El Centro, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

COLACE BROTHERS, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 79-CE-146-EC 79-CE-147-EC 79-CE-148-EC 6 ALRB No. 56

DECISION AND ORDER

On March 12, 1980, Administrative Law Officer (ALO) William A. Resneck issued the attached Decision in this case. Thereafter, Colace Brothers, Inc. (Respondent), United Farm Workers of America, AFL-CIO (UFW), and the General Counsel each timely filed exceptions and a supporting brief. Respondent and the General Counsel each filed a brief in reply to the other's exceptions.

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

The ALO concluded that Respondent violated Labor Code Section 1153 (e), (c) and (a) by unilaterally changing its employees' working conditions and by refusing to recall its employees because of their union activities. Respondent excepts to this conclusion. Respondent contends that it had no duty to bargain about the changes, because the changes occurred during the

UFW's strike against Respondent and involved the manner in which Respondent procured replacement workers. We find merit in this exception.

Respondent grows, harvests, and packs lettuce and melons in the Imperial Valley. During the 1978-79 lettuce season, Respondent planted lettuce towards the end of August, thinned lettuce in October and harvested lettuce from November until January. The UFW and Respondent signed a collective bargaining agreement which took effect in June 1976 and continued in effect until January 15, 1979. On January 26, 1979, Respondent's employees commenced a UFW-sanctioned economic strike in support of the Union's bargaining demands. As a result of the strike, Respondent plowed under the melon crop it planted in January 1979 because it could not obtain irrigators or tractor drivers to care for the crop. During the summer melon harvest season, however, Respondent harvested melons for other growers in the Imperial Valley.

During the strike,[1/] Respondent unilaterally instituted two changes in working conditions. First, Respondent changed its method of obtaining workers. Under the UFW contract, Respondent obtained melon harvest employees by sending out recall notices to

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[1/] General Counsel asserts the strike encompassed only the lettuce employees and not the melon harvest employees. The record indicates otherwise. Melon harvest employees testified to their understanding that the strike included the melon harvest. Respondent shared this understanding. Furthermore, when the strike commenced, the melon workers went on strike along with the lettuce workers. Many of the lettuce harvest employees also worked in the melon harvest. In the absence of any evidence to the contrary, we find that the melon harvest employees were on strike against Respondent.

those individuals on the seniority list. The individuals would then contact Respondent or the UFW for the exact starting date and location at which Respondent would pick up its employees for transport to the fields. During the strike, however, Respondent did not send out recall notices but assigned its foremen the task of procuring temporary workers by word-of-mouth. Second, Respondent unilaterally changed the location of the pickup point. During the preceding eight or nine years, Respondent had used a pickup point in Calexico. During the 1979 lettuce thinning season, however, Respondent used a pickup point in El Centro, a few miles north of Calexico. Respondent asserted it used this pickup point because the lettuce thinners employed during that season lived nearer to El Centro than Calexico, and because it feared outbreaks of violence in Calexico.

We conclude that Respondent was not under an obligation to notify and bargain with the UFW about these changes. The changes relate solely to Respondent's decision to obtain, and its method of obtaining, replacement workers during a strike. The continuing obligation to bargain during an economic strike does not extend to an employer's decision to hire temporary replacement workers or to the method by which the employer obtains them. A contrary holding would serve to nullify the right of the employer to hire replacements in order to continue its business operations during an economic strike. See Times Publishing Company (1947) 72 NLRB 676 [19 LRRM 1199]. In addition, as we find that the melon harvest employees were on strike and had made no offer to return to work at the time Respondent obtained replacements, we conclude that

Respondent did not violate Section 1153(c) and (a) by failing or refusing to recall its striking employees. Accordingly, we shall dismiss the complaint in its entirety.

ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the complaint in this matter be, and it hereby is, dismissed in its entirety.

Dated: October 9, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Colace Brothers, Inc. (UFW)

6 ALRB No. 56
Case Nos. 79-CE-146-EC
79-CE-147-EC
79-CE-148-EC

ALO DECISION

The ALO concluded that Respondent violated Section 1153(c), (e) and (a) by instituting two unilateral changes in its employees' employment conditions after the expiration of its collective bargaining agreement with the United Farm Workers and during a strike involving Respondent's lettuce and melon workers. During the summer melon harvest, Respondent failed to recall melon workers according to its customary written recall notice procedure, but instead procured employees through word-of-mouth notification. During the fall lettuce thinning operation, Respondent changed the location of a pickup point used by employees.

BOARD DECISION

The Board reversed the ALO, finding that the changes occurred during the strike, which encompassed both the lettuce and melon workers. The Board held that Respondent's duty to bargain during an economic strike does not extend to its decision to hire temporary replacement workers or to the method by which it chose to obtain replacements. Because the changes instituted by Respondent were of such a character, Respondent did not violate the Act by its conduct. The Board dismissed the complaint in its entirety.

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STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

In The Matter of COLACE BROTHERS, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	CONSOLIDATED CASES NO. 79-CE-147-EC 79-CE-148-EC

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DECISION

STATEMENT OF THE CASE

WILLIAM A. RESNECK, Administrative Law Officer:

This case was heard before me in El Centro, California, on January 21 and 22, 1980. This case arises out of three separate unfair labor practice charges filed on November 16, 1979, with the Agricultural Labor Relations Board by the United Farm Workers of America, AFL-CIO (hereinafter referred to as "UFW"

or the "Union") against Colace Brothers, Inc., (hereinafter referred to as the "Respondent, "Company", or "Employer"). Thereafter, complaints were issued on each of the charges, Cases No. 79-CE-146-EC, 79-CE-147-EC, and 79-CE-148-EC, and consolidated for trial by Order dated December 27, 1979. The Employer filed an answer to each of the three charges.

During the course of the hearing, General Counsel's motion to dismiss the Complaint in Case No. 79-CE-146-EC was granted. The hearing proceeded, and testimony was presented on the remaining two cases.

All parties were given full opportunity to participate in the hearing, and the General Counsel, the UFW, and the Employer were all represented by counsel at the hearing. After the close of the hearing, General Counsel and the Employer filed briefs.

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

FINDINGS OF FACT

I. JURISDICTION

Employer admitted in its response to the Complaints that it is an agricultural employer within the meaning of Section 1140.4 (c) of the Agricultural Labor Relations Act (hereinafter referred to as the "Act"), and that the Union is a labor organization within the meaning of Section 1140.4(f), and I so find.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. FAILURE TO RECALL MELON WORKERS

Paragraph 5 of the Complaint in Case No. 79-CE-147-EC alleges that around the end of May 1979, the Employer refused to recall 12 named employees to their jobs because of their Union activities. Paragraph 6 alleges that Employer unilaterally changed his hiring practices by refusing to recall the employees named in Paragraph 5 without having previously bargained with the Union over the change.

Paragraph 7 alleges that the above acts interfere with rights guaranteed by Section 1152 of the Act in violation of Section 1153 (a). Paragraph 8 alleges that the Employer discriminated in regard to hiring in tenure against supporters of the Union in order to discourage membership in the Union in violation of Section 1153(c). Paragraph 9 alleges that this

unilateral change in the hiring and terms and conditions of employment without negotiating with the Union is a refusal to bargain in good faith in violation of Section 1153 (e).

On the second day of the hearing, General Counsel sought to amend the Complaint to include additional employees as charging parties who allegedly should have beer, but were not, recalled for the melon season. General Counsel contended that the additional charging parties could be obtained by comparing General Counsel's Exhibit 2, seniority list of workers to whom recall notices should have been sent, with General Counsel's Exhibit 3, the list of melon workers who actually did work in the 1979 melon season (II:42).[1/] That amendment was denied, and the hearing proceeded only as to the named employees in Paragraph 5 of the Complaint, with corrections as to spellings of their names, as hereafter noted.

B. WITHDRAWAL OF BUS SERVICE FROM CALEXICO

Paragraph 5 of the Complaint in Case No. 79-CE-148-EC alleges that for the fall 1979 lettuce season, Employer changed his practice of transporting employees from Calexico, California, to the work site. Paragraph 6 alleges that this change is an interference with rights guaranteed by Section 1152 in violation of Section 1153 (a). Paragraph 7 alleges that this unilateral change in the terms and conditions of employment without negotiating with the Union is a refusal to bargain with the Union in good faith in violation of Section 1153(e).

III. FACTS

A. BACKGROUND

Colace Brothers is a California corporation which since 1953 has been engaged in the growing of agricultural products, primarily melons and lettuce. It is a family held corporation whose officers and Board of Directors consist of two brothers, Joe Colace, Sr., and Tony Colace; and Joe Colace, Jr., the son of Joe Colace, Sr. (I:10-12). Colace Brothers' employees have been represented by the United Farm Workers, which was certified as the bargaining representative after an election. Employer and Union are parties to a collective bargaining agreement that went into effect in June of 1976 and expired December 1, 1978. By mutual agreement the contract was extended until January 15, 1979.

[1/] References to the Reporter's Transcript will contain a Roman Numeral, either I or II, indicating the transcript volume, followed by the page number of that volume.

On January 26, 1979, Employer's lettuce harvest workers went out on strike, sanctioned by the Union. The strike was still in effect at the time of the hearing (Stipulation, January 22, 1980).

The controversy in this present case centers around two separate events which resulted in charges of unfair labor practices: (1) the failure to recall melon workers for the melon harvest season in June, 1979; and, (2) the failure to provide bus transportation service from Calexico, California, for the lettuce harvest workers in October, 1979. The testimony at the hearing will be discussed according to these two separate events. And although certain witnesses may have testified about both events, their testimony will be separately discussed for each.

B. TESTIMONY REGARDING FAILURE TO RECALL MELON WORKERS

Joe Colace, Jr.: Mr. Colace is Treasurer of the Employer and the only other officer besides his father and his uncle. Colace Brothers has grown melons since it incorporated in 1956 or 1957 (I:17). The season normally runs from January, when the melons are planted, until June or July, when they are harvested (I:12). In 1978, Colace Brothers had 768 acres of a variety of melons known as cantaloupe (I:12), with approximately 130 men employed at peak employment (I:16).

Prior to the institution of the collective bargaining agreement, Employer did not send out formal recall notices to the workers but instead utilized a word of mouth hiring and recall procedure. In 1977 and 1978 under the collective bargaining agreement, Employer would send out recall notices approximately two weeks preceding the melon harvest to the previous year's workers according to the seniority list (I:17-18). After the workers received notice of recall, they had either to ask their foreman, call the Employer, call the Union, or ask other employees regarding the starting date of employment and the pickup point. (Stipulation January 22, 1980). After the expiration of the collective bargaining agreement and its extension in January of 1979, no agreements, either written or oral, were made between Employer and the Union regarding either the recall procedure or the pickup points.

Employer did not plant melons in 1979 since the strike occurred at the end of January, which was the normal planting season (I:19). This was the first year since 1956 that Employer did not have a melon crop (II:236-37). Instead, Employer entered into an agreement to harvest approximately 130 acres of melons belonging to Jack Maljian and Joe Colace, Jr. (I:21). In order to recruit workers to harvest his melons and the melons of

Mr. Maljian, Mr. Colace instructed the foremen of Colace Brothers to go out and find men that were experienced melon harvesters (I:20). The foremen were instructed to start looking for melon employees around the end of May or the first of June (II:212). Work was started at the Colace Brothers' packing shed on June 6 (II:212).

Some of the people recruited by the foremen to work on the 1979 melon harvest were people who had worked during the 1978 melon season, including those workers who had appeared on the seniority list (I:33-34). Mr. Colace testified that the Company did not send out recall notices to melon workers in 1979 because the Company did not plant any melons of its own and because the people in the lettuce harvesting crews had already gone on strike. Many of these strikers worked during the melon harvesting season, and he believed that the Union would penalize these workers if they tried to return to work (I:32-33).

Alberto Gonzalez: Mr. Gonzalez is an organizer for the Union and was in charge of the hiring hall in 1976 and 1977 (II:64). During 1976 he had received calls from the Employer to dispatch workers for the melon and lettuce season according to their seniority (II:64). The Company would call and tell when the work was to start and inform the Union where the people were to be picked up (II:68).

Refugio Acosta: Mr. Acosta has worked for the Employer for four years in thinning, weeding, cutting, and packaging both the melon and lettuce crops (I:42). In the previous two years' melon harvest for 1977 and 1978, he became aware of the starting time for the melon harvest when the Company sent its seniority list to the Union, and the Union then informed the workers (II:15). When he found out that the Company was harvesting melons in 1979, he did not ask the Company for a job because he knew that the Union had previously gone out on strike (II:14).

Jesus Villegas: Ms. Villegas was a worker at Colace Brothers both in cutting and packaging lettuce and in picking melons (II:29). There were no picket lines during the 1979 melon season because the Union believed that the Company did not have any melons (II:30). The picket lines did not resume again until August (II:31).

Arturo Huereque: Mr. Huereque has worked for seven years as a foreman for both lettuce and melons (II:156-57). He testified that all of the employees listed in Paragraph 5 of the Complaint had gone out on strike during the lettuce harvest, except for Santiago Jaurequi (II:162). He testified that Tony Colace told him to go out and hire people to harvest the melons during the 1979 season about two weeks before they were to start work. He believed that about 90% of the people he hired to work in the

melon harvest had seniority (II:163-64). He found workers by people asking him for work, by his asking people for work, and by workers bringing their friends (II:187).

Mr. Huereque testified that of the complainants listed in Paragraph 5 of Case No. 79-CE-147-EC (General Counsel Exhibit 1-E), the following people actually worked during the melon harvest season: (1) Guillermo Gomez worked under a different name (II:170-71); (2) Jose Luis Haro (II:172); (3) Luis Montero (II:172) worked for one day (II:189); (4) Manuel Urena (II:180). Mr. Huereque also stated that Raoul Pacheco was offered work but did not accept because he was working elsewhere (II:178-79).

C. FAILURE TO PROVIDE BUS TRANSPORTATION FROM CALEXICO, CALIFORNIA

The essence of the charge of this unfair labor practice, Case No. 79-CE-148-EC, is that the Company's unilateral decision to discontinue bus service from Calexico without informing the Union was an attempt to intimidate the workers out of their right to organize self-collectively and a failure to bargain in good faith on a mandatory subject of bargaining. The testimony can be summarized as follows:

Joe Colace, Jr.: Mr. Colace testified that transportation had been provided by the Company from a central pickup point in Calexico for the last eight to nine years (I:15). The bus would transport workers from the pickup point to the field and then return to that point at the end of the day (I:15). The bus carried approximately 42 people, which is a standard capacity for a labor bus in the Imperial Valley (I:14-15)

Mr. Colace testified that he did not discuss with the Union the Company's decision not to provide bus transportation for the lettuce workers from Calexico (I:22). Instead, workers were bussed from a location in El Centro (I:24). No bus was sent to Calexico since there had been no response from the workers who lived in Mexicali and because there had previously been violence down there (II:203-04). The El Centro site was picked because it had a fenced-in yard which offered more security than the pickup point in Calexico (II:205-06). He was not aware of any threats made against the bus, nor was there any testimony that the bus suffered any damages (II:227-28). Further, no one advised him not to send the bus down to Calexico because of any violence (II:227).

Stipulated Testimony: The parties stipulated in a written agreement dated January 22, 1980, as to the following testimony:

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"In 1979, respondent did not provide transportation from Calexico to its field nor did respondent discuss its decision not to provide said transportation with the UFW during its contract negotiations at any time during 1979.

General Counsel and Charging Party claim that approximately thirty-four former thinning and weeding seniority employees of Colace Brothers Inc., appeared on October 8, 1979, at the pickup point' in Calexico, California used the previous two years by the Company for the purpose of being provided transportation to work at respondents lettuce field. That no bus arrived and after waiting a reasonable period, they proceeded by carpool to the respondents fields. Those persons names are contained in Joint Exhibit 2."

Refugio Acosta: Mr. Acosta testified that he was waiting on October 8,1979, at the Standard Gasoline station, 4th Street and Imperial in Calexico, for the bus, as the Company had been parking the bus there for years before (II:21). He testified that he was willing to go back to work if a bus had been present to provide him transportation to the fields (II:27). He was one of the persons who signed the Petition on December 4, 1979 (Joint Exhibit 2). Mr. Acosta was also on the picket line at the field during December, and during this time he did not ask for work.

David Cajero: Mr. Cajero was one of the names selected from Joint Exhibit 2 pursuant to the stipulation to testify concerning the failure to provide bus transportation. Mr. Cajero has worked for Colace for 7 to 8 years (II:128). He was also at the bus stop, waiting for the bus on October 8 (II:144) He was waiting to go to work for Colace on that day (II:152). After signing the Petition (Joint Exhibit 2) on October 8, he went out to the field and picketed (II:150). He started picketing after the bus failed to show up on October 8 (II:152).

Jesus Ramirez: Ms. Ramirez was one of the witnesses picked by the Employer to testify from Joint Exhibit 2. She has worked for Colace in melons and lettuce continuously since 1972 until the strike on January 26, 1979 (II:89). She signed Joint Exhibit 2 at the bus pickup point on October 8 (II:109-16). She went to the field and picketed that day because no bus had arrived (II:124-25). She saw approximately 30 workers working for the Company there in the field (II:120-24).

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ANALYSIS OF THE ISSUES AND CONCLUSIONS

The two main issues are as follows:

(1) Did Employer commit Section 1153 (a), 1153(c), and 1153(e) violations by failing to use the Union's seniority list in hiring workers for the 1979 melon season?

(2) Did the Employer commit Section 1153 (a) and Section 1153 (e) violations in discontinuing bus service from Calexico?

I conclude that Employer's unilateral actions here in failing to use the Union's seniority list and in discontinuing bus service from Calexico without even advising the Union prior to these actions constitute violations of the above sections.

The applicable code sections of .the Act are (1) Section 1152 - right to organize collectively; (2) Section 1153 (a) -unfair labor practice for employer to interfere with Section 1152 rights; (3) Section 1153 (c) - unfair labor practice for employer to discriminate in regard to hiring or tenure or encourage or discourage membership; (4) Section 1155.2 - "Employer has the obligation to meet . . . and confer in good faith with respect to wages, hours, and other terms and conditions of employment", which relates to (5) Section 1153 (c) - unfair labor practice for employer to refuse to bargain in good faith.

Both the failure to recall melon workers and the withdrawal of bus service are Section 1153(a) and Section 1153(e) violations. The additional Section 1153 (c) violation is applicable only to the failure to recall melon workers.

I. APPLICABLE GOVERNING LAW

It is undisputed that Employer failed even to advise the Union that it was hiring employees for the melon harvest and discontinuing bus service from Calexico (I:15). The Employer had grown melons since 1956 (II:236-37). Similarly, for the last 8 or 9 years, the Employer had provided bus service from Calexico. These unilateral changes in past practices without first attempting to bargain in good faith with the Union are unfair labor practices.

In NLRB vs. Katz, (1962) 369 U.S. 736, the U.S. Supreme Court found the employer to be guilty of a per se violation of Section 8 (a)(5) of the NLRA by instituting unilateral changes in matters that are mandatory subjects of bargaining without first consulting the Union.[2/] In subsequent cases, the

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2/ Section 1153(c) of the ALRA tracks Section 8(a)(5)of the NLRA.

United States Supreme Court amplified this doctrine. Thus, in I NLRB vs. Great Dane Trailers, (1967) 388 U.S. 26, the Supreme Court held that if the employer's discriminatory conduct is "inherently destructive" of important employee rights, then no anti-union motivation is needed, and an unfair labor practice can be found despite employer evidence of business justification.

Similarly, in NLRB vs. Great Dane Trailers, (1967) 388 U.S. 26, it was held that an employer may not discriminatorily refuse to reinstate or reemploy strikers merely because of their union membership or concerted activity. Further, in a subsequent decision, Laidlaw Corp., (1968) 171 NLRB No. 175, aff'd (7th Cir. 1969) 414 F.2d 99, cert. denied (1970) 397 U.S. 920, it was held that the right to a job does not depend on its availability at the precise moment of application, and strikers retain their status as employees who are entitled to reinstatement absent substantial business justification and regardless of the employer's intent or motivation.

Further, oftentimes the conduct itself will be so "in herently destructive" to important union rights that anti-union intent can be inferred. For example, in NLRB v. Erie Resistor Corp.,(1963) 373 U.S. 221, which predates the Great Dane and Fleetwood decisions, employer was found guilty of an unfair labor practice by extending a 20-year seniority credit to strike replacements and strikers who left the strike and returned to work.

II. FAILURE TO RECALL MELON WORKERS

The above authorities are controlling here with respect to the Employer's attempt to undermine the Union's seniority list by selectively and without notice to the Union hiring replacement workers, many without seniority. Such conduct is "inherently destructive" to Section 1152 rights enjoyed by agricultural employees, violating Sections 1153 (a), 1153(c), and 1153(e).

By ignoring the seniority list for melon workers in effect since 1976, Employer's conduct here is tantamount to granting a "super seniority", as was done in Erie Resistor, supra.

Moreover, on the record before me, it is not necessary to decide whether Employer's conduct here is a per se violation, as discussed in Katz, Fleetwood, and Great Dane. I find the employer's conduct here to be without substantial business justification. An examination of the Employer's professed reasons for failure to use the seniority list, and authorities relied on by the Employer in support thereof, make this clear.

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Employer contends that it had no duty to use the seniority list, since Colace Bros, had no melons (I:32-33). Although that is technically correct, one of Employer's three principals, Joe Colace, Jr., did plant and harvest melons. Not only were the premises and facilities of Colace Bros, used for the melon harvest, but its foremen and many of the workers were hired in 1979. This selective hiring of employees during a strike by Employer's foremen without notice to the Union and in contravention of the seniority list is inherently destructive of the Union's attempt to bargain collectively as the representative of all employees.

Additionally, Employer contends that since the collective bargaining agreement expired in January of 1979, it had no contractual obligation to use the seniority recall provisions. The law is clearly otherwise.

For example, in American Sink Top & Cabinet Co.,(1979) 242 NLRB No, 53, 101 LRRM 1166, the employer was ordered to arbitrate a grievance arising in July, 1978, pursuant to the grievance provisions of the contract, even though the contract had expired on May 1, 1978. Similarly, in Industrial Union of Marine & Shipbuilding Workers vs. NLRB, (3rd Cir. 1963) 320 F.2d 615, cert. denied (1964) 375 U.S. 984, the Third Circuit Court of Appeals agreed with the NLRB that seniority rights are mandatory subjects of bargaining and found the company guilty of an unfair labor practice by discontinuing seniority rights upon the expiration of a collective bargaining agreement. 320 F.2d at 620.

Employer's authorities in support of tis position are equally unpersuasive. On page 10 of its Brief, Employer quotes language from Borg-Warner Controls, (1960) 128 NLRB 1035, 1044 concerning discriminatory refusal to reinstate union workers after an extensive layoff.

However, there the employer was found guilty of a Section 8 (a) (5) violation in failing to recall union adherents due to lack of any evidence that they were refused recall because of reasons unrelated to union activity. 128 NLRB at 1045.

Similarly, in our present case, the Employer has offered no credible justification for not sending out recall cards or using the seniority list for hiring melon workers.

In fact, Employer admits that because of concerted Union activity it did not use the seniority provisions but instead told its foremen selectively to hire workers. Accordingly, Borg-Warner only reinforces Employer's liability for unfair labor practices.

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Westinghouse Electric Corp., (1965) 150 NLRB No. 136, cited on page 12 of Employer's brief is equally inapposite. There, no unfair labor practice was found where an employer had sub-contracted out work to an independent third party since the 1940's. Our situation is distinguishable since there was no past practice of sub-contracting out work during the melon harvest, and since the workers used were not independent but selectively chosen from the present employees.

NLRB vs. D. H. Farms, (6th Cir. 1973) 481 F.2d 830, cited on page 13 of Employer's brief, is also distinguishable. There it was held proper not to recall laid-off employees for temporary production positions during the summer months. However, in the agricultural field, the distinction between temporary and permanent is untenable due to the seasonal nature of the work. Accordingly, Katz, Fleetwood, and Great Dane, supra, would control in our situation.

III. WITHDRAWAL OF BUS SERVICE FROM CALEXICO

The authorities previously discussed are also applicable with respect to the Employer's unilateral decision to discontinue bus service from Calexico without even notifying the Union. Preliminarily, it should be noted that the parties stipulated that approximately 34 former thinning and weeding seniority employees appeared at the pickup point in Calexico on October 8, 1979, used by the Employer the previous two years for the purpose of being transported to work at Employer's lettuce field. Thus, it is undisputed that the employees were willing to work.

Employer contends that when the workers appeared at the field to picket later in the day on October 8, they were given an opportunity to return to work at that time (Employer's Brief, p. 6, n. 4). The record does not support that contention. No discussion of the October 8th incident is found at the citation given by Employer to Volume I of the transcript (I:21-22), while the reference to Volume II (II:120) indicates that the picketing workers were unable even to cross the field due to the presence of policemen. Rather, the record demonstrate that the Employer instead had sent its bus to El Centro and transported approximately 30 workers from that site to work in its field (I:24; II:124).

As discussed in Katz, Fleetwood, and Great Dane, supra, the Employer's unilateral change in a practice that had existed for the previous 8 to 9 years without even advising the Union is an interference with the employees' right to organize collectively and a refusal to bargain in good faith over a mandatory subject of bargaining.

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IV. CONCLUSIONS OF LAW

Based on the foregoing, I make the following conclusions of law:

1. Colace Brothers, Inc., is a California, corporation engaged in agriculture and *is* an agricultural employer within the meaning of Section 1140.4(c) of the Act.

2. United Farm Workers of America, AFL-CIO, is a labor organization within the meaning of Section 1140.4(f) of the Act.

3. The Employer engaged in unfair labor practices within the meaning of Sections 1153(a), 1153(c), and 1153(e) of the Act.

4. The unfair labor practices affected agriculture within the meaning of Section 1140.4(a) of the Act.

REMEDY

Having found that the Employer has engaged in certain unfair labor practices within the meaning of Sections 1153 (a)., 1153(c), and 1153(e) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

In Case No. 79-CE-147-EC, twelve employees were named in paragraph 5 of the Complaint (General Counsel Exhibit 1-E) whom Employer allegedly refused to recall to their jobs because of their Union activities. However, Employer offered evidence that five of the employees either worked during the melon season or were offered work. The five individuals are Guillermo Gomez, Jose Luis Haro, Luis Montero, Manuel Urena, and Raoul Pachecho (II:170-89). That evidence was uncontroverted, and I find no violation as to these five individuals.

With respect to the following seven remaining individuals, I find that the Employer did refuse to recall them to their jobs for the melon harvest because of their Union activities:

1. Refugion Acosta
2. Francisco Paz
3. Santiago Jauregui
4. Luciano Perea
5. Crecenciono Castellon

6. Arnulfo Moreno
7. Merced Romero

Accordingly, upon the basis of the entire record and of the Findings of Fact and Conclusions of Law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommendation:

ORDER

Respondent, its officers, agents, and representatives sh all:

1. Cease and desist from:

(a) Failing or refusing to hire or rehire any employee or otherwise discriminating against any employee in regard to hire, rehire, or tenure of employment or any other term or condition of employment because of any employee's membership in or activities on behalf of United Farm Workers of America, AFL-CIO, or any other labor organization.

(b) In any other manner interfering with, restraining or coercing employees in the exercise of their Section 1152 rights.

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

(a) Offer Refugio Acosta, Francisco Paz, Santiago Jauregui, Luciano Perea, Crecenciono Castellon, Arnulfo Moreno, and Merced Romero immediate and full reinstatement to their former jobs, or a comparable position, without prejudice to seniority or other rights and privileges.

(b) Make whole Refugio Acosta, Francisco Paz, Santiago Jauregui, Luciano Perea, Crecenciono Castellon, Arnulfo Moreno, and Merced Romero for any loss of earnings and other economic losses, plus interest thereon at a rate of 7 percent per annum, they have suffered as a result of Respondent's refusal to rehire them in June, 1979.

(c) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due under this Order.

(d) Sign the attached Notice to Employees and post copies of it at conspicuous places on its property for a period

of 60 days, the times and places of posting to be determined by the Regional Director. Copies of the Notice, after translation by the Regional Director into appropriate languages, shall be furnished by Respondent in sufficient numbers for the purposes described herein. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(e) Hand out copies of the attached Notice, in appropriate languages, to all current employees.

(f) Mail copies of the attached Notice in all appropriate languages, within 31 days after the date of issuance of this Order, to all employees who were recalled to work for for the 1979 melon harvest.

(g) Arrange for a representative of Respondent or a Board agent to 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.

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

DATED: March 12, 1980.

AGRICULTURAL LABOR RELATIONS BOARD

By _____
WILLIAM A. RESNECK
Administrative Law Officer

NOTICE TO EMPLOYEES

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

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

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

1. To organize themselves;

2. To form, join, or help unions;

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

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

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

Because this is true, we promise that:

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

Especially:

WE WILL NOT fail or refuse to hire or rehire any person, or otherwise discriminate against any employee in regard to his or her employment, because of his or her membership in or activities on behalf of the UFW or any other labor organization, or because of any other concerted activity by employees for their mutual aid or protection.

WE WILL pay Refugio Acosta, Francisco Paz, Santiago Jauregui, Luciano Perea, Crecenciono Castellon, Arnulfo Moreno, and Merced Romero any money they may have lost because we did not rehire them in 1979 for the melon harvest season.

Dated: COLACE BROTHERS, 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.