

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF)	Case No.	2015-CL-006-VIS
AMERICA,)		
)		
)		
Respondent,)		
)		
and,)		
)	44 ALRB No. 6	
ANGEL LOPEZ,)		
)		
)	(July 24, 2018)	
)		
)		
Charging Party.)		
_____)		

DECISION AND ORDER

On September 11, 2015, agricultural employee Angel Lopez filed the underlying unfair labor practice charge (No. 2015-CL-006-VIS) against the United Farm Workers of America (the “UFW”), alleging that the UFW violated the Agricultural Labor Relations Act (the “ALRA” or “Act”)¹ by temporarily excluding a group of pro-decertification, anti-UFW farmworkers of Gerawan Farming, Inc. (“Gerawan”) from attending and participating in a September 9, 2015 public hearing conducted by the Agricultural Labor Relations Board (the “ALRB” or “Board”). On June 30, 2016, the General Counsel of the ALRB (the “General Counsel”) issued a complaint, and a seven-

¹ The ALRA is codified at Labor Code section 1140 et seq.

day formal hearing was held before Administrative Law Judge Mark R. Soble (the “ALJ”).

On December 11, 2017, the ALJ issued a decision and recommended order. The ALJ concluded that: (1) the “blue-shirted” workers² who sought to attend and speak at the September 9, 2015 public hearing because of their desire to see the decertification votes counted were engaged in protected concerted activity; (2) the blue-shirted workers who sought to attend and speak at the September 9, 2015 public hearing to address the Board’s proposal to allow its own staff to visit agricultural worksites in order to educate farmworkers about their rights under the ALRA were engaged in protected concerted activity; and (3) by directing or misleading hotel security to exclude the blue-shirted workers, the UFW committed an unfair labor practice by restraining protected concerted activity.

The ALJ ordered the UFW to cease and desist from violating the Act, to post a notice at all of its offices in the San Joaquin Valley for a sixty-day period, to post a notice at Gerawan’s worksite for a sixty-day period, and also to cooperate with the Visalia Regional Office to arrange for notice mailing and notice reading to crews employed by the UFW during the time period of September 1, 2015, to September 16, 2015. The ALJ also ordered training on the Act for all San Joaquin-Valley based UFW

² The anti-UFW Gerawan workers wore blue shirts, and the ALJ generally identifies the group in this fashion throughout his decision. Pro-UFW individuals, on the other hand, mostly wore red shirts. For ease of reference and continuity with the ALJ’s decision, we also will refer generally to these opposing groups by their shirt colors.

coordinators, organizers and their immediate supervisors. The UFW and Lopez filed timely exceptions to the ALJ's decision.³

The Board has considered the record and the ALJ's decision in light of the exceptions and briefs filed by the parties. The Board affirms the ALJ's findings of fact, in part, and affirms the ALJ's legal conclusion that the UFW violated Labor Code section 1154, subdivision (a)(1) by directing or misleading hotel security into temporarily excluding workers employed by Gerawan from attending a public hearing held by the ALRB. We reach our conclusions subject to the discussion below.

I. Factual Background

The UFW was certified as the exclusive representative of Gerawan's agricultural employees in 1992. On October 25, 2013, Gerawan employee Silvia Lopez filed a petition to decertify the UFW. An election was held on November 5, 2013, and the ballots were impounded pending resolution of election objections and related unfair labor practice complaints, which were consolidated for hearing. After a formal hearing, an ALJ found that Gerawan violated the ALRA by, inter alia, supporting and assisting the gathering of signatures for the decertification petition. With respect to the representation matter, the Board affirmed the ALJ's conclusion that Gerawan's unlawful and/or objectionable conduct tainted the entire decertification process, and adopted his recommended remedy dismissing the decertification petition and setting aside the election. (*Gerawan Farming, Inc.* (2016) 42 ALRB No. 1.)

³ The General Counsel did not except to any of the ALJ's finding or conclusions of law.

The ALRB held a series of public hearings in September 2015 for the purpose of gathering information concerning a proposed regulation to allow ALRB staff to enter employer worksites to provide education to employees concerning their rights under the ALRA. The ALRB held one such hearing on September 9, 2015, at a Doubletree Hotel conference room in Fresno at which interested persons could comment on the proposal. Staff and supporters of the UFW attended this hearing, and most of them wore red t-shirts.

Also attending the public hearing was a group of individuals who sought to decertify the UFW as the exclusive representative of Gerawan's agricultural employees. Almost all of these individuals wore blue t-shirts, some of which were printed with the words "Pick Justice" and/or "Count Our Votes." Some of the persons wearing blue shirts were identified as Gerawan non-supervisory agricultural workers. Angel Lopez, the charging party, was part of the anti-UFW group. The agenda for the public hearing did not include the topic of the Gerawan decertification petition and election.

On the day of, but prior to the start of the public hearing, Hector Lopez, the hotel security manager, spoke with Nancy Oropeza ("Oropeza"), a coordinator for the UFW, and was left with the impression that she was one of the contacts for the public hearing. Hector Lopez testified that Oropeza told him that people wearing blue shirts might be coming and would be disruptive to the public hearing, and that Oropeza further told him to exclude those wearing blue shirts. Immediately after his conversation with Oropeza, Hector Lopez told another security guard, Jose Sepulveda ("Sepulveda"), that the blue-shirted protestors were not allowed at the event. Sepulveda told the blue-shirted

persons that they were not allowed at the public hearing. He made this statement at the side entrance to the hotel and, as a result, 20 to 25 Gerawan employees were temporarily prevented from entering the hotel where the public hearing was to be conducted. Persons wearing red shirts or street clothes were allowed into the public hearing.

Gerardo Hernandez (“Hernandez”), counsel for the anti-UFW workers, was among those individuals who were told that those wearing blue shirts would not be allowed to attend the public hearing. Hernandez told Sepulveda that it was “preposterous” that the blue-shirted persons would not be let into the building. In response, Sepulveda stated that he was “just doing his job.” Hernandez then stated that the exclusion was “going to be an issue” and Sepulveda offered to take him inside to talk with someone. Hernandez, Hector Lopez and Sepulveda walked into the hotel and entered a conference room where they encountered Hernandez’s co-counsel, Anthony Raimondo (“Raimondo”). One of them informed Raimondo that the blue-shirted persons would be excluded from entering the building. Raimondo stated that it was a “public hearing,” and Hector Lopez responded that they had been “instructed by the organizer.” Raimondo interrupted Hector Lopez and asked who the organizer was. Hector Lopez, referring to Oropeza, responded that it was “the lady in pink right over there.”

Raimondo then found Antonio Barbosa (“Barbosa”), who at the time was the ALRB Executive Secretary. Raimondo told Barbosa that there were farmworkers who had been told by security that they had been instructed not to let them enter the building. Oropeza interrupted Barbosa and Raimondo, stating “Antonio, there’s a protest going on outside.” Barbosa then went outside with the security guards and the two

attorneys and invited the blue-shirted persons to come inside and informed them that, if they desired, they could speak at the meeting.⁴

II. Discussion and Analysis

A. Protected Concerted Activity

The ALJ found that, at all relevant times, the blue-shirted workers were engaged in concerted activity protected under the Act. No party excepted to this conclusion. We agree with the ALJ that the blue-shirted workers who sought to enter the hotel in order to attend the public hearing were engaged in protected concerted activity. We reach this conclusion based on the discussion below.

The ALRA protects the rights of employees “to full freedom of association, self-organization, and designation of representatives of their own choosing” free from interference, restraint, or coercion by employers or labor organizations. (Lab. Code, § 1140.2.) Employees similarly have the right to refrain from any and all such activities. (Lab. Code, § 1152.) A labor organization commits an unfair labor practice when it restrains or coerces employees in the exercise of these rights. (Lab. Code, § 1154, subd. (a).)

In the instant matter, the workers who appeared at the hotel and sought to attend the ALRB’s public hearing were engaged in concerted activity. Moreover, the record is devoid

⁴ In making his factual determinations, the ALJ gave weight to testimony by Hector Lopez, Sepulveda and Hernandez regarding the events that led to the temporary exclusion of the blue-shirted persons from the public hearing. However, the ALJ found a video clip of these events to be the most persuasive evidence. The video clip lasts for four minutes and forty-four seconds, and is partly in English and partly in Spanish. The video clip starts with Hernandez speaking with Sepulveda, then follows Hernandez and the security guards into the hotel to approach Raimondo, where they then find Barbosa. The video clip concludes with Barbosa inviting the blue-shirted workers to come inside and informing them that, if they desire, they could speak at the meeting.

of facts that would remove the workers' conduct from the protections of the Act.⁵ At the time that Oropeza caused hotel security to exclude the blue-shirted workers from the public hearing, she could not have known the content of what any of them would say at the hearing, or if they would say anything at all. Any belief she may have harbored as to what they would do at the hearing was speculative and gave her no legal justification to interfere with their concerted activity. Thus, the restraint on the blue-shirted workers' rights was achieved before any of them even were permitted to speak after being admitted to the hearing.

B. The ALJ's Credibility Determinations

The UFW excepts to three of the ALJ's credibility determinations. First, the UFW excepts to the ALJ's "omission" of Hector Lopez's testimony that Oropeza did not tell him to exclude the blue-shirted workers from the public hearing and that he incorrectly assumed that Oropeza was in charge of the public hearing. Second, the UFW excepts to the ALJ's decision to discredit Oropeza's testimony. Third, the UFW excepts to the ALJ's decision to partially credit the testimony of Angel Lopez. We address each of these exceptions in turn.

In the case of non-demeanor based credibility determinations, the Board may reject the ALJ's findings in favor of its own when the ALJ's findings conflict with well-supported inferences from the record considered as a whole. (*California Valley Land Company, Inc. et al.* (1991) 17 ALRB No. 8, p. 12; *Mann Packing Co.* (1990) 16 ALRB No.

⁵ For instance, there are no facts suggesting the blue-shirted workers were engaging any unlawful or violent conduct. (See, e.g., *NLRB v. Washington Aluminum Co.* (1962) 370 U.S. 9, 17 [concerted activity not protected where it is "unlawful, violent or in breach of contract" or is "indefensible"].)

15, p. 9; *Krispy Kreme Donut Corp. v. NLRB* (6th Cir. 1984) 732 F.2d 1288, 1290; *NLRB v. Mt. Vernon Telephone Co.* (6th Cir. 1965) 352 F.2d 977, 980; *NLRB v. Elias Brothers Big Boy, Inc.* (6th Cir. 1964) 327 F.2d 421, 427.)

In *Sabor Farms* (2015) 42 ALRB No. 2, p. 1, fn. 1, the Board summarized the standards for reviewing ALJ credibility determinations:

The Board will not disturb credibility resolutions based on demeanor unless the clear preponderance of all the relevant evidence demonstrates that they are in error. (*United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 3; *P.H. Ranch* (1996) 22 ALRB No. 1; *Standard Drywall Products* (1950) 91 NLRB 544.) In instances where credibility determinations are based on factors other than demeanor, such as reasonable inferences, consistency of witness testimony, or the presence or absence of corroboration, the Board will not overrule the ALJ's credibility determinations unless they conflict with well-supported inferences from the record considered as a whole. (*S & S Ranch, Inc.* (1996) 22 ALRB No. 7.) In addition, it is both permissible and not unusual to credit some but not all of a witness's testimony. (*Suma Fruit International (USA), Inc.* (1993) 19 ALRB No. 14, citing 3 Witkin, Cal. Evidence (3d ed. 1986) § 1770, pp. 1723-1724.)

The UFW contends that the ALJ erred by omitting Hector Lopez's testimony that Oropeza did not tell him to exclude blue-shirted workers from the public hearing and that he incorrectly assumed Oropeza was in charge of the public hearing. The ALJ's assessment of Hector Lopez's credibility was not based upon his demeanor. Therefore, the question is whether the ALJ's decision to credit his testimony that Oropeza told him to exclude the blue-shirted workers from the public hearing over his testimony that she did not explicitly tell him to exclude the blue-shirted workers conflicts with well-supported inferences from the record considered as a whole.

With the passing of 19 months since the public hearing, Hector Lopez provided inconsistent testimony regarding whether Oropeza told him to exclude the blue-shirted persons from the public hearing. He remembered having a conversation with Oropeza, but had trouble recalling exactly what Oropeza told him. Initially, Hector Lopez testified that Oropeza told him that there might be blue-shirted persons coming to the public hearing that would be disruptive to the hearing. Later on, he testified, “I’m not sure if she actually said, keep them out, but she said that they have the potential of being disruptive.” Under questioning by counsel for the charging party, Hector Lopez stated that Oropeza told him not to let the blue-shirted workers in because they were protesting. Under questioning by the ALJ, Hector Lopez testified that it was more likely that Oropeza told him that the blue-shirted persons were engaged in a “disruptive presence or protest, which combined with my mind-set of it being a closed meeting would mean these people can’t come into the meeting if it’s a closed meeting and they’re going to be disruptive.”

The ALJ relied upon the video clip to resolve the issue of Hector Lopez’s contradictory testimony. In the video clip, Hector Lopez, when questioned concerning the exclusion of the blue-shirted workers, states that the security guards have been “instructed by the organizer,” then, when asked who the organizer was, he replied, “the lady in pink over there.” At this moment, Hector Lopez is referring to Oropeza. Moreover, Sepulveda heard Oropeza tell Hector Lopez something about “blue-shirts” and “protestors” and, immediately thereafter, Hector Lopez told Sepulveda not to let the blue-shirted workers enter the event. Therefore, reasonable inferences from the record and corroboration from the video clip and

other witnesses weigh in favor of the ALJ's finding that Oropeza told Hector Lopez to exclude the blue-shirted workers. (*Sabor Farms, supra*, 42 ALRB No. 2, p. 1, fn. 1.)

Additionally, the UFW excepts to the ALJ's decision to discredit Oropeza's testimony. In the UFW's view, the ALJ erred by finding that Oropeza never spoke with the hotel manager and that the ALJ erred by concluding that Oropeza misled the hotel security guards based on the video showing her interjecting an explanation of the events to Barbosa. The ALJ's assessment of Oropeza's testimony was not based upon her demeanor, and therefore the issue is whether Oropeza's denial that she directed or mislead the security guards into believing that she was in charge of the public hearing conflict with well-supported inferences from the record as a whole. We find that it does not.

Oropeza's testimony was contradicted by several other witnesses who had little motive to be deceptive. For example, Oropeza testified that the security guards, not her, mentioned "blue shirts" first. Security guard Sepulveda testified that Oropeza was the person who mentioned people in blue shirts. Oropeza also testified that the blue-shirted workers were yelling and making "a lot of noise outside." Every other witness contradicted Oropeza, including Valdez and Mejia, the two other UFW coordinators. Valdez testified that the workers were not acting aggressively and Mejia testified that the blue-shirted workers were not yelling at or threatening the pro-UFW group.

The UFW also puts significant emphasis on Oropeza's alleged conversation with the hotel manager due to her ability to accurately describe his appearance as a "gentleman in his 60s, Caucasian, and weighing about 170 or 180 lbs." Sepulveda testified that he never saw Oropeza speak with the hotel manager. Furthermore, Oropeza testified that the man she

described never stated that he was the hotel manager, but that she had presumed that he was because he wore a suit. Neither of the other two UFW coordinators, or anyone else for that matter, stated that they saw or spoke with the hotel manager. We find that the ALJ's credibility determinations regarding Oropeza's testimony do not conflict with well-supported inferences from the record considered as a whole. (*Sabor Farms, supra*, 42 ALRB No. 2, p. 1, fn. 1.)

The UFW also contends that the ALJ partially credited the testimony of Angel Lopez. UFW's contention is in error, as the ALJ's decision makes clear that he did not credit any of Angel Lopez's testimony. Specifically, on page 12 of his decision, the ALJ states, "I did not find Angel Lopez to be credible." The ALJ's decision goes on to state, "While I am confident that Angel Lopez told a lot of people about what happened at this meeting, his testimony as to the specific crews and timetable of his alleged visits was implausible." We conclude that the language of the decision makes clear that the ALJ did not credit Angel Lopez's testimony.

C. Dissemination

The UFW excepts to the ALJ's findings concerning the dissemination of information among Gerawan employees regarding the temporary exclusion of the blue-shirted workers from the public hearing. The ALJ found, "it [was] highly probable that, in the following days, there was widespread discussion among Gerawan workers about the temporary exclusion from the ALRB meeting, as the meeting occurred just eight days before the

undersigned issued his decision in the consolidated election case,⁶ so there would have been high interest in UFW and ALRB-related news.” The ALJ also concluded that the blue-shirted workers spread word of their temporary exclusion from the public hearing via smart phones, internet and social media platforms.

The Board does not rely on the ALJ’s findings regarding dissemination to support its conclusion that the UFW committed an unfair labor practice by restraining protected concerted activity. The record contains no evidence, nor does the ALJ cite any, concerning the use of smart phones, internet, or social media to disseminate news of the workers’ temporary exclusion from the public hearing. The ALJ’s dissemination finding also is unnecessary in reaching the conclusion the UFW violated section 1154, subdivision (a)(1) of the Act. Thus, we do not adopt the ALJ’s findings and conclusions of law concerning whether Gerawan employees discussed the temporary exclusion from the public hearing.

D. Remedies

The UFW excepts to the remedies ordered by the ALJ, contending that the remedies are punitive because: the ALJ failed to address that only five Gerawan workers testified that they discussed the public hearing with coworkers; the ALJ credited Angel Lopez’s false testimony; and the ALJ assumed that dissemination occurred via smart phones and online platforms.

In his lone exception, Angel Lopez objects to the ALJ’s notice reading remedy by seeking to have the notice read on “Radio Campesina,” which it contends is the UFW’s

⁶ See *Gerawan Farming, Inc.*, Case No. 2012-CE-041-VIS, et al. and, subsequently, *Gerawan Farming, Inc.*, *supra*, 42 ALRB No. 1.

public radio station that it uses to promote its activities to workers. We address these exceptions in turn.

1. The UFW's exception to the ALJ's ordering of a notice posting, mailing, reading, training, and cease and desist remedies.

The Board has broad discretion in fashioning remedies that effectuate the purposes of the Act. (*Tri-Fanucchi Farms v. ALRB* (2017) 3 Cal.5th 1161, 1168.) A primary purpose of the Act is to encourage and protect the right of agricultural employees to be free from interference, restraint, or coercion in the exercise of their self-organizational rights. (Lab. Code, § 1140.2)

The Board's adherence to standard non-economic remedies has served to further the purposes and policies of the Act, and it is incumbent upon the respondent to demonstrate compelling reasons for departing from such remedies. (*Vincent B. Zaninovich & Sons, Inc.* (1999) 25 ALRB No. 4, p. 2, fn. 2; *Nish Noroian Farms v. ALRB* (1984) 35 Cal.3d 726, 747.) Thus, where the violation is "isolated" or "technical" the Board may find that departure from standard remedies is warranted. (*Zaninovich, supra*, 25 ALRB No. 4, p. 2, fn. 2.)

As a preliminary matter, it appears that the ALJ incorrectly worded Section 2 subsections (b) and (e) of the order. Section 2, subsection (b) states:

Prepare copies of the attached Notice, in all appropriate languages, by placing a copy of such Notice in a plain stamped or metered envelope, with the ALRB's return address, in the manner directed by the Regional Director, addressed individually to each and every agricultural worker employed by *Respondent* during the time period of September 1, 2015 to September 16, 2015...

Section 2, subsection (e) states:

To cooperate with the Visalia ALRB Regional Director as needed with respect to the arrangement of Board agents reading the attached Notice in all appropriate languages to the crews employed by *Respondent* during the time period of September 1, 2015 to September 16, 2015.

We correct the ALJ's technical error here, and find that the mailing and notice readings be provided to crews employed by Gerawan, and not Respondent, UFW.

Turning to the exceptions, the UFW argues that the ALJ's proposed remedy in this case is punitive, particularly because the ALJ found widespread dissemination of information among Gerawan employees concerning the temporary exclusion of the blue-shirted workers from the public hearing. In other words, the UFW is asserting the ALJ erred by finding that there was widespread dissemination, and consequently the ALJ's erroneous usage of widespread dissemination as justification for the remedies ordered is punitive and should be overturned.

As stated, we do not rely on the ALJ's conclusions concerning dissemination, whether it occurred via word of mouth, smart phones, or online platforms. Witness testimony establishes that 20 to 25 Gerawan-employed farmworkers witnessed the temporary exclusion of the blue-shirted workers from the public hearing. Additional witness testimony indicates that approximately 40 other employees were later told about the public hearing. Thus, the record makes clear that the event is neither "isolated" nor "technical" such that the Board should depart from its standard remedies. (*Zaninovich, supra*, 25 ALRB No. 4, p. 2, fn. 2.) Furthermore, these notice posting, mailing and reading remedies are in accordance with prior

Board decisions. (See *United Farm Workers of America (Olvera)* (2018) 44 ALRB No. 5, p. 37.)

We reject the UFW's argument that the notice posting, mailing and reading remedies ordered by the ALJ are punitive. Posting, mailing and reading remedies serve the important functions of informing workers of the outcome of the unfair labor practice proceedings and to answer their questions about the notice and the rights guaranteed to them by the Act. (*M. Caratan, Inc.* (1980) 6 ALRB No. 14; *Jasmine Vineyards, Inc. v. ALRB* (1980) 113 Cal.App.3d 968, 979-982.) The notice would serve its purpose of informing employees of the resolution of this unfair labor practice charge, and of their right to engage in protected concerted activities, free of restraint, irrespective of whether they support or oppose the union. Moreover, here, the remedies ordered by the ALJ are narrowly tailored to reach Gerawan workers employed during the time period of September 1, 2015, to September 16, 2015. Thus, we find that the notice posting, mailing and reading remedies are in accordance with applicable law and find that the UFW's contentions that these remedies are punitive lack merit.

Turning to the ALJ's order that San Joaquin Valley-based UFW coordinators, organizers, and their immediate supervisors undergo training, we do not deem such a remedy necessary. While not diminishing the seriousness of the UFW's unlawful conduct, the standard notice posting, mailing and reading orders are sufficient to remedy the UFW's unlawful conduct. Thus, we overturn the ALJ's order of training for all San Joaquin Valley-based UFW coordinators, organizers, and their immediate supervisors on the protections afforded to agricultural workers under the Act.

2. Charging party Angel Lopez’s request for a notice reading on “Radio Campesina.”⁷

Angel Lopez filed one exception to the ALJ’s decision, wherein he seeks a remedy that includes a notice reading on “Radio Campesina,” which, Lopez asserts, is the UFW’s public service radio station.

The NLRB regards notice publication via newspaper or other publications of broad circulation to be a remedy that, while permissible in appropriate cases, is “not routinely used” and has generally been reserved for “egregious cases.” (*HTH Corp.* (2014) 361 NLRB No. 65, pp. 32-33.) In *Perry Farms, Inc.* (1978) 4 ALRB No. 25⁸, *Andrews* (1977) 3 ALRB No. 45, and *Vessey & Co.* (1981) 7 ALRB No. 44⁹, administrative law judges ordered noticing via media publication and, in each case, the Board declined to include that remedy in its final order.

We decline to find that this case is sufficiently egregious to warrant a notice reading via a media publication and we conclude that the notice mailing, along with the other remedies, ordered by the ALJ is sufficient to remedy the conduct at issue. Notice mailing is a well-established part of the NLRB’s remedial repertoire when traditional posting is insufficient to dissipate the effects of the unfair labor practices. (*HTH Corp., supra*, 361 NLRB No. 65, p.

⁷ On February 16, 2018, Angel Lopez filed a Request for Hearing on the Remedies, where he reasserts his argument that a remedy should include a notice reading on “Radio Campesina.” This filing, however, does not comport with Board regulation 20282, subdivision (c), which provides, in relevant part, that after the filing of reply briefs to exceptions, “No further brief shall be filed except as requested by the Board.” The last day to file a reply brief was February 7, 2018, nine days before Angel Lopez filed his brief. Thus, the Board rejects Angel Lopez’s filing as untimely.

⁸ In *Perry Farms*, the media noticing was optional.

⁹ See *Vessey & Co., Inc.* (1985) 11 ALRB No. 3, p. 3.

28.) The ALJ's recommended order appropriately calls for notice mailings for Gerawan workers employed from September 1, 2015 through September 16, 2015. Accordingly, we deny Angel Lopez's request that the notice be read on "Radio Campesina."

III. Conclusion

In summary, the Board affirms the ALJ's findings of fact, in part, and affirms the ALJ's legal conclusion that the UFW violated Labor Code section 1154, subdivision (a)(1) by directing or misleading hotel security into temporarily excluding workers employed by Gerawan from attending a public hearing held by the ALRB. We find that that the blue-shirted workers were engaged in protected concerted activity when they were temporarily prevented from entering the hotel where the ALRB's public hearing was to be held, and we affirm the ALJ's credibility determinations. We do not adopt the ALJ's conclusion that there was widespread dissemination of information, whether by word of mouth or through smart phones or online platforms, among Gerawan employees regarding the temporary exclusion of the blue-shirted workers. We clarify the ALJ's recommended order to state that the mailing and notice readings are to be provided to crews employed by Gerawan, and not Respondent, UFW. We overturn the ALJ's order for training for all San Joaquin-Valley based UFW coordinators, organizers, and their immediate supervisors and deny the media noticing remedy requested by the charging party.

ORDER

Pursuant to Labor Code section 1160.3, Respondent United Farm Workers of America (“UFW”), its officers, agents, and representatives shall:

1. Cease and desist from coercing or restraining employees who choose to exercise their right to engage in protected concerted activity under section 1152 of the Act;
2. Take the following affirmative steps which are found necessary to effectuate the purposes of the Act:
 - (a) After its translation by the ALRB into all appropriate languages, post signed copies of the attached Notice to Agricultural Employees (“Notice”) at the UFW’s San Joaquin Valley offices for a period of 60 consecutive days, the specific dates and location of posting to be determined by the Visalia ALRB Regional Director, exercise due care to replace any Notice which has been altered, defaced, covered, or removed, and grant ALRB agents access to that location to ensure compliance with this requirement;
 - (b) Prepare copies of the attached Notice, in all appropriate languages, by placing a copy of such Notice in a plain stamped or metered envelope, with the ALRB’s return address, in the manner directed by the Regional Director, addressed individually to each and every agricultural worker employed by Gerawan during the time period of September 1, 2015 to September 16, 2015, and submit such

addressed, stamped envelopes to the Visalia ALRB Regional Director for him to mail within thirty (30) days after the Board's order becomes final;

- (c) Cooperate with the Visalia ALRB Regional Director, as needed, with respect to the arrangement of Board agents reading the attached Notice in all appropriate languages to the crews employed by Gerawan during the time period of September 1, 2015 through September 16, 2015. In the event the configuration of these crews has changed since that time, the Visalia ALRB Regional Director is authorized to select a replacement crew of approximately equal size; supervisor, or foreperson employed by Gerawan.
- (d) Upon calculation by the Visalia ALRB Regional Director, to transmit a reasonable rate to be paid to employees to compensate them for time lost at the reading and during a short ensuing question and answer period;
- (e) Upon request, sign copies of the Notice, in whatever languages specified, and promptly transmit them to the Visalia Regional Director for use in the event that Gerawan chooses to post the Notice on its premises where the bargaining unit employees work; and
- (f) Notify the Visalia Regional Director in writing, within thirty days after the date this order becomes final, of the steps that the UFW has taken to comply with the terms of this order and, upon request,

notify the regional director periodically in writing of all further actions taken to comply with the terms of that order.

DATED: July 24, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed in the Visalia Regional Office of the Agricultural Labor Relations Board (“ALRB”), the General Counsel of the ALRB issued a complaint that we, the United Farm Workers of America, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the Agricultural Labor Relations Act (“Act”) on September 9, 2015 by directing or misleading private hotel security into excluding anti-UFW workers from attending an ALRB hearing on allowing ALRB staff access into the fields to educate farm workers about the Act. The workers were let inside as soon as ALRB staff found out what had happened, which was prior to the actual start of the meeting.

The ALRB has told us to post and publish this Notice.

The Agricultural Labor Relations Act is a law that gives you and all other farmworkers in California the following rights:

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative;
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 ALRB;
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 you have these rights, we promise that we will **NOT** interfere with employees exercising their rights under the Act in any similar or related manner, nor will we restrain or coerce employees from exercising such rights.

Dated: _____

United Farm Workers of America

By: _____
(Name and title of representative)

If you have any questions about your rights as farmworkers or about this Notice, you may contact any office of the ALRB. One office is located at 1642 West Walnut Avenue, Visalia, CA 93277-5348. The telephone number for the Visalia ALRB Regional Office is (559) 627-0995. This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

UNITED FARM WORKERS OF AMERICA
(Angel Lopez)

44 ALRB No. 6
Case No. 2015-CL-006-VIS

Background

On April 28, 2014, Administrative Law Judge Mark R. Soble (“ALJ”) issued a decision finding that Respondent United Farm Workers of America (“UFW”) violated Section 1154(a)(1) of the Agricultural Labor Relations Act (“ALRA” or “Act”) by directing or misleading hotel security into excluding anti-UFW agricultural workers from an Agricultural Labor Relations Board (“ALRB” or “Board”) public hearing. The ALJ ordered the UFW to cease and desist from violating the Act, to post a notice at all of its offices in the San Joaquin Valley for a sixty-day period, to post a notice at Gerawan Farming, Inc. (“Gerawan”) for a sixty-day period, and also to cooperate with the Visalia Region to arrange for notice mailing and notice reading to crews employed by the UFW during the time period of September 1, 2015 to September 16, 2015. The ALJ also ordered training on the Act for all San Joaquin-Valley based UFW coordinators, organizers and their immediate supervisors.

Board Decision and Order

The Board affirmed the ALJ’s findings of fact, in part, and affirmed the ALJ’s legal conclusion that the UFW violated the Act by directing or misleading hotel security into temporarily excluding anti-UFW workers from engaging in protected, concerted activity at a public hearing held by the ALRB. The Board found that the blue-shirted, anti-UFW workers engaged in concerted, protected activity. The Board also affirmed the ALJ’s credibility determinations. The Board did not adopt the ALJ’s conclusion that there was widespread dissemination of information, whether by word of mouth or through smart phones or online platforms, among Gerawan employees regarding the temporary exclusion of the blue-shirted workers. Additionally, the Board clarified the ALJ’s order to state that the mailing and notice readings be provided to crews employed by Gerawan, and not Respondent, UFW. Finally, the Board overturned the ALJ’s order for training for all San Joaquin-Valley based UFW coordinators, organizers, and their immediate supervisors, and denied a media noticing remedy requested by the charging party.

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

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF)	Case No. 2015-CL-006-VIS
AMERICA,)	
)	
Respondent,)	
)	
and)	
)	
ANGEL LOPEZ,)	
)	
Charging Party.)	
)	
)	
)	

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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This matter was heard by Mark R. Soble, Principal Administrative Law Judge (“ALJ”), State of California Agricultural Labor Relations Board (“ALRB”), at the State of California Building, 2550 Mariposa Mall, Fresno, California 93610, starting on Tuesday, March 28, 2017, and ending on Tuesday, April 4, 2017.

BACKGROUND

On September 9, 2015, the ALRB held a public meeting at which interested persons could testify about a Board proposal to allow its own staff to visit agricultural worksites in order to educate farmworkers about their rights under the Agricultural Labor Relations Act. The public meeting was held in a private Fresno hotel conference room. Staff and supporters of the United Farm Workers of America (“UFW”) attended this meeting. Most of the members of the pro-UFW group were wearing red t-shirts.

Also among the persons who came to attend this public meeting was a group of pro-decertification, anti-UFW Gerawan farmworkers. Almost all of the members of the anti-UFW group were wearing blue t-shirts. In her First Amended Complaint (“FAC”), the General Counsel alleges that a UFW employee told hotel security to exclude the blue-shirted workers. It is undisputed that, for a short period of time, hotel security did in fact exclude the blue-shirted workers until their attorneys brought the matter to the attention of ALRB staff. At that juncture, which was before the formal start of the

meeting, ALRB staff directed hotel security to let the blue-shirted workers inside and security complied with that direction.

ISSUES

The issues raised by this matter are as follows:

1. As a matter of fact, did a UFW staff person either direct or mislead hotel security into excluding the blue-shirted workers?
2. Would attendance at this public meeting by the anti-UFW workers comprise protected, concerted activity even if their primary motive was to urge the Board to take particular action on a decertification case that was not scheduled on the meeting agenda?
3. If the UFW staff person did interfere with farmworkers' protected, concerted activity, but government officials quickly remedied the situation, what is the appropriate remedy under the Act?

FINDINGS OF FACT

A. Jurisdiction and Procedural History

Respondent UFW concedes that the charge in this matter was filed just two days after the September 9, 2015 event in question, namely on September 11, 2015.

(Answer to FAC, page 1, lines 21-22) The UFW also concedes that it is a labor organization as defined by the Act and that, at all pertinent time periods, employee Nancy Oropeza was their agent. (Answer to FAC, page 1, lines 25-26)

On June 30, 2016, the General Counsel filed and served a complaint in this matter. On July 14, 2016, the UFW filed their answer. On July 15, 2016, the Charging

Party timely gave notice of his desire to intervene. On August 5, 2016, the ALRB Executive Secretary issued a Notice of Hearing in this matter setting a hearing for March 28, 2017. On August 19, 2016, the General Counsel filed and served the FAC. On September 1, 2016, the UFW filed an answer to the FAC. On February 6, 2017, a Prehearing Conference was held in this matter. On February 22, 2017, the undersigned issued a Prehearing Conference Order. On March 16, 2017, the Charging Party requested the undersigned ALJ to recuse himself from this matter. On March 17, 2017, the undersigned issued an Order denying the recusal request and striking Genevieve Shiroma and William Gould from the Charging Party's witness list.

B. Video Evidence and Witness Testimony

1. The Video Clip

The parties stipulated to the admission of Exhibit GC-001. (Court Reporter's Transcript, volume one, at page 35, lines 7-9, is hereafter abbreviated as 1 RT 35:7-9) This exhibit is a video clip that lasts for four minutes and forty-four seconds, partly in English and partly in Spanish. The interpreter translated the Spanish portion. (1 RT 35:20-37:19)

The video starts at the side entrance of the hotel near the conference rooms. You can tell that it is the side entrance by viewing the reflection in the hotel windows. Attorney Gerardo Hernandez is visible in a checkered white dress shirt. Glasses are hanging from his shirt and he is holding a black pad. Hernandez is speaking with Jose Sepulveda, a uniformed and capped security guard. Nearby are several persons with

blue t-shirts, some of which read, “Count our votes”. At least some of these persons can be identified as Gerawan non-supervisory agricultural workers.

Hernandez tells the guard, “Well, that’s preposterous” and the guard responds that he is just doing his job. Hernandez then states that this is going to be an issue and the guard offers to take him inside to talk with someone. A second security guard is visible wearing a white knit shirt. This guard, Hector Lopez, is wearing glasses and has a walkie-talkie attached to his belt.

Hernandez and the security guards walk into the hotel and enter a conference room which has an identifying sign describing it as “Salon C”. Hernandez immediately approaches his co-counsel, Anthony Raimondo, who is wearing glasses, a gray suit, blue button-down shirt and blue-striped tie.

Raimondo states, “This is a public hearing.” Hector Lopez responds, “Yes, but we’ve been instructed by the organizer . . .” Raimondo interrupts, “Who’s the organizer?” and Lopez responds, the lady in pink right over here.

Raimondo then interrupts a man with a mustache in a navy blue suit and wearing glasses. The man in the navy suit is Antonio Barbosa, who at that time served as the ALRB Executive Secretary. Raimondo tells Barbosa that we have farm workers here who have been told by security that they’ve been instructed to bar them. A woman in a pink or coral outfit then interrupts Barbosa and Raimondo, saying “Antonio, [there’s a protest going on outside]”. The woman in the pink outfit is Nancy Oropeza.

Barbosa then goes outside with security and the two attorneys and, speaking in Spanish, invites the workers to come inside and informs them that, if they desire, the workers may speak at the meeting.

2. Testimony by the Two Security Guards

i. Hector Lopez

Hector Lopez is the hotel security manager, having held that position for the past fifteen years. (2 RT 8:10-19) On the day of the event, he spoke with Nancy Oropeza and was left with the impression that she was one of the contacts for the meeting. (2 RT 10:11-15, 2 RT 54:22-25, 2 RT 63:20-24 and 2 RT 84:6-8) Oropeza told him that blue-shirted persons might be coming who would be disruptive to the meeting. (2 RT 12:17-22 and 2 RT 22:1-10, and 2 RT 45:12-19) Lopez recalls seeing twenty-five to thirty blue-shirted persons. (2 RT 15:17-24) Lopez told security guard Jose Sepulveda to exclude the blue-shirted persons. (2 RT 59:20-60:1) Lopez did not know what the blue-shirts were protesting. I found Hector Lopez to be a truthful witness, but it was ultimately the video clip that served as the most persuasive evidence.¹

ii. Jose Sepulveda

Jose Sepulveda is a security guard at the Doubletree Hotel on Ventura Avenue, in Fresno, having held that position for the past seven years. (4 RT 133:10-19)

¹ Approximately one or two months after the event, ALRB regional attorney John Cohen and ALRB field examiner Leonardo Pescador and telephonically interviewed Hector Lopez for four or five minutes. (2 RT 96:8-14, 2 RT 97:8-9, 2 RT 98:6-14 and 2 RT 99:2-15) Mr. Cohen typed notes during the interview. (2 RT 100:25-101:2) Cohen may have then added a word or a sentence after hearing from Pescador. (2 RT 116:15-20) Cohen's notes state that Hector Lopez told them that Nancy Oropeza told him that the blue-shirts could not enter the building. (2 RT 120:11-20 and 3 RT 41:14-15) I find that Pescador's recollection of the Hector Lopez interview was not very sharp. While I allowed the regional office notes to be read into the transcript, I did not rely upon them in reaching any of my findings, because the video and witness testimony was far more persuasive.

Sepulveda saw Oropeza wave to him and his supervisor, and Hector Lopez then spoke with Oropeza while Sepulveda waited nearby. (4 RT 135:1-9) Sepulveda had previously seen Oropeza walking in and out of the conference room carrying a clipboard and/or paperwork. (4 RT 135:13-18) Sepulveda did not hear most of the conversation between Oropeza and Lopez, but he could hear her say the words “blue shirts” and “protesters”. (4 RT 136:1-4) Immediately after that conversation, Lopez told Sepulveda that the blue-shirted protesters were not allowed at the event. (4 RT 135:10-12, 4 RT 144:1-3 and 4 RT 145:21-23) He did not see the hotel manager come down and speak to anyone. (4 RT 142:21-25) Nor did anyone tell him that the hotel manager had expressed concerns about the blue-shirted workers. (4 RT 143:3-7)

Speaking in Spanish, Sepulveda told the blue-shirted persons that they were not allowed at the event. (4 RT 137:16-17 and 4 RT 138:7-17) Persons wearing red shirts or street clothes were allowed into the meeting. (4 RT 140 17-23) One member of the group spoke with Hector Lopez and they went inside. (4 RT 137:18-25) Five minutes later another gentleman came out and told the entire group that it was a public event and welcomed everyone inside. (4 RT 137 18-22) I credited all of Sepulveda’s testimony.

3. Testimony by the Anti-UFW Workers and their Counsel

i. Gerardo Hernandez

Gerardo Hernandez attended the September 2015 event on proposed access regulations. (1 RT 102:17-23) Hernandez recalled eighteen to thirty persons attending who were wearing blue-shirts. (1 RT 102:16-19 and 104:9-15) Some had “count our

votes” signs. (1 RT 104:2-8) Silvia Lopez told Hernandez that the security guard was not letting her inside. (1 RT 106:22-107:2) People in street clothes and red shirts were allowed into the building. (1 RT 112:1-11) The uniformed security guard by the side entrance told Hernandez that the organizer was not letting him allow the blue-shirts inside. (1 RT 107:17-21 and 119:6-23) A second security guard wearing a white polo shirt took Hernandez inside. (1 RT 108:2-13) The security guard pointed to Nancy Oropeza and stated that the lady in pink told him not to let in the blue-shirted workers. (1 RT 108:22-25) When Hernandez, his co-counsel and the security guard spoke with Antonio Barbosa, Oropeza stated words to the effect of “But Tony, there’s a protest outside.” (1 RT 116:18-25) I found Hernandez credible and his testimony is bolstered by the video-clip evidence.

ii. Silvia Lopez

In September 2015, Silvia Lopez worked for Gerawan Farm in the crew of Reynaldo or Racquel Villavicencio. (4 RT 8:10-9:9:24) Lopez indicated that she has not worked at Gerawan for over a year. (4 RT 9:6-13) Angel Lopez is her son-in-law. She understood the meeting, which took place at a hotel, to involve the ALRB wanting to send its staff to the fields. (4 RT 10:24-11:2 and 4 RT 11:9-10) Lopez arrived approximately twenty to twenty-five minutes before the meeting start time. (4 RT 55:5-11) Lopez could not remember whether she or someone else drove her to the meeting. (4 RT 55:2-4) At the time that Lopez arrived, none of the blue shirts had tried to get inside, noting the group usually entered meetings together. (4 RT 56:1-6 and 4 RT 57:1-4) Lopez believes that she wore a blue shirt that day which stated “Count Our

Votes.” (4 RT 12:1-8) She also has similar shirts in white and black colors. (4 RT 12:4-6) Lopez brought three or four signs to the meeting, including ones that stated “Count Our Votes.” (4 RT 32:10-12 and 4 RT 39:19-40:2) She brought the signs so that the ALRB would see them. (4 RT 40:15-19) Lopez wanted to convey the message that the decertification votes should be counted. (4 RT 40:21-24)

When Lopez arrived at the meeting, the security guard would not let them in. (4 RT 12:15-19) Lopez states that the security guard told her that they could not go inside because a lady named Nancy told security to exclude the blue shirts. (4 RT 13:18-23, 4 RT 53:1-6 and 4 RT 67:6-14) Lopez adds that when they asked who had directed security to keep out the blue shirts, the guard told them that Nancy was wearing a pink or red shirt. (4 RT 34:10-14, 4 RT 41:11-15 and 4 RT 47:16-48:2) Lopez could not recall if she saw one security person or more than one security person on that day. (4 RT 22:1-4) Looking at a picture, however, Lopez did recall speaking with the uniformed and hatted security guard, but she did not remember if the conversation was in English or Spanish. (4 RT 23:11-17) Lopez indicates that a friend, Juan Esquivel, told her that Nancy worked for the UFW. (4 RT 41:7-19) Esquivel did not work for Gerawan. (4 RT 41:20-25) It only took her “seconds or a minute at the most” to find attorney Hernandez. (4 RT 24:19-24) Lopez then informed attorney Hernandez and her co-workers what the security guard had told her. (4 RT 24:1-6) Lopez states that she told attorney Hernandez that the security guard told her that Nancy had excluded the blue shirts. (4 RT 53:15-21) Lopez did not remember Antonio Barbosa coming outside to speak with the workers. (4 RT 42:13-43:15) After getting inside, Lopez

testified at the meeting. (4 RT 32:19-21 and 4 RT 50:15-16) Lopez did not remember if other members of her groups testified that day. (4 RT 50:17-22) Lopez told the Board that she did not agree with ALRB staff going to the fields and that the ALRB was only going to lie to the workers. (4 RT 32:25-33:9) Lopez also told the Board that she was upset because Nancy told the security not to let them inside. (4 RT 33:18-22 and 4 RT 59:19-60:2) Later that day, Lopez spoke with six to eight co-workers, telling them what had transpired. (4 RT 15:13-15) Lopez could not recall if she posted Facebook or Twitter entries about what took place. (4 RT 18:1-7) Eventually, overall, Lopez thereafter discussed the hearing with between twenty to thirty co-workers. (4 RT 36:1-14) I found Sepulveda's recollection to be more credible than Lopez. Lopez could not remember Barbosa coming outside and talking to her group. It also seemed unclear whether Lopez remembered which things she learned before versus after attorney Hernandez went inside. For those reasons, I did not credit her recollections.

iii. Angel Lopez

Angel Lopez worked for Gerawan in September 2015 in the crew of Juan Berdejo (1 RT 43:8-25 and 1 RT 44:21-22). His crew was located in Kerman and grew and harvested peaches and nectarines (1 RT 44:1-5) Gerawan has since promoted Angel Lopez to a position as a mechanic.

Angel Lopez went to meeting with his wife wearing a pick justice t-shirt. (1 RT 47:13-47:24) Angel Lopez went to the meeting to explain to the Board that they should

“count their votes” (1 RT 49:22-25)² Lopez’ co-workers arrived also wearing blue shirts. (1 RT 50:1-12) There were more than twenty persons wearing blue shirts. (1 RT 58:4-10)

The blue-shirts tried to enter the meeting, but security did not let them in. (1 RT 51:8-16) Angel Lopez did not remember if this was the front or side of the hotel. Angel Lopez alleges that security told them that no one with a blue shirt was to be let inside. (1 RT 51:17-21) Lopez testified that persons wearing non-blue clothing were able to go inside. (1 RT 63:12-22) The first time that they tried to enter the building their attorney, Mr. Gerardo Hernandez, was with them. (1 RT 55:6-8) Mr. Hernandez then went inside to get permission to enter. (1 RT 56:9-20) The blue-shirted workers were then let inside. (1 RT 58:21-23)

Angel claims that Nancy told them that they could not enter. (1 RT 60:9-15) After entering, Angel gave testimony at the meeting. (1 RT 65:4-7) Angel Lopez told the Board that the workers need their help to count their votes or to let them vote again. (1 RT 65:8-16) Afterward, Angel talked about what happened that evening to different Gerawan crews. (1 RT 65:17-25 and 1 RT 66:1-17) Angel spoke to these crews over the few days following the event. (1 RT 67:19-21) He explained what happened with security and that the UFW did not want to let them inside. (1 RT 68:6-14) Angel also allegedly spoke with 20-25 workers on the telephone and to fifty others at soccer. (1

² Throughout the decision, I generally refer to the anti-UFW group as the “blue-shirted” workers because there was no persuasive testimony indicating whether or not the group were formal members of a competing labor organization or even whether “Pick Justice” was a sponsor or backer of the specific workers in attendance. For purposes of this case, the right to engage in protected, concerted activity does not hinge on the answers to those questions.

RT 69:6-70:25) Upon cross-examination, Angel stated that he visited the thirteen crews during his lunch time over a period of three weeks. (1 RT 82:1-5) Angel admitted that when he previously met with ALRB staff, he did not tell them that he discussed the exclusion with thirteen different crews. (1 RT 92:7-9 and 1 RT 94:4-6) Nor did Angel tell staff that he telephoned other workers about the event. (1 RT 95:18-24) Angel indicated that he did not tell Mr. Marsh about this information because Silas Shawver had tricked the workers in the past, so he did not trust the ALRB attorneys. (1 RT 97:24-98:12) I did not find Angel Lopez to be credible. He changed his story from talking to the other crews over a few days to over three weeks. Even while distrusting ALRB attorneys, Angel had no reason to withhold from ALRB staff that he had discussed the exclusion with other crews after the meeting. While I am confident that Angel Lopez told a lot of people about what happened at this meeting, his testimony as to the specific crews and timetable of his alleged visits was implausible.

iv. Robert Angeles

In September 2015, Roberto Angeles worked at Gerawan in the crew of Gustavo Gonzalez. (3 RT 161:22-162:14) Gerawan is also sometimes known as “La Prima”. (3 RT 161:25-162:2) Angeles was invited to the hearing by Silvia Lopez. (3 RT 176:17-24) Silvia Lopez gave protest signs to him and co-workers that read “No Union” and other messages. (3 RT 177:1-12) Angeles purpose in going to the meeting was to communicate to the Board that he and his co-workers wanted their votes counted with respect to the decertification election. (3 RT 177:13-178:8) Angeles wore a blue shirt to the September 9, 2015 hearing and had the same shirt under his sweatshirt when he

came to testify before the undersigned. (3 RT 163:5-18) I found Angeles credible as to his motivation, but not as to his recollection of other details. Angeles' answers were sometimes non-responsive and it was often unclear when he was testifying based upon actual direct observations versus testifying solely based upon second-hand comments that he heard from co-workers. For example, when Angeles was asked what he wore to the event, he responded that the Union allowed the red shirts inside, but excluded the blue shirts. (3 RT 162:20-24) And Angeles explained that Nancy Oropeza excluded him from the hearing, but later backtracked and admitted that he was standing forty feet away and had only heard this from co-workers. (3 RT 164:23-166:8 and 3 RT 170:17-14) Angeles did not directly hear what the security guards said to their attorney. (3 RT 172:16-23) By the time he went inside the meeting, it was almost over. (3 RT 174:18-175:3) This is because after the workers were let inside, he first sat down in a chair in the hallway to rest. (3 RT 176:2-16)

v. Jennifer Rivas Arreola

In September 2015, Jennifer Rivas Arreola worked in her aunt's crew at Gerawan. (3 RT 102:21-103:4 and 3 RT 114:5-7) Along with co-workers, Arreola was wearing a blue shirt and holding her daughter when she unsuccessfully tried to enter the hotel to attend the Board meeting. (3 RT 103:12-104:8 and 3 RT 113:1-4) Arreola heard second-hand from a co-worker that the security guard was refusing entry to the blue-shirts. (3 RT 111:14-24) Arreola had learned about the event from Silvia Lopez. (3 RT 109:2-13) Some of her co-workers at the event were holding signs that read "No Union". After the event, she told co-workers in her crew what had happened. (3 RT

106:1-22) Arreola recalls approximately twenty minutes transpiring from when she arrived until the blue-shirts were allowed inside to attend the hearing. (3 RT 107:24-1086)

vi. Gonzalo Campos

Gonzalo Campos worked at Gerawan in the crew of Lucio Torres. (2 RT 184:7-13) He and his co-worker in that crew, Gerzayn Hernandez-Zequera, did landscaping. (2 RT 201:6-18) He attended the September 2015 meeting wearing a blue shirt. (2 RT 186:22-187:1) When he arrived, security was letting the red shirts inside, but not the blue shirts. (2 RT 187:12-188:22) The blue shirts waited outside for fifteen or twenty minutes. (2 RT 191:12-13) When asked about whether the people excluded were wearing the same shirt color, Campos began talking about a woman wearing a pink shirt. (2 RT 189:6-9) Campos claimed that a worker named Charlino told him that he had seen “Nancy” talking to the security guard. (2 RT 193:16-194:12) I found this to be unreliable hearsay. Campos indicated that, the next day, he told a single Gerawan worker, Jaime, a mechanic, about what had transpired. (2 RT 191:20-192:24) Campos did not tell the mechanic who excluded the workers from the meeting. (2 RT 196:1-15) Except for the uncorroborated hearsay from “Charlino”, I found Campos credible.

vii. Gisela Castro

In September 2015, Gisela Castro worked for Gerawan in the crew of Estella Aceves. (3 RT 50:3-14) Her husband is Gerawan foreman Bartolo Ortiz. (3 RT 75:22-76:1) Castro expects to work for Gerawan again in the future. (3 RT 75:5-6) She was wearing a blue t-shirt. (3 RT 53:13-15) Castro went to the meeting because she wanted

the decertification votes to be counted. (3 RT 66:22-25) One of her co-workers had a megaphone and others had signs. (3 RT 69:8-10 and 3 RT 70:9-11) When she tried to enter with her co-workers, the security guard told them that the persons dressed in blue could not enter. (3 RT 54:8-13) As a result, she felt humiliated. (3 RT 69:1-3) Castro saw the security guard let at least one man enter who was wearing a red t-shirt. (3 RT 54:18-55:6) When she got inside, Castro saw the red shirts sitting on chairs while her group had to stand in the corner because there were no remaining chairs. (3 RT 56:1-5) At the meeting, Castro tried to make comments against Regional Director Silas Shawver. (3 RT 72:7-10) After the meeting, Castro discussed what happened with several Gerawan workers. (3 RT 57:1-25 and 65:5-23) I found Castro credible.

viii. Maria Hinojosa

In September 2015, Maria Hinojosa worked in Kerman for Gerawan picking peaches in the crew of Gloria Mendez, having worked for Gerawan for twelve years at that juncture. (2 RT 142:19-144:18) A co-worker, Jovita encouraged her to attend the meeting to protest. When Hinojosa arrived at the meeting in question, she was wearing a blue t-shirt and saw more than ten of her similarly attired co-workers already there. (2 RT 145:17-146:4) The blue shirted workers opposed the union. (2 RT 173:14-19) Her blue t-shirt read “Count my votes”. (2 RT 179:12-18) Hinojosa wore the blue t-shirt in the hopes that the ALRB would see it and be influenced to count the votes in the union election. (2 RT 180:2-13) None of the blue-shirted workers were shouting or yelling. (2 RT 167:5-168:1) Hinojosa was outside in the parking lot for about thirty minutes before her group decided to enter. (2 RT 148:1-12) Her co-workers then told

her that they were not allowed to enter. (2 RT 152:1-6) Hinojosa had seen other persons entering the building including those in red shirts. (2 RT 159:6-160:10) The co-workers then spoke with Mr. Hernandez who thereafter went inside the building. (2 RT 152:7-21) Ms. Hinojosa recalls that it was ten to fifteen minutes from when the group was first denied entry until when Mr. Hernandez went inside. (2 RT 153:7-10) Mr. Hernandez then came back outside and told the workers that they could enter. (2 RT 11-14) The blue-shirted workers were able to get inside before the meeting started. (2 RT 177:14-20) Hinojosa later discussed what happened with three or four of her crew members. (2 RT 164:21-165:9 and 2 RT 174:1-6) Hinojosa herself later heard from co-workers that the union had told the security guard not to let them the blue-shirted workers inside. (2 RT 169:11-17 and 2 RT 171:15-17) I found Hinojosa credible.

ix. Angel Rincon

In September 2015, Angel Rincon worked at Gerawan in the crew of Jose Carrillo. (3 RT 82:19-83:5) Rincon was sometimes known by the nickname “Tamales”. (3 RT 99:2-3) He wore a blue shirt to the Board meeting but was initially denied entry by a uniformed security guard who spoke Spanish. (3 RT 83:11-18, 84:2-9 and 85:14-23) Rincon saw the red shirts enter the building. (3 RT 83:19-22) The blue shirts generally opposed the union and the red shirts generally supported it. (3 RT 90:6-14) Rincon and the other blue shirts wanted the ALRB to count the decertification votes. (3 RT 94:9-15 and 3 RT 96:4-9) The group waited about five to ten minutes after being denied entry until ALRB staff intervened to let them inside. (3 RT 95:11-

15) Rincon testified at the hearing and indicated that he was tired of so much abuse. (3 RT 95:20-25) Rincon later told his crew about what had transpired. (3 RT 84:13-24)

x. Jose Luis de la Rosa

In September 2015, Jose Luis de la Rosa worked for Gerawan in the crew of Pedro Rosas. (3 RT 117:25-118:7) He attended the hearing attired in a blue t-shirt, bringing along with him his son who was four to five years old. (3 RT 118:21-22, 3 RT 139:12-13 and 3 RT 144:24-145:2) He had been told about the meeting by Silvia Lopez. (3 RT 130:16-131:4) At least one or more of his co-workers carried signs that said "Count Our Votes". (3 RT 131:5-15) Uniformed security allowed red shirts to enter but indicated that the blue shirts were initially not permitted inside. (3 RT 119:2-11 and 3 RT 124:12-19) He did not hear what the security guard said firsthand, but rather heard it indirectly from Silvia Lopez. (3 RT 135:1-7) Silvia told him that the guard said that the people who rented the place were not allowing entry by the blue shirts.

Jose Luis de la Rosa saw a woman in a rose-colored shirt talking with one of the security guards, but he did not overhear any of that conversation. (3 RT 123:14-21 and 3 RT 135:19-23) He recalls waiting about five minutes before the blue-shirts were permitted to enter the building. (3 RT 124:23-125:1) Ultimately, de la Rosa did not go inside to the hearing area but rather stayed outside in the adjacent hallway to take care of his son. (3 RT 140:10-14) As a result, de la Rosa did not see or hear what transpired in the hearing room. (3 RT 141:7-11) The next day, over the telephone, de la Rosa told

five other Gerawan employees about his experience. (3 RT 119:16-122:22 and 3 RT 128:17-20) I credited all of his non-hearsay testimony.

xi. Gerzayn Hernandez-Zaquera

Gerzayn Hernandez-Zaquera worked in Lucio Torres' crew doing landscaping, having worked in that crew for thirteen years. (2 RT 207:1-23) They were wearing their blue shirts. (2 RT 211:1-4) He attended with the goal of persuading the Board to count the workers' decertification votes. (2 RT 218:9-16) Co-workers told him that security would not let them inside, so he proceeded to go home. (2 RT 211:5-212:24) He did not know if the workers were being excluded because the occupancy inside was too high. Hernandez-Zaquera only stayed about ten minutes before he left. (2 RT 219:3-25) I credited the testimony of Hernandez-Zaquera.

4. Testimony by Three UFW Employees

i. Nancy Oropeza

In September 2015, Nancy Oropeza worked for the UFW as a paid coordinator. (1 RT 127:14-128:1) Oropeza had worked for the UFW for nine years. (1 RT 128:2-3) She now has different duties, working for the UFW Foundation. She arrived an hour before the event. (1 RT 129:2-4) She saw and recognized the blue-shirted workers. (1 RT 131:19-132:10) She alleges that she saw, on the corner between the front and the side, a few blue shirted workers with signs yelling. (1 RT 136:22-25 and 1 RT 137:1-8) Oropeza testified that she spoke in English to the two security guards about getting in the side door and parking. (1 RT 133:5-10 and 1 RT 138:2-4) She told the guards that she was the farmworkers union coordinator. (1 RT 140:3-7) Oropeza exchanged

business cards with the guard in the white polo shirt. (1 RT 134:21-22, 1 RT 143:18-22 and 1 RT 175:9-12) Security then complained to her that there was a group of workers protesting in the front and that they needed to come around to the side door. (1 RT 136:17-21 and 1 RT 144:13-18) The hotel manager was there with the security guards. (1 RT 136:14-17) Oropeza told them that she couldn't tell them what to do about it. (1 RT 144:19-21) Oropeza alleges that the hotel manager, speaking in English, complained to her about noise. I do not believe that Oropeza had such a conversation with the hotel manager. But even if she did, then Oropeza clearly did not inform the manager or security that she was not the event organizer.

Oropeza saw Jesse Rojas tell Anthony Raimondo that workers were being kept outside. (1 RT 147:9-11) Then she saw Raimondo talking to Barbosa and interjected that there was a protest going on outside. (1 RT 160:4-17) Oropeza stated that the blue-shirts created an ugly environment, a dangerous safety environment. (1 RT 163:9-22 and 1 RT 166:17-18) Oropeza claimed that later some crews did not let UFW staff circulate flyers, claiming that the UFW didn't let them inside. (1 RT 188:12-20 and 1 RT 193:17-194:1) I did not find Nancy Oropeza credible. Her story about the hotel manager was contradicted by both of the hotel security guards, neither of whom had an apparent motive to be deceptive. But the videotape was most telling among the evidence. Oropeza, upon seeing Raimondo and Hernandez talking to Barbosa, immediately tries to interject an excuse across the room. The most reasonable conclusion is that Oropeza misled the security guards and knew that her ruse had been uncovered. I did not credit any of Nancy Oropeza's testimony.

ii. Oscar Mejia

In September 2015, Oscar Mejia was a UFW coordinator who supervised Nancy Oropeza and Lizbeth Valdez. (4 RT 75:4-20) At the time, the three were mostly working on the Gerawan Farms campaign. (4 RT 75:21-24) The three of them attended the ALRB hearing at the Doubletree Hotel. (4 RT 76:1-17) Oropeza told Mejia that she would let security know that the blue shirts had a history of being a little more aggressive. (4 RT 81:3-19) Mejia thought that it was good that Oropeza let security know how these protests sometimes transpire. (4 RT 81:20-23) At least half an hour before the hearing started, Mejia saw Oropeza speak with the uniformed security guard, but from his vantage, he was unable to hear what was discussed. (4 RT 82:3-21, 4 RT 83:1-3 and 4 RT 84:2-6) Mejia did not see Oropeza talk with any non-security hotel employees. (4 RT 97:1-4) Nor did Oropeza tell him that the hotel manager had complained about noise. (4 RT 98:21-99:1) I found Mejia credible but his recollection of precise details of the event was limited. For example, in his testimony, Mejia initially testified that he did not remember seeing Gisela Castro at the event. (4 RT 90:22-91:3) But upon watching the video clip admitted into evidence, Mejia conceded that Castro was visible in the video. (4 RT 93:3-8)

iii. Lizbeth Valdez

In September 2015, Lizbeth Valdez was a UFW coordinator, working on the Gerawan campaign. (4 RT 105:13-22 and 4 RT 106:6-8) Her supervisor was Oscar Mejia and above that, Armando Elenes. (4 RT 106:9-14) Nancy Oropeza was the UFW staff person in charge for the ALRB access hearing held at a hotel. (4 RT 107:7-

16 and 4 RT 108:4-9) Lizbeth recalls arriving approximately fifteen to twenty minutes before the start of the meeting. (4 RT 110:19-111:1) Lizbeth wore a red t-shirt that day. (4 RT 126:18-25) Shortly after Lizbeth's arrival, Nancy Oropeza introduced her to two hotel security guards. (4 RT 111:3-9 and 4 RT 112:17-19) The organizers and guards spoke for approximately three minutes. (4 RT 118:13-17) Oropeza told security in English that Lizbeth was one of the organizers in case they saw something that looked wrong. (4 RT 115:9-25) Oropeza and Valdez told security that if anything happened, to let them know. (4 RT 116:17-25) They explained that there were past occasions when Silvia Lopez's daughters acted aggressively toward workers and also that once a blue-shirt threw a box at a co-worker. (4 RT 117:1-11) They told security that they could take care of any problems with red-shirted workers, but that they had no control over the blue-shirted workers. (4 RT 117:13-21) When Silvia Lopez spoke inside at the meeting at the microphone, this was the first time that Valdez heard about blue-shirts being excluded. (4 RT 120:13-121:20 and 4 RT 122:18-21) Valdez asked Oropeza what had happened, and Oropeza stated that she did not know and that she didn't say or do anything. (4 RT 120:19-121:2) Valdez recalls Oropeza going to talk to someone and that the workers were then let inside. (4 RT 121:3-11) Valdez identified Oropeza as the woman wearing pink pictured in Exhibit GC-004. (4 RT 127:6-14) I am not crediting Valdez's testimony. Neither of the security guards recalled her participating in a conversation with them and Oropeza. Oropeza clearly knew what had transpired by the time that attorney Raimondo was speaking to Barbosa,

which was prior to when the blue-shirted workers were admitted. Only after that did Silvia Lopez speak at the microphone.

C. Specific Findings of Fact

1. UFW staff person Nancy Oropeza directed or misled hotel security into excluding the blue-shirted workers.

2. There was no credible evidence that the blue-shirted workers were acting unsafe or dangerous at any time on September 9, 2015.

3. There was no any credible evidence that the blue-shirted workers were adversely affecting the hotel's ability to conduct its business.

4. As a consequence of Oropeza's action, approximately twenty to twenty-five anti-UFW workers were wrongly excluded from entry to the ALRB meeting for approximately ten minutes.

5. During this ten-minute time period, the attorneys for the anti-UFW workers brought the matter to the attention of the ALRB Executive Secretary, who immediately directed hotel security to let the workers inside and who informed the workers in Spanish of their right to enter and participate.

6. The workers were allowed inside prior to the start of the ALRB meeting and those workers wishing to give testimony at the meeting were able to do so.

7. For most of the blue-shirted workers their primary motivation to attend the meeting was to attempt to influence the Board to count decertification votes at Gerawan, a matter that was not scheduled on the meeting agenda. Some of the blue-

shirted workers also wanted to express their opposition to the proposed ALRB access regulation.

8. On September 9, 2015, UFW staff did not publicly repudiate Oropeza for directing or misleading hotel security into excluding the blue-shirted workers

9. It is highly probable that, in the following days, there was widespread discussion among Gerawan non-supervisory workers about the temporary exclusion from the ALRB meeting. This meeting occurred just eight days before the undersigned issued his decision in the consolidated election case so there would have been high interest in UFW and ALRB-related news. At that juncture, I have little doubt that the anti-UFW workers were trying to actively communicate with a large number of their colleagues. As part of that ongoing communication process, I am confident that they told many of their colleagues about being temporarily excluded from the ALRB meeting and that the story was thereafter repeated and passed along.

ANALYSIS AND CONCLUSIONS OF LAW

California Labor Code section 1152 states that:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

Protected, concerted activity requires that: (1) there must be a work-related complaint or grievance, (2) a sought-after specific remedy or relief, (3) the furtherance of a group

interest, and (4) that the activity be neither violent, nor in breach of contract, nor indefensibly disloyal. (*Nash De Camp Co. v. Agricultural Labor Relations Board* (1983) 146 Cal.App.3d 92, 104.) Qualifying anti-union activities by non-supervisory agricultural workers are clearly protected. If a labor organization restrains or coerces employees engaging in such activities, then it violates section 1154, subdivision (a)(1).³

**A. At All Pertinent Times to this Matter, the Blue-Shirted Workers
Were Engaged in Protected, Concerted Activity**

For the reasons discussed below, I find that the blue-shirted workers were engaged in protected, concerted activity. By directing or misleading hotel security, UFW employee Nancy Oropeza excluded the blue-shirted workers just as effectively as had she erected a physical barrier formed with tractors, picketers, or a locked and chained fence. In reaching my conclusion, I examine three salient factors. First, the activity took place outside of the company work site. Second, the request that day to count the decertification votes was an *ex parte* (unscheduled) communication to the Board. Third, the access regulation would apply farms statewide, not just Gerawan. My analysis concludes that none of these three factors change the concerted activity protected status of the blue-shirted workers' attempt to attend the ALRB meeting on September 9, 2015.

³ "Picketing which obstructs access may be an unfair labor practice under Labor Code section 1154, subdivision (a) (1), to the extent that it restrains or coerces non-striking employees in the exercise of their right to refrain from concerted activities guaranteed by section 1152." *Kaplan's Fruit and Produce Co. v. Superior Court* (1979) 26 Cal.3d 60, 71. The test for violating the restraint provision is an objective standard. First, the General Counsel must prove that the employer's actions would tend to coerce a reasonable employee, but she does not need to demonstrate that particular employees were actually coerced. Second, once the General Counsel has proven the coercive nature of the employer's actions, she does not need to prove employer intent. *Carian v. ALRB* (1984) 36 Cal.3d 654, 669-670. I find that this same standard is appropriately applied when the alleged misconduct is committed by a union rather than an employer.

1. Concerted Activity Does Not Lose Its Protected Status Solely Because It Occurs Outside of the Company Worksite

Concerted activity most commonly occurs at the company worksite, but concerted activity unequivocally may take place elsewhere. For example, filing a complaint with OSHA about safety conditions can be protected, concerted activity. *Wray Electric Contracting, Inc.* (1974) 210 NLRB 757, 762; *Alleluia Cushion Co., Inc.* (1975) 221 NLRB 999, 1001. It also comprised protected, concerted activity when employees sent a letter to the Coast Guard expressing their alleged safety concerns over allowing the usage of less experienced personnel. *Riverboat Services of Indiana* (2005) 345 NLRB 1286, 1294; *Socony Mobil Oil Company, Inc.* (1965) 153 NLRB 1244, 1248. Even an employee-written letter to the editor, published in a newspaper, may comprise protected, concerted activity. *Dougherty Lumber Company* (1990) 299 NLRB 295, 298. It is clear-cut law that the physical location of the protected, concerted activity can be far away from the company worksite.

2. Concerted Activity Does Not Lose Its Protected Status Because the Workers Sought to Make an Unscheduled Communication to the Board Regarding a Pending Election Petition Proceeding

It is undisputed that the ALRB agenda for the September 9, 2015 meeting did not include the topic of the Gerawan decertification petition and election. Rather, the meeting was noticed so that interested persons could testify about a Board proposal to allow its own staff to visit agricultural worksites in order to educate farmworkers about their rights under the Agricultural Labor Relations Act.

California State Bar Rule 5-300 (formerly Rule 7-108) prohibits a California attorney from communicating with a judicial officer about the merits of a contested matter before that officer except in open court with the consent or presence of opposing counsel. In formal opinion number 1984-82, the State Bar opined that hearing officers or administrative law judges should be considered “judges” for this purpose. (See *Andrews v. Agricultural Labor Relations Board* (1981) 28 Cal.3d 781, 790-794 (decision by California Supreme Court referring to ALRB hearing officers as “judicial” officers.) In formal opinion no. 1984-82, the State Bar further opined that, where the case is ultimately heard by the agency itself, neither the interested party nor her attorney should communicate *ex parte* with an agency head or Board Member during a pending contested adjudicatory proceeding.

ALRB Regulation sections 20700-20740 restrict communications involving pending election objections and unfair labor practices from parties (and other persons) to Board Members, their staff and the executive secretary. (See ALRB Regulation section 20720, subdivision (b) (discussing that, for this purpose, the definition of Board employees includes Board Members); ALRB Regulation section 20720, subdivisions (d)(1) and (d)(2) (discussing when election petitions and unfair labor practice cases are still considered “pending”). Oral communications concerning matters of general significance to the field of labor relations are permitted if they are not specifically related to the pending proceedings. (ALRB Regulation section 20740, subdivision (g).) But oral communications specifically related to a pending matter require advance notice

given by the communicator to all parties in the proceeding and adequate opportunity for all parties to be present.” (ALRB Regulation section 20740, subdivision (b).)

Outside of the litigation process, no person may volunteer a communication which may be expected to affect a party in a case. (ALRB Regulation section 20700) In this instance, the blue-shirted workers had a message on their shirts stating, “Count our votes”. Some of the workers had signs that said, “Count our votes.” The workers sought to communicate this message directly to the Board Members. The message to “count votes” in a particular election was far more specific than merely expressing support or opposition to the UFW solely through insignia or clothing color-choice.

The issue is thus raised whether the unscheduled and arguably inappropriate attempt of the blue-shirted workers to lobby the outcome of a pending case not on the agenda comprises protected, concerted activity. Policy certainly dictates that it is the Board, and not an employer or union, who shall determine which worker communications are permissible at ALRB hearings. Both the Board itself and its administrative law judges have previously allowed both pro-union and anti-union workers to wear t-shirts, caps and pins which indicate pro-UFW support. The Board and ALJs have also permitted large numbers of workers in attendance at meetings and hearing where one of the obvious goals of the workers was to influence an outcome.

Ultimately, at the time of excluding the blue-shirted workers, Ms. Oropeza had no way of knowing in advance the subject matter of any oral testimony that might be offered by the blue-shirted workers. The Act’s protections would be undermined to allow an employer or union to speculate that a non-supervisory workers testimony

might violate the Board's own rules and to in turn allow that employer or union to impede the workers attendance at a public meeting. For that reason, I find that the blue-shirted workers' concerted activity does not lose its protected status even if the workers sought to make an unscheduled communication to the Board regarding a pending election petition proceeding.

3. Supporting or Testifying on Behalf or in Opposition to Potential Statewide Laws May Comprise Protected, Concerted Activity

Petitioning a government agency can often comprise protected, concerted activity. It comprised protected, concerted activity when a group of engineers wrote to Congress objecting to the easing of immigration requirements for foreign engineers. *Kaiser Engineers v. NLRB* (9th Cir. 1976) 538 F.2d 1379, 1385. The U.S. Supreme Court has even held that employees were entitled to distribute a newsletter that was critical of a Presidential veto of an increase in federal minimum wage because it was within the scope of the mutual aid and protection clause of the National Labor Relations Act. *Eastex, Inc. v. NLRB* (1978) 437 U.S. 556, 570. It is clear-cut law that testimony at a public governmental meeting may comprise protected, concerted activity even when the subject matter involves workers in an entire industry.

B. Specific Conclusions of Law

1. The blue-shirted workers who sought to attend and speak at the September 9, 2015 Board meeting because of their desire to see the decertification votes counted were engaged in protected, concerted activity.

2. The blue-shirted workers who sought to attend and speak at the September 9, 2015 Board meeting to address the Board's proposal to allow its own staff to visit agricultural worksites in order to educate farmworkers about their rights under the Agricultural Labor Relations Act were engaged in protected, concerted activity.

3. By their employee Nancy Oropeza directing or misleading hotel security to exclude the blue-shirted workers, the UFW committed an unfair labor practice by restraining protected, concerted activity.

C. Appropriate Remedies for the UFW's Unfair Labor Practice

Include the Ordering of Readings, Mailings and Postings

Respondent UFW cites *J.R. Norton Company v. ALRB* (1987) 192 Cal. App.3d 874, 908 for the proposition that noticing may be punitive and thus prohibited. In *Norton*, the Court of Appeal states as follows:

“the Board's discretion in ordering affirmative action to remedy unfair labor practices "is not unbounded. It must be exercised reasonably by the Board whose 'power to command affirmative action is remedial, not punitive, . . .'" (*Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Bd.*, supra, 93 Cal.App.3d at p. 940, quoting in part from *Edison Co. v. Labor Board* (1938) 305 U.S. 197, 236 [83 L.Ed. 126, 143, 59 S.Ct. 206], italics in original.) When the order of the Board is so severe in comparison to the conduct involved in the unfair labor practice that it is clearly punitive in character, the order will be annulled. (*Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Bd.*, supra, 93 Cal.App.3d at p. 940.)

Respondent then cites *M. B. Zaninovich, Inc. v. ALRB* (1981) 114 Cal. App. 3d 665 for the proposition that a reading and mailing would be punitive. But in *Zaninovich*, the court reaches its finding based upon a conclusion that it was an unwarranted

assumption that the employees working on the ranch acquired knowledge of the unfair labor practice. *M. B. Zaninovich, Inc. v. ALRB* (1981) 114 Cal. App. 3d 665, 686.⁴

Thus, the UFW raises two different thresholds to consider when imposing a reading and mailing requirement following an unfair labor practice. The first threshold is the seriousness of the unfair labor practice. The second threshold is whether workers learned that the unfair labor practice occurred.

1. The UFW’s “Virtual Blockading” of Anti-UFW Workers from an ALRB Hearing is a Very Serious Unfair Labor Practice

The UFW’s “virtual blockading” of anti-UFW workers from an ALRB hearing is a very serious unfair labor practice even if it was quickly halted once ALRB staff learned about the ruse. The anti-UFW workers initially had no way to know whether or the ALRB was complicit in their denial of entry. Had the anti-UFW workers not been accompanied by attorneys wearing dressier clothing, it is possible that the hotel security might have refused the workers access into the hotel needed to alert ALRB staff as to what was happening. By directing or misleading the hotel security guards, UFW employee Nancy Oropeza was undermining worker confidence in the Act and the Board. If an employer representative impersonated a government official to restrain a worker from testifying, there is no doubt that the UFW would consider the allegation to be egregious. It is correct that the ALRB staff learned of the worker exclusion, correcting the matter within ten minutes and ensuring that all workers could get inside

⁴ Similarly, in *Dole Farming, Inc.* (1996) 22 ALRB No. 8, the Board addresses whether violations are of the nature likely to become widely known.

before the meeting started. But being permitted into a governmental meeting only after your adversaries are admitted sends a powerful and disturbing message.

2. The Record Contains Ample Evidence That the Anti-UFW Workers Spread the Word of their Temporary Exclusion from ALRB Meeting

Many blue-shirted workers testified that they told co-workers about their temporary exclusion from the ALRB hearing. Even in Angel Lopez' instance where I did not believe his testimony as to the specific crews with which he communicated, I am confident that he actively spread the word as to what transpired. The world has changed since the ALRB cases in the 1970s and 1980s. Non-supervisory farm workers have smart phones, internet access and social media platforms. Small groups of workers are able to quickly repeat a story much quicker and easier than three or four decades ago. This meeting occurred just eight days before the ALJ decision in the consolidated election case so there would have been already be a strong motive at this time period for active communication among the anti-UFW workers. The anti-UFW workers had strong motivation to tell their colleagues about being temporarily excluded from the ALRB meeting and it reasonably follows the story was thereafter repeated and passed along.⁵

⁵ Events occurring during an election campaign are likely to be discussed, repeated and disseminated, thus having an amplifying effect. (*Triple E Produce* (1980) 35 Cal.3d 42, 51) In this instance, even after the decertification election, the election objections, alleged unfair labor practices and mandatory mediation litigation all likely served to bolster employee interest in most aspects of employer and union activity.

3. The General Counsel's Proposed Parameters for Posting, Mailing and Reading a Notice are Reasonable and are Hereby Ordered

In her post-hearing brief, the General Counsel seeks an order requiring the UFW to pay for posting at all Gerawan worksites where such notices are usually posted, plus a mailing to all agricultural employees who worked for Gerawan during September 1, 2015 through September 16, 2015, and a reading to all crews which worked during that same time period. The General Counsel also seeks a cease and desist order and training on the Act for all UFW organizers in the San Joaquin Valley. Given my findings as to the seriousness of the UFW's unfair labor practice, and that knowledge of the unfair labor practice was thereafter widely disseminated, I find this request reasonable and hereby ordered, with the below clarifications and additions.

First, the wording of the notice posted shall be restricted to the wording provided in the attached order, and to appropriate language translations thereof. Second, the proposed training shall be required for all San Joaquin Valley-based UFW coordinators, organizers, and their immediate supervisors. Third, the UFW shall additionally be required to prominently post the notice in both Spanish and English for a period of sixty days at all of its own UFW offices in the San Joaquin Valley, with the specifics to be determined by the Visalia ALRB Regional Director. It is so ORDERED.

Dated: December 11, 2017

Mark R. Soble
Principal Administrative Law Judge
Agricultural Labor Relations Board

ORDER

Pursuant to California Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, UNITED FARM WORKERS OF AMERICA, its officers, agents, successors and assigns, shall:

1. Cease and desist from coercing or restraining employees who choose to exercise their right to engage in protected, concerted activity under California Labor Code section 1152
2. Take the following affirmative steps which are found necessary to effectuate the purposes of the Agricultural Labor Relations Act:
 - (a) Sign the attached Notice to Agricultural Employees on page thirty-six of this decision and, after its translation by a Board agent into the appropriate languages, reproduce sufficient copies in each language for the purposes set forth below;
 - (b) Prepare copies of the attached Notice, in all appropriate languages, by placing a copy of such Notice in a plain stamped or metered envelope, with the ALRB's return address, in the manner directed by the Regional Director, addressed individually to each and every agricultural worker employed by Respondent during the time period of September 1, 2015 to September 16, 2015, and submit such addressed, stamped envelopes to the Visalia ALRB Regional Director for him to mail within thirty (30) days after the Board's Order becomes final;

- (c) Provide copies of the Notice, in all appropriate languages, for posting at Gerawan for a sixty (60) day period, the specific dates and location to be determined by the Visalia ALRB Regional Director;
- (d) Post copies of the Notice, in all appropriate languages, in conspicuous places at all of its UFW offices in the San Joaquin Valley for a sixty (60) day period, the specific dates and location of posting to be determined by the Visalia ALRB Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed;
- (e) To cooperate with the Visalia ALRB Regional Director as needed with respect to the arrangement of Board agents reading the attached Notice in all appropriate languages to the crews employed by Respondent during the time period of September 1, 2015 to September 16, 2015. In the event, the configuration of these crews has changed since that time, the Visalia ALRB Regional Director is authorized to select a replacement crew of approximately equal size;
- (f) Upon calculation by the Visalia ALRB Regional Director, to transmit a reasonable rate to be paid to employees to compensate them for time lost at the reading and during a short ensuing question and answer period; and

- (g) Within sixty (60) days after the Board's Order becomes final, to ensure that all San Joaquin Valley-based UFW coordinators, organizers, and their immediate supervisors attend a training session on the Act not to exceed four hours in duration with the date, time and precise subject matter subject to the determination of the Visalia ALRB Regional Director. The UFW shall be required to compensate its employees at their regular rate for the time spent at this training.
- (h) Notify the Visalia ALRB Regional Director in writing, within thirty (30) days after the Board's Order becomes final, of the steps that Respondent has taken to comply with its terms.
- (i) Upon request of the Visalia ALRB Regional Director, Respondent shall notify the Regional Director or his designee periodically in writing of further actions taken to comply with the terms of this Order until notified that full compliance has been achieved.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a change that was filed in the Visalia Regional Office of the Agricultural Labor Relations Board (“ALRB”), the General Counsel of the ALRB issued a complaint that we, the United Farm Workers of America, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the Agricultural Labor Relations Act (“Act”) on September 9, 2015 by directing or misleading private hotel security into excluding anti-UFW workers from attending an ALRB hearing on allowing ALRB staff access into the fields to educate farm workers about the Act. The workers were let inside as soon as ALRB staff found out what had happened, which was prior to the actual start of the meeting.

The ALRB has told us to post and publish this Notice.

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

1. To organize yourselves;
2. To form, join or help a labor organization or bargaining representative;
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 ALRB;
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 you have these rights, we promise that we will **NOT** interfere with employees exercising their rights under the Act in any similar or related manner, nor will we restrain or coerce employees from exercising such rights.

Dated: _____

United Farm Workers of America

By: _____
(Name and title of representative)

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the ALRB. One office is located at 1642 West Walnut Avenue, Visalia, CA 93277-5348. The telephone number for the Visalia ALRB Regional Office is (559) 627-0995. This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE