Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GROWERS EXCHANGE, INC. Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 79-CE-175-SAL 8 ALRB No. 7

DECISION AND ORDER

On September 19, 1980, Administrative Law Officer (ALO) Matthew Goldberg issued the attached Decision in this proceeding. Thereafter, the Charging Party, Respondent, and General Counsel each filed timely exceptions, supporting briefs, and reply briefs.

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

In his Decision, the ALO concluded that Respondent violated Labor Code section 1153 (a) by denying organizers or agents of the United Farm Workers of America, AFL-CIO (UFW) access to Respondent's labor camp or fields during a strike at Respondent's Salinas operations. The ALO's conclusion was based on the Board's decision in 0. P. Murphy Produce Co. (Dec. 27, 1978) 4 ALRB No. 106 which held that a certified bargaining representative has the right to take reasonable post-certification access to an employer's premises for the purpose of communicating with the employees regarding

collective bargaining. This right of access may be denied only where the employer demonstrates that effective alternative means of communication with the employees are available to the exclusive representative. See, e.g., Sunnyside Nurseries, Inc. (Sept. 11, 1980) 6 ALRB No. 52. Finding that no alternative means of communication existed in this case, the ALO found that despite the strike conditions, the UFW had *a* continuing right to communicate with the nonstriking employees about the negotiations. The ALO further found that the strike conditions did not alter the Union's right to visit Respondent's employees at their homes in the labor camp. He therefore ordered Respondent to allow access to UFW organizers at the fields and labor camp under limited conditions.

Respondent here had a collective bargaining agreement with the UFW which was effective from February 21, 1978 to January 15, 1979. When the contract expired without a new agreement, the UFW commenced a strike which continued through the hearing of this case. The strike against Respondent began at its Blythe operations and moved with the lettuce harvest to Salinas in May 1979.

During the Blythe harvest, Respondent agreed to allow access to its fields under the terms of the pre-election access rule. 8 Cal. Admin. Code section 20900 et seq. However, when the Salinas harvest began, Respondent denied the Union access on any basis. On May 15, the UFW filed an unfair labor practice charge concerning the access denial. On June 4, the parties reached a settlement agreement which again provided for access under the terms of the pre-election access rule.

On June 20, Respondent revoked its agreement on access,

based on *a* UFW leaflet which Respondent considered an attempt to inflame racial tensions between Filipino and Mexican workers.[1/] On July 19, Judge Richard Silver of the Monterey County Superior Court issued a preliminary injunction ordering Respondent to permit access under terms roughly equivalent to the parties' settlement agreement and ordering the UFW to refrain from disruptive or violent acts.

During the periods when no access agreement or Court order was in effect, the UFW attempted to contact Respondent's nonstriking employees by picketing, by shouting through the fence at the edge of the lettuce fields, by radio broadcasts, and by contacting the nonstrikers at home after work.[2/] When access was available, UFW organizers entered Respondent's fields and inquired as to working conditions, advised workers of progress and developments in the negotiations, discussed the reasons for the strike including the positions of the parties, and also received some input from the nonstriking employees concerning particular contract proposals.

This is the first case in which we must apply the principles set out in our Decision in Bruce Church (Aug. 10, 1981) 7 ALRB No. 20, regarding when the denial of strike access will

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[1/] Although Respondent argues in its brief in support of exceptions that it denied access because of violence, Respondent's witnesses repeatedly testified that the racially-charged leaflet was the sole reason for revoking its agreement to allow access.

[2/] The efforts to talk to nonstrikers at home were largely ineffective, since the UFW had no names or addresses.

constitute an unfair labor practice.[3/] In that case, we held that when picketing is ineffective and no effective alternative means of communication otherwise exists, an employer may not deny access for the purpose of permitting striking employees to communicate with nonstriking employees so that the latter may make an informed choice about whether to join, or to refrain from joining the strike.

A major policy objective of the Agricultural Labor Relations Act (hereinafter the "Act") is to allow farmworkers to freely and intelligently choose whether to participate in or refrain from participating in union or other concerted activity directed at their employer. Labor Code section 1140.2. We believe that the opportunity for informational communication, preferably a dialogue, is critically important to an employee's decision to join or refrain from joining a strike. Thus, "free choice," in this sense, requires the availability of facts and information which enable an employee to review his or her options and exercise the unfettered liberty to choose among them. It is this informed, yet unrestricted, choice which the Board by its strike access rule seeks to preserve and protect. See discussion, Bruce Church, supra, at p. 29.

Moreover, in our view, providing such avenues of

[3/] As stated above, the ALO in this case relied on our decision in O. P. Murphy Produce Co., supra, 4 ALRB No. 106 to justify strike access. However, as we indicated in Bruce Church, O. P. Murphy applies only to the post-certification, non-strike setting and does not address the difficult question of communication with nonstrikers. Although O. P. Murphy access rights for collective bargaining purposes still exist during a strike, the focus of our inquiry here and in Bruce Church is on strike-related communication.

communication reduces the potential for inflamed emotions, which can lead to exploding tempers and violent confrontations. Accordingly, we determined in Bruce Church, supra, that the policies of the Act, the protection of the workers' right to impart and receive information concerning the strike, and the need to reduce the potential for violence warranted authorization of strike access to the work site where there is no effective alternative means of communication.[4/]

Our conclusion is supported in this regard by the testimony of Captain Walter Scott, a 20-year veteran of the Monterey County Sheriff's Department with more than a decade's experience with labor strife. In Scott's opinion, the granting of access reduced the incidence of violence which had prevailed prior to

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[4/] Section 1 of the ALRA states:

> In enacting this legislation the people of the State of California seek to ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.
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> This enactment is intended to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state. The Legislature recognizes that no law in itself resolves social injustice and economic dislocations.
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> However, in the belief the people affected desire a resolution to this dispute and will make a sincere effort to work through the procedure established in this legislation, it is the hope of the Legislature that farm laborers, farmers, and all the people of California will be served by the provisions of this act.

access being granted.[5/]

Not only did the access operate as a kind of safety valve to generally reduce violence, but there was no evidence of any

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[5/]Having been involved with agricultural strikes every year but one since 1970, Scott has had substantial experience with strike locations within Monterey County. He has been the host for meetings among law enforcement officers from various agricultural counties to discuss strikes and has visited other counties where strikes were in progress in order to observe those situations and lend his expertise. Moreover, as head of the Sheriff's Department's farm labor strike unit, Captain Scott was able to monitor union activity at the various strike locations within 'the county and therefore was in a position to know of any and all disturbances related to the strike. As to the effect of court-ordered access, Scott testified as follows:

Q. Do you recall whether access — do you have an opinion about the impact of the Court ordered strike access during the course of the strike?
(Thereafter the objection of Respondent's counsel was overruled.) MS. SCHREIBERG: Q. Do you have an opinion?

A. Yes, I do.

Q. What is that?

A. Well, the Court ordered access, as far as we were concerned, as far as the sheriff's office was concerned, worked very well. We had no problems with it at all.

Q. With regard to the incident of rushing in the field and violence, did it have any effect in your opinion?

A. Yes, I believe it did.

Q. What was that?

A. I believe there was less rushing the field after the access was granted.

Q. And that was with the exception of this one June llth and the Admiral Packing situation?

A. Yes, there was three incidents that I — June llth was one, and there was two incidents with Admiral where they rushed the field after the access was granted. RT IV:12

violence associated with the access-takers. For example, Scott testified that he witnessed the taking of strike access on about 100 occasions and he recalled one incident of violence during that time, when someone threw an object at one of the access takers. Respondent's own labor relations manager, Ed Stoll, testified that he knew of no instances of violence while UFW representatives took access.

Respondent argues that it was justified in denying access on account of isolated acts of violence which were apparently committed by union adherents, but which were not related to the taking of access itself. In his dissent in Bruce Church, Member McCarthy argued vigorously to the same end. Because we did not have the opportunity to reply to the dissent in Bruce Church, we take this opportunity to fully deal with the question of violence so earnestly argued by both Respondent and our dissenting colleague.

As a general matter, a blanket denial of access on the basis of independent unlawful conduct appears to us to punish an entire group in order to sanction the willful misconduct of a few of its members. Violence or forms of intimidation short of violence are either independently enjoinable, or enjoinable as unfair labor practices, Code of Civil Procedure section 527.3, Kaplan's Fruit and Produce (1980) 26 Cal.3d 60, Labor Code section 1160.4, and we feel it is more appropriate to deal with such unlawful conduct directly rather than indirectly by the sanctioning of conduct in itself.

Our dissenting colleague argues that this position fails

to take into account the "reality" that any contact between striker and nonstriker is inherently coercive.[6/] According to this argument, the acts of picket line violence relied upon to justify denying access simply exemplify the potential inherent in every communication between striker and nonstriker. If such an argument is correct, of course, proof that violence actually occurred is not necessary to warrant our denying access. As *a* threshold matter, we do not believe it can be said as a matter of fact that a particular form of communication is inherently coercive without reference to either the content of the communication or the circumstances in which it takes place. Moreover, as a matter of law, the statute itself will not permit us to say it:

> The expressing of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic or visual form shall not constitute evidence of an unfair labor practice ... if such expression contains no threat of reprisal or force or promise of benefit. Labor Code section 1155.

In arguing that communication between striker and non-striker must be coercive, the dissent has ignored the lesson of history. It was not so long ago that picketing itself, now a recognized weapon of labor, was enjoinable as necessarily violent or inherently coercive. It was not until the courts freed

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[6/] Member McCarthy states in his dissent that because strike access requires a nonstriker to communicate person-to-person with an access-taker, the nonstriker is especially likely to be coerced. He then lists the tactics that "might" be used to coerce. However, the record is devoid of any evidence that statements or tactics of the kind suggested by Member McCarthy as "probably" coercive were in fact used against the nonstrikers during the access periods.

themselves of preconceptions that picketing could be viewed as a legitimate weapon:

> Nowhere [could] picketing be accompanied by violence; and where violence soften[ed] into "intimidation", "threats" or "coercion" the result [was] the same because analysis assume[d] the inevitability of violence, and judgment upon conduct in these cases... [rested] confidently upon the allegations of affidavits. A "threat" may be a warning of violence; it may also be a warning that one will do a legally permissible act. "Coercion" may be physical compulsion; it may also imply the exertion of economic pressure. "Persuasion" may be insult and menace; it may also be an appeal to free judgment. A vocabulary so freighted with ambiguity easily lends itself to a fictitious issue, by confounding assumed conduct with the real conduct whose justifiability is in question. Unwittingly a court may be pronouncing judgment upon the implications of a label, instead of weighing the elements of an industrial conflict as it transpired. These situations make a heavy demand upon intellectual detachment and require a sturdy hold upon reality. Frankfurter and Green, The Labor Injunction (1930), p. 35. (Emphasis added.)

We do not doubt that we have the power to deny access where an atmosphere of coercion has resulted from repeated and aggravated violent acts, but whether any form of communication has become so identified with noxious conduct as to have lost its protection as an appeal to reason is a question that calls for the most scrupulous judgment rather than a simple reflex which automatically equates contemporaneous unlawful activity with protected activity. In Milk Wagon Drivers Union, etc, v. Meadowmoor Dairies (1941) 312 U.S. 287 [7 LRRM 310], the U.S. Supreme Court upheld a trial court injunction against both violent and peaceful picketing where the striking workers had committed over fifty acts of violence including bombings, window smashing, beatings, shootings, and wrecking of trucks. Even in this context, the Court stated:

> It must never be forgotten, however, that the bill of Rights was the child of the Enlightenment. Back of the guarantee of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guarantee of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution.
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> Still it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. And so the right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exuberance the conclusion that otherwise peaceful picketing has the taint of force. 312 U. S. 293.

In reviewing election objections involving violence, this Board has applied standards similar to the apparent standard of Meadowmoor. We have set aside elections where acts of violence were so serious or pervasive that an atmosphere of fear and coercion was created, rendering free choice impossible. Phelan & Taylor (Jan. 29, 1976) 2 ALRB No. 22 (UPW organizer beaten by Teamster organizers in front of voters). We have upheld elections where the violence, viewed objectively, could not have affected free choice. Frudden Enterprises, Inc. (Aug. 21, 1981) 7 ALRB No. 22 and Joseph Gubser Co. (Oct. 9, 1981) 7 ALRB No. 33 (isolated incidents of field-rushing during pre-election strike.)

These election cases have well-equipped this Board to determine whether violence has so tainted the atmosphere of a strike that appeals to reason are thereafter impossible. Based on our

review of the record, the two incidents of field-rushing in this case are not sufficient to preclude rational communication in the context of subsequent strike access.

The dissent has also argued that in the absence of NLRA precedent granting strike access, we may not grant it. Yet, as we pointed out in Bruce Church, the NLRB does permit strike access for the purpose of picketing: an employer's property rights must yeild to the right of striking workers to communicate their message. Scott Hudqens (1977) 230 NLRB 414 [95 LRRM 1351] So long as, in our view, access itself is not inherently coercive, we cannot see any reason to distinguish between the right to take access to communicate with customers and other members of the public and the right to communicate with employees themselves, whose section 1152 rights we are bound to protect.

It is certainly true, as the dissent points out, that the decision to refrain from joining a strike is "entitled to as much respect and freedom from coercion as is the decision to participate in union activities," (Emphasis added), but, even as formulated by the dissent, the critical question is whether such access is coercive. As noted above, we know of no authority which holds that the mere opportunity to persuade is coercive.

As we noted in Bruce Church, the concept of strike access is a novel one; but the history of access under the NLRA is a history of just such novelty. First arising in the context of the right of employees to talk among themselves, Republic Aviation Corp. v. NLRB (1945) 324 U.S. 793 [16 LRRM 620], a right of access came to be recognized for nonemployees seeking to organize,

Babcock & Wilcox Co. V. NLRB (1956) 351 U.S. 105 [22 LRRM 1057], and finally for strike purposes, Scott Hudgens, supra, 230 NLRB 414. Since it is only in the last decade that the NLRB has had to grapple with questions involving the scope of permissible access in support of economic activity, the lack of precedent is not surprising. Although the paucity of precedent makes our task more difficult, we must deal with questions as they arise in light of principles already established and the peculiarities of agricultural labor relations.

Since the UFW here sought to communicate the union's strike message to nonstriking employees, work site access was appropriate. Respondent argues that no violation was committed, even assuming the UFW had a legitimate interest in taking strike access, because the Union could have used newspaper and radio advertisements, public address systems, home visits, and distribution of information from the picket line. We have discussed each of these means of communication in our decision in Bruce Church Inc., supra, 7 ALRB No. 20 at 26-27 and found each to be ineffective in the typical agricultural setting. See also, Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal.3d 392, 415. As the character of the work force and physical setting in this case are substantially similar to those in Bruce Church, we conclude that the UFW had no effective alternative means of communicating with Respondent's nonstriking employees.

Our decision in Bruce Church, Inc., supra, 7 ALRB No. 20 reasons that strike access is generally necessary in agriculture because picketing, the most common form of strike communication, is

ineffective.[7/] The facts of this case support this reasoning. Respondent's fields are surrounded by private access roads. The picket lines around the perimeter of Respondent's Salinas fields were located on the public road and were approximately sixty feet from the nonstrikers at the closest point. Attempts to shout to the workers from the picket line were frustrated by the constant noise of the stitching machines and workers' radios. Nonstriking employees crossed the picket line in their personal cars or buses provided by Respondent for workers staying in the labor camp. This prevented face-to-face contact between pickets and nonstrikers as the nonstrikers entered and left Respondent's property.

As mentioned above, UFW organizers tried to contact the nonstrikers at the labor camp, but were denied access. Since the Union had no names or addresses for the replacement workers, home visits or calls to those who did not live in the labor camp were impossible. Some public announcements regarding the strike were

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[7/] We make this general finding based on the typical open-field setting, the potentially large areas involved, and the frequent use of buses to carry workers to and from the work site. However, we recognize that not all agricultural operations exhibit these characteristics and therefore we will examine the effectiveness of picketing and other means of communication on a case-by-case basis e.g., Sunnyside Nurseries, Inc., supra, 6 ALRB No. 52 (nursery setting, atypical of agriculture, allows alternative means of communication). As in 0. P. Murphy Produce Co., supra, 4 ALRB 106, we start with the presumption that no alternative means of effective communication exists, subject to rebuttal by the Respondent. We would consider relevant any evidence regarding the size of the fields and work force, the location of the pickets in relation to the workers, the circumstances under which workers cross the picket line, the source of the nonstriking workers, the degree of turnover among replacement workers during the strike, and facts relating to nonstriking workers' residences, literacy, and bilinguality. We will continue this ad hoc adjudication of strike access cases until additional experience indicates whether a broad rule is appropriate.

put on local radio stations by the UFW, however, there is no indication whether any of the nonstrikers heard these messages. It is clear from these facts that, during the period when neither an agreement or a court order was in effect, the UFW could not communicate effectively with the nonstrikers at the work site or away from the work site. To the extent that any communication was achieved by the presence of the picket line or radio announcements, such communication was of the "one-way" variety, criticized in Bruce Church as insufficient to allow persuasive conversation between reasonable individuals.

In order to ensure an opportunity for the strike message to be communicated to all the workers, daily access is appropriate. Due to turnover among replacement employees, workers arrive at the fields unaware of the facts and issues involved in the strike action against their employer.[8/] Consequently, organizers are often required to conduct an informational presentation which is, fundamentally, not unlike the tasks performed during a union's pre-certification or election campaign. We have determined that work site access is necessary in order for the union's organizational message to be communicated, and we have similarly found access to be necessary in the strike situation where no effective alternative means of communication exist. However, we have reduced the number of times that access can be taken in the strike setting from three (the allowed number of access periods per day

[8/] The uncontroverted testimony of UFW organizers Arturo Mendoza and David Valles indicates that many nonstrikers had never worked for Respondent before the strike and were unaware of the issues involved in the strike or contract negotiations.

during an organizational drive) to one access period per day. By limiting access in this manner, we provide a sufficient opportunity to address replacement workers without unduly interfering with the right of replacement workers to refrain from engaging in protected activity. Although it is the nonstriker's right to ignore the union's message, we restate our position in Bruce Church, supra, 7 ALRB No. 20 at 29, that "[e]mployee ignorance is not an employer's weapon to use; the entire structure of our act and the rights guaranteed by it tell against such a proposition."

Based on the foregoing, we conclude that the interests of stable agricultural labor relations and free choice for Respondent's agricultural employees are best served by the rule set out in our Bruce Church decision. Respondent here denied the UFW an opportunity to take access to discuss the negotiations and to deliver its strike message. The UFW, under the facts of this case, had no effective alternative means of communication with the nonstrikers. We therefore conclude that Respondent has interfered with employee rights guaranteed under Labor Code section 1152 and thereby violated section 1153(a).

ORDER

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

1. Cease and desist from:

(a) Denying reasonable access to Respondent's premises, including labor camps, to any UFW representative or

other union agent for the purpose of communicating with non-striking employees while there is a strike in progress at Respondent's premises.

(b) In any like or related manner interfering with, restraining and coercing employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) During any period when there is a strike in progress at Respondent's premises, permit access to its premises by UFW representatives or other union agents for the purpose of communicating with nonstriking employees. Said access takers may enter the Respondent's property for a period not to exceed one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch, if there is an established lunch break, the access period shall encompass such lunch break. If there is no established lunch break, the access period shall encompass the time when employees are actually taking their lunch break, whenever that occurs during the day. Access shall be limited to one UFW representative or union agent for every fifteen workers on the property. Said access shall continue until a voluntary agreement on strike access is reached by the

parties or until the union ceases to be the collective bargaining representative of Respondent's employees, whichever occurs first.

(b) During any period when there is a strike in progress, permit access to its labor camps by UFW representatives or other union agents for the purpose of communicating with non-striking employees.

(c) 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.

(d) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its property, the period 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.

(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 May 7, 1979, until August 31, 1979.

(f) 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 times and places 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 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.

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

Dated: February 9, 1982

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

ALFRED H. SONG, Member

MEMBER MCCARTHY, dissenting:

The majority's attempt to shore up its Decision in Bruce Church (Aug. 10, 1981) 7 ALRB No. 20, is unavailing in my opinion. The Decision in this case merely highlights the majority's inability to fairly weigh the competing employee interests involved and then come to a conclusion which affords the greatest degree of protection for employee rights as a whole. Their inability to properly weigh the competing interests stems from their belief that communication of "information," rather than coercion, is the primary purpose of strike access.

My dissent in Sruce Church makes it clear that additional communication of information about strike issues makes little, if any, difference to agricultural workers who have decided to cross the picket line despite the great difficulties that they may incur by so doing. The Charging Party knows this, and yet, as we have seen from Bruce Church, it has made repeated and violent demands for strike access. This tells me that strike access is being sought for

reasons beyond that of providing information.

The majority makes the mistake of assuming that the objections to granting strike access stem from the fear that such access will necessarily precipitate violence. Although violence is not unlikely to occur when spokesmen for the strike are brought into direct contact with nonstriking workers, my real concern is the nonphysical forms of coercion that can easily be applied to nonstriking workers as a means of making them leave their jobs. These workers are extremely susceptible to coercion because they know they are regarded as being disloyal by many of their peers and because they have no organized backing, save perhaps for employer-provided transportation and a modicum of protection during working hours. With the addition of the face-to-face contact that strike access affords, the depersonalized pressures of the picket line suddenly become highly personalized as the workers perceive that they are being individually identified by the strike leaders who are taking access. This in itself creates a new coercive effect.[1/] Without any real source of moral support and often fearing for the safety of their families and property, the nonstriking workers experience a growing sense of isolation and vulnerability which makes them easy marks for coercive tactics.

[1/] The coercive effect will be reinforced by the majority's failure to limit the repetition of strike access. Strike access under the majority's holding may be taken each and every day for the duration of the strike. Even pre-election access is restricted as to the number of times it may be taken during the year. It is worth noting that a provision for that form of access was adopted by a duly enacted regulation of the Board, whereas here the Board acts simply by judicial fiat despite the fact that there is much more at stake here than the property rights of the employer.

Such tactics might include statements which imply that the good-standing clause will be invoked against them, that they will be confronted at their residences and public places by angry striking workers, and that, having been identified, they are now targeted for various other reprisals.

In short, the nonstriking workers could easily come to believe that they had no choice but to yield to the will of the union, that rather than risk humiliation, ostracism, property loss, and perhaps physical injury to themselves or their families, they had best abandon their jobs and endure not only the economic privation, but perhaps also a sacrifice of principles.

The majority does "not believe it can be said as a matter of fact that a particular form of communication is inherently coercive without reference to either the context of the communication or the circumstances in which it takes place ...." I believe I have made more than adequate reference to the circumstances surrounding strike access which gives it its inherently coercive nature. However, even if one assumes that coercion is not inherent in forced daily confrontations between union agents/strikers and nonstrikers at the work site, the probability that such coercion would occur is so great that the additional avenue of communication for the union is not warranted. I note in this connection that the union's demands for strike access have been accompanied by repeated and large-scale acts of violence. This hardly lends credence to its claim that strike access would be used for the purpose of enlightening,

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rather than coercing, the nonstriking workers.[2/]

As I have pointed out in my dissent in Bruce Church, the accessibility of the farmworker for purposes of receiving the strike message is certainly no less, and is perhaps greater, than that of the typical industrial worker. The picket lines are usually always visible and audible to the nonstriking farmworker throughout the day, whereas in the typical industrial setting, the worker is reminded of the strike only upon entering and leaving the confines of the plant. The record in this and other cases shows that farmworkers often have radios with them in the fields and that the union regularly uses broadcasts from Spanish-speaking stations to convey its message. Industrial workers, on the other hand, are not generally reachable by radio while on the job. For these and other reasons indicated in my dissent in Bruce Church, I find that there is no basis for the contention that strike access is needed to compensate for ineffective means of communication with agricultural workers. Even if it could be said that the union's strike message faces somewhat greater obstacles in agriculture than it does in industry, that inconvenience is more than outweighed by the coercive effects of strike access.

The majority's entire opinion betrays a lack of concern for

[2/] One need only look to the residential picketing cases, such as Marcel Jojola (Oct. 24, 1980) 6 ALRB No. 58, and Salinas Police Department (Dec. 24, 1980), 6 ALRB No. 63, to get an idea of the type of message that is communicated to nonstriking workers by strike agents. Rather than picketing the homes of the nonstriking workers in a peaceful and informational manner, the picketers bombarded the occupants with insults and threats to the safety of their person and property. The targeted employees were thus coerced into leaving their jobs.

the section 1152 rights of those who have already made the decision not to participate in the strike. Instead of viewing that decision as one that is entitled to protection under section 1152, the majority focuses almost exclusively on what the union needs in order to make its economic action more effective. It is not the business of this Board to provide the means by which the employer or the union can improve its chances of success in an economic struggle. Strike access is an unprecedented economic weapon which not only unfairly aids the union but also, and more importantly, jeopardizes and erodes the workers' right under section 1154 to be free from coercion in the exercise of their right to refrain from union activity. On the other side of the scale, it adds very little to the legitimate informational goals of the union. Finally, as neither the NLRB nor the federal courts have ever granted a striking union access to the work site for the purpose of persuading nonstrikers to leave their jobs and join the strike, and as section 1148 of the Act requires us to follow applicable NLRA prcedents, I believe our Act prohibits us from granting such access.[3/]

As in Bruce Chruch, I would find that no violation of the Act occurred when the Respondent in this case denied strike access to the union.

Dated: February 9, 1982

JOHN P. MCCARTHY, Member

[3/] Contrary to the majority's assertion, section 1155 affords no protection for strike access because that provision goes only to the content of the communication, not the circumstances under which it is made. Freedom of expression under section 1155 does not mandate forced confrontations between union representatives and nonstriking workers who have expressed no desire or wish for such contacts.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law during the 1979 Salinas lettuce harvest by refusing to allow UFW organizers and other union agents to take access to our property during a strike in order to speak to nonstriking employees. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

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

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer to obtain a contract covering 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 or 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 do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT refuse to allow agents of your certified bargaining representative to enter our property at reasonable times during a strike at our property so that they can talk to the employees who are working.

Dated: GROWERS EXCHANGE, INC.

By: _____
Representative Title

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3160.

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

Growers Exchange, Inc. (UFW)

8 ALRB No. 7
Case No. 79-CE-175-SAL

ALO DECISION

The ALO concluded that the employer violated Labor Code section 1153 (a) by denying organizers or agents of the UFW access to the employer's labor camp or fields during a strike. Based on P.P. Murphy Produce Co. (Dec. 27, 1980) 4 ALRB No. 106, the ALO held that the UFW had a right to post-certification access for the purpose of communicating with employees regarding collective bargaining, since no effective alternative means of communication existed.

BOARD DECISION

Based on its decision in Bruce Church (Aug. 10 1981) 7 ALRB No. 20, the Board held that strike access was appropriate not only for the bargaining-related purposes discussed in P.P. Murphy/ but for the purpose of communicating the union's strike message to the non-striking employees as well. Expanding on its Bruce Church decision, the Board stated that such access was necessary, where no alternative channels of communication exist, to allow the exchange of information which is so critical to the free and intelligent exercise of the choice to join or not join a strike. Relying on the testimony of Sheriff Walter Scott, the Board further stated that communication in a controlled environment would reduce the frustration and the tendency to violence associated with farm labor strikes. Finding nothing inherently coercive in communication between strikers and non-strikers, the Board indicated that acts of violence or intimidation would be prohibited and sanctioned when they occurred by the Board's power to seek injunctive relief and its subsequent review of strike related unfair labor practice charges.

Since the record of this case indicated no alternative means of communication, the Board held that strike access was necessary. The employer was therefore ordered to allow the UFW strike access once a day for a period not to exceed one hour during the employee's lunch break, with one organizer allowed for each fifteen employees in a crew.

MEMBER MCCARTHY DISSENTING

Member McCarthy, adhering to his dissent in Bruce Church, argued that strike access causes the non-striking employee to experience an increased sense of isolation and vulnerability. In this situation, the probability of coercion occurring is so great that strike access is unwarranted. Further, the dissent maintains that picket lines in agriculture are not so ineffective as the majority assumes and further maintains that an agricultural employee generally knows full well the existence and implications of the strike when he or she chooses to cross the picket line.

* * *

* * *

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD,

GROWERS EXCHANGE, INC. Respondent and UNITED FARM WORKERS OF AMERICA, AFL-CIO Charging Party	Case No. 79-CE-175-SAL

APPEARANCES :

Frances Schreiberg, Esquire,
for the General Counsel

Wayne A. Hersh, Esquire, of
Dressier, Stoll, Hersh & Quesenberry,
for the Respondent

Ned Dunphy, for the Charging Party

BEFORE: Matthew Goldberg, Administrative Law Officer

DECISION OF THE
ADMINISTRATIVE LAW OFFICER

STATEMENT OF THE CASE

A charge filed by the United Farm Workers of America, AFL-CIO (hereafter the "Union") on June 25, 1979,[1/] and served that date on Growers Exchange, Inc. (hereafter the" "Respondent")ȷ alleged a violation of SH53(a) of the Act, based on the denial of! access by Respondent to agents of the Union. On July 10, 1979, the General Counsel of the Agricultural Labor Relations Board issued a complaint grounded on this charge. The complaint and, notice of hearing were duly served on Respondent, which filed an answer essentially denying the commission of the unfair labor

[1/] All dates refer to 1979 unless otherwise noted.

practice alleged,

A hearing was held before me commencing September 11, 1979. All parties appeared through their respective representatives, and were afforded full opportunity to examine and cross-examine witnesses, introduce evidence, and submit oral arguments and briefs.

Based upon the entire record in the case, including my observations of the demeanor of witnesses as they testified, and having read the briefs submitted after the close of the hearing, I make the following:

FINDINGS OF FACT

A. Jurisdiction

1. The Respondent is and was, at all times material, an agricultural employer within the meaning of §1140.4 (c) of the Act.

2. The Union is and was, at all times material, a labor organization within the meaning of §1140.4(f) of the Act.[2/]

B. The Unfair Labor Practice Alleged

In March, 1977, the Union was certified as the collective bargaining representative of the Respondent's agricultural employees. The parties concluded a collective bargaining agreement which was effective from February 21, 1978, to January 15, 1979. Although bargaining between the parties ensued following this date, and negotiations continued through the date of the hearing, the Union commenced a strike on January 29, which like-wise has proceeded unabated.

In early May, Respondent resumed its agricultural operations in the Salinas area.[3/] The Union maintained picket lines at | the Respondent's field site's there and at its labor camp on Airport Boulevard in Salinas.

Witnesses for the General Counsel testified that on several occasions in May, following the commencement of harvesting operations, Union representatives were denied access during the lunch break at various work sites, and at the Company labor camp. Previously in 1979, during the harvest season in Blythe, the Respondent and the Union entered into an agreement whereby the Union would be permitted access at such times and in such numbers as

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[2/] Respondent admitted the jurisdictional facts in its answer,

[3/] Respondent also performs agricultural operations in the Imperial Valley, and the Huron and Blythe areas in California.

that allowed by the Agricultural Labor Relations Board access regulation (Regs. §20900).[4] Union representatives, apparently acting under the assumption that the Blythe agreement would continue in effect in Salinas, attempted to take access in that region. However, sheriff's deputies at the fieIds,[5] and security guards at the labor camp, would not allow Union representatives to enter the respective properties.

Specifically, Union volunteer David Valles testified that on or about May 7, during the lunch break, he requested a sheriff's deputy to permit him to enter a field near Greenfield where Respondent was conducting operations. The deputy, James Cronin, testified that he relayed the request to a Company foreman whom he felt was in charge. The foreman then conducted a poll among the workers in the field to ascertain if they wished the Union representatives to come in and talk to them, and subsequently reported to the deputy that the people had voted not to let the Union enter. As a consequence, the deputy would not allow access by the Union representative on this date.

Several days thereafter, Valles tried to gain access to the Company labor camp at 6:00 a.m., but was prevented from doing so by an unidentified security guard stationed at the camp. Lee Arnhold, general supervisor for the Achates Security Company which had been retained by the Respondent on the dates in question, testified that he was instructed by Ed Stoll, Respondent's labor relations manager, not to allow Union representatives to enter the labor camp.

Although Valles could not recall the exact number of times he was denied access to fields and to the labor camp, he stated that denials occurred on more than one occasion in May.

At this juncture, on May 15, the Union filed a charge in case no 79 Case No. 79-CE-105-SAL concerning the access denials. Based on this charge, a complaint was issued by the General Counsel on June 1. On June 4, the parties entered into an informal settlement agreement as a result of which the Union withdrew the charge it had filed on May 15.

Under the terms of that settlement, the Respondent agreed to allow Union representatives to have access to its property for a one-hour period before and after work in places where

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[4] ln By the, initial attempts at access were rebuffed. Harvesting took place in that locale during March. A charge involving an alleged denial of access by Respondent occurring on March 27 was filed by the Union, The above-noted agreement was presumably prompted by the withdrawal of this charge, and the matter was not litigated.

5/Sheriff's deputies were assigned to various fields at the request of Salinas growers, in an ostensible attempt to deter violence. They also were called upon to escort Company buses from no labor camps to fields and back.

workers congregate, including buses and labor camps; and for a one-hour period at the work site during the lunch break. The numbers of access takers were equivalent to those allowed under ALRB organizer access regulations. In addition, the Union agreed to furnish a list of individuals who would actually be taking access. Such persons were to wear badges identifying themselves, as well as present proper identification, upon request, to Respondent, law enforcement officials, ALRB personnel, or their agents. Significantly, the agreement contained a clause which stated: "The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery or interference with the process of boarding buses. Speech by itself shall not be considered disruptive conduct." (Emphasis supplied.)

Pursuant to that agreement, the Union availed itself of access to Respondent's properties or those under Respondent's control up until June 20. At that time, Hal Moller, Respondent's . owner, wrote the Agricultural Labor Relations Board Salinas Regional Director that the Company was revoking the Union's access privileges. The reason for the revocation,[6/] spelled out in Holler's letter and in his testimony at the hearing, was that the Union on June 19 circulated a leaflet which, in his opinion, exacerbated racial tensions between Respondent's Filipino and Mexican workers.[7/]

The leaflet itself, attached hereto as Exhibit "A," and its English translation (Exhibit "B"), describes an incident at a Sun Harvest labor camp, where a "Pilipino" shot at a group of Mexicans, The leaflet exhorts workers to insure that the Company provide adequate security for its employees.

Incidents involving violence had previously occurred at Respondent's operations in Salinas during the 1979 season. On May 23, at a field near San Juan Bautista, Union picketers smashed windows of several cars and of the Company bus. On June 11, large numbers of picketers rushed a field, throwing rocks and smashing windows, A worker who was in the field at the time, Jose Rios, poignantly testified that he was chased down by a number of picketers, beaten to the point of unconsciousness and hospitalized for a period of several weeks. However, it should be emphasized that picketers, not access takers, were responsible for these acts which did not occur during access times.

Notwithstanding these incidents, the Respondent did not

[6/] Ed Stoll also referred to a statement, as a reason for revoking access, allegedly made by a Union volunteer, Jesus Camacho, concerning the killing of a Mexican worker at Mann Packing.

[7/] Respondent employed one ground crew composed primarily of Filipino workers. The remainder of its employee complement were workers of Mexican descent.

utilize them as its rationale for unilaterally abrogating the access agreement. [8] As previously noted, access was revoked as a result of the Respondent's interpretation of the Union-circulated leaflet of June 19.

A new charge was filed on June 25 (79-CE-175-SAL, or the. instant one herein) which again alleged a violation of the Act based on the Respondent's refusal to allow access from May 7 forward. The instant complaint also sets forth that the alleged violations to be litigated in this case stemmed from that date.

I find that the leaflet in question, at least on its face, was not racially inflammatory. Admittedly, it does seem to emphasize that a Filipino shot the Mexicans who were injured, and that reference to the ethnic background of the perpetrator might well have been omitted. However, without more evidence to the effect that tensions between the two groups were extant, or that he leaflet resulted in fomenting same, it is impossible to attach.

Nevertheless, the foregoing begs the question of whether the Respondent could lawfully justify its revocation of access privileges as a result of a leaflet circulated by the Union, The informal settlement agreement, as noted above, clearly stated that "speech by itself" was not to be considered disruptive. The leaflet is clearly encompassed within the term "speech."9/ I find that the Respondent's actions in denying access from June 20 was violative of the settlement agreement.[10]

Respondent's agents, Stoll and Holier, openly admitted that access was denied to Union representatives from June 20 to July 19. Jesus Camacho, an irrigator who aided Union access efforts during the course of the strike, stated that he had, in fact, been denied access to a field being Respondent's interpretation to it.

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[8] The May 23 incident obviously predated the informal settlement agreement of June 4.

[9] This Board has held that insofar as the organizer access rule is concerned, no distinction is to be drawn between oral communication and the distribution of literature: both further "the goal of effectively informing agricultural employees about the issues impacting on the question of unionization." Tex-Cal Land Management, 3 ALRB No. 14 (1977), aff'd, 24 cal.3d 335 (1979). By analogy, once the union has been certified, it may resort to either direct oral communication or literature to "effectively inform agricultural employees" concerning union business.

[10] The procedural posture of this case might have been less complicated if the prior charge, 79-CE-105-SAL, due to the violation of the settlement terms, had been reinstated, rather than utilizing yet another charge as the basis for the instant case

revocation of access privileges.

On July 19, Judge Richard M. Silver of the Monterey County Superior Court issued a preliminary injunction pursuant to a stipulation by the parties, which in essence ordered that the Union be permitted access to Respondent's fields, labor camps and buses for the purposes of meeting and talking with workers, at times and in numbers roughly equivalent to those contained in the informal agreement; that lists of access takers and their proper identification be furnished; that the Union and the Respondent refrain from coercive and violent acts; and that the Union limit the number of pickets placed at Respondent's facility and not block ingress or egress from such sites.[11/]

General Counsel's witnesses testified that when access was taken at Grower's Exchange, Union representatives discussed with workers the reasons for the Union's strike; attempted to persuade workers to join the strike; explained the current status the relative positions of the arties, and the Union's aims in negotiations then in progress; related wage rates and other matters agreed upon in negotiations with other growers, and inquired as to existing working conditions, particularly whether any changes had been made regarding them.[12/] Jose Rios, on the other hand, stated that when he reported to work at the shop in order to board the bus which transported workers to the fields the "Chavistas" would "insult us," and would not, at such times, discuss negotiations, which he would learn about by listening to radio broadcasts,

While Valles could not recall whether a public address system had been used in Salinas to speak to Respondent's employees in the fields who did not participate in the strike, he did state that this method of communication was used in Blythe at Respondent's fields and at those of other growers in the Salinas Valley, Valles discounted the efficacy of such methods, however, since the distance of crews from the amplification equipment and the noise of field machinery and workers' radios rendered the P. A. system virtually impossible to hear.

Arturo Mendoza stated that Union negotiation demands were published in a Mexicali Spanish-language newspaper. However,

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[11/] Parenthetically, the injunction also prohibits the Union from distributing literature or making oral remarks which are racially prejudicial."

[12/] The subject matter of access discussions was provided through the testimony of General Counsel's witnesses Arturo Mendoza, a Union staff member, David Valles, and Jesus Camacho, Although their testimony was admittedly self-serving, it was essentially uncontroverted. Rios' statements noted above do not necessarily contradict assertions by General Counsel witnesses regarding matters covered in conversations between employees and access takers.

no evidence was presented concerning similar methods utilized to disseminate such information in the Salinas area. As noted above, radio broadcasts were employed to a degree to publicize the Union's position.

Perhaps the most telling testimony regarding the effect of access under strike circumstances was that preferred by Captain Walter Scott. Captain Scott, a 25-year veteran of the Monterey County Sheriff's Department, has had extensive experience with agricultural strikes, being in charge of county law enforcement in the context of these strikes since 1970. In the early part of 1979, Captain Scott met with law enforcement officers from several California counties to monitor strike activities in the I El Centro area and presumably to learn from those experiences. Also in 1979, during the course of the labor disputes in Monterey County, law enforcement officers came to the county to receive training in regard to strike situations under the aegis of the Monterey County Sheriff's Department.

In Captain Scott's opinion, when access was ordered by the court, violence, in particular the rushing of fields by strikers, was minimized. Thus, access, in his words, "worked very well. We had no problems with it at all." On cross-examination, Scott stated, however, that restrictions placed on the number of pickets, restraints as per the court order on coercive and violent conduct, and identification procedures for access takers also contributed to a certain extent to the success vis-a-vis limiting violence of the court-ordered access program: each of these procedures was inextricably interwoven in producing the desired effect of minimizing physical confrontations when access was taken. It should also be pointed out that sheriff's deputies escorted the access takers in and out of the fields. This arrangement was mutually agreed upon by the Union and the growers to prevent the potential outbreak of violence.

ANALYSIS AND CONCLUSIONS OF LAW

A. The Union's Right To Access

In O. P. Murphy Produce Co.. Inc. , 4 ALRB to. 106, p. (1978), the Board " address led] the issue of post-certification -- access . . . insofar as it relates to a certified labor organization engaged in or attempting to engage in collective bargaining negotiations with an employer," and found that the need for such access existed, and was based on the right and duty of the exclusive representative to bargain collectively on behalf of all the employees it represents.[Id. P. 3.] The instant case contains a factual aspect not present in the Murphy situation, to wit, that the Union, while engaging in collective bargaining with the Employer, has also resorted to a strike to exert economic pressure on that Employer, However, I find that the analysis contained in the Murphy decision applies with equal force to this case, and that the rights and duties of the Union to bargain collectively on behalf of all employees remain undiminished, despite the strike. As a consequence, the Union herein, duly

certified to represent Respondent ' s employees, and actively engaged in negotiations with Respondent, must have the right of access to workers to effectively fulfill its obligations as a representative.

> As the certified union is the agent and representative of all the employees in the bargaining unit, it is essential that it have access to, and communicate with the unit employees during the course of contract negotiations, in order to determine their wishes with respect to contract terms and proposals, to obtain current information about their working conditions and to keen them advised of progress and developments in the negotiations. [Id./ PP. 3-4.]

General Counsel's witnesses testified that when access was taken by Union representatives those representatives inquired as to working conditions, advised workers "of progress and developments in the negotiations," and also received some input from non-striking employees concerning particular contract proposals. Since the Union is the certified representative of ail the agricultural employees of Respondent, it follows a_ fortiori that it is the representative of those workers who have" declined to honor its picket line, as well as those who participate in the strike. See Seveld Wholesale, 218 NLRB No. 206, at p. 1350(1975)? of. Wallace Corporation v. N.L.R.B., 323 U.S. 248 (1944). The Union's duty to represent non-striking employees, as the evidence demonstrated, was facilitated by access to, and communication with, those employees. As noted in the Murphy decision, this duty, "which extends to the negotiation of contracts, cannot be discharged unless the union is able to communicate with the employees it represents." Id., p. 4, citing Prudential ,Q p Insurance Company of America y. N.L.R.B. , 412 F.2d 77, 71 LP.RJ1 : (C.A. *2t* 1969J, cert, den., 369 U.S. 9 28 (1969). The fact that the Union also utilized the taking of access to attempt to convince employees to join the strike does not militate against a finding that the Union was imparting to employees and receiving from them information concerning the negotiations pursuant to its role as their representative.

In further support for its position concerning post certification access, in the Murphy case, this Board cited National Labor Relations Board precedent to the effect that where no alternative means of communication with employees existed, collective bargaining representatives are entitled to access to an employer's premises. It then stated that a presumption arose in the context of agricultural labor that such alternatives did not exist. See also Tex-Cal Land Management, 3 ALRB No. 14 (1977), aff'd, 24 Cal.3d 335 (1979); A.L.R.B. v. Superior Court, 16 Cal.3d 392 at pp. 414-415 (1975). This presumption remained unrebutted in the instant situation, contrary to one of Respondent's contentions raised in its brief. Public address systems employed at the fields proved ineffective, as they

competed with machinery noise and radios, and could only be placed around the edges of fields, often at some distance from the workers to whom they were directed. Newspaper advertisements concerning the Union's demands, given the well-recognized high rate 5 [I of illiteracy among farm workers [see A.L.R.B. v. Superior Court, 16 Cal.3d 392, 414-415, 128 Cal. Rptr. 183, 546 P.2d 657 (1976)], likewise would not completely provide a satisfactory "alternative channel." Both of these methods, and radio broadcasts as well, do not allow the Union to garner any information from employees, as the Union, in utilizing these techniques, speaks to employees, rather than with them. Obviously, in meeting its obligation to represent employees the Union must receive information from them. As the Board recognized in Murphy, Union access is necessary to achieve that end. The strike herein does not alter these considerations.

Respondent seeks to distinguish 0. P. Murphy, supra, from the instant situation. It points to language in that decision to the effect that the issue of post-certification access is to be adjudicated on a case-by-case basis, and that no general rule concerning that access was enunciated by the Board. The Murphy case clearly states that the Board "will evaluate the extent of the need for such access on a case-by-case approach"; that an employer "may not deny post-certification access at reasonable times and places"; and that a "certified bargaining representative is entitled to take post-certification access at reasonable times and places for any purpose relevant to its duty to bargain collectively as the exclusive representative of the employees in the unit" (Id., p. 8; emphasis supplied). This is construed to mean that while access by the bargaining representative is presumptively valid and entitled to ALRA sanction, the manner and means by which such access is effectuated may be examined to determine whether the access privilege has been abused, therefore giving rise to appropriate limitations consonant with the policies of the Act.[13/] It is doubtful whether such access, under Murphy, might be eliminated in toto.

Respondent claims that the Union made no attempts to negotiate the access issue with it, as per the Board's recommendation in Murphy (Id., p. 10). This position is clearly belied by the facts or this case. Agreements concerning access between the parties were reached, after negotiations, in no less than two separate instances: in early 1979 regarding Respondent's Blythe operations, and following the initial filing of unfair labor practice charges after access was denied in the Salinas area. It was only after Respondent unilaterally abrogated the infernal settlement agreement allowing access in Salinas that the instant case arose.

Respondent further contends that the ruling in Murphy, supra, was limited to conduct which was not disruptive of an

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[13/] E.g., where access leads to restraint or coercion by union agents in violation of §1154(a), or where access disrupts normal work operations.

employer's operations. It argues that the strike and the efforts by Union agents to persuade working employees to join in the strike were in fact disruptive. While not discounting the fact that a strike might naturally be deemed "disruptive" as it per force seeks a cessation of an employer's operations through the withholding of labor by employees, it does not necessarily follow that access by Union agents, pursuant to their duties on behalf of the exclusive bargaining representative, would in all circumstances be disruptive. Access under the two agreements herein, as well as that ordered by the Monterey County Superior Court, was taken while employees were not actually working, i.e., before and or after work, or during the lunch break. No evidence was ore sented that this access in any way interfered with Respondent's regular operations.

Respondent's other arguments in support of its position are similarly unavailing. In its brief, Respondent contends that to permit access in these circumstances would be inconsistent with the §1152 rights of its employees to refrain from participation in concerted activities. Respondent repeatedly emphasizes that the purpose for taking access was to convince non-striking employees to join the strike, and ignores the evidence supporting the finding that Union representatives discussed negotiations and investigated working conditions at times when access was taken.[14/] Respondent presumes that the picket line herein was in and of it self coercive and that allowing access by Union representatives "would be nothing more than an extension of [that] coercion." It should not be subject to discussion although a picket line might be deemed "coercive" in some sense, picketing activity to publish the "facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the [federal] Constitution." Thornhill v. Alabama, supra. Apart from certain distinct regrettable incidents, the picketing here was, in the main, peaceful. Furthermore, contrary to Respondent's stance, it IQ ii has been demonstrated that violence (and hence coercion) was minimized, rather than aggravated, by the taking of access by Union representatives.[15/]

Respondent argues that permitting access by Union

[14/] Notwithstanding these findings, attempts to encourage strike participation, as long as they are accomplished by peaceful means, are clearly protected by the federal constitution. See Thornhill v. Alabama, 310 U.S. 88 (1940); and Carlson ' v» California, 3l0 U.S. 106 J1940),

[15/] The case cited by Respondent in support of its argument to the effect that Union" access was an extension of the coercion inherent in the picket line, District 65. Retail, Wholesale and Department Store Union, 157 NLRB 6l5, enf'd, 375 F.2d 745 (C.A. 2, 1967), is "clearly inapposite. There, organizers entered the employer's premises en masse, created a major commotion, and halted production. No such showing has been made here.

agents under the circumstance* here would violate its "right to privacy," under Article 1, §1 of the State Constitution, and that of its replacement workers, and that there has been no demonstration of a "compelling state interest" which might override such concerns.[16/] As noted by the California Supreme Court in A.L.R.B, v. Superior Court, 16 C.3d 392, 409 (1976), when it ruled upon the . ,.. constitutionality of the Board* s organizer access regulation, a rule granting access to union personnel is not a "deprivation of 'fundamental personal liberties' but a limited economic regulation of the use of real property imposed for the public welfare 17/ Although that case analyzed the Board's administrative rule regarding access in the face of the contention that the regulation amounted to an unconstitutional deprivation of a property right without just compensation, violative of the Fifth and Fourteenth Amendments, much of its reasoning is applicable to the instant I situation.18/

> The governmental policy in favor of collective bargaining as the ... preamble to the ALRA makes clear, is designed to benefit the public as a whole. It should scarcely be necessary, as we enter the last quarter of the 20th century, to reaffirm the principle that all private property is held subject to the power of the government to regulate its use for the public welfare. . . [T]he rights preserved to the individual by these constitutional provisions are held in subordination to the rights of society ... [T]he interest of society justifies ... restraints upon the use to which property may be devoted. ... Where the interest of the individual conflicts with the interest

[16/] It is exceedingly dubious that Respondent would have the proper standing to invoke the privacy rights of its employees as a defense. See, generally, Excelsior Underwear,Inc., 156 NLRB 1236 (1966); American' Foods, Inc., 4 ALRB No. 29
1978) .

[17/] another case concerning the right of a union to peacefully picket on private property and publicize the facts of a current labor dispute, the California Supreme Court noted that the interest of a landowner in preventing such conduct was but a "thin" and "technical" one. Sears Roebuck and Company v. San Diego District Council of Carpenters (1979), 25 Cal.3d 317 (1979).

[18/] The fact that the Board may seek to enforce a union's right to post-certification access by promulgation of a decisional rule, as opposed to an administrative regulation, does not make such a rule any less consonant with the requirements of due process. The choice between proceeding by general rule or by ad ho adjudication "lies primarily in the informed discretion of the administrative agency." Id., p. 413, citing Commissioner v. Cheney Corporation, 332 U.S. 19T, 203 (1947).

> of society, even individual interest is subordinated to the general welfare, ... [Id., p.403.]

It is clear therefore that the California Supreme Court did in fact find that a compelling state interest existed in the promulgation of rules enhancing the rights of agricultural employees vis-a-vis collective bargaining. The court, quoting with it approval language from Republic AviationCorp. v. N.L.R.B., 329 U.S. 793, 802, fn. 8 (1945), stated that"[i]nconvenience, or even some dislocation of property rights, may be necessary in order to safegurard the right of collective bargaining. . . . The [National Labor Relations] Board has frequently applied this principle in decisions involving varying sets of circumstances, where it has o held that an employer's right to control his property does not permit him to deny access to his property to persons whose presence is necessary there to enable the employees to effectively exercise their right to self-organization and collective bargaining." Id., p. 405.

Lastly, Respondent, more or less reiterating the above argument, submits that "'strike-time access' constitutes an arbitrary, capricious and unreasonable infringement, [violative of state and federal due process guarantees], of Respondent's constitutional right to live and work its own agricultural lands as it sees fit without the unreasonable and disruptive intrusions of union representatives seeking to cease production operations and force Respondent's employees to leave work to join the union's strike." This, contention flies in the face of the basic fact the. as a result of collective bargaining and the Union's representation, Respondent may no longer "live and work its own . . . lands as it [solely] sees fit," but must consult and hopefully reach agreement with the Union on matters affecting its employees' wages, hours and terms and conditions of employment. It is also based on the premise, not supported by the evidence, that strike access was disruptive herein and that its sole purpose was to encourage employees to join the Union's strike. Furthermore, as the California Supreme Court noted in the access regulation case, the requirements of due process are satisfied if a rule or regulation "has a reasonable relationship to a proper public purpose and is neither arbitrary nor discriminatory." Id., p. 410. As noted ' above, permitting access to the Union enhances its effectiveness as collective bargaining representative, and as such, assists employees in realizing their right to self-organization as per §1152 of the Act, recognized as a "proper public purpose." Limitations placed on the time, place, purpose and manner of taking access would cure any defects regarding the arbitrariness or discriminatory nature of this access. Id. Such limitations would perforce be an inherent part of any remedy which would arise from an access denial. Therefore, due process considerations would be satisfied.

B The §1153(e) violation

Having determined that the Union, even though engaged

a post-certification strike, is entitled to access to Respondent's properties for the purpose of communicating with employees, the issue remains as to whether the denial of such access constitutes "restraint, coercion, or interference" within the meaning of §1153(a) of the Act. In p. P. Murphy, supra, p. 8, the Board stated that "where an employer does not allow the certified bar-gaining representative reasonable post-certification access to the unit employees at the work site, henceforth such conduct will be considered as evidence of a refusal to bargain in good faith." (Emphasis supplied,) By implication, the Board appeared to be following the line of NLRB cases which associates a denial of I access to a bargaining agent, after a request for same, with the I violation of an employer's duty to provide to that representative information relevant and necessary to collective bargaining, giving rise to a violation of §8(a)(5) of the National Labor Relations Act. See, generally, Fafnir Bearing v, N.L.R.B., 362 F,2d o 716 (C.A. 2, 1966); Wayeross Sportswear$_f$ Inc. v. N.L.R..B, 69 LRRM 4 2718 (C.A. 5, 1968); General Electric Company v. N.L.R.B., 414 F.2d 918 (C.A. 4, 1969); N.L.R.B. v. Metlox Manufacturing Company, 83 LRRM 2331 (C.A. 9, 1972); Borg-Warner Corp., 198 NLRB No. 93, 80 LRRM 1790 (1972) ; Wilson Athletic Goods manufacturing Co., Inc., 169 NLRB 621 (1963); Winn-Dixie Stores, Inc., 224 NLRB No. 190, 92 LRRM 1625 (1976).

As reflected by the evidence herein, the obtaining of information regarding Respondent's work operations was but one of a series of purposes for which access was sought. Additionally, access takers discussed the strike and apprised workers of the status of negotiations.

In the Tex-Cal case, supra, the Board held that "the protected rights of agricultural employees under Section 1152 of our Act and the Regulations includes the right to receive information regarding the advantages and disadvantages of unionization." Quite clearly, the "advantages and disadvantages of unionization" become nowhere more manifest than when they are put into practice via the process of collective bargaining. Prior to certification, these factors are on a more-or-less theoretical, or hypothetical201 level; after a union has been selected as bargaining representative, the goals of self-organization are translated into the practicalities of hammering out a collective bargaining agreement, and the representation of employees prior to and following the reaching of that agreement, when and if such is achieved. Communication with employees following certification, given these considerations, becomes critical.

Section 1152 of the Act guarantees to employees the right to "assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection...." Discussions between union representatives and employees during the course of negotiations, notwithstanding the existence of a strike, are obviously within the ambit of the rights enumerated above. Workers provide input to representatives and learn of the fruits

of collective bargaining via these discussions. Hence, they "assist" the labor organization representing then in the collective bargaining process. Communication between workers and their representatives provides the means by which employees participate or "engage" in that process, apart from, but in addition to, whatever role the workers may play at the bargaining table itself. In light of the presumption that no alternative means, other than access, of communication with employees exists, see O. P. Murphy, supra; A.L.R.B. v. Superior Court, supra, measures which unduly restrict the right of workers to speak with agents of their union via union access therefore "interfere with, [and] restrain agricultural employees in the exercise of the rights guaranteed in Section 1152," within the meaning of 51153(a) of the Act. Accordingly, the denial of access following certification herein constituted a violation of §1153(a), and I so find.

Other considerations appertain to the rationale for finding a violation of §1153(a) in this case. Although no specific evidence was presented that Union representatives went on the Employer's property to solicit, investigate or process grievances, it might logically be assumed that such activities would be a natural consequence of communication between employees and their representatives. This is particularly so in light of testimony to the effect that access takers inquired into and discussed working conditions with employees.

In one of the early NLRB cases dealing with the issue of representative access, that Board and the enforcing appellate court dealt with the question of whether the refusal to grant the union representatives access to , , . personnel restrained and coerced the latter in the exercise of rights guaranteed them by §7 of the N.L.R.A., thereby violating §8(a)" [the equivalent to ALFA §§1152 and 1153(a), respectively]. N.L.R.B. v. Cities Service Oil Co., 122 P.2d 149, 8 LRRM 540, 541 (C.A. 2, 1941). finding such a violation, the Second Circuit noted that "with access these representatives may learn the nature of, assess the value of, and properly present grievances on behalf of [employees]; . . . without access, these representatives cannot effectively accomplish these tasks? and that the grievance procedure which involves access is necessary for the protection of the right to bargain collectively through representatives of their own choosing as guaranteed in §7 of the Act. ... The result of refusing passes [permitting access] is undoubtedly to prevent the most effective sort of collective action by employees. . . Therefore the union must have [employees] readily accessible in order to work to any real advantage." [8 LRRM 540, 542,] Similarly, in the instant case, given the established inefficacy of alternative means of communication, "denials of access during negotiations prevent the most effective sort of collective action by employees" in that problems occurring in the course of the working relationship between employees and their employer cannot be fully explored if those employees are insulated from their representatives. Since "conditions of employment" are a prime subject of collective bargaining (see ALRA §1156), inhibiting exchanges concerning them between employees and their

representatives as a result of denying the latter access "interferes" and "restrains" the right of employees to "assist labor organizations" and to "engage in other concerted activities for the purpose of collective bargaining," thereby violating §1153(a) of the Act.

Notwithstanding any of the foregoing, an independent ground exists for finding a violation of §1153 (a) herein, in that access was denied to Union representatives not only at Respondent's fields but also at its labor camp. It is well settled that the right of access to employee homes is derived from §1152 itself and is not based on the "access rule" contained in the Regulations. Vista Verde Farms, 3 ALRB No. 91 (1977). As noted above, communication between employees and agents of their certified representatives during negotiations might well be more crucial than that between unrepresented employees and union personnel. Since violations of §1153 (a) occur when access to labor camps is denied to organizers [see, e.g., Sam Andrewo Sons, 3 ALRB No. 45 (1977),rev'd other grds, Cal.App.3d C«A. 2d Dist. 1980); Whitney Farms, 3 ALTS? No. 68 (1977) High and Mighty Farms, 6 ALRB No. 34 (1980)] , it follows a fortiori that a violation of §1153 (a) is established when access To employee residences is denied to agents of a collective bargaining representative.

THE REMEDY

As I have found that the Union's right to strike access is grounded upon its duty as collective bargaining representative, apart from other considerations, the remedy herein, underscoring that right, must be tailored to the Union's role as a certified representative, as distinguished from its function when it seeks to organize unrepresented employees. Access as extensive as that provided for by the ALRB organizers access regulation is accordingly considered unnecessary. The short period between the filing of a representation petition and the election itself [see AJ.RA §1156.3(a)(4)], dictates that organizer efforts be concentrated within a minimal time span. Although collective bargaining agreements should optimally be concluded as expeditiously as possible, similar time constraints on union representatives do not exist. In addition, the effectiveness of representative access in reducing violence and physical confrontations is interrelated with the presence of law enforcement personnel at work sites. Thus, any remedy provided for in strike access situations might in all likelihood involve a commitment of local law enforcement personnel to ensure that this access would proceed without incident.

The natural tension which exists between striking employees withholding their labor in an effort to redress economic demands and non-striking employees who are acting contrary to that intent and in effect are occupying the strikers' employment positions must be minimized. Wholesale exposure of non-striking I employees to harangues and exhortations by union adherents to join the strike (as opposed to gathering and receiving information for collective bargaining) might well exacerbate, rather than mollify, such tension.

As stated in the O.P. Murphy case, supra,

> The purpose for taking access must be related to the collective bargaining process. Absent unusual circumstances, the labor organization must give notice to the employer and seek his or her agreement before entering the employer's premises. The labor organization must give such information as the number and names of the representatives who wish to take access, and the times and locations of such desired access. The parties must act in good faith to reach agreement about post-certification access. The right of access does not include conduct disruptive of employer's property or agricultural operations.19/

A strike is, by definition, "disruptive of employer's . . . agricultural operations," Strike access, therefore, should not be utilized as a means to amplify this disruption beyond that which is already inherent in a strike situation,

Accordingly, rather than order access to work sites during the strike on a daily basis, it is recommended that access at those locations be restricted to three times per week, at the times and in such numbers as stated in the Board's access regulation. Given the different circumstances upon which access to labor camps is based, it is recommended that access to the camps be permitted daily.

RECOMMENDED ORDER

Pursuant to Labor Code §1160.3, IT IS HEREBY ORDERED that the Respondent, Growers Exchange, Inc., its officers, agents, successors and assigns shall;

1. Cease and desist from:

(a) Preventing Union representatives from entering its fields or labor camp, subject to the restrictions set forth below.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights guaranteed by §1152 of the Act.

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

(a) During the course of the strike being conducted

19/ The evidence reflected that the provision of notice and an attempt of a voluntary agreement were aspects of the instant situation.

by the United Farm Workers of America, AFL-CIO, involving Respondent, permit access by Union representatives to its fields three times weekly, and to its labor camp daily, as follows:

(i) Union representatives nay enter the property of the Respondent or that on which it is conducting harvesting operations for a total period of one hour before the start of work and one hour after work to meet and talk with employees in areas in which employees congregate before and after working. Such areas shall also include buses provided by the Respondent or by a labor contractor in which employees ride to and from work, while such buses are parked at sites at which employees are picked up or delivered to work. Where employees board such buses more than one hour before the start of work, representatives may have access to such buses from the time when employees begin to board until such tine as the bus departs.

(ii) Union representatives may enter the Respondent's property, or that on which it is conducting harvesting operations, for a single period not to exceed one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall encompass the time when employees are actually taking their lunch break, whenever that occurs during the day. Union representatives shall have access prior to and after the lunch period to enable them to be present and talk to the employees throughout the entire lunch period.

(iii) Union representatives may enter the Respondent's property at its labor camp or camps for a period of two hours immediately before dinner commences to meet and talk with employees and to distribute literature in areas in the labor camp in which employees congregate after working. Union representatives are limited to the public area, and may not knock on barracks doors or enter barracks unless invited by a resident.

(b) Procedures regarding the number of representatives, identification of representatives, notice to be provided by the Union and prohibited conduct during access are as follows:

(i) NUMBERS. Access shall be limited in the morning to two representatives for each crew of workers provided j that if there are more than 30 workers in a crew, there may be one additional representative for every 15 additional workers.

Access during lunch period shall be limited to two representatives for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional representative for every 15 additional workers. In the case of a single worker, only one Union representative may take access.

Access during the afternoon at the labor camp shall be limited to six representatives for the labor camp,

provided that if there are more than 60 workers who reside in a particular labor camp, there may be one additional representative for every 10 additional workers.

(ii) IDENTIFICATION. Upon request, representatives shall identify themselves by name and labor organization to the Respondent or law enforcement officials or their agents. Representatives shall also wear a badge which clearly states his or her name, and the name of the organization which the representative represents.

(iii) NOTICE. The Union shall provide a written list of those persons it has authorized to take access to the Respondent and to the ALRB, Such list shall be provided 3 within 48 hours of the first day on which access is to be taken. Any modification of that list must be received by those listed above at least 48 hours prior to the time that the modification becomes effective.

The Union shall notify the Respondent and the ALRB by 5:00 p.m. the day before access is to be taken at a labor camp of their intent to take access and of the time and place for access. Notification by phone is sufficient.

(iv) PROHIBITED CONDUCT. The right of access shall not include conduct disruptive of the Respondent's property or agricultural operations, including injury to crops or machinery or interference with the process of boarding buses, nor does it include the right to disturb the peace and quiet of the camp, engage in coercive conduct, or engage in any other unlawful conduct. Speech by itself shall not be considered disruptive conduct,

(c) This Order shall not limit access to the labor camps when individual (s) have been invited into the labor camps, including any part thereof, by a resident of the labor camp.

(d) Sign the Notice to Employees attached hereto. After its translation by a Board agent into Spanish and any other appropriate language(s), Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice at tires and places to be determined by the Regional Director. The notices shall remain posted for 60 consecutive days thereafter. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed."
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(f) Mail copies of the attached Notice in Spanish and any other appropriate language, within 30 days after the date of issuance of this Order, to all employees employed at any time from June 26 through July, 1973, and during March, 1979.

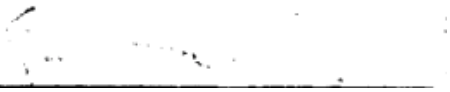
(g) Arrange for a representative of Respondent or a Board agent to read the attached Notice in Spanish and any

other appropriate language to the assembled employees of Respondent on Company time. The reading or readings shall be at such tines and places as are specified by the Regional Director. Following the reading, the Board agent shall be given the onoortunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice of their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with the Order.

Dated: September 19, 1980

AGRICULTURAL LABOR RELATIONS BOARD

By 

Matthew Goldberg
Administrative Law Officer

NOTICE TO WORKERS

After a trial in which each side had an opportunity to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely discuss with Union representatives about Union affairs.

We will do what the Board has ordered, and also tell that: the Agricultural Labor Relations Act is a law of the State of California which gives farm workers these rights:

1. To organize themselves.

2. To form, join, or help unions.

3. To choose, by secret ballot election, a union to represent them in bargaining with their employer.

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

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

Because this is true, we promise that WE WILL NOT do anything in the future that forces you to do, or prevents you from doing, any of the things listed above.

Especially, WE WILL NOT:

Prevent or interfere with your communications with Union representatives at our labor camps or premises where you work.

DATED: GROWERS EXCHANGE, INC,

By: _____
Representative Title

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