

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ABATTI FARMS, INC., and)	Case Nos. 82-CE-125-EC
ABATTI PRODUCE, INC.,)	82-CE-134-EC
)	82-CE-135-EC ^{1/}
Respondent,)	82-CE-141-EC
)	82-CE-161-EC
and)	
)	
)	10 ALRB No. 40
)	
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	
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DECISION AND ORDER

On August 11, 1983, Administrative Law Judge (ALJ) Arie Schoorl issued the attached Decision in this matter. Thereafter, General Counsel and Respondent each filed exceptions to the ALJ's Decision with a supporting brief and a brief in response to the other's exceptions.

Pursuant to the provisions of California Labor Code section 1146,^{2/} the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

^{1/} Unfair Labor Practice Charge No. 82-CE-135-EC was the subject of a formal settlement agreement between all parties prior to the opening of the hearing herein. Thereafter, at the commencement of said hearing, the ALJ dismissed related allegations from the complaint.

^{2/} All section references herein are to the California Labor Code unless otherwise specified.

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm the ALJ's rulings, findings, and conclusions except as modified herein, and to adopt his proposed Order, as modified.

Respondent's motion to strike General Counsel's brief in response to its exceptions, on the basis that it was not timely filed, is hereby denied.

The Board's regulations require that response briefs be filed within 10 days of the filing of exceptions with the Executive Secretary. (California Administrative Code, title 8, sections 20282(b),^{3/} and 20480 (b)^{4/}.) Whenever a time period begins to run as of service of a document on a party, three days are added to the prescribed time period if service is by mail. (Cal. Admin. Code, tit. 8, § 20480(a)^{5/}

On September 28, 1983, both Respondent and General Counsel timely filed exceptions to the ALJ's Decision with the Executive Secretary. Service was complete at the time of deposit

^{3/} In relevant part, section 20282(b) provides as follows: "Within ten days following the filing of exceptions or within such other period as the executive secretary may direct, a party opposing the exceptions may file with the executive secretary, an original and six copies of a brief answering the exceptions."

^{4/} Section 20480(b) states, in pertinent part: "Where a document is required to be filed with the Board, it must be received by the Board by 5:00 p.m. on the last day of the time limit or, if mailed, mailed by registered or certified mail postmarked as of that last day."

^{5/} Section 20480(a) states: "Whenever a time period begins to run by service of a document on a party and such service is made by mail or telegraph, three days shall be added to the prescribed period for response."

by mail on that date. On October 7, within the 10-day limit set forth in California Administrative Code, title 8, section 20282(b), Respondent filed with the Executive Secretary a response to General Counsel's exceptions. Again, service was by mail. General Counsel, invoking the three-day extension of time proviso of California Administrative Code, title 8, section 20480(a), mailed its response to Respondent's exceptions to the Executive Secretary on October 11.

Relying on Mario Saikhon, Inc. v. Agricultural Labor Relations Board (1983) 140 Cal.App.3d 581, Respondent contends that the extension of time proviso of California Administrative Code, title 8, section 20480(a) applies only when a prescribed time period begins to run from the service of a document on a party. Therefore, according to Respondent, General Counsel may not claim the benefit of that section because the 10-day period for filing responses to exceptions begins to run at the time exceptions are served, not on a party, but with the Executive Secretary.

In Mario Saikhon, Inc. v. Agricultural Labor Relations Board, supra, 1-40 Cal.App.3d 581, the question was whether California Code of Civil Procedure section 1013(a), which extends prescribed time requirements in case of service by mail, is applicable to the 30 day time limit of Labor Code section 1160.3 governing the filing of petitions for review of final orders of the Board. The court answered that question in the negative, finding that Code of Civil Procedure section 1013(a), by its terms, refers only to cases involving "service by mail," whereas

Labor Code section 1160.8 requires that petitions for review be filed within 30 days of the "issuance" of a Board Order. The court reasoned that Code of Civil Procedure section 1013(a) could be invoked only if the statutory directive required that petitions be filed within 30 days after the order was both "issued and served" on the parties. Absent such language, the court concluded that Labor Code section 1160.8 pertains to "entry, and not service, of the Board's order." (Id. at 581, 583.) The court held that the 30-day time limit of Labor Code section 1160.8 is jurisdictional and therefore the petition for review in that case, which was filed 33 days after issuance or entry of the Board's final Order, was not timely.

Respondent's attempt to equate the filing of documents with the Board with the issuance of final Orders of the Board, and to characterize such filings as jurisdictional, is misplaced. Unlike petitions for review of final Decisions and Orders of the Board, for which precise time limits have been expressed by the Legislature, the time requirements in dispute herein concern procedural matters subject to the regulations of the Board; failure to conform thereto does not serve to automatically divest the Board of jurisdiction over such matters.

While affirming the ALJ's finding that Respondent reduced the hours of work of both Gilberto Castro and Guadalupe Leon in retaliation for their having testified against Respondent in an ALRB backpay compliance proceeding, we reject his further finding that Castro's June 14, 1982, reassignment to wheel tractor work was motivated by his having filed a complaint against

Respondent two days earlier with the State Labor Commissioner. The evidence adduced is insufficient to prove Respondent had actual knowledge of the complaint at the time of the reassignment.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent, Abatti Farms, Inc., a corporation, and Abatti Produce, Inc., a corporation, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Threatening, verbally abusing or otherwise harassing agricultural employees because of their participation in union activities and their participation in Board proceedings.

(b) Reducing the hours of work of agricultural employees because of their participation in union activities and/or their participation in Board proceedings.

(c) Assigning onerous or undesirable work to agricultural employees or otherwise discriminating against them because of their participation in union activities and/or their participation in ALRB proceedings.

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

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

(a) Make whole Gilberto Castro, Guadalupe Leon and Isidore Andrade for all losses of pay and other economic

losses they have suffered as a result of Respondent reducing their work hours beginning June 1, 1982, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55, and offer them reinstatement to full employment with no reduction in hours to their former or substantially equivalent positions, without prejudice to their seniority or other employment rights and privileges.

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

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

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the one year period which commenced on July 1, 1982.

(e) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its

premises, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

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

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

Dated: September 18, 1984

JOHN P. McCarthy, Member

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB or Board) by the United Farm "Workers of America, AFL-CIO, UFW) the certified bargaining representative of our employees, the General Counsel of the ALRB issued a complaint which alleged that we, Abatti Farms, Inc., and Abatti Produce, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we violated the law by reducing the work hours of employees Gilberto Castro, Guadalupe Leon and Isidore Andrade, assigning them onerous and undesirable work assignments and harassing and verbally abusing them because they had participated in union activities and/or ALRB proceedings. 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, and 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 do do, or stops you from doing, any of the things listed above.

WE WILL NOT reduce the hours of work of any of our employees because he or she has participated in union activities or ALRB proceedings.

WE WILL NOT harass or verbally abuse any of our employees because he or she has participated in union activities or ALRB proceedings.

WE WILL offer to reinstate Gilberto Castro, Guadalupe Leon and Isidoro Andrade to their previous jobs as tractor drivers and reimburse them with interest for any loss in pay or other economic losses they suffered because we reduced their hours of work because of their participation in union activities and ALRB proceedings.

Dated:

ABATTI FARMS, INC.
ABATTI PRODUCE, INC,

By: _____
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at El Centro Regional Office, 319 Waterman Avenue, El Centro, California 92243. The telephone number is (619) 353-2130.

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

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

10 ALRB No. 40

Abatti Farms, Inc.

Case Nos. 82-CE-125-EC
82-CE-134-EC
82-CE-135-EC
82-CE-141-EC
82-CE-161-EC

ALJ's Decision

The ALJ found that Respondent unlawfully reduced the hours of work of three employees and assigned them more onerous working conditions in retaliation for their having testified against Respondent in an ALRB backpay compliance proceeding involving Respondent. He ordered Respondent to cease and desist from engaging in such conduct and to compensate the employees for all economic losses which resulted from the retaliatory reduction in hours.

Board Decision

The Board affirmed the findings, rulings and conclusions of the ALJ but rejected his reliance on one employee's filing of a complaint against Respondent with the State Labor Commissioner as an added motive for the discriminatory treatment since there was no evidence that Respondent had knowledge that such a complaint had been filed prior to the change in assignment which resulted in a loss of hours and/or wages.

ARIE SCHOORL, Administrative Law Judge: This case was heard before me on February 24, 25 and 28 and March 3 and 4, 1983 in El Centro, California. The consolidated complaint, which issued on September 17, 1982, based on charges in Cases Nos. 82-CE-125-EC, 82-CE-134-EC, and 82-CE-141-EC filed by the United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW Or the union) and duly served on Abatti Farms, Inc., and Abatti Produce, Inc.^{1/} (hereinafter referred to jointly as Respondent) alleged that Respondent had committed various violations of the Agricultural Labor Relations Act (hereinafter referred to as the Act). Respondent timely filed an answer to the said complaint, denying that it had committed any of the alleged violations. Subsequently the General Counsel issued and duly served on Respondent a first amended complaint, based on the charges filed in Cases Nos. 82-CE-135-EC and 82-CE-161-EC, in which it was alleged that Respondent had committed additional violations of the Act.

On February 11, 1982, a second amended complaint issued in which the General Counsel alleged that Respondent had committed additional violations of the Act. The parties reached an informal settlement with respect to the allegations based on the charges in Case No. 82-CE-135-EC shortly before the hearing commenced, so I hereby sever that case from the instant matter and dismiss the allegations in the complaint in respect thereto.

The General Counsel, Respondent and the Charging Party were

1. The Board found in Abatti Farms, Inc. and Abatti Produce, Inc. (1977) 3 ALRB No. 83, that two corporations were a single integrated enterprise.

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

FINDINGS OF FACT

I. Jurisdiction

Respondent admits in its answer, and I find, that it is an agricultural employer within the meaning of section 1140.4(c) and that the UFW is a labor organization within the meaning of section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

General Counsel alleges that on or about June 1982, Respondent, by and through its agents Tony Abatti and Fred Binggeli, has discriminated against and harassed its employee Guadalupe Leon, by assigning him more onerous work assignments and by threatening him with discharge because of his real and/or suspected participation in union activity and protected concerted activity and because of his participation in ALRB proceedings. General Counsel further alleges that since May 24, 1982, Respondent, through its agents Tony Abatti and Fred Binggeli, has discriminated against and harassed its employee Isidore Andrade, by assigning him more onerous work assignments and by verbally abusing him, creating an atmosphere designed to force Andrade to quit his job, because of his support of the union and in retaliation for his participation in ALRB proceedings, specifically those stemming from the Board decision, Abatti Farms, Inc. and Abatti Produce, Inc. (1980) 6 ALRB No. 57.

General Counsel further alleges that beginning in June 1982, Respondent, by and through its agent Tony Abatti, has discriminated against and harassed its employee Gilbert Castro, by assigning him more onerous work assignments because of his union activity and protected concerted activity and his participation in ALRB proceedings.

III. Background Information

Ben Abatti is the president and general manager of the Abatti corporations and is responsible for most of the major decisions as to which crops to plant, what work is to be done, sales, labor relations, and the general day-to-day operations. His brother, Tony Abatti, is vice president of the corporations and is directly in charge of the tractor drivers. Fred Binggeli is a foreman of the tractor drivers and shares more or less co-extensive authority over them with Tony Abatti. They both share the duties of making the daily assignments in respect to the tractor work. Binggeli and Tony Abatti testified that they had no seniority system as such in the assignment of tractor drivers. They assigned a tractor driver to a particular task based on his ability to perform the duties of the task and his availability, that is, his completion of a previous assignment.

The three alleged discriminatees (Guadalupe Leon, Isidoro Andrade and Gilberto Castro) are all tractor drivers and work under the direction of Tony Abatti and Fred Binggeli.

IV. Gilberto Castro

A. Facts

As of the time of the hearing herein, Gilbert Castro had

worked for Respondent for 6 years as a tractor driver. He mainly drove Caterpillar tractors, i.e. with tractor treads rather than wheel tractors.

According to his own testimony, Castro attended union meetings in December 1981 or January 1982 and also in July and August 1982. In April 1982 he filed a charge with the ALRB Regional Office, alleging that Respondent had discriminatorily reduced his hours of work because of his union activity. After an investigation, the Regional Director dismissed that charge. In June Castro testified against Respondent at an ALRB hearing. Also in the same month his fellow tractor driver Guadalupe Leon filed a complaint with the Labor Commissioner alleging that Respondent had refused to pay reporting-in pay to the tractor drivers who had to report in every morning but did not receive a work assignment. Castro testified against Respondent in a hearing on the matter also. Later Castro testified against Respondent in the Municipal Court after Leon had appealed the Labor Commissioner's adverse decision to that court.

During the months of June, July, August and September in 1981 Castro worked as a driver on caterpillar tractors for 170 hours, 197 hours, 276 hours and 214 hours respectively.^{2/} In 1982,

2. Respondent in its post hearing brief has mischaracterized Gilberto Castro's testimony in respect to hours worked before June 1982. Respondent alleges that Castro testified that he was working 50, 60 hours a week through 1981 and prior to June 1982. The payroll records indicate that during the first half of 1982 Castro worked fewer hours each month, and so Respondent argues Castro was not telling the truth. Respondent's allegation in respect to Castro's testimony is false. Castro testified that his

(Footnote continued----)

he worked only 80 ½, 39, 6 and 6 hours respectively during the same summer months. Most of the work performed in the summer of 1982 consisted of wheel tractor work, marking borders and on one occasion cleaning portable toilets. General Counsel argues that Respondent reduced Castro's hours and gave him less desirable work assignments because Castro, had attended union meetings and had testified against Respondent in the above-mentioned judicial proceedings.

Fred Binggeli and Tony Abatti, Respondent's tractor driver foremen, testified that Gilberto Castro worked fewer hours in the summer of 1982 than in the previous summer because they had decided not to assign him work on the caterpillars but only on the smaller wheel tractors and there was less work available in that category. According to their testimony, the reason they were reluctant to assign him work on the caterpillars was because he had, through gross negligence, in August or September 1981, damaged a D-8 caterpillar to such an extent that it cost Respondent \$30,000 to repair it. Binggeli gave as an additional reason for the fewer assignments in the summer of 1982 that Castro seldom reported for work.

The two tractor foremen testified that after the tractor

(Footnote 2 continued—)

regular work week before 1982 was 40, 50 and 60 hours a week and that he could have worked 40 or 50 hours a week in the first part of 1982 and thereafter his work hours became fewer and fewer until after June 1982 he ended up working 30 hours in one month and 6 in another. His testimony is in conformity with the payroll records which indicates his reliability as a witness. Moreover, I found Castro to be a credible witness in general as he made a sincere effort to remember accurately and in detail in his answers to all questions.

accident occurred in August or September 1981 they decided to cease assigning Castro caterpillar work. However, Castro credibly testified that he continued to operate caterpillar tractors after the accident and his testimony is supported by Respondent's payroll records which demonstrate the kind of work he was doing, i.e. landplaning, disking which is the work tractor drivers engage in while operating caterpillar tractors. Furthermore, neither Binggeli or Tony Abatti ever informed Castro that the reason he was receiving fewer hours was because they were of the opinion that he lacked the capacity to operate caterpillar work because of his involvement in the 1981 D-8 tractor accident.^{3/}

Gilberto Castro testified that his work assignments of marking borders and cleaning the portable toilets were onerous tasks. Binggeli and Abatti testified that various employees receive the assignment of marking borders,^{4/} e.g., tractor drivers, shop mechanics, and at times ever foremen.

Binggeli and Tony Abatti testified that one of them had instructed Castro to wash only the outside of the 6 to 9 portable

3. Castro testified Abatti had hold him soon after the accident that it was his fault and Castro denied any responsibility and that was the last the subject was discussed. Binggeli testified that he assumed Castro knew about his culpability in respect to the D-8 accident and that he might have mentioned it to him. Binggeli did not provide this testimony on direct examination but only in response to my own questioning and I judged by his demeanor that he was very tentative about these two points. However, there is no evidence in the record that either Binggeli, Abatti or any other supervisor at Respondent's ever informed Castro that the reason he was receiving fewer hours or no caterpillar work was because of the D-8 accident.

4. Marking borders consists of placing plastic hags, with a dirt clod inside for ballast, along a field so that the tractor drivers will have points of reference.

toilets. Castro testified that Abatti was the one who assigned him the toilet-cleaning task and instructed him to clean the inside and outside of the toilets. Castro testified it took him six hours to complete the task and that while he was doing that work, Tony Abatti mocked him and told him he should stick his head into a toilet. Castro further testified that the task was very messy, dirty and repugnant and that towards the end of the job he vomited from nausea and was so sick the following day that he did not report to work. The payroll record indicates he worked 6 hours that day and his assignment was "clean bathrooms".

Binggeli testified that sometime in the summer of 1982 Castro began failing to report to work or to call in by telephone, and that that was one of the reasons why Binggeli and Abatti stopped assigning him tractor work. To substantiate that testimony, Respondent introduced into evidence records kept by Binggeli from July 1981 through February 1982.^{5/} The records indicate that: in June 1982, Castro worked 17 days and failed to report or call in one day; in July Castro worked four days and failed to report or call in on the last four work days of July; during the first 10 days of August, Castro neither worked nor reported in person or by telephone; during the last 20 days of August, Castro worked one day

5. I find that the "slashes" after each tractor driver's name indicate "did not work any hours that particular day" and not "did not call in or telephone" as Respondent half-heartedly argues. Of course, when Binggeli marked "no show", "did not call", "NS", "NC", etc., T interpreted such markings as "did not call in or telephone." Binggeli in his testimony was extremely dubious that the slashes might mean "no show, no telephone call."

and failed to report or call in on 12 days;^{6/} in September he worked one day and failed to report or call in on 26 days; in October he neither worked nor called in on- 21 days. The payroll record also shows that in October Castro reported for work three times and twice contacted Respondent's tractor foremen and explained why he would not be available for work, i.e., one of his children had broken an arm and the fact he was going on a vacation to Sinaloa, Mexico, for a week or two. Respondent's records indicate that during the subsequent months Castro failed to either report or call in for work.

Gilberto Castro testified that he reported in for work at least five days a week all during the summer up to September 28 and that on the few days he failed to report in person, he called in by telephone. Castro further testified that between September 28 and October 13 he called in twice a week. He resumed reporting in person for work on October 18, but each day that he did so either Binggeli or Abatti sent him home. On October 27 he informed Binggeli by telephone that he was going on a trip to Mexico because his sister was ill. Upon his return from Mexico on November 4 he telephoned the foreman but was told there was no available work. According to Castro's testimony, he contacted Respondent a few times in December seeking work but received a negative answer on each of those occasions. He was disabled for work from December 30, 1982, to February 14, 1983, because of a hernia operation. Shortly

6. According to the records after three consecutive days of "no show" Castro telephoned in at 6 a.m. and explained that he had had a flat tire and would be unable to report in that day.

thereafter he telephoned for work and, after receiving a negative reply decided not to contact Respondent again because he considered it to be futile.

During the summer months, on various occasions, according to Respondent's records and Binggeli's testimony Castro called in and explained to Binggali or Abatti the reasons he was unable to report to work for a whole day or part of a day. Castro gave the following reasons: a flat tire, his son had broken his arm; he had to get an analysis for his wife; and he could not get his car started. In her rebuttal case, counsel fo the General Counsel asked Castro whether he remembered calling in those messages and he testified he could not remember. However, I believe that Castro did in fact make the calls, that Binggali accurately recorded the substance thereof and that Castro was sincere in his testimony that he could not remember the calls.

B. Analysis and Conclusion

General Counsel contends that Respondent, through its foremen Binggeli and Tony Abatti, reduced Gilberto Castro's work hours and gave him onerous work assignments because of his union activities and his participation in ALRB and judicial proceedings against Respondent and thereby violated sections 1153(c), (d) and (e) of the Act.

To establish these violations, General Counsel must prove by a preponderance of the evidence that Respondent discriminated against Castro due to the reasons alleged. Generally in discrimination cases General Counsel must prove that the employee engaged in union activities, etc., that the employer had knowledge

thereof, and there was a causal connection between the union activity, concerted activity and/or the participation in the ALRB proceedings, and the employer's subsequent discriminatory treatment of the employee.

In the instant case, Gilberto Castro filed an unfair labor practice against Respondent in April 1982 and later testified against Respondent at an ALRB hearing in June 1982 and later before a Labor Commissioner and in Municipal Court. His testimony in the Labor Commissioner and Municipal Court hearings constitutes protected concerted activity as it concerned employees' rights as a group, e.g., his and the other tractor drivers' right to receive reporting-in pay.

Respondent clearly had knowledge of Castro's filing the ALRB charge since a copy of the charge served on it contained his name as the charging party. Furthermore, General Counsel's Ex. 13 is the letter Respondent's attorney wrote in May to the ALRB about the charge and of course confirms the fact Respondent was aware that Castro had filed the charge.

Castro testified that he had attended union meetings in December or January 1982 and then again in July 1982 but there was no evidence that Respondent had any knowledge thereof. Nor was there any evidence that Respondent had knowledge of Castro testifying before the Labor Commissioner or at the Municipal Court hearings.

A frequent factor to be considered in cases of discrimination is timing. In 1981 Gilberto Castro worked an average of 200 hours per month doing caterpillar tractor work during June,

July, August and September. In April 1982, he filed a ULP charge against Respondent. In May 1982 Respondent defended its conduct with respect to the charge and after an investigation, the Regional Director dismissed the charge. Immediately afterwards, in June, Respondent reduced his tractor work to a minimal amount and relegated him to the odd jobs of marking borders and cleaning portable toilets. He worked 80 hours in June, 39 hours in July, and 6 hours each in August and September, and no work assignments thereafter. Respondent's actions coming so quickly after Castro's recourse to the ALRB give rise to a strong inference that the cause of such treatment was Castro's filing an unfair labor practice charge against his employer. As General Counsel has clearly presented a prima facie case, Respondent has the burden of proving that its treatment of Castro was based on legitimate business reasons.

Respondent argues that one of the reasons it ceased to assign Castro more caterpillar tractor work was because of his gross negligence in the operation of the D-8 tractor during the preceding year. I find that that defense is a pretext, for two reasons.

First of all, Binggeli and Abatti failed to inform Castro that because of his negligence in the D-8 accident, that they had decided not to assign him any more caterpillar tractor work. In fact, the foremen did not ever mention their decision to him either immediately after the accident or throughout the months afterwards, during which Castro repeatedly and constantly sought tractor employment at Respondent's. Moreover, when Castro asked Tony Abatti in the summer of 1981 when was he going to be reassigned to his old

job of tractor driving, Abatti made no mention of the D-8 incident and merely mocked him. If Castro's negligence were the true cause of Respondent's denying Castro tractor work, it is difficult to understand why neither Binggeli nor Tony Abatti did not inform him of that fact. The record makes it clear, and I find that neither of the two tractor foremen ever so advised Castro.

Secondly, Respondent had continued to assign Castro to caterpillar tractor work all during the 1931 autumn months immediately subsequent to the D-8 accident. Although Binggeli and Tony Abatti testified that that was not the case, Castro's credible testimony and Respondent's payroll records demonstrate that he continued to operate caterpillar tractors, D-7's and perhaps D-6's, during that period.

Accordingly, I credit Castro and Respondent's payroll records and discredit Binggeli's and Abatti's testimony in this respect.

Because of the two aforementioned reasons, I find that Respondent has failed to establish that Castro's alleged incompetence with caterpillar tractors was a basis for Respondent's failing and refusing to continue assigning him such work.

Respondent also argues that it discontinued assigning Castro to caterpillar tractor work in the summer of 1982 because he consistently failed to report to work or to call in about work.

There is a definite conflict in the evidence on this question as tractor foremen Binggeli testified that based on his records, beginning in July 1982 Castro commenced to report to work infrequently and that after October did not report at all, while

Castro testified that he reported to work or called in on a near-daily basis until October.

I do not think that the resolution of this conflict is crucial in determining the true basis for Respondent's treatment of Castro. Already in June, during which month even Respondent's records indicated that Castro was reporting to work regularly, Respondent was assigning him only wheel tractor work and marking borders and already at reduced hours. In July, at least until July 27, a period during which Respondent's records show that Castro was reporting in regularly, he received only one four-hour day in one week, two six-hour days in another week, one eight-hour day in the following week, and then two weeks without any work assignments at all. In contrast, in 1981 he performed some 170 hours of caterpillar tractor work in June and 197 hours in July. The discrepancy between the two years is evident and, according to Respondent's own records, Castro failed to report for work only once or twice during the period of severely diminished work assignments.

In August and September, according to Respondent's own records, Castro began reporting or calling in infrequently. However, even assuming that Respondent's records are accurate, it is likely that Castro became discouraged after two months of flat denials of work and assignments that hardly ever varied from making borders or short-term small tractor jobs. Also the effect on his perceived opportunity of substantial employment which resulted from Tony Abatti making fun of him when he inquired about being reassigned to his old tractor job and the assignment of cleaning the portable toilets cannot be overlooked.

In view of the foregoing, I see no necessity to resolve the conflict between Binggeli's testimony and his records and Castro's testimony, at least not in detail. It is likely that Castro reported or called in on more occasions that Binggeli recorded, and that there were occasions when Castro telephoned in and talked to Tony Abatti or employee Charlie Figueroa, rather than Binggeli and, for one reason or another, Abatti and/or Charlie Figueroa failed to inform Binggeli of that fact. It may be that Castro did not report or call in as frequently in the latter part of August, September or October as he stated in his testimony but the record convinces me that he did so at least once or twice a week. Otherwise, it is unlikely that he would be so careful to advise Binggeli or Abatti that he had had a flat tire and would not be in that day, or that he could not come to work because one of his sons had broken an arm. That kind of call evidences a definite concern to retain a job and is consistent with a worker who would periodically check to see whether and when work would be available rather than one who would let weeks go by without in inquiry.

In view of the foregoing, I find that Respondent has failed to prove that its two alleged business reasons, i.e., Castro's purported negligence in operating caterpillar tractors and his failure to report to work on a regular basis, for reducing Castro's work hours to a minimal amount in the summer of 1982, have any basis in fact. Rather, I find that Respondent's treatment of Castro during the summer months clearly evidences an intention to make him become discouraged and abandon his efforts to continue working for Respondent. Respondent's consistent denial of tractor work

assignments supports that finding, as does its assignments of Castro to a six-hour job of cleaning the portable toilets.^{7/} Castro's assignment to the toilet cleaning job appears to have been calculated as the ultimate humiliation heaped on Castro and to dissuade him from seeking further employment at Respondent's operations.

Based on the above, and the record as a whole, I find that Respondent reduced Castro's hours and gave him less desirable and onerous tasks in retaliation against him for his participation in ALRB proceedings against it and has thereby violated sections 1153(d) and (a) of the Act.

V. Guadalupe Leon

A. Facts

Guadalupe Leon has worked as a tractor driver for Respondent since 1977. He has experience operating both caterpillar (tread) and wheel tractors while in the employ of Respondent.

During the peak employment summer months of June, July, August, and September, Leon usually worked a ten-hour day, six-day week schedule, operating large caterpillar tractors at night-time. Work is customarily slow at Respondent's ranch during the Spring

7. I discredit Binggelli's and Tony Abatti's testimony that the foreman who gave Castro the toilet-cleaning assignment told him to wash down only the outsides. If that were the case, and Castro had washed down only the outsides, the cleaning work would not have lasted 6 hours. I also credit Castro's testimony that while he was cleaning the toilets, Tony Abatti passed by and told him to stick his head in. Tony Abatti denied making such a remark, but I do not credit his denial since during his testimony he exhibited a very poor memory as many of his answers were "I do not know" or "I don't remember". In general I found Tony Abatti to be an unpersuasive witness since it was evident that he -did not make much effort at all to recall events or to testify about them in detail.

months and in 1982 Leon worked only 74 hours in March, 54 hours in April, and 58^ hours in May. During those months, Leon was operating large caterpillar tractors and doing the land-preparation work, i.e., disking, spiking, etc.

In 1982, Leon attended three negotiation meetings between Respondent and the UFW. On Friday, June 11, 1982, Leon filed a claim with the State Labor Commissioner requesting that Respondent be required to pay reporting-in pay to tractor drivers, who were required to report to work on a daily basis, for occasions when they did not receive a work assignment for the day.^{8/} On Monday, June 14, 1982, he reported to work and Respondent took him off the caterpillar tractors and assigned him to wheel tractor work.

Leon testified against Respondent at an ALRB hearing on June 23, 1982, and continued to pursue his claims with the Labor Commissioner, testified at a hearing therein and later after appealing the Labor Commissioner's adverse ruling, testified again against the Respondent in the Municipal Court.

During the entire summer season, Respondent continued to assign Leon to wheel tractor work and Leon earned markedly less compensation during the 1982 season than he had earned in the 1981 season. During the 1981 summer season, Leon operated large caterpillar tractors at night-time doing soil-preparation work and worked 180 hours in June (one week of the records are missing so it

8. Also during the summer of 1982 Leon filed a charge with the ALRB about Respondent's failure to provide reporting-in pay and a further complaint with the Labor Commissioner alleging that Respondent had discriminated against him for having filed the original complaint with the Labor Commissioner about the lack of reporting-in pay.

could very well have been 240 hours since he had worked 60 hours a week for three weeks), 204 hours in July, 260 hours in August, and 201 hours in September.^{9/} in the 1982 summer season, operating the wheel tractors during the day time, Leon worked 236.5 hours in June, 102.5 hours in July 145.5 hours in August, 117.5 hours in September.

There was no evidence that Respondent transferred any other tractor driver from the night caterpillar work to the day wheel tractor driver work. Moreover, Leon earned less in wages during the 1982 summer season than any of the other tractor drivers (except for discriminatee Castro), including both the caterpillar drivers and the tractor drivers who, like Leon, were engaged in operating wheel tractors. Almost every other tractor driver was averaging 200 hours per month.

The payroll records reveal a pattern indicating that Leon received assignments that varied from day to day and were of short duration, e.g., 5, 6, 7, 8 or 9 hours long and every so often a 10-hour day. In contrast the other tractor drivers consistently worked on assignments that lasted 9, 10, or 11 and sometimes as much as 14 hours per day.

9. Respondent in its post-hearing brief has mischaracterized Guadalupe Leon's testimony in respect to hours worked before July 1982. Respondent asserts that Leon testified that he was working a 60-hour week on a regular basis during April, May and June 1982. What Leon testified to was that as a general practice the tractor drivers who do land-preparation work as he does customarily work a 60-hour week, more or less, April through October. In his testimony, Leon was not clear when he began a 60-hour week in the summer of 1982. Respondent has tried to combine those aspects of his testimony into something Leon never asserted, i.e., that he had worked a 60-hour week during April, May and June 1982. For the above-described reasons I reject Respondent's argument. Moreover, I find Leon to be a credible witness in general as he testified in a straightforward and candid matter.

Both Ben and Tony Abatti and Fred Binggeli testified that Leon earned lower wages in 1982 than in 1981 because Respondent had reduced the total amount of tractor work.^{10/}

In late June, Leon finished tractor work in two fields of 80 acres each and returned to the shop area where he encountered Tony Abatti, who asked him how many acres he had worked that day. When Leon responded 160, Abatti criticized him for completing only two 80-acre fields, rather than three during that day. Leon tried to explain the reason for his slowness,^{11/} but Abatti continued to criticize him and told him that if he didn't speed up he would be replaced. Leon replied that he had noticed that Abatti had not liked his work for sometime and asked Abatti why he had not fired him. Abatti answered that Leon was going to have to do a lot of work and not to expect easy jobs and if Leon wanted his final paycheck to let him know. Leon replied that he was not going to quit. At that moment, Binggeli came out of the office and Abatti told him Leon had quit and to give him his check. Leon replied that

10. Binggeli and Tony Abatti testified that they transferred Leon from the night caterpillar work to the day wheel-tractor work because he was experienced at such work. Respondent hired three new tractor drivers for the night caterpillar work in the summer of 1982. The two tractor foremen testified that they assigned the day wheel-tractor work to Leon rather than, one of the newly-hired tractor drivers because he knew the locations of the various fields and had experience in operating wheel tractors. They further testified that the new tractor drivers did not know how to operate wheel tractors and, moreover, since they were not acquainted with the ranch layout, they would be unable to go from one field to another as is required in the day wheel tractor work. On the other hand the night caterpillar work is performed in one large field and so no knowledge of the locations of the various fields is necessary.

11. At the hearing, Leon testified that the many borders and cross checks in the field that he was working forced him to drive slowly.

he was staying and not quitting.

During July or August, Leon returned from a weekend and was driving a D-4 tractor and it ran out of fuel. Leon walked back to the shop, secured some gasoline and walked back to the tractor but was unable to start it. He walked back to the shop where he radioed for assistance since he believed that two persons were needed to get the tractor engine started. Tony Abatti and Fred Binggeli were riding in Tony's pickup, heard the radio message, and drove ten miles to where the tractor was parked. Leon had not yet returned. Abatti, by himself, purged the gas lines and started the engine almost immediately. At that moment, Leon returned and Abatti told him that it takes only one person to purge the gas lines and start the engine. Abatti added that Leon acted like a "beginner" and expected everything to be done for him. As Abatti and Binggeli drove away, Abatti called out to Leon in Spanish, an extremely vulgar word of insult. Leon testified that he had never driven a D-4 before that day and did not know how to purge the gas lines in order to start the engine after it ran out of fuel. Abatti testified he did not know whether Leon had ever purged gas lines in a D-4 tractor before or whether anyone had ever shown Leon the procedure, but he had assumed that Leon knew since all the tractor drivers were acquainted with the method utilized.

On another occasion when Leon was rolling a furrow Tony Abatti shouted at him to speed it up and shift the tractor into a higher gear. Leon complied and shifted into fourth gear. Abatti added, "If you cannot do it, I will get another". Binggeli, who was also present, told Leon to do his best.

Abatti testified that such an incident never took place and denied that he had had an argument with Leon about third and fourth gear. Leon testified that driving the tractor over such rough ground at such a speed caused the seat to jolt him so much that he could not sleep that night.

B. Analysis and Conclusion

General Counsel contends that Respondent, through its foremen Binggeli and Tony Abatti, discriminated against Guadalupe Leon by reducing his hours, assigning him onerous work, and harassing him on the job because of his union activities and his participation in ALRB and judicial proceedings against Respondent and thereby violated section 1153(a), (c) and (d) of the Act. To establish those violations, General Counsel must prove by a preponderance of the evidence that Respondent discriminated against Leon because of the reasons alleged. Generally in discrimination cases, the General Counsel must prove that the employee engaged in union or other protected activities, etc., that the employer had knowledge thereof and that there was a causal connection between the union or protected activity and/or the participation of the ALRB proceedings, and the employer's subsequent discriminatory treatment of the employee.

Respondent had knowledge of Leon's union activities, and his filing of complaints against Respondent with the ALRB and the Labor Commissioner.^{12/} Leon testified about his union activities,

12. Leon's filing of a claim with the Labor Commissioner and his subsequent participation in the proceedings constitutes protected concerted activities since it dealt with a subject of import to all the other tractor drivers at Respondent's, i.e., reporting-in pay.

i.e., attending UFW meetings in December 1981 and January 1982 at the ALRB hearing in June 1982. Leon also attended three negotiation meetings between Respondent and the UFW during the first part of 1982.^{13/}

An important factor in discrimination cases is timing. In the instant case Guadalupe Leon filed a claim against Respondent with the Labor Commissioner and the very next week Respondent took him off the caterpillar tractors, his customary summer job, and assigned him to wheel tractors. Simultaneously with his assignment to wheel-tractor work, his hours were reduced and throughout the entire summer he earned less than any other tractor driver with the exception of discriminatee Gilbert Castro.^{14/}

A very strong inference can be made that Respondent changed Leon's tractor assignments because he had filed a claim against it with the Labor Commissioner's office and that Respondent continued to maintain Leon on such an assignment at reduced hours because he testified against Respondent at the June 24 ALRB hearing and continued to prosecute his claim before the Labor Commissioner throughout the summer. Clearly, General Counsel has presented a prima facie case, Respondent must prove that it changed Leon's work assignments and reduced his work hours based on legitimate business reasons.

13. Tony Abatti testified that in the summer of 1982 he knew that Guadalupe Leon and filed the claim with the Labor Commissioner.

14. There were some tractor drivers who earned less than Leon but they worked only part of the season.

Respondent argues that all of the tractor drivers worked fewer hours in 1982 than in 1981 because of the reduced tractor work at the ranch. However, whether that is true or not is immaterial in the instant case since Leon earned considerably less than his fellow tractor drivers in 1982. General Counsel's prima facie case is based on that fact and not the fact that Leon worked fewer hours in 1982 than he did in 1981.

Respondent also argues that it changed Leon's work assignment because he was experienced in operating wheel tractors and knew the layout of the ranch. That argument may have carried some weight if Leon had earned more than or approximately the same amount of compensation as the other tractor drivers who were operating tractors during the day but that is not the case. Leon earned considerably less than any of them in the 1982 summer season.^{15/} Respondent's payroll records clearly show the discrepancy. It appears to be more than a coincidence that Respondent managed over a period of several months to consistently assign Leon to wheel tractor jobs that involved so few hours to complete.

General Counsel has presented additional evidence to demonstrate that Respondent treated Leon in a discriminatory manner not only in the matter of hours worked but also in its general treatment of him. Although the additional proof is not necessary, I shall review it and see whether further findings are in order.

When Abatti criticized Leon for not covering enough acreage, more was involved than just an admonition about an

15. There were some tractor drivers who earned less than Leon, but they worked only part of the season.

insufficient quantity of work. Abatti warned Leon that if he did not speak up his work, he would replace him and followed that up with an acerbic criticism calculated to goad Leon into quitting. That confrontation ended with Abatti claiming that Leon had quit, and instructing Binggeli to deliver to Leon his final check, although Leon informed Binggeli that he did not want the check because he was not quitting.

Abatti's aforescribed attempt to induce or force Leon to resign is certainly consistent with evidence set forth above and further proof of what I have found to be Respondent's true reason for reducing Leon's hours.

Abatti's criticism of Leon for not purging the gasoline lines and restarting the D-4 tractor by himself and for not driving the tractor in a higher gear are additional manifestations of the Respondent's antagonistic treatment of Leon and further proof of its overall negative treatment of him with the ever present purpose to compel him to quit.

In view of the foregoing, I find that Respondent reduced Leon's work hours and endeavored to compel him to quit because of his participation in union activities and ALRB proceedings and his prosecuting a claim against Respondent before the Labor Commissioner and the Municipal Court and thereby violated sections 1153(a), (c) and (d) of the Act.

VI. Isidore Andrade

A. Facts

Isidoro Andrade was discharged in 1976 by Respondent after having worked as a tractor driver, operating caterpillar tractors,

for a year-and-a-half. The Board found that Respondent had illegally discharged him for his union activities and ordered backpay and reinstatement.

Andrade testified in the Board's backpay proceeding in late April or early May 1982 and returned to work for Respondent on May 24, 1982.^{16/} Respondent assigned, him to do land preparation work with a small caterpillar tractor, a D-4. Andrade immediately noticed that the tractor overheated to such an extent that he was frequently compelled to stop and put water in the radiator. He reported that irregularity to the foremen. Within seven days, Respondent had ordered a spare part and repaired the radiator problem. However, Andrade testified that the tractor consumed too much oil, had a seat with no cushion and the hot air from the engine continued to blow in his face. One day in a field, he mentioned those factors to Tony Abatti and the latter replied only that it was a good machine.

Andrade worked a full 50 to 60 hours a week, doing the land-preparation work up to and including the first week of July.^{17/}

16. The Administrative Law Judge's decision issued October 12, 1982, and awarded Isidore Andrade \$29,833.90 to compensate him for his backpay and other economic losses he suffered because of Respondent's alleged discharge in 1976. Respondent appealed the decision to the Board and as of this date, no Board action has been taken.

17. Respondent in its post-hearing brief has mischaracterized Isidore Andrade's testimony in respect to the hours worked in May and June 1982. Respondent asserts that Andrade testified that beginning after his return to work for Respondent in 1982, his hours were reduced from the number of hours he was working when he was discriminatorily discharged in 1976. Such assertion is erroneous. Andrade did not testified to that. His testimony was

(Footnote continued----)

After that date, Respondent ceased providing him with daily assignments and he worked only one, two, or three days at a time (only twice in a four-month period, July through October, did Andrade work five days straight). Sometime in August, Andrade complained to Tony Abatti about the reduction in his hours and the latter laughed and said there wasn't much work.

On another occasion during that same period, Binggeli asked Andrade why he had stopped in the middle of his tractor work. Andrade replied that he had stopped to go to the bathroom. Binggeli commented to Andrade that Tony Abatti did not want to have anything to do with lawyers. Andrade remarked that if Tony wanted more work out of him, he should give him good equipment and that Binggeli should tell Tony Abatti that. Binggeli said that he was a foreman and Tony Abatti gave him orders and if he (Binggeli) did not like the orders he would quit.^{18/}

Binggeli testified that on many occasions he observed Andrade stopped in the field for no obvious reason and remain sitting on his tractor for some moments. Binggeli said that the 70 to 80 times he observed Andrade that summer he was stopped about a third of the time. At times, he asked Andrade the reason and

(Footnote 17 continued-----)

that when he first returned to work, Respondent treated him right and provided him with his regular hours and it was not until July that Respondent began to reduce his hours. His testimony in that respect coincides with the payroll records. Moreover, I find Andrade was a credible witness in general as he testified in a sincere and thoughtful manner throughout the hearing.

18. The clear implication to Andrade from Binggeli's words is that if Andrade did not like the work there, it would be advisable for him to quit.

Andrade answered that he had to get a drink of water, check equipment, or move his automobile, or offer some other explanation that did not make sense to Binggeli. Neither Binggeli nor Tony Andrade testified that they gave fewer work assignments to Andrade because of the above-described work habits.

In September, Respondent switched Andrade to a diesel wheel tractor. One day he was driving it in third gear in a field where there were many dirt clods. Tony Abatti ordered him to shift into fourth gear and go faster. Andrade replied that he could not go any faster because the tractor would jolt too much. Abatti said, "It doesn't matter, put it in fourth and give it all the velocity it can go". Andrade complied.

Andrade worked until November 1, 1982, when he stopped work because of serious back pain. He filed a claim with the Workmen's Compensation Appeals Board against Respondent since he claimed his back condition was caused by his tractor work at Respondent's.

According to the summary of Respondent's payroll records prepared by General Counsel and submitted after the close of hearing, pursuant to an agreement by all the parties, Isidore Andrade worked the following hours in the summer and early fall months of 1982: July 138 ½; August 159 ½; September 134; and October 80; total hours 512.

There is uncontroverted testimony that Andrade worked in soil-preparation work and operated a D-7 tractor during the year-and-a-half he worked for Respondent in 1974, 1975 and 1976. In Abatti Farms, Inc. (1979) 5 ALRB Mo. 34, the Board ordered his reinstatement to his previous position or a substantially equivalent

one. Respondent complied with that order at the beginning, that is through the first week of July. After that date, Respondent assigned him to roll beds and he no longer received any full weeks of work assignments except on two occasions.

Some 19 other tractor drivers operated caterpillar tractors and did the land preparation work, the same work Andrade had engaged in when he previously worked at Respondent's. Their hours during the same four-month summer and fall period are as follows: G. Andrade 550; T. Arizaga 893.5; J. Benavides 663; A. Bertiudez 893; F. Borjorquez 892; J. Calles 761.5; E. Castro 921; T. Correa 772; T. Cruz 979; 3. Galindo 889; M. Garcia 486^; J. Herrera 651; R. Magana 480; Sam Martinez 854; Santana Martinez 786; J. Perez 910; R. Rosas 897; R. Salazar 746; and A. Zaragoza 580.

The remaining tractor drivers at Respondent who did work, other than land preparation using caterpillar tractors, worked the following hours during the four-month period July through October: J. Abatti 748; R. Abatti 927.5; G. Alderete 531; C. Beljean 861; M. Campos 1051; R. Cobian 830; B. Flores 938; V. Galindo 1025; G. Garcia 306; E. Garabaldi 626; L. Hurtado 614.5; Luis Lerma 387; J. Lopez 1048.5; F. Llevano 798.5; E. Mandujano 806? J. Manix 955; D. Mannis 663; J. Martinez 1149; R. Ortega 756; G. Ramos 361; J. Rios 1004; C. Robles 988; J. Roth 835; R. Ruelas 915; and R. Samaniego 824.

The work hours for some of the tractor drivers who worked for Respondent during these four months are not listed above. They are the following: F. Aguirre, 34 hours in July. However, according to Binggeli's records, Aguirre was a "no show" after the

first few days of July. Campbell, 40 hours. Campbell hauled melons in June and the first few week of July. After that date there are no hours recorded for him. Valerio Manjarrez, 382 hours. He worked until August 20 and Binggeli's records show he got angry and quit on that date and never returend. J. Romero, 395 hours. He commenced to work on August 20. F. Avila, 381.5 hours. He commenced to work on August 13.

Binggeli testified that Respondent hired the following three new tractor drivers to operate the caterpillar tractors and do night work in preparing the soil: Guadalupe Andrade, Jesus Calles, and Timeteo Correa. Binggeli explained that none of these drivers knew how to operate a wheel tractor and for that reason Respondent did not assign them day work. He testified that during the first part 06 August he hired two new tractor drivers, J. Romero and F. Avila for the same night work and did not assign them day work for the same reason.

Ben Abatti testified that the tractor work has been gradually reduced at Respondent's ranches. Binggeli and Ben Abatti testified that Respondent changed its method of land preparation and by so doing reduced the amount of tractor work needed for their crops.

B. Analysis and Conclusion

General Counsel contends that Respondent, thorough its foremen, Binggeli and Tony Abatti, discriminated against Tsidoro Andrade by reducing his work hours and by providing him with onerous working conditions and harassing him on the job because of his union activities and participation in ALRB proceedings and thereby

violated Section (c), (d) and (a) of the Act.

To establish those violations, General Counsel must prove by a preponderance of the evidence that Respondent discriminated against Andrade because of the reasons alleged. Generally in discrimination cases, General Counsel must prove that the employee engaged in union or other protected activities, that the employer had knowledge thereof, and that there was a causal connection between the employee's protected activity or participation in ALRB proceedings and the employer's subsequent discriminatory treatment of the employee.

Respondent had knowledge of Andrade's testifying in the unfair labor practice proceeding against Respondent in 1976 and again in the spring of 1982 in the ALRB backpay proceeding. We shall now analyze the difference between Andrade's work hours and his fellow tractor drivers in 1982 and determine whether any discriminatory treatment can be discerned.

Andrade returned to work at Respondent's ranch after a five-year absence in compliance with a Board order. Respondent at first returned him to his former work, soil preparation, and to his former work schedule 50 to 60 hours a week. Then at the beginning of July at the same time it reduced Leon's hours, it reduced Andrade's hours. From that date on Respondent assigned Andrade work in portions of 1, 2 and '3 days even though he reported in daily for work.^{19/} Andrade protested to Tony Abatti about his short hours and received an answer that there was no work.

19. Respondent broke this pattern only twice when it assigned him 5 days of work in a row.

A comparison of Andrade's total hours with the tractor drivers who performed the work that he used to perform at Respondent's, soil preparation, demonstrated that he worked 512 hours in July, August, September and October while the other tractor drivers worked 979, 921, 910, 897, 893.5, 893, 892, 889, 854, 786, 772, 761.5, 746, 663, 651, 580, 550, 486.5, and 480.^{20/} Seven hundred sixty-eight (768) hours is the average for that group and Andrade's 512 hours of work is 66.7 percent of that average.

A comparison of Andrade's hours with the tractor drivers who did not perform the same kind of work Andrade used to perform at Respondent's, but rather performed wheel tractor work, demonstrates that he worked 512 hours in the four-month period during which they worked 1,149, 1,051, 1,048, 1,025, 1,004, 988, 955, 938, 927.5, 916, 887, 861, 862, 835, 830, 824, 806, 806, 798, 756, 748, 663, 626, 614.5, and 531. Eight hundred fifty-eight (858) hours is the average of that group and Andrade's 512 hours of work is 59 percent of that average.

General Counsel has shown that Respondent during the first summer after Andrade's return to work reduced the number of hours he would have worked performing his old work, soil preparation by 67% or the number of hours he would have worked in any other tractor driver work by 59 percent. Accordingly, General Counsel has raised a strong inference that Respondent retaliated against Andrade for

20. The source of these monthly hours is the payroll record summaries submitted by General Counsel subsequent to the hearing. There was no summary for the third week of October, so I referred to Fred Binggeli's own records for the hours worked by each tractor driver during the third week of October 1982.

his participation in ALRB proceedings and has proven a prima facie case.

To overcome that prima facie case Respondent must establish that it reduced Andrade's work hours because of a legitimate business reason.

First of all, Respondent, in its post hearing brief fails to address itself to those overall figures that clearly show the striking difference between Andrade's hours and those of the other tractor drivers. Rather, Respondent compares Andrade's hours on a weekly basis and indicates that in one week Andrade worked more hours than some tractor drivers and during other weeks Andrade worked fewer hours than some tractor drivers. These comparisons are meaningless in view of the overall figures which eloquently demonstrate the clear discrepancy.^{21/}

Respondent argues that the business reason for Isidore Andrade receiving fewer hours during the summer months was because Respondent had reduced the amount of tractor work needed for its crops. That argument carries no weight since General Counsel's

21. Respondent argues that many workers received no hours of work during the times Andrade was receiving 50 to 60 hours a week and to illustrate that point, it pointed out the payroll records in reference to the hours worked by the following employees: Guadalupe Andrade, Fidel Aguirre, Francisco Avila, Larry Bates, Jesus Calles and Carlos Hernandez. This comparison is worthless since Guadalupe Andrade, Francisco Avila and Jesus Calles had not yet begun to work at Respondent's at the time Andrade worked 50 and 60 hours a week. Larry Bates and Carlos Hernandez did not work at Respondent's that summer (their names appeared on the summary prepared and submitted by General Counsel but no hours were recorded for them and their names did not appear in Fred Binggeli's weekly records either). Respondent was having a problem with Fidel Aguirre as he did not report in for work regularly in May and June 1982 and stopped work for Respondent in July.

prima facie case is not based on comparing Andrade's hours in the past with his present work hours but comparing his 1982 summer work hours with the 1982 summer work hours of the other tractor drivers.

In essence, Respondent has no persuasive explanation for the drastic reduction in Andrade's hours^{22/} after the first week in July. On the basis of the entire record, I find that Respondent reduced Andrade's work hours to retaliate against him because of his participation in ALRB proceedings and thereby violated sections 1153(d) and (a) of the Act.

General Counsel has presented additional evidence to demonstrate that Respondent treated Andrade in a discriminatory manner not only as to the number of hours worked but also in its general treatment of him. Although that additional proof is not necessary to prove his case, I shall review it and see whether further findings are in order.

Andrade protested to Tony Abatti about his diminished hours and Abatti laughed and told him there was no work. As the figures indicate, there was abundant work for over 40 tractor drivers, some newly hired, but not for Isidore Andrade and his co-discriminatees, Guadalupe Leon and Gilberto Castro.

If Respondent's true reason for reducing Respondent's work was because of the overall reduction in Respondent's tractor work, a more likely answer to Andrade's inquiring from Abatti would have been an explanation to that effect. It was not forthcoming and so

22. Respondent asked Andrade about his back problems preventing him from reporting in for work on a daily basis. He denied it and Respondent did not present any evidence that he failed to report.

an inference can be made that it was not the real reason. Furthermore, Fred Binggeli's remark to Andrade that Tony Abatti did not want to have anything to do with lawyers coupled with the remark that, if he were working here and he did not like it, he would quit, translated into, "If you do not like it her, quit and do not bring in any lawyers". This message from Binggeli to Andrade is consistent with and additional proof of what I have found to be Respondent's true discriminatory motive for reducing Andrade's hours.

Respondent's assignment of the 20-year old D-4 tractor with the worn out seat and the uncomfortable hot air which continued to blow into Andrade's face after the radiator was repaired, Binggeli's frequent criticism of Andrade's work performance and Tony Abatti's compelling Andrade to drive in a higher gear are additional manifestations of Respondent's general treatment of Andrade consciously designed to discourage him to the point of resigning.

In view of the foregoing, *I* find that Respondent violated sections 1153(d) and (a) of the Act.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent, Abatti Farms, Inc., a corporation, and Abatti Produce, Inc., a corporation, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Threatening, verbally abusing or otherwise harassing agricultural employees because of their participation in

union and concerted activities and/or their participation in ALRB proceedings.

(b) Reducing the hours of work of agricultural employees because of their participation in union and concerted activities and/or their participation in ALRB proceedings.

(c) Assigning onerous or undesirable work assignments to agricultural employees or otherwise discriminating against them because of their participation in union and concerted activities and/or their participation in ALRB proceedings.

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

(a) Make whole Gilberto Castro, Guadalupe Leon and Isidore Andrade for all losses of pay and other economic losses they have suffered as a result of Respondent reducing their work hours from June 1, 1982 on, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55, and offer them reinstatement to full employment with no reduction in hours to their former or substantially equivalent positions, without prejudice to their seniority or other employment rights and privileges. The amount of makewhole and interest to be paid to each employee shall be determined by the Regional Director after consultation with both Respondent and the UFW.

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

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

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

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time from June 1982 until the date on which the said Notice is mailed.

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

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

to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

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

DATED: August 11, 1983.

A handwritten signature in cursive script that reads "Arie Schoorl".

ARIE SCHOORL
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB or Board) by the United Farm Workers of America, AFL-CIO (UFW), the certified bargaining representative of our employees, the General Counsel of the ALRB issued a complaint which alleged that we, Abatti Farms, Inc. and Abatti Produce, Inc. had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we violated the law by reducing the work hours of employees Gilberto Castro, Guadalupe Leon and Isidore Andrade, assigning them onerous and undesirable work assignments and harassing and verbally abusing them because they had participated in ALRB proceedings. 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, and help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

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

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

Especially:

WE WILL NOT reduce the hours of work of any of our employees because he or she has participated in union or protected concerted activities or ALRB proceedings.

WE WILL NOT make work assignments that are undesirable or onerous because an employee has participated in union or protected concerted activities or ALRB proceedings.

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

WE WILL offer to reinstate without loss of seniority or other rights and privileges Gilberto Castro, Guadalupe Leon and Isidoro Andrade to full employment as tractor drivers and reimburse them with interest for any loss in pay or other economic losses because we

reduced their hours of work because of their participation in union and protected concerted activities and ALRB proceedings.

ABATTI FARMS, INC.

ABATTI PRODUCE, INC.

By: _____
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. Our office is located at El Centro Regional Office, 319 Waterman Avenue, El Centro, California 92243. The telephone number is (619) 353-2130.

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

DO NOT REMOVE OR MUTILATE