STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PETER D. SOLOMON and JOSEPH R. SOLOMON, dba CATTLE VALLEY FARMS/ TRANSCO LAND AND CATTLE CO., Respondent/Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party, and JAMES BOSTON, Petitioner.	)	Case Nos. 81-CE-54-EC 81-CE-90-EC 81-CE-57-EC 81-CE-91-EC 81-CE-64-EC 81-CE-96-EC 81-CE-71-EC 81-CE-98-EC 81-CE-81-EC 81-CE-99-EC 81-CE-82-EC 81-CE-100-EC 81-CE-83-EC 81-CE-101-EC 81-CE-85-EC 81-CE-102-EC 81-CE-86-EC 81-CE-103-EC 81-CE-87-EC 81-CE-105-EC 81-CE-88-EC 81-CE-106-EC 81-CE-89-EC 81-RD-3-EC 9 ALRB No. 65

DECISION AND ORDER

On October 25, 1982, Administrative Law Judge (ALJ)[1/] Arie Schoorl issued the attached Decision in this proceeding. Thereafter, Respondent, General Counsel, and the Charging Party, each timely filed exceptions and a supporting brief. General Counsel and Respondent timely filed responses to exceptions, and the Robert F. Kennedy Medical Plan (RFK Plan) of the United Farm Workers of America, AFL-CIO (UFW or Union) filed an amicus curiae brief, to which Respondent filed a timely response.

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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.)

Pursuant to 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, supporting briefs, amicus curiae brief, and reply briefs, and has decided to affirm the ALJ's rulings, findings and conclusions, as modified herein,[3/] and to adopt his recommended Order, as modified.

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

[3/] We find no merit in Respondent's exception that it was denied due process by the ALJ's ruling that Peter Solomon not take notes while testifying as an adverse witness. Respondent received an expedited copy of the transcripts and had full access to the record prior to commencing the presentation of its case. Therefore Respondent suffered no prejudice thereby.

Respondent's other assertions that it was denied due process by the ALJ's rulings are not supported by references to the record as required by our regulations. (See 8 Cal. Admin. Code section 20282(a)(1).) Respondent has presented us with no basis on which to overturn the ALJ's rulings.

We find it unnecessary to adopt the ALJ's finding that the failure by Respondent to rehire Santiago Cano until November 1981 was a violation of section 1153(c) and (a), as we adopt the ALJ's findings and conclusions that Cano's layoff in July 1981 violated section 1153(c) and (a).

We also decline to follow the RFK Plan's request that, as part of our makewhole Order, we specify that Respondent pay to the Plan the interest and damages for noncompliance mandated by section 502(g) of the Employee Retirement Income Security Act (ERISA) 29 U.S.C.A. section 1001 et seq. This issue was not raised before the ALJ, and the General Counsel has not addressed the matter. Procedurally, the determination of the losses to be remedied by our makewhole order is left to the compliance proceeding. We shall therefore defer the RFK's Plan request until the compliance proceeding, where all parties shall have the opportunity to address whether, in light of sections 502(g) and 514(a) of ERISA, the Board even has the authority to award the requested damages and interest.

Respondent's Instigation of and Assistance to the Decertification Drive

Respondent excepts to the ALJ's finding that it arranged free legal representation for its employees in their decertification effort. We find no merit in this exception. The evidence shows that as a result of a phone call by Respondent's attorney, Tom Slovak, to Marion Quesenbery, general counsel for Western Growers Association (WGA) on September 8, 1981,[4/] Slovak in fact did arrange for WGA to undertake the representation and to do so at no charge to the employees. Slovak told Quesenbery he had incurred a financial hardship representing the decertification petitioners in Abatti Farms, Inc. (1981) 7 ALRB No. 36 and was calling WGA because they had the financial ability to absorb the cost of such representation. Quesenbery memorialized the substance of their conversation in a memorandum, stating in part that Slovak had called regarding "whether [WGA] would be interested in doing pro bono work for some agricultural workers." Because WGA normally only represents its grower-members, Quesenbery sought permission for the representation from WGA Executive Vice President, Don Dressler, who in turn obtained approval from the Chairman of WGA's Board of Directors. After reviewing the availability of staff time, Quesenbery and Dressler determined they could undertake the pro bono representation. On September 9, Quesenbery called Slovak and told him WGA would undertake the representation if the workers

[4/] All dates hereinafter refer to 1981, unless otherwise specified.

needed the help. Thus even before September 11, the date Respondent gathered the employees and referred them to WGA, Respondent had secured an agreement by WGA to represent the workers free-of-charge in the decertification movement.[5/]

We agree with the ALJ, for the reasons stated in his Decision, that Respondent instigated the decertification efforts of its employees. Although many employees were genuinely upset with the UFW and the potential for a decertification effort was definitely present, the impetus for the decertification movement was clearly provided by Solomon and Slovak. Solomon took advantage of the employees' dissatisfaction and organized them into a group by asking employee James Boston to bring the discontented workers together to his office on September 11. Once there, Solomon gave them Quesenbery's name and number so they could seek "advice." Only then did the workers elect Boston to be their main representative to contact Quesenbery. Until then, no employee had either discussed or contemplated getting

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[5/] Respondent also excepts to the ALJ's finding that Peter Solomon had knowledge of WGA's agreement to provide free legal representation at the time he gave Marion Quesenbery's name and number to the employees. The record amply supports the ALJ's inference that Solomon was in control of or informed about all important events. Illustrative of this fact are the events of October 1 when, despite Slovak's presence, Solomon placed phone calls to Sarah Wolfe of WGA, Governor Brown, Rich Rominger of the California Department of Food and Agriculture, and the ALRB; he dictated telegrams for Slovak to send; and he negotiated on his own with the employees to keep essential operations going for twenty-four hours. However, even if Solomon was not so aware, Respondent is still responsible for the actions of Slovak, its attorney and agent, in arranging the free legal representation. It was Solomon who told Slovak he wanted to help the dissatisfied workers who were unhappy with the Union and Slovak followed up on Solomon's desire by contacting Quesenbery.

workers together or taking any concerted action; neither had the employees requested assistance or advice of any kind until they were brought together by Solomon.[6/] The "advice" given to the workers had been prearranged by Slovak's announcement on September 8, to WGA that the workers wanted assistance in decertifying the Union. In fact, no worker had decided or even discussed taking any action to remove the Union. And the prearranged assistance given to employees as a result of the referral was free legal representation even though no employee requested a lawyer or professed an inability to pay for such services. The decertification movement did not take hold and move forward until Respondent brought the dissatisfied workers together and organized them. Respondent initiated the idea of decertification when it advised WGA that this was the employees' desire and provided the workers with valuable assistance in the form of free legal representation. Respondent's actions crystallized the employees' dissatisfaction and converted it into a coherent movement to seek a decertification election. (See Inter-Mountain Dairymen, Inc. (1966) 157 NLRB 1590 [61 LRRM 1584].)

The ALJ found, and we agree, that the facts of this case are similar to those in Sperry Gyroscope Co. (1962) 136 NLRB 294 [49 LRRM 1766]. In Sperry, the employer knew that

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[6/] James Boston, the decertification petitioner, testified that none of the employees went to the meeting to ask for assistance and he wasn't paying that much attention to what was happening at the meeting because he was thinking about finding another job.

there was dissatisfaction among the employees but realized that it would require leadership to organize the dissatisfied elements. Through a supervisor, it approached an employee it thought was the organizing type and learned he was interested in taking action. The supervisor made it clear to the employee that the initial step was to find others of like-mind who were also willing to take action, which step the employee followed. Later, the employer's labor consultant made it clear that another necessary step was to consult a lawyer versed in labor law, which suggestion the employee also followed. The National Labor Relations Board (NLRB or national board) found that the employer interfered with its employees' rights by implanting in the employee's mind the idea of assuming leadership, pointing him in the right direction by advising him of the initial steps to take in organizing the dissatisfied employees, and encouraging him to act. In the instant case, Peter Solomon, on his own initiative, asked employee James Boston to gather like-minded workers together so that he (Solomon) could give them the name of someone who would help them, pointed them in the direction of decertification by telling WGA that this was what the employees wanted, and arranged for assistance in the form of free legal services, thus ensuring that the employees achieved Solomon's desired result.

Like the ALJ, and the trial examiner in Sperry Gyroscope, we see no purpose in speculating whether the employees might not have eventually petitioned for a decertification election had Respondent not steered them towards one. We can

as easily speculate here that had Respondent not involved itself, the employees would not have taken any action at all. As in Sperry Gyroscope, Respondent's actions here were causal, not casual, in the employees' subsequent actions to decertify the Union.

We also affirm the ALJ's findings, for the reason stated in his Decision, that Respondent's conduct in arranging the free legal representation went beyond a ministerial act and therefore constituted unlawful assistance. We noted in Abatti Farms, Inc., supra, 7 ALRB No. 36 that although an employer may name or suggest a lawyer whom employees might consult, it cannot bring the employees and attorney together. In Abatti, the employer arranged a meeting where an attorney would be present and then drove the employee to meet him. In the instant case, Respondent went beyond merely suggesting a lawyer whom employees could consult. It actually established the attorney-client relationship for the employees and arranged the terms and purpose of the employment relationship: free legal representation for the purpose of decertifying the UFW. Thus the employees were able to receive WGA's valuable assistance with a mere phone call, something they might not have been able to do had Respondent not secured an agreement from WGA to represent the employees free of charge. Under such circumstances, Respondent's assistance was unlawful. (See also Gold Bond, Inc. (1954) 107 NLRB 1059 [33 LRRM 1312]; Scherer & Sons, Inc. (1964) 147 NLRB 1442, 1449 [56 LRRM 1408].)

We wish to stress that an employer does not violate the Agricultural Labor Relations Act (ALRA or Act) by responding

to employees' questions or inquiries concerning their rights, including the right to decertify, or by referring employees to someone they can consult about their rights. Employees are entitled to receive information about their rights from whatever source; any other result would be contrary to the purposes of the Act. (Cf. Jack or Marion Radovich (1983) 9 ALRB No. 45.) As explained above and in the ALJ's Decision, our finding of unlawful instigation and assistance is based upon Respondent going beyond merely advising its employees of their rights or referring them to someone for advice. Respondent prearranged free legal representation for the purpose of a decertification drive, coalesced the workers into a group, and then brought the attorneys and workers together.

The national board has often stated that decertification is an exclusive remedy for employees, not to be interfered with by an employer. When the employer has unlawfully instigated or assisted the workers, it has interfered with its employees' free exercise of their rights and invalidated the election as a measure of the employees' free choice. (Gold Bond, Inc., supra, 107 NLRB 1059; Bond Stores, Inc. (1956) 116 NLRB 1929 [39 LRRM 1125].)

We have no doubt that a number of Respondent's employees here were genuinely dissatisfied with the Union; at least 15 employees testified as to their reasons for signing petitions against the Union, none of which included Respondent's calling together the employees or providing free legal representation. Most of these workers testified that they signed because the

Union never notified them of negotiations or invited them to meetings to discuss or ratify the contract, and/or because even though they received a small increase in pay, a 2% deduction for dues resulted in a loss of takehome pay.[7/] The record is devoid of direct evidence that employees viewed WGA as representing Respondent or its interests, or that they knew or believed that WGA's free legal representation had been arranged by Respondent. Nonetheless, we cannot close our eyes to the fact that Respondent did in fact call the workers together and referred them to free legal representation previously arranged for the purpose of the decertification drive, and that this did in fact provide the impetus and means needed for the decertification effort to begin and move forward. It is not surprising that employees would not necessarily know of the influence of the illegal conduct; nonetheless, the illegal influence is there and taints the validity of the election as a measure of employee free choice. In the instant case, Respondent engaged in misconduct which affected its employees' free exercise of their rights and we are required to dismiss

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[7/] One employee, Manuel Tapia, testified that he signed the decertification petition because the Union had lied to him, promising a substantial pay increase which he did not get. Two employees, Jesus Castaneda and Blas Gonzalez, both union members, testified they signed because they feared reprisals by Solomon if they didn't. Employee Arturo Garcia testified he signed because he didn't want problems with his coworkers.

the decertification election petition and set aside the election.[8/]

Repudiation of Contract

We also affirm the ALJ's findings and conclusion that Respondent violated section 1153(e) and (a) when it refused to recognize the Union and terminated its collective bargaining agreement. As we find that Respondent unlawfully instigated and assisted the decertification effort, Respondent cannot rely upon a good faith doubt concerning the union's majority support, which doubt it helped to create.[9/] (Abatti Farms, Inc., supra, 7 ALRB No. 36; Medo Photo Corp. v. NLRB (1944) 321 U.S. 678 [14 LRRM 581]; NLRB v. Maywood Plant of Grade Plastics (D.C. Cir. 1980) 628 F.2d 1 [104 LRRM 2646].)

We also reject Respondent's argument that it had no choice but to refuse to honor its contract because its key employees were on strike and it could not continue in business without them. Respondent, by instigating and assisting the decertification effort, helped create the situation whereby the

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[8/] We also find that the other violations of the Act the ALJ found and which we adopt in this Decision, are additional grounds upon which to dismiss the decertification petition and set aside the election.

[9/] In Nish Noroian Farms (1982) 8 ALRB No. 25, we adopted the "certified until decertified" rule and held that when a bona fide question of representation is raised by the filing of a decertification petition, an employer who refuses to bargain does so at his own peril. We rejected the defense of good faith belief in the union's loss of majority support; however, we issued Nish Noroian Farms a year following the conduct at issue here. Since we are dismissing the decertification petition, no bona fide question of representation was raised and the bargaining duty continued uninterrupted.

employees wanted to decertify the Union and repudiate the contract. We also note that Respondent's foremen participated in organizing the strike. For example, foremen called workers to the strike area and ordered an employee to park a tractor with other machinery striking employees were using to block the entrance to the farm.

We reject Respondent's defense that its subjective lack of faith in the Board's impartiality justified its refusal to recognize the Union or to honor its contract. There is no authority, and none was cited by Respondent, that would allow a party to refuse to abide by the legal processes or procedures of a governmental agency simply because it disagrees with the decisions of the agency or has no faith in the agency's fairness.

Threat to Evict Employees from Company Housing

Respondent excepts to the ALJ's findings that it threatened to evict Jorge Sanchez and Jesus Castaneda from company housing in order to discourage the two employees from supporting the Union and to encourage them to support the decertification effort. We find merit in this exception. The evidence shows that the housing leases were prepared by office personnel in order to update files due to the recent execution of the contract, and that foreman Baldomar Orduno was requested to obtain signatures on some of the contracts. Orduno told both Sanchez and Castaneda to read the leases over and sign them. Orduno's refusal to give the employees an extra day to read the leases is more easily explained by Orduno's belief, as he stated to the employees, that he had orders to get the signatures and return

the forms to the office. Orduno's response to the workers that if they did not sign the lease they would probably have to look for new housing was a personal view in response to the employees' question concerning what would happen if they refused to sign. It was reasonable for Orduno to believe that such would be the consequences if the employees altogether refused to sign. Orduno's silence, when asked if the increase in rent was because of the Union, is as much attributable to his reluctance to say anything about the Union rather than an attempt to coerce the employees. We therefore find that the General Counsel failed to prove that Orduno's conduct tended to interfere or restrain Sanchez and Castaneda in the exercise of their rights, and we dismiss that allegation of the complaint.

Exceptions to the ALJ's Remedial Order

Makewhole: General Counsel excepts to the failure of the ALJ to order makewhole for losses the employees suffered after expiration of Respondent's collective bargaining agreement. We find merit in this exception. The contract between Respondent and the UFW would have expired on August 24, 1982, and at that time Respondent would have been obligated to bargain in good faith with the UFW. Respondent's unlawful repudiation of the contract and refusal to recognize the UFW has prevented the Union from bargaining for new benefits, such as increases in wages and fringe benefits, after the expiration of the contract. Therefore, we shall order Respondent to make its employees whole for losses suffered by them after August 24, 1982, and shall order that such losses be calculated not solely by the terms

of the expired contract, but by what the Union could have reasonably negotiated had Respondent bargained in good faith. This requires that makewhole be calculated for the period following August 24, 1982 according to Board precedents.

Attorney Fees and Costs: The UFW urges us to award attorney fees and costs for what it deems to be frivolous defenses presented by Respondent. We find it unnecessary to resolve the issue left undecided in V. B. Zaninovich and Sons (1982) 8 ALRB No. 71 as to whether we have authority to assess attorney fees and costs. Even assuming we have such authority, we would not impose fees and costs in this case. While it is true that Peter Solomon announced that he wanted to drag out the hearing and bankrupt the ALRB, and while Respondent's defenses rested in part on the belief that it need not abide by its contract with the UFW because it had lost faith in the ALRB's impartiality, we find that the record, taken as a whole, demonstrates that Respondent presented relevant testimony and nonfrivolous defenses on all the alleged violations. We therefore find Respondent's conduct does not warrant the imposition of attorney fees or costs.

Notice: Respondent excepts to the ALJ's Order, assuming that it requires Respondent to read the Notice to its employees. The Order gives Respondent the option of reading the Notice to the employees itself or having a Board agent read it. Our Order conforms to NLRB practice and avoids any unnecessary humiliation to a respondent. (See J. P. Stevens (1967) 167 NLRB 258 [66 LRRM 1024].)

We typically do not limit the amount of time it takes

to read a notice or answer questions of employees. The amount of time spent gathering employees together, reading them a notice, and/or answering their questions depends on many factors, including size of the work force, different locations at which employees may be working, distances between workers within a location, different languages spoken within a group (including English, Spanish and others), the number and nature of the violations committed, and the workers' knowledge of the law and their rights. The time necessary to accomplish the reading and to answer employees' questions is best determined in each instance by the Regional Director who is in the best position to make an informed decision. Our Orders, in which we leave to the Regional Director's discretion the time and places for the reading of the Notice, have been upheld by the courts and we do not know of, nor has Respondent shown us, abuses of such discretion by a Regional Director. In M. Caratan, Inc. (1980) 6 ALRB No. 14, we held that the fact that such readings cost money does not render the remedy inappropriate, since the burden is on the Respondent to remedy the wrong. Therefore we decline to set an arbitrary time limit and will continue to allow the Regional Director to determine how much time is necessary for the reading of the Notice and the question-and-answer period.

ORDER

By authority of Labor Code section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board hereby orders that Respondent Peter D. Solomon and Joseph R. Solomon, dba Cattle Valley Farms/Transco Land and

Cattle Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off, discharging, or otherwise discriminating against any agricultural employee because of his or her union activities or sympathies.

(b) Failing or refusing to meet and bargain collectively in good faith, as defined in Labor Code section 1155.2(a) of the Act, with the United Farm Workers of America, AFL-CIO, (UFW) as the exclusive collective-bargaining representative of its agricultural employees.

(c) Failing or refusing to abide by or adhere to the terms and conditions of the collective bargaining agreement between Respondent and the UFW.

(d) Changing any terms or conditions of employment of its employees without first notifying the UFW of the proposed change and affording the UFW an opportunity to bargain about such proposed change.

(e) Instigating the filing of a decertification petition or assisting employee(s) in an effort to decertify their certified bargaining representative.

(f) Interfering with, restraining or coercing agricultural employees in the exercise of their rights guaranteed by section 1152 of the Act by threatening to lay off employees if they support the Union.

(g) Interrogating employees concerning their participation in union activities and other protected concerted activities.

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

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

(a) Offer Natividad Calleros full and immediate reinstatement to his former or substantially equivalent job without prejudice to his seniority rights or other employment rights and privileges and make him whole for all losses of pay and other economic losses he has suffered as a result of his layoff, the backpay amount to be computed in accordance with Board precedents, plus interest computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(b) Restore the full and complete seniority of Santiago Cano and make him whole for all losses of pay and other economic losses he has suffered as a result of his layoff by Respondent, the backpay amount to be computed in accordance with Board precedents, plus interest computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(c) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of its agricultural employees.

(d) Reimburse the UFW for all membership dues which, since October 2, 1981, Respondent has failed to withhold and transmit to the Union pursuant to signed dues deduction

authorizations and in accordance with the checkoff provision of the collective bargaining agreement, with interest computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(e) Offer any employees who were laid off or who were not recalled as a result of Respondent's failure to comply with the collective bargaining agreement after October 2, 1981, full and immediate reinstatement to their former or substantially equivalent jobs, without prejudice to their seniority rights or other employment rights and privileges, and make said employees whole for any losses they may have suffered as a result of Respondent's failure to comply with the collective bargaining agreement, plus interest thereon computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(f) Make whole employees for losses suffered as a result of Respondent's failure to meet and bargain in good faith over terms and conditions of employment after the expiration date of the contract on August 24, 1982, until the date upon which Respondent commences good-faith collective bargaining with the UFW which leads to a contract or bona fide impasse, such amounts to be computed in accordance with Board precedents, plus interest thereon computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(g) Preserve and, upon request, make available to the Board or its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment

records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay and makewhole period and the amount of the backpay and makewhole due under the terms of this Order.

(h) 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.

(i) 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 April 7, 1981, until such time as Respondent commences good-faith bargaining with the UFW which results in a contract or bona fide impasse.

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

(k) Provide a copy of the attached Notice to each employee hired by Respondent during the twelve-month period following the date of issuance of this Order.

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

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

Dated: November 15, 1983

ALFRED H. SONG, Chairman

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by: (1) instigating and assisting the decertification campaign; (2) refusing to continue to recognize the United Farm Workers of America, AFL-CIO, (UFW or Union) as the certified representative of our employees; (3) refusing to comply with a collective bargaining agreement we had signed with the UFW in September 1981; (4) laying off Natividad Calleros, on account of his union activity and support; (5) laying off Santiago Cano on account of his union activity and support; (6) making unilateral changes in the employees' wage rates and medical plan without notifying the UFW and negotiating such changes; (7) refusing to comply with the collective bargaining agreement by ceasing to deduct union dues from employee paychecks after October 1981; (8) refusing to abide by the collective bargaining contract in the laying off and recall of irrigators from October 1981 to the present, and in refusing to process grievances properly filed by the UFW on behalf of our employees; (9) interrogating employees concerning their participation in union activities and other protected activities; and (10) threatening to layoff employees if they support the Union.

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 (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 do anything in the future that forces you to do or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT lay off, suspend, discharge or otherwise discriminate

against any employee in regard to his or her employment because he or she has joined or supported the UFW or any other labor organization.

WE WILL NOT interrogate employees about their participation in union activities and other protected concerted activities.

WE WILL NOT threaten to lay off employees if they support the Union.

WE WILL NOT instigate or assist any decertification campaign.

WE WILL NOT refuse to continue to recognize the United Farm Workers of America as the certified representative of our employees.

WE WILL make each of our employees whole for all losses of pay and any other economic losses he or she has suffered because of our failure to comply with the collective bargaining agreement and our refusal to bargain in good faith with the UFW, our employees certified bargaining representative.

WE WILL make each irrigator whole for any economic losses he has suffered because of our failure to comply with the collective bargaining contract's seniority provisions in respect to their layoff and recall from October 1981 to the present.

WE WILL offer to reinstate Natividad Calleros to his previous job, or to a substantially equivalent job, without loss of seniority rights or privileges, and we will reimburse him for any loss of pay or other money losses he incurred because we discharged him.

WE WILL restore Santiago Cano's seniority and pay him for any loss of pay or other money losses he incurred because we laid him off in July 1981.

Dated:

PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/ TRANSCO LAND AND CATTLE CO.

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 319 Waterman Avenue, El Centro, California 92243. The telephone number is (619) 353-2130.

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

PETER D. SOLOMON and
JOSEPH R. SOLOMON dba
CATTLE VALLEY FARMS/
TRANSCO LAND AND CATTLE CO.,

9 ALRB No. 65
Case Nos. 81-CE-54-EC, et al.

ALJ DECISION

The ALJ found that Respondent unlawfully instigated and assisted a decertification effort by employees who were unhappy with the Union. Although Respondent had been approached by six or seven employees complaining about the Union and threatening to quit, none mentioned getting rid of the Union or taking any other concerted action. Respondent through its attorney, nonetheless, contacted Western Growers Association (WGA) and advised them that employees wanted to decertify the Union, and arranged for WGA to provide legal representation for the employees free of charge. Respondent then called the dissatisfied employees together in his office and referred them to WGA. The ALJ found that by such actions, Respondent unlawfully provided the impetus for the decertification effort and gave them valuable assistance.

The ALJ found that Respondent could not rely upon a good faith doubt in the union's majority support as a basis for refusing to recognize the UFW and repudiating its collective bargaining agreement with the Union because Respondent had in essence created that doubt by unlawfully instigating and assisting the decertification drive. The ALJ also rejected Respondent's defense that it repudiated its contract because it had no confidence in the ALRB's impartiality, finding no authority for such a proposition.

The ALJ also found that Respondent unlawfully laid off two employees because of their union activity; unlawfully laid off several irrigators and a tractor driver because of its failure to abide by the contract's seniority provision due to Respondent's repudiation of the contract. In addition the ALJ found several statements made to employees and questions asked by foremen were unlawful threats or interrogations; and an attempt by a foreman to secure two employees' signatures on rental agreements for company housing, which contained higher amounts of rent than were being paid, was an attempt to discourage those employees' union support. The ALJ dismissed the remaining allegations concerning unlawful discharges or discriminatory changes in working conditions.

The ALJ's recommended remedial Order included provisions that the decertification petition be dismissed due to Respondent's unlawful instigation or assistance, that Respondent make whole its employees for its failure to abide by the contract, and that backpay be given for losses suffered as a result of Respondent's unlawful conduct.

BOARD DECISION

The Board adopted the ALJ's findings and conclusion that Respondent unlawfully instigated and assisted the decertification drive. The Board noted that while an employer is free to respond to employee inquiries concerning their rights, including providing them with information about their right to decertify the union, and can refer them to or suggest an attorney or person whom they can consult about their rights, Respondent went well beyond these steps. Respondent actually brought the workers together and referred them to prearranged legal assistance, the terms and purpose having already been established: free legal representation for the purpose of decertifying the Union. The Board also affirmed the ALJ's other findings of violations, except it reversed the ALJ's finding that Respondent's attempt to obtain its employees' signatures on company housing rental agreements was an attempt to discourage union support. The Board ordered that the decertification petition be dismissed and that the election be set aside and that make whole be provided not only for losses resulting from Respondent's failure to abide by its collective bargaining agreement, but also for losses occuring during the period of time Respondent has not bargained with the union after expiration of the collective bargaining agreement.

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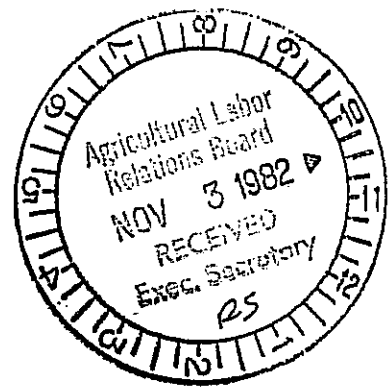
This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: PETER D. SOLOMON and JOSEPH R. SOLOMON dba CATTLE VALLEY FARMS/ TRANSCO LAND AND CATTLE CO., Respondent/Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party, and JAMES BOSTON, Petitioner.	)	Case Nos. 81-CE-54-EC 81-CE-57-EC 81-CE-64-EC 81-CE-71-EC 81-CE-81-EC 81-CE-82-EC 81-CE-83-EC 81-CE-85-EC 81-CE-86-EC 81-CE-87-EC 81-CE-88-EC 81-CE-89-EC 81-CE-90-EC 81-CE-91-EC 81-CE-96-EC 81-CE-98-EC 81-CE-99-EC 81-CE-100-EC 81-CE-101-EC 81-CE-102-EC 81-CE-103-EC 81-CE-105-EC 81-CE-106-EC Case No. 81-RD-3-EC



Appearances:

Nicholas F. Reyes, Esq.
for the General Counsel

In Pro Persona
Peter D. Solomon, Esq.
for Respondent

Ned Dunphy, Legal Assistant
for Charging Party

Jon F. Gauthier, Esq. and
Ron Barsamian, Esq. of
Dressler, Quesenbery, Laws &
Barsamian for Petitioner

DECISION OF THE ADMINISTRATIVE LAW OFFICER

ARIE SCHOORL, Administrative Law Officer: This matter was heard before me on December 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22 and 23, 1981, January 4, 5, 6, 7, 8, 11, 12, 13, 14, 18, 19, 20, 21, 26, 27, 28 and February 3, 4, 5, 9, 10, 11, 12, 16, 17, 18, 19, 22, 23, 24 and 25, 1982 in Coachella and Indio. The original complaint which issued on September 21, 1981, based on three charges filed by the United Farm Workers of America AFL-CIO (hereinafter referred to as the UFW) the Charging Party, and duly served on Peter D. Solomon and Joseph R. Solomon dba Cattle Valley Farms/Transco Land and Cattle Co., (hereinafter referred to as Respondent) alleged that Respondent committed numerous violations of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act). Thereafter the complaint was amended 4 times to include additional allegations of violations of the Act, based on 20 additional charges field by the UFW and duly served on Respondent. In addition, the Executive Secretary ordered that hearing on certain of the objections to the election be consolidated with the hearing on the unfair labor practice cases.

The UFW, the Charging Party in the 23 consolidated unfair labor practice cases and the Petitioner in the representation case, filed motions to intervene in all of those cases, which motions I granted.

General Counsel, Respondent, Charging Party and Petitioner appeared at the hearing and filed post hearing briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments and briefs of the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent admitted in its answer, and I find, that it is an 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) of the Act.

II. The Alleged Unfair Labor Practices

The complaint, as amended, alleges that Respondent violated section 1153(a) of the Act by instigating, perpetuating, financing and organizing a decertification petition against the UFW in order to rid itself of its obligation to bargain with the UFW and its obligations under a collective bargaining agreement with the same union. The complaint also alleges that Respondent interfered with its employee exercise of their rights under section 1152 of the Act by unlawfully assisting and supporting an effort by employees to decertify the UFW. Furthermore, the complaint alleges that Respondent violated section 1153(c) of the Act by granting improved terms and conditions of employment to those employees who cooperated in the alleged employer instigated decertification campaign; and by discriminating against employees, who supported the UFW. In addition, the complaint alleges that Respondent violated section 1153(a) of the Act by interrogating employees about their union activities and immigration status, by making threatening and coercive statements to employees with reference to their union activities and immigration status. Furthermore, the complaint alleges that Respondent violated section 1153(c) and (a) of the Act by discriminatorily raising employee rents for company housing, by

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discriminatorily assigning onerous tasks to, laying off and discharging employees to discourage union activities. The complaint also alleges that Respondent violated section 1153(a) of the Act by engaging in surveillance of employees. Finally the complaint alleges that Respondent has violated section 1153(e) of the Act since October 2, 1981 by refusing to recognize the UFW as the exclusive collective bargaining representative of its employees and by refusing to honor the provisions of its existing collective bargaining contract with the UFW.[1]

III. The Objections to the Election

The Executive Secretary noticed for hearing the following post-election objections filed by the UFW: (1) that the Board committed a procedural error in ordering an election without providing the UFW adequate time to respond to the Request for Review filed by the Petitioner; (2) the Employer engaged in a pattern of conduct of instigation and support of the decertification petition; and (3) that the Employer hired employee James Boston for the purpose of promoting a vote against the UFW.

IV. Background Information

Respondent raises cattle and row crops and processes orange peel as cattle feed on a 4,000 acre ranch located in Thermal, a few miles south of the town of Coachella. Peter Solomon and his father

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1. General Counsel also alleged in the complaint that Respondent had violated Section 1153(a) of the Act by interrogating employees regarding their union sympathies by asking them for addresses to be given to the UFW in connection with the pending decertification election. However, during the hearing General Counsel made a motion to dismiss such allegation which motion I granted.

Joseph Solomon are the joint owners. Peter Solomon is the general manager and is in charge of Respondent's entire farming operation while his father has only a financial interest.

At all times material herein, the supervisors and foremen at Respondent's ranch were: Mal Rice, general manager, Jack Kivi, controller, John Sidhu, equipment manager, Jose Garcia, irrigation foreman, Antonio Lopez, assistant irrigation foreman, Baldomar Orduno, tractor foreman, Victor Cano, shop foreman, and Guillermo Perez, assistant shop foreman; and Abraham Espinoza, foreman of the orange-peel operation. Respondent has admitted the supervisorial status of the foregoing supervisors and foremen.

The Treesweet Corporation which processes frozen orange juice is located in close proximity to Respondent's fields. By arrangement with Treesweet, Respondent picks up and disposes of the orange peels left over from Treesweet's canning operation. Respondent transports the orange peels to an airport landing strip adjacent to its premises where tractors spread the peel out to dry in the sun. The dried orange peels are used to feed Respondent's cattle.

In March 1978 the ALRB certified the UFW as the exclusive collective bargaining representative of Respondent's agricultural employees. Respondent and the UFW began to negotiate in April 1978. Later that year, the UFW filed unfair labor practice charges against Respondent; pursuant to a settlement agreement in that case Respondent agreed: to bargain in good faith with the UFW about Sunday work and overtime; to pay employees (except irrigators) time-and-a-half for work over 60 hours a week and Sunday work and

reinstate its previous practice of paying straight time, without deduction for lunch periods to employees operating cotton machines; and to reinstate its practice of providing employees with turkeys on Thanksgiving and hams at Christmas.

In June 1980, a hearing was held on additional charges filed by the UFW which alleged that Respondent had failed and refused to bargain in good faith.

In May 1980 the ALO issued a decision which found that Respondent had bargained in good faith with the UFW and was not unreasonable in making a lump-sum economic offer or in providing financial information but found that Respondent had violated the Act by unilaterally acquiring new farm land without negotiation. The parties filed exceptions to that decision and in August 1982 the Board issued its Decision and Order which adopted the ALO's decision in respect to his finding of good faith bargaining on the part of the Respondent but reversed as to the acquisition of additional land except that the Respondent had a duty to provide information regarding the acquisition of additional land and violated the Act by refusing to provide that information.

The parties resumed negotiations in April 1981 and continued to bargain through the first part of September 1981 when they reached agreement on, and executed, a collective bargaining contract. Shortly thereafter a group of employees filed a Petition to Decertify the UFW.

V. Respondent Allegedly Interrogated Francisco Alvarez Threatened to Discharge him and Discharged him Because of his Union Activities

A. Facts

Francisco Alvarez commenced working for Respondent in October 1980. He had taken a course in diesel mechanics from John Sidhu, Respondent's equipment manager, four years previously. Alvarez' testified that Sidhu contacted him at his El Centro residence and offered him a job as a mechanic. Sidhu testified that he encountered Alvarez by chance in El Centro and since Respondent needed a mechanic at that time, he offered him employment.

On Alvarez' first day of work for Respondent, Sidhu told him that it would be a good idea not to get involved with the union.

Alvarez worked in the shop repairing tractors and trucks from October 1980 until January 1981. During that period, there were some criticisms of his work, e.g. failure to keep track of nuts and bolts removed from machinery during repairs and his lack of diligent dedication to his duties. In January 1981 shop foreman, Victor Cano, decided that it would be more convenient to have a Spanish-speaking mechanic on the service truck because most of the tractor drivers were Spanish-speaking. Accordingly he assigned the Spanish-speaking Alvarez to that position. For approximately one month Alvarez provided mechanical service and maintenance to the tractors in the field. In general he performed his duties adequately but there were still some complaints about his lack of complete effort and for failure to change the tractor oil, or the oil filter, on several occasions and his habitual failure to adequately clean the air filters. However, according to Alvarez,

the reason for the latter was that the air compressor which is used to clean the air filters was too small for the job. In their testimony, foremen Victor Cano and Guillermo Perez and equipment manager John Sidhu minimized that factor and added that his inadequate cleaning of the air filters continued even after Respondent provided him with a larger air compressor.

In March 1981 Respondent transferred Alvarez back into the shop.2/ According to the testimony of foremen Cano and Perez, he continued to fail to put forth the maximum effort in his work. On several occasions Sidhu, Cano and Perez individually and together discussed his work performance with Alvarez. According to their testimony they called to Alvarez' attention his lack of effort and the need of improvement on his part. Alvarez denied these conversations ever took place.

In March and April 1981 the shop mechanics were discontented because they frequently had to work more than 60 hours a week without receiving any overtime pay. Alvarez, along with other mechanics and welder Natividad Calleros met at the latter's house on the evenings of April 7 and 8 to discuss their complaints and whether to contact the UFW for assistance. Shortly before the April 7 meeting while at work, Alvarez informed shop foremen Perez

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2. Alvarez testified the reason was because tractor foreman Baldomar Orduno wanted one of his own men on the service tractor while Respondent contends it was because Alvarez needed closer supervision.

and Cano about the meeting and invited them to attend.[3] Perez was not interested. Cano also declined but added he would be willing "to help with the signatures." The next day, April 8, Perez queried Alvarez about the meeting and the latter replied that they had held it and planned another one for later on that day and once again invited Perez to attend. Thereafter foreman Perez made fun of Calleros and Alvarez about going to the meeting that evening by sarcastically chanting "Let's go to the meeting". On April 9, at work, Alvarez asked Cano whether he wished to help them in their efforts to have the UFW solve their problems and Cano replied in the negative because, he explained, he had plans with the company involving a loan and housing. In the middle of April Cano warned Alvarez that he should get out of the union because the union would lose out and all the employees who supported the union would be laid off.

On April 29, the motor of the Steiger Tractor #270 blew up. Management blamed Alvarez' negligent work for the mishap and Peter Solomon discharged him. The work in question involved the tightening of nuts on twelve connecting rods of the motor. No one at Respondent's had the specifications for the tightening of the nuts so Alvarez, under the supervision of Cano, called dealer Bates & Osborn (the distributor of that particular make of tractors) in El Centro. An unidentified employee of Bates & Osborn read the

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3. Alvarez testified the reason he invited Perez was because the latter was always complaining about the long hours of work at inadequate compensation therefor at Respondent's. In respect to his inviting Cano, Alvarez and Cano are compadres which is very similar to a family relationship in their (Mexican) culture and involves certain family-like obligations. The relationship is based on a person being a godfather or godmother to another person's child.

required specifications to Alvarez and he wrote them down on a piece of paper. Cano proceeded to tighten the nuts on two of the connecting rods of the Steiger tractor to show Alvarez how to do it. He then left as he was called to another task. Alvarez continued to tighten the nuts and according to his testimony he followed the specifications which he had obtained from Bates & Osborn, i.e., to tighten and lossen the various nuts in a prescribed sequence. The next day the book with the printed instructions arrived at the ranch and Cano testified that they were checked and were identical to the ones Alvarez had written down the day before on the piece of paper.

Alvarez testified that before he tightened the nuts, that he had called to the attention of his immediate supervisors the fact that there was too much play in the crankshaft and that the bearings should have been replaced with new ones before the reassembling. Cano testified that this had presented no problem at all since the play was only 1/1000 of an inch which was minimal and could not have been the cause of the accident. Three days after the reassembling, the engine blew up when the nuts on connecting rods three and four became loose and fell off.

Cano testified that he had tightened two of the twelve nuts, i.e., those on rods one and two, but that it was the nuts on rods three and four which fell off and caused the damage.

Cano and Perez went to talk to Peter Solomon about the future of Alvarez with the firm. They informed him about the tractor engine incident and Alvarez' previous record of subpar mechanical work. On May 2 Solomon made the decision to discharge Alvarez and so informed him, stating that the reason was that he was

not performing his duties efficiently. He cited Alvarez' failures to change oil, install oil filters, place springs on a transmission and finally, Alvarez' failure to tighten the bolts correctly on the Sleiger tractor motor.

B. Analysis and Conclusion

To establish a violation of section 1153(c) and (a) of the Act, General Counsel must prove by a preponderance of the evidence that Respondent discharged Francisco Alvarez because of his union activities. Generally in discrimination cases General Counsel must prove that the employee engaged in union activities, that the employer had knowledge thereof, and that there was a causal connection between the union activity and the subsequent discriminatory treatment of the employee.

In the instant case, Alvarez was active in the union and had attended union meetings on April 7 and 8. Respondent was well aware of such activities as Alvarez spoke openly of the meetings either to or in the presence of foremen Victor Cano and Guillermo Perez. Guillermo Perez even made fun of the fact Alvarez and his fellow employee Natividad Calleros were going to attend a UFW meeting after work. In the middle of April Victor Cano warned Alvarez that he should leave the union because the union would lose out and its supporters would be laid off.

The timing of the discharge, just three weeks after Respondent learned of Alvarez' union activity and two weeks after Cano's threat of discharge creates a strong inference that the reason for the discharge was Alvarez' participation in UFW activities. That inference is bolstered by Cano's statement

declaring to employee Calleros subsequent to Alvarez' discharge that he would never recommend that another employer hire Alvarez because Alvarez was a striker like Calleros and companies dislike employees who are with the union.

Accordingly, I find that General Counsel has presented a prima facie case that Respondent discharged Francisco Alvarez because of his union activities.

The NLRB Wright Line[4/] case holds that in a dual motive discharge case, after General Counsel has proven a prima facie case of unlawful discrimination, the burden of production and the burden of persuasion shift to the Respondent to prove that the discharge would have occurred for a legitimate business reason even absent the employee's protected activity. Zurn Industries v. N.L.R.B. (9th Cir. 1982) 680 F.2d 683 [110 LRRM 2944]. The Wright Line analysis is another way of stating the traditional "but for" test of whether a violation occurred, i.e., if the employer would not have discharged the employee "but for" his union activities, a violation is found.

Consequently, in this case I must determine whether it is likely Respondent would have discharged Alvarez because of his error in tightening the connecting rod bolts even if he had not been engaged in union activities. On the basis of the record evidence, I find that Respondent would have done so, and that Respondent discharged Francisco Alvarez for a legitimate business reason.

First of all, Respondent proved that the cause of the

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4. Wright Line, A Division of Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169].

blow-up of the Steiger tractor engine was Alvarez' failure to tighten the bolts correctly. Respondent presented testimony by four knowledgeable witnesses who all confirmed that the direct cause of the damage to the engine was the coming loose of the connecting rods that had been tightened by Francisco Alvarez, i.e., Nos. 3 and 4.

Victor Cano's testimony on that point is important. He is experienced with tractor diesel engines and testified that in his opinion the cause of the engine damage was Alvarez' failure to properly tighten the nuts on Nos. 3 and 4. That testimony is made more convincing by Cano's candor in volunteering the information that he tightened two of the nuts himself, i.e., those on rods nos. 1 and 2. Also, Dick Scaramella,[5] the sales manager at the Scaramella Equipment Co., Guillermo Perez and John Sidhu, all knowledgeable about diesel motors, testified that the cause of the accident was the improper tightening of the nuts.

The only testimony to the contrary was Sidhu's comment to Alvarez, when the latter was moving out of company housing, that the cause of the engine damage was overheating and Alvarez' own testimony that worn-out bearings caused excessive "play" or clearance at the crank shaft. However, I find that overheating was not the cause because the tractor was equipped with a Murphy switch which would turn the engine off in the event of overheating. There was no evidence that the Murphy switch was not in working order, and General Counsel presented no evidence that the cause was, as

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5. Scaramella was present when mechanics at his company tore down the engine and found that the rod caps and main caps were loose but found nothing else wrong with the engine. The Scaramella Equipment Co. had taken Respondent's Steiger 270 in trade.

asserted by Alvarez, the worn out bearings. Clearly the preponderance of the evidence establishes that defective tightening of the nuts was the proximate cause of the engine damage.

The next thing to consider is whether Alvarez' faulty work would constitute a reasonable cause for his discharge. The error appears to have had expensive consequences for Respondent as it lost $15,000 trading in the damaged tractor for a replacement. It would appear that that error alone was serious enough to warrant the penalty of discharge. Further, it appears that that error constituted the "last straw" in a series of errors by Alvarez indicating a lack of complete commitment to his work followed by warnings and advice from management about improving his work performance. Alvarez denied the errors, the lack of commitment, the advice and the warnings, but I do not credit his testimony in that regard[6/] because of the credible testimony to the contrary by three members of management whose accounts of the facts on these points were consistent and uttered in a sincere and convincing matter.

Respondent may have been pleased to be rid of Alvarez as an employee since it was aware that he was a UFW supporter and Respondent, as manifested by its union animus and other conduct described herein, preferred not to have a UFW presence on the ranch.

However, the law is clear that despite the fact that an employer may be pleased to rid itself of a union adherent, as long as it has a legitimate business reason for discharge, and that

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6. I do not think Alvarez conciously lied in his testimony, I believe he had a tendency to forget because of pride any adverse comments by management about the quality of his work.

reason is the basis for the discharge, it is not liable under the Act. Accordingly, I recommend dismissal of the allegation in the complaint that Respondent's discharge of Alvarez was a violation of the Act.

On the other hand, I find that Respondent violated the Act by supervisor John Sidhu's warning to Alvarez, on his first day of work, not to get involved with the union and by Victor Cano warning and threat to Alvarez in mid-April that the union would lose out and its members laid off since those statements clearly tended to interfere with Alvarez' and other employees' right to participate in union activities and therefore were violations of Section 1153(a) of the Act. Furthermore, I find that Respondent through its foreman Guillermo Perez unlawfully interrogated Alvarez on April 8, 1981, about the employees meeting the previous evening and thereby violated section 1153(a) of the Act.

VI. Respondent Allegedly Threatened Natividad Calleros, Assigned Him to Onerous Work and Discharged Him Because of His Participation in Union Activities.

a. Facts

Natividad Calleros went to work for Respondent as a welder on March 12, 1981. Calleros and fellow employees, including Francisco Alvarez, held a meeting at the former's house after work on April 7, 1981 to confer about whether to join or seek assistance from the UFW.

The next day at work foreman Victor Cano talked to Calleros about the meeting and told him that if he wanted to earn more money he and his fellow employees should work harder and not have meetings to discuss their employment problems. Cano added that employees

should discuss their problems with him and they didn't have to hold meetings to do that.

Later the same morning, foreman Guillermo Perez, asked Alvarez what had happened the night before, Alvarez answered that they had had the meeting and were going to have another one that evening. Throughout the rest of the day Perez sarcastically chanted to Calleros and Alvarez, "Let's go to the meeting" on about 8 occasions.

A week after the meetings, Calleros went to confer with John Sidhu, the equipment manager, about his rate of pay. He explained to Sidhu that Respondent was not paying him what Cano had promised him. Sidhu responded angrily that if Respondent owed him money it would pay it. Calleros, somewhat taken aback by Sidhu's angry response, replied that he had nothing against the company but he was merely defending his rights with respect to his pay.

Sometime in May, Cano after Calleros had informed him that he had visited Alvarez in El Centro, asked him whether Alvarez was working. Calleros replied that no, he had not yet found employment. Cano responded that if any company asked him about Alvarez he would inform the company that Alvarez was a striker like Calleros, and added that none of the companies wanted employees who were with the union. Calleros responded "Well, that's the way it is, what can I do?"

Calleros testified that, during the six-week period after Cano's conversation with him about Alvarez, Cano and Perez changed his work assigments from mainly welding to a variety of tasks, e.g., washing down trucks in a muddy quagmire, changing tires including

two assignments involving very heavy tractor tires without any assistance,[7] and grinding fodder at the mill. Meanwhile, Cano and Perez attended to the welding and soldering work in the shop.

Calleros was laid off on May 23. Two days before the layoff, Victor Cano told him there was plenty of work and that he was going to hire two more men. The day before the layoff, Calleros invited fellow employees David Alvarado and Miguel Montes, to accompany him to a negotiations meeting between Respondent and the UFW at the union hall in downtown Coachella. The three attended the meeting[8] and afterwards Calleros drove Alvarado and Montes back to Respondent's ranch and let Alvarado out at the mill and Montes out near where Peter Solomon and Abraham Espinoza were sitting in a parked automobile. Calleros testified that on the day of the layoff, Cano told him that he did not have any more work for him although there was lots of work but those were Pete's (Peter

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7. John Sidhu, equipment manager, testified that employees at Respondent's did not change the Steiger tires. The tires plus the rims weighed more than 1,000 pounds each and that Respondent engaged a firm with special equipment to come to the ranch and change the tires.

8. David Alvarado testified that Calleros gave him a ride into town so he could buy some cigarettes. He followed Calleros into the union hall thinking that he was on his way to a cigarette vending machine and suddenly found himself in the negotiations meeting. Calleros invited Alvarado and Montez to take a seat which they did. He managed to ask a union official a question on insurance coverage and the official answered that he could not answer the question at that time. A discussion ensued between union representatives and Respondent's employees and Respondent's attorney Tom Slovak stepped outside to the lobby. As Alvarado left the hall he noticed Slovak sitting just outside and commented to him, "What a deal, I just wanted some cigarettes and I end up here." He testified he only found out who Tom Slovak was after that day. Alvarado testified he was very upset at Calleros for taking him to the union meeting under false pretenses.

Solomon's) orders.

Victor Cano denied that he ever made any remarks to Calleros about union activities or about the reason for the discharge of Francisco Alvarez,[9/] or about the fact that there was plenty of work available when he laid Calleros off. Guillermo Perez[10/] testified that he never had any conversations with Calleros about the UFW. He admitted Calleros and Alvarez would talk about the union in his presence but stated that he only listened. Perez claimed he never found out which employees were in favor of the union. He specifically denied that he made fun of the employees about going to the meeting in April.

B. Analysis and Conclusion

General Counsel has proven a prima facie case that Respondent laid off Natividad Calleros on May 23 because of his union activity.

Respondent had knowledge of Calleros' union activities, holding organizational meetings at his home on April 7 and 8 and

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9. However, I do not credit Cano's denials in respect to his warnings to Alvarez and Calleros about their union activities. Although Cano made a sincere effort to recall the facts he testified to, I believe he rationalized in his own mind that he was only giving "friendly advice" to his compadre Alvarez and Calleros about refraining from union activities "for their own good" and did not place them in the category of "threats". Consequently, when queried about these statesment, he sincerely denied them. For further comment of Victor Cano's credibility see footnote 23.

10. Guillermo Perez was not a reliable witness. He answered many questions which required some thought because they were complicated and involved incidents which happened some time ago with an immediate "I don't remember". Later on he would answer to the question which he had previously answered, "I don't know". Furthermore, his demeanor and attitude on the stand clearly evidenced that he was not putting forth a sincere effort to answer the questions accurately.

attending a negotiations meeting in Coachella the day before his layoff. Respondent also knew that he had taken two fellow employees to the latter meeting although according to one of them, David Alvarado, it was against his will.[11/] The timing in the instant case, creates a strong inference of an unlawful basis for the layoff since Respondent laid off Calleros one day after his recruitment of employees for a negotiations meeting at the UFW hall. The inference is strengthened by the anti-UFW comments made by foremen Cano and Perez to Calleros. Cano told him there was no need for employees to hold meetings to seek solutions to work-related problems because all employees had to do was to speak with him. Perez interrogated him about the first meeting and then openly mocked him about his plans to attend a second meeting of a similar nature that evening. Cano informed him that employers dislike strikers (i.e., union activitists) and that if any employer inquired about Alvarez he would say Alvarez was a striker and would therefore be denied employment.

Although Cano and Perez denied making those statements I credit Calleros in this respect.[12/] The anti-union remarks of Perez and Cano are consistent with the anti-union attitudes that they and other supervisors manifested during their testimony and

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11. Respondent's knowledge of Calleros attending the negotiations meeting and his taking employees with him is based on attorney Slovak being present at the negotiations meeting and Solomon and Espinoza being in a position to see Calleros when he returned to the ranch after the meeting and let Montes out at the Treesweet plant.

12. Calleros testified in a sincere manner and had a good memory for detail. See footnotes 9 and 10 for my evaluation of Perez and Cano as witnesses.

also by their conduct on the ranch. An example of the latter was the highly efficient way Respondent's management organized to squelch the July 27 planned strike with instant replacements and firings and their laissez-faire "boys-will-be-boys" approach to the October 1 strike by employees against the UFW.

After General Counsel has proven a prima facie case, the burden shifts to Respondent to show that it laid off Calleros for a legitimate business reason. Respondent has failed to do so. In fact, there is direct evidence that Respondent had no legitimate business reason to lay him off. Two days before the layoff Cano said that there was plenty of work and that he, Cano, was planning to hire two additional workers. The day of the layoff Cano told him that he did not have any more work for him but there was lots of work however those were Pete's orders. Cano's denied making these remarks. In fact, Cano claimed that Calleros was qualified only for welding work, not mechanical work, and when the welding work diminished they gave him other work to keep him busy. Later Cano decided that since both he and Perez could do welding work and Solomon wanted them to cut down on personnel for economical reasons they should let Calleros go. Cano testified that Callero's union activities had nothing to do with his (Cano's) decision.

Respondent failed to present any evidence to show that it did not hire two new employees at the time of or soon after the layoff of Calleros. Respondent offered no proof that the welding requirements at the shop had diminished since March when Calleros was hired as a full time welder. It is difficult to understand how the welding requirements which were so high in March that it

required the employment of a full time welder fell off to such an extent in a matter of weeks that Cano and Perez could handle all the welding work[13/] in addition to their duties as mechanics especially when they were experiencing a shortage of mechanics as a result of Alvarez' discharge on May 2, and a search for a new mechanic had just begun.

It is clear from the record that Respondent failed to prove a legitimate business reason for laying off Calleros. In light of the extremely strong prima facie case presented by General Counsel, the layoff of Calleros on the day after his efforts on behalf of the UFW and the numerous anti-union statements by his immediate superiors, Respondent cannot rely on solely oral testimony by the foremen that the welding had diminished especially when it appears so incongruous just weeks after a full time welder was hired. Respondent also failed to prove that no new employees were hired after Callero's departure.

Accordingly, I find that Respondent laid off Calleros because of his activities on behalf of the UFW and thereby violated Section 1153(c) and (a) of the Act.

In respect tc allegations in the complaint concerning Respondent's threats and coercive remarks to Natividad Calleros, I recommend dismissal of each one with the exception of foreman Victor Cano's remarks to Calleros about his informing inquiring potential

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13. I believe that the reason Respondent switched Calleros from welding work to a variety of odd jobs was not to discourage him from participating in union activities but to legitimize its reason for laying him off some weeks later due to "lack of welding work". Therefore, I recommend dismissal of the allegation that Respondent assigned Calleros onerous work to discourage his union activities.

employers of Alvarez that the latter like Calleros was a striker. This remark constitutes a threat to Calleros and would tend to discourage him from engaging in union activities, and therefore intereferes with his rights under section 1152 of the Act. Accordingly, I find that Respondent has violated section 1152(a) of the Act.

VII. Respondent Allegedly Interrogated and Threatened Santiago Cano, Laid him Off and Refused to Rehire Him Because of his Union Activities.

A. Facts

Santiago Cano had been a tractor driver at Respondent's since October 1980. He regularly attended meetings of the UFW at the union hall in Coachella and was President of the UFW Ranch Committee.

On or about June 27, foreman Baldomar Orduno told Cano and another tractor driver Juan Moya to stop talking and go to work. Later that day Moya mentioned to assistant shop foreman Guillermo Perez that he and Cano were almost fired that morning and Perez expressed his agreement and added that they would receive no protection if discharged and that the state would provide no unemployment insurance benefits. Cano replied that the state would pay such benefits if the employee had been discharged unjustly and also that the union would help. Perez replied that the union had sold them out, that there was a woman named Dolores who worked at the UFW office in Coachella and provided Respondent with the names of all employees who had contacted the union and added that Respondent paid 35¢ an hour to the UFW to stay out. Perez advised Cano and Moya not to attend union meetings and warned him that he

and Moya would be fired, as were Calleros and Alvarez because they had attended union meetings.[14/]

During July, the UFW adherents at Respondent's ranch decided something must be done to apply pressure on Respondent to reach an agreement with the UFW negotiators on a collective bargaining contract. Consequently, Santiago Cano and the other UFW supporters decided to call a one-day work stoppage on July 27. Peter Solomon learned of their plans approximately one week before that date and called his supervisors and foremen together to decide on defensive tactics to thwart the work stoppage. The morning before the meeting, Ralph Gonzalez, a foreman and plant specialist, invited Santiago Cano to accompany him to a nearby store for a soda drink. While en route to the store, he asked Cano what was going to take place on July 27 and Cano said there would be a work stoppage. Gonzalez asked who was organizing it. Cano admitted it was he. Gonzalez told Cano that Respondent's foremen would be meeting that afternoon with Solomon about the pending work stoppage. Gonzalez

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14. Guillermo Perez denied that this conversation ever took place. I have already explained previously in this decision my reasons for discrediting Perez' testimony. Moreover, I credit Santiago Cano's testimony in respect to this conversation and other matters as I found him to be a sincere witness who made an obvious effort to remember all details and provide an accurate account of all statements and events. I also found his testimony to be internally consistent. Even though Juan Moya was called as a witness by General Counsel and did not testify about this conversation, I still credit Cano's version because besides the other reasons already set forth for crediting Cano, I believe Cano had more of a reason to remember the conversation than Moya since he argued against Perez while Moya took a more passive role. Respondent argues that this conversation among Perez, Cano and Moya did not occur because not all three men were working at the ranch in the afternoon on or about June 27. Nevertheless, although Santiago Cano may have been mistaken about the date, I still credit his testimony that such a conversation took place for the reasons previously stated.

testified that he did not report this information to Solomon or any member of management.

The pro-UFW workers did not carry out the planned work stoppage on July 27 since not enough workers were willing to support it.

On July 31 foreman Baldomar Orduno laid off Santiago Cano, telling him that it was because there was not enough work and because Cano had the least seniority, and assuring him that Respondent would recall him to work in a month (i.e., about September 1) or on September 20. Orduno informed Cano of the layoff while Cano was driving a tractor in a field. Cano testified at the time of his layoff that there was still much discing work to be done in the field where he had been working. Cano applied for and received unemployment benefits at the local unemployment office. He testified that while he was at the unemployment office he overheard an office employee comment that Respondent had put in a request for two tractor drivers. Respondent presented evidence which indicated it had filed a request for employees in other specialities at that time but not for tractor drivers.[15/]

Baldomar Orduna, Cano's foreman, testified that he laid off Cano and Moya on July 31 because there was a shortage of tractor work. He also testified that he offered both of them tomato irrigation work which Moya accepted, but that Cano declined, and stating that he had a chance to work in Bakersfield. Orduno

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15. Although, I believe Respondent did not file a request for tractor drivers, the fact that Cano testified he overheard a comment to that effect does not distract from his sincerity as a witness since he could easily have made an honest mistake and thought he heard such a comment.

admitted that other tractor drivers continued to work e.g. Arturo Garcia, Ed Carmona and Lucio Frias but stated that they had more seniority than Cano or Moya.[16/] Orduna denied having any knowledge that Cano was active in the UFW or anything about his role in the planned July 27 work stoppage. However, John Sidhu, equipment manager, testified that he and Peter Solomon both knew that Santiago Cano and Graziano Rodriguez were members of the UFW when they were going to have a work stoppage and put pressure on Respondent's at the bargaining table.

On August 20, Respondent hired Josie Expinoza as a tractor driver in the orange peel operation.[17/] On August 23, Respondent hired Fortunato Palomares as a tractor driver. Cano testified that after he was laid off he was very busy looking for work so it appears he did not secure the tractor driving job in Bakersfield. On September 1 and 20 Cano telephoned Orduno about tractor work but Orduno replied "no openings". Cano voted a challenged ballot in the ALRB election on September 29.

Respondent recalled Cano to work as a tractor driver on or about November 2, 1981.

B. Analysis and Conclusion

In order to establish a prima facie case, General Counsel must prove by a preponderance of the evidence that Respondent laid

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16. However the payroll records indicate a fourth tractor driver continued to work until mid-October, Rodolfo Castro who had less seniority than Cano. Cano began to work at Respondent's in October 1980 and Castro in November 1980.

17. The supervisor of the orange peel operation Abraham Espinoza testified that he hired his wife Josie because she had experience with the orange peel operation (her experience only amounted to her riding around the work site with her husband on several occasions before starting to work at Respondent's), was an experienced tractor driver and he knew that she would be a steady employee.

off Santiago Cano because of his union activities or other protected concerted activities.

Santiago Cano was very active in union affairs as he was president of the UFW Ranch Committee and attended UFW meetings at the union hall on a regular basis. He was fluent in English and Spanish.

Respondent contends that except for the testimony of Ralph Gonzalez, no evidence was presented that Respondent knew that Santiago Cano was the ranch committee president, had organized the planned June 27 walkout and attended UFW meetings. It also contends that Gonzalez never reported to Respondent's officials that Cano had admitted to him that he had organized the planned walkout. However, Respondent's own witness John Sidhu testified that he and Peter Solomon knew of Cano's union participation during June and July 1981, the time that the union was trying to apply pressure on Respondent at the bargaining table by means of a work stoppage.

The timing of Cano's layoff creates an inference that Respondent laid him off because of his union activities. The layoff occurred four days after the date scheduled for a work stoppage (which did not take place) to bring pressure on the employer to sign a contract and he was not recalled to work until November 2, a month after the decertification campaign ended. Between those dates Respondent rid itself of an active union adherent who would otherwise have been an effective spokesman for the UFW, to both the Spanish and English speaking voters, during the period in which the decertification campaign took place.

This inference of an unlawful basis for the layoff is

supported by General Counsel's showing of union animus in general[18/] on the part of Respondent and also by the threat of assistant foreman Guillermo Perez, addressed to Cano and Moya that if they attended UFW meetings they would be fired, as were Alvarez and Calleros. Accordingly, I find that General Counsel has presented a prima facie case, which shifts to Respondent the burden of proving evidence that it would have laid off Cano July 31 and kept him on layoff from July 31 to November 2 even absent his union activity, because of a letigimate business reason.

Respondent contends that it followed seniority in laying off Cano and Moya and that the only tractor drivers who continued to work were three who had more seniority than Cano and Moya. However the payroll records reveal that Respondent failed to follow seniority by continuing to employ tractor driver Rodolfo Castro, who had less seniority than Cano but more than Moya.[19/]

Respondent argues that it had no intention that Cano cease working at Respondent's as evidenced by the fact that foreman Orduno offered Cano and Moya the option of working as irrigators and that Cano declined the offer in order to take a tractor job in Bakersfield. That argument would be more persuasive if Respondent

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18. Respondent's union animus has been established by the numerous anti-UFW statements by Respondent's supervisors and foremen as found herein plus Respondent's intolerant response to the pro-UFW work stoppage of July 27, 1981, compared to its tolerant response to the anti-UFW work stoppage of October 1, 1981 as found herein, infra.

19. Although Castro was active in the union he was not as active as Cano who was president of the Ranch Committee. Also Castro testified that in June or July Tony Garcia questioned him about being a member of the UFW and he ignored the question and refrained from answering it.

had recalled Cano when it needed additional tractor drivers. Rather, Respondent hired both Josie Espinoza and Fortunato Palomera as tractor drivers in late August and did not recall Cano until November, a month after the decertification election.

Respondent argues that the hiring of Josie Espinoza represents special circumstances and to a certain extent it does. It would be advantageous from a business point of view for Respondent to hire Josie Espinoza, the wife of foreman Abraham Espinoza, since she had a good idea of the duties of the job, was an experienced tractor driver and Respondent had the assurance that she would be a steady employee.

On the other hand, General Counsel argues with some validity that the predominate reason Respondent had in hiring Josie Espinoza was that Respondent knew beforehand that she would be an assertive anti-UFW employeed,[20] a definite asset for Respondent in a decertification campaign.

So the hiring of Jose Espinoza in preference to rehired Santiago Cano does not constitute convincing evidence of an improper motive on the part of Respondent in not recalling Cano for the particular orange peel tractor job. However, Respondent's decision to hire Fortunato Palomares almost two months before recalling Cano does. Respondent presented no evidence to show a legitimate business reason for the preference it accorded to Palomares. Palomares had previously worked for Respondent in June 1980 and had

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20. There was no evidence of this knowledge other than her husband's testimony that he knew she had not been an active member of the UFW in her previous agricultural employment.

left of his own accord. Respondent did not claim or present evidence that Palomares had any seniority at the time. The record shows that Palomares signed the petition to decertify the UFW and participated in the strike against the UFW. By hiring Palomares and by failing to recall Cano, Respondent gained one anti-union employee and insured the absence, during a very crucial time, the decertification campaign, of a known UFW spokesman and former president of the ranch committee.[21/] From these facts I infer that Respondent hired a new tractor driver rather than recalling Cano because of Cano's union activities.[22/]

Accordingly, I find the reason Respondent laid off and later did not recall Santiago Cano until November 1, 1981, was because it wanted to weaken the UFW's presence on the ranch in general and in particular to prevent Cano's union activities during the anticipated decertification election, and I conclude that Respondent thereby violated Sections 1153(c) and (a) of the Act.

Furthermore, I conclude that Respondent through its foreman Guillermo Perez threatened Santiago Cano and Juan Moya with discharge if they continued active in the UFW and thereby violated

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21. See discussion in Analysis and Conclusion in respect to Respondent's alleged instigation and assistance of the decertification movement for Respondent's attitude toward the UFW.

22. Although Respondent failing to recall Cano until November was not alleged in the complaint, it was fully litigated by the parties and is related to the subject matter of the complaint. Anderson Farms Company, 3 ALRB No. 67.

section 1153(a) of the Act.[23] In addition, I find that Respondent through its foreman Ralph Gonzales unlawfully interrogated Santiago Cano about his participation in union activities and thereby violated section 1153(a) of the Act.

VIII. Respondent Allegedly Instigated and/or Assested the Employees' Decertification Campaign.

A. Facts

Respondent and the UFW resumed negotiations in April 1981 and continued to bargain through the first part of September.

During the negotiations, the UFW planned a strike on July 27 to apply pressure to Respondent to reach an agreement at the bargaining table. Peter Solomon learned of the proposed strike[24] and called a meeting of the supervisors and foremen to discuss the defensive strategy Respondent would use when and if the strike actually occurred. Solomon advised the supervisors and foremen to discharge any employee who refused to work and to immediately hire replacements so that no work time would be lost. Moreover, Solomon

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23. In respect to Natividad Callero's and Santiago Cano's layoffs, Peter Solomon denied that the two were laid off because of their union activities. I do not believe that Solomon lied in respect to this testimony. However from my observations of him as a witness, I concluded that he has a very active and intelligent mind, but appears to see things only from his point of view which I believe made for a great amount of rationalization in his answers. He may not have directly ordered the layoffs of Natividad Calleros and Santiago Cano because of their union activities or subsequently learned of it, but his own anti-UFW policy and calculated steps to eliminate the union from the ranch (see Discussion re: Respondent's alleged instigation and assistance in the decertification movement, infra) certainly created the ambience in which foremen Victor Cano and Baldomar Ordino believed that their actions in respect to the layoffs were in keeping with Peter Solomon's wishes.

24. Solomon testified that even though he knew of the planned strike he did not know that the UFW was behind it.

instructed the foremen that any striking employee who was living in company housing should be evicted forthwith. Solomon set up a system to calculate and distribute final pay checks to the strikers and called the police to come and patrol during the anticipated strike.

In response to Solomon's orders, the supervisors and foremen came to work early on July 27, the day of the planned strike. However, the strike did not take place because the pro UFW employees decided there was not enough employee support for the strike and all reported to work.

In August 1981 the UFW submitted two alternative offers to Respondent. Plan A was essentially an acceptance of Respondent's latest offer but did not include a provision for withdrawal of the UFW's outstanding unfair labor practice charges against Respondent. Plan B called for better benefits for employees and higher costs for Respondent along with a provision for withdrawal of all pending unfair labor practice charges against Respondent.[25/] Respondent decided to accept Plan A.

Respondent's representatives in the negotiations were the attorney Thomas Slovak and controller Jack Kivi while Saul Martinez and Frank Ortiz represented the UFW. Kivi testified that during the negotiations on wages he pointed out that the wage distribution should be more evenhanded but the union representatives bypassed his advice. The parties came to an agreement on all the important items on August 24. Thereafter they continued to negotiate on less

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25. The charges to be dropped would have been the ones filed by the UFW but not the ones filed by individual employees.

important details. On September 3 the parties reached a final agreement, at which time Respondent signed the collective bargaining contract. The UFW representatives did not sign the contract on that date, since its representatives planned to have a ratification meeting at the union hall on September 11.

During the negotiations the UFW representatives kept only some of the employees (all Spanish speaking) informed of the progress in collective bargaining.

On September 4, Jack Kivi, Respondent's controller, met with Respondent's foremen and reviewed the collective bargaining contract with them and explained various provisions in the contract. He informed the foremen in detail about the "good standing clause" and that the employees had to sign the union dues checkoff authorization cards or the employer would be legally obligated at the union's request, to discharge any worker who refused to sign. He also explained that there would be no hiatus in the employees' medical insurance coverage during the changeover from the company plan to the UFW plan. He told the foreman that the information he was giving was only for them and that they were not to pass it on to the employees at that time. Nevertheless, shop foreman Victor Cano and orange peel operation foreman Abraham Espinoza explained the new wage rates to the employees under their supervision a few days later.

Peter Solomon testified that during the latter part of August and the early part of September, 6 to 7 employees approached him, one and two at a time, and asked him about the UFW and the collective bargaining contract and the wage rate therein. Solomon

told them that he could not get involved but that the UFW would contact them about the contract.[26]

On September 8 Solomon telephoned his attorney, Thomas Slovak, and told him that employees had asked him questions with respect to the UFW and the contract. Solomon testified that he did not think the term decertification was mentioned during the conversation.[27] Slovak replied that perhaps the Western Growers Association's (hereinafter referred to as WGA) law firm of Dressler, Laws, Quesenbery and Barsamian would agree to represent these employees and stated that he would contact that firm. Later that day Slovak telephoned Marion Quesenbery of the WGA law firm and told her that Respondent's employees had expressed discontent and at least some of the workers had indicated they did not want the union and wanted to know how to decertify it. Slovak explained to Quesenbery that he had represented Abatti Farms' employees in a decertification election and knew that representing employees during decertification election proceedings could involve financial burdens. He asked Quesenbery whether the WGA attorneys would be interested in representing Respondent's employees in a decertification election on a pro bono publico (i.e. unremunerated) basis. Quesenbery told him she would check with Donald Dressler,

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26. John Sidhu's testimony corroborates Solomon's to the effect that employees asked only about the UFW and the collective bargaining contract because Sidhu stated that 7 or 8 employees (in good part the same employees who queried Solomon) also asked him similar questions and he reported this fact to Solomon.

27. Solomon testified that he had known for a couple of years that his employees could file a Petition to Decertify with the ALRB only if there were a collective bargaining agreement in effect between Respondent and the Union.

the head of the law firm about representing the dissident employees on a pro bono basis. Quesenbery later telephoned to advise Slovak that if the workers needed legal assistance the WGA law firm would be happy to represent them. She told Slovak that the workers could telephone her directly.[28/]

At about 6:30 a.m. on September 11 Peter Solomon went to the ranch shop when James Boston began to talk to him about the UFW and the contract. Mechanics Gordon Hofer, Albert Montes, and one or two other employee were present. Boston told Solomon that he was going to quit, that the employees had heard about Respondent's contract with the union and that some of them wanted to leave Respondent's employ. The employees asked pointed questions about the contract and Solomon told them the union would provide answers for them. He added that if there were enough interest he would talk to a group of employees and that he could give them a name of

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28. Slovak denied that he had arranged for the WGA to represent the dissident employees. However, I disagree and base my finding of fact on the following memorandum dated 9/8/81 from the WGA (GCX 47) written by Marion Quesenbery:

> Tom Slovak from Best, Best and Krieger called this morning, September 8, regarding whether we would be interested in doing pro bono work for some agricultural workers. He explained that one of his clients was approached by some workers who wanted to know how to decertify the union. He wanted to be able to suggest some legal help for them. I told him I would have to call him back. I asked Dressler if WGA would be interested in such pro bono work. He said yes. I called Slovak back (714-325-7264) and told him that if the workers needed legal assistance we would be happy to represent them. I told him that they could call me directly.

Slovak explained the reason he had contacted the WGA law firm was because he had gotten stuck when he had incurred substantial legal expenses representing Abatti employees and he decided to contact WGA because it was a large entity which might be in a position to absorb such expense.

someone who could answer their questions. Boston asked Solomon where he would be and Solomon replied that he would be in his office for several hours.

At 9:18 on the same morning some eighteen employees entered Respondent's offices and asked to talk to Solomon. James Boston and Walter Sherley, Sr. spoke for the employees and asked Solomon whether he had signed a contract with the UFW and adding that if he had done so employees would quit. They also asked whether Solomon could help then in any way and why they hadn't heard about the union.[29/] Peter Solomon answered that he would like to help but he could not get involved but he would give them the name of a person who could give them advice. He gave them the name and telephone number of Marion Quesenbery and the group left.

Apparently Solomon informed Slovak that he had given Marion Quesenbery's name and number to the dissident employees and that the employees would probably contact the law firm around 11 o'clock that morning.[30/] Slovak relayed this information to the WGA law firm.

At about noon the same day, James Boston, Walter Sherley, Sr., and David Nicolson went to a Foster Freeze restaurant for lunch, but there is no evidence in the record that any of the three mentioned anything about decertifying the Union. Boston telephoned

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29. James Boston testified that he did not pay much attention to what was being said at the beginning of the meeting because he had planned on quitting.

30. There was no direct testimony about Solomon telephoning this information to Slovak but it is easily inferred from the circumstances since there was testimony that Slovak notified the WGA law firm to expect a telephone call from the dissident employees at 11:00 a.m. that same morning which would be about an hour and one-half after Solomon gave them the WGA law firm's telephone number.

the WGA law firm in El Centro and talked to Geoff Gega, an attorney member of the firm. Boston explained to Gega the situation at Respondent's ranch and Gega responded by informing him about decertification and the necessary steps to be taken e.g. fill out and file a petition, obtain signatures of at least 30% of the employees to support the petition etc., and by stating that his law firm would represent them[31/] and that he (Gega) would mail a petition form to them. There is no evidence in the record that Boston mentioned anything to Gega about decertification or getting rid of the union to Gega until after Gega explained to him the necessary procedure for filing a petition for decertification. Nor is there any evidence that Gega ever mentioned any alternative course of action to Boston. After that conversation, Boston explained to Nicolson and Sherley about the course of action to be taken with respect to filing a decertification petition. Boston, Nicolson and Sherley returned to their respective jobs at the ranch. At approximately 2:00 p.m., Boston telephoned Gega from a pay telephone at a nearby Circle K store and told him he wanted to obtain the petition that day so they could commence gathering signatures immediately.[32/] Gega asked him to telephone back in an

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31. Gega told Boston they could discuss the fees at a later date.

32. The reason the dissident employees wished to accelerate the petition process is because they were fearful the UFW would force Respondent to discharge them before the decertification election since they believed that under the good standing clause in the contract, the UFW had this power. The dissident employees understood that the UFW could use any pretext it cared to in obliging Respondent to fire anti-UFW employees.

hour. Boston complied with that request by telephoning from a company telephone on Respondent's premises. Gega told Boston he would have the petition form ready that evening and Boston said that one or two of the dissident employees would go to the law firm's El Centro office and pick it up that same evening.

At about 5:30 p.m. that evening James Boston and Nick Sidhu left the ranch and drove south to El Centro. Dave Nicolson telephoned the law firm from a telephone in Respondent's offices and told Sarah Wolfe, a WGA attorney, that Boston and Sidhu had left the ranch later than had been anticipated and would arrive around 7:00 p.m. Boston and Sidhu met with Sarah Wolfe, another WGA attorney at the law firm's El Centro office. She delivered the petition to them and gave them instructions on how to gather the signatures, i.e. not on company time, only talk to the employees about signing not the foremen, not to use Respondent's telephone, etc.

The UFW held its ratification meeting on the evening of September 11 and the union members approved the contract and the UFW officials gathered some signatures on the dues check off authorization cards. On Saturday, September 12, Jack Kivi, Respondent's controller, went to the Union hall in downtown Coachella and picked up the union check off cards, slightly fewer than half already having been signed by Respondent's employees. Upon his return to the ranch, Kivi distributed the dues check off cards for the employees who had not yet signed to their respective foremen and told the latter to inform the employees that if they did not sign them that Respondent would be legally bound to discharge

them at the Union's request.[33] The foremen followed Kivi's instructions and numerous employees protested about being forced to sign the dues check off cards. Nevertheless all of the remaining employees signed the cards.

On Saturday, Sunday and Monday (September 12, 13 and 14) Boston, Sidhu, Nicolson, Heliodoro Garcia and other dissident employees gathered signatures in support of the decertification petition. On Tuesday, September 15, Sarah Wolfe decided that the petition was defective in that each page was not clearly identified as a decertification petition. She prepared a new petition on Tuesday afternoon and that evening drove from El Centro up to Respondent's ranch. At approximately 6:00 p.m.[34] she met with 18 to 20 employees on Respondent's premises and explained to them that they would have to sign a new petition because of the unclear identification of the pages. The employees present passed the petition around to one another as they signed and then returned the petition to her. She announced to the group that she was an attorney with a law firm that represented the W.G.A. and that her firm represented growers and that in this instance the firm was representing them. Wolfe spoke in English but there were various bilingual employees translating her comments for the Spanish-speaking employees. Josie Espinoza was the lead interpreter

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33. The message to the employees about the employer's obligation to discharge them if they did not sign the checkoff authorization card is based on a reasonable interpretation of the collective bargaining contract between Respondent and the UFW.

34. Work ends at 5:00 p.m. at the ranch.

and urged employees present to sign the petition.35/

During the meeting, Peter Solomon drove by in his pickup truck and asked Wolfe whether he could stay and she said no and he left. He testified that he had learned of the filing of the petition to decertify when an ALRB agent had telephoned him the day before.

The next day, September 16, Wolfe filed the decertification petition with the ALRB in El Centro.

On September 18 three Board agents of the ALRB went to Respondent's ranch to talk to the employees about the coming decertification election. The meeting took place near Respondent's offices and Peter Soloman and Sarah Wolfe were present but, at the request of the Board agents, were standing about 30 feet away from the group (and about ten feet from each other). Soloman and Wolfe did not converse with each other but only exchanged pleasantries. The Board agents closely questioned the employees about who was behind the movement to decertify the UFW. Some of the employees were very upset by these questions since the clear implication was that the agents throught that the dissident employees were incapable by themselves of initiating such an action.

The pre-election conference was held on Monday, September 21 at the Coachella Recreation Center. Representatives of the UFW, the Respondent and the petitioning employees were present. The Board

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35. Jesus Castaneda testified that Wolfe answered some questions asked her by Arturo Garcia and said the company would pay higher salaries and provide a better medical plan if the UFW were decertified. However General Counsel called Arturo Garcia as a witness but did not ask him any questions concerning his interrogation of Wolfe.

agents announced that the election would take place on Wednesday, September 23 at Respondent's ranch. Peter Solomon testified that just before the preelection conference took place that one of the Board agents conferred with the UFW representative outside his earshot. He also testified that he talked with a Board agent Roger Smith who informed him that the Board would order the election cancelled. According to Solomon those two incidents made him suspicious of the fairness of the Board processes and later his suspicion was confirmed when the election was postponed.

The next morning, Tuesday, September 22, the ALRB notified the parties that the election had been postponed since the UFW had filed a Request to Cancel the election. The Regional Director had decided to grant the UFW's request because of the numerous unfair labor practice charges which had been filed against Respondent. Thereafter, Respondent and the Petitioner filed with the ALRB objections to the Regional Director's decision. They also filed a Writ of Mandamus in the Riverside County Superior Court requesting the court to order the ALRB to hold the election.

On Wednesday, September 23, the employees held a meeting at 5:30 at the ranch to discuss the decertification election, its postponement, etc., attorney Gega addressed the group. Solomon was nearby playing baseball with his children and the children of Guillermo Perez who lived in a company house near the place where the employees were meeting. There were T.V. reporters and cameras present, who had been called there by the petitioning employees.

On September 25, the ALRB notified the parties that the election would be held on Wednesday, September 29, but that the

ballot box would be impounded and the ballot-count deferred. The election was held on Respondent's premises on Wednesday, September 29, from 4:00 p.m. to 8:00 p.m. Immediately after the election, the anti-UFW employees met in an abandoned structure on the ranch property and discussed their strategy. Sarah Wolfe was present. They discussed going on strike to force Peter Solomon to repudiate the UFW and the collective bargaining contract since their attempts to decertify the UFW and nullify the contract had been frustrated by what they believed to be unfair decisions by the ALRB. Sarah Wolfe advised them against such a tactic. However the consensus of the group was to go on strike on October 1.

On September 30 the dissident employees present at the meeting informed the other dissident employees about the strike schedule for October 1. They also circulated for signatures a petition which demanded that Solomon repudiate the UFW and the collective bargaining agreement and cease to deduct UFW dues from their pay checks. David Nicolson and James Boston were among those who gathered signatures for that petition.

Sometime during the day Baldomar Orduno informed Solomon that there was going to be a strike the next day, Solomon passed that information on to Jack Kivi, John Sidhu and Abraham Espinoza but to none of the other supervisors or foremen. James Boston told Solomon in the afternoon of September 30 that he should have his lawyer at the ranch the next morning because Boston would have something important to tell Solomon and Solomon consented.

The dissident employees met during the evening on September 30, discussed proposed tactics for the pending strike and prepared

picket signs. On the morning of October 1, the dissident employees placed virtually all of Respondent's tractors and trucks in the main intersection of the ranch roads in order to prevent vehicle movement at the ranch. At about 9:00 a.m. the irrigators, (almost none of whom were dissident) at the Tigre Ranch received a message from foremen or fellow workers to meet at the Tigre Ranch headquarters and then proceed to ranch headquarters as there would be a decision made or announced there about which side won the election. The Tigre Ranch irrigators gathered at the Tigre Ranch headquarters and then went in two automobiles to the ranch headquarters. They did not join in the strike or the picketing but stood to the side and watched the dissident employees march around the area carrying signs which protested against the ALRB and the UFW.

Two of the strikers borrowed the shop keys from foremen Victor Cano and Guillermo Perez and locked the shop doors.36/ At approximately 10 a.m. a group of strikers approached Peter Solomon, who was standing outside Respondent's offices and began to speak to him. He asked that the group select delegates to confer with him. Solomon and four designated employee representatives, James Boston, Nick Sidhu, Miguel Montes and Walter Sherley, then entered the offices. The representatives presented the petitions which had been

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36. Cano and Perez testified that they knew nothing of the strike and frequently lent their rings of keys (which happened to hold also the shop door keys) to employees so they could unlock the gasoline tanks, and therefore were unaware that these employees would use the keys to lock the shop doors.

signed by twenty-three employees.[37/] The representatives told Solomon that he would have until 10:00 a.m. the following day to meet their demands. Meanwhile, they assured him that they would continue the necessary ranch operations, e.g., the pickup and delivery of the orange peels and the feeding and care of the cattle. Solomon expressed his agreement and promised he would give the employees his decision the next day at the designated hour.

The Tigre Ranch irrigators remained in the office area until noon time. While they were standing there some of the dissident employees, including Manuel Montes, asked them to sign a petition to oust the UFW and to join in the dissidents' strike. The irrigators declined to do so. At noontime, the irrigators returned to the Tigre Ranch and resumed their work duties. Respondent did not dock them for the two hours they spent observing the strike demonstrations.

At approximately 11 a.m. Baldomar Orduno drove Arturo Garcia to a field where Lucio Frias was operating a tractor. While en route, Orduno mentioned that the strike would end at 10 o'clock the next morning. Following Orduno's orders, Garcia drove the tractor back to the office area and parked it among the rest of the tractors and trucks in and around the main intersection where the picketing was taking place. Orduno drove Frias to another job on

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37. However, one of signees was Jose Garcia, a foreman who consequently was not an employee under the Act as there were 43 persons in Respondent's employ on that date, 22 employees constituted a majority so there were sufficient signatures (22) on the petition so that Respondent could accurately claim that the petition was signed by a majority of the employees.

the ranch.[38]

After Solomon met with the dissident workers on the first morning of the strike, he confered with his attorney Tom Slovak about a course of action. Solomon telephoned the Secretary of Agriculture and the ALRB for advice but none was forthcoming. He testified he did so because he was faced with a dilemma: to repudiate the UFW and the contract or to have his business operations come to a complete halt. At no time during the rest of that day (October 1) did Solomon direct his foremen to order any of the striking employees back to work or to remove the tractors and trucks which were blocking the ranch's main intersection.

On the morning of October 2, Solomon decided to repudiate the UFW and the collective bargaining agreement. He testified that he made that decision because it was impossible to continue to operate especially because all of his skilled workers were on strike, i.e., mechanics etc. He explained that if he had had a week's notice he would have been able to line up replacement workers as he had done at the time of the scheduled (and later cancelled)

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38. There was testimony by Baldomar Orduno that he ordered Arturo Garcia to drive the tractor to the picketing site because Garcia, David Alvarado and Miguel Montes pressured him to do so. Orduno added that he was fearful that if he had refused to do so the three employees would have resorted to violence to achieve their immediate end. I do not believe this was Orduno's prime reason for his actions. His acquiescence to the striking employees' request was typical of management's indulgent attitude toward the strikers as no member of management ever chastised or criticized any of the striking employees because of their work stoppage and picketing on October 1 and 2. Another reason for my assessment of Orduno's conduct regarding the tractor removal was David Alvarado's testimony that the three strikers simply requested the removal with no intention to resort to violence since in his mind it was a peaceful protest.

strike of July 27. He added that another reason was that it was clear to him that the UFW no longer represented the majority of his employees so the right thing to do was to withdraw recognition from the Union, and also he stated he had lost faith in the fairness of the ALRB.

At 10 a.m. October 2 Solomon notified the strikers of his decision. At no time on September 30, October 1 or 2 did he notify the UFW[39] about the strike or the strikers' demands. Beginning October 2, Respondent ceased to give effect to the collective bargaining contract, stopped the employees' dues deductions, and granted a 10¢ per hour raise to all of the employees at the next pay period, an amount which represented the difference between the employers' payments for the more expensive UFW medical plan and Respondent's own medical plan, which it reinstituted immediately.

On October 2, Respondent received a communication from Barbara Macri, head of the UFW legal section, informing it that the UFW did not approve of the strike and for Respondent to order the employees back to work. On October 6, Respondent's attorney, Thomas Slovak, notified the UFW that Respondent had repudiated the collective contract and had withdrawn its recognition of the UFW.

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39. Solomon explained at the hearing that on the morning of the strike he noticed a UFW automobile at about 11 a.m. near the offices and intersection where the strike demonstration was taking place with two occupants observing the event and taking pictures. Consequently, he assumed that the UFW had knowledge of the strike and was the reason he did not notify the union.

Approximately 10 dissident employees testified that one of the reasons for their anti-UFW attitude was because they understood that under the "good standing clause" in the contract the union could force the employer to discharge them at anytime and for any reason and also because they were upset that they had to sign dues deduction cards or be subject to discharge for not doing so. The same 10 employee witnesses stated that another reason for their dissatisfaction with the union was the fact that the UFW never kept them apprised of the progress of negotiations, did not notify them when an agreement was reached, and did not tell them that a ratification meeting was going to be held.

Several of the 10 dissident employee witnesses testified a third reason for them to be against the UFW and the contract was because the union representatives had promised them higher raises than they actually received by the terms of the new contract.

Several other of the 10 employee witnesses testified that another reason that they decided they did not want the UFW to represent them was because they received less money under the collective bargaining contract than they had before. Checking the payroll records it appears that the gross rate of pay was raised under the collective bargaining contract but with the 2% of gross pay as union dues being deducted from each pay check, these employees did actually suffer a reduction in their net pay.

On or about September 20, six of the most active dissident employees, including James Boston, went to talk to Granziano Rodriguez, the president of the UFW's ranch committee, about the collective bargaining contract. Boston took a copy of the agreement

with him and began to ask Rodriguez about the details. Rodriguez told him that he did not know much about the contract since it had not been translated into Spanish. The group expressed their disapproval of the UFW, and Rodriguez' failure to keep them informed of the negotiations and the ultimate contract. Rodriguez responded by saying there was no need for them to know the details of the contract because the union would see to it that they would be soon discharged by means of the "good standing" clause in the contract.

On September 24, James Boston, Nick Sidhu, and Dave Nicolson decided to contact the UFW office in Coachella and find out more about the contract. They telephoned from Respondent's premises and an unidentified person at the UFW office informed them at a Cattle Valley Farms employee's meeting was taking place at that time. Shortly thereafter the three employees arrived at the UFW office and began to converse with Saul Martinez, the UFW representative. He explained to them that the information they had received over the telephone was incorrect, that no meeting for Respondent's employees was then in session but that he would be happy to answer any of their questions.

The three employees complained to him about the failure to communicate with Respondent's employees and Martinez apologized for them for getting off on the wrong foot. He explained to them about the good standing clause and stated that it had little or no importance because the union never utilized it. He also explained about the Union's medical plan.

The meeting came to an abrupt end when employee David Alvarado arrived to announce that Respondent's freight liner vehicle

had been in an accident and all three employees left forthwith.

Several leaders in the decertification movement were either relatives of Respondent's supervisorial personnel: e.g. Nick Sidhu, son of John Sidhu, the equipment manager; Dave Nicolson, brother-in-law of Peter Solomon; and Josie Espinoza, wife of Supervisor Abraham Espinoza, or recently employed by Respondent e.g. James Boston. Of course Jose Espinoza also qualified in this latter category having been hired just a few weeks before the decertification movement began.

In July Respondent hired four irrigators who later on did not join in the subsequent decertification movement. However in August and early September Respondent hired eight new employees, six of whom participated in the October 1 anti-UFW strike,40/ and at

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40. General Counsel alleges that two additional employees, Baudelio Sanchez and B.A. Navarro fall into this same category but there was testimony that Baudelio Sanchez was already in the employ of Respondent and his name is on the payroll records prior to August 17 the date General Counsel alleged he was hired. There is no evidence that B.A. Navarro participated in the October 1 strike. He did not sign the petition in respect thereto.

There was no evidence presented that Respondent knew that any of these employee was anti-union or that there was any conversation or communciation between the employee applicants and Respondent's management about the union before they were hired. All of the employees who testified at the hearing who signed the petitions and engaged in the strike with the exception of Blas Gonzalez, Jesus Castaneda and Arturo Garcia expressed their dislike of and dissatisfaction with the UFW in a sincere and convincing manner. The three exceptions, Gonzalez, Castaneda, and Garcia, testified that they only reason they signed the petitions and went along with the strike was because of fear of losing their jobs if they had refrained from doing so.

least four of whom signed the petition to decertify.[41]

The six employees were James Boston, mechanic, hired on August 10; Albert Montes, mechanic, hired August 13; Jose T. Gonzalez, general laborer, hired August 17; Josie Espinoza, tractor driver, hired August 20; Fortunato Palomera, tractor driver, hired August 23; and Gordon Hofer, mechanic, hired September 8.

Josie Espinoza, the wife of Abraham Espinoza, Respondent's foreman for the orange peel operation, was hired by Respondent on August 20 as a tractor driver to work in the orange peel operation. Respondent's explanation for hiring her was that she had gained experience as a tractor driver in the orange peel operation so it would take her very little time to be broken in and be able to efficiently perform all the duties of that position. Respondent hired another tractor driver, Fortunato Palomera, on August 23. He had worked for Respondent at some time in the past. Of course, in so hiring those two tractor drivers in August, Respondent passed over Santiago Cano whom it had laid off July 31 and, who was told by his foreman Orduno at that time that he would be recalled at the end of August or on September 20. However, Respondent did not recall Cano until the first of November. At the time of the July 31 layoff Cano was the President of the UFW ranch committee and the most proficient bilingual (Spanish & English) person among the UFW activists at the ranch.

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41. Boston, Montes, Palomera and Hofer all testified that they signed the petition to decertify. In all probability Espinoza and Gonzalez also signed it since they both supported the October 1 anti-UFW strike. Neither Espinoza nor Gonzalez were called as witnesses so they were unable to confirm that they had signed the petition to decertify.

Gordon Hofer had no contact whatsoever with Respondent before coming to work but in a few days manifested an extremely vehement dislike for the UFW or any union and testified that if he had known there was a union at Respondent's ranch he would have never have accepted a job there. There was no testimony adduced about Jose T. Gonzalez but he supported the October 1 anti-UFW strike.

General Counsel claims that Respondent learned about Boston's anti-union background from his previous employer. However, General Counsel never presented any evidence to support that assertion.

Respondent has experienced a high turn-over rate in mechanics in the years 1980 and 1981, i.e, 15. Respondent's witnesses explained that the reason was that it was difficult to find a good mechanic for farm tractors and trucks. As Respondent discharged mechanics it periodically advertised in area newspapers for mechanic applicants. Respondent advertised in late July and early August. Boston who had recently been laid off his mechanic's job in Phoenix was visiting his sister in El Centro and read Respondent's advertisement in the local newspaper.[42/] He drove up

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42. The UFW argues that James Boston's testimony was not credible. Boston testified that he had been a shop steward for the Railroad Workers union in 1968 while working for the Pennsylvania Railroad in Canton, Ohio, and that based on his experience with that union, he considered the UFW's performance at Respondent's as being very poor. On the last day of the hearing, the UFW requested to introduce into evidence a declaration from an official of the Railroad Workers' Union attesting to the fact that Boston was never a shop steward or a member of that union. The UFW contended that the declaration would establish that Boston lied in respect to being

(Footnote continued----)

to Respondent's ranch and John Sidhu and Victor Cano interviewed him. The latter two testified that they asked him questions about farm equipment mechanics and that they knew from his answers that he was very knowledgeable on the subject and decided to hire him without checking his references. Cano who made the final decision in hiring Boston testified he did this because he would know, after Boston spent a short time on the job, whether he was a competent mechanic.[43] Boston proved to be an excellent mechanic, competent to perform all duties of the job, and was still employed by Respondent in that capacity at the date of the hearing.[44]

(Footnote 42 continued----)

a shop steward and therefore his entire testimony is suspect. I reserved my ruling on the question of admissibility until this decision. Of course the declaration is hearsay and is inadmissible under the California Evidence Code. A deposition is the proper manner to secure testimony of out of state witnesses. Neither the NLRB nor the ALRB allow such declarations or affidavits to be used for evidentiary purposes. Accordingly, I reject the UFW's offer of Terry A. Watterman, Sr.'s declaration into evidence.

43. Boston went to work as a Class II mechanic at a weekly rate of $346.15.

44. General Counsel alleged in Paragraph 29 of his Fourth Amended Consolidated Complaint that since September 30, 1981, Respondent attempted to undermine the certified bargaining representative status of the UFW by collecting employee signatures on a petition in a coercive manner, for the purpose of avoiding its bargaining obligation with the UFW and its obligations under the existing collective bargaining agreement with the UFW. However, General Counsel has failed to present any substantial evidence that Respondent through its supervisors or agents collected employee signatures on the strike petition. I find that it was the employees acting on their own, who secured the signatures. Furthermore, General Counsel failed to present any evidence that any coercive means were utilized in the collecting of the signatures. Accordingly, I recommend that the aforementioned allegation be dismissed.

B. Analysis and Conclusion

The basic issue in this matter is whether Respondent's conduct, i.e., inviting to the employees to come see him about their dissatisfaction with the UFW, referring them to the WGA law firm, and arranging for them to receive legal services on a pro bono basis, constitutes illegal interference with, restraint or coercion of employees in respect to the decertification election. I conclude that Respondent's conduct constituted unlawful interference, by instigation and assistance and I find ample evidence to support that conclusion.45/

Before Peter Solomon contacted his attorney about legal representation for his employees, none of them had mentioned to him anything about decertifying or otherwise getting rid of the UFW. Five to seven of them, on an individual basis, had told Solomon and Sidhu merely that they wanted more information about the UFW and the imminent collective bargaining agreement. Solomon had replied to each one who had queried him that he could not provide such information but the UFW would do so. Solomon did not suggest that they contact the UFW, nor did he notify the UFW that some of the employees wanted information about the Union and the anticipated contract.46/

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45. My findings of fact are based on the testimony of witnesses called by Respondent and adverse witnesses called by General Counsel including Peter Solomon's testimony as Respondent's witness and as an adverse one.

46. I do not suggest the Peter Solomon had a duty to so inform his employees but merely mention these facts to put Solomon's conduct in the proper context.

Shortly thereafter Solomon had his attorney Slovak contact the WGA law firm. Slovak reported to the firm them that some employees of Respondent wanted to decertify the Union (actually the employees had not yet decided to do so) and secured an agreement from the firm to represent the employees on a pro bono basis in a decertifiation proceeding.

The very next day, Peter Solomon, with the knowledge that the WGA attorneys were willing to represent his employees in a decertification effort,[47/] began to make his rounds at the ranch. He advised James Boston the first employee he encountered, who asked him about the UFW, to bring the other dissatisfied employees in a group to his offices to receive the name of someone who could answer their questions. Up to that point, the employees had not acted in unison; it was Solomon who suggested the concerted action. Boston followed Solomon's suggestion and two hours later he and approximately 17 other employees came to assemble in Solomon's offices.

Solomon could have responded to the employees' inqueries about the UFW and the new collective bargaining contract in various ways. He could have suggested that they contact the UFW (the members of which, who as far as Solomon knew, had not yet ratified

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47. I infer from Solomon's testimony and demeanor on the stand, that he invariably made sure that attorney Slovak kept him apprised of all events as they transpired. In fact, Slovak testified his client, Peter Solomon, and not Slovak made the decisions. Consequently, it is logical to assume that when Slovak told Solomon that the WGA law firm had given permission for their name and number to be give to the employees, he also informed him that the firm was willing to represent Respondent's dissident employees on a pro bono basis.

the contract)[48] or that they obtain the services of an attorney versed in labor law (but not one previously contacted by or one whose services were arranged for by Respondent) or that they contact the the ALRB. Rather, he referred them to the WGA law firm, which had been erroneously advised by Slovak that Respondent's employees had already decided to seek decertification of the UFW and which had expressed its agreement to counsel the employees gratis during the entire decertification campaign. Such activity goes far beyond such permissible conduct as explaining to employees about representation proceedings and/or their right to file a decertification petition and/or the names of persons or agencies to contact, which are merely ministerial acts and are not violative of the Act.[49]

The employees followed Solomon's suggestion, and contacted the law firm, and after Boston explained the situation to attorney Gega of that law firm the latter immediately began to instruct Boston about the procedural steps to initiate the decertification process.

In summary, Respondent, realizing that the dissatisfaction of a few individual employees might not reach the stage of an organized decertification effort decided to coordinate and direct the dissatisfaction toward a formal decertification proceeding. Respondent supplied the method and means by suggesting that Boston

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48. The UFW held a meeting that night (September 11) and the employees ratified the contract.

49. In Movie Star (1963) 145 NLRB 319 [54 LRRM 1387[the NLRB indicated that the test is whether the Respondent's conduct constitutes more than a mere ministerial act to employees seeking to withdraw from a union.

bring the dissatisfied employees, as a group, to his office. Once the group was before him, Solomon referred them to the law firm which he knew had already agreed to represent them in decertification proceedings, and on a pro bono basis.

It is noted that the WGA law firm is a part of a grower association and generally represents agricultural growers rather than agricultural employees or labor organizations. Understandably, its commitment is to the interests of its grower clients rather than to farm workers. Respondent was aware of the nature of the organization and its commitment.50/ By referring its employees to such a law firm, Respondent gained the added assurance that there existed a high probability that the law firm would advise, encourage and assist its employees to take the decertification route.

In Sperry Gyroscope (1962) 136 NLRB 294, 49 LRRM 1776, a case in which the facts were similar to those in the instant matter, the NLRB found that the employer had instigated the decertification movement and set the election aside. The NLRB determined that the employer had interfered with its employees' Section 7 rights by the acts of an employee (Werst) who played a major role in the organization and formation of a decertification campaign, which occurred after he followed management's suggestions and took the initial steps of contacting like-minded colleagues and consulting an attorney.

The facts herein are analogous since Solomon asked Boston

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50. Slovak's testimony demonstrated that he knew that the WGA was a large scale farmers' organization, with extensive financial resources.

to assemble like-minded colleagues to visit Solomon in a group in order to obtain the name of a "person" whom they could consult. The Trial Examiner in Sperry Gyroscope commented that it was the employer, through its supervisors, who planted in Werst's mind the desire to take action and the initial steps which would point him in the direction of decertification. However, in the instant case, Respondent went one step further. Besides suggesting the initial steps of assembling the dissatisfied employees and pointing them in the right direction by suggesting that that contact a lawyer, Respondent referred them to a pre-selected law firm which due to attorney Thomas Slovak's statements mistakenly believed that Respondent's employees had already decided on decertification, and had agreed to represent them on a pro bono basis. So Respondent herein not only pointed the employees in the direction it wished them to go as the employer had done in Sperry Gyroscope, it made sure the employees would stay on course toward the ultimate target of a decertification election.

It could be argued that even if Solomon had not steered the employees to the law firm which advised them to petition for decertification, they would have done so eventually. In Sperry Gyroscope, the Trial Examiner stated, "I see no purpose in speculating whether or not Werst would have ultimately taken the action he did, even if the employer's representatives had not conducted themselves as they did. There is a sufficiently clear relationship between their conduct and the ensuing actions of Werst to infer that the connection was causal not casual."

Under the facts of this case, a conclusion can also be made

that Respondent illegally interfered with employees' section 1152 rights by assisting them in their decertification campaign. In Abatti Farms, Inc. 7 ALRB No. 36 (1981) the Board found that the employer had not instigated the decertification petition because the evidence fell short of establishing that Respondent implanted the idea of decertification in the minds of the Petitioners[51] but it did find that there was ample evidence of Respondent's unlawful assistance to the employees in their decertification endeavors.

One of the acts of assistance that the Board found to be unlawful in Abatti was the employer's making arrangments for its employees to be represented by counsel. The Board stated, "The evidence in this case shows that Respondent went well beyond merely naming or suggesting a lawyer whom Petitioners might consult, it brought Petitioners and counsel together."

In the instant case, Respondent did not merely give its employees the name of a lawyer or a law firm to the employees. Solomon, through his attorney Thomas Slovak, secured in advance the agreement of the WGA law firm to represent his employees on a pro bono basis in a decertification campaign. In the Abatti case, the employer's labor relations director drove the petitioning employee to a meeting with the chosen attorney, at which the employee and the attorney reached an agreement to have the attorney represent the employees in a decertification proceeding.

In the instant case Respondent took an even more active

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51. Of course in the instant case I have found that Respondent's conduct was tantamount to implanting the idea of decertification in the minds of the petitioners and therefore constituted unlawful instigation.

part as it secured in advance the commitment of the law firm to represent its employees on a pro bono basis and then made sure that the employees and the law firm made contact by giving the name and number of one of the firm's attorneys to the employees and by immediately alerting the law firm that a telephone call from the employees was imminent. Respondent's securing of an agreement by a law firm well versed in labor law to represent its employees gratis for a protracted period of time constituted a valuable asset for the employees in their decertification effort. If the dissident employees had selected a law firm of lesser ability or one which charged the going-rate of attorney fees, the decertification effort may very well have come to naught either due to the ineffectiveness of the law firm and/or the employees inability or unwillingness to pay high legal fees.

Respondent's conduct to assure that its employees would be represented by the WGA law firm, and on a pro bono basis, clearly goes beyond a ministerial act and, I find, constitutes illegal interference and assistance. Consequently I conclude that Respondent illegally assisted the decertifying employees and thus interfered with their section 1153 rights and thereby violated section 1153(a) of the Act.

With respect to my conclusion that Respondent instigated and assisted the employees' decertification effort in this case, it must be kept in mind that decertification is a remedy exclusively for employees. As the NLRB stated in I-Knife River (1950) 91 NLRB 176 [26 LRRM 1465]and Wood Parts (1952) 101 NLRB 445 [31 LRRM 1090], "The Board cannot as a matter of policy permit an employer to do

indirectly, through instigation and fostering a decertification petition that which we would not permit him to do directly."

Respondent's illegal instigation and assistance of the employess' decertification petition together with it's discriminatory lay off and delay in rehiring Santiago Cano and its attempt to discredit the UFW and the contract by forcing Jorge Sanchez and Jesus Casteneda to sign rental agreements for higher amounts already determined to be violations, supra, of the Act clearly calls for dismissing the Petition for Decertification as the appropriate remedy. Accordingly, I recommend that the Petition for Decertification be dismissed.

There are other factors in the record herein which, although they do not constitute grounds to dismiss the Petition, demonstrate the Respondent's attitude toward the UFW and the decertification movement and which are helpful in evaluating the more essential events.

The most important of these factors was the different attitudes Respondent exhibited toward the pro-UFW employees who planned the July 27 strike and the anti-UFW employees who carried out the October 1-2 strike. In the first instance, Respondent went into action immediately and set up a system of hiring replacements and discharging, evicting and preparing final checks for all striking employees. In the second instance, Respondent took no action to neutralize the effect of the strike. It made no plans for hiring replacements, did not discipline the strikers in any way and agreed to all their demands. Furthermore, its supervisors and foremen were instrumental in having the maximum number of employees

(e.g. irrigators) at the picketing site, and in closing down the operation by permitting employees to lock the gas tanks without a reprimand, i.e. foremen Victor Cano and Guillermo Perez.

Another factor was Respondent's rapid repudiation of the collective bargaining contract and its withdrawal of recognition from the UFW. A third factor was 10¢ per hour wage increase which Respondent granted three days after the second strike began. Despite Respondent's explanation that 10¢ was the difference between the cost of its medical plan and the UFW's the effect was to demonstrate to the employees that they would earn a higher wage without a UFW contract. Moreover, Respondent accentuated this effect by simultaneously terminating automatic deduction of union dues (which had been in effect only 3 weeks) from its employees pay checks.

General Counsel has presented additional theories upon which to prove that Respondent illegally instigated and/or assisted the employees' decertification movement. However, I conclude that they fall short of constituting sufficient grounds to set aside the decertification election.

General Counsel contends that Respondent purposely hired James Boston to organize and lead the decertification movement. However, General Counsel failed to present any proof that Boston harbored any union animus before he was hired by Respondent, or that he had previously participated in any anti-union busting activities. There is no evidence in the record that any of Respondent's supervisors or agents ever discussed anything about unions before hiring Boston. Moreover, there is no evidence that Boston received

everything being done by employees with regard to the Petition to Decertify was with Respondent's approval.

There may be some merit in General Counsel's arguments. Even assuming General Counsel's assertions as to facts are correct,[53/] I find that under NLRB precedent more is needed before a finding can be made that the circulation of a decertification petition with the knowledge and/or approval of the employer constitutes an unlawful interference with employees' statutory rights. In NLRB cases in which such a finding has been made, the usual circumstances include employees gathering signatures of company time in the presence of members of management who appear to approve such activity at least tacitly.[54/] Employees circulating a petition to decertify on company property on their own time with no active or passive supervisorial involvement has consistently been insufficient grounds for such a finding in NLRB cases. In the instant case, more management involvement is required than just the fact that Peter Solomon passed by the September 15 assemblage of employees and then left the site immediately when told to do so by the Petitioner's attorney Sarah Wolfe.

General Counsel also contends that Respondent hired eight new employees including Boston in August and early September. General Counsel argues that Respondent knew that they would be

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53. Every one of the assertions of fact are true with the exception of whether the petition was signed during work hours. Some employees might have done so but there is not direct evidence to that effect.

54. See Snyder Tank Corp. (1969) 177 NLRB 724, [71 LRRM 1615], River Tops Inc. (1966) 160 NLRB 58 [62 LRRM 1511], Southeast Ohio Egg Producers (1956) 116 NLRB 1076 [38 LRRM 1406].

any special treatment from Respondent.

General Counsel argues that James Boston received a salary higher than his ability as a mechanic warranted and therefore an inference should be drawn that the extra money was to compensate him for his efforts in the decertification campaign. I disagree since I find that Boston's remuneration was commensurate with his abilities. Respondent classified both him and Gordon Hofer as Class II mechanics and compensated them accordingly. The record evidence indicates that the Class II classification was appropriate for the two mechanics taking into account the high caliber of mechanical work performed by them at Respondent's ranch over an extended period of time.

General Counsel contends that the employees signed the Petition of Decertification because they had reason to believe that the employer was strongly desirous of getting rid of the UFW. General Counsel points out that the reasons were as follows: Respondent recommended the WGA law firm;[52/] the employees learned from Sarah Wolfe that the WGA law firm generally represented growers (although not Respondent) rather than farm workers; Respondent permitted the first petition to be circulated on its premises on company time; Respondent permitted the meeting for signing the second petition to be held on its premises (although after work hours), during the course of which Peter Solomon passed by and exchanged words with Sarah Wolfe. According to General Counsel, the clear message of Respondent's conduct was that everything being done

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52. Respondent's recommendation in this regard has already been found to be illegal assistance.

faithful to him because each of the employees hired had some previous or current connection with Respondent and that Respondent therefore was aware of their loyalties and affiliations. Other than showing that Baudelio Sanchez was a relative of foreman Baldomar Orduno, Josie Espinoza was the wife of foreman Abraham Espinoza and that Fortunato Palomares had previously worked for Respondent, General Counsel failed to present any evidence to indicate how Respondent became aware of these new employees' "loyalties and affiliations." Clearly there is insufficient evidence with record to support this allegation.

The UFW argues that Respondent was responsible for the activities of Nick Sidhu, David Nicolson, Josie Espinoza and Heliodoro Garcia in the decertification movement as each of these employees was a supervisor or a relative of a supervisor.

As to Sidhu, Nicolson and Espinoza, who were relativies of Respondent's supervisors, I find that their statements, acts and conduct are not attributable to Respondent since there is no record evidence that any of them were acting as agent or supervisor for management. In the cases cited by the UFW and also in the other cases I researched,[54a/] more is required than merely a family relationship with a supervisor or foreman to convert a regular employee into an agent of management, e.g. additional tasks such as relaying orders from management to the employees.

As to Heliodoro Garcia, I find that he is a leadman as he had no authority to hire, or fire, or discipline etc. employees. He relays orders from the foremen to employees, shows them where to

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54a. F.M. Broadcasting Corp. (1974) 211 NLRB 560 [87 LRRM 1057].

work, transports them to worksites, provides them with water, etc.

Nevertheless, General Counsel argues that since Garcia was a leadman Respondent's employees looked upon him as a member of management and therefore under the criteria in the Vista Verde case, Respondent is bound by his conduct.

The fact that an individual functions as a leadmen or leadwomen i.e. exercises minor or routine authority over other employees, does not make him or her an agent or supervisor under the Act. The Board so decided in Dairy Fresh Co. (1976) 2 ALRB No. 55, wherein it adopted the ruling in Doctor's Hospital of Modesto, Inc. (9th Cir. 1973) 489 F.2d 772 (85 LRRM 2228) to the effect that: "The leadman or straw boss may give minor orders or directives or supervise the work of others, but he is not necessarily a part of management and a 'supervisor' under the Act."

Now to the argument that under Vista Verde Farms case, 29 Cal.3d 307, 172 Cal.Rptr. 720, Respondent would be responsible for Helidorio Garcia's statements. The Vista Verde court ascribed liability to the employer for the statements of a labor contractor even though there was no indication that the labor contractor's acts were directed, authorized or expressly ratified by the employer. In the Vista Verde case, the court established liability based on the contractor's continuation of the employer's policies which had been clearly demonstrated to the employees. Moreover, the statements were made in the presence of the employer's foreman who was in a position to stop, or at least disavow or disclaim, the contractor's conduct but he failed to do either. There is no indication in the instant case that the employer's policy to assist in the decertification campaign had been amply demonstrated to the

employees or that any foreman or any other member of management was present when Heliodoro Garcia circulated the Petition to Decertify among his coemployees.

In any event, under ALRA precedents, the employer is always liable for the unlawful acts and conduct of its labor contractor(s), just as it is for the unlawful acts and conduct of its supervisors. But Heliodoro Garcia is neither a labor contractor nor a supervisor, and his agency has not been established on any other basis.

IX. Respondent Allegedly Interrogated and Threatened Employees Regarding Their Immigration Status so as to Discourage Union Activities

A. Facts

On or about September 11, 1981 Respondent's employees Arturo Perez and Carlos Villareal were involved in a minor vehicle accident on Respondent's premises. Arturo Perez, driving his own automobile, and Carlos Villareal, driving a company truck, grazed each other's vehicle as they passed each other traveling in opposite directions. The two employees went to talk to foreman Baldomar Orduno about whose fault it was, etc.[55/] Each driver explained his version of the accident to Orduno and claimed the other one was at fault. Jose Garcia suggested that they call in the police. Villareal agreed but Perez was reluctant. Orduno pointed out to Perez that if the police were called in, they would ask for his "papers"[56/] and advised him to let the one who hit you pay you.

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55. Foreman Jose Garcia and Leadman Graziano Rodriguez happened to be with Orduno at the time and participated in the discussion.

56. "Papers" in Spanish in the context of this sentence means immigration documents according to the interpreter.

Perez then made the final decision against calling the police and none was called.

On or about the first week of September, Graziano Rodriguez testified, that Helidoro Garcia told a group of employees that he personally would be responsible for calling the Border Patrol in respect to Respondent's illegal workers and that Jorge Sanchez was very close to the union. General Counsel claims that Heliodoro Garcia is a foreman and Respondent is therefore bound by that statement. Respondent contends that Garcia is not a foreman but only a leadman and therefore he is not bound by these statements.

Heliodoro Garcia is an assistant to Baldomar Orduno and frequently directs a group of workers in cleaning up weeds or debris, fixing pipes, or performing other odd jobs. He gives instructions to the workers about their duties but does not have any authority to hire or fire, discipline, or effect any other personnel changes which constitute statutory supervisory authority.

B. Analysis and Conclusion

General Counsel contends that in the context of the surrounding circumstances, Baldomar Orduno's comment to Arturo Perez that he did not possess immigration papers was coercive.

I fail to detect anything coercive about Orduno's remark. First of all, Orduno did not seek out Perez. It was the latter who along with fellow employee Carlos Villareal sought out Orduno for advice on a solution to the vehicle accident. Secondly, the conversation concerned only about the vehicle accident and the advisability of calling the police. These constitute the surrounding circumstances and in that context there was nothing

coercive about Orduno's remarks about the "papers". Rather than a threat, it was advice to Perez, strictly secondary to the main discussion about the accident, to think twice about calling the police because the latter might ask Perez for his immigration papers and of course the implication was that if he had none he could be turned over to the Border Patrol and deported. In respect to this allegation I find that General Counsel has not proven a prima facie case and I recommend that that allegation in the complaint be dismissed.

General Counsel contends that Heliodoro Garcia remarked to employees, including Jorge Sanchez and Graziano Rodriguez, that he Garcia would be responsible for calling the Border Patrol in respect to Respondent's illegal alien workers and as Garcia is a supervisor, Respondent is responsible for said "threat". Respondent points out that Garcia in his testimony denied saying anything about aliens and further contends that Garcia is not a supervisor as defined by section 1140.4(j) of the Act and therefore Respondent is not liable for his acts or statements.

I have found that Heliodoro Garcia is not a foreman but a leadman and has no statutory supervisory authority over other employees. He relays orders from the foremen to the employees, shows them where to work, and transports them to the work site on the ranch in his pickup truck.

I have already determined with respect to another allegation in the instant decision that Heliodoro Garcia is not a supervisor under the Act and that Respondent is not liable for his acts and statements even according to Vista Verde criteria. See

discussion, Part VIII, page ___. To complete the discussion in respect to the Vista Verde criteria as applied in this incident when Heliodoro Garcia spoke of calling the INS, there was no supervisor present as in the Vista Verde case nor was there any evidence in the instant case that Respondent had a policy of reporting any of its employees to the INS.[57/]

Accordingly, General Counsel has failed to prove these allegations of the complaint; I recommend that they be dismissed.

X. Respondent Allegedly Engaged in Surveillance of Employees who Attended a UFW Meeting

A. Facts

At between 7:30 and 8:00 p.m. on September 17, 1981, Baldomar Orduno drove by the UFW's Coachella union hall just as a union meeting was breaking up. As he passed in front of the entrance to the hall he glanced over and saw Graziano Rodriguez, Edwardo Carmona and the latter's wife. According to Orduno's testimony there were more people exiting the hall but he did not pay much attention to who they were.

Orduno testified he was driving a company pickup truck with his wife and daughter as passengers in the front seat in a westerly direction on the main commercial street of Coachells, en route to the A & D Market on the same thoroughfare.[58/] He denied that he ever notified the INS about illegal aliens among Respondent's

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57. There was some evidence that there were INS agents near the UFW headquarters in Coachella on September 17 and that they were looking for a particular employee, but General Counsel failed to prove any connection between that incident and Respondent.

58. Orduno's testimony in this respect was corroborated by credible testimony of his wife, Ann Orduno.

employees or that he ever threatened to do so. At about the same time Orduno passed by the union hall the Border Patrol apprehended a farmworker as he left the union hall.

B. Analysis and Conclusion

General Counsel contends that Orduno drove by the UFW headquarters in down town Coachella on the evening of September 17, in order to engage in surveillance of Respondent's employees who were attending the UFW meeting. However, Orduno credibly testified that he was merely en route to the grocery store to buy food for his family. The fact that he was accompanied by his wife and little daughter lends credence to his explanation. General Counsel presented evidence that indicated that Orduno glanced in the direction of the exiting employees and that he was traveling at only ten miles per hour. However, this slow speed is easily explained by the fact that the street Orduno was driving on is the main commercial street in Coachella with a speed limit that restricts vehicle traffic to a slow pace. So the only fact left supporting General Counsel's thesis is Orduno's glance to the right at the employees who were leaving the meeting. I believe that more than that is needed to constitute illegal surveillance under the Act. Accordingly, I recommend that that allegation be dismissed.

XI. Respondent Allegedly Laid Off Jorge Sanchez Because of his Support of the UFW

A. Facts

Jorge Sanchez went to work for Respondent in October 1980 as a cowboy. Sanchez was an experienced tractor driver having worked as such for 9 years in Mexico. He had learned about the cowboy job by writing Baldomar Orduno's wife, a relative of his,

from Mexico. He had informed Baldomar Orduno that he had had experience as a cowboy and a tractor driver but preferred to work in the latter speciality.

Respondent laid off Sanchez on September 11, 1981. He had attended UFW meetings at Natividad Callero's house and had also attended negotiations meetings during the preceding summer. He had seen Jack Kivi, Respondent's controller, at two of the meetings. However, he did not actually join the UFW until the day he was laid off.

In July 1981 Sanchez and his fellow cowboy Jesus Castaneda asked Peter Solomon to change their method of pay from a salary basis to an hourly one. Solomon rejected their request but Sanchez and Castaneda insisted with such determination that Solomon told them that if they did not want to work on a salary basis they were fired. Sanchez and Castaneda went to the UFW union hall in Coachella and consulted with the UFW agent Saul Martinez. Martinez telephoned Respondent's offices and explained that Sanchez and Castaneda thought they had been fired but wanted to continue to work for Respondent and were interested in reaching a solution. The two cowboys returned to their company housing and the next morning a foreman informed them they would continue to work at Respondent's as cowboys for the same pay but on an hourly basis.

That same day Sanchez and Castaneda returned to work at Respondent's and began to receive their compensation on an hourly basis.

On or about July 25 John Sidhu made a comment to Sanchez and Castaneda that if the employees continued with the union

movement that he did not know what would happen but he didn't want to go here and there with his backpack.[59/]

On September 11 Baldomar Orduno came to where Sanchez and Castaneda were working and asked them to sign rental agreements and after a discussion both of them signed. Later that day while Sanchez went in Respondent's office in the course of his duties, Mal Rice, Respondent's general manager, utilizing Blas Gonzalez as an interpreter, informed Sanchez that this was his last day of work and that he should not become angry because there was not sufficient work for two cowboys. Sanchez returned at approximately 6 or 6:30 p.m. to pick up his final check. Jack Kivi and John Sidhu were present. Kivi commented to Sanchez that he should not become angry adding that he could not help him because the Union was in between them and the Union did not want any employee transferred to a lower position with lower wages. Kivi then asked how he was going to pay the rent and stated that the rent would be raised from $200 to $250 a month because Sanchez would no longer be working there. Kivi concluded by telling Sanchez that he could come back on Monday to work something out on the rent. Since Sanchez had no way of paying the $250 a month rent without a job he moved out on Sunday, September 13.

Sanchez testified that in March and April of 1981 there

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59. Sidhu denied making this statement about the backpack. However, I credit Sanchez' testimony in this respect since Sanchez was an exceptionally honest and forthright witness. Furthermore, this remark by Sidhu is consistent with his attitude that the UFW constituted a detriment to the efficient management of the ranch. This attitude was not manifested by any exact words during his testimony but by his demeanor whenever he mentioned the UFW.

were 3,000 to 3,500 head of cattle on the ranch and that as Respondent had shipped out many cattle and had not brought in any new stock so the stock was down to 1,500 head at the time of his layoff.

B. Analysis and Conclusion

General Counsel contends that Respondent laid off Jorge Sanchez because he supported the UFW and that Respondent, by and through Jack Kivi, made coercive statements to employee Jorge Sanchez that he had to be laid off because Respondent had signed a contract with the union.

I find that Respondent laid Jorge Sanchez off because of a legitimate business reason.

It is clear from the record that Jorge Sanchez was active in the union, having attended UFW meetings, and had sought the UFW's assistance in changing his pay to an hourly basis during the summer before his lay off and that Respondent had knowledge of such union activities. However these facts and any inference of unlawful basis for his subsequent layoff that could be raised therefrom are completely overcome by Respondent's legitimate reason for laying off Sanchez at that time it did so. Sanchez' cowboy duties involved the care and feeding of the cattle on the ranch. Sanchez himself admitted that the number of cattle had diminished from between 3000 and 3500 head in March and April to 1,500 at the time of his layoff in September and that the other cowboy, Jesus Castaneda, had more seniority than he. So with less than half of the previous number of cattle, only one cowboy was needed, and Respondent laid off the one with the least seniority.

General Counsel argues that Respondent could have transferred Sanchez to another job at the ranch and that Respondent had hired 8 new employees in August, among them two tractor drivers. General Counsel points out that Respondent could have placed Sanchez in one of those jobs, especially in a tractor driver job, since he had 9 years experience in that work and Respondent had knowledge of it.

General Counsel is entering into the area of speculation when he suggests that because Respondent could have transferred Sanchez to another job, the only reason he didn't do so was because of Sanchez' union activities.

There could have been many other reasons for not doing so. The first one that suggests itself is that Respondent did not lay Sanchez off until two to three weeks after the new employees had been hired in August. Furthermore, General Counsel has not presented proof that there was a general practice on Respondent's part to transfer employees to other openings rather than lay them off. In other words, General Counsel failed to prove Respondent had a policy of company-wide transfer and bumping in preference to layoffs.

Another item that weakens General Counsel's case and that is that Sanchez was not very active in the union. Although he and Castaneda went to the UFW for assistance in their successful quest for a change to hourly pay, he was not an activist on the same level as Natividad Calleros or Santiago Cano and in fact did not become a union member until the day of his layoff. I find that General Counsel has failed to prove a causal connection between the minimal

union activities of Sanchez and his subsequent layoff by Respondent.

However, I find the remark by Jack Kivi to Sanchez that he would like to transfer him to another job but under the terms of the collective bargaining contract with the UFW he was not permitted to do so to be additional proof of Respondent's intent to discredit the UFW in the eyes of the employees. Although the contract might be arguably interpreted to that effect, I believe Jack Kivi made the remark to increase the employee dissatisfaction against the UFW and the new contract. Moreover, there is no record evidence that the transfer clause in the new contract was the actual reason why Respondent did not transfer Sanchez into another job. The real reason appears to have been that there was at the time no other work available, and that Respondent anticipated laying off employees the following month because of a managerial decision not to plant certain crops and as a result there would be no anticipated openings to which Respondent could transfer Sanchez. However, this conduct by Kivi does not constitute an unfair labor practice since it does not interfere with, threaten or coerce Sanchez in the exercise of his rights under section 1152 of the Act. Accordingly, I recommend that the allegation thereof be dismissed. This conduct may constitute a factor to be considered in an objections case to set aside an election but since I have already decided to dismiss the Petition for Decertification, I will not have to make any determination in the elections case herein. However, I find that this remark by Kivi to discredit the UFW and the contract is another example to the tactics used by Respondent in its overall strategy to rid itself of the UFW through setting the stage for a decertification movement by increasing its employees'

dissatisfaction with the UFW.

XII. Respondent Allegedly Increased the Rent to Employees Sanchez and Castaneda because of Their Support for the UFW

A. Facts

On September 11 Respondent sent Baldomar Orduno to confer with Jorge Sanchez and Jesus Castaneda, Respondent's two cowboys, about signing new leases for company housing in which they and their families were residing. Sanchez' rent had been $175 a month and Castaneda's $200 which sums were deducted from their checks monthly. The leases which called for monthly rents to $200 and $300 respectively, had been drafted but not signed by the employees, at the time they were hired. Sanchez asked Orduno why the leases included rents higher than what the employees had been paying, and Orduno answered he did not know. Sanchez and Castaneda testified that Orduno commented that the higher figures in the leases reflected a raise in the rent.[60/] Sanchez asked Orduno whether or not he could leave the leases with them for a day so they could read them over and then decide about signing them. Orduno answered that if they did not sign them immediately they could look for cheaper housing. Sanchez and Castaneda signed the two leases forthwith.[61/]

Respondent's explanation was that the signing of the leases was a mere formality and its witnesses testified to the following: When the two cowboys originally went to work for Respondent, Solomon

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60. Orduno testified that he told the two cowboys, "I don't believe rents to be raised."

61. I credit Jorge Sanchez' description of this event for the same reasons as enumerated in footnote 59 and because he readily admitted facts adverse to his claims, i.e., the fact the amount of cattle had greatly diminished at the time of his layoff.

informed them that they were to pay rents of $200 and $300 a month respectively. However, for different reasons, he lowered their rents to $175 and $200 a month each. After Respondented signed the collective bargaining contract, Kivi decided to update everything so he and/or the office staff went over various documents in their files and learned that neither Sanchez nor Castaneda had signed their leases when they were hired. So office employee Bonnie Nicolson gave them to Orduno without realizing that the leases contained the original high rental amounts which the employees had not been required to pay. Orduno took the leases to the cowboys for signatures without realizing that the two sums written in the leases were not the current amounts the employees were being charged. Respondent never deducted the higher rent from Castaneda's checks, either before or after he was required to sign the lease. Of course, when Sanchez was laid off he moved out so his rental agreement came to an end, without his ever having paid the rental figure set forth in his lease.

B. Analysis and Conclusion

General Counsel contends that Respondent increased the rent to employees Jorge Sanchez and Jesus Castaneda living in company housing because of their union support.

Respondent presented evidence at the hearing to indicate that it was merely putting employee documents in order because a union contract had been signed and therefore all personnel records had to be made current. Office personnel had discovered that Sanchez and Castaneda had not signed their leases and Orduno was sent out to secure the signatures.

Respondent's explanation of the events leading up to September 11 is logical and credible but its version of what happened on September 11 appears to be highly unlikely unless Respondent had an ulterior motive in forcing Sanchez and Castaneda to sign the leases that day. If Respondent had no ulterior motive, it is likely that Baldomar Orduno would have acted in a different manner.

Orduno sought out the two cowboys while they were working and presented them with the lease documents containing substantially higher figures for their rent than they had been paying. Understandably, they protested and demanded an explanation. Orduno not only failed to provide an explanation but expressed his unwillingness to do so. Orduno could have easily solved the employees' problem by returning to the office and inquiring about answers for their questions. But he acted in an arbitrary manner by demanding that Sanchez and Castaneda sign the leases immediately or to look for cheaper new housing.[62/] The only likely explanation for Orduno to force the two cowboys to sign the leases was to make them believe at least for the time being, that Respondent had raised the rents on their company housing as part of putting the new collective bargaining agreement into effect. A probably effect of such conduct would be to make the two employees, and other employees who heard

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62. I do not believe it is likely Orduno was acting on his own in threatening to evict Sanchez and Castaneda from the company housing because they asked for time to study the lease and consider whether it would be advantageous for them to continue to live on the ranch with the higher rent. I do not see any reason for Orduno not to comply with their reasonable request unless he had received orders to be adamant about securing the signatures on the lease agreements immediately.

about the episode disenchanted with the UFW so they would sign a petition to decertify the UFW and vote yes in the ensuing election.[63]

This explanation for Respondent's conduct coincides with Kivi's remark which placed the blame for his inability to transfer Sanchez to another job on the new UFW contract, rather than simply stating the fact that there were no other jobs open at the time.

I find that Respondent in effect threatened Sanchez and Castaneda with a rent increase as a means of discouraging them from supporting the Union in the imminent decertification election, and thereby violated section 1153(a) of the Act.

I find no violation of section 1153(c) as no increase was ever implemented.

XIII. Respondent Allegedly Constructively Discharged Antonio Villareal Because of his Support of the UFW

A. Facts

Antonio Villareal went to work on August 2 or 3, 1981, as an irrigator for Respondent. He had originally applied for work as a mechanic but Guillermo Perez had told him the work was very slow and to apply for a job as an irrigator with supervisor Jose Garcia. Villareal conferred with Garcia about such a job and a few days later Garcia hired him as an irrigator. During the next few weeks Villareal worked as an irrigator and, in connection with his duties as such he welded some irrigation pipes and repaired a pump.

On September 6, while Villareal was working in irrigation,

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63. Respondent on September 8 and/or 9 had already obtained the agreement from the WGA law firm to represent its employees in a decertification election.

he noticed that the company pickup truck which he was driving was low on gas and he went to the main shop area for gasoline. John Sidhu was nearby and gave Villareal a key to the gasoline pumps. The brake pedal of the pickup was malfunctioning so, at Villareal's request, Sidhu repaired it. As Villareal was about to leave Sidhu asked him whether he was a member of the union and added that if the UFW gets in "we will all go to pot." Villareal responded that he had to tend to his duties and left.

Villareal requested Tony Lopez, his foreman, to transfer him to irrigating work on the night shift because his back was bothering him and there was little or no lifting work to do on the night shift. Lopez complied and on Wednesday, September 9, Villareal began work at 5:45 p.m.[64/] A little while later, Villareal dropped by Lopez' trailer home, which is on Respondent's property, and Lopez told him that all the employees had gone to a union meeting. However Lopez failed to tell Villareal the location or the subject matter of the meeting. Villareal learned of the location and attended the Union meeting which was held at the UFW hall in downtown Coachella, and returned to the ranch at 8 or 9:00 p.m., and then went and talked with Lopez at the latter's trailer. Lopez asked him how many people had attended the union meeting and whether they had signed the contract.[65/] Villareal responded that

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64. Four irrigators work the day shift while only one works the night shift. The basis work is performed during the day and the night work is mainly a caretaking operation.

65. Lopez denied asking these questions.

30 or 32 employees had attended, and added that he himself would be for or against the union, depending on which would be a better course for him. Villareal told Lopez that he had signed in favor of the union and had become a member of the medical plan. Lopez testified that at the time he talked to Villareal after the meeting he noticed an overflow of an irrigation ditch near his trailer. About two hours later, he noticed the overflow had become much more serious. Consequently, he went to the field to check it but by the time he reached the dike the overflow had stopped. Villareal testified that when he left for the Union meeting he noticed a ditch about to overflow but since Lopez was able to see it also, he assumed that Lopez would take care of it. Upon his return to Lopez' trailer after the meeting, he noticed the overflow in the same ditch and fixed it immediately.

The next morning Villareal went to Lopez' trailer and the latter reprimanded him for not adequately taking care of the overflow adequately the night before. Villareal testified that the reason he had problems with overflows was that Lopez was overworking him and he did not have time to attend to all the irrigation ditches. At approximately 6:00 a.m. on the morning of September 11 Villareal's pickup truck sank into a gopher hole on one of the ranch roads so Villareal could not finish up his irrigation duties. Some fellow employees who came to work at 7:00 a.m. were able to push the truck out of the hole. Later that morning, Lopez reprimanded Villareal for not coming directly to his trailer which was only one half mile distant, to seek his assistance in moving the truck from the hole so that Villareal could finish his duties that morning.

On the afternoon of September 11, Villareal telephoned Lopez and told him that because he had problems at home he would be late for work.[66/] Actually Villareal went to a UFW meeting where he voted to ratify the new collective bargaining contract. Villareal subsequently reported, late for work, at between 8:45 and 9:00 p.m. While he was at work, his fellow employees told his that Lopez had said he was going to pour the work on Villareal until he quit.

As Lopez had transferred Villareal back to the day shift, he reported to work on the morning of September 14. His coworkers informed him that Lopez had been critical of his work and had told them that Villareal had been sleeping on the job. This made Villareal exceedingly angry. He confronted Lopez and accused him of criticizing him behind his back. Lopez denied it and Villareal said he would bring the workers to Lopez so the latter could hear it from them directly. Lopez asked Villareal if he wanted to continue to work there and Villareal replied "Not one more moment with you." Villareal went to the office and picked up his final pay check.

Villareal did not leave Respondent's premises immediately but went and talked to foreman Victor Cano and Guillermo Perez at the shop. He told them that he had quit the irrigation job but was still interested in working for Respondent as a mechanic. The two shop foremen gave him some encouragement but soon afterwards Jose Garcia, the irrigation supervisor, arrived and told Villareal that he did not want to see him on company property. Later, Peter

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66. In his declaration Villareal stated that he had told Lopez he was going to a union meeting. On cross-examination, after his declaration was read to him, Villareal changed his testimony and said he had told Lopez he might go to the union meeting.

Solomon, seeing Villareal at the shop told him, "If you have any business here, all right, but if you don't, on your way." Villareal stayed a while longer and then left.

Villareal testified that the reason he quit was because Lopez had given him too much work and had humiliated him in front of his coworkers. Villareal admitted he was able to do all the work but he could not stop for "a second."

B. Analysis and Conclusion

General Counsel contends that in retaliation for attending the UFW meetings and voting in favor of the contract,[67] Respondent by and through Tony Lopez assigned Villareal an exceedingly heavy work load in irrigation and humiliated him in front of his fellow employees with the purpose of forcing him to quit. In other words, General Counsel argues that Respondent is guilty of a discriminatory constructive discharge of Villareal.

Villareal testified that Lopez assigned him so much irrigation work on the night shift that it was very difficult for him to attend to all his duties. Lopez testified that the practice at the ranch was to have four irrigators working during the day and only one at night. The daytime irrigators performed the basic work while the night-shift irrigator performed a caretaking task. Furthermore Villareal testified on cross-examination that he was able to perform all of his night-shift duties but had no time to stop not even for a second.

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67. Respondent knew of Villareal's union activities since Villareal kept foreman Lopez informed of his attending union meetings on September 9 and 11.

Villareal further testified that other employees told him that Tony Lopez had said that he would pour the work on Villareal until he quit. However this hearsay testimony was not admitted for the truth of the matter asserted, and General Counsel did not call any employees to testify that they heard Lopez make such statements about Villareal. Another important fact is that Villareal never complained to Lopez about the work load. The record indicates that there may have been abundant work for Villareal on the night-shift but not that Respondent overloaded him with work or that the work was onerous.

Villareal's testimony about Lopez humiliating him was not corroborated by any other witnesses, and the testimony of Villareal was admitted only with respect to his state of mind and not for the truth of the matter asserted.

Accordingly, I find that General counsel has failed to prove that Respondent gave Villareal onerous work assignments or humiliated him because of his union activities and I recommend that this allegation be dismissed.

XIV. Respondent Allegedly Refused to Recognize the UFW as the Certified Representative of its Employees and has Refused to Honor the Provisions of the Existing Collective Bargaining Agreement

A. Facts

On the morning of October 2, Peter Solomon notified the dissident employees that he was acceding to their demands and would repudiate the new collective bargaining agreement with, and withdraw its recognition of, the UFW. Respondent notified the UFW of that decision on October 6. On October 8, Respondent through its attorney, Thomas Slovak, informed the UFW by letter that Respondent

would no longer deduct employees' union dues from their payroll checks and that only access according to the ALRB regulations would be permitted, i.e., that Respondent would no longer permit the UFW access to its premises according to the more liberal access provisions of the collective bargaining agreement. On October 16, Respondent, by its controller Jack Kivi, notified Saul Martinez of the UFW by letter that Respondent would no longer recognize the seniority list or the grievance procedure in the agreement. During the entire hearing herein Peter Solomon, Respondent's co-owner and operator, in his comments as his own attorney and as a witness admitted that from October 2 on he, acting for Respondent, had repudiated both the UFW and Respondent's collective bargaining contract with the Union.

In October Respondent laid off the following irrigators:

DATE OF LAYOFF	NAME OF EMPLOYEE	SENIORITY DATE
October 4	A.R. Perez	01-19-81
October 4	Jose Macias	02-20-81
October 4	Margarito Macias	07-05-81
October 4	C.R. Villareal	08-01-81
October 4	Juan Moya	07-31-81
October 4	B.A. Moya	07-31-80
October 7	Jesus L. Romero	03-14-80
October 9	Jose Gastelum	05-04-81
October 9	Mario Gastelum	06-20-81
October 13	Pablo Robledo	12-16-80
October 17	Felipe Fernandez	03-19-81
October 17	Avel Perez	01-19-81

Meanwhile the following irrigators continued to work without any interruption: Alfredo Higuera (3-12-81), M.R. Frias (3-23-81) and A.A. Gutierrez (7-21-81).

Respondent rehired Jesus L. Romero (11-27-81), Pablo Robledo (11-29-81) and Jose Macias (12-16-81).

B. Analysis and Conclusion

As there is uncontroverted evidence that Respondent breached the collective bargaining agreement as alleged by General Counsel and Respondent by Peter Solomon's testimony during the hearing, has admitted such breach the only remaining matter is to decide whether Respondent had a right to repudiate the contract.

Respondent presents two defenses which it claims permits it to not to comply with the contract.

The first one is that with just cause Respondent had lost faith and confidence in the impartiality of the ALRB and consequently he was not obliged to continue to abide by its orders or to continue to recognize the UFW as its employees certified representative, or to comply with the collective bargaining contract it had signed with the UFW. However there exists no legal authority that would exempt an entity from abiding by the orders of a quasi-judicial body such as the NLRB or the ALRB or any other regulatory governmental agency because it has lost faith in the fairness of such an agency nor has Respondent cited any authority to that effect at the hearing or in his brief.

Respondent's second defense is that it had a good faith doubt as to whether the UFW continued to represent its employees. In Abatti Farms, Inc., 7 ALRB No. 36, the Board determined that in

light of its finding of unlawful assistance, it did not have to deal with the question whether an employer may rely on good faith doubt of majority status when a decertification petition raises a real question concerning representation, since the general rule is that there is no good faith in a doubt which "an employer has manufactured".

The Board cited Medo Photo Corp. v. N.L.R.B. (1944) 321 U.S. 678, 687 [14 LRRM 581].

> [Respondent] cannot, as justification for its refusal to bargain with the union, set up the defection of union members which it had induced by unfair labor practices, even though the result was that the union no longer had the support of the majority. It cannot thus, by its own action, disestablish the union as the bargaining representative of the employees, previously designated as such by their own free will.

The Board added that the rule set forth in the Medo Photo Corp. case applies with equal force to decertification campaigns citing another NLRB case.

> "An employer that has orchestrated" a union busting campaign cannot rely on the pendency of a decertification campaign or the loss of majority to justify its refusal to bargain. N.L.R.B. v. Maywood Plant of Grede Plastics (D.C. Cir. 1980) 628 F.2d 1, 5 [104 LRRM 2646].

Of course the "duty to bargain" encompasses the duty to honor all terms and conditions of an existing collective bargaining agreement.

So according to ALRB and NLRB precedent, Respondent's defense of a reasonable good faith doubt as to a continuing majority support of the union for its withdrawal of recognition of the UFW and its repudiation of the collective bargaining contract fails since it instigated and assisted the decertification movement, that is, "manufactured" the good faith doubt by orchestrating "a union

busting campaign" in the words used by the NLRB in the two above cited cases.

As I find that Respondent's defenses have no validity under the law, I conclude that it violated section 1153(e) of the Act by withdrawing its recognition of the UFW and refusing to bargain with it and furthermore by not complying with the terms and conditions of its collective bargaining contract with the union.

Accordingly, I shall order Respondent to make whole each of its employees for all losses of pay and other economic losses sustained as a result of Respondent's failure and refusal to honor the collective bargaining contract with the UFW and to comply with the provisions of the collective bargaining contract granting said contract retroactive effect to the effective date as set forth therein.

Furthermore, I shall order Respondent to reimburse the UFW for all membership dues it has failed to transmit to the UFW since October 2, 1981, the date it repudiated the contract.[68/]

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68. Although the Board rejected the union's request that it be compensated for dues lost as a result of the employer's unlawful refusal to bargain in Robert Hickam, 4 ALRB No. 73, the facts in the two cases are distinguishable. The Hickam case dealt with a refusal to bargain where there was no contract yet in existence. In the instant case, Respondent has breached an existing collective bargaining contract with a dues checkoff provision and in such cases the NLRB consistently orders the employer to reimburse the union for the membership dues. See Amoco Production Company v. N.L.R.B. (1977) 233 NLRB 158 [97 LRRM 13].

XV. Respondent Allegedly Laid Off Irrigators to Retaliate Against Employees who did not Support the Decertification Movement 69/

A. Facts

General Counsel contends that Respondent laid off pro-UFW irrigators to retaliate against them for supporting the UFW during the decertification campaign and to undermine the UFW's support among Respondent's employees. In October 1981, Respondent laid off 7 irrigators and one tractor driver. Respondent contends that it laid them off because of the severe reduction in irrigation work, mainly prompted by Respondent's decision not to plant wheat. General Counsel maintains that Respondent's reason for not planting wheat was to create a plausible basis for its layoff of pro-UFW employees, and that even if wheat were an authentic reason, Respondent laid off pro-UFW irrigators and kept other irrigators

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69. In Paragraph 27 of the Fourth Amended Consolidated Complaint General Counsel alleged that, beginning in September 1981, Respondent discriminatorily granted benefits and favors to those employees who cooperated with Respondent in the decertification campaign while discriminating against employees who supported the Union. It is true that after Respondent repudiated the contract with the UFW, it granted a 10-cents-an-hour raise (to compensate for its less expensive medical plan) but that raise benefited all of the employees, both pro-Union and anti-UFW. Thus, it cannot be argued that the raise favored one group over another. There was some testimony that foreman Baldomar Orduno postponed having an employee, Rodolfo Castro, sign insurance papers so the employee would believe he was not covered by insurance. However, the confusion about the signing of the papers seems to have been a result of happenstance rather than any design by Respondent. General Counsel also argues that Respondent never discharged or laid off any anti-UFW employees but did lay off pro-UFW employees. However, General Counsel failed to present any evidence thereof as anti-UFW employees ceased to work for Respondent in October and November 1981 but General Counsel presented no evidence to indicate that they quit of their own accord. Consequently there is insufficient evidence to support this allegation in respect to favoring pro-UFW employees in respect to layoff and discharges. Accordingly I recommend that this allegation be dismissed.

working out of seniority, in order to undermine the UFW's majority support.

Respondent presented evidence to show that its decision not to plant wheat in the fall of 1981 was strictly an economic one. In October, Peter Solomon, Jack Kivi, Baldomar Orduno, Mal Rice and Joe Garcia met and according to the testimony, Peter Solomon and Jack Kivi, decided, because of the low price for wheat[70/] not to plant wheat and because fewer irrigators would be needed and if no wheat were planted, some of them should be laid off.

At the beginning of October the seniority list for the irrigators was as follows:

NAME OF EMPLOYEE	SENIORITY DATE
Jesus L. Romero	03-14-80
Pablo Robledo	12-16-80
A.R. Perez	01-19-81
Jose Macia	02-20-81
Avel Perez	02-22-81
A. Higuera	03-12-81
Mario Frias	03-23-81
Felipe Fernandez	03-19-81
Jesus Gastelum	05-04-81
Margarito Macias	06-20-81
Mario Gastelum	06-20-81
A.R. Villareal	07-22-81
A.A. Gutierrez	07-28-81
B.A. Moya	07-31-81
C.R. Villareal	08-01-81
B.A. Navarro	09-08-81

The ten following named irrigators were active in the UFW. They attended anti-UFW meetings, refrained from participating in the October 1 strike, and from signing the two petitions, i.e. to decertify the UFW and to demand that Respondent withdraw its

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70. In 1980 the price of wheat was $200 a ton. In the fall of 1981 it had fallen to $125, $122, $120 a ton.

recognition of the UFW and repudiate its contract with the UFW: Pablo Robledo, Jose Macias, Margarito Macias, Jesus Gestulum, Mario Gestulum, Juan Moya, Jesus L. Romero, Felipe Fernandez, Avel Perez and Carlos Villareal. They were all laid off in October while irrigators with less seniority as to some or all of them continued to work, e.g. Alfredo Higuera, M.R. Frias and A.A. Gutierrez. However, Respondent recalled Romero on November 27, Pablo Robledo on November 19 and Jose Macias on December 16.

Jose and Margarito Macias did not join in the anti-UFW strike on October 1 and worked the entire day. The Immigration and Naturalization Service apprehended them after work and deported them to Mexico. Their father notified Jose Garcia, Respondent's irrigation supervisor, of his sons' deportation. Garcia told him he could not guarantee their jobs back but that they should come talk to them after they returned from Mexico.

On Sunday, October 3, the two brothers returned and went to talk to Garcia who informed them there was little irrigation work but perhaps there would be more within a month and that he would notify them. In late November the brothers contacted Garcia about returning to work and he replied that it was still slow but there might be work in a month. On December 16, Respondent rehired Jose Macias but not Margarito.

Margarito Macias testified that since then he has inquired about work with Garcia by means of his brother, but no longer does so because Garcia is well aware that he is interested in work as an irrigator and that when there is an opening he is sure Garcia will communicate with him through his brother, Jose.

According to Garcia's testimony, he offered Margarito work as an irrigator twice at the beginning of the year but each time Margarito had declined the offer because he has been ill. Garcia consequently had hired other irrigators but is willing to continue to offer Margarito employment as an irrigator when such openings occur.

Juan Moya worked as a tractor driver from the beginning of the year until July 31 when he and Santiago Cano were laid off. Respondent offered Moya a job as an irrigator and he accepted. As stated, supra, he was a member of the UFW and attended the UFW meetings at the union hall in Coachella. Moya did not participate in the October 1 anti-UFW strike and declined to sign the petition to decertify the UFW. On October 6, Baldomar Orduno informed him that there was no more work and that he would be laid off for a period of 4 to 5 weeks. Moya did not thereafter receive any notice of recall from Respondent. He did not contact any of the supervisorial personnel at Respondent's but kept in contact with other irrigation employees.

Felipe Fernandez began to work for Respondent as an irrigator on March 19, 1981 and began to attend UFW meetings at Coachella in May of that year. Respondent laid him off on May 16 and Fernandez asked irrigation supervisor Jose Garcia the reason for the layoff and Garcia replied that he did not know anything and that he merely received and followed orders. When Fernandez later learned from his former coworkers that Respondent had hired new employees, he filed a grievance with the UFW against the Respondent. He returned to work for Respondent at the end of

June. In July, his fellow-workers elected him secretary of the Union's Ranch Committe. He attended one of the negotiation meetings and saw some supervisors and foremen at one.

Respondent laid off Fernandez on October 12. On the next day, he protested to Baldomar Orduno and the latter replied that the layoff would only be for 10 to 15 days. Fernandez asked Orduno how seniority was being run there and Orduno replied that he didn't know anything. Fernandez chastised him and said "You should know, you're the foreman." Orduno insisted that Fernandez was next on the seniority list for layoff, but Fernandez pointed out that there were new employees who continued to work while he was on layoff. Orduno told Fernandez he would show him the seniority list but since the office was closed he should come back around 8:00 or 9:00 a.m. Fernandez and Orduno went to the office at 9:00 a.m. but Orduno did not show him the list, stating that General Manager Mal Rice had the list and wasn't there. As they left the office Fernandez told Orduno that he was very angry and Orduno replied, "Don't be angry, I'll call you." The next Tuesday, Fernandez went to Peter Solomon's office and tried to talk to him about his job but the receptionist rejected his request and explained that Peter Solomon was very busy. Later Fernandez protested to Jose Garcia and said he knew new people were working there. Garcia replied that he would recall him but Fernandez did not thereafter receive such a recall notice.

Avel Perez had worked as an irrigator for Respondent since February 22, 1981. He was a member of the UFW and attended the UFW meetings on a regular basis. He declined to sign the petition to decertify the UFW or to participate in the October 1 anti-UFW

strike. While he, Rodolfo Castro and Carlos Villareal worked cleaning out weeds on the afternoon of the strike, supervisor Jose Garcia commented to them that they were the only ones who were "valiant."

Respondent laid off Avel Perez on October 17. Leadman Graziano Rodriguez informed him of the layoff and told him that Baldomar Orduno had said that work was slow but that Respondent would notify him later on when work picked up again. On approximately November 1 Perez talked to Garcia but the latter did not offer him any employment. Perez testified that he saw irrigators who had less seniority than he working on Respondent's premises after he was laid off. At the time of the hearing herein, Respondent had not called Perez back to work.

Pablo Robledo had worked for Respondent as an irrigator since December 16, 1980. He left for Mexico on September 27, 1981, as he had received a message that his mother was gravely ill and at the point of death. It was Sunday so it was difficult for him to notify his supervisor Jose Garcia, so he contacted union steward Graziano Rodriguez who assured him not to worry about his job, that he would communicate with Jose Garcia and explain the extenuating circumstances about Pablo Robledo leaving his job so abruptly without previous notification. Rodriguez complied and Garcia assented.

Robledo returned on October 13 from Mexico, and went and talked to Jose Garcia about resuming his job. Garcia explained that there was no work for him since the work had diminished for everyone. Robledo protested that he saw irrigators working at that

time who had less seniority than he, such as Alfredo Higuera, Baudelio Sanchez, Manuel Frias and Tacho. Garcia responded that Graziano Rodriguez would have to know the reason. Rodriguez who was present replied, "No, you're the bosses." Respondent rehired Robledo as an irrigator on November 19, 1981.

Jesus Romero had worked for Respondent as an irrigator since March of 1980. He had been a member of the UFW for 12 years and wore a UFW button on his cap daily. Jose Garcia, the irrigation supervisor, had asked him whether he belonged to the UFW. In August, Romero requested a 4 week combined vacation and leave of absence to travel to Mexico. Garcia consented because as he told Romero, work was slow at Respondent's operations. Later, Romero decided he did not want to go to Mexico because he did not have dependable transportation.[71/] He so informed Garcia, and the latter responded that Romero would have to take his vacation at that time since he was laying off everybody. So Romero asked Garcia for, and received, a letter which stated that after Romero returned from his vacation (one week earned vacation and three weeks unpaid leave of absence) he would be eligible for reemployment with Respondent.

On October 22 Romero returned form Mexico and consulted with Garcia about returning to work. Garcia replied there was none available. Romero pointed out to Garcia that some irrigators were working who had less seniority than he had. Garcia replied that Respondent had its own seniority list rather than the union's and

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71. Romero had tried to have his automobile repaired at a local garage on credit but the garage refused to do so because Respondent declined to guarantee Romero's credit.

besides he could not lay off one employee just to put Romero back to work immediately. Four days later, Respondent rehired Romero and he went to work under foreman Tony Lopez.

Some time later, Lopez commented to Romero "What are you gaining because all the Union does is take your time?" Romero responded "To each his own, for myself I belong to the union". At the end of December Lopez drove by Romero while the latter was working in the fields and handed him a newspaper with the headlines of an article which read "Cattle Valley Wins -- No UFW", and said to Romero, "Here's you union so you won't lose your heard. You and the union have lost".

Rodolfo Castro went to work for Respondent in November 1980 as a tractor driver. He became a member of the UFW in the summer of 1981 and attended some union meetings at the UFW headquarters in Coachella. He did not sign the petition to decertify the UFW nor participated in the anti-UFW strike of October 1; he was never asked by anyone to sign or participate.

On October 20 Baldomar Orduno laid Rodolfo Castro off and explained that there was no more tractor work or any other kind. He noticed that there were two other employees performing tractor work who had less seniority than he: Fortunato Palomera and an unidentified employee whom he had never seen before. Francisco Palomera had a Class One driver's license and therefore was also able to drive trucks. Castro was limited to driving tractors since he did not have a Class One license. This was one of the reasons Respondent gave for laying off Castro while retaining Palomera who had less seniority. Respondent rehired Castro in the middle of

November.

B. Analysis and Conclusion

General Counsel contends that Respondent refrained from planting wheat in the autumn of 1981 so it could lay off a large number of irrigators and therefore retaliate against them for supporting the UFW and not signing the petitions during the decertification campaign or participating in the anti-UFW work stoppage of October 1 and 2.

I find that Respondent has proven that it decided not to plant wheat in the fall of 1981 because of a legitimate business reason. The price of wheat had fallen from $200 a ton in 1980 when Respondent had planted wheat to only $125 a ton in the fall of 1981 so no profit could be made. General Counsel failed to present any proof to offset this business reason.

As I have elsewhere determined, supra, that Respondent violated section 1153(e) by its failure and refusal to comply with its contract with the UFW including the contract's seniority provisions, and as the remedy for a section 1153(c) discriminatory refusal to lay off employees is in no way different from the remedy for a section 1153(e) unilateral change effecting the same result, there is no need for me to determine whether Resopndent's aforesaid conduct in laying off the irrigators and tractor driver Rodolfo Castro also violated section 1153(c) of the Act. The proposed remedy in respect to the violation of section 1153(e) of the Act will provide make whole for employees who lost work as a result of Respondent's unilateral changes with respect to laying off, hiring and rehiring according to seniority.

XVI. Respondent allegedly Shortened Graziano Rodriguez' Work Hours on or about October 19, 1981, Because of his Union Activity.

a. Facts

Graziano Rodriguez testified that approximately 20 days after the October 1 strike, while he was working as an irrigator, foreman Baldomar Orduno reduced his work hours from ten, or perhaps nine hours, to only eight. Rodriguez admitted that immediately the next day he returned to a ten-hour-a-day schedule. He testified that he believed the reason for Respondent's conduct in this respect was to retalliate against him for his union activities, as the UFW ranch committee president. Rodriguez also testified that on that particular day Respondent also reduced the work hours for the tractor drivers.

b. Analysis and Conclusion

General Counsel has failed to present any evidence in respect to any discriminatory conduct by Respondent against Rodriguez in this instance since it appears that his fellow employees also had their work hours reduced. Furthermore, the reduction of work hours for one day immediately followed by a return to the regular full complement of hours could scarcely discourage union activities on the part of the most timid union activist.

Accordingly, I recommend the dismissal of this allegation.

XVII. Election Objections

As I have already dismissed the Petition for Decertification, I need not pass on the objections to the Election.

ORDER

By authority of Labor Code section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board hereby orders that Respondent Peter Solomon and Joseph R. Solomon dba Cattle Valley Farms, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off, refusing to rehire, or otherwise discriminating against any agricultural employee because of his or her union activities or sympathies.

(b) Failing or refusing to meet and bargain collectively in good faith, as defined in Labor Code section 1155.2(a) of the Act, with the United Farm Workers of America, AFL-CIO, (UFW) as the exclusive collective-bargaining representative of its agricultural employees.

(c) Failing or refusing to abide by or adhere to the terms and conditions of the collective bargaining agreement between Respondent and the UFW.

(d) Changing any terms or conditions of employment of its employees without first notifying the UFW of the proposed change and affording the UFW a chance to negotiate about such proposed change.

(e) Instigating the filing of a Petition to Decertify or assisting employee(s) in an effort to decertify its employees' certified bargaining representative.

(f) Interfering with, restraining or coercing agricultural employees in the exercise of their rights guaranteed by

Section 1152 of the Act by threatening a lay off employees if they support the Union or by threatening employees to raise their rents (on company housing) to discourage their support of the Union.

(g) Interrogating employees concerning their participation in union activities and other protected concerted activities.

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

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

(a) Offer Natividad Calleros full and immediate reinstatement to his former or substantially equivalent job without prejudice to his seniority rights or other employment rights and privileges and made him whole for all losses of pay and other economic losses he has suffered as a result of his layoff, the backpay amount to be computed in accordance with Board precedents, plus interest computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc., 8 ALRB No. 53.

(b) Restore the full and complete seniority of Santiago Cano and make him whole for all losses of pay and other of economic losses he has suffered as a result of Respondent's layoff any delay in rehiring him, plus interest on such sums computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc., 8 ALRB No. 55.

(c) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective

bargaining representative of its agricultural employees.

(d) Honor and give effect to all terms of its contract with the UFW from the date the contract became effective until the expiration date thereof, including but not limited to the provisions relating to the medical plan, the grievance procedure, union security clause, seniority clause, and the right to access.

(e) Reimburse the UFW for all membership dues which, since October 2, 1981, Respondent has failed to withhold and transmit to the Union pursuant to signed dues deduction authorizations and in accordance with the checkoff provision of the collective bargaining agreement, with interest computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc., 8 ALRB No. 55.

(f) Make whole those employees employed by Respondent since October 2, 1981 for any losses they may have suffered as a result of Respondent's failure to comply with the collective bargaining agreement.

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

(h) 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.

(i) 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 September 24, 1980, until the date on which the said Notice is mailed.

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

(k) 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 times(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 compensate them for time lost at this reading and during the question-and-answer period.

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

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

DATED: October 25, 1982.

ARIE SCHOORL
Administrative Law Officer

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which all parties have an opportunity to present evidence, the Board found that we did violate the law by: (1) instigating and assisting the decertification campaign; (2) refusing to continue to recognize the United Farm Workers of America, AFL-CIO, as the certified representative of our employees; (3) refusing to comply with a collective bargaining agreement we had signed with the UFW in September 1981; (4) laying off Natividad Calleros, on account of his union activity and support; (5) laying off and delaying in rehiring Santiago Cano on account of his union activity and support; (6) making unilateral changes in the wage rates and medical plan without notifying the UFW and negotiating such changes; (7) refusing to comply with the collective bargaining agreement by ceasing to deduct union dues from employee paychecks after October ___, 1981; (8) refusing to abide by the collective bargaining contract in the laying off and recall of irrigators from October 1981 to the present; (9) refusing to abide by the collective bargaining agreement by refusing to process grievances properly filed by the UFW on behalf of our employees; (10) interrogating employees concerning their participation in union activities and other protected activities; (11) threatening to layoff employees if they support the Union; and (12) threatening employees to raise their rents (on company housing) to discourage their support of the Union.

The Agricultural Labor Relations Board has told us to send out and post this Notice. We will do what the Board has ordered us to do. We also want to tell you that the Agricutlural Labor Relations Act is the 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 this is true, we promise that:

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

Especially:

WE WILL NOT lay off, suspend, refuse to rehire or otherwise discriminate against any employee in regard to his or her employment because he or she has joined or supported the UFW or any other labor organization.

WE WILL NOT interrogate employees about their participation in union activities and other protected concerted activities.

WE WILL NOT threaten to lay off employees if they support the Union.

WE WILL NOT threaten employees to raise their rents (on company housing) to discourage their support of the Union.

WE WILL NOT instigate or assist any decertification campaign.

WE WILL NOT refuse to continue to recognize the United Farm Workers of America as the certified representative of our employees.

WE WILL comply with all the terms of the collective bargaining agreement we signed with the UFW in September 1981.

WE WILL make each of our employees whole for all losses of pay and any other economic losses he or she has suffered because of our failure to comply with the collective bargaining agreement.

WE WILL make each irrigator whole for any economic losses he has suffered because of our failure to comply with the collective bargaining contract's seniority provisions in respect to their layoff and recall from October 1972 to the present.

WE WILL offer to reinstate Natividad Calleros to his pre vious job, or to a substantially equivalent job, without loss of seniority rights or privileges, and we will reimburse him for any loss of pay or other money losses he incurred because we discharged him.

WE WILL make whole Santiago Cano for any loss of pay or other money losses he incurred because we laid him off and refused to rehire him prior to November 1981.

DATED:

PETER D. SOLOMON AND JOSEPH R. SOLOMON d/b/a CATTLE VALLEY FARMS

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.

DO NOT REMOVE OR MUTILATE.