Holtville, California
Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| BRUCE CHURCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party | ) | Case Nos. 79-CE-171-EC 81-CE-147-SAL 82-CE-16-SAL<br><br>9 ALRB No. 75 |

DECISION AND ORDER

On December 9, 1982, Administrative Law Judge (ALJ)[1/] Arie Schoorl issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions to the ALJ's Decision and a supporting brief. General Counsel timely filed a reply brief to Respondent's exceptions.

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

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

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

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

to affirm the ALJ's rulings, findings and conclusions[3/] and to adopt his recommended Order, as modified.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Bruce Church, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. Threatening any agricultural employee with a disciplinary notice for communicating with another such employee or employees concerning a union or union benefits, or otherwise interfering with any agricultural employee's right to engage in union activity.

b. Unilaterally changing employees' wages or working conditions without giving prior notice thereof and an opportunity to bargain about the change to the United Farms Workers of America, AFL-CIO.

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

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

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[3/] In light of our Decision in Bruce Church, Inc. (1983) 9 ALRB No. 74, the ALJ's conclusion that Respondent's action in instituting a wage increase in September 1981 was a violation of section 1153(e) and (a) of the Agricultural Labor Relations Act is hereby affirmed. His alternative conclusion, that the increase was not a violation, is disapproved.

a. If the UFW so requests, rescind the unilateral change in wage rates and other unilateral changes determined to be violations in the instant matter, and make whole the affected employees for all losses of pay and other economic losses they have suffered as a result of the unilateral changes in working conditions, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

b. 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.

c. Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time between September 1, 1981 and September 1, 1982.

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

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

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

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

Dated: December 27, 1983

ALFRED H. SONG, Chairman

JEROME R. WALDIE, Member

MEMBER McCARTHY, Dissenting,

In contrast to the majority's finding in footnote 3 of its decision, I would not find Respondent's unilateral wage change to be violative of the Agricultural Labor Relations Act. As I pointed out in my Dissenting Opinion in Bruce Church, Inc. (1983) 9 ALRB No. 19, at the time it implemented the change in wages, Respondent was not engaged in bad-faith bargaining and a bona fide impasse existed.

Furthermore, I do not find adequate support in the record for the Administrative Law Judge's conclusion that Respondent interfered with the Labor Code section 1152 rights of employee Guadalupe Arvizu.

The complaint in this case should have been dismissed in its entirety.

Dated: December 27, 1983

JOHN P. McCARTHY, Member

## NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Bruce Church, 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 interfering with our employees' right to communicate with each other concerning a union or union benefits and by unilaterally changing your wage rates without previously negotiating in good faith with the United Farm Workers of America, AFL-CIO (UFW). The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT hereafter threaten any employee with a disciplinary notice because of his or her conversing with another employee or employees about a union or union benefits, or otherwise interfere with an employee's right to so communicate.

WE WILL NOT unilaterally change your wage rates without negotiating in good faith with the UFW about the proposed wage increase.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our agricultural employees in the exercise of their rights guaranteed by section 1152 of the Act.

Dated: BRUCE CHURCH, INC.

By: _____
Representative Title

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

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

DO NOT REMOVE OR MUTILATE.

# CASE SUMMARY

Bruce Church, Inc.
(UFW)

9 ALRB No. 75
Case Nos. 79-CE-171-EC, et al.

## ALJ DECISION

In 1980, the UFW filed a charge that BCI violated the Act by unilaterally implementing wage increases and changes in working conditions without negotiating in good faith with the UFW about those changes. The unilateral changes, admitted by BCI, were implemented in September 1980, and were pursuant to the contract implementation by BCI in February 1980, following an impasse in bargaining with the UFW. The Administrative Law Judge, Arie Schoorl, ruled that if the ALRB upholds ALJ Jim Wolpman's decision in Bruce Church, Inc., 79-CE-87-SAL (BCI 1) (see 9 ALRB No.74), then these unilateral changes would be in contravention of the Act, but otherwise, there would be no violation.

Also, BCI employee Guadalupe Arvizu charged that her forman, Manuel Guizar, threatened her with a warning notice in September 1981, for discussing the benefits of unionization with a co-worker and harassed her on October 5, 1981, because of her prior union activity. The ALJ ruled that the September incident was a violation of the Act but that the General Counsel failed to prove that the October incident was in retaliation for Arvizu's union activity.

## BOARD DECISION

The Board adopted the rulings, findings, and conclusions of the ALJ and adopted his recommended Order.

In light of the Board's Decision in Bruce Church, Inc. (1983) 9 ALRB No. 74, the Board adopted the ALJ's conclusion that the unilateral changes violated the ALRA.

## DISSENT

Board Member John McCarthy dissented, concluding that the changes implemented by Respondent were permissable under the ALRA. He further objected to the ALJ's conclusion that Respondent interfered with any rights of employee Arvizu that may have been protected by the Act.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| In the Matter of:<br><br>BRUCE CHURCH INC.,<br><br>Respondent,<br><br>and<br><br>UNITED FARM WORKERS OF AMERICA, AFL-CIO,<br><br>Charging Party. | Case Nos. 79-CE-171-EC<br>81-CE-147-SAL<br>82-CE-16-SAL |

Appearances:

James W. Sullivan, Esq.
for the General Counsel

William Claster, Esq.
Gibson, Dunn and Crutcher
for Respondent

DECISION OF THE ADMINISTRATIVE LAW OFFICER

ARIE SCHOORL, Administrative Law Officer: This case was heard by me on September 29, 1982, in Salinas, California. A complaint which issued on July 3, 1980, based on a charge (79-CE-171-EC) filed by the United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW) and duly served on Bruce Church Inc. (hereinafter referred to as Respondent), alleged that Respondent had committed a violation of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act). Respondent filed an answer thereto on July 14, 1980, denying any such violation. Another complaint issued on June 29, 1982, based on a charge (82-CE-16-SAL) filed by the UFW and duly served on Respondent, alleging that Respondent had committed another violation of the Act. Respondent filed an answer thereto on July 6, 1982, denying any such violation.

An order consolidating cases and first amended consolidated complaint issued on August 24, 1982, based on the two above-mentioned charges and a third charge (81-CE-147-SAL), and was duly served on Respondent. The consolidated complaint alleged that Respondent had committed various violations of the Act. Respondent filed an answer thereto on August 30, 1982, denying any such violations. A second amended and consolidated complaint issued on September 20, 1982, and Respondent filed an answer thereto on September 17, 1982.

The UFW filed a Notice of Intervention on August 27, 1982, but did not enter an appearance and was not represented at the hearing.

The General Counsel and Respondent were represented at the

hearing. The General Counsel and Respondent timely filed briefs after the close of hearing. Upon the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs submitted by the parties, I make the following findings of fact:

I. JURISDICTION

I find that Respondent is an agricultural employer within the meaning of section 1140.4(c) of the Act, and that the UFW is a labor organization within the meaning of section 1140.4(f) of the Act, and was, at all times material herein, the certified collective bargaining representative of all of Respondent's agricultural employees.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleged, inter alia, that on or about November 19, 1979, Respondent employed agricultural employees during a labor dispute without plainly and explicitly informing such persons that a labor dispute or a strike existed. At the hearing, General Counsel moved to dismiss that allegation and I granted the motion. The complaint also alleged that Respondent unilaterally implemented a wage increase without negotiating this increase with the certified bargaining representative of Respondent's employees, the UFW, and that in October 1981 Respondent harassed[1/] employee

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1. General Counsel provided the details of the alleged harassment in an amendment to a second amended and consolidated complaint in which it is stated that the harassment consisted of foreman Manuel Guizar interfering with Guadalupe Arvizu's rights as she started to answer a question of a coworker about the benefits of a union contract, threatening to give Arvizu a warning for poor work although her work was standard and workmanlike and also denying her assistance that Guizar provided to other members of the crew.

Guadalupe Arvizu because of her union activities and because she gave testimony in a prior ALRB hearing.

## III. THE ALLEGED UNILATERAL WAGE INCREASE OF SEPTEMBER 1981

### A. Facts

On September 20, 1981 Respondent implemented a wage increase for all of its hourly and piece rate employees. The increase was approximately 5.5 percent for hourly classifications. Respondent contends that bargaining had reached an impasse by September 1980. Respondent did not give prior notice to the UFW or provide it with an opportunity to bargain about the wage increases.

### B. Analysis and Conclusion

Since Respondent's unilateral wage increases were implemented in September 1981 pursuant to the same alleged impasse as were earlier wage increases granted by Respondent, they are part of the same conduct that was the subject of litigation in Bruce Church, Inc., Case No. 79-CE-87-SAL. Accordingly, the parties in the instant matter stipulated at the hearing that the issue as to whether Respondent's implementation of the wage increases in September 1981 was lawful shall be resolved in accordance with whatever final determination is made by the ALRB or a court with respect to earlier increases which were in issue in Case No. 79-CE-87-SAL.

Because the Board has not, as of the date of this decision, issued its decision in Case No. 79-CE-87-SAL, I must make my findings of fact and conclusions of law in the alternative. If the Board affirms or modifies the ALO's decision in the aforementioned case and finds there was no bona fide impasse, I conclude that

Respondent's action in instituting a wage increase in September 1981 was a violation of section 1153(e) and (a) of the Act. However, if the Board reverses or modifies the ALO's decision in the aforementioned case and find that there was a bona fide impasse, I conclude that Respondent's action in instituting the wage raise was not a violation of the Act.

## IV. ALLEGED PRESSURE AND HARRASSMENT OF GUADALUPE ARVIZU IN OCTOBER 1981

### A. Facts

Guadalupe Arvizu has worked as a lettuce cutter for Respondent since 1974. At all times material herein, Arvizu worked on Crew No. 8 under the supervision of foreman Manuel Guizar. She has been a member of the UFW throughout her employment with Respondent. During the 1979 UFW lettuce strike against Respondent, she carried a UFW flag on the picket line and was observed by Respondent's supervisor Mike Payne. On one of those occasions Payne attempted to take a photograph of Arvizu. During the same strike period, while Arvizu was picketing to protest lettuce sales at or near a J.C. Penney department store in Salinas, she gave a strike handbill to Payne who then asked her whether she spoke any English. Arvizu responded in the negative whereupon Payne told her in Spanish that what she was doing was dumb.

During the same strike, Manuel Guizar observed Arvizu while she participated in picket line activities. On one occasion, while Guizar and his wife were working on the lettuce harvesting machine, Arvizu spoke to him from the picket line and asked him why he had recruited his wife for work on the machine. Guizar responded that is was because Respondent was short of workers. During the course

of the strike, Arvizu saw Guizar working on the machine near the edge of the fields on numerous occasions.

In the middle of September, Arvizu was at work cutting lettuce with crew No. 8 under the supervision of foreman Manuel Guizar. The crew was working with a lettuce cutting machine.[2/] As Arvizu was cutting lettuce, a wrapper, named Veronica, who was positioned on the machine directly in front of her, asked her about the union and the benefits of union representation. Arvizu answered that the benefits included better wages and a medical plan. At that point, Manuel Guizar interrupted and told Arvizu to keep working and not to talk about the politics of the union. Arvizu answered that she was only answering questions. Guizar retorted that if she continued to talk about the politics of the union that he would give her a warning.[3/]

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2. Eight cutters walked in front of the machine and eight cutters including Arvizu, walked behind the machine. Eight wrappers, two picker-uppers, two packers, a stitcher and a closer completed the crew and worked on or in close proximity to the machine.

3. I base my findings of fact in regard to this incident on the credible testimony of Guadalupe Arvizu and Marta Uribe. Both witnesses testified in an open candid manner and appeared to be endeavoring to answer questions truthfully.

Respondent argued in its post-hearing brief that Uribe admitted she did not hear the words expressed by Arvizu and Guizar during their dialogue. Respondent errs in that assertion. Uribe admitted she failed to hear the words exchanged between Arvizu and Guizar on October 5 when Guizar was reprimanding Arvizu about speeding up her work but did not admit any such thing in respect to the incident when Guizar ordered Arvizu to stop talking about the union. Respondent repeatedly misstated the record in an attempt to discredit the testimony of General Counsel's witnesses Guadalupe Arvizu and Marta Uribe. Respondent claimed that Arvizu testified that Manuel Guizar never permitted her to talk while the record

(Footnote continued----)

Guizar testified that he did not remember the incident of interrupting a conversation between Arvizu and a wrapper working in spot number one.[4/] He denied ever telling any crew member to stop talking about any subject, including union matters while working. He admitted there were times when the harvesting-machine crew

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(Footnote 3 continued)

reflects that Arvizu testified that Guizar generally permitted her to talk but told her to stop on several occasions. Respondent claimed that Arvizu and Uribe contradicted each other when the former testified that Guizar stopped only her from talking and the latter testified that Guizar stopped both Uribe and Arvizu from talking. Respondent's claim is misleading since Arvizu was testifiying about Guizar's conduct during the few months preceding the hearing, the summer of 1982, and Uribe's testimony referred to Guizar's conduct up to October 1981, the month she transferred out of the crew. So there was no contradictory testimony. Respondent claimed that Arvizu and Uribe contradicted each other since Arvizu testified that she was unable to inform Veronica of the union wages because of Guizar's interruption, while Uribe testified that Arvizu informed Veronica about "wages when salary increase come." Respondent's claim is misleading since Uribe substantially qualified her testimony regarding "wages . . . salary increase" by adding that she did not recall exactly about the "wages" and "salary increase" and furthermore categorically denied that Arvizu ever mentioned the amount of money workers would be making under the union contract.

4. Arvizu testified that Veronica was the name of the wrapper who had worked in "spot number one" on the harvesting machine that day. Uribe in her testimony corroborrated Arvizu's testimony in this respect.

Respondent implied in its post hearing brief that doubt should be cast about the veracity of Arvizu's account of this incident because she did not know Veronica's last name. I see nothing unusual about an employee who does not know a fellow employee's last name.

General Counsel filed a Motion to Strike Portions of Respondent's Post Hearing Brief on November 17, 1982. General Counsel objects to Respondent referring in its post hearing brief to previous ALRB cases wherein the administrative law officers made certain evaluations of Guadalupe Arvizu's testimony. However, these evaluations were inextricably involved with the circumstances of each case and I do not see how they can have any bearing on the evaluations I have made of Arvizu's testimony in the instant case.

employees' talking interfered with their work but stated that on such occasions he told them to "get back to work" rather than telling them to stop talking.[5/] Guizar's testimony as to Arvizu's talking about the union was equivocal. At one point in his testimony, he admitted that sometimes he heard their talking about the union and at another point he testified that he didn't pay attention to what the workers were talking about.

On October 5, 1981, Guadalupe Arvizu, Marta Uribe, Ismael Camacho and other members of Crew No. 8 were harvesting lettuce with the lettuce harvesting machine. At approximately 9:30 a.m., foreman Guizar gave a signal to the stitcher to accelerate the machine to top speed. As the machine began to move faster, the cutters slowly fell back i.e. increasingly farther behind the machine. Guizar periodically helped individual cutters catch up to the machine. As those cutters moved closer to the machine, leaving uncut lettuce heads behind them, he assisted them by cutting the missed heads and bringing them to the machine. In that way he helped every cutter except Guadalupe Arvizu. Rather, he repeatedly told her to hurry up, to pick all the good lettuce and stop leaving good lettuce behind. He also told her that if she could not do the job, she should go to the bus (which transports workers to and from the job site). As Guizar's conduct made her exceedingly nervous and caused

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5. Ismael Camacho, a witness called by Respondent, who worked as the closer on the harvesting machine during the events in question testified that Guizar never told the workers to stop talking at any time. Marta Uribe, a witness called by General Counsel, who worked as a wrapper on the harvesting machine during the events in question testified that Guizar told her to stop talking several times when she was conversing with Arvizu. Sometimes they were talking of the union and sometimes not.

her to cry, she cut her hand with the lettuce-cutting knife. She informed Guizar of the injury and he permitted her to leave the worksite to seek first aid. She returned in 30 minutes and resumed her work as a cutter.

Guizar testified that he remembered the day Arvizu cut her hand and recalled that he took her place cutting for a while and then secured another employee to perform her work. Guizar testified he occasionally helps cutters when they fall behind in their work, but that he provides such help to all the cutters including Arvizu.[6/] He stated that he did not remember whether he helped any of the cutters on the morning of the day Arvizu accidentally cut her hand.

Marta Uribe, a witness called by the General Counsel, testified that Guizar had repeatedly talked to Arvizu about her work that morning and that Arvizu was nervous and crying. She added that Guizar would take lettuce to her, Uribe, that Arvizu had left uncut and that most of it was soft and not appropriate for wrapping. This confirmed Arvizu's testimony that Guizar was criticizing her for leaving good lettuce uncut when it was actually defective.[7/]

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6. Elva Banegas, a cutter from Crew 8, called by Respondent testified that Guizar helped every cutter who falls behind, including Arvizu. She also testified that she knew Arvizu was a Chavista and that Guizar treated Arvizu the same as all the other employees. However, her testimony was limited to what she had observed since she joined the crew in December 1981.

7. I base my findings of fact in regard to this incident on the credible testimony of Guadalupe Arvizu and Marta Uribe and for reasons previously stated in footnote 3. Once again Respondent has repeatedly misstated the record in an attempt to discredit the testimony of Guadalupe Arvizu and Marta Uribe. Respondent claims

(Footnote continued----)

B. Analysis and Conclusion

General Counsel contends that in September and October 1981 Respondent, through its foreman Manuel Guizar, harrassed and pressured Guadalupe Guizar because of her union activities and because she gave testimony at a prior ALRB hearing and thereby has violated sections 1153(c), (d) and (a) of the Act.

To establish these violations, General Counsel must prove by a preponderance of the evidence that Respondent discriminated against Arvizu because of her union activities and testimony before the Board. Generally in discrimination cases, General Counsel must prove that the employee engaged in union activities and/or testified before the Board, that the employer had knowledge thereof and that there was a causal connection between the union activity and/or ALRB testimony and the subsequent discriminatory treatment of the employee.

In the instant case, Arvizu was very active in the union as

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(Footnote 7 continued----)

that Arvizu testified that all the cutters complained about the accelerated speed of the harvesting machine. Respondent's claim is misleading since Arvizu immediately qualified this statement by adding that the crew members who complained were only Valentin, Paula Marguez, and herself and that they only complained to each other. Respondent claims that Marta Uribe testified that Guizar never went to the other side of the harvesting machine on the morning of October 5, but Uribe later made it clear in her testimony that Guizar was "most of the time" on her and Arvizu's side of the machine. Respondent claims that Uribe was inconsistent in her testimony because at one point she described the contents of conversations that she heard on the morning of October 5 between Arvizu and Guizar and at other times she admitted she was unable to hear the words of the conversations. However, it is clear from the record that Uribe described what was said in the first two conversations between Arvizu and Guizar and it was only with respect to their subsequent conversations that she testified she was unable to distinguish the words.

she was a picket captain during the strike, picketed retail outlets that were selling non-union lettuce, was an observer in the Arizona election and was the shop steward for the crew.

There is clear evidence that Respondent had knowledge of her activities as both Mike Payne and Manuel Guizar observed her on the picket line during the 1979 lettuce strike. Mike Payne commented to her while she was picketing a commercial outlet during the 1979 lettuce strike that want she was doing was dumb. Manuel Guizar, Respondent's foreman knew that she had been an observer for the UFW at the union representation election in Arizona election.

Respondent stipulated at the hearing that Arvizu testified against Respondent at three hearings before the ALRB and has filed through the UFW six charges against Respondent and that Respondent had knowledge of same.

General Counsel contends that on October 5, foreman Guizar harassed Arvizu about her lettuce-cutting work and refused to help her in her work because of her union activities and her filing charges with the ALRB or giving testimony at hearings.

I find that Manuel Guizar harassed and pressured Arvizu on that date based on her credible evidence and the equally credible corroborative evidence of Marta Uribe.[8/] However, it is difficult

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8. I found Manuel Guizar to be an unconvincing witness. He appeared to tailor his testimony so it would be favorable to Respondent's case. He repeatedly disclaimed knowledge about Guadalupe Arvizu i.e. whether she was a union activist, whether she spoke to coworkers <u>in favor</u> of the Union, whether Arvizu was a UFW observer at the ALRB election in Arizona in the fall of 1981, and even whether Arvizu wanted the harvest machine to go fast or slow.

(Footnote continued----)

to determine whether Guizar engaged in that conduct because of Arvizu's union activities and/or recourse to the ALRB or because of his personal animosity toward Arvizu or a mutual imcompatibility. Reviewing the record evidence it appears that either explanation would be plausible. According to Marta Uribe's testimony she and Guizar also had their differences. He compelled her to work as a picker-upper instead of her regular job as a wrapper on day when she was nauseous and despite her telling him how the picker-upper job aggravated her condition he refused to transfer her back to her regular job. Guizar went further and docked her pay when she took time off to complain about his treatment of her to supervisor Patricio Garcia. Later, Guizar demoted Uribe from a wrapper to a cutter and scolded her so severely on one occasion that she cried. Thus it appears that Guizar treated not only Arvizu, but also Marta Uribe in a callous and cavalier fashion. However, there is no evidence that Uribe was a union activist or even a Union adherent,

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(Footnote 8 continued----)

There was uncontradicted evidence that he had seen her on the UFW picket line in 1979. He admitted in his testimony that he had heard Arvizu speak about the union to other employees. If so, it is unlikely that he was unaware that she was speaking in favor of the union. After first denying knowledge of her union connection, he later admitted that he learned the day after the November 1981 ALRB election that she had been the UFW observer. Furthermore, he denied that he ever gave Arvizu a warning notice. However, she credibly testified that Guizar issued her one in Arizona on the day after Thanksgiving Day and Guizar did not specifically deny that testimony. Respondent introduced evidence that no copy of the warning notice had been placed in Arvizu's personnel file. Arvizu credibly testified that after receiving the warning notice from Guizar she went to Respondent's office, explained to Alfonso, an employee of Respondent's, the reason for her absence, i.e., the necessity for taking her sick child to the hospital, and Alfonso tore up the notice and threw it away.

so it cannot be found that Guizar treated union sympathizers differently than he treated other employees.[9/]

Of course there does exist the possibility that Guizar treated Arvizu harshly the morning of October 5 because of her past union activities and recourse to the ALRB. That would be a likely explanation for Guizar's harsh treatment of Arvizu but no more likely than that Guizar harbored a personal animosity toward Arvizu and toward Uribe also.

To establish a violation, the General Counsel must prove by a preponderance of the evidence that Respondent has discriminated against Arvizu because of her union activity or other protected activities. On this record, I find that General Counsel has failed to do so. Accordingly, I conclude that Respondent did not violate the Act on October 5 by the acts and conduct of its foreman Manuel Guizar.

Nevertheless, I conclude that Respondent violated section 1153(a) of the Act in mid-September by Guizar's threat to issue a warning notice to Arvizu if she did not stop talking to coworker Veronica about union affairs. There is uncontradicted evidence that the harvesting employees were permitted to talk during their work as long as it did not interfere with their job performance. Guizar bypassed Respondent's policy in this respect, and ordered Arvizu to stop talking about union affairs or she would receive a disciplinary notice. It is well settled that absent a work rule prohibiting

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9. As Arvizu testified Guizar scolded all of the women employees in the crew, it appears that Guizar's harsh treatment of women employees was generalized throughout the crew.

conversation of all kinds, employees have the same right to discuss union activities as other subjects during their work hours. As Respondent clearly interfered with Arvizu's right, which is guaranteed under section 1152 of the Act, it thereby violated section 1153(a) of the Act.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Bruce Church, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. Threatening any employee or employees with a disciplinary notice for communicating with other employees concerning a union or union benefits, or otherwise interfering with an employee's right to so communicate.

b. In any like or related manner, interferring with, restraining or coercing agricultural employees in the exercise of their rights protected by section 1152 of the Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Agricultural Labor Relations Act (Act):

a. 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.

b. Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at

any time during the period from September 1, 1981, until the date on which the said Notice is mailed.

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

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

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

DATED: December 9, 1982.

Arie Schoorl

ARIE SCHOORL
Administrative Law Officer

# NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office by United Farm Workers of America, AFL-CIO, the certified, exclusive bargaining agent for our agricultural employees, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Bruce Church, 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 interfering with our employees' right to communicate with each other concerning a union or union benefits. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT hereafter threaten an employee with a disciplinary notice because of his or her conversing with another employee or employees about a union or union benefits or otherwise interfere with an employee's right to so communicate.

WE WILL NOT in any like or related manner interfere with, restrain or interfere with our employees in the exercise of their rights protected by section 1152 of the Act.

Dated: BRUCE CHURCH, INC.

By: _____

Representative Title

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

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

DO NOT REMOVE OR MUTILATE.