Mr. Melkesian claimed that he originally decided to contract for the insurance in January or February in order to continue the medical insurance when the Teamsters' contract expired in mid-April. On the other hand, Melkesian 's testimony was outwardly vague and evasive and was unsupported by any written documents that he entered into concerning the insurance program. 6/ In

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4/ Medo Photo Supply Corp. v. N.L.R.3., 321 U.S. 673, 636 (1944),

5/N.L.R.3. v. Exchange Parts Co., 375 U.S. 405, 409 (1964).

6/Melkesian's testimony was purposely vague and indefinite concerning nearly every material fact or detail surrounding the issues in this proceeding. For example, he --[continued]

addition, CID's medical insurance program was the centerpiece of CID's campaign against the UFW in May and June, being a major topic in the labor consultants' speeches to employees and the subject of written comparisons with the UFW medical program.

Significantly, the testimony from two employees, Juan Vallejo and Carmen Gonzales, indicates that employees were not informed of the medical insurance program until after CID began its active campaign against the UFW. Although Gonzales may have only begun her employment with CID in early June, she apparently was not initially informed of the insurance program. Vaiiejo, who had long worked for CID, did not hear of the program until after the labor consultants first began campaigning among employees.

Thus, the evidence persuades me that the announcement to employees of CID's medical insurance program, if not the program's origin itself, was designed to stave off the UFW's organization campaign and was used in such a way as to accomplish that purpose. Indeed, given the proximity to the UFW's election campaign, at both CID and CV, it would not be unreasonable to conclude that the prospect of that election campaign played a sharp role in the decision to institute the program in the first place. Given these factors, I believe that CID unlawfully interfered with employee rights, under Section 1153(a) of the Act, by timing its announcement of the medical insurance program to coincide with the campaign and election. This conclusion is reinforced when viewed against the other employment changes instituted by CID, as outlined below.

In addition to instituting its own program for medical insurance, CID began a series of wage increases following expiration of the Teamsters Union contract. Thus, on April 15, CID raised its hourly wage from $2.70 per hour to $3.00 per hour. That in itself may have been proper enough in view of the expired contract and inasmuch as April was a traditional time for pay raises. But, on June 9 CID granted a second wage increase, from $3.00 per hour to $3-35 per hour and, in addition$_3$ gave employees a separate paycheck for retroactive wages of either $.15

6/[continued]--claimed that employees were informed of the medical plan in mid-April, but neither he nor any other witness for CID could describe how employees were informed. Furthermore, it appears far more likely that the insurance plan was instituted when Melkesian first had the assistance of a labor relations consultant, in March or April, when CID put together a set of employee policies and consolidated them into a formal employee handbook. But, as Juan Vallejo, a CID employee, credibly indicated, he did not receive that employee handbook until after CID began to actively campaign against the UFW.

Mr. Melkesian's testimony was so vague, indefinite$_3$ and at times self-contradictory that it cannot be given any weight, particularly in those instances when it could have been easily corroborated by documentary fact but was not.

or $.35 per hour back to April 15. Clearly, this second, substantial wage increase and the retroactive wage payment were granted after two election petitions had been filed and union organizing was in high gear.

CID's rather limp explanation for its June wage adjustments was that it wished to keep up with the prevailing wage rate in the Coachella Valley area. Not only did CID fail to establish why such a policy was significant to it, particularly since it apparently had no difficulty in recruiting and retaining employees, bur CID's explanation is without basis in fact. The only "prevailing wage rate" in the Valley that CID sought to keep up with when it raised wages in June was that rate recently negotiated between the UFW and the David Freedman Company. Indeed, on the strength of mere newspaper accounts of the collective bargaining arrangements set to take effect on June 10 at David Freedman, CID precipitously raised its wages and granted a retroactive payment. Ironically, Mr. Melkesian could not name one other employer in the area then raising wages to $3-35 per hour and could not even recall with certainty what the "wage setter," the David Freedman Company, was paying in wages when CID initially raised its wage to $3.00 per hour.

Thus, on the eve of the employee election, and at the same time that a UFW contract went into effect at a neighboring employer, CID substantially increased its wages to the rate negotiated by the UFW. It coupled that raise with a bonus by giving employees a separate retroactive wage check. It is difficult to imagine a more obvious effort to interfere with employee rights by granting benefits than that employed by CID. Accordingly, I find that CID further violated Section 1153(a) of the Act by granting its June wage increase and retroactive wage payment.7/

The other benefit of major rank granted by CID was the party it held for employees. On June 28, the night before the

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7/The testimony is unclear as to whether CID officials promised wage increases before the June wage adjustments. Mr. Melkesian, himself, admitted to instructing his general supervisor, Cariaga, to inform employees in April that they would be getting further wage increases as the prevailing wage changed. Mr. Vallejo's testimony, however, was confused as to whether Cariaga at that time actually promised employees future wage increases or merely discussed the June wage increase and retroactive payment when the checks were actually distributed in June. On the other hand, it appears that Cariaga, at least in June, held out the generalized promise that Respondent CID would raise wages as other employers in the Valley did, thus holding out the promise of future benefits. In view of the timing of these premised benefit increases, and coupled as they were with contemporaneous pleas to the employees to vote down the UFW for a~ least the next year, it seems rather obvious that employees understood that future wage increases would be forthcoming if only they voted down the UFW.

employee election, CID sponsored a large party at the County Fairgrounds for some 400 workers and their families, paying for refreshments, dinner, and live music. The testimony amply indicates that nothing of that magnitude or kind had been given the employees in past years. The idea for and planning of the party were the responsibilities of CID's paid labor consultants. Colon and Highfill.

The purported reason for the party, as mainly described by Mr. Highfill, was to formally announce the merger of CID and CV and to assuage employee fears that they would lose work due to the new business combination. Mr. Highfill's explanation, however, carries virtually no substance. First, at no time during the party did any management official seek to set forth that explanation for the party. Second, employees were not told beforehand of that reason for the costly celebration. Third Highfill's explanation is doubtful in view of the month-long delay between the merger and the party. Fourth, the record is totally devoid of any factual basis for Highfill's expressed concern that employees feared a loss of employment or competition for work from other employees due to the merger. Indeed, Highfill's explanation for the party appears to be nothing short-of contrived, for, as Mr. Melkesian expressed it, "we found a purpose for a party with the new company, the merger."

There can be little doubt that CID's festive treat for employees on the eve of the election was calculated to affect the employees' votes. Indeed, the timing of the party was not even established until after the UFW had filed its election petition (which gave CID's knowledgeable labor consultants a fairly certain idea of when an election would be held). It is also significant that the party was planned not by CID's management but by its labor relations consultants, who only proposed the party (as admitted) in the context of a discussion with Melkesian relating to labor relations. Whether or not someone from CID spoke at the party regarding the upcoming election, an issue over which the testimony is in conflict, the purpose and effect of the party is clear: to interfere with the free choice to be exercised by employees the following day by emphasizing CID's munificence.

Other, more minor benefits were also tossed about by CID representatives in the days preceding the election. For the first time in memory (of Mr. Vallejo), employees were given free soda pop when working at the Melkesian ranch. Also according to the credible testimony of Mr. Vallejo,8/ during at least one of the many speeches given by CID's labor consultants to employees, the employees were told that the Company's new policy of recalling employees by written notification was far superior to the "JFW s hiring hall practices. Until that time, CID had no such

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8/Mr. Vallejo's demeanor was exceedingly credible. While it is true that at points in his testimony his recollection seemed a bit hazy or confused, I have not relied on his testimony when it suffered from those infirmities.

recall system, however. Then, on election day, prior to voting. Hilda Acosta (an admitted supervisor) informed her crew that they were getting a half-hour break that morning and would continue getting such a new break-time throughout the harvest. Acosta did not take the stand to rebut Ms. Gonzales's credible description of that newly announced benefit.9/

In sum, I find that CID violated Section 1153(a) by granting, promising, or announcing such benefits as increased wages, a new medical insurance program, an expensive employee party, free refreshments in the fields, new break-time, and a new recall system. Taken together these new benefits or promises of them clearly demonstrated to employees the lack of need for self-organization, denied them their right to freely choose to be represented or not, and substantially interfered with the rights set forth in §1152 of the Act. Given the timing of CID's new benefits or announcements of them, corresponding as they did to the union organizing campaign beginning at CID and CV, it is almost inconceivable that any other rationale for them existed except to forestall union representation.

V. The Employee Lists Provided By Respondent.

Both the General Counsel and the UFW complain about the employee lists provided by Respondent CID. The General Counsel levels his complaint at the list provided in response to the UFW's June 22 representation petition, claiming that the list contained numerous errors. The UFW complains about that list as well as the two employee lists provided in response to its notices of intent to' organize, one notice being filed on CID on March 29 (77-NO-lo-C) and another notice being filed on CV on May 3 C77-NO-31-C).

Considering the employee lists supplied by CID and CV chronologically, 10/ the following facts emerge. In response to

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9/The General Counsel also notes that several policies announced in CID's employee handbook, devised initially in March or April, added certain other new benefits to those enjoyed by employees under the expiring Teamsters' contract. Admittedly, CID at that time employed a labor relations consultant from Mr. Colon's firm to devise an employee handbook setting forth CID policies and benefits. Some of those benefits, such as the paid holidays, exceeded benefits enjoyed under the Teamsters' contract. In view of my other conclusions, however, I see no need to fully compare the new CID handbook and the Teamsters' contract; the record is sufficiently clear that CID granted a number of important benefits to employees in the midst of the union organizing campaign.

10/Although CID does not take the position in this proceeding that it cannot be held liable for C7's possible violation of Board regulations in regard to the employee list supplied in response to 77-MO-31-C, my findings below essentially relate to CID's own conduct.

the UFW's notice of intent to organize filed on March 29, CID submitted to the Board, on April 6, a list with 113 employees (C.P, Exh. 6). No job classifications are set forth on that list. Of the 113 addresses given, some 59 are of post office box numbers and 11 are located in Brownsville, Texas. Two additional addresses are listed for Castroville and Los Angeles, California.

The CV list submitted in response to 77-NO-31-C was substantially more complete. Of the 94 names listed, only one had a post office box. But Liticia Hernandez, one of the UFW organizers responsible for campaigning among CV employees, testified without contradiction that she found 19 erroneous addresses on that list.

Similar problems exist with regard to the employee list compiled in response to the UFW's June 22 representation petition. CID provided Board Agent Janice Johns with payroll records and employee lists on Friday, June 24, in response to the UFW's petition. Johns, however, determined that a different payroll date should be used for compilation of the employee list and so informed GIB representatives, resulting in a substantial increase in employees eligible to vote. Apparently on the next day, June 253 although the evidence is by no means clear, CIB, through the secretary of its attorney, supplied additional payroll information and possibly an expanded employee list based on the new payroll information. 11/

11/It is not clear whether Johns received a new, larger employee list on June 25 or not. Ms. Shawgo, secretary for Respondent's counsel, claimed she delivered both the newly requested payroll "information and an employee list to the Board that day (P.. Exh. 12); the address information contained on that list is essentially identical to the address information Johns compiled for her employee list (G.C. Exh. 5). Yet, Johns claimed to have laboriously compiled her address information based on an employee list submitted by CID in response to an earlier representation petition filed on June 7 (77-RC-3-C) and on information she received back from CID on Monday, June 27, after she had requested that GID fill in the blanks that she left for employee addresses she did not have. Johns's testimony, however, is not clear, as one cannot determine just how many blank addresses she left on her list for CID to later fill in or why she did not review Respondent's earlier employee lists other than the single one she noted in compiling her address list; nor was she called in rebuttal to clarify whether she received from CID on Saturday, June 25, the more complete list (R. Exh. 12) that Ms. Shawgo claimed to have delivered to the Board.

Respondent, on the other hand, introduced several different employee lists that were filed with the Board in response to early election petitions or notices of intent to organize. While Respondent offered these lists for the purpose of showing the "total" employee information provided--
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Nonetheless, the following facts with respect to the employee list turned, over to the UFW by Board Agent Johns are not in serious dispute. The UFW was not given the list until late on the afternoon of June 27, when the pre-election conference was held. (Johns did not turn over the list until she received it back from CID with the requested corrections.). On the list given to the UFW, as well as on the list Respondent claims to have supplied the previous Saturday (R. Exh. 12), the following errors or omissions exist: (1) According to the unrebutted testimony of Rosalinda Aguirre, a UFW organizer, the GID portion of the list has eight employees listed in Riverside, California, at an address they did not live at and nine employees are listed as living at 43-412 Kenya Drive in Indio, the home of a forewoman, Lucila Rosales, an address they did not live at; in addition, six employees are listed as having only post office boxes and two employees have no addresses listed. Thus, of the approximately 180 employees listed on the CID portion of the list, some 25 have erroneous or incomplete addresses. (2) According to the unrebutted testimony of UFW organizers Roberto DeLaCruz and Liticia Hernandez, the CV portion of the employee list contained between 29 and 44 errors, including some six employees listed as having only a post office box number. In addition, two employees are listed without any address. The CV portion of the list contains approximately 185 employee names.12/

It can be seen from the face of the employee list purportedly delivered by Ms. Shawgo to the Board on June 25 (R. Exh. 12) that as to its post office numbers, missing addresses, and erroneous addresses in Riverside and Indio that her list contained essentially the same errors as did that compiled by Ms. Johns of the Board, with slight exception. Thus, it makes little difference as to whether Johns had in her possession on June 25 CID's latest employee list, as Shawgo claimed, or did not, as suggested by Ms. Johns. In other words, the Shawgo list and the Johns list contained essentially the same address information or lack of it.

11/[continued]—to the Board, it has made no effort to establish that the prior information it supplied would have accurately provided the address information for Johns when preparing her eligibility list information.

12/Hernandez indicated that she noted between 10 and 15 errors on the CV list, but limited her calculation to those employees working on the crew of Alfredo Baez, a CV foreman and admitted supervisor. DeLaCruz's calculation of 29 errors referred to the CV portion of the list, and it cannot be determined from his inexact testimony whether he referred to only the crew supervised by Hilda Acosta, another CV foreman and admitted supervisor, or also included errors involving Baez's crew. None of the organizers specified in complete detail which of the employee addresses were in error, but Respondent aid not seek to refute the organizers' claim of error.

The Board has previously noted that in responding to the filing of a representation petition,

> . . . it is the employer's obligation to supply an accurate, up-dated list of names and addresses of workers in accordance with the applicable statutory provisions and regulations. The burden of explaining defects or discrepancies in the list is consequently upon the employer. [Yoder Bros., 2 ALR3 No. 4 (1976) (Slip Opinion, p.15).]

The same standard of accuracy and currency applies to employee lists supplied in response to a notice of intent to organize. Valley Farms, 2 ALR3 No. 42 (1976). And, as noted in Laflin and Laflin, 4 ALRB No. 28 (1978) (Slip Opinion, p. 3), "[s]upplying lists of names with either post office boxes or street addresses outside the Coachella Valley [where the employees worked] clearly interferes with employees' Section 1152 rights, which include the opportunity of workers to communicate with and receive information from labor organizations about the merits of self-organization." Thus, the failure to provide accurate and current information on an employee list may be grounds for setting aside the results of an employee election and/or for a finding that the employer engaged in an unfair labor practice.

The facts in this proceeding establish a history on the part of CID and its predecessor, CV, to either willfully or neglectfully provide the information required on employee lists. CV has already been found once to have committed an unfair labor practice in untimely providing stale employee information to the UPW in response to a notice of intent to organize. Yeji Kitagawa, 3 ALRB No. 44. CID, in its turn, responded to the UFW's notice to organize in March by providing an employee list with addresses half of which were far outside the Coachella Valley or mere post office box numbers.

While it is true that CID's employee lists improved with practice, perfection was never reached. The uncontradicted testimony reflects that CID's employee information provided in response to the UFW's election petition contained an error rate between 20$ and 26% in address information, by way of erroneous addresses, post office box numbers, and missing addresses. Respondent's one answer to this substantial rate of misinformation is that it cannot be held responsible for employees who refuse to provide accurate, current addresses. Our statute, of course, obligates employers to maintain "accurate and current payroll lists containing" the names and addresses of all their employees," as do laws administered by the California Department of Industrial Relations. See Yoder Bros., supra, 2 ALRB No. 4 (pp. 3-6). Indeed; Respondent CID seems to have done far less than it should have or could have to insure the accuracy of its employee information. For example, in its employee handbook, drafted as recently as the previous March, CID, while advising its employees of state law

requiring accurate information as to social security and income tax, merely tells its employees "We would appreciate your providing us with your home address if you desire to do so."

I do not believe that CID's response to the UFW s election petition was sufficiently accurate to meet the standards imposed through §20310(a)(2) of the Board's regulations, particularly in view of its history of dilatoriness. Nor, in view of the other evidence surrounding CID's effort to stave off a UFW election victory, do I think that its incomplete and inaccurate information resulted from mere oversight or other good faith error on its part. Accordingly, I conclude that CID violated Section 1153(a) of the Act by failing to provide a sufficiently up-to-date and accurate employee list in response to the UFW's election petition, thus handicapping union efforts to communicate with its workers at the crucial time immediately prior to the employee election.

In addition, I have concluded that, CID failed to comply with the Act and its regulations when submitting an employee list in response to the UFW's notice of intent to organize filed on March 29, a list that contained an error or omission rate of over 5Q%. This, coupled with CID's response to the election petition, forms a basis for overturning the election results, inasmuch as once again CID made it difficult for the UFW or any other labor organization to fully communicate with its workers regarding self-organization. In view of the other evidence, however, one need not determine whether CID's improper employee lists would alone warrant setting aside the election.

VI. CID's Threats To Arrest UFW Organizers.

The final claim made in the complaint is that one of CID's supervisors, Don Salazar, threatened to call the sheriff to arrest UFW organizers who were then engaging in legitimate organizing activity. A similar claim is made by the UFW in its objections petition.

On June 27, at about 5:00 a.m., Robert DeLaCruz was soliciting support from and distributing leaflets to the workers on Hilda Acosta's crew. He was engaging in this organizing activity at one of CV's fields, by 70th Avenue and Polk Street. After DeLaCruz was with the workers for about 10 minutes, Don Salazar came up and began calling the workers over to him. As he did so, Salazar began yelling at DeLaCruz that he was breaking the law and had to leave. When DeLaCruz protested that he was there legitimately, Salazar yelled that they (the UFW organizers) did not cooperate, always made complaints against the company, and that Salazar was going to do the same toward them. Salazar also called out to the workers present that he wanted them to verify that the UFW was breaking the law. Although DeLaCrus did not immediately leave,' he did depart when Hilda Acosta arrived
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with the last workers of her crew and, when work began to ensue. 13/

Liticia Hernandez described a similar encounter with Saiazar that morning. Hernandez was organizing workers from the Baez crew, at around 5:00 a.m., when Saiazar drove up fast in his truck. He began to yell at Hernandez that she should get out of the field, that she was not supposed to be there, and that he would call the sheriff if she did not leave. Saiazar also remarked that Hernandez's friend, Robert, would not obey Saiazar's orders either and that he, Saiazar, had had to write Robert up. Hernandez did not leave immediately, but continued to speak with the workers. According to her unrebutted testimony, the Baez crew remained where she was, relaxing and talking, the entire time that she remained. In other words, work had not yet begun. Hernandez recalled that as she left the field that morning she saw a police car drive by the field.14/

Both DeLaCruz and Hernandez returned to the CV fields to talk with workers during their lunch break. They had been informed that the break would occur at 10:30 a.m. As Hernandez waited on a road outside the field at about 9:30 a.m., she saw Eusepio Lopez (another foreman with the "Baez crew"), who informed her that the crew would be leaving early that day, at about 10:00 a.m. She informed DeLaCruz that workers were then about to leave and both of them decided the organizers should go into the fields and contact their respective crews.

DeLaCruz directed two or three of his organizers to make contact with Acosta's crew. DeLaCruz, however, remained outside the field. As he waited outside, he saw Mr. Saiazar, whom he informed that the organizers had gone into the field because workers were breaking from work. Saiazar then left, but

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_13/The incident described above, as depicted in Mr. DeLaCruz's testimony, was similar to the incident described by one of Acosta's workers, Carmen Gonzales. It is unclear, however, as to whether Gonzales described the June 27 incident, since she recalled the incident occurring about two weeks before the June 29 election, not just two days before the election. Nonetheless, it is fair to conclude that Gonzales described the same incident as DeLaCruz did, inasmuch as their recollection of the incident was so strikingly similar and inasmuch as DeLaCruz did not seek to relate any similar incident involving him at some earlier point in time.

_14/Don Salazar did not attempt to contradict the testimony of Hernandez or DeLaCruz with respect to his early morning encounters with them or the subsequent ones that day (which are yet to be described). Mr. Melkesian recalled being informed that morning of some trouble with the UFW organizers and that the Indio Police Department was summoned as a result. He did net know whether the police actually came to the ranch, however.

returned shortly after and informed DeLaCruz that the organizers must leave the field or Salazar would call the police. As Salazar warned DeLaCruz about the police, he was talking loudly and only some 15 feet away from employees. DeLaCruz then attempted to get the organizers to leave the fields where the Acosta and Baez crews were.

In the meantime, Hernandez had gone in to speak with the Baez crew. The workers had finished picking for the day and were then packing the grapes. After she spoke with the employees for a. time and after DeLaCruz had come into the field and told her she should leave, Mr. Salazar then arrived by the crew. He again began to yell at Hernandez that she should leave the field or he would call the sheriff. She refused to leave and Salazar then left. When Salazar returned, however, he informed Hernandez that he had called the sheriff, after which she then left. Both Hernandez and DeLaCruz recalled seeing a police car outside the field, in an area close by where the Acosta crew was working.

Thus, on two separate occasions on June 27, each involving a different work crew, Don Salazar sought to curtail UPW organizing efforts and warned UPW organizers of arrest if they did not end their organizing. On the first occasion, it was before work had commenced for the day. On the second occasion, work was apparently taking place for both the Baez and Acosta crews. Under the circumstances of this case, however, the organizers had the right to be present while work was in progress, and there is no evidence that their activity interfered with that work.15/

The Board has clearly stated that "[a] threat to call the sheriff to arrest for trespass the UPW organizers on the property for legitimate organizing purposes constitutes an unfair labor practice. * * * * Such a threat is a violation of employee rights whether or not it could be immediately carried out." D' Arrigo Bros. Co. . 3 ALRB No. 3.1, pp. 3-U (1977). Indeed, such a threat (and, here, the actual implementation of that threat) is made more serious by the then outstanding Board order which secured the UFW's right to organize employees in CV's fields. Accordingly, I find that Respondent CID violated §1153 (a) of the Act when Don Salazar, one of its highest-ranking supervisors, threatened UFW organizers with arrest, when those organizers were properly engaged in organizing activities.

15/In Yeji Kitagawa. 3 ALRB No. 44, the Board, on June 5, had ordered that "the UFW shall have the right of access during working hours . . . provided that such organizational activities do not disrupt work." Thus, the UFW organizers could engage in organizing activity at CY fields, where they were, during work hours, which they did on June 27.

VII. The Remaining Election Objections.

The UFW raises additional complaints regarding CID conduct as such conduct allegedly affected the election results. A brief summary of those complaints and the related testimony follows.

First, the UFW complains that CID threatened workers who supported the UFW.16/ The uncontradicted testimony shows that on two occasions Hilda Acosta threatened workers in her crew over their support for the UFW, Jesus Munoz testified that on March 30, when he began organizing the Acosta crew, Hilda Acosta angrily announced to some 15 employees near her that she would lay off or fire any worker who signed an authorisation card. Humberto Gomez testified that on April 23, as he was organizing workers during their lunch break, Hilda Acosta held up a UFW authorization card in her hand and in a loud voice announced to the workers nearby that she would fire any worker who signed the card and, to a worker named Martinez, Acosta said, "since you like Chavez I'm going to send you to work with him."17/

Of course, the statements uttered by Hilda Acosta on March 30 and April 28 were clearly threatening to employees concerning their support for the UFW. Under our Act such threats are impermissible. Nor do I believe that Acosta's threatening remarks were adequately ameliorated by Don Salazar on April 30, when, in response to Mr. Gomez's inquiry, Salazar stated to the employees then gathered that they could sign authorization cards if they wanted to. Not only was Gomez's inquiry that day

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16/The UFW s claim is found in Paragraph 5 of the Executive Secretary's notice of hearing, dated November 29. Following the evidentiary hearing, the UFW withdrew the portion of Paragraph 5 that dealt with misconduct aimed at "observers for the Union and their families . . . ."

17/Respondent seeks to cast doubt on Gomez's testimony by noting that his pretrial declaration failed to mention that Acosta raised the authorization card in her hand when she spoke to the workers and that she made her remark to Mrs. Martinez in the presence of Gomez. Mr. Gomez indicated that employees first informed him of Acosta's threats, but when he confronted her about them she repeated them loudly to the employees in his presence, while holding the authorization card aloft. I accept Gomez's description of the event; his demeanor was credible, his testimony was uncontradicted, and the variance from his declaration was insignificant.

Furthermore, it readily appears that Acosta was seriously antagonistic toward the UFW. According to Carmen Gonzales, about two weeks before the election Acosta warned the workers to keep their children hidden in the field because the UFW was encouraging the state to check on their working at the Company and whether they were covered by insurance.

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, post on our property

and publicly have this Notice read to you.

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 the rights to organize themselves; to form, join, or help unions; to bargain as a group and choose whom they want to speak for them; to act together with other workers to try to get a contract or to help or protect one another; and to decide not to do any of these things.

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

WE HAVE in the past violated our workers' rights by promising them, granting them, and announcing to them increased benefits, such as improved wages, medical insurance, soda drinks, break time, all at a time and under circumstances which unlawfully interfered with their decision to support or not a union. Due to our misconduct the election that was held on June 29, 1977, was not fair.

WE WILL NOT in the future interfere with your rights under the Agricultural Labor Relations Act.

Dated:

COACHELLA IMPERIAL DISTRIBUTORS

By _____

Representative Title

THIS IS AN OFFICIAL NOTICE OF THE AGRICULTURAL LABOR RELATIONS BOARD, AN AGENCY OF THE STATE OF CALIFORNIA. DO NOT REMOVE OR MUTILATE THIS NOTICE.

prompted by Acosta's similarly threatening remarks that day, but there is no showing that the same employees who witnessed her threats on March 30 and April 23 also overheard Salazar's comments. Additionally, Salazar's comments did not go far enough in assuring employees that they had nothing to fear from their immediate boss, Acosta, for their UFW support.

Second, the UFW complains that on election day CID summoned the Indio Police Department to the election site. Although it was admitted that CID summoned the local police department to the field on election day, no witness asserted that the police presence was observed by those voting in the election. At most, there is a suggestion of such observation, as evidenced through Mr. Melkesian's testimony. Thus, although the presence of police officers during the voting could have had a deleterious effect on voters, and although Mr. Melkesian's reason for summoning police officers seems both ill-conceived and unwarranted, I. am not satisfied that the evidence sufficiently demonstrates that the police presence was known to the voters or was likely to have influenced the balloting.

Third, the UFW complains that CID failed to comply with an unfair labor practice settlement agreement by its failure to post the proper notices on its property .18/ The evidence shows that at most two notices were posted at CV property, one by Mr. Salazar's house and one in the dining room of the CV labor camp. No one, however, could fix a date--either before or after the election—as to when these notices were observed as posted. And various UFW organizers, such as DeLaCruz and Hernandez, denied ever seeing any notice posted.

A troubling weakness exists in the claim that CID failed to post the notice as required by the settlement agreement. For one thing, no evidence exists that CID was ever directed by a Board agent to post the notices in certain locations. For another thing, the thoroughness of the UFW's investigation of the posting on CV property is open to some doubt. And finally, no evidence exists that whatever failure there was on CID's part to post the notices was timely or otherwise called to CID's or the Board's attention so that such notices would henceforth be posted.

Although I an skeptical about CID's own lackadaisical attitude concerning the notice-posting, I am not persuaded that the fault can be laid at CID's door. The facts surrounding the notice-posting are too vague and indefinite for me to conclude that CID violated the terms of the official, written settlement

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18/On June 20 the parties signed a settlement agreement in Case Nos. 77-CE-43-, 55-, and 72-C. Paragraph 2 of the "terms and provisions" of that settlement provided, inter alia, for the posting of notices "in conspicuous places on the property . . . which was acquired from Coachella Vineyards . . . at locations ... to be specified by a Board Agent after inspection of the Employer's property."

notice.

Finally, the UFW complains that CID personnel were improperly in the voting area while the balloting was taking place. Mr. Vallejo recalled seeing Mr. MeIkesian[1]s son standing in the voting area for about five minutes. Admittedly, the son was removed by a Board agent when the agent was informed of his presence. Mr. DeLaCruz and Ms. Hernandez recalled seeing Hilda Acosta walk down a dirt road leading to the voting area and, when she was about half-way to the area, she made her way into the field and continued moving toward the voting area. Neither DeLaCruz nor Hernandez, however, could place Acosta at or proximate to the voting. Humberto Gomez observed Mr. and Mrs. Salazar, at slightly different places, standing in an area where workers were still working or passing by on their way to the voting area. Gomez could not recall Mr. Salazar speaking with any of the workers, but recalled that Mrs. Salazar spoke to some workers for about five minutes, not too distant from the voting area.

It does not appear to me that the movements and behavior of the Salazars, Acosta, or Melkesian's son were such as to influence the voting then going on. Unless it can be found that their conduct was such as to interfere with, or influence, or impede the free expression of voters in the secret ballot election, it would not behoove the sanctity of that election process to overturn it. To be sure, a supervisor's unauthorized presence in the voting area might be grounds for setting aside an election where the circumstances warrant, but here we have only brief appearances near the voting area and virtually no communication with the voters. Furthermore, the most serious encroachments near the voting area involved Mrs. Salazar and Melkesian's son, persons who were not high-ranking supervisors , known UFW antagonists, or persons whom the voters could readily fear.

CONCLUSION

Having found that CID engaged in various unfair labor practices and that, in addition, CID failed to comply with Board regulations when responding to the UFW's notice of intent to organize, as well as having one of its supervisors engage in threatening workers over their support for the UFW, I recommend that the order which follows be issued against CID and further recommend that the results of the June 29 election be set aside and that a new employee election be conducted. CID's misconduct preceding the election was sufficiently serious to substantially interfere with the freedom employees are ensured when casting ballots in a Board-conducted election. In addition, CID's violations are serious enough to warrant the recommended increase in UFW organizing protection.

ORDER

Respondent, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Granting, promising, or announcing any increase in workers' benefits, or improvements in working conditions, where the purpose is, or the effect would be, to deter or interfere with the workers' rights to freely choose to be represented or not by a labor organization.19/

(b) From failing to provide full and timely information as to employees and their addresses, as is required by Board regulations.

c) In any other manner interfering with, training, or coercing employees in the rights guaranteed them by Section 1152 of the Act.

2. Take the following affirmative action:

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

(b) Distribute copies of the attached Notice in appropriate languages to all present employees and to all employees hired by Respondent during the 12-month period following issuance of this Decision.

(c) Mail copies of the attached Notice in the appropriate languages, within 30 days from receipt of this Order, to all employees employed by Respondent between April 1, 1977, and July 1, 1977-

(d) Post copies of the attached Notice in all appropriate languages in conspicuous places on its property, including all places where notices to employees are usually posted, for a 90-day period to be determined by. the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(e) Arrange for a Board agent or a representative of Respondent to distribute and read the attached Notice in all appropriate languages to its employees assembled on Company time and property, at times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of

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19/This cease and desist provision is not to be read as to require Respondent CID to rescind the increased benefits in granted to employees in 1977 that have beer, found to be in violation of the Act.

compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(f) Upon filing of a written notice of intent to take access pursuant to 3 California Administration Code §20900 (e)(.l)(3), the UFW shall have the right of access with twice the number of organizers as is provided for under 3 California Administration Code §20900(e) (3). In addition, the UFW shall be entitled to one access period during the calendar year in addition to the four periods provided for in 3 California Administration Code §20900(e)(l)(A)".

(g) Provide the UFW with an employee list as required by 3 California Administration Code §20910(c) upon its filing of a notice of intent to take access, without regard to the UFW's showing of interest. In addition, Respondent is to provide the UFW such an employee list every two weeks during which the UFW is taking access, without regard to the UFW's showing of interest.

(h) Notify the Regional Director, in writing, within 10 days from the date of the receipt of this Order, what steps have been taken to comply herewith. Upon request of the Regional Director, the Respondent shall notify him or her periodically thereafter, in writing, what further steps have been taken to comply herewith.

Dated: January 27, 1979

AGRICULTURAL LABOR RELATIONS BOARD

By David C. Nevins (sic)
David C. Nevins
Administrative Law Officer