

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	Case No. 79-CL-14-SAL
Respondent,	)	
	)	
and	)	
	)	7 ALRB No. 3
ADMIRAL PACKING COMPANY,	)	
	)	
Charging Party,	)	
	)	
and	)	
	)	
CLYDE W. CORNELL,	)	
	)	
Intervenor.	)	

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DECISION AND ORDER

On August 20, 1979, Administrative Law Officer (ALO) Bernard S. Sandow issued the attached Decision in this proceeding. Thereafter, the Charging Party, the General Counsel and Respondent each filed timely exceptions and a supporting brief. Respondent also filed a reply brief.<sup>1/</sup>

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

The complaint alleges that the United Farm Workers of

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<sup>1/</sup> The General Counsel and the Intervenor each requested, and was granted, leave to file a supplemental brief concerning the significance of the United States Supreme Court's decision in Carey v. Brown (1980) 100 S.Ct. 2286, a case which involves residential picketing. Thereafter, Respondent submitted an answering brief.

America, AFL-CIO (UFW) violated section 1154(a)(1) of the Act by its conduct in picketing the residence of a nonstriking agricultural employee, Clyde W. Cornell, the Intervenor herein, and by threatening Cornell during the course of such picketing. The parties stipulated that at all times material herein there was an ongoing labor dispute between the UFW and Admiral Packing Company (Admiral), that on Sunday, April 29, 1979, UFW members and other strike supporters arrived at the Cornell residence in Salinas at approximately 9:00 a.m., and that their activity there was pursuant to the direction of the UFW. It was further stipulated that Daniel Mendoza was Respondent's strike captain, that some members of the UFW group carried UFW flags, and that members of the UFW group caused no physical damage to Cornell's property and made no personal physical contact with Cornell or his family. The UFW activity in front of Cornell's residence ended at approximately 9:36 a.m. with the arrest of 13 members of the UFW group by the Salinas Police Department on charges of violating section 409 of the Penal Code (unlawful assembly); 1 of them was also charged with violating Penal Code section 148 (resisting arrest).

The ALO found, as the parties had stipulated, that on April 29, 1979, between 9:00 and 9:30 a.m., 30 to 40 UFW members picketed and demonstrated on the sidewalk in front of the residence of Clyde W. Cornell, an employee of Admiral. The picketers engaged in yelling, shouting, chanting, and handclapping. The ALO also found that on one occasion in the course of the demonstration, obscenities were directed to Clyde W. Cornell, and that Daniel Mendoza, Respondent's strike captain, directed a threat of physical

violence at Cornell.<sup>2/</sup> The ALO concluded that the UFW by its actions and conduct at Cornell's residence restrained and coerced an agricultural employee in the exercise of his right, under section 1152 of the Act, to refrain from joining or assisting the UFW in its strike, and thereby violated section 1154 (a) (1) of the Act.

We conclude that the UFW violated section 1154(a) (1) of the Act by demonstrating and picketing at the residence of an agricultural employee in large numbers and by yelling, shouting, and chanting loudly.<sup>3/</sup> In the residential setting where it occurred, such conduct clearly tended to coerce and restrain the targeted worker in the exercise of his right under section 1152 to refrain from joining, supporting or engaging in a strike or any other union or concerted activity. See United Farm Workers of America, AFL-CIO (Marcel Jojola) (Oct. 24, 1980) 6 ALRB No. 58.

The ALO found it was the intent of the UFW to coerce and restrain Clyde W. Cornell from working for Admiral by picketing and loudly demonstrating at his residence, and he contended that the respondent's intent is a "controlling factor" in establishing the elements of a section 1154 (a) (1) violation. The test of whether an employer has interfered with, restrained, or coerced employees in

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<sup>2/</sup> As we find insufficient record evidence with respect to the obscenities, or that UFW picket captain Mendoza threatened Cornell, we reject the ALO's implied conclusion that these actions constituted separate violations of section 1154(a)(1) of the Act.

<sup>3/</sup> It is unnecessary for us to determine whether the ALO's reliance on Officer Avalo's tape recording was proper, as there is sufficient independent evidence in the record to establish that the picketers did in fact engage in loud yelling, shouting, and chanting.

violation of the Act does not focus on the employer's knowledge of the law or on his motive or intent. The test is whether the employer engaged in conduct, which, it may reasonably be said, tends to interfere with, restrain, or coerce employees in the free exercise of their rights under the Act. Nagata Brothers Farms (May 23, 1979) 5 ALRB No. 39; El Rancho Market (1978) 235 NLRB No. 61 [98 LRRM 1153]. In the case of unfair labor practices committed by a labor organization, a similar test applies: Whether the union's conduct reasonably tends to coerce or restrain employees in their statutory right to engage in, or refrain from engaging in union activities or other protected concerted activities. Thus, neither a union's intent nor the subjective effect of its conduct on employees is relevant to a determination as to whether the union's conduct constituted an unfair labor practice. Ladies Garment Workers (Bernard-Altman Texas Corp.) v. NLRB (1961) 366 U.S. 731 [48 LRRM 2251].

Remedy

The remedy herein will provide for a cease-and-desist order, for the posting and mailing of a Notice to Employees, and for Respondent to submit a written apology to Cornell and other residents of the picketed home.

In his Decision, the ALO suggested that certain limitations be imposed by the Board as to the number of picketers who may picket a residence and times when such picketing may be

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permitted. We reject this proposal.<sup>4/</sup> Should any cases involving residential picketing come before us in the future, we shall review the evidence on a case-by-case basis to determine whether such conduct reasonably tended to coerce or restrain agricultural employees in the exercise of rights guaranteed by section 1152 of the Act, taking into account all the facts of each particular case.<sup>5/</sup>

ORDER

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

1. Cease and desist from:

(a) Restraining or coercing any agricultural employee in the exercise of his or her right to join or engage in, or to refrain from joining or engaging in, any strike, union activity, or other protected concerted activity, by means of

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<sup>4/</sup> Member Perry rejects the ALO's proposal because he believes that it is the responsibility of the legislature or the courts, and not of this Board, to determine the limits, if any, within which picketing and demonstrating at private homes would be legally permissible.

Member McCarthy rejects the ALO's proposal because, as stated in his concurring opinion in United Farm Workers of America, AFL-CIO (Marcel Jojola) , supra, 6 ALRB No. 51T, p.28, Member McCarthy believes that picketing and demonstrating at the homes of agricultural employees has an inherent tendency to coerce employees and therefore should be subject to a rebuttable presumption of illegality.

<sup>5/</sup> Member Ruiz agrees to the remedy for the reasons given in his concurring opinion in United Farm Workers of America, AFL-CIO (Marcel Jojola), supra, 6 ALRB No. BIT

picketing or demonstrating in large numbers, yelling, shouting or chanting loudly, or by other like or related conduct, at or near the home or residence of any agricultural employee.

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

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

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

(b) Post copies of the attached Notice, in all appropriate languages., for 60 consecutive days in conspicuous places at all its offices, union halls and strike headquarters throughout the state of California, the period and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(c) Mail copies of the attached Notice, in all appropriate languages within 30 days after the date of issuance of this Order, to Clyde W. Cornell and his family.

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

(e) Submit a written apology signed by an official representative of Respondent, to Clyde W. Cornell and other residents of the Clyde W. Cornell home and provide a copy thereof to the Regional Director.

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

Dated: March 4, 1981

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board, issued a complaint that alleged we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by our conduct at and near the home of an Admiral Packing Company employee on April 29, 1979. The Board has told us to post and publish this Notice. We will do what, the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

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

WE WILL NOT restrain or coerce you in the exercise of your right to join or engage in, or to refrain from joining or engaging in, any strike or other concerted activity, by means of picketing or demonstrating in large numbers or by yelling, shouting, or chanting loudly, or by other like or related conduct at or near your homes or residences.

SPECIFICALLY, the Board found that we restrained and coerced Clyde W. Cornell, an employee of the Admiral Packing Company, when we picketed and demonstrated at his residence. The Board found that our conduct at the home of this employee tended to restrain and coerce hi- in his right to refrain from joining or supporting our strike against. Admiral Packing Company. We promise that we will not restrain or coerce any employees because of their decision not to participate in union activity.

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

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

By: \_\_\_\_\_  
Representative Title

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

DO NOT REMOVE OR MUTILATE.



CASE SUMMARY

United Farm Workers of America, AFL-CIO  
(Admiral Packing Company)

7 ALRB No. 3  
Case No. 79-CL-14-SAL

ALO DECISION

The ALO concluded that the Respondent union violated section 1154(a)(1) of the Act by picketing the residence of a nonstriking agricultural employee in large numbers and by yelling, shouting, and chanting loudly. The ALO found that Respondent's conduct tended to restrain and coerce the agricultural employee in the exercise of his rights guaranteed under section 1152 of the Act.

BOARD DECISION

The Board affirmed the ALO's conclusions, finding that the Respondent union violated section 1154 (a) (1) of the Act by picketing the residence of a nonstriking agricultural employee in large numbers and by yelling, shouting, and chanting loudly. The Board held that in the residential setting where it occurred, this conduct tended to coerce or restrain the agricultural employee in the exercise of his protected right to refrain from joining or supporting the union's strike against the employer.

REMEDIAL ORDER

The Board ordered Respondent: to cease and desist from restraining or coercing agricultural employees in the exercise of their right to join or engage in, or to refrain from joining or engaging in, any strike or other concerted activity, by means of picketing or demonstrating in large numbers, yelling, shouting, or chanting loudly, or by other like or related conduct at or near the home or residence of any agricultural employee; to post, mail, and publish a remedial Notice to Employees; and to submit a written apology to the picketed employee and other residents of his home.

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

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STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

UNITED FARM WORKERS OF AMERICA,  
AFL-CIO,

Respondent,

and

ADMIRAL PACKING COMPANY,

Charging Party,

and

CLYDE W. CORNELL,

Intervenor.

CASE NO. 79-01-1-SAL

DECISION

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ELLEN LAKE. Staff Counsel, appearing for General Counsel,  
Agricultural Labor Relations Board.

CARLOS ALCALA, Esc., and KAREN L. DANIEL and KATE UWEEDY, Legal  
Workers, appearances for the Respondent.

WAYNE A. HERSH, Esc., appearing for the Charging party.

PACIFIC LEGAL FOUNDATION, by ROBIN L. RIVET Esc., appearing for  
the Intervenor.

That a contested hearing was commenced July 10, 1979, before BERNARD  
S, SANDOW, Administrative Law Officer, and testimony

and evidence was taken, both oral and documentary, July 10 and 11 1979\* in Salinas, California, until conclusion. Witnesses were called, sworn and testified and interpreters were present, sworn and used when and as needed.

That the following preliminary matters, motions and stipulations, were entertained and ruled upon accordingly:

1. Motion to Intervene, based on a Noticed Motion, by Robin L. Rivett, Esq., of Pacific Legal Foundation, representing CLYDE W. CORNELL, an interested party: Said Motion is made pursuant to 8 California Administrative Code Section 20258. Upon inquiry, there was voiced no objection in behalf of General Counsel and no objection in behalf of Charging Party. Objection was made in behalf of Respondent and after full argument and hearing on said motion, and after acknowledgement by Respondent of timely receipt of said Noticed Motion and no necessity of further preparation or further witnesses nor prejudice shown to Respondent if said motion be granted, Motion to Intervene by Clyde Cornell is granted and the pleadings are hereby corrected: to reflect the Intervenor CLYDE W. CORNELL and a party herein.

2. Motion for Exclusion of Witnesses made on behalf of the Charging Party, and over objections thereto by Respondent and General Counsel, said Exclusion Motion was granted accordingly.

3. Motion for Continuance or in the alternative to suspend this Hearing as it pertains to the testimony of three (3) witnesses to a date subsequent to August 14, 1979, made by a Stephen Sillman, Deputy of the Monterey County District Attorneys Office, in the interest of justice. The basis for the Motion is that there is a criminal trial set for August 14, 1979 and

said three (3) witnesses material to the Respondent's case herein are also defendants in said criminal trial and the issue arises that if they be given immunity to testify in this hearing, that said immunity (against self incriminator.) granted would deprive the State from proceeding at the later date against said defendants as once testifying they will not be subject to prosecution, in accordance with Labor Code Section 1151.2. Under the present set of facts and circumstances, the said Motion was denied. That present and an active participant in said motion and effect to be given to said Labor Code Section 1151.2, was Terrance R. Donoan Public Defender appearing for the Office of the Public Defender of Monterey County.

4. It was so stipulated that:

(a) Clyde W. Cornell is an agricultural employee as defined in Labor Code Section 1140.4 (o) and is employee of Admiral Packing Company it all times relevant hereto.

(b) The United Farm Workers of America, AFL-CIO and Admiral Packing Company have been engaged in a labor dispute during which the UFW has conducted a strike against Admiral packing

(c) 716 amarillo way, Salinas (residence of Clyde W. Cornell), is a single family residence in a residential neighborhood.

(d) On Sunday, April 29, 1979; UFW members and other strike supporter's went to 716 Amarillo way, Salinas.

(e) Their activity there (UFW members and other strike supporters) was pursuant to directions by the united Farm workers of America, AFL-CIO

(f) The Captain of the group was Daniel Mendoza.

(g) The first members of the group arrived at around 9.00 a.m.

(h) The UFW activity in front of 716 Amarillo way ended at approximately 9:36 a.m., with the arrest of 13 members of the UFW group by the Salinas Police Department on charges of violating Section 409 of the Penal Code. One member of the group was additionally charged with violating Penal Code Section 148. The criminal cases are currently pending. All persons arrested have pleaded innocent

(i) Some members of the UFW group carried the red UFW flags but no placards.

(j) The members of the UFW group caused no physically damage to Clyde Cornell's property.

(k) The members of the UFW group made no personal physical contact with Clyde Cornell or his family

5. Motion to amend the complaint was made by the General Counsel, without objection thereto and further, waiver being made to its reduction to writing and that it may be done by interlinesti and all parties stipulating thereto, as follows:

That paragraph 4 of the complaint, at the top of page 3 of the same that the last two words "Coastal Farms" be and are struck and in their place be setforth the words "Admiral Packing".

6. That General Counsel offered their formal papers, with no objections thereto and crossexamination. thereon being reserved, into evidence and they and each of them were so admitted into evidence and marked accordingly, as follows :

General Counsel Exhibit number I- consisting of I-A, the Charge consisting of two (2) pages; I-B, the Notice of Hearing and

Complaint consisting of three (3) pages, but marked on the front and back thereof as 1 through 5; and, I-C, the Answer to the Complaint, consisting of two pages including the proof of service by mail page.

All parties were given full opportunity to participate in the Hearing. After the close thereof, written briefs were filed by each and every of the parties and together with page corrections and commissions as submitted by Admiral Packing and United Far-Workers of America, AFL-CIO, in support of their positions timely, and which were read and considered by myself.

That based upon the testimony of the witnesses, exhibits, matters of record and moving papers, stipulations of counsels and the entire record, including pertinent Code and sections and regulations alluded to, and including the weight given to certain elements and including my observations of the demeanor of witnesses, I make the following findings, conclusions and recommended decision:

PLEADINGS: ADMISSIONS

1. That on April 30, 1979, ADMIRAL PACKING COMPANY filed a charge against the Respondent UNITED FARM WORKERS OF AMERICA, AFL-CIO, in case number 79-CL-14-SAL alleging violations of Labor Code Section 1154 (a) (1) and 1154 (a) (2). A true and correct copy of this charge was served on UFW on April 30, 1979. Note: not admitted to and not denied according to respondent's answer, out not objected to by Respondent when offered into evidence by the General Counsel as Exhibit I-A;

2. That Respondent UFW is now and at all times material herein has been a labor organization within the meaning of the act.

3. That ADMIRAL PACKING is now and at all times material herein has been an agricultural employer within the meaning of the Act;

4. That at all times material herein, a labor dispute existed between UFW and ADMIRAL PACKING during which time UFW conducted a strike against ADMIRAL PACKING.

PLEADINGS: ALLEGATIONS, DENIALS, DEFENSES

The complaint alleges that respondent has violated Section of the Act, and is charged with the following:

1. Restraining and coercing an agricultural employee in the exercising of his rights guaranteed in Section 1152 of the Act by on Sunday, April 29, 1979. having its members and agents' picket the residence of CLYDE W. CORNELL, a non-striking employee of ADMIRAL PACKING;

2. Coercing an agricultural employee from exercising his rights guaranteed in Section 1152 of the act by on Sunday, April 29, 1979, having a member and agent of respondent threaten CLYDE V. CORNELL, a non-striking employee of ADMIRAL PACKING;

3. Engaging in unfair labor practices affecting agriculture within the meaning of Section 1154(4)(1) and Section 1140.4(a) of the Act, by its purported acts as setforth above,

The Answer denies that Respondent has violated the Act and/or any sections thereunder, and setsforth the further affirmative defense :

1. That the picketing activities charged as coercive, are protected under the constitutions of the United States and of California.

SECTIONS OF THE ACT

SECTION 1154 OF THE ACT - LABOR ORGANIZATIONS OR AGENTS; UNFAIR LABOR

PRACTICES

"It shall be an unfair labor practice for a labor organization or its agents to do any of the following:

(a) To restrain or coerce:

(1) Agricultural employees in the exercise of the rights guarantee in Section 1152."

SECTION 1152 OF THE ACT - RIGHTS OF AGRICULTURAL EMPLOYEES

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities -----."

(Emphasis added.)

THE EVIDENCE

I - EXHIBITS IN EVIDENCE

General Counsel I-A,B,C : Formal papers

General Counsel II : Tape recording by Officer Denois Avalos of the Salinas Police Department made at the site of:

picketing April 29, 1979, at the residence of Clyde Cornell

(all parties stipulated that this copy may be in evidence in

place of the original said tape, and that there may be = total

volume distinction between the total original and total copy General Counsel

III-A,B,C: Pictures of front of residence of

Clyde W. Cornell. General Counsel IV : Declaration of Clyde V.

Cornell,

admitted for the limited purpose of the encircled words, only. Admiral

Packing A : Drawing of the picketing and arrest

scene, by Officer Avalos.

Admiral Packing B-1,2,3,4,5,6: Strike related Judicial actions. Intervenor

Clyde W. Cornell A: Drawing of the residence and

neighborhood areas of Clyde W. Cornell.

II - TESTIMONY OF WITNESS

For the General Counsel:

1. Patrol Officer Denois Avalos -Police officer within the Salinas Police Department on assignment to all present strike situations, for the past five months. He was on duty and called to 715 Amarillo Way (residence of Clyde W. Cornell, intervenor and non-striking employee of Admiral Packing), arriving 9:20 or 9:25 a.m.



on Sunday, April 29, 1979. On approach, in this residential neighborhood, he observed neighbors on their lawns and looking out of doors and windows and in groupings, while there were approximately 40 persons picketing, walking, in a tight oval circle carrying red flags with a black eagle, on a stick, which is the United Farm workers flag, in front of the 716 Amarillo Way residence. They were on the sidewalk and partially on the edge of the lawn towards said residence. All of said persons were moving and making noises of chanting and yelling. He made a tape recording of the occasion while he was ten feet from the pickets and the tape truly and accurately portrays what he heard. The tape is played and then translated by this witness from Spanish to English as it is replayed. The chanting, shouting, yelling and handclapping to the same were "strikebreaker", "down with the strikebreakers", "strike", "Chavez yes, strikebreakers no", "strike to the strike breaker"; and the constant chanting, shouting and yelling of the same statements and handclapping loud and louder by said persons in concert. Daniel Mendoza, identified himself as the UFW, member in charge of this picketing to the Officer and he was advised and further discussed with the Officer that this was being considered an unlawful assembly and the persons were being arrested by the Salinas Police because of the same. I advised Daniel Mendoza that as much noise as the picketers were making, this would be considered an unlawful assembly anywhere in town. A first arrest was made, and then the shouting and voices and statements became still louder. The Officer stated that the actual event was yet louder than it sounded on the tape. He observed Clyde Cornell outside of the residence assign an invalid at a stationary agent in the driveway. A loudspeaker affixed to the paddywagon was used by the police and was 20 feet from the nearest picket and the Officer was 10 feet from the pick; when taping. The more the loudspeaker was used, the louder the chanting. H-J probably heard some obscenities to Mr. Cornell and some strikers were on the lawn, probably because of their numbers, but before the arrests he didn't hear any threats by the strikers directed to Mr. Cornell. Officer proceeds to draw a diagram and markings thereon, identified as Admiral Fucking Exhibit A. The oval circle of pickets dimensions estimated at four feet in width and thirty to thirty-five feet in length. The entire width of this sidewalk was covered by the pickets.

2. Mrs. Frances Cornell - she was at home, 716 Amarillo way on the morning of the picketers and her son was also and he advised her of the picketing and she looked out her window and saw the picketing, and heard screams and yelling and she called the police. She estimates more than 40 pickets. She was scared by the picket: The pickets arrived by 9-00 a.m., and she was alone and frightened with her son, and her husband Clyde Cornell arrived with her invalid father at about 9:15 a.m., and she was still frightened. The pickets were walking around their van in the driveway, on their lawn and up and down the sidewalk. The pickets on their lawn were mostly two to three feet onto the lawn and mostly just standing. There is a fence at one boundary of their house and the driveway at the opposite boundary, and the marching back and forth between bounds: and into the driveway. My windows were closed, but I could hear the pickets shouting outside. She was scared and upset. She works

in a packing shed at a marketing coop trimming cauliflower and as a wrapper. (Note: this witness was called out of order, by agreement of all parties, as a witness for the Intervenor Cornell.

3. Mr. Clyde W. Cornell - he resides at 715 Amarillo Way, in Salinas. He has worked the last nine years for Admiral Packing and works there now, during this strike, as a tractor driver. On the morning of April 29, 1979 he picked up his 82 year old father in law at the coalescent home and retimed to his home 9:15 to 9:20 a.m. ,with his father-in law and observed 40 to 45 pickets in front of his home, into his driveway and on the sidewalk, and the; were moving, hollering and walking back and forth. The pickets were also beyond his fence and onto the neighbors yard. The police had to assist him, by having the pickets move out of the way, so that he could drive into his driveway. He heard the yelling arc chanting and shouting by the pickets as he was putting his father-in law into the wheelchair and wheeling him into the house. He doesn't know what the pickets were saying as it was in Spanish and he doesn't understand Spanish. He then returned to the outside, standing to the back of his car, to see if he recognized any of the pickets. He was 10 feet from the nearest pickets and they were screaming and hollering. He identified Bill Gran field, were he thinks manages the UFW union hall, and Daniel Mendoza and other who were irrigators at the ranch where he works. Two girl pickets yelled in English to him "Bill, don't work, come with us". He witnessed the pickets and then their arrest for 2 to 3 minutes total. Daniel Mendoza when arrested and in the police van fifteen feet away from him, pointed at him and made a motion to him of pounding his fist into his hand and twisting his fist into his hand, directed to Cornell. Obscenities were yelled to me in English by two female picketers as they were about to drive away. (Note: Declaration of Clyde Cornell, General Counsel IV in evidence limited to the encircled words of obscenities). The police spoke to his invalid father-in law, in! his presence, and his voice was vibrating and his voice was changing and he was about to cry. Clyde Cornell is a UFW member and had been on strike and on picket lines and at the UFW office for meetings during this strike period He had spoke to Daniel Mendoza before this picketing and was asked why he went back to work and he told Mendoza, and this took place at the work site. The declaration, General Counsel IV, ".as draft; with the assistance of Admiral Packing counsel Wayne Hersh. Mr. Cornell interpreted the motions of Daniel Mendoza in pounding his fist and related was showing anger and a threat at him by Mendoza, because Daniel was arrested. He didn't take the threat seriously and he wasn't frightened by it and it didn't influence him not to work. He still works at Admiral Packing and his wife's or father-in law feelings or the activities of the strikers will not affect his future work or not. The reason is because he has doctor bill: to pay and house payments to make and he must work.

For Admiral Packing, Charging Party:

Offer into evidence Exhibit B-1,2,3,4,5,6 and over objection: by General Counsel and Respondent as to relevancy, which objection are overuled, said Exhibits are admitted as to existence and the

limited weight, if any, to be given to them in this case. Admiral Packing, rests.

For Clyde W. Cornell, Intervenor:

1. Mrs. Elizabeth Marie Hanrahan - She is a housewife and lives with her son and his wife and their two children at 723 Amarillo Way, Salinas. She was in the kitchen with the two grandchildren when she heard disturbances outside and viewed from her kitchen window from 9:00 to 9:20 a.m. noises of cars and blowing of their horns and people walking and talking loud. She and the two grandchildren then walked outside to neighbor Shea's driveway at 722 Amarillo Way and watched people gathering at the chain link fence which is next door to the Cornell's house. At first there were twenty-five to thirty-five pickets in front of Cornell's moving and then formed a circle moving and on their lawn. Then the Sunday school bus came for the children I spoke to another neighbor and she was frightened. I first thought that there was a group marching-by, but they didn't continue on but stopped at Cornell's and they increased in numbers and got louder and chanting and then louder and chanting in Spanish. Neighbors were also outside watching. Ten more pickets came to join the original twenty-five to thirty-five. Because of the numbers of persons and the volume of the chanting of the pickets, the grandchildren were crying. She observed flags being carried, red and with an eagle. She did not talk to the police. She put the children on the Sunday school bus and at the same time there were about seven, neighbors out there. The noise got louder as they clapped their hands and shouted. She didn't talk to the Cornells.

For UFW, Respondent:

Preliminary - the respondent indicates their intention to call as witnesses for their case three of the arrested persons charged with the said Penal Code violations, namely Daniel Mendoza Douglas Kessler and Bill Granfield. They are to be advised of the rights and they are being represented by the named Deputy Public Defender. They will testify if granted immunity in accordance with Section 1151.2 of the Labor Code. I called Mr. Sillman of the Monterey County District Attorney Office and he was present and argued the issue of the extent of the immunity to be granted. That the UFW then requested the issuance of three subpoenas for each of these said three witnesses, which were accordingly issued and the returns of service of each was duly filed and attached to this file That under the circumstances of the subpoena process of each witness it is accordingly held, that the immunity granted by said Labor Code Section 1151.2, is hereby granted to each said three witness

1. Daniel Mendoza(Anguido) - He is a striker and is the coordinator of the strike for the UFW . He held the meeting at the Union office that morning to organize the member strikers and instruct them and he instructed them to be non violent, no destruction of premises and just to gather to talk with the strikebreakers and form picket lines in front of their houses. They were to two houses earlier and Cornell's house was the third that morning

They wanted to find out from the strike breakers why they went back to work during the strike. Their intent at Cornell's house was to form a circle on the sidewalk and keep moving, as this was the way to form a picket line. The only time he was on the lawn was to talk to the police officer who was on the lawn. He was arrested. He saw Cornell before the arrest, but didn't speak to Cornell or his wife that day. He never made gestures or motions with his hand to Cornell or any gestures and never heard obscenities or threats from his group that day. He was captain of the group and as such was responsible for their behavior, and he was to direct them and to walk the members as they walked and picketed. He was to oversee that there be no insults, damages and that the cars on both sides of the street not be damaged. He saw his groups activities from the time he was arresting and he didn't see anyone disobey his instructions. He was not the first to arrive at the Cornell's, there were seven members there already, and the rest came in ten to twelve cars and he arrived between 9:00 and 9:15 a.m. and the total members picketing was around twenty-five and less than thirty. The chanting was of "strike"; "Strike", "strikebreaker". The more members that joined the picketing, there was more of the same, but still the volume remained the same (?). He never saw any members on the lawn. He was fifteen feet from Cornell when he saw him in his driveway and seven to ten minutes later, I was arrested. He was placed in the police van which was in the street in front of the Cornell house. He was in the van with his back to the Cornell and there was a window in the van and if he turned he could see Clyde Cornell in the driveway. He didn't understand most of the English that the police were saying. He could hear everything his group was saying while he was on the picket line but not while he was talking to the police or in the police van. Members then left in their cars to return to the union hall. He knew Cornell before the strike as a worker for Admiral Packing, the same as he was. He had seen Cornell many times at the union office and he knew he had been originally on strike. He had spoke to Cornell in testified after Cornell returned, but still while strike was on, to work and why he returned to work and Cornell had said he had many bills to pay and I said we all do and you should join us. He had parked his car across the street and in front of a different neighbors house, during the Cornells ' residence picketing and he was picketing and marched in a circle and yelled "strikebreaker". He was at the two houses picketed earlier that morning and the same members were and the police were there, but no arrests were made. He didn't see Cornell, while arrested and in the van, because he was looking out for those being arrested as to their treatment. He understood that if he was on private property he would be arrested.

2. Douglas Kessler - He was with the group picketing in front of the Cornell house. It was stipulated, that if called he would testify that from his position, he observed, while being with the said group of picketers, no threats, no obscenities and no one on the lawn. That he was in front of the Cornell house from 9:05 to 9:35 a.m. when arrested and placed in the police van for about another half hour. The police van windows were tinted in front and wire on both side windows and back windows. From his position in front of the Cornell house, he couldn't see into the van's windows,

He saw Cornell the morning of the picketing and knew him previously from the fields and from picket lines. Cornell had motioned over to him to ask what was going on, but before he could get to him, he was arrested. Cornell looked in a happy mood to him. He made no gestures to Cornell. Although there were other picketers between himself and Cornell, he thought Cornell was gesturing to him. When Daniel Mendoza was arrested, he was told to take over the picketing, but in one to one and one-half minutes later, he was also arrested. He saw Bill Granfield, after he was arrested. The police van doors were open when the arrests were made and the van was facing away from the Cornell house. He was able to see out of the van windows, but believes that because of the wire on the windows, one couldn't see into the van.

3. Bill Granfield - Same stipulation, that if testifying, his testimony would be that from his position with the group picketing in front of the Cornell house, he observed no threats, no obscenities and no one on the lawn. He arrived at about 9:30 that morning and parked a half block up the street and walked to the strikers and police and asked the police what the problem was and was then arrested. He had not picketed, and there was no picketing when he arrived. There were only about eight strikers standing on the sidewalk. He had seen a police vehicle and knew that there were strikers in the area, was why he followed the police vehicle to this area. He is the director of the UFW field office in Salinas. Once arrested he was placed in the police van in front of the Cornell house and the van was pointing outward from the house. He is in charge totally of the strikes in the Salinas Valley. Daniel Mendoza and Douglas Kessler had been arrested and were in the van before him, but others arrested after him. Daniel Mendoza was not handcuffed in the van. Daniel Mendoza is a captain and a coordinator, for Admiral Packing strike and he conveyed to Daniel Mendoza the strike rules established by the UFW.

#### ISSUES

1. Has the Respondent UFW committed an unfair labor practice a violation of Section 1154 (a) (1) of the Act, in exercising conduct - mass residential picketing -to restrain or coerce an agricultural employee in the exercise of his rights guaranteed in Section 1152 of the Act, i.e., to refrain from assisting and engaging in concerted activities, of the UFW, in its strike against Admiral Packing.

2. Is the affirmative defense of a constitutionally protect right to Freedom of Speech an absolute defense to this charge?

FINDINGS OF FACT - CONCLUSIONS OF LAW

That the charging party -Admiral Packing- is an agricultural employer within the meaning of the Act;

That Clyde W. Cornell, a non striking member of the UFW, is an agricultural employee within the meaning of the Act;

That the respondent -UFW- is a labor organization within the meaning of the Act;

That during all times in issue herein, there was a labor dispute involving the UFW and Admiral Packing;

That on April 29, 1979 commencing at 9:00 a.m., 30 to 40 UFW members arrived at the single family residence of Clyde Cornell, located at 716 Amarillo Way, Salinas, California;

That the purpose of the group was a picketing in mass of said single family residence in this residential neighborhood, captained by Daniel Mendoza, present thereat;

That the groups' activities, at said time and place, was pursuant to Daniel Mendoza's instructions as directed by the UFW

That the conduct and activities of the members and agents was pursuant to the direction of the UFW, their principal, and chargeat to the UFW, respondent herein, and the UFW is accordingly responsible for the conduct and acts of their agents herein;

That on April 29, 1979; at 9:35 a.m. an unlawful assembly was declared by the Salinas Police Department, at said residence, with resultant arrests being made from the dispersing ranks of said UFW pickets;

That between the hour of 9:00 a.m. and 9:36 a.m., 30 to 40 pickets of the UFW ,walked and marched in an oval circle from one boundary edge to the opposite boundary edge of the residence at

716 Amarillo Way property;

That, between the hour of 9:00 and 9:30 a.m., pickets walking and marching and some carrying UFW flags, but no placards;

That between the hour of 9:00 and 9:36 a.m., 30 to 40 picket picketing the single family residence of Clyde W. Cornell, in this residential neighborhood, were yelling, shouting, handclapping and chanting in a loud to louder pitch, in mass and unison;

That between the hour of 9:00 and 9:36 a.m., 30 to 40 picket picketing the single family residence of Clyde W. Cornell, in this residential neighborhood, were yelling and chanting and hand-clapping loudly to crescendo pitches, "strikebreaker", "strikebreaker" and "down with the strikebreakers", "Chavez, yes, strikebreaker, no

That obscenities on one occasion were directed to Clyde Cornell;

That a threat and a threat of physical violence was directed toward Clyde Cornell by Daniel Mendoza, the captain, picketer and UFW member, on said occasion;

That Daniel Mendoza, on an earlier occasion had spoke to Clyde W. Cornell in the fields at work at Admiral Packing and while the strike was on, and the Union had access to non strikers in the field

That Clyde W. Cornell had told the UFW, through its agents, on previous occasions, that he had to return to work during this strike period, because of bills to be paid;

That it was the intent of the UFW through their picketing of the residence of Clyde W. Cornell and their loud to crescendo volume of yelling, shouting, handclapping and constant chanting during the walking and marching, to coerce, intimidate and restrain Clyde W. Cornell from employment and working for Admiral Packing,

while the UFW strike of Admiral Packing was in progress;

That the UFW by the actions and conduct of their members and agents as before said, have committed an unfair labor practice in violation of Section 115^ (a) (1) of the Act, by restraining and coercing of an agricultural employee in the exercising of his rights guaranteed in Section 1152 of the Act, to refrain from assigning and to refrain from engaging in the joint and concerted activity of the UFW in their on going strike against the Admiral Packing Company.

The following observation is also made, that:

1. The fact that Clyde W. Cornell has expressed a lack of fear, intimidation, etc., by the before mentioned picketing activities and related, and the fact that he expressed that he would continue to work for the Admiral Packing, regardless of the effect; on his family and/or the picketing situation at his residence, is not the controlling factor to establish the elements of the before mentioned unfair labor practice or the lack of the same; cut, rather the intent to coerce and to restrain Clyde W. Cornell, en the part of the respondent by their picketing and said related actions and activities, and, as to what effect these activities would have and foreseeably upon a reasonable man, is the standard to be followed.

2. The fact that Daniel Mendoza and the UFW had access to the non striking workers in the fields to disseminate information and to communicate and therefore an alternative available means of communication and therefore the residential picketing should not be permitted, is not a valid argument and does not follow. This would enforce a restraint and limitation to effective means of



communicating. All means available to a party may be utilized, just as long as their activities and means to an end are acceptable within the means and intent of the Act, and are not exercises of unfair labor practices.

That as to the Affirmative Defense of Freedom of Speech,  
as exercised by the Respondent - - - - -

That Respondent has the constitutionally protected right to Freedom of Speech and picketing is an exercise of Freedom of Speech, but a conflict; also arises, and must be equally respected, that an individual has a constitutionally protected right against the Invasion of his Privacy.

Therefore, one must Weigh carefully the fact situation in protecting equal rights such as these, as a total deprivation of either, must be an unconscionable exercise of power.

This case contains the elements of: 1) a mass picketing of 30 to 40 persons 2) high degree of volume, aided and abetted by t numbers 3) a yelling, shouting, chanting, handclapping, loud and greatly amplified by the large numbers 4) in a residential neighborhood of single family dwellings.

We find and conclude, that the right to Freedom of Speech is a constitutionally protected right to all persons, but a limitation must be imposed where otherwise, its absoluteness, as in this case, would act to effectively impinge upon, aggravate intensely and tend to destroy one's Right to ? ivity and domestic tranquility.

The following observation, is advanced:

That it is not the intent here to hold as a definitive ruling that residential picketing is per se an unfair labor practice and not per se coercive and intimidating in its purpose and effect, but

that each case must stand or fall on its own merits; and, each factual situation must be weighed and ruled upon accordingly. That picketing, be it residential or not, is still a means of expression and speech and dissemination of ideas and therefore to be protected - - if, not going to the magnitude and extreme of being coercive and restraining, which must be based on the particular factual situation.

#### REMEDY

Having found that Respondent UFW has engaged in certain unfair labor practices within the meaning of the Labor Code Section 1154 (a) (1) and the Act, and that said unfair labor practices committed by Respondent UFW effect the rights guaranteed to employ; by Labor Code Section 1152 and the Act, I shall recommend that the respondent UFW cease and desist therefrom unless sale, actions will be regulated by certain restrictions and limitations, designated to effectuate the policies of the act.

Based upon the entire record, the findings of fact and conclusions of law, and pursuant to Section 1150.3 of the act, I revert issue the following recommended:

#### ORDER

Respondent, UNITED FARM WORKERS OF AMERICA. AFL-CIO, their officers, agents, representatives and members, shall:

1. Cease and desist from:

(a) Picketing residences, tending to restrain, coerce an; intimidate agricultural employees in the exercise of their rights

(b) In any other manner Interfering with, restraining coercing employees in the exercise of their rights to refrain from

self organization, and to refrain from forming, joining or assisting a labor organization and to refrain from engaging in other concerted activities, in the exercise of their rights guaranteed by Sections 1152 and 115 of the Act.

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

(a) To limit to time, place, intent and manner the picketing of residences, as follows:

1. Any residential picketing shall not commence earlier than the hour of 9:00 a.m., and not extend past the hour of 12:00 noon, on any given day;

2. The number of pickets shall not exceed two (2) at any given residence nor any single structure of a multiple unit building and this said numerical limitation shall include persons seated in parked vehicles directly in view of the target residence

3. That said pickets shall remain on the sidewalk or public way, shall not be within the boundaries of a driveway or carports nor within that area of the residence which contains the means of access or egress or which would interfere with the freedom of movement by the tenant, his neighbors or guests;

4. That the picketing must, at all times, be peaceful, orderly and its purpose informative;

5. That the pickets at all times must not threaten by actions or language, or use obscenities, or cause disruption, or cause damage to property, or cause to threaten the safety and tranquility of the target individual nor members of said person's household, guests or family,

(b) Posting of the terms of the Order in Spanish and

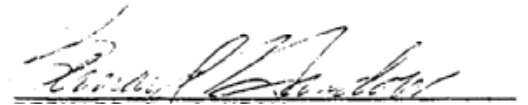
English by designated agents of the Agricultural Labor Relations Board at the union hall's and other conspicuous congregating locations of the UFW's membership;

(c) Mailing of a written apology, the content to be in conformity with the attached "Written Apology Appendix", to all residences that were picketed, signed by the UFW by its representative

(d) A verbal apology, the content to be in conformity to that setout in the attached "Verbal Apology Appendix", to the non-striking employee Clyde W. Cornell;

(e) Notify the Regional Director in the Salinas Regional Office within twenty (20) days from receipt of a copy of this Decision of the steps that Respondent has taken to comply with the full compliance therewith.

DATED: August 20, 1979.

A handwritten signature in cursive script, appearing to read "Bernard S. Sandow", is written over a horizontal line.

BERNARD S. SANDOW  
Administrative Law Officer

APPENDIX

WRITTEN APOLOGY

We apologize for any disturbance and/or interference with your domestic tranquility that we may have caused by our picketing.

If you are an agricultural employee, then we further, acknowledge and will respect your rights and as guaranteed by the Agricultural Labor Relations Act, and that you have the right to refrain from self-organization and to refrain from forming, joining, or assisting labor organizations and to refrain from engaging in other concerted activities and to be free from restraint, interference, intimidation and coercion by the United Farm Workers of America, APL-CIO, or its agents, in the exercise of these rights so guaranteed.

DATED:

UNITED FARM WORKERS OF AMERICA, AFL-CIO

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APPENDIX

VERBAL APOLOGY

We apologize for the way in which our picketing was exercised and for the disturbances that we caused and for the effects that our actions caused in upsetting your domestic tranquility, during the picketing of your residence on the morning of April 29, 1979.

Further, we apologize for the interference and disregard of your rights by the before mentioned picketing and we acknowledge and will respect your rights as guaranteed by the Agricultural Labor Relations Act and that you have the right to refrain from self-organization and to refrain from forming, joining, or assisting labor organizations and to refrain from engaging in other concerted activities and to be free from restraint, interference, intimidation and coercion by the "United Farm Workers of America, AFL-CIO, or its agents, in the exercise of these rights so guaranteed.