

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CLARK PRODUCE, INC.,)	
)	
Respondent,	)	Case Nos. 83-CE-130-SAL
	)	83-CE-133-SAL
and	)	83-CE-140-SAL
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,	)	11 ALRB No. 19
)	
Charging Party.)	
)	

DECISION AND ORDER

On April 30, 1984, Administrative Law Judge (ALJ) Arie Schoorl issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions and a supporting brief.

Pursuant to the provisions of Labor Code section 1146, the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.^{1/} The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the ALJ and to adopt his recommended Order with modifications.^{2/}

1/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.

2/The ALJ mistakenly ordered mailing of the Notice to Agricultural Employees to all employees employed from August 1979 until the date the Notice is mailed. In accordance with the Board's standard practice, we will order the Notice to be mailed to employees' employed from the date of the first violation until one year later.

ORDER

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

1. Cease and desist from:

(a) Discharging, laying off or otherwise discriminating against any agricultural employees because they have engaged in union activity and/or other concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

(b) Threatening any agricultural employees with changes in working conditions as retaliation for their union activities and/or other concerted activities.

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

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

(a) Offer to Braulio Vargas and Abram Munoz immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other employment rights or privileges.

(b) Make whole Braulio Vargas and Abram Munoz for all losses of pay and other economic losses they have incurred as a result of the discrimination against them, 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.

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

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from September 23, 1983 until September 23, 1984.

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

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company

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

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

Dated: August 2, 1985

JYRL JAMES-MASSINGALE, Chairperson

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Clark Produce, Inc., had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we violated the law by discharging employees Braulio Vargas and Abram Munoz because of their union and protected concerted activities and by threatening employees to suspend the bus service because of their union activities. The Board has ordered us to post and publish this Notice. We will do what the Board has ordered us to do.

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

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

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

WE WILL NOT hereafter discharge, layoff, or otherwise discriminate against any employee because he or she has engaged in union activities or other protected concerted activities.

WE WILL NOT threaten to change any working condition to retaliate against an employee or employees for their union activities.

WE WILL reinstate Braulio Vargas and Abram Munoz to their former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse them for any pay or other money they have lost because we discharged them, plus interest.

Dated:

CLARK 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 112 Boronda Road, Salinas, California 93907. The telephone number is (408) 443-3161.

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

CLARK PRODUCE, INC.

11 ALRB No. 19
Case Nos. 83-CE-130-SAL
83-CE-133-SAL
83-CE-140-SAL
83-CE-162-SAL

ALJ Decision

The ALJ found that in September 1983 the Employer had unlawfully discharged two broccoli cutters because of their union and other protected concerted activities. The ALJ also found that in September 1983 Respondent, through its foreman, had unlawfully threatened its employees with cancellation of the employees' bus service because of their union activities.

Board Decision

The Board affirmed the ALJ's Decision and adopted his recommended Order with minor modifications.

* * *

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

* * *

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:	)	Case Nos.	83-CE-100-SAL
	)		83-CE-133-SAL
CLARK PRODUCE, INC.,	)		83-CE-140-SAL
	)		83-CE-162-SAL
Respondent,	)		83-CE-166-SAL
and	)		83-CE-174-SAL
)		
UNITED FARM WORKERS)		
OF AMERICA, AFL-CIO,)		
)		
Charging Party.)		

Appearances:

Constance Carey, Esq.
for General Counsel

Howard Silver, Esq.
Lee Tarkington-Lundrigan, Esq.
for Respondent

Before: Arie Schoorl
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ARIE SCHOORL, Administrative Law Judge:

This case was heard by me on January 18, 19, 20, 24, 25, 26 and 27, 1984, in Salinas. The complaint herein, which issued on November 3, 1983, based on three charges, 83-CE-130-SAL, 83-CE-133-SAL and 83-CE-140-SAL, filed by the United Farm Workers of America (hereinafter called UFW) and duly served on Mark Clark doing business as Clark Produce, Inc. (hereinafter called Respondent) on September 23, September 29 and October 11, 1983, respectively, alleges that Respondent committed various violations of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act) in September and October 1983. An amended complaint which issued on December 19, 1983, based on charges 83-CE-162-SAL, 83-CE-166-SAL and 83-CE-174-SAL filed by the UFW and duly served on October 31 and November 2, 1983, respectively alleges that Respondent committed additional violations of the Act in October and November 1983 and reiterates the allegations in the original complaint. During the hearing, the parties reached and signed a settlement agreement of the allegations in the amended complaint which were based on charges numbered 83-CE-166-SAL and 83-CE-174-SAL and the Board approved that settlement on February 29, 1984. Subsequent to the hearing on March 30, 1984, the parties reached and signed a settlement agreement of the allegations in the amended complaint which were based on charges numbered 83-CE-133-SAL, 83-CE-140-SAL and 83-CE-162-SAL and the Board approved the settlement on April 18, 1984.

FINDINGS OF FACT

I. JURISDICTION

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

II. THE ALLEGED UNFAIR LABOR PRACTICES

The only allegations in the complaint left to be decided after the settlement agreements are as follows:

Respondent is alleged to have violated section 1153(a) and (c) of the Act in September 1983 by discharging two employees, Braulio Vargas and Abram Munoz, because of their protected activity and their support of the UFW, and by discontinuing bus service for its employees because of their support of the UFW.

III. RESPONDENT ALLEGEDLY DISCHARGED BRAULIO VARGAS AND ABRAM MUNOZ BECAUSE OF THEIR UNION AND CONCEPTED ACTIVITIES

Clark Produce, Inc. a sole proprietorship owned by Mark Clark, is a harvesting company which specializes in broccoli and cauliflower and operates in the Salinas Valley. Two separate labor contractors, Sam Trevino and a firm entitled Green Thumb supply Respondent with cutters for its harvesting operations. The foreman of the Trevino crew (Respondent's No. 1 crew) is Lalo Campos. The foreman of the Green Thumb crew (Respondent's backup crew) is Armando Ramirez. Braulio Vargas and Abram Munoz were members of the Campos crew but did not work on a steady basis. They would work periodically for some days or weeks at a time, leave and then return after several months to work once again for some days or weeks.

On September 16 approximately 10 members of the Campos crew

(including Braulios Vargas but not Abram Munoz as he did not return to work for Respondent until the following day) met and discussed work conditions and decided to request a raise.^{1/} As a result of the meeting the crew members as a group talked to Campos on September 21 and requested a raise. He replied that he would confer with Trevino. The crew members returned to work and as they cut the broccoli, Campos drew each one aside and asked whether he preferred a raise or the union. Each one, except Jose Sandoval, answered that he preferred a raise. Sandoval responded that he preferred the union.

About an hour later in response to Campos' request, Trevino came to the field and met with the crew members. Crew members Vargas and Munoz were the first to speak but Campos immediately interrupted them and told them to "shut up" and let the other members of the crew speak as they, Vargas and Munoz, were not part of the regular crew. Vargas replied, "Don't tell me to shut up and Campos retorted "Yes you will". Vargas and Munoz complied and the other crew members asked for raises of several different hourly rates. Trevino replied that he thought he could secure \$6.35 per hour but he could not make it final at that moment since he had to confer with the bosses. He added that he did not want the employees to sign with the union as he did not want to have anything to do

1. In the Findings of Fact I have included matters that are the subject of allegations which have been settled by the parties. Of course, these matters no longer can serve as a basis of an unfair labor practice violation but I was compelled to include them in my factual findings since I could not determine the facts in respect to the two allegations left for my decision without evaluating the circumstances surrounding such facts.

with one.

Campos informed Trevino that every crew member preferred a raise rather than the union except Sandoval. Trevino replied that he would take Sandoval and hang him to the highest tree and drag him along the ground with his pickup truck.^{2/} Campos added that he would fire Sandoval at the first opportunity.^{3/}

At noon time a union organizer, Raul Garza, arrived at the field and asked Campos for permission to meet with the crew members. Campos readily consented and the crew members met with Garza at the edge of the field. Campos went to the harvesting machine, fifty yards distant from the group, sat down and ate his lunch.

That afternoon Campos commented to some of the crew members that if they had signed authorization cards it was very probable that the "Migra" would pick them up and the union, unlike him, would be unable to secure their employment for them again upon their return from Mexico. Munoz testified that he informed Campos that he had signed an authorization card and later that day Campos commented to Munoz that he would fire him because of his big mouth. Campos was upset with the crew and told them that there would be no work for them the next day.

The next day since there was no work, the crew members went to Trevino's residence to pick up their pay checks. Braulio Vargas and Antonio Parra went together and requested their checks from

2. Sandoval and Trevino had been acquaintances for several years and periodically would drink coffee together at a local restaurant.

3. Respondent did not discharge or layoff Sandoval. He left of his own accord in October.

Trevino's wife, Connie Trevino, the bookkeeper for her husband's labor contracting operations. She handed the check to Parra in a normal manner but according to Vargas' testimony she handed Vargas' check to him as if she wanted to throw it at him and turned around and slammed the door as she reentered the house. However, she credibly denied any such signs of anger or annoyance. General Counsel failed to elicit any corroborating evidence from its witness Antonio Parra on this particular point. Therefore, I disagree with Vargas' interpretation of Connie Trevino's conduct and find that she delivered the check to him in a normal manner.

Crew members Martin Espinoza, Vicente Guevara and Francisco Martinez also went to the Trevino residence for their checks. Trevino informed them that the bus had been fixed^{4/} and that Campos would be waiting for them the next morning at the pickup point as there would be work after all. According to Campos' testimony, both Jaeger and Trevino and instructed him to take only the regular crew because there would be less work in the future.

The next morning Vargas and Munoz went to the pickup point. As they were boarding the bus Campos stopped them and told them that there was no more work for them as he had orders to take only 28 cutters since work was slow. Vargas pointed out to him that the bus was only half full so he was puzzled why he and Munoz could not work. Campos replied that his instructions were to take only regular crew members even if there were only 5 who showed up. Sam Trevino arrived and gave the same explanation to Vargas and Munoz

4. The bus had been inoperable for virtually the entire month of September.

about the layoff. Vargas and Munoz left. The bus soon left and stopped on Main Street and picked up eight more crew members before proceeding to the freeway and south to the work site in Greenfield. Campos admitted that he left the pickup point without having counted the number of crew members on the bus.

During the first part of the following week Campos told the crew members that the union was no good that they did not know what they were doing, that if the "Migra" came and took them away the union would be unable to get their jobs back for them.

The election was held at 5:00 a.m. on September 28 and the UFW won 23-6 with 11 challenged ballots. Oscar Gonzalez and Gustavo Rojas were the observers for the union and Jose Oseguera for Respondent. After the election, the crew members gathered at the pickup point. Campos was there waiting for them but without the bus.^{5/} He informed them that if they wanted to go to work they would have to use their own cars as there would be no more bus since they had brought the union in.

During the rest of the day, Campos told every one of the crew members that they should not have supported the union and that he would not be surprised if the Border Patrol made a raid and picked them up. He added that they should ask for another

5. However, Respondent had suspended the bus service the day before after having run it for only 2 work days, September 23 and 25. Campos testified that the reason for no bus service was the fact that the bus was inoperable again.

election.^{6/} The crew members replied that they could not go backwards. Campos said that they could still vote for "no union" and then if the Border Patrol came and apprehended them, their jobs would be waiting for them on their return and besides the wage rate would be \$7.00 per hour. The crew members replied that they had already voted and they could not undo that.

The next day on the bus Campos told the cutters that they would be sorry for what they had done. During the entire day in the field Campos repeated to the cutters about a probable raid by the Border Patrol, that they would be sorry about their support for the union etc.

The next day at about 8:00 a.m. the Border Patrol with three vehicles were making a routine check of the area (based on Haakedahl's credible testimony I find that no one had given them any information about illegal aliens working in the area) and as they approached the field in which the Campos crew was working they noticed that some of the crew members broke and ran. So the Border Patrol agents pursued them, apprehended them and placed them in a van. Bruce Haakedahl, the agent in charge, approached Campos who pointed to the workers who were working at the harvest machine and said to Haakedahl that there were some more undocumented workers in the field and motioned in the direction of the machine. Haakedahl responded to Campos' indication and apprehended three more cutters

6. Somehow the Green Thumb crew had not participated in the election and Respondent had filed objections because of this alleged disfranchisement. It appears that was the reason for Campos' comments about another opportunity to vote.

Who had been working at the machine.^{7/} As the Border Patrol left, Campos waved to them and said, "Adios Chavistas."

ANALYSIS AND CONCLUSIONS

General Counsel contends that the actual motive for Respondent's layoff of Braulio Vargas and Abram Munoz was Vargas' participation in protected concerted activities on September 16 and both Vargas' and Munoz' participation in protected concerted activities and union activities on September 21. According to ALRA precedent, General Counsel must prove by a preponderance of the evidence that there is a causal connection between the discriminatory action and the union and/or concerted activities. The legal principles applicable to discriminatory action based on union activity and protected activity are identical. (Lawrence Scarrone (1981) 7 ALRB No. 13.)

In discrimination cases there is often no direct evidence that the employer discriminated against an employee because of his union or protected activities. With respect to the connection between such activities and the subsequent treatment, the Board stated in S. Kuramura, Inc. (1977) 3 ALRB No. 49, "It is rarely possible to prove this by direct evidence. Discriminatory intent when discharging an employee is 'normally supported only by the circumstances and circumstantial evidence' Amalgamated Clothing

7. The individual who suggested to Haakedahl to check the workers at the machine was no doubt Campos. In the first part of his testimony Campos failed to mention anything about his indicating to the Border Patrol about the presence of additional illegal aliens in the fields. But later he admitted doing so but added that it was in response to the agent requesting such information from him. According to Haakedahl's credible testimony, Campos volunteered the information and I so find.

Workers of America, AFL-CIO v. N.L.R.B., 302 F.2d 186, 190 (C.A. D.C. 1962)."

Considering the circumstantial evidence, a preliminary factor in finding that an employer discharged an employee for union or protected activity is the determination that the employee engaged in such activities and that the employer had knowledge of such activities.

It is uncontroverted that Vargas and Munoz engaged in protected concerted and union activities. Vargas participated in the initial meeting of the crew members on September 16, 1983 when they discussed taking concerted action to request improved working conditions. On September 21 both Vargas and Munoz participated in the meeting with foreman Campos when the crew requested a raise. Later that same day they attempted to participate in the crew's meeting with Trevino but were prevented from doing so by Campos' ordering them not to. At the lunch break that same day they participated in the crew's meeting with the union organizer Raul Garza and signed UFW authorization cards.

It is obvious that Respondent had knowledge of Vargas' and Munoz' participation in meetings with Campos and Trevino and later with Raul Garza the union organizer. The only question would be whether Campos and/or Trevino knew that Vargas and Munoz signed authorization cards at the meeting with the union organizer. Munoz testified that he had informed Campos that he had signed a card. Campos denied that he had such knowledge. Since there is no corroborating evidence one way or the other I will refrain from making a finding. Nevertheless, I find that Respondent through

Campos had knowledge of Vargas' and Munoz' participation in concerted and union activities as above-described.

Another factor of circumstantial evidence usually found in discrimination cases is timing. If the discriminatory treatment takes place soon after the employer learns of the protected activity, an inference can be drawn that Respondent engaged in the discriminatory conduct to discourage union and/or protected concerted activities. On the same day Campos learned of Vargas' and Munoz' participation in the concerted and union activities, he expressed his anger about their speaking to Trevino about a raise, to the extent that in Campos' mind they interfered with the regular crew members' so doing and on the next work day Campos laid off the two outspoken employees. Whether he was correct or not in becoming upset about the two employees who were not regular members of the crew and therefore should have deferred to the seniority employees, is somewhat beside the point, as the salient fact is his annoyance at what he considered to be offensive behavior which at the same time was participation in a protected concerted activity. The fact of that annoyance with these two employees coupled with the discriminatory treatment he meted out to Vargas and Munoz the following work day when he laid them off raises an inference that the cause of the layoff was their participation and attempt to participate in protected activity.

Respondent argues that the layoff of Vargas and Munoz was due to a legitimate business reason. Respondent pointed out that Trevino decided to reduce the number of employees on Campos' crew because of the reduction in work. He cited Campos' and Trevino's

testimony that the five employees laid off on September 23 were the crew members with the least seniority. It is true that 5 of the 8 employees who worked on September 21 but not on September 23 were the crew members with the least seniority, Vargas, Munoz, Eusebio Montez, Alex Garza and Guadalupe Romero. (The other 3 employees Jose Gonzalez, Sergio Romero and Ruben Montoya had worked on a steady basis throughout September so they cannot be considered employees with the least seniority and no inference can be made that Respondent included them in the crew members Campos laid off the 23rd.) Accordingly, Campos laid off those 5 aforementioned employees. However, on September 25, the next work day, Campos rehired Eusebio Montez (who had less seniority than both Vargas and Munoz) and Alex Garza (who had less seniority than Vargas and the same as Munoz).^{8/}

On the next work day, September 27, Campos hired a new employee, Camilo Ortiz, and Montez and Garza continued to work. On September 28, Ortiz, Montez and Garza worked. On September 29, Ortiz and Garza worked. According to Campos' testimony, he advised the five laid off employees on the morning of September 23 that they had been laid off. Later he testified that he had told the five to keep checking later for employment. He may have given this suggestion to the other 3 employees (as 2 of the 3, Garza and Montez, reported for work the next day), but I believe he failed to so instruct Vargas and Munoz. Campos did not include such

8. Campos also hired Manolito Campos and Joe Amaro in the days following the layoff but the former was his son and the latter his stepson. So they fall into a special category and cannot be used for comparison.

instructions to the five employees in his direct testimony but added it toward the end of his testimony.

Furthermore, Campos' conduct on the morning of September 23 points to the conclusion that he intended to and did convey to Vargas and Munoz that they had been laid off for an indefinite period. The message was clear to them that regardless of whether sufficient regular crew employees showed up for work that morning they were no longer working there. Of course the clear implication to them was that if Campos would not hire them that day, he certainly would not be hiring them in the near future. Additional facts that support that interpretation of Campos' conduct are Campos' refusal to take non-regular crew members⁹ and his leaving the pickup point without counting the number of crew members aboard the bus.

Moreover, Campos' entire testimony about the layoff is replete with ambiguities which subtracts credence from his alleged reason for the layoff. He testified that he had hired Vargas and Munoz on a temporary basis just for the use of their automobiles during the period when the bus was being repaired. The record demonstrates that Munoz never used his car to drive to the fields. Nor does the record indicated that Campos ever informed Vargas that it was just for his providing transportation that he hired him and moreover this explanation of Vargas' employment status came late in Campos' testimony as earlier he had stated that Vargas was a

9. Campos told Vargas and Munoz that his instructions were to take only regular crew members so if only 5 regular crew members reported for work, he would only take those five.

temporary employee who worked off and on at Respondent's but had a more steady job elsewhere. Campos also testified that after laying off Vargas, Munoz and three other of the newest employees he no longer needed their services. However, he rehired two of the three the very next work day.^{10/}

Furthermore, I discredit much of Campos' testimony not only because of his demeanor^{11/} but because of the following reasons:

Bruce Haakedahl, the Border Patrol agent who testified at the hearing, credibly testified that Campos volunteered the suggestion that the Border Patrol check the employees on the machine. Campos failed in his initial testimony to make mention of his making any such suggestion but later he admitted that he had done so but at the behest of a Border Patrol agent. I find that he failed to tell the whole truth in his initial testimony and misrepresented the facts in his later testimony.

Campos testified that he never questioned the crew members

10. Campos testified that Munoz contacted him "some time" after the layoff and informed him that he would not be returning to work at Respondent's since he had secured employment elsewhere. An inference can be drawn from this communication that Campos had actually told Munoz and Vargas on the morning of the layoff to check back for employment. However, I have already explained in detail, based on a preponderance of the evidence, that Campos and Trevino clearly communicated to Munoz and Vargas that for the next few weeks there would be only sufficient work for the regular crew. The fact that "some time" (the intonation in Campos' voice was that the time involved was at least some weeks in length) after the layoff Munoz contacted Campos about future employment is not inconsistent with my aforementioned finding.

11. I observed that Campos' demeanor, when he gave testimony which was in contradiction to the testimony of credible witnesses and credible documentary evidence, was consistent with his consciously tailoring his testimony in his favor.

about their union sympathies because they were free to do whatever they wanted to. However, one of Respondent's witnesses, employee Gerardo Gallegos, placed this testimony in serious doubt as he testified that in connection with his being a witness at the hearing and once before when he returned to work after the September Border Patrol raid that Campos asked him whether he favored the union and on both occasions the witness informed Campos that he was against the union. Moreover, four crew members credibly testified that Campos interrogated them one by one about their preference for a raise or the union on the morning of September 21 before the crew's meeting with Sam Trevino.

II. RESPONDENT ALLEGEDLY DISCONTINUED BUS SERVICE BECAUSE EMPLOYEES SUPPORTED THE UFW

A. Facts

Between September 6 and September 21, inclusive, Respondent did not provide Campos' crew members with bus transportation to the work sites. The reason was because the bus was inoperable due to defective brakes, lights and dilapidated general overall condition. Respondent compensated seven crew members an hour's wage for driving themselves and their fellow crew members in their motor vehicles to the harvest fields.

After almost an entire month with no bus service, Respondent resumed it on September 23 and 25. However, on September 27, the bus again was inoperable and Respondent reverted to using the crew members' motor vehicles on September 27 and 28 with the same system of compensation.

After the election on the morning of September 28, the crew members went to the pickup point in downtown Salinas and Campos

informed them that there would no longer be a bus service because they had supported the union. Respondent restored the bus service on October 5, three working days later.

B. Analysis and Conclusion

The key factor in determining whether Respondent had a proper motive in suspending the bus service is the fact that it halted it one day before the election. It is highly unlikely for an employer to suspend a bus service, a convenience to the employees, the day before an election as it would not want to lose favor with its employees when the next day they were to make a choice between the union and the "company". If Respondent wanted to make some point with the employees regarding the suspended bus service, Campos or some other representative of management would have made the point on the first day that the bus service was suspended and not the day afterwards as Campos did with his comment about the suspension being a reprisal for the employees' union support.

True, three of General Counsel's witnesses, crew members, Martin Espinoza, Jose Espinoza and Gustavo Rojas, testified that Campos told them the morning of the election about the bus service suspension as a reprisal for their union support. I believe the three witnesses in that respect because of their credibility and the fact such comments by Campos were very much in keeping with his other comments all during the election period as he made a variety of threats and admonitions about the dire consequences of their union activities. Campos knew the reason for the suspension of the bus service was the inoperability of the bus (and it actually was inoperable) but he wished to maximize his pressure on the crew

members to change their mind about union representation, so he seized upon the fact of the bus being inoperable that morning to make an additional point with the employees about how they would be worse off because of their adherence to the union.

Accordingly, I find that Respondent suspended the bus service for a legitimate business reason, the bus's dilapidated condition and not because of the crew members' support of the UFW. Nevertheless, I do find that Respondent through Campos threatened the crew members with cancellation of the bus service because of their union activities.

ORDER

By authority of section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board (Board) hereby orders that Respondent Mark Clark doing business as the Clark Produce, Inc. his agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging, laying off or otherwise discriminating against, any agricultural employee(s) because of his/her (their) union and/or protected concerted activities.

(b) Threatening any agricultural employee(s) to change any working condition as retaliation for his/her (their) union activities.

(c) In any like or related manner interfering with restraining, or coercing agricultural employees in the exercise of the rights guaranteed in Section 1152 of the Act.

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

(a) Offer to Braulio Vargas and Abram Munoz immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other employment rights or privileges, and make them whole for all losses of pay and other economic losses they have incurred as a result of their discharge; 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. (Aug. 18, 1982) 8 ALRB No. 55.

(b) Preserve and, upon request, make available to this Board and its agents, for examination, photocopy, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other 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 this 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 August 1979, 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 take to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

DATED: April 30, 1984



ARIE SCHOORL
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Regional Office of the Agricultural Labor Relations Board (ALRB or Board) by the United Farm Workers of America, AFL-CIO, (UFW), the General Counsel of the ALRB issued a complaint which alleged that we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that I violated the law by discharging employees Braulio Vargas and Abram Munoz because of their union and protected concerted activities and by threatening employees to suspend the bus service because of their union activities. 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.

Especially:

WE WILL offer to reinstate Braulio Vargas and Abram Munoz to their former positions or the equivalent without loss of seniority or other rights and privileges, and we will reimburse them for all losses of pay and other monetary losses they incurred because we discharged them, plus interest.

WE WILL NOT discharge, lay off or otherwise discriminate against any agricultural employee in regard to his or her employment because he or she has joined or supported the UFW or any other labor organization, or has participated in any other protected concerted activities.

WE WILL NOT threaten to change any working condition to retaliate against an employee or employees for his/her (their) union activities.

Dated: MARK CLARK doing business as
CLARK PRODUCE, INC.

By: _____
Representative Title