

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

THE GARIN COMPANY,	)	
	)	
Respondent,	)	Case Nos. 84-CE-93-SAL
	)	84-CE-94-SAL
and	)	84-CE-121-SAL
	)	84-CE-145-SAL
UNITED FARM WORKERS OF AMERICA,	)	85-CE-41-SAL
AFL-CIO and JUAN LOPEZ, ANTONIO	)	
HEREDIA, GUILLERMO GODINEZ,	)	
AND ROGELIO GODINEZ,	)	
	)	12 ALRB No. 14
<u>Charging Parties.</u>	)	

DECISION AND ORDER

On October 24, 1985, Administrative Law Judge (ALJ) Thomas Sobel issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions to the ALJ's Decision with a brief in support of its exceptions, and General Counsel filed a reply brief.

Pursuant to the provisions of Labor Code section 1146,<sup>1/</sup> the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.<sup>2/</sup>

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs and has decided to affirm the ALJ's rulings, findings and conclusions, as modified herein, and to

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<sup>1/</sup>All section references herein are to the California Labor Code unless otherwise specified.

<sup>2/</sup>The signatures of Board members in all Board decisions appear with the signature of the chairperson first, if participating, followed by the signatures of the participating Board members in order of their seniority.

adopt his recommended Order, with modifications.

The Company Barbecue

Respondent excepts to the ALJ's conclusion that the exclusion of six employees from the annual Company barbecue in Gonzales was a violation of the Agricultural Labor Relations Act (Act).

In May of 1984, there were two Company sponsored barbecues for irrigation crews, one in Gonzales and another 20 to 25 miles away in Salinas. Approximately two months prior to the barbecues, a hearing had ended in another unfair labor practice proceeding involving the Respondent herein. (The Garin Company (1985) 11 ALRB No. 18.) In that case, General Counsel established that the Company's justification for the discharge of a union activist, drinking on the job, was pretextual. In support of the allegation of disparate treatment of the discharged employee, several of his co-workers testified as to the Company's more lenient handling of the on-the-job drinking of Jose Alvarez, a fellow irrigator.

Prior to the barbecue for the Gonzales irrigators, Arturo Alvarez, Jose Alvarez' son, told the Respondent's employee relations manager, John Barrientos, that ". . . if those people are there, you know, and there are comments made about my father (Jose Alvarez), there's liable to be problems." Alvarez mentioned the alleged discriminatees by name. He testified that he believed that four of the individuals had said something disparaging about his father (drinking on the job) and that the others "were supporting those things."

Barrientos decided that the six individuals should not go

to the Gonzales barbecue, but that instead they would be invited to the subsequent Salinas barbecue. He stated that since he believed that the Alvarezes had a better relationship with the other Gonzales irrigators, he determined that they should attend the barbecue there.<sup>3/</sup>

On the morning of the Gonzales barbecue, the irrigation foreman assembled his crew and informed them of the barbecue planned for that day. The foreman told the irrigators that certain of them were not invited and he recited the names given to him by Barrientos.

The ALJ determined that the Respondent violated section 1153(a) and (d) by excluding the six workers from the Gonzales barbecue. The ALJ found that, since there was no evidence of any problems when the two groups worked together, Barrientos had no reasonable fear of conflict and that he was not "deferring to the wishes of the Alvarezes in good faith."

Respondent contends that Barrientos was a peacemaker who ". . . sought only to avoid conflicts between the two groups of workers." We cannot give much credence to this contention. Just three days after the barbecue, Barrientos unlawfully discriminated against one of these same six individuals. In that instance

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<sup>3/</sup>Barrientos testified that after the conversation with Alvarez, but prior to the barbecue, he invited one of the six alleged discriminatees, Juan Lopez, to attend the barbecue and cook. Barrientos stated that Lopez replied "No, they don't like me." Lopez said that he had been invited to cook but denied making the statement attributed to him by Barrientos. Another witness to the encounter gave a different account which was ambiguous. The ALJ credited the Lopez account of the conversation. We affirm his credibility resolution and thus find Barrientos' subsequent exclusion of Lopez to be unexplained.

Barrientos appears to have been exploiting the apparent antagonism that existed between the two groups by his deliberate use of one of the Alvarezes as a witness against Juan Lopez.<sup>4/</sup> We also note that Respondent made no other efforts to keep the two groups apart and that the two groups worked together on a daily basis without incident.

When the announcement was made that the six individuals were to be excluded from the barbecue, no explanation was given. Nor was there any statement then given that the six would be invited to the subsequent Salinas barbecue. The foreseeable consequence was that all of the Gonzales irrigators would receive the impression that the discriminatees were being excluded because of their involvement in Board processes. A reasonable inference is that this impression was intended. Had the intent been to heal the relationships rather than to discriminate, an explanation would logically have been offered. Rather, it appears that the intent was to seize upon this opportunity to discriminate against six individuals for the testimony they gave at the prior Board hearing and thereby send a message to all of Respondent's employees who would participate in the Board's processes. We agree with the ALJ that Barrientos was not deferring to the wishes of the Alvarezes in good faith, and thus find the proffered justification for the discrimination to be pretextual. A determination by the Board that an employer's business reasons for its action were pretextual means that the

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<sup>4/</sup>Lopez testified that Barrientos radioed a foreman with a specific request to bring Ismael Alvarez to the site of that incident. Barrientos did not dispute that testimony.

asserted reasons "either did not exist or were not in fact relied upon, thereby leaving 'intact the inference of wrongful motive established by the General Counsel." (Frank Black Mechanical Services, Inc. (1984.) 271 NLRB 1302, fn. 2, [117 LRRM 1183].)

We affirm the ALJ's conclusion that Respondent violated Labor Code section 1153(d) by excluding the six individuals from the Company barbecue.

#### Warning Tickets for Cutting Asparagus

Respondent also excepted to the ALJ's finding that it violated section 1153(d) by issuing warning tickets to Rogelio and Guillermo Godinez on March 11, 1985.

Guillermo and Rogelio Godinez were installing sprinklers when Guillermo walked into a field and cut a handful of asparagus for personal use. As he returned, Rogelio called out "Johnny Cotta is coming." Guillermo stated that he then put the asparagus aside "to keep working." John Cotta, a field supervisor, arrived and confronted Guillermo about cutting asparagus without permission. Rogelio responded with a false explanation that another supervisor had given them permission. The next morning Cotta reported the incident to Barrientos, who then directed the irrigation foreman to issue the warnings.

Upon consideration of testimony by numerous witnesses, the ALJ determined that the Respondent did have an existing policy that vegetables were to be taken only with prior permission. He also found that when Guillermo Godinez was confronted by Cotta, Rogelio Godinez falsely stated that a foreman had given them permission. The taking of the asparagus could thus be considered a joint

activity for which they could both be disciplined. These findings are adequately supported by the record.

The ALJ then determined that, had Cotta made the decision to issue the warning tickets, there would have been no causal connection between the warnings and protected activity. However, because Barrientos made the decision and because the ALJ had concluded that Barrientos had engaged in unlawful discrimination in the carburetor (see ALJD, p. 26) and barbecue incidents, the ALJ found that a causal connection did exist in this incident. Pursuant to Wright Line, A Division of Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169], the burden then shifted to the Respondent "to demonstrate that the two men would have received warnings in the absence of their 'protected' activities." The ALJ concluded that Respondent did not meet its burden primarily because he found Barrientos to be an untrustworthy witness.

To establish a prima facie case the General Counsel must demonstrate that a person engaged in activity protected by the Act, that this activity was known to his employer and that there was a causal connection between the employer's knowledge of the activity and the disciplinary action taken. (Royal Packing Company (1982) 8 ALRB No. 74.) In dual motive cases, once a prima facie case has been established by the General Counsel, the burdens of production and persuasion shift to the Respondent.

We agree with the ALJ that a prima facie case was established. However, we do not agree with his finding that Respondent failed to meet its burden. We find, based on the ALJ's own credibility resolutions, that the Respondent successfully rebutted

the prima facie case of the General Counsel. The ALJ credited Cotta's version of the incident: that the Company had a rule that no vegetables were to be taken without permission and that Cotta confronted the employees immediately and then took the matter up with the labor relations manager who, in turn, had the warning issued. The ALJ also inferred from the actions of the Godinezes that they knew they were doing something wrong. This evidence supports the existence of a nondiscriminatory business judgment that warnings were warranted.<sup>5/</sup>

The ALJ's conclusion that a violation occurred seems to be based on the rationale that, because Barrientos had been guilty of unlawful discrimination in incidents occurring ten months earlier, any subsequent discipline must, "a fortiori," be similarly motivated. While a finding of past discrimination may be of some relevance in assessing a present action, it does not become a conclusive presumption of current unlawful motivation. (Sioux Quality Packers, Etc. v. NLRB (1978) 581 F.2d 153, 157 [98 LRRM 3128].)

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<sup>5/</sup>Respondent contends that "[b]y acknowledging that the issuance of the tickets would have been legitimate by another supervisor, the ALJ supports Respondent's view that it raised a genuine issue of fact as to whether it discriminated against these two workers." Respondent argues that General Counsel therefore cannot be found to have met its burden of proof. For this proposition, Respondent cites Martori Brothers Distributors (1982) 8 ALRB No. 15. However, in Royal Packing Company, supra, 8 ALRB No. 74, page 2, we stated:

. . . We overrule Martori Brothers Distributors, supra, 8 ALRB No. 15, and hold that in dual motive cases, once the General Counsel has carried its burden of proof as to the prima facie case, the burdens of production and persuasion shift to the employer, and a violation will be found, unless the employer proves by a preponderance of evidence that the adverse action would have been taken even absent the employee's protected activity.

Respondent was not compelled to prove that it was without animus toward the Godinezes. Rather, it was required to prove that the discipline would have taken place regardless of the protected conduct. We find that Respondent met its burden of proof concerning the discipline of the Godinezes and we therefore dismiss that portion of the complaint.

#### Remedy

Respondent, relying primarily on M. B. Zaninovich, Inc. v. ALRB (1981) 114 Cal.App.3d 665, 690 [171 Cal.Rptr. 55], contends that the publication provisions of the ALJ's proposed order are overbroad and punitive. However, unlike Zaninovich, the two violations in this case are not ". . . single, isolated, somewhat 'technical' acts which occurred in the privacy of a supervisor's office." (M. B. Zaninovich, Inc., supra, 114 Cal.App.3d 665, 687.) In these incidents, the unlawful conduct was open and it is reasonable to infer that knowledge of the conduct was widespread among the employees. (Nish Noroian Farms v. ALRB (1984.) 35 Cal.3d 726, 747 [201 Cal.Rptr. 1].) The remedial provisions in question are well established and are appropriately applied in this case.

#### ORDER

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

1. Cease and desist from:
  - a. Any conduct which may reasonably tend to interfere

with employees' exercise of their rights to participate in Board processes or other concerted activities.

b. Discriminating against employees by treating them differently on account of their participation in concerted activity protected by section 1152 of the Act.

c. In any other like or related manner interfering with the right of agricultural employees to participate freely in Board proceedings.

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

a. Rescind the warning notice issued to Juan Lopez.

b. Sign the Notice to Employees attached hereto. Upon its translation by a Board agent into all appropriate languages, Respondent shall thereafter reproduce sufficient copies in such languages for the purposes set forth herein.

c. Post copies of the attached Notice in all appropriate languages, in conspicuous places on its property for a sixty-day period, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered or removed.

d. Mail copies of the attached Notice in all appropriate languages within 30 days of the date of issuance of the Order to all agricultural employees employed by Respondent in the Salinas area from May 11, 1984, to May 11, 1985.

e. Arrange for a Board agent to distribute and read the attached Notice in appropriate languages to the assembled

employees of Respondent on Company time. The reading (s) shall be at such times and places as are specified by the Regional Director. Following the reading(s), the Board agent shall be given the opportunity outside the presence of supervisors and management, to answer any questions employees may have concerning the notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

f. Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps which have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing of further actions taken to comply with this Order.

Dated: June 30, 1986

JYRL JAMES-MASSENGALE, Chairperson

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) issued a complaint which alleged that we, The Garin Company, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by discriminating against Juan Lopez, Rogelio Godinez, Antonio Heredia, Guillermo Godinez, Riveriano Heredia and Marcos Alba because of their participation in Board proceedings. The Board found that we violated the law by not permitting all six employees to attend the Company barbecue and by issuing a warning notice to Juan Lopez. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

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

WE WILL NOT exclude from any Company benefits any of our employees because he or she has participated in union or protected activities or ALRB proceedings.

WE WILL rescind the warning notice given to Juan Lopez.

WE WILL NOT harass or issue warnings to any of our employees because he or she has participated in union or protected concerted activities or ALRB proceedings.

Dated:

THE GARIN COMPANY

By: \_\_\_\_\_  
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California, 93907. The telephone number is (408) 443-3151.

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

The Garin Company  
( UFW )

12 ALRB No. 14  
84-CE-93-SAL  
et al .

ALJ DECISION

The ALJ found that Respondent committed three violations of Labor Code section 1153(d) and, derivatively, section 1153(a). One of the violations involved the exclusion of six individuals, who had testified at a prior Board hearing, from a Company barbecue. Another violation stemmed from the issuance of a warning ticket to one of the six for allegedly having performed major mechanical work on his personal vehicle during work hours. The ALJ found this justification to be pretextual. In the third incident, the ALJ concluded that Respondent unlawfully issued warning tickets to two workers for taking asparagus for personal use.

BOARD DECISION

The Board affirmed the ALJ's findings and conclusions that the exclusion of six workers from the barbecue and the warning ticket for major mechanical work were violations of Labor Code section 1153(d). The Board overruled his finding that Respondent did not meet its burden of proof, under Wright Line, in the asparagus caking incident and found that the warnings would have issued even had the employees not engaged in protected activities.

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

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	Case No.	S4-CE-93-SAL
	)		84-CE-94-SAL
GARIN COMPANY,	)		84-CE-121-SAL
	)		84-CE-145-SAL
Respondent,	)		85-CE-41-SAL
	)		
UNITED FARM WORKERS	)		
OF AMERICA, AFL-CIO,	)		
	)		
and	)		
	)		
JUAN LOPEZ, ANTONIO HEREDIA,	)		
GUILLERMO GODINEZ, and	)		
ROGELIO GODINEZ,	)		
	)		
Charging Parties.	)		

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Appearances:

Mark Ginsberg  
 Norman K. Sato  
 Agricultural Labor Relations Board  
 112 Boronda Road  
 Salinas, California 93907  
 Attorneys for General Counsel

Howard Silver 911-B Blanco  
 Circle Salinas, California  
 93901 Attorney for  
 Employer

Before: Thomas M. Sobel  
 Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

THOMAS SOBEL, Administrative Law Judge:

This case was heard by me in Salinas, California, on May 21, 22, 23, 24, 28 and 29, 1985. Upon a variety of charges being duly filed and served upon Respondent (an admitted agricultural employer) by various admitted agricultural employees and by the United Farm Workers of America, AFL-CIO (an admitted labor organization), General Counsel issued a complaint alleging that, during spring and summer 1984, Respondent discriminated against Juan Lopez and Rogelio and Guillermo Godinez, either because of their concerted activities or because of their participation in Board processes,<sup>1</sup> and otherwise "interfer[ed] with, restrain[ed] or coerc[ed]" these employees as well as Antonio Heredia, Riveriano Heredia, and Marcos Alba in a variety of ways in the exercise of their Labor Code section 1152 rights.<sup>2</sup>

I.

BACKGROUND

Although unsuccessful in a representation election in 1978, and in an organizing campaign in 1982, see Garin Company, 11 ALRB No. 18, ALJD, p. 24, the United Farm Workers of America still has some visible supporters among

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<sup>1</sup>Paragraphs 6(a), (e) and (f), First Amended Complaint.

<sup>2</sup>Paragraphs 6(b), (c), (d), First Amended Complaint

Respondent's employees. Respondent stipulated that these include Juan Lopez, Antonio Heredia and Rogelio Godinez, three of the alleged "discriminatees"<sup>3</sup> in this case. Because Respondent would not similarly stipulate regarding the union activities of the other alleged discriminatees, Marcos Alba, Riveriano Heredia and Guillermo Godinez, the parties devoted a good deal of attention to disputing whether these others engaged in union activities and whether Respondent was aware of whatever they were doing.<sup>4</sup> For the reasons stated below, I decline to make any findings with

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<sup>3</sup> Although the complaint does not uniformly make allegations of discrimination, for the sake of convenience, when speaking of the employees collectively, I will refer to them as "discriminatees."

<sup>4</sup> To this end, General Counsel presented several different kinds of evidence: one kind consists of testimony that the employees openly revealed or otherwise displayed their union sympathies from which it might be inferred that these sympathies came to Respondent's attention; another kind consists of statements allegedly made by Respondent's agents which, if credited, reveal both Respondent's knowledge of, and its antipathy towards certain of the employees' union activities; another kind consists of statements of discriminatory intent directed against some of the employees as to which, in combination with other background evidence, anti-union motive might be inferred as the cause.

For its part, Respondent's witnesses claimed to be innocent of any knowledge concerning some of the employee's union activities, or contended that those employees of whose activities it was aware were minimal, or whatever activities came to its attention did so after the incidents at issue in this case took place and so couldn't have played any part in Respondent's actions. Additionally, Respondent's witnesses denied making the discriminatory or anti-union statements attributed to them.

respect to many of the factual disputes raised by this testimony.

In particular, I find it unnecessary to determine either the extent, or Respondent's knowledge, of the protected activities of Marcos Alba, Riveriano Heredia or Guillermo Godinez. Discriminatory or coercive treatment of these employees is only at issue in two subparagraphs of the First Amended Complaint, namely, the allegation that Respondent excluded all six discriminatees from its Gonzales area barbecue because of their protected activities [Subparagraph 6 (c)]; and the allegation that Respondent discriminatorily issued a warning ticket to Guillermo and Rogelio Godinez [Subparagraph 6 ( f ) ] . Because Barrientos essentially admitted that he excluded the six alleged discriminatees from the Gonzales area barbecue because of the feelings engendered by their testimony at a previous Board hearing, there is no need to consider whether these employees engaged in any other "protected" activities in order to determine whether General Counsel made out a prima facie case in connection with this allegation.<sup>5</sup> For the

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<sup>5</sup>The Board has recently stated "that, to make out a prima facie case for [an 1153(d)] violation, General Counsel must prove that the discriminatees filed charges or gave testimony or otherwise involved themselves in the processes of the Board . . . . [that] Respondent knew of the above activity and discriminated against the employees because of their involvement in the processes of the Board." Ben and Jerry Nakasawa, 10 ALRB No. 48, p. 6. Although General Counsel has only alleged the barbecue incident as in 1153

(Footnote Continued)

same reason, it is unnecessary to consider the specific dispute over Guillermo Godinez's union activities since Barrientos' admission that he treated all the men "differently" because of their testimony also suffices to meet the elements of General Counsel's prima facie case in connection with this allegation.

I also decline to consider much of the evidence of animus adduced by General Counsel as background, not because it is unnecessary in either of the senses described above, but because it is not helpful in resolving the matters actually put in issue by the complaint. With the exception to be discussed, no witness in this case left me with sufficient confidence in his or her testimony to permit me to rely upon it as a point of departure in evaluating the testimony of any other witness; to make use of the evidence offered as background, then, would put me to the fruitless task of evaluating the likelihood that an encounter was innocent or unlawful either based upon directly conflicting versions of that encounter or with the help of conclusions that have already been drawn from the main events of this case -- which only makes the evidence offered as

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(Footnote Continued)

( a ) violation, the nature of the evidence makes it clear that the incident involves violation of 1153(d) and I am so construing it. See Labor Code Section 1160.2: "Any. . . complaint may be amended by the member, agent or agency conducting the hearing, or the Board in its discretion, at any time prior to the issuance of any order based thereon." Valdora Produce (1984) 10 ALRB No. 3, ALJD p. 1.

"background" redundant. Accordingly, I decline to consider the testimony<sup>6</sup> concerning the denial of insurance forms, the conversation concerning the grower's political fund, and the letter from Chavez. However, I will treat as appropriate background evidence the findings, including the finding of union animus, made in 11 ALRB No. 18, a recently issued case involving the same Respondent,<sup>7</sup> and Javier Trujillo's testimony that when he received work gloves from foreman Higinio Guzman, Guzman told him not to tell Marcos Alba, who had also asked Guzman for gloves, that he had received them. Since Trujillo had no discernible motive to lie, I find Alba's and Trujillo's testimony evidence of discriminatory motive. While the testimony I am refusing to consider is consistent with this finding, as well as the

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<sup>6</sup>This is not to say that I found General Counsel's witnesses generally unbelievable (which, of course, would mean that General Counsel did not meet his burden of proof), but only that as to those incidents tried as background, General Counsel's witnesses were no more credible than Respondent's witnesses.

<sup>7</sup>General Counsel has requested I take judicial notice of this case, including notice that ALJ LeProhn, who heard it, found many of the same witnesses I heard credible. For its part, Respondent asserts that because it has sought review of the Board's decision my relying on it in any way is improper. To take Respondent's argument first, the fact that a party has sought review of a Board decision does not preclude my taking it into account as background. *Abatti Farms* (1982) 7 ALRB No. 36, p. 3, see esp. n. 4. On the other hand, General Counsel cites no authority for his suggestion that I must consider his witnesses credible because another ALJ found them to be and I decline to attach any significance to prior determinations of credibility by another ALJ.

Board's previous findings, when, for reasons to be stated in my discussion of some of the specific allegations, I believe some of the testimony of General counsel's witness to be exaggerated, consistency is not sufficient to persuade me of the truth of the testimony of General Counsel's witnesses concerning the background incidents.

II.

THE ALLEGATIONS

A.

THE WARNING TICKET TO JUAN LOPEZ

1.

FACTS

Juan Lopez, an irrigator, uses a pickup truck bearing UFW insignia at work. According to Lopez, for a considerable period of time prior to the incident in question, he had been having problems starting his truck,<sup>8</sup> which made it necessary for him to prime the carburetor. To do this, he had to raise the hood and remove the cover to the air filter to expose the carburetor. On May 14, 1984, Lopez attempted to start his truck in order to go to the pump to adjust the flow of water and discovered it wouldn't start. According to his practice he went to get some gas

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<sup>8</sup>Lopez originally testified he had been having starting problems for a year. II:43. Later, on cross-examination, he explained that the problems began in January of 1983, continued through December 1983 when he replaced his carburetor, and started again in February 1984, when the starting problem recurred. III:91.

which he carried in the bed of his truck, raised his hood, removed the air filter cover and primed the carburetor.

According to Antonio Heredia, who was irrigating a field about 400 meters away, as soon as Lopez raised the hood, Juan Barrientos and Frank Vargas, who were then at the barn, got into their vehicle and drove in Lopez's direction. Lopez continues the story: unsuccessful in his effort to start his truck with the initial priming, he was about to repeat the procedure when Barrientos and Vargas arrived. Barrientos asked him what he was doing and he replied he was having starting problems. Barrientos immediately summoned Higinio Guzman and told him to bring Ismael Alvarez. When Higinio arrived with both Riveriano Heredia and Ismael Alvarez, Barrientos chided him for not bringing Ismael alone. III:55-56. Barrientos then asked Ismael to look at the pickup. Then Barrientos and Vargas left, leaving Guzman and Lopez alone; Guzman told Lopez he was going to give him a ticket, which he later did. When Lopez objected, Guzman said, "As long as you don't take the signs from the union [from] your pickup, we're going to continue to bother you." III:57-58<sup>9</sup>

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<sup>9</sup>This statement was also alleged as a separate violation. As I have already noted, General Counsel's witnesses uniformly testified that Respondent's supervisors or agents made a number of overtly anti-union remarks which I am not relying on as background and I do not rely on Guzman's purported statement to Lopez either as evidence of motive or as a violation in itself.

(Footnote Continued)

Respondent's witnesses tell a different story. Ismael Alvarez and Juan Barrientos testified they saw Lopez's hood raised for over an hour. V: 17-20, 23; VI: 24-25. Barrientos testified he first observed the raised hood between 12:15 and 12:25 and saw that it remained raised an hour later, at which point he went to see what Lopez was doing. When he arrived, he asked Lopez what he was doing and Lopez replied he was fixing his car. Barrientos noticed the air filter and the valve cover had been removed and were lying on top of the engine compartment. Observing the type of work being done, Barrientos told Lopez this was not minor repair work and couldn't be done on company time. According to Barrientos, Lopez then said Guzman gave him permission. Barrientos summoned Guzman to check on the story and also asked him to bring a witness. VI: 28-29. When Guzman arrived with Alvarez and Heredia, Barrientos asked Ismael to

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(Footnote Continued)

Taken together the statements attributed to Respondent's supervisors were so hostile that they jarred with the alleged retaliatory actions that were actually taken in this case. In the absence of additional evidence that the warnings were a first step in progressively harsher discipline, I cannot treat them as anything but minor and, therefore, out of keeping with the virulence of the sentiments which Barrientos especially supposedly expressed. My suspicion of this sort of testimony is further aroused by my sense that Heredia has put words in Guzman's mouth; that Rogelio Godinez is not trustworthy; that some of Lopez's testimony (and the testimony which corroborates it) is exaggerated; and, finally, that the testimony about Respondent's vegetable cutting policy is also exaggerated. Accordingly, I do not credit Lopez's testimony about Guzman's purported statement and I hereby dismiss Fara. 6 ( b ) of the complaint.

observe what Lopez was doing before he asked Guzman if he had given Lopez permission to perform repair work in the fields. Alvarez testified the valve cover was off and the gasket was visible. V:27, 29.

2.

ANALYSIS AND CONCLUSIONS

At the outset I should point out what I don't consider at issue with regard to this allegation. Although General Counsel presented some evidence that Respondent tolerated other employees' performing "emergency" work on their vehicles during worktime, and that Respondent's foremen even assisted them at times, the nature of Respondent's defense largely makes that evidence irrelevant for Respondent contends that Lopez was not performing a brief emergency operation, but major repairs during work time. Indeed, in his account of the conversation with Lopez, Barrientos says he distinguished between emergency procedures and major repair work. Proof of General Counsel's case, therefore, turns on who is telling the truth about what Lopez was doing.<sup>10</sup>

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<sup>10</sup>In treating this case as turning entirely on the question of what Lopez was doing, I am avoiding the burden-shifting approach of Wright Line (1982) 251 NLRB 1051 because Respondent's defense is either false (that is, pretextual) in which case, no burden shifting is required, see George Lucas & Sons (1985) 11 ALRB No. 11, or true, in which case it is sufficient to meet Respondent's burden under Wright Line since General Counsel presented no evidence that anything but "emergency" repairs were tolerated on company time.

Certain aspects of Lopez's testimony strike me as exaggerated: the idea that he has been priming his carburetor "almost everyday"<sup>11</sup> without trying to determine if anything else might be wrong with his truck strikes me as unimaginative enough to be incredible, especially in view of the fact that merely replacing his carburetor provided only a one-month solution to his year long problem.<sup>12</sup> However, since this case comes down to Lopez's word against that of others, I can understand his temptation to appeal to the very regularity of the procedure he claimed he was performing to support the truth of his account and to hope that the more regular he can show his "priming" to have been, the more compelling would be the induction he wants me

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<sup>11</sup> A number of employees testified to Lopez's practice of frequently priming his carburetor and General Counsel would have had more testimony to the same effect if I hadn't cut off that area of examination. General Counsel continues to insist that increasing the number of witnesses who could testify that Lopez primed his carburetor at other times assists me in determining whether that was what he was doing? on May 14, see e.g. Post-Hearing Brief, p. 12. It doesn't; the question in this case is: What was Lopez doing? The question is not: If Lopez was having trouble starting his truck, would he prime his carburetor? The evidence proffered is question-begging because it assumes the very fact in issue. Moreover, this is not evidence of habit which would even be relevant to making a determination about what Lopez was doing. (See Jeffereson, Evidence Benchbook, Vol. 2, §33.8, p.1271 [Evidence that a party did something on "many occasions" not relevant to prove conduct for a specific occasions].)

<sup>12</sup>This is not to suggest that Lopez had to take his truck in for service in order to persuade me of the accuracy of his account; it is his lack of curiosity over whether something else might be wrong with his truck which is unusual.

to make. Accordingly, I do not find the testimony false, even though I feel it to be exaggerated. My task is to decide on the record as a whole, including the testimony of Respondent's witnesses, whether Lopez's account is more credible than that of Respondent.<sup>13</sup>

Although I have found elements of Lopez's testimony somewhat exaggerated, I find certain details of Barrientos' testimony to be so inconsistent with the overall tone of his testimony at the hearing that I do not believe him. As I have already mentioned, Barrientos admitted that he decided to segregate the six alleged discriminatees from the Gonzales barbecue in order to keep peace between them and the Alvarezes because the Alvarezes resented the men's testimony at the previous hearing; such concern in keeping peace between the two groups which he displayed in planning the carne asada makes his use of one of the Alvarezes<sup>14</sup> as a witness to Lopez's "dereliction" appear provocative and vindictive. It is also curious that Barrientos had Alvarez observe what Lopez was doing even before he asked Guzman if

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<sup>13</sup>In weighing the credibility of Lopez's account against that of Respondent's witness I am not imposing on Respondent a burden of persuasion in the absence of General Counsel's having met an initial burden of persuasion since there is no burden shifting in this case; I am simply attempting to ascertain on the record as a whole which of two directly conflicting accounts to believe.

<sup>14</sup>That Ismael Alvarez is one of the Alvarezes who felt hostility toward the alleged discriminatee is borne out by Barrientos testimony at VI:59.

he had authorized Lopez to do it -- despite the fact that Guzman was summoned in order to see if he had given Lopez permission. These details are so out of keeping with the picture of himself as a neutral investigator which Barrientos sought to convey to cause me to conclude that his account is false, that Lopez was not performing major mechanical work on his truck, and that his discipline was pretextual.

B.

THE CARNE ASADA

1.

FACTS

Respondent has traditionally held barbecues for its crews. The barbecues were formerly company-wide, but in 1984 the company decided to have separate barbecues for each crew. Since its irrigators primarily work in one of two geographic areas -- Gonzales or Salinas -- one barbecue was to be held in each area. All of the alleged discriminatees work in the Gonzales area. It is undisputed that none of them attended the Gonzales barbecue although at one point at least one of them, Juan Lopez, had been invited; the rest, Antonio and Riveriano Heredia, Guillermo and Rogelio Godinez and Marcos Alba were never invited to the Gonzales barbecue.<sup>15</sup> Antonio Heredia testified that after Guzman

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<sup>15</sup>Although no one mentioned that Rogelio was excluded  
(Footnote Continued)

announced there would be a barbecue for the Gonzales irrigators he asked Guzman if it were "for everyone" to which Guzman replied, "There is no carne asada for Antonio Heredia, Juan Lopez, Guillermo Godinez, Riveriano Heredia and Marcos Alba." I:15. Both Barrientos and Lopez testified that prior to either barbecue, Barrientos approached him to ask him if he would help cook at a carne asada. III:34. Lopez remembers Ismael and Arturo Alvarez being present at their initial conversation. However, Barrientos also testified that when he invited Lopez to a barbecue (presumably at Gonzales) Lopez told him, "No, they don't like me." According to Barrientos, "they" were members of the Alvarez family who believed that the six men had either testified, or supported the testimony of those who testified, that Sr. Alvarez was drunk on the job.

Barrientos also testified he had a conversation with Arturo Alvarez who asked him not to invite those who testified about their father's drinking problem because, as Alvarez put it, if "there were comments against . . . his father . . . there could be a confrontation. VI: 38 Since both Barrientos and Lopez agree that Lopez was asked to cook at the carne asada, thus indicating that something must have caused Barrientos to change his mind about inviting him, and

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(Footnote Continued)  
by name, Lopez said Guzman mentioned "a few others", III:33, and Rogelio testified he didn't even know there was going to be a Gonzales carne asada until after it was held.

since even Lopez testified that the Alvarezes were present when he was originally invited to cook, I conclude that, as Barrientos and Ismael Alvarez testified, Alvarez objected to the presence of the discriminatees at the barbecue. However, I do not credit Barrientos' testimony that Lopez himself said he didn't want to attend the barbecue.

Disposed as I am to credit the chronology of Barrientos' account, I do not credit the substance of it. I have already noted in connection with the issuance of Lopez's warning ticket that Barrientos appeared to be exploiting whatever antagonism existed between the Alvarezes and the discriminatees and I am therefore suspicious of the genuineness of his solicitude for the feelings of one group of workers when he showed so little regard for the feelings of another. Since there is no evidence that any provocative comments about Sr. Alvarez were made when the discriminatees worked with the Alvarezes, I do not believe Barrientos had any reasonable fear they would make any comments about Sr Alvarez at the picnic. Accordingly, in excluding the men from the Gonzales barbecue I find Barrientos was not deferring to the wishes of the Alvarezes in good faith. With the exception of Rogelio, the other alleged discriminatees testified they were invited to the Salinas barbecue and all admitted they declined to attend because it was either inconvenient or too expensive to drive to Salinas.

## ANALYSIS AND CONCLUSIONS

In view of my findings, it only remains to determine whether, in excluding the men from the Gonzales' barbecue, an unfair labor practice is made out. Section 1153(d) prohibits all forms of "discrimination" and not merely discrimination in regard "to the hiring or tenure of employment or any term or condition of employment" as does Section 1153(c). Accordingly, even if I could not regard the Gonzales barbecue either as a form of compensation or as a term or condition of employment, see e.g., Benchmark Industries \_\_\_\_\_ NLRB \_\_\_\_\_, 116 LRRM 1032, Barrientos' exclusion of the six men from the Gonzales barbecue can still be considered prohibited "discrimination".<sup>16</sup> The harder question is whether the kind of "discrimination" of which Barrientos is culpable is not so insignificant as to be considered de minimis, especially in view of the fact that most of the men were invited to another barbecue. As petty as the action appears to be, I am inclined to view it as a violation: for most working people the workplace is not merely a place to earn a living, but also a source of companionship, and the message that an employee is not

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<sup>16</sup>That 1153(d) prohibits treating an employee differently in anyway, and not merely in regard to a term or condition of employment, is clear from Bill Johnson's Restaurant v. N.L.R.B. (1983) 461 U.S. 731 in which the Supreme Court treated filing a lawsuit against an employee in retaliation for the exercise of her protected rights as potentially violative of 8(a)(4).

welcome in the company of his workmates is a powerful one, the import of which is not likely to be eased by the invitation to a gathering of workers with whom one is less familiar.

Accordingly, I find Respondent violated Labor Code section 1153(d) and (a) by excluding the six men from the Gonzales barbecue.

C.

THE THREAT TO ANTONIO HEREDIA

1.

FACTS

The evidence on both sides may be quickly stated. According to Marcos Alba, around the first of June, 1985, Higinio Guzman asked Antonio Heredia for his address. In turn, Heredia asked "[A]re you getting the addresses from everybody or just from me?" to which Guzman replied "I'm getting the addresses of all the Chavez sympathizer so that when I need them I'll know where they are." V: 112. Heredia testified slightly differently: according to him, Guzman approached him carrying a clipboard and told him "he didn't like Chavistas and that is why he gave them a hard time" and also said, referring to the clipboard, "he wanted the addresses to know where the Chavistas live so that when he wanted to find him he would know where to find them." 1:20-21. Guzman admitted asking Heredia for his address, but only because Barrientos asked him to obtain the addresses of Respondent's employees for insurance

purposes.<sup>17</sup> He denied saying anything to Heredia beyond asking for the address. Having already credited Marcos Alba as a disinterested witness, I credit him in connection with this incident and I also take his failure to corroborate the rest of Heredia's version as indicative of the falsity of the rest of the latter's account. With the substance of the conversation established, it remains to determine whether what was said would have a reasonable tendency to interfere with the free exercise of employee rights. In that respect, there are a few features of the conversation which are noteworthy.

The first is the absence of evidence that Guzman asked any other "Chavistas" for an address despite the presence of Marcos Alba who, General Counsel contends, was another known Chavista. This consideration, combined with the conclusion that Guzman was actually obtaining employee addresses, seems to indicate that Guzman's remark was spontaneous rather than reflective of a plan to obtain only Chavista addresses. Interpretation of the exchange as spontaneous receives additional support from Alba's testimony that Heredia asked Guzman if he were requesting addresses only from Chavistas. The exchange between the two men is then seen as one in

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<sup>17</sup>No other employee testified he was asked for his address and no current list of addresses was adduced. However, since even Heredia testified Guzman was carrying the materials for keeping a list, I conclude he was genuinely collecting addresses.

which a suspicious partisan questions a legitimate purpose and receives a reply which appears to be merely sarcastic in view of my disbelief of Heredia's testimony that Guzman also said he purposely gave Chavistas a hard time.

The second interesting feature of the conversation is that no specific action is threatened and that to the extent the statement has a threatening quality, it does not point to the exercise of the employer's power in the one sphere in which that power is rightly feared, namely, the work place. Since whatever threat could be implied in the statement is diluted by its tone and its vagueness, and since the tone of the exchange was initiated by Heredia, I think it unlikely the statement would interfere with the free exercise of employee rights.<sup>18</sup> Accordingly I dismiss this allegation of the First Amended Complaint.

D.

THE WARNING TICKET TO ROGELIO GODINEZ

1.

FACTS

Curiously, this incident, too, centers on whether Rogelio Godinez was doing mechanical work on his truck or sleeping. According to Godinez, he began to experience difficulty starting his truck on August 10, 1984. He was

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<sup>18</sup>If the evidence had shown a pattern of violence by unknown perpetrators against union sympathizers at their homes, the statement would have to be viewed differently.

apparently advised by both Javier Trujillo and Guillermo Godinez that there might be a problem with the ignition switch II:68, 72, but he didn't check it out until the next day when he was at work. II:73. According to him, he was underneath the dash, checking the switch wires when he heard a car slowly pass by following by the arrival of Paulino. Paulino told him Tom Tarp had asked him to drive by to see if he was asleep and, if he was asleep, to give him a ticket. II:83, IV: 84. Rogelio denied he was sleeping.

Paulino Guzman testified he received a call from Tom Tarp to see if Rogelio was asleep in his truck. IV: 82-84. Guzman observed Rogelio's truck from above on the ridge road; he could see through the front window that Rogelio was "lying down" with his hands supporting his head in a sleeping posture. IV: 85. However, Guzman also described Rogelio as sleeping "seated, on his side." IV:105. Guzman honked but Rogelio didn't move until he got out of his pickup at which point Rogelio got out of his truck. Guzman then returned to Tarp to tell him it was indeed Rogelio; Tarp asked if he was sleeping and Guzman said it looked like he was. Tarp told him to give him a ticket. IV: 87. Guzman drove back, asked Rogelio if he had been sleeping, and Rogelio admitted he had. Guzman said he was sent to give him a ticket. Guzman then called Higinio who came and again asked Rogelio if he had been sleeping. Rogelio again admitted he had. Higinio asked Paulino to write the ticket in Spanish because Rogelio wanted it in Spanish. IV: 92.

Rogelio wrote on the bottom he was being discriminated against. GCX 5.

He was working irrigating at the number 13 Harold Ranch. At 7:20 in the morning Tom Tarp passed by and saw him sitting in his pick up. Then Paulino Guzman came to the Harold Ranch and passed by the Harold Lot No. 13 and there he was. Tom Tarp was there and he said to him to go see if Rogelio Godinez was in his pickup. [GCX 5, Translation put in at II:89. Emphasis added.]

2.

#### ANALYSIS AND CONCLUSIONS

As with Lopez, the question comes down to whether or not Rogelio was sleeping since there is no claim by Respondent that he would have been disciplined for fixing his starter switch. General Counsel argues that Respondent's version makes no sense, especially Paulino's failure to write that Rogelio was "sleeping" in his truck. To my mind, the text of the ticket written by Guzman is an example of an almost "bureaucratic" mentality seeking to be scrupulously faithful to the chain of events in order to somehow remain above them and I do not disregard his testimony because of it. My chief reason for concluding that Respondent's witnesses are to be believed is my distrust of Rogelio Godinez as a witness, a distrust which crystallized principally during his testimony about the vegetable cutting incident which I shall shortly discuss. Because of this, I dismiss Subparagraph 6 ( e ) of the complaint.

E.

THE VEGETABLE CUTTING INCIDENT

1.

FACTS

The final incident concerns a disciplinary ticket issued to Rogelio and Guillerrao Godinez for cutting vegetables. Respondent's witnesses testified employees were not supposed to take vegetables for their own use without prior permission. According to numerous General Counsel witnesses, employees have been cutting vegetables for their own use for years, which I don't doubt. Some of the witnesses testified the company permitted it as evidenced by their cutting vegetable with impunity in front of their foreman; however, most of these anecdotes appear highly exaggerated. For example, Juan Lopez told the story that one day he let some unknown lettuce workers cut asparagus and when Frank Vargas and Johnny Cotta appeared and asked him who they were, Lopez said "some people I know" and Cotta let these unknown workers continue cutting Respondent's asparagus, saying it was okay as long as they cut from below. I find this story incredible on its face.

While insisting he cut vegetables in the presence of foreman, Guillermo Godinez testified "we never paid (enough) attention to anyone" to know who was watching. I: 21; I: 41. Because a policy of not permitting employees to take whatever they want whenever they wanted it appears entirely reasonable and the employees' contradictory testimony has

folklorish elements to it, and moreover, because as will be seen, the employee's actions during the episode in question point to existence of the very policy they sought to deny, I credit Respondent's witnesses concerning its policy towards taking produce.

The incident in question took place while Guillermo Godinez, Rogelio Godinez and Juan Estrada were irrigating on the Harold Ranch and Guillermo Godinez decided to cut 15 asparagus to take home. As Guillermo was leaving the field, John Cotta, a field supervisor for the asparagus crews came by. Noticing a man in the fields cutting asparagus, he stopped his truck. As Cotta approached, Rogelio testified that he called out, "Watch out, John Cotta is coming." Guillermo and Estrada both verified that Rogelio said Cotta was coming. Rogelio's statement may fairly be taken as a warning.

As Cotta drove up, he saw that Guillermo had placed the asparagus alongside some pipes as though he were attempting to conceal it. Guillermo testified, however, that he placed the asparagus out in the open. On the basis of Rogelio's testimony that he essentially warned Guillermo, I find Guillermo's placement of the asparagus indicates consciousness of guilt. Cotta asked Guillermo if he had cut asparagus, to which Guillermo replied that he had. Estrada recalls that Guillermo told Cotta that, "We were cutting a few." Cotta asked him if he had received permission from a supervisor to cut asparagus. Guillermo did not respond, but

asked Cotta if they needed permission. Cotta testified that Guillermo seemed surprised when he told him that he did need permission.

At some point, Cotta got out of his vehicle. He told Guillermo that it was stealing to take asparagus, if he hadn't received permission. At this point, Estrada had moved away from the conversation and could no longer hear what was said. Rogelio testified that Guillermo and Cotta argued "for a while," with Cotta calling Chavistas "thieves"<sup>19</sup> and, fearing violence would ensue, Rogelio told Cotta that Eliseo Ramirez, a foreman's assistant, had given Guillermo permission to cut asparagus. Cotta, whom I found a candid, reliable witness testified Rogelio told him that Ramirez had given them permission. Both Rogelio and Guillermo knew this to be false. Rogelio's resort to such a fabrication indicates to me his untrustworthiness as a witness.<sup>20</sup> Cotta left the area to find Eliseo Ramirez who denied giving the men permission.

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<sup>19</sup>Cotta denied saying anything of the sort; Juan Estrada didn't hear anything like it. I credit Cotta.

<sup>20</sup>One other sign of Rogelio's untrustworthiness: When first examined, he straightforwardly testified in contradiction to the whole thrust of General Counsel's case, that he didn't cut vegetables without permission; General Counsel later sought to examine him further regarding this strange to-his-theory of-the-case testimony on the grounds that Godinez had earlier been confused. In fact, when the witness appeared during the afternoon session, the whole quality of his testimony had changed; he testified haltingly, sometimes appearing to misunderstand questions.

(Footnote Continued)

The following morning, Cotta reported the incident to Barrientos. Barrientos decided to give both Rogelio and Guillermo warning notices. With regard to Rogelio, Barrientos stated, "it was my opinion, especially by his statement, that Eliseo gave us permission, I took it to mean they were both acting together."

2.

ANALYSIS AND CONCLUSIONS

General Counsel contends that Rogelio and Guillermo were given a warning as a result of their protected activities. He contends that because no one was ever given a warning ticket for cutting vegetables and everyone did it, their receipt of a warning ticket must be discriminatory. Since none of the employee witnesses persuaded me that they had cut vegetables in front of supervisors, the fact that no one ever received a ticket for doing so proves nothing. As I have stated, Rogelio's telling Guillermo to "watch out" appears to be a warning; Guillermo's placing the asparagus away from him appears to be furtive, and Rogelio's reference to having received permission -- although false and purportedly made for wholly different reasons -- smacks of recognition of the policy Respondent contends it has.

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(Footnote Continued)

Indeed, I was puzzled by the dramatic change in his self-possession. However, when I heard General Counsel's motion to re-examine him about his damaging testimony regarding Respondent's vegetable cutting policy, I then understood Rogelio's later display of confusion as designed to convince me that he had earlier been confused.

If it were Cotta who decided to issue tickets to the two men, I would have found no causal connection between their protected activities and their receipt of the ticket; Cotta appeared to be a fiery character and the confrontation between him and Rogelio and Guillermo seems in keeping with the character he displayed at the hearing. However, since it was Barrientos who decided to issue the warning tickets, some further analysis is necessary.

In view of my conclusion that Barrientos discriminated against Juan Lopez in connection with the carburetor incident and the other discriminatees in connection with the carne asada incident, I find a causal connection between Rogelio's and Guillermo's protected activities and their receipt of a ticket. The burden then shifted to Respondent to demonstrate that the two men would have received warnings in the absence of their "protected" activities. Since the entirety of the evidence on this question is Barrientos' vouching for his motives, my distrust of Barrientos is that requires me to find that Respondent has not met its burden of proof. Accordingly, I find Respondent violated 1153(d) in issuing warning tickets to Rogelio and Guillermo Godinez.

#### ORDER

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

1. Cease and desist from:

a. Discriminating against its employees by issuing warning tickets or separating them from other employees because of their participation in Board proceedings.

b. In any other like or related manner interfering with the right of agricultural employees to participate freely in Board proceedings.

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

a. Rescind the warning notices issued to Juan Lopez, and to Guillermo Godinez and Rogelio Godinez in connection with the cutting of asparagus;

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

c. Post copies of the attached Notice in conspicuous places on its property for a sixty-day period, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered or removed.

d. Provide a copy of the attached Notice to each employee hired during the 12-month period following the date of this decision.

e. Mail copies of the attached Notice in all appropriate languages within 30 days of the date of issuance of the Order to all employees by Respondent in the payroll period encompassing June 10, 1983, or for any payroll period thereafter for the remainder of the year 1983 in the Salinas area.

f. Arrange for a Board agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading(s), the Board agent shall be given the opportunity outside the presence of supervisors and management, to answer any questions employees may have concerning the notice of their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

g. Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps which have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing of further

actions taken to comply with this Order.

Dated: October 24, 1985

A handwritten signature in cursive script, appearing to read "Thomas M. Sobel", written in black ink on a white background.

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THOMAS M. SOBEL  
Administrative Law Judge

## NOTICE OF AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Santa Maria Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Claasen Mushrooms, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by discriminating against Juana Marisol Andrade and Raul Rodriguez because they protested working conditions and found that we unlawfully discharged Cosme Loya because he was associated with Raul Rodriguaz. The Board also found that we violated the law by interrogating employees about their union activities, engaged in surveillance of or gave the impression of engaging in surveillance of employees discussing the union and working conditions, and threatened to discharge workers for talking about the union, and threatened to close the company if the workers decided to bring a union in to represent them. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

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

WE WILL NOT threaten to or actually discharge or layoff any employees for engaging in protests over wages or their working conditions, or for discussing these matters.

WE WILL NOT question employees about their support or preference for a union.

We WILL NOT engage in surveillance of employees who are discussing working conditions or bringing a union in.

WE WILL NOT threaten to close the company if employees decide to be represented by a union.

WE WILL reimburse Juana Marisol Andrade, Raul Rodriguez, and Cosme Loya for all losses of pay and other economic losses they have suffered as a result of our discriminating against them plus interest and in addition offer them immediate and full reinstatement to their former or substantially equivalent positions.

Dated:

CLAASEN MUSHROOMS

By: \_\_\_\_\_  
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 528 South "A" Street, Oxnard, California 93030. The telephone number is (805) 486-4475

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

DO NOT REMOVE OR MUTILATE.