STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAM ANDREWS' SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 82-CE-40-SAL 9 ALRB No. 32

DECISION AND ORDER

On January 25, 1983, Administrative Law Judge (ALJ)[1/] Steve A. Slatkow issued the attached Decision in this proceeding. Thereafter, General Counsel timely filed exceptions and a supporting brief, and Respondent timely filed a brief in opposition to General Counsel's exceptions.

Pursuant to the provisions of 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 attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALJ and to adopt his recommended Order

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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 specified.

with modifications.[3/]

ORDER

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

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any agricultural employee because he or she has engaged in union activity or other concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

(b) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the rights guaranteed 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 to Florencio Valdez immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other employment rights or privileges.

(b) Make whole Florencio Valdez for all losses of pay and other economic losses he has suffered as a result of the discrimination against him, such amounts to be computed in

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[3/] Although he concluded that Respondent had discriminatorily discharged Florencio Valdez in violation of section 1153(c) and (a), the ALJ failed to order reinstatement of Valdez. In accordance with established Board precedents in unlawful discharge cases, we will order that Respondent immediately offer Valdez full reinstatement to his former or substantially equivalent job.

accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms (1982) 8 ALRB No. 55.

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

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from May 12, 1982, until May 12, 1983.

(f) 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.

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined

by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

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

Dated: June 3, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we, Sam Andrews' Sons, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by discharging employee Florencio Valdez because of his union activities and other protected concerted activities. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT hereafter discharge, or in any other way discriminate against, any agricultural employee because he or she has engaged in union activities or other protected concerted activities, or otherwise utilized his or her rights under the Act.

WE WILL reinstate Florencio Valdez to his former or substantially equivalent employment, without loss of seniority or other privileges, and WE WILL reimburse him for any pay or other money he has lost because we discharged him, plus interest.

Dated: SAM ANDREWS' SONS

By: _____

Representative Title

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

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

SAM ANDREWS' SONS
(UFW)

9 ALRB No. 32
Case No. 82-CE-40-SAL

ALJ DECISION

The ALJ concluded that Respondent had discriminatorily discharged an employee because of his union activities and other protected concerted activities. The ALJ recommended that the standard cease and desist, make whole, and notice remedies be ordered. However, the ALJ neglected to recommend that the Respondent be ordered to offer reinstateement to the discriminatee.

BOARD DECISION

The Board upheld the ALJ's rulings, findings, and conclusions, but modified his recommended Order to include the standard remedy ordering Respondent to offer the discriminatee full reinstatement to his former or substantially equivalent position.

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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

Agricultural Labor Relations Board
JAN 26 1983
RECEIVED
Exec. Secretary

In the Matter of: SAM ANDREWS' SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case No. 82-CE-40-SAL

DECISION

STEVE A. SLATKOW, ADMINISTRATIVE LAW OFFICER

This case was heard by me, sitting as an Administrative Law Officer, on September 21, 1982, in Salinas, California.

The unfair labor practice charge underlying this case was filed on May 19, 1982. The Complaint was served on the necessary parties on August 10, 1982. A First Amended Complaint was served on the necessary parties on September 15, 1982.

Respondent filed an answer to the Complaint on August 20, 1982, and an Answer to the Amended Complaint on September 21, 1982. By these Answers, Respondent admitted that it is an agricultural employer within the definition contained in Labor Code Section 1140.4(c), and that the UFW, the charging party, is a labor organization within the definition contained in Labor Code Section 1140.4(f). Respondent's Answers also admitted that Robert Andrews, Fred Andrews and Don Andrews are partners; that Juan Guillen is a foreman; and that Eddie Rodriguez and Ramon Hernandez are supervisors.

The General Counsel and Respondent were represented at the hearing and each side offered oral and documentary evidence. All parties participated fully in the hearing. The General Counsel and Respondent filed briefs after the close of the hearing.

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Based on the entire record, including my observations of the demeanor of the witnesses, and after consideration of all the written and oral testimony, the arguments and briefs submitted by both parties, I make the following findings:

STATEMENT OF FACTS

Florencio Valdez, the Complainant in this case, has been an agricultural worker for about seven years, mostly in the lettuce harvest. During this time, he has worked for the Respondent as well as six other companies.

Florencio Valdez first worked for Respondent in 1976 and was employed by them off and on through 1979, working both in Bakersfield and the Imperial Valley. During this period of employment, Valdez had seniority with Respondent and had never received a written warning regarding the quality of his work.

In November, 1979, while employed by Respondent, Valdez was involved in labor disputes between Respondent and the UFW. Mr. Valdez was involved in four work stoppages in the Bakersfield area. Mr. Valdez' activity included the wearing of a UFW flag during work hours and the urging of another work crew to support and take part in the work stoppages. These work stoppages resulted in the UFW filing charges against Respondent. These charges were heard in March, 1980, in ALRB case, 79-CE-105-EC. Mr. Valdez was a

named discriminatee in that case as well as testifying for the General Counsel.

Respondent's hiring practice is to allow the foremen to hire their own crews (this practice existed in Salinas, as well as in Bakersfield and Imperial Valley). Following the work stoppages in November 1979, Mr. Valdez applied for work eight times with Respondent. Those attempts at employment were all with Respondent's foremen, who knew Mr. Valdez and for whom he had worked in the past. Even though he had had seniority with Respondent in his past employment and had never received a written warning regarding the quality of his work, he was not once hired by these foremen. Respondent offered no evidence to explain or rebut this fact.

Mr. Valdez was hired by Respondent in Salinas on May 6, 1982. The circumstances of his hiring were as follows: Mr. Valdez' friend Rafael Torres was also acquainted with Respondent's foreman Juan Guillen. Torres asks Guillen if there is work and Guillen hires him. Torres then asks Guillen if there is work for his friend Valdez. Guillen, who does not know Valdez, asks Torres if he knows how to work and Torres tells him that Valdez works better than himself. Guillen then hires Valdez. Both Torres and Valdez work in Crew #3, the non-seniority crew, with Guillen as the foreman and Danny Garcia as a supervisor.

Mr. Valdez only worked until May 12, 1982, when he was fired by foreman Guillen. Guillen testified that Valdez

was discharged because of his poor work. He stated that Valdez did not select the proper heads of lettuce for the top of the boxes; that he left more loose leaves than the company liked; and that the boxes were not packed tight enough or correct according to the manner he wanted. Guillen also stated that when Valdez was cutting, he left heads of lettuce in the ground which should have been cut. Foreman Guillen testified that he had to warn Valdez about his work at least a couple of times each day he worked. Although Foreman Guillen testified that his assistant, Hernandez, also warned Valdez about his work, Hernandez did not testify, nor did any other supervisorial personnel. Respondent offered no corroboration of Guillen's testimony.

Mr. Valdez testified about his work, contradicting Foreman Guillen. His testimony was corroborated by Mr. Torres. Mr. Valdez testified that on his first day of work, Foreman Guillen observed his work and told him he was working well. On his third day of work, Supervisor Garcia criticized his packing of one box. Valdez explained that he packed that box rapidly because the ground was wet and the stitcher machine was approaching and he was afraid of falling. Foreman Guillen, who was nearby, repacked the box but didn't say anything. In fact, according to Valdez, Guillen continued to tell him his work was fine. Mr. Valdez also testified that he received favorable comments on his work from assistant foreman Hernandez.

Mr. Torres corroborated the testimony of Mr. Valdez. The first two days Torres and Valdez were in the same trio in Crew #3. Supervisor Garcia told him the work was going fine. He testified that he heard Foreman Guillen telling Valdez that his work was good. Mr. Torres also gave his own opinion that Valdez' work was very good.

Mr. Valdez also testified that during the morning break on his first day of work, he went over to the crew of Ramon Hernandez to talk to a friend. Hernandez, a foreman who knew Mr. Valdez from when he had worked for Respondent in Bakersfield, was standing nearby. Later that day, Foreman Guillen asked Mr. Valdez if he had worked for Sam Andrews before. Mr. Valdez testified that he told his foreman that he had worked in Bakersfield in 1979 and had had problems, but that he was now coming to work and not to cause problems.

Mr. Valdez testified as to his firing. He stated that on May 12, 1982, Foreman Guillen took him aside and told him he could not give him any more work. Valdez testified that Guillen said, "that it wasn't his fault and he thanked me for having worked with him." (Reporter's Transcript, p. 23 L. 10). [1] Mr. Valdez testified that in the afternoon he told assistant foreman Hernandez that he had been fired and, according to Valdez, he responded that he didn't know why

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1 It was not clear to me whether the "his" in this answer referred to Valdez or Guillen, but either way it indicates some reason for the firing other than the quality of the work.

they were firing him because he was a good worker.

Mr. Torres corroborated Valdez' testimony regarding his conversation with Hernandez. In addition, Mr. Torres stated he asked Guillen about Valdez being fired and that Guillen responded that he had been fired on orders from above.

Mr. Torres testified he had another conversation with Guillen a couple of days later, at which time Guillen told him that his friend Florencio Valdez had been fired because he had been blackballed because of the stoppages in Bakersfield.

ANALYSIS

The General Counsel, representing the charging party in this case, must show that the termination of Mr. Valdez was caused by more than his poor work performance. That is, the General Counsel must establish the motives of the opposing side. There must be a connection between Respondent's action and Mr. Valdez' protected union and concerted activities.

At the request of General Counsel, I have taken administrative notice of prior cases involving Respondent where findings of anti-union animus were made against Respondent (6 ALRB 44, and 3 ALRB 45, as upheld in 8 ALRB 58).

These earlier administrative findings, along with Respondent's specific actions relating to Mr. Valdez, establish

an anti-union animus on the part of Respondent which then must influence an analysis of the testimony presented herein regarding Mr. Valdez' termination.

Mr. Valdez' actions in Bakersfield involving the work stoppages, including his wearing of the UFW flag and his testifying in the earlier ALRB hearing, are clearly protected activity. Respondent's refusal to hire Mr. Valdez on eight occasions between 1979 and 1982, even though he had had seniority with Respondent, show Respondent's anti-union animus specifically directed at Mr. Valdez. Respondent offered no rebuttal evidence either denying Mr. Valdez' eight attempts at employment or establishing some other reason for his not being hired. Respondent attempts to argue that because the initial problems were in Bakersfield in 1979 and the firing which is the issue herein was in Salinas in 1982, there is no connection and the incidents are isolated. Respondent ignores the eight attempts at employment by Mr. Valdez and the fact that he was hired in Salinas by a foreman who did not know him and was fired after he was recognized by a foreman who knew him from his employment three years prior. It appears, at least as to Mr. Valdez, that Respondent's anti-union animus has continued all along and has culminated in his firing in Salinas in May of 1982.

General Counsel's initial burden of establishing a connection between the protected activity of Mr. Valdez and his firing has been met, Nishi Greenhouse, 7 ALRB 18 (1981).

Respondent's defense, through the testimony of Foreman Guillen, is that Valdez was fired because of his poor work. If Respondent can show that a basis for firing existed independent of that established by the General Counsel, then irrespective of any anti-union animus and protected activity, the firing of Mr. Valdez is legitimate. Mr. Valdez' participation in protected activity will not immunize him from termination due to poor work, Royal Packing Co. v. ALRB, 101 Cal. App. 3d 826 (1980).

Respondent relies solely on the testimony of Foreman Guillen to meet this burden. Even though the testimony of Valdez and Torres established statements and actions of other supervisorial personnel, they were not brought forward in rebuttal. Although Foreman Guillen directly contradicts the statements of General Counsel's witnesses, no rebuttal was offered as to Mr. Valdez' prior work experience and work record. It seems improbable to me that someone with Mr. Valdez' experience and desire to work (even continually trying to get work with Respondent) would suddenly change and deteriorate into such a poor worker.

The major problem with Respondent's defense is the credibility of Foreman Guillen. Not only was his testimony evasive and contradictory, he was argumentative and hostile to such an extent that all his testimony is questionable.

Mr. Guillen contradicted himself numerous times when questioned about the dates of employment of members of his

crew. These inconsistencies included his testimony about Mr. Valdez. First saying he fired Valdez on May 11, then when shown General Counsel Exhibit 2, which he prepared, showing a discharge date of May 12, he stated that the writing on Exhibit 2 was wrong, even though it was prepared at the time (Reporter's Transcript, pp. 83, 84, 102, 103).

The problems with Mr. Guillen's credibility do not just come from his contradictory statements regarding dates and the preparation of documents; those just substantiate the general evasive and argumentative nature of his testimony and his highly unreliable demeanor.

CONCLUSION

Based on Respondent's anti-union animus and the lack of credible evidence to contradict the direct and corroborated testimony of the General Counsel, I find that Mr. Valdez was fired because of his union and protected activity and that there was no independent basis for that firing.

Upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to section 1160.3 of the ALRA, I hereby issue the following recommended:

ORDER

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

1. Cease and desist from:

(a) Discharging, or otherwise discriminating against, any agricultural employee for engaging in union activity or other protected concerted activity.

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

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

(a) Make whole Florencio Valdez for all losses of pay and other economic losses he has suffered as a result of its discharge of Rodriguez, the makewhole amount to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 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 period and the amount of backpay 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

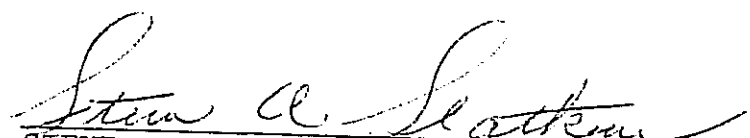
of this Order, to all agricultural employees employed by Respondent at any time between May 1, 1982 and the date such copies of the Notice are mailed.

(e) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its property, the period(s) and place(s) of posting to be determined by the Regional Director and exercise due care to replace any 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 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 to compensate them for worktime lost at this reading and 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: January 25, 1983



STEVE A. SLATKOW
Administrative Law Officer

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by discharging an employee because of his support for the United Farm Workers of America, AFL-CIO, (UFW) or because he engaged in activities for the benefit of employees. The Board has ordered us to post this Notice and to take certain other actions. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act (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 employee because he or she has joined or supported the UFW, or any other labor organization, or has exercised any other rights described above.

WE WILL NOT interfere with, or restrain or coerce you in the exercise of your right to act together with other workers to help and protect one another.

WE WILL reimburse Florencio Valdez for all losses of pay and other economic losses he has sustained as a result of our discriminatory acts against him, plus interest computed in accordance with the Board's Order in this matter.

DATED:

SAM ANDREWS' SONS

By: _____
(Representative) (Title)

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

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

DO NOT REMOVE OR MUTILATE