

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PATTERSON FARMS, INC.,	)	Case Nos.	78-RC-4-S
LEE BREWER, individually and as	)		78-CE-12-S
President of ALPHA AGENCY,	)		78-CE-13-S
DAVID TORRES, individually and as	)		78-CE-13-1-S
President of DELTA SECURITY &	)		78-CE-14-S
INVESTIGATIONS,	)		78-CE-C-S
	)		78-CE-16-S
Employer/Respondents,	)		78-CE-16-1-S
	)		78-CE-20-S
Charging Party,	)		78-CE-20-1-S
	)		78-CE-21-S
and	)		78-CE-22-S
	)		78-CE-23-S
	)		78-CE-23-1-S
PATTERSON FARMS EMPLOYEES	)		78-CE-24-S
ASSOCIATION	)		78-CE-24-1-S
	)		78-CE-26-S
Petitioner,	)		78-CE-26-1-S
)		
and,)		
)		
UNITED FARM WORKERS,)		
OF AMERICA, AFL-CIO)		
	)	8 ALRB No.	57
)		
Certified Union,	)	SUPPLEMENTAL DECISION	
Charging Party,	)	AND ERRATUM	
Respondent	)	(Labor Code Section 1160.3)	
)		

On August 27, 1982, we issued a Decision and Order and Certification of Election Results in the above-captioned matter. In that Decision we concluded, inter alia, that Respondent had unlawfully discriminated against seven unreplaced economic strikers^{1/} who had unconditionally offered to return to work, by not reinstating them to their previous jobs or to substantially

^{1/}Carlos Maya, Rufina Garza, Elida Villa, Dolores "Lola" Gonzalez, Luis Gonzalez, Raul Gonzalez, and Gerardo Gaytan. In our original Decision, we affirmed the Administrative Law Officer's (ALO) finding that these seven employees had not been permanently replaced at the time they unconditionally offered to return to work.

equivalent employment.

On our own motion, and pursuant to Labor Code section 1160.3, paragraph 2, we have decided to modify in part, our original Decision, in order to clarify our consideration of the rule(s) set forth in Seabreeze Berry Farms (Nov. 16, 1981) 7 ALRB No. 40 as they pertain to the facts in the instant matter.

In Seabreeze,^{2/} supra, we decided that our standard of proof as to whether economic strikers have been permanently replaced will be different from that which prevails under National Labor Relations Act (NLRA) precedents because labor practices in agriculture are inherently different from those in the industrial setting. The instant matter was litigated without the benefit of the guidelines we set forth in Seabreeze, supra. We find that, under Seabreeze, there is insufficient record evidence on which to base a finding as to whether the seven above-named strikers had been permanently replaced as of the time when they unconditionally offered to return to work.

We have considered remanding the case and re-opening the hearing in order to adduce additional record evidence as to that issue, but have decided that remand is unnecessary in view of the fact that the record herein supports the finding, and we find, that Respondent unlawfully discriminated against the seven strikers, even if they had been permanently replaced before they applied, for reinstatement.

^{2/} In accordance with his dissenting opinion in Seabreeze, supra, Member McCarthy would affirm the ALO's findings as being properly reached on the basis of applicable NLRA precedent.

The parties stipulated that on September 6, 1978, Respondent Patterson Farms received from the above-named employees an offer to return to work, and that all seven of the employees had previously worked in Respondent's shed and in its fields. The record evidence established that most of the employees had worked in various jobs at all of Respondent's operations. At least three of them, Carlos Maya, Luis Gonzalez, and Raul Gonzalez, had worked year round. Luis Gonzalez and Raul Gonzalez had 18 and 20 years seniority, respectively, in Respondent's employ.

On September 7, 1978, the day after Respondent received the employees' offers to return to work, Respondent hand delivered letters to all seven of them. Five of the strikers received letters which stated that there were no jobs available for them. Carlos I-Iaya was offered employment as a boxer at \$3.20 per hour, and Rufina Garza was offered field work at \$3.20 per hour. Maya and Garza had been earning \$3.75 and \$3.50, respectively, just prior to the strike. On that same day, three new hires began working at rates of \$3.35 and \$3.50 per hour.^{3/} Respondent failed to adequately explain why it had not offered the three higher-paying jobs to any of the strikers who had offered to return to work.

Economic strikers who have unconditionally offered to return to work are entitled to reinstatement to their previous positions until permanently replaced, and are thereafter entitled to preferential hiring as the replacements leave or as other job openings become available. (NLRB v. Fleetwood Trailer Co., Inc.)

^{3/} Other new hires began working on September 14 and September 20

(1967) 389 U.S. 375, [66 LRRM 2737].) An employer must show a legitimate and substantial business reason for not rehiring replaced economic strikers as positions for which they are qualified become available. (Laidlow Corp. (1968) 171 NLRB 1366, enforced, 414 F.2d 99 (7th Cir. 1969), cert, denied (1970) 397 U.S. 920.) We find that Respondent did not satisfy its burden of showing why none of the strikers was offered any of the higher paying positions and why—those who were offered jobs on September 7, 1978, and thereafter, were not offered the same pay as they had been earning prior to the strike. We therefore conclude that Respondent discriminated against all seven of the above-named economic strikers in violation of Labor Code section 1153(c) and (a), and we hereby reaffirm our Order of August 27, 1982, in its entirety.

ERRATUM

The Decision in the above-captioned matter is hereby amended to delete from footnote 3 the word "only" from the last sentence. The sentence shall read: "In order to avoid discriminatory access, or the appearance of such, during rival union campaigns, we find that a certified union is entitled to organizational access pursuant to 8 California Administration Code section 20900 whenever a rival union files a Notice of Intent to Take Access (NA) or an election petition *is* filed, whichever occurs', first.

Dated: November 8, 1982

HERBERT A. PERRY, Acting Chairman

JOHN P. MCCARTHY, Member

JEROME R. WALDIE, Member

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

PATTERSON FARMS, INC.,
 LEE BREWER, individually and as
 President of ALPHA AGENCY,
 DAVID TORRES, individually and as
 President of DELTA SECURITY &
 INVESTIGATIONS,

Employer/Respondents,
 Charging Party,

and

PATTERSON FARMS EMPLOYEES
 ASSOCIATION,

Petitioner,

and

UNITED FARM WORKERS OF
 AMERICA, AFL-CIO,

Certified Union,
 Charging Party,
 Respondent.

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	78-CE-12-S
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	78-CE-21-S
	78-CE-22-S
	78-CE-23-S
	78-CE-23-1-S
	78-CE-24-S
	78-CE-24-1-S
	78-CE-26-S
	78-CE-26-1-S
	78-CL-9-S

8 ALRB No. 57

DECISION AND ORDER AND
CERTIFICATION OF ELECTION RESULTS

On August 4, 1980, Administrative Law Officer (ALO)

Ron Greenberg issued the attached Decision and Recommended Order in this proceeding. Thereafter, the United Farm Workers of America, AFL-CIO (UFW) and the General Counsel (GC) timely filed exceptions and supporting briefs, and Respondent filed a reply brief.^{1/}

^{1/}After issuance of the ALO's Decision (ALOD), the Executive Secretary directed the parties to file Exceptions by October 7, 1980 Respondent filed no exceptions, brief, or motions by that date. After receiving two extensions to file a reply to the GC's

Pursuant to the provisions of Labor Code section 1146/ the Agricultural Labor Relations Board {ALRB or Board) has delegated its authority in this matter to a three-member panel.

We hereby consolidate Case No. 78-CL-9-S, which was submitted directly to the Board upon a stipulation of facts, with the other nineteen cases in the caption of this Decision. The resolution of Case No. 78-CL-9-S is related to the issues presently before us.

The Board has considered the record and the attached Decision^{2/} in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO except as modified herein.

The Election

This Board certified the UFW as the exclusive collective bargaining representative of all agricultural employees of Patterson Farms, Inc. (Patterson) on December 1, 1976. Patterson

[fn. 1 cont.]

and the UFW's Exceptions, Respondent filed its Answering Brief on November 10, 1980. On that same day, Respondent also filed a document entitled "Cross-Exceptions to the Decision of the ALO-IHE. " The documents were actually Exceptions to the ALOD. In its Reply to a Motion to Strike the Exceptions, Respondent claims it was relying on Regulation 20370 (g). However, Regulation 20370 (g) applies only to investigative hearings and Regulation 20370 (j) states clearly that consolidated proceedings are controlled by Chapter 2, Regulation 20282. The GC and the UFW were prejudiced by the late filed "Cross-Exceptions" because it presented new factual and legal issues to which they had no opportunity to reply. Therefore, we hereby grant the Motion to Strike.

^{2/}We hereby expunge the postscript to the ALO Decision even though it was incorporated by reference in footnote 90. The content of the postscript has nothing to do with the evidence in the case nor does it deal with the merits of the case, but is merely the ALO's own intellectual reflections on the legal system.

and the UFW commenced collective bargaining in March 1977, and continued through August 1978, without reaching a contract. On August 23, 1978, the Patterson Farms Employees Association (PFEA) filed a Petition for Certification. After investigation, the Regional Director directed that a representation election be conducted on August 30, 1978. On August 29, the UFW filed a Petition for Intervention, which was rejected as untimely by the Regional Director. Pursuant to an appeal by the UFW, we directed that the election be postponed until August 31, and that the UFW be included as a choice on the ballot. On August 31, 1978, the election was conducted, and the official Tally of Ballots indicated the following results:

No Union	63
UFW	17
PFEA	3
Challenged Ballots ...	14
Void	<u>1</u>
Total.	98

Thereafter, the UFW's timely filed post-election objections were consolidated for hearing along with various unfair labor practice charges which were filed subsequent to the election, and a hearing was held beginning on April 23, 1979, and concluding August 9, 1979.

We find that the election was properly directed pursuant to Labor Code section 1156.3(a). Where a union has been certified for more than a year and no collective bargaining agreement is in effect, a rival union petition may be filed under section 1156.3 (a)

of the Agricultural Labor Relations Act (Act). (Cattle Valley Farms and Nick J. Canata (Mar. 25, 1982) 8 ALRB No. 24.) Where the unit employees are represented by a certified union and an election is directed pursuant to a timely filed decertification petition or a rival union petition, the incumbent union should be included as a party to the election and as a choice on the ballot. Just as a decertification petition seeks to eject an incumbent union, a rival union petition seeks to replace it. In either event, the incumbent union remains the exclusive representative of the employees until the issuance of the certification of results following a decertification or a rival union election in which the incumbent lost. See our discussion in Nish Noroian Farms (Mar. 25, 1982) 8 ALRB No. 25. As such, the incumbent union is entitled to all rights as a party to an election, including participation in the pre-election conference, a copy of the employer's list of names and addresses of employees eligible to vote, access to the work site for purposes of pre-election campaigning,^{3/} and observers

^{3/} A certified union has rights to post-certification access, P.P. Murphy Produce Co., Inc. (Dec. 27, 1978) 4 ALRB No. 106. Moreover, 8 Cal. Admin. Code section 20900 provides for organizational access and contains specific time and number limitations for work site access by union organizers. Unions utilize section 20900 to organize, to secure sufficient authorization cards to petition for an election, and to campaign prior to a scheduled election. In order to avoid discriminatory access, or the appearance of such, during rival union campaigns, we find that a certified union is entitled only to organizational access pursuant to 8 Cal. Admin. Code section 20900 whenever a rival union files a Notice of Intent to Take Access (NA) or an election petition is filed, whichever occurs first.

at the election.^{4/}

The Regional Director did not treat the UFW as a party upon the filing of the rival union petition by PFEA and thereafter rejected as untimely the UFW's filing of a Petition for Intervention. Pursuant to the UFW's appeal of the Regional Director's action, we ordered that the UFW be placed on the ballot and that the election be rescheduled for August 31. During the 24 hours preceding the election, the UFW participated in a second preelection conference, and was given a copy of the eligibility list.

The fact that the certified union was not automatically and immediately accorded party status in a rival union election would not, by itself, be sufficient cause for setting aside an election. The UFW, here, was belatedly given a place on the ballot and another day to campaign. The question we must decide is whether, in this case, the late granting of party status prejudiced the UFW and tended to affect either the employees' freedom of choice or the outcome of the election. The burden of proof is on the party seeking to have the election set aside to establish that objectionable pre-election conduct occurred which tended to interfere with the employees' free choice to such an extent that it affected the results of the election. (TMY Farms (Nov. 29, 1976) 2 ALRB No. 58; NLRB v. Golden Age Beverage Co. (5th Cir. 1969)

^{4/}There may be situations in which the incumbent union is not automatically entitled to party status. This may occur, for example, where the incumbent union has become defunct or has disclaimed interest in continuing to represent the unit. Those exceptions do not apply here. The UFW had a negotiations session with Patterson Farms on August 15, 1978, just one week prior to the filing of the petition by PFEA, and the UFW was picketing in support of its economic strike against Patterson on the day of the election.

415 F.2d 26 [71 LRRM 2924]; also See NLRB v. Mattison Machine Works (1961) 365 U.S. 123 [47 LRRM 2437].) Contrary to our dissenting colleague, we find that the UFW has not met its burden of proof. We affirm the ALO's finding that there is insufficient evidence to establish that the Respondent unlawfully assisted or dominated the PFEA, or that PFEA represented a no-union vote. We find that Respondent failed to exercise due diligence in preparing the payroll list, but that there was no bad faith and no actual prejudice to the UFW. Because the UFW should have been accorded party status at the time the election petition was filed, it was entitled to take access, notwithstanding the fact that it had not filed a Notice of Intent to Take Access (NA) . Therefore, by denying access to the UFW on August 29, prior to the filing of its NA, Respondent violated section 1153 (a) of the Act.

We affirm the ALO's findings and conclusions as to the other post-election objections. The evidence does not establish that the acts and conduct referred to in those objections were of such character as to create an intimidating or coercive impact on the employees' free choice or to affect the results of the election. (See Ranch No. 1, Inc. (Jan. 3, 1979) 5 ALRB No. 1; Triple E Produce Corporation (Aug. 21, 1980) 6 ALRB No. 46.) Certification of Election Results

It is hereby certified that a majority of the valid votes cast has been for "No Union." Accordingly, the certification of the UFW as the exclusive bargaining representative of the agricultural employees of Patterson Farms, Inc., is hereby revoked.

The parties stipulated: that this Board certified the UFW as the collective bargaining representative of Patterson's agricultural employees on December 1, 1976; that Patterson and the UFW were engaged in collective bargaining through August 15, 1978; that the UFW commenced a strike to reinforce its bargaining demands on August 11, 1978; and that the UFW ended its strike on September 1, 1978. As heretofore stated, the PFEA filed its rival union petition on August 23, 1978, and the election was conducted on August 31, 1978.

The complaint alleges that the UFW, on or about August 11, 1978, and continuing thereafter, engaged in recognition picketing against Patterson Farms in violation of section 1154(h). Section 1154(h) of the Act states that it is an unfair labor practice for a union:

To picket or cause to be picketed or threaten to picket or cause to be picketed, any employer where an object thereof is either forcing or requiring an employer to recognize or bargain with the labor organization as a representative of his employees unless such labor organization is currently certified as the collective bargaining representative of such employees. (Emphasis added.)

Even after the expiration of the 12 month period following the date of certification, the UFW remained the certified collective bargaining representative of the unit employees with respect to their wages, hours, and other terms and conditions of employment. (Montebello Rose Company v. ALRB (1981) 119 Cal.App.3d 1.) Neither the rival-union petition, nor the direction of election, nor the Tally of Ballots affected the UFW's certified status or Patterson's

duty to bargain with the UFW. (Nish Noroian Farms, supra, 8 ALRB

No. 25.)^{5/}

We find that the UFW was the certified collective bargaining representative of Patterson Farms' agricultural employees when it began its picketing activities on August 11, 1978. The UFW did not violate section 1154(h) of the Act when it began its picketing activities. The UFW's certification continued uninterrupted until we certified the results of the election. Where an incumbent union, as here, loses an election, our certification of the results relates back to the date of the election for the purpose of relieving the employer of its duty to bargain with the incumbent union. (Nish Noroian Farms, supra, 8 ALRB No. 25.) Accordingly, we find that the UFW's picketing on September 1, the day after the election, was technically a violation of section 1154(h), but we find the violation to be de minimis and will order no remedy.

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^{5/} We take this opportunity to clarify what may be a seeming conflict between Nish Noroian Farms, supra, 8 ALRB No. 25, and Harry Parian Sales (Oct. T~, 1980) 6" ALRB No. 55. Our issuance of a bargaining order in Carian is within our remedial authority, and is not inconsistent with the statutory prohibition against an employer's voluntary recognition of a union. We held, in Carian, that we have the authority to compel an employer to bargain with a union which has lost a representation election and where the employer has committed pervasive unfair labor practices which, by their nature, are such that they tend to interfere with employee free choice and to preclude the holding of a fair election within the foreseeable future. If we did not have authority to issue certifications and bargaining orders in such circumstances, an employer, by its own unlawful conduct, could preclude indefinitely the certification of a union and the union's exercise of its right to bargain for the employees.

The Unfair Labor Practices, Section 1153(a) Violations

The UFW attempted and was denied work site access by Patterson on many occasions on August 29 and August 30, 1978. As of that time, we had not yet issued our decisions holding that currently certified unions are entitled to post-certification access and strike access. (See O. P. Murphy Produce Co., Inc. (Dec. 27, 1978) 4 ALRB No. 106; Bruce Church, Inc. (Aug. 10, 1981) 7 ALRB No. 20.) Patterson and the Regional Director were therefore under the impression that the UFW had to file an NA in order to be entitled to any access. The UFW did file an NA about 12:20 p.m. on August 29. As we find today that the UFW should have been granted organizational access at the time the rival-union petition was filed, without being required to file an NA, we conclude that Patterson's denials of access, by agent MacKay at 12:05 p.m. and 12:15 p.m., on August 29, were violations of section 1153 (a) of the Act.

We affirm the remainder of the ALO's findings and conclusions regarding Patterson's violations of section 1153(a). We find that a Patterson security agent's spraying of mace at a UFW pickup which was attempting to pass him in a menacing fashion was a reasonable defensive response to a serious physically-threatening situation. Accordingly, we conclude that the Patterson agent's use of force in that situation did not constitute a violation of section 1153(a) of the Act, Tex-Cal Land Management, Inc. (Feb. 15, 1977) 3 ALRB No. 14 and we hereby dismiss that allegation of the complaint.

We affirm the ALO's conclusion that Respondent's

photographic surveillance of employees' protected activities constituted unlawful interference, restraint, and coercion. We find Respondent's proffered justification unpersuasive, especially in view of the fact that Patterson's agents admitted that they sometimes pretended to be photographing employees when they were not in fact doing so. Photographic surveillance or giving the impression of photographic surveillance of employees' protected activities constitutes a tacit threat of future reprisals for engaging in such activities, and is therefore a violation of section 1153 (a) of the Act. (Russell Sportswear Corp. (1979) 197 NLRB 1116.)

The ALO recommended dismissal of the allegation that Patterson's citizen's arrest of Pedro Munoz for trespass was a violation of the Act. There was insufficient evidence presented to establish either that Munoz was on public property at the time of the arrest, or that Respondent arrested Munoz with careless disregard for the facts or for the purpose of harassment. (New French Benzol Cleaners and Laundry, Inc. (1962) 139 NLRB 1176.)

Accordingly, that allegation of the complaint is hereby dismissed.

We also affirm the ALO's conclusion that the conduct of Patterson's representative, Lee Brewer, in "stalling" his vehicle on a road so as to block the passage of the UFW auto caravan in its attempt to travel to a field for the purpose of picketing was unlawful interference with protected concerted activity, a violation of section 1153 (a) of the Act.

The Unfair Labor Practices, Section 1153(c) Violations

On February 25, 1977, Patterson Farms, the UFW, and the General Counsel entered into a settlement agreement which provided, among other things, for the reinstatement of employees Pablo Segoviano, Anselma Segoviano, Julian Izquierdo, and Isidro Cubillo. As part of the settlement of other unfair labor practice charges, the same parties, in late 1977 and early 1978, executed an amendment to the aforesaid settlement agreement which provided for Patterson to hire by seniority, in accordance with attached seniority lists, which were to remain in effect until the parties reached agreement in collective bargaining on a new seniority list. A contract with a seniority list was not thereafter negotiated.

The complaint alleges that Patterson discriminatorily refused to rehire nine employees and one supervisor.^{6/} The ALO found that all of the named individuals were affiliated with and active in the UFW, that Patterson had knowledge thereof and had animus toward the UFW from 1975 until and during the events alleged in the complaint. We affirm these findings of the ALO. The ALO found that there was insufficient evidence in the record to prove that Respondent discriminated against any of the nine employees prior to the strike on August 11, 1978. We affirm that finding but we disagree with the ALO's basis

^{6/}The supervisor was Pablo Segoviano, and the employees Anselmo Segoviano, Isidro Cubillo, Julian Izquierdo, Amelia Izquierdo, Melania Saucedo, Tubursia Medina, Maria Medina, Gloria Tovar, and Martin Tovar. We shall treat the case of Pablo Segoviano separately because of his supervisorial status.

therefore.^{7/}

The ALO further found that the above named individuals were not entitled to reinstatement after the strike because they did not unconditionally offer to return to work. We reverse that finding.

Economic strikers who have not been permanently replaced and who wish to return to work are required to make unconditional offers to return to work in order to be entitled to reinstatement. An economic striker is an employee who has voluntarily left work and is withholding his labor as a protest related to working conditions. Picketing is a protected concerted activity and is an act independent of striking. The named individuals were not employed prior to the strike and, as they did not "walk off" a job or otherwise withhold their labor from Patterson, they can scarcely be required to make an offer to "return" to a job they never left. Therefore, their rights to employment were governed by the negotiated seniority list rather than by labor law precedents affecting returning economic strikers.

Few of the nine alleged discriminatees had been recalled or rehired by Patterson since the February 25, 1977, settlement.

^{7/}The ALO found the settlement agreement and its implementation too confusing to find a violation. However the settlement language, seniority lists, and company payroll lists do provide a basis for determining whether Patterson violated its agreement to hire according to seniority. Comparing those documents, there is no evidence that employees with less seniority than the alleged discriminatees were hired in 1977 and 1978 prior to the strike. The one exception is Anselma Segoviano. The records show that employees with less seniority than she were hired in the summer of 1978 in the packing shed. However, uncontradicted testimony established that Patterson requested of the UFW at negotiations an exception from the seniority lists for that hire and that the UFW did not object.

Patterson claimed that a drought in 1977-1978 greatly reduced its work force requirements and we find documentary support for this position. As stated previously, we find that Patterson did not discriminate against any of the nine employees prior to the August 11, 1978, strike.

However, Patterson's records indicate that many employees were hired during the strike^{8/} and at least 15 more were hired after the strike ended on September 1, 1978. None of the alleged discriminatees was offered work during the course of the strike, although most of them walked on the picket line at one time or another during the UFW's strike of August 11 through September 1, 1978. Some were there daily while others were present on two occasions or just on the day of the election. The ALO noted the alleged discriminatees were a visible component of Patterson's work force. They spent considerable time together and had inter-familial relationships. They were known by Respondent to be supportive of the UFW.

The amendment to the 1977 settlement clearly states that, when work became available, Patterson was to first offer jobs to its regular employees according to seniority. We conclude that Respondent, by failing to recall any of the alleged discriminatees

^{8/}The evidence is insufficient to establish that the offers of work were to the discriminatees during the strike. The ALO found, and we affirm, that the letter given to Pablo Segoviano was an offer to him only and not to his crew. Mum Yamaichi testified that letter offers were distributed to picketers on the first day of the strike. All of the employees who were asked testified that they were not given the letter (Employer Exhibit 50) during the strike. There is no evidence that any of the individual discriminatees were given the letter. On its face, the letter is directed at the strikers, not those on layoff.

after the strike ended and instead hiring new employees, engaged in discrimination in regard to hire or tenure of employment and thereby violated section 1153(c) and (a) of the Act.^{9/} Accordingly, we shall order Patterson to reinstate, with backpay plus interest, the following employees:

Isidore Cubillo	Melania Saucedo
Amelia Izquierdo	Anselma Segoviano
Julian Izquierdo	Gloria Tovar
Tubursia Medina	Martin Tovar
Maria Medina	

The ALO concluded that Patterson did not violate the Act as to Pablo Segoviano, finding that he was a supervisor and therefore not protected by our Act. We consider his analysis too shortsighted. Discriminatory action against a supervisor which tends to interfere with, restrain, or coerce employees in the exercise of their section 1152 rights violates the Act. As president of the ranch committee and chief spokesperson for the UFW in its dealings with Respondent, Pablo- Segoviano was the most visible UFW advocate in Respondent's employ. Discriminatory conduct against Segoviano would clearly tend to interfere with employees' exercise of protected rights.

The "discrimination" alleged by General Counsel is that the settlement agreement was not complied with. We find that the General Counsel did not prove, by a preponderance of the evidence,

^{9/}Our conclusion that Respondent discriminatorily failed to rehire the nine employees is not based, per se, on its breach of the settlement agreement. It is based, rather, on a finding that Respondent, after the UFW strike ended, for discriminatory reasons failed or refused to rehire the laid-off employees in accordance with the seniority list agreed upon in Respondent's settlement agreement with the UFW, and that such conduct clearly tended to discourage membership in, or support for, the UFW.

that Respondent discriminated against Pablo Segoviano. Consequently, we dismiss that portion of the complaint involving Pablo Segoviano.

On September 1, 1978, the UFW terminated its strike. On September 6, 1978, Respondent received the UFW's offer, on behalf of 15 named strikers, to return to work.^{10/} The ALO found the offer to be unconditional and that Respondent had not permanently replaced any of those strikers by that date. We affirm those findings, as well as the ALO's finding that the job offers which Patterson thereafter extended to 5 of the 15 were not for the same or substantially equivalent work and therefore did not satisfy Respondent's obligation to reinstate them.^{11/} Unreplaced economic strikers must be reinstated, upon request, to their former or substantially equivalent jobs at the same wages and benefits. (H. & F. Binch Co. (1971) 188 NLRB 720; The Laidlaw Corporation (1968) 171 NLRB 1366 enforced 414 F.2d 99 (7th Cir. 1969) cert. den. 397 U.S. 920 (1968).) We likewise adopt the ALO's conclusion that Respondent did not satisfy its obligation to reinstate Raul Gonzalez.

There is a question as to whether Respondent discriminated against three employees, who assertedly made unconditional offers

^{10/}Cruz Martinez, Carlos Maya, Espiridion Salazar, Luis Gonzalez, Henry Delgado, Raul Gonzalez, Fernando Gaytan, Dolores Gonzalez, Rufina Garza, Elida Villa, Gerardo Gaytan, Isidoro Gaytan, Mario Gaytan, Isidoro Gaytan, Jr., and Maximino Medina.

^{11/}The five employees are Carlos Maya, Rufina Garza, Elida Villa, Dolores Gonzalez, and Luis Gonzalez. Although we have stricken Respondent's exceptions to this finding, we have examined the underlying record and find the ALO's conclusions well supported.

to return to work, by not offering them reinstatement to their prior jobs or substantially equivalent employment. These employees were Gerardo Gaytan, Maximino Medina, and Espiridion Salazar.^{12/}

The ALO concluded that Maximino Medina did not make an unconditional offer to return to work, based on his finding that Medina did not testify and that someone else wrote his name on the list of striking employees who were making an unconditional offer to return. That list was submitted to Respondent on September 6, 1978. Maximino Medina did in fact testify and stated that he asked another person to sign the list for him because he cannot write. However, as records received into evidence show that he was earning \$3.20 per hour just prior to the strike and, as the parties stipulated that Respondent offered him a job at \$3.20 per hour on September 9, 1978, which he refused, we find Respondent met its obligation to offer Medina substantially equivalent work and we hereby dismiss the allegation as to him.

The ALO recommended dismissal of the allegation as to Gerardo Gaytan on the basis that he did not make an unconditional offer to return to work. Gaytan did not testify at the hearing and the ALO credited the testimony of Respondent's expert witness that Gaytan did not personally sign the offer to return. We find no merit in this reasoning. There is no requirement that economic strikers individually and personally sign an offer to return to

^{12/} During the hearing, the ALO recommended dismissal of allegations in the complaint as to five employees: Fernando Gaytan, Isidoro Gaytan, Mario Gaytan, Isidoro Gaytan, Jr., and Henry Delgado. In his Decision, the ALO recommended dismissal of the allegation as to Cruz Martinez, As no exceptions were taken to any of those recommendations, we hereby dismiss those allegations.

work for such offers to be valid, A union is authorized to make unconditional offers on behalf of the employees involved, (American Cyanamid Co. v, NLRB (7th Cir. 1979) 592 F.2d 356 [100 LRRM 2640]; Woodlawn Hospital (1977) 233 NLRB 782,) Moreover, it is not required that each individual striker testify regarding his unconditional offer. (Olin Industries, Inc. (1949) 86 NLRB 203 [24 LRRM 1600] affd. (5th Cir. 1951) [29 LRRM 2117].) In Olin, supra, only 21 of 87 employees testified, but the NLRB found for all of them on the basis of evidence that all of them had made a valid offer to return to work. There is undisputed evidence that Gerardo Gaytan was at the meeting where the signatures were gathered. There is also evidence that he asked his son to sign for him. There is no contention or proof that any fraud was involved or that Gerardo Gaytan did not intend to unconditionally offer to return. At the time, Respondent did not question the authenticity of his offer. On all the evidence we find that he made a valid offer. Respondent's records show that Gaytan was receiving \$3.50 per hour just prior to the strike. The parties stipulated that Respondent offered him a job at \$3.20. We find that that was not an offer of substantially equivalent work and therefore, Respondent did not satisfy its obligation to reinstate him.

Espiridion "Speedy" Salazar was notified by Respondent on September 7, 1978, that he was being terminated for firing gun shots in the direction of a field crew on September 6, 1978. The ALO found that Patterson lawfully discharged Salazar because after investigation, it reasonably and honestly believed Salazar to be responsible for that conduct. Work-related violence can justify a

discharge, whether or not it occurs during a strike. (Rubin Brothers Footwear, Inc. (1952) 99 NLRB 610; La-Z-Boy South, Inc. (1974) 212 NLRB 295.) After Respondent's substantial proof of its good-faith belief that Salazar engaged in misconduct, the burden shifted to the General Counsel to establish that Salazar was not responsible for the misconduct. (Dallas General Drivers v, NLRB (D.C. Cir. 1968) 389 F.2d 553 [67 LRRM 2370].) Although the General Counsel showed that Salazar was acquitted of criminal charges, that alone does not satisfy its burden. Accordingly, we hereby dismiss the allegation as to Salazar.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Patterson Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Denying access to the UFW when authorized by 8 Cal. Admin. Code section 20900 or Board precedents.

(b) Engaging in actual or pretended photographic surveillance of employees' protected concerted activities.

(c) Failing or refusing to hire or rehire, or otherwise discriminating against, any agricultural employee because he or she has engaged in any union activity or other concerted activity protected by section 1152 of the Act.

(d) Interfering with or restraining employees from engaging in lawful protected activity by blocking their movement.

(e) In any like or related manner interfering with,

restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code section 1152.

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

(a) Immediately offer to the following named individuals full reinstatement to their former jobs or equivalent employment, without prejudice to their seniority or other employment rights and privileges:

Isidore Cubillo	Carlos Maya
Rufina Garza	Maria Medina
Gerardo Gaytan	Tubursia Medina
Dolores "Lola" Gonzalez	Melania Saucedo
Luis Gonzalez	Anselma Segoviano
Raul Gonzalez	Gloria Tovar
Amelia Izquierdo	Martin Tovar
Julian Izquierdo	Elida Villa

(b) Make whole each of the employees named in paragraph 2 (a), above, for all losses of pay and other economic losses they have suffered as a result of Respondent's discrimination against them, the backpay amounts to be computed in accordance with established Board precedents, plus interest thereon as set forth in Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.

(c) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amount of backpay due under the terms of this Order.

(d) Sign the Notice to Agricultural 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.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period from August 23, 1978, until the date on which the said Notice is mailed.

(f) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its property, the period (s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees on company time and property at time(s) and place (s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and/or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps

Respondent has taken to comply therewith, and continue to report periodically thereafter, to the Regional Director, at his or her request, until full compliance is achieved.

Dated: August 27, 1982

HERBERT A. PERRY, Acting Chairman

JOHN P. MCCARTHY, Member

MEMBER WALDIE, Concurring in part, dissenting in part:

I concur with the rulings, findings, and conclusions of the majority in respect to its resolution of the unfair labor practice charges in the instant case.^{1/} I further concur with the majority's well-reasoned analysis of the proper status of a certified union upon the filing of a rival union petition. I disagree with the majority's findings, however, that the late granting of party status to the UFW did not prejudice that union and that some of the election objections, while having merit, did not tend to affect employee free choice or the results of the election.

The majority correctly finds that the UFW, as the certified union, was entitled to be accorded party status immediately upon the filing of a rival union petition and that it was not afforded such status. But my colleagues' cavalier treatment of the

^{1/}Since I would set aside the election that occurred on August 31, 1978, the UFW would remain the certified union. Consequently, I would not find that its picketing on September 1, 1978, was in violation of section 1154(h) of the Act.

election objections is inexplicable in light of that finding, the factual record, and legal precedents which would compel me to set aside the election. Contrary to the majority, I would find that the UFW more than met its burden of proof that misconduct occurred which tended to affect employees' free choice and the results of the election.

The uncontradicted evidence shows that the UFW was neither invited to, nor allowed to participate in, the first pre-election conference, held on August 28. At that meeting, decisions were made about the time, date, and location of the election, the observers, the location of guards during the election, the voting eligibility of the UFW strikers, voter identification, and the ballot-count site. The eligibility list was agreed upon. Although the UFW participated in a second pre-election conference on August 30, called as a result of our Order that the election be postponed 24 hours so that the UFW could be included on the ballot. I would find that the UFW was prejudiced by its exclusion from the first pre-election conference. Among other things, the UFW would have been given the eligibility list and could have begun effective organizing among the replacement workers at that time.

The original eligibility list agreed upon at the first pre-election conference consisted of a list of 122 names, with 41 Post Office boxes given as addresses. The evidence establishes that the Board agent, although he knew the list did not comply with our Regulations, did nothing to seek compliance because the PFEA raised no question or objection about the list's inadequacies. The UFW received the list on August 30 and complained to the Board

agents, but they took no action to obtain the proper addresses because of the late date. As a result, the UFW had only one evening in which to locate or contact the 122 employees, many of whom were replacement workers for whom the UFW had no addresses. I would find that the Board agent's late delivery of an inadequate eligibility list to the UFW prejudiced the UFW and tended to affect and interfere with the unit employees' freedom of choice in the election.

(Valley Farms (Mar. 25, 1976) 2 ALRB No. 42; Yoder Bros. Inc. (Jan. 7, 1976) 2 ALRB No. 4.)

My colleagues find that Respondent failed to exercise due diligence in preparing the payroll list, but did not act in bad faith. The uncontradicted evidence establishes that Shig Yamamoto, a partner in Patterson Farms and in charge of its field operations, was in bad faith when he prepared and delivered the list. Yamamoto testified that he personally knew many of Respondent's employees who lived in trailers on land owned or leased by Respondent and that he knew the location of their trailers. Yamamoto had actually visited some of them in their homes. Despite that, he listed Post Office boxes for many of their addresses and claimed he did so because he could not find their addresses in the telephone book or on their employee cards. It is less than candid for an employer to claim ignorance of the addresses of employees who live on his own property, especially where he knows the exact location of their homes or has visited them in their homes. The majority's finding that Yamamoto was not in bad faith in the preparation of the list evidences a high degree of credulity and is inconsistent with common sense and our own legal precedent. I would find Respondent acted in

bad faith with respect to its preparation of the list, and that its action tended to affect the outcome of the election and employees' free choice. (Jack T. Bailie Co. Inc. (Dec. 12, 1979) 5 ALRB No. 72; Laflin & Laflin (May 19, 1978) 4 ALRB No, 28.)

If the UFW had been accorded party status upon the filing of the petition, it would have been entitled to receive the eligibility list on August 25, 1978, (Regulation section 20310) and could have raised its objections thereto at a time when the inadequacies might still be remedied. If the UFW had not been excluded from the first pre-election conference, it would have received the list no later than August 28, when there was still time for some address corrections to be made. The majority correctly finds the UFW was entitled to a timely and accurate list, and then, incongruously, finds that the UFW was not prejudiced by its receipt of a late and inadequate list. I would find otherwise.

The NLRB sets aside elections when its eligibility list requirements (the Excelsior^{2/} rules) are not substantially complied with, regardless of whether the omissions are by inadvertence, negligence, or bad faith. It has found failure of substantial compliance when approximately ten percent of the names are omitted. Moreover it does not count the ballot differential and compare it to the number of omissions. (Sonfarrel, Inc. (1971) 188 NLRB 969; Pacific Gamble Robinson Co. (1970) 180 NLRB 532; Fuchs Baking Co. (1969) 174 NLRB 720.)

We have been hesitant to mechanically apply rules, such

^{2/}Excelsior Underwear, Inc. (1966) 156 NLRB 1236; NLRB v. Wyman-Gordon (1969) 394 U.S. 759, 89 S.Ct. 1426 [70 LRRM 3345] .

as the Excelsior rules to our elections. We have set aside elections on the basis of an incomplete or late eligibility list only when there is bad faith or gross negligence by the employer or actual prejudice to the union. (Jack T. Bailie Co. Inc., supra, 5 ALRB No. 72.) As bad faith and actual prejudice exist in this case, I would find that those factors tended to interfere with the free choice of the employees and to affect the outcome of the election.

The above grounds for setting aside the election are supplemented by other valid election objections, some of them ignored by my colleagues as a basis for setting aside the election.

The evidence establishes that Respondent placed a "noise-making machine" between the picketers and the replacement employees whenever the employees, while working, approached a road where the UFW was picketing. Respondent did not deny having done so, but claimed it did so to block the loud obscenities of the picketers. I would find the election objection relating to this conduct by Respondent to have merit and conclude that it tended to interfere with employees' free choice by preventing communication between the employees and the Union. The language of the picket line is not that of the parlor. Obscenity on a picket line does not make the conduct unprotected, nor does it constitute a valid defense for blocking communication attempts between a striking union and non-striking employees. (Growers Exchange (Feb. 9, 1982) 8 ALRB No. 7; NLRB v. Cement Transport, Inc. (6th Cir. 1974) 490 F.2d 1024.) While this conduct of Respondent, by itself, would be insufficient grounds for setting aside the election, I would find it

to be part of a pattern of Respondent's conduct which obstructed communications and tended to affect employee free choice.

I concur with the majority's affirmation of the ALO's findings regarding Respondent's attempt to control lunchtime access in the compound on the day before the election. As we did not direct that the UFW be a party to the election until August 30, (and Respondent was denying access prior to that on the basis that the UFW had not filed a Notice of Intent to Take Access), noontime access on August 30 was the only opportunity the UFW had to talk to employees at the work place. As the ALO found, Respondent's attempt to control that access was coercive, the Board agents' participation was a grave error, and the result was a situation in which the Respondent's conduct communicated to the employees, and the Board agents' acquiescence confirmed, that the employees were not safe with the UFW and needed to be "protected" with private security forces, company officers and attorneys, and law enforcement personnel on standby.

I concur with my colleagues' conclusion that Respondent's denials of access on August 29 prior to the UFW filing of a Notice of Intent to Take Access violated the UFW's rights to access and constituted objectionable conduct.

Indeed, the UFW was denied almost all of the rights that the majority found they were entitled to:

As such, the incumbent union is entitled to all rights as a party to an election, including participation in the pre-election conference, a copy of list of names and addresses of employees eligible to vote, access to work site for the purposes of campaigning and observers at the election. (p. 4).

The preponderance of the evidence establishes that the UFW

was denied participation in the first pre-election conference, given an eligibility list with 33.6 percent Post Office boxes as addresses less than 24 hours before the election, denied work site access, prevented from communicating with employees from the picket line, and denigrated as dangerous in the presence of the employees on the day before the election. The probable effect on the election results of the above objectionable conduct is magnified by the fact that the incumbent union was on strike and much of the work force consisted of replacement workers. There is no evidence that the UFW knew the addresses of those workers and, without an accurate and timely eligibility list, it was unable to communicate with them at their homes. Respondent denied the UFW work site access and obstructed the flow of information between picketers and non-striking employees. Consequently, there was no adequate means by which the incumbent, certified union could effectively communicate with a substantial portion of the work force. Communication between union and employee is an acknowledged prerequisite to free choice and free elections. I do not believe it proper for the majority to apply different standards here on the basis that the UFW had already been certified.

Dated: August 27, 1982

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL BOARD

After a hearing at which all parties had an opportunity to present their evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to send out and post this Notice. We will do what the Board has ordered. 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 yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT engage in any actual or pretended photographic surveillance of your lawful activities on behalf of any labor organization;

WE WILL NOT interfere with your use of public roads during labor union activities by unlawfully blocking them with vehicles;

WE WILL NOT refuse to rehire or otherwise discriminate against any agricultural employee(s) because of their involvement in union activities or other concerted activities protected by the Agricultural Labor Relations Act.

WE WILL NOT deny access to the UFW when they are entitled to it by the Regulations or precedents of the Board.

WE WILL, as required by ALRB Regulations, provide to any union which is .to be party to the ALRB election an accurate and complete list of the names and current residence addresses of all our agricultural employees.

WE WILL offer immediate reinstatement to the employees named below and we will pay each of them any money they lost because we unlawfully failed or refused to hire them, plus interest.

Isidore Cubillo	Amelia Izquierdo	Melania Saucedo
Rufina Garza	Julian Izquierdo	Anselma Segoviano
Gerardo Gaytan	Carlos Maya	Gloria Tovar
Dolores "Lola" Gonzalez	Maria Medina	Martin Tovar
Luis Gonzalez	Tubursia Medina	Elida Villa
Raul Gonzalez		

PATTERSON FARMS, INC.

By: _____
(Representative) (Title)

If you have any questions 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 1685 "E" Street, Fresno, California. The telephone number is (209) 445-5591.

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

Patterson Farms, Inc.

8 ALRB NO. 57

Case Nos. 79-R-4-S et al

ALO DECISION

The UFW was certified in 1976. Patterson Farms Employees Association (PFEA) filed a petition for an election on August 23, 1978. The Regional Director directed an election be held and dismissed, as untimely, the UFW's petition for intervention on August 29. Upon appeal, the Board ordered the UFW be put on the ballot and the election be postponed one day. The election was held and "No Union" received a majority of the votes. The UFW filed election objections and unfair labor practice charges.

The UFW and Respondent Patterson began bargaining shortly after the certification. No contract was ever agreed to between the parties. The UFW went out on strike on August 11, 1978.

The ALO found that, while some of the objections had merit, they did not affect the outcome of the election and recommended that the results be certified by the Board.

The ALO found that Patterson Farms committed the following unfair labor practices: excessively photographed strikers for harassment; interfered with protected activity by blocking the movement of a UFW caravan; discriminatorily refused to rehire strikers who unconditionally offered to return by offering them jobs that were not substantially equivalent work. The ALO found no violations for the following conduct: spraying tear gas at a passing UFW pickup to avert a collision; arresting picketer Munoz who was on Respondent's property; access denials because they were prior to the filing of a Notice of Intent to Take Access or insufficiently proven; payroll list inadequacies because of employer due diligence; physical assault on UFW picketer because not proven; discriminatory failure to rehire UFW supporters prior to the strike because of insufficient proof and after the strike because they did not unconditionally offer to return; failure to rehire some economic strikers because there -was proof their names were "forged" and therefore had not made an unconditional offer to return; discharging "Speedy" Salazar because Respondent honestly and reasonably believed he shot a gun in the direction of a working crew.

BOARD DECISION

The Board held that a certified union, upon the filing of a rival union petition, is automatically entitled to party status. After the filing of an election petition or a Notice of Intent to Take Access, whichever occurs first, the incumbent union is entitled to organizational access; they are also entitled to be immediately notified of the filing of the petition, given a copy of the eligibility list when available, invited to and be present at the preelection conference, placed on the ballot and allowed to have observers at the election. Analyzing the facts relating to the

objections, the Board majority found that, while the incumbent union was not initially accorded party status, they were not prejudiced thereby: the UFW had not met its burden of proof to show that free choice was interfered with or that the results of the election were affected. The Board found that Patterson Farms did not exercise due diligence in the preparation of the eligibility list, but that that conduct did not rise to the level of bad faith. The Board also found that the UFW was improperly denied access.

The Board consolidated a CL complaint which alleged recognitional picketing in violation of section 1154(h) of the Act and was before the Board on stipulated facts. The stipulation indicated that the UFW was engaged in bargaining with Respondent and sanctioned a strike August 11, 1978, through September 1, 1978, in support of their bargaining demands. By this decision, the Board certified the results of the election on August 31, 1978, in which the UFW lost. The Board found that the UFW remained the certified union and was engaged in protected picketing activity until August 31, 1978, the date of the election. Finding the one day of picketing, September 1, 1978, to be technically in violation of section 1154(h) of the Act the Board found the violation de minimus and ordered no remedy.

The Board affirmed the ALO's rulings regarding most of the unfair labor practices. It reversed the ALO's finding that there was no unlawful refusal to rehire UFW supporters who did not unconditionally offer to return after the strike. The Board found that the workers were entitled to recall because they were on layoff status and they were not strikers who needed to make unconditional offers to return. Finding that there was no duty to personally sign and that there was no evidence of fraud, the Board found that the offer was valid and the failure by Respondent to offer the same or substantially equivalent work was a violation of section 1153 (c) of the Act.

Member Waldie concurred in the majority opinion except that he would have set aside the election. Member Waldie would have found that the UFW was prejudiced by not being accorded party status and that free choice and the results of the election were affected by a combination of meritorious objections which essentially prevented communication between the work force and the certified union.

* * *

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 RELATION BOARD



In the Matter of:	)	Case Nos. 78-RC-4-S
	)	78-CE-12-S
PATTERSON FARMS, INC.,	)	78-CE-12-1-S
LEE BREWER, individually and as	)	78-CE-13-S
President of ALPHA AGENCY,	)	78-CE-13-1-S
DAVID TORRES, individually	)	78-CE-14-S
and as President of DELTA	)	78-CE-14-1-S
SECURITY & INVESTIGATIONS,	)	78-CE-16-S
Employer/Respondents	)	78-CE-16-1-S
and	)	78-CE-20-S
	)	78-CE-20-1-S
PATTERSON FARMS EMPLOYEES ASSOCIATION,	)	78-CE-21-S
	)	78-CE-22-S
Petitioner,	)	78-CE-23-S
	)	78-CE-23-1-S
and	)	78-CE-24-S
	)	78-CE-24-1-S
UNITED FARM WORKERS OF AMERICA, AFL-CIO	)	78-CE-26-S
	)	78-CE-26-1-S
Certified Union,)	
)	
Charging Party)	

Appearances By:

Jeffrey Fine of Sacramento,
for the General Counsel

George Tichy, Robert Carrol,
Littler, Mendelson, Fastiff & Tichy
San Francisco, and Robert Triebisch,
Turlock, for Respondent

Dianna Lyons of Sacramento
for the Charging Party.

Merced Duarte of Patterson
for the Petitioner

DECISION

STATEMENT OF THE CASE

RON GREENBERG, Administrative Law Officer: This matter was heard by me beginning on April 23, 1978, and concluding on August 9, in Modesto and Patterson, California.

On August 31, 1978,^{1/} pursuant to a petition filed by the Patterson Farms Employees Association (hereafter "PFEA"), an election was held at Patterson Farms, Inc. (hereafter Employer,^{2/} Respondent, or Company). The United Farm Workers of America, AFL-CIO (hereafter "UFW"), certified at Respondent by the Board in 1976, was placed on the ballot by the Board. The tally of ballots revealed that PFEA received 3 votes, UFW 17, No-Union 63, and there were 14 challenged ballots. The challenged ballots were not determinative of the results of the election.

Thereafter, the UFW filed a petition to set aside the election pursuant to Board Regulation Section 20365. On November 6, the Executive Secretary set 10 objections for hearing. On December 20, the Executive Secretary set an 11th objection for hearing.

Thereafter, a Complaint and Order Consolidating Cases (GC Exh. 1-5), dated March 16, 1979, was issued by the Sacramento Regional Director, Subsequent amendments to the Complaint are based on charges filed by the UFW. During the hearing, I granted motions by General Counsel to amend

^{1/} Unless otherwise stated, all dates refer to 1978.

^{2/} All Respondent exhibits are marked with the designation "Employer" At the outset of the hearing, General Counsel and Respondent entered into a settlement agreement. Prior to Board disapproval of that agreement, the hearing continued, considering only the representation issues. During that time, all exhibits were identified with the word "Employer". The representation issues were heard in their entirety before again considering the unfair labor practice charges. For purposes of clarity, I continued using the same "Employer" designation in marking all exhibits throughout the hearing.

the Complaint pursuant to Section 20222 of the Board's regulations.^{3/}

These amendments have been reduced to writing.^{4/}

The charges and amended charges were duly served on Respondents and Petitioner, The Complaint, as amended at the hearing alleges violations of Section 1153(a) and (c)^{5/} of the Agricultural Labor Relations Act (hereafter the "Act") by Respondents.

All parties were given a full opportunity to participate in the hearing. General Counsel, Respondent and Charging Party all filed post-hearing briefs pursuant to Section 20278 of the Regulations.

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

^{3/} All references to the Board's regulations are to Title 8, California Administrative Code.

^{4/} Paragraph 20 of the complaint was amended by deleting the words "who were attempting to follow those not honoring the strike as they moved to a different work area."

Paragraph 27 was amended to change the names Martin Toval and Gloria Toval to Martin Tovar and Gloria Tovar respectively.

Paragraph 27 was amended to add the name Julian Izquierdo The complaint was amended to include the following paragraph:

"At the conclusion of the strike, the following individuals

Carlos Maya	Eli da Villa
Cruz Martinez	Rufina Garza
Luis Gonzales	Isodoro Gaytan
Dolores (Lola) Gonzales	Isodoro Gaytan, Jr.
Raul Gonzales	Gerardo Gaytan
Henry Delgado	Mario Gaytan
Maximino Medina	Fernando Gaytan

while still employees of Patterson Farms, Inc. unconditionally applied for jobs and were either denied jobs or offered jobs at rates substantially lower than what they had been paid prior to the strike. By this act, respondent has violated Section 1153(a) and 1153(c) of the ALRA."

^{5/} All statutory references herein are to the California Labor Code unless otherwise specified

FINDINGS OF FACT

I. Jurisdiction

Patterson Farms, Inc., is a corporation engaged in agriculture in Stanislaus County, California, and is an agricultural employer within the meaning of Section 1140.4(c) of the Act,

Leland Brewer,^{6/} individually and doing business as Alpha Agency, a Labor Relations Consulting firm headquartered in Stockton, California, acted directly or indirectly in the interest of Patterson Farms in relation to agricultural employees and is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

David Torres, individually and as an officer of Delta Security and Investigations acted directly or indirectly in the interest of Patterson Farms in relation to agricultural employees and therefore is an agricultural employer within the meaning of Section 1140.4(c) of the Act

The United Farm Workers of America (UFW) is an organization in which agricultural employees participate. It represents those employees for purposes of collective bargaining, and it deals with agricultural employers concerning grievances, wages, hours of employment and conditions of work for agricultural employees. The UFW is a labor organization within the meaning of Section 1140.4(.b) of the Act.

The Patterson Farms Employees Association (PFEA). was determined to be a labor organization by the Regional Director of the Sacramento Region for purposes of conducting an election. No evidence was presented at the hearing concerning whether PFEA represents agricultural employees for purposes of collective bargaining; whether it deals with agricultural

^{6/} Mr, Brewer died in an auto accident in September, 1979,

employers concerning grievances, wages, hours of employment or conditions of work. I therefore am unable to find that the PFEA is a labor organization within the meaning of Section 1140.4(b) of the Act.

II. The Alleged Unfair Labor Practices

Respondents are alleged to have violated Sections 1153(a) and (c) of the Act in the following respects: spraying a chemical agent on picketers; photographically surveilling strike activity; illegally arresting a striker; blocking picket road access; denying access to UFW organizers; supplying a legally insufficient payroll list; striking a picketer; refusing to employ UFW supporters before and after the strike.

Respondents generally and specifically deny all alleged violations of the Act. As affirmative defenses Respondents assert: (1) the Complaint fails to state a claim upon which relief may be granted; (2) because the UFW failed to get its certification extended, the strike was illegal, and the striking workers are not entitled to the protection of the Act;^{7/} (3) as a supervisor, Pablo Segoviano is not entitled to the protection of the Act.

III. Facts

A. The Employer's Operation

In 1978, Respondent farmed 900 acres of crops, 650 of which were melons. Those melons included canteloupe, honeydew, crenshaw and casaba. On a year round basis, Respondent employed between 70 and 100 employees. Most of these employees in 1978 worked the melon harvest, which included

^{7/} The Board, in Kaplan Fruit and Produce Co., 3 ALRB No. 38 (1977), ruled that when the initial certification year expires, there remains a presumption of continuing majority status sufficient to require continued bargaining. Based on that decision, I find that the UFW's majority status, absent extension of certification, is presumed to have continued. I therefore find the striking workers entitled to the protection of the Act.

the packing shed operation. Workers in the packing shed made boxes, stacked boxes, and generally worked in and about the Company compound. That compound included the shed, office and a shaded area for the workers to relax.

Mamoura Yamaichi, President of Respondent, supervised the packing operation. Shig Yamamoto, Vice-President, oversaw the field operation. Shig's wife, Mitzi Yamamoto, shared the packing shed supervision with Yamaichi. Jimmy Yamamoto oversaw maintenance of tractors and supervised the tractor drivers.

Crops harvested by the Company in previous years included apricots, broccoli, cauliflower, barley, and peas. Because of the draught in California, the Company planted only 250 acres of crops in 1977. The labor intensive cauliflower crop drastically was cut back that year. In previous years, the Company planted as much as 1,500 acres. The Company continued to harvest apricots in 1978. However, all UFW supporters, except Raul Gonzales, chose not to work that July harvest. (See discussion - - unfair labor practice, paragraph 27.)

B. History of the UFH at Patterson Farms

In 1975, the UFW successfully organized workers at Respondent and won a Board conducted election. In 1976, the Board certified the UFW. The Company owners apparently were very unhappy over the UFW victory. Shig Yamamoto told workers that he would refuse to sign a contract with the UFW. (See discussion—unfair labor practice, paragraph 27.) Employee Merced Duarte, the originator of the PFEA, circulated a petition among employees in 1975, expressing disapproval of those 1975 election results. The document was sent to the Board.

Contract negotiations between the Company and UFW began shortly after

the certification. Pablo Segoviano, a long time supervisor, headed the UFW effort at Patterson Farms. He became president of the ranch committee and remained in this capacity during the following years, Most of the UFW supporters were either related to or hired by Segoviano. When Segoviano became the pivotal UFW figure at Patterson Farms, his previously satisfactory working relationship with Yamamoto and Yamaichi deteriorated significantly. 1975 was the first year Segoviano did not receive his customary bonus as a foreman.

The UFW continued its efforts to get a signed contract with the Company. Numerous charges were filed by the UFW, ending in a 1977 settlement agreement with the Company (G.C. Exh. 29). That agreement provided equal supervisory work for Segoviano with other supervisors and established a seniority list for all hiring.

Still unsuccessful in reaching agreement on a contract, the parties continued, to negotiate in 1978. By late July, the UFW planned an August strike if the Company had not signed a contract by that time. The UFW supported strike began on August 11. The Company, with melons awaiting harvest, hired a labor contractor's crew and other workers.

On August 22, Merced Duarte circulated his petition on behalf of the PFEA. On August 23, he filed that petition for certification with the Sacramento Regional Office. After an administrative investigation, an election was scheduled for August 30. The UFW failed to file a petition of intervention in the election. However, the Board postponed the election one day and placed the UFW on the ballot. The election, ending in a no-union victory, occurred on August 31.

C. ULP 20 -- Mace Incident

On August 16, at approximately 8:00 a.m., Walt Plumb, a labor relations consultant working at Patterson Farms during the strike,^{8/} was notified by radio in his van that the workers were going to change fields during the morning. Driving a security van, Plumb, along with Larry Mackey, pulled onto Welty Road to lead a caravan of workers to a new work site. Immediately behind the van, two tractors pulled two open melon trailers filled with workers. A large piece of farm equipment traveled behind the trailers. Completing the convoy, security chief David Torres rode in a jeep wagoner driven by Lee Brewer.

The UFW picketers at the early morning site apparently were surprised by the sudden movement of the workers. As the Patterson Farm vehicles proceeded down Welty Road, a two-lane road, a white pick-up truck carrying UFW pickets attempted to pass the line of vehicles in order to reach the new work site before the workers arrived. In the bed of the pick-up, 4-5 youngsters and Pablo Segoviano rode, some holding UFW flags on long sticks.

According to Larry Mackey's testimony, the people in the bed of the pick-up were swinging their picket flag sticks at the workers in the open trailers as the pick-up erratically passed those vehicles. Mackey

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testified that the front tractor driver, the one closest to the van, was

^{8/} Respondent emphatically stressed throughout the hearing and in its brief that Walt Plumb, Larry Mackey and Leland Brewer were all labor consultants rather than security personnel. Allegations in both the Complaint and Objections Petition charged Patterson Farms security personnel with various violations of the Act. Plumb, the President of Beta Consultants, was hired by Delta Security for the Patterson strike. Leland Brewer, President of the Alpha Agency, previously was hired by Patterson Farms during negotiations with the UFW. Furthermore, Plumb, Brewer and Mackey, another Alpha consultant, were ever present during the strike with security personnel. The only apparent difference was the fact that those three men did not wear security uniforms. For purposes of this Decision, I make no distinction between Plumb, Mackey, Brewer and any other security person in determining whether their conduct violated the Act.

nearly struck by a stick. Respondent illustrated this point with the admission of Respondent's Exh. 41 and 41A. Respondent asserts that this triple exposure^{9/} demonstrates that the front tractor driver is moving away from a stick extended towards him.^{10/}

Mackey further testified that he lost sight of the white pick-up as it moved alongside the van in the passing lane. At that point, both Plumb and Mackey stated that they heard repeated "booms" against the side of the van. Plumb and Mackey testified that a stick then came through the driver's window of the van, striking the steering wheel close to Plumb's hand. Plumb picked up a container of mace from the console in the van and discharged it out his window in the direction of those in the pick-up.

The pick-up sped ahead of the caravan and pulled off to the side of the road. Pablo Segoviano flagged down Torres to report the incident. Segoviano and others were teary from the spray of the chemical agent. Torres later reported the entire incident to Sheriff's deputies.

UFW witness Antonio Zuniga testified that he was riding in the bed of the pick-up during the incident. 15-year old Zuniga stated that just prior to the spraying incident the individuals in the pick-up were looking straight ahead and at the fields, waving their flags. He testified that he did not see anyone in the truck hit anything with the flagpole. He further stated on cross-examination that the flags were on long poles

^{9/} David Torres, who took the photo, explained that the triple exposure occurred at the end of a roll of film. After the last image had been recorded, the camera apparently took two more photographs through the same frame. Resp. Exh. 41A, when placed over the photograph, attempts to isolate the tractor driver moving away from the stick.

^{10/} Single exposure photographs are unreliable in themselves. The fact is often overlooked that photographs are not objective documents, but rather they reflect the point of view of the photographer.

In the present case, Resp. Exh. 41, a triple exposure, presents a collage of indiscernable activities. Thus, I make no finding based on this photograph.

or sticks, which were 3-1/2 feet to 5 feet in length.

When further questioned on cross-examination, Zuniga stated that he was not sure if the people in the pick-up truck were waving their flags and yelling at the people in the van as they passed. He also testified that he did not remember what the people behind him in the bed were doing. According to Zuniga, the words "puta madre cabron" (fuck your mother) might have been spoken to the people they passed. Finally, Zuniga stated, "People could have been really yelling, I don't know."

UFW witness Angela Betancourt was driving another vehicle when the Patterson workers were moved. She stated that she attempted to pass Brewer's jeep, but Brewer blocked her. Consequently, she did not see the pick-up pass the van.

Her father, Pablo Segoviano, stated that he was in the back of the pick-up with four young boys. Contradicting Zuniga, Segoviano testified that those in the pick-up did not have sticks with flags or posters attached. He stated that no one held sticks. Rather, all sticks were on the side of the pick-up, resting in holes in the frame.

D. ULP 21 -- Photographing Strike Activity

During the strike, Respondent engaged in extensive picture taking. Angela Betancourt testified that she observed some representative of Patterson Farms photographing on a daily basis. Those individuals included Larry Mackey, David Torres, Lee Brewer and some of the guards. She recalled that both movie and still cameras were used. Photographing activity extended into periods when the pickets were merely sitting around and eating.

Angela Betancourt also stated that Brewer regularly took pictures of the license plates of cars parked along the canal. On some occasions

workers were within 35-50 feet of the area. She recalled her brother covering the license plate on his car with a shirt in order to thwart Brewer's efforts.

Espirdion Salazar and Pablo Segoviano testified that they observed Mackey and other guards taking a turn with the camera.

Raul Gonzales testified that 2-3 days before he attempted to take access,^{11/} he saw attorney Rob Carrol taking pictures while Carrol was seated in a van with Lee Brewer. Gonzales recalled that he was using a microphone to talk to workers while Carrol photographed. Gonzales further stated that Carrol was by himself photographing outside the packing shed on another occasion. Gonzales testified, "I have no doubt that Carrol was taking photos. I'm sure it was him. Carrol had the same suit."^{12/} if it was another one it was the same color."

^{11/} Raul Gonzales attempted to take access on August 29 or 30.

^{12/} Shig Yamamoto testified that Carrol wore three different suits at the ranch. He recalled they were always black or gray.

On the day that Raul Gonzales testified at the hearing, Carrol wore a gray pin-stripe suit. Carrol later presented me with a receipt for the particular suit which post-dated the strike at the ranch. Carrol did not testify about the suit or the picture taking.

Carrol was further defended by Yamamoto who stated that Carrol was one of their attorneys and had not been hired as a guard or in any other capacity. Yamamoto further testified that he had not instructed him to take pictures during the strike or election campaign and had never seen him with a camera.

Lee Brewer testified that he never saw Carrol with a camera. Brewer denied ever driving a vehicle while Carrol photographed.

However, Carrol never took the stand to answer the one question whether he ever photographed.

Raul Gonzales was a particularly believable witness. He apparently was very well thought of by management during his 18-year employment with Patterson Farms. I credit his version of these incidents.

Lee Brewer testified that he, Larry Mackey, and Walt Plumb took pictures during the strike. He stated that his intention was to document violations of the Penal Code and ALRA. During the strike, Brewer took 10-15 rolls of film. He also testified that some of the rolls would be prematurely pulled from the camera after capturing particular incidents.

Regarding his photographing of car license plates he stated, "There wasn't any need to take pictures of every car." Brewer said that he pretended to take more photos than he actually did. "The only reason we did that was so they wouldn't know the reason that we were taking a picture of the car that we actually took a picture of."

E. ULP 22 -- The Pedro Munoz Arrest

The Delta Mendota Canal winds its way through Patterson Farms. The Company farms parcels on both sides of the canal. Pedro Munoz received an assignment from Manual Chavez of the UFW to measure a distance down the sloping bank of the canal so that the pickets would not trespass on private property.

On August 15, Julian Izquierdo held the tape measure and case as Munoz descended the slope with the tape. They measured one full length of the tape.^{13/} Izquierdo descended the slope the full distance of the tape, and Munoz again walked down the hill with the tape.

Munoz testified that while he was still on the slope, he slipped and was pulled onto Patterson property by a security guard. Several guards lined the bottom of the slope at that time. Security chief David Torres made the arrest. Another guard, John Skipper, placed handcuffs on Munoz and walked him over to a security van parked in the field. Munoz testified that after he was arrested, they informed him that he was trespassing. Munoz refused to answer any questions directed at him

^{13/} The record is unclear as to what the full length of tape measures

by Torres. Torres next removed Munoz's wallet from his pocket in order to identify him. Two guards were stationed outside the van. Torres telephoned the Sheriff's Department. Within 15 minutes a deputy arrived. The handcuffs were removed and Munoz was placed in the deputy's vehicle.

Within 15 minutes of Munoz's transfer, CRLA paralegal worker, Steve Teixeira, spotted the deputy's car on a road near the property with Munoz inside. The deputy gave Teixeira custody of Munoz. Munoz was given a "Notice to Appear", and he was released.

Teixeira testified that he also observed the initial citizen's arrest that was affected by the security personnel working for Respondent. Teixeira stated that the guards handcuffed Munoz and walked him to the car. Munoz offered no resistance, and they didn't rough him up. "It was a peaceful arrest."

Angela Betancourt was 25-30 feet away from Munoz when he was arrested. She observed more than 20 workers in the field nearest to where the arrest took place. She testified that the moving workers were very close to Munoz when he was arrested.

Angela Betancourt further testified that Torres told Munoz several times before the arrest in English and Spanish that he was on private property. However, Munoz kept measuring. Munoz was then told that he would be arrested if he did not leave. Ms. Betancourt further stated that she could hear what Torres was saying. She said that she heard no response from Munoz.

Julian Izquierdo testified that he did not hear any warnings prior to Munoz's arrest.

David Torres, in important aspects, corroborated Angela Betancourt's¹ version. Torres testified that Munoz came off the levee with the tape onto

the private roadway of Patterson Farms. Torres and another guard approached Munoz and told him in both English and Spanish that he was trespassing and to leave. Torres testified that Munoz was 15 feet into the private property when he was arrested. Torres also stated that workers in the field were within 10-15 feet of Munoz when he was arrested.

Steve Teixeira testified that he had contacted the Federal Bureau of Reclamation in both Sacramento and Tracey in order to determine the Patterson Farms' boundaries. He provided hearsay of testimony that the Federal Government owned 90 feet of clearance on both sides of the entire canal. Teixeira testified that the Bureau sent copies of three area maps to CRLA. Those maps never were offered into evidence.

F. ULP 23 -- The Lee Brewer, Jeep Wagoneer Blocking Incident

In the same general vicinity of the Pedro Munoz incident (ULP 22), Lee Brewer sat parked on the Levee Road in his jeep wagoneer on August 13, along the side opposite the canal. (Employer Exh. 1, 48, 49) 25-50 UFW supporters picketed the field just north of the road. The picketers' cars were on the south side of the road. Brewer was observed by Steve Teixeira to be photographing the picketers and their cars.

Teixeira testified that someone came to the picket line, reporting that the workers had entered a field further south along the canal. A group of people got into their cars to go down there to picket. When the UFW vehicles started moving, Brewer started his wagoneer, backing up his car across the road. As the line of UFW cars approached Brewer's wagoneer, his car no longer moved. At that point he sat perpendicular to the side of the road, blocking both lanes.

Speedy Salazar, driving a pick-up truck with approximately 12 people in the bed, closely approached Brewer. He honked as other pickets

ran to the driver's side of Brewer's vehicle, urging him to get out of the way.

Teixeira testified that Brewer just sat back, staring straight ahead. In English, Teixeira asked Brewer if he would move. Brewer replied, "yes." Brewer remained frozen, not turning to talk to Teixeira. Teixeira again asked him to move. Brewer responded, "yes." Brewer remained silent for two minutes. Teixeira estimates that the entire incident took 7 minutes. Teixeira further testified that approximately 20 workers were in the field, 60-80 yards away from the scene.

Brewer testified that he was attempting to turn his vehicle around when the engine flooded. He stated that he had had problems with the car and realized that he would have to wait for the engine to clear. He testified that he made no attempt to explain to the pickets that he was having difficulty with his car. Brewer further stated that Salazar was lurching his vehicle at him, giving the impression that he was going to make contact. Brewer also said that the pickets were shaking his vehicle as it sat stalled.

Angela Betancourt, who was with the group of pickets attempting to pass Brewer, testified that a car or truck could not pass Brewer while his vehicle sat across the road. She described the road as asphalt surfaced, with gravel on the sides, wide enough for two cars to pass. She testified that the gravel narrowed where the jeep was parked. She also stated that the new working site was not a short distance away. She said that the UFW pick-up could not have turned around at that place on the road. Ms. Betancourt further stated that there were no exits from the road at that point in either the direction of the town of Vernalles or Westly.

David Torres testified that he came on the scene as Brewer sat

stalled. Torres stated that Brewer's car was not operating and Brewer appeared to be trying to start the car. Torres further testified that he was not sure whether the pick-up had room to get past Brewer's vehicle. Torres also stated that there were three points of access off the road that could have been used as alternate routes.

Co-owner Mum Yamaichi testified that there was no change in the topography of the road from mid-August to the date of his testimony, June 6, 1979. (Employer Exh. 49)

Employer's Exh. 49 demonstrates the width of the road at the approximate point the incident occurred. According to Yamaichi's calculations, the road is 24 feet wide and the shoulder is 22 feet wide. Brewer testified that his jeep wagoneer measures 12 feet in length.

Yamaichi measured the road on that later date. The incident occurred some 300 feet from an access road, which was opposite the direction the pickets were moving. That road leads into Patterson Farms property. Yamaichi also stated that there is another road on the other side of the canal.

Angela Betancourt stated that there was no way to drive from the canal bank to the new work site without using Welty Road. From her observations, the only exception was a little road leading into the grower's property.

G. DIP 24 – Alleged Access Violations: August 29; Objection 4- -

Alleged Access Violations: August 30 ^{14/}

On August 29, the UFW filed its Notice of Intent to Take Access with the Sacramento Regional Office at approximately 12:20 p.m.^{15/}

^{14/} I have combined discussion of unfair labor practices and objections where overlap exists.

^{15/} General Counsel Exh. 26

On August 29, at approximately 6:30 a.m., prior to the filing of the Notice of Intent to Take Access, UFW organizer Saul Martinez visited workers in the field. He identified himself to Lee Brewer with an organizer's button and a UFW identification card which included his name. He was allowed to enter.

Sometime later that morning, and still prior to the filing of the Notice of Intent to Take Access, UFW organizer Gretchen Laue approached Lee Brewer at the North gate to the compound, attempting to take access. Brewer testified that she was wearing a button with an eagle on it, and the button had the name "Laue¹¹ or "Lane" written in grease pencil across it. Brewer stated that he looked at the button and it did not have the name of the organization on it. However, he testified that he was not absolutely certain of that.

On August 29, at approximately noon, two groups of organizers attempted to talk to workers in two different fields. Labor relations consultant Larry Mackey encountered the first group at approximately 12:00 p.m. The group of organizers already had entered a field just south of the packing shed. Luis Gonzales, a member of the group, also testified that the incident occurred at 12:00 p.m. on August 29. He stated that he was with Pablo Segoviano and organizer Arturo Rodriguez. There were 20 workers in the crew, and the organizers were talking to some of the employees. In a security van, and accompanied by guards, Mackey drove into the field to meet the organizers. Mackey told Arturo Rodriguez that the UFW had not filed a Notice of Intent to Take Access, that he was trespassing, and would have to leave. Rodriguez told Mackey that he wanted to talk to the employees. Mackey coaxed the organizers back to their cars. The organizers drove off. According to Mackey's testimony, he examined

his watch, and it was 12:05 p.m. when the organizers left the field. At that time, Mackey received another call over his radio. He was informed that a group of UFW organizers had taken access on the north 40. Mackey testified that he drove considerably fast, 80 miles per hour, heading towards the second location. He reached the next field and drove 75-100 yards into it. Mackey spotted a white pick-up truck in the field, with UFVI organizers Gilberto Rodriguez, Speedy Salazar and Fernando Gaytan in the area. Gaytan was in the pick-up and Salazar was on the right side of the truck. Mackey told Gilberto Rodriguez they were trespassing. Rodriguez responded that they were there to talk to the employees. Gilberto Rodriguez testified that the organizers were in the field for 10-15 minutes. Towards the end of that time, a blue pick-up carrying the ranchers' sons, Bobby Yamamoto and Roddy Yamaichi, along with security guards arrived. Bobby and Roddy instructed guards to arrest the threesome. According to Speedy Salazar's testimony, the guards did not do anything. Gilberto Rodriguez stated that he was pushed by guards in the direction of the white pick-up. Salazar, Rodriguez and Gaytan then left the field. According to Larry Mackey's testimony, the group of organizers remained in the field only 3-4 minutes after he arrived. He stated that he checked his watch at the end of the incident. It was 12:15 p.m.

Cruz Martinez testified that he was with organizer Saul Martinez talking to workers in the field near the packing shed on August 30 at 12:15 p.m. Cruz Martinez recalled wearing a UFW button and a piece of paper with his name secured by a shirt button. They entered the field without speaking to company representatives. When they were finished speaking to workers, they were approached by the employer's son. Once he recognized

them, he got the guards. The guards accompanied them out of the field, at times within three feet of the departing UFW organizers. Martinez further testified that the workers were sitting down when he and Saul Martinez entered the field. Cruz stated that perhaps they had just finished eating. Cruz further stated that he could not recall the day of the week, but he remembered that it was one day before the election.

Raul Gonzales testified that he, Gretchen Laue, and Carlos Maya attempted to take access on August 30, just past noon. They approached the entrance gate near the packing shed. Gonzales recalled seeing the company workers in the compound between the packing shed and the office.^{16/} Gonzales testified that he saw ALRB agent Pablo Garcia at the gate. He also observed the company owners, Shig Yamamoto, Mum Yamaichi, and Jimmy Yamamoto, in the compound area along with Merced Duarte, Bob Triebisch, Lee Brewer, and his assistant. Gonzales stated that the UFW's purpose in this visit was to serve the employer with a copy of the Notice of Intent to Take Access.

Gonzales testified that he wore a red UFW button with a black eagle. He also stated that he wore a card with his name on it. He further testified that Gretchen Laue spoke for the group, and she spoke in English. The witness testified that he does not speak English. The witness testified that they were not allowed to take access. He further stated that he was very sure this incident occurred on a Wednesday. Gonzales testified that the workers were not eating at noon on August 30.

Carlos Maya also testified that he, Raul Gonzales and Gretchen Laue attempted access on August 30, at 12:15 p.m. Maya stated that the workers were eating at the time. Maya wore a UFW button along with a

^{16/} Employer Exh. 7

pinned piece of paper bearing his name. Maya testified that Gretchen Laue wore a badge, but Maya did not notice whether her name was on it.

Under cross-examination, Maya testified that he was simply guessing about the date. He stated that it could have occurred 2-4 days before the election. Maya also said that he did not understand the conversation Laue had with company representatives. Maya stated that the group was denied access.

Pablo Segoviano testified about an access attempt on August 30, at noon. He stated that he entered the field with Arturo Rodriguez and Raul Gonzales. Segoviano testified that all three wore UFW buttons and notes with their names. Segoviano stated that the attempt was made one day before the election. Segoviano further testified that the workers ate lunch at 12:00 on August 30.

Arturo Rodriguez testified that he and two strikers attempted access in the field near the packing shed at noon on August 29. He testified that the three organizers were in the field for 1-2 minutes before being ushered out by a group of guards. Rodriguez stated that 30 workers were within 10-15 feet of the organizers when they were forced to leave.

Board agent Mori Ueda testified that he stood at the gate during the entire lunch period (10:00-11:00 a.m.) on August 30. He stated that the UFW pickets were across the road, about 25 yards from where he stood. Ueda testified that no one from the UFW attempted to take access.

H. ULP 25, Objection 6 – Payroll List

On August 30, the UFW received the eligibility list^{17/} for the August 31

^{17/} UFW Exh. 2. Four names apparently were added by Board agent Angel Melendez at a pre-election conference.

election. The list was prepared by owner Shig Yamamoto. He testified that, in compiling the list, he used individual identification cards (filled out by the workers when they began working), compensating record cards, and the phone book. He also stated that he asked for information from other workers. He testified that the "p.o. boxes" appearing on the list were those supplied by the workers when they were hired. Yamamoto stated that he worked several hours on the document, rushing to get it out.

122 names appear on the list. 41 of them have post office box addresses. When questioned about those specific names, Yamamoto stated that Costantino Gonzales lived with the Gaytans (UFW supporters) when he worked at Patterson Farms. Jesse Castillo lived on farm property for 10-12 years. Henry Ellery lived in Westley on Highway 33. Yamamoto stated that Ellery's name was in the phone book. Mike Klopping lived in Patterson and was listed in the phone book. The Muratas lived on a ranch in Westley. Paul Murrieta lived on ranch property for many years.

Angela Betancourt began using the eligibility list at 6:00 p.m. on August 30. She and Gretchen Laue visited workers that night. She had problems with the first name on the list, Rosarian Benitez, 8620 Stokes Street, Patterson, California. She went to a service station and was unable to locate Stokes Street in Patterson.^{18/} Angela testified that she knew where to find Margarita Delgado, who was listed at the same Stokes Street address. Betancourt talked with employee Lisa Sarasqueta. Having looked for two workers, they talked with one. Because it was late, they quit.

40 of the workers on the list were employed by a labor contractor at

^{18/} Employee Benitez in fact lives on Stakes Street in nearby Grayson, California.

a single address in Stockton. Betancourt knew where most of the workers lived who used post office boxes. Betancourt testified that she did not know where the following employees lived: Francisco Hernandez, Lorenzo Luna, Rafael Navarro, Juanita Hernandez, Paul Murrieta, Merced Duarte (President, PFEA), and Ester Alvarado.

I. DIP 26 -- Mackey-Betancourt Encounter

A temporary restraining order relating to strike activity was issued by the Stanislaus County Superior Court on August 22. On August 23, Larry Mackey recalled serving the order (written in English) on a group of pickets. The order was translated into Spanish during the following 3-4 days. Mackey testified that he next served a group of pickets on or about August 27 at the old labor camp off Welty Road. Angela Betancourt testified that the event occurred on August 29.^{19/}

According to Mackey, he approached the area in his van. He spotted 20 people in the area. After attempting to serve some of them, he approached Angela Betancourt, who called him a "cabron" (pig) and spat in his face. She told him to go ahead and hit her. Mackey dropped the TRO, wiped his face,^{20/} turned around and walked away. Mackey stated that she and the others called him names. Angela followed Mackey to the edge of the road. He walked to his van and drove away.

Mackey testified that he served the TROs only to the adults present. He said he was pretty mad when Betancourt spat in his face. He denied hitting her. He said he was angry and not interested in photographically

^{19/} Determining the precise date is not important in deciding this issue. The Employer submitted Employer Exhs. 44 and 46 as depicting the incident. The UFW submitted UFW Exh. 26 to represent the event.

^{20/} Employer Exh. 46

documenting the incident. He testified that he was a "Green Beret" during the Viet Nam War. Mackey stated that his year and a half of training by the Special Forces taught him how not to lose his cool. Mackey also stated that the nearest workers were in a field 250 yards away when the incident occurred.

Angela Betancourt testified that she was with a group of 6-7 adults and three children, on company property, having just finished lunch. Carlos Maya was the only adult male in the group. Betancourt testified that they were 100 feet from the packing shed where employees were working. She stated that Mackey and two security guards arrived in a van. One stood on top of the van taking pictures with a camera. Parking the van across the street, Mackey walked over to them. Betancourt testified that he threw one form on top of the pick-up truck and started shoving ^{21/} them at her mother and her sister, Maria. Betancourt stated that he touched the people with the papers and then went after her daughter and another youngster, chasing the 8 and 10 year olds. Angela testified that his chasing the children upset her very much. She said that Mackey then pursued her, while she tried to get away from him. Betancourt stated that "he kept after me." She got angry, turned and spit on him. She stated that he got real angry and, with a closed fist, hit her hard on the left arm. Betancourt asked him to hit her again. He said he couldn't, having just lost his temper. He then walked backwards to the van. In the declaration she gave the day following the incident, Betancourt stated she forgot to mention that he was chasing the children and that she spat before he hit

^{21/} In a declaration taken the day after the incident, Betancourt stated that Mackey was "hitting" her mother. In her testimony, she changed that to "shoving." She claimed that the incident was clearer in her mind on the day she testified at the hearing. Based on the prior inconsistent statement, I discredit her testimony.

her.^{22/}

Carlos Maya was standing to the left of Angela Betancourt when the event occurred. Maya testified that Mackey did not give him or any other picket a court order in that they all refused to accept them. The orders were dropped on the ground. Maya stated that Angela raised her voice, saying something in English. She put her hands on her shoulders and he put his hands on her shoulders. Maya testified that he "didn't exactly shake her." Maya said he did not see her spit on Mackey. He stated that he was looking away at the time.

J. ULP 27, Objection 1 -- Refusal to Rehire UFW Supporters; The Termination of Espirdion Salazar

A. 1977 Settlement Agreement

In 1977, the Employer, UFW and ALRB General Counsel entered into a settlement agreement^{23/} which spelled out an order for rehiring employees

^{22/} Maria Segoviano and Lee Brewer offered few insights into the incident. Brewer, sitting in his vehicle, photographed the scene (Employer's Exh. 46). Maria Segoviano stated that Mackey and Betancourt argued. A few minutes later she testified that Betancourt did not yell at any time during the incident. I do not believe Maria Segoviano's testimony.

^{23/} G.C. Exh. 29. In pertinent part that agreement states:

1. The Employer will reinstate to their former positions commencing Monday, February 28, 1977, the following persons:

Pablo Segoviano - supervisor
Anselma Segoviano - shed
Angela Betancourt - shed
Ismael Betancourt - shed
Cruz Biscera Martinez - field hand
Julian Isquierdo Moreno - tractor driver

2. Pablo Segoviano will be reinstated on the following terms:

(A) Spring harvest - Pablo Segoviano will be the number two supervisor in the spring cauliflower harvest and will work in such capacity until there is only one cauliflower harvest crew remaining in employment.

(.B) Fall harvest - Pablo Segoviano will be the number two supervisor in the fall cauliflower harvest and Alfredo Delgado will be the number two supervisor in the fall melon harvest.

(C) Pablo Segoviano shall work at least as many hours in a supervisory capacity in the summer-fall harvest season (from commencement of the melon harvest through completion of the cauliflower harvest) as is worked by Alfredo Delgado.

Explaining the Company's rehiring practices, Attorney Triebisch testified that Patterson Farms has a policy to rehire by crews. He explained that one possible effect was to have a worker with less seniority begin before a more senior employee. Triebisch stated that the policy was agreed upon by the UFW. Triebisch also pointed out that the settlement agreement specifies that supervisors Pablo Segoviano and Alfredo Delgado were to be given an equal number of hours for the entire harvest period. Triebisch interpreted the provision to mean that the Employer could control each of their hours. The total at the end of the harvest would determine the equality.

(fn. 23 cont.)

3. The above clause relating to Pablo Segoviano and the spirit of this entire agreement are based upon the principles of good faith expressed between Pablo Segoviano and Shig Yamamoto on the afternoon of February 24, 1977.

4. When possible, past practices will be viewed as a guideline for determining the hiring of Pablo Segoviano as a second or third supervisor. If the use of past practice is not possible because of changes in the growing policies or conditions of the Employer, the parties will rely on good faith.

5. Anselma Segoviano, Angela Betancourt, Ismael Betancourt, Cruz Biscera Martinez, Julian Isquierdo Moreno, and Isidro Cubillo shall be reinstated in the order of seniority set out in Appendix A until such time as the Employer and the Union may sign a contract containing different seniority provisions.

8. By entering into this Settlement Agreement (including the seniority provisions herein), the Employer does not guarantee to any person any specific amount of work or work at any specific time.

9. Any alleged discriminatee who was included in any charges listed in the caption of this Agreement and/or was included in the Complaint or any amendment thereto who has not been included in the reinstatement provisions of this Agreement shall not be entitled to reinstatement.

14. The Employer shall have absolute discretion regarding the planting of crops and the use of farm equipment for all legitimate business purposes

15. Nothing in this Settlement Agreement shall affect the rights of the Employer to discharge any supervisor or employee for any lawful reason.

B. Apricot Harvest Offers and Offers at the Negotiating Session of July 27

Two days prior to the early August melon harvest, Attorney Triebisch notified the UFW negotiator (Ullman or Beauchamp) that 20-25 workers were needed for the apricot harvest. Triebisch then spoke to Jose Zuniga at the UFW office, making the same request. Zuniga told Triebisch that he would get back to him. Zuniga did not return Triebisch's call. According to Triebisch's testimony, he again made the offer across the bargaining table to negotiator Ullman 2-3 days before the late July apricot harvest.

On July 27 or 28, the UFW negotiator at Patterson became Ken Fujimoto. Others present for the UFW that negotiating day included Pablo Segoviano, Julian Izquierdo and Carlos Maya. Triebisch testified that the Employer offered jobs to Julian Izquierdo and Ismael Betancourt over the negotiating table that day. The UFW caucused after the offers were made. Fujimoto informed Triebisch that he would speak with him later that day. According to Triebisch's testimony, Fujimoto contacted him by phone at 10:00 p.m. Fujimoto told him that the workers did not want to harvest apricots because it was dirty and nasty work.

On July 5, Triebisch sent Fujimoto a letter,^{24/} acknowledging the "nasty work" comment and the fact that the workers wanted to be paid by the hour. Triebisch confirmed that the Employer would be able to use any labor available to harvest the apricots on a piece rate. The letter continued, "On the conditions that such action by the employer have no effect upon the workers on the existing seniority list and that

^{24/} Employer Exh. 78

permanent resolution of this question will be subject to negotiation."

C. Blanket Offers

On August 11, the first day of the strike, the Employer came to the picket line and distributed a letter^{25/} offering work to all striking employees. Mum Yamaichi accompanied Larry Mackey to the picket line, while Mackey passed the letters out to the striking employees. Yamaichi observed Mackey begin the process of distributing the letters. Yamaichi then left the area. Yamaichi testified that Mackey had orders to give a copy to everyone on the picket line.

Witnesses for the Employer testified that a blanket offer had been made to all members of Pablo Segoviano's crew on or about August 12. On that day, Lee Brewer prepared a document for Shig Yamamoto to sign. The document was a letter to Pablo Segoviano, telling him to report to work the following Monday for the honeydew melon harvest.

After Yamamoto signed the letter, he gave it to Brewer. Brewer testified that within the next two days he hand delivered it to Pablo Segoviano. Brewer testified that the letter requested that Segoviano and his crew report for work the following Monday for the honeydew harvest.

Segoviano testified that he received the letter about that time.

^{25/} Employer Exh. 50, written in both English and Spanish, reads: Dear Patterson Farm Worker:

You have a right to strike if you want to. But the farm also has a right to have the crop harvested.

There is work available to you. We request that you return to work or notify Patterson Farms by 3:00 p.m. tomorrow, Saturday, August 12, 1978. If we have not heard from you by then, the farm may have to hire other workers to perform available work.

Shig Yamamoto
Patterson Farms

However, he was unable to locate it for the hearing,^{26/} He recalled that the letter requested that he report for work. Segoviano stated that he remembered no mention of either the crop to be harvested or the request to bring his crew with him. The letter was written in English. Angela Betancourt read the letter to her father. She corroborated Segoviano's testimony regarding the contents of the letter.

Although Shig Yamamoto read the letter before signing it, he could not recall whether the letter requested that anyone other than Segoviano report for work. Mum Yamaichi testified, "I can't say I'm absolutely certain if it said to bring his crew back. It could have just asked Pablo to report to the ranch and nothing more. I didn't see a copy of the letter."

0. Individual Offers

Lupe Ramirez testified about offers she made prior to the apricot and melon harvests. Called as a witness by the UFW, Ms. Ramirez was asked:

MS. LYONS: Q Other than in the apricot harvest of 1978, on what other occasion in 1978 did you tell workers that they should return to work at Patterson Farms?

A When the melons started.

Q When was that?

A I don't remember. We started July or the first of August. The first weeks of August.

Q And you told Elida Villa to come back to work; didn't you?

A Yes.

Q And Rufina Garza, as well?

A Yes.

Q Who else?

A Some other ladies: Angela Mejia and some other ladies: Julita Gomez, Amelia Izquierdo, Angela Segoviano.

^{26/} Segoviano testified that he gave it to representatives of the UFW at the end of August. During the hearing he unsuccessfully attempted to relocate it at the UFW office in Salinas. No copies were kept by the Employer.

Q Angela Segoviano?

A Yes.

Q And this was for the melons in 1978? How about Maria Segoviano?

A No.

Q Anyone else?

A Yes. There was some other ladies.

Q How many more?

A Well, they started with a few for the first week, and then later on, they started hiring more people.

Q So, you didn't tell all of these people that you've named at the same time to return to work?

A I don't remember if it was when we first started. Eli da and Rufina and Lola, we started first, and then the Segovianos. But they didn't show up for work.

Q When did you offer work to Angela Betancourt?

A It was when we were going to start in the melons. Must have been a week or a few days before we started.

Q And that was the conversation that took place in a grocery store?

A Yes. It was in the Liberty Market in Patterson.

1. Isidro Cubillo

Cubillo, a member of the field crew, was listed number 36 in the 1977 Settlement Agreement. He testified that he last worked at Patterson Farms on January 10, 1976, when he was told there was no more work. Cubillo further testified that he customarily worked the cauliflower harvests.

According to Cubillo's testimony, he twice asked Shig Yamamoto for work in 1977. He recalled one incident at the end of April in the cauliflower fields and another in front of the shop during thinning. On both occasions Yamamoto told him that no work was available. Yamamoto testified that he remembered at least one request for work by Cubillo in 1977. Yamamoto further testified that he did not instruct anyone to offer Cubillo work in the 1978 melon harvest.

2. Pablo Segoviano

Segoviano, President of the ranch committee, and spokesman for the UFW at Patterson Farms, began work as a foreman at the farm in 1969.

Segoviano testified that he served as a foreman from 1969 to 1977, the last year he worked for Patterson.

During the years 1969 to 1974, Segoviano worked 11 months of the year. His routine included cutting cauliflower from January 15 to April 20. He then thinned cauliflower, tomatoes and lettuce. In July he planted or cultivated various crops, and in August, he worked the melon harvests. On October 1, he began cutting more cauliflower. The cauliflower crew normally worked until approximately December 23. Both before and during his years as foreman, Segoviano worked as a wheeled and caterpillar tractor driver, cultivating and disking the soil. He also irrigated, worked in the shed, and cut cauliflower.

Beginning in 1970, Shig Yamamoto instructed Segoviano to bring more workers to fill in his crew and other crews. When a new operation began at the farm, Yamamoto often told Segoviano to bring back the old people. Yamamoto would then determine whether more workers were needed. He often told Segoviano to gather a certain number more. Pablo Segoviano testified that he had a reputation for finding as many workers as the Employer needed. During certain years, Segoviano boarded workers in his own house and transported them to Patterson Farms.

Segoviano testified that over the years he had personally hired many workers.^{27/} In 1975, as in previous years, Shig Yamamoto gave Segoviano names of individuals to contact. He also requested Segoviano

^{27/} A partial list, including the approximate year, was revealed in Segoviano's testimony: Americo Trevino, 1970, Rafael Navarro, 1974, Pedro Aguilera, 1974, Cirino Castellanos, 1975, Isidro Cubillo, 1975, Magdaleno Escamillo, 1974, Santiago Murillo, 1975, Aniceto Saucedo, 1975, and Apolonio Ordonez, 1974.

to hire a number of workers in addition to the specified employees.

During his full years as foreman, 1969-1975, Segoviano worked the two cauliflower and melon harvests. Beginning in April, 1973, 1974 and 1975, he worked with other Patterson employees at another ranch, Bogetti. The group of workers then returned to Patterson for the fall cauliflower harvest.

Segoviano did not work at Patterson in 1976. Pursuant to the settlement agreement, Segoviano was called back in June of 1977. According to Segoviano's testimony, he did not work as a foreman that year. However, he testified that he continued that year to tell employees what to do, where to do it, and how to do it when they arrived at work. He stated that in all his years at Patterson he showed untrained employees how to do the work.

While rank and file employees customarily were paid hourly,^{28/} foremen were paid a salary by the day. Segoviano testified that even if he were to work only two hours on a given day, he would receive a full day's pay. In 1975, he earned \$30 per day. In 1977, he earned \$40 each day.

Segoviano further stated that the employees regarded him as a foreman. Segoviano testified "that was my title,"

In addition to showing employees how to do the work, Segoviano also inspected the work. He said that he was responsible for the quality of work done. Pablo testified that, "I would exercise my judgment as to whether it was being done." He would then correct workers if they were working improperly,

^{28/} Exceptions in past years included piece rate paid in apricots and broccoli.

Further, Segoviano kept his crew's time books. If a crew member left early, Segoviano would record the hours. If the employee left for more than a couple of hours, Segoviano would inform Yamamoto, who would then send him an additional employee.

Segoviano also testified that he could both promote and recommend the promotion of an employee to tractor driver in his crew.

During the years 1969-1977, Segoviano told people when they had to work overtime. He stated, "That was within my authority as supervisor."

Furthermore, in three separate places in the 1977 settlement agreement (paragraphs 1, 2, 4), Segoviano is referred to as a "supervisor". Further, his name does not appear with the rank-and-file listings in the settlement agreement.

3. Gloria Tovar, Martin Tovar, Tubursia Medina, Maria Media

Gloria Tovar began working at Patterson Farms in 1972. In 1973, 1974, and 1975, she was called back to work by Lupe Ramirez to work on the tomato machine and hoeing with Lupe's crew. In 1977, she worked in the packing shed. She testified that during the strike she appeared on the picket line twice at the end of the strike. She testified that she never received a letter offering her work from either Yamamoto or Lee Brewer while she was on the picket line.

Gloria Tovar testified that she and her husband, Martin Tovar, lived at her father's (Maximino Medina) home in 1977 and 1978. Martin Tovar¹'s work history at Patterson is unclear from the record. In the 1977 settlement agreement, Tovar, a/k/a Magdaleno Escamillo, is listed number 27 in the field crew. Shig Yamamoto testified that Tovar was offered work through a family member in 1978.

Tubursia Medina, Gloria's mother, was hired in 1974. She last

worked in 1977 with Lupe Ramirez, who had traditionally called Tubursia back to work. Tubursia testified that she walked the picket line twice during the strike, including the first day. She further stated that she did not receive any letter offering her work while on the picket line.

Maria Medina worked in 1974 and 1975. She testified that she had not been offered work since 1975. She further stated that she was on the picket line twice at the end of the strike.

Foreman Alfredo Delgado testified that on or about August 9, he talked to Maximino Medina, who was working in Delgado's crew. Delgado testified that he asked Maximino whether his family could work at the ranch during the melon harvest. Delgado stated that Medina responded that same day that they could not because they were busy working elsewhere, Delgado further testified that he did not personally extend the offer to any of the family members. He also stated that he did not ask Maximino again.

Maximino testified that he did not remember the conversation referred to by Delgado. Gloria, Tubursia, and Maria all testified that no offer of employment at Patterson in 1978 was communicated to them by Maximino Medina.

4. Anselma Segoviano

Anselma Segoviano, Pablo's wife, began work at Patterson in 1969. From 1969 to 1975, her husband informed her when to come back to work. Anselma, who last worked cutting cauliflower in 1977, was contacted by Lupe Ramirez that year. She testified that she did not receive a job offer in 1978. She further stated that she did not have any conversations relating to work at Patterson Farms with her daughter, Angela Betancourt, during June or July. Anselma testified that she saw

Angela regularly during the August strike,

Shig Yamamoto testified that he did not offer Anselma Segoviano work in a honeydew harvesting crew in 1978.

5. Amelia Izquierdo

Amelia Izquierdo, Julian's daughter-in-law, first worked at Patterson in 1972. She last worked in 1976 or 1977. Most years she worked with Pablo Segoviano's crew. She also worked with Lupe Ramirez. Amelia testified that she was on the picket line every day of the strike. She further stated that she did not receive a letter offering her work.

Ms. Izquierdo testified that Lupe Ramirez, on June 28, offered her a job picking apricots. Amelia refused the offer, telling Lupe that she already had a job. Amelia further testified that Lupe Ramirez never called her for the melon harvest in 1978. Lupe Ramirez corroborated this testimony. Further, Shig Yamamoto testified that he did not offer Amelia work by name in the 1978 honeydew harvest.

6. Melania Saucedo

Melania Saucedo began working for Patterson in 1973. She last worked in 1975. She stated that she talked to Shig Yamamoto by the shed in 1976, asking for work. He told her there was no work available. Saucedo testified about another conversation with Yamamoto near the trailer office in 1977. She was with her husband. Yamamoto said there was very little work, and that he would inform them later. Saucedo further testified that between 1976 and 1977 she telephoned Yamamoto on one occasion, asking for work.

Saucedo had moved from the home she occupied in 1977. She testified that she did not give Yamamoto a new address or phone number.

In 1977, while in the hospital, Melania Saucedo talked with Lupe

Ramirez. According to Saucedo, she told Ramirez that she was living in a different home at the government camp in Patterson. Lupe Ramirez testified that she was unable to find a good phone number for Saucedo in 1978. Ramirez stated that she did not know where Saucedo lived. She testified that Saucedo never told her. Further, she stated that she did not ask anyone.^{29/}

Shig Yamamoto testified that no offer was made to Melania Saucedo after the 1977 settlement agreement.

7. Julian Izquierdo

Julian Izquierdo, a member of the ranch committee, began work at Patterson in 1968. He last worked on May 4, 1977, when he was told by Shig Yamamoto that there was no more work. In May, 1977, Izquierdo asked Jimmy Yamamoto for work. According to Izquierdo, Jimmy did not answer him. Izquierdo testified that he asked Jimmy for work twice more in April-May, 1978. The conversation took place inside the shop. Jimmy told him he did not know.

According to Izquierdo, he was not offered work at the July 27 or 28 negotiating session. He recalled hearing his own name mentioned at the negotiating session. However, Izquierdo testified that the UFW negotiator Fujimoto only mentioned that the Employer did not want to hire him. According to Izquierdo's testimony, no work had been offered to him since May, 1977.

Izquierdo further stated in 1977 he exclusively drove the wheeled

^{29/} Saucedo testified about her long, close relationship with Angela Betancourt. She and Betancourt were godmothers to each others' children. The record is unclear whether Ramirez knew of the relationship.

tractor. In 1975 and years previous to that, Izquierdo also drove a caterpillar tractor. In the 1977 settlement agreement, Julian Izquierdo is listed as a "wheeled" tractor driver.

Shig Yamamoto testified that caterpillar tractor drivers first would be called back to work when a caterpillar or wheeled tractor driver was needed. Yamamoto used Genaro Delgado, number 1 caterpillar driver, as an example. He would be kept on the payroll as long as some kind of tractor driving needed to be done. However, if an irrigator were needed, one would be called from that list rather than using Delgado as an irrigator.

E. September 6 Offer to Return to Work

On September 6, a group of employees delivered G.C. Exh. 5 to Shig Yamamoto. The letter requested that the Employer give the signing employees their jobs back. These employees included Cruz B. Martinez, Carlos Maya, Espiridion Salazar, Luis Gonzalez, Henry D. Delgado, Raul Gonzales, Fernando Gaytan, Dolores Gonzales, Rufina Garza, Elida Villa, Gerardo Gaytan, Isodoro Gaytan, Mario Gaytan, and Isodoro Gaytan, Jr.^{30/}

^{30/} During the hearing, the 14 names contained in G.C, Exh. 5 were added by amendment to paragraph 27 of the complaint. General Counsel called most of those employees as witnesses to establish that they had in fact signed the document. At the close of General Counsel's case, the Employer moved to dismiss as to employees Henry D. Delgado, Fernando Gayton, Isodoro Gaytan, Mario Gaytan, and Isodoro Gaytan, Jr. on grounds of insufficient proof. I granted the motion, deleting those names from paragraph 27 of the complaint.

By way of written confirmation of the above-stated amendment, General Counsel added the name Maximino Medina to the list of employees in paragraph 27 of the complaint. Medina's name appears on Employer Exh. 72, but not on G.C. Exh. 5. Medina did not testify regarding his signing or condoning anyone signing that document. According to handwriting expert Morrill, Medina's signature was written by Pablo Segoviano. Segoviano denied signing Employer Exh. 72 for Medina. Based on Medina's testimony, Segoviano's denial, and Morrill's expert opinion, I find that Medina did not offer to return to work. I therefore eliminate his name from the G.C. Exh. 5--Employer Exh. 72 group, dismissing him from paragraph 27 of the complaint.

The original letter of G.C. Exh. 5 was introduced by the Employer and identified as Employer Exh. 72. An examination of the two documents revealed that Employer Exh. 72 contained an additional name, Maximino Medina. It appeared as the last name in the right hand column.

At the hearing, the Employer called Sherwood Morrill, an examiner of questioned documents.^{31/} Mr. Morrill stated that he specialized in authenticating documents. Prior to the hearing, Mr. Yamaichi had provided Mr. Morrill with exemplars containing the handwriting of all the individuals listed on Employer Exh. 72. These exemplars included signed employment personnel cards and endorsed checks. Morrill testified that the signatures for Elida Villa, Gerardo Gaytan, Isodoro Gaytan, Mario Gaytan, Isodoro Gaytan, Jr., and Maximino Medina in no way corresponded to the exemplars for these people. He based his conclusions on the fact that the signatures were not within natural variation (different construction of letters, different speed and density of writing). He also concluded that the signatures for Elida Villa, Gerardo Gaytan, Isodoro Gaytan, Mario Gaytan, and Isodoro Gaytan, Jr. were signed by one individual. Morrill further concluded that Pablo Segoviano had signed Maximino Medina's name on Employer Exh. 72.

Rufina Garza testified that she was working at the UFW office in Patterson during the strike. She attended the meeting on September 5, when Employer Exh. 72 (G.C. Exh. 5) was prepared at the UFW office at 5:30 -6:00 p.m. She testified that she saw all of the people sign the

^{31/} I found Mr. Morrill qualified to testify as an expert. He had been examining questioned documents for 45 years, 39 of them with the California Bureau of Criminal Investigation. He had testified at more than 2,000 trials, one of which was the Hughes Mormon will trial.

document. She stated that only one signature appearing on G.C, Exh. 5 was not actually signed, by the named individual. Garza testified that Gerardo Gaytan was followed in line by his father, Isodoro Gaytan, When the senior Gaytan reached the document, he instructed Gerardo to sign it for him. Ms. Garza further stated that Maximino Medina was not present when G.C, Exh. 5 was signed. Rufina Garza testified that after all the workers signed, Pablo Segoviano picked up the document to deliver it to the farm owners the next day.

Elida Villa testified that she signed G.C, Exh, 5 during that meeting at the UFW office. She also stated that all the people who signed the letter were present at that meeting, Ms. Villa testified that she had difficulty signing the document because she was holding her six-month old baby in her arms at the time.

Carlos Maya, father of Rufina Garza and Elida Villa, was present at the signing of G.C, Exh. 5. He testified that Elida Villa's baby was not at the meeting. Maya stated that his wife was caring for the baby at home during the meeting. He further testified that he did not remember whether Elida Villa signed her name to G,C, Exh, 5.

Pablo Segoviano testified that he too was present during the signing, He stated that he saw all named individuals sign their own names except for Isodoro Gaytan, who instructed his son, Gerardo, to sign for him. Segoviano further testified that he did not know whether Maximino Medina signed the document. Segoviano denied signing Medina's signature.

F. Employer's Offers Following September 6 Offer to Return

1. Cruz B. Martinez

Cruz Martinez, a member of the ranch and negotiating committees since 1977, began full-time work with the Employer in 1970 or 1971. He testified that he was recalled pursuant to the settlement agreement for one month of work in 1977. In 1978, he went back to work in June. He was again recalled in July, but he chose not to return. He testified telling the person, "I was going out on strike." He further stated that he could have worked the one month before the August 11 strike. Martinez testified that the strike had been planned in July.

On September 25, Martinez was offered a position in the field crew (see Stipulation, Attachment B). He did not report for work.

2. Carlos Maya

Carlos Maya, who attended negotiating sessions as a member of the ranch committee, first worked for Patterson Farms in 1966. He left his job on August 11, when he joined other workers striking the Employer.

As noted in the Stipulation, paragraph 7, the Employer delivered a letter to Carlos Maya on September 7, stating that his position in the packing shed had been permanently filled, offering him another job making boxes at \$3.20 per hour. Mr. Maya was earning \$3.75 in the packing shed in August, when he went out on strike. Mr. Maya sent the Employer a letter in response (G.C.-UFW Exh. 27), expressing his feeling that the Employer was discriminating against him. Maya refused the offer, stating that the hourly rate was lower than he previously had earned.

3. Espiridion Salazar

Espiridion Salazar worked for Patterson Farms from October,

1969 until the August, 1978 strike. He worked both on field and shed crews.

As noted in the Stipulation, after September 7, no job offers were made to Salazar.^{32/}

4. Luis Gonzales

Luis Gonzales, a member of the ranch committee, began full-time work at Patterson Farms in 1962. He joined other employees in leaving work on August 11. During 1978, Luis Gonzales was one of few regular employees to work the apricot harvest at Patterson Farms. During July, 1978, Gonzales did irrigating and other tasks. He drove a tractor during the apricot harvest.

As set out in the Stipulation, paragraph 12, the Employer delivered a letter (Attachment A) to Gonzales on September 12, stating that his position as a packer in the shed had been permanently filled and offered him a job in the shed stacking packed boxes at \$3.20 per hour. Mr. Gonzales did not report after this offer was made.

In the 1977 settlement agreement, Luis Gonzales is listed as the number 2 irrigator. The Stipulation states that Luis Gonzales worked primarily as an irrigator. Shig Yamamoto testified that Gonzales spent one-half of his time in the shed and the remaining time, both irrigating and doing field work. Yamamoto testified that Celestino Rodriguez replaced Gonzales as an irrigator. Yamamoto testified, "I don't know who took his place in the shed." Yamamoto further stated that he (Yamamoto) and his son irrigated from October to May, 1979, when Carlos Sierra returned to work. Celestino Rodriguez reported back 2-3 weeks after Sierra.

^{32/} See later discussion regarding the shooting incident involving Mr. Salazar.

5. Raul Gonzales

Raul Gonzales began work for the Employer in 1960. The settlement agreement establishes him as the number 1 irrigator. The Stipulation confirms that he worked primarily as an irrigator.

On September 7, the Employer delivered a letter^{33/} to Raul Gonzales acknowledging his offer to return to work. It further stated that his position had been permanently filled and that he would be notified if equivalent employment became available. After September 7, no job offers were made to Raul Gonzales.^{34/}

6. Dolores Gonzales

Dolores Gonzales first worked for the Employer in the packing shed in 1972. In 1978, she started in the shed in July, quitting 2-1/2 weeks later to join the strike.

On September 7, she received the same form letter^{35/} that many other employees received. She was informed that her position had been filled, telling her that she would be contacted when equivalent employment became available. On September 12, the Employer sent her a letter^{36/} offering her a job as a picker in a field crew for \$3.20 an hour. Ms. Gonzales did not appear for work.

7. Rufina Garza

Rufina Garza, number 1 on the women's crew in the settlement

^{33/} See Stipulation, Attachment A.

^{34/} See Stipulation, paragraph 14.

^{35/} See Stipulation, Attachment A.

^{36/} See Stipulation, Attachment B.

agreement, began work at Patterson Farms in 1966. She last worked the day before the strike with the shed crew sorting melons. Garza testified that prior to 1977, she usually returned to work with the men at an earlier date than the women's crew returned. During June and July, 1978, she also did 3-4 weeks of work with a field crew.

On September 7, the Employer hand delivered a letter^{37/} to Ms. Garza, offering her \$3.20 as a picker in a field crew. In response, on September 10, she sent a letter (G.C.-UFW Exh. 28) to Shig Yamamoto refusing the job offer. She pointed out that she had been making \$3.50 when she left work.

8. Elida Villa

Elida Villa first worked for the Employer in 1972. She last worked in the packing shed the day before the strike.

On September 7, she received the form letter^{38/} informing her that her job had been permanently filled. On September 9, she received another letter,^{39/} offering her a \$3.20 per hour job as a picker in a field crew. Ms. Villa did not report for work.

9. Gerardo Gaytan

Gerardo Gaytan began work for the Employer in 1968. He joined the strike in August.

On September 9, the Employer delivered a letter,^{40/} to him, offering work in the packing shed at \$3.20 per hour. Mr. Gaytan did not report for work.

^{37/} See Stipulation, Attachment A.

^{38/} See Stipulation, Attachment A.

^{39/} See Stipulation, Attachment B.

^{40/} See Stipulation, Attachment B.

G. Employer Animus

Espiridion Salazar testified that in October, 1975, he had a conversation with Shig Yamamoto following the UFW victory in the election. Shig Yamamoto told Salazar that he was not going to plant anymore, as long as the Chavez union was in. According to Salazar, Yamamoto also said he would never sign a contract, telling him the workers would see what they were going to eat. Salazar further testified that Yamamoto, in 1976, told him that he would only grow peas, barley and melon. This discussion took place in front of Salazar's house. In 1977, when Salazar asked Yamamoto for a raise, Shig told him to go to Chavez for it. Yamamoto denied having any of these conversations with Salazar.

In 1975, prior to the UFW's organizational effort at Patterson Farms, Pablo Segoviano testified that Yamamoto told him that if UFW organizers came to the farm, he should not allow them to talk to the workers, Segoviano further stated that 10-12 days before the 1975 election, Yamamoto told Segoviano to instruct the workers not to vote for the UFW. Segoviano also testified that 7-8 days before the 1975 election, Yamamoto told him to let the Teamsters talk to the workers. Yamamoto also asked Segoviano to act as a company observer in that election. Segoviano informed him that he was observing for the UFW. Segoviano stated that his relationship with the owners changed after 1975. He testified that they basically stopped talking to him. Yamamoto denied all the anti-union remarks attributed to him. Segoviano testified that 1975 was the first year in many that he did not receive some kind of bonus. Pablo stated that he traditionally received a yearly bonus of \$100-200 in late December when the crew was laid off.

H. Crop Changes and Layoffs

Several of the UFW witnesses testified that they worked nearly 10 months during the years up through 1975. In 1977, most workers were employed no more than 7 months that year. Many of them worked far less than that in 1977.

Mamoru Yamaichi testified that Patterson Farms planted 1,500 acres of crops in 1975. In 1976, the acreage was reduced to 1300-1400 acres. Because of the draught, Patterson planted only 250 acres in 1977. Yamaichi testified that in the Fall of 1977, the farm was getting .79 acre foot of water compared to 4-5 feet during normal non-draught years. Yamaichi explained that in 1978, based on economics and the shortage of water, Patterson Farms planted 650 acres of melons. The entire farming operation was 900 acres that year. Yamaichi further testified that increasing the volume of melons in 1978 made the operation more efficient for selling, packing and transporting.

Shig Yamamoto testified that Patterson Farms did not plant or harvest broccoli or cauliflower in 1978. Instead, melons became the major crop. In late July, the crews started harvesting cantaloupes. They moved on to crenshaws in the first part of August. Then in mid-August, the crews harvested and packed honeydew melons and casabas.

Prior to this crop shift, the farm planted and harvested extensive cauliflower acreage. As evidenced by Pablo Segoviano's testimony, cauliflower was a very labor intensive crop. The crews usually cut cauliflower from January 15 till April 20. Then the cauliflower crop would be thinned. Again at the beginning of October, after the melons had been harvested and packed, the cauliflower crew would cut more cauliflower until December 23, the time of the usual short seasonal layoff. After the layoff, the cauliflower crew again would be working the cauliflower crop in mid-January.

I. The Salazar Shooting Incident

Mamoru Yamaichi testified that on September 6, he was in his trailer office looking out at a crew harvesting melons. Yamaichi observed workers running from the field, directly west of Salazar's home. Yamaichi entered the field and questioned workers and a security guard. The workers said they were being shot at. The guard informed him that someone was shooting into the field. Sheriff's deputies arrived about that time and surrounded Salazar's house. Yamaichi talked to one of Ramona Salazar's boys, who told him that he heard a bullet pass overhead. The boy told Yamaichi that the tractor driver jumped from the tractor and ran. The Salazar boy told Yamaichi that Speedy Salazar was doing the shooting. Yamaichi testified that he concluded that Salazar was shooting at the crew.

Crew worker Ludovina Benitez ran for cover during the incident. However, she did not see anyone shooting. Margarita Barrientos testified that she was picking melons in Alfredo Delgado's crew that day. She testified that she heard a shot and saw a man walking away with a weapon in his hand. She stated that she heard the "zoom" of the bullet overhead. She did not hear the "boom" of the rifle.

Speedy Salazar testified that he did fire a shot that day. He stated that he was shooting at a rabbit near his home some 100-200 yards from the melon field. Salazar testified that he was shooting to the north of his house. The crew was working to the south. He denied shooting at the crew.

Shig Yamamoto later talked to workers about the incident. He also conferred with Yamaichi. Based on their investigation that day, they

concluded that Salazar had shot at the crew.^{41/} They immediately decided never again to offer employment to Salazar.

J. Replacing the Striking Employees

When questioned about the replacements for the striking workers, Yamaichi testified that "to accommodate Lyons^{42/} is the only reason we made up the list."^{43/} You can't say one person took the place of another in our kind of operation. You can't say one permanently replaced another." Yamamoto was examined regarding Luis Gonzales and his replacement. Yamamoto testified that Gonzales was doing field work and cleaning weeds in March. At the end of May, he began irrigating. Gonzales worked in the packing shed in July, 1978, when the canteloupe harvest began. Gonzales had worked year round, every year, for 18 years. Yamamoto stated, "I don't know who took his place in the shed." Rodriguez took his place irrigating and he is still in Gonzales' spot. Yamamoto further testified that on August 11, the first day of the strike, he told Rodriguez that he was going to be a permanent irrigator, the number 2 irrigator. Yamamoto stated that on the morning of the strike, he told Carles Sierra that he was permanently replacing Raul Gonzales as the number 1 irrigator. He further stated that no one replaced Sierra (number 4 irrigator in the 1977 settlement agreement).

Yamamoto stated that he and his son did irrigating from October, 1978,

^{41/} When questioned about another crew member involved in a shooting, Yamamoto said, "I don't care if they shoot someone as long as it's not on my property."

On February 8, 1979, Salazar was acquitted of assault with a deadly weapon by the Stanislaus Superior Court. (G.C. Exh. 12)

^{42/} UFW attorney Dianna Lyons.

^{43/} Employer Exh. 79, 80.

to May, 1979. Sierra and Rodriguez returned to work at that time.

Yamamoto further testified that Patterson had a policy of having a senior worker cross categories rather than laying him off. As an example, Yamamoto testified that Luis Gonzales did several jobs. Yamamoto also stated that Genaro Delgado, number 1 caterpillar tractor driver, would drive a caterpillar or cross over to a wheeled tractor if the need arose. He would be utilized before the Employer called back the listed wheeled tractor drivers. However, Delgado would not be used for irrigation if an irrigator were needed.

Yamamoto further testified that he told Carlos Luna that he was replacing Henry Delgado on the day the strike began.

Yamaichi testified that on the first day of the strike he told Lupe Ramirez that she was replacing Carlos Maya as a packer in the shed. He further testified that Lupe Ramirez continued her own job and took over a major part of Maya's job. Yamaichi also stated that Lupe Ramirez replaced Gaytan as well in the shed.

In referring to Employer's Exhibit 79, Yamaichi stated that he could not really say that Eddie Solarez replaced Luis Gonzales, even though Solarez is listed as Gonzales' replacement. Yamaichi added that Solarez did not irrigate.

Yamaichi testified, "We just hired bodies to get the shed working, not replacing anybody either the day or day after the strike. We really didn't replace anybody until we talked to the attorneys to see what is the right procedure."

Yamaichi also testified that after receiving Employer's Exh. 72 (G.C. Exh. 5) on September 6, Patterson Farms did not hire anyone as a packer, stacker, sorter, box person, or dumper.

K. Objection 2 – Whether PFEA was Employer Dominated;

Objection 7 -- Whether PFEA Represented No-Union on Ballot

In mid-1975, Merced Duarte, a 12-year rank-and-file employee of Patterson Farms formed the Patterson Farms Employees' Association (PFEA). Duarte¹'s activities with the Association that year were limited to circulating a petition following the UFW victory, expressing disapproval of the results of the election. The organization held no formal meetings at that time. Duarte, President and only officer of the Association, testified that the organization has never had either a constitution or by-laws.

In August, 1978, Duarte activated organizational efforts on behalf of the PFEA. During the first or second week in August, Duarte called a membership meeting of the organization. Three workers--Lupe Ramirez, Pete Rodriguez, and Genero Delgado--joined Duarte at Delgado's house. Duarte testified that no one else was invited. Duarte stated the purpose of the PFEA: "We need some kind of insurance out there and a pay raise." The meeting lasted from 7:00 p.m. to 8:30 p.m.

A second meeting was held just before the August 31 election. The same participants attended this meeting with the addition of Lupe's daughter, Sandra. Prior to the election, the organization boasted three members (Duarte, Rodriguez, and Ramirez), and continued to function without a constitution or by-laws.

Duarte then decided to circulate a petition^{44/} to seek a representational election at Patterson Farms.^{45/} On August 22, Duarte

^{44/} UFW Exh. 16

^{45/} Duarte testified that he was unaware that the UFW and the Employer were negotiating a contract at that time.

began circulating a petition with the heading, "The People's Choice"^{46/} among the workers at Patterson Farms. At 5:00 a.m., he went to the service station in Westley where the workers met a security escort into work during the strike. Duarte spent 20 minutes getting signatures under a street light. A security vehicle was parked 150 feet away from the street light. Duarte next went to the compound where workers congregated before work. He spent 15 minutes gathering more signatures. At the 10:00 break, he approached the packing shed employees, spending 10-15 more minutes in his pursuit of signatures. He returned to work, leaving the petition all day on a board in an area of the packing shed where pickles are cleaned.

Duarte testified that both Shig Yamamoto and Mum Yamaichi were around that area during the day. In soliciting signatures, Duarte testified that he did not talk about either insurance or wages. He stated that he got most of his signatures, more than one page, at the service station. Duarte testified that he told workers, "I was going to form a union to help ourselves because everything was so high and we needed better insurance and so on." Duarte stated that he forgot to tell the workers about an election. He testified that he invited some workers to a membership meeting, but no one came. Duarte further stated that he did not discuss the formation of the PFEA with Yamaichi, Yamamoto, Triebisch, or any other lawyers or representatives of the company.

When Duarte retrieved his unattended petition at the end of the work day, he discovered the total sufficient to trigger an election. With his

^{46/} UFW Exh. 17

wife's help, Duarte filled out a petition for certification^{47/} to take to Sacramento the next day. On August 23, he took the documents to the ALRB's Sacramento Regional Office. The Regional Office had Duarte also complete a Declaration by Representative of Purported Labor Organization.^{48/}

Employees Rufina Garza, Espiridion Salazar, Raul Gonzales, Cruz Martinez, and Lola Gonzales testified that Duarte never asked them to sign the petition or attend a membership meeting.

Lola Gonzales, who worked with Lupe Ramirez from 1972 to 1978, testified about the Tatter's job duties. Gonzales stated that Ramirez gave her orders to make boxes in the packing shed; told the crew when to take a break;^{49/} told them when to do work outside the shed; gave the crew members their checks; kept track of worker hours. Ms. Gonzales also stated that Mum Yamaichi was often present telling the crew what work to do.

Lola Gonzales testified that Lupe Ramirez also made boxes and sometimes packed melons with the rest of the crew. She also translated from English to Spanish for the owners Yamaichi and Yamamoto. Gonzales further stated that Ramirez stacked boxes, swept the floor, and cleaned the yard. Ms. Gonzales said, "I believe Yamamoto was at the shed to tell Ramirez to tell us what we have to do." Lola Gonzales stated that either Yamaichi or Yamamoto was present in the shed while the crew worked.

Rufina Garza testified that Lupe Ramirez told her what to do. Ms.

^{47/} UFW Exh. 16.

^{48/} UFW Exh. 15.

^{49/} Gonzales testified that breaks were called at the same time every day.

Garza stated that Mum Yamaichi was the only other person that gave them orders. Ms. Garza further testified that Lupe Ramirez told the crew how to weed and thin in the field; told the witness to go from the field to the shed; gave the workers their checks on occasion; called the workers back to work; announced a lay-off; and announced the end of melons and an alternative job. Ms. Garza stated that she did not know if Lupe had a job title. She further stated that Yamaichi did not tell her that Lupe Ramirez was in charge in his absence.

Shig Yamamoto testified that Lupe Ramirez worked in the shed in August as a timekeeper, box maker, melon packer and translator. He stated that she was not a designated foreperson. She earned \$3.75 an hour, while the designated forepersons^{50/} were paid by the day.

Yamamoto stated that prior to 1977, Lupe Ramirez ran a women's crew in the field. Yamamoto testified that she took orders from him, working alongside the crew. Ramirez would walk up and down rows, checking the performance of the workers. She would report to Yamamoto if someone was not doing a good job. Yamamoto testified that she never recommended that an employee be terminated. He further stated that she had no authority to hire, fire, discipline, or to recommend such actions.

Mum Yamaichi testified that he and Mitzi Yamamoto supervised the packing operation. He stated that one of them was most often present. He testified that he gave Lupe the list of names from the seniority list to call back to work. Yamaichi further stated that Lupe never had been classified as a foreperson.

^{50/} In 1978, those forepersons were Pafalo Campos, Alfredo Oelgado, Miguel Ramos.

Lupe Ramirez, an admitted member of the PFEA, testified that in 1978 she packed, made boxes, stacked boxes, cleaned up and served as a checker in the June-July apricot harvest. She stated that Yamaichi ordered her to change from one task to another. She further testified that Mitzi Yamamoto or Mum Yamaichi were always there. When the work ran out, Yamamoto would have Lupe convey the message to the workers. If she was hoeing and Yamamoto needed two ladies to pack, she would send them. Lupe Ramirez stated that she told workers to return to work in the melons during the first weeks in August.

Ramirez testified that Elida Villa and other women would call her when they were going to miss work. Ramirez would O.K. the absence.

Pete Rodriguez, the third select member of the PFEA, worked as a utility man. Yamamoto testified that Rodriguez, who was paid by the hour, drove a tractor, irrigated, and worked in the shed and shop. Yamamoto said that he served as a messenger of orders, having no authority to hire, fire, or discipline employees. Julian Izquierdo testified that Rodriguez gave him orders every day in 1977. However, he qualified that statement. "I guess Jimmy [Yamamoto] would tell him something and then he would tell me." Izquierdo stated that Jimmy was the boss of the tractors.

Mum Yamaichi and Shig Yamamoto testified that they first saw the PFEA's petition for certification on August 23, when Duarte brought the papers to the office. They both stated that prior to August 23, they never heard of the PFEA. Subsequent to that date, the Company began a brisk "no union" campaign. Yamamoto, with the assistance of attorney Carrol, passed out literature. Yamamoto gave speeches in Spanish to all the crews. Carrol made all the campaign arrangements. Neither the PFEA nor UFW distributed any campaign literature or posters.

L. Objection 3 -- Whether Security Guards Harassed, Threatened,
Intimidated UFW Pickets

Patterson Farms employed a team of labor consultants and security guards to monitor strike activities, to provide basic security, and to escort working employees to and from the fields. Labor consultant Lee Brewer, President of Alpha Agency, had been used by Patterson in 1977 to help with labor negotiations. David Torres, President of Delta Security, was hired by Patterson to maintain security when the strike began. Larry Mackey, an assistant to Brewer at Alpha, worked primarily with Walt Plumb, President of Beta Agency, in photographically documenting the strike activities.^{51/} Plumb, hired by Delta, drove an Alpha leased van. Plumb used a camera belonging to Delta. When he completed a roll of film, he left it on the console of the Alpha van.^{52/}

David Torres testified that he first came to Patterson Farms on August 12. He observed Manuel Chavez and other pickets urging workers to leave the fields. Torres testified that the UFW supporters were trespassing. At that time Torres photographed the scene. He stated that the photographing throughout the strike was done to document violations of the law in order to obtain injunctions. He further stated that it was done to identify individuals. Torres testified that the strikers customarily used obscenities and threats when addressing the non-striking employees. At the entrance

^{51/} Photographing by Company personnel occurred on a daily basis. See discussion infra of Unfair Labor Practice, paragraph 21.

^{52/} Brewer's wife served as an officer of Beta. Beta, Alpha, and Delta shared office space and had a common phone number. Brewer, Plumb, and Torres maintained throughout the hearing that Alpha, Beta, and Delta were totally separate entities, sharing no common relationship. While finding that hard to believe, I find it unnecessary to make a finding for purposes of this Decision.

to the farm, Torres used both audio and visual equipment to record strikers' statements.^{53/}

Torres testified that early on in the strike he concluded that Patterson Farms needed two types of security services: (1) noise making devices to drown out the obscene remarks made by strikers; and (2) escort services for the non-striking employees. The noise making policy was implemented the second or third day of the strike, when a tractor without a muffler was used in the fields between the workers and the pickets. Torres testified that the tractor was utilized until at least August 22. The tractor motor ran while the workers were within earshot of the UFW's bull horns and public address system. Torres testified that the motor of this and all other noise making equipment was cut when the workers moved a sufficient distance from the striking workers. Brewer, on the other hand, testified that the noise machines ran all the time, never being turned off.^{54/}

According to Torres' testimony, the second noisemaker was brought into action 4-5 days after the strike began. It was dubbed the "troublemaker" (UFW Exh. 9), as it resembled an old army truck. Owner Yamaichi testified that the "troublemaker" (those words were stenciled on its side) was an army surplus lift truck owned by Patterson Farms and customarily used to load cauliflower onto trucks.

^{53/} Employer Exh. 28, 29. The transcribed and translated text of Employer Exh. 28 (28A and 28B) reveals obscene remarks made by striking employees.

^{54/} CRLA paralegal worker Steve Teixeira corroborated Torres' testimony. He testified that the tractor engine was turned off as the crew moved away from the edge of the field. As the workers moved closer, Teixeira stated that the engine was turned on and then raced.

Torres further testified that when the "troublemaker" broke down, the cab of a semi-trailer (UFW Exh. 7) was used. Steve Teixeira testified that the truck, aside from making noise, also caused considerable dirt to fly when it was driven back and forth in front of the pickets. Torres denied that it was used for that purpose. He testified that there was a dirt problem and that some of the roads were watered to keep the dust down.

Torres stated that a fourth noisemaker, a van with a sound system on top, was used throughout the entire strike, beginning on the third or fourth day. The personnel operating the van played extremely loud Mexican music. Steve Teixeira testified that guards also used hand-held amplifiers to make screeching sounds.

The noise making equipment was used throughout the strike. Angela Betancourt testified that when the "troublemaker" was being used, strikers could not hear each other on the picket line. Steve Teixeira testified that as a crew finished a row, the noise making equipment moved with the crew.

Arturo Rodriguez testified that on or about August 30, pickets with bull horns attempted to talk to workers in the field about the strike and upcoming election. Rodriguez stated that the van with the sound system played music loudly, drowning out the strikers.

Non-striking employee Americo Trevino testified that on the third day of the strike, pickets began calling the workers "names" and shouting "bad sayings". Trevino said that they routinely referred to the workers as "donkeys", telling the men they would buy them a dress. Trevino also stated that the strikers often told the workers to "fuck your mother". Trevino said the workers were angered by the verbal abuse. He claimed to

be able to hear the strikers even when the noise machines were operating. He also stated that he never heard mention of an election during the pickets' statements.

Steve Teixeira testified that the younger pickets used obscene language. He heard the words "bastards", "whore", and "motherfuckers" spoken on the picket line and directed toward the non-striking employees. Teixeira stated that security guards often called the pickets derogatory names.

Carlos Maya ^{55/} testified that early in the strike, pickets yelled obscene things to people in the field. Maya stated that the pickets used obscenities to get the workers upset, hoping they would join the strike. Maya, who was daily on the picket line, further stated that he did not hear any company representative or guard shout obscenities at the pickets.

Mum Yamaichi testified that at the beginning of the strike 10-15 growers came to observe the picket line. The growers drove their pick-ups into the fields. Yamaichi testified that one grower, Kellner, took pictures of the pickets. Steve Teixeira testified that the event occurred on August 12. He stated that 13 growers came out to the field, 20-30 feet from the pickets. Teixeira said that the growers pointed at particular strikers, workers they recognized.

Also at the beginning of the strike, Lee Brewer hung a rubber chicken out his window or attached it to the antenna of his jeep wagoneer or van. Steve Teixeira testified that the chicken appeared during the

^{55/} I found Carlos Maya to be a most credible witness throughout the hearing. He was always direct and forthright in his testimony. He came across as a very honest human being. His testimony consistently smacked of the "truth", whether that testimony was positive or negative for the UFW's case.

second week of the strike. Maria Segoviano testified that security guards yelled that the UFW was as dead as the chicken.

Lee Brewer testified that the chicken was used to counter the pig the UFW displayed on a rope. Brewer stated that the UFW would call him the name "el chicherron" (pork rind) and shake the pig. According to Brewer, he stopped dangling the chicken when the UFW ceased showing the pig. Angela Betancourt said that the chicken was used before and after the election.

Pancho Segoviano,^{56/} Pablo's son, related three incidents involving Lee Brewer. On August 12, while the strikers were on top of the levee, Brewer, from below, according to Pancho's testimony, argued with the pickets. When Pancho told him to shut up, Brewer invited him into the field. Pancho stated that the crew worked 20-30 yards away. Brewer denied that the incident occurred.

The second conversation, according to Pancho, occurred during the middle of the strike. Pancho testified that Brewer took out the rubber chicken, telling Pancho that it was his brother Johnny. Pancho said that Brewer said that Johnny was hurt in the hospital and that they had put him there. Brewer again denied the conversation.

Approximately two days before the election, Pancho testified that Brewer swerved his jeep wagoner into the passing lane, intentionally trying to hit Pancho. Pancho said he jumped into a melon field to avoid

^{56/} I found Pancho Segoviano not a very credible witness. He noticeably sweated under questioning by Company Counsel. He had difficulty meeting my eyes and those of the attorneys when answering questions. He was particularly evasive.

However, I also found Lee Brewer to be unreliable. His consistently belligerent attitude towards the UFW diminished his believability.

being hit. Again, Brewer denied the incident occurred.

Raul Gonzales testified that two days before the election, he observed 100-500 tacks on the roadway near his house. The pickets customarily parked their cars in that area. In the years he had lived there, he had never before observed tacks in that vicinity.

M. Objection 5 -- Whether Persons Were Hired to Vote

The UFVI workers struck the Employer on August 11, during the melon harvest. According to Shig Yamamoto, the honeydew crop needed harvesting, and he needed workers to harvest that crop. Yamamoto, within a few days after the strike began, asked Lee Brewer for suggestions of a labor contractor. Yamamoto had called a contractor named Rodriguez, but he was not able to supply a crew.

Brewer provided the names Paulino, Central Valley Growers, Atad, and Torres. Yamamoto testified that he contacted Atad and spoke to a man called Reyrey. On or about August 16, Yamamoto requested 26 workers the next day to begin the honeydew harvest. The contractor's crew worked the entire harvest with as many as 40 workers on certain days.

During the harvest, Yamamoto and Yamaichi hired other people to help in the packing shed. These included neighboring ranchers Ellery, the Muratas, and Alderson (son of a rancher). According to Yamamoto, all were hired before August 23, the date he learned there was going to be an election. Both Yamamoto and Yamaichi testified that these workers were hired to harvest the existing ripe melon crop.

In opposition, the UFW witnesses offered only names of people they had not previously seen employed by Patterson Farms.

N. Objection 8 -- Whether the Regional Director Improperly Directed an Election

On August 23, at approximately 12:20 p.m., Merced Duarte came into

the Sacramento Regional Office with a Petition for Certification^{57/} on behalf of the Patterson Farms Employees Association. Because that particular organization had never before filed a petition, the Board's officer in charge had Duarte fill out a form entitled "Declaration by Representative of Purported Labor Organization".^{58/}

Duarte testified that he informed the board agents that, to date, the organization had had one membership meeting. At that time and also at the hearing, Duarte stated that the organization lacked a constitution and by-laws.

Following the filing of the petition, Board Agent Angel Melendez, first in command of the subsequent election, held at Patterson Farms, spoke to Dolores Huerta, first Vice President of the UFW, on August 24. Huerta informed Melendez that the Patterson Farms Employee Association was employer dominated. According to Melendez, Huerta told him to "get off his butt and investigate." Melendez testified that the UFW never submitted declarations in support of that accusation pursuant to Section 20300(j)(4) of the Board's Regulations.

Without the submission of declarations, the Regional Office began an investigation of the employer domination issue. On or about August 25, the Regional Office involved agents Melendez, Martinez, Garcia, Gaters, Ueda, Camacho and Regional Director Gent in the investigation. Gent instructed agents Martinez, Gallegos, Garcia, and Gaters to ask the workers certain questions. Company attorney Tribsch testified that the four agents arrived at the farm on August 25, telling him they were attempting to

^{57/} UFW Exh. 16.

^{58/} UFW Exh. 15.

determine the validity of the petition. According to Triebisch, they wanted to talk to employees on each crew and also to Merced Duarte. Triebisch testified that he directed them to the crews.

Board agent Paul Garcia testified that he went with agent Martinez to speak to the melon crew. Garcia stated that he personally spoke to 10-15 workers. According to Garcia, both men spoke to approximately 25% of the crew. Garcia stated that he recalled two questions specifically: (1) whether they signed the petition, and (2) who circulated the petition. Garcia did not recall asking any question regarding membership meetings. Garcia concluded that all who said they signed knew what they were signing—a petition for an election. Garcia stated that he did not believe any employee told him he wanted Merced Duarte to represent him in collective bargaining with Patterson Farms. Garcia testified that he was in the field talking to workers for less than one hour.

Garcia further testified that there were 3-4 questions he asked the workers. He also stated that agent Gaters separately interviewed other employees.

Agent Melendez received reports from the interviewing agents. Melendez testified that by August 25 or 26, he concluded that the Patterson Farms Employee Association had established a sufficient showing of interest, having received no evidence of employer assistance.

0. Objection 9 -- Challenged Ballot Procedure

On August 31, prior to 7:00 a.m., ALRB agents prepared for the election. UFW sympathizers who were out on strike were lined up on an access road near the orchards that contained the voting area. Board agent in charge, Angel Melendez, testified that several of the people in line were wearing UFW buttons and were with small children. Melendez walked past the line telling the people that only voters were allowed in the area.

He asked the others to leave. Melendez stated that he asked people to leave 2-3 times. He also asked a woman to stop taking photographs. Melendez recalled that 3-5 people who presented themselves to vote were not allowed to vote.

Raul Gonzales testified that Board agent Robert Camacho told the workers in line that only those who had gone out on strike could vote. Gonzales testified that Camacho said the other people did not have a right to vote. Gonzales estimated that 60 people were not allowed to vote.

The UFW strikers voted first. UFW observer Carlos Maya then announced he would challenge every other worker because they were hired for the purpose of voting. Melendez testified that he caucused with other Board agents (Camacho and Bucatt) to get a legal opinion on the blanket challenge. The Board agents decided not to allow the challenge to all voters on that basis. Melendez testified that he deemed the challenge to be "frivolous".

Maria Segoviano testified that she last worked for Patterson Farms in 1975. She testified that Board agent Camacho told her she was not on the list, denying her the right to vote. Maria testified that 8 people told her they were denied a ballot.

Angela Betancourt testified that she also was stopped from voting by Angel Melendez and Robert Camacho. Betancourt testified that Camacho told the workers that only those who worked during the previous two weeks could vote. According to Betancourt, Camacho also told them if they were not on the payroll list, they should get out of line. Betancourt said she checked the list at the table and her name was not on the list. Betancourt testified that 60-65 people were denied ballots.

Rufina Garza, Elida Villa, and Pablo Segoviano voted subject to

challenge. According to Garza, agent Melendez told Pablo Segoviano to leave or there would be a \$5,000 fine. Garza stated that Camacho repeated the threat and grabbed Segoviano by the shoulders and shook him.

Pablo Segoviano testified that he told Camacho to let everyone vote subject to challenge. Segoviano stated that this angered Camacho, who then told Segoviano not to tell him how to do his job. Segoviano stated that Camacho then touched him and shook him by the shoulders a little. Segoviano testified that Camacho told him he could be subject to a \$5,000 fine or jail for interfering with the election. Segoviano further stated that Camacho did not physically prevent anyone from voting.

Camacho denied threatening a fine or jail to any prospective voter. However, he stated that Board agent David Rodriguez did read Section 1151.6^{59/} of the Act in the voting area. Camacho stated that he allowed Segoviano to vote subject to challenge because he was aware that Segoviano had filed a charge against the Employer. Camacho testified that he told Segoviano that he would allow a challenged ballot to anyone who filed an unfair labor practice charge. But Camacho stated it would be done only on an individual basis.

Camacho said that Segoviano and Betancourt called him an idiot. They told him he should know what was going on, that the petition had been

^{59/} That section reads:

Any person who shall willfully resist, prevent, impede, or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this part shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five thousand (\$5,000) dollars.

employer dominated. Camacho denied grabbing Segoviano. He stated that he has a tendency to grab another's arm when he is talking to him. Camacho said he may have touched Segoviano's arm. He testified that he did not physically shake him.

Camacho further testified that Angela Betancourt took pictures in the voting area during the election. According to Camacho, when he told her to stop, she became verbally abusive.

Prior to the tally of ballots, UFW organizer Gretchen Laue questioned the agents' overruling the blanket challenge made by Carlos Maya. Melendez told her he deemed the challenge to be frivolous because the eligibility list had been agreed upon. Laue protested that the UFW had not attended the pre-election conference. Melendez stated that he had seen no evidence of UFW intervention to entitle them to attend the first conference. He further stated that Section 20355(d) of the Board's Regulations gave him the right to rule on challenges he felt were not based on good cause.

P. Objection 10 -- Whether Board Agents Interfered with UFW Access Rights on August 30

At 7:00 a.m. on August 30, Board agents Mori Ueda, Paul Garcia, and Willie Gaters arrived at Patterson Farms to announce that the scheduled August 30 election had been postponed. Mori Ueda first told UFW organizers Gilberto Rodriguez and Gretchen Laue, who were across the road from the compound.

The Board agents next entered the Patterson compound. The workers were all assembled. PFEA President, Merced Duarte, in the presence of numerous workers, Shig Yamamoto, Mum Yamaichi, and attorney Bob Triebisch, informed Ueda that the workers had indicated that they were afraid and that the Company had set up a special time for the workers to gather and eat.

Owner Shig Yamamoto testified that, "We made a special access from 10-11 on that day so the UFW could come in and take access during the lunch period." Yamamoto stated that he and his attorney had conceived the idea.

Attorney Triebisch instructed the Board agents to communicate with the UFW regarding access, proper identification, and the presence of guards. The Board agents initially communicated the election postponement to the assembled workers. Ueda addressed groups of workers while Garcia and Gaters provided translations in Spanish and Tagalog, respectively. The discussion ended at 8:00-8:30 a.m. In addition to the previously named Company representatives, Triebisch recalled also seeing Company attorney Rob Carrol and Lee Brewer at the morning gathering. Shig Yamamoto testified that 10 security guards were present.

Board agent Garcia walked across the street to talk to the assembled UFW pickets, communicating the Employer's questions regarding the "special lunch". Organizer Gretchen Laue complained that the lunch time access should be taken with the workers at their normal work place rather than in the compound.^{60/} The UFW organizers conveyed to Garcia that the compound with guards was an unsatisfactory arrangement. The UFW wanted all guards eliminated. The Employer agreed to have all guards removed from the compound, leaving two guards at the gate. Per instructions from Ueda and Regional Director Frank Gent, Garcia also told them that an authorization card with their names would not be proper identification. Garcia also told them that the ALR8 would be standing at the gate judging proper identification and the proper number of organizers for the "special

^{60/} See Employer Exh. 7. Garcia testified that "[i]t was my intention to comply with that."

lunch". Garcia told them that they could take a piece of paper, draw an eagle on it with their name, and pin it to themselves. Throughout these discussions, the UFW apparently never agreed to the "special lunch" arrangement.

The Employer represented that only three crews would be eating, making six the appropriate number of organizers. The UFW asked for eight. Garcia, running communications between the groups, told the UFW that the Employer agreed to eight organizers.

Prior to this special lunch hour, Company attorney George Tishy, also present at Patterson Farms that day, contacted Regional Director Gent,^{61/} complaining about adequate UFW identification. Gent decided to require two pieces of identification for the organizers. Board agent Garcia testified that requiring two pieces of identification had not occurred in any other election he had conducted.

Shortly before 10:00 a.m., all the workers^{62/} were brought back from the fields to the compound for the special lunch. Ueda had contacted Captain Clyde Pierce of the Stanislaus County Sheriff's Department, requiring some men for the lunch period. During the "special lunch", a patrol car was parked outside the gate where an access road led into the field, while a deputy sheriff paced the road in front of the gate.

Board agents Ueda, Gaters and Garcia joined Company attorneys Triebisch and Carrol along with two guards at the front gate.^{63/} Paul

^{61/} Attorney Triebisch, in a conversation with Gent, said the Regional Director appreciated the Employer's position regarding access.

^{62/} Estimates ranged from 70-100 employees.

^{63/} UFW Exh, 14.

Garcia testified that Gent told them to check identification at the gate. Garcia stated, "we were gathered for that purpose." The workers congregated in an area that was 150-200 feet from the front gate, at the west end of the packing shed, near the cooler.^{64/} Board agent Ueda testified that guards without weapons were placed inside the gate, 30-40 yards from where the workers ate. Agent Garcia stated that the employees generally congregated in the area of shade and all the way back to the gate area. The workers were visible to the group standing at the gate. Larry Mackey recalled seeing security chief David Torres in the compound. Yamaichi was in his office in the compound during the lunch. Yamaichi testified, "I believe Brewer was in the compound for the special lunch." Shig Yamamoto also was in the area eating his lunch. Attorney Triebisch testified that before August 30, he had never observed all the employees gathered in one area eating lunch.

The "special lunch" ended at 11:00 a.m. The employees returned to work. During the hour "special lunch" no Board agent or Company representative observed any UFW organizer attempting to take access in the compound.

Q. New Objection 1 -- Whether the Board Improperly Held the First
Pre-election Conference

On August 23, the PFEA, through Merced Duarte, filed a petition for certification. The Board conducted an investigation and scheduled an election to be held on August 30.

Melendez testified that on the afternoon of August 23, the UFW was informed of the petition. On August 24, Melendez spoke to Dolores Huerta,

^{64/} See Employer Exh. 7.

According to Melendez, Huerta told him that the UFW was not going to intervene, but rather was going to stop the election. She claimed that the union was company dominated and that the UFW was the certified representative of the workers. She also stated that the UFW was negotiating a contract with the Employer. Melendez testified that he subsequently checked with the Executive Secretary. He stated he did not become aware of any current certification status of the UFW.

On August 28, a pre-election conference was held at Patterson Farms. According to Mori Ueda, the conference included Merced Duarte, Triebisch, Yamamoto, Carrol and Angel Melendez. The parties discussed the place, location, time, date, tally location, the observers, and the list. Ueda testified that the UFW was informed of the election site within one-half hour after the conference ended. Ueda further testified that the UFW had not filed a written intention to intervene prior to the August 28 conference.

On August 29, UFW paralegal worker Dave Daniels attempted to file a petition for intervention in the election. Melendez stated that he informed Daniels that the petition was untimely. Daniels asked to speak to Regional Director Gent. Melendez testified that Gent told Daniels the same thing.

The UFW appealed the Regional Director's decision to the Board. The Board ordered the election delayed 24 hours. On August 29, the parties were informed of the Board's decision.

On August 30, Melendez testified that he went to Patterson Farms and informed attorney Tichy that a second pre-election conference would be held. Tichy contacted Gent by phone to confirm the order.

Melendez stated that he telephoned Daniels on August 29 and informed him that the UFW was on the ballot and was entitled to a list. Melendez

told Daniels that he needed the names of the UFW's observers and informed him of matters previously decided at the first pre-election conference.

On August 30, Melendez met with Daniels and Gretchen Laue prior to the 2:00 p.m. pre-election conference. Melendez gave Daniels a copy of the amended notice of election. Melendez stated that he took them to the proposed election site. Daniels suggested that all security guards be out of view of the voting area. He also suggested that a different access road be used by the strikers.

When Melendez, Laue and Daniels returned to the farm, a pre-election conference was held with representatives of the employer, PFEA and the UFW.^{65/} The previously noted suggestions made by the UFW were adopted by the Board agents. The Employer objected to the UFW being in the election. Melendez testified that he told Employer representatives that he had been directed by the Executive Secretary to put the UFW on the ballot. All items covered during the August 28 conference were reviewed.

On August 31, a short meeting of all representatives^{66/} was held to instruct the observers. Daniels objected to Delgado and Rodriguez as PFEA observers. The agents allowed the challenge to Delgado.

^{65/} The participants included Melendez, Garcia, Gaters, Daniels, Laue, Tichy, Carrol, Tribsch, and Duarte,

^{66/} Daniels, Laue, Tribsch, Melendez, Duarte, Delgado, Rodriguez, Ueda, Maya.

ANALYSES AND CONCLUSIONS

Section 1153(a) of the Act makes it an unfair labor practice for an agricultural employer to interfere with, restrain, or coerce employees in the exercise of their right "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing...and...the right to refrain from any or all such activities..." Section 1153(c) makes it an unfair labor practice to discriminate "...in regard to hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization." Further, Section 1148 directs the Board to follow applicable precedents of the National Labor Relations Act, as amended in 29 U.S.C. Section 151, et. seq., (hereafter the "NLRA")

I. The Unfair Labor Practices

A. ULP 20 – Mace Incident

The UFW pickets were surprised by the sudden movement of the crew from one site to another. In order to reach the new site before the workers, the strikers decided to take certain risks. One of those was for the white pick-up to attempt to pass the line of vehicles on the wrong side of the road.

Plumb testified that he felt endangered by the erratic movement of the white pick-up. He testified that he was concerned about running his own vehicle into an embankment. I credit Plumb and Mackey's version regarding the pounding on the side of the van. Antonio Zuniga's testimony does not contradict their version. He merely stated that he did not know what the others in the bed of the pick-up were doing. He admitted that they might have been cursing at the others as they passed.

Pablo Segoviano contradicted Zuniga with regard to the pickets holding flags while they passed the other vehicles.

I clearly do not condone the use of mace or any chemical agent. However, Plumb's spraying clearly appeared to be in response to the pickets pounding on the van. His response was defensive. But for the fact that the UFW recklessly drove past the caravan making threatening noises, the chemical agent would not have been released. The reckless activity initiated by the UFW ended in their members being maced. The actions of the pickets must be viewed as "mitigating circumstances" in evaluating Plumb's response. Cosmo Graphics, Inc., 217 NLRB No. 178 (1975).

The exercise of rights guaranteed workers by Section 1152 of the Act cannot be evaluated in a vacuum. Individuals must take responsibility for a course of events they set into motion. Many innocent workers' safety was jeopardized by unsound judgment.

I therefore dismiss paragraph 20, finding no violation of the Act.

B. ULP 21 -- Photographing Strike Activity

The evidence reveals that extensive picture taking by company representatives took place during the strike. On a regular basis Brewer, Plumb and Mackey photographed the strikers involved in many activities including eating lunch. According to Brewer he pretended to take more pictures than he actually did "so they wouldn't know the reason that we were taking a picture of the car that we actually took a picture of."

The protection afforded growers to document violations of the law does not provide a carte blanche privilege to photograph indiscriminately. The NLRB and courts have established standards whereby they evaluate

the ultimate use of photographs in the judicial proceeding. See Larand Leisurelies v. NLRB, 523 F.2d 814 (6th Cir. 1975). The justification advanced by the employer for its overly extensive photographing of striking employees is specious. NLRB v. Craw, 565 F.2d 1267 (3rd Cir. 1977); Russell Sportswear Corp., 197 NLRB No. 166 (1972).

I therefore find that the Employer violated Section 1153(a) of the Act.

C. ULP 22 -- The Pedro Munoz Arrest

The fact of the trespass was not ultimately disputed. Angela Betancourt testified that she heard several warnings from Torres in English and Spanish prior to Munoz's arrest. Munoz continued moving down, ignoring the warnings.

Furthermore, the hearsay attempt by Teixeira to assert that Munoz was on federal property cannot be credited. According to Teixeira, he received three maps from the Federal Bureau of Reclamation. I presume they would have been introduced had they verified the UFW's position.

The General Counsel has not met its burden of proof in the instant case. It has not been shown that the Employer acted in bad faith. No credible evidence was presented to demonstrate the Employer's malicious motivation in affecting the arrest. Colonial Press, Inc., 204 NLRB No. 126 (1973). Rather, security personnel issued unheeded warnings that resulted in Munoz's arrest.

I therefore dismiss paragraph 22 of the Complaint,

D. ULP 23 -- The Lee Brewer, Jeep Wagoneer Blocking Incident

The evidence is confusing. Although examination of Employer's Exh. 49 appears to demonstrate sufficient room for the vehicle to pass, it was prepared months after the incident. The commotion and high

feelings that the strikers experienced at the time cannot be later compared against a drawing that does not account for the emotional pitch of the moment. Further, it is unclear whether another route could have been used by the strikers. Security chief Torres was uncertain of its existence.

Most telling, perhaps, was Lee Brewer's attitude during the incident. It is impossible to determine whether the car stalled or whether Brewer purposefully planted himself perpendicular to the road. Assuming that the car stalled, that fact could have been conveyed by Brewer. Had Brewer been unable to communicate in Spanish with some of the pickets, he chose not to convey his problem to English speaking Teixeira.

The pickets were attempting to move. Brewer blocked their progress. Brewer made no effort to either explain his predicament or help them go around his vehicle, In so doing, he thwarted their exercise of rights guaranteed by Section 1152 of the Act. I therefore find that Brewer's blocking the road violated Section 1153(a) of the Act,

E. ULP 24 -- Alleged Access Violations: August 29; Objection 4 -Alleged Access Violations: August 30

It is undisputed that the UFW first filed a notice of intent to take access^{67/} with the Sacramento Regional Office at 12:20 p.m. on August 29. It is further undisputed that the following access attempts occurred prior to the filing of the notice of intent to take access:

^{67/} Section 20900(e)(1)(B) of the Board's Regulations states in pertinent part: Each thirty-day period shall commence when the labor organization files in the appropriate regional office two (2) copies of a written notice of intention to take access...(emphasis supplied).

(1) Saul Martinez at 6:30 a.m. on August 29;^{68/} and [2) Gretchen Laue, morning of August 29.

At approximately noon, Larry Mackey encountered two groups of organizers. The first included Luis Gonzales, Pablo Segoviano and Arturo Rodriguez in a field just south of the packing shed. Both Mackey and Gonzales testified that the incident occurred at 12:00 p.m. on August 29. Accordingly, I find that the group was not entitled to take access at that time in that the notice had not yet been filed. Mackey told the organizers to leave. They left the field, Mackey testified that his watch read 12:05 when the organizers departed. I credit his testimony.

Mackey testified that he immediately received a call regarding a second group taking access in another field. According to Mackey, he sped to the other location, meeting Gilberto Rodriguez, Speedy Salazar and Fernando Gaytan. With the assistance of other security personnel along with the ranchers' sons, Mackey ushered the group out of the field. According to Mackey, his encounter with the organizers lasted 3-4 minutes before they left the field. Mackey testified that the organizers departed by 12:15 p.m. Gilberto Rodriguez testified that the organizers remained in the field 10-15 minutes. Crediting Rodriguez's estimate and Mackey's calculations, I find that this group of organizers entered the North 40 at approximately noon. Again, this attempt was made prior to the UFW's filing its notice. I therefore find that the ejection of the group did not violate Section 1153(a) of the Act.

The August 30 access attempts present a more confusing situation. Cruz Martinez credibly testified that he and Saul Martinez attempted to

^{68/} Ironically, Brewer allowed Martinez to enter the property.

talk to workers in a field near the packing shed on August 30, at 12:15 p.m. Martinez stated that the workers were sitting down when they entered, perhaps just having finished eating, Martinez could not remember the day of the week, but he stated that it was one day before the election.

I find that Martinez must necessarily have confused the date of the access attempt. It is undisputed by a majority of all parties' witnesses that the workers ate at 10:00 a.m. on August 30 in the company compound. (A discussion appears in a following section regarding that common lunch.) Thus, if Martinez viewed workers finishing lunch, he most likely did so on a day other than August 30. Had the attempt been made at 12:15 on a day before August 30, the Employer rightfully could have rejected the attempts because of the absence of a filed notice of intent to take access,

I therefore find that the incident described by Martinez did not violate the Act.

Raul Gonzales, Carlos Maya and Gretchen Laue made an access attempt on August 30. According to Gonzales the attempt was at noon and the workers were not eating at the time. Maya testified that it occurred at 12:15 p.m. and the workers were eating. As Gonzales, Maya, and Laue approached the compound gate, Gonzales observed the company owners (Shig Yamamoto, Mum Yamaichi, and Jimmy Yamamoto), Bob Triebisch, Lee Brewer, his assistant, and Merced Duarte inside. He also observed ALRB agent Paul Garcia at the gate. Laue spoke for the group. Both Maya and Gonzales wore UFW buttons and pinned pieces of paper with their names affixed. Neither Maya nor Gonzales understood the English conversation that took place between Laue and Company representatives. Maya testified that Laue wore a badge, but he did not notice whether her name was on the badge. Both Maya and Gonzales testified that access was denied, but

neither knew the reason.

Board agent Mori Ueda testified that he remained at the gate during the common lunch between 10:00 a.m. and 11:00 a.m. According to his credited testimony, the UFW did not attempt to take access during that common lunch hour. However, the events occurring after that hour are not clear on the record. Gretchen Laue did not testify at the hearing. So I am left with the testimony of Maya and Gonzales. Both Maya and Gonzales were exceptionally credible witnesses throughout the hearing. However, they were unable to testify to the conversation Laue had with Company personnel. Further, they were unable to state whether Laue's identification complied with the Board's Regulations.^{69/}

Under these circumstances, I am compelled to find that the UFW did not sustain its burden of proof with regard to this particular incident

The final incident was related by Segoviano. He testified about an attempt in a field at noon on August 30 with Arturo Rodriguez and Raul Gonzales. Segoviano stated that the workers were eating at noon. In that I have found that the workers were not eating at noon in the field on August 30,^{70/} and also that Gonzales was attempting access elsewhere at that hour, I do not credit Segoviano's testimony. I therefore find that the UFW again has fallen short in sustaining its burden of proof.

The combined efforts of General Counsel and the UFW have failed to establish an access violation on either August 29 or 30. Although

^{69/} Section 20900(e)(4)(B) states in pertinent part: Organizers shall also wear a badge which clearly states his or her name and the name of the organization which the organizer represents.

^{70/} See discussion of Objection 10.

considerable confusion appeared in the testimony concerning dates, the UFW's right to take access occurred after 12:20 p.m. on August 29, Further, the common lunch situation on August 30 clearly defined where the employees ate on that day. And August 30 was the last available access day.

I therefore find no violations of the Act.

F. ULP 25. Objection 6 – Payroll List

Shig Yamamoto testified he spent several hours compiling the list of eligible employees from individual identification cards, compensating record cards and the phone book. He also asked other workers for information.

Through no fault of the Employer, the UFW did not receive the list until August 30. From the list, Angela Betancourt and Gretchen Laue were unable to find the first listed name because of an error on the list. However, their attempts were mainly hampered by the lateness of the hour. They contacted one other person on the list before quitting for the day. And that was the last day they could use the list.

An employer is expected to exercise due diligence in obtaining and supplying names and addresses of workers. The employer has the burden of justifying any discrepancies in the list. Where the list is deficient due to gross negligence or bad faith of the employer, an election may be set aside on the union's showing of actual prejudice. Yoder Brothers, 2 ALRB No. 4 (1976); Tom Buratovich, 2 ALRB No. 11 (1976).

In the present case, I find that the employer exercised due diligence in compiling the list. Further I find that the UFW did not establish actual prejudice arising from their use of the list. Their organizational efforts mainly were discouraged by the lateness of the hour and day. I therefore dismiss this paragraph of the Complaint and Objection.

G. ULP 26 – Mackey-Betancourt Encounter

Larry Mackey delivered copies of a temporary restraining order, translated into Spanish, to a group of pickets on or about August 27 or 29, According to Carlos Maya's testimony,^{71/} Mackey encountered a group of adults, who refused to accept the orders. Maya further stated that he saw Mackey put his hands on Angela Betancourt's shoulders. Maya testified that Mackey "didn't exactly shake her."

By her own admission, Angela Betancourt met Mackey's efforts by spitting in his face. Clearly, that was a very provocative act on Ms. Betancourt's part. Further, she ran after him telling him to hit her again. She also recalled leaving out important details in the declaration she gave the day following the incident. In the declaration, she neglected to state that Mackey harassed and chased her children. She emphatically stated that point during her testimony. I have difficulty believing much of her testimony.

I conclude that she spat at Mackey, while the latter placed his hands on her shoulders. Mackey quickly left and she followed him. The incident is unfortunate in human terms, but does not constitute a violation of the Act.

H. ULP 27, Objection 1 -- Refusal to Rehire UFW Supporters;

The Termination of Espiridion Salazar

The UFW has been negotiating a contract with Patterson Farms since its 1976 certification by the Board. In that time the UFW has never had a contract with the Employer. As negotiations continued in 1978, following a settlement agreement in 1977, the UFW decided to strike on

^{71/} Again, I commend Carlos Maya for his basic honesty.

August 11.

The Company found itself without a significant number of workers for the harvest. The apricot harvest, which occurred at the end of July, was done without the services of the UFW workers except for Raul Gonzales. The Company, in a letter^{72/} on July 5, confirmed the fact that the refusal by UFW workers would in no way affect the existing seniority list contained in the settlement agreement. The permanent resolution of that question was to be the subject of future negotiation.

Subsequent to the August 11 walkout, the Employer took various steps to secure employees to work the harvest. According to Mum Yamaichi, letters^{73/} offering work to the strikers were passed out on the picket line on the first day of the strike. No UFW picket who testified admitted receiving such an offer. Most significantly, a strike was going on. The Employer's action attempted to undermine the UFW's mobilization of support for its frustrated attempts to negotiate a contract with the Employer. Although the Employer had a clear right to find workers for the harvest, the strikers did not lose the protection of the Act even though they refused offers of reinstatement. "[T]o hold otherwise... would require persons...to forsake their legitimate protests evidenced by their picketing activity and to become strikebreakers..." Colonial Press, Inc., 204 NLRB No. 126 (1973). See also NLRB v. Stratford Furniture Corp., 202 F.2d 884 (5th Cir. 1953). I treat all subsequent offers made by the Company during the strike in the same manner. The workers were not required to return to work during the strike,

^{72/} Employer Exh. 78

^{73/} Employer Exh. 50

The history of the UFW at Patterson Farms requires further elaboration. In 1975, the Employer ran its operation without any UFW involvement. During that year the ALRA was created. The UFW successfully organized Patterson Farms and won an election in 1975. The results of that election were certified in 1976. I credit the conversations Pablo Segoviano testified to, regarding Yamamoto's animus towards the union in 1975. Yamamoto warned Segoviano about UFW organizers, urging Segoviano to tell workers to vote against the UFW. Yamamoto also encouraged Segoviano to offer better treatment to the Teamsters. And when Segoviano refused to be a Company observer at the election, his relationship with the Company deteriorated dramatically.

I further credit the conversations Espiridion Salazar had with Yamamoto. Yamamoto told Salazar in 1975 that he would not plant as long as the Chavez union remained at Patterson Farms. There were other threats. Most telling perhaps was Yamamoto's prophecy that he would never sign a contract with the UFW. I cannot think of a more forceful way to convey animus towards a union.^{74/}

To add to my finding of animus, I find that the Employer had full knowledge of the UFW affiliation of all individuals listed in paragraph 27. Pablo Segoviano has always been the pivotal figure at Patterson Farms. He has served as President of the ranch committee these past several years. Other members of the ranch committee have included Cruz B. Martinez, Carlos Maya, Luis Gonzales, Raul Gonzales and Julian Izquierdo. The entire Medina family appeared on the picket line during the strike.

^{74/} As previously stated, Patterson Farms never has signed a contract with the UFW during the past five years since the election.

Anselma Segoviano, Pablo's wife, picketed on a daily basis. Amelia Izquierdo, Julian's daughter-in-law, picketed every day. Melania Saucedo had a close relationship to the Segovianos. She and Pablo's daughter, Angela Betancourt, were the godmothers of each other's children. Dolores Gonzales picketed regularly and was married to ranch committee member and organizer Luis Gonzales. Rufina Garza and Elida Villa, Carlos Maya's daughters, were active UFW members. The Gaytans were visibly and closely connected to the Segovianos. Cubillo was hired by and transported to the farm by Segoviano.

Moreover, this group of UFW supporters spent considerable time with each other during those years of negotiations. Further, Patterson Farms rarely employed more than 100 employees. The UFW supporters were very visible. Thus, I find that the owners of Patterson Farms knew who supported the UFW and expressed animus towards the UFW.

The Company made another attempt to offer work. On August 12 or 13, Lee Brewer delivered a letter to Pablo Segoviano, asking him to report back to work. There is considerable dispute whether the letter also offered work to Segoviano's¹ customary honeydew melon crew. Neither Segoviano nor Angela Betancourt, who read the letter, recalled that language. Neither Yamamoto, the signer, nor Yamaichi could remember if the offer extended to the crew. Brewer, the drafter of the letter, testified that the letter offered both Segoviano and his crew work. I found Brewer to be a most unreliable witness, not crediting much of his testimony. Based on the inconclusive nature of the testimony, I find that the offer extended only to Pablo Segoviano.^{75/}

^{75/} Again I reiterate my finding that the employees would not be obliged to abandon their strike activities because of an offer of employment.

As Unfair Labor Practice 27 and Objection 1 relate to a refusal to hire and layoff prior to the strike, I am unable to find sufficient proof on the record as a whole. The 1977 settlement agreement and its subsequent implementation was a very confusing issue on the record. 1977 was the first year the parties operated under that agreement. 1977 was greatly affected by the draught. Management made certain decisions that year which were dictated by the draught. The farm was receiving 60-80% less water than in previous years. The Company moved primarily into melons, planting and harvesting far fewer acres. The heavily labor intensive cauliflower crop was eliminated. That crop in previous years provided year round work for many employees. There were two cauliflower harvests each year along with the attendant activities accompanying planting and harvesting.

Further, Bob Triebisch's uncontradicted testimony revealed that the employees were called back by crew. He explained that this necessarily affected the literal translation of the settlement agreement. Thus, less senior members actually could return prior to more senior members. Further, he stated that the UFW had agreed to this arrangement.

The settlement agreement also provided that Pablo Segoviano would work an equal number of hours as foreman Alfredo Delgado. However, Triebisch explained that the tally of hours could only occur after an entire season. Segoviano worked sporadically in 1977 and 1978. I do not find that the Employer necessarily violated the settlement agreement in relation to Segoviano. With the evidence presented, an incomplete record is the end result. General Counsel and the UFW have not met their burdens of proof with regard to pre-strike discrimination.

Furthermore, Pablo Segoviano is specifically mentioned as a

supervisor^{76/} in that settlement agreement. His testimony revealed that he served as a foreman from 1969-1977. He hired many employees during that time. He instructed them how to do their work. Further, he recommended the promotion of workers. He received a daily salary as foreman as opposed to the normal hourly pay. He had the job title of foreman. The record is replete with evidence of Segoviano's supervisory authority. From 1969-1977, Segoviano's work required his exercising independent judgment. Anderson Farms Co., 3 ALRB No. 67 (1977); Mid-State Horticulture Co., 4 ALRB No. 101 (1978). Further, his fellow workers always considered him to be a supervisor. Gerbés Supermarket, Inc., 213 NLRB No. 112 (1974). I therefore find Pablo Segoviano to be a supervisor and not entitled to the protection of the Act.

On September 6, Patterson Farms received what purported to be an unconditional offer to return to work from 14 workers.^{77/} The Employer's expert witness, Sherwood Morrill, testified that the six signatures were not in fact affixed by those persons. Elida Villa and Gerardo Gaytan are the only remaining signatures still under consideration on that document. Gerardo Gaytan did not testify at the hearing. Because I did not receive

^{76/} Section 1140.4(j) of the Act provides:

The term "supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

^{77/} See Employer Exh. 72 and G.C. Exh. 5. As previously discussed, six names have been dismissed from paragraph 27 of the complaint: Henry D, Delgade, Fernando Gaytan, Isodoro Gaytan, Mario Gaytan, Isodoro Gaytan, Jr, and Maximino Medina.

credible evidence that Gerardo Gaytan unconditionally offered to return to work, I dismiss his name from paragraph 27. Mr. Morrill's credited testimony revealed that Gerardo Gaytan did not sign the document.

However, Elida Villa maintained that she signed the document. Although Morrill testified that she did not, I find that she intended that the appearance of her name on Employer Exh. 72--G.C. Exh. 5 be an unconditional offer to return to work.

The ALRB and NLRB treat economic strikers in the same manner. The striker continues as an employee of the struck employer. Santa Clara Farms, 5 ALRB No. 67 (1979); Kyutoku Nursery, Inc., 3 ALRB No. 30 (1977).

The U.S. Supreme Court, in its decision in NLRB v. Fleetwood Trailer Co., 389 U.S. 375, 378 (1967), discussed the underlying reasons for the right to reinstatement for strikers.

If, after conclusion of the strike, the employer refuses to reinstate striking employees, the effect is to discourage employees from exercising their rights to organize and to strike guaranteed by ...the Act.

The Court further stated:

This basic right to jobs cannot depend upon job availability as of the moment when the applications are filed. The right to reinstatement does not depend upon technicalities relating to application. On the contrary, the status of the striker as an employee continues until he has obtained "other regular and substantially equivalent employment." (Id. at 381)

See also NLRS v. W.C. McQuaide, Inc., 552 F.2d 519 (3rd Cir. 1977).

The ALRB, in Santa Clara Farms, supra, approved the Supreme Court's approach, citing Trinity Valley Iron and Steel Co. v. NLRB, 410 F.2d 1161 (5th Cir. 1969):

Respondent was made aware during the course of negotiations that all strikers wanted to return to work. Such a statement by the employee's certified bargaining representative suffices. An offer from an individual worker is unnecessary.

I find that the strikers who signed Employer Exh. 72--G.C. Exh. 5 acted in good faith in submitting their unconditional offer to return to work. The fact that Elida Villa's signature was a forgery was a mere technicality.^{78/} The Employer was put on notice that this particular group of workers offered to return to work.

The right of an employer to refuse to rehire based on sound business reasons remains a managerial prerogative. However, the failure to rehire by an employer exhibiting an antiunion attitude, in the absence of other valid reasons, must necessarily lend strong weight to a finding of discrimination. NLRB v. Williams Lumber Co., 195 F.2d 669 (4th Cir. 1952). The General Counsel must establish that the refusal was pretextual. Sahara Packing Co., 4 ALRB No. 40 (1978)

When Mum Yamaichi was questioned about the replacement of striking workers, he stated, "You can't say one person took the place of another in our kind of operation. You can't say one permanently replaced another." Yamamoto also stated that some tasks of striking workers were not covered by other workers. Yamaichi testified, "We just hired bodies to get the shed working, not replacing anybody either the day or day after the strike. We really didn't replace anybody until we talked to the attorneys to see the right procedure." From the above testimony, I find that the

^{78/} See In re Quality and Service Laundry, Inc., 39 NLRB 970 (1942), where striking workers who committed crimes retained their right to reinstatement.

striking employees were not permanently replaced. I find that Employer Exhibits 79 and 80 were prepared for purposes of the hearing and bore no relationship to actual permanent replacements of strikers. I find that the Company discriminated against these strikers, offering lower paying positions at the end of the strike. The record is replete with evidence establishing union animus and knowledge of union membership.

In examining the Stipulation, paragraph 7 established that on September 7, Carlos Maya, who left the Company earning \$3.75, was offered a job in the packing shed for \$3.20 per hour. Mr. Maya responded by letter^{79/} refusing the job because of the insufficient wage. The NLRB, in approving the Laidlaw doctrine, has determined that employees are entitled to earn the same wages and benefits they received before the strike. H.&F. Binch Co., 188 NLRB No.98 (1971); Griffin Wheel Co. 136 NLRB No, 144 (1962). I find that the offer to Carlos Maya was not one of substantially equivalent employment. NLRB v. Fleetwood Trailer Co., supra.

Paragraph 8 of the Stipulation revealed that Rufina Garza received the same \$3.20 per hour offer her father, Carlos Maya, received on September 7. By letter,^{80/} she refused the job offer because the wage was too low. Rufina Garza earned \$3.50 per hour before going on strike. She had worked for the Company since 1968. I find that the offer was not substantially equivalent to her former job.

Paragraph 9 of the Stipulation reflected that Elida Villa was offered a field position on September 12, for \$3.20 per hour. She earned \$3.35 before the strike. I find that this offer was not one of a substantially

^{79/} UFW--G.C. Exh. 27.

^{80/} UFW--G.C. Exh. 28.

equivalent position.

Paragraph 11 of the Stipulation showed that Dolores "Lola" Gonzales, previously earning \$3.50, was offered a field position for \$3.20. I again find that the reduction in wages does not meet requirements established by the NLRB.

Paragraph 12 of the Stipulation showed that Luis Gonzales, a Patterson Farms employee since 1960, previously earning \$3.50 per hour, was offered a packing shed job for \$3.20. Further, Mr. Yamamoto testified that Eddie Solarez replaced Luis Gonzales in the packing shed, but not in his irrigating position. The \$3.20 packing shed job was not a substantially equivalent position.

An examination of paragraph 13 of the Stipulation and Attachment B showed that Cruz B. Martinez, on September 25, was offered a position on the field crew. No hourly amount was discussed. Mr. Martinez did not report for work. He thereby refused a potentially equivalent job.

Finally, in examining paragraph 14 of the Stipulation, Raul Gonzales was not offered work after being notified on September 7 that his position was permanently filled. Having offered to return to work, he was entitled to reinstatement. I so find.

The remaining workers listed in paragraph 27, Isidro Cubillo, Martin Tovar, Gloria Tovar, Anselma Segoviano, Amelia Izquierdo, Melania Saucedo, Tubursia Medina, Maria Medina, and Julian Izquierdo, did not offer to return to work after the strike. Because of their omission, no relief can be offered to them.

Finally, Espiridion Salazar, a signer of G.C. Exh. 5--Employer Exh. 72, was not offered work after the strike. He was notified by the Company on September 7 that he would not be offered future employment "...as a result

of certain violent acts...committed against our employees..." Although Salazar was later acquitted by a Superior Court jury in Stanislaus County, Yamamoto and Yamaichi claimed to believe he was responsible for shooting at the crew. I find their belief reasonable based on the investigation they conducted after the incident. They talked to workers and security personnel who had been in the area at the time. Honest belief on the part of the employer that the striking employee engaged in misconduct provides adequate defense to a charge of discrimination. Rubin Brothers Footwear Inc., 99 NLRB 610 (1952). The General Counsel then has the burden to prove that the conduct did not in fact occur.

Presenting the proof of acquittal does not sustain that burden. Criminal convictions require a much higher standard of proof, proving guilt beyond a reasonable doubt. Salazar admittedly shot his rifle in the area of his house. He was seen carrying a rifle immediately after the alleged incident. Without making a finding that he shot at the crew, I find that the Company owners' belief of his culpability was honest and reasonable. I further find the cavalier use of firearms to be deplorable. I therefore offer no relief to Mr. Salazar.

II. The Election Objections

A- Objection 2 – Whether PFEA Was Employer Dominated;

Objection 7 -- Whether PFEA Represented No-Union on Ballot

No evidence was presented in the hearing to connect the PFEA with the owners of Patterson Farms or other admitted supervisors or agents of the Employer. However, a very confusing picture was painted by Merced Duarte, the man who conceived the PFEA. No more than three members ever participated in the Association's two meetings. Although Duarte

formed the Association in 1975, he never drafted a constitution or by-laws. And by far the most suspicious circumstance of all, during his one day solo effort in gathering signatures for an election, he garnered more than 50 signatures in a very short time.^{81/} When the election rolled around, only three workers voted for the PFEA.^{82/}

Section 1153(b) of the ALRA parallels Section 8(a)(2) of the NLRA. The NLRB in Hot Point Division, 128 NLRB 788 (1960) stated that the purpose of 8(a)(2) is to insure that an organization purporting to represent employees in collective bargaining not be subject to control by an employer, or be so dependent on the employer's favor that it would be unable to give wholehearted support to the employees it represents.

Domination is defined as support of or interference with a labor organization by an employer amounting to control of the organization. Hershey Metal Products Co. 76 NLRB No. 105 (1948). However, the test commonly used by the Board to determine whether an organization is dominated by an employer "is not an objective one but rather subjective, from the standpoint of the employees". NLRB v. Tappan Stove Co., 174 F.2d 1007 [6th Cir. 1949).

Domination and interference may "be inferred from a course of conduct even though no overt acts are proved". NLRB v. Clinton Woolen Mfg. Co. 141 F.2d 753 (6th Cir. 1944). In NLRB v. General Shoe Corp.

^{81/} During my five years viewing ALRB elections, I have observed unions spending vast amounts of organizational time to get very few signatures. Duarte, on the other hand, without an ability to articulate a clear purpose for his organization, was deluged with signatures on the only day he tried. I must either applaud Mr. Duarte, or assume I heard an incomplete story, or believe in magic.

^{82/} I am left with the conclusion that the workers liked elections more than the PFEA.

192 F.2d 504 (6th Cir. 1951), the court stated that a violation will be found if the formation of the union was stimulated by management.

The ALRB has demonstrated a similar approach to the issue of employer domination. In Bonita Packing Co., 3 ALRB No. 27 (1977), the Board examined whether the "degree or nature" of the involvement of the employer in the labor organization was such that it intruded upon the free exercise of the employees' rights under Section 1152 of the Act.

The record is devoid of direct or circumstantial evidence linking the PFEA with management. Thus, the only inquiry concerns the status of employees Lupe Ramirez and Pete Rodriguez, the two other members of the PFEA.

Lola Gonzales testified that she worked with Lupe Ramirez from 1972 to 1978. Gonzales stated that Ramirez gave her orders regarding making boxes, taking breaks, and doing outside work. Ms. Gonzales also testified that Lupe kept track of workers' hours and passed out checks. At times Lupe worked along side other workers, making boxes, packing melons, sweeping the floor or cleaning the yard. Either Mum Yamaichi or Mitzi Yamamoto was always present overseeing the packing operation. Ms. Gonzales testified, "I believe Yamamoto was at the shed to tell Ramirez to tell us what we have to do."

Rufina Garza, who worked with Lupe Ramirez, testified that Lupe gave the crew orders including how to weed and thin, and to go from the field to the shed. Garza testified that Lupe called the crew back to work, gave out checks, announced a lay-off and told the workers when melons ended, then telling them of an alternate job. Garza further stated that she did not know whether Lupe had a job title. Further Garza said that Yamaichi never told her Ramirez was in charge when he was absent.

Yamamoto testified that Lupe Ramirez was a rank-and-file employee, receiving \$3.75 per hour. Forepersons were paid a flat daily rate.^{83/} In August, she worked as a timekeeper, box maker, melon packer and translator. Yamamoto further testified that prior to 1977, while running a women's crew in the field, Lupe Ramirez worked along side Yamamoto. According to Yamamoto, she never recommended that an employee be terminated, and she had no authority to hire, fire, discipline, or recommend such action.

During her work in the shed, either Mum Yamaichi or Mitzi Yamamoto was always present supervising the crew. According to Yamaichi, Lupe served as a conduit of orders from the owners to the crew members. She often told them about returning to work or new assignments.

From an examination of the record evidence, Lupe Ramirez lacks supervisory indicia. She has no authority to hire, fire, discipline, or recommend such action. McCoy's Poultry Services, Inc., 4 ALRB No. 15 (1978) Further, she exercises no independent judgment. Mid-State Horticulture Co., 4 ALRB No. 101 (1978). Her high visibility among the work force does not make her a supervisor. Dairy Fresh Products, 2 ALRB No. 55 (1976). Under the circumstances, I find Lupe Ramirez to be a rank-and-file employee.

Pete Rodriguez drove a tractor, irrigated and worked in the shed and shop according to Yamamoto's testimony. Yamamoto stated that Rodriguez also served as a messenger of orders, having no authority to hire, fire, or discipline employees. Julian Izquierdo testified about receiving orders from Rodriguez, but conceded that the orders originated from Jimmy Yamamoto.

From the evidence presented, Rodriguez possesses none of the

^{83/} Pablo Segoviano testified that he had been paid a daily wage for many years.

requisite supervisory authority. I find Rodriguez not to be a supervisor as defined by the Act.

Thus, I am left with the very sketchy and incomplete facts regarding the rise and fall of the PFEA. The Regional Director made a finding in August, 1978, that the PFEA established a sufficient showing of interest to trigger an election and be placed on the ballot. The UFW apparently had no more information then regarding illegal domination than it had once this hearing commenced. No evidence was presented to make out any connection between Patterson Farms management and the PFEA. I have further found that the three participants in the PFEA, although long-time employees, friendly towards management, were not supervisors as defined by the Act. Under the circumstances, I find no merit in either Objection 2 or 7.

B. Objection 3 – Whether Security Guards Harassed, Threatened
Intimidated UFWJ Pickets

The evidence reveals an intensive presence of security personnel, but not necessarily an intimidating one. The Employer hired a team of labor consultants and security types to assure the harvest of crops and the protection of its employees.

As previously discussed, the security effort of photographically documenting everything became excessive. That continuing surveilling eye interfered with the strikers' rights. However, an examination of the other techniques used prompts a contrary conclusion.

The noisemaking machines were used to drown out obscenities coming from the picket line. UFW witnesses Maya and Teixeira testified that the younger members on the picket line used foul language. I examined Employer Exhibits 28 and 29 and found the language to be offensive. The Company's attempt to block out those sounds does not seem unreasonable.

Aside from Arturo Rodriguez's testimony regarding August 30, no other witness testified that the pickets were trying to communicate with the workers about the upcoming election. I further find that any dirt stirred up by the noise machines was unintentional.

The alleged conversations and incidents between Brewer and Pancho Segoviano, although unfortunate, had no apparent effect on the election. Workers were not in the immediate vicinity. Having found both witnesses to be so unreliable, I have difficulty believing the accusation and the denials. I discredit both, and merely conclude that the UFW did not meet its burden with regard to these incidents between the two men.

The rubber chicken-porcelain pig episodes are of a similar character. The personal grudge match between the Segovianos and Lee Brewer seemed far removed from the election. Much of the complained of activity occurred prior to the filing of the petition for certification. Although the Board has never adopted the principles spelled out by the NLRB in Ideal Electric & Mfg. Co., 134 NLRB No. 135 (1961).

I find these quarrels too remote in affecting the results of the election.

I thus find that Objection 3 lacks merit. However, I am forced to comment on the sad state of affairs where a farm owner feels compelled to hire security personnel. The appearance of an armed camp adversely affects the consciousness of all people. However, the NLRB condones such activity when there is a showing that the guards were hired to protect property and non-striking employees against strike violence. Stark Ceramics, 155 NLRB No. 120 (1965).

C. Objection 5 -- Whether Persons Here Hired to Vote

The Employer was faced with a ripe melon crop without having a crew to harvest it. Offers were made to Pablo Segoviano to come back to

work the honeydew melon harvest. None of the UFW supporters, who in past years harvested honeydew melons, reported for work during that time.

To violate Section 1154.6^{84/} of the Act, an employer must willfully arrange for persons to become employees for the purpose of voting. Mario Salkhon, Inc., 5 ALRB No. 44 (1977). In such a case, the objecting party must establish by substantial evidence in the record as a whole that the employer's primary motivation in hiring the new employees was to enable them to vote. NLRB v. Putnam Tool Co., 290 F.2d 663 (6th Cir. 1961).

I find that the UFW has not met its burden. Yamamoto hired the labor contractor's crew and the others to work a crop that needed harvesting. From the record, that clearly was his primary motivation.

D. Objection 8 -- Whether the Regional Director Improperly Directed an Election

On August 23, Merced Duarte filed a petition for certification with the Sacramento Regional Office. He also filed a "Declaration by Representative of Purported Labor Organization."

The Regional Office began an administrative investigation pursuant to Section 20300(j) of the Board's Regulations. The Regional Office's investigation went beyond the requirements of Section 20300(j)(2) of the Regulations, which requires determining adequate employee support to warrant conducting an election.

On August 24, Dolores Huerta advised Board agent Melendez that the PFEA was employer dominated and Melendez should "get off his butt and investigate." The UFW never filed declarations regarding the employer

^{84/} That section provides:

It shall be an unfair labor practice for an employer or labor organization, or their agents, willfully to arrange for persons to become employees for the primary purpose of voting in elections.

domination accusation pursuant to Section 20300(j)(4)^{85/} of the Regulations.

Nevertheless, the Regional Director dispatched agents to Patterson Farms to interview some of the workers who signed the petition. After Melendez received reports back from the three interviewing Board agents, he concluded that the PFEA established a sufficient showing of interest. Melendez testified that he received no evidence of employer assistance.

Thus, the regional office went beyond its duty in investigating the employer assistance issue absent any filing of declarations by the UFW. Further, the Regional Director's determination of the adequacy of the showing of interest to warrant the conduct of an election is not reviewable.^{86/}

I therefore find no merit in Objection 8.

E. Objection 9 -- Challenged Ballot Procedure

After the UFW supporters voted, Carlos Maya challenged all other voters on the grounds that they were hired to vote in the election.^{87/}

85/ That section provides in pertinent part:

Any party which contends that the showing of interest was obtained by...employer assistance,...shall submit evidence in the form of declarations under penalty of perjury supporting such contention to the regional director within 72 hours of the filing of the petition...When the evidence submitted to regional director gives him or her reasonable cause to believe that the showing of interest may have been tainted by such misconduct, he or she shall conduct an administrative investigation.

86/ Section 20300(j)(5) of the Regulations.

87/ Section 20355--Challenges, states in pertinent part:

(a) Any party or the Board agent may challenge, for good cause shown, the eligibility of any person to cast a ballot. Good cause shown shall consist of a statement of the grounds for the challenge, which shall be supported by evidence submitted subsequent to the closing of the polls, (emphasis supplied) See Employer Exh. 4.

Melendez testified that he caucused with other Board agents and decided that the blanket challenge was "frivolous". The Board agents allowed all subsequent voters to vote who were on the eligibility list.

The judgment of the Board agents appears somewhat premature. Section 20355(d) of the Regulations reads:

Subsequent to the balloting but prior to the tally of ballots, the Board agent supervising the election shall have discretion to rule upon challenged ballots on which all parties agree that there is no factual or legal dispute, or to accept withdrawal of any challenge by the party making the challenge.

Moreover, in this case, a legal dispute still existed. However, I have already determined that these employees were hired to harvest a crop, not vote in the election. Thus, whether the Board agents should have voted all the UFW challenged voters subject to challenge becomes a moot question, not affecting the outcome of the election.

Further, the UFW witnesses provided no proof of eligible voters who were disenfranchised by procedures followed by the Board agents. These witnesses dealt in numbers, not real names and reasons why they were entitled to vote.

The incident involving Pablo Segoviano and Robert Camacho was unfortunate. Apparently Segoviano's suggestion that Camacho allow all UFW people to vote subject to challenge angered Camacho. I find that Camacho did touch Segoviano, but not in a threatening manner. Segoviano testified that Camacho did not physically prevent anyone from voting.

Further, David Rodriguez's reading Section 1151.6 of the Act to assembled voters was not improper. He was merely emphasizing the importance of not interfering with Board agents conducting elections.

In all, I find that the Board agent's conduct of the challenged ballot procedure did not affect the outcome of the election.

F. Objection 10 -- Whether Agents Interfered with UFW Access Rights on August 30

When the Board agents arrived to inform the workers of the postponement of the election, they found them already assembled in the company compound. They also discovered a plan conceived by the employer to have all employees eat together that day. Yamamoto gratuitously claimed that the special lunch had been established to enhance UFVI access rights. Duarte also indicated that the employees were "afraid."

The UFW protested the arrangements from the beginning. However, the Board soon became involved in working out the details. The UFW began participating, requesting that eight organizers be allowed into the compound. The arrangements further involved Sacramento Regional Director Frank Gent, who told attorney Tishy that two pieces of identification would be required for organizers.^{88/} Board agent Garcia testified that two pieces of identification had never been required in any other election he had conducted.

During the common lunch period, Board agents Ueda, Gaters and Garcia joined Company attorneys Triebisch and Carrol and two guards at the compound gate. The agents were there to check identification. Director Gent had told them to do so. The compound was filled with workers and company representatives. The people at the gate did not observe any UFW organizer attempting to take access during the special lunch hour.

This objection presents perhaps the most outrageous conduct presented at the hearing. Duarte described the workers as "afraid". Without questioning the Employer's motives, the common lunch solution seemed to

^{88/} Section 20900(e)(4)(B) states in pertinent part: Organizers shall also wear a badge which clearly states his or her name, and the name of the organization which the organizer represents.

support those fears. Why was there a need to place 70-100 employees in a compound the day before the election? I cannot accept Yamamoto's gratuitous explanation--to provide access for the UFW. For that purpose, Board agents, company personnel and guards provided a guarded fortress to keep the employees safe. Safe from what? UFW access to workers, as previously discussed, was almost non-existent. Few organizers ever reached workers in the field.^{89/}

I find that the Sacramento Regional Director made a grave error when he lent his agents to a plan conceived of by the Employer which smacked of discriminatory treatment towards the UFW. Gent's requiring two pieces of identification for the special lunch may have crippled the UFW's efforts to get its organizers into the compound by 10:00 a.m. I can see no justification for his bending the regulations, making a stricter rule, in order to accommodate the Employer's plan. I find that the Regional Director's aiding and abetting such a situation is clearly objectionable conduct.

The central question next arises. Is it the type of conduct which had an effect on the outcome of the election? I think not. The final vote disparity between the UFW and No-union was overwhelming.^{90/} The UFA could not get on track. The union's difficulties perhaps mounted due to the lunch arrangement with Board approval, but it was not the event that affected the election results. A significant factor in my resolution of

89/ As previously discussed, many of those attempts were thwarted by the UFW itself. The UFW had great difficulty getting its counter campaign going.

90/ See my discussion in the "Postscript."

this question is the fact that the UFW did not attempt to take access during the common lunch. Had their organizers attempted to take access with Board agents asking for two pieces of identification, that occurrence could have had more effect on the election. Yet, at the same time, Frank Gent's actions should not be condoned. The regional offices must assert their strength during such difficult times rather than accommodating a strong party's needs.

I thus find merit in the objection, but I do not find that it affected the results of the election.

G. New Objection 1 -- Whether the Board Improperly Held
the First Pre-election Conference

On August 23, the PFEA filed its petition for certification. As previously discussed, by August 25 or 26, the regional office concluded that the PFEA had established a sufficient showing of interest. Accordingly, pursuant to Section 20350(d)^{91/} of the Regulations, the regional office scheduled a pre-election conference for August 28. The office clearly was under an obligation to schedule the pre-election conference. Further, the UFW had not filed a petition for intervention in the election pursuant to Section 20325(a)^{92/} of the Regulations.

Further, following the delay of the election ordered by the Board,

91/ That section reads in pertinent part: ... a pre-election conference shall be held in each case no later than 24 hours before the commencement of the election.

92/ That section provides in pertinent part: Subject to the provisions of Labor Code Section 1156.3(b), any labor organization which seeks to intervene in an election proceeding based on a petition filed under Labor Code Section 1156.3(a) must file with the regional office of the Board in which the petition is being processed a written petition for intervention.

the UFW was placed on the ballot and included in subsequent pre-election conferences. All election issues were reviewed with all the participants in the election.

The regional office acted properly in holding the first pre-election conference without the UFW. I therefore find no merit in this objection.

Having found that the accumulated conduct complained of did not adversely affect the results of the election, I hereby recommend that the election results be certified by the Board.

The Remedy

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

Having found that Respondent unlawfully refused to rehire Carlos Maya, Luis Gonzales, Raul Gonzales, Dolores (Lola) Gonzales, Rufina Garza, and Elida Villa on September 6, 1978, I shall recommend that Respondent be ordered to make each whole for any losses incurred as the result of its unlawful action against him/her by payment to him/her of a sum of money equal to the wages s/he would have earned from the date of his/her offer to return to work, less his/her net earnings during that period, together with interest thereon at 7% per annum. I shall recommend that the loss of pay and interest be computed in accordance with the formula used by the National Labor Relations Board in F.H. Woolworth Co., 90 NLRB 289; and Isis Plumbing and Heating Co., 138 NLRB 716. I shall recommend that each person named above be offered employment during the current harvest at the earliest possible date.

In order to more fully remedy the Respondent's unlawful conduct, I shall recommend that Respondent make known to its current employees, to all persons employed during the 1977-1978 season, to all persons employed during the 1978-1979 season, and to all persons hired during the 1979-1980 season that it has been found in violation of the Agricultural Labor Relations Act, that it has been ordered to make certain of its employees whole for wage losses resulting from its unlawful acts, and that it has been ordered to cease violating the Act and not to engage in further violations.

To this end I shall recommend:

(1) That Respondent be ordered to mail a copy of the attached Notice to Employees to each person employed during the 1977-1980 seasons at his or her last known address on file with Respondent or to any more current address furnished Respondent by the Fresno Regional Director, or Charging Party.

(2) That Respondent be ordered to distribute a copy of the Notice to each of its current employees.

(3) That Respondent be ordered to post the Notice at the commencement of the 1980-1981 season in each vehicle used to transport workers to and from the job; the Notice to remain posted in the vehicles for so long as they are utilized during the 1980-1981 season.

(4) That Respondent be ordered to post the Notice conspicuously on each farm machine utilized during the 1980-1981 harvest and for the entire period of the harvest as well as at any other location on its properties where workers may reasonably be expected to become aware of the Notice.

(5) That Respondent be directed to distribute a copy of the Notice to each person hired during the 1980-1981 season.

(6) That the Notice be read in Spanish by Shig Yamamoto to the workers

in all crews at the outset of the 1980-1981 harvest.

I shall further recommend that the Notice as posted and distributed be printed in both Spanish and English.

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

ORDER

Respondent, its officers, agents, supervisors and representatives shall:

(1) Cease and desist from:

(a) Discouraging the membership of any of its employees in the United Farm Workers of America, AFL-CIO, by surveilling workers supporting the UFW, by interfering with or restraining employees from engaging in lawful protected activity, by discharging, laying off or in any other manner discriminating against individuals in regard to hire or tenure of employment, except as authorized in Section 1153(c) of the Act.

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

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

(a) Offer Carlos Maya, Luis Gonzales, Raul Gonzales, Dolores Gonzales, Rufina Garza and Elida Villa full and immediate reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges and to make each of them whole in the manner described above in the section called "Remedy" for any losses suffered as a result of the unlawful refusal to rehire.

(b) Preserve and make available to the Regional Director or his representatives, upon request, for examination and copying all payroll records, social security payment records, time cards, personnel records and reports and other records necessary to ascertain the back pay due.

(c) Mail to each employee employed during the 1977-1980 seasons a copy of the Notice attached hereto and marked "Appendix." The Notice shall be mailed to the person's last known address on file with Respondent or the person's address as supplied by the Fresno Regional Director or the Charging Party.

(d) Give to each of its current employees a copy of the Notice attached hereto and marked "Appendix."

(e) Give to each employee hired during the 1980-1981 season a copy of the Notice attached hereto and marked "Appendix."

(f) At the commencement of the 1980-1981 season post the "Notice" attached hereto and marked "Appendix" in a conspicuous place in each of the vehicles used by Respondent to transport workers to and from work. The Notice shall remain so posted for the entire period the vehicle is used for worker transport.

(g) At all times during the 1980-1981 harvest season, post in a conspicuous place on each farm machine a copy of the Notice attached hereto and marked "Appendix."

(h) At the commencement of the 1980-1981 season, read in Spanish to all crews the Notice attached hereto and marked "Appendix."


(i) Notify the Regional Director in the Fresno Regional Office within twenty (20) days from receipt of a copy of this Decision of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

Copies of the Notice attached hereto shall be furnished Respondent for distribution by the Regional Director for the Fresno Regional Office.

Dated: August 4, 1980.

AGRICULTURAL LABOR RELATIONS BOARD

By



Ron Greenberg
Administrative Law Officer

POSTSCRIPT

I am breaking with tradition to comment on this case because my conscience tells me that my ruling regarding the election may be unjust. I fear that the truth did not surface. And justice is served only when the truth emerges.

My early suspicions about the case were aroused by evidence of the new union's formation. The worker who created it was unable to articulate the new union's purpose. Nevertheless, he collected 50-60 signatures on a petition in less than one day, triggering an election while the UFW was out on strike. Having personally observed lengthy and energetic union organizational campaigns for many years, I doubt that one inarticulate spokesperson can gather that many signatures on a single day with only a few minutes worth of effort.

My second unanswered question involved the vote count in the election. All but three of the petition-signing employees abandoned the new union in

the election. And those workers selecting the no-union (employer) choice accounted for 70% of the vote. It runs contrary to intuition to have more than 50% of the employees signing the new union's petition for an election to be followed by 3% support of this union. Although I appropriately cannot look behind the secret acts of petitioning and voting, the evidence left in the record greatly conflicts with my basic experience. Most petitioning unions receive a substantial number of votes in the election.

Another unsettling question concerned the history of the UFW at this particular farm. The UFW won an election in 1975 and was certified by the Board in 1975. The UFW and the Company negotiated extensively, but never reached a contract. I gained few insights into those prolonged unsuccessful negotiations. However, that was not properly before me in deciding the election issue. My inquiry was limited to considering only adverse conduct that was close in time to the filing of the election petition.

Because many facts remained buried, I had no opportunity to administer a just result. Truth must emerge during the fact gathering part of the trial. The final state of the record evidence is directly related to pre-trial investigation and the legal presentation of that evidence. The judge's decision is confined to that legally admissible evidence which survives the long competitive struggle between opposing lawyers. This is in no way intended to impugn the integrity of the lawyers who participated in the proceeding. However, skilled lawyering greatly affects the final shape of the record evidence. The company attorneys had a significant experiential advantage in developing the evidence. The UFW had a very capable but far less experienced lawyer. And while the adversary system and the rules of evidence are constructed to protect individual rights, they

sometimes play a part in obscuring the truth. When the party with the burden of proof (the UFW in this case) fails to meet that burden, the case is dismissed.

What should a judge do when the record evidence does not appear to reflect the actual events? According to the law, I am left with no recourse. Yet my conscience continues to wrestle with the problem. That very perplexing question has stimulated many questions in me about the process of judging disputes.

How does justice enter into the judicial decision? What is justice in 1980? Is a single definition of justice suitable in all cases? What should a judge do when s/he fears the truth has been obscured? Are judges dealing humanely with the people appearing before them? Would all judges be satisfied to be on the receiving end of their own judgments?

I propose a dialogue among judges on all levels to address these and other pressing issues. I look forward to meeting and corresponding with judges who are concerned with similar troubling questions. Our vocation is a very solitary one. We rarely exchange ideas on the most essential elements of our profession: truth and justice.

If a judge does not think about justice, who will?

APPENDIX "A"

NOTICE TO EMPLOYEES

After a trial at which all sides had the opportunity to present their evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act, and has ordered us to send out and post this notice. We will do what the Board has ordered.

The Act gives all agricultural employees the following rights:

To engage in self-organization;

To form, join or assist labor unions;

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

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

To decide not to do any of these things.

Because this is true we promise that:

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

Particularly,

WE WILL NOT excessively photograph your lawful activities on behalf of any labor organization;

WE WILL NOT interfere with your use of public roads during labor union activities by unlawfully blocking them with vehicles.

WE WILL OFFER the workers named below their jobs back, if they want them, at the start of the 1980-1981 season and we will pay each of them any money they lost because we unlawfully refused to hire them:

Carlos Maya Luis
Gonzales Raul
Gonzales Dolores
Gonzales Rufina
Garza Elida Villa

PATTERSON FARMS, INC.

By _____
(Representative) (Title)

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