Hollister, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAM ANDREWS' SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 81-CE-258-D 8 ALRB No. 87

SUPPLEMENTAL DECISION

On November 30, 1982, we issued a Decision and Order in the above-captioned matter. On our own motion, and pursuant to Labor Code section 1160.3, paragraph 2, we make the following modifications to our original Decision.

To the end of the second full paragraph on page 2, we add as footnote 1:

> The court noted that in referring to "First Amendment rights" it implied no exclusive reliance upon the United State Constitution. Rather, the court explained, "... we bottom our conclusion on provisions of the California Constitution, particularly article I, . section 2, thereof." (United Farm Workers of America v. Superior Court, supra, 14 Cal.3d at 909 n. 6.) We bottom our conclusions herein regarding farmworkers' and labor organizers' constitutional rights on the same provisions of the California Constitution, as well as on article I, section 1, thereof.

Existing footnote 1 on page 5 is renumbered footnote 2, and the following is added to said footnote:

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We further distinguish NLRA labor camp access cases from ALRA cases in that in California such cases involve California Constitutional rights. (United Farm Workers of America v. Superior Court, supra, 14 Cal.3d 902.)

Dated: January 5, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

Holtville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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DECISION AND ORDER

On June 21, 1982, Administrative Law Officer (ALO) Joe H. Henderson issued the attached Decision in this proceeding. Thereafter, Respondent, the Charging Party, and the General Counsel each filed exceptions and a supporting brief. Respondent and the Charging Party each filed a reply brief.

Pursuant to the provision of Labor Code section 1146, the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.

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

We affirm the ALO's finding that Respondent unlawfully denied United Farm Workers of America, AFL-CIO (UFW or Union) organizers access to Respondent's Lakeview Labor Camp on October 28 and 29, 1981. However, we reject the ALO's recommendations that Respondent be ordered to erect bulletin boards at the labor camp

and that the Union be granted only limited access to barracks and dining halls for the purpose of announcing times and places of union meetings.

Lakeview Labor Camp is located south of Bakersfield, California, about. 12 miles from Mettler and 28 miles from Lament. The camp is a large, fenced-in compound containing, inter alia, two barracks, a kitchen and dining facility, and separately fenced storage areas. Respondent admits that it denied access on the stated dates, but argues that the Union should be denied all access to Respondent's labor camp because alternative means of communication are available, because workers' rights to receive visitors are outweighed by other workers' rights to privacy, and because a no-access rule is necessary for protecting camp security.

The California Supreme Court considered the question of labor camp access rights in a pre-Agricultural Labor Relations Act (ALRA or Act) case, United Farm Workers of America v. Superior Court (1975) 14 Cal.3d 902. In that case, the Supreme Court vacated the trial court's temporary restraining order limiting picketing and labor organizer access to the respondent's labor camp. In overruling the restraining order, the court recognized First Amendment free speech rights belonging both to labor camp inhabitants and to union organizers and attorneys who visited them. (United Farm Workers of America v. Superior Court, supra, 14 Cal.3d at 910.)

In an election case, Silver Creek Packing Co. (Feb. 16, 1977) 3 ALRB No. 13, this Board held that the right of agricultural workers to communicate with labor organizers is implicit in Labor Code section 1152 rights. We set the election aside because,

inter alia, the employer had denied organizers access to its labor camp. Our Decision stated,

> We have determined that communication at the homes of employees is not only legitimate, but crucial to the proper functioning of the Act. [Citations omitted.] An employer may not block such communication. The fact that an employer is also a landlord does not give him a license to interfere with the flow of discourse between union and worker.
> (Silver Creek Packing Co., supra, 3 ALRB No. 13 at p. 4.)

In another Decision upholding labor organizers' access rights to labor camps, Merzoian Brothers (July 29, 1977) 3 ALRB No. 62, review denied by Ct. App., 5th Dist., Sept. 28, 1979, we said,

> The right of employees who are residents of a labor camp to receive visitors is akin to the rights of a person in his own home or apartment. The owner or operator of a labor camp cannot exercise for the worker his right not to receive visits from union organizers.
> (Merzoian Brothers, supra, 3 ALRB No. 62 at p. 4.)

Accomodation must be made for the rights of the tenant as well as the camp owner and organizer, Merzoian continues, and

> It is our duty to balance these rights and a heavy burden will lie with the owner or operator of a camp to show that any rule restricting access does not also restrict the rights of the tenant to be visited or have visitors.
> (Merzoian Brothers, supra, 3 ALRB No. 62 at p.4.)

Further, we expressed our conviction in Vista Verde Farms (Dec. 14, 1977) 3 ALRB No. 91, affirmed, 29 Cal.3d 307, that denials of labor camp access rights have a coercive effect on the exercise of protected rights and are therefore unlawful even apart from their interference with communications between employees and organizers. We concluded that,

> When an employer. . .uses his power as landlord to dictate to employees that they cannot receive union visitors in their own homes, that action is in itself an awesome display of power which cannot but chill enthusiasm for union activity. The normal effect of such a showing of control over employees' lives is to give workers a sense of futility and thereby restrain the exercise of self-organizational rights in violation of the Act.
> (Vista Verde Farms, supra, 3 ALRB No. 91 at p. 6.)

In a more recent Decision, Bruce Church, Inc. (Aug. 10, 1981) 7 ALRB No. 20, we reaffirmed Silver Creek Packing Co., supra, 3 ALRB No. 13 and Merzoian Brothers, supra, 3 ALRB No. 62, in concluding that the respondent had violated the Act by denying access to its labor camps.

Most decisions regarding union organizer access under the National Labor Relations Act (NLRA) have involved work site access, and have generally held that union organizers have a right of access if no other reasonable means of communication exists, but that the right is subject to the employer's reasonable rules necessary to maintain production or discipline. (Sabine Towing & Transportation Co., Inc. v. NLRB (5th Cir. 1979} 599 F.2d 663 [101 LRRM 2956]; NLRB v. Tamiment, Inc. (3rd Cir. 1971) 451 F.2d 794 [78 LRRM 2726]») We find that the NLRA work site access decisions are not applicable precedent for cases involving access to California agricultural labor camps, where worker/tenants have not only organizational rights under Labor Code section 1152, but also constitutional free speech and privacy rights akin to those of

a person in his or her own home or apartment.[1/]

Thus, the NLRA standard of allowing access only if no alternative reasonable means of communication exist is not the standard to be applied in California agricultural labor camp access cases. Rather, the prior labor camp access decisions of this Board are applicable precedent. Applying ALRA precedents to the facts at hand, we find that Respondent has not met its heavy burden of showing that its rules restricting access do not also restrict the rights of labor camp residents to have visitors. (Anderson Farms Co. (Aug. 17, 1977) 3 ALRB No. 67; Merzoian Brothers, supra, 3 ALRB No. 62.)

Respondent's argument that denial of access to its labor camp is necessary to prevent potential violence is answered in Growers Exchange, Inc. (Feb. 9, 1982) 8 ALRB No. 7, in which the employer argued that it was justified in denying labor camp access on account of isolated acts of violence. The Board reasoned that such a blanket denial of access on the basis of unlawful conduct of individuals would punish an entire group in order to remedy the willful misconduct of a few of its members. Since violence is

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[1/] We note that one NLRA case, NLRB v. Lake Superior Lumber Corp. (6th Cir. 1948) 167 F.2d 147 [18 LRRM 1345], involves organizer access rights to a lumber camp where workers resided and did not work. That case applied—incorrectly, we believe—the NLRA access standards established in work site access cases, under which organizers must show no reasonable alternative means of communication and the employer may limit access rights by establishing rules necessary to maintain production and discipline. The decision does not discuss the organizers' or camp residents' free speech rights or the residents' rights to receive visitors in their own homes; it also does not explain how "production or discipline" could be adversely affected by access to premises where the workers live but do not work.

independently enjoinable, the Board found it appropriate to deal with such unlawful conduct directly rather than indirectly.

Respondent's argument that access must be denied to protect workers' privacy is answered by the Board in Anderson Farms Co., supra, 3 ALRB No. 67, in which we held that the owner of a labor camp cannot exercise the workers' privacy rights for them.

We conclude that Respondent violated Labor Code section 1153 (a) by denying UFW organizers access to agricultural employees at its Lakeview Labor Camp on October 28 and 29, 1981. We are greatly concerned that Respondent has twice previously been found in violation of Labor Code section 1153 (a) by this Board for denying union organizers access to the same labor camp with which we are dealing herein. (Sam Andrews' Sons (Nov. 30, 1979) 5 ALRB No., 68 j Sam Andrews' Sons (June 10, 1977) 3 ALRB No. 45, remanded, 28 Cal.3d 781, Supplemental Decision and Order (Aug. 30, 1982) 8 ALRB No. 58.) This is therefore the third time we have found it necessary to order Respondent to cease interfering with union organizers taking access to Respondent's labor camp. This Board will not tolerate Respondent's flagrant disregard of our orders in the future.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Sam Andrews' Sons, its officers, agents, successors, and assigns, shall:

1. Cease and desist from;

(a) Preventing, limiting, or restraining any union

organizers or agents from entering and remaining on the premises of Respondent's labor camps for the purpose of contacting, visiting, or talking to any agricultural employee on the premises.

(b) In any like or related manner, interfering with, restraining, or coercing agricultural employees in .their right to communicate freely with union organizers or agents on the premises of Respondent's labor camps.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Agricultural Labor Relations Act (Act):

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

(b) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from October 28, 1981, until the date on which the said Notice is mailed.

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

(d) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on

company time and property at time(s) and place (s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their 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.

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

Dated; November 30, 1982

JOHN P. McCARTHY, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office by United Farm Workers of America, AFL-CIO, the certified, exclusive bargaining agent for our agricultural employees, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Sam Andrews' Sons, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by denying union organizers access to agricultural employees at our Lakeview Labor Camp. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

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

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

WE WILL NOT hereafter prevent, limit, or restrain any organizers or agents from entering and remaining on the premises of our labor camps for the purpose of contacting, visiting, and/or talking with any agricultural employee.

WE WILL NOT in any other manner restrain or interfere with the right of our employees to communicate freely with any union organizers or agents on the premises of our labor camps.

Dated: SAM ANDREWS' SONS

By: ______________________________

Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California, 93215. The telephone number is (805) 725-5770.

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

Sam Andrews' Sons	8 ALRB No. 87
(UFW)	Case No. 81-CE-258-D

ALO DECISION

The ALO concluded that Respondent had violated Labor Code section 1153(a) by denying United Farm Workers of America, AFL-CIO (UFW) organizers access to Respondent's Lakeview Labor Camp. The ALO recommended that Respondent be required to erect bulletin boards at the camp for posting UFW notices of union meetings. However, the ALO recommended that UFW organizers' access to camp barracks and dining halls be prohibited except for the purpose of announcing times and places of union meetings.

BOARD DECISION

The Board affirmed the ALO's conclusion that Respondent had unlawfully denied UFW organizers access to Respondent's labor camp, but overruled his limitations on that access. The Board examined National Labor Relations Act work site access decisions and found that they are not applicable precedent for cases involving access to California labor camps, where worker/tenants have not only organizational rights under Labor Code section 1152, but also constitutional free speech and privacy rights akin to those of a person in his or her own home. The Board applied Agricultural Labor Relations Act labor camp access precedent cases to find that Respondent had not met its heavy burden of showing that its rules restricting access did not also restrict the rights of labor camp residents to receive visitors.

* * *

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

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STATE OF CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of SAM ANDREWS' SONS -and- UNITED FARM WORKERS OF AMERICA, AFL-CIO	CASE NO. 81-CE-258-D Hearing Officer's Report

Appearances:

Hearing Officer: JOE H. HENDERSON
P.O. Box 463
Santa Rosa, CA 95402

Respondent: JYRL A. JAMES
Seyfarth, Shaw, Fair-
weather & Geraldson
2029 Century Park East
Suite 3300
Los Angeles, CA 90067

A.L.R.B: JUAN ARAMBULA
Agricultural Labor
Relations Board
Delano Regional Office
627 Main Street
Delano, CA 93215

The complaint on this matter was filed by the Regional Director in Delano on November 5, 1981 and was served upon the Respondent on November 5, 1981.

The complaint reads as follows:

COMPLAINT

The charging party has charged that San Andrews' Sons (Respondent) has engaged in, and is now engaging in, unfair labor practices affecting agriculture 33 set forth and defined in Labor Code Section 1140 et seq. The General Counsel of the Agricultural Labor Relations Board, by the undersigned Regional Director hereby

issues this complaint pursuant to Labor Code Section 1160.2 and 8 California Administrative Code Section 20220.

1. True and correct copies of the original unfair labor practice charges were filed and served by the charging party on the following dates.

Charge Number	Date Filed	Date Served
81-CE-258-D	11/5/81	11/5/81

2. Respondent is an agricultural employer within the meaning of Labor Code section 1140.4(c) doing business in the State of California.

3. The United Farm Workers of America, AFL-CIO is a labor organization within the meaning of Labor Code section 1150.4(b).

4. At all times material herein, the following named persons occupied the positions set opposite their names and have been, and are now, supervisors within the meaning of section 1140.4 (j) of the Agricultural Labor Relations Act (Act) and agents of Respondent acting on its behalf;

Pieter Van Leuven	Attorney
Bob Garcia	Personnel Director
Steve Rodriguez	Supervisor
Guard Robinson	Security Guard
Guard Johnson	Security Guard

5. On or about October 28 and October 29, 1981, Respondent through Bob Garcia, Pieter Van Leuven and numerous uniformed security guards, refused to

permit UFW organizers to take access to Respondent's Lakeview Ranch Labor Camp for the purpose of making contact with and speaking to members of the UFW.

By the acts described in paragraph 5 above, and by each of said acts, Respondent interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in section 1152 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting agriculture within the meaning of Labor Code section 1153(a).

WHEREFORE, relief is prayed for, including but not limited to the following:

1. An order requiring Respondent to cease and desist from denying access to union agents at company labor camps.

2. An order requiring Respondent to post a notice containing the terms of the Board's order in writing in Spanish and English in conspicuous places on Respondent's property for one year at locations to be decided by Board agents.

3. An order requiring representatives of Respondent or a Board agent to read and explain the notice to agricultural employees during working hours at a time to be determined by the Regional Director and to allow a Board agent to answer questions of employees outside the presence of the employer or its representatives.

4. An order requiring Respondent to mail a notice

containing the terms of the Board's order in writing to the last home address of all 1981 lettuce harvest employees.

5. An order requiring Respondent to make periodic reports to the designated agent of the Board, under penalty of perjury illustrating compliance with the Board's order.

6. Such other and further relief as will effectuate the policies of the Agricultural Labor Relations Act as the Board deems just and proper.

The respondent SAM ANDREWS' SONS answered the Complaint on November 18, 1981 as follows:

ANSWER TO COMPLAINT

1. Respondent denies the allegations contained in Paragraph 1 based on information and belief.

2. Respondent admits the allegations contained in Paragraphs 2 and 3 of the Complaint.

3. Respondent admits that some of the individuals listed in Paragraph 4 of the Complaint have acted as agents for Respondent at certain times for specified purposes, but Respondent denies each and every allegation contained in Paragraph 4 based on uncertainty and ambiguity as to time and purpose.

4. Respondent denies each and every allegation contained in Paragraph 5 of the Complaint.

WHEREFORE, Respondent requests that the Complaint against Respondent be dismissed in its entirety.

SUMMARY OF FACTS;

The Camp, Lakeview, is located 12 miles from Mettler and 28 miles from Lament in the area south and west of Bakersfield. The entire compound is encircled by a chain-link fence, as are the other areas within the compound, such as the kitchen, shop, storage and barracks areas. Each of these areas can be locked . independently to prevent movements within the compound. In addition, the entrances to the camp are guarded by company guards.

When the strike against the respondent began, the respondent placed tarps around the compound on the chain-link fence. Shortly before the denial of access, as herein alleged, respondent placed at the entrance to the barracks area a guard booth from which guards stood watch 24 hours per day. The guards could view the activities taking place in the adjacent park area.

The two barracks each contain groups of bunk beds separated by wooden partitions some eight feet high. The employees in some cases improvised curtains to increase the degree of privacy.

The barracks contained a shower/bathroom facility and a lounge area at opposite ends of each of the two barracks. There are separate eating facilities within the compound.

A company owned park boarders the barracks.

The procedure required by the employer to gain access to workers within the barracks consisted of contacting the guard at the gate and telling the guard the name of the person you wish to speak with. The guard would then contact the person within the compound to see if he wished to come to th gate. If the Union organizers did not know the name of the worker, it would be

difficult to speak to a person within the camp.

San Andrews' and the United Farm Workers have been attempting to reach a collective bargaining agreement for almost three years. There has been a long history of hard bargaining prior to the United Farm Workers being certified as the bargaining representative.

A strike was called against the respondent in the first part of July, 1981. The strike continued during the period of denial of access.

The Respondent admitted that its agents denied United Farm Worker representatives access to the barracks and/or dining hall at Lakeview. The Respondent asserted as its defense to general counsel's allegations as follows:

1. The availability to the Union of reasonable alternative means of communication with Respondent's employees;

2. The need for security at Lakeview;

3. Privacy concerns with respect to Lakeview residents; and

4. The unreasonableness of permitting union organizers access to the barracks and dining facility at Lakeview.

There are no private rooms in either barrack and no place in which a residents can totally seclude themselves.

The areas between the ends of the rows of beds and bathrooms are approximately ten to fifteen feet wide and extend the width of the barracks. Residents sometimes use this limited space to play cards or to watch television. There is no place to accomodate group meetings without, making all labor camp residents a captive audience.

The group nature of the living quarters at Lakeview is further evidenced by the fact that a single light switch controls the lighting for the entire facility.

There is a pay telephone in the barracks for the use of the residents for either receiving or making calls.

GENERAL COUNSEL'S ARGUMENTS & STATEMENT OF PERTINENT CASES:

Once the denial of access has been established, the employer has a heavy burden to establish that its policy, does not restrict the rights of tenants to be visited or have visitors, Anderson Farms Co., 3 ALRB No. 67. Respondent clearly has not met this burden.

In California, there clearly exists a constitutional right of access to labor camps. In United, Farm Workers vs. Superior Court (Buak) (1975), 14 C. 3d 902, prior to the initial implementation of the Agricultural Labor Relations Act, the State Supreme Court considered the issue of labor camp access by union organizers to employer-owned premises.

On page 910 the court said, many courts have recognized a 1st amendment right of access--We are persuaded by the reasoning and join in their reading of the 1st amendment rights". On the same page the courts stated, "A labor housing facility is not, of course, the equivalent of a prison isolation block, impervious to visitation".

ALRB precedent clearly establishes right of labor camp access. One of the initial ALRB cases to consider the issue of camp access ws Silver Creek Packing Co. (1977) 3 ALRB No. 13. There the camp, much like the present case, was surrounded by a

cyclone fence with posted "No Trespassing" signs and a locked gate and guards day and night. The Board recognized that implicit in section 1152 rights "is the opportunity of workers to communicate with and receive communication from labor organizers about the merits of self-organization". The Board's policy then and now is to assure the right of communication, by keeping open all legitimate channels of communication between labor organizers and employees.

The Board has also held that an employer cannot block such communication. The mere fact that an employer is also a landlord does not give it a license to interfere with the flow of discourse between a union and a worker. Mitch Knego, 3 ALRB No. 32, the Board extended section 1152 protection for right of access to workers at their homes, even where the employees share their dwellings with agents of the employer.

In a more thorough analysis of the issue, the Board, in Merzoian Brothers, 3 ALRB No. 62, affirmed its policy of camp access when it held that Respondent committed a section 1153(a) violation by denying access to union organizers to a labor camp under its control. The Board also held that field access regulations has no bearing whatsoever on labor camp access and are not applicable to visits by union organizers to labor camps. See Sam Andrews' Sons, 4 ALRB No. 59.

The facts in Merzoian were that the employer's agents shut and locked the camp at night (the camp surrounded by fences), not unlocking it until the workers left in the morning, with only four persons having keys. The facts in the instant case are strikingly similar. The camp was enclosed, closed and locked at

night, with entry or exit dependent on the guards present. General Counsel presented uncontradicted testimony, furthermore, that workers within the camp wanted to speak with organizers. As the Board stated:

> "The right of employees who are residents of a labor camp to receive visitors is akin to the rights of a person in his own home or apartment. The owner or operator of a labor camp cannot exercise for the worker his right not to receive visits from union organizers. Unlike our dissenting colleague, we recognize that accomodation must be made for the rights of not just the owner and the organizer, but also for the tenant who has a basic right to control his own home life. It is our duty to balance these rights and a heavy burden will lie with the owner or operator of a camp to show that any rule restricting access does not also restrict the rights of the tenant to be visited or have visitors."

As a remedy, the Board issued a broad cease and desist order, preventing or interfering with communication between organizers and employees at the place where employees live.

In Anderson Farms, 2 ALRB No. 67, the Board further expanded labor camp access by rejecting the employer's justification of denial of access as necessary to protect employees from being pestered by organizers. The Board stated,

> "If an employee does not wish to speak with an organizer, that is, of course, his or her right. The owner of the camp cannot exercise that right for the worker . . . We cannot vest in an employer, embroiled in the midst of a heated organizational campaign, the blanket authority and responsibility for 'protecting' workers from visits by union organizers . . ."

It is important to note that Respondent only began to enforce its alleged "long-standing" policy when the strike was begun in July of 1981. In addition, tarps covering the fences were also put up

shortly after.

In Vista Verde Farms, 3 ALRB No. 91, the Board held that organizers do not have to be specifically invited by particular employees within the camp, and that an employer may not draw any contrary inferences. In the present case, General Counsel made clear that Respondent's "policy" required knowing the name of a resident within the camp who would "invite" the organizers, a clear violation of Vista Verde. Thus, if a worker's name was unknown, there was no way to visit the employee at him home, the camp.

The Board, in Vista Verde, further held that denials of labor camp access had a coercive effect on the exercise of protected rights, and that such denials of access are unlawful, apart from prohibited interference with communications. The rationale is that the employer's use of such power over union visitors will necessarily chill enthusiasm for union activity. The net effect is to give workers a sense of futility.

This is specially so where the atmosphere surrounding the denial is highly charged and coercive. Here, as stated before, the denial took place during a strike by the United Farm Workers and during a protracted period of contract negotiations. In George Lucas, 4 ALRB No. 86, under similar conditions, th Board held Respondent had notice of its obligation to permit access to organizers, even though the violation occurred on the very first effective day of the Act, based upon a broad reading of section 1152 rights and the Buak decision. Thus, Respondent certainly cannot argue at that late date that it had no notice of the right of labor camp access.

RESPONDENT'S ACTIONS ARE NEITHER WARRANTED NOR JUSTIFIABLE; NOR HAS RESPONDENT SHOWN THE AVAILABILITY OF EFFECTIVE ALTERNATIVE METHODS OF COMMUNICATION.

Respondent may wish to argue that there is not precedent for labor camp access during a strike. Cases do clearly indicate the authority for organizer access during a strike situation.

The employer will undoubtedly also allege its actions were taken for reasons of protecting worker privacy. This defense, however, had already been found pretextual in prior Sam Andrews' camp access litigation. (3 ALRB No. 45). In any event, General Counsel presented uncontradicted testimony that meetings could be and were held within the barracks with no apparent annoyance to any worker. The most logical place for such meetings is the lounge area, where workers customarily play cards and watch television.

The Respondent claims its policy allows its workers to speak with whomever guests they choose, and that access to the part next door is sufficient. Such is clearly not the case, however. Assuming that access to the park was routinely granted (which is denied by the Union), the fact remains that persons visiting there are highly visible to the guards stationed in the guard house. These workers must run the risk of being openly identified as union members, supporters or sympathizers.

This long standing company policy is thus certainly discriminatory against the UFW, and inherently destructive of employees' rights. Even assuming the long standing nature of this policy, its application is uneven and questionable at best.

The testimony at the hearing reveals several distinct purposes for taking camp access. First, the union further needed

extensive input from the employees into the contract negotiation process, per P.P. Murphy (1978) 4 ALRB No. 106. Second, the union sought access to convey its views on the strike to non-strikers. This purpose, however, was not paramount at the time that access was denied, the non-strikers having left several months later. And, thirdly, the union sought to fulfill its duty to service the needs of the camp residents, as demonstrated by its desire to help explain the individual status of their pending unfair labor practice cases.

In regard to the access of the employer's business premises, the standard to be applied in determining the proper accommodation between employee and employer interests during strike activity has been enunciated by the NLRB in Babcock and Wilcox, supra. In essence, the amount of access permitted is the amount necessary to facilitate the purposes of the Act, and the employer's property rights must give way in the fact of employee's strong section 1152 rights in regard to communications with the intended audience. How deep a penetration of the employer's rights is for the Board to determine, and, as mentioned, depends on whether there exist other effective means of communication.

It has been held that picketing at the borders of work areas is not an effective means of communication. See Bertuccio vs. Superior Court (1981) 118 C.A. 3d 363, 372 for a discussion of the differences between agricultural and industrial contexts. The net result is that, in regard to discussing with strikebreakers, the union is essentially in the same position during a strike as it is in any initial organizational drive. Bruce

Church, supra, at 26.

RESPONDENT'S ARGUMENT:

The Respondent SAM ANDREWS' SONS argues as follows.

Respondent admits that it denied the United Farm Worker representatives access to the barracks or dining hall at Lakeview j but asserted that the basis of its defense to the general counsel's allegation that such denial violated Section 1153(a) for the following reasons:

1. The availability of the Union's reasonable alternative means of communication with Respondent's employees.

2. The need for security at Lakeview.

3. The privacy concern with respect to the Lakeview residents, and

4. The unreasonableness of permitting union organizers access to the barracks and dining facilities of Lakeview.

The Respondent has had a no visitor policy at the Lakeview facility for a number of years and signs that each of the appropriate entrances announced such a policy.

The employer and respondent asserts that they have a right to enforce this no visitors policy and on October 28 and 29 it did deny representatives of United Farm Workers access based upon the no visitors policy.

The employer argues that the leading case under the National Labor Relations Act regarding rights of non-employee union representatives to enter into private property is found in Babcock SWilcox Company, 351 U.S. 105 (1955). The United States Supreme Court there established the standard to be applied in

determining such rights:

> "Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other. The employer may not affirmatively interfere with organization; the union may not always insist that the employer aid organization. But when the inaccessibility of employees, makes ineffective the reasonable attempts by non-employees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communications of information on the right to organize.
>
> "[I]f the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property." Id. at 112-113 (1956).

The Court made clear, however, that where such inaccessibility cannot be shown, a different rule applies;

> [A]n employer may validly post his property against non-employee distribution of union literature if reasonable efforts by the union through other available channels of communication with its message and if the employer's notice or order does not discriminate against the union by allowing other distribution." Ibid.

Although Babcock & Wilcox dealt with the access issue in the context of a union's organizational effort, the same standard is recognized as applicable to union access to an employer's premises generally. Thus, in Sears, Roebuck & Co., 436 U.S. 180, 204, 98 S. Ct. 1745, 1761 (1978), the United States Supreme Court quoted one of its earlier opinions:

> "In NLRB v. Babcock & Wilcox Co., 351 U.S. 105, for example, the Court recognized that in certain circumstances non-employee union organizers may have a limited right of access to an employer's premises for the purpose of engaging in organization solicitation.

> And the Court has indicated that Babcock extends to Section 7 rights other than organizational activity, though the 'locus' of the 'accommodation of Section 7 rights and private property rights . . . may fall at differing points along the spectrum depending on the nature and strength of the respective Section 7 rights and private property rights asserted in any given contract.' Hudgens v. NLRB, 424 U.S. 507, 522."

Substantively, the ALRB's approach is consistent with the guidelines of Babcock & Wilcox in that it looks to the availability of alternative means of communications to determine whether an employer's refusal to permit a certified bargaining representative access to company property constitutes an unfair labor practice. O.P. Murphy & Sons, 4 ALRB No. 106 at p. 8 (1978); Sunnyside Nurseries, Inc., 6 ALRB No. 52 (1980). In O.P. Murphy, supra, the ALRB declared that based on the exclusive representative's need and duty to bargain collectively on behalf of all employees it represents, a union is entitled to post-certification access at reasonable times and places.

Unlike the NLRB, in post-certification cases the ALRB presumes that a certified bargaining representative does not have an adequate avenue of communication other than access to employees while they are on their employer's premises. Under the ALRB's standard, once an employer has established a prima facie case of the existence of other means of communication, the burden of proof shifts to the General Counsel.

Whether General Counsel's burden is to initially establish the task of alternative means of communication or to rebut Respondent's evidence of their existence, the burden is indeed a heavy one. Thus, the United States Supreme Court stated in Sears, Roebuck & Co., supra, at 436 U.S. 180, 205, 98 S. Ct. at

1761-62:

> "While Babcock indicates that an employer may not always bar non-employee union organizers from his property, his right to do so remains the general rule. To gain access, the union has the burden of showing that no other reasonable means of communicating its organizational message to the employees exists or that the employer's access rules discriminate against union solicitation. That the burden imposed on the union is a heavy one is evidenced by the fact that the balance struck by the Board and the court under the Babcock accommodation principle has rarely been in favor of trespassory organizational activity."

The mere fact that employees reside on an employer's premises does not preclude the possibility that there exist reasonable channels of communication other than access to the employer's premises. In this regard, the court in NLRB v. Tamiment, Inc. , 451 F.2d 794 (3d Cir. 1971), explained:

> "In cases involving self-contained resorts where the employees live on the premises^ union organizers face a more difficult task in communication with the workers than they do in the ordinary plant situation, where employees leave daily and return to their homes. This problem is particularly acute in organizations where many believe that there is no substitute for some face-to-face contact between the union organizers and workers during the campaign. However, these needs and problems do not require that the employer forego his right to limit access to his property in a non-discriminatory fashion, absent a showing that the union could not take alternative measures to generate face-to-face contact." 451 F.2d at 797-798.

Similarly, in NLRB V. Kutsher's Hotel & Country Club, Inc., 427 F.2d 200 (2d Cir. 1970), in reversing the NLRB, the Second Circuit held:

> "Applying the Babcock & Wilcox test, we find that the location of the 'plant' (Kutsher's Hotel) and the living quarters of the employees were such that there was no barrier to communication. Nor could the scant union efforts made here be characterized as 'reasonable' if an effective organizational campaign were being carried on. The 'other means' were

> 'readily available' to the union here. Babcock & Wilcox, 351 U.S. at 114, 76 S. Ct. 679. From a factual point of view an a fortiori case to that in Babcock & Wilcox is presented here.
>
> * * *
>
> Before permitting an invasion of private property for union organizational purposes, there should be 'substantial evidence on the record as a whole' to justify such an invasion. The record here not only does not show such evidence but does reveal evidence of adequate accessibility had there been reasonable union efforts to this end." (Emphasis added). Id. at 201.

The Respondent/Employer argues that the union had readily available alternative means of communication and cited the methods as follows:

> "In October, the Union had available to it at least six avenues of communication other than access to Respondent's labor camp. They included: (1) holding meetings at the UFW hall, (2) requesting Respondent's guards or foremen to summon Lakeview residents to the park area, (3) speaking to residents during field access periods, (4) telephoning employees at the barracks, (5) mailing notices to employee at the barracks, and (6) using selected camp residents as messengers."

The defenses asserted by the Respondent center around the fact that the general counsel produced no evidence whatsoever that the United Farm Workers attempted to communicate by mail, telephone, or use residents as messengers. The Respondent argued that even under the NLRB standard of proof, the general counsel failed to establish a violation of the act.

The United States Supreme Court is establishing precedent under the National Labor Relations Act, instructs that a union must demonstrate that it has made reasonable efforts to use alternative means of communication as a prerequisite to claiming entitlement to access to an employer's property. See Sears,

Roebuck & Co., supra, at 205, 98 S. Ct. 1761-62; Babcock & Wilcox, supra, at 112-113. See also, The Falk Corporation, 192 supra; NLRB v. Kutsher's Hotel, supra. General Counsel failed to show that the Union made any effort to use telephone or mail communication, that it attempted to use Respondent's system for retrieving Lakeview residents, that during field access, it was unable to inform employees of meetings at the UFW hall, or that it could not hold meetings at the UFW hall for those employees who wished to attend. Finally, the Union has not shown that it attempted to use Lakeview residents to notify employees of a Union meeting to be held outside the barracks or dining hall.

The Respondent concluded its case as follows:

1. Respondent does not preclude union representatives from visiting residents at their homes, since a union representative can meet with residents in the adjacent park or parking lot.

2. Those decision do not stand for the proposition that a union has the right to enter the bedrooms or any other room of an employee without his consent. Due to the physical aspects of the barracks and dining facility at Lakeview, it is impossible for one resident to have a visitor without intruding on the privacy of the living quarters of his fellow residents. This distinction alone necessitates an access rule for labor camps different from on which could be established for a private home.

3. In light of the threats, harassment, equipment destruction and other strike misconduct on Respondent's property, Respondent had legitimate concerns about the safety of its Lakeview residents and the security of equipment stored at Lakeview.

HEARING OFFICERS RECOMMENDATIONS;

Three enunciated "rights" are in conflict in this case. (1) The right of the Union to communicate with the workers, (2) The company's property rights, and (3) The workers right to privacy.

Each of these rights are of equal importance in the legal scheme of the work area and living accommodations.

The N.L.R.B. had addressed the question of the proper accommodations between the employer and employee organization. The ALRB has permitted access in an amount necessary to facilitate the purposes of the Act. The ALRB in several cases, cited in the General Counsel's argument, has addressed the question of Union access on the employer's premises. A distinction is made between the "business premises" and the "workers residences".

This case deals with what is "reasonable" yet "effective" access by the Union to the residence accommodations provided by the employer. These rights must be balanced with the workers rights to be informed and his/her privacy.

The central question on the individual workers rights is the question relating to the adequacy of the facility meeting place.

I viewed the camp on February 12, 1982. My personal observation of the barracks facility were that neither of the two barracks are adequate for meeting purposes. A meeting consisting of more than a handful of people would intrude upon all those persons in the barracks. A raised voice to address several people would be disruptive to the barracks.

There is no question that the union has a right to communicate with the workers, (see cases cited above). What is

effective communication, in a barracks setting, during a strike is the primary question.

FINDINGS:

I find that Paragraphs 1, 2, 3, and 4 of the Complaint to be true.

Sam Andrews & Sons and his agents denied U.F.W. representatives access to the Lakeview camp sit on or about October 28 and 29, 1981, thereby violating Section 1153(a) of the Act.

RECOMMENDED ORDER:

1. Sam Andrews and Sons will provide bulletin boards of sufficient size, no less than 2 feet by 4 feet, for the posting of notices. One area of the bulletin boards shall be designated as/and reserved for Union notices.

A bulletin board shall be located at the entrance to each barrack, each mess hall, and the entrance to the camp site.

The Union shall be afforded access to the bulletin boards at all reasonable hours for the purpose of posting notices of meetings, invitations to meet with representatives of the Union and other Union related business matters.

2. The Company is not required to permit Union meetings in the barracks. However, Union representatives, not to exceed 2 at one time, shall be permitted access to the barracks and/or dining halls for the purpose of announcing the time and place of Union meetings.

3. An order requiring Respondent to post a notice containing the terms of the Board's order in writing in Spanish

and English in conspicuous places on Respondent's property for one year at locations to be decided by Board agents.

4. An order requiring representatives of Respondent or a Board agent to read and explain the notice to agricultural employees during working hours at a time to be determined by the Regional Director and to allow a Board agent to answer questions of employees outside the presence of the employer or its representatives.

5. Such other and further relief as will effectuate the policies of the Agricultural Labor Relations Act as the Board deems just and proper.

6. Post notices at the start of the 1982 lettuce season.

7. Permit periodic inspections by Board agents of the bulletin boards and/or provide affidavit of compliance.

DATED: 6/21/82

Respectfully submitted,

Joe H. Henderson,
Hearing Officer