Sanger, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| SUMA FRUIT INTERNATIONAL (USA), INC. AND CHOICE FARMS, INC., Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party. | Case No. 92-CE-39-VI<br><br>19 ALRB No. 14<br>(October 28, 1993) |

DECISION AND ORDER

On June 2, 1993, Administrative Law Judge (ALJ) Barbara D. Moore issued a decision in which she found that Suma Fruit International (USA) , Inc. and Choice Farms, Inc. (Suma) violated the Agricultural Labor Relations Act (ALRA) by discriminatorily discharging foreman Juan Magana and his crew on July 31, 1992[1] and refusing to recall them thereafter because of the crew's visible support for the United Farm Workers of America, AFL-CIO (UFW). The ALJ also found that Suma unlawfully changed the normal break time on the morning of the same day in order to prevent UFW organizers from talking to crew members.

Suma timely filed exceptions to the findings underlying the violations and the General Counsel filed a response to the exceptions. Suma also filed a Motion To Augment Record, to which the General Counsel filed a brief in

[1]All dates refer to 1992 unless otherwise specified.

opposition. The Agricultural Labor Relations Board (Board) has considered the record and the attached decision of the ALJ in light of the exceptions and briefs filed by the parties and, as explained below, finds insufficient evidence to sustain any of the allegations in the case.

## DISCUSSION

This case centers on the events surrounding the layoff of Juan Magana's crew on July 31. Magana was hired by Robles Farm Labor Contractor (RFLC) , the labor contractor utilized by Suma to harvest table grapes on leased property at Elmco Ranch Vineyards. Before work began on the morning of July 31, at the invitation of a member of Magana's crew, the UFW appeared at the vineyards to speak with the crew. The UFW representatives said that they would return at the crew's break time, which the crew told them began at 9:30 a.m. However, the break was taken at 9:00 a.m. that day, so work had resumed by the time the UFW arrived at 9:30 a.m. The ALJ credited the testimony of witnesses which established that the break time was changed to prevent the UFW from talking to the workers any further on that day. At the end of the workday on July 31, RFLC supervisor Luis Robles informed Magana that he and his crew were laid off.[2] Robles mentioned to Magana that he might be able to give the crew work with another grower. Despite at least one request, the crew was not rehired thereafter.

[2]RFLC's hiring practice was to hire foremen, who were then responsible for assembling a crew.

However, the ALJ found that the crew was offered work picking raisin grapes, but declined it.

The Legality of the Layoff

The ALJ credited the testimony of Suma manager John Green that on July 28 he instructed RFLC to lay off a crew at the end of the week. The layoff was necessary because of a slow market coupled with a shortage of storage capacity. The ALJ concluded that the Magana crew was chosen as the one to be laid off due to the presence of UFW organizers on the morning of July 31.[3] The ALJ based this conclusion on several factors. First, the layoff very closely followed in time the protected activity on the morning of July 31 and Suma witnesses were evasive when testifying about when they learned of the UFW presence. Second, the ALJ found anti-union animus, albeit slight, from the changing of the break time to interfere with UFW access to the crew members.[4] Third, and most importantly, the ALJ discredited Suma witnesses who testified that the Magana crew was chosen for layoff because it produced the poorest quality of work and because Magana had treated some members of his crew badly. Also critical to the ALJ's analysis was her finding that personnel records showed that there were

[3]The ALJ properly concluded that there was no evidence to indicate that an earlier request for a wage increase by a Magana crew member played any part in precipitating the layoff,

[4]The ALJ acknowledged that there was no other evidence of animus and no evidence of interference with later UFW visits.

107 new hires after the layoff of the Magana crew, far more than enough to constitute a crew.

There is no dispute that the decision that a crew needed to be laid off was made several days prior to July 31 and that RFLC supervisors were given the task of choosing which crew. The RFLC witnesses, Manuel and Luis Robles and supervisor Juan Olmos, testified that the selection of the Magana crew was made on July 30, the day before the layoff and the protected activity that allegedly precipitated it. Unless that testimony is rejected, the activity on July 31 obviously could not have affected the selection process and the discriminatory layoff allegation must be dismissed.

While the ALJ did not credit the three witnesses' testimony that the Magana crew did poor work compared to the other crews, and therefore disbelieved their stated rationale for selecting that crew, the ALJ did not expressly discredit their testimony that the decision had been made on July 30. Our review of the record has revealed no reason to find this portion of the witnesses' testimony to be false.[5] On the contrary, it would appear more likely than not that, having been previously informed of the need to lay off a crew by the end of the pay period, RFLC would not wait until the afternoon of the layoff to make the selection. Nor is there any evidence that another crew had been selected initially and that the

[5]It is both permissible and not unusual to credit some but not all of a witness's testimony. (See, e.g., 3 Witkin, Cal.Evid. (3d ed. 1986) sec.'1770, pp. 1723-1724.)

selection was changed after the UFW appeared among the Magana crew.

Moreover, though we agree with the ALJ to the extent that the Suma witnesses' testimony as to the poor quality of the Magana crew's work was exaggerated, we find that the weight of the evidence establishes some legitimate concerns about the crew's work.[6] Based on her credibility determinations, the ALJ concluded that there were no significant problems with the Magana crew's work. However, as the ALJ acknowledged, since a crew had to be selected for layoff, it would take only a small difference in perceived performance to dictate which would be selected.[7] Though we do not disturb the ALJ's credibility determinations, we find that they do not warrant the conclusion that the testimony of Suma's witnesses with regard to the quality of the Magana crew's work was entirely false.

In sum, while the Suma witnesses may have provided exaggerated and post hoc justifications for selecting the Magana crew for layoff, we find insufficient reason to disbelieve their consistent testimony that the decision was in any event made before the protected activity that allegedly motivated it. Furthermore, we find some evidence of a difference, albeit much less than that claimed by some Suma

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[6]It should also be noted that the General Counsel's witnesses provided testimony which also appeared exaggerated, in that the witnesses were quick to deny that the crew ever had any problems or that anyone ever corrected their work.

[7]In fact, absent an unlawful motive, the decision could have been arbitrary.

witnesses, in pack quality between Magana and other crews that would explain why the Magana crew was the first chosen for layoff.[8] Consequently, we will order that the discriminatory layoff allegation be dismissed. This conclusion is further bolstered by the discussion below, in which we find that Suma did not discriminatorily fail to recall the Magana crew.

The Failure to Rehire

The ALJ put great emphasis on the fact that there were 107 new hires after the July 31 layoff of the Magana crew, yet the crew was not recalled. This, supported by her conclusion that the layoff itself was discriminatory, led her to conclude that Suma unlawfully refused to recall the crew when the amount of work justified adding a crew. As explained below, we find the number of new hires to be badly misleading.[9]

First, the figure used by the ALJ does not account for turnover. For example, we have calculated that 73 people

[8]Another crew, that of Jose Carillo, was laid off just a few days after Magana's crew. The ALJ mistakenly concluded that the Carillo crew was not really laid off because many of the crew members were later absorbed by other Suma crews. Though it appears from the record that only two Magana crew members were picked up by other crews, there is no evidence that any individual Magana crew members sought and were denied entry into other crews working at Suma.

[9]In light of the fact that the Board finds the evidence to be insufficient to sustain any of the charged allegations against Suma, it is unnecessary to rule on Suma's Motion to Augment Record. However, we note that inclusion of the proffered information, the daily crew sheets of the Juanita Huerta crew for the period of August 3-8, would not significantly change the numbers discussed below and clearly would not change their import.

who were working at Suma before the July 31 layoff of the Magana crew stopped working before their crew was laid off for the season. Thus, the number of "new hires" was in fact just a fraction of the 107 figure relied upon. Even this reduced figure is misleading because it does not reflect the fact that, due to a gradual reduction in the number of crews, significantly fewer people were working on the days after the layoff of the Magana crew. On July 31, 321 people worked. On the highest days after that, August 11, 14, and 18, there were 282 people working. On most days, the total was much less. The number of cartons packed generally tracked the reduced number of employees, except on August 14, when more cartons were packed than on July 31. Thus, there is in fact no indication from work records that there was any need after July 31 to rehire a crew.

The only apparent change with regard to personnel was crew size. The average crew size up to and including July 31 was 54.14, while the average after July 31 was 63.10. However, this difference is not significant for several reasons. First, there is no indication in the record that foremen were given strict limits on crew size and the record reflects vast variation in crew size from one day to the next. Second, the ALJ found that RFLC would merely hire the foremen, who would in turn organize their crews.[10] In other words, it is not clear

[10]Indeed, the ALJ's finding of a violation was based expressly on the failure to rehire the crew, not on a failure to rehire individual crew members.

that Suma or RFLC had direct control over the makeup or size of the crews. Third, despite the increase in average crew size, the total number of people working each day was much less than the July 31 total of 321.

Thus, the most relevant and instructive numbers do not support the ALJ's finding that there was sufficient work available after July 31 to warrant recalling the Magana crew. Without this critical element, and without the finding of prior discrimination in the layoff itself, there is nothing left on which to base a finding of illegality. Moreover, a finding of discriminatory failure to rehire is further undermined by the fact that the Magana crew was offered work elsewhere by RFLC but declined it. The work was then offered to and accepted by the Carillo crew, which had been laid off at Suma on August 5.

The Change in Break Time

We find no basis on which to disturb the ALJ's finding that the break time was changed on July 31 to prevent further access that day by UFW organizers. However, we do not agree that the denial of access was unlawful. The ALJ acknowledged that no Notice of Intent to Take Access (NA) had been filed, as required by the Board's regulations. However, relying on Tex-Cal Land Management. Inc. (1977) 3 ALRB No. 13, the ALJ concluded that Suma should have expressly denied access to the UFW until an NA was filed rather than taking steps to make workers unavailable.

In our view, Tex-Cal presented a very different situation than that presented here. In Tex-Cal. the employer was found to have unlawfully denied access even though the union had brought more access takers than were allowed. The Board placed the burden on the employer, who was most aware of the number of employees in the fields, to alert the union to the problem so that it could be immediately corrected. Here, the UFW failed to follow the Board's well-known access procedures which require the filing of an NA, and that failing could not have been perfected on the spot. Moreover, since the union in this case may properly be charged with knowing why its attempted access was improper, it would not be appropriate to charge the employer with the responsibility of alerting the union to the problem. Therefore, we find that in such circumstances Suma may not be found to have interfered with a right that was as yet inchoate.

## ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby Orders that the complaint in Case No. 92-CE-39-VI be DISMISSED. DATED: October 28, 1993

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

SUMA FRUIT INT'L. (USA), INC. and CHOICE FARMS, INC. (UFW)

19 ALRB No. 14
Case No. 92-CE-39-VI

The ALJ's Decision

On June 2, 1993, Administrative Law Judge (ALJ) Barbara D. Moore issued a decision in which she found that Suma Fruit International (USA) , Inc. and Choice Farms, Inc. (Suma) violated the Agricultural Labor Relations Act. The ALJ concluded that the Juan Magana crew was chosen to be laid off on July 31, 1992 due to the presence of the UFW among the crew on that same morning. She also concluded that the crew was discriminatorily refused rehire. The ALJ based these conclusions, inter alia, on her findings that the layoff followed shortly after the protected activity on the morning of July 31, that Suma witnesses who testified that the Magana crew was chosen for layoff because it produced the poorest quality of work were not credible, and that the number of new hires after the layoff warranted the recall of a crew. In addition, the ALJ found that the crew's break time was unlawfully changed on the morning of July 31 in order to prevent the UFW from again talking to crew members that day, even though the UFW did not yet have a legal right to access because it had not filed a Notice of Intent to Take Access (NA).

Board Decision

The Board dismissed the discriminatory layoff allegation because, while Suma witnesses may have provided exaggerated testimony to support selecting the Magana crew for layoff, there was insufficient reason to disbelieve their consistent testimony that the decision was in any event made before the protected activity that allegedly motivated it. The Board also found that there was some evidence of a difference in pack quality, albeit small, that would explain why the Magana crew was chosen for layoff.

The Board also dismissed the refusal to rehire allegation because, inter alia, it found no evidence to show that a crew should have been recalled. The 107 figure for new hires used by .the ALJ did not account for turnover and failed to reflect that the numbers of people working on the days after the layoff of the Magana crew were significantly less than at the time of the layoff.

Finding the present situation distinguishable from Tex-Cal Land Management. Inc. (1977) 3 ALRB No. 13, the Board concluded that Suma may not be found to have interfered with access since no right of access had yet arisen.

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

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| In the Matter of:<br><br>SUMA FRUIT INTERNATIONAL (USA), INC. and CHOICE FARMS, INC.,<br><br>Respondents,<br><br>and<br><br>UNITED FARM WORKERS OF AMERICA, AFL-CIO,<br><br>Charging Party. | ) | Case No. 92-CE-39-VI |

APPEARANCES:

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for Respondent

Before:
Barbara D. Moore
Administrative Law Judge

June 2, 1993

DECISION OF THE ADMINISTRATIVE LAW JUDGE

BARBARA D. MOORE, Administrative Law Judge: This case was heard by me in Visalia, California, on February 16, 17 and 13, 1993. It arises from a charge filed by the United Farm Workers of America, AFL-CIO ("UFW" or "Union") on August 4, 1992, and served on Suma Fruit International (USA), Inc. and Choice Farms, Inc.[1] (herein referred to individually as "Suma Fruit" and "Choice" and collectively as "Respondent," "Company," or "Suma").

The case went to trial on the Third Amended Complaint ("Complaint") issued February 2, 1993, by the Regional Director of the Visalia regional office of the Agricultural Labor Relations Board ("ALRB" or "Board"). Therein, the General Counsel alleges that Respondent discriminatorily discharged foreman Juan Magana[2] and his crew on July 31, 1992,[3] and since that time has refused to rehire them because the crew asked for a wage increase and visibly expressed its support for the UFW. General Counsel further alleges that on that same date Respondent changed the normal break time of the crew in order to keep the workers from talking to the UFW.

Respondent filed its Answer to the First Amended Complaint wherein it denied any wrongdoing. Pursuant to the Board's regulations, Respondent is deemed to have denied the allegations

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[1]Respondent admits that the two companies are a single integrated enterprise. See Prehearing Conference Order dated February 10, 1993 (hereafter " Prehearing Order").

[2]Respondent concedes that because of the facts of this case Mr. Magana is protected under the Agricultural Labor Relations Act ("ALRA" or "Act"). (Respondent's post hearing brief, p.19.)

[3]A11 dates hereafter are 1992 unless otherwise noted.

in the subsequent amended complaints as well.

All parties had full opportunity to participate in the hearing. Both the General Counsel and Respondent were represented at the hearing and filed post hearing briefs. The UFW neither appeared nor intervened.

Upon the entire record,[4] including my observation of the witnesses, and after careful consideration of the arguments and briefs submitted, I make the following findings of fact and conclusions of law.

I. JURISDICTION

As admitted in its Answer, Respondent is an agricultural employer; Charging Party is a labor organization; and the 54 individuals named in paragraph 12 of the Complaint are agricultural employees within the meaning of the Act.[5] John

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[4]References to the official hearing transcript will be denoted : " volume:page." General Counsel's, Respondent's, and Joint Exhibits will be identified as GCX, RX or JX, respectively, followed by the exhibit number. The record was left open so General Counsel would have adequate time to review RX1 and counsel for both parties could confer about its accuracy. Subsequently, General Counsel notified me the parties agreed to submit a new document to be identified as JX1, a copy of which was attached, in lieu of RX1. (See letter dated March 19, 1993, from Stephanie Bullock to the undersigned Administrative Law Judge ("ALJ")). Ms. Bullock wrote to me again on March 29, 1993, notifying me that she and Respondent's counsel Mr. Barsamian had stipulated to a correction to JX1. The two letters are admitted into evidence, in chronological order, as ALJX1 and ALJX2. Each letter indicates a copy was sent to Mr. Barsamian. I hereby admit the document submitted as JX1, and, as requested, I have noted and initialed the correction on it.

[5]Respondent contends, however, that Octavio Magana is not a discriminatee because he did not work on July 31. (II:III-113.) See discussion below.

Green[6], Jim Springmeyer, Pablo Lucero, Jacinto Velarde, Jose Manuel Rabies, Jose Luis Robles, Juan Olmos and Juan Magana are all supervisors within the meaning of the Act.

II. COMPANY OPERATIONS

Suma Fruit and Choice are both Delaware corporations with their principal places of business in Sanger, CA. In 1992, Suma grew and harvested its own table grapes[7] on property it leased at the ELMCO Ranch vineyards. It also marketed grapes for other growers. (II:65-66.) The ELMCO Ranch harvest started the first week of July and lasted until late August. (JX1; 11:70.)

John Green, the manager of the ELMCO Ranch where the actions at issue took place, was responsible for the overall operation. Jim Springmeyer, the ranch foreman, reported to Green. Springmeyer was in charge of quality control and had two assistants, Pablo Lucero and Jacinto Velarde.[8] (II:65-66, 75.)

Suma retained the services of Robles Farm Labor Contractor {"RFLC") to provide the necessary labor for the 1992 season. Jose Manuel Robles (hereafter "Manuel"), his brother Jose Luis Robles (hereafter "Luis") and Juan Olmos were the supervisors for RFLC. They supplied Suma with six crews during the harvest and

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[6]The workers referred to him as "Jim," which is how he is identified in the Complaint which was amended by the Prehearing Order to correct the name to "John."

[7]Suma had four varieties in the 1992 season: Thompson Seedless, Fantasy (also known as Black Seedless), Flame Seedless and Red Globes.

[8]Green was employed by Suma Fruit. He hired Springmeyer, Lucero and Velarde (all of whom had worked previously for ELMCO) and put them on Choice's payroll.

also supplied five crews to other growers in the area. (II:124-125.)

RFLC, usually through Luis or Olmos, hired the forewoman or foreman who then put together her or his own crew. (II:3, 132.) In the 1992 harvest, the Suma crews were headed by: Juan Magana, Jose M. Carrillo, Guadalupe Orozco,[9] Ignacio Lopez, Fermin Corona and Juanita Huerta. Juan Magana had never worked for RFLC or Suma before the 1992 season. His crew worked in the harvest and also in the deleafing, thinning and pruning of the grapes all of which preceded the harvest. (II:14-15.)

Suma's own quality control personnel, Lucero and Velarde, directly monitored the quality of the pick of three crews for which each man was responsible. Velarde oversaw the Magana, Huerta and Orozco crews. He went to the fields three or four times a day to inspect the boxes of grapes being packed by them. (III:3-4.)

Because of their other duties, Springmeyer and Green were not in the fields as often. Green did, however, frequently inspect the pack in the field himself.[10] (II:76.)

## III. CONCERTED AND UNION ACTIVITY

### a. The request for a pay raise.

Luz Maria Aguero was a packer in Magana's crew. She had never worked for Magana or RFLC previously. On Thursday, July 30, she asked Manuel Robles for a raise. (I:61; II:107.)

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[9]Referred to as Guadalupe Robles by Velarde. (III:2.)

[10]Springmeyer did not testify.

She had previously been asked to do so by other members of the crew.[11] (I:19, 52, 66.) I find, and Respondent concedes, that this request constituted protected concerted activity and that Employer knowledge thereof is established because Manuel is a supervisor .[12] (Respondent's brief, p. 18.)

b. Union activity

Manuel Robles did not give Ms. Aguero an answer about the pay raise,[13] so she contacted the Union. Union representatives came to the field the next day before work started. They visited only Magana's crew and distributed leaflets, authorization cards and Union buttons (GCXS). Virtually all of the crew members wore

[11]A day or a few days prior to this request, some other workers, also from Magana's crew, had asked Manuel for a raise. (Compare I:91 with II:20-21.)

[12]There is conflicting testimony as to whether Ms. Aguero again spoke to Manuel about the raise later in the day. (Compare I:24; II:19-20, 31-32, 82, 108-109.) I find it unnecessary to resolve the conflict since protected concerted activity and employer knowledge are established. I note, however, that Green was vague and contradictory as to his knowledge of the request for a wage increase. First, he testified he did not learn of it until Manuel told him during the week after the layoff that someone had asked Manuel for a wage increase. Then, on cross-examination, he stated that Manuel had said some of the other growers were raising their pay rate so Green responded because they were starting the second round of harvesting, he would pay five cents more a box to make up for the second round slower packing. When asked again about the request, he testified Manuel did not tell him about that, just that some of the growers were raising wages. Then, he was asked to reconcile this statement with his initial one, and he responded that he thought Manuel had said "there was some talk that people were—someone, I'm really not sure on that—that someone had mentioned a raise or something." (Compare 11:82, 83, and 84.)

[13]Respondent contends Manuel Robles testified he did not take the request seriously because Mr. Magana never raised the issue. (Respondent's brief, p. 21.) There is no citation to the transcript, and I did not find such a statement. It is clear, that, for whatever reason, he did not give Ms. Aguero an answer.

the buttons the rest of the day and were observed doing so by supervisors Magana and Jacinto Velarde. (I:13-14, 17, 47-48, 64-65, 85-86; III:17.)

When it was time for the crew to start work, the Union representatives left, promising to return at lunch time which the crew members told them was 9:30 a.m. (I:13-14, 49, 51, 65, 86.) Ms. Aguero, her husband Rogelio Aguero, co-workers Corina Ramirez and Corina's husband Manuel Ramirez all testified that their lunch break was changed to 9:00 a.m. so that when the Union representatives returned, the workers were back in the fields and unable to speak with them. (I:15-16, 52, 65, 86.) Mr. Velarde, a witness for Respondent, confirmed that the crew usually took its break at 9:30 and that he saw the Union representatives in the field at approximately 9:30 or 10:00 a.m. at the end of the fields where the crew was working. (III:15, 21.)

Mr. Magana corroborated the workers' testimony and added that he changed the break time because Luis had told him to do so because he (Luis) did not want the workers to talk to the Union people.[14] (II:5.) Luis denied so instructing Magana and maintained he merely asked Magana what time the crew was taking its break, and replied "Okay" when Magana said it would be at 9:00 a.m. (II:193-194.)

I credit Magana's and the workers accounts. Velarde's

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[14] It is not clear whether Ms. Aguero asserted she overheard this conversation or Magana told her about it. (1:15.) Either way her testimony is admissible, but I do not credit it. I detected a hesitancy in her manner that was not usually present, and this causes me to doubt her statement.

testimony tends to support the workers' version. Magana also corroborated their testimony. Although both Magana and Luis have a personal interest in the litigation, Magana was markedly less prone to exaggeration than was Luis.[is]

Moreover, Luis' testimony that he simply asked when the break would occur sounded lame when he gave it, and no logical reason appears why he would make such any inquiry about an everyday event.[16] His denial that he was even aware the Union had been in the field also was unconvincing. His testimony as to when he actually learned the Union had been to the fields was evasive and his manner almost coy. (II:194, 199.)

Velarde had gone out to the crew about 7:00 a.m. and had seen most of the workers wearing Union buttons and also heard them talking about the Union. (III:17, 19.) Luis arrived at the field later. I do not credit the latter's testimony that he did not see any Union buttons because he was parked along the road and there were no workers nearby at the packing tables. (11:194.)

The packers only left the tables to pick when there was an insufficient supply of grapes—for example at the start of work. Even then, they stayed near the tables and picked only for a few minutes. (III:79-80) The crew had been picking long enough so

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[15]Particularly when describing the quality of the crew's work, Luis was far more critical than any of Respondent's other witnesses.

[16]ln making this finding, I am mindful of his testimony that the break was usually at 9:00 a.m. but could be taken at 8:45, 9:00 or 9:15. (II:193. )

there would be grapes to pack, and I find it highly improbable that all 15 tables would run out of grapes at the same time thereby causing all the packers to be in the field picking.

Mr. Velarde's and Luis' knowledge of the Union activity establishes the requisite employer knowledge, but John Green's testimony on the issue is also significant. He was vague as to his knowledge of Union activity on the ranch but ultimately acknowledged on cross-examination that sometime around Wednesday August 5, the day the second crew was laid off, Jim Springmeyer told him the Union had been to the ranch talking to several crews earlier that week. (II:82, 84-86.) He never acknowledged he knew the Union had been on the ranch on the 31st.

Green testified that neither he nor Springmeyer paid much attention to the Union's presence except that he might have told Springmeyer he hadn't seen a Notice of Intent to Take Access ("NA") from the Union and then asked Springmeyer if he had seen one. (II:86.) He maintained he did not ask, and Springmeyer did not say, why the Union had come to the ranch. (II:86.)

In an effort to show he did not know on the day Magana's crew was laid off that the Union had been on the ranch earlier that same day, Green had testified on direct that had he known, he would have told the representatives to leave until they filed an NA. This latter assertion is not persuasive since he never sought an NA even after he admittedly became aware that the Union had been on the ranch. (Compare II:82-82 with II:86.)

Further, I do not believe neither he nor Springmeyer sought to find out or discussed why the UFW was on Company property.

Both Green's vague responses and the evasive, uncomfortable manner in which he answered General Counsel's questions cause me to doubt him. Additionally, it is simply implausible that he would be so completely unconcerned and incurious about repeated trips by the Union to Company property.

Similarly, I do not believe Velarde's testimony that, having seen virtually the entire Magana crew of 50 some people wearing UFW buttons and talking about the Union, he did not tell anyone from RFLC or Suma about it. (III:17) Finding one-sixth of your workforce sporting Union buttons and having Union representatives visit Company property twice in one morning would occasion at least some interest if not actual concern.

IV. THE LAYOFF

It is undisputed that at the end of the very day the UFW representatives talked to them in the field, Luis told Magana he and his crew were laid off. The major difference in the various accounts is that General Counsel's witnesses recall Luis being more definite that they were going to another job[17] than his somewhat inconsistent testimony indicates.[18] (Compare I:12, 62; II:21-22 with II:194-195, 209.)

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[17]Corina Ramirez' testimony indicates she was unsure about the reliability of Luis' statement they were going to another job since it did not comport with his instruction to pack up the pans the crew used for picking grapes since they always took them home with them for safekeeping. (I:62.)

[18]Luis initially testified he told Magana they "were probably going to start working for another farmer Monday or Tuesday." On cross-examination, he modified his testimony slightly saying he told Magana he was laying him off because the cold storage was full and there was "a possibility" they would give him work with another farmer, Gilbert Marroguin.

According to Luis, Magana's response to the layoff notice was simply that Luis should call him if the work actually became available, which Luis testified he told Magana he would do. (11:210.) Neither Magana nor any of his crew testified Magana objected to what Luis had told them.

Respondent's witnesses testified the layoff and the selection of Magana's crew were for legitimate business reasons. John Green testified as to the need for the layoff.

Green believed it was July 28 when he decided he needed to lay off one or two crews at Suma because he could not process the amount of grapes they were picking. He cited several reasons for this situation.

First, sales of table grapes were slow because of a poor retail market. This was especially true, he said, in early July, and it was only after August that sales began to pick up. (II:70-71, 80-81.) Since there were more grapes than orders for them, the surplus had to be stored.

This problem was exacerbated by the situation at the Dulcich Cold Storage facility ("Dulcich") where Suma sent its grapes to be cooled prior to their being shipped to customers.[19] A new manager changed the method of cooling, but the process did not

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[19]John Howton, a consultant at Dulcich, testified shipments were based on orders received each morning, and they tried to ship the grapes out within three or four days, or at most a week. (II:54, 60.) Elsewhere, however, he testified the grapes that came in during July and August were shipped out as late as September and even October. (II:60-61.) I found Howton credible and conclude his initial testimony described the normal process, and his later testimony referred to the inability to keep to that schedule in 1992.

work as planned and instead of speeding up the cooling, the facility was able to cool only half as much fruit in a day as it normally could have handled. (II:58.)

According to Green, the delay in cooling was especially problematic because for about two weeks in July it was hotter than usual. The heat caused the grapes to mature quickly which meant there was a lot of fruit that needed to be cooled in a short time. (II:71-72, 77-79.)

This combination of factors, Green testified, meant fruit sometimes sat on the docks at the cooler all day which "destroy[ed] the storage life." (II:78.) According to Howton, it also meant that the crews' workdays had to be shortened so that not as much fruit came to the cooler.[20] (II:58.)

Green had reserved back up storage space at another cooler-Workman Enterprises, Inc. ("Workman"). But there was a limit to how much space Suma could use at Workman's because other growers used the same facility and because the boxes Suma used for packing took up one-third more floor space than a different type of box. This reduced the amount of grapes that could be cooled at one time, and Workman's complained about it. (II:79.)

By mid to late July, Green believed it was not possible to

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[20] GCX4 is a summary, by crew, of the number of hours worked and the number of boxes packed for July and August. It shows one day, the 25th, when the crews worked only 5 hours, one day when Magana's crew worked only 4 hours, and two days where one crew worked 7.5 instead of 8 hours. It also shows there was no work on Friday and Saturday (the 17th and 18th) whereas previously Sunday was the only day not worked. This tends to support Howton. As discussed below, I find GCX4 reliable only as to the period before the layoff of Magana's crew.

obtain more storage space because he heard growers complaining they were in the same predicament as he.[21] (II:80.) Because of this fact and because it was not his department, he did not try to obtain additional space.[22] (II:87-88.) He was not asked to reconcile this last statement with his prior testimony that he initially reserved the storage space.

The records are not of much help in determining how backed up the Dulcich facility was because the dates on GCX2(a) simply reflect that the number of cartons indicated as packed on a date were eventually shipped out, but the date is not the actual shipping date.[23] (II:37-38.) Howton's testimony is the only indication as to when the grapes were actually shipped and it, of course, is quite general. GCX4 is supposed to show the number of cartons actually packed by the crews on a given day, but, without any reliable shipping date, it is not possible to tell how full

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[21]This testimony was admitted over General Counsel's hearsay objection on condition that it could not establish no storage space was available but could only show Green's belief this was so. Respondent's brief (p.6.) fails to observe this limitation.

[22]He was asked about facilities Suma had in the town of Sanger and replied there was no space but even if that had not been the case, he would not have sent the grapes that far in the heat because it would have damaged the fruit. But then, Respondent's counsel asked if he were aware that grapes had been sent from Dulcich to Suma's facilities. He then said he knew this had occurred "later in July" but that he had not been involved in that action. (II:72-73.) GCX2(b) shows only a few cartons sent to those facilities on the 28th and 29th.

[23]Similarly, the date cartons were "packed" is the date they were received at Dulcich not necessarily the date they were packed in the field although the two should be close. The same meaning of "packed" and "shipped" applies to GCX3 for Workman's.

the facility was.[24]

GCX2(a), 3 and 7 do show an increase in the number of cartons sent to Workman's versus Dulcich beginning on July 22 which is in accord with Green's and Howton's testimony. With a few exceptions, one being the day the Magana crew was laid off, this trend continued until August 26, the last date showing any cartons being sent to Workman's (GCX3).

Green testified that because of these difficulties, he informed Jim Springmeyer and the Robles brothers that one or two crews would have to be laid off. Green left it to them to select which crew because it did not matter to him who was chosen since "the pack that I was getting satisfied me."[25] (II:80, 103.)

He told them not to effectuate the layoff until the weekend because he did not like to stop a crew in the middle of a week. (II:81.) The very next week, however, on Monday he decided to lay off the Carrillo crew on Wednesday.[26] (II:191) There is no

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[24]As General Counsel notes in her brief, after the layoff the number of cartons packed by the crews according to GCX4 differs markedly from the amounts set out in GCX2(a), 2(b), 6(a) and 7 with GCX 4 showing substantially fewer cartons—some 6,000 for the whole period. Prior to the layoff, however, GCX4 is generally in accord with the other records. Adding GCX2(a) and GCX3 shows 172,199 cartons sent to Dulcich and Workman's combined for the period July 6 through July 31. Nearly the same number, 172,687, is shown on GCX4—a difference of only 488 cartons with GCX4 showing the higher number.

[25]He attributed the quality of the pack to Suma's field supervision. (II:74.)

[26]Manuel testified he picked this crew because they were willing to work in other parts of the state while Magana's crew was not willing to work outside the area. (II:114.) Luis, however, testified it was because, after Magana, Carrillo's crew had the most trouble with quality. (II:191.) No evidence was introduced to show there was any work out of the area to which

explanation for this discrepancy.

I credit Green and Howton as to the problems at Dulcich and Workman's. Howton was especially credible. Not only does he have no apparent personal stake in the matter, his manner was open and honest, and he was very forthcoming in his responses to questions from both General Counsel and Respondent.

Despite my concerns about Green's testimony noted above, I also credit that he decided to lay off a crew prior to the 31st and left it to the Robleses to decide which crew. In spite of his vagueness when testifying about his knowledge of the request for a raise and the Union activity, and despite the question about the timing of the layoff of Carrillo's crew, Green was overall a credible witness. The shift of cartons to Workman's is also consistent with the timing he described.

## V. THE REASONS FOR CHOOSING MAGANA'S CREW

Manuel Robles, and his two supervisors, his brother Luis and Juan Olmos, all testified for Respondent. They discussed which crew should be laid off, and Luis and Olmos both recommended Magana's crew. (II:175-176, 189.) Manuel said he decided on Thursday the 30th that it would be Magana's crew. (II:103, 105.) He instructed Luis to tell Magana which, as described above, Luis did at the end of the next day.

Initially, Manuel Robles testified he chose Magana's crew for two reasons. First, he did not like the way Magana had handled some personnel matters in his crew. Second, the quality

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the Robles brothers expected to assign Carrillo.

of the pack in Magana's crew was worse than in any other crew, and he had a job with another farmer to whom he could assign them where quality was not as important as at Suma. So, the fact they were the fastest crew but not strong on quality would not be a problem. (II:105-107.)

a. Magana's Treatment of Crew Members.

As examples of the first reason, he cited two instances. In the first instance, Magana did not rehire some workers (the Gaona family) for the grape harvest. (II:95.) He spoke to Magana about this, and Magana said they had not reported to work. (II:96.) This testimony is consistent with Magana's testimony that, except for a person named Sumaguey, he hired anyone who appeared for work.[27] (II:11.)

According to Manuel, he put the Gaona family to work with another company (Sun World) thinning peaches. (II:126.) His testimony makes no sense, however, since he said the thinning at Sun World occurred in May, while the harvest at Suma did not begin until early July. (Id.)

Regarding the second instance, Manuel testified Magana fired a woman named Aracely who had been a checker.[28] Initially, he testified Magana said he fired her because she was late to work as a result of an accident; later, he said Magana told him it was

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[27]He did not testify in rebuttal and so was never asked specifically about the Gaona family.

[28]The only worker with this name in Magana's crew is Aracely Garcia. (JX1.) The name is spelled "Araceli" in the transcript which is hereby corrected.

because she "didn't do her job well."[29] (II:98-100.) After some back and forth discussion, he stated it was primarily the latter reason. (Id.)

On cross-examination, Manuel changed his testimony yet again and stated that Magana had not fired her but, rather, had put her to work as a picker. (II:128-129.) Faced with his contradictory testimony, Manuel reiterated his claim that Magana had acted improperly, saying the move to picker was still a punishment since checkers[30] make more money than pickers. Manuel interceded and transferred Ms. Garcia to another crew where, he said, she did fine.[31] (II:99, 102, 128-129.)

Magana testified only as part of General Counsel's case in chief and therefore before Manuel Robles. He was asked only if he had fired the checker, which he denied, and was not asked for any specifics about the incident.[32] (II:11.)

The four members of Magana's crew who testified, all on

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[29]This testimony was admitted over General Counsel's hearsay objection on condition that it could not be used to establish the truth of the statement, i.e. as establishing the reason for Magana allegedly firing her, but only to establish what Magana said to Manuel.

[30]A checker moves from one packing table to another to count the boxes of packed grapes and to note where the boxes are to be shipped. (I:72.)

[31]JX1 shows that Ms. Garcia moved from Magana's to Carrillo's crew on July 15 and worked there until August 5. She was one of those not laid off on that date, and she continued to work until August 21 in Lopez' crew.

[32]Mr. Ramirez testified he believed Magana had fired the woman who was checker before his wife because the former had not done a good job. (1:96-97, 102.) I credit Magana and Manuel's ultimate testimony that Magana did not fire her.

behalf of General Counsel, each testified they were not aware of any problems with how Magana treated the crew members. (I:29, 56-57, 70, 92; (III:28-29.) Magana generally denied there were any complaints about how he did his job. (II:4.)

I do not credit Manuel that these incidents played any meaningful part in his decision to lay off Magana's crew. The first cannot have occurred as he maintains, and the second seems too minor to have had any carry over effect. I was not convinced he found it important but instead believe he simply put it forward to try to buttress his decision after the fact.

b. The Quality of Work in Magana's Crew

There is objective evidence that Magana's crew usually was the best or second best crew in so far as the number of cartons of grapes picked.[33] Manuel and Respondent's other witnesses concede the indisputable fact that the crew was very productive[34] but complain about the quality of work the crew did. Unfortunately, there is no external objective evidence on this point since there were no written warnings. (II:202.)

Manuel acknowledged that his supervisors, Luis and Juan Olmos, spent more time in the field than he did. (II:100.) All three of them, plus Roberto Cisneros,[35] testified about the

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[33]See GCX4 which, as noted above, is reliable prior to the layoff of Magana's crew.

[34]The workers had an incentive to be productive since they were paid a bonus over and above their hourly wage. (III:73.)

[35]Manuel and Luis testified they assigned Cisneros, a foreman for RFLC who had been working at another company, to work with Magana's crew for one day on Wednesday the 29th.

poor quality of work in Magana's crew. From Suma, Jacinto Velarde, the quality control person assigned to monitor Magana's crew, testified about their performance.[36] Velarde and Olmos were the most credible of Respondent's witnesses on this issue, and I begin with their accounts. Velarde inspected the packing of each crew three or four times every day.[37] If there were problems, he reported them to his boss, Jim Springmeyer. (III:4-6.) From the fact that Green was satisfied with the pack, I infer Springmeyer did not report any problems with Magana' s crew to Green and Velarde did not report any to Springmeyer which I believe they would have done if they had been significant since that was their domain. Velarde's assessment of Magana's crew was that they produced the most boxes, but their quality was worse than other crews. (III:6) He acknowledged he was familiar only with the three crews he supervised and did not know anything about the other three RFLC crews. (III:9.)

Juan Olmos had worked with RFLC only since March 1992. (II:165.) In the leafing (sometimes referred to as deleafing), he said Magana's crew did good work 70% of the time. (II:169.) As far as thinning, Olmos testified in effect that Magana's crew

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[36]Velarde did not know ahead of time that Magana's crew was going to be laid off on the 31st. (II:17.)

[37]At one point, he testified the foreman would always be with him when he checked the boxes. Elsewhere, he stated he sometimes corrected individual crew members, but he did not say why this was necessary if the foreman were always present. (III:5-6)

did acceptable work but not high quality.[38] (II:171.)

Olmos described harvesting as requiring more care and said the crew did not do a good job of packing. He stated he brought this to Magana's attention every time he visited the crew.[39] (II:173.)

Olmos testified when he, Manuel and Luis discussed which crew to lay off crew on Thursday, he chose Magana because of the six crews Olmos supervised, Magana's crew gave him the most trouble.[40] (II:175-176.) His testimony was quite general, and the specifics he did give were not convincing because, on inquiry on cross-examination, it was clear they did not necessarily apply to Magana's crew. (II:176.)

On cross-examination, Olmos readily acknowledged that he, Luis and Manuel talked about the trouble they had with Magana in the context of preparing for trial.[41] While his answers are somewhat imprecise, twice he said that he did not see the

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[38]Luis, too, stated the problems in the thinning were not significant and were corrected. (II:186.) This testimony, however, conflicts with his assertion elsewhere that they had Magana start the harvest because his crew had problems, and it was easier to supervise just one crew and get it straightened out before putting the others to work. He also testified some of the supervisors complained about Magana's performance in the leafing. This evidence, however, was admitted not for the hearsay purpose of establishing that the performance was deficient, but only to show Luis had such information when he gave his opinion that Magana's crew should be laid off. (II:185-186.)

[39]He did not speak to any of the crew members about the problems. (II:174.)

[40]The other crews were not perfect, he said, but they were better than Magana.

[41]Luis, on the other hand, denied discussing his testimony with anyone. (II:211.)

situation with Magana as a problem—that it was the sort of thing that always happened in the field. (II:177-178.)

In fact, he stated they would not have let Magana's crew go if Green had not told them they needed to lay off a crew. (II:176.) Despite his very negative assessment of Magana's crew, Luis made an observation similar to that of Olmos, saying that they did not fire Magana because they liked to work with the crews until their performance had been perfected. (II:184-185.)

Luis was much more negative than Velarde or Olmas. He testified that during the discussion about which crew to lay off, he chose Magana's because of the poor quality of their work and, secondarily, because they produced a lot of boxes which exacerbated the problem of there being too many grapes for the cold storage to handle.[42] (II:188-190.)

Luis asserted that "most of the time [Magana's crew] was one of the worst crews...."[43] (II:180.) He also maintained that it was not just certain packers who had trouble but that all the packers in Magana's crew did a poor job.[44] (II:207.) Elsewhere, he stated that at least half of the 12 to 15 tables

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[42] I do not find this argument persuasive. The Company could always have slowed them down, whereas once the cold storage situation eased, it could not necessarily increase the productivity of the slower crews. The fact that so many additional workers were hired in August (see discussion below) indicates that the storage situation did ease enough so that the Company was able to resume higher levels of harvesting.

[43] Luis acknowledged he never told him they were the worst crew. (II:195.)

[44] The packers remained at the same tables, and the boxes were marked with their initials, so it was possible to identify who packed which boxes of grapes. (II:76, 183, 207.)

were always a problem in Magana's crew whereas, in contrast, only one or two tables in the other crews would be a problem. (II:182, 184.)

He added that Magana' s crew had to be corrected almost every day while other crews would need to be corrected perhaps only once a week. (II:183-184.) Manuel estimated he, Luis and Olmos would speak to Magana about the quality of his pack two or three times per day. (II:101.)

Luis and Manuel both maintained Magana's crew had trouble from the beginning of the harvest, but they disagreed as to the specifics. Manuel observed they did not have as much trouble when they moved from the Flame to the Thompson grapes whereas Luis said their performance became worse when the crew moved to picking the Thompson's which were harder to pick than the Flame.[45] (Compare II:95, with II:186-187, 200)

According to Luis, when he found a bad packing job, he would show the box to the packers who had done the work. He would also inform Magana so both Magana and the crew were told their packing was not up to par. (II:183, 187-188.)

As noted earlier, Magana did not testify on rebuttal. He simply denied generally that anyone complained to him about his work. Ms. Aguero and Ms. Ramirez specifically denied ever seeing

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[45] In view of this testimony, I find it odd that Luis could not recall which crew was sent back to the Flames for the second round of picking while the first round of Thompson's was still going on. If Magana's crew did worse in the Thompson's and picking Flames was easier, as Luis maintained, it seems logical they would deliberately have been returned to the Flames and that Luis would have remembered this. (II:200, 205-207.)

Luis take apart a box. (III:65, 100.) Ms. Ramirez readily acknowledged that Velarde would take boxes apart to check the pack[46] and that Magana would often be present but maintained she never saw Luis or Manuel at such times. (III:108.)

Respondent tried to question Ms. Ramirez' ability to testify reliably on this point by eliciting testimony from her that she was constantly going from one table to another spending only perhaps a minute at each. (III:99, 107.) But this fact also meant she could see what was going on at all the tables, albeit for brief periods.[47] She observed Velarde, and certainly if Luis' testimony were accurate, she would have had ample opportunities since virtually all the packers were a problem.

I credit Ms. Ramirez and Ms. Aguero. Both were more credible overall than Luis. Ms. Ramirez especially demonstrated an open and forthright manner in the way she answered questions of Respondent as well as General Counsel. She also candidly acknowledged on rebuttal that she had made an error in her direct testimony which she realized after talking to her husband and readily admitted certain facts favorable to Respondent's case. (I:71; III:105-106, 109.)

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[46] It is clear she meant this was a normal part of checking the quality and was not an indication that the packing had been done improperly.

[47] Ms. Aguero acknowledged that from the first table to the tenth table was a very long distance from which I infer that she could only testify as to the tables nearby. (III:87.)

Manual testified he assigned Roberto Cisneros[48] to work with Magana's crew for a day—Wednesday the 29th—to "be sure what type of work was being developed there." (II:102.) This statement makes no sense in view of his and Luis' testimony that they had been working with Magana to correct the crew for nearly a month in the harvest and even prior to that.[49] According to them, they were very aware of the nature of the crew's work.

Neither Magana nor Ms. Aguero, the only member of his crew who was asked, remembered when testifying on direct who Cisneros was.[50] Magana also denied that a second foreman had been sent to work in the crew a few days before the layoff. (I:34; II:7, 101.)

I do not view their failure to remember Cisneros reflects adversely on their credibility. From Cisneros' and Olmos' testimony, it is no wonder Cisneros did not make much of an

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[48]Cisneros had worked in harvesting grapes for sixteen years, but 1992 was his first season with Robles. (II:151.)

[49]Interestingly, Cisneros testified it was Luis and Olmos not Manuel who told him to work with Magana and that he reported his findings--that the crew packed dirty and unripe grapes—to Olmos and Luis. (II:152.)

50 On rebuttal, Ms. Aguero freely stated that after talking with a co-worker/ she recalled that Cisneros had worked in the crew one day. She maintained he was not a second foreman nor an assistant to Magana but simply came to show them a new way to pack—with the packed grapes higher in the center. (III:64-65, 92, 94-95.) Her testimony is consistent with the fact that Cisneros merely started the day by showing them how to pack properly and apparently had no other communication with any of the workers. (II:154.) He did not describe what he meant by packing "properly," so it is not possible to tell if this was something different than what Ms. Aguero described. He acknowledged he gave no indication to the crew that he was there to check quality.

impression on Magana or the crew. Olmos stated he simply brought Cisneros to the crew and introduced Magana and Cisneros to each other. He did not testify he gave any indication to Magana that Cisneros was acting as a second foreman, or that Magana should follow Cisneros' directions or anything of the kind. (III:174) He told Magana only that Cisneros was there to help with the packing. (Id.)

Cisneros' s testimony too shows the only conversation he had with Magana all day was at quitting time when Magana asked Cisneros where Cisneros was working. (II:160.) He said nothing to Magna about how the crew did its job or how Magana handled the crew. His conduct that day does not fit with Olmos' description of him being there to assist the crew with the packing. Nothing he did was designed to correct the asserted problems.

Cisneros himself was not a good witness. His testimony was muddled and often inconsistent and thus did not inspire confidence in his conclusions.

For example, he testified there was" no discipline in the crew, i.e. that the workers would not obey Magana. (II:151.) Next, he stated he observed Magana tell some workers to pick the grapes correctly, but the workers would not understand Magana. (Id.) Then, however, he said they did correct their work. (Id.)

On cross-examination, he essentially repeated this testimony but stated Magana corrected workers on two occasions. (II:152.) Upon further inquiry, he admitted he did not remain in the area to personally see that they did not continue to do the work

correctly. (II:153.)

On redirect, Respondent's counsel explored the issue, and twice Cisneros said he did not personally observe whether the workers corrected their work. (II:161.) After some argument as to Cisneros' prior testimony, Respondent's counsel put the question to Cisneros a third time, and Cisneros answered in the affirmative but added that they had corrected their work for a while and then continued to pack improperly. (II:164.) His earlier testimony, however, referred to workers who had been picking grapes not packing.[51] (II:151.)

Respondent's counsel questioned the translation, but the interpreter stated he had accurately translated the questions and answers.[52] (I:161-162.) I also do not believe Cisneros did not understand the word "personally" since he used in himself earlier in his testimony. (II:151.) Whatever the reason for these contradictory statements, they might be overlooked but for the other contradictions in his testimony.

Cisneros also testified in a confused manner about the work he did in another crew. (II:157-158.) Then, he testified incorrectly that besides working with Magana for one day, the only crew he worked in was Rosy's which he said was at Dulcich. (II:159.) JX1 shows he also worked at Suma in Guadalupe

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[51]At one point, he did mention workers packing dirty grapes, but his reference to Magana correcting workers was definitely made as to pickers rather than to packers. (II:151.)

[52]The interpreter did acknowledge that Cisneros' reply to the first question about personal knowledge on cross was not responsive, but that time too he was sure he had translated correctly. (II:153.)

Orozoco's crew from August 11 through 22.

Magana denied generally that anyone complained to him about how he was doing his job and further testified if there had been a problem, the system was that Manuel or Luis would immediately bring the matter to his attention. (II:4.) He also stated he had been harvesting grapes for 27 years and that the quality of the grapes he was "taking out" were of the best kind. (II:12.)

He also testified that near the beginning of the season, Carrillo had worked with Magana's crew to learn how to harvest. (II:24.) None of Respondent's witnesses directly contradicted this statement, but Luis did so inferentially when he testified they started Magana's crew in the harvest because it was easier to correct them when they were the only crew.

The workers denied they were ever told there were complaints about their work or that they observed supervisors tell Magana there were problems.[53] (I:28; II:69-70, 92, 56-57, III:63-64.) Their testimony is consistent with Olmos' and Cisneros' testimony that they did not correct crew members directly, but inconsistent with Luis' that he corrected Magana in front of the packers so they were aware of the problems and Velarde' s that he sometimes told the workers directly to correct their work. As noted, however, Velarde testified inconsistently since he also stated

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[53]Mr. Ramirez corroborated the testimony of his wife and Ms. Aguero that he never heard Olmos or either of the Robles brothers tell Magana there were problems with the pack. Nor did any foreman or supervisor complain to him that he was picking dirty grapes or otherwise not properly picking. (III:114.) His testimony as to the packing is of little significance since he would have come to the packing area only long enough to drop off the grapes he had picked.

Magana was always present on such occasions. He was supposed to deal with the foreman or RFLC personnel from which I infer that he would have addressed himself to Magana rather than the workers if Magana were present.

I have noted various inconsistencies in Manuel's and Luis' testimony. Also, the fact that they disagreed on whether the crew's performance improved or deteriorated and that they both falsely claimed that Carrillo's crew was laid off when only about half actually were calls the credibility of both into question. I have discredited Luis' testimony because of the various inconsistencies, his evasiveness and the exaggeration of the crew's poor work as compared to all of Respondent's other witnesses.

Although Olmos stated directly that Magana's crew did not do a good job packing, I have trouble giving too much weight to his testimony because it was cast in generalities and, on cross-examination, it became clear that at least some of the more specific comments did not apply to Magana's crew at all. This fact casts doubt on the reliability of the rest of his testimony.

Velarde generally testified credibly, but, he was noticeably hesitant when describing his conversation with Ms. Aguero and Ms. Ramirez about the layoff. Further, his testimony and theirs indicates that when asked why they had been laid off, Velarde expressed surprise their crew had been picked and could not give them an answer. (See discussion below)

Additionally, I have found both Ms. Aguero and especially Ms. Ramirez credible. I also conclude that since Ms. Ramirez

moved continually from one packing table to another that if there had been repeated instances of Magana and/or the packers being shown examples of poor packing, she would have observed at least some of them as she observed Velarde opening boxes.

## VI. AFTER THE LAYOFF

### a. The Meeting at the RFLC Office

Sometime early in the week following the layoff,[54] members of Magana's crew (estimates varied from about 20 to the entire crew of 50 or so) and two UFW representatives went to the RFLC office in Delano.[55] Ms. Aguero and Ms. Ramirez gave very similar accounts of this encounter.

Both testified that Ms. Aguero spoke on behalf of the crew and asked Manuel for their jobs back. He told them there was no work for them because the cold storage was full. Ms. Aguero asked him if that were so, why then were the other crews still working. Manuel replied there would be more layoffs. ((I:25-27,67-68.) He did not reply when she asked why their crew had

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[54]Exactly when the crew went to the RFLC office is not clear. Mr. Magana placed it two days after the layoff, but that would have been on Sunday. From the tenor of the discussion that occurred, I infer that it was before the Carrillo crew was laid of on Wednesday the 5th.

[55]I do not credit Manuel's testimony that he invited the Union to bring the crew. His account as to how the meeting came about was hopelessly confused. Initially, he testified that someone from Suma telephoned and informed him that Magana's workers were complaining they had been fired. He first said he did not know who the person was, and then said he thought it was the attorney for Suma. After expressing uncertainty as to who had called and what that person had said, he ultimately decided it was someone from the Union who had telephoned him and stated he invited the workers to come to his office so he could explain they had not been fired. (II:115-118, 133-134, 138-141.)

been selected for layoff. (I:26.)

The following day, they both went to the Suma fields to, as they put it, gather evidence and support for their claim that there was work available. They saw Jacinto Velarde and asked why they had been laid off. He replied that he did not know why and commented positively on their performance.

The witnesses' accounts differ slightly on this last point. Ms. Aguero stated Velarde said their crew did most of the work. (I:25-27.) Ms. Ramirez testified he said their crew was "quality" and did a good job and was fast, but, on cross, when asked specifically if Velarde had said "quality" she promptly acknowledged he had said "good job" rather than "quality." (I:68-69,71.) Her manner was candid, and I found her ready correction of her initial testimony a reflection of this candor rather than an indication of being caught in a falsehood.

Velarde confirmed the encounter with the two women, but his manner was hesitant when he testified about his response that they were among the fastest crews. He maintained this was a response to their query whether they were laid off because they were slow. (III:8, 18-19.)

I doubt the latter, but conclude from the testimony of all three witness that Velarde gave the impression that he could not understand why their crew had been picked because his view of them was favorable. I also conclude he noted their speed rather than specifically mentioning the quality of their work.

Magana came to the office in response to a phone call from Manuel. According to the latter, he wanted Magana to tell the

crew they had not been fired and he (Manuel) would have another job for them.[56] (II:115, 117.)

Most of the people stayed outside and Manuel, his brother Luis and their secretary met with Magana, the two Union representatives and a few workers inside.[57] (II:117, 144.) According to Manuel, he asked Magana in front of the workers why Magana hadn't apprised them of the facts, and Magana told the workers he did not know why they were there because he would be informing them when work was available. (II:117-118.) Magna denied making these remarks to the workers. (II:27.)

Sometime during this incident, Manuel telephoned someone he told Magana was a farmer named Marroguin who had promised Manuel he was going to give him some work. (II:22-24.) According to Magana, Manuel said he should be starting to work with the farmer within two days. (II:31.)

According to Manuel, the offer of work was less definite than Magana recalled. He testified the farmer said he did not know about hiring RFLC, so he (Manuel) told Magana to wait and

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[56]To support his contention that he had not fired the crew, Manuel testified he told them they would be able to seek unemployment benefits since they had been laid off rather than fired. (II:118.) Luis corroborated this statement, and none of General Counsel's witnesses disputed it. I therefore find he did so instruct them.

[57]Luis said it was he, not Manuel, who called Magana to come to the office and that he was not included in the meeting in the office with the workers and the Union. (II:199, 211.) He also testified he left before Magana arrived. (II:211.) I credit Manuel.

see if something developed.[58] (II:109-110, 113-114, 118-119.)

Manuel testified that a few days after the office meeting, he saw Magana in the RFLC shop in the town of Delano. Manuel told Magana he had a job picking grapes for raisins, but Magana replied he did not have any workers to do that work.[59] (II:25, 113-119.) Since he did not testify on rebuttal, Magana did not specifically deny this incident occurred, but he did deny RFLC ever contacted him to go back to work for them (II:22, 25, 32.)

Magana's testimony on this issue is contradictory. At one point, he insisted he was never contacted by anyone and offered work with RFLC after the layoff. (II:32.) Elsewhere, however, he testified that about three or four weeks after the layoff, Manuel telephoned him and told him "immediately we should be going over to the grapes--excuse me—raisins." (II:6.) He maintained Manuel did not give a definite place or date when work would begin and that Manuel never called again. (II:7.)

Then, on cross, he was asked if he ever worked in the raisins, and he replied that he was never called. (II:12.) He denied saying he did not want to work in the raisins, repeating that Manuel never called. (Id.)

According to Mr. Ramirez, he had numerous telephone conversations with Magana about getting work, and Magana did ask

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[58]This testimony is inconsistent with his and Luis earlier testimony that one of the reasons they chose Magana's crew was because they could assign them this job which Manuel now acknowledges was not definite.

[59]"Working in the raisins" is the shorthand way of referring to this work used by various witnesses and counsel.

him if he wanted to work in the raisins. He believed this occurred about two weeks after the layoff. (II:93.) Ramirez replied he wanted his job with Suma back. Asked if it was a firm offer of work, Ramirez replied it was not. (II:93-94.)

Ms. Ramirez testified without objection on this issue, but it was clear her information came from her husband. (II:72.) According to her, the week after the layoff, Magana transmitted an offer from Manuel to the whole crew that they could work in the raisins. (II:69.) Like her husband, she testified there was never a firm offer in so far as a specific date and place. (Id.)

She also stated that Magana told her husband that Magana had not accepted the raisin work, (II:72.) She testified that the entire crew never got together to discuss or decide whether they wanted the raisin work. (II:76.)

From the foregoing, I find that Manuel offered Magana work in the raisins if such work became available and that Magana declined to take the job. According to Manuel, after Magana declined the work, he gave it to Carrillo who accepted and brought with him the same people who had harvested table grapes at Suma for Carrillo. (II:119-120.) Similarly, Luis testified that approximately 40 of the 50 members of Carrillo's crew at Suma moved to work in the raisins. (III: 195-196.)

JX1 belies their testimony. It shows that of the 62 individuals who worked in Carrillo's crew on July 31, the date Magana's crew was laid off, only 30 did not transfer to other Suma crews. Thus, Manuel's and Luis's testimony that Carrillo took his entire crew from Suma to work in the raisins is

false.

b. Working in the Raisins vs. Working in Table Grapes

There was testimony from the four worker witnesses that working in the raisins was less desirable because the work was harder, more dangerous and less profitable than table grape work. (I:69, 74; III:69-70, 72-73, 101-103, 112-114.) They did acknowledge that one did not have to be as careful in picking the grapes for raisins as one did with table grapes in terms of taking out bad grapes. (III:83, 106, 117-118.)

Conversely, Manuel and Luis testified the raisin work was less difficult and just as profitable. (II:120, 191) Manuel did acknowledge the raisin work was a little dirtier. (II:121.)

At least as to Ms. Aguero and Ms. Ramirez, the raisin work would clearly have been less desirable than their work at Suma. As a packer, Ms. Aguero did not have to pick grapes except when there were no grapes to pack, for example at the start of the day. At such times she would pick until the crew had enough grapes for packing to begin again. There were no packers in the raisin work so she would have had to work as a picker. (III;103.) Clearly, having to be in the field bending over picking is less desirable than her job at Suma.

Ms. Ramirez testified that are no checkers in the raisin work either, and that each worker keeps track of the amount she or he picks. (III:103-104.) Luis, in testifying how much one would earn in the raisins, stated a checker would earn $50.00 per day versus $55.00 per day at Suma in the table grapes. (II:191.)

In general, Ms. Ramirez was much more credible than Luis,

and his reference to checkers was an aside to testimony focused on wages. Ordinarily, I would credit her, but she had not worked in the raisins for nearly 10 years, and conditions might have changed, so I do not credit her. Assuming arguendo that Luis was correct, the fact that she would have earned approximately 10% less every day clearly makes the raisin work less desirable than her job at Suma.

Lastly, only about half of Carrillo's crew was actually laid off at Suma. Since Respondent's witnesses testified Carrillo got the same work Magana turned down, logically there would have only been enough work for about 30 of the 50 workers in Magana's crew. For all the above reasons, I do not find the raisin work was comparable to the work at Suma.[60]

c. The Hiring of Workers at Suma After the Layoff.

JX1 shows that after Magana's crew was laid off on July 31, RFLC added 107 workers to the crews that continued to work the grape harvest at Suma.[61] This number does not include the

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[60]Further, no logical reason appears why Magana would decline work which was easier and paid the same which is how Luis described the raisin work compared to Suma.

[61]General Counsel listed 96 workers in this category in Appendix C to her post hearing brief. In addition to those names, my review of JX1 shows the following individuals had hire dates after July 31 in the following crews. Corona: Roberto Alcarez, Ismael Farias (who later moved to Orozco's crew), Enrigue Mendez, Soledad Munguia, and Lucio Robledo. Orozco: Cecilia Farias, Melida Ortega and Jose Trejo (as distinct from Jose Juan Trejo). Huerta: Norma Jasso. Lopez: Asuncion Carrillo and Jose M. Carrillo. Additionally, I note these corrections to Appendix C. Fulgencia not Florencio Alvarez; Rodolfo not Rudolfo Ventura; and Enrique not Emroque Padilla.

workers who transferred from Carrillo's crew after August 5.[62]

Of the 107 individuals, 61 worked more than 6 days which I somewhat arbitrarily chose as a significant period of work. Many were hired around August 10 or 11 and worked virtually until the end of the season.

The only actual crew that was added after July 31 was that of Juanita Huerta who was called back to harvest the Fantasy grapes. Green testified that this grape had to be treated with special care so that they did not crack and so the color was not blemished by oil from the workers' hands. (II:67-68.)

Magana testified he had experience picking this variety and there was nothing special about the way these grapes were picked, except one had to make sure the grape was perfect and that it kept its color. (II:13) His testimony is not that different from what Green said. I do not find that Respondent established that Magana was not competent to head a crew to pick the Fantasy grapes. I do not believe, however, there is any reason his crew should have been hired in preference to Huerta's.

As noted earlier, GCX4 purports to show the actual number of cartons of grapes picked by each crew throughout the Suma harvest. After the July 31 layoff, however, the number of

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[62] It does include two people with the same names as two members of Magana's crew, to wit, Cecilia Farias and Ismael Farias. There is no testimony about them, and so even if they are the same people, it is not clear that RFLC knew they were former members of Magana's crew. In fact, had that been the case, I would expect Respondent to have brought that fact out as some evidence, albeit of little weight under all the circumstances, that they were willing to rehire workers of Magana.

cartons shown in the GCX4 varies dramatically from the numbers in the records of Dulcich and Workman's (GCX2 and GCX3) with GCX4 showing some 6,000 fewer cartons.

General Counsel contends this discrepancy indicates that RFLC had more people working in the Suma harvest than its records indicate. That is certainly one possibility, and there is nothing in the record to explain why such a large discrepancy appears only after the lay off of Magana's crew. Clearly, Respondent was in the best position to account for this discrepancy.

General Counsel argues that Manuel Robles hired individual workers when he wanted to as demonstrated by his actions with the Gaona family and Aracely Garcia. While this is true, his typical practice was to hire forewomen and foremen who brought their own crews. I am not persuaded these two incidents are sufficient to warrant a finding that he should have rehired individual members of Magana's crew especially when it is clear from the record that the demands to Manuel were for the entire crew to be rehired.

## VII. THE STATUS OF OCTAVIO MAGANA F.

Respondent concedes that Octavio Magana F. worked prior to July 31 but contends that because he did not work on the day of the layoff he cannot be included in the class of alleged discriminates. GCX5 is a copy of the daily crew sheets for RFLC for the week ending July 31. It shows that Mr. Magana worked every day that week except the 31st. JX1 shows he first worked on July 9, and comparing JX1 with GCx4, it is clear he worked every day through the 30th.

## ANALYSIS AND CONCLUSIONS

In order to prove unlawful discrimination, General Counsel must prove that the employer knew or believed that the employees engaged in protected concerted or union activity and that the employer discriminated against the employees for that reason. (Lawrence Scarrone (1981) 7 ALRB No. 13.) Once the General Counsel has established a prima facie case, the burden then shifts to the employer to prove it would have taken the adverse action even absent the protected conduct. (NLRB v. Transportation Management Corp. (1983) 462 U.S. 392 [113 LRRM 2857]; Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169, enf'd NLRB v. Wright Line (1st Cir. 1981) 662 F.2d 899 [108 LRRM 2513], cert. den. (1982) 455 U.S. 989 [108 LRRM 2779].

The readiest for a wage increase constituted protected concerted activity, and employer knowledge thereof is established by the fact that it was addressed to Manuel Robles. I have also found that Velarde and Luis were aware of the Union's contact with the crew and the crew's support for the Union.[63]

As in most cases of discrimination, the discriminatory motive must be proved largely by circumstantial evidence. There are a variety of factors this Board and the National Labor Relations Board ("NLRB" or "national board") look to as evidence of an unlawful motive.

One of the most important of these is timing. However, mere

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[63]The status of the Union's visit in view of the fact that it had not filed an NA is discussed below, but the workers' support of the Union was protected in any event.

proximity of the adverse action and the protected activity does not ipso facto result in an inference of unlawful motive.

Here, the adverse action occurred immediately after the request for a raise and the Union's visit. However, neither Ms. Aguero's request nor the earlier ones were met by negative comments or any other overt expression of animus. Apparently, they were simply ignored.

While it is possible there was a cumulative effect i.e. her request on top of the others was the proverbial straw that broke the camel's back, I do not think there is sufficient evidence to support such a finding. Thus, I am not convinced that her request for the raise precipitated the layoff.

The situation is different with regard to the crew's visible support for the UFW. This was met with swift action by Luis which, together with his and Green's evasiveness about their knowledge of Union activity, support an inference the layoff was in response to the crew's protected activity.

Union animus is another significant factor. The evidence here is mixed. Luis changed the crew's break time in order to interfere with the workers' communication with the Union. On the other hand, the Union continued to visit the Company the next week, and there is no evidence of interference with these visits.

Further, Union representatives accompanied Magana's crew to the RFLC office early the week after the layoff, and there is no evidence anyone from RFLC exhibited animus. Overall, I find there is evidence of mild union animus.

Other factors include: failure to investigate the conduct

on which the adverse action is based, prior condonation of such conduct, disparate treatment of workers based on their participation in protected activity, the severity of the adverse action, failure to give warnings, and the assertion of false, inconsistent or shifting reasons or the absence of any reason for the adverse action.

This case was investigated on an expedited basis. Respondent's counsel filed a letter with the Regional Director just two days after the charge was filed. (GCX9.) In it, Respondent asserted the lack of capacity in the cold storage as a reason for the layoff and indicated that the crews may have been (emphasis added) laid off based on the quality of their packing. There has been no shift in Respondent's position. I note, however, that where there is no system of written warnings, an assertion that quality was the criteria is the easiest reason to substantiate adverse action since it is subjective.

I have credited Green that the cold storage situation was the reason he told Manuel to lay off a crew. Green was satisfied with the pack he was getting. Consequently, a crew was going to have to be let go even though the people were doing a satisfactory job.

The applicability of the remaining factors is determined by resolution of Respondent's contention that Magana's crew was selected based on the problems described by its witnesses. Based on the credibility resolutions I have already made, on balance, I am persuaded by General Counsel's witnesses that there were no significant problems with the crew's work. I recognize that a

crew was going to be laid off in any event because of the cold storage problems. Thus, even a small difference in the performance of a crew could provide a legitimate reason and had Respondent's witnesses established such a distinction existed I would find in its favor. But there are so many problems with the credibility and reliability of Respondent's witnesses on this issue that I was not persuaded by them.

In addition to these credibility resolutions, there are additional factors that trouble me as well. In GCX9, Respondent took the position that the reduction in workforce was expected to be temporary and certainly implied that if additional workers were needed the laid off workers would be recalled. Further, Olmos testified that Magana and his crew would have been kept on if Green had not required that a crew be laid off. Luis implied the same thing.

In view of these assertions, the fact that Magana was not offered work but new workers were hired tends to undercut Respondent's protestations that the layoff of Magana's crew was motivated by legitimate reasons. If that were so, one would expect them to recall Magana.[64] The fact that Magana had declined the work in the raisins is no reason not to recall him to Suma, and none of Respondent's witnesses indicated that his refusal to take that job somehow disqualified him from ever working for RFLC again.

I recognize that no actual new crews were added at Suma, but

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[64]The fact that RFLC did not oppose the crew's collecting unemployment does not outweigh these other considerations.

Respondent achieved the same end by hiring enough people in the existing crews to make up a normal size crew. By this time, Respondent was on notice of the unfair labor practice allegation and would have known that adding a new crew would be a red flag.

I also recognize that none of Carrillo's people were rehired. However, by this time, according to Respondent, RFLC had employed him elsewhere and may not have been able to move him off that job.

Based on the foregoing, I find General Counsel established a prima facie case which Respondent failed to rebut. I therefore find that the layoff and refusal to recall Magana and his crew violated section 1153 (a) and (c) of the Act.

THE STATUS OF JUAN MAGANA

As noted, Respondent concedes that pursuant to Seqruoia Orange Co. (1985) 11 ALRB No. 21, Juan Magana is protected under the Act because the workers were hired and let go through him. Therefore, Magana is properly included as a discriminatee.

THE STATUS OF OCTAVIO MAGANA F.

It is General Counsel's burden to establish that a worker is within the class of discriminates entitled to relief. The sole evidence regarding Mr. Magana is that he worked regularly for three weeks from the time he was hired through July 30. There is no evidence why he did not work on July 31.

It is not known if he was on sick leave or vacation or absent for some other reason which would mean he was still an

employee or whether he quit.[65] While it is unlikely Mr. Magana quit after such regular employment, it is General Counsel's burden to establish his status, and I find she has failed to do so.

THE CHANGE IN THE CREW'S BREAK TIME

General Counsel alleges that Respondent violated the Act when it changed the crew's break time so the Union could not talk to them. Since the Union had not filed an NA, Respondent could have told the Union representatives to leave until they did so. Whether it was also permitted to choose the path it did is the question.

I have found no case quite like this one, but there is an analogous situation in Tex-Cal Land Management, Inc. (1977) 3 ALRB No. 14. The employer there believed the Union had brought more representatives than permitted under the Board's access regulations and chose to deny access to all the organizers.

Stressing the importance of agricultural workers being able to communicate with Union representatives on Company property, the Board found the Company should have informed the Union that it believed there were too many organizers (a conclusion in which the Board did not necessarily concur) and given it an opportunity to correct the situation. The Board's conclusion was upheld by the California Supreme court in Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Board (Tex- Cal) (1979) 24 Cal. 3d

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[65] Rod McLellan Co. (1977) 3 ALRB No. 6; Valdora Produce Company (1977) 3 ALRB No. 8; Atlanta Paries Corporation, Inc. (1987) 283 NLRB 327 [124 LRRM 1360]; Red Arrow Freight Lines (1986) 278 NLRB 965 [12 LRRM 1257]

335 [156 Cal. Rptr. 1].

Tex-Cal is different because had the Company taken the course the Beard found proper, the Union could have immediately corrected the situation by reducing the number or organizers. Here, the Union could not have remedied the problem on the spot.

The cases are similar if one views the Board's decision as requiring an employer to exercise its rights under the Act (i.e. dismissing the Union representatives until the Union filed an NA) rather than selecting its own remedy (making the employees unavailable). I find this is the appropriate standard since it prevents a party from taking matters into its own hands and requires that it follow the strictures of the Act. Such a requirement also has the effect of demonstrating to workers that the ALRA sets standards for both their employer and the Union and that the Act must be respected and observed. Consequently, I find Respondent's conduct violated section 1153(a) and (c) of the Act.

## ORDER

By authority of Labor Code section 1160.3 the Agricultural Labor Relations Board hereby orders that Respondent Suma Fruit International (USA), Inc. and Choice Farms, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Laying off, refusing to rehire or otherwise discriminating against agricultural employees because of their participation in protected concerted Union activity;

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

restraining or coercing any agricultural employee in the exercise of the rights guaranteed by §1152 of the Act.

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

(a) Offer Juan Magana and his crew members employed on July 31, 1992, to wit:

Luz Maria Aguero
Rogelio C. Aguero
Angelica Aguilar
Petronilo Basurto
Casimiro Bustos
Rodrigo Calvario S.
Herminia Camacho
Nibardo Camacho C.
Maria Elena Camacho
Delia Casas
Fidel Casas
Miguel Castro
Ramon Castro
Fernando Chaves
Roberto Chavez
Rosalio Castellon
Librado Espinoza
Cesilia P. Farias
Ismael Farias
Maria Gaona
Jose Rosas Gaytan
Laura Gomez
Cornelio Gonzales
Jorge Gonzalez
Rafael M. Guerra
Maria Esther Llanos E.
Israel Lopez M. also known as Israel Morales L.
Refugio Medrano
Antonio Madrigal
Jose Magana
Javier R. Magana
Luis R. Magana
Maribel Martinez
Rigoberto Martinez
Rodimiro Martinez
Manuel Medorono Gosia
Ramon Gomes Medrano also known as Ramon Gomes
Balentin Medrano
Salvador Meza
Mario Ornelas M.
Rafael Ornelas G.
Ricardo Ornelas
Carmelo Penaloza
Carmen Perez
Corina Ramirez
Jaime Ramirez
Manuel Ramirez
Marisela Gonzales Segura also known as Marisela Gonzalez
Ramiro Tapia M.
Ruben Tapia Veronica
Valdez Aucencion Valle
Gabriel Valle

immediate and full reinstatement to their former positions of employment, or if their former positions no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges of employment;

(b) Make whole the employees named in paragraph 2(a)

above for all losses of pay and other economic losses they have suffered as a result of Respondent's unlawful layoff and refusal to rehire them. Loss of pay is to be determined in accordance with established Board precedents. The award shall reflect any wage increase, increase in hours or bonus given by Respondent since the unlawful acts. The award shall include interest thereon, computed in accordance with the Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5;

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

(d) Sign the attached Notice to Agricultural Employees ("Notice") and, after its translation by a Board agent into all appropriate languages, make sufficient copies in each language for the purposes set forth in this Order;

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days of issuance of this order to all agricultural employees in its employ from July 31, 1992, to the date of mailing;

(f) Provide copies of the signed Notice to each employee hired by it during the twelve (12) months following the remedial order;

(g) Post copies of the attached Notice in all

appropriate languages, for 60 days, in conspicuous places on its property, the exact 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 ;

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

(i) Upon request of the Regional Director or his designated Board agent, provide the Regional Director with the dates of Respondent's next peak season. Should Respondent's peak season have begun at the time the Regional Director requests peak season dates, Respondent will inform the Regional Director of when the present peak season began and when it is anticipated to end in addition to informing the Regional Director of the anticipated dates of the next peak season;

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(j) Notify the Regional Director in writing, within 30 days of the issuance of this Order, of the steps it has taken to comply with its terms, and make further reports at the request of the Regional Director, until full compliance is achieved.

DATED: June 2, 1993

BARBARA D. MOORE
Administrative Law Judge

## NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB), the General Counsel of the ALRB issued a complaint that alleged we, SUMA FRUIT INTERNATIONAL (USA), INC. and CHOICE FARMS, INC., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by laying off and refusing to rehire Juan Magana and the members of his crew employed on July 31, 1992, for engaging in protected concerted activity, namely, showing their support for the United Farm Workers of America, (AFL-CIO) ("UFW").

The ALRB has told us to post and publish this NOTICE. We will do what the ALRB has ordered us to do.

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.

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

WE WILL NOT lay off, refuse to rehire or otherwise interfere with employees because they protest or show their support for the UFW.

WE WILL make Juan Magana and the members of his crew employed on July 31, 1992, whole for any losses they suffered as a result of our unlawful acts. 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 711 North Court street, Suite H., Visalia, California 93291. The telephone number is (209) 627-0995. DATED:

SUMA FRUIT INTERNATIONAL (USA), INC., and CHOICE FARMS, 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.