El Centro, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ABATTI FARMS, INC., and ABATTI PRODUCE, INC. Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, and LUPE AGUIAR, et al., Charging Parties.	)	Case Nos. 81-CE-112-EC 82-CE-41-EC 82-CE-45-EC 82-CE-65-EC 82-CE-70-EC 82-CE-72-EC 9 ALRB No. 70

DECISION AND ORDER

On December 31, 1982, Administrative Law Judge (ALJ)[1/] Robert L. Burkett issued the attached Decision in this proceeding. Thereafter, General Counsel, Respondent and the United Farm Workers of America, AFL-CIO (UFW) each timely filed exceptions with a supporting brief. Respondent filed a brief in response to General Counsel's exceptions and one in response to the UFW's exceptions. General Counsel and the UFW each filed a brief in response to Respondent's exceptions.

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

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

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

Decision in light of the exceptions and briefs and has decided to affirm the ALJ's rulings, findings, and conclusions as modified herein, and to adopt his recommended order as modified herein.

The ALJ concluded that Respondent Abatti had not unlawfully discharged employees Lupe Aguiar and Rita Gonzalez. He found that while both women believed they had been discharged, in fact neither of them had actually been discharged. General Counsel excepts to the ALJ's conclusions.

Aguiar and Gonzalez worked for J & J Labor Contractors under foreman Emilio Miramontes. On November 5, 1981, Aguiar had a conversation with John Johnson, the person who operates J & J Labor Contractors. Johnson informed Aguiar that effective the following day, Abatti's workers would receive half-hour lunch breaks and ten-minute morning and afternoon breaks. The next day, Aguiar questioned foreman Miramontes about the breaks. He responded angrily.

General Counsel alleged that Miramontes discharged Aguiar because she brought up the issue of the employees' rest periods. Rita Gonzalez was allegedly discharged because of her close association with Aguiar. The "discharge" occurred when Miramontes informed Aguiar and Gonzalez that there would be no work the following day although in fact there was to be work. In addition, Victor Corrales allegedly told the women that there was a movement afoot to discharge them.

To establish an unlawful discriminatory discharge in

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violation of section 1153(a),[3/] the General Counsel must prove that the alleged discriminatee engaged in protected concerted activity, that the employer had knowledge of that activity, and that the employer discharged the employee for engaging in the protected activity. (i.e., Lawrence Scarrone (1981) 7 ALRB No. 13.)

In the instant case we must also determine whether the alleged discriminatees reasonably believed they had been discharged, based on Miramontes' words and actions. In addition, we must determine whether Miramontes' words and actions had the intended effect of discharging the alleged discriminatees. (See Ridgeway Trucking Company (1979) 243 NLRB 1048 [101 LRRM 156]; NLRB v. Hilton Mobile Homes (8th Cir. 1967) 387 F.2d 7 [67 LRRM 2140].)

While the ALJ did not make a finding as to whether the alleged discriminatees engaged in protected concerted activity, we find that Aguiar's statements to Miramontes concerning the rest periods related to conditions of employment that were matters of mutual concern to all the crew members and therefore constitute protected concerted activity. (Foster Poultry Farms (1980) 6 ALRB No. 15, citing Alleluia Cushion Company (1975) 221 NLRB 999 [91 LRRM 1131].) In addition, we find that Respondent knew of the activity. However, we conclude

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[3/] We disavow the ALJ's reliance on the fact that neither Aguiar or Gonzalez made any attempts to return to work for Respondent. Failure to seek work from Respondent is not probative to a finding of unlawful discharge.

that Respondent did not discharge the two alleged discriminatees.[4/]

The ALJ specifically discredited Lupe Aguiar, finding that contradictions in her testimony seriously undermined her credibility. Rita Gonzalez testified that the only basis she had for believing she had been discharged was the statements by Victor Corrales to the effect that Miramontes was planning to discharge them. Based on the inadequacy of the record evidence, we conclude that General Counsel has failed to establish that the alleged discriminatees had a reasonable belief that they had been discharged. (Ridgeway Trucking Company, supra, 243 NLRB 1048.) We also find that the General Counsel has not established by a preponderance of the evidence that Miramontes' words and actions reflected a desire to discharge them.

The complaint alleges that Respondent unilaterally changed the bus pick-up point of the lettuce workers. For the following reasons, we affirm the ALJ's conclusion that Respondent did not bypass the UFW or deal directly with its employees concerning the change in pick-up point.

Ramon Hernandez, Respondent's general harvesting foreman, testified that on January 8, 1982, the Friday before

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[4/] Since the Board concludes that the alleged discriminatees were not discharged, Member McCarthy finds no need to rule on whether or not they had engaged in concerted activity subject to the protections of Labor Code section 1152. In any event, he would not find that the allegedly concerted activity here falls within the ambit of the constructive or implied concerted activity doctrine of Alleluia Cushion Company (1975) 221 NLRB 999 [91 LRRM 1131]; see also NLRB v. Bighorn Beverage (9th Cir. 1980) 614 F.2d 1238 [103 LRRM 3008] and cases cited therein.

the work stoppage, employees Roberto Tafoya and Raymundo Palacios informed him that the lettuce workers wanted the bus pick-up site changed from Dogwood to Calexico. Tafoya said that the lettuce crew would engage in a work stoppage if the site was not changed.

Respondent's Exhibit Number One (Resp. Ex:1) is a letter from UFW representative Ann Smith to Ben Abatti dated May 23, 1980, in which Smith informed Abatti that the members of the UFW Ranch Committee are Hilario Corral, Rosa Briseno, Berto Briseno, Angel Carrillo, and Raymundo Palacios. In addition, the letter stated:

> Any matters relating to the employees' wages, hours, and conditions of work should be taken up with the authorized Ranch Committee members and/or a staff representative of the United Farm Workers of America, AFL-CIO, as the authorized bargaining representative for all agricultural employees, at the telephone and address indicated above.

We agree with the ALJ[5/] that, regardless of whether the UFW actually intended the named individuals to act in its behalf in negotiations, the letter indicated to Respondent that the named individuals had apparent authority to conduct negotiations on its behalf. Subsequent changes in the membership or authority of the committee were never communicated to Respondent.

We conclude that Respondent did not act unilaterally or deal directly with its employees regarding the change in bus pick-up point. Respondent merely acceded to a demand made by

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[5/] The UFW's letter listed five members of the Ranch Committee, not ten as found by the ALJ.

Raymundo Palacios, a member of the UFW's Ranch Committee who was authorized to negotiate with Respondent. (See Claey's Luck, S. A. Inc., and Neuman Seed Growers, Inc. (1983) 9 ALRB No. 52.)

As we have found that Respondent did not act unilaterally, we need not decide whether exigent circumstances justified Respondent's action.

General Counsel alleged that Respondent unilaterally increased the rate of pay of its rapini harvest employees. In addition, General Counsel alleged that Respondent's action in continuing to subcontract the rapini work after the work stoppage constitutes unlawful unilateral action.

On January 21, 1982, a group of rapini harvest workers gathered in a rapini field and refused to work unless their pay rate was raised. Ben Abatti arrived at the field and spoke with a group of workers including Fernando Franco and Guadalupe Covarrubias. Abatti refused to grant the requested wage increase and left. UFW negotiator David Martinez was at the field. He asked the employees to meet at the UFW office in Calexico. Approximately 100 employees left the field and went to the UFW's office in Calexico. Later that day Abatti made arrangements with J & J Labor Contractors for a crew to harvest the rapini.

The next morning, the striking rapini harvesters returned to the field. David Martinez was again present. Ben Abatti agreed to the wage increase and the striking workers returned to work. The J & J Labor Contractors' crew also began working that day.

The ALJ found that the circumstances surrounding the

rapini wage increase were similar to those involving the change in bus pick-up point for the lettuce harvesters in that Respondent dealt with members of the UFW Ranch Committee who were authorized to bargain on behalf of the UFW. We reject this finding as we find that the employees who acted as spokespersons during the rapini work stoppage, Fernando Franco and Guadalupe Covarrubias, are not listed as members of the Ranch Committee in Resp. Ex:1.

We nonetheless uphold the ALJ's conclusion that Respondent did not act unilaterally in granting the rapini wage increase. UFW negotiator David Martinez was present at the field on both days of the work stoppage. In fact, Martinez testified that on the second day, he spoke with employees Franco and Covarrubias about the problems the rapini harvesters were encountering. We find that Martinez' presence in the field, as well as his meeting with the rapini harvest workers at the UFW's office in Calexico, amounts to a ratification or approval of their request for a wage increase. (See Claey's Luck, S. A. Inc., and Neuman Seed Growers, Inc., supra, 9 ALRB No. 52.) Here again, as we find that Respondent did not act unilaterally, we need not decide whether exigent circumstances justified its actions.

Shortly after the commencement of the work stoppage and the employees' demand for a wage increase, Respondent arranged for J & J Labor Contractors to supply a crew to harvest the rapini. The J & J crew, consisting of 40 to 50 employees, commenced working the next day and continued to work for approximately ten days.

An agricultural employer has a legitimate interest in continuing its business operations during an economic strike, and a concomitant right to fill positions left open by strikers, in order to continue its business. (Seabreeze Berry Farms (1981) 7 ALRB No. 40, citing NLRB v. Mackay Radio & Telegraph Co. (1938) 304 U.S. 333 [2 LRRM 610].)

Ben Abatti testified that the rapini must be harvested immediately or it will flower. He also testified that Respondent's rapini crew consisted of about 120 workers. Furthermore, when he contacted J & J Labor Contractors he asked for a crew of only 40-50 workers because he assumed that the regular rapini crew would return to work.

This uncontroverted testimony indicates that Respondent hired the labor contractor to enable it to continue its rapini harvest operations during the work stoppage.

We find that Respondent kept the J & J crew on after the work stoppage to catch up with the harvest of rapini which had ceased during the work stoppage. General Counsel has not shown that the continued employment of the subcontractor crew for a ten-day period was unreasonable.

The ALJ concluded that Respondent violated section 1153(e) and (a) of the Agricultural Labor Relations Act (ALRA or Act) by not giving the tractor drivers morning and afternoon breaks as provided for in the parties' collective bargaining agreement and by not following the seniority provisions of the agreement. The ALJ found that Respondent's actions constituted unlawful unilateral changes. We affirm the ALJ's findings and

conclusions as to the timeliness of the charges relating to these allegations.

Respondent excepts to the ALJ's findings of violations and argues that since it never implemented the contractual provisions, it cannot be found to have unilaterally implemented the changes. We reject Respondent's argument.

In Tex-Cal Land Management, Inc. (1982) 8 ALRB No. 85, this Board stated that where a term or condition of employment is established by past practice and/or contractual provision, a unilateral change from that practice or provision constitutes a per se violation of section 1153(e) and (a) of the Act. The Board also stated that this is the case even after expiration of the contract.[6/] We find that the tractor drivers' rest periods and seniority system were established by the contract and that Respondent unilaterally changed those terms and conditions of employment in violation of section 1153(e) and (a) of the Act. We agree with the ALJ's conclusion that to adopt Respondent's position would permit it to profit from its own misconduct. (See also, section 1155.3(a).)

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Abatti Farms, Inc., and Abatti Produce, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

[6/] The parties' collective bargaining agreement expired on January 1, 1979.

(a) Making unilateral changes in the terms and conditions of employment without notice to and bargaining with the United Farm Workers of America, AFL-CIO (UFW), as the exclusive certified bargaining representative of its agricultural employees.

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

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

(a) Upon request of the UFW, rescind the unilateral changes as to the seniority system and paid rest periods for the tractor drivers, and meet and bargain with the UFW concerning any proposed changes in those, or any other conditions of employment of its agricultural employees.

(b) Reimburse its agricultural employees for all losses of pay and other economic losses they have suffered as a result of the unilateral changes in the seniority system and paid rest periods, described in paragraph 2(a) above, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(c) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination by

the Regional Director, of the makewhole period and the amount of make whole due under the terms of this Order.

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period January 1, 1979 to January 1, 1980.

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

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

reading and during the question-and-answer period.

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

Dated: December 9, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, 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, Abatti Farms, Inc., and Abatti Produce, Inc., had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by unilaterally changing the seniority system and the paid rest periods of our tractor drivers. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT unilaterally change the seniority system, paid rest periods or any other term or condition of employment of our agricultural employees.

WE WILL in the future make no further unilateral changes in working conditions without first meeting and bargaining in good faith with the United Farm Workers of America, AFL-CIO (UFW) concerning any proposed changes.

WE WILL reimburse each of the employees employed by us as tractor drivers after January 1979, for any loss of pay or other economic losses sustained by them because of our unilateral changes.

Dated:

ABATTI FARMS, INC., and
ABATTI PRODUCE, INC.

By: _____
Representative Title

If you have a question about your rights as farmworkers 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

Abatti Farms, Inc., and
Abatti Produce, Inc.
(UFW)

9 ALRB No. 70
Case No. 81-CE-112-EC,
et. al.

ALJ DECISION

The ALJ found that employees Lupe Aguiar and Rita Gonzalez had not in fact been discharged even though they believed they had been. He recommended dismissal of this allegation.

The Employer's lettuce harvest crew engaged in a work stoppage in support of their demand that the bus pick-up point be changed to a location closer to the Mexican border. The ALJ concluded that Respondent did not bypass the United Farm Workers of America, AFL-CIO (UFW) or negotiate directly with the employees regarding the change in pick-up site. He found that the ranch committee members were authorized to bargain with the Respondent based on a letter from a UFW representative to Ben Abatti.

The ALJ concluded that Respondent did not unlawfully subcontract its rapini harvest work during a strike and that Respondent did not deal directly with its employees concerning a wage increase demand. The ALJ found that the spokesmen for the striking workers were members of the ranch committee who had actual authority to negotiate on behalf of the UFW.

Finally, the ALJ concluded that Respondent unilaterally changed the terms and conditions of its tractor drivers' employment by not following the contract provisions regarding morning and afternoon breaks and seniority.

BOARD DECISION

The Board adopted the ALJ's decision as modified. It found that employees Aguiar and Gonzalez did not have a reasonable belief that they had been discharged and that General Counsel had failed to establish that Respondent's words and actions reflected a desire to discharge them. The Board concluded that Respondent did not act unilaterally or deal directly with its employees regarding the change in bus pick-up point. The Board found that Respondent merely acceded to a demand made by Raymundo Palacios, a member of the UFW's Ranch Committee who was authorized to negotiate with Respondent. The Board concluded that Respondent did not unilaterally grant a wage increase to the rapini harvesters. UFW negotiator David Martinez' presence in the field at the time the workers made their demand for a wage increase amounted to a ratification or approval of their request. Finally, the Board adopted the ALJ's findings and conclusions regarding the tractor drivers.

* * *

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

Agricultural Labor Relations Board
DEC 31 1982
RECEIVED
Exec. Secretary

In the Matter of:	)	
	)	
ABATTI FARMS, INC., and ABATTI PRODUCE, INC.,	)	Case Nos. 81-CE-112-EC
	)	82-CE-41-EC
	)	82-CE-45-EC
Respondent,	)	82-CE-65-EC
	)	82-CE-70-EC
and	)	82-CE-72-EC
	)	
UNITED FARM WORKERS OF AMERICA, AFL-CIO, and LUPE AGUIAR, et al.,	)	
	)	
Charging Parties.	)	
	)	

APPEARANCES:

Darrell Lepkowsky
El Centro, California
for the General Counsel

Merrill E. Storms
San Diego, California
for the Respondent

Lupe Aguiar
El Centro, California
for the Charging Party

Clare McGinnis
Keene, California
for the Charging Party (UFW)

DECISION OF THE ADMINISTRATIVE LAW OFFICER

STATEMENT OF THE CASE

Robert L. Burkett, Administrative Law Officer: These consolidated cases were heard by me in El Centro, California, on June 21, 22, 23 and July 1, and 2, 1982.

The complaint alleges various violations of sections 1153(a) and (e) of the Agricultural Labor Relations Act (hereinafter the Act) by Abatti Farms (hereinafter Respondent).

All parties were given full opportunity to participate in the hearing and after the close of the hearing the General Counsel and Respondent each filed a brief in support of its respective positions.

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

FINDINGS OF FACT

I. JURISDICTION

Respondent admits that it is an agricultural employer within the meaning of section 1140.4(c) of the Act. I find that the United Farm Workers of America, AFL-CIO (herinafter UFW) is a labor organization as defined in section 1140.4(f) of the Act on the basis of the pleadings and undisputed evidence. I further find that Lupe Aguiar and Rita Gonzalez were at the time of the alleged unfair labor practices agricultural employees within the meaning of Labor Code section 1140.4(b).

II. THE UNFAIR LABOR PRACTICE ALLEGATIONS

The complaint as amended makes the following substantive allegations against Respondent:

1. On or about November 6, 1981, Respondent by and through its agents Emilio Miramontes and John Johnson, discriminatorily discharged agricultural employees Lupe Aguiar and Rita Gonzalez because of their real and/or suspected participation in protected, concerted activities.

2. On or about January 11, 1982, Respondent by and through its agent, Ben Abatti, unilaterally changed the pick-up point for its lettuce harvest employees without notifying or bargaining with the UFW regarding the change in the pick-up point.

3. On or about January 10, 1982, Respondent by and through its agent, Ben Abatti, by-passed the UFW, and dealt directly with its employees by negotiating with its employees regarding the change in the pick-up point location.

4. Since on or about January 22, 1982, Respondent by and through its agent, Ben Abatti, unilaterally subcontracted out bargaining unit work in the mustard (rapini) harvest without notifying or bargaining with the UFW. This subcontracting was in direct retaliation for the concerted activities of Respondent's own mustard harvest crews. Subcontracting resulted in a decrease in actual hours worked by Respondent's mustard harvest crews as a punitive measure for the concerted activities of those crews.

5. On or about January 22, 1982, Respondent by and through its agent, Ben Abatti, unilaterally increased the rate of pay of its mustard (rapini) harvest employees without notifying or bargaining with the UFW concerning the wage increase.

6. On or about Janaury 22, 1982, Respondent by and through its agent, Ben Abatti, by-passed the UFW and dealt directly with its

employees by negotiating with the employees regarding the wage increase.

7. On or about January, 1979, Respondent unilaterally began circumventing the established seniority system of its tractor drivers by selectively assigning work without respect to seniority, with the result of less hours worked by seniority tractor drivers. The UFW did not receive notice of this unilateral change until on or about April 7, 1982.

8. On or about January, 1979, Respondent unilaterally changed the reporting time compensation of its tractor drivers when no work is provided or less than four hours of work are provided, without notifying or bargaining with the UFW. The UFW did not receive notice of said unilateral action until on or about April 14, 1982.

9. Since on or about January, 1979, Respondent has unilaterally refused to provide paid rest periods to its tractor drivers without notifying or bargaining with the UFW regarding the unilateral decision not to provide paid rest periods. The UFW did not receive notice of said unilateral action until on or about April 19, 1982.

Respondent denies that it violated the Act and asserts that:

1. Lupe Aguiar and Rita Gonzalez were not "discharged."

2. The change of the pick-up point for its lettuce harvest employees did not violate the Act, was not unilateral, and that Respondent did not by-pass the UFW in negotiating or otherwise directly deal with its employees regarding the change in its lettuce

workers' pick-up point. Furthermore, assuming the pick-up point change would otherwise be held unlawful, the Respondent was exonerated by the Union's failure to request bargaining with regard to said change.

3. The subcontracting of the rapini harvest work and increasing the pay rate of the rapini harvest employees did not violate the Act and the Respondent did not by-pass the UFW and/or negotiate or otherwise deal directly with its employees regarding the workers' wage increase. Furthermore, assuming the subcontracting of rapini work and the increase in rapini workers' wages would otherwise be held unlawful, the Union's failure to request bargaining with regard to said charges precludes the finding that Respondent violated the Act.

4. There were no unilateral changes in the terms and conditions of the tractor drivers' employment, and furthermore, the charges are barred by the statute of limitations.

III. GENERAL BACKGROUND

The Respondent is a joint employer composed of two basic entities: Abatti Farms, Inc. which grows the crops, and Abatti Produce, Inc. which is responsible for harvesting, packaging and selling the crops grown. Respondent's products include lettuce, melons, onions, rapini (mustard), asparagus, alfalfa and sugar beets. Employees of Respondent who perform various duties with regard to the aforementioned crops are divided into separate crews. Additionally, Respondent employs a tractor crew which performs various operations involving several different kinds of heavy equipment.

The United Farm Workers of America, AFL-CIO was certified as the sole collective bargaining representative of Respondent's agricultural employees on November 18, 1977. An initial collective bargaining agreement was signed on June 7, 1978 with an expiration date of January 1, 1979.

The decertification election was held on December 27, 1978. As a result of that election, the UFW was decertified. The UFW contested the election claiming the company had unlawfully instigated and assisted in the decertification campaign. The Board found that, although there was not enough evidence to prove the allegation of unlawful instigation, significant proof existed to demonstrate that the company had unlawfully assisted the decertification attempt that was coordinated primarily by two employees, Manuel Castellanos an irrigator, and Toubio Cruz a tractor driver.

The final Board decision was not issued until October 28, 1981, almost three years after the election.

The Respondent employs a labor contractor, J & J Contractors, for some of its field work.

IV. FACTUAL BACKGROUND

A. The Alleged Discharge of Lupe Aguiar and Rita Gonzalez

The testimony in regard to the circumstances surrounding the "discharge" of these two former employees is totally contradictory. Lupe Aguiar testified that she worked for J & J Labor Contractors thinning sugar beets and that her foreman was Emilio Miramontes. She stated that her first day of work was Tuesday, October 21, 1981, and that she did not work the following

Friday or Saturday because she was too tired and sore.

She stated that on Thursday, November 5, 1981, she rode with Victor Corrales in John Johnson's car and that Mr. Johnson, who operates J & J Labor Contractors informed them that the field workers would receive half-hour lunch breaks and ten minute morning and afternoon breaks effective the following day; the breaks were being instituted because of problems with the labor commission.

Ms. Aguiar then testified that she questioned Mr. Miramontes about the breaks and that he responded by becoming angry and cursing both Mr. Johnson and Mr. Abatti. She stated that this conversation, which took place between 7:30 a.m. and 8:30 a.m. on November 6, 1981 in front of the entire crew..

Ms. Aguiar testified that after this conversation with Mr. Miramontes she was approached by Victor Corrales who told them that they were going to be fired because Mr. Miramontes did not like what she had said to him.

She said that at approximately 2:45 that afternoon Mr. Miramontes approached her and Rita Gonzalez and told them that there was not going to be any work the next day because they were going to spray the fields and that he took out a piece of paper telling them where they were to work on Monday. She stated that she reiterated "We're not going to work tomorrow?" and that Mr. Miramontes responded that he was sure. The conversation took place in front of most of the crew.

She stated that on November 6, she twice attempted to telephone Mr. Abatti at his office, the first such attempt occurring at approximately 5:30 p.m. and that she finally succeeded in

speaking with him and told him that she had been "laid off" or "fired" for talking about breaks. She said that Mr. Abatti responded by saying that he never said anything about breaks but that "the foreman could do with his people whatever he wants."

Ms. Aguiar testified that she also went to Mr. Miramontes residence on the afternoon of September 6, but that he was not at home, and that she telephoned his residence that evening but was told that Mr. Miramontes was asleep. Ms. Aguiar stated that she did not report to work on Saturday, November 7, because she had been told there was going to be no work and that the following Monday, November 9, she personally delivered a letter from the State Board to Mr. Miramontes.

She said that she was confronted by Mr. Miramontes as she was in her automobile and she told him that she had gone to the State because he fired her, to which he replied that, "I didn't fire you, you just didn't show up for work." She stated that he went on to say that "well, anyway I could fire whoever I want. That's why we pay you every day."

Ms. Aguiar testified that she maintained a log or notebook while working for J & J Labor Contractors and that she had consulted such log or notebook prior to testifying. At a later point in her testimony she said that upon examining her papers she was unable to find such a log and that in fact none existed, that what she was referring to was the statement that she had given to the Agricultural Labor Relations Board.

Ms. Gonzalez went on to state that she had a second conversation with Mr. Corrales. This recollection in part

contradicted her earlier testimony that she had spoken to Mr. Corrales but once on that afternoon. She said that during the second conversation Mr. Corrales told her and Rita Gonzalez that Mr. Miramontes' statements about no work the next day were not true and that in fact there was going to be work the next day, but not for them.

The Testimony of Rita Gonzalez

It is uncontroverted that Ms. Gonzalez began working at Abatti for J & J Labor Contractors in October of 1981. She testified that she got to work each day by riding in Mr. Miramontes' van from Calexico.

She stated that on her last day of work while riding back to Calexico in Mr. Miramontes' van he told her that "tomorrow there will be no more work, look for work at some other place." She said that these remarks were addressed not only to her but to all the workers in the van.

She also stated that she was told by Mr. Corrales that Mr. Miramontes was telling the other workers that while he was stating there was going to be no work there really would be work and the reason he was doing this was that he wanted to fire "those two faces."

Ms. Gonzalez corroborated Ms. Aguiar's testimony that when Ms. Aguiar asked Mr. Miramontes about the breaks he got angry and began cursing. She also stated that he said "it's better for me to fire two and not for him to fire me."

She testified that at approximately 1:45 p.m. she finished work for the day and that Ms. Aguiar was told by Mr. Miramontes that

there would be no work at all the next day. She stated that at this time, Mr. Miramontes was still angry. She said that at 3:00 a.m. the following morning she returned to the pick-up point at Calexico where Mr. Miramontes usually picked her up and watched him loading workers into the van, but that she did not approach him because she didn't feel that she could ask him.

Ms. Gonzalez stated that the only basis she had for believing she was fired was the statements by Victor Corrales and that she never complained to Mr. Miramontes about the rest periods or even spoke about the rest periods. She testified that since November 6, 1981 she had not sought work at J & J though she went daily to the bus pick-up point in Calexico.

She stated that on the Monday after the day she last worked for J & J she delivered a letter from the State to Mr. Miramontes who then asked her "who fired you, you just got off and did not ask if there was going to be work." She testified that she responded "you still wanted me to humble myself to you, to kneel down to you, to cry to you, when you had already sent word with (Corrales) that you were going to fire us."

Testimony of Victor Corrales

Mr. Corrales testified that while he and Ms. Aguiar were riding in a truck with John Johnson, Mr. Johnson stated that the workers were going to get ten minute breaks in the mornings, afternoons and half-hour lunch breaks.

Mr. Corrales stated that on the day after that conversation Ms. Aguiar asked Mr. Miramontes about the breaks, to which Mr. Miramontes responded with anger and started to swear and further

said that it would be the last day "of this pretty faces here," because Mr. Miramontes "didn't want . . . gossiping ladies that would interfere the crew." He testified that he subsequently told Mrs. Aguiar and Ms. Gonzalez "that was the last day of work for them."

Mr. Corrales stated that after the conversation with Ms. Aguiar, Mr. Miramontes went around telling the other workers that there would, in fact, be work the next day but that he intended to announce that there would be no such work. He stated that Mr. Miramontes also told him that they would be working the next day but that he did not want the "girls" to return to work. Mr. Miramontes testified that he was an assistant foreman and also at a later time testified that he was a helper.

Mr. Corrales stated that at the end of the last day in which Ms. Aguiar and Ms. Gonzalez worked for J & J, Mr. Miramontes yelled out that there would be no work the following day in a voice loud enough for the rest of the crew to hear.

Mr. Corrales testified that it is common for employees hired by labor contractors to work for awhile and then not to show up again. He stated that on the day following Ms. Aguiar's and Ms. Gonzalez' last day of work, Mr. Miramontes' crew worked in the same field as it had the preceding day but that on the next working day, Monday, November 9, Mr. Miramontes' crew worked in a different field.

Mr. Corrales testified that Mr. Miramontes stated to him in the presence of his brother the derogatory comment about the gossiping ladies.

Testimony of Ben Abatti

Mr. Abatti testified that he did not talk with Lupe Aguiar by telephone on November 6 and that he was certain he was not in his office at the time in question because he had gone out to dinner and subsequently attended a football game between Brawley and El Centro High Schools. Mr. Abatti stated that he was positive that he had never talked to any worker employed by J & J Labor Contractors.

Abel Miramontes

Abel Miramontes who fit the physical description of Victor Corrales as the brother who witnessed his conversation with Mr. Miramontes testified that to his knowledge Mr. Miramontes never approached Mr. Corrales and said that he wanted to get rid of Ms. Aguiar or Ms. Gonzalez, nor did he curse or swear about Ms. Aguiar and Ms. Gonzalez or call them bitches or any similar names. He went on to testify that Emilio Miramontes never told Mr. Corrales or himself that he was going to pretend that there was no work in order to get rid of Ms. Aguiar and Ms. Gonzalez.

Testimony of Yolando Castro

Ms. Castro testified that she worked for J & J weeding sugar beets in October and November of 1981 and that her foreman was Mr. Miramontes. She stated that Ms. Aguiar and Ms. Gonzalez worked on the same crew with her.

She testified that during the time in question no problems arose regarding rest periods or lunch breaks and that she never heard any members of the crew complain about such matters. She stated that the crew was given a morning rest break and a lunch break and that sometimes the crew would take shorter breaks in order

to leave early.

She testified that on the last day that Ms. Aguiar and Ms. Gonzales worked for J & J she did not hear or observe any arguments between Mr. Miramontes nor Ms. Aguiar or Ms. Gonzalez, nor did she see or hear Mr. Miramontes say that there would be no work the next day. She stated that she did hear Mr. Miramontes tell the crew to report to the same place because he did not know where the work was needed to be done on another field. She stated that she did report to the field the next day and did work.

Ms. Castro testified that no one told her that she was going to pretend there would be no work the following day in order to get rid of Ms. Aguiar and Ms. Gonzalez nor did she hear rumors to the effect that such a plan was afoot.

She further testified that she did not ride back to Calexico with Mr. Miramontes on the day in question and that Mr. Miramontes did not customarily take her to and from work in his van.

Testimony of Juana Ramirez

Mr. Ramirez testified that he worked for J & J Labor Contractors weeding sugar beets for Abatti in October and November of 1981, that his foreman was Emilio Miramontes and that Ms. Aguiar and Ms. Gonzalez worked on the same crew at that time.

The rest of Mr. Ramirez' testimony point for point corroborated that of Ms. Castro.

Testimony of Emilio Miramontes

Mr. Miramontes testified that he was working for J & J Labor Contractors during the fall of 1981 and that he personally hired Ms. Aguiar and Ms. Gonzalez to work on his sugar crew. He

said that Victor Corrales was also on this crew and that he was assigned as a helper to help individual workers catch up when they ran in to particularly heavy weeds. He said that Mr. Corrales had no authority to hire, fire or discipline members of the crew and that he was not Mr. Miramontes' assistant.

There is no dispute to the fact that Ms. Aguiar and Ms. Gonzalez were both good workers and that in fact Mr. Miramontes had no problem with their work. Mr. Miramontes did testify that he did not fire either Ms. Aguiar or Ms. Gonzalez nor did he tell either of them that they were fired. He stated that he did not tell either Ms. Aguiar or Ms. Gonzalez not to return to work nor did he tell anyone that he intended to fire or get rid of either of them. Mr. Miramontes said that he did not tell Victor Corrales that he was going to find a way to get rid of them and that he did not tell Mr. Corrales or his own brother that either Ms. Aguiar or Ms. Gonzalez were bitches or anything similar to that.

Mr. Miramontes testified that the crew worked eight hours and received a fifteen minute morning break and a half-hour lunch break but that frequently the crew would decide not to take a break prefering to quit earlier instead.

Mr. Miramontes testified that on Ms. Aguiar's and Ms. Gonzalez' last day of work he did not tell them there would be no work the following day and in fact never told any member of his crew that he was going to pretend that there was no work in order to get rid of them.

Mr. Miramontes testified that he did not wonder about Ms. Aguigar's and Ms. Gonzalez' absences because sometimes they worked

and sometimes they didn't. He stated that he did not see either of them until they came to his home and brought him the ALRB papers. He said when each of them came he asked what happened to them and why they had not come to work and that they responded that the lawyer had told them not to talk to anyone.

He testified that neither Ms. Aguiar or Ms. Gonzalez had asked for work since the last day that they worked for J & J and that he would be willing to employ either of them if they want to work.

Mr. Miramontes further testified that Victor Corrales sometimes worked as a interpretor between Mr. Miramontes and John Johnson who speaks only English but that many of the workers also served this function. He said that when he needed to communicate with Mr. Johnson he asked the nearest English speaking worker to translate for him.

B. <u>The Change of the Pick-up Point for the Lettuce Harvest</u>

It is undisputed that on Friday, January 8, 1982, a number of workers approached Ramon Hernandez who was employed by Respondent as its general harvesting foreman. Mr. Hernandez was informed that the lettuce workers wanted their pick-up point moved to Calexico and there would be a work stoppage until such move was made. Raymundo Palacio and Angel Carrillo, both members of the Abatti Ranch Committee, were among the workers speaking with Mr. Hernandez.

Mr. Hernandez informed the workers that he could make no decision in this matter and that it was up to either Ben or Tony Abatti to do so. Mr. Hernandez then informed Ben Abatti of the situation.

On the Monday following Mr. Hernandez' conversation with Mr. Carrillo and Mr. Palacio, the lettuce workers gathered at the Dogwood pick-up point. Lettuce workers refused to work unless Respondent changed the pick-up point. The workers told the foreman at the pick-up point that they wanted to talk to Ben Abatti who came to the pick-up point shortly after 7:00 a.m.

When Mr. Abatti arrived at the pick-up point in Dogwood, approximately 100 to 150 workers were present. According to Mr. Carrillo's testimony he was not present although Mr. Abatti testified that he thought Mr. Carrillo was there but could not be certain. The workers told Mr. Abatti that they would not work unless the pick-up point was changed to Calexico. As a result of this meeting Mr. Abatti instructed his foreman to change the pick-up point, effective the following day, from Dogwood to Calexico.

At the time the lettuce workers refused to work the Respondent was in the process of harvesting some 1,500 acres of lettuce. The harvest was in its peak, producing 18,000 to 22,000 cartons of lettuce per day. Witnesses for Respondent claimed that it was critical that the lettuce harvest continue because Respondent had previously contracted to fill customers' orders and, although lettuce can remain in the fields for two or three days without going bad, new fields of lettuce were maturing every day at the time in question and there was no way to catch up if a day of harvesting was missed. Respondent claimed that it had approximately 1.8 million dollars invested in its lettuce operation at the time and that its only motive in agreeing to change the pick-up point was the desire to protect Respondent's investment by getting the lettuce harvested.

At the time of the lettuce workers' refusal to work, contract negotiations were in progress between Respondent and the UFW. Respondent never informed David Martinez, the Union's chief negotiator, of either the work stoppage or the change in the pick-up point. Mr. Carrillo was the individual who informed Mr. Martinez regarding the work stoppage and the pick-up point change in mid to late January. Although there has been several bargaining sessions since that time, the UFW had not, at the time of this hearing raised the issue of the change in pick-up point or demanded that the company rescind the change.

C. The Rapini Harvest

Among the crops grown and harvested by Respondent is rapini, which is a member of the broccoli family and a labor-intensive crop requiring a harvest force of approximately 140 employees. It is a winter crop, with harvesting beginning in early December and continuing through Janaury and February. Respondent testified that rapini is a most delicate crop which turns to flower if not harvested when ready.

In January 1982, during the rapini harvest a group of Abatti rapini workers assembled in a rapini field and refused to work unless their pay rate was raised. At the time the pay rate was 10.5¢ per pound. At approximately 8:30 that morning one of Respondent's foremen notified Ben Abatti that the workers were refusing to work.

Mr. Abatti arrived at the field where the workers had assembled and spoke with a group of workers. Among the group were Fernando Franco and Maria Guadalupe Caranza de Covarrubias, who

acted as spokespersons for the group. Mr. Franco testified that he was not a member of the ranch committee while UFW negotiator Mr. Martinez testified that he was a member of the committee. Ms. Covarrubias was a member of the Abatti ranch committee. After discussing the matter with the workers, Mr. Abatti declined to increase the workers' pay rate and left the field. After he left, UFW negotiator David Martinez came to the field and asked the workers to gather at the UFW's field office in Calexico. Approximately 100 workers left the field and met with Mr. Martinez in the UFW's office.

Shortly before noon that day Mr. Abatti met with John Johnson of J & J Labor Contractors. Mr. Johnson agreed to provide a crew to harvest the rapini. When the crew reported to the fields at approximately 6:00 a.m. the following morning, they were confronted by Respondent's striking employees and the J & J crew did not work. Mr. Martinez was present at the rapini fields that morning and testified that he talked with Mr. Franco and Ms. Covarrubias that morning and another person whose name he could not recall.

Mr. Abatti then consented to an increase of 1¢ per pound rate. He testified that when he made this decision the rapini was starting to bloom and as a result Abatti Farms was loosing rapini every day. The striking rapini workers returned to work on January 22 and the J & J crew also began work that day. Mr. Abatti testified that the J & J crew continued work until the end of January because that was how long was necessary for Abatti Farms to catch up with the harvest as a result of the one and one-half day work stoppage.

Mr. Franco testified he usually cut between five and six hundred pounds of rapini per day before the J & J crew came to work and that he was only able to cut between 400 and 450 pounds of rapini per day during the time the J & J crew was also working in Respondent's fields. He also testified that he had to spend a long amount of time on line waiting to weigh the rapini because there were not a sufficient number of scales. Mr. Franco stated that the Respondent's records might not actually reflect his work because he frequently permitted his wife to take credit for some of the rapini he had picked in order to inflate her unemployment compensation claims. He testified that his wife's name is Socorro Ramirez.

Respondent's records indicate that Mr. Franco and his wife actually performed more work while the J & J crew was present than they did immediately before and immediately after the presence of the crew.

Respondent did not notify the UFW negotiator that a work stoppage was taking place or that it was attempting to hire J & J Labor Contractors. Respondent did not notify the UFW negotiator of the rapini workers' pay increase. The Union negotiator was informed of the increase by the Union's local field office director several days after the increase occurred. The testimony reveals that the Union and Respondent have engaged in contract negotiations subsequent to the Union's negotiator learning of the increase but that the Union has not attempted to raise any issues at the negotiating table regarding said increase or regarding Respondent's subcontracting the rapini work.

D. Terms and Conditions of the Tractor Drivers' Employment

The six tractor drivers who testified on behalf of General Counsel are in accord on most parts of their testimony. With some minor inconsistencies their testimony was as follows:

The tractor drivers had only a general knowledge of the existence of a collective bargaining agreement between Respondent and the UFW during the times such contract was in effect and were unaware of the specific terms of the agreement. Though they were sent by the Respondent to sign up with the Union some time in 1978 when the contract took effect, no one from the Union had ever discussed a contract with them or informed them of its details.

Not all tractor drivers performed the same kinds of work. For example, some caterpillar drivers knew how to plant but other were not assigned such work. Abatti Farms has never assigned work according to seniority but rather by a determination of each individual driver's work abilities.

Abatti Farms has never paid tractor drivers for hours of work by virtue of the fact that they appeared at the company shop to find out whether work was available. Respondent only pays workers who are actually assigned the work.

The tractor workers all testified that Respondent does not now and has never provided 10 minute morning and afternoon rest breaks for his tractor drivers.

There were some inconsistencies about Respondent's break policy testified to by the tractor drivers. Mr. Reyes testified that he customarily took ten minute breaks in the morning and in the afternoon though he had never been told to do so by Respondent. He

also testified that he occasionally saw the tractor drivers taking coffee or breakfast breaks after going out into the field. Mr. Martinez testified that he never took any breaks but that he did stop to drink water or go to the bathroom whenever the need arose.

The six tractor drivers were unanimous asserting that Respondent's practices regarding work assignments, reporting time compensation and breaks had not changed since the collective bargaining agreement expired.

Sometime in 1980, Edmundo Castro and Roberto Covian were assigned work and worked for two and one half hours and were paid only for two and one half hours while Fidel Reyes testified that he worked for two hours and had been paid only for two hours not four on two occasions.

Mr. Martinez the UFW negotiator testified that there had been minimal contact between Respondent's tractor drivers and the UFW between the expiration of the collective bargaining agreement and February 1982 and could not recall that anybody had ever discussed working conditions with the tractor drivers since 1978.

Fred Binggeli, the Respondent's tractor foreman for the last eight or nine years testified that work was assigned to the drivers on the basis of their ability to do the job at hand, and that he always assigned work on this basis before, during and after the contract.

Mr. Binggeli further testified that the drivers normally took breaks in the morning and in the afternoon and that in fact he had joined the drivers during their breaks on several occasions and eaten burritos with them. He stated that he had seen Mr. Castro,

Mr. Reyes and Mr. Leon take breaks. He stated that he had never told the tractor drivers that they should take a break at a specific time and since the drivers are spread out among numerous different locations they take their breaks when they see fit.

Mr. Binggeli said that tractor drivers had never been paid for simply reporting to the shop to find out if work was available but that Respondent has paid and continues to pay four hours wages to tractor drivers whose assigned work take less than four hours to complete. He stated that Respondent's policy regarding such matters had not changed since 1978.

Mr. Binggeli testified that the reason Mr. Castro and Mr. Covian were paid for only two and one half hours work was because they had been given a particular short duration assignment and told to return to the shop for further instructions when they completed it. Upon finishing the assignment Mr. Castro and Mr. Covian did not return to the shop but rather went home. He stated that under such circumstances he concluded that Mr. Castro and Mr. Covian were not entitled to four hours pay.

Tony Abatti testified that work is assigned on the basis of a tractor driver's ability rather than seniority and that some tractor work is highly specialized; for example only one or two drivers can perform an operation known as "listing," and only six or seven drivers are capable of operating a Versatile. He stated that he determines whether a given worker is capable of doing a particular job by assigning him to perform it and evaluating the results.

Mr. Abatti further testified that he frequently observed

tractor drivers taking breaks.

Tony Abatti further stated that it is mandatory for tractor drivers to check in, that they could do so by telephone but most of them do it in person because they don't have a phone.

Ben Abatti testified that he interpreted the break time provision of the contract to apply primarily to field crews who work in the presence of a foreman able to supervise their breaks. The tractor drivers he stated are customarily scattered over a 25-mile area and can break whenever they want to. He testified that his application of the contract's rest period provision had not changed at all since 1978.

Mr. Abatti testified that he did not believe the seniority provisions of the contract required that Respondent call back the most senior drivers regardless of their ability to do the job at hand. He stated that he has never applied the contract seniority provision to its tractor drivers in such a manner and that his application for the seniority provision has not changed since 1978.

Mr. Abatti stated that he has never paid tractor drivers who check to see whether work is available but who were assigned to no work. He testified that he does, however, pay four hours time to tractor drivers who are assigned fewer than four hours work. He stated that while they could call to work it was to their advantage to appear in person because they would know that those who were present had a better chance of working than those who merely called in.

V. FINDINGS OF FACT

1. The Alleged Discharge of Lupe Aguiar and Rita Gonzalez

There is no question that Ms. Gonzalez and Mr. Aguiar believed that they had been discharged by Abatti Farms on November 6, 1981. Neither woman was a union activist or even member of a union and neither had any history of being involved in labor activity. Yet both filed their charges on the first working day following their alleged discharge. If they both believed that they were entitled to continue work with Respondent, it would be illogical of them to have, for no reason, filed these charges. The sole question then, is whether or not there was in fact a discharge of Rita Gonzalez and Lupe Aguiar.

The interested witnesses' testimony sharply contradict each other about the details of the critical facts in this dispute. It is therefore necessary to examine the testimony of the apparently non-interested parties in making a determination as to whether or not there was an unlawful discharge of Lupe Aguiar and Rita Gonzalez.

The three witnesses who might be terms disinterested were Victor Corrales, Yolando Castro, and Juana Ramirez.

Mr. Corrales' testimony, for the most part, corroborated the testimony of the two complaining witnesses. Juana Ramirez' and Yolando Castro's testimony seem to corroborate the position taken by Abatti.

It would have been valuable to have the testimony of John Johnson as background in this matter in that it is the position of General Counsel's witnesses that John Johnson spoke of the need for

rest periods to Lupe Aguiar. This testimony was never forthcoming. It would have been equally helpful to have had more detailed testimony from the two disinterested witnesses presented by Respondent. In particular, it would have been helpful to know how they knew there was to be work the day following the alleged incident.

Given the facts presented, I find that there was no discharge of Rita Gonzalez. I base this finding mostly on the fact that on the Monday after the last day she worked for Abatti, Ms. Gonzalez, in delivering a letter from the State to Mr. Miramontes had a conversation during which it was certainly implied by Mr. Miramontes that there was work available to her. Additionally, there is testimony by Ms. Gonzalez that she never made any further attempt to go to work for Abatti after the alleged incidents of the previous Friday. It seemed more a matter of pride and face saving than a discharge.

It is my belief that some confrontation took place between Mr. Miramontes and Lupe Aguiar on Friday. However, the evidence presented does not give rise to a claim of unlawful discharge. As stated earlier, I believe both women believed they were discharged, but neither made any further attempt to go back to work for Abatti. The facts presented would indicate that had they made additional attempts to return to work, they would have encountered no difficulty. The General Counsel's case is built mostly on inuendo and speculation with very little hard facts other than the testimony of their own witnesses and the testimony of Mr. Corrales. Even reading Mr. Corrales' testimony as the absolute truth, there was

never any overt or even covert dismissal. While there apparently was some game playing by Mr. Miramontes, there was no actual or constructive dismissal of either of these two women.

In making this finding, I should point out that I've taken into account my observation of the demeanor and credibility of all witnesses. General Counsel was unable to produce more than one crew member to testify that the workers were told not to report at one moment and then at a later time report in order to get rid of these two women. If Victor Corrales was the only person that had recollection of these events other than the complaining witnesses, this completely contradicts testimony by General Counsel's witnesses that the damaging conversations took place in front of the majority of the workers. In the absence of other witnesses' testimony, I am unable to find other than that there was no illegal discharge of the two complaining witnesses.

Additionally, Ms. Aguiar's contradictions seriously undermined her credibility.

2. The Lettuce Stoppage

There is no dispute of fact to the changing of the pick up point for the lettuce harvest employees. It is important to remember that at the time of the lettuce workers' refusal to work, contract negotiations were in progress between Abatti Farms and the UFW. Abatti did not inform David Martinez that the union's chief negotiator of either the work stoppage or the change in the pick up point, and that subsequent to the UFW learning of the change in the pick up point there had been several bargaining sessions and the issue still was not raised.

Additionally important is the fact that Angel Carrillo and Raymundo Palacio were both members of the UFW Abatti Ranch Committee, and that Mr. Carrillo had attended the contract negotiating sessions with the company.

3. the Rapini Harvest

There is no dispute over the general circumstances in the rapini field. It is stipulated by all parties that the rapini harvest crew initiated a work stoppage beginning on January 21, 1982, as a result of which Respondent raised the piece rate of the crew from 10½¢ per pound to 11½¢ per pound.

There is also no dispute that when Mr. Abatti arrived at the field after the workers had assembled to make their demands, among the workers were Fernando Franco and Maria Guadalupe Caranza de Covarrubias, both of whom were members of the Abatti Ranch Committee. (While Mr. Franco testified that he was not a member of the Ranch Committee, the UFW negotiator testified that he was a member of the committee.)

Respondent put on basically uncontroverted testimony that rapini is a most delicate crop which turns to flower if not harvested when ready, unlike like other leaf crops such as lettuce. The witnesses of Respondent testified that on the morning of January 21 when the rapini workers staged their work stoppage, the rapini was ready to flower.

Respondent never notified that UFW negotiator, David Martinez, that a work stoppage was taking place nor did it notify Mr. Martinez of the pay increase. Although both the UFW and Respondent have engaged in subsequent contract negotiations, the UFW

has not attempted to raise the issue of the rapini at the bargaining table. Nor has the Union raised the issue of the Respondent's subcontracting of rapini work.

There is no dispute that some of the rapini work was subcontracted; however, it is the position of General Counsel that as the result of this subcontracting, the workers in rapini had to spend more time in line to weigh the rapini and were therefore getting paid for less rapini per day. The documentary evidence presented by Respondent refutes General Counsel's position. It appears that in fact the rapini workers, if Mr. Franco is typical, were making more money and cutting more rapini after the subcontracting began. Additionally, I find the testimony of Mr. Franco to be untrustworthy. He testified that the records might be incomplete because sometimes he permitted his wife to take credit for some of his rapini harvesting to inflate her unemployment compensation claims. The records do not support his allegations.

4. Tractor Drivers

There are a number of factual disputes concerning the tractor drivers. There is agreement that the company did not follow the seniority provisions of the 1978 collective bargaining agreement. The company did claim, however, that not all tractor drivers performed all work equally well and that it made work assignments based on skill rather than on seniority. This position was never controverted successfully by General Counsel. However, there was conflicting testimony as to whether or not the company had a policy of breaks. It was the contention of the witnesses for General Counsel that there was no breaks allowed by the company. It

was the contention of witnesses for Respondent that there was an informal break policy that allowed workers to take breaks whenever and wherever they wanted.

I find that the company had no policy of breaks. While it is true that workers might be able to relieve themselves or take an occasional break here and there, the testimony supports General Counsel's position that they were always under the fear of being discovered by supervisors for Respondent and either reprimanded or disciplined. It is certainly clear that there was no formal period of breaks. Even Respondent would concede this.

The testimony and record does not support General Counsel's witnesses contention that they reported for work, worked less than four hours, and were not paid for the full four hours. Respondent has presented credible evidence to explain away those circumstances when employees were paid for less than four hours.

The allegation that the Respondent unilaterally changed a condition of employment by denying reporting time paid to its tractor drivers is an issue of contract interpretation and law rather than a fact.

CONCLUSIONS OF LAW

1. Lupe Aguiar and Rita Gonzalez

Although I am in agreement with General Counsel that any complaints or statements made by individual workers constitute protected activity if they relate to conditions of employment that are matters of mutual concern to all affected employees, Foster Poultry Farms, 6 ALRB No. 15, citing Alleluia Cushion Company, 221 NLRB No. 999, 91 LRRM 1131 (1975); my finding of fact that there was

no discharge, constructive or otherwise, moots the issue of whether or not there was concerted activity here. The facts in this case like the facts in the case cited by counsel for Respondent, Happy Food Center, Inc., 154 NLRB 702 (1965), simply do not support a claim of discharge.

On the question of whether or not Mr. Corrales was a supervisor within the meaning of the Act, the record certainly does not support such a contention.

2. Lettuce Stoppage

Since Angel Carrillo and Raymundo Palacio were the workers that brought the demands to Abatti vis-a-vis the pick up point location, Respondent did not bypass the UFW and negotiate or otherwise directly deal with its employees regarding the change in its lettuce workers pick up point. The letter to the UFW from Respondent (Resp's Ex. 1) identified these ten individuals as members of the Abatti Ranch Committee and stated that "any matters relating to the employees wages, hours and conditions of work should be taken up with the authorized Ranch Committee members and/or staff representative of the UFW . . ."

Whether the UFW intended these individuals to act in its behalf in its negotiation, this letter indicated to Respondent that these individuals had apparent authority to conduct negotiations on behalf of the UFW. And certainly there is enough authority invested in these individuals to at least be agents in terms of notice to the union.

Therefore, Mr. Carrillo's demands to Abatti would certainly seem to be at the very least constructed notice insofar as any

response that Abatti may have taken to such demands. It would be ludicrous to assume that Mr. Carrillo had no knowledge that in fact on the following day there was a change in the pick up point after he had made the original demand. If Mr. Carrillo is deemed to have received at least constructive notice of the change of work place, then there was no bypassing the union in terms of notification, even though he was not physically there.

The fact that the committee no longer existed at the time that notification was received and that it was not recognized by the Union is irrelevant. Abatti Farms had no way of knowing that the committee's duties had ceased, nor did it have any way of knowing what its duties were other than the letter it had received from the UFW. It would be much too great a burden to place on any company to go beyond the facts presented to it by the Union. General Counsel's argument that there are only minor circumstances where an employer will be excused from a duty to bargain during a strike and its citations in support of that authority are misplaced in this instance because the citations refer to instances where it is the union itself that is, under its own name and color conducting a strike. Here, if we read the General Counsel's case in its most favorable light, it is a number of workers acting outside the color of the union that is conducting the strike.

Even if there were to be a finding that the UFW never received sufficient notice, the circumstances surrounding the work stoppage and the subsequent change in the pick up point would have to be taken into account. While it is true that absent impasse, an employer in general may not unilaterally change the terms and

conditions of its employees' employment, there may be exceptions to this doctrine. In the case of A-V Corporation, 209 NLRB 451, 86 LRRM 1057 (1974), the NLRB found that there might be circumstances which the board could or should accept as excusing or justifying unilateral action.

In Betts Cadillac-Olds, 96 NLRB 268 (1950), the NLRB stated:

> An employer is not prohibited from taking reasonable measures including closing down his plant, where such measures are, under the circumstances, necessary for the avoidance of an economic loss or business disruption attendant upon a strike . . . . The nature of the measure is taken, the objective, the timing, the reality of the strike threat, the nature and extent of anticipated disruption, and the degree of resultant restriction on the effectiveness of the concerted activity, are all matters to be weighed in determining the reasonableness under the circumstances, and the ultimate legality of the employers action.

In this instance, the Respondent's lettuce crop was apparently seriously threatened by the work stoppage. The perishable nature of agricultural crops contrasts sharply with conditions in industrial plants. A few days delay in the harvesting of most crops can lead to severe economic hardship. When balanced with any potential harm that could be cause to the collective bargaining process and to the UFW itself, it seems apparent that Respondent acted in a reasonable fashion in acceding to the workers demands.

It should once again be noted that the UFW, even after receiving actual notice has never raised the issue of change in work place at the bargaining table. The only remedies asked for by General Counsel is that the Respondent cease and desist from refusing to bargain collectively in good faith by unilaterally

changing the pick up point, and upon the request of the UFW, to change the pick up point. Respondent has gone on record as saying that it is willing and able to go back to the original pick up point at the request of the UFW.

3. Rapini Stoppage

The circumstances in the rapini harvest was very similar to the circumstances in the change of the lettuce workers reporting place. Respondent believed that it was dealing with members of the Ranch Committee in Mr. Franco and Ms. Covarrubias, two employees who frequently acted as spokespersons for their crew and who were members of the committee. Certainly it would have been reasonable for the Respondent to conclude that these two individuals had apparent authority to negotiate on the workers' behalf.

The belief that these individuals had actual authority to negotiate on behalf of Abatti or certainly to receive notice on behalf of Abatti is strengthened by the fact that union negotiator David Martinez held meetings with the striking workers in the fields on both mornings of the strike.

Therefore, Respondent did not bypass the UFW and negotiate or deal directly with its employees regarding the rapini workers wage increase. Furthermore, the Respondent did not unilaterally increase the rate pay of its rapini harvest employees without notifying or bargaining with the UFW concerning the wage increase.

Once again, even if it were to be found that Respondent acted unilaterally, the same argument as to a balancing between the economic circumstances and the acts performed by Respondent hold true here; in fact, given the uncontroverted nature of rapini, and

its need for immediate harvesting before flowering, the economic circumstances were more critical in the rapini harvest than they were even in the lettuce harvest.

The allegation by General Counsel that Abatti Farms unilaterally subcontracting out bargaining work in the mustard harvest without notifying or bargaining with the UFW resulting in a decrease in the actual hours worked by Respondent's mustard harvest crews is totally without merit. The testimony and documentary evidence presented during the course of this hearing established conclusively that the workers suffered no prejudice as a result of the subcontracting by Respondent. In fact, the documentary evidence would demonstrate that the workers enjoyed increased productivity once the subcontracting took place. Furthermore, both Respondent and General Counsel concur that during a strike, Respondent had the right to subcontract.

It should once again be noted that the remedy requested by General Counsel has been already accepted by Respondent. Respondent is more than willing to roll back the wage increase to the pre-strike amount. Furthermore, at the time of the hearing, the UFW had not negotiated the issue of wage increases at the bargaining table.

Respondent argues in both the rapini harvest and the lettuce change of pick up points that the union's failure to request bargaining with regard to said change precludes a finding that Respondent violated the Act. While my findings of fact and conclusions of law did not necessitate me responding to this point, I find it necessary that I do so. The cases cited by counsel for

Respondent in support of his position, most particularly Citizens National Bank of Willmar, 245 NLRB 389 (1979), affirmed 106 LRRM 2816 (D.C. Cir. 1981), dealt with circumstances that existed prior to the unilateral change. In these instances, however, the unilateral change had already taken place and while it is true that the UFW had notice of such changes, the decision to raise these issues at any given time became a tactical question, particularly since the workers had gotten benefits it considered important. For the UFW to demand retraction of these benefits would have possibily jeopardized its position as negotiating agent on behalf of the Respondent's employees. The UFW, therefore, was under no compulsion to bargain as to these particular issues given the overall circumstances at hand.

4. The Tractor Drivers.

Respondent contends that Paragraphs 18, 19 and 20 of the second amended consolidated complaint, all of which are alleged to have occurred beginning on or about January, 1979, is time barred by section 1160.2 of the ALRA. That section states, in relevant part:

> No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board . . . .

Section 1160.2 is a statute of limitations designed to prevent litigation of stale claims. The National Labor Relations Board has a similar statute of limitations and it is held that the period is not to be tolled until ". . . the claimant discovered, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged violation." Montebello Rose Company, Inc.,

5 ALRB No. 64 citing N.L.R.B. v. Allied Products Corp., 548 F.2d 644, 650, 94 LRRM 2433 (6th Cir. 1977). The NLRB does not begin to toll the six-month period until the charging party has actual or contructive notice of the unlawful conduct in refusal to bargain cases dealing with unlawful unilateral changes. Montebello Rose Company, Inc., supra, at p. 13 citing S & W Motorlines, Inc., 236 NLRB No. 113, 98 LRRM 1488 (1978); the NLRB has held that the burden is on Respondent to show that there was no notice to Charging Party, thus making the six-month statute an affirmative defense. ACF Industries, Inc., 234 NLRB No. 158, 96 LRRM 1287 (1979). In this matter, the tractor drivers were unaware of the provisions of the 1978 collective bargaining agreement. There was little or no contact with the United Farm Workers, and the UFW was certainly unaware and uninformed that the company did not intend to comply with certain provisions of the collective bargaining agreement. In ACF Industries, supra, the NLRB makes a distinction between employees knowledge of the unilateral act and notice to the charging party in the wrongdoing and found that the union was not given notice even though the employees were aware of the wrongdoing.

In this matter the overwhelming testimony of General Counsel's witnesses indicated that the union was unaware of any deviations by Respondent from the contract language until approximately January of 1982. In the ALRB case of Martori Brothers, 8 ALRB No. 23, the Respondent argued that notice to the employees of Respondent's unilateral act must also be charged to the union. The ALO, citing Oilworkers International, CIO v. Superior Court of Contra Costa County, 103 Cal.App.2d (1951) and Daniels v.

Sanitarium Association, Inc. C.2d 602 (1963) states the following:

> These arguments are not persuasive. Patently, the bus riders had actual notice that bus transportation had ceases. However, no authority cited for the proposition that such notice is to be equated with notice to the UFW, charging party herein. A labor organization is sui generis and has an existence separate from that of its members. Knowledge of a bargaining unit member, qua bargaining unit member, is not chargeable to the union any more than service of process upon a rank and file bargaining unit member constitutes service upon the union.
>
> (ALOD at page 23.)

In reaching my conclusions in this matter, I looked at the circumstances surrounding the time period from June 7, 1978 to January 1982. On June 7, the UFW and Respondent entered into a six-month collective bargaining agreement. The six-month period was marked by tremendous tension between the parties. Contract administrators were initially prohibited from entering Respondent's property, and many employees refused to join the UFW as required by the contract (taking judicial notice of 7 ALRB No. 36). At the termination of the contract period, a decertification effort was begun by two of Respondent's employees, an irrigator and a tractor driver, resulting in a decertification election held on December 27, 1978, which resulted in the decertification of the UFW. The UFW contested the election, alleging that the company had unlawfully instigated an assisted the decertification drive; the ALRB in its decision found Respondent had indeed unlawfully assisted the employees attempt to decertify the union and Respondent was ordered to renew negotiations with the UFW.

The decision was not issued until October 28, 1981. In the nearly three years between the decertification campaign started and even before the contract had expired, the UFW found itself in a type

of limbo. It was not the certified bargaining representative of the Abatti workers, and had to be content to wait out the Board processes for final determination of its standing. The intervening three-year period caused what can only be termed the collapse in the relationship between the UFW and the workers who believed that, as a result of the decertification, they were no longer represented by the UFW. This is apparently particularly true of the tractor drivers who were never represented on the initial workers' ranch committee and who were the workers from which the decertification effort originated. The evidence indicates that the contact with the tractor drivers was not re-established until early in 1982 when the workers became aware of the decision overruling the decertification and thus realized that the UFW was again considered the certified bargaining representative of the Abatti agricultural employees.

I therefore find that the UFW did not receive either actual constructive notice of Respondent's contractual policies until early 1982. While on the surface it would seem absurd that a bargaining unit would lose contact with its member for such a long period of time, the circumstances and conditions surrounding the decertification campaign, the subsequent election, and the isolation of the UFW, makes the three-year hiatus reasonable.

Even if the statute were to bar the earlier conduct, the charges would still be timely filed due to a continuing nature of the alleged violations. See Julius Goldman's Egg City, 6 ALRB No. 61 (1980).

Respondent contends that under the contract the conduct complained of by the UFW is the subject of mandatory arbitration and

should not be heard by the hearing officer but rather should be referred for arbitration. I find that although that might well have been the case if the alleged conduct had occurred within the context of normal labor relations, given the circumstances in this matter, the decertification election, the employer's choosing to ignore the conditions of the contract, and taking the position that the UFW had been decertified, the interest of justice would not be served by merely submitting this to an arbitrator. Additionally, the contract speaks clearly to 10-minute breaks and to seniority. The testimony before us in this matter indicates that Respondent ignored those provisions of the contract. Therefore, the complaint does not involve interpretations of the contract in these two instances, but rather a per se violation of the contract. The only subject matter that might reasonably be expected to be arbitratable would be the interpretation of the reporting provisions.

The company initiated the decertification campaign at its own peril and acted on the belief that it would ultimately prevail. In doing so, the company ignored the provisions of the contract in regard to the tractor drivers. Counsel for Respondent argues that since the company always ignored the provisions of the contract, there can be no unilateral change. It is the position of General Counsel that the contract is the status quo and that any deviation from the contract constitutes unilateral change. To accept Respondent's position would be to allow Respondent to reap the fruits of its own misconduct. While it is true that Respondent never complied with the provisions of the contract in terms of seniority and the breaks, there was a contract existing and the UFW

had no way, as I had found earlier, of determining that there was non-compliance. Therefore, I find that the contract was the status quo, and any change from the contract must be considered a unilateral change.

There is no question but that an collective bargaining agreement survives its expiration date for the purposes of marking the status quo as to wages and working conditions. The employer is required to maintain that status quo following the expiration of the collective bargaining agreement until the parties negotiate a new agreement or bargain in good faith to impasse. (N.L.R.B. v. Carilli (9th Cir. 1981) 648 F.2d 1206, 107 LRRM 2961.) Thus, though an employer's contractual obligations cease with the expiration of the contract, those terms and conditions established by the contract and governing the employer-employee relationship, survive the contract and present the employer with a continuing obligation to apply those terms and conditions, unless the employer gives timely notice of its intention to modify a condition of employment and the union fails to timely request bargaining or impasse is reached during the bargaining over the proposed change. (Bay Area Sealers (1980) 251 NLRB 89, 105 LRRM 1545.)

Consistent with this precedent, the NLRB has found that employers who made unilateral changes in wages, hours, or other terms and conditions after expiration of a contract violated section 8(a)(5) of the NLRA. (See Bay Area Sealers, supra.)

It is also found that an employer "acts at his own peril" when instituting unilateral changes pending the outcome of a decertification election. In Nish Noroian Farms, 8 ALRB No. 25, the

Board stated that:

> Under the ALRA, the rule is as follows: After a union is certified, an employer has a duty to bargain upon request with that union. A filed petition, direction of election, or tally of ballots, does not affect that duty. If a "no union" vote prevails in a decertification election, the certification of results dates back to the day of the election so that no violation can be found, and no remedial order imposed, based on an employer's refusal to bargain from that point forward. This is an application of the "at the employer's peril" doctrine. If a rival union is certified, the employer's duty to bargain switches from the imcumbent to the rival on the date of certification. In all other case, the employer's duty to bargain with the incumbent union continues uninterupted. Id. at 14.

Since the Board has upheld the decertification, the employer's actions were held to be permissible as the union was not a certified bargaining representative at the time the change was implemented.

In the present case, the decertification election was overturned. Therefore, any unilateral actions taken by the Respondent employer would be deemed unilateral changes because the certification was awarded to the union and they are deemed to be the certified bargaining representatives during the intervening years.

The duty to bargain has been found to include not only the duty to recognize a newly certified union, but all negotiations for labor contracts, continuing even after a collective bargaining agreement has been executed. Even in instances where an employer, rather than repudiating the entire contract, unilaterally modifies a provision of the contract without having given the authority to do so would bring about a violation of the ALRA. See Oak Cliff Golman Baking Company (1974) 207 NLRB 1063, enf'd mem. 90 LRRM 2613 (5th Cir. 1974).

Golman goes on to state that if the subject matter of the relevant modification is contained in the collective bargaining

agreement, and the provision is a mandatory subject of bargaining, the employer is required to bargain with the union over the proposed mid-term alteration in terms. The duty exists even if the union has been notified of the change.

Rest periods are the subject of mandatory bargaining. Firebird Paper Products Corp. v. N.L.R.B. (1964) 379 U.S. 203, 222, 57 LRRM 2609. For this reason the change in policy with regard to breaks has consistently been found to be a violation of the act. (See Production Plated Plastics, 254 NLRB No. 68, 106 LRRM 1143 (1981).) My finding of facts indicated that the employees at Abatti were not given the ten-minute breaks in the morning and afternoon and thus there was a universal change in this condition of employment.

The issue of whether or not the company weighed the individuals abilities of its tractor drivers is irrelevant in that the company has admitted that it has never followed the seniority provisions of the contract. I therefore find that the company unilaterally changed a condition of employment by refusing to recognize tractor driver seniority.

My interpretation of Paragraph M of the parties supplemental agreement No. 1 which specifically provides that "the shop meeting site shall not trigger the pay guarantee set forth in Article 20 reporting and standby time of this agreement." would exclude the tractor drivers from the provisions of Article 20 and thus no unilateral change was brought about by Respondent's refusal to pay 4 hours of wages to tractor drivers who reported to Respondent's shop but were assigned no work.

I find that the modification of the contract without notification and bargaining to the unit is a unilateral act in violation of section 1153(e) and (a) of the ALRA. The right to file charges would have existed during the life of the contract had the violations been discovered at that time. As was shown, the union did not discover the violations until after the decertification situation was resolved and the workers approached the union in 1982. I am in agreement with General Counsel that equity, logic and policy consideration behind the purpose of the Agricultural Labor Relations Act dictate that the union is entitled to a remedy for the Respondent's admitted acts of changing provisions in the contract by declining to follow certain of these provisions.

I shall recommend to the Board that for the reasons stated above, charges contained in Paragraph 12, 13, 14, 15, 16, 17 and 19 be dismissed.

Furthermore, having found Respondent engaged in certain unfair labor practices within the meaning of section 1153(a) and (e) of the Act, I shall recommend that he be ordered to cease and desist from and to take certain affirmative action designed to effectuate the policies of the Act.

I shall further recommend that General Counsel's request for an award of attorneys fees, costs of litigation and costs of investigation be denied. I shall further recommend that the Respondent's similar request be denied.

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

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that:

1. Respondent, Abatti Farms, Inc., Abatti Produce, Inc., its agents and officers, shall cease and desist from:

a. Failing and refusing to bargain collectively in good faith with the UFW by unilaterally changing work allocations according to seniority, and the method of paid rest breaks, or any other terms or conditions of employment of its employees.

b. Refusing to meet and bargain collectively in good faith, as defined in Labor Code section 1152(a), with the United Farm Workers of America, AFL-CIO, as the exclusive certified collective bargaining representative of its agricultural employees in violation of Labor Code section 1153(e) and (a), and in particular:

(1) Make unilateral changes in the terms and conditions of employment without notice to and bargaining with the UFW.

2. Respondent shall make whole the agricultural employees who suffered losses of benefits and wages as a result of Respondent's change in the contract provisions of seniority and paid rest breaks as such losses are defined in Adam Dairy (1978) 4 ALRB No. 24.

3. Respondent shall take the following additional affirmative actions deemed necessary to effectuate the policies of the Act:

a. Preserve and upon request, make available to the Board or its agents for examination and copying, all records relevant to a determination of the amounts due its employees under the terms of the remedial order.

b. Sign a notice to employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes hereinafter set forth.

c. Mail copies of the attached notice in appropriate languages within 30 days after issuance of this order, to all employees of Respondent.

d. Post copies of the notice in appropriate languages in conspicuous places on Respondent's property, including places where notice to employees are usually posted, for a sixty day period, the period and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the notices which may be altered, defaced, covered or removed.

e. Provide a copy of the attached notice to each employee hired by Respondent during the 12-month period following the remedial order.

f. Arrange for a Board agent or representative of Respondent to distribute and read the notice in all appropriate languages to employees assembled on Respondent's time a property, at times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunty, outside the presence of supervisors and management, to

answer any questions the employees may have concerning the notice of employee rights under the Act. The Regional Director shall determine the reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and question and answer period.

g. Notify the Regional Director, in writing, 30 days after the issuance of a remedial order, as to what steps have been taken in compliance. Upon request of the Regional Director, Respondent shall notify him periodically thereinafter in writing what further steps have been taken in compliance.

DATED: December 31, 1982

ROBERT L. BURKETT
Administrative Law Officer

NOTICE TO ALL ABATTI FARMS, INC. AND ABATTI PRODUCE, INC. EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by unilaterally changing certain conditions of employment of the Abatti tractor drivers. The Board has ordered us to post this notice and to take certain other actions. We will do what the Board has ordered and will also tell you that:

The Agricultural Labor Relations Act is a law that gives farmworkers these rights:

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

Because this is true, we promise you that:

WE WILL, on request, meet and bargain in good faith with the UFW about a contract because it is the representative chosen by Abatti Farms, Inc. and Abatti Produce, Inc.

WE WILL reimburse each of the employees employed by us as tractor drivers after January 1979, for any loss of pay or other economic losses sustained by them because of our unilateral changes.

WE WILL in the future make no further unilateral changes in working conditions without first bargaining and meeting in good faith with the UFW concerning any proposed changes.

DATED:

ABATTI FARMS, INC. and
ABATTI PRODUCE, INC.

By: _____ _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE