Coachella, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RLEATIONS BOARD

HARRY CARIAN SALES,	)	
Respondent,	)	Case No. 80-CE-57-SD
and	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	9 ALRB No. 13
Charging Party.	)	

DECISION AND ORDER

On September 15, 1982, Administrative Law Judge (ALJ)[1/] Thomas Burns issued the attached Decision and recommended Order in this matter. Thereafter, Harry Carian Sales (Respondent), General Counsel, and the United Farm Workers of America, AFL-CIO (UFW) each timely filed exceptions and a supporting brief. Respondent timely filed a reply brief to the General Counsel's exceptions and to the UFW's exceptions; General Counsel timely filed a reply brief to Respondent's exceptions.

Pursuant to California Labor Code section 1146,[2/] the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs and has decided

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[1/] At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 30, 1983.)

[2/] All section references herein are to the California Labor Code unless otherwise stated.

to affirm his findings,[3/] rulings, and conclusions as modified herein and to adopt his recommended order as modified herein.

We find no merit in Respondent's contention that the conditions at its labor camp were not work-related and therefore that the employees' discussion of labor camp conditions with legal representatives did not constitute a protected concerted activity. Employer owned and/or operated housing constitutes a condition of employment: (1) where employees receive the housing at a rental cost below the prevailing rate for comparable housing, see Bemis Bros. Bag Co. (5th Cir. 1953) 206 F.2d 33 [32 LRRM 2535] and American Smelting and Refining Co. (1967) 167 NLRB 204 [66 LRRM 1015] enforced 406 F.2d 552 [70 LRRM 2409] cert. denied 395 U.S. 935; (2) where a shortage of other housing in the area of employment has caused worker demand for company housing, see Lehigh Portland Cement Co. (1952) 101 NLRB 529, [31 LRRM 1097] enforced 205 F.2d 821 [32 LRRM 2463]; and/or (3) where company housing is a necessary part of the enterprise and is provided to employees at such a (low) rate as to represent a substantial part of their renumeration, see Weyerhaeuser Timber Company (1949) 87 NLRB 672 [25 LRRM 1163]; NLRB v. Hart Cotton Mills Inc. (4th Cir. 1951) 190 F.2d 964 [28 LRRM 2434].

[3/] No exception was taken to the ALJ's conclusion that Respondent violated section 1153(a) by the conduct of Robert Carian, Respondent's supervisor, in ordering California Rural Legal Assistance representatives Muro and Richards to leave its property while they were conversing with employees about conditions at Respondent's labor camp. Although the conduct was not alleged in the complaint as an unfair labor practice, the ALJ found that it was fully and fairly litigated at the hearing. We affirm the ALJ's findings and conclusion with respect to the incident.

In this case, as Respondent did not charge its employees anything for lodging at its labor camp, the housing arrangement clearly represented partial renumeration for the employees' services. Therefore, we affirm the ALJ's conclusion that Respondent violated section 1153(a) by discharging employees Jose Luis Godinez, Jaime Vargas, and Manuel Moya Perez because they engaged in protected concerted activity, i.e., discussing their living conditions at the labor camp with legal representatives.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent Harry Carian Sales, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any agricultural employee for discussing working conditions with legal representatives, or for engaging in any other concerted activity protected by section 1152 of the Act.

(b) Interfering with the rights of agricultural employees at its labor camp to receive visits from, or to engage in discussions of living conditions at the labor camp with, legal representatives.

(c) In any like or related manner interfering with, restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by section 1152 of the Act.

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

(a) Offer Jose Luis Godinez, Jaime Vargas, and Manuel Moya Perez full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other employment rights or privileges, and make them whole for all losses of pay and other economic losses they have suffered as a result of their unlawful discharge, the amounts of backpay to be computed in accordance with Board precedents, plus interest thereon computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

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

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

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from June 15, 1980, to the date on which said Notice is mailed.

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

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

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

Dated: March 23, 1983

ALFRED H. SONG, Chairman

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Harry Carian Sales, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the Agricultural Labor Relations Act (Act) by discharging three workers because they engaged in protected concerted activity and by ejecting from Labor Camp No. 3 two legal representatives who were talking to the workers about their living conditions there. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT discharge or otherwise discriminate against any agricultural worker because he or she engaged in any of the protected concerted activities described above.

WE WILL offer Jose Luiz Godinez, Jaime Vargas, and Manuel Moya Perez their old jobs back or substantially equivalent jobs and will reimburse them for all pay and other money they lost because we discharged them, plus interest.

WE WILL NOT interfere with the rights of our agricultural employees to receive visitors at our labor camp or to discuss their working conditions with such visitors or other employees.

Dated:

HARRY CARIAN SALES

By: _____

Representative Title

If you have a question about your rights as workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California, 92243. The telephone number is (619) 353-2130.

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

Harry Carian Sales

9 ALRB No. 13
Case No. 80-CE-57-SD

ALJ DECISION

The Administrative Law Judge found that Respondent violated section 1153(a) of the Act by discharging Jose Godinez, Jaime Vargas and Manuel Moya Perez because they discussed the living conditions at Respondent's labor camp with legal representatives. Respondent also violated section 1153(a) of the Act by ejecting from the labor camp two legal representatives who were discussing the living conditions at the camp with agricultural employees. The ALJ found no violation of the Act with regard to Rubin Mendiola and Jorge Pena, as General Counsel failed to establish a prima facie case.

The ALJ found that living conditions at an employer's labor camp are working conditions of the employees who reside there, and that employees' seeking legal assistance concerning the living conditions at their labor camp were therefore engaged in protected concerted activity.

BOARD DECISION

The Board affirmed the ALJ's conclusion that Respondent violated section 1153(a) by its discharge of Jose Godinez, Jaime Vargas, and Manuel Moya Perez and ejection from the labor camp of two legal representatives who were discussing the living conditions at the camp with those agricultural employees. Employer owned and/or operated housing constitutes a condition of employment: (1) where employees receive the housing at a rental cost below the prevailing rate for comparable housing; (2) where other housing in the area of employment is in short supply and consequently there is a worker demand for company housing; or (3) where company housing is a necessary part of the enterprise and is provided to employees at such a low rate as to represent a substantial part of their renumeration. As Respondent did not charge its employees for lodging at the labor camp, the housing arrangement represented partial renumeration for its employees' services.

* * *

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

HARRY CARIAN SALES, Respondent,	)	
and	)	CASE NO. 80-CE-57-SD
UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	

RICHARD RIVERA for General Counsel.

DAVID SMITH and JAMES HALL for Respondent.

DECISION

STATEMENT OF THE CASE

The hearing was held in Indio, California, on June 14, 15, and 16, 1982, before Administrative Law Officer, THOMAS PATRICK BURNS.

A Notice of Hearing and Complaint (hereafter complaint) charging Respondent with having violated California Labor Code Sections 1152 and 1153(a) was issued and served on March 10, 1982. (GCX 1(a).1/ During the hearing GCX 1(a) was amended. TR.I: 32,35.2/ The amendments were timely served on the parties, the ALO, and the Board.

The complaint was amended by substituting in the names of Manuel Moya, Ruben Mendiola, and Augustine Pena for Does I, II and III. The remaining Does were dismissed. Thereafter the hearing was conducted pursuant to the First Amended Complaint.

1/. The following abbreviations are used throughout the decision.

CRLA	California Rural Legal Assistance
UFW	United Farm Workers of America, AFL-CIO
RX	Respondent's Exhibit
GCX	General Counsel's Exhibit
ACT & ALRA	Agricultural Labor Relations Act
ALRB	Agricultural Labor Relations Board
NLRB	National Labor Relations Board
NLRA	National Labor Relations Act

2/. Refers to transcript Volume I, pages 32 through 35. The transcripts will be cited in this manner.

During the hearing fourteen different witnesses testified. One was called to testify three times; three others were called to testify twice. Of the fourteen, four testified for Respondent. UFW was not present. All parties were given full opportunity to participate in the hearing and after the close thereof, General Counsel and the Employer (Respondent) each filed a brief in support of their respective positions. Upon the entire record, including my observations of the demeanor of the witnesses, and in consideration of the briefs filed by the parties, I make the following findings of fact, analyses and conclusions of law, and determination of relief.

FINDINGS OF FACT

A. Jurisdiction

Harry Carian Sales is a sole proprietorship that grows and ships table grapes in the Coachella Valley. The company properties include, inter alia, Ranch No. 3, and a company labor camp at that ranch. Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

B. Alleged Unfair Labor Practices

This case involves the alleged discharge of agricultural workers Jose Luis Godinez, Augustin Jaime Vargas, Jorge Pena, Manuel Moya Perez and Ruben Mendiola by Respondent company, allegedly because they had engaged in protected concerted activities. General Counsel alleged that the workers had protested to company foremen about paycheck deductions and camp conditions. General Counsel also asserts that the workers arranged for a community worker from California Rural Legal Assistance to inspect the labor camp and to advise the company employees of their legal rights. General Counsel alleged that the company became aware of the CRLA visit, ordered the representatives off the premises and subsequently fired those persons who had accompanied the CRLA agents, in violation of Labor Code Section 1153(a) because of their actions and to warn other employees not to protest the terms and conditions of their employment.

C. Conflicts in Testimony

1. In Re CRLA Visit to Camp:

I find numerous conflicts in the testimony of many of the witnesses on both sides of this case. To the extent that the evidence is consistent, the following appears to be true.

Jose Louis Godinez, Jaime Vargas, and possibly one other unnamed person, all of who were grape pickers for Harry Carian Sales, went to the office of the CRLA in Coachella on June 13, 1980. They lodged certain complaints to the effect

of water being unavailable and the consequent camp conditions, which caused CRLA representative, Magdaleno Muro, to visit camp number 3 of Respondent that same afternoon.

Mr. Muro, accompanied by a CRLA secretary, Ms. Bella Richards, and by several employees, including Godinez, Vargas, Moya, Mendiola and Jorge Pena took photographs of various parts of the camp. Pictures were taken of the living areas, toilets and the kitchen. Also, pictures were taken of a well located just outside the camp, but on the ranch property.

There is a conflict in testimony as to whether Foreman Hilario Castro interfered with the picture taking and ordered the CRLA persons to leave. He denies it, while three employees contend they heard him. In any case he admits being present, observing the activity, including the employees accompanying the photographer, and admits calling the Carian brothers to notify them of the presence of the visitors. Because neither Muro, himself, nor Richards said anything about such a confrontation, I am loathe to resolve the conflict against Respondent on that specific question. The observation is the important aspect regardless of the confrontation. Jose Castro, General Foreman, also admits to observing the picture taking.

There appears to be no doubt, from all testimony presented, that at least Mr. Robert Carian, Ranch Supervisor, son of the owner, did in fact confront the CRLA representatives and angrily demand that they leave on the grounds of trespassing and being present without company permission. It appears that Robert Carian was accompanied by his brother, Blaine Carian, but such a finding is not necessary for a decision in this matter.

Robert Carian claimed that his confrontation took place off the camp grounds at a well on the ranch. Muro and others contend there were two such confrontations, and that one was in the camp, and one by the well. It is of little importance in reaching the decision, as the vital question is whether Respondent was knowledgeable about the concerted activity of the alleged discriminatees and whether action was subsequently taken against them. I do however, conclude that two such confrontations took place. Clearly, Respondent was knowledgeable through observation by at least four management persons of the activity and of the presence of the alleged discriminatees.

Because of conflicts in testimony within and between all parties, I have set out some of the questions and the varied responses. Statements to the right of the names summarize testimony.

<u>What members of management arrived when Muro was there?</u>

RICHARDS: Robert Carian with a foreman.
MURO: Robert Carian with another person.

MOYA:	Hilario Castro (H. Castro spoke to Muro) also Robert Carian. (Robert Carian also spoke to Muro.)
VARGAS:	Hilario Castro (H. Castro spoke to photographer and told him he could not enter camp, asked where he was from, and what permission he had to be there.) also Robert Carian.
MENDIOLA:	Did not recall what foremen were present.
PENA:	Hilario Castro. (H. Castro was trying to prevent Muro from taking pictures. H. Castro told the photographer to get out because he did not have any right to be taking pictures there.)
CARIAN:	Robert Carian. (Did not see Muro at camp, only at domestic well on his ranch by the camp. Does not recall if anyone was with him.)
J. CASTRO:	Jose Castro. (Was present when Muro was there, but did not say or do anything. Did not see them leave because he had left.)
H. CASTRO:	Hilario Castro. (Was present when CRLA representatives were there. Called Blaine Carian to report it. Saw Robert and Blaine Carian talking to them about 200 feet from his house. Left to go to work.)

Who accompanied CRLA representative around camp to take photographs?

GODINEZ:	Godinez, Mendiola, Vargas, Moya, Augustine Pena and Jorge Pena and others whose names I do not recall.
VARGAS:	A lady, Godinez, Moya, Jorge Pena and some others whose names he could not recall. (And self Vargas.)
MENDIOLA:	A lady with the photographer, Mendiola and Godinez, along with some other fellows. (And self Mendiola.)
PENA:	A lady with the photographer, Pena, Moya, Vargas, Godinez and others he could not recall.
MOYA:	A lady (his secretary), with the photographer, Jaime Vargas, Mendiola, Godinez and myself, Moya Perez.

Why did CRLA representative Muro leave camp?

GODINEZ:	Because Hilario Castro and Jose Castro asked him whether he had legal authority to be there at the camp and told him to get out of the camp.

MURO:	Told to leave by Robert Carian. Carian told him that he had no right to be on the property and that he should leave.
MOYA:	He was asked to leave by a foreman who said that it was private property.
VARGAS:	Both Hilario Castro and Robert Carian told Muro to leave.
PENA:	Was told to leave by Hilario Castro and Robert Carian.
CARIAN:	Denied ever ordering a man taking pictures at the camp to leave the camp in June 1980. Carian denied seeing a man taking pictures at the camp. Carian said he saw a man on the northwest corner of the ranch, about 80 yards from the camp, taking pictures. Carian said he did not object to the pictures being taken, only to the person being on the ranch without permission, as he was trespassing. Told Muro to leave or go back to the camp.
RICHARDS:	She and Mr. Muro left the camp because Mr. Carian had told them to get off the property. She testified that Mr. Carian told them this on two occasions: once when they were by the houses, and then again when they were by the well. Mr. Carian was angry and Mr. Muro told him they were there investigating a complaint by one of the workers. She said that after being told to leave by Mr. Carian they walked to the well and took pictures of it. Mr. Carian again told them they did not have any right to be on the property and they should get either permission to be on it or a search warrant.

2. In Re Jose Castro's return:

Testimony again is in conflict as to exactly what happened after the CRLA representatives left the area. It is my conclusion based on all testimony that Mr. Jose Castro, the General Foreman, drove up to a group of employees which included, Godinez, Vargas, Moya, Augustine Pena and Jorge Pena. Though others testified that Mendiola was also present, Mendiola said that he was in bed and did not see who came to the camp after the CRLA representative left.

Following is a brief summary of the essence of the testimony showing conflicts and similarities on this issue:

<u>After CRLA representative Muro left, what took place?</u>

GODINEZ:	(On direct) Ten minutes after Muro left Jose Castro drove up and told Godinez and friends to get out of the camp. Jose

Castro told him he was going to give them their checks.
(On cross) Jose Castro told Manuel Moya he was causing a lot of trouble in the camp, and told him he was going to give them their checks. Jose Castro told Godinez that since he did not live in the camp, he and Jaime Vargas should leave the camp.

MOYA: About half an hour to an hour after the photographer left Jose Castro drove up. Jose Castro told Godinez and Vargas to leave because they did not live in the camp. He told Moya and the others he was going to give them their checks the next day. Castro was directing himself to those who had caused the photographer to be there.

VARGAS: Jose Castro arrived. Castro angrily told them to leave because they were causing problems. Jose Castro told them that he had found out where the photographer had been sent from and that they were causing problems at the camp by lodging a complaint. He told them to leave, because they were causing problems. Jose Castro told Vargas to leave because he did not live there.
(On cross) Jose Castro said to the group, "Well get the fuck out of here." He also told them they had caused a lot of problems by going to CRLA and that he was going to bring them their checks.

MENDIOLA: Don't know. Went to bed. Could not remember if any foremen arrived after Muro left.

PENA: Jose Castro arrived. (On direct) Castro told Vargas and Godinez to leave the camp because they did not have any right to be there.
(On cross) Pena admitted he did not know what Castro told Godinez and Vargas.
(On redirect) Pena said Castro told Godinez and Vargas that they had to leave the camp because they did not have any right to be in the camp as they did not live there.

JOSE CASTRO: Drove up to where employees were. First he told Godinez he should act right in the camp. Told him that the other people were complaining that they didn't let them sleep properly there in the barracks. Godinez pulled a knife and that's when I told him that "That was it." That I was going to go get his check and give it to him. Jaime Vargas said he was leaving too and that he wanted his check. (First testified he went and got both checks, but on cross he testified that Erasmo Castro gave the checks. He denied that this took place the same day as the photographer was there. Then he said he did not know what day it was, from June 15 to 17.

Who was present when Jose Castro allegedly said he was going to give them their checks?

GODINEZ:	(On direct) Godinez, Jaime Vargas, Manuel Moya, Augustine Pena, Jorge Pena, Ruben Mendiola and others names not recalled. (On rebuttal) Godinez, Jaime Vargas and Manuel Moya.
MOYA:	Moya, Mendiola, Godinez, Vargas and some others whose names he could not recall.
VARGAS:	Godinez, Vargas, Manuel, Augustine and Jorge Pena.
PENA:	Augustine Pena, Vargas, Moya, Godinez and some others whose names he could not remember.
MENDIOLA:	I do not know. I was in bed.
JOSE CASTRO:	Godinez and Vargas as well as many others he does not recall.

3. In Re the Knife Incident:

Jose Castro alleged that he fired Godinez because he pulled a knife on him. The testimony is in conflict as indicated hereinafter:

What action was taken with a knife?

GODINEZ:	Godinez was playing with it under a tree when Jose Castro drove up. The knife was on the ground when Jose Castro was present.
MOYA:	Saw Godinez playing with a knife before Jose Castro arrived. Godinez did not threaten Castro with the knife, throw the knife in Castro's direction or point the knife at Castro.
VARGAS:	Godinez was playing with a knife, throwing it on the ground against a tree. Jose Castro arrived. Did not recall if Godinez stopped playing with knife after Castro arrived.
JOSE CASTRO:	Godinez pulled a knife on Castro. Castro then told Godinez that was it that he was going to get his check and give it to him.

4. In Re the Dismissal of Jose Luis Godinez:

Again there is controversy as to who, what and when he was fired.

When was Godinez fired?

GODINEZ:	On Monday following the Friday the pictures were taken. Worked 15 minutes and then told he was fired and given check.
JOSE CASTRO:	June 16 or 17. Redirect it was 15 or 17. Not sure of exact date. Same day as Godinez had the knife.

MURO:	He testified that Godinez was fired the day after the photographer visited the camp on Friday.
GC. Ex3:	Shows that on June 18 (Wednesday) Godinez visited Muro and told him he was fired on that date.
Rx5(b):	Payroll record shows Godinez paid for last day of work, June 21, 1980.
E. CASTRO:	Gave check to Godinez in mid-June.

Who fired Godinez? What was said?

GODINEZ:	Handed check by Erasmo Castro and told he did not know why he was being fired but they had taken some people through the camp without permission, and that was the reason he was being given his check. If he wanted to know more ask Jose Castro. Godinez later asked Jose Castro who told him he had been fired because he had taken the agent to the camp, and that he had been causing a lot of trouble.
J. CASTRO:	Fired Godinez. Told Godinez that other people had been complaining about the noise he had been making in the barracks and were unable to sleep. He told Godinez he was not acting right in the camp. Godinez pulled a knife, Castro told him that was it, he was going to get his check.
E. CASTRO:	Gave check to Godinez in June, 1980, and told him that he was fired. He told him he was fired because of the problem he had caused in the camp. Told to fire him by Jose Castro. His work was acceptable. He was a regular worker.

5. In Re the Dismissal of Jaime Vargas:

There is controversy as to whether he quit or was fired.

Who fired Vargas? What was said?

VARGAS:	Erasmo Castro fired Vargas. He said, "Young man, why don't you leave. You're not making it by picking." Also testified that Erasmo Castro did not give him a reason, but simply told him to get out. Vargas also testified that it was Jose Castro who had fired him along with others after the photographer had left on Friday.
J. CASTRO:	Jaime Vargas was not fired. He asked for his check at the time that Godinez was fired, at the time of the knife incident. Jose Castro went to pull the check for him.

E. CASTRO: Do not know who fired Jaime Vargas.

When was Vargas fired? By whom?

VARGAS: The Monday following the Friday that the camp was photographed.

PENA: First he said he saw Jose Castro hand Godinez his pay check the day after the camp was photographed. Then he said he did not see Jose Castro give Vargas his check, but only saw the check when Vargas showed it to him. Finally Pena said he did not know how Vargas got his check.

J. CASTRO: Vargas was not fired. When Godinez pulled a knife, and Castro told him that was it, he was getting his check, Vargas said he wanted his check too. Castro left to get the two checks.

Exhibit: Rx4 Pay record shows last date of work as June 17, 1980.

6. In Re Manuel Moya (Perez):

When was Moya fired?

MOYA: The same day as the photos being taken. Did not work after that day, but given check one or two days later.

Exhibit: Resp EX 3(b): Exhibit shows last day of work was Monday, June 23, 1980. This was 10 days after Muro visited the camp.

How was Moya fired?

MOYA: Jose Castro stated that he would have Moya's check ready the next day. Moya understood this to mean that he was being fired. Jose Castro told Moya that he was giving him his check because he was causing a lot of problems.

J. CASTRO: Did not fire anyone but Godinez.

7. In Re Ruben Mendiola:

When did Mendiola last work? When did he receive his last check?

MENDIOLA: Did not work after the day the camp was photographed. Received his last check on the following day, along with some others, including Jaime Vargas.

Exhibit: Rx 1: Last day of work for Mendiola was Friday, June 13.

8. In Re Payroll deductions:

Mr. Godinez testified that he discussed problems with

payroll deductions involving too much taken out of his check with two foremen, Hilario Castro and Jose Castro. He claimed to have told them that money was taken out for lodging, though he did not live on the camp. He said that at least 15 other people were present and that they complained also. He specifically named Manuel Moya, Jaime Vargas, Jorge Pena, Augustine Pena, Ruben Mendiola and the cook. He claims to have had these discussions on the same day that the CRLA agent took pictures of the camp. He said the discussion was in the afternoon about four hours before the agent came. It appears that the CRLA agent came at approximately 2:00 p.m. No other witnesses testified in support of Godinez assertions. Both Hilario and Jose Castro denied discussing anything about payroll deductions with Godinez or others. Further, pay stubs showed a deduction for food, but not for lodging. See GCX 1(j) The discussion was to have taken place in the field. Records show Jaime Vargas did not work that day. Though the exhibits showed that no deductions were made for lodging from Godinez' check, Jose Castro testified that Godinez did sleep in the camp. He named a person who complained of being kept awake by Godinez. That person was not produced in support of this claim. Godinez, Moya, Vargas and Eunice Godinez (wife of Jose Luis Godinez) testified that he did not sleep at the camp.

I find that there is sufficient conflict in the testimony of Godinez on the matter of payroll deductions as to cause me to reject it entirely. If this were the only matter where concerted activity was alleged, I would find it insufficient to conclude that a violation had taken place. There is, however a separate matter which does appear to stand for concerted activity, i.e., the bringing of the CRLA representative to the camp and the accompanying of him during his visit in the presence of management personnel.

Did the contradictions in testimony disprove the case?

Respondent's counsel relies heavily upon the contradictions in testimony by the complaining witnesses to support his allegation that General Counsel did not prove his case. He ignores the even more striking contradictions by his own witnesses. Admittedly it is difficult to make a finding where there is exageration, fabrication or puff by both sides. One must penetrate the mist of misstatement and draw out that which is most consistant, and that which contains the clearest essence of truth. It was with that in mind that I rejected Godinez' claims re paycheck deductions. They may have been true, but with no support and in the face of other contradictions, the burden of proof should be greater.

As will be seen later the same principle was applied to the contradictions between Respondent's payroll records and the statements of its own foremen. The payroll records lost their value as proof positive when the Foreman claimed dismissing Godinez at an earlier date.

While contradictions make it difficult to decide, they do not in and of themselves disprove the case.

9. Statements of Robert Carian:

It was stipulated that Robert Carian, Jose Castro, Hilario Castro and Erasmo Castro were Foremen or Supervisors within the meaning of the Act.

Carian denied speaking to the CRLA representatives at the camp, insisting that he only spoke with them at the well, away from the camp area. He claims he was not angry, and that he observed the two because the well was near the entrance to his driveway. Tr. II: 17-18; Tr. III: 5-7.

Besides being contradicted by all five discriminatees' testimony and Magadeleno Muro's testimony, supra; Carian's claim is also contradicted by ex-CRLA secretary Bella Richards' testimony. She testified that "Mr. Carian came and told us that we had no right to be on this property and he told us to get off of it . . . The first time we were by the houses. And the second time we were by the well." Tr. III: 40. Present at the first conversation were Muro, herself, the foreman, and "some of the men who were living there that worked for Carian Ranch. . ." Ms. Richards testified that Carian was quite angry. Id., 40, 41.

Even more damaging to Carian's credibility is the testimony of foreman Hilario Castro. Hilario testified that he notified Blaine Carian that the CRLA representatives were present. A few minutes later, Blaine and Robert Carian arrived at the camp, while Muro and Richards were still present, and spoke with Muro and Richards there. Tr. II: 28. Thus, Robert Carian's claims that he did not speak with Muro in the camp, and that he was not told of Muro's presence in the camp are shown to be false by a company foreman.

10. Statements of Jose Castro:

Jose Castro testified, pursuant to California Evidence Code §776, that he fired Godinez approximately the 15th or 17th of June, 1980. Tr. II: 23-24. The General Foreman also admitted observing persons inspect the Camp No. 3 bathrooms and barracks. He evaded answering a question about becoming angry that "they were looking around" by stating "I didn't tell them anything." Tr. II: 25. When asked, "when did you fire Ruben (sic) Mendiola in 1980?" Jose Castro replied "He was never fired. He was never hired. He was staying at the camp but not working." Tr. II: 24. Jose Castro was asked if he returned to Camp No. 3 later, on the day that the camp was inspected. His reply was "Probably so. I am not sure." Tr. II: 26. He denied speaking to the workers or becoming angry.

Jose Castro claimed that Godinez pulled a knife on him

and tried to fight with him; "That was it", so he fired Godinez. Tr. III: 8, 10.

Jose Castro testified concerning a "complaint" by one "Francisco Iralez" who allegedly objected to Godinez being disruptive at nights at the camp. Tr. III: 11-12. He also claimed that "this fellow that came yesterday to testify"-- Erasmo Castro, and Francisco Iralez were with him when he fired Godinez. Tr. III: 12. While he recalls that it was Erasmo who actually delivered the final check to Godinez, Jose cannot recall if he fired Godinez before or after the camp inspection incident. He only recalled "a lot of people" being present. Tr. III: 9-12.

Jose Castro's claim that Ruben Mendiola was never hired (thus not fired) is shown to be false by RX 1, the Zoila Castro payroll for June 9-15, 1980, where Mendiola's name, his hours worked, and the number of boxes of grapes he picked, appears. As Mendiola's name does not appear on any subsequent payroll, his last day of work was Friday, June 13, 1980. See RX 1 through RX 5(b), the Stipulation at Tr. III: 30-31, and Ms. Durate's testimony at Tr. III: 28, regarding RX 1.

Godinez, his wife, and Moya, all denied that Godinez ever slept at the camp, or even stayed there late at night. Tr. I: 5, 15, 25, 26, 83; Tr. III: 32, 42. Godinez denied knowing a Francisco Iralez, although Jose Castro claimed that Iralez had the bed next to Godinez. Tr. III: 35. Although Godinez firmly denied sleeping at the camp or knowing Francisco Iralez, Respondent did not rebut this denial.

Jose Castro's claim that Godinez threatened him with a knife was denied by Godinez, Vargas, and Moya, the latter two being witnesses to the incident where Castro drove up. Tr. III: 32-34; 36-38; 44-45; 48. Castro's claim that Erasmo was with him when he fired Godinez is not supported by the discriminatees' testimony nor by Erasmo's testimony.

11. Statements of Hilario Castro:

Hilario Castro testified that he did not confront the persons from CRLA who were inspecting the camp, but merely informed Blaine Carian of their presence. According to Hilario, both of the persons were men. Tr. II: 28-29. All evidence supports the fact that one was a woman.

Hilario's denial of interfering with the camp inspection is contradicted by Godinez, Moya, Vargas and Pena. Tr. I: 11, 70, 80-81, 101, 107; Tr. II: 8-9. Ms. Richards recalled that a foreman was present with Robert Carian when they were confronted in the housing area, but there is no indication that she knew who that person was.

I do not find Hilario Castro's misidentification of

Ms. Richards as a man significant or intentional as it would serve no purpose and can be accounted for as a failure in memory on a minor matter.

ANALYSIS

Did Respondent Know That Godinez, Vargas, Moya, Pena, and Mendiola Engaged in Protectd Concerted Activities.

General Counsel argues that testimony showed that the five men were present during a protest to Foreman Erasmo Castro about paycheck deductions. He says that in total, about fifteen persons were involved in the protest. He also argues that a second protest to General Foreman Jose Castro was made where paycheck deductions and squalid camp conditions were discussed, and that the five men participated in the protest. Tr. I: 7-8. I am struck by the fact that only Godinez testified to those assertions though the other claimants were not asked about it. Because of numerous contradictions in the Godinez testimony I do not credit these allegations without further support.

Supervisor Robert Carian, General Foreman Jose Castro and Foreman Hilario Castro were all aware that the five named discriminatees assisted Mr. Muro and Ms. Richards with the inspection of the camp as they saw them.

I find that the protest of the workers concerning labor camp conditions is protected concerted activity.

The Actions involving CRLA Representative was Concerted Activity.

In Jack Bros. and McBurney, Inc., 6 ALRB No. 12, the Board held that anything directly involving the employment, wages, hours, and working conditions of the employees constitutes protected concerted activity. As the evidence also shows that the labor camps were operated when the company needed workers, Tr. II: 16, the labor camps per se involved working conditions. Thus, Respondent operated the labor camps to facilitate its farming and harvest operations. The workers' protest regarding the camp conditions is analogous to protests regarding dirty field toilets or inadequate drinking water. In Royal Packing Company, 8 ALRB No. 16, the Board held that protests regarding field toilets and drinking water constituted protected concerted activities.

In recent years, the NLRB has held that seeking assistance from outside agencies can rise to protected concerted activity, where the assistance sought involves the terms and conditions of employment. Examples include individual workers filing complaints with state Occupational Safety and Health Administration (OSHA), or Equal Employment Opportunity Commissions. Alleluia Cushion Co. Inc., 221 NLRB 999, 91 LRRM

1131 (1975); Bighorn Beverage, 236 NLRB 736, 98 LRRM 1396 (1978); Massachussetts Women's Hospital d/b/a Parker Hill Medical Center, 227 NLRB 1289, 95 LRRM 1616 (1977); Country Club of Little Rock, 109 LRRM 1301 (3-22-82).

While the above-cited cases involve an individual seeking the intervention of an outside agency in a work-related matter of concern to all the employees, a fortiori protected concerted activity is involved where three workers seek legal assistance on work-related matters of concern to all of Respondent's employees. In the instant case, Respondent's foreman and supervisors (including the owner's son) were aware that Godinez, Vargas, and the other named employees were involved in the CRLA's inspection of the camp. Going to CRLA and arranging for Mr. Muro and Ms. Richards to inspect the camp was protected concerted activity. Respondent became aware of who assisted Muro and Richards in their camp inspection.

Did the Five Men's Participation in Protected Concerted Activities Motivate their Discharges?

Despite Respondent's claim that only Godinez was discharged, the evidence shows that the discriminatees were fired shortly after participating in the camp inspection incident. Mendiola did not testify that he was fired though his last day was June 13, the day the CRLA representative visited the camp. Respondent's witnesses never claimed that Moya and Pena were not fired. Rather, Respondent seeks to imply that the two men continued working until the end of the harvest.

Jose Luis Godinez

Briefly, Godinez testified that, after Muro and Ms. Richards left Camp No. 3, Jose Castro arrived and ordered him to leave. "He told me to get out of the camp, that I had no right to be there and also my friends. He told them he was going to give them their check." Tr. I: 12. While not positive, Godinez recalled the camp inspection incident and the subsequent conversation with Jose Castro to have occurred on a Friday.

The following Monday his foreman, Erasmo Castro, informed Godinez that he was fired. Erasmo gave him his check. The same day, Jose Castro told Godinez that he had been fired for taking the "agent" to the camp and for "causing a lot of trouble." Tr. I: 12-13.

Godinez's recollection of his discharge is corroborated by the other discriminatees, and also by the testimony of Erasmo Castro and Jose Castro. Jose Castro testified that he fired Godinez, but that Erasmo Castro gave Godinez his check. Jose Castro placed the approximate date of the discharge at June 15 or 17, 1980, which corroborates what Godinez told Mr. Muro from the CRLA Office. See GCX 3, where Mr. Muro noted that Godinez came on June 18, 1980 and informed him that he had been fired.

Erasmo Castro testified that he told Godinez he had been fired for "causing problems" at the camp. It would appear the "problems" Godinez caused was having the camp inspected by Legal Aid personnel. There was no effort by Respondent Counsel to clear up any possible misconception on that point.

Respondent's defense that Godinez was fired for misconduct, does not withstand scrutiny. According to Jose Castro, he admonished Godinez to behave himself at the camp, whereupon Godinez pulled a knife on Castro and challenged him to fight. "And that's when I told him 'That was it.' That I was going to go get his check and give it to him." Tr. III: 8-9. Castro alleged that camp residents had complained about Godinez' late-night disturbances.

One must wonder why Jose Castro or any foreman had not warned Godinez before about his "disturbances", especially if Godinez did not live in the camp. Although Jose Castro claimed he could not recall when the discharge occurred, Godinez and the other discriminatees vividly recall the timing, ten to twenty minutes after the camp had been inspected.

Castro's claim about being threatened with the knife was uniformly refuted by the five men. The testimony shows that Godinez was idly tossing the knife into the ground while Castro was angrily running him off the property, and firing the other men. Tr. III: 33-34, 36-37, 44-45, 48. I do not find that Godinez threatened Jose Castro with the knife. Castro's testimony about the knife does, however, corroborate the five discriminatees' claim that they were fired (or run off) within minutes after the CRLA employees left.

In Lawrence Scarrone, 7 ALRB No. 13, the Board set forth the elements of proof necessary to sustain a finding of a discharge for engaging in protected concerted activity in violation of §1153(a) of the Act. "(T)he General Counsel must prove by a preponderance of the evidence that the employer knew, or at least believed, that the employee(s) had engaged in protected concerted activity, and discharged or otherwise discriminated against the employee(s) for that reason." Citations omitted.

In view of Jose Castro's testimony, there is a clear causal connection between Godinez' protected concerted activities and his discharge Monday morning. I find that the alleged threat with a knife is a pretext to justify the dismissal of Godinez. Jose Castro admitted observing the camp inspection; it is uncontroverted that Godinez and the other men closely accompanied Mr. Muro and Ms. Richards during the camp inspection.

Respondent's defense to Godinez; discharge is further discredited by its contradictory claim that Godinez continued working in a different crew. I do not believe that General Foreman Jose Castro (who supervised "everything" Tr. II: 22) fired Godinez and prepared his check, had Foreman Erasmo Castro

give the check, and then allow Godinez to finish the harvest.

Custodian of Records Elizabeth Durate testified that work in the Zoila Castro crew (jointly supervised by Erasmo Castro Tr. II: 31-32) continued through the twenty-third of June, 1980 Tr. III: 21. Yet Respondent offered no explanation why Godinez suddenly "transferred" from the Zoila-Erasmo crew to the Jorge S. Castro crew right after the camp inspection incident. I agree with General Counsel's argument that there is no explanation why Godinez and Vargas were paid for two extra days (RX 4, RX 5a, Tr. III: 22-23), June 17 and 18, but no other worker was. It definitely appears that Godinez and Vargas were fired and paid off. Godinez did not work in the Jorge S. Castro crew (RX 5b), from June 17 to June 23, as his unequivocal denial Tr. III: 35 and GCX 3 clearly demonstrates.

The General Counsel has met the requirements of Lawrence Scarrone, supra; and the requirements of Nishi Greenhouse, 7 ALRB No. 18. By showing that Respondent's "defenses" were pretexts, Respondent has not met the test in Nishi Greenhouse, id., that it would have fired Godinez regardless of his participation in protected concerted activities. See Wright Line, Inc., (1980) 251 NLRB 1083, 105 LRRM 1169. Respondent clearly violated Labor Code §1153(a) when it discharged Godinez in June, 1980.

Jaime Vargas

Respondent's defense, that Augustin Jaime Vargas quit his job (Tr. III: 8) rests solely on the credibility of Jose Castro. I do not find his testimony believable. Jose Castro's denials, evasiveness, and fabrications destroy his credibility as a witness. I reject General Counsels request that this ALO should take judicial notice of the findings of other ALO's in other cases regarding the credibility of the witness. The fact that he may have been found to be false in one case does not determine his credibility for the future. My findings are totally independent of any other cases noted. Indeed I avoided reading those cases because of that request.

RX 4, the Zoila payroll for June 9 through June 15, 1980, purports to be Vargas' last pay period. At Tr. III: 22, Ms. Duarte testified that "the seventeenth of June", 1980, was the last date on which Mr. Vargas worked for Harry Carian Sales. Thus, Respondent's proffered evidence corroborates the discriminatees' claims that they were fired very shortly after the labor camp inspection incident. Again, the evidence shows that the requirements of Lawrence Scarrone, supra, have been met. The Castros and Robert Carian knew that Vargas accompanied Muro and Ms. Richards during the labor camp inspection. Respondent's discharge of Vargas violated §1153(a) of the Act.

Were Mendiola and Pena Dismissed?

Though Respondent's attorney states on page 37, line 23, 24

and 25 of his closing brief that Jorge Pena testified to being fired on June 13, I find nothing in the transcripts to substantiate that. General Counsel does not make an allegation that Pena testified that he was dismissed, but attempts to bootstrap that interpretation into evidence through the testimony of another witness, Moya, that Jose Castro's use of the plural word "you", i.e., "ustedes", in Spanish, was directed at both Pena and Moya. General Counsel asks that we accept that Pena was dismissed without having asked Pena himself while on the stand whether or not he believed he was dismissed.

It may have been an oversight on the part of General Counsel to not ask the key question of Pena, as indeed, he did not ask it of Mendiola, but the men were there testifying under oath. It may have been that neither could honestly say that they understood themselves to be dismissed. Clearly, Pena was asked whether he was aware of other persons' dismissals, why not his own?

If, in fact, Mendiola and Pena had testified that they were given their checks on the 13th or even a few days later, or at any reasonable time after their participation in the concerted activity, and that they believed they were dismissed on account of such activity, there would have been ample evidence to support their allegations.

In the next section of this decision I have included General Counsel's argument on behalf of Mendiola, Pena and Moya. He ties these together so that he may assert that what happened to one happened to the others. I present the argument here in fairness to General Counsel's position, but I do not accept his argument as to Mendiola and Pena for the very reason he cites, i.e., California Evidence Code Section 412: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

I do accept his argument as to Moya. It appears to be sound, but I reject the effort to bootstrap the other two into position as discriminatees without having examined them as to their beliefs that they were discriminated against, or even that they were fired without having any idea why.

It may be justly argued that since the date of separation was so closely related to the act of concerted activity, there can be no other conclusion than that Pena and Mendiola were dismissed without just cause. Who is to say that they did not just stop working on their own or because of rumor from others? It would have taken very little to ask them those simple questions to clear it up as was done with Moya and the others. Indeed, all of the surrounding evidence draws me toward a conclusion on behalf of Pena and Mendiola, but without a more clear statement of their own assertions I am unwilling to find against Respondent on those two matters.

START OF GENERAL COUNSEL'S ARGUMENT

Ruben Mendiola

Mr. Mendiola testified that he worked for Respondent in April, May, and June, 1980. Unlike the other discriminatees, Mendiola worked in the "leafing", a preharvest function, and was assigned to Hilario Castro's crew. Tr. II: 2. Like the other discrimintees, Mendiola accompanied Mr. Muro and Ms. Richards through the camp's kitchen and bathrooms. Tr. II: 3. After that day, Mr. Mendiola did not work. "I did not because the following day we received my (sic) last check, myself and some others, among them Jaime Vargas." Tr. II: 4. Mendiola's testimony is uncontroverted.

Unknown to Mr. Mendiola, Jose Castro had observed Mr. Muro and Ms. Richards inspecting the camp. At Tr. II: 25, Jose Castro testified:

Q. (By Rivera) Well didn't you find out, Mr. Castro, that in June of 1980 a man had gone to camp number three to take photos?

A. There were some people around but I didn't see anything about photographs or anything.

Q. What were the people doing?

A. I do not know. They came in to check there.

Q. How do you know that they came in to check?

A. I arrived there when they were looking around.

Q. Who was looking around?

A. I do not know who they are.

Q. Where were they looking?

A. Camp number three, the bathrooms, the barracks.

In short, Mendiola was observed by the General Foreman (among other foremen) engaging in protected concerted activity.

As was discussed ante, Respondent's defense is that Mendiola was never employed in 1980, hence he was never fired. RX 1 flatly contradicts this lie. As Respondent has failed to produce any credible evidence to explain Mendiola's termination, the company has failed to rebut the General Counsel prima facie case. Again, the requirements set forth in Lawrence Scarrone, supra, have been met.

Manuel Moya Perez

Manuel Moya testified at length about his discharge and the discharge of others, by Jose Castro on the day the labor camp was inspected. Mr. Moya described the setting when Jose Castro arrived. At the side of the camp were Moya, Vargas, Godinez, Jorge Pena, and others. Tr. I: 74. On cross-examination, Moya described the discharges in detail.

Q. (By Smith) When did Jose Castro arrive that day?

A. He arrived there later, about half an hour after the photographer5/ had left.

Q. Were the workers still outside?

A. Most of them were there.

Q. Was Vargas still there?

A. Yes.

Q. How about Godinez?

A. He was also there. Yes, that's where he told them to get out of the camp.

Q. That was about an hour after the photographer left; is that right?

A. About half an hour.

Q. Half an hour to one hour; is that what you said before?

A. Yes. I couldn't be precise whether it's half or an hour, but it was a long time.

Q. So they stayed there a long time after the photographer left?

A. Who?

Q. Vargas, Godinez.

A. After the photographer left, they were there for the time until Jose arrived.

(Tr. I: 82-83)

5/. The witnesses often referred to CRLA community worker Magdaleno Muro as "the photographer" because he took photographs of the camp on the day in question. See GCX 2(a), 2(b), and 2(c).

Q. Now you say that Jose Castro arrived after the photographer left.

A. Yes.

Q. He told some people to leave.

A. Yes.

Q. And what else did he say?

A. "And I'll have your checks ready for you tomorrow."

(Tr. I: 84)

Respondent's defense to the Moya and Pena discharges is that Jose Castro merely informed the two men (among others) that he would give them their overdue paychecks. The testimony and the case law do not support the company's "defense". As is shown by Moya's testimony, he reasonably interpreted the paycheck remarks to mean that he and Pena (among others) were fired.

Q. (By Smith) When Jose Castro drove up, did he tell you you were fired?

A. When he arrived in the car?

Q. When he arrived the day that the photographer had been there.

A. He didn't tell me I was fired but that he was giving me my check.

Q. Did he tell everybody he was going to have their checks for them the next day?

A. No, not everybody.

Q. What did he say?

A. He directed himself to those that -- of us that had been living there at the camp, but those of us that had been going around. More or less that he saw -- those of us that he had seen there protesting or something like that.

Q. Mr. Moya, you testified that the photographer had gone before Jose Castro arrived.

A. Yes, before Jose Castro arrived.6/

6/. It should be remembered that Jose Castro observed the camp being inspected.

Q. And then Jose Castro drove up and told the people who didn't live there to leave the camp?

A. Yes. That's when he told them to leave.

Q. And then he said to all of you there, "I'll have your checks tomorrow."

A. Not everybody.

Q. Who did he say by name, "I'll have your check tomorrow"?

A. In particular he directed himself to me, but I can't say that he told everybody that.

Q. Did he call you by name and say, "Moya, I'll have your check tomorrow"?

* * * *

THE INTERPRETER: In plural, "We will have your check for you."

THE WITNESS: He didn't tell everybody but he saw those that he saw in front there, those of us that had protested.

(Tr. I: 85-87)

Moya clearly understood that, by being given his check, he was being fired. He knew this because he had asked Castro if they were going to go back to work. Castro's reply was that they were going to get their checks. Tr. I: 88-90.

Moya did not work after this incident, and was ultimately given his check by Foreman Erasmo Castro. Tr. I: 90-91.

Respondent's reliance on payroll records such as RX 3(b) is suspect, in view of the contradictory use of the payrolls in its defense of the Mendiola and Godinez firings. Jose Castro testified that Mendiola never worked in 1980; the payroll (RX 1) contradicted him. Castro testified that he fired Godinez on approximately June 15 or 17, yet the company offered a payroll that purportedly showed Godinez to be still employed on June 23.

Jose Castro disengenuously testified that he did not fire Moya, nor did he know who did. Tr. II: 24. Significantly, none of Respondent's witnesses testified that Moya continued working in the harvest after the camp inspection incident. Ms. Duarte admitted, when asked about her independent knowledge of the payroll record contents, that she relied solely on what the

foremen told her. Tr. III: 29. Therefore no company witness who actually observed who worked contradicted Moya's claim that he was fired. Respondent is seeking to prove its defense indirectly rather than directly. "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." Cal. Evid. Code §412. In view of the unreliability of these particular payrolls, the ALO should "view with distrust" Respondent's failure to forthrightly state that Moya was not fired.

To buttress its claim that Moya and the others were not fired, Respondent belabors the fact that Jose Castro never recited the exact phrase "you are fired". However, the evidence shows that he meant to fire Moya and the message was understood:

Q. (By Mr. Rivera) To clarify, you testified that Jose Castro arrived after the photographer left.

A. Yes.

Q. Can you describe for us the expression on Jose Castro's face when he arrived?

A. He was extremely angry and extremely perturbed and he was yelling.

Q. And you testified that he said he would have your check the next day; is that correct?

A. Yes.

Q. My question is what did you understand that to mean?

A. That I was being fired.

* * * * * *

Q. (By Mr. Rivera) Okay. Let me ask you again, Mr. Moya. And please try to answer as direct as possible.

Why did you think the phrase "I'll give you your check" meant that you were fired?

A. Because he told me that so that I could leave because we were causing a lot of problems in his camp.

Q. Did he say that to you?

A. Yes. Yes, because I asked him, "Are we going to work tomorrow?" "No. I'm going to give you your check because you're causing me a lot of problems."

(Tr. I: 94-95)

It is well settled that "no set words are necessary to constitute a discharge; words or conduct, which would logically lead an employee to believe his tenure had been terminated, are in themselves sufficient." NLRB v. Cement Masons Local 555 (9th Cir. 1955) 225 F.2d 168, 172, 36 LRRM 2426, 2429; NLRB v. Trumbull Asphalt Co. of Delaware (8th Cir. 1964) 327 F.2d 841, 55 LRRM 2435; NLRB v. Hilton Mobile Homes (8th Cir. 1967) 387 F.2d 7, 9, 67 LRRM 2140, 2141.

The facts in Ridgeway Trucking Company (1979) 243 NLRB 1048 are very similar to the facts in the instant case. In Ridgeway, General Manager Surbaugh:

> (o)rdered the drivers engaged in the work stoppage to leave the premises unless they were going to go to work. As evidenced by their subsequent actions, this statement was construed by them that they were discharged. Thus, in response to Surbaugh's statement, they immediately requested that they be paid on that day, Tuesday, despite the fact that Friday was the normal payday. In addition, they further requested that they be allowed to remove all their personal belongings from the company trucks. Surely, both requests must have made it obvious to Surbaugh that the employees believed that they had been discharged by their failure to heed his order to return to work. Id., at 1049.

The Board, citing Trumbull Asphalt Co. and Hilton Mobile Homes, supra, found that Respondent violated §8(a)(1) of the national Act, a "parallel" violation of §1153(a) of the ALRA.

In the instant case, Castro's statement that he would give Moya his check, made minutes after Moya's participation in protected concerted activity is consistent with a discharge action which included Moya.

The credible testimony shows that Manuel Moya Perez was discharged for engaging in protected concerted activities.

Jorge Pena

Like Moya and Mendiola, Mr. Pena lived at Camp No. 3 in June, 1980. Tr. II: 7. Pena was present with the others when "the people from the Legal Assistance Department" inspected

the labor camp. Tr. II: 8; Tr. I: 10, 99. Like the others, therefore, he was observed by foremen and supervisors participating in protected concerted activities. Pena was also present when Jose Castro arrived and spoke to the men who had participated in the camp inspection. Tr. II: 9-10; Tr. I: 71, 87, 102; Tr. II: 9-10.

Like Moya, Pena was angrily told by Jose Castro that he would be given his check. Moya's testimony made it clear that Castro used the word "you" in the plural sense; i.e., that you Moya and you Pena will be given your checks.

Q. (By Smith) Did he call you by name and say, "Moya, I'll have your check tomorrow"?

A. He said, "All of you --

THE INTERPRETER: I need a clarification here. It doesn't mean exactly "all of you," but "ustedes" means "you in general," in plural.

HEARING OFFICER BURNS: In plural.

THE INTERPRETER: In plural, "We will have your check (for) you."

(Tr. I: 86-87)

* * * * * *

Q. (By Smith) Now you testified that, after you talked to Jose Castro on the day the photographer was there, you didn't go back to work again.

MR. RIVERA: Objection to the translation.

(The interpreter interprets the question again)

THE WITNESS: No, we did not return to work. They were going to give us our checks.

(Tr. I: 87)

* * * * * *

Q. (By Smith) Did you try to go back to work the next working day in June of 1980 after the photographer was there?

A. Yes, but he did not want for us to go back to work.

Q. When did you try to go back?

A. I asked him that same day?

Q. When did you ask him that same day?

A. When he told us that our checks were going to be ready, I told him, "Hey, Jose, aren't we going to go back to work?" He said, "No." He says, "I'm going to check (sic) you your check."

Q. This is what he says now. Do you remember this now?

A. No. I asked him whether we were going to return the next day and he says, "No. I'm going to give you guys your checks."

Q. When did you ask him that, Mr. Moya?

A. That same time when he said, "you -- tomorrow I'm going to give you your checks."

HEARING OFFICER BURNS: "Usted?"

THE INTERPRETER: "Ustedes."

(Tr. I: 88-89)

* * * * * *

Q. (By Mr. Smith) Had you gone to work on the morning that Erasmo gave you your check?

A. No. I was waiting for it.

Q. You just stayed in the camp?

A. Yes, I just stayed there.

Q. Did the rest of the crew go to work?

A. Yes. Other people that were working.

Q. You were the only one in the camp?

A. No. Those of us that knew, that all we were waiting for was the check.

Q. Who else stayed in the camp with you?

A. Only the female cook. Just those of us

> that were waiting for our checks. I don't remember that there were other people there. It was two years ago.
>
> (Tr. I: 89)

The above-cited testimony shows that Moya and others (including Pena) were fired when Castro told them he would give them their checks.

As with Moya's discharge, Respondent chose to rely on "silent" payroll records to prove its defense that Pena was not discharged. (ALO excised a statement here as it relies on reference to another case not at bench.) RX 2(b) purports to show that Pena worked through June 20, 1980. However, the ALO correctly sensed that something was amiss.

> HEARING OFFICER BURNS: I'd be interested to know about the line that has gone through the name Jorge Pena.
>
> THE WITNESS (Elizabeth Duarte): All it is is that they were paid and the line is through there so that that way I don't make the check twice. (Tr. III: 19).

In other words, Pena was paid before the other workers were. The inference is clear: he was paid off because Jose Castro had fired him previously. Moya's testimony showed that Pena was part of the group fired by Castro when the latter said he would give them their checks. The evidence offered by one witness (Moya) is sufficient to prove the fact of Pena's discharge. Cal. Evid. Code §411. The General Counsel has met the requirements of Lawrence Scarrone, supra., proving that Respondent discharged Pena in violation of §1153(a) of the ALRA.

- END OF GENERAL COUNSEL'S ARGUMENT -

Did Respondent Violate §1153(a) of the Act by Interfering with the Community Worker's Inspection of the Labor Camp and Discussion with the Employees?

Section 1152 of the Act, entitled "Agricultural Employees--Rights", provides 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.

Clearly, the discriminatees' protest about wages and labor camp conditions qualifies as "engag(ing) in other concerted activities for . . . mutual aid or protection." Id. Part of their protest involved seeking legal assistance to improve the camp conditions.

Section 1153(a) provides that:

> "It shall be an unfair labor practice for an agricultural employer to do any of the following:
>
> (a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152."

The discriminatees credibly testified that Robert Carian interfered with Mr. Muro's inspection of the camp and with his discussion with the workers at the camp.

Mr. Muro testified, that at the camp, he discussed the camp condition and paycheck deductions with a group of workers that included the discriminatees. Tr. I: 40. Mr. Muro "was talking to about ten workers outside after I had already been inside and I was outside." Tr. I: 41. At that point, Robert Carian arrived and ordered him to leave in the presence of approximately ten workers. Mr. Muro was not able to finish his meeting with Respondent's employees:

> Q. (By Mr. Rivera) Mr. Muro, you mentioned that Robert Carian ordered you to leave; is that correct?
>
> A. Yes.
>
> Q. While you were at the camp?
>
> Can you describe for me his demeanor while he was speaking with you?
>
> * * * * * *
>
> A. He was angry, pissed off.

Q. How did you conclude that?

A. Well he came up to about two or three inches from me and he told me I had better get out of there and he was mad and angry.

Q. Were you able to finish speaking to the workers as you had intended?

A. No.

(Tr. I: 47-48)

Mr. Muro went on to describe how most of the group quickly wandered away when they saw Robert Carian arrive. Tr. I: 48.

Carian's behavior is an example of employer actions that "interfere with, restrain, or coerce agricultural employees in the exercise of their rights guaranteed in §1152." ALRA §1153(a).

It is well settled that this type of §1153(a) violation (interference, restraint, or coercion) is established by proof that the conduct occurred. Put differently, the standard of proof is an objective one. An improper employer motive need not be offered. Nor must it be shown that the employees subjectively felt coerced or intimidated. "(T)he General Counsel, to establish a prima facie case need prove only that the employer engaged in conduct (e.g., threats, interrogation, or surveillance) which reasonably tends to interfere with, restrain, or coerce employees in the exercise of their rights under the Act." Lawrence Scarrone, supra, at 4; also see Jack Brothers and McBurney, Inc., supra.

The ALRB has often held that it is the residents of a labor camp, not the employer, who have the right to accept or reject visitors. Referring to union organizer visits to labor camps, the Board held that "An employer may not block such communication. The fact that an employer is also a landlord does not give him a license to interfere with the flow of discourse between union and worker." The right to access in labor camps flows directly from the rights guaranteed in §1152 of the Act. Silver Creek Packing Co., 3 ALRB No. 13.

In Merzoian Brothers Farm Management Co., Inc., et. al. 3 ALRB No. 62, at 4, the Board held that:

> "The right of employees who are residents of a labor camp to receive visitors is akin to the right of a person in his own home or apartment . . . It is our duty to balance these rights and a heavy burden will be with the owner or operator of a camp to show that any rule restricting access does not also

restrict the rights of the tenants to be visited or have visitors."

The California Supreme Court held in United Farm Workers of America v. Superior Court, (1975) 14 Cal. 3d 902, 910, 122 Cal. Rptr. 877, that "Many courts have recognized a First Amendment right of access which belongs both to labor camp inhabitants and to union organizers and attorneys who seek to visit them. We are persuaded by the reasoning of those decisions, and join in their reading of the First Amendment." (Citations omitted).

Thus, as held in Silver Creek Packing Co. and Merzoian Brothers, supra, Respondent violated §1153(a) by evicting Mr. Muro from its Labor Camp No. 3 in June, 1980.

Although Respondent's interference with the camp inspection and Muro's discussion with the workers was not alleged in the complaint, the incident was fully litigated at the hearing. Respondent presented its version of the events through the testimony of Robert Carian. The Board recently affirmed the rule that a violation of the Act can be found where the subject matter is related to allegations in the complaint and was fully litigated at the hearing. D'Arrigo Brothers Company, 8 ALRB No. 45, at 2, citing NLRB v. International Association of Bridge, ETC. (9th Cir. 1979) 600 F.2d 770.

CONCLUSIONS OF LAW

Based on the foregoing, I make the following conclusions of law:

1. Harry Carian Sales is a California corporation engaged in agriculture and is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

2. United Farm Workers of America, AFL-CIO, is a labor organization within the meaning of Section 1140.4(f) of the Act.

3. Respondent employer engaged in unfair labor practices within the meaning of Sections 1152 and 1153(a) of the Act, in so far as it dismissed Jose Luis Godinez, Jaime Vargas and Jorge Pena.

4. The unfair labor practices affected agriculture within the meaning of Section 1140.4(a) of the Act.

5. That the charges against Respondent should be dismissed in so far as they relate to Ruben Mendiola and Manuel Moya (Perez).

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REMEDY

Having found that the Employer has discriminated against certain named employees for having engaged in protected concerted activity by dismissing them from their employment as agricultural workers, all in violation of Sections 1152 and 1153(a) of the Labor Code, I shall recommend that the Employer shall offer to reemploy those persons forthwith, shall make each such person whole for the loss of pay and other economic benefits resulting from the unfair labor practices, and shall cease and desist from further such actions of discrimination. I recommend that interest be paid at the rate determined by the Board in the recent Lu-Ette Decision, 8 ALRB No. 55.

Accordingly, upon the basis of the entire record and of the Findings of Fact and Conclusions of Law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended order and notice:

ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Harry Carian Sales its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee with regard to hire, tenure or any terms or conditions of employment because of that employee's involvement in concerted activities.

(b) In any like manner interfering with, restraining or coercing employees exercising their rights guaranteed under Labor Code Section 1152.

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

(a) Immediately offer Jose Luis Godinez, Jaime Vargas and Jorge Pena reinstatement to their former positions without prejudice to their seniority or other rights and privileges.

(b) Make the aforenamed persons whole for any loss of pay and other economic losses, (plus interest thereon computed at a rate consistent with the Lu-Ette decision, 8 ALRB 55.) They have suffered as a result of their discharge by Respondent.

(c) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records and reports, and all other records relevant and necessary to a determination by the Regional Director, of the back pay period and the amount of back pay due under the terms of this Order.

(d) Sign the Notice to Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall reproduce sufficient copies of each language for the purposes set forth hereinafter.

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

(f) Mail copies of the attached Notice, in all appropriate languages, to all employees employed in crews in the Coachella area at any time during the payroll periods from May, 1980 to August, 1980.

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

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

IT IS FURTHER ORDERED that the allegations of the complaint with respect to which no violation of the Act was proved are dismissed.

DATED: September 15, 1982.

THOMAS PATRICK BURNS
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing was held at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of workers to discuss and attempt to change their working conditions. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and also tell you that:

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

1. To organize themselves;
2. To form, join or help unions;
3. To bargain as a group and choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help or protect one another; and
5. To decide not to do any of these things.

Because this is true we promise that:

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

Especially:

WE WILL NOT discharge or otherwise discriminate against any worker because of his or her union activity or union sympathy.

WE WILL offer Jose Luis Godinez, Jaime Vargas and Jorge Pena their old jobs back and will reimburse any pay or other money they lost because we discharged them.

WE WILL NOT threaten employees with loss of employment benefits or with other changes in wages, hours, or working conditions because of their joining or supporting a union or exercising any of the rights set forth in this Notice.

DATED:

HARRY CARIAN SALES

By: _____
Representative Title

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

DO NOT REMOVE OR MUTILATE.