Azusa, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MONROVIA NURSERY COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 80-CE-90-SD, 80-CE-91-SD, 80-CE-92-SD, 81-CE-7-SD, 81-CE-10-SD, 81-CE-13-SD, 81-CE-18-SD, 81-CE-19-SD	9 ALRB No. 5

DECISION AND ORDER

On December 11, 1981, Administrative Law Judge (ALJ)[1/] William A. Resneck issued the attached Decision and recommended Order in this proceeding. Thereafter, Respondent and General Counsel each timely filed exceptions and a supporting brief and each filed a brief in response to the other's exceptions.

Pursuant to the provisions of Labor Code section 1146,[2/] the Agricultural Labor Relations Board (ALRB or 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 of the parties and has decided to affirm the rulings, findings and conclusions of the ALJ only to the extent consistent herewith.

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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 code citations, unless otherwise noted, refer to the California Labor Code.

Alleged Isolation of Carmen Catalan

General Counsel alleged, and the ALJ found, that Monrovia Nursery (Respondent) assigned Carmen Catalan, a five-year employee, to a job which isolated her from her fellow workers because of her union sympathies. Evidence was adduced that Catalan was the first of Respondent's employees to wear a union button and that, shortly after she began to wear it, her work assignment was changed from canning in a group of ten to fourteen employees to cleaning in a relatively remote area with only one other employee as a partner.

Maggie Garcia, Catalan's crew leader, testified that half of the members of her crew of approximately forty-five employees either worked alone or, like Catalan, with one other employee, and that Catalan had been given the same assignments the year before. According to Catalan's partner, Maria Teran, however, in the portion of Garcia's crew which was part of the "liner" division, only two other employees worked as a pair. Garcia explained that the group work was assigned to workers who could not read plant labels, but because Catalan and her partner could read, they were assigned to the "cleaning" job which required only one or two pairs per section. Garcia also testified that although Catalan continued to wear her union button, she was reassigned to work in close proximity with other workers in the crowded "cutting" department as soon as she requested the transfer in late November 1979. No evidence was introduced to indicate any anti-union animus on the part of Garcia, the supervisor who made the assignments. Because the ALJ gave no

explanation for discrediting Garcia's testimony, we have reviewed the record independent of that credibility resolution. (S. Kuramura (1977) 3 ALRB No. 49.) We conclude that the General Counsel has failed to meet the burden of proving that the assignment which separated Carmen Catalan from most of the other employees was based on unlawful discrimination, i.e., retaliation for her union sympathies. Because the timing of the change in assignments can also be explained by the shifting market conditions, as testified to by Maggie Garcia, the inference that the assignment was discriminatory cannot be supported merely by the fact that it occurred shortly after Catalan began wearing her union button. (Tex-Cal Land Management, Inc. (1979) 5 ALRB No. 29.)

Accordingly, we hereby dismiss the allegation that Respondent unlawfully discriminated against Carmen Catalan.

Alleged Harassment of Luis Avila and Interrogation and Threatening of Avila, Nicholas Estrada and Adan Torres.

The ALJ found that Respondent had harassed Luis Avila because of his union sympathies by reprimanding him for posting on the company bulletin board a notice concerning workers' rights to organize, for using Respondent's internal telephone without permission, and for improper pruning. He recommended dismissal of the allegation that Respondent transferred Avila to the isolated pruning job because of his union activity, finding that the transfer took place long before any union activities commenced.

The evidence introduced regarding those incidents fails to establish that Respondent treated Avila in a discriminatory

manner. Supervisor Resendez testified that prior approval of management had always been required for posting notices and for using the company telephone. According to Resendez, Avila's pruning method retarded his pruning up to one half to one bed per day. The only indication that the criticism might have been discriminatory is the fact that it occurred between one and three months from the date Avila first began wearing a union button. However, circumstances which merely raise a suspicion of a causal connection do not establish a violation. (Rod McLellan Company (1977) 3 ALRB No. 71; Tex-Cal Land Management, Inc., supra, 5 ALRB No. 29.)

We find insufficient evidence to support the allegation that Respondent engaged in "unlawful interrogation and threatening of employees regarding the extent of their union activities." Avila and fellow worker Adan Torres testified that they attended a meeting of employees convened by Respondent two or three months after Avila began wearing his union button. According to Torres, he and coworkers Avila and Estrada asked questions and made comments which indicated their support for the Union. After the meeting, supervisor Juan Alba approached Avila and angrily questioned him about his statement at the meeting that Alba "pushed" his workers too much. Alba then took work away from Estrada and Torres and left them with nothing to do.

We conclude that Respondent's questioning of Avila did not constitute unlawful interrogation, and that Respondent's

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taking of work from Estrada and Torres[3/] did not constitute unlawful discrimination. Interrogation is unlawful only when it tends to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by section 1152 of the Agricultural Labor Relations Act (Act). (Maggio-Tostado, Inc. (1977) 3 ALRB No. 33.) We find that no such tendency existed here. Moreover, because the General Counsel failed to establish any causal connection between the employees' union sympathies and with their subsequent loss of work, we find there was no unlawful discrimination.

Accordingly, we hereby dismiss the allegations of harassment of Avila and interrogation and threatening of Avila, Torres, and Estrada.

The Alleged Isolation of Francisca Lozano

The ALJ found that Respondent discriminated against Francisca Lozano by assigning her to isolated jobs when she returned from her maternity leave on November 3, 1980, wearing a UFW jacket and button. Lozano had worked for the company sporadically from 1973. The evidence established that "leadlady" Alexandra Hernandez told Lozano to leave the strenuous outside work she was doing on the day of her return and assigned her to pot hibiscus with two other workers inside House #16. There were 6 other workers working outside. For approximately 10 days, Lozano and her two coworkers, joined briefly on two occasions by

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[3/] In addition, the General Counsel's representation at hearing that Adan Torres was not a discriminatee, but was only testifying as a "corroborating witness" precludes a finding of discrimination as to him.

another crew of unspecified number, potted in House #16. Hernandez transferred Lozano back to House #5, where she had worked for several years, with one coworker to transplant ferns for a few days. Division head Dennis Connor then assigned her to work in the cutting shed. The cutting department was expanded from eight to approximately 100 employees while Lozano was working there and the seats were rearranged several times to accomodate the fluctuating number of workers. Lozano testified that in the cutting department, foreperson Maria Elena Ibarra assigned her to a seat directly across from Ibarra, despite the fact that Lozano continued to talk to coworkers openly about the union.

We reject the ALJ's finding that the transfers and seating assignment of Lozano were inherently coercive. Although the first two transfers were to slightly less populated worksites, the final transfer to the crowded cutting department counteracts any inference that Respondent was attempting to isolate Lozano because of her union sympathies. The fact that Lozano was one of the first workers in her division to wear union paraphernalia to work does not suffice to establish a causal connection between her union sympathies and her transfers or seating assignment. We find, then, that General Counsel has not met its burden of proving a prima facie case of unlawful discrimination.

In addition, Respondent's witnesses testified credibly and without contradiction to business justification for the transfers and the General Counsel did not establish that the supervisors were anti-union. Leadlady Hernandez removed Lozano

from the outside fern work because it involved bending over, and because she was concerned about Lozano's health as only two and one-half months had elapsed since the latter's Caesarean-section delivery in August. Although there was no official company policy prohibiting workers from working outside until three full months after such a surgical operation, Hernandez claimed that she had her own rule. Hernandez testified that she assigned Lozano to House #16 because there was no room in House #5 where she had worked before. She stated that the eventual transfer to House #5 occurred when the outdoor crew finished working outside and took over the work in House #16. We are convinced that the transfers and seating assignment of Francisca Lozano would have occurred even absent her union activities and accordingly we hereby dismiss those allegations as to Lozano. (Royal Packing Company (1982) 8 ALRB No. 74, citing Zurn Industries, Inc. v. NLRB (10th Cir. 1982) 680 F.2d 683.)

The Alleged Harassment of Francisca Lozano and Maria Reynoso

In February of 1981, Respondent assigned Lozano and union supporter Maria Reynoso to prune with 12 other workers under the supervision of Narciso (Tito) Branca. The ALJ found that Branca harassed them because of their union sympathies by reprimanding them unfairly several times.

Although Reynoso had stopped wearing her union button in December, Lozano was wearing a UFW button and jacket. A few weeks after they started to prune, Branca separately summoned Lozano and Reynoso to his office, where he criticized them for working too slowly, and urged them to "demonstrate more enthusiasm"

for their work. Reynoso testified that Branca stated that he did not care for the "little buttons or caps of the union." On cross-examination, Branca admitted having mentioned "the things they were wearing."

On a later occasion, Branca scolded the two women in the presence of other employees for starting their break early one day. Lozano and Reynoso testified that Reynoso had merely removed her workgloves before Branca announced the break but that both women continued to work until the break began.

Respondent called two other crew members on rebuttal. They testified that Lozano and Reynoso were the slowest workers in the crew. One of them described the break incident as follows: Reynoso removed her gloves and started to walk away on her break, causing another worker to ask Branca why Reynoso and Lozano were stopping before the others.

Although Branca's admission that he did mention "the things they were wearing" when reprimanding Reynoso would indicate employer knowledge of their union support, the evidence does not establish a causal connection between Lozano's and Reynoso's union sympathies and Branca's reprimands. We reject as unwarranted the ALJ's finding that the "obvious message" of Branca's comment about their union paraphernalia was a threat that their jobs were in jeopardy because of their union activities. Employer speech which does not constitute a threat or promise of benefit is protected and cannot serve as evidence of an unfair labor practice. (Labor Code section 1155.) In addition, Branca's testimony regarding Lozano and Reynoso's work performance was corroborated

by credible testimony of other crew members,[4/] and it appears that even absent their union sympathies, Respondent would have reprimanded Lozano and Reynoso for their slowness and for breaking early. Accordingly, we hereby dismiss the allegations that Tito Branca harassed Francisca Lozano and Maria Reynoso because of their union sympathies.

Alleged Discriminatory Refusal to Rehire Gustavo Rodriguez, Luis Cortez and Demesio Serrano

The ALJ found that Respondent discriminated against laid-off employees Gustavo Rodriguez, Luis Cortez, and Demesio Serrano by refusing to rehire them in January 1981. Despite testimony to the contrary from all three of Respondent's witnesses, the ALJ credited, without explanation, the testimony of Luis Cortez that he regularly wore his union button when applying for work in early 1981. Other crucial credibility resolutions on which the ALJ based his finding that Respondent knew of the union sympathies of the three workers are similarly unsupported by explanation. When an ALJ's decision does not explain how the ALJ weighed specific items of evidence, how he or she analyzed the facts, or how he or she judged the credibility of individual witnesses on specific issues in dispute, we do not consider ourselves bound by the ALJ's credibility resolutions. In such cases, we shall make an independent review of the record, examine undisputed facts and the reasonable inferences which can be drawn therefrom,

[4/] The ALJ's finding that their coworkers' testimony was biased by anti-union sentiments is not supported by the record evidence and we therefore decline to adopt it.

and test those inferences against the ALJ's findings and conclusions. (S. Kuramura, Inc., supra, 3 ALRB No. 49.)

The uncontroverted evidence regarding Respondent's failure to rehire Rodriguez, Cortez, and Serrano includes the length of time each had worked for Respondent,[5/] Respondent's policy of giving priority in rehire to workers who had been laid off during the previous year, the "termination reports" recommending rehire of all three employees, and the fact that although all three applied for rehire in January and February 1981, they were rejected in favor of individuals who had not previously worked for Respondent. The evidence relied upon by the ALJ in support of his finding that Respondent had knowledge of the union activities or union sympathies of the three men was all contradicted by Respondent's witnesses. As the uncontested evidence of their union support involved activities which took place away from Respondent's premises, we cannot base an inference of employer knowledge on those activities.

Cortez' testimony that he wore a union button and jacket when applying for rehire was corroborated by three employee witnesses but contradicted by all three of Respondent's witnesses.[6/] Rodriguez' testimony that he saw his foreman, Julio Villa in front of the union office when he came out from a union

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[5/] Serrano had worked for Respondent since 1971, Cortez since 1976, and Rodriguez since 1979.

[6/] Cortez also claimed to have seen supervisor Ricardo Lopez surveilling the union hall at 8:30 p.m. in late November. When asked on cross-examination, he stated it was not dark at that time. The ALJ consequently discredited his testimony and dismissed the surveillance allegation.

meeting was flatly denied by Villa. Although Rodriguez testified that he had union buttons on his car and that his wife, Celina Galvan, wore a union button to work, there is no evidence that his car was seen by, or known to, management personnel or that management knew of his relationship to Galvan. Employer knowledge of Serrano's union activities could have been inferred only by crediting Serrano's testimony that he spoke with Cortez and Rodriguez on each of the seven or eight occasions when he applied for rehire and that Cortez was wearing a union button and jacket on those occasions. Serrano's claim that he discussed the union socially with leadlady Amalia Delgado was denied by Delgado and disregarded by the ALJ.

Although, in the appropriate circumstance, employer knowledge might be inferred from Respondent's confused and inadequate explanation for the inconsistency between the rehire recommendations on the employees' termination reports and Respondent's subsequent refusal to rehire them for poor work performance,[7/] there is inadequate record evidence in this case to support such an inference. As the General Counsel has failed to establish the essential element of employer knowledge, we hereby dismiss the allegations of discriminatory refusal to rehire Gustavo Rodriguez, Luis Cortez, and Demesio Serrano.

Alleged Discriminatory Suspension of Maria Teran

We affirm the ALJ's finding that Respondent suspended Maria Teran because of her union sympathies rather than because of

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[7/] See Gould, Inc. (1975) 216 NLRB 1031 [88 LRRM 1581] and Sunnyside Nursery, Inc. (1977) 3 ALRB No. 42 (ALOD p. 21).

a threat Respondent claims she made to another worker. The incident which Respondent asserts led to the suspension occurred on January 26, 1981, the same day that Teran began wearing the union button at work. She had worked for Respondent for almost 8 years when she was suspended for allegedly threatening a fellow employee with her clipping scissors. Approximately 15 to 20 other workers in the cutting department where Teran worked were wearing union buttons, 15 of them for the first time, on that day, the first workday after a large UFW rally nearby at which UFW president Cesar Chavez had been present.[8/]

We find that the timing and other circumstances surrounding Teran's suspension, such as the inadequate investigation and the unprecedented meeting with the other workers to explain the suspension, indicate that Respondent's true reason for suspending Teran was discriminatory. (See Sunnyside Nurseries, Inc. (1980) 6 ALRB No. 52.) The burden, therefore shifts to Respondent to show that it had a legitimate business reason for the suspension and would have suspended Teran even absent her union sympathies. (Royal Packing Company, supra, 8 ALRB No. 74.) We find that Respondent failed to establish that Teran actually threatened Perez, especially in view of the conflicting testimony

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[8/] At Respondent's nursery, the wearing of union buttons was all the more significant in the context of the employer's anti-union campaign. Company buttons reading "Freedom without a Union" in Spanish were placed in boxes next to the time clocks and were given to supervisors. Although they were apparently not distributed directly to the employees, the pressure to wear a company button was intense, as indicated by Maria Teran's testimony that her friendly relationship with division head Dennis Connor evaporated when she refused to wear the company button.

of witnesses to the event. Moreover, Respondent's inadequate investigation of the incident does not support its claim of a good faith belief that a threat occurred. Accordingly, we find that absent Teran's union sympathies Respondent would not have summarily suspended her, and we conclude that her suspension was a violation of section 1153(c) and (a) of the Act.

Alleged Discriminatory Suspension of Dolores Sierra

We affirm the ALJ's finding that Respondent suspended Dolores Sierra because of her union sympathies rather than for pushing a fellow workers in the cutting shed. The "pushing" incident occurred in the same department as, and approximately one week after, the Maria Teran-Epiphania Perez incident and four days after Teran's suspension. The "victim" of the alleged pushing, Estela Lopez, was an anti-UFW employee who regularly wore two company buttons to work. Much evidence was introduced concerning the crowded conditions in the cutting shed, and the only eye-witness to testify, other than Sierra and Lopez, corroborated Sierra's version of the incident as an accidental brushing of backs when the two women passed each other in a crowded corridor. Respondent's investigation of that incident was even more cursory than the investigation of Teran's purported misconduct, although Sierra had worked for Respondent for almost ten years. For the above reasons, we find that, absent Sierra's union sympathies, Respondent would not have suspended Dolores Sierra without affording her a more adequate investigation, and we conclude that, by summarily suspending her, Respondent violated section 1153(c) and (a) of the Act.

Propriety of Respondent's Meetings wilth Newly-Hired Employees Informing Them of Union Organizing Campaign

The ALJ declined to make any findings or conclusions as to whether Respondent violated the Act by any of its statements at orientation meetings for newly-hired workers because the statements were neither alleged as violations in the complaint nor made the subject of an amendment to the complaint at hearing. In addition, although some evidence concerning the meetings was volunteered by Respondent's own witness, Gilberto Resendez, the matter was not fully litigated, and the General Counsel represented on the record that the information sought was for background purposes only. Accordingly, we make no findings or conclusions as to whether Respondent's statements about the Union at the orientation meetings were in violation of the Act.

ORDER

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

1. Cease and desist from:

(a) Suspending, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in any union activity or any other concerted activity protected by section 1152 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing any agricultural employee(s) in

the exercise of the rights guaranteed them by Labor Code section 1152.

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

(a) Remove from its official files, including the personnel files of employees Maria Teran and Dolores Sierra, any and all records of their suspensions by Respondent on or about January 30, 1981 and February 6, 1981, respectively, and make each of them whole for all wage losses and other economic losses she has incurred as a result of her suspension, plus interest 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 length 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 employees employed by Respondent at any time during the period from January 30, 1981, until the date on

which the said Notice is mailed.

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

(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 reimburse them for time lost at this reading and during the question-and-answer period.

(g) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to

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report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: February 17, 1983

ALFRED H. SONG, Chairman

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the San Diego Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint that alleged that we, Monrovia Nursery Company, 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 suspending two of our employees during January and February of 1981, because of their union sympathies. 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 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.

SPECIFICALLY, the Board found that it was unlawful for us to suspend Dolores Sierra and Maria Teran.

WE WILL NOT hereafter suspend or otherwise discriminate against any employee for engaging in union activities.

WE WILL reimburse Dolores Sierra and Maria Teran for all losses of pay and other money they have lost because of their discriminatory suspensions.

Dated: MONROVIA NURSERY COMPANY

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 1350 Front Street, Room 2062, San Diego, California 92101. The telephone number is (619) 237-7119.

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

MONROVIA NURSERY COMPANY

9 ALRB No. 5
Case Nos. 80-CE-90-SD
80-CE-91-SD
80-CE-92-SD
81-CE-7-SD
81-CE-10-SD
81-CE-13-SD
81-CE-18-SD
81-CE-19-SD

ALJ DECISION

The ALJ concluded that Respondent had unlawfully discriminated against pro-union employees in the course of a UFW organizing campaign from September 1980 to the spring of 1981 by assigning them to isolated jobs, harassing them by excessive criticism and more stringent enforcement of rules, refusing to rehire laid-off employees, suspending employees after inadequate investigations of alleged misconduct, and interrogating employees who spoke in favor of the union at a company meeting. The ALJ recommended a dismissal of an allegation that a supervisor unlawfully surveilled a union meeting and expressly declined to base any finding on a contention made in General Counsel's brief, but not alleged in the complaint, that certain statements Respondent made to new employees at company meetings about the union organizing campaign violated the Act.

BOARD DECISION

The Board affirmed the ALJ's finding that Respondent's investigations preceding its suspensions of employees Maria Teran and Dolores Sierra were inadequate and, in the context of the organizing campaign indicated a discriminatory basis for their suspension. The Board reversed the ALJ's conclusions as to the other alleged violations, however, finding that he failed to make credibility resolutions crucial to the establishment of the General Counsel's prima facie case. On independent review of the facts, pursuant to S. Kuramura, Inc. (1977) 3 ALRB No. 49, the Board found that the General Counsel had failed to establish: (1) a causal connection between the employees' union support and their subsequent isolation and harassment; (2) any interrogation or other coercive employer conduct occurring after the company meeting; or (3) that Respondent had knowledge of the union sympathies of the three laid-off employees it refused to rehire. The Board also found that the legality of statements concededly made by Respondent's agent at orientation meetings for newly hired employees was not fully litigated.

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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

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of	)	Case Nos. 80-CE-90-SD
	)	80-CE-91-SD
Monrovia Nursery,	)	80-CE-92-SD
	)	81-CE-7-SD
Respondent,	)	81-CE-10-SD
	)	81-CE-13-SD
v.	)	81-CE-18-SD
	)	81-CE-19-SD
UNITED FARM WORKERS of AMERICA, AFL-CIO,	)	
Charging Party.	)	

APPEARANCES

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Azusa, California 91702
On Behalf of Charging Party

DECISION

WILLIAM A. RESNECK
Administrative Law Officer:

STATEMENT OF THE CASE

This case was heard by me in Irwindale, California, on June 9, 10, 11, 12, 15, 16 and 17, 1981, and arises out of eight unfair labor practice charges filed at various times beginning in November 1980 through March 1981. The Second Amended Consolidated Complaint (hereinafter referred to as the "Complaint") issued on June 3, 1981, alleges eleven separate violations of Section 1153(a) and Section 1153(c) of the Agricultural Labor Relations Act (hereinafter referred to as the "Act"). The charges were filed by the United Farm Workers of America AFL-CIO (herein referred to as "UFW" or the "Union") against Monrovia Nursery Company (hereinafter referred to as the "Respondent", the "Company" or the "Employer").

The alleged unlawful conduct consists of assigning certain employees to work in isolation from their fellow employees (Carmen Catalan and Francisca Lozano); subjecting employees to unwarranted criticism and harassment because of their support of the Union (Maria Reynoso, Francisca Lozano and Luis Avila); discriminatory suspensions (Dolores Sierra and Maria Teran); unlawful refusal to rehire (Gustava Rodriguez, Luis Cortez and Denisio Serrano); unlawful surveillance by one of Respondent's agents (Ricardo Lopez); and unlawful interrogation and threats (Adan Torres and Nicholas Estrada).

Respondent, in its Answer, admitted the jurisdictional allegations of the complaint and the allegation as to the supervisory status of Jim Poorbaugh, Gilbert Resendez, Bruce Usrey, Dennis Connor,

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OSP

Maria Elena Ibarra, Juan Alba, Maria Maggie Garcia and Alejandra Hernandez. Respondent denied committing any unfair labor practices.

All parties were given a full opportunity to participate and general counsel, employer and charging party were all represented at the hearing. After the close of the hearing, general counsel and the employer filed briefs.

Based upon the entire record, including my observation of the demeanor of the witnesses, and after full consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Employer has stipulated it is an agricultural employer within the meaning of Section 1140.4(c) of the Act, and that the UFW is a labor organization within the meaning of Section 1140.4(f), and I so find.

II. THE EMPLOYER'S OPERATIONS

Respondent, a California corporation founded in 1930, is a wholesale grower of general ornamental plants. Located near Azusa, California on approximately 500 acres, it employs approximately 700 full-time employees and approximately 100 additional employees during the peak season.

Propagation of the plants begins in Division 7 where 90% of the plants are grown from cuttings taken from mature plants and 10% are grown from seeds and grafting. The process begins in Division 7's cutting department where they are trimmed into 3-inch segments and placed in flats, holding approximately 200 cuttings each. The

flats are then transported by jeep and trailer into greenhouses or mist beds.

After 3 to 9 months, roots form on the cuttings which are then taken to the potting department in Division 7. Here, the cuttings are removed from the flats and transplanted into individual 2" by 3" pots called liners. Liners are then transported by jeep and trailer into 8 foot by 50 foot growing beds located in the Division's liner department where they remain for an additional 3 to 9 months until ready for sale or canning into 1 gallon containers.

After liners are transplanted into 1 gallon containers, they are transported to one of the sixteen other divisions of the nursery. Although the divisions differ in size, the tasks performed there are basically the same: watering, pruning, staking and tying, weeding, spacing, assembling for orders, hauling to shipping docks and consolidation in the beds.

Finally, there are certain specialized crews which are not assigned to any one division. These crews include canning, pruning, weeding, staking and tying, pest control and maintenance.

III. THE UNFAIR LABOR PRACTICES

In September, 1980, the UFW launched an organizing drive at the company. The incidents here all arose during the following seven months of that campaign. The various incidents will be discussed in chronological order as they occurred.

A. THE ALLEGED ISOLATION OF CARMEN CATALAN.

Catalan has been employed at the company since May, 1975. She started to wear her union button in October, 1980 and was the first

person in the company to wear one. General counsel alleges in paragraph 17 of the complaint that shortly after Catalan began to wear her union button she was discriminated against by a job transfer that effectively isolated her from her fellow workers.

No dispute exists that her work assignment changed aroung mid-October. Before, she was assembling plants for canning in the liner department of Division 7 under the supervision of Maggie Garcia. In mid-October, Garcia transferred her to Section 2 along with her partner, Maria Teran, to clean plants. This assignment lasted six to eight weeks. For two of the weeks, two other employees, Estella Aguirre and Inez Baltazar, also worked with them.

It is also undisputed that Catalan was performing the same work as the other employees in her divison. However, the contention is that while other employees at times worked alone and at other times in larger groups, Catalan during this period essentially worked in isolation with her partner away from the remainder of the workers.

Both Maria Teran and Marie Jiminez corraborated that Catalan was isolated from the rest of the workers. Jiminez testified that Catalan worked "quite a ways" from the rest of the group (V:4).*1 Moreover, when it was time to fill a large order, approximately 4,000 to 5,000 plants, it was customary for a number of workers to work on the order together. During this period of time, Catalan, whose work assignments were directed by her supervisor, Maggie Garcia, never worked in a group on a large order.

*1. References to the transcript of the proceedings will contain a Roman Numeral, either I, II, III, IV, V, VI or VII indicating the transcript volume, followed by the page number of that volume.

Maggie Garcia confirmed in her testimony that Catalan was physically isolated from the rest of the crew, and could not see the others (VII:35). She also confirmed that Catalan was the first employee to wear a union button (VII:38). She also testified that about half the other employees were performing the same tasks as Catalan. Catalan never complained about her job assignment. Further, she was transferred to the cutting department in late November or early December at her request. That time was the cutting department's busiest season.

B. THE ALLEGED INTERROGATION AND HARASSMENT OF LUIS AVILA.

Avila has been employed by the company from July 1972 to January 1976 and from later in 1976 to the present. Paragraph 13 of the complaint alleges that supervisor Juan Alba interrogated and threatened employees regarding the extent of their union activities. Paragraph 14 alleges that Alba discriminatorily changed Avila's work assignment from assembling plants for orders to pruning which had the effect of isolating him from the work force. Paragraph 14 further alleges that supervisors Alba and Gilberto Resendez harassed Avila by unwarranted criticism of his pruning performance.

Avila was the second person to wear a union button at the company, and the first in his division (III:102). The alleged interrogation and harassment all took place within a month after he began wearing the button, sometime in October or November. Four separate incidents were offered to support the allegations of paragraphs 13 and 14 and they will be discussed in chronological order.

Preliminarily, on the fifth day of the hearing, upon motion

of respondent, I dismissed the first allegation of paragraph 14 of the complaint concerning the alleged isolation of Avila. He testified that he had been working alone since August pruning while the other workers were working about a block away (III:85-86). He testified that he continued to prune for quite a few months (III:88). Further, he testified that he was not aware of union activity until the first days of September (III:86-87). He first wore a union button to work on October 4, 1980 (III:104). Accordingly, it was clear that the assignment to pruning took place long before any union activities started and long before Avila was even aware of such activity. Accordingly, the transfer could not have been a discriminatory measure in response to union activity.

All the other alleged incidents took place after he started wearing his union button. Approximately a month after he began wearing the button, Avila posted a notice from the State of California concerning workers' rights to organize on the bulletin board located in Division 14. That same morning, he was approached by Gilbert Resendez, Jim Poorbaugh and Juan Alba who asked him whether he had put the paper up. He responded affirmatively and Resendez then inquired whether Avila had received permission from his foreman Juan Alba to post the notice. After Avila admitted he did not have permission, Resendez said that permission must be received before posting anything on the bulletin board, and he took down and gave Avila the notice.

Resendez testified and essentially corroborated Avila's version of the incident. Resendez also testified that these bulletin boards

were located in each division for the benefit of the workers, and from time to time employees were allowed to post notices on the bulletin boards.

The second incident happened around the same time as the first incident. Avila made a phone call to his brother using the in-house Division 14 phone. After Avila had completed his call and was returning to his jeep to take his morning break, Resendez and Alba approached him and Resendez asked whether Avila had received permission from Alba to use the phone. Avila responded that he had not and remarked that it seemed that he now had to ask permission for everything. Resendez replied that Avila did need to request permission to use the phone and then told him to go ahead and take his break.

The third incident took place a month or two later and occurred after a meeting called by the company where a representative of a unionized company discussed his company's experience with the union and concluded that it was not a favorable one. During the meeting, Avila asked the speaker why he was saying the union was no good and stated that his foreman, Juan Alba, pushed them a lot, demanding more work from them. Also, during the meeting, Adan Torres testified that both he and his work partner, Nicholas Estrada, asked questions which suggested that they also were in favor of the union.

After the meeting was over, Alba approached Avila and Adan Torres and demanded to know from Avila how it was that he pushed the workers. Avila stated that it was because Alba used to go to other persons to talk about work errors instead of talking to the person

himself. Alba responded that he did that because he could avoid controversy.

Torres testified that after the meeting, when Estrada and he returned to continue their work, Alba came over to them, took away the work that they were doing and gave it to another worker. When Torres asked what they were supposed to do now, Alba did not respond but just walked away leaving both Estrada and himself with nothing to do. Torres then went over to help Avila when he witnessed the exchange between Avila and Alba.

The fourth incident occurred sometime in November or December. Avila testified that one morning while he was pruning, Resendez and Alba approached him and Resendez told him that he was working very slowly. Avila responded that it seemed like since the union arrived that he was now having all of his errors noticed. Resendez then showed him a different method to prune the plants. Resendez also testified that he told Avila that although they had a difference of opinion about the union, that difference of opinion should not affect either Avila's work performance of his ability to correct the deficiencies in Avila's performance.

C. THE ALLEGED SURVEILLANCE OF UNION SUPPORTERS.

On the fifth day of the hearing I granted general counsel's motion to amend the complaint by adding paragraph 22a alleging that "in the month of October, 1980 respondent, by and through the act of its agent and supervisor, Ricardo Lopez, did take actions which amounted to surveillance of the union supporters of the Monrovia Nursery during a union meeting" (V:81). The contention is that

during a union meeting in October , 1980, at the Union Hall on Azusa Avenue, Ricardo Lopez, a company supervisor, engaged in surveillance of union supporters by driving circles around the UFW office and then parking in a lot about a block away from the Union Hall.

Luis Cortez testified that he saw Ricardo, a foreman for Division 10, driving around outside the office. Cortez stated that he and a companion watched Ricardo until he parked. He stated that he followed him to the back of his car and was able to see his face. A corroborating witness, Javier Avila, also attended that union meeting in October. He stated that he was told that Lopez was outside the meeting, and he went outside and saw a white truck. He was unable to see who was in the truck, and he had never seen Lopez driving a truck like that before.

Lopez testified that he had never seen Luis Cortez at the Union Hall. He states that he drives up Azusa Avenue every day to and from work, and that he owns a yellow El Camino pickup truck. He denied ever going to the Union Hall to spy on people and was never directed by anyone in the company to do so.

D. THE ALLEGED ISOLATION OF FRANCISCA LOZANO.

Lozano claimed to be the victim of more than one incident of discrimination. The charge of isolation occurred during November and December of 1980 while the other acts occurred a few months into the 1981 year. Accordingly, maintaining a chronological narrative, only the isolation incident will be discussed at this time.

Paragraph 15 of the complaint alleges that respondent

discriminated against Francisca Lozano by changing her work assignment of usually working outside with a group of workers to working inside with only one other worker.

Paragraph 16 alleges that respondent discriminated against her by assigning her a seat in the cutting department where she was effectively isolated from other employees in that department.

Lozano worked for the company for a short period of time in 1973 and 1974 and then from January 1976 to the present. . She took a pregnancy leave of absence from the company on July 3, 1980 and eventually returned on November 3, 1980, after delivering a child on August 15, 1980. Prior to her leave of absence she had worked in the fern greenhouse about three and a half years under supervisor Alejandra Hernandez.

Lozano testified that when she returned she was wearing a red UFW jacket and a UFW button and she had been very involved in union activities. She had a house meeting, made calls to fellow workers, distributed leaflets to workers and attended one union meeting where there were about a hundred workers present.

Upon her return on November 3, when she could not immediately locate her foreman, she began working with her fellow workers outside doing a variety of work involving bending, stooping and picking up plants. Shortly thereafter, Hernandez returned and told her that she should not be doing such strenuous work so soon after her childbirth, which was performed by Caesarean surgery, and sent her to work potting plants inside House No. 16. Lozano worked there transplanting ferns for two weeks with two other employees. At the

end of two weeks the rest of the workers joined Lozano in House No. 16. However, Hernandez then sent Lozano to House No. 5 to work alone with her partner, Amelia Picasso, in the ferns. Hernandez testified that she sent Lozano back to No. 5 because that was where Lozano used to work. The work performed in House No. 5 was substantially the same work as that performed in House No. 16.

Lozano worked in House No. 5 for one day before she was transferred at the request of the division head, Dennis Connor, to the cutting department. At the time Lozano had returned to work, she was the only one in the division wearing union paraphernalia.

When Lozano reported to the cutting shed she was instructed by her foreman, Maria Elena Ibarra, to bring some cans from House No. 18. When she returned about 10 minutes later, Lozano testified that the seats had been rearranged so that an additional chair was added to each row and there were now four chairs facing the direction of Ibarra's desk. Ibarra pointed to an unoccupied seat in the front row, and Lozano occupied that seat throughout her tenure in the cutting department. As a consequence, Lozano had Ibarra directly in front of her and Velia Gomez, Ibarra's assistant, next to her.

Ibarra testified and denied that she assigned workers their seats and denied that the seats had been rearranged during the ten minutes that Lozano was gone. However, Ibarra did admit that the seat Lozano was told to sit in was the seat she herself used; that it was unoccupied; and that she probably did point to the vacant chair near her desk. Ibarra also testified that Lozano sat in that seat for two to three months and never requested a seat change.

E. THE ALLEGED REFUSAL TO REHIRE.

Paragraph 20 alleges that beginning in January, 1981 respondent discriminatorily refused to rehire Gustavo Rodriguez, Luis Cortez and Demisio Serrano because of their participation in the UFW organizational drive. Serrano had worked for the company for various times since 1971; Cortez had been employed by the company since 1976, and Rodriguez since 1979. All were laid off at the end of August or the beginning of September, but no contention is made that their layoffs were discriminatory, since their layoffs predated the UFW organizing efforts.

All applied for work in January of 1981 and continued their efforts for the first few months of 1981. Several employees were hired during this period, including new employees with no prior work experience. None of the three were offered jobs.

1. Gustavo Rodriguez: Rodriguez was laid off on August 28, 1980 by Jim Poorbaugh.

About four days after he was laid off, the company's secretary, Aurora, picked him up and drove him to the offices to meet with Jim Poorbaugh. Poorbaugh asked him to excuse him for laying him off but that they had run out of work. Poorbaugh further stated that in January he could have his job back (III:118). Poorbaugh testified but did not discuss the conversation with Rodriguez, and thus Rodriguez' version of the incident went unchallenged. Rodriguez also received a form letter from the company dated September 22, 1980 essentially confirming that those laid off would be first to be rehired (G.C. Ex.6).

Rodriguez became involved with the union on September 16. He went to union meetings, took union representatives to worker's homes, and gave his wife, who wore a union button from the end of September to February, a ride to work with six union buttons sitting in the front of his car. Further, he testified that Julio Villa, a foreman, saw him coming out of a meeting in front of the union office. He testified that Villa must have seen him because their eyes met.

The company also fills out termination reports on its workers. On Rodriguez' termination report filled out in August, 1980, his attendance and punctuality was noted as "good"; his work habits were noted as "good"; and it was checked that he should be rehired (G.C. Ex.8).

Poorbaugh and Resendez both testified that they were in charge of hiring and that the reason Rodriguez was not hired was because he was a very poor worker. Resendez testified that while Poorbaugh and he were reviewing Rodriguez' application, Poorbaugh recalled that Villa, Rodriguez' former supervisor, had said there was a problem with Rodriguez. Resendez testified that Villa informed him that when Villa had instructed the workers to work faster, Rodriguez had countermanded those instructions by saying they were being paid by the hour.

Villa also testified that he had told Poorbaugh in June of 1980 that Rodriguez was the worst worker in the crew and that he had problems with his throwing dirt and playing around during working hours. Poorbaugh testified that he had this conversation with

Villa in January of 1981.

2. Luis Cortez: Cortez was first employed in 1976 and laid off on September 5, 1980. Cortez also became active in the union around September 13, 1980 by presenting organizers to the people; by taking union representatives to the people's homes and by wearing his UFW jacket and button. Cortez also testified that he saw Ricardo Lopez allegedly keeping surveillance on a union meeting in October, 1980, as previously discussed. Cortez testified that when he returned to Monrovia Nursery in January of 1981 to ask for a job he wore his union jacket and button. Cortez also testified that during one of these Mondays he spoke directly to Resendez and asked if he was going to have his job back. Resendez told him that they could all go home and come back whenever they wanted but they should not feel obligated to come back. Cortez testified that during this conversation he was wearing his union jacket and button.

Gustavo Rodriguez, Demisio Serrano and Robert Galvin all corroborated Cortez' testimony that he would wear the union jacket and button on the Mondays when he would apply for work.

Poorbaugh and Resendez denied any knowledge that Cortez was a union advocate and denied specifically having any knowledge of his union activity.

Resendez also testified that Dennis Connor gave a very negative appraisal of Cortez' work performance. Although Cortez was one of the most senior employees he was one of the first four employees selected for layoff. Cortez' termination report stated that he was not too ambitious, needed to be watched and needed a lot of supervision. However, on the evaluation part of the termination report,

Cortez' attendance and punctuality were marked as "good"; his work habits were marked as "fair"; and the question as to whether he should be rehired was checked "yes" (G.C. Ex.8).

3. Demisio Serrano: Serrano was laid-off on September 12, 1980 after having worked for the company for ten years. In the last two years he had been working under the supervision of David Fierro. Despite his seniority he was the first person laid off in Division 1.

Serrano testified that when he was informed of his layoff by Resendez he asked why he was one of the first ones being laid off. Resendez responded that they had to lay off three people from each division. Serrano then asked if he was going to get his job back and testified that Resendez said "yes". Serrano then asked when, and Resendez said that he should submit an application in six months and he would be one of the first ones hired.

Serrano started to get involved in union activities about September 20. He took a union representative to visit the homes of Monrovia workers, attended UFW meetings and gave out union flyers. Further, during his involvement in these activities he had a number of conversations about the union with a company supervisor, named Amelia Delgado, at the home of a mutual friend, named Dona Rosa. Serrano also testified that when he would show up during the Mondays in January at the hiring hall he would associate with Gustavo Rodriguez and Luis Cortez.

Delgado testified that she knew Serrano only by the name of Toscano, but that she had never discussed the union with him. She

further testified that although there were discussions from time to time about the union, she never responded to those discussions and never discussed any of the people involved in the union organizing campaign.

Resendez testified that when he was reviewing Serrano's application for reemployment in January in 1981 he was puzzled by the favorable termination report Serrano had received from Fierro. Resendez said that he spoke with Fierro who told him that he had sent it in blank to the personnel office and that apprarently someone from the personnel office filled it in wrong. The termination report indicated that Serrano's attendance and punctuality were "fair"; his work habits were "fair" and that he should be rehired (G.C. Ex.8).

F. THE ALLEGED DISCRIMINATORY SUSPENSION OF MARIA TERAN.

Teran has been employed at Monrovia Nursery since February of 1973. On January 26, 1981 she allegedly threatened Epifania Perez while they were both sitting in chairs working in the cutting shed. The incident happened around 10:00 in the morning while they were seated back-to-back cutting leaves. Although there is a dispute as to the exact nature of their conversation, Teran apparently raised her scissors, told Perez not to act dumb and to keep quiet or else she was going to stab her with the scissors and take her guts out and make cracklins out of them.

Five days after that incident occurred Teran was suspended for three days by the company. Paragraph 19 of the complaint alleges that this was a discriminatory suspension in retaliation

for her support of the union.

On the day of the incident, Teran and about fifteen other workers in the cutting sheds wore UFW buttons to work for the first time. Most of the other workers in the cutting department were wearing company buttons handed out by the employer. Teran testified that she was sitting back-to-back with Perez while Josephina Guillen was sitting immediately to the left of Teran a few feet away. Perez was objecting to Teran that Teran's cousin had been saying that Perez' former husband, who was now deceased, while he was sick went crazy and was running naked around the house. Teran testified that she responded that her cousin had not said that because her cousin did not live at the house and, further, her cousin would never have said such a thing. Teran testified that they kept on talking and that is when she made the crack about stabbing her and making cracklins out of her guts. She testified that Perez laughed, and that they had often joked in this manner before.

Perez' version is that Teran threatened to "hit her with the scissors if she did not stop talking bad about her" (VI:97-98). When questioned by respondent's counsel if she was afraid, she answered: "yes, a little bit, but I did..." (VI:99). Her answer was not completed as respondent's counsel asked her another question.

Perez, herself, did not complain about the incident. Instead, Estella Lopez, a cutting department employee sitting nearby, told Eva Tachiquin, an employee of the Farm Employer Labor Service who worked at the company on a consulting basis, about the incident. Tachiquin notified supersivors Jim Poorbaugh and Dennis Connor of

the incident on January 28, two days later, and conducted her own investigation of the incident at their request.

Tachiquin obtained signed declarations from four employees: Josephina Rodriguez, Paula Cruz Basa, Estella Lopez and Epifania Perez (Resp.'s Ex.D). In the declarations, Rodriguez, Lopez and Perez said that Maria Teran had been told that they were talking bad about the union. Teran responded that Perez should shut up or else she would cut her with the scissors.

At the hearing, Estella Lopez testified that she overheard Teran tell Perez about the union meeting and that Perez was not taking her seriously and just laughed at her. Teran then got up and went to the flatting table. Lopez saw Josephina Guillen go over and talk to Teran. When Teran returned to her seat she was angry and then threatened Perez with the scissors.

Josephina Guillen testified and corroborated Maria Teran's story that the conversation concerned Epifania's husband, who apparently was running naked through the house while he was still alive. Guillen also corroborated Teran's version that Teran and Perez often kidded each other in that manner.

In any event, Tachiquin returned on that Thursday, January 29, with the statements of those four witnesses, but without ever speaking with Maria Teran about the incident. On Friday, January 30, supervisors Jim Poorbaugh, Gilbert Resendez, Dennis Connor and Bruce Usrey summoned Teran and told her that she had been accused of threatening to stab one of her fellow workers. Teran admitted that she had done so but said she was joking. Resendez said that

that's not the way they understood the incident had happened. Teran then requested that Epifania Perez and Estella Lopez be brought there so that she could talk to them face to face about the incident. Resendez refused and the four supervisors then went into an office for fifteen minutes to deliberate an appropriate punishment. When they returned, they told her that she had been suspended for three days. The whole conversation took place outside in the patio and during this time other workers were able to see what was happening.

Resendez essentially corroborated Teran's version of the incident but added that while the four supervisors conferred in private they discussed either suspension or discharge. Resendez stated that they were very concerned about preventing any violence so that workers would not be physically hurt.

Further, Resendez testified that immediately after Teran left the premises, the supervisors called all the employees in the cutting shed to a meeting and informed them that one worker had threatened another worker with physical violence and had therefore been suspended for three days. He added that although there were differences of opinion regarding the organizing campaign at the nursery they believed it could be discussed in a reasonable manner and there should not be any reason to have either verbal or physical confrontations. Prior to the day that Teran had been suspended no person from the cutting shed had ever been suspended, nor had there ever been a meeting called at the cutting shed to inform the workers of any discipline or termination of another employee.

G. THE ALLEGED DISCRIMINATORY SUSPENSION OF DOLORES SIERRA.

Dolores Sierra has been employed at the company from July 13, 1970 to June 20, 1979; and from January 25, 1980 to the present. On February 3, 1981 Dolores Sierra allegedly pushed Estella Lopez in the cutting shed while they were preparing for work in the morning. She was suspended for three days beginning on February 4, 1981 and returned to work on February 10, 1981. Paragraph 18 of the complaint alleges that this suspension was discriminatory.

Sierra testified that she had attended a union meeting on January 23, 1981 and had been wearing a union button to work for two weeks when the incident allegedly occurred. Moreover, the incident occurred in the week following the Teran suspension.

Sierra testified that she first heard about the pushing incident the day after it occurred and that was because she was sent to Dennis Connor's office where she found Resendez, Poorbaugh and Connor waiting for her. Resendez told her that she had pushed Lopez the day before. She denied pushing Lopez but, that even if she had, people in the cutting department often pushed against each other accidently.

Only two witnesses testified as to how the incident actually happened. Estella Lopez testified that she was standing by the sink in the cutting department and that as Sierra passed her she hit her on the left elbow causing her to lose her balance so that she had to grab onto the sink. Lopez testified that she immediately complained to Maria Ibarra, the foreman, who was busy handing out knives to the employees and did not respond.

Ibarra testified that she was handing out knives when Estella told her of the push, but that she asked Estella why Sierra did it. Lopez said that she did not know and Ibarra testified that she took no action to discipline Sierra nor did she take any investigative action. She did tell Estella she could talk to Eva about it, but she was not sure if she told Estella to talk to Eva about it on the same day of the incident.

The only other testimony concerning the incident was by an eyewitness, Socorro Cervantez, a company employee for thirteen years. She testified that Sierra's and Lopez' backs brushed against each other only slightly on the morning in question. Cervantez then heard Lopez complain to Ibarra about a push and, when Ibarra asked Lopez who had pushed her, Lopez said it was Sierra. She testified that Ibarra said "don't push each other, girls" and that was the end of the incident.

Lopez then complained to Eva Tachiquin about the incident. Tachiquin stated that she investigated both the Teran and Dolores Sierra incident on complaints by Estella Lopez, and that she neither talked to Teran nor Sierra in the course of her investigation. Tachiquin took a sworn statement from Lopez who in turn informed the company supervisors.

After Sierra was suspended, the workers in the cutting shed circulated a petition requesting that the ALRB take prompt action to investigate the allegedly unfair treatment and harassment of workers who were union supporters (G.C. Ex.5).

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H. THE ALLEGED HARASSMENT OF FRANCISCA LOZANO AND MARIA REYNOSO.

Paragraph 21 of the complaint alleges that supervisor Narciso Branca harassed and intimidated Reynoso and Lozano by unwarranted criticism of their work. Paragraph 22 alleges that supervisor Branca acted discriminatorily against Reynoso and Lozano by unequal application of company rules concerning break times.

In February of 1981 Lozano and Reynoso transferred to Division 16 where they worked in Branca's crew of about twelve employees pruning and weeding. Reynoso had worn a union button for two months (November and December), and Lozano had been wearing a union button and jacket since November. In approximately March, Branca spoke with both Reynoso and Lozano telling each of them separately that he thought they were working too slowly.

Approximately three weeks later, Branca called both Reynoso and Lozano into the company office on separate occasions and again told them they were working too slowly. Reynoso testified that he told her he wanted her to put more enthusiasm in her work. Reynoso also stated that he told her that he did not care about little buttons or caps or jackets of the union but that he wanted her to do a good job.

Lozano testified that when she was taken by Branca to the company office, he told her that she was not paying attention to her job and that she did not show enough enthusiasm.

The last incident occurred approximately a week after the second incident. It was approximately 9:00 a.m., when the workers customarily took their breaks. Reynoso testified that she looked

ANALYSIS OF THE ISSUES AND CONCLUSIONS OF LAW

The issues before me and my decision on each of them are as follows:

1. Whether respondent discriminatorily changed the working conditions of Carmen Catalan because of her union activity. I find the respondent guilty as charged.

2. Whether respondent discriminatorily interrogated and harassed employees because of their union activity. I find the respondent guilty as charged.

3. Whether respondent was guilty of surveillance of union supporters. I find the respondent not guilty of this charge.

4. Whether respondent discriminatorily changed the working conditions of Francisca Lozano. I find the respondent guilty as charged.

5. Whether respondent refused to rehire Gustavo Rodriguez, Luis Cortez and Demisio Serrano because of their union activity. I find the respondent guilty of refusing to rehire all three because of their union activity.

6. Whether respondent discriminatorily suspended Maria Teran because of her union activity. I find the respondent guilty as charged.

7. Whether respondent discriminatorily suspended Dolores Sierra because of her union activity. I find the respondent guilty as charged.

8. Whether respondent discriminatorily harassed Francisca Lozano and Maria Reynoso by unwarranted criticism of work and

unequal application of company rules concerning break time. I find the respondent guilty as charged.

I. THE DISCRIMINATORY TREATMENT OF CARMEN CATALAN.

Isolating a worker from her fellow workers because that person is a union supporter is an interference with rights guaranteed by § 1153(a) and § 1153(c) of the Act. For example, in Tappan Co. (1977)228 NLRB No. 176, 195 LRRM 1035, an employer was found to have engaged in discrimination by illegally transferring an employee from the same plant to a warehouse one mile away. Immediately prior to the transfer, the employee had been soliciting signatures for union authorization cards. After the transfer, he was effectively isolated from the rest of the employees.

Catalan was the first employee in the company to wear a union button. Prior to wearing her button she worked with her fellow employees in groups and alone. Shortly after she began wearing her union button, her assignment changed so that she no longer worked with other employees but in effect worked alone with her partner away from the rest of the group. Catalan's supervisor, Maggie Garcia, admitted both her knowledge of Catalan's union button and the fact that she was physically isolated from the rest of her crew. Catalan's testimony was further corroborated by her fellow workers, Maria Teran and Marie Jiminez, that she was physically isolated from the rest of the workers. For example, after Catalan started wearing her union button she never worked with other workers to fill a large order. Further, no legitimate business reasons were offered by respondent justifying Catalan's isolation during this

period of time. Accordingly, I find the evidence supports the charge of discrimination.

II. INTERROGATION AND HARASSMENT OF EMPLOYEES.

These allegations concern primarily Luis Avila, although both Nicholas Estrada and Adan Torres were also involved.

Avila started wearing his union button on October 4, 1980: the second person in the company and the first in his division to do so. Within the next month, his work performance was repeatedly corrected, not only by his immediate supervisor, Juan Alba, but by the sales-production manager, Gilbert Resendez, and even the production manager, Jim Poorbaugh. The undue attention that Mr. Avila attracted was heightened when the trivial nature of his "offenses" are examined.

Avila was criticized for posting a notice on the bulletin board concerning workers' rights without permission; for making an intra-company phone call for two to three minutes without first asking permission; for taking issue with anti-union comments by speaking at a company meeting; and, finally, for his pruning performance. Further, Torres and Estrada, both of whom made similar comments at the company meeting, found their work assignments taken away from them immediately after the meeting and left with nothing to do. Accordinlgy, what is involved here is not the company's right to correct the work performance of its workers, but, instead, a pattern of harassment of those workers indicating support for the union.

In evaluating unlawful interrogation in harassment cases, the

test is not whether an employer's questioning actually intimidated the employees but whether the questioning would tend to interfere with the free exercise of Section 1152 rights. Abatti Farms, Inc. (1979) 5 ALRB No. 34, pp.9-10; Maggio-Tostado, Inc. (1977) 3 ALRB No. 33, pp.2-3. Further, the evidence here established that the pattern of discipline after the commencement of the union activity was much more vigorous than existed prior to the commencement of such activity. See Keller Manufacturing Co. (1978) 237 NLRB No. 94, 99 LRRM 1083, 1086. For example, in the past workers had posted notices on the bulletin and made phone calls without requesting permission from their foreman.

Respondent offered no justification for its increased application of its rules concerning the posting of notices, the permission to receive phone calls, nor Resendez' and Poorbaugh's increased interest in the work performance of Avila, a company employee since 1972. Further, Alba's actions in taking away the work of Torres and Estrada immediately after the company meeting was again in direct retaliation to their vocal support of the union during the meeting. Although respondent contends on page 6 of its brief that its actions regarding Torres and Estrada were not alleged as improper in the complaint, I find the allegations of paragraph 13 alleging that Juan Alba did interrogate and threaten employees regarding the extent of their union activities sufficient to cover this conduct.

Accordingly, I find the employer guilty of the unfair labor practices charged here.

III. THE SURVEILLANCE OF UNION SUPPORTERS.

The surveillance of employee activities which has a reasonable tendency to affect employee exercise of statutory rights violates § 1153(a). Moreover, proof that the surveillance actually interfered with employees' union activities is not necessary in order to find a violation. Merzoian Brothers (1977) 3 ALRB No. 62, p.3.

However, the mere presence of a supervisor driving past a union meeting on a main thoroughfare does not in and of itself establish surveillance. See Salinas Greenhouse Co. (1978) 4 ALRB No. 64. The burden is on general counsel to prove that an employer representative was present for the purpose of surveillance. Tomooka Brothers (1976) 2 ALRB No. 52, p.5.

The evidence here is insufficient to establish that Ricardo Lopez was present on an unspecified night in October for the purposes of surveillance. General counsel's evidence, at best, is the testimony of Luis Cortez that he saw Lopez in the truck. However, Lopez testified that it was not yet dark, although it was 8:30 p.m. in late October.

The other witness presented by general counsel as corroborating evidence was Javier Avila. Avila testified that it was dark, and that he could not see who was in the truck. Moreover, he never saw Lopez driving a truck like the one he saw that night (V:64).

Lopez testified that he never went to the union hall to spy on union workers. Moreover, he was never directed by anyone in the company to do so.

Accordingly, due to the inconsistency in general counsel's two

witnesses and due to the fact that Cortez testified he drives up Azusa Avenue every day to and from work, general counsel has not carried its burden of establishing an unlawful surveillance.

IV. DISCRIMINATION AGAINST FRANCISCA LOZANO.

Lozano's complaint of discrimination is two-prong: a charge of isolation in work assignment, and a charge of isolation in her seating assignment.

When Lozano returned to work on November 3 after a pregnancy leave of absence she wore a red UFW button and jacket. At the time, she was the only one in her division wearing union paraphernalia. Initially, she was sent by her foreman to work inside, potting plants, at House No. 16, away from her fellow workers. Respondent testified this transfer was out of concern for her health, although it effectively isolated her from the rest of her fellow employees. However, after two weeks when the remainder of the employees joined her at House No. 16, she was then sent to No. 5, performing exactly the same work as that which was performed in No. 16. No justification was offered for that transfer other than she used to work in House No. 5.

It is critical to remember that these events occurred in November, 1980, when the union organizing campaign was commencing. In response, the company had held meetings, passed out company buttons and leaflets and was actively conducting a counter-campaign on its own. Accordingly, although the company perhaps could argue justification in the initial change of job assignment upon Lozano's return, no justification could be found for the second

transfer once the other employees joined Lozano in House No. 16. Accordingly, I find that Lozano's transfer to House No. 5, even if only for a day, was a discriminatory transfer to isolate her from her fellow workers because of her outspoken support for the union.

Similarly, her transfer after one day in House No. 5 to the cutting shed was also discriminatory. When she arrived in the cutting shed, Lozano was assigned a seat directly in front of the supervisor, with the supervisor's assistant right next to her. Moreover, although Lozano made no complaint concerning her transfer to the cutting shed or her seat assignment, that does not immunize the company from liability. The three prior transfers that Lozano had undergone in the previous two weeks, and her transfer to the cutting shed where she had not worked for four years, sufficiently served to intimidate her from any objections. Moreover, her reluctance may be further explained by the fact that her transfer was specifically requested by Dennis Connor, the division head of the cutting department. Her numerous transfers over the past two weeks, culminating in her transfer at the specific request of the division head would have effectively intimidated even the most outspoken union advocate from voicing any objection. Accordingly, I find that her failure to object to the seat assignment does not relieve the employer from liability here.

V. THE REFUSAL TO REHIRE.

To establish a discriminatory refusal to rehire, the general counsel must prove that an alleged discriminatee made a proper application for rehire and was not rehired as a result of union

related considerations. George Lucas & Sons (1979) 5 ALRB No. 62, p.2. An employer who declines to hire employees because they are members of a union commits an unfair labor practice. In assessing conduct, it is relevant to consider the employer's knowledge of union activities, animus towards such activities and the reasons asserted for the failure to hire. See McCain Foods (1978) 236 NLRB No. 53; Newark Morning Ledger Co. (1977) 232 NLRB No. 95.

Gustavo Rodriguez, Luis Cortez and Demisio Serrano all had been longtime company employees. Serrano had worked for the company since 1971; Cortez had worked for the company since 1976; and Rodriguez since 1979. All were laid off at the end of August or the beginning of September, prior to any union organizing efforts. Moreover, on the termination reports filled out by the supervisors for each of the three employees, it was indicated that each of them should be rehired.

After their layoff in the Fall, all became involved in union activities. Rodriguez went to union meetings, took union representatives to workers' homes, put union buttons in the front of his car and associated at work with his wife, who wore a union button. Further, he testified that he saw his foreman, Julio Villa, when he came out of a meeting in front of the union office.

Cortez took union organizers around to the people, wore his UFW jacket and button and even spoke with Resendez in January wearing his union jacket and button when he applied for work.

Serrano also participated in union activities by taking a union representative to visit the homes of workers, by attending UFW

meetings and giving out union flyers. Also, he associated with Rodriguez and Cortez when he came to the company on Mondays when new workers were hired.

In addition, Rodriguez was promised his job back, in January, by Jim Poorbaugh, the division head, four days after he was laid off. Similarly, Serrano testified that Resendez told him at the time he was laid off, that he would be one of the first ones hired in January.

Despite their favorable termination reports, their past history of working for the company and the express promises received by two of the three discriminatees, none were hired in January when the winter season started. In fact, the hiring continued from January through April, including the hiring of new employees without any past work experience, and none of the three discriminatees were hired.

The company's justification for not rehiring these workers is that they were poor workers that needed lots of supervision. Specifically, Poorbaugh and Resendez, who were in charge of hiring, testified that Rodriguez was not rehired because Rodriguez' foreman, Villa, had informed Poorbaugh that Rodriguez was the worst worker in the crew. The only problem with this justification is that Villa testified that he informed Poorbaugh of this in June, 1980, prior to the termination report being completed. Poorbaugh testified, in contradiction to Villa, that he was not informed until January of 1981.

Resendez testified that Dennis Connor gave a very negative

appraisal of Cortez' work performance. However, although Cortez' termination report stated that he was not too ambitious, needed to be watched and needed a lot of supervision, it was also indicated that he should be rehired.

Finally, Resendez testified that in reviewing Serrano's application for reemployment in January of 1981 he was puzzled by the favorable termination report and spoke with Fierro, Serrano's supervisor. Fierro disclaimed any knowledge of the termination report and stated that someone must have filled in the blanks, according to Resendez. Fierro did not testify at the hearing.

The long work history of the discriminatees; their favorable termination reports; and the specific promises that two of the three received of reemployment in January compels me to reject the employer's justification for not rehiring them. All three were active in the union and quite visible during the union organizing activity. I do not credit the company's denial of any knowledge of their union activities, particularly since the evidence demonstrates that Cortez wore his UFW jacket and button while seeking employment from January on. Accordingly, I find that employer discriminatorily refused to rehire the three discriminatees because of their union activity.

VI. THE DISCRIMINATORY SUSPENSION OF MARIA TERAN.

Teran was suspended on January 30, 1981 allegedly for threatening Epifania Perez in the cutting shed on January 26. Although Perez herself made no complaint, Estella Lopez, who overheard the threat, registered a complaint with Eva Tachiquin, a consultant

from the Farm Employer Labor Service.

The issue here is whether Teran's suspension was for the alleged threat to Perez or was in response to her union activity. For example, in Best Products Co. (1978) 236 NLRB No. 108, the NLRB overturned an administrative law judge's finding that the suspension of an employee was not discriminatorily motivated. The ALJ had agreed with the employer that the suspension was for her excessive absenteeism. The NLRB reversed, finding that the asserted motive was pretextual and that the actual motive was because of her union activity. See Shattuck Denn Mining Corp. (9th Cir. 1966) 362 F.2nd 466, 470.

On the day of the incident, Teran and 15 other workers in the cutting shed wore UFW buttons to work for the first time. Most of the other workers in the cutting shed were wearing company buttons, handed out by the employer. Accordingly, I find that the timing of the suspension was more than coincidentally related to the union activity.

Further, Teran was suspended without the company having undertaken an adequate investigation. For example, the impetus for the complaint came not from the person who was allegedly threatened, Epifania Perez, but from an employee who was admittedly anti-union and hostile to the union's organizing efforts, Estella Lopez. Moreover, the person delegated to investigate the incident, Eva Tachiquin, was admittedly hired by the company, at least in part, to combat the union organizing campaign. In fact, she was the first one to advise the supervisors at the company of the union

organizing efforts.

Moreover, in her investigation Eva Tachiquin never talked to Maria Teran about the incident. Instead, she collected signed declarations from other employees and simply presented these declarations to the supervisors. In fact, no mention was made of the incident for the following five days until Teran was called to a meeting and confronted by four supervisors. Moreover, at that point the supervisors were struggling with the issue of whether to suspend her or terminate her. The alternatives seem particularly harsh in view of the fact that Teran and Perez continued to sit side by side peaceably for four days after the incident and prior to the suspension.

Moreover, the company's true motive reveals itself when a meeting is called immediately after the suspension, linking the discipline with the union organizing campaign. In fact, the difference of opinion which led to the threat was not over the union organizing campaign, but over remarks made about Epifania Perez' dead husband. Further, Perez herself seemed to take the "threat" much less seriously than those around her. In fact, I believe the anti-union impetus motivated the company here much more than any alleged threat to Perez's well-being. Accordingly, I find that the suspension was discriminatory and in response to Teran's open support for the union.

VII. THE SUSPENSION OF DOLORES SIERRA.

The suspension of Dolores Sierra occurred on a Wenesday immediately following the suspension of Teran on the preceeding Friday. She was suspended for allegedly pushing Estella Lopez in the cutting

shed while they were preparing for work in the morning. As noted, Lopez was the complaining witness for the alleged threat upon Epifania Perez.

Three witnesses testified as to the incident: Dolores Sierra, Estella Lopez, and Socorro Cervantez. Sierra did not unequivocally deny that she may have brushed Lopez; Lopez asserted that she was definitely pushed; and Cervantez, an independent eyewitness, said that their backs brushed against each other only slightly. Accordingly, I find that although Sierra and Lopez did make contact on the morning in question, there is insufficient evidence to establish that Sierra deliberately pushed Lopez. In fact, the testimony was that in the morning when the cutting shed was crowded with approximately 100 employees, incidental contact of that nature occurred quite frequently.

Lopez immediately complained to her supervisor, Maria Ibarra, who brushed off the incident because she was busy handing out knives to the workers. Accordingly, Lopez then followed up her complaint with Eva Tachiquin. Tachiquin again investigated the incident without talking to Sierra.

Sierra only heard about the incident the following day when she was confronted by three supervisors, Resendez, Poorbaugh and Connor. All of them had assumed she was guilty of the incident, although as the testimony indicates, the incidental nature of the contact was very much in dispute. Moreover, no one had yet talked to Sierra to obtain her version of the event.

Sierra had also been a union supporter and had been wearing

a union button for two weeks when the incident allegedly occurred. Following Sierra's suspension, the workers in the cutting shed circulated a petition requesting prompt action from the ALRB in response to the suspensions of Teran and Sierra (G.C. Ex.5).

I find that the suspension here was discriminatorily motivated by Sierra's union activities. Dennis Connor testified that during his discussion with the other supervisory personnel concerning the discipline to be imposed on Teran and Sierra, it was never discussed whether either was a member of the union (VI:24). However, Jim Poorbaugh, who was one of those taking part in the discussions, indicated that the union overtones to the situation were definitely discussed (VI:50). Clearly, the company supervisors believed that Sierra was guilty of the actions and that they were in retaliation for Lopez's role in bringing about the suspension of Teran. However, those present on the scene, including the forewoman, Maria Ibarra, did not draw such conclusions.

Accordingly, I find that the company failed to investigate this incident and took such extreme measures directly in response to Sierra's support of the union, and not in reaction to any actual physical contact that may have occurred. Accordingly, I find the employer guilty of a discriminatory suspension of Dolores Sierra.

VIII. THE HARASSMENT OF FRANCISCA LOZANO AND MARIA REYNOSO.

The essential thrust of these allegations is that both were harassed by their supervisors over a one-month period, not because of any deficiencies in their work performance, but because of their union support. The testimony and evidence support this contention.

Lozano had worked for the company off and on since 1973, while Reynoso had been employed since 1979. Their supervisor had on prior occasions stated in front of the crew that they were good workers. In addition, other workers in their crew testified that they were good workers.

In rebuttal, the employer produced workers to say that the two workers were the slowest workers in their crew. What this demonstrates is not the proficiency of the two women as workers, but the fact that perhaps the difference of opinion concerning their work performance was affected more by beliefs about the union than about any objective evaluation of the two.

Moreover, the evidence demonstrated that when they were called by their supervisor alone to the company office, the conversation concerned not only their work performance, but their support of the union. Although their supervisor stated that he did not care about their union button or jackets, the obvious message is that he was aware of their union support and that unless they showed more "enthusiasm", their jobs would be in jeopardy. Moreover, when they went to join workers from another crew at the start of a break, they were singled out for criticism publicly in front of the rest of the crew. In the context of the company's vigorous anti-union campaign the reaction of their supervisor is quite understandable. However, harassment of union supporters is illegal and I so find here.

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CONCLUSIONS OF LAW

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

1. Monrovia Nursery is a California corporation engaged in agriculture, and is an agricultural employer within the meaning of § 1140.4(c) of the Act.

2. United Farm Workers of America, ALF-CLO, is a labor organization within the meaning of § 1140.4(f) of the Act.

3. The employer engaged in unfair labor practices within the meaning of § 1153(a) and § 1153(c) of the Act.

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

On the basis of the entire record and on the Findings of Fact and Conclusions of Law, and pursuant to § 1160.3 of the Act, I hereby issue the following recommended:

O R D E R

Respondent, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to hire or rehire, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in any union activity or other concerted activity protected by Section 1152 of the Act.

(b) In any like or related manner interfering with,

restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code Section 1152.

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

(a) Immediately offer to Gustavo Rodriguez, Luis Cortez and Demisio Serrano full resinstatement to their former jobs or equivalent employment, without prejudice to their seniority or other rights or privileges.

(b) Make whole Gustavo Rodgriguez, Luis Cortez and Demisio Serrano for any loss of pay and other economic losses they have suffered as a result of their discharge, reimbursement to be made according to the formula stated in J. & L. Farms (Aug. 12, 1980) 6 ALRB No. 43, plus interest thereon at a rate of seven percent (7%) per annum.

(c) Discontinue the discriminatory work assignments to Francisca Lozano and Carmen Catalan that isolate or have other adverse effects upon them.

(d) Discontinue any harassment of Luis Avila, Francisca Lozano and Maria Reynoso, in the form of unwarranted or discriminatory criticism of their work performance.

(e) Discontinue the discriminatory treatment of Maria Teran and Dolores Sierra, and remove any evidence or effects of their suspensions from their work records including making each of them whole for their wage losses and any other economic losses.

(f) Preserve and, upon request, make available to this Board and its agents, for examination and 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.

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

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

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

(j) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees on company time and property at 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 employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to reimburse them for time lost at this reading and during the question-and-answer period.

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

Dated: December 11, 1981

William A. Resneck

WILLIAM A. RESNECK
Administrative Law Officer

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the San Diego office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by harassing, and suspending our employees during the Fall of 1980 and Winter of 1981 and by refusing to rehire three of our employees during January, 1981 because of their union 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 farm workers these rights:

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

WILL 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.

SPECIFICALLY, the Board found that it was unlawful for us to harass Carmen Catalan, Francisca Lozano, Maria Reynoso, Luis Avila; to suspend Dolores Sierra and Maria Teran; and to refuse to rehire Gustavo Rodriguez, Luis Cortez and Demisio Serrano. WE WILL NOT hereafter harass, suspend or refuse to rehire any employee for engaging in union activities.

WE WILL resinstate Gustavo Rodriguez, Luis Cortez and Demisio Serrano to their former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse them for any pay or other money they have lost because of their discharge.

Dated: MONROVIA NURSERY, INC.

By: _____

Representative Title

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