

Salinas, California

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	Case No. 79-CL-7-SAL
	)	
Respondent,	)	
	)	
and	)	6 ALRB No. 63
	)	
	)	
SALINAS POLICE DEPARTMENT,	)	
WILLIAM S. NELSON, LT.,	)	
	)	
Charging Party.	)	
	)	

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DECISION AND ORDER

On November 29, 1979, Administrative Law Officer (ALO) Sanford Rosen issued the attached Decision in this proceeding. Thereafter, Respondent United Farm Workers of America (UFW) timely filed exceptions and a supporting brief and the General Counsel filed a reply brief.<sup>1/</sup>

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

The complaint alleged that the UFW, then on strike against the Bruce Church Company, violated section 1154(a)(1) of the Act by

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<sup>1/</sup>The General Counsel requested and was granted leave to file a supplemental brief concerning the significance of the United States Supreme Court's decision in *Carey v. Brown*, 48 U.S. Law Week 4756 (June 20, 1980), a case which involves residential picketing. Respondent submitted a brief in opposition to the position taken by the General Counsel. We are disregarding the exhibits attached to the General Counsel's supplemental brief, as they were not offered or received into evidence at the hearing.

picketing the residences of nonstriking employees of Bruce Church, Inc., an agricultural employer, and was amended at hearing to include allegations of UFW threats to the personal safety and property of agricultural employees. The General Counsel requests that we remedy the violation by placing restrictions on future residential picketing by the UFW. The ALO concluded that the UFW violated section 1154 (a) (1) and recommends that the Board establish certain restrictions as to the manner in which future residential picketing may be carried out. The UFW denies that it violated the Act in any respect.

Facts

This case involves three separate incidents of residential picketing in March, 1979, at two homes in Salinas. The UFW stipulated that the pickets in all three incidents were its agents.

On the morning of March 28, 1979, between 7:00 and 7:30 a.m., 20 or more pickets arrived at the home (a single-family residence) of Mrs. Placida Garcia and her five children. Yelling and carrying UFW flags, the pickets marched along the sidewalk in front of the house and also stood or walked atop the retaining wall which separates the front yard from the public sidewalk. The pickets shouted offensive and opprobrious epithets<sup>2/</sup> at Mrs. Garcia, and one of them threatened that if she did not stop working for Bruce Church,

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<sup>2/</sup>Among other things, the pickets called Mrs. Garcia a "witch", "rat", "whore", "adulteress", "dog", and "old lady in heat".

Inc., something might happen to her 16-year-old daughter.<sup>3/</sup>

Mrs. Garcia testified that she felt frightened and nervous and that her daughter appeared to be frightened and did not want to go to school. Her eighteen-year-old son testified that he started to go to school, but returned to the house because of concern for his mother's safety. He further testified that his mother was crying during the picketing and that his family had called the police in response to the picketing.

Also on the morning of March 28, 1979, at about 9:00 a.m., 22 or more pickets arrived at the residence of Mr. Juan Serrato Ortiz, an irrigator employed by Bruce Church, Inc. From the sidewalk in front of the single-family house, where Ortiz lived with his wife and seven children, the pickets shouted at the occupants, calling them "traitors", "cheap scabs", and "animals". Mr. Serrato testified that the pickets shouted threats that if he did not come out they would "break cars"<sup>4/</sup> and also threatened that if the people inside did not stop working for Bruce Church, Inc., "this house will be in mourning". The pickets departed at one point that morning but

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<sup>3/</sup>In his testimony, UFW picket captain Baldemar Espinoza admitted, "I told her to come on out, otherwise I'm going to take your daughter and make her a Chavista. And I said when we have children, they will be Chavistas." Mrs. Garcia subsequently told the pickets she would stop working. She stayed away from work at Bruce Church, Inc., for about a month and then went to work in the kitchen, rather than in the fields.

<sup>4/</sup>The ALO found that cars parked in front of the house belonged to members of the Serrato family, as UFW picket captain Espinoza had assumed.

returned in even greater numbers<sup>5/</sup> about 10 minutes later and repeated their threats to "break cars".

Although Mr. Serrato did not leave his house to speak to the pickets because he feared a physical confrontation, his 19-year-old son, Ruben, did leave the house upon the return of the pickets. After some conversation with them, Ruben told them that he would stop working for Bruce Church, Inc. The pickets expressed their satisfaction and left the area shortly thereafter.

We affirm the ALO's conclusion that the UFW violated section 1154(a)(1) by picketing employees' residences in large numbers, chanting and yelling loudly enough to be heard by the residents from inside their homes, addressing obscene, abusive, and contemptuous epithets at the residents, and threatening the life, property and physical safety of the residents. In the residential setting where it occurred, such conduct clearly tended to coerce and restrain the targeted workers in the exercise of their right under section 1152 to refrain from supporting or engaging in union or concerted activity. See United Farm Workers of America, AFL-CIO (Marcel Jojola) (October 24, 1980) 6 ALRB No. 58.

#### Remedy

Our remedial Order herein will provide for a cease-and-desist order together with posting and mailing of a Notice to Employees. In addition, we shall order Respondent to submit a written apology to all of the residents of the picketed homes.

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<sup>5/</sup> Explaining the reason for the increased number of pickets, Espinoza testified, "It could have been because the more [pickets], the better it is."

The ALO recommended that this Board establish time, place, and manner limitations on future residential picketing and restrictions as to the number of picketers which would be permissible at or near the homes of agricultural employees. We reject this proposal.<sup>6/</sup> Should any cases involving residential picketing come before us in the future, we shall review such matters on a case-by-case basis to determine whether the alleged conduct tended to coerce or restrain agricultural employees in the exercise of rights guaranteed by section 1152 of the Act, taking into account all the facts of each particular case.<sup>7/</sup>

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, United Farm Workers of America, AFL-CIO (UFW), its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Restraining or coercing agricultural employees in the exercise of their right to join or engage in, or to refrain from

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<sup>6/</sup>Member McCarthy rejects the ALO's proposal because, as stated in his concurring opinion in United Farm Workers of America, AFL-CIO (Marcel Jojola), *supra*, p. 28, Member McCarthy believes that picketing and/or demonstrating at the homes of agricultural employees has an inherent tendency to coerce employees and therefore should be subject to a rebuttable presumption of illegality.

Member Perry rejects the ALO's proposal because he believes that it is the responsibility of the Legislature or the courts, and not of this Board, to determine the limits, if any, within which picketing and/or demonstrating at employees' homes would be legally permissible.

<sup>7/</sup>Member Ruiz agrees to the remedy for the reasons given in his concurring opinion in United Farm Workers of America, AFL-CIO (Marcel Jojola), *supra*, p. 10.

joining or engaging in, any strike or other union or concerted activity, by means of picketing, demonstrations, threats, abusive language, insults, or other like or related conduct at or near the home or residence of any agricultural employee.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed by Labor Code section 1152.

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

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

(b) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places at all its offices, union halls and strike headquarters throughout the state, the period and places of posting 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.

(c) Mail copies of the attached Notice, in all appropriate languages within 30 days after the date of issuance of this Order, to members of the Garcia family and the Serrato family.

(d) Print the attached Notice, in all appropriate languages, in any and all news letters and other publications which it publishes and distributes to its members during the period from one month to six months following the date of issuance of this Order.

(e) Mail a written apology signed by an official representative of Respondent, to the residents of the Garcia and Serrato homes and provide a copy thereof to the Regional Director,

(f) Notify the Regional Director of the Salinas Region, in writing, within 30 days after the date of issuance of this Order, of the steps it has taken to comply herewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: December 24, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member.

NOTICE TO EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by threatening and unlawfully picketing certain Bruce Church employees at their homes on March 28, 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:.

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

1. To organize yourselves.
2. To form, join, or help unions.
3. To vote in a secret ballot election to decide whether you want a union to represent you ;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to try to get a contract or to help or protect one another.
6. To decide not to do any of these things.

WE WILL NOT restrain or coerce you in the exercise of your right to join or engage in, or-to refrain from joining or engaging in, any strike or other concerted activity, by means of picketing, demonstrations, threats, abusive language, insults, or other like or related conduct at or near your homes or residences.

SPECIFICALLY, the Board found that we threatened and coerced certain employees of the Bruce Church Company when we picketed their homes. The Board found that we picketed the homes of those employees because they and members of their families would not join our strike or stop working for a struck employer. We promise that we will not threaten or coerce any employees because of their choice or decision not to participate in union activity.

If you have any question about your rights as farmworkers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3161.

Dated:

UNITED FARM WORKERS  
OF AMERICA, AFL-CIO

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

United Farm Workers  
of America, AFL-CIO  
(Salinas Police Department,  
William S. Nelson, Lt.)

6 ALRB No. 63  
Case No. 79-CL-7-SAL

ALO DECISION

The ALO concluded that the UFW violated section 1154(a)(1) by its conduct during the picketing of the residences of nonstriking employees of the Bruce Church Company. Three separate incidents of residential picketing were involved. In one instance, 20 or more pickets began demonstrating at about 700 a.m. in front of the home of a woman and her five children. Their conduct included carrying banners and marching along the sidewalk and on a retaining wall in front of the house, shouting offensive epithets at the occupants, and threatening to harm the woman's daughter. The pickets left after securing the woman's promise that she would stop working for the struck employer.

In another instance, 20 or more pickets arrived at the residence of a nonstriking worker and his family and shouted threats and offensive epithets at the occupants. The pickets departed at one point, but returned in even greater numbers about 10 minutes later and resumed their demonstrating. The pickets left after the homeowner's son promised that he would stop working for the struck employer.

The ALO concluded that the foregoing acts and conduct constituted unlawful restraint and Coercion under the ALRA but held that peaceful residential picketing is not proscribed by the Act. He recommended that the Board establish certain time, place and manner limitations on residential picketing.

BOARD DECISION

The Board affirmed the ALO's conclusion that the UFW violated section 1154(a)(1) by picketing employees' residences in large numbers, chanting and yelling loudly enough to be heard by the residents from inside their homes, addressing obscene, abusive and contemptuous epithets at the residents, and threatening the life, property and physical safety of the residents. The Board held that such conduct clearly tended to coerce and restrain the targeted workers in the exercise of their rights under section 1152 to refrain from supporting or engaging in a strike or other union or concerted activity.

The Board rejected the ALO's recommendation to establish time, place, and manner limitations on any future residential picketing, stating that it intends to rely on a case-by-case approach in any future residential picketing cases.

BOARD ORDER

The remedial order provided for a cease-and-desist order together with posting and mailing of a Notice to Employees. In addition, Respondent was ordered to submit a written apology to all the residents of the picketed homes.

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

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
 )  
 UNITED FARM WORKERS OF AMERICA, )  
 AFL-CIO, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 SALINAS POLICE DEPARTMENT, )  
 WILLIAM S. NELSON, LT., )  
 )  
 Charging Party, )  
 )  
 and )  
 )  
 AGRICULTURAL LABOR RELATIONS )  
 BOARD, )  
 )  
 Petitioner, )  
 )  
 and )  
 )  
 CITY OF SALINAS, )  
 )  
 Intervenor for )  
 Charging Party. )  
 )



Case No. 79-CL-7-SAL

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William G. Hoerger  
 of Salinas, California,  
 for the General Counsel

Karen L. Daniel  
 of Salinas, California,  
 for the Respondent

David M. Kennedy  
 of Salinas, California,  
 for the Charging Party  
 and the Intervenor

DECISION

I. Statement of the Case

SANFORD JAY ROSEN, Administrative Law Officer;

The Notice of Hearing and Complaint in this case issued on May 17, 1979. (GC Ex. 1-B.) The Respondent answered on May 29, 1979. (GC Ex. 1-D.) Pursuant to a Motion of that date, the Complaint was amended on July 17, 1979. (GC Ex. 1-E.)

The Amended Complaint alleges violations of Sections 1154 (a)(1) and 1140.4(a) of the Agricultural Labor Relations Act (hereinafter the "Act"), by the United Farm Workers Union, AFL-CIO, in conducting certain residential picketing. The Amended Complaint is based upon a charge filed on March 30, 1979. (GC Ex. 1-A.)

This case was heard before me on July 17 and July 23, 1979.

At the hearing on July 17, 1979, the City of Salinas' Motion to Intervene on behalf of the Charging Party was granted without objection. (Tr. 1:21 to 2:10 July 17, 1979.) All percipient witnesses were sequestered, without objection. (Tr. 2:11-17 July 17, 1979.) The General Counsel's Motion to Amend the Complaint was granted, over the Respondent UFW's objection, but with provision made for such continuances as might prove necessary to enable the Respondent UFW to present additional evidence. (Tr. 2:18 to 7:19 July 17, 1979.) The Respondent UFW thereupon withdrew its preferred motion to amend its answer and to set aside the hearing. (Tr. 2:20-22; 7:22 to 8:18 July 17, 1979.)

Live testimony was presented by five witnesses at the hearing on July 17 and July 23, 1979: (1) Mrs. Placida Garcia, (2) Jose G. Ortiz, (3) Juan Serrato, (4) Valdemar Espinoza, and (5) Salinas Police Officer Ugale (who essentially re-confirmed Jt.Ex. 1, his March 28, 1979 police Incident Report). In

addition to the pleading file (GC Ex.1) and Officer Ugale's March 28, 1979 Incident Report (Jt.Ex.1), two other exhibits were admitted in evidence at the hearing: Color photographs of the picketed residential premises, 543 East Market Street, Salinas, and 7 Florence Place, Salinas (GC Ex.2 and 3). In addition, at the hearing, the parties entered into several stipulations.

All parties were given full opportunity to participate in the hearing, and, after the close thereof, the General Counsel, the Respondent and the Charging Party-Intervenor each filed a brief and additional authorities, and the attorney for the General Counsel submitted a Declaration under Penalty of Perjury. The additional authorities included several unreported Superior Court opinions concerning residential picketing, to which the Respondent UFW objected by a letter dated September 27, 1979.

Based upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs and materials filed by the parties, I make the following findings of fact, conclusions of law and recommended order:

## II. Admitted and Stipulated Facts

By their answer, the Respondent UFW has admitted the following facts:

(1) Respondent UFW is now and at all times material to the Complaint has been a labor organization within the meaning of Labor Code Section 1140.4(f), doing business in Monterey County, California;

(2) Bruch Church, Inc., is now and at all times material to the Complaint has been an agricultural employer within the meaning of Labor Code Section 1140.4(c), doing business in Monterey County, California; and

(3) At all times material to the Complaint, a labor dispute existed between the Respondent UFW and Bruce Church, Inc.

(See GC Ex. 1-B and 1-D.)

At the Hearing, the following six stipulations were orally read into the record, and assented to by all parties:

[1] At all times material herein, respondent United Farm Workers of America, AFL-CIO, has been the certified bargaining agent of Bruce Church, Inc. within the meaning of Labor Code Sections 1156 and 1156.3.

(Tr. 1:27 to 2:2. July 23, 1979.)

[2] On the morning of Wednesday, March 28, 1979, United Farm Worker members went to 543 East Market Street, Salinas, and to ..#7 Florence Place, Salinas.

[3] The group went to the two residences pursuant to direction by the United Farm Workers of America, AFL-CIO.

[4] Some members of the United Farm Workers group carried red and white UFW flags but none carried any signs or placards.

[5] No personal physical violence or property damage occurred while the group was at either of the two residences on March 28.

[6] The attached report of Officer Ugale [Jt.Ex. 1] is a true and accurate description of the events on March 28 as Officer Ugale perceived them.

(Tr. 9:24 to 11:8. July 17, 1979.)

### III. Findings As to the Credibility of Witnesses

With respect to the historic facts at issue in the instant proceedings, relatively little was contested among the parties or their witnesses. With a few material exceptions, whatever

disagreements existed among the parties consisted of disputes with respect to nuances and implications, as well as the inferences that persons on the scene could and should have drawn from particular actions and utterances by other persons on the scene.

In resolving any factual disputes in this case the credibility of the witnesses has been very important. Based upon their demeanor, as well as my assessment of the consistency and believability of each witness's testimony, I find that the testimony of some of the witnesses was much more credible than that of others.

First, based both upon the parties' stipulation and my observation of him on the stand, I find that Officer Ugale was a highly credible witness and that both his live testimony and his March 28, 1979, Incident Report (Jt.Ex. 1) were accurate.

Second, I find that the testimony of Mrs. Garcia and of her son Mr. Ortiz, witnesses for the General Counsel, was credible and accurate.

Third, I find that the testimony of Mr. Serrato, another witness for the General Counsel, was not as accurate or credible as the testimony of the previously-described witnesses. Mr. Serrato had some difficulty properly relating date and time sequences, and did not seem to comprehend some questions or remember some events sharply. However, based upon my assessment of his demeanor and his testimony, I find that his testimony was a true and accurate statement of what he saw, heard and could remember, faulted only by failings of memory or perception that are obvious in his testimony itself.

Fourth, on the other hand, I find that Mr. Espinoza, the Respondent UFW's witness, was not a reliable witness. Not only was his demeanor consistently bad, but his answers were frequently unresponsive, argumentative, inflammatory and impertinent. I found it necessary to grant numerous motions to strike during Mr. Espinoza's testimony, and had to admonish him to be responsive. In general, he was condescending toward the persons he picketed, the hearing proceedings and the participants at the hearing. On one occasion, he responded to an unprovocative question by the attorney for the General Counsel: "a mi no me importa" (that's not important to me). (Tr. 25:10-23. July 23, 1979.) On another occasion, he responded to another unprovocative question by the attorney for the General Counsel, "it's none of your business" (Tr. 32:20 to 33:3. July 23, 1979), even after relevancy objections were overruled. In addition, a number of Mr. Espinoza's factual statements were conflicting and demonstrably false, including, for example, his statements of the time at which he and the other pickets arrived at the residence at 543 East Market Street, Salinas. On other occasions, he could not "remember" whether certain utterances were made or actions taken, or he gave evasive answers. In view of the foregoing, especially where Mr. Espinoza's testimony conflicted with other evidence, I find that his testimony must be discounted considerably.

#### IV. Findings of Contested Fact

##### Picketing at the Garcia Residence

On March 28, 1979, Mrs. Garcia resided at 543 East Market Street, Salinas, a single-family house, with her six children.

Five of the children were at home with her that morning.

Mrs. Garcia was 55 years of age at the time. The five children who were at home on the morning of March 28th ranged in age from 16 to 23. Two of these children, Jose Ortiz and Petra, were 18 and 16 years old respectively; both of them were attending public school.

As of March 28th, Mrs. Garcia had been employed by Bruce Church, Inc., for 13 years, working as a field laborer. She was not participating in Respondent UFW's strike.

Sometime between 7:00 and 7:30 A.M. on March 28th, Mrs. Garcia was aroused from her bed by the noise of people in front of her house. She was not working that day because of rain.

Mrs. Garcia joined her children in the living room where, looking through a window, they observed a group of pickets on the sidewalk in front of the house. The pickets numbered 20 or more, and had two picket captains, one of whom was Mr. Espinoza.

The pickets were marching back and forth mostly on the sidewalk in front of Mrs. Garcia's house; some of them were carrying flags. On occasion, some pickets stood on top of a concrete retaining wall that rose above the public sidewalk and separates it from the front lawn.

The pickets were yelling or screaming at the occupants of the house, loud enough for the occupants to hear distinctive words and loud enough for the pickets to be heard in neighboring houses. Spanish was used by all participants in the events at issue in this case.



The pickets invited the occupants out of the house to talk with them, and asked that they stop work at Bruce Church, Inc. They also yelled many "offensive" or "bad" and "profane" words at the occupants of the house.

Mrs. Garcia would not repeat the most offensive or profane of these words because of her religious faith. However, she stated that the pickets called her a "witch", a "rat" and an "adultrous".

Also because of his religious faith, Mrs. Garcia's son, Jose Ortiz, testified only to some but not all of the offensive and profane words he heard.

In English, he stated that Mrs. Garcia was called "stupid", "Whore" and "prostitute". In Spanish, he testified that she was called "son of a bitch" (la Chingada), "dog" (perra) and "old lady [bitch] in heat" (Vieja Caliente).

Both Mrs. Garcia and her son, Mr. Ortiz, testified that the pickets stated threats that something unspecified would happen to Mrs. Garcia's daughter, Petra, if Mrs. Garcia did not comply with their requests to support the strike. The Respondent UFW's witness, Mr. Espinoza, admits that "I told her to come on out, otherwise I'm going to take your daughter and make her a Chavista. And I said when we have children, they will be Chavistas." (Tr. 12:16-18, 26:4-7. July 23, 1979.)

Mrs. Garcia became very frightened and nervous because of the picketing, the number of pickets and their shouts, threats and profanities.

While in her house she began to cry. Her two younger children started out of house but returned and did not go to school, out of concern that they should not leave their mother alone at home.

After the pickets had been at the house for a while, two of the older sons, one after another, went out of the house and spoke briefly with the pickets.

Mrs. Garcia did not want to leave the house while the pickets were there. However, after she had been invited out of the house numerous times, Mrs. Garcia accompanied by some of her sons did leave the house and speak with the pickets. She wanted to explain why she had to work, and felt the pickets would not leave until she came out.

The police had first come to the house at about 7:45 A.M., observed the scene and left. They returned at about 8:20 A.M., shortly after Mrs. Garcia left the house to speak with the pickets. They had been called twice by members of Mrs. Garcia's household. (See Jt. Ex. 1.)

When the police were present, the pickets calmed down, did not yell and shout, and used no more profanity. Two or three pickets were standing on the concrete retaining wall, or embankment, when the police arrived, and came down while the police were present.

When she approached the pickets, they all attempted to gather around her and several attempted to talk with her. The pickets told her she should stop working for Bruce Church, Inc., and support their strike effort.

Mrs. Garcia spent approximately one-half an hour with the pickets. After the statement or threat about her daughter, she told the pickets that she would stop work. The pickets then left.

Mrs. Garcia stopped working for more or less a month. She returned to work in the kitchen at Bruce Church, Inc., rather than the fields.

Mrs. Garcia testified that she had never been picketed before, and did not want the pickets to return. She found the great number of pickets (20 or more) especially frightening and might not be so disturbed if there were only two pickets.

#### Picketing at the Serrato Residence

On March 28, 1979, Mr. Juan Serrato resided with his family at 7 Florence Place, a single-family residence in Salinas. Mr. Serrato was then employed by Bruce Church, Inc., as an irrigator, and had worked for the company for approximately fifteen years. Other family members residing with him included his wife and seven children. Three of the children were adults, aged 21 to 24 who were also employed at Bruce Church, Inc.

On March 28th, Mr. Serrato did not go to work because of the rain. At about 9:00 A.M., from his bedroom he heard hollering at the front of his house. Mr. Serrato proceeded to the front rooms of the house, from which he could view pickets on the sidewalk in front of the house. Many of these pickets were the same persons who were at the Garcia residence; and Mr. Espinoza again was a picket captain.

From inside the house, Mr. Serrato could hear pickets calling to persons in the house to come out or the pickets would "break cars". Several cars parked in front of the house belonged to members of the Serrato family, as the UFW picket captain, Mr. Espinoza so assumed.

Mr. Serrato also heard pickets yell at the people in the house that they were "traitors", "cheap scabs" and "animals". He also heard "threats" that "this house will be in mourning" if the people in it did not stop working for Bruce Church, Inc. Notably, the UFW picket captain, Mr. Espinoza denied neither the threats nor the offensive words; he merely testified that he did not remember hearing threats or offensive language.

Mr. Serrato was not certain as to the exact number of pickets; he testified once that there were twenty-five to thirty pickets in front of the house when he first looked outside and another time testified that at first there were about fifteen pickets. According to Officer Ugale's report, approximately twenty-two pickets were present at Mr. Serrato's house on their first visit to the house. (Jt. Ex. 1.)

Mr. Serrato testified however, that the pickets came to his house twice on March 28th, leaving for about ten minutes and returning in larger numbers (more than twenty) on the second occasion. The UFW's picket captain, Mr. Espinoza admitted that more people may have joined the pickets on their second visit: "it could have been because the more the better it is." Hence I find that a larger number of pickets returned to the house on their second visit. Moreover, on their second visit,

the pickets repeated their threat that cars would be "broken" if the people in the house did not come outside.

On the pickets' second visit to the Serrato house, Mr. Serrato's nineteen-year-old son, Ruben, went outside to speak with them. Mr. Serrato overheard the conversation. After speaking with the pickets a while, Ruben agreed to stop working for Bruce Church, Inc. The pickets expressed their pleasure and soon left.

According to Mr. Serrato, he did not himself go out of the house to confront the pickets because he was concerned that he might be provoked into picking a fight with them or they might hit him. He also testified that the pickets' threats and the offensive words they shouted at the people in the house caused him to worry, especially because "I had never seen anybody picket a home and I have been here for many years. And other companies go out on strike and I never saw any house being picketed." He also testified that he was aware of other people's cars being "broken" and that "the family was kind of scared because there are people that would carry out things like that." Finally, in response to questioning by the General Counsel, he agreed that the pickets' return in greater numbers on their second visit caused him more worry and concern.

The police visited the Serrato house both times the pickets came to the house. They were not called by persons in the Serrato house, but presumably by neighbors. The pickets calmed down

somewhat when the police were present. However, at least one picket leader refused to identify himself to the police.

#### V. Findings and Conclusions

##### Residential Picketing Does Not Per Se Constitute an Unfair Labor Practice Under Labor Code Section 1154(a)(1)

To a certain extent the per se legality of residential picketing can still be argued as a matter of federal constitutional and labor law. See Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971); Gregory v. City of Chicago, 394 U.S. 111 (1969); Cf. Old Dominican Branch No. 496, National Association of Letter Carriers, AFL-CIO v. Austin, 418 U.S. 264 (1974); Lim v. Plant Guard Workers Local 114, 383 U.S. 53 (1966). And it probably would not be lawful-for the State of California to enact a statute prohibiting most residential picketing but excepting from the prohibition such picketing when related to labor disputes. Brown v. Scott, \_\_\_\_ F. 2d \_\_\_\_ (7th Cir. No. 78-2432, August 2, 1979); Pace v. Doorley, 468 F. 2d 1143 (1st Cir. 1972); see, e.g., Police Department v. Mosley, 408 U.S. 92 (1972) Grayned v. City of Rockford, 408 U.S. 104 (1972).

Clearly, however, under more recent federal court decisions, residential picketing can be declared per se illegal across the board. Garcia v. Gray, 507 F. 2d 539 (1974), cert. denied, 421 U.S. 971 (1975). It also constitutes an unfair labor practice under the National Labor Relations Act. United Mechanics' Union Local 150-F Fur, Leather and Machine Workers, 151 NLRB 386 (1965). And, in

light of the most recent emanations from the Supreme Court of the United States on the subject of labor and other picketing involving privacy interests, I cannot anticipate that federal labor and constitutional law will soon be adjusted to protect residential picketing in a labor dispute context, or that Fur Workers will soon be overruled by the NLRB. See, e.g., Hudgens v. NLRB, 424 U.S. 507 (1976); Lloyd Corp. v. Tanner, 407 U.S. 551 (1972); Central Hardware Co. v. NLRB, 407 U.S. 539 (1972).

The situation is different, however, under California law. For, in recent years, the Supreme Court of California has consistently parted company with the Supreme Court of the United States in striking the balance between free speech and privacy interests in the picketing context. Moreover, California statutory law, especially in the context of agricultural labor relations, mandates a different approach to residential picketing than can be gleaned from the federal precedents.

First, as a matter of California constitutional law, as opposed to federal constitutional law, the California Supreme Court has sustained freedom of speech and petition generally in privately-owned shopping centers. Robins v. Pruneyard Shopping Center, 23 Cal.3d 899, 153 Cal.Rptr. 854, 592 P.2d 341, certiorari granted \_\_ U.S. \_\_, 48 L.W. 3319 (No. 79-289, November 13, 1979).

Second, again by contrast to the rulings of the Supreme Court of the United States, the California Supreme Court has consistently provided constitutional and statutory protection to labor dispute picketing that takes place on the premises of

privately-owned shopping centers. See Diamond v. Bland, 11 Cal.3d 331, 334 n.3, 113 Cal.Rptr. 468, 521 P.2d 460 (1974); In re Lane, 71 Cal.2d 872, 79 Cal.Rptr. 729, 457P.2d 561 (1969); Schwartz-Torrance Investment Corp. v. Bakery and Confectionery Workers' Union, 61 Cal.2d 766, 40 Cal.Rptr. 233, 394 P.2d 921 (1964); see also Annenberg v. South California District Council of Laborers, 38 Cal.App.3d 637, 113 Cal.Rptr. 519 (1974) (where the Court of Appeal sustained the right to picket at a residence that is also the place of employment).

Significantly, in its most recent decision on this subject, the California Supreme Court comprehensively surveyed both federal and California precedents and statutes and held that California Code of Civil Procedure § 527.3 insulated peaceful picketing, on a privately-owned sidewalk surrounding plaintiff's department store, from State court injunction. Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, 25 Cal.3d 317, 158 Cal.Rptr. 370, \_\_\_P.2d\_\_\_ (1979).<sup>1/</sup> In its careful analysis, the California Supreme Court made it clear that the balance of privacy and freedom of expression interests, in the context of labor dispute picketing, will be struck in California on the side of freedom of expression. See also the series of cases in which the Supreme Court struck down injunctions against agricultural

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1/ CCP § 527.3 divests state courts of equity jurisdiction over labor "picketing or other mutual aid or protection" except in limited circumstances.



labor union picketing. United Farm Workers of America, AFL-CIO v. Superior Court (California Retail Liquor Distributors Institute), 16 Cal. 3d 499, 128 Cal. Rptr. 209, 546 P. 2d 713 (1976); United Farm Workers of America, AFL-CIO v. Superior Court (William Buak Fruit Co.,) 14 Cal. 3d 902, 122 Cal. Rptr. 877, 537 P. 2d 1237 (1975).

Third, the California Legislature, the California Supreme Court and the ALRB have consistently recognized that the circumstances of agricultural labor make union organizing and strike activity especially difficult. Hence, in Agricultural Labor Relations Board v. Superior Court, 16 Cal. 3d 392, 128 Cal. Rptr. 183, 546 P. 2d 687, appeal dismissed 429 U.S. 802 (1976), the Supreme Court held that the Agricultural Labor Relations Act and ALRB regulations constitutionally authorized union access and organizing on a private employer's property. Such protected access includes access to workers at their homes, and the Act prohibits the employer from interfering with such access to the workers at their homes. Accord, e.g., Nagata Brothers Farms, 5 ALRB No. 39 (1979); Frank A. Lucich Co., Inc., 4 ALRB No. 89 (1978); George Lucas & Sons, 4 ALRB No. 86 (1978); Belridge Farms 4 ALRB No. 30 (1978); Vista Verde Farms, 3 ALRB No. 91 (1977); Security Farms, 3 ALRB No. 81 (1977); Sam Andrews Sons, 3 ALRB No. 45 (1977); Silver Creek Packing Co., 3 ALRB No. 13 (1977).

The same conditions that render it unduly difficult for a union to organize the agricultural work force unless the union

is given access to workers at the job site on the employer's property and at the workers' homes, also appear to render it unduly difficult for a union to communicate meaningfully with non-striking workers about a strike unless strikers can bring the picket line to the workers' residences. See, e.g., Declaration of William G. Hoerger attached to Post-Hearing Brief on Behalf of the General Counsel.

I am aware of the several recent Superior Court cases in which individual judges have observed that "residential picketing in itself presents elements of an intimidation and coercion." Agricultural Labor Relations Board v. United Farm Workers of America, AFL-CIO (Superior Court, County of Monterey, No. 75266, July 3, 1979). See Agricultural Labor Relations Board v. United Farm Workers of America, AFL-CIO (Superior Court, County of Imperial, No. 2228, April 18, 1979) (implied); Annenberg v. Southern California Council of Laborers, 38 Cal. App. 3d 637, 113 Cal. Rptr. 519 (1974) (dictum). However, all picketing presents "elements of intimidation and coercion." See, e.g., Pierce v. Stablemen's Union, 156 Cal. 70, 103 p. 324 (1909); Alkinson, T. S S.F. Ry. Co. v. Gee, 139 F. 582, 584 (C.C. Iowa 1905); Gevas v. Greek Restaurant Workers' Club, 99 N.J. Eq. 770, 783, 134 A. 309, 314 (1926); Cooper Co. v. Los Angeles Buildings Trades Council, 3 C.C.H. Lab, Cas. ¶ 60,235 at 728 (Cal. Super. Ct. 1941). But the law has come to recognize that the coercive elements of picketing can be controlled or tolerated in the interest of freedom of expression. Cf., e.g., NLRB v. Fruit & Veg. Packers & Warehousemen, Local 760, 377 U.S. 58 (1964). Certainly, it is not

necessary to prohibit all picketing at a particular kind of location, even a residence, in order to control intimidation and coercion. Protection of legitimate privacy and other interests can be accomplished through regulation and limitation that takes account of the picketing's location. Cf. ibid.

In view of the consistent thrust of the Agricultural Labor Relations Act, the anti-injunction provisions of the California Civil Practice Code, and the decisions of the California Supreme Court and the ALRB, I cannot conclude that residential picketing per se violates Labor Code Section 1154(a)(1).

Respondent's Conduct in This Case  
Violated Labor Code Section 1154(a)(1)

To decide whether picketing has violated Section 8(b)(1)(A) of the National Labor Relations Act, the National Labor Relations Board examines the entire context of a case to determine if the picketing unlawfully restrained or coerced employees in the exercise of their rights guaranteed under the Act. Local No. 1150, United Elec., Radio & Machine Workers, 84 NLRB 972, 977 (1949) . The number of pickets alone usually is not determinative. United Steelworkers of America, 137 NLRB 95, 98 (1962). Rather, the NLRB investigates whether the pickets actually barred non-striking employees from entering or leaving the struck plant (Ibid.), or whether the numbers of pickets taken together with threats of violence or other tactics tended to "chill the desire of employees to cross the picket line and come to work." United Mine Workers of America, 174 NLRB 344 (1969).

The same basic standards apply under the Agricultural Labor Relations Act. Hence, the appropriate test is "whether the

misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act." Western Conference of Teamsters (Zaninovich S Sons, Inc.), 3 ALRB No. 57 (1977) (emphasis added). See also, United Farm Workers of America, AFL-CIO (Kevin Keene Larson), 4 ALRB No. 42 (1978).

In numerous interlocking respects, the Respondent UFW's picketing in the instant case tended to coerce or restrain the targeted workers in the exercise of their statutory rights:

First, at least twenty pickets were active at each of the houses.

Second, the pickets were chanting and yelling so loudly that they could be heard by the residents from inside their homes, as well as by persons not inside the picketed homes.

Third, the pickets swore at the target residents, calling them "sons of bitches," and obscenities and epithets.

Fourth, the pickets yelled unmistakable threats to both the personal safety of their targets as well as threats to the security of those persons' property.

Fifth, some pickets unnecessarily left the public sidewalk and went and stayed upon portions of the private premises at one of the residences.

Sixth, the pickets were active at one residence for approximately two hours.

Seventh, the pickets left the second residence and quickly

returned to that residence in greater numbers.

Eighth, the picketing actually frightened and caused apprehension to targeted workers and other residents at the two homes; and out of fright Mrs. Garcia actually changed her position on the strike.

In the context of residential picketing, I find that the Respondent UFW's conduct constituted unlawful restraint and coercion under the Agricultural Labor Relations Act. Even though a residential neighborhood is not, in California, out-of-bounds for picketing as well as other expressive conduct, the residential setting does contribute to a determination of whether the particular picketing will tend to chill a nonstiker's free choice. Twenty pickets marching in front of the home of a worker necessarily implies a threat since the worker is greatly outnumbered by the pickets (see United Mine Workers of America, supra, 174 NLRB 344) and has no colleagues, supervisors or security guards available upon whom he can call for protection in case of trouble. The noise generated by twenty or more shouting pickets will be far more intrusive in an area where people are sleeping or relaxing than near a factory or lettuce field. Similarly, even relatively minor picket misconduct such as a minor encroachment on the private premises assumes greater dimensions at the worker's home than at his or her work place.

Under all the facts and circumstances of this case, therefore, I find and conclude that the Respondent UFW's residential picketing threatened, restrained and coerced agricultural workers in violation of Section 1154(a)(1) of the Agricultural Labor Relations Act.

## VI. The Remedy

Having concluded that peaceful residential picketing is not proscribed by the Agricultural Labor Relations Act, but that the Respondent UFW's picketing violated the Act in the instant case, I recommend that the Respondent be ordered to cease and desist from its unlawful acts and that the ALRB enter an order establishing reasonable time, place and manner limitations on residential picketing. To this end, I have adapted a number of proposals submitted by the General Counsel to produce a reasonable remedy in the context of the instant case.

It is difficult to justify any particular number of pickets. However, limiting residential pickets to six (6) has several advantages. It permits a union a meaningful presence as well as sufficient numbers to counter any attempts at coercion or intimidation that might be made by the non-striking worker, members of his or her family or other persons in his or her home at the time of the picketing. At the same time it substantially reduces the possibility that by sheer numbers the picketers will exert a coercive effect on the non-striking worker since it is unlikely that six peaceful picketers will make those present in the residence being picketed feel overwhelmingly outnumbered. Furthermore, it prevents the massing of excessive numbers of pickets in a residential neighborhood where sidewalks are likely to be narrow and where large numbers may be unduly obstructive. Compare, United Mechanics' Local 150-F, Fur, Leather & Machine Workers, supra, 151 NLRB 386. Similarly, limiting to two (2) the

number of pickets who may approach a non-striking worker's door helps prevent any impression of undue force that flows from large numbers. Restriction of picketing to the hours between 9:00 a.m. and one-half an hour before sunset ensures that a union's activity is aimed at communication rather than disruption. See In re Brown, 9 Cal.3d 612, 619, 621, 108 Cal.Rptr. 465, 510 P.2d 1017 (1973).

Prohibiting threats is consistent with ALRB and NLRB precedent. Western Conference of Teamsters, 3 ALRB No. 57 (1977) ; New Power Wire and Electric Corp. v. NLRB, 340 F.2d 71 (2d Cir. 1965). Prohibiting loud or raucous chanting, shouting or yelling as well as use of obscenities also is consistent with the relatively more-subdued behavior one is entitled to expect in a residential neighborhood. With, respect to regulation of loud or raucous sounds, compare Saia v. New York, 334 U.S. 558 (1948) with Kovacs v. Cooper, 336 U.S. 77 (1948). See Maldonado v. County of Monterey, 330 F.Supp. 1282 (N.D. Ca. 1971). Finally, I would require that private residential premises not be picketed if the pickets lack any reasonable basis for believing that non-striking workers in fact are present at the picketed residence. This limitation gives needed assurance that a residence will be picketed to communicate with the non-striking worker and not to intimidate him or her through a demonstration that he or she and his or her home, family and neighbors will have no peace unless the non-striker joins ranks with the strikers.

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in this case, I hereby issue the following recommended order:

ORDER

Respondent, United Farm Workers of America, AFL-CIO, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any manner threatening, restraining or coercing any individual employed by Bruce Church, Inc., in the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of his or her own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and in the right to refrain from any or 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 subdivision (c) of Section 1153.

(b) Picketing or demonstrating at the homes of employees of Bruce Church, Inc., or in any other like or related manner, restraining or coercing employees of said employer in the exercise of rights guaranteed in Section 1152 of the Act, except for residential picketing or demonstrations limited to:

(i) no more than six (6) pickets or demonstrators at any time,



- (ii) no more than two (2) persons ever approaching the door or entrance of the premises,
- (iii) no picketing or demonstrations other than between the hours of 9:00 a.m. and one-half hour before sunset,
- (iv) no use or expression of threats of any kind,
- (v) no use of loud or raucous chanting, shouting or yelling,
- (vi) no use of obscenities, and
- (vii) no picketing or demonstrations if the pickets lack any reasonable basis for believing that non-striking workers in fact are present at the picketed residence.

2. Take the following affirmative action:

- (a) Sign and post the attached Notice to Workers on bulletin boards in its offices throughout the State where other notices and information are available for its members. Such posting to continue for a period of six consecutive months during the twelve-month period following issuance of this decision or its enforcement if necessary. The respondent shall exercise due care to replace any notice which has been altered, defaced or removed.

- (b) Mail the attached signed Notice to Workers, translated into any languages deemed appropriate by the Regional Director in addition to Spanish and Tagalog, to all employees of Bruce Church, Inc., during the period of the strike in 1979. Such notice to be mailed to the last-known address of such workers,
- (c) Provide sufficient copies of the attached signed Notice to Workers in appropriate languages to Bruce Church, Inc., so that, if it consents, a copy may be distributed to its employees hired during the next peak season.
- (d) Designate a representative or representatives to read, or be present while a Board Agent reads, the attached signed Notice to Workers in appropriate languages to the assembled employees of Bruce Church, Inc., during the next peak season if the employer consents to such a reading on its property. The respondent to compensate the employer for labor costs incurred by it, if any, by the provision of such an opportunity to address the workers.
- (e) Preserve and make available to the Board or its Agent, upon request, for examination and copying all membership records or other records necessary to determine whether the respondent has complied

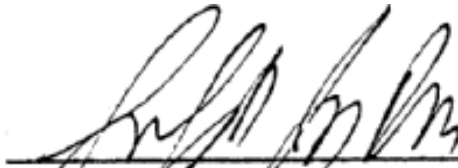
with this Decision and Order to the fullest extent possible.

- (f) Notify the Regional Director of the Salinas Regional Office within 20 days from receipt of a copy of this Decision and Order of steps the respondent has taken to comply therewith, and to continue reporting periodically thereafter until full compliance is achieved.

Dated: November 29, 1979.

AGRICULTURAL LABOR BOARD

By:

A handwritten signature in dark ink, appearing to read 'S. J. Rosen', is written over a horizontal line.

SANFORD JAY ROSEN  
Administrative Law Officer

NOTICE TO WORKERS OF BRUCE CHURCH, INC.

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we interfered with the rights of the workers at the company to decide for themselves whether or not to join the strike which we called at the company last year. The Board has told us to send out and post this Notice.

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

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

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

Because this is true we promise that:

WE WILL NOT FORCE you to join any strike we may call by threatening you or damaging your property or doing anything like that. You have the right not to participate in any strike we may call. But if you are a member of our union and work during a strike, we may discipline you, so long as it is done according to the law.

We will not conduct demonstrations or picketing at your residence except as limited to:

- (i) no more than six (6) pickets or demonstrators at any time,
- (ii) no more than two (2) persons ever approaching the door or entrance of the premises,
- (iii) no picketing or demonstrations other than between the hours of 9:00 a.m. and one-half hour before sunset,
- (iv) no use or expression of threats of any kind,
- (v) no use of loud or raucous chanting, shouting or yelling,
- (vi) no use of obscenities, and
- (vii) no picketing or demonstrations if the pickets lack any reasonable basis for believing that non-striking workers in fact are present at the picketed residence.

UNITED FARM WORKERS OF AMERICA, AFL-CIO

DATED: \_\_\_\_\_ By: \_\_\_\_\_

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