

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

FRUDDEN ENTERPRISES, INC.,)	
)	
Employer,)	Case Nos. 79-RC-18-SAL
)	79-PM-5-SAL
and)	
)	
UNITED FARM WORKERS)	7 ALRB No. 22
OF AMERICA, AFL-CIO,)	
Petitioner.)	
)	
_____)	

DECISION AND ORDER

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on August 27, 1979, a representation election was conducted on August 29 among the Employer's agricultural employees. The official Tally of Ballots showed the following results:

UFW	201
No Union.....	4
Challenged Ballots.....	10
Void Ballots.....	<u>1</u>
Total	216

The Employer timely filed post-election objections, two of which were set for hearing. In these objections, the Employer alleges that the UFW, through its agents, violated the access rule, 8 Cal. Admin. Code section 20900, and committed acts of physical and verbal violence. It is further alleged that these acts by the UFW created an atmosphere of fear and coercion which prevented employees from making a free choice as to bargaining representative.

The Employer also filed a timely Motion to Deny Access, based on the same violations of the access rule and acts of violence.

A hearing was held before Investigative Hearing Examiner (IHE) Deborah Warren in April 1980. In a decision issued on March 6, 1981, the IHE found that, although UFW organizers violated the access rule on the dates alleged, the violations and the incidents of violence that accompanied those violations were not of such character as would affect the outcome of the election. The IHE recommended that the Employer's objections be dismissed and the UFW be certified as the exclusive representative of the Employer's agricultural employees. The IHE further recommended that the Board grant the Employer's Motion to Deny Access and order sanctions against the UFW organizers involved.

The Employer and the Union each filed timely exceptions to the IHE Decision. The parties also filed briefs in support of their exceptions. The UFW filed a response fo the Employer's exceptions.

Pursuant to Labor Code section 1146, the Board has delegated its authority in this case to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the IHE's rulings, findings,^{1/} conclusions, and recommendations as modified herein.

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^{1/}We do not adopt the ALO's finding that the hand crews were unaffected by the access violations or acts of violence occurring among the machine workers. See M. Caratan, Inc. (March 12, 1980) 6 ALRB No. 14.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have been cast for the United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all agricultural employees of Frudden Enterprises, Inc. in the State of California for purposes of collective bargaining, as defined in Labor Code section 1155.2(a), concerning employee's wages, hours, and working conditions.

ORDER

The Agricultural Labor Relations Board hereby orders that UFW organizers Lopez and Ruiz are prohibited for sixty (60) consecutive days from taking access, pursuant to 8 Cal. Admin. Code section 20900, on the property of any agricultural employer located within the geographical jurisdiction of the Salinas Region, including Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma Counties. It is further ordered that UFW organizers Mendoza, Medina, and Banuelos are prohibited from taking access, pursuant to 8 Cal. Admin. Code section 20900, on the property of any agricultural employer located within the geographical jurisdiction of the Salinas Region for

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six (6) consecutive months. These periods will begin on the issuance date of this Order.

Dated: August 21, 1981

RONALD L. RUIZ, Acting Chairman

HERBERT A. PERRY, Member

JEROME R. WALDIE, Member

CASE SUMMARY

Frudden Enterprises, Inc. (UFW)

7 ALRB No. 22
Case No. 79-RC-18-SAL
79-PM-5-SAL

IHE DECISION

The IHE found that the UFW took access in numbers and at times that violated this agency's access rule, 8 Cal. Admin. Code section 20900. Moreover, during several of these access violations, UFW agents were violent and disruptive of Respondent's operations. The UFW's conduct, however, was not held to be sufficiently serious to create an atmosphere of fear and coercion that would interfere with employee free choice. The election objections were dismissed and the UFW certified as exclusive bargaining representative for Respondent's employees. However, the UFW organizers were barred from taking access, because of the violence and disruption, for periods of sixty days to six months.

BOARD DECISION

The Board adopted the IHE's rulings, findings, conclusions, and recommendations with one exception. The IHE found that Respondent had separate crews for hand picking and machine picking and that the hand pick crews were unaffected by the acts of disruption and violence among the machine pick crews. The Board did not rely on this finding in upholding the IHE Decision and election results.

* * *

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

* * *

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

FRUDDEN ENTERPRISES, INC.

Case No. 79-RC-18-SAI
79-PM-5-SAL

Employer,

and

UNITED FARM WORKERS OF AMERICA,

AFL-CIO,

Petitioner.

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STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
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FRUDDEN ENTERPRISES,) Case Nos. 79-RC-18-SAL
INC. ,) 79-PM-5-SAL
)
Employer,)
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and)
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UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
Petitioner.)
_____)

Howard Silver and Richard Quandt,
Dressler, Stoll, Quesenbery, Laws
and Barsamian, Attorneys for Employer.

Alicia Sanchez and Francis Fernandez,
Attorneys for Petitioner.



DECISION

STATEMENT OF THE CASE

DEBORAH WARREN, Investigative Hearing Examiner: This case was heard before me in King City, California, on April 15, 16, and 17, 1980. On August 27, 1979,^{1/} the United Farm Workers of America, AFL-CIO, (UFW), filed a petition for certification alleging the existence of strike conditions at Frudden Enterprises, Inc. (Employer). An expedited election was conducted

^{1/} Unless other specified, all dates are in 1979.

on August 29, 1979, pursuant to Labor Code section 1156.3(a).2/

The tally of ballots showed the following results:

UFW	201
No Union.	4
Challenged Ballots.	10
Void Ballots.	1
Total Ballots Cast.	216
Number of Names on Eligibility List	299

The employer filed timely objections to the election, pursuant to Labor Code section 1156.3(c). Pursuant to his authority under 8 Cal. Admin. Code section 20365(e) and (g), the executive secretary dismissed some of these objections and set others for hearing, by order dated December 20, 1979. Pursuant to the Board's ruling on the employer's Request for Review of Partial Dismissal of Election Objections, additional objections were set for hearing by order of the Board dated February 27, 1980.

On August 27, 1979, the employer filed a Motion to Deny Access pursuant to 8 Cal. Admin. Code section 20900(e)(5)(A). On September 6, 1979, the UFW filed a response to the employer's motion. In its order dated February 27, 1979, the Board directed that the Motion to Deny Access be consolidated for purposes of hearing with the employer's objections to the election.

Pursuant to the executive secretary's order dated

2/ Labor Code section 1156.3(a) provides in pertinent part as follows: "If at the time the election petition is filed a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a secret ballot election within 48 hours of the filing of such petition."

December 20, 1979, and the Board's order dated February 27, 1980, the following matters are before me:

1. Election Objections

Whether the UFW violated the access regulation^{3/} at times and places set forth in the above orders^{4/}, and if so, whether such conduct affected the outcome of the election; and whether the UFW committed physical and verbal violence at times and places set forth in the above orders^{5/}, and if so, whether such conduct affected the outcome of the election.

2. Motion to Deny Access

Whether organizers or agents of the UFW engaged in conduct at the times and places named in the employer's motion^{6/} which warrants the imposition of sanctions pursuant to 8 Cal. Admin. Code section 20900(e)(5)(A).

Both parties were represented at hearing and were given full opportunity to participate in the proceedings. Both parties submitted post-hearing briefs.

Upon the entire record I make the following findings of fact and reach the following conclusions of law.

^{3/} 8 Cal. Admin. Code section 20900, et seq.

^{4/} August 16, at Rancho del Viento; August 20, at Ernie Homen Ranch; August 20, at 11:00 a.m.; August 21 at 10:00 a.m. at Allen Gill Ranch; August 24, at 9:45 a.m.; August 24 at noon; and August 24, at 8:00 p.m.

^{5/} August 16, at Rancho del Viento; August 20 at Ernie Homen Ranch; and August 24, at 8:00 p.m.

^{6/} August 16 at Rancho del Viento; August 20 at 9:00 a.m. at Ernie Homen Ranch; August 20 at 11:00 a.m. at Rancho del Viento; and August 21 at 10:00 a.m. at Alien Gill Ranch.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

The ALRB has considered whether access violations warrant setting aside elections on numerous occasions.^{7/} In two cases, the Board has considered whether access violations warrant the imposition of sanctions under 8 Cal. Admin. Code section 20900(e)(5).^{8/} The standards which determine each of these questions are different, and have been distinguished in Ranch No. I, Inc. (May 16, 1979) 5 ALRB No. 36. In both types of cases, however, the Board has first determined whether particular conduct violates the access rule, and then determined whether violations warrant setting aside the election or imposing sanctions.

In this decision, I have first discussed issues of fact and law which are common to the election objections and the motion to deny access. Under the date of each incident set for hearing, I have set forth findings of fact and conclusions as to whether the facts establish violations of the access rule. This discussion is followed by separate recommended rulings on the election objections and motion to deny access. As further set forth below, I have recommended that the objections be dismissed and the results of the election certified, and that the motion to deny access be granted and sanctions imposed upon individual organizers for violations of the access rule.

^{7/} See cases cited at page 49, infra.

^{8/} Ranch No. I, Inc. (May 16, 1979) 5 ALRB No. 36; Sam Andrews' Sons, (May 22, 1979) 5 ALRB No. 38.

I. Jurisdiction

Neither the employer nor the UFW challenges the Board's jurisdiction. Accordingly, I find that the employer is an agricultural employer within the meaning of Labor Code section 1140.4(c), and that the UFW is a labor organization within the meaning of Labor Code section 1140.4(f).

II. Credibility of Witnesses

The employer presented nine witnesses who testified concerning the incidents set for hearing. As the UFW presented no witnesses, it is undisputed that these incidents occurred. However, there is considerable variation in the extent to which the testimony establishes the details of each incident and any effect each had on employees, depending on such factors as the number of witnesses testifying as to each incident from differing perspectives, the extent to which witnesses were examined by counsel and by this hearing officer,^{9/} and various indicia of the credibility of witnesses. I have based my findings of fact upon my observation of the demeanor of witnesses, the weight of the respective evidence provided by them, established or

^{9/} While all nine witnesses testified as to the events of August 16, only one witness, Nate Holladay, testified with respect to all of the incidents set for hearing. Holladay's testimony was supplemented as to some incidents by the testimony of one or two other witnesses. Direct examination of the witnesses was brief, the first seven witnesses being examined in one day of hearing. Only two witnesses, Nate Holladay and Francis Arroyo, were extensively cross-examined.

uncontradicted facts,^{10/} inherent probabilities and reasonable inferences which may be drawn from the record as a whole. Northridge Knitting Mills, Inc. (1976) 223 NLRB 230 (91 LRRM 1518); Warren L. Rose Casting, Inc., d/b/a V & W Castings (1977) 231 NLRB 912 (96 LRRM 1121).

III. The Employer's Operations

The employer grows and harvests tomatoes in the Salinas Valley. Its 1979 harvest began on June 26 and ended in mid-October. The 1979 harvest work force consisted of three hand crews of 30-40 workers each, and three machines crews of 18-20 sorters, a machine operator and an elevator operator. During August, the UFW began an organizational campaign among these employees which culminated in a strike on August 27, and the expedited election on August 29. The following background information on the employer's operations is helpful to an understanding of the testimony concerning the alleged violations of the access rule described below.

Nate Holladay gave most of the testimony concerning the employer's managerial and supervisory structure. Holladay was the employer's field representative. It was his responsibility to work with tomato growers, line up tomato acreage, and oversee the growing process. During the harvest, Holladay scheduled the

^{10/} I note, however, that I am not bound to credit the testimony of witnesses solely because it is uncontradicted. See Aero Corporation (1978) 237 LRRM 455 (99 LRRM 1019); Plasterers' Local Union No. 32, (McCrory and Co.)(1976) 223 NLRB 486; (91 LRRM 1515); Operative Plasterers' & Cement Masons' International Assn., Local 394 (Burnham Bros., Inc.)(1973) 207 NLRB 147 (84 LRRM 1471).

fields for harvesting and would help however he could. He began his day by checking with growers on watering schedules and the progress of the crop. He would try to be present when harvesting operations began, but would sometimes not arrive on time because he would be working on another field. He would visit the various crews more than once a day, checking on the quality of fruit and progress of harvesting. Holladay's supervisor was Dennis Frudden, an owner of the company. Holladay indicated that approximately seven supervisors were below him, before the rank-and-file workers. These were the field harvesting superintendent (Feliciano Reyes); overall foreman for the hand crews (Manual Garcia); three individual hand-crew foremen; a machine crew foreman (Francis Arroyo); and a tractor foreman.

Although Holladay testified that he and Feliciano Reyes were responsible for labor relations, he also testified that no management or supervisory personnel reported directly to him. He repeatedly referred questions concerning the details of the crews' work day, such as start and end times and break times, to Francis Arroyo.

Holladay testified that he was not responsible for contact with the ALRB with respect to labor matters. He speculated that one of the Fruddens would have been responsible for contact with the ALRB, and later indicated that he had consulted with Dennis Frudden, and that Dennis Frudden had consulted an attorney, on access-related matters. Once the UFW began organizing at Frudden, he spent more time in the field, staying fairly close to the machine crews once the strike began.

Six of the seven incidents set for hearing occurred among the employer's three machine crews. Francis Arroyo, supervisor of these crews, provided most of the testimony concerning their working conditions.

Each machine is about 12 feet long on the driver's side, about 14 feet long on the other side, and about five feet across. Eighteen to twenty sorters stand on a platform about one-and-an-half feet off the ground along both sides of the machine. They look down on a conveyor belt at about waist height, which carries tomatoes picked by the machine, and are responsible for sorting out weeds and twigs which they pitch into a chute immediately in front of them. They work quickly, with constant hand movements. Francis Arroyo indicated that workers tended to talk to people on the same side of the machine, because of the noise of the motor which was situated in the middle of the machine. However, she also indicated that a loud voice could be heard across the machine, and that a person on the ground next to the machine could easily hear any conversations among the workers.

Employees in the machine crews were paid on an hourly basis. Arroyo told workers when to come to work each day shortly before quitting time on the previous day, after receiving instructions from Feliciano Reyes or Dennis Frudden. On all but one or two days, starting time was 10:00 a.m. On the exceptional days, the crews could start at 9:00 or 9:30 a.m. Quitting time varied considerably more than starting time. Arroyo testified that work ended most days at 7:30 or 8:00 p.m., but that it went past 8:00 p.m. on several occasions. Holladay estimated quitting

time as between 6:00-9:00 p.m. Raul Acosta, a machine operator, testified that work usually stopped at sundown, but continued after dark many nights. Both starting and quitting times were affected by demand from the packing shed.

The machine crews regularly took one half hour for lunch, and a ten-minute afternoon break. On mornings when work began at 9:00 a.m., there was also a ten-minute morning break, and on evenings when the crew worked past 8:00 p.m., there was an additional ten-minute evening break.^{11/} Both breaks and the lunch period were regularly scheduled, although the exact starting times of each crews' breaks varied somewhat. Each break period would begin when one of the machines finished a row near the toilets. Other crews would then join the first as their machines reached the same area. Arroyo testified that there could be from five to fifteen minutes between the start time of each crew's break, depending on when each finished the row. Thus, the break period for all three crews could span half an hour. The regular afternoon break would begin between 2:30-3:00 p.m. Morning and evening breaks, when they occurred, would begin between 10:30-11:00 a.m. and 7:00-7:30 p.m., respectively.

Lunch breaks occurred on a similarly approximate schedule, beginning when a machine reached the area where workers'

11/ Arroyo testified that she had asked the crew whether they wanted an hour or half an hour for lunch, and that they had chosen the shorter lunch in order to be home earlier. She also testified that she had tried one-half hour supper breaks the first time the crews worked late, but had changed to a ten minute break in response to workers who wanted to work through, and get home earlier.

cars were parked. Arroyo estimated that lunch usually started at about 11:30 a.m. and that all crews would have started their break by 12:30 p.m., so that by 1:00 p.m. all three crews would be back at work. Arroyo testified that there could be from two to fifteen minutes between the start of each crew's lunch break.

During cross-examination, counsel for the UFW sought to establish how often all three crews took breaks together. Arroyo's testimony indicates that all combinations, including two or three crews breaking together, and each crew breaking alone, did in fact occur; and that it was not possible to determine in advance what would occur on any given break since it depended upon the rate of progress of each machine down the rows.

Since only one of the incidents involved in this case occurred among the hand crews, there was considerably less testimony concerning the employer's hand crew operations. Information concerning the hand crew was provided by Nate Holladay. These crews were hired and supervised by Manual Garcia. Each crew also had its own foreman. They worked on a piece-rate basis, and started work at about 6:30-7:00 a.m., depending on the weather. Quitting time varied, depending on the tomato market, quality of pick, and weather, but was usually about 3:00-4:00 p.m.

IV. August 16

Although nine witnesses testified concerning this incident, there was no single narrative which outlined the entire course of events on this day. It has been necessary to piece together a composite picture of the facts from the testimony of witnesses who observed the incident from several different points

of view, and at times, to resolve contradictory versions of the facts. A brief description of the witnesses, in the order in which they testified, is included as an aid to understanding the discussion of testimony which follows.

a. The Witnesses

Feliciano Reyes, also referred to as "Chano", was the field supervisor or head foreman, and had worked for Frudden for six years. Other witnesses described him as hiring for both hand and machine crews, determining starting and ending times, and attributed to him responsibility for the employer's labor relations.

Pat Fancher was a student at Cal Poly, San Luis Obispo. He was employed at a mechanic on the tomato harvesters from June 15 - October 15. Fancher does not speak very much Spanish.^{12/}

Hector Munoz was employed as a tractor driver for the employer for a two-month period which included August 16.

Betty Jean Rodriguez had worked for the employer for four years, as a transplanter and as a sorter. During the events of August, she worked as a sorter on the machine.

Gloria Reyes was employed as a tomato sorter on the machines from August-October, 1979. I infer from her remarks concerning her husband that she is the wife of Feliciano Reyes.

Robert John Mota is a cut-tomato harvester who was

12/ Except where specifically noted, the record indicates that witnesses spoke or understood Spanish.

employed by Frudden on a contract basis during the harvest. During the incident of August 16, he was with Feliciano Reyes in the latter's pick-up. Mota does not understand Spanish.

Raul Acosta was employed during August 1979, as a machine operator.

Nate Holladay's position and responsibilities have already been described. Holladay indicated that he could understand a little Spanish, but that he communicated with workers primarily in English or with gestures.

Francis Arroyo was employed during 1979 as supervisor of the three tomato machines. She testified that she and Feliciano Reyes hired all of the members of the three crews for the 1979 harvest. Arroyo was responsible for overseeing work quality, breaks and lunches, and for seeing that water was available on the machines. She received directions from Feliciano Reyes and Dennis Frudden as to starting times and ending times.

Arroyo was a particularly credible witness. Her demeanor was straightforward and her answers precise on both direct and cross-examination. Although she was the last of nine witnesses to testify concerning August 16, she gave testimony which contradicted previous testimony in some respects, without showing hesitation or nervousness .^{13/} Arroyo's memory concerning personnel and working conditions of the machine crews was generally more precise than that of other witnesses. I note that,

13/ Neither party made a motion to exclude witnesses from the hearing room, and I observed that witnesses were present during most, if not all, of the testimony on the first day of hearing.

as direct supervisor of these crews, she was in constant contact with them, and it would have been her responsibility to know these details.

b. The Events

The testimony established that the general course of events on August 16 was as follows:

The three tomato harvesters began work at Rancho del Viento at 9:00 a.m. Feliciano Reyes testified that the early starting time was due to a shortage of fruit at the packing shed. Two of the machines were working in adjacent rows, while the other machine was working alone on the other side of a field access road. At about 9:30-9:45, a caravan of cars pulled into the area where workers' cars were parked. The witnesses generally identified them as UFW supporters, based on the UFW flags carried by some of them. In addition, several witnesses testified that the group of supporters was accompanied by UFW organizer Art Mendoza. These union supporters entered the fields and approached the machines, shouting strike slogans and some obscenities, and urging the workers to stop work. Some threw tomatoes and possibly dirt clods, and some climbed on the machines. While the group was in the field, Feliciano Reyes summoned the sheriff. Eventually, about eight sheriffs arrived, and a group consisting of workers and union supporters left the field and gathered beside it for about 15-30 minutes. The entire incident consumed approximately an hour. Some workers returned to the machines when the UFW supporters left, while others did not return to work until the following day. The machines continued to work short-handed for

the remainder of the day.

There is considerable variation in testimony about the details of this incident. Witness estimates of the total size of the group^{14/} ranged from a low of 20 to a high of 100, with the most common estimates being in the neighborhood of 40-50. After considering all the testimony, I conclude that the group consisted of approximately 25-50 persons.^{15/}

When they entered the field, all or most of the group went first towards the two adjacent machines. Betty Jean Rodriguez and Raul Acosta were working on those machines.

14/ Some witnesses also offered estimates of the size of parts of the group, such as the number of persons confronting a particular machine. I base my conclusions as to the size of the group on estimates of its total size because there were more such estimates which would be compared with one another. This comparison (see fn. 15, infra) reduces to some extent the degree of speculation inherent in untrained estimates of crowd size.

15/ The estimate of 100 was offered by Nate Holladay, who arrived after the sheriffs had arrived, at a point when employees had climbed off the machines and were intermingled with union supporters. Even crediting his testimony that he is somewhat familiar with the members of the machine crews, he was clearly in the worst position of all the witnesses to make an accurate estimate. Two other witnesses, Fancher and Munoz, offered estimates of from 50-70; while Feliciano Reyes, Gloria Reyes, and Betty Rodriguez estimated between 40-50. I am inclined to give more weight to the estimates of the Reyes and Rodriguez, because all three should have been more familiar with personnel in the machine crews than Fancher, who was a mechanic; and because Munoz appeared to be a somewhat nervous and less than reliable witness as to factual detail (see fn. 28, infra). Finally, Francis Arroyo estimated that the group consisted of 20-25 people. As noted above, Arroyo was a particularly credible witness. She offered this particular estimate on direct examination, without hesitation, after all previous witnesses had testified to higher numbers. Given the testimony of other witnesses to consistently higher numbers, I must find her estimate to be low; however, her testimony convinces me that it is extremely unlikely that the group was larger than 50 persons, and that it quite probably was smaller.

Rodriguez testified that about 25 people rushed at her machine, yelling at the workers to get off the machines. The sorters on her side of the machine put their heads down and kept working; those on the other side jumped down when they saw the union supporters coming. Some of the union supporters climbed on the machine, and waved flags at the workers and urged them to get off, for about three or four minutes. They began to back off when the sheriffs arrived. Rodriguez did not see any tomatoes thrown at her machine.

Acosta testified that 30-40 people were around his machine, some of whom ran past it toward the one in front of him. They were shouting slogans such as "huelga"; calling the workers names such as stupid bastards; and calling to the workers to "come off and help us; we can offer you more money. Don't be stupid and work for them". Everyone on his machine got off except for himself and the elevator operator. Initially, the sorters just trickled off the machine; but the union supporters continued to shout aggressively until all were off. Acosta testified that they did not engage in any physical violence.

The group of union supporters then converged on the third machine. Gloria Reyes and Hector Muñoz worked on this machine. Reyes testified that she observed the group first charging the other machines, but could not see much. Thereafter, they charged her machine, chanting "Viva Chavez", "huelga", and unspecified obscenities, and yelling at the workers to get down from the machine. All of the workers left the machine except for herself, David Pelaya (the elevator operator), the machine operator, and

the tractor driver (Muñoz). Some of the group of union supporters threw tomatoes at those who remained. When asked if she was threatened, Reyes testified somewhat equivocally that she was not, really, but that she was hit two or three times with tomatoes. She further testified that the elevator operator on the machine was hit "pretty bad". When asked if anything was said about cars, she added that some people had said that if the workers did not get down from the machine, damage would be done to their cars.^{16/} Reyes testified that this incident lasted about five minutes.

Hector Muñoz testified that the group of people approached his machine, shouting at the workers to get out of there, using obscenities, and that they threw tomatoes at workers who did not get off the machine. He did not leave his machine because he was driving the tractor and could not leave it alone. He was hit twice by tomatoes.

The testimony of other witnesses is consistent with the following conclusions drawn from the above testimony: the encounter at each machine lasted above five minutes; union supporters shouted slogans and obscenities at workers on the machines and urged them to leave; some climbed on the machines at the first location but there was no physical violence or throwing of objects at that point; and at the second location no one

16/ Feliciano Reyes was the only other witness to testify about threats to cars. He testified generally that threats to smash windshields or damage cars were made by the people who entered the fields.

climbed on the machine but tomatoes and possibly dirt clods^{17/} were thrown at the workers who did not leave the machine.

The testimony of Francis Arroyo on direct and cross examination offers the clearest account of what next transpired. Arroyo testified that everyone walked out of the field initially, as "they told them they wanted to talk to everybody." The group of union supporters and workers remained outside the field talking for about half an hour. Leaflets were also distributed. Workers returned to the field about one hour after the incident began. Arroyo estimated that about 34-37 workers left the machines, and stated that 44 were at work in the afternoon. On cross-examination she testified, consistently with these numbers, that eight out of 33 workers who walked out returned on August 16.^{18/} Arroyo initially affirmed that everyone had returned to work on August 17, then stated there might have been eight to ten who did not.

17/ Both Gloria Reyes and Muñoz referred only to tomatoes being thrown at workers. Other witnesses testified that dirt clods were thrown. However, it is not clear from what distance they observed objects being thrown. To the extent that it is of any consequence whether the union supporters threw only tomatoes or whether harder objects were also thrown, I note that Reyes and Muñoz were in the best position to know what was thrown, and neither testified that dirt clods or other hard objects were thrown. Both testified that they were not injured, although Reyes testified that she and the elevator operator were hit hard.

18/ Arroyo's testimony on cross-examination is somewhat confusing due to a misunderstanding between counsel and witness as to whether questions referred to employees returning to work on August 16, or to employees returning after the strike was called on August 27. However, as noted above, it is consistent with her testimony on direct examination.

Testimony of other witnesses as to how many returned to work in the afternoon of August 16 and on the following day consistently indicates that quite a few employees left the machines after the incident; that of those who walked out,19/ not many returned to work the afternoon of August 16, and some did not return on August 17. Some witnesses estimated specific numbers which differed from Arroyo's. I credit Arroyo's estimate because it is roughly consistent with estimates of the total numbers of employees in the machine crews;20/ because in view of her position as supervisor of the machine crews it would have been her job to know how many were at work, and she twice offered "44" as a definite number rather than as an estimate; and because of her general credibility and reliable powers of observation.

Several witnesses recognized UFW organizer Arturo Mendoza on this occasion.21/ Nate Holladay also recognized an organizer

19/ It is sometimes not clear what is the witness's reference point for an estimate, e.g., one half of all who walked out, or one half of all the crews. The former interpretation produces estimates more in line with Arroyo's specific figures.

20/ If 44 employees were at work in the afternoon, and that number includes eight to ten who returned after walking out, then approximately 34-36 employees did not walk out. If, as Arroyo also testified, 33-37 walked out, the numbers who walked out and those who did not add up to a minimum of 67-73 employees for all three machine crews. As previously noted, each of the three machine crews consisted of from 18-20 sorters plus two to three other persons, for a total for all three crews ranging from 60-69 employees.

21/ Feliciano Reyes, Gloria Reyes, Betty Rodriguez, and Robert John Mota identified Mendoza in a photograph taken by Feliciano Reyes. (Er. Exhibit 1A.) The Reyes and Rodriguez all identified Mendoza as an organizer based on previous encounters with him in the employer's fields, although apparently none knew his name as of August 16. I note that the UFW did not contest the identification of the person in the photograph as UFW organizer Mendoza.

named Mr. Bañuelos, based on previous encounters in the fields.^{22/} Specific testimony as to Mendoza's conduct is scant; there is none as to the conduct of Bañuelos. Feliciano Reyes described Mendoza as "going with the people" and as their apparent leader. He heard Mendoza say "Let's go and stop the harvesters". The record does not indicate at what time Reyes observed Mendoza or took the picture of him. Robert John Mota, who observed these events in the company of Reyes, testified that the person in Employer's Exhibit 1A "always seemed to be there."^{23/} The testimony of Gloria Reyes and Nate Holladay places Mendoza among the group of workers and union supporters after the arrival of the sheriff. Gloria Reyes spoke to Mendoza, saying that "that was no way to straighten out anything, by violence", to which she testified that Mendoza replied "That's not violence". Holladay observed both Mendoza and Bañuelos as workers were driving away from the field after this incident, stopping their cars and speaking to them.

c. Violations of the Access Rule.

To determine whether the access rule was violated by the above conduct, it is necessary to decide which of the participants in this event were organizers within the scope of 8 Cal. Admin.

^{22/} Holladay did not identify Mendoza in Employer's Exhibit 1A, but simply named both Mendoza and Bañuelos based on previous encounters. I infer from his testimony as to other incidents that he knew their names as a result of having asked both men for identification at some other time.

^{23/} Mota described himself as being confused by the events around him. His testimony is generally so lacking in specificity that it has little probative value. See *Certain-Tweed Products Corp. v. NLRB* (7th Cir. 1977) 562 F.2d 500, 506-7 (96 LRRM 2504).

Code section 20900, and whether the conduct of non-organizers may be attributed to organizers who were present. As will be further set forth, I conclude that Mendoza was an organizer within the meaning of 3 Cal. Admin. Code section 20900(e); that the record does not establish that the 25-50 unidentified persons who took part in this incident were organizers; but that their conduct may be attributed to Mendoza for purposes of determining whether he violated the access rule. I further find that as to Banuelos, the evidence is insufficient to establish that the conduct of others on August 16 may be attributed to him.

In Ranch No. I, Inc. (supra) 5 ALRB No. 36, the Board discussed conduct by organizers which would warrant the imposition of sanctions pursuant to 8 Cal. Admin. Code section 20900(e)(5)(A). However, it did not address the question, presented by these facts, of union or organizer liability under section 20900(e) for the conduct of unidentified persons who engage in conduct which would clearly violate the access rule if engaged in by organizers. To resolve this question, I have therefore turned to the terms of the access rule itself and to cases dealing with the responsibility of union agents for the conduct of pickets.^{24/}

^{24/} I note, however, that the Motion to Deny Access is a limited proceeding whose scope is defined by the access rule which establishes it. It is intended to deal with conduct of union organizers who, in seeking to exercise the right of access defined by the rule, fail to honor the limitations to which that right is subject. It is not a general catch-all procedure under which a union may be held to answer for the conduct of any non-employee who enters an employer's property outside the bounds of the access rule, or for the conduct of persons engaged in picketing as opposed to the taking of access.

The access rule nowhere explicitly defines the term "union organizers". However, it may be inferred, based on Section 20900(e), that an organizer for purposes of Section 20900 of the Board's regulations is any person, not an employee of the employer in question, who is authorized by a union to enter an employer's property "for the purpose of meeting and talking with employees and soliciting their support."

Arturo Mendoza's status as an organizer is indicated by the following factors: 1) He took access to meet and talk with employees on behalf of the UFW on several occasions; 2) On two occasions, discussed in parts VI and VIII, he identified himself as an organizer, once by producing a UFW membership card and once by producing an organizer badge; and 3) He was named as a person authorized to reach voluntary access agreements on behalf of the UFW in the Notice of Intent to Take Access, discussed in part VII.b. in the face of this evidence, the UFW has not contended that Mendoza was not authorized to organize and take access on its behalf.

I further find that the conduct of the 25-50 unidentified persons who entered the field on August 16 may be attributed to Mendoza for purposes of determining whether he violated the access rule.^{25/} Mendoza took no steps to prevent their entry into the

25/ The record fails to establish that these persons were themselves UFW organizers for purposes of the access rule. The fact that they were carrying UFW flags or shouting pro-UFW slogans is by itself insufficient to establish that the UFW authorized them to do so or to take access and organize on its behalf. Plumbers, Local 195 (McCormack-Young Corporation)(1977) 233 NLRB 1087 (97 LRRM 1023); International Longshoremen's and Warehousemen's Union (Sunset Line and Twine Company)(1948) 79 NLRB 1487 (23 LRRM 1001) at fn. 49.

fields or to dissociate himself or the UFW from their conduct. In fact, the testimony of Feliciano Reyes, though lacking in detail as to Mendoza's conduct, establishes that Mendoza accompanied the group into the fields and actively encouraged them by stating "Let's go stop the harvesters." Reyes was a credible witness, and his testimony is uncontradicted. Mendoza further failed to disavow the conduct which actually occurred during this incident when confronted by Gloria Reyes after the group left the field. Because he actively participated in and encouraged the group's entry into the fields for purposes of stopping the harvesters, and because he failed to disavow its conduct after the group left the field, I find that Mendoza ratified and may be held accountable for its conduct for purposes of determining whether or not he violated the access rule.

Nate Holladay identified an organizer named Banuelos as being present on August 16. No other witness mentioned Banuelos on this occasion. Since Holladay did not arrive until after the group was leaving the field, his testimony establishes only that Banuelos was present after the entry into the field. There is no evidence as to when he arrived, no evidence of any improper conduct on his part, and no evidence that he encouraged or ratified the conduct of others. I find that his mere presence after the entry into the fields is insufficient basis for holding him accountable for the group's conduct on this occasion.

Having found that Arturo Mendoza is an organizer to whom the limitations of the access rule apply, and that he may be held accountable for the conduct of the group of August 16 by virtue of

his encouragement and participation in its conduct, I conclude that the access rule was violated on this occasion by the entry onto the employer's property of more people than the rule permits, during working hours, and by conduct which substantially disrupted the employer's operations. 8 Cal. Admin. Code section 20900(e)(3), 20900(e)(4)(A), 20900(e)(4)(C); Ranch No. I, Inc. (January 3, 1979) 5 ALRB No. 1.

d. Workers' Reactions

All of the witnesses except Fancher testified about workers' reactions to this incident. Some of this testimony was in response to leading questions and consisted of generalized statements that unidentified workers told the witness they were afraid. Witnesses also speculated freely that workers left the harvesters or failed to return to work after this incident because they were afraid of the union.^{26/}

In response to leading questions as to whether anyone expressed fear to them after the August 16 incident, both Feliciano Reyes and Holladay answered affirmatively. Neither elaborated on this testimony. In response to a leading question as to whether workers appeared scared, Robert John Mota initially

^{26/} Such testimony was admitted pursuant to 8 Cal. Admin. Code section 20370(c), which provides as follows in pertinent part: "The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible in civil actions."

hesitated and said some of them did, then that not all but a majority did. Mota does not speak Spanish, and no one told him they were afraid, but he stated he could tell they were.

When asked if anyone had told him about their feelings about August 16, Raul Acosta testified that there was lots of conversation in the field, with some people being anti-union, and some people being pro-union but wanting to protect their jobs and continue working. No one told him why they did not return to work after August 16, but "there was talk" in the fields as to threats, and windshields and slashed tires. Hector Munoz testified that he noticed fear in workers' faces as they got off their harvesters and left the fields on August 16.

More specific testimony was offered by Betty Jean Rodriguez, Gloria Reyes, and Francis Arroyo, each of whom corroborated the other in some respects; and by Hector Munoz. These witnesses also testified about other incidents, not set for hearing, involving encounters with unidentified "pickets".

Betty Jean Rodriguez testified that she did not vote because she was afraid that union persons who knew that she was working would be there. Gloria Reyes testified that she did not vote because she was afraid, and had never been through anything like this before, and because she was afraid the union would do something to her or her husband if they knew she was going to vote. Hector Munoz testified that he did not vote because he was not interested.

Both Reyes and Rodriguez were asked if anyone else had told them they were afraid to vote in the election. Rodriguez

responded that three men who had been riding with her decided to go elsewhere and work, because they wanted to avoid the problems which had occurred the previous year in connection with the strike. Reyes responded that other people had told her they were afraid to vote but that she didn't know who they were, other than Rodriguez.

Francis Arroyo named six persons and two families who told her they were afraid of "the people, the union". Rodriguez and Reyes were among the six people named. With the exception of the two families (the Sanchezes and the Baganas) these people worked after August 16 through August 27, and thereafter finished the season with the employer. Both the Sanchez and Bagana families worked though August 27, and walked out when the strike began. Arroyo testified that she observed the Bagana family and Mr. Sanchez (father) on the picket line. Arroyo also testified to statements made to her by the Bagana family after the incident of August 16 and after the strike, to the effect that they were afraid to work because they had been told they would be sorry. These statements are hearsay if offered to show that fear motivated these families to join the strike, or to show that they were in fact threatened by anyone. The record establishes only that they left work when the strike began on August 27, and that some family members were observed on the picket line. Evidence as to their motives for these actions is speculative and entirely hearsay, and insufficient to support a finding that they were afraid of the union. See 8 Cal. Admin. Code section 20370(c).

Rodriguez, Gloria Reyes, and Munoz all described

encounters with "pickets" occurring after August 16 and before the election. In no case were these persons identified, and evidence is very sketchy as to whom they represented, when and where they appeared, or who beside the witness observed the encounters.

Rodriguez testified in very general terms that she had been threatened if she continued to work. When asked when this occurred, she responded that it had happened on two occasions, the first occasion two or three days before the election and the second one after the election. On the first occasion she attempted to enter the property at a location on Central Avenue, and encountered two cars parked by the road, blocking it, and six people. She testified that these persons would not let her go in, and told her not to go in and to stop and picket. Rodriguez also described an incident involving an employee named Elicita Ochoa which occurred after work on August 20. The car in which Rodriguez was riding gave Ochoa a ride from the point at which the machine had stopped for the day to the area where Ochoa's car was parked. This was also the area where pickets were congregated. Rodriguez' car waited while Ochoa went to her car. Rodriguez testified that she observed Ochoa being surrounded by pickets, who cursed at her and threatened her. Ochoa did not return to work after that day. Gloria Reyes also testified that she saw pickets on Central Avenue two to three days prior to the election. Reyes testified that she passed by the pickets without realizing what they were doing. When she turned into the field, they finally said they were picketing, but she didn't pay it much mind.

Hector Munoz testified that he twice encountered pickets,

on one occasion two or three days before the election and on another occasion after the election.^{27/} He testified that he would go in by another entrance or drive through the pickets, and that sometimes pickets would bang their flags on his windshield. Munoz affirmed that he was frightened when this happened. However, it is not possible to determine from his testimony whether this conduct occurred when he encountered pickets prior to the election or after it.

V. August 20, 9:00 a.m.

Nate Holladay testified concerning this incident, which was the only one which occurred among the hand crews. On August 20, approximately three hand crews with 30-40 persons per crew were harvesting on the Ernie Homan Ranch. Work started at about 6:30-7:00 a.m. At about 9:00 a.m., 15-20 persons arrived at the field. About six of them carried UFW flags. The group was led by a person whom Holladay identified as Mr. Banuelos, based on

^{27/}Munoz was very uncertain of these dates. However, his estimates are corroborated by Rodriguez, who also encountered pickets twice at about these times.

Munoz also described an incident occurring at the Ernie Homan Ranch on August 20. He testified that up to 60 pickets stood by the side of or just inside a field, shouting at people at the machines as soon as they started work, not to be strikebreakers. This incident does not resemble either of the August 20 incidents set for hearing, and no other witness testified to the occurrence of such an incident at about this time. The record indicates that on August 20, the machine crews were working on Rancho del Viento, located across Hobson Avenue, from the Ernie Homan Ranch. Although Munoz generally was a credible witness, he had considerable difficulty with dates, and in view of the lack of corroborating testimony, I am unable to determine whether this incident in fact occurred on August 20, or as is also possible, during the strike. In any event, it involves neither access violations nor violent conduct.

a previous encounter. The group first encountered Holladay at a point from which they would have been able to see the crews at work. Holladay informed them that the crews were at work, that if they entered it would be a trespass, and that he would call the sheriff. At this point, the group left, and Holladay got into his car and drove to the location where the crew was working. He saw a caravan of four to five cars with the UFW people in them proceed down the freeway and turn into the ranch at another entrance. At this point Holladay called the sheriff.

At the field, approximately 50 yards away from the crews, Holladay and the group again confronted one another. This time, the group entered the fields and walked towards the workers, chanting slogans such as "Viva Chavez", "Huelga", and "no more work". Holladay testified that he walked in front of them, saying "You guys are trespassing. You don't have any right to be here. Would you please leave." He further testified that Banuelos replied "you can't stop me. I'm bringing these people in. We're going to talk to our people out there in the field". The group finally halted about 20-30 yards from the crews, when the sheriff's unit entered the ranch, having advanced approximately 20-30 yards into the field. Holladay testified that he turned during the incident and observed that workers had stopped working to watch.

After the sheriff had arrived and everyone left, Holladay returned to where his foremen were. They asked him if he was scared, and when he replied in the affirmative, they responded that they were scared also. On cross-examination, Holladay could

remember the names of two foremen who participated in this conversation—Manual Garcia and Guillermo—although he estimated that four to five persons were part of it. He was unable to remember names of the other persons. In view of his own testimony on direct that he had returned to where the foremen were, and his lack of familiarity with workers in the hand crews, and the fact that there was a foreman for each of the crews, I find that this exchange took place among the foremen and at most one other crew member.

The only other evidence concerning the hand crews was provided by Holladay, who testified that when the strike started on August 27, the hand crews walked out and did not return prior to the election on August 29. There is no evidence to indicate that there was any interchange between hand and machine crews, and as noted previously, the two operations were separately supervised and worked different hours.

For the reasons discussed in connection with the August 16 incident, I conclude that the conduct of the group which entered the field on this occasion may be attributed to Banuelos for purposes of determining whether the access rule was violated.

Banuelos identified himself as a UFW organizer on another occasion by producing a UFW membership card, and by his own statement to Holladay was responsible for leading the group into the field. I therefore find that on this occasion the access rule was violated by the presence of more people than are permitted under the rule, during working hours. 8 Cal. Admin. Code section 20900(e)(3); 20900(e)(4)(A).

Work disruption on this occasion was minimal, occurring only to the extent that workers stopped to watch the encounter. In Ranch Mo. I, Inc. (supra) 5 ALRB No. 1, at pps. 5-6, the Board held that where organizers' presence in violation of the rule "prevented work and interrupted the Employer's harvest operations, these violations do constitute work disruptions." I therefore find that the presence of this group disrupted work to the extent that employees stopped to watch the incident, in violation of 8 Cal. Admin. Code section 20900(e)(4)(C) .

VI. August 20, 11:00 a.m.

Nate Holladay testified concerning this incident. At about 11:00 a.m., he went to Rancho del Viento, located on Hobson Avenue across the road from the Ernie Homan Ranch. At that time two machine crews were working, and one had just stopped for a ten minute break. Holladay observed three UFW organizers, whom he identified as such based on previous encounters, handing out pamphlets. None was wearing a badge, but upon his request to see badges Medina produced one and Banuelos and Art Mendoza produced UFW membership cards. Holladay informed the organizers that they had no right to be 'there, as the crew was on a ten-minute break. When Mendoza refused to leave, Holladay called the sheriff. The organizers left after the sheriff informed Mendoza that he would be arrested if he stayed.

Holladay testified, that after this occasion, "the crew" asked him how come these people kept coming in, how come they weren't being arrested, and that he responded that "We were doing the best we could to keep them out."

Section 20900(e)(3)(A) and (3) permit organizers to enter an employer's property before and after work and during lunch break. If there is no established lunch break, organizers may be present during a one-hour period when employees are actually taking their lunch break. These provisions do not encompass break periods, particularly where, as here, there is a regularly scheduled lunch break. However, the organizers' initial appearance during the mid-morning break does not establish their intent to violate the access rule, since was are some variation in the start of the lunch hour. Once they were informed that employees were on a ten-minute break, the organizers' continued presence constituted an intentional violation of the access rule, in violation of section 20900(e)(3)(3) .

Section 20900(e)(4)(3) requires organizers to identify themselves on request, and to wear a badge which states their names and the name of the labor organization they represent. In this case, all three organizers identified themselves on request. However, none was wearing a badge, and only Medina was carrying one.28/

28/ The other two organizers offered UFW membership cards. There is no official form for a "badge". The rule requires only that it "clearly" state the organizer's name and labor organization. If a UFW membership card satisfies this requirement, it could be worn as "badge". The record contains no evidence on this point. However, since these organizers were carrying them rather than wearing them as required by the rule, make no finding on the suitability of union membership cards as "badges".

Since Holladay recognized all three organizers based on previous encounters, their failure to wear badges was of little practical consequence. It is nevertheless a violation of the literal requirement of section 20900(e)(4)(B).

VII. August 21, 10:00 a.m.

a. The incident and workers' reactions.

Nate Holladay testified concerning this incident. On this day, the employer had three machine crews working at the Alien Gill Ranch. The machines were to start at about 10:00 a.m. At a little bit after 10:00 a.m., when the crews were just getting ready to start work, three UFW organizers drove into the parking area where workers' cars were parked. Holladay identified them as Sabano Lopez, Mr. Ruiz, and Mr. Medina. The organizers separated and began handing out pamphlets to workers. Holladay approached each one and asked for identification, and asked each one to leave. In response, Lopez and Ruiz produced UFW membership cards from their wallets, and Medina produced an organizer badge from his coat pocket. The organizers ignored Holladay's request that they leave, continuing to hand out pamphlets after the machines had started to work, and approaching the workers as they worked on the machines, causing workers to turn around on the machine to talk to them. Holladay called the sheriff, who arrived after the organizers had left the fields.

In response to questions by counsel as to whether workers spoke to him after this incident, Holladay testified that people were scared. On cross-examination, he testified that such conversations with workers after the incident occurred as he

worked on the machine beside workers; and that perhaps ten people spoke to him on this particular occasion, two in Spanish and eight in English.

Section 20900(e)(3)(A) permits organizers to be present for a one-hour period prior to the start of work. In this instance, organizers arrived at about the normal starting time for the machine crews, and refused to leave when asked to do so by Holladay. They further stayed after work had begun and disrupted work to the extent that they caused workers to turn their attention away from the shute to speak to them, thereby violating section 20900(e)(4)(C). See Ranch No. I, Inc. (supra) 5 ALRB No. 1, at pps. 5-6. Finally, although the organizers complied with the requirement of section 20900(e)(4)(3) that they identify themselves on request, none was wearing a badge as is also required by that section.

b. Service of Notice of Intent to Take Access

Shortly after the organizers had left the fields, sheriff's units arrived, followed by Dennis Frudden. The three organizers then joined this group, and a conversation ensued in which Dennis Frudden and Holladay informed the organizers that the employer had not received notice of the union's intent to take access as required by the Board's regulations, and that it was the employer's position that they had no right to take access at any time for that reason. On returning to the employer's offices at about 11:30, Holladay was shown a Notice of Intent to Take Access which had been hand-delivered to a secretary shortly before. This document was admitted into evidence .as Employer Exhibit 3.

Holladay testified that this was the first such notice served on the company, and further that the employer never received a follow-up telegram confirming this personal service of the notice.

On my own motion, I took official notice^{29/} of a Notice of Intent to Take Access in this case, with proof of service attached, filed in the ALRB's Salinas regional office. Both notice and proof of service are date-stamped "Agricultural Labor Relations Board, August 15, 1980, received Salinas." This document indicates that both notice and proof of service were filed on the same day, August 15. It is improbable that the employer would have received the notice in the mail prior to the UFW's first attempt at access on the following morning, and even more improbable that the UFW would have had the return receipt in its possession at the time of filing the document. In the absence of any evidence explaining the whereabouts of the return receipt, I must infer that the notice was accepted for filing by the regional office without the return receipt.^{30/}

29/ See Sunny side Nurseries, Inc. (Nov. 7, 1978) 4 ALRB No. 88. Before taking notice, I showed counsel for both parties a copy of this document sent to the executive secretary's office by the Salinas regional office at my request. I retained this copy after showing it to counsel. For purposes of further reference by all parties, this copy is appended to my decision.

30/ The UFW offered into evidence a Notice of Intent to Take Access, with proof of service attached. This document was marked for identification as UFW Exhibit 4. At the hearing, I stated that UFW Exhibit 4 was identical to the document officially noticed by me. On closer examination of the date stamps and handwritten docket numbers on the two documents, it is apparent that they are not identical. The UFW provided no foundation for the introduction of UFW Exhibit 4. The employer objected to its introduction on that ground, and I took the objection under

(— footnote continued)

Section 20900{e}(1)(B) specifies that each thirty-day access period shall commence when the labor organization files in the appropriate regional office two copies of a notice of intent to take access "together with proof of service of a copy of the written notice upon the employer in the manner set forth in Section 20300(f)". Section 20300(f) governs service of process of petitions for certification pursuant to Labor Code section 1156.3, and provides as follows:

(f) Service of the petition. A petition for certification shall be served upon the employer in the manner set out herein. In order to be filed, a petition must be accompanied by proof of service of the petition on the employer, either by verified return of the person making personal service or by the return receipt from the post office. Service on the employer may be accomplished by service upon any owner, officer, or director of the employer, or by leaving a copy at an office of the employer with a person apparently in charge of the office or other responsible person, or by personal service upon a supervisor of employees covered by the petition for certification. If service is made by delivering a copy of the petition to anyone other than an owner, officer, or director of the employer, the petitioner shall immediately send a telegram to the owner, officer, or director of the employer declaring that a certification petition is being filed and stating the name and location of the person actually served. (Emphasis added)

The effect of these requirements is to insure that employers receive actual notice of the petition or notice before the time periods triggered by filing of these documents begin to run.

(-- footnote continued)

submission. It is hereby sustained, and the exhibit is rejected. It is possible that UFW Exhibit 4 is the UFW's file-stamped copy of the document of which I took notice, but there is no evidence in the record to this effect.

In this case, the UFW filed its Notice of Intent to Take Access in the Salinas regional office on the same day as it was served by certified mail. No return receipt accompanied the proof of service. The UFW also failed to send a telegram following its personal service of an "NA" at the employer's offices on August 21. These methods of service fail to comply with the requirements of Sections 20900(e) (1)(3) and 20300(f).

The record indicates, however, that the employer was informed at least generally and perhaps in some detail about the ALRB's access rule, prior to the time it was personally served on August 21. Some apparently peaceful access was tolerated prior to August 16.

In the course of explaining how she recognized Art Mendoza as a union organizer on August 16, Betty Jean Rodriguez testified that Mendoza had taken access prior to that date. She described his conduct in talking individually with employees and giving them leaflets and stated that it was "usually on our break times or lunch times that they would let him go in for a little while."

Holladay testified that he believed Dennis Frudden consulted an attorney on access-related matters. He further testified that he and Dennis Frudden consulted about the company's access policy prior to August 21, and determined that the policy would be that no organizing would be permitted until the employer was properly served with a notice. Holladay himself objected to organizers' presence on August 20, one day prior to the day on which notice was personally served, on the basis that the crews

were on a ten-minute break. This objection makes sense only in terms of the access rule, which permits access at times other than such breaks. Finally, although the above evidence that the company was aware of the terms of the rule prior to August 21 is largely circumstantial, I note that Holladay seemed reluctant to give straightforward testimony. When he was questioned concerning his own or the company's knowledge of the access rule prior to August 21, his demeanor was consistently hostile and his answers evasive.

I conclude that the employer took steps to become informed about the Board's access rule prior to the time when it first raised the service issue with UFW organizers on August 21, and that it first formulated the policy that it would not permit access unless it was properly served, at some time after the incident on August 16. Although I have found that the UFW failed to comply with all of the requirements of Section 20300(f), the record does not establish that any harmful consequences resulted from this lack of proper service.

VIII. August 24, 10 ; 00 a .m.

Nate Holladay and Francis Arroyo testified consistently concerning this incident. The following facts are based on the testimony of both witnesses.

At about 9:45, UFW organizers Mendoza and Medina arrived at Rancho del Viento, where three machine crews were getting ready to start work. Although work had not yet started, some workers were on the machines, while others were in the staging or parking area. On Holladay's request for identification both organizers

produced organizer badges from their pockets. Holladay directed the organizers to the area where employees were parking their cars, and told them not to approach the machines, because he did not want them around the equipment. However, Mendoza asserted his right to talk to the people wherever they were, and the organizers approached the people on the machines.

At 10:00 a.m., Holladay informed the organizers that work was starting and they would have to leave. Mendoza replied that he hadn't yet seen all the people and would continue until he had. The organizers continued to talk to workers for about ten to fifteen minutes after work had started, causing some workers to turn away from the tomatoes on the belt to accept pamphlets or to talk to them. Arroyo testified that the operator of one machine did not start the machine at 10:00 a.m., because some workers had turned to talk to Mendoza.

Arroyo testified that workers indicated to her that they did not want the organizers there, that they wanted to work and that they were scared. She named five workers, including Betty Jean Rodriguez and Gloria Reyes, and indicated that there were others whose names she did not remember.

Section 20900(e)(3)(A) permits organizers to talk to employees on the employer's premises before work "in areas in which employees congregate before . . . work". Since it appears that machine crews members congregated before work on or about the machines, the rule permits organizers to approach employees in that area. On this occasion, organizers again failed to wear badges in violation of section 20900(e)(4)(B), although once again

they willingly complied with the requirement of that section that they identify themselves on request. The failure to wear badges was the only violation of the access rule which occurred prior to the start of work on this occasion.

After work started, organizers continued to talk to workers for ten to fifteen minutes, and disrupted work by causing workers to turn from the belt and by delaying the start of one of the machines, in violation of Sections 20900(e)(3)(A) and 20900(e)(4)(C). Ranch No. I, Inc. (supra) 5 ALRB No. 1.

IX. August 24, Noon

Nate Holladay testified concerning this incident. On this occasion, three UFW organizers identified by Holladay as Mendoza, Medina and Banuelos returned to the three machine crews at about noon. One crew had broken for lunch, while the other two were working their way down the rows towards the parking area. Holladay asked the organizers for identification, which all three produced, and told them that since only one crew was on lunch break, only two of them could talk to the crew. Mendoza responded that he could take in as many organizers as he wanted. All three organizers then talked to the one crew for its entire lunch period, and then stayed during the lunch periods for the other crews as well. Holladay's testimony does not indicate whether any of the lunch periods overlapped. Based upon Arroyo's testimony about patterns of lunch breaks, it is probable that the other two crews arrived no later than 12:30, and that all three crews returned to work by 1:00 p.m. Against this background, Holladay's testimony establishes that three organizers arrived at noon and

were present during a one hour period encompassing the lunch break of three machine crews. For some portion of this period only one crew was actually on its lunch break. During other portions, two and perhaps all three crews must have been present.31/

Section 20900(e)(4)(a) provides that access is limited to two organizers for each work crew on the property provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers. Although the limitation is based on numbers of employees per crew, it prescribes how many organizers may be on the property at one time, not how many may talk to a particular crew at one time.32/ To the extent that a higher "concentration" of organizers per crew would have a disruptive effect on the employer's operations, or an intimidating effect on employees, it is prohibited under Sections 20900(e)(4)(C) or by the independent provisions of Labor Code section 1154(a)(1). The Board adopted this approach to Section

31/ Holladay's failure to testify to the arrival of the other crews during the lunch period does not, in my view, provide any counter to these inferences, which are based on Arroyo's detailed and credible testimony concerning the crews' work schedule. Holladay showed a tendency not to mention details which were unfavorable to the employer's case until pressed on cross-examination. See, for example, the series of questions relating to his own and the company's knowledge of the access rule. In this particular instance, he was not asked whether the other crews ever arrived, and I place no weight on his failure to mention it of his own accord.

32/ The section thus reasonably accords some flexibility to unions, who may have to estimate how many organizers will be permitted based only on information as to the total size of the workforce. In such a case the union might make organizer assignments based on this figure, only to have them arrive at a time permitted by the rule and find that all of those employees are not immediately available for various reasons.

20900(e)(4)(A) in Ranch No. I, Inc. (supra) 5 ALRB No. 1, at pps. 4-5. There, the record established that six to seven organizers were talking to 15-20 members of a crew. Estimates of total crew size ranged from 70-100. The Board concluded that a violation of the rule was not established by looking at total crew size, although the organizers were apparently not spread among the whole crew.

In this case I have found, based upon appropriate inferences from the record, that three organizers were present for a one-hour period, which occurred during the regularly-scheduled lunch period for all three machine crews. Under these circumstances, Section 20900(e)(4)(A) would permit the presence of up to six organizers on the property. I have further found that during the one-hour period, it is probable that two or perhaps three crews were on their lunch break at sometime. Under these circumstances, I conclude that the only violation of the access rule which occurred on this occasion was the apparent failure of the organizers to wear badges in violation of Section 20900(e) (4)(B), although again, all three produced identification on request.

X. August 24, 8:00 p.m.

Nate Holladay, Francis Arroyo, Robert John Mota, and Raul Acosta testified concerning this incident. Both Mota and Acosta testified that it was dark when the incident occurred, but in any event, their testimony is not inconsistent with the more detailed testimony of Holladay and Arroyo.

At about 8:00 p.m., one machine crew was on a break,

while the other two were working. UFW organizers Mendoza and Banuelos approached the crew on break. Holladay and Dennis Frudden were with the crew. Holladay told organizers that the crew was on a ten minute break, and that they could not talk to the crew until after work. Mendoza replied that he could talk to the crew during a break if he wanted to, and attempted to walk around Holladay. Finally after two such encounters, Holladay pushed Mendoza aside, apparently knocking him down. Mendoza then jumped up and told Holladay he would pay for that. Acosta, apparently the driver of the machine which was on break at the time, testified that Mota told him to start the machine after this encounter. Arroyo testified that Holladay and Mendoza argued and that Mendoza attempted again to go to the crew, but could not because the machine had already started up.

Each of the witnesses who testified about this incident addressed the issue of who pushed whom. Holladay himself testified that he stepped into Mendoza's path when the latter tried to walk around him. Holladay and Arroyo both firmly testified that Mendoza deliberately walked into Holladay. However, Arroyo's testimony is based on her insistence that Mendoza had room to walk around Holladay and instead walked into him, and does not carry much weight in view of Holladay's own testimony that he stepped in front of Mendoza. Mota, who observed the incident from a distance of about 30 yards characterized Holladay's push as "like being a guard in basketball". Acosta, who observed the incident from close at hand, commented that he thought it would come to blows.

In fact the clearest account of the encounter between the two men is Holladay's testimony on direct examination:

". . .he (Mendoza) tried and walked around us. So, I'd step in front of him, and he kind of walked right into me and pushed me out of the way and kept on doing this."

Q: How many time did he do so?

A: He did it two times. Finally, the second time after he pushed into me, I pushed him back and knocked him out of the way. And then, people that were sitting there on the machines, or taking their break, they kind of congregated around, and he-he jumped up and told me I'm going to pay for that." (TR: II:38)

Arroyo testified that after this incident the same people whom she named earlier told her they were afraid to go home.^{33/}

Section 20900(e)(3)(A) permits organizers to be present for a one-hour period after the completion of work. On this occasion, organizers arrived at approximately the usual quitting time for the machine crews. However, as happened on several occasions, the crews were scheduled to work late on this day and were taking only a ten-minute evening break. As previously noted, the access rule does not provide for access during such break periods. That being the case, Mendoza engaged in disruptive conduct in violation of Section 20900(e)(4)(A) by his insistence on attempting to push past Holladay to reach employees after being informed they were on a break. No other violation of the rule occurred on this occasion, since Mendoza was prevented from actually taking access, first by Holladay's actions and then by

^{33/} Holladay also testified that workers were afraid after this incident. The testimony was in response to a leading question by counsel, and Holladay could not remember who told him they were afraid.

the termination of the break period on Mota's orders. There is no evidence that work was disrupted on this occasion, since the employees observing the incident were all on break at the time.

XI. The Motion to Deny Access

a. Analysis

The Board has stated that a motion to deny access will be granted where the moving party demonstrates a violation involving either (1) significant disruption of agricultural operations, (2) intentional harassment of an employer or employees, or (3) intentional or reckless disregard of the rule. Ranch No. I, Inc. (supra) 5 ALRB No. 36. Each of these standards has been met on one or more occasions by the violations found above. This conclusion is based in particular on the following aspects of these incidents:

August 16; The violations which occurred on this occasion, and which are attributable to UFW organizer Arturo Mendoza, resulted in a significant disruption of the employer's operations. Furthermore, the interruption of work by large numbers of people entering the field, as well as conduct such as throwing tomatoes at employees, climbing on the harvesters and calling names at employees to cause them to leave their work posts during working hours amounted to harassment of both employer and employees. Finally, the violations of the access rule as to time and numbers on this occasion so far exceed the clear limits of the rule that they indicate a reckless disregard for its terms on Mendoza's part.

August 20, 9:00 a.m.: On this occasion, a group of union

supporters led by organizer Banuelos entered a field where the hand crews were at work. This incident ended when sheriffs arrived and the group turned back before reaching the employees. As a result, there is no indication that any disruption of work or harassment of employees actually occurred. However, as on August 16, the violations of the access rule as to time and numbers, which are attributable to UFW organizer Banuelos, are so clear on this occasion as to rise to the level of reckless disregard of its terms by Banuelos.

August 21, 10:00 a.m. and August 24, 10:00 a.m.; On both of these occasions, organizers stayed after work had started, handing out pamphlets and talking with employees who were working. The organizers involved were Lopez, Ruiz, and Medina on August 21, and Mendoza and Medina on August 24.

Machine crew members work facing a moving belt in the center of the machine, on a platform which is one-and-one-half feet off the ground. It is apparent that in order to talk to organizers or to receive pamphlets, they would have to turn completely away from the conveyor belt, during which time the belt of course keeps moving.

Because it should be clear that talking to employees on the machine disrupts their work, and because it should also be clear once the machine starts up that the entire crew is at work, I conclude that this conduct disrupted agricultural operations in deliberate disregard of the terms of the access rule.

August 20, 11:00 a.m., and August 24, 8:00 p.m.: On each of these occasions organizers persisted in visiting employees on

ten-minute breaks, after they were correctly informed by the employer that access was not appropriate at those times. The organizers involved were Mendoza, Medina, and Banuelos on August 20? and Mendoza on August 24. In each case, it should have been apparent to organizers once they were informed that employees were on a ten-minute break, that access was not permitted under the Section 20900(e)(3). Although there was no disruption of work or harassment of employees on these occasions, the organizers intentionally disregarded the rule, and moreover, their persistence in visiting employees in the face of the employer's proper request that they not do so at a time prohibited by the rule amounts to harassment of the employer. This is particularly true with respect to Mendoza's attempts to visit employees on August 24.

I do not include either the union's failure to properly serve the notice of intent to take access or the organizers' failure to wear badges among these intentional violations. -With respect to the service issue, the record does not establish that the union deliberately intended to take access without properly serving the employer. The union twice attempted to serve the notice, and there is no indication that it intentionally served it improperly, nor any evidence that it gained anything by its improper service. Such disruption as appears on this record resulted from the conduct of access takers and not from lack of notice. As to the failure to wear badges, organizers were consistently willing to identify themselves and to produce some form of identification. There is no evidence that they sought to

conceal their own identities or the name of the organization they represented, nor is there any indication that any harm resulted from their failure to wear badges. On the facts of this case with respect to the service and badge issues alone, I would not recommend the impositions of sanctions pursuant to Ranch No. I, Inc. (supra) 5 ALRB No. 36. Taken in context of the entire case, however, these violations are further examples of the union's indifference to the specific requirements of the access rule.

b. Recommendation

Five organizers were identified as participants in one or more of these seven incidents. Three of these five--Mendoza, Medina, and Banuelos--were each involved in significant and intentional violations of the access rule. Two of the five--Lopez and Ruiz--were involved only in the incident on August 21, discussed in Part VII, and on that occasion were accompanied by Medina.

In Ranch No. I, Inc. (supra) 5 ALRB No. 1, the Board imposed a sanction of no access for 60 days within one region on an organizer who had committed one violation involving intentional disregard of the rule and some disruption of agricultural operations. Lopez and Ruiz were similarly involved in one incident only, and a comparable sanction would be appropriate in their cases.

Mendoza, Medina, and Banuelos, were repeatedly involved in significant violations. More serious sanction is warranted in their cases. In the absence of any specific guidelines from the Board, I will recommend that the Board bar these organizers from

taking access in the Salinas region for a six month period; and that the Regional Director be directed to determine when the sanction period shall begin so that it will encompass the period of the tomato harvest in the Salinas Valley.^{34/}

The employer has requested that the UFW, as well as its organizers, be sanctioned pursuant to the provision of Section 20900(e)(5)(A) which specifies that a union may be barred from taking access if its organizers repeatedly violate the provisions of the rule. The Board has not previously imposed sanctions on a union under this provision. Since the union's right of access pursuant to the access rule is derived directly from the employee's rights pursuant to Labor Code section 1152 to receive information about organizing and collective bargaining,^{35/} it follows that sanctions pursuant to Section 20900(e)(5)(A) should not be applied so as to deprive employees of meaningful access to information about a union. (cf. section 20900(e)(4)(C), which provides that "(d)isruptive conduct by particular organizers shall

34/ I note that the sanction which is to be applied, is barring that right of access which was abused, i.e., access pursuant to 8 Cal. Admin. Code section 20900(e). Section 20900(e)(1)(C) specifically provides that "(n)othing herein shall be interpreted or applied to restrict or diminish whatever rights of access may accrue to a labor organization certified as a bargaining representative". If the Board adopts my recommendation to certify the UFW, the UFW would then have the rights of access of a certified union at this employer. See O. P. Murphy & Sons (Dec. 21, 1978) 4 ALRB No. 106.

35/ The Board's findings are set forth in the preamble to the access rule, at section 20900(a)-(e). The legal and factual bases for these findings were recognized and discussed at length by the Supreme Court when it approved the access rule. See Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal. 3d 392, at 414-416.

not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.")

Since I have recommended that five organizers be individually sanctioned for their specific misconduct herein, and since the record in this case provides no specific basis for sanctioning the union in addition to those organizers, I will recommend that no sanctions be imposed on the union itself.

XII. The Election Objections

a. Analysis

The employer argues that the incident of August 16 established an atmosphere of fear and coercion which was perpetuated until the election by other access incidents. The employer argues both that this atmosphere impeded the ability of employees to make a rational choice of bargaining representative because they were afraid of the union, and that employees were deterred from voting by fear of the UFW. The burden of proof in an election proceeding under Labor Code section 1156.3(c) is on the party seeking to overturn the election. TMY Farms (Nov. 29, 1976) 2 ALRB No. 58; NLRB v. Golden Age Beverage Company (5th Cir. 1969) 415 F.2d 26 (71 LRRM 2924); see also NLRB v. Mattison Machine Works (1961) 365 U.S. 123 (47 LRRM 2437). This is a heavy burden, requiring an objecting party to come forward with "specific evidence. . . showing not only that unlawful acts occurred, but also that they interfered with the employees' exercise of free choice to such an extent that they materially affected the results of the election." NLRB v. Golden Age Beverage Co., supra, 415 F.2d 26, 30. As further set forth below,

I find that the employer herein has failed to show that conduct of UFW organizers or of unidentified third parties had such an impact on this election.

8 Cal. Admin. Code section 20900(e)(5)(B) provides that violations by a labor organizer or organization of the access regulations may constitute grounds for setting aside an election where the Board determines in objections proceedings under Section 1156.2(c) of the Act that such conduct affected the results of the election. In past cases, the Board has indicated that it would set aside an election based on access violations which were of such character as to have an intimidating and coercive impact on employees' free choice of a collective bargaining representative. Ranch No. I, Inc. (Jan. 3, 1979) 5 ALRB No. 1; Sam Andrews' Sons (Aug. 21, 1978) 4 ALRB No. 59; Triple E Produce Corp. (April 13, 1978) 4 ALRB No. 20; George Arakelian Farms, Inc. (Feb. 2, 1978) 4 ALRB No. 6; Martori Bros. Distributing (Jan. 27, 1978) 4 ALRB No. 5; Dessert Seed Co. (Oct. 29, 1976) 2 ALRB Mo. 53; K. K. Ito Farms (Oct. 29, 1976) 2 ALRB No. 51. See also J. R. Norton Co. v. Agricultural Labor Relations Board (1979) 26 Cal.3d 1, 25-26, in which the Supreme Court upheld the Board's dismissal of election objections based on this standard.

The Board has also considered whether elections should be set aside based on the occurrence of physical violence prior to an election. In Phelan & Taylor (Jan. 29, 1976) 2 ALRB No. 22, the Board considered the effect on an election of a violent confrontation between rival union organizers during an organizing campaign. The Board noted that the NLRB has set aside elections

where physical attacks and threats of physical attacks on organizers and employees contributed to an atmosphere not conducive to the free choice of a bargaining representative, and expressed its intent to follow the same approach in this area. NLRB cases in turn have looked to where there existed a general atmosphere of confusion or violence such as might reasonably be expected to generate anxiety or fear of reprisal, and to render impossible a rational, uncoerced expression of a bargaining representative. Al Long, Inc. (1968) 173 NLRB 447 (69 LRRM 1366); see also Ciervo Blanco, Inc. (1974) 211 NLRB 578 (86 LRRM 1452); Sonoco of Puerto Rico, Inc. (1974) 210 NLRB 493 (86 LRRM 1122); Servomation of Columbus, Inc. (1975) 219 NLRB 504 (89 LRRM 1688), enf. den., Servomation of Columbus v. NLRB (6th Cir. 1977) 96 LRRM 2862.

Of the seven incidents involving access violations,^{36/} only one occurred among the employer's hand crews. The record indicates that the hand and machine crews were under separate supervision, were paid on a different basis, and worked different hours. There is no evidence in the record of any interchange or contact between hand and machine crews. Such evidence as there is concerning the crews' background or attitudes emphasizes differences between hand and machine crews rather than similarities. The hand crews had a lower percentage of English-speaking workers than the machine crews. Nate Holladay testified that the hand crews walked out when the strike began on

^{36/} I have concluded that the only violation which occurred on August 24, at noon was a failure to wear badges.

August 27, and did not return prior to the election on August 29. On the other hand, Arroyo's testimony establishes that a substantial percentage of the machine crews continued to work after the strike was called.

Based on the separation between hand and machine crews, I conclude that the incidents which occurred among the machine crews had no effect on the hand crews. I further find that the incident which occurred on August 20, when a group of union supporters entered the field where the hand crews were working, was not of such character as to establish an atmosphere of fear among workers observing it. There is no evidence that the persons who entered the field ran, shouted threats, threw objects or were violent in any way, and they were turned back 20 yards from the crews. The only evidence of workers' reactions to the incident was offered by Holladay. No worker from the hand crews testified, nor did any supervisory personnel who would have been more familiar with the crews than was Holladay. Holladay was less able to communicate with hand crew members who spoke predominantly Spanish, and was less familiar with hand-crew personnel than with machine crew personnel.^{37/} Holladay's testimony concerning workers' immediate reaction to this incident indicates only that they stopped working to watch, and that four to five persons, including the hand crew foremen, expressed fear to him after the

37/ I do not credit Holladay's efforts to establish his knowledge of and rapport with Spanish-speaking employees in either hand or machine crews. During questioning on this subject his demeanor was consistently hostile; moreover, his answers are inconsistent with his admittedly limited Spanish and with his limited responsibilities with respect to personnel.

incident. This evidence is hearsay, and by itself is insufficient basis on which to find that hand crew members were afraid as a result of this incident. 8 Cal. Admin. Code section 20370(c).

The record indicates that the machine crews first encountered organizers during an unspecified number of apparently peaceful access incidents prior to August 16. The conduct which occurred on August 16, in which a group of union supporters ran into the field, shouting slogans, and climbing on the machines or throwing tomatoes is of the type which would be expected to frighten workers. Betty Jean Rodriguez, Gloria Reyes, and Hector Munoz, all machine crew workers, each testified that they personally were afraid. Munoz testified that he observed fear in other employees. On the other hand, the record indicates that union supporters sought to talk with the workers and did so for about one-half hour after the group withdrew from the field. There is no evidence as to the tenor of this exchange, although it would certainly have a bearing on the impact which the incident had on workers who took part in it. Raul Acosta, also a machine crew worker, reported that both pro and anti-union sentiments were expressed among the crews in conversations after this incident.

Following the events of August 16, there is hearsay evidence that three of the subsequent access incidents in the machine crews frightened some employees. On August 21 and 24 when organizers persisted in talking to employees after the start of work (see Parts VII and VIII, supra), Holladay testified that unidentified workers expressed fear to him. Arroyo testified that workers expressed fear to her on August 24, as well as indicating

resentment that organizers interfered with work. By itself, this testimony is hearsay and insufficient to support a finding that the workers mentioned were afraid, let alone to generalize about the reactions of others. Nor is the conduct involved here clearly of the type which would have a coercive impact on employees' choice of a bargaining representative. Although such conduct is prohibited by the access rule, and puts workers in a difficult position by inducing them to turn from their work in the presence of supervisors who have directed the organizers to leave, it is equally likely that this conduct would cause resentment of the organizers' interference with work, or anxiety about the supervisor's reaction to the employee turning from work, as that it would inspire fear of the union. To conclude that fear is the probable reaction would be highly speculative.

On August 24, when a confrontation occurred between Holladay and Mendoza, both Holladay and Arroyo testified that workers expressed fear to them. Again, this evidence is hearsay and insufficient by itself to support a finding. By comparison with the violence encounter between organizers condemned by the Board in Phelan and Taylor, (supra) 2 ALRB No. 22, I find that the pushing match between supervisor and organizer which occurred on this occasion is not likely to have had a coercive impact on employees who observed it.

With respect to the remaining access incidents, on August 20 and August 24 (see Parts VI and IX, supra), there is no testimony that workers expressed fear. On these occasions, organizers talked to workers who were on breaks, and there is no

evidence of work disruption or threatening conduct.

Based on the evidence herein, the employer would extend its argument that employees were too frightened to vote to all employees on the eligibility list who did not vote in the election.^{38/} The ALRB has indicated that it will set aside an election where the record establishes specific conduct which results in employees being turned away from the polls or prevented from voting. TMY Farms (Nov. 29, 1976) 2 ALRB No. 58; Pacific Farms (Sept. 8, 1977) 3 ALRB No. 75. However, it has recognized, as has the NLRB, that the mere fact that employees do not vote is insufficient basis to set aside an election, since employees may choose not to exercise their franchise for any reason at all or for no reason. Pacific Farms, supra; Sun World Packing Corporation (April 25, 1978) 4 ALRB No, 23. Especially in an industry in which high turnover alone may result in a diminished turnout, a causal connection must be established between improper conduct and employees' failure to vote, or else elections would routinely be set aside based on highly speculative conclusions about employees' motives.

The evidence in this case fails to establish such a connection. There was no evidence of specific threats connected with voting. To the extent that it is possible to determine the purpose of harassment of employees shown on this record, the

^{38/} The employer uses the figure of 83 employees. By excluding unresolved challenged ballots from my calculations, I conclude that 205 eligible voters cast ballots out of 299 on the eligibility list, for a turn-out of approximately 69 percent. By these figures, 94 voters on the list did not appear to vote.

evidence indicates that it was intended to cause employees to stop work and listen to union appeals, and possibly to join a strike. Although the record indicates that this election was conducted under strike circumstances, there is no evidence of interference with the polling process or with employees' access to the polls.^{39/}

Furthermore, this standard must be met based on the objective nature of the conduct involved rather than on subjective testimony by employees as to their reactions. G.H. Hess (1949) 82 NLRB 463 (23 LRRM 1581). Although subjective testimony is relevant and has been considered by the NLRB, it must be weighed in light of ". . . the varying subjective reactions of potential voters, some of whom may be more sensitive than others." Beaird-Poulan Division, Emerson Electric Company (Feb. 25, 1980) 247 NLRB No. 180 (103 LRRM 1389), administrative law judge's decision, slip opinion, at page 13, note 14. In this particular case, the only direct evidence that employees refrained from voting out of fear of the UFW is the subjective testimony of Betty Jean Rodriguez and Gloria Reyes. Although Reyes testified that

39/ Labor Code section 1156.3(a) requires that elections be conducted under strike circumstances as expeditiously as possible. It is likely that such elections will take place in an atmosphere of some tension and perhaps in the presence of some picketing. Given this fact, it is clear that the mere existence of strike circumstances with some picketing is insufficient to require that such elections be set aside. In this case, there is evidence that picket lines were up during the strike after August 27. Although Holladay was present at the picket lines, there was no specific testimony that there was picketing during the election itself or that picketing was of such character as to interfere with access to the polls.

ñ the incident on August 16 was the basis for her fear, Rodriguez also recited other incidents which caused her to be frightened.^{40/} Moreover, the testimony of Rodriguez, Reyes, and Hector Munoz illustrates the "varying sensitivities" of individual employees which make a generalization from such testimony to the motives of 91 other non-voting employees highly unreliable. In addition to the August 16 incident, both Rodriguez and Munoz experienced encounters with pickets during which they were frightened. However, Munoz testified that his motive for not voting in the election was disinterest.^{41/} Muñoz' testimony about his reactions to such events generally indicates that he was frightened by specific acts such as throwing tomatoes or banging on his windshield with picket signs, but does not establish that he was generally fearful of the union. By contrast, in response to similar events Rodriguez exhibited a general fear of the union. Finally, although Gloria Reyes also encountered pickets on one occasion, she seemed to be much less disturbed by their presence than was Rodriguez, and went so far as to confront Mendoza on August 16 with her disapproval of his actions.

Although I credit the testimony of Rodriguez and Reyes that they personally did not vote out of fear, there is no basis

40/ It is impossible to assess the impact of these incidents on other employees in the absence of any testimony as to how many employees besides Rodriguez witnessed them. The same is true for incidents described by Munoz and Gloria Reyes.

41/ Although I have discredited Munoz based on his ability to remember dates, his testimony was generally credible. He delivered this answer without hesitation in a straight-forward manner and I find it to be a credible statement of his motive for not voting.

for generalizing from their testimony to conclusions about the motives of others. Moreover, both the testimony of Munoz and Raul Acosta's description of employee "talk" after the August 16 incident specifically indicate that not all employees shared their reactions.

I further find that the objective nature of the conduct on August 16 and August 24 at 8:00 p.m. is not such as to have caused a significant number of employees to be afraid to vote. While not to be condoned, none of this conduct involved specific threats concerning voting, and none was as serious as conduct which occurred in Phelan and Taylor, (supra) 2 ALRB No. 22, which involved two physical assaults in the presence of employees, or in relevant NLRB cases.^{42/} Nor is the conduct established herein sufficiently serious to warrant an inference that any of the 200 votes cast for the UFW were cast out of fear or confusion caused by the union's tactics. The NLRB has recently held, even in the context of its laboratory conditions standard,^{43/} that in order to

42/ In Al Long, supra, such events included extensive property destruction, anonymous telephone threats to eligible voters, a bomb threat, and unruly picket line conduct. In Sonoco, Inc., supra, employees were personally threatened with violence on four occasions if they did not vote for the union. In Ciervo Blanco, Inc., supra, employee's homes and automobiles were firebombed and damaged, and strikers visited employees' homes and threatened them with injury and property damage if they crossed picket lines. In Servomation, Inc., supra, the election was preceded by 39 days of strike during which there were incidents of throwing objects at cars and damaging tires, threats of physical injury near the picket line, anonymous phone calls to non-striking employees, and two incidents in which pickets followed non-striking workers and attempted to run them off the road.

43/ See General Knit of California (1978) 239 NLRB 619 (99 LRRM 1687).

set aside an election, "not only must conduct be coercive, but it must be so related to the election as to have had a probable effect on the employees' action at the polls." Hickory Springs Manufacturing Co. (1978) 239 NLRB 641 (99 LRRM 1715), reaffirming the standard announced in The Great Atlantic and Pacific Tea Company, Inc. (1969) 177 NLRB 942 (71 LRRM 1554); and overruling its previous decision in Provincial House, Inc. (1974) 209 NLRB 215 (85 LRRM 1326), but see also the dissenting opinions in Hickory Springs, supra.^{44/} As previously noted, no specific threats connected with voting were made in this case, and it would seem unlikely that employees who were frightened by tactics chosen by the UFW to cause them to join a strike or to stop work to listen to organizers would react by voting for the UFW as their collective bargaining representative.

b. Summary of Conclusions and Recommendation

I find that the conduct shown on this record did not establish an atmosphere of fear and coercion which rendered impossible a free choice of collective bargaining representative, for the following reasons: 1. No incident which would have had such an impact occurred among the employer's hand crews, which constituted over 50 percent of its work force;

^{44/} The dispute in this area between majority and dissenting positions has persisted in other cases. See Prince Manufacturing Company, (1979) 240 NLRB 388 (100 LRRM 1217); KMS Corporation (May 30, 1979) 242 NLRB No. 91 (101 LRRM 1256); Weyerhaeuser Co. (Sept. 18, 1979) 244 NLRB No. 178 (102 LRRM 1222); Burris Chemical, Inc. (Oct. 22, 1979) 246 NLRB No. 34 (102 LRRM 1509); Loose Leaf Hardward, Inc. (Nov. 5, 1979) 246 NLRB No. 46 (102 LRRM 1551); Weyerhaeuser Co. (Feb. 7, 1980) 247 NLRB No. 147 (103 LRRM 1271).

2. The evidence is insufficient to establish that incidents occurring among the machine crews had such an impact. The objective nature of the events which occurred does not warrant such a finding, because these events did not involve threats or violence specifically directed at voting conduct, and because the misconduct involved is not as serious as misconduct which the ALRB and NLRB found to result in an atmosphere of fear and coercion requiring elections to be set aside. The subjective testimony of two employees that they did not vote out of fear resulting from these events is insufficient basis on which to speculate about the motives of other non-voting employees.

Based on the foregoing findings of fact, analysis, and conclusions, I recommend that the employer's objections be dismissed and the United Farm Workers of America, AFL-CIO, be certified as the exclusive bargaining representative of all the agricultural employees of the Employer in the State of California.

DATED: March 6, 1981

Respectfully submitted,

DEBORAH WARREN
Investigative Hearing Examiner