

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

DUKE WILSON COMPANY,)	
)	
Respondent,)	Case Nos. 85-CE-61-EC
)	
and)	85-CE-67-EC
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	12 ALRB No. 19
)	
Charging Party.)	

DECISION AND ORDER

On November 8, 1985, Administrative Law Judge (ALJ) Stuart A. Wein issued the attached Decision in this matter. Thereafter, General Counsel and Respondent timely filed exceptions to the ALJ's Decision along with supporting briefs.

Pursuant to the provision of Labor Code section 1146,^{1/} the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.

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

ORDER

By the authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent, Duke Wilson Company and its officers, agents,

^{1/}All section references herein are to the California Labor Code unless otherwise specified.

successors and assigns shall:

1. Cease and desist from:

(a) Interrogating any agricultural employees concerning whether or not they have signed United Farm Workers of America, AFL-CIO (UFW) authorization cards or have engaged in any other concerted or union activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

(b) Discouraging membership of employees in the UFW or any other labor organization, by refusing to rehire or hire any of its agricultural employees because they engaged in union activities, or in any other manner discriminating against individuals in regard to their hire or tenure of employment or any term or condition of employment, except as authorized by section 1153(c) of the Act.

(c) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of his/her 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 Rodolfo Madronero, Marina Palacios, Lara Palacios, Pedro Vidal, Jesus Reyes, Jessie Munoz, Vidal Payan, Virgilio Castillo, Antonia Palacios, Gilberto Serna, Saul Callahan, Rico Parcez, Miguel Duran, Ramiro Reyes, Ernie Abuyen, Bill Abuyen, Tony Montana,

Ernesto Cruz, Artemio Centeno, Renee Gonzalez and Francisca Camaddo full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other employment rights and privileges, and make them whole for all losses of pay and other economic losses they have suffered as a result of the employer's failure to rehire, the amounts to be computed in accordance with established Board precedents, plus interest computed in accordance with the Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(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 periods and the amount of backpay 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 thirty days after the date of issuance of this Order, to all agricultural employees employed by Respondent from April 1985 to April 1986.

(a) Post copies of the attached Notice, in all

appropriate languages, in conspicuous places on its property for 60 days, the times and places 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.

(f) Arrange for a representative of Respondent or a Board agent to read and distribute the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at times and places 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 their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees in order to compensate them for time lost at the reading and during the question and answer period.

(g) Notify the Regional Director in writing, within thirty days after issuance of this Order, of the steps

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Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: September 30, 1986

JYRL JAMES-MASSENGALE, Chairperson

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint that alleged that we, Duke Wilson Company, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by interrogating employees Jose Saldana and Jose Saldana, Jr., regarding whether or not they had signed union authorization cards and by refusing to rehire employees Rodolfo Madronero, Marina Palacios, Lara Palacios, Pedro Vidal, Jesus Reyes, Jessie Munoz, Vidal Payan, Virgilio Castillo, Antonia Palacios, Gilberto Serna, Saul Callahan, Rico Parcez, Miguel Duran, Ramiro Reyes, Ernie Abuyen, Bill Abuyen, Tony Montana, Ernesto Cruz, Artemio Centeno, Renee Gonzalez and Francisca Camaddo because of their protected, concerted 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 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. Specifically:

WE WILL NOT interrogate any agricultural employee regarding whether or not he or she has signed a union authorization card and/or has engaged in any protected concerted or other union activity.

WE WILL NOT refuse to rehire any employee for engaging in any protected, concerted and/or union activity.

WE WILL reimburse Rodolfo Madronero, Marina Palacios, Lara Palacios, Pedro Vidal, Jesus Reyes, Jessie Munoz, Vidal

Callahan, Rico Farces, Miguel Duran, Ramiro Reyes, Ernie Abuyen, Bill Abuyen, Tony Montana, Ernesto Cruz, Artemio Centeno, Renee Gonzalez and Francisca Camaddo for all losses of pay and other economic losses they have suffered as a result of our discriminating against them plus interest, and in addition offer them immediate and full reinstatement to their same or substantially equivalent position.

DATED

DUKE WILSON COMPANY

By: _____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue El Centro, California, 92243. The telephone number is (6 1 9) 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

DUKE WILSON COMPANY
(UFW)

Case Nos. 85-CE-61/67-EC
12 ALRB No. 19

ALJ DECISION

The ALJ found that Duke Wilson Company, through its foreman William Foronda, refused to rehire a group of grape harvest employees because of their organizational activity on behalf of the UFW. The ALJ found that Foronda informed the employees that those who had signed union authorization cards would be blacklisted by the company. The ALJ found that subsequent attempts by former employees to obtain work confirmed the unlawful hiring practices of the company.

The ALJ also found that the company unlawfully interrogated a tractor driver and his son through the questioning of supervisor Mark Wilson. However, the ALJ rejected the charge that the tractor driver was terminated or refused rehire for unlawful reasons.

BOARD DECISION

The Board affirmed the findings of the ALJ and adopted his proposed order.

* * *

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:)
DUKE WILSON COMPANY,)
Respondent,)
and)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
Charging Party.)

Case Nos. 85-CE-61-EC
85-CE-67-EC

Appearances:

Eugene E. Cardenas, Esq.
319 Waterman Avenue El
Centro, California for the
General Counsel

David E. Smith, Esq. 73255
El Paseo, Suite 11 Palm
Desert, California for the
Respondent

Before: Stuart A. Wein
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

STUART A. WEIN, Administrative Law Judge:

This case was heard by me on July 9, 10, 24 and 25, in Indio, California.

The original complaint issued on 17 May 1985 and was based on charge #85-CE-61-EC filed by the United Farm Workers of America, AFL-CIO, (hereafter the "Union" or "UFW") on 23 April 1985 and duly served on Respondent Duke Wilson Company ("DWC" or "Company"). That complaint (GCX 1.2) alleges that Respondent violated sections 1153(a) and (c) of the Agricultural Labor Relations Act ("Act") by discriminatorily refusing to rehire/hire and discharging various agricultural employees from the grape thinning crew of foreman George Carreon, as well as interrogating various members of that crew concerning whether or not they signed UFW authorization cards.

A First Amended Consolidated Complaint (GCX 1.6) issued on 11 June 1985 including allegations relating to the interrogation and discharge of Jose Saldana and Jose Saldana, Jr.,¹ as well as the allegations concerning the former Carreon crew members.

At the opening of the hearing, I granted General Counsel's unopposed motion to dismiss Jose Saldana, Jr.,

¹These paragraphs (13, 14) of the First Amended Complaint were based on Charge #85-CE-67-EC filed on 22 May 1985 and duly served upon Respondent.

from Paragraph 14 (the discharge allegation) of the First Amended Complaint.

Also at hearing, General Counsel moved to orally amend the portion of the complaint dealing with the Carreon crew to include employees Tony Montana, Artemio Centeno, Ernie Abuyen, Bill Abuyen, and Ernesto Cruz among the group of alleged discriminatees. I granted General Counsel's motion to amend over Respondent's objection as the new allegations merely detailed the discriminatees listed in the original pleading, and the Respondent was given a full opportunity to offer testimony on the issue after the motion to amend was granted. See Mission Packing Company (1982) 8 ALRB No. 47, rev. den., Ct.App., 1st Dist., Div. 3, Jan. 20, 1984.

Further, I denied Respondent's motion to limit the scope of the hearing to the "April 22, 1985, discharge of employees Virgilio Castillo and Rodolfo Madronero plus others" as alleged in the underlying charge (#85-CE-61-EC - GCX 1.1). Respondent contends (Respondent Post-Hearing Brief, p. 1) that the complaint violates section 1160.2² of

Section 1160.2 provides in pertinent part: "Whenever it is charged that any person was engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agency or agencies, at a place therein fixed, not less than five days after the

(Footnote Continued)

the Act and cannot be the basis for any findings against Respondent because the allegations differ from the underlying charge. However, this Board has recently rejected the identical argument in Ben and Jerry Nakasawa dba Nakasawa Farms and B.J. Harvesting (1984) 10 ALRB No. 48, which recognized the authority of the General Counsel to issue complaints based on conduct discovered during an investigation of related charges. In fact, if General Counsel does not include discoverable charges in the complaint, they may be forever waived. See Laminite Plastics Mfg. Co. (1978) 238 NLRB 1234 [99 LRRM 1471]. The rationale for this rule was articulated by the Board in Porter Berry Farms (1981) 7ALRB No. 1:

"Once the Board's jurisdiction has been invoked by the filing of a charge, its General Counsel is free to make full inquiry under its broad investigatory power in order to properly discharge its duty of protecting public rights." (Citing N.L.R.B. v. Fant Milling Co. (1959) 360 U.S. 301 [44 LRRM 2236].)

As suggested by the United States Supreme Court in reference to the role of the National Board:

"A charge filed by the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. Labor Board v. I. & M. Electric Company, 318 U.S. 9, 18

(Footnote Continued)

... serving of such complaint. No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the board and the service of a copy thereof upon the person against whom this charge is made,

. . . "

[11 LRRM 763]. The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act. The Board was created not to adjudicate private controversies but to advance the public interest in eliminating obstructions to interstate commerce, as this Court has recognized from the beginning." Labor Board v. Jones and Laughlin, 301 U.S. 1 [1 LRRM 703]; N.L.R.B. v. Fant Milling Company, supra.

Thus, in Porter Berry Farms, supra, the charge and original complaint included an alleged violation of section 1153(a), and the Board permitted the complaint to be amended to include additional 1153(a) violations, so long as the parties received adequate notice of the new allegations. See also N.L.R.B. v. Raymond Pearson, Inc. (5th Cir. 1957) 243 F.2d 456 [39 LRRM 2625].

Here, the First Amended Consolidated Complaint refers to various instances of discriminatory refusals to rehire former members of the George Carreon crew (paragraphs 10 and 11), discriminatory discharge of one member (paragraph 12), as well as unlawful interrogation of some of the identical personnel from 17 April to 22 April 1985 (paragraphs 8 and 9). These allegations are closely related to the charge of discriminatory firing of two former members of the Carreon crew on 22 April 1985. Since Respondent has had notice of the pleading since 17 May 1985, it has had ample opportunity to defend against the "expanded"

allegations.³ I therefore conclude that it is proper to consider the allegations, as amended, on their merits.

All parties were given a full opportunity to participate in the proceedings. The General Counsel and Respondent were represented at the hearing; both filed briefs after the close of the hearing pursuant to 8 Cal. Admin. Code section 20278.

Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments and briefs submitted by the parties, I make the following:

FINDINGS

I. Jurisdiction

Respondent, DUKE WILSON COMPANY, is an employer engaged in agricultural operations -- specifically the growing and harvesting of table grapes in Coachella Valley, California, as was admitted in its Answer to First Amended Consolidated Complaint. Consequently, I find that the Respondent is an agricultural employer within the meaning of section 1140.4(c) of the Act.

As was also admitted by Respondent in its Answer, I find that Charging Party, United Farm Workers of America,

General Counsel's at-hearing amendment merely identified five additional members of the Carreon crew who were to be included in the group of employees refused rehire in April 1985. See discussion, supra.

AFL-CIO, is a labor organization within the meaning of section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The First Amended Consolidated Complaint, as amended orally at hearing, alleges that Respondent violated section 1153(a) of the Act by interrogating employees Marina Palacios, Antonia Palacios, Lara Palacios, Rodolfo Madronero, Virgilio Castillo, Jose Saldana and Jose Saldana, Jr. (Paragraphs 8, 9 and 13) in April 1985 concerning whether or not they signed UFW authorization cards so as to interfere with protected union activities and intimidate the employees. Respondent is further charged with violations of section 1153(a) and (c) of the Act by the 19 April 1985⁴ discriminatory refusal to rehire 26⁵ named employees (paragraphs 10 and 11), the discriminatory discharge of employee Salvador Delgadillo Perez on 22 April 1985 (paragraph 12), and the discriminatory discharge of Jose Saldana (paragraph 14) on 17 May 1985.

⁴The alleged refusal to rehire Francisca Camaddo and Renee Gonzalez occurred on 20 April 1985. See discussion infra.

⁵Rodolfo Madronero, Virgilio Castillo, Maria Benita Lara, Jose Lara, Renee Gonzalez, Francisca Camaddo, Marina Palacios, Antonia Palacios, Lara Palacios, Daniel Zazueta, Alonso Carrillo, Pedro Vidal, Gilberto Serna, Jesus Reyes, Saul Callahan, Jessie Munoz, Rico Parcez, Marcello Garcia, Miguel Duran, Vidal Payan, Ramiro Reyes, Tony Montana, Artemio Centeno, Ernie Abuyen, Bill Abuyen and Ernesto Cruz

Respondent denies that it violated the Act in any respect. It contends that numerous employees volunteered the information that they had signed authorization cards, that no decisions to rehire were based on any perceived union activities, and that the reason that the named individuals were not immediately rehired for the grape thinning was because their foreman, George Carreon, had quit, and the new foreman, William Foronda, secured employees from other sources. Finally, Respondent contends that employee Jose Saldana left his work on 17 May 1985 following a dispute with general manager Mark Wilson. Upon the employee's return on 20 May 1985, he was told he was no longer needed as another tractor driver had been hired in his place.

III. Background

The major relevant agricultural operations of the Duke Wilson Company involve the wintertime pruning, spring thinning, and summer harvesting of three different table grape varieties - Flames, Thompsons, and Perlettes. The company owns and leases several ranches in the Coachella

⁶Many returned to work with the company in the May-June picking season. See GCX 2. Because the circumstances of these "belated" rehires -- e.g., whether or not the product of a general recall notice to the individuals named in Paragraph 7 of the First Amended Consolidated Complaint -- were not elicited at hearing, I am unable to draw any inferences by virtue of their occurrence.

Valley which are located approximately 10-15 miles from one another. There is a shop on all the ranches, with an equipment yard at the home ranch at Wilson Poore -- on Avenue 60 between Johnson and Lincoln.

Day-to-day operations of the company are run by Mark Wilson and his brother Barry Wilson -- both of whom handle all aspects of the agricultural processes and have ultimate hiring and firing authority. Foremen are in charge of recruiting, and have power to fire if people do not perform their jobs properly. The charging paragraphs of the complaint (Paragraphs 8, 9, 10, 11, 12) based on charge 85-CE-61-EC center around the grape thinning crew of George Carreon who was first hired as foreman for Duke Wilson Company approximately two years prior to the events in question. Carreon and his crew were typically involved in the entire range of cultural operations of the table grapes - including pruning, thinning, harvesting, and intermediary functions involving hoeing and spraying weeds, irrigating, girdling, etc. The balance of the case (Paragraphs 13 and 14) based on charge 85-CE-67-EC relates to employees Jose Saldana (tractor driver) and his son Jose Saldana, Jr. (irrigator/assistant).

In the spring of 1985, the United Farm Workers of America, AFL-CIO, began an organizing campaign at the company and served a Notice of Intent to Take Access upon Respondent. It is this effort which set the stage for the events litigated at hearing. For clarity, I will discuss

the factual basis for each allegation and legal analysis thereof in chronological order.

IV. Events Involving the Carreon Crew

A. Alleged Interrogation of Marina Palacios, Antonia Palacios and Lara Palacios of 17 April 1985 (Paragraph 8)

General Counsel presented no evidence concerning this paragraph of the complaint. I recommend that it be dismissed.

B. Alleged Discriminatory Refusal to Rehire (24) Members of George Carreon Crew of 19 April 1985 (Paragraph 11)

1. Facts:

The genesis of the Carreon crew problems at DWC date back to the 1985 spring thinning. The initial work ceased on 4 April 1985 and Mr. Carreon and some 25-35 members of his crew remained on at the Country Boy labor camp in anticipation of resuming work spraying, girdling,⁷ and thinning the Thompsons.⁸ Mark Wilson was upset about

⁷Girdling is a process of cutting a ring around the base of the trunk with a special knife, and removing a layer of bark to a point known as the cambium layer. This is done in a complete circle around the vine -- to make the plant think that it is dying, so that it will reproduce itself and shoot energy into the fruit. The process requires skill because if the girdling is too deep, big, or "blotched up", the vine can be killed. (See R.T., Vol IV, p. 19.)

⁸Carreon testified that Mark Wilson had promised this work to his crew. Wilson denied same, testifying that the foremen would be informed of the jobs to do right before the tasks were to be accomplished. It is clear from the
(Footnote Continued)

damage which had been caused to the vines by the Carreon crew⁹ -- fruit had been brushed right off the bunch causing the vines to be "burned" -- and asked Carreon to rethin one ranch with a small crew. The rethinning was accomplished on April 6 and 7.

Because of this "problem" in the thinning, Wilson decided to hire foremen Maurelio Herrera, who had worked for Duke Wilson Company previously, to do the girdling.¹⁰ Carreon spoke with Wilson and said that he was closing the camp and quitting because he did not get the girdling job. Wilson indicated that Carreon and his crew would have work the following week in the thinning, but Carreon demurred.

(Footnote Continued)
testimony of both men that Carreon normally would have anticipated doing the girdling work with at least some of his crew members and then continuing on thinning the Thompsons, as he had done in previous years. In any event, the company decision concerning the girdling work preceded the protected concerted activity and is therefore not supportive of General Counsel's theory re the charged violations.

⁹The workers believed they were merely following the instructions of Mark Wilson in this regard, and had even told him that it was too early to brush the vines as Wilson had wanted. Wilson testified that he had to show the workers on more than one occasion how he wanted the vines thinned. There is no factual dispute that he was displeased by the work -- and this displeasure preceded all union activity. A later rethinning of another (Beckman) ranch was also necessitated because of the original work of the Carreon crew. (R.T., Vol. IV, pp. 17, 18.)

¹⁰There is no record evidence supportive of Respondent's contention (Respondent Post-Hearing Brief, p. 2) that Carreon's status as an unlicensed labor contractor impacted upon the decision to hire foreman Herrera to do the girdling.

Thereafter, the parties' versions of events differ dramatically. George Carreon and several¹¹ of the members of his crew who remained on at the labor camp following the April 4 layoff detailed the following account:

When Carreon returned to the camp to tell his people that another crew was doing the girdling work, they urged him to go to the UFW office with Virgilio Castillo.

Carreon did so and returned with authorization cards which were signed by some 20 to 25¹² crew members at the camp on the afternoon of 17 April.¹³

Later that day, the Laras and Daniel Zazueta drove to Supervisor Tomsy's house in Mecca to ask for work. Tomsy said that they could start on April 20 but that only the five people from camp who had not signed the Union

¹¹Leonora Carreon, Virgilio Castillo, Vidal Payan, Gilberto Serna, Rodolfo Madronero, Saul Callahan, Rico Parcez, Maria Benita Lara, Jose Lara.

¹²At hearing, the following employees listed in Paragraph 7 of General Counsel's First Amended and Consolidated Complaint (GCX 1.6) were identified as signees: Artemio Centeno, Ernie Abuyen, Marcello Garcia, Virgilio Castillo, Daniel Zazueta, Antonia Palacios, Pedro Vidal, Miguel Duran, Salvador Delgadillo Perez, Marina Palacios, Rodolfo Madronero, Tony Montana, Lara Palacios, Jesus Reyes, Ramiro Reyes, Jessie Munoz, Gilberto Serna, Vidal Payan, Alonso Carrillo, Jose Lara, Maria Benita Lara, Rico Parcez, Saul Callahan, Bill Abuyen, and Ernesto Cruz. Renee Gonzalez and Francisca Camaddo signed cards on April 18. (See discussion infra.)

¹³Foronda was in camp on that date but there is no evidence that he witnessed who signed the Union authorization cards.

authorization cards would work.¹⁴ This statement was repeated by William Foronda who returned to the camp in the afternoon of 19 April. In the presence of George and Leonora Carreon, Virgilio Castillo, Rodolfo Madronero, and Maria Benita Lara, Foronda told the workers that he was the new foreman.¹⁵ Those people who signed Union authorization cards were "blacklisted"; and there would only be work for the five people (referring to the Laras, Daniel Zazueta, Stanley Adono, and Isagani Villaflor) from camp who did not sign.¹⁶

Foronda's remarks (uttered in Tagalog) were translated into Spanish and spread among the workers at the labor camp on 19 April. Similar utterances were allegedly

¹⁴There is no ready explanation for Tomsí's "instantaneous" knowledge in this regard. Mr. Lara's testimony suggests that the supervisor queried the employees as to who had signed cards during the house visit (R.T., Vol. III, p. 81). Tomsí did not testify in this regard. In any event, no separate violation has been alleged by virtue of this conversation.

¹⁵Only Mrs. Lara recalled that Foronda announced he was the foreman on April 17. I credit the recollection of the other employee witnesses who testified that the announcement was made on April 19.

¹⁶Foronda's remarks were corroborated by the following witnesses at hearing: George Carreon (R.T., Vol. I, pp. 141-142; 152, 157), Leonora Carreon (R.T., Vol. I, pp. 141-143), Virgilio Castillo (R.T., Vol. I, pp. 141-143), Rodolfo Madronero (R.T., Vol. II, p. 52), Saul Callahan (R.T., Vol. II, pp. 63-64). Additionally, the following witnesses heard identical remarks translated by coworkers: Vidal Payan (as translated by Maria Benita Lara, R.T., Vol. II, p. 30); Gilberto Serna (as translated by George Carreon, R.T., Vol. II, pp. 42-43; Rico Parcez (as translated by an unidentified individual, R.T., Vol. II, pp. 76-77).

repeated by Mssrs. Foronda and Tomsí on April 20 and 22 as described infra,¹⁷ and the Laras further recalled Foronda¹⁸ denying work to Alonso Carrillo on 22 April because the latter had signed the Union card.¹⁹

¹⁷These remarks are discussed with respect to the alleged refusal to rehire Renee Gonzalez and Francisca Camaddo on April 20, and the discharge of Salvador Delgadillo Perez on April 22, as well as the April 20 visit of Rodolfo Madronero to Foronda's house referred to in the alleged interrogation charge (Paragraph 9) .

¹⁸Foronda testified that he did not give Alonso Carrillo work because "he had no paper." (R.T. , Vol. I, p. 122.)

¹⁹On direct examination, Maria Benita Lara recited the following version of her conversation with supervisor Tomsí/foreman Foronda of 22 April 1985:

Q: Did William give him work?

A: He said, "We will not give you work, because you signed the union card."

Q: Where were you when William and Alonso spoke?

A: I was with Alonso, and then I said to William, "Why don't you give the work? They are not working right now. It is not bad to sign a union authorization card."

Q: What did William say?

A: He said, Mark does not want people who signed the union card to work

[R.T. , Vol. III, p. 56 , 11. 1-10.]

On cross-examination, Mrs. Lara testified as follows:

Q: You told both William and Tomsí "It is not bad to sign a union card."?

A: Yes.

(Footnote Continued)

Pertinent payroll records reflect that only the following members of the Carreon crew who lived at the labor camp obtained work during the spring thinning: Maria Benita Lara, Jose Lara, Daniel Zazueta, Isagani Villaflor, Stanley Adono, and Filiberto Galicia. (GCX 2).²⁰

According to Respondent,²¹ Mark Wilson and Marcello Tomsì decided to name William Foronda as foreman to replace Carreon. Foronda was instructed to hire people with experience, and proceeded to secure a majority of his crew

(Footnote Continued)

Q: Did you say anything else about the union to those two men?

A: Yes.

Q: What did you say?

A: I said to him, Tomsì, why do you not give work? Why is work not given to these people? According to what I understand, signing a union card is not bad. And people have a right to get a card of that type if it is advantageous to them. It is not reasonable that because of this, they should be laid off work?

Q: Um-humh. Did you say anything else?

A: No. Tomsì said to me, no, this is not the reason. It is that the people from the camp burned the field. . . .

[R.T. III, p. 66, 11. 10-25.]

Although Maria Benita Lara also identified Marcello Garcia as a labor camp resident and "signee" who continued to work during the spring thinning, the payroll records do not confirm the latter's employment.

General Manager Mark Wilson was the only witness for Respondent. Foreman William Foronda was called and examined by General Counsel; supervisor Marcello Tomsì did not testify.

from his home area in Mecca, (many of whom were, like Foronda, former members of Carreon's crew in 1984 and 1985), rather than the Country Boy labor camp which was some 20 miles away. (R . T . , Vol. I, pp. 129-131, 123-124.) Wilson specifically denied refusing to rehire any employees (with the exception of Jose Saldana) who had worked earlier in 1985, and also denied seeing or circulating a "blacklist" of workers who were involved with Union activities. (R . T . , Vol. IV, p. 27). Foronda denied even being present at the labor camp on 19 April, but was never questioned regarding any of the remarks attributed to him. He conceded that on one occasion prior to his becoming foreman, many of the workers told him that they had signed for the Union. (R . T . , Vol. I, pp. 126-129.)

2. Analysis and Conclusions;

Labor Code section 1153(c) makes it an unfair labor practice for an agricultural employer "to discriminate in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization." General Counsel's prima facie case is established by showing that the employee(s) were engaged in protected activity, the Respondent had knowledge of such activity, and there was some causal relationship or connection between the protected activity and the adverse action taken against the employee(s). Jackson & Perkins Rose Co. (1979) 5 ALRB No. 20. Where the alleged discriminatory conduct consists of a

refusal to rehire, General Counsel must ordinarily show that the discriminatee applied for work at a time when work was available and that Respondent's policy was to rehire former employees (Verde Produce Company (1982) 7 ALRB No. 27, rev. den. by Ct.App., 4th Dist., Div. 1, April 27, 1982, hg. den. May 27, 1982. Where the Respondent has a practice or policy of recalling or giving priority in hiring to former employees, proof of the discriminatee's proper application is all that is required. Work need not be available at the time of the application, because the discrimination occurs when the Respondent fails or refuses to recall the employee because of union activity when work becomes available. Kyutoku Nursery, Inc. (1982) 8 ALRB No. 98; Mission Packing Company, supra.

In the instant case, the members of the Carreon crew engaged in protected activity by signing Union authorization cards at the labor camp on 17 April and thereafter. Respondent had knowledge of such activity as conceded by William Foronda (the workers informed him who had signed), or as testified to by the employees themselves who quoted Foronda and supervisor Marcello Tomsì as knowing that "only 5 had not signed." The latter remarks were not denied by any of Respondent's supervisory personnel.

To prove the causal connection between the employer's knowledge of the employees' protected concerted activity and the employer's subsequent discriminatory action, it is almost always necessary to resort to

circumstantial evidence, such as timing and anti-union animus. See Royal Packing (1982) 8 ALRB No. 16, modified on other grounds 8 ALRB No. 48, rev. den. by Ct. App. 1st Dist., Div. 4, May 31, 1984.²² In the instant case, however, General Counsel's theory hinges totally upon direct evidence - - the statements of foreman William Foronda and supervisor Marcello Tomsì to the effect that the company would only rehire the five members from the Carreon crew who refrained from signing the Union authorization cards. Thus, credibility resolutions of this testimony become critical to the determination of liability.

For General Counsel, five witness directly described Foronda's statements of 19 April that only the (5) members of the Carreon crew who did not sign UFW authorization cards would be able to work in the upcoming thinning. There is reason to suspect the testimony of George Carreon and his wife Leonora as the two had a definite interest in protecting the jobs of the crew members, which Carreon had himself promised. Indeed, Carreon had invested money on groceries in the expectation that he would be the foreman in the spring thinning and that his people would be remaining at the company labor camp. Further, Carreon conceded becoming a volunteer for the UFW following the incidents in question. Virgilio Castillo and

²²As will be discussed infra, the "circumstantial" case against the employer is not particularly compelling.

Rodolfo Madronero, on the other hand, (although having an "interest" in the outcome), attempted to answer examination in a precise manner and were not prone to overstatement. Mr. Castillo, particularly, took great pains to precisely recollect the statements of William Foronda, and interrupted the interpreter to assure that the translation was accurate. (See R.T., Vol. I, pp. 141-143.) Nor do I find any reason to disbelieve the testimony of Saul Callahan who testified in a straightforward, direct manner and offered testimony adverse to General Counsel's case on the issue of the alleged interrogation of Mr. Castillo and Mr. Madronero (see discussion, infra).

All the other witnesses called by General Counsel on the issue (Vidal Payan, Gilberto Serna, Rico Parcez, Maria Benita Lara and Jose Lara) were informed either by George Carreon, Rodolfo Madronero, or Saul Callahan --or even more indirectly by the latter coworkers via Maria Benita Lara -- as to the statements of William Foronda. These witnesses candidly admitted that they did not hear and/or understand William Foronda's remarks;²³ they appeared sincere as they responded to examination in a respectful, precise manner -- especially the Laras²⁴ who conceded that

²³As such, their testimony is inadmissible to prove the truth of the foreman's statements, or even the fact that Foronda uttered the remarks. (Evidence Code section 1200.)

²⁴Indeed, the Laras had no real "interest" in the
(Footnote Continued)

supervisor Tomsí articulated a non-discriminatory rationale²⁵ for the failure to rehire the Carreon crew members during the April 22 discussion concerning Alonso Carrillo.

On the other hand, Mark Wilson for Respondent denied the existence of any "blacklist"; but since the general manager did not actually hire the individual crew members, he was unable to rebut the testimony of the employees at the labor camp on 19 April. Foronda never denied making the incriminating remarks attributed to him --although he was available for testimony during the hearing. The foreman did specifically deny even being present at the labor camp on 19 April - which denial I do not credit in light of the specific testimony of all ten General Counsel witnesses to the contrary. Supervisor Tomsí did not rebut the remarks attributed to him, as he did not testify.

While the circumstantial aspects of General Counsel's case are much more problematical, they are at least consistent with the direct evidence on record. It is somewhat unusual that such admissions (to a large number of employees) of unlawful conduct would be made by supervisory personnel, particularly in light of Mark Wilson's testimony that he consulted with his attorney upon

(Footnote Continued)
outcome of the hearing, since they worked the entire spring thinning.

²⁵ I . e . . , the grapes had been improperly thinned.

learning of the UFW organizing campaign in the spring of 1985. But there are numerous cases under our Act and the NLRA where comparable evidence was deemed sufficient to support a finding of wrongful conduct. See, e.g., George Lucas & Sons (1979) 5 ALRB No. 62; Alpine Products (1983) 9 ALRB No. 12; M & D Investments dba David's (1984) 271 NLRB No. 87; California Dental Care, Inc. (1984) 272 NLRB No. 190.

Even more unusual in the instant context is the admitted effort on the part of the employees -- as orchestrated by foreman George Carreon -- to preserve the jobs that they had lost (or thought that they had been promised) by engaging in protected concerted activity. Mark Wilson had decided not to give the girdling job to Carreon which resulted in the latter's resignation one day before the signing of the authorization cards. While the prior predicament of the Carreon crew negates an inference of unlawful motivation in the decision not to rehire them in the girdling and suggests an ulterior rationale for their testimony at hearing, the employees are certainly entitled to engage in such protected concerted activity as a matter of right. The determination still must be made as to whether or not the admissions attributed to Respondent's supervisory personnel were actually made and were indicative of Respondent's policy with respect to rehiring employees for the thinning operation.

The payroll records are supportive of General Counsel's theory, but are certainly not determinative. On the one hand, insofar as Foronda limited work to those members of the Carreon crew who had not signed union authorization cards, he was not very accurate. Of the six members of Carreon's crew (residing at the labor camp) who did obtain work in the thinning, four actually signed cards (Maria Benita Lara, Jose Lara, Daniel Zazueta, and Filiberto Galicia). Only Isagani Villaflor and Stanley Adono did not sign. Nor is there any basis for ascertaining whether Foronda's hiring choices disproportionately impacted upon "signers" from Carreon's crew who were living at the labor camp, as opposed to others (non-signers) who did not live at the camp. Indeed, there is no evidence that Foronda had any independent knowledge of who had signed the cards apart from what the employees had told him. By the account of General Counsel's own witnesses, Foronda's information was equally reliable (e . g . , with respect to employees Virgilio Castillo and Rodolfo Madronero) or unreliable (Maria Benita Lara, Jose Lara, Daniel Zazueta).

On the other hand, the payroll records reflect the availability of work on the days immediately following the discriminatory statements. Appendix A suggests the number

²⁶There is no indication of the number of signers who did not live at the camp who obtained work, or even of the number of signers as opposed to non-signers (formerly in Carreon's crew) who did not live at the labor camp.

of employees engaged in thinning in Foronda's crew from 19 April through May 6 and the total number of new hires on any given day. As reflected in this document, it is apparent that the number of hires jumped from 5 to 36 on April 19-20 and again up to 43 and then 46 on April 22 and 23. The number of new hires during the initial week ranged from 4 to 31 on any given day.

The defense presented by Respondent is of little help to the analysis. The Company's assertion that anybody who had worked in the Carreon crew previously and who asked either Marcello Tomsic or William Foronda for work was given work (Respondent's Post-Hearing Brief, p. 7) is not supported by the record evidence. Witnesses Rodolfo Madronero, Virgilio Castillo, Renee Gonzalez, and Francisca Camaddo testified credibly that they were told that all signers would be denied work when they applied for jobs, and were in fact denied work.

Respondent's version of events would seem to suggest that all of the critical conversations occurred prior to Foronda's becoming a foreman. (See R.T., Vol. I, pp. 126, 128.) But this scenario fails to explain why William Foronda was at the labor camp on April 19, why he announced he was the foreman, or why he would articulate the

company's hiring policy in response to crew member queries regarding the resumption of the spring thinning.²⁷

In view of the entirety of the record, including the demeanor of all the witnesses, I conclude that it is more likely than not that Foronda did make the statements attributed to him and in fact discriminatorily excluded the members of George Carreon's crew from the spring thinning as directed by Mark Wilson. I reach this conclusion mindful of the relative inexperience of Foronda as a foreman, his failure to specifically deny the remarks attributed to him, the failure of Marcello Tomsì to deny identical remarks attributed to him, and credited versions of other similar conversations - i . e . , the refusal to rehire Renee Gonzalez and Francisca Camaddo. I find it more likely that Foronda made the remarks that the employees attributed to him than that the former members of the Carreon crew (albeit displeased with their predicament) fabricated the events in question to secure additional thinning work.

²⁷Similarly, the foreman's conduct is inconsistent with the company's contention that only experienced people would be hired, or that only people who lived nearby in Mecca would be asked to resume the spring thinning. While it would not seem unreasonable for a new foreman to choose his own people, and for the disgruntled members of Carreon's crew to leave with their leader, the record does not support such a defense. Foronda himself was a former member of Carreon's crew, and there is no evidence that any hiring choices were actually made on the basis of the criteria -- e . g . , experience -- suggested by the company.

I also specifically reject Respondent's contention that there is no proof of discrimination because some former members of the Carreon crew (the Laras and Zazueta) who signed cards still lived at the labor camp and were rehired. Board decisions finding group discrimination have not required a showing of complete exclusion of the group from the workforce. J.R. Norton (1982) 8 ALRB No. 89, rev. den. Ct.App. 1st Dist., Div. 1, Sept. 16, 1983, hg. den. October 26, 1983; N.L.R.B. v. Shedd-Brown Mfg. Co. (7th Cir. 1954) 213 F.2d 163 [34 LRRM 2278]; Borg-Warner Controls (1960) 128 NLRB 1035 [46 LRRM 1459].

Nor is it necessary for each of the alleged discriminatees to have formally applied for work in the instant context. Where, as here, an employer has made clear its discriminatory policy not to rehire a particular group of persons, each member of the group need not undertake the futile gesture of offering in person to return to work.²⁸

J.R. Norton Co., Inc. (1982) 8 ALRB No. 89, supra, citing N.L.R.B. v. Park Edge Sheridan Meats, Inc. (2d Cir. 1963) 323 F.2d 956 [54 LRRM 2411]; N.L.R.B. v. Valley Die Cast

²⁸Said disposition renders moot Respondent's contention that the discriminatees should have contacted Mark Wilson to properly apply for work (see Respondent Post-Hearing Brief, p. 7.) In any event, I note that William Foronda was the proper person from whom to request rehire in the instant case. As supervisor, Marcello Tomsini had only general recommendatory authority. Mark Wilson testified that he did not concern himself with the details of which individuals would be hired.

Corp. (6th Cir. 1962) 303 F.2d 64 [50 LRRM 2281]; N.L.R.B. v. Lummus Co. (5th Cir. 1954) 210 F.2d 377 [33 LRRM 2513].

Thus, in N.L.R.B. v. Nevada Consolidated Copper Corp. (1942) 316 U.S. 105 [10 LRRM 607], the U.S. Supreme Court upheld the NLRB's finding that the Respondent's refusal to rehire a union member contained on a "blacklist" was discriminatory although the member did not properly apply for rehire. In J.R. Norton (1982) 8 ALRB No. 76, the Board concluded that Respondent's discriminatory treatment consisted not only of specifically denying rehire to applicants who asked for work (e.g., Rodolfo Madronero and Virgilio Castillo in the instant case), but also discouraging application through statements made by foremen to former employees. Contrary to Respondent's suggestion (Respondent's Post-Hearing Brief, p. 8), I find that the former members of the Carreon crew reasonably relied upon the new foreman's remarks, and should be relieved of formal application for rehire.

I therefore recommend that the group of discriminatees include those workers who signed union authorization cards, or were perceived to have done so by the Respondent, and were denied rehire for that reason, and who either (1) testified at the hearing that they applied for and were available, for work, or that their failure to apply for work was based upon a reasonable belief that such application would be futile; or (2) are persons, who, according to credible testimony of others, applied for and

were available for work or failed to apply because of a reasonable belief that application would be futile. J.R. Norton Co., Inc. (1982) 8 ALRB No. 76.²⁹ The discriminatees are comprised of the following employees, who either testified at the hearing, or by virtue of the testimony of others were placed at the labor camp at the time of the remarks of Foronda and were signatories of the authorization cards: Rodolfo Madronero, Marina Palacios, Lara Palacios, Pedro Vidal, Jesus Reyes, Jessie Munoz, Vidal Payan, Virgilio Castillo, Antonia Palacios, Gilberto Serna, Saul Callahan, Rico Parcez, Miguel Duran, Ramiro Reyes, Tony Montana, Ernie Abuyen, Bill Abuyen, Ernesto Cruz, and Artemio Centeno. (R.T., Vol. I, pp. 52, 55, 166; Vol. II, pp. 30-31, 50, 52, 65, 76.)

I have excluded employees Daniel Zazueta, Maria Benita Lara, and Jose Lara from this list of discriminatees, as the evidence indicates that they were rehired on 20 April 1985.

I have excluded employee Marcello Garcia as there is insufficient evidence to link him to the events of 19

²⁹Even though nonapplicants are relieved of the burden of proving proper application, each must still show that he or she would have applied but for Respondent's discriminatory policy. That requirement may be met by "evidence of an employee's informal inquiry, expression of interest, or even unexpressed desire" Kawano, Inc. (1978) 4 ALRB No. 104, enforced Kawano, Inc. v. ALRB (1980) 106 Cal.App.3d 937, citing International Brotherhood of Teamsters v. U.S., (1977) 431 U.S. 324 [97 S.Ct. 1843].

April. Only George Carreon testified that the "Garcias" were present on April 19. (R.T. , Vol. I, p. 55.) While there is no reference to Marcello Garcia in the payroll records for the period in question (GCX 2), Maria Benita Lara recalled that Mr. Garcia obtained work in the spring thinning. (R.T. , Vol. III p. 65.)

I have also excluded employee Alonso Carrillo. Although various witnesses placed Mr. Carrillo at the labor camp on 19 April (see R.T. , Vol. II, pp. 31, 50, 52) , the Laras indicated that Mr. Carrillo sought work with them on April 22. As Mr. Carrillo did not testify on his own behalf, foreman Foronda specifically denied refusing rehire to him for any discriminatory purpose, and Mrs. Lara's version of the events of 22 April was equivocal³⁰ (see discussion, supra), I find there is insufficient evidence to include him among the group of discriminatees.

³⁰Although Foronda's expressed reason for refusing work to Carrillo (because of the latter's "papers") differed from the remarks attributed to supervisor Marcello Tomsì ("the fields were improperly thinned"), I am of the opinion that Carrillo's case parallels that of Salvador Delgadillo Perez. As both were allegedly denied employment on the same day the Laras revealed their union sympathies, but remained at work, I conclude that General Counsel has failed, to prove a prima facie case in this regard.

C. Alleged Interrogation of Rodolfo Madronero and Virgilio Castillo of 19 April 1985
(Paragraph 9)

1. Facts:

Virgilio Castillo testified that on 19 April when William Foronda came to the labor camp, the foreman asked him whether or not he had signed an authorization card. Castillo replied that he had not signed, but Foronda retorted that he knew Castillo had signed and therefore there was no work for him.³¹ (R . T . , Vol. I, pp. 143-146).

Rodolfo Madronero recalled a similar conversation between himself and Foronda at the foreman's house in the presence of Lara Palacios, Antonia Palacios, Marina Palacios and Pedro Vidal in the early evening of April 20. Madronero asked for work and Foronda declined because the employee had signed a UFW authorization card. When Madronero denied signing the card, Foronda indicated that someone had seen him sign the card, and that therefore Foronda could not give him work.

As indicated, supra, William Foronda denied even being present at the labor camp on 19 April. He did recall

³¹Saul Callahan testified that the interrogation by Foronda was directed at Rodolfo Madronero rather than Virgilio Castillo (R . T . , Vol. II, p. III), but Mr. Madronero denied that Foronda asked whether he had signed (R . T . , Vol. II, p. 52).

that members of Carreon's crew -- including Virgilio (Castillo), Rudy (Madronero), and Lara (Palacios) volunteered that they had signed for the union on April 16 or 17 when Foronda had gone to the camp to ask for work (before he became foreman). He further recalled Rudy Madronero, Antonia Palacios and Lara Palacios going to his house to ask for work on 22 April. Foronda told them that the company already had its people by that time. (R.T., Vol. I, pp. 126-128.)

2. Analysis and Conclusions:

Interrogation is proscribed when it tends to restrain or interfere with the exercise of rights guaranteed by the Act. Maggio-Tostado, Inc. (1977) 3 ALRB No. 33. Where the employer's general manager questions an employee (organizer) as to his/her views, sympathies or activities with the union, said conduct tends to restrain or interfere with the collective rights guaranteed by the Act, and is thus violative of section 1153(a). Rod McLellan Co. (1977) 3 ALRB No. 71, rev. den. Ct.App., 1st Dist., Div. 4, Nov. 8, 1977; hg. den. Dec. 14, 1977. Similarly, it is a violation of section 1153(a) for the employer to question its employees about their support for the union and thereafter threaten discharge and/or promise benefits for such support. Harry Boersma Dairy (1982) 8 ALRB No. 34. In the instant case, while Castillo recalled that Foronda asked whether or not he had signed a card, both General Counsel witnesses Leonora Carreon and Saul Callahan recalled that it

was the employee (either Castillo or Madronero) who volunteered the information that he had not signed after the foreman indicated that there was no work for those who did sign. (R.T., Vol. I, p. 164; Vol. II, p. 64.) This version of the conversation is also consistent with Foronda's recollection that various members of George Carreon's crew volunteered that they had signed for the union.³² As such, no "interrogation" can be said to have occurred.³³

Insofar as General Counsel also alleges that the conversation between Rodolfo Madronero and William Foronda at the foreman's house in the early evening of April 20 was similarly violative of the Act,³⁴ I would reach the same conclusion. Foronda recalled that Madronero and the Palacios came to his house to ask for work and none was available. Madronero recalled asking for work and Foronda declining because the employee had signed a union authorization card. When Madronero denied signing the card, Foronda indicated that someone had seen him and that therefore Madronero could not work. No corroborative

³²As discussed, supra, I do not credit Foronda's recollection of the dates of these conversations.

³³The impact of the threatening statement that those who did not sign would have not work is discussed, supra.

³⁴It is unclear from the complaint or General Counsel's Post-Hearing Brief whether or not a separate violation has been alleged in this regard or whether the remarks are viewed to be merely illustrative of the Respondent's conduct: following 19 April.

witness of this cryptic conversation was provided by General Counsel; Pedro Vidal, Antonia Palacios, Lara Palacios, and Marina Palacios all failed to testify. While Madronero's version of events may shed light on the motivation for the rehiring decisions discussed supra, no credible interpretation of the testimony would suggest that an improper "interrogation" occurred. At best, the employee volunteered that he did not sign the Union authorization card and the foreman disbelieved him. I recommend the dismissal of this separate allegation in the complaint.

D. Alleged Refusal to Rehire/ Hire Francisca Camaddo and Renee Gonzalez of 20 April 1985
(Paragraph 10)

1. Facts:

Both Francisca Camaddo and Renee Gonzalez worked for Duke Wilson Company in George Carreon's crew in 1984. They sought work in 1985 after the commencement of the thinning season, first looking at the labor camp on Van Buren Avenue where they were housed the previous year. They then went to Rancho Los Gatos on 18 April and met George Carreon and approximately 20 crew members. They were explained the situation of the girdling work and both signed union authorization cards. The next day (19 April) supervisor Marcello Tomsy spoke with Gonzalez by telephone and told her and Ms. Camaddo to report to work at Avenue 60 on April 20. Because they had car problems, Gonzalez and Camaddo arrived after work had commenced (approximately

8:00-10:00 a . m .) . They asked Foronda for Tomsí but were informed that they had no work because they had signed for the union and the boss did not want the union. (R . T . , Vol. II, pp. 7, 18 .) The two made no further efforts to obtain work during the spring thinning. The testimony of Ms. Gonzalez and Ms. Camaddo was corroborated by witnesses Maria Benita Lara and Jose Lara. (R . T . , Vol. III pp. 54, 77 .) Neither foreman Foronda nor supervisor Tomsí testified concerning these events.

2. Analysis and Conclusions:

Applying the identical standard (regarding the failure to rehire the other members of the Carreon crew) to the situation involving Renee Gonzalez' and Francisca Camaddo's efforts to return to work on 20 April, I find Respondent's conduct violative of section 1153(a) and (c) of the Act. The uncontroverted testimony of four Witnesses (Gonzalez, Camaddo and the two Laras) quotes William Foronda as denying work for the two because they had signed for the union and the boss did not want the union. There was nothing about the testimony or demeanor of Gonzalez, Camaddo or the two Laras which would cause me to discredit the entirety of their narrations. On the contrary, as discussed supra, Mrs. Lara struck me as one of the more credible witnesses at the hearing, and the two alleged discriminatees seemed sincere, straightforward, and responded in a direct fashion to examination. . Both Ms. Camaddo and Ms. Gonzalez were soft-spoken and not prone to

exaggeration. They each candidly conceded having arrived late on the day in question, as well as failing to ask Foronda directly for work.³⁵ In contrast, no supervisory personnel from Respondent denied the events in question.

In similar situations, the Board has held that it was unnecessary for General Counsel to show that there were positions available (i . e . , that the two arrived on time on the day in question) on the day the employees applied for (re)hire. Mission Packing Co. , supra. There, as here, the employer hired numerous employees to fill vacancies during the time period immediately subsequent to the applications for rehire.

Nor do I find it particularly significant that Gonzalez and Camaddo failed to pursue their search for work by contacting either supervisor Tomsy or general manager Mark Wilson. Both heard William Foronda state that there was no work for them, and also indicate that he was the foreman in charge of the crew. As there was no reason to disbelieve these remarks, it would seem pointless for either to have continued to pursue their search for work.³⁶

³⁵It was clear from the circumstances that both were at the fields seeking work. It was equally apparent from Foronda's remarks that the foreman was aware of the interest of both women in returning to work. Additionally, Mr. Lara credibly testified that both "applied" for work on the day in question. (R.T. , Vol. Ill, p. 77.)

³⁶Because Tomsy was the supervisor and was the person who offered the work in the first place, the employees'

(Footnote Continued)

Having found that Foronda made the remarks attributed to him,³⁷ and having found that he denied work to Camaddo and Gonzalez on the basis of their having signed union authorization cards, I will recommend an appropriate remedy therefor.

E. Alleged Discriminatory Discharge of Salvador Delgadillo Perez of 22 April 1985 (Paragraph 12)

1. Facts:

Both Maria Benita Lara and her husband Jose Lara recalled giving Salvador Delgadillo Perez a ride to work on the morning of 22 April 1985. The two testified that Mr. Perez worked one day but was told by foreman Foronda at the end of the day that there would be no more

(Footnote Continued)
failure to return to speak with him regarding the matter may seem somewhat peculiar. But the real question is whether or not they made proper application for work in the thinning, and I conclude that they did so by going to speak with the foreman in charge of the crew in the field. Indeed, Respondent has conceded Foronda's responsibility for the hiring decisions at that time. Tomsy could recommend but did not have the final hiring authority. And, as discussed supra, Wilson was not in any way involved at this level, nor had he been previously. To obligate the employees to proceed "all the way up the managerial ladder" to seek work does not seem consonant with the hiring practice of Respondent, and not suggested by the case law. See *Abatti Farms, Inc.* (1979) 5 ALRB No. 34, modified on other grounds, *Abatti Farms, Inc. v. ALRB* (1980) 107 Cal.App.3d 317.

Such a result is also consistent with the uncontroverted remarks attributed to Foronda of the previous day.

work for him because he signed a union card. (R.T., Vol. III, pp. 57, 80-81.)

However, on cross-examination, when referring to the conversation (of the same day) concerning Alonso Carrillo,³⁸ Mrs. Lara asked supervisor Marcello Tomsì why work was not given to former members of Carreon's crew, volunteering that it was not bad "to sign with the union". According to Mrs. Lara, Tomsì denied that the authorization cards were the reason for the failure to be hired, but stated that it was because the people from the camp burned the Van Buren field. (R.T., Vol. III, pp. 66-67.)

When examined concerning Mr. Perez at hearing, foreman Foronda was unable to match the name with the face. (R.T., Vol. I, pp. 122-123.) Nor is there reference to Salvador Delgadillo Perez on the date in question in any of the payroll records introduced by the parties.³⁹

2. Analysis and Conclusions:

The case of Mr. Perez is more enigmatic. On the one hand, I have credited the Laras' version of the events of the 19th (at the labor camp) and 20th (concerning Gonzalez and Camaddo) because Foronda did not deny the remarks attributed to him, and because the alleged conduct

³⁸Mr. Carrillo also rode to work with the Laras on the day in question. See discussion, supra.

³⁹Mr. Perez apparently worked in the small crew which rethinned the Perlettes at the Van Buren Ranch on 7 April 1985. See GCX 2.

is consistent with the version of events recited by all other witnesses.

On the other hand, the alleged discriminatee did not testify on his own behalf to corroborate the version of the Laras. Indeed, Mrs. Lara's recollection of the conversation with supervisor Marcello Tomsic concerning employee Alonso Carrillo equivocated on this issue. It is inconsistent with General Counsel's theory of the case that the Laras -- who voluntarily made known their union sympathies -- would be retained on the same occasion that Mr. Perez would be fired because Foronda learned that the latter had been one of the signers. The foreman's testimony sheds no light on the issue nor do the payroll records. I therefore find that the testimony of the Laras is insufficient standing alone to prove the discriminatory discharge and conclude that General Counsel is unable to make out a prima facie case on this record. I recommend the dismissal of the allegations concerning employee Salvador Delgadillo Perez.

V. The Saldanas

A. Alleged Interrogation of Jose Saldana and Jose Saldana, Jr. (Paragraph 13)

1. Facts:

Jose Saldana commenced working for Respondent as a tractor driver, irrigator, and general laborer in June 1984. He worked two months, went to Mexico for a one-month vacation, and returned the first of

September after receiving a recall letter from foreman Gustavo Perez.⁴⁰ Jose Saldana, Jr. , started working for Duke Wilson Company in November 1984 helping in the irrigation, spraying, and cleaning hoses under foreman Perez. In the spring of 1985, both Saldanas commenced speaking with Union organizer Juan Cervantes at the shop prior to work in the mornings and in the fields during breaks.

Jose Saldana recalled that on the occasion of Mr. Cervantes' first visit to the fields during the afternoon, foreman Gustavo Perez approached, queried who Saldana was speaking to, and warned that the latter would be fired if not careful. (R.T. , Vol. III, pl. 7 .)

Mr. Saldana, along with the other tractor drivers, irrigators, foreman Gustavo Perez, and Jose Saldana, Jr. , chatted with Juan Cervantes some three times at the shop before work started. On one occasion, Gustavo Perez asked Saldana whether he had signed up with the union and indicated that he knew Saldana was "secretary" of the union. (R.T. , Vol. III, p. 9 .)

⁴⁰I find Mr. Saldana's recollection that the company offered him a job "for life" (see General Counsel Post-Hearing Brief, pp. 26-27) to be inherently implausible in light of his very limited tenure. A more reasonable interpretation of the offer (which was not disputed by Mark Wilson) was that Saldana would remain employed as long as there was work available and his performance remained satisfactory. In any event, neither analysis helps explain the underlying motivation for Saldana's discharge. See discussion, infra.

In April, Mark Wilson arrived at the shop when Saldana and the other tractor drivers were speaking to Juan Cervantes. Cervantes left and conversed with Wilson in English by Cervantez' car. Afterwards, Mark Wilson asked Saldana in an angry tone whether or not the tractor drivers had signed with the union. Saldana denied having signed, which conversation was repeated some three days later (around noontime) between Mark Wilson and Jose Saldana in the fields at Avenue 60. (R.T., Vol. III, pp. 11-12.) According to Mr. Saldana, Mark Wilson would ask Jose Saldana and Jose Saldana, Jr., "all the time" whether or not they signed union authorization cards, which Jose Saldana always denied although in actuality he signed on 30 April 1985. (R.T., Vol. III, pp. 12-13.)

Jose Saldana, Jr., confirmed that Mark Wilson asked him in April on some 3-4 occasions whether or not he had signed union authorization cards. On the first occasion, Jose Saldana, Jr., was on Avenue 60 cleaning hoses in the morning when Mark Wilson asked about his union sentiments; the second occasion was toward the end of April. Foreman Gustavo Perez also made similar inquiries on 2-3 occasions in April 1985. At all times Jose Saldana, Jr., denied signing for the union. (R.T., Vol. III, pp. 40-41.)

For the company, Mark Wilson conceded that he became aware of the UFW organizing campaign in March or April upon receipt of the Notice of Intent to Take Access papers, and was in contact with Juan Cervantes who was

speaking to a group of tractor drivers on one occasion when the workers were supposed to be in the fields. Wilson specifically denied asking Jose Saldana or Jose Saldana, Jr. , about their conversations with Juan Cervantes or their union sentiments. He suggested that Jose Saldana volunteered information that the organizers were visiting daily, but that he, Wilson, had nothing to worry about, because they (the tractor drivers) did not want the union. (R.T. , Vol. I, p. 22.)

2. Analysis and Conclusions:

On this issue, General Counsel has provided evidence of the following interrogations concerning the Saldanas: The questioning of Jose Saldana by foreman Gustavo Perez and subsequent warning during UFW organizer's Juan Cervantes' first visit to the field; inquiries by both Gustavo Perez (on one occasion) and Mark Wilson (on two occasions) as to whether or not they (the tractor drivers) signed up with the union; and similar inquiries of Jose Saldana, Jr. , by Mark Wilson (three-to-four occasions) and Gustavo Perez (two-to-three occasions) in April 1985. Credibility resolutions are again determinative because if the inquiries and threatening remarks are found to have occurred, they would be violative of the Act. See Harry Boersma Dairy, supra, Giannini & Del Chiaro Co. (1980) 6 ALRB No. 38.

I found Jose Saldana to be a sincere witness --not prone to overstatement, and desirous of directly

answering questions posed on examination. Jose Saldana, Jr. , was a particularly compelling witness -- readily conceding that Mark Wilson had offered him work after the dispute with his father (see discussion infra) which testimony, of course, is detrimental to his father's case. In contrast, Mark Wilson's specific denial was coupled with the commentary that the employees were volunteering information about the organizer's activity -- which remark I find somewhat difficult to believe because of the Saldanas' articulated concern about how the general manager would react to the union organizing effort. Foreman Gustavo Perez never testified, so the remarks attributed to him remain uncontested on the record. I thus credit the Saldanas¹ version of the events of April 1985, and conclude that Respondent violated section 1153(a) of the Act. I will recommend an appropriate remedy therefor.

B. Alleged Discriminatory Discharge of Jose Saldana of 17 May 1985 (Paragraph 14)

1. Facts:

On 17 May 1985, Jose Saldana approached the field on Avenue 62 and Monroe (the Don Ranch) to commence work at 5:30 a.m. Mark Wilson was already present and ordered Saldana to move the tractor into the field and then adjust the machinery to prepare for the day's task of spraying gibralic acid.⁴¹ Saldana replied that he did not

⁴¹Gibralic acid is applied to table grapes to cause
(Footnote Continued)

have the proper tools to adjust the machinery (they were with foreman Gustavo Perez who had yet to arrive) and asked Mark Wilson to lend him his tools. According to Saldana, Wilson retorted angrily (and obscenely) in English that the worker could not have his (Wilson's) tools and that Saldana should not work any more (R . T . , Vol. III, pp. 17-18). Mark Wilson left, as did Jose Saldana. The latter met up with Gustavo Perez on Avenue 62 and informed the foreman of the discharge. Two to three days later, Saldana returned with his son, Jose Saldana, Jr . , "to beg for his job" , but Wilson said there was no more work for Mr. Saldana. Jose Saldana, Jr . , however, could have a job with the company "any time". (R . T . , Vol. III, pp. 19-21, 46 .)

Mark Wilson's version of events closely paralleled that of Jose Saldana.⁴² He told Mr. Saldana not to use his tools, and to wait for Gustavo Perez to bring the proper equipment before starting to work. He proceeded to call Gustavo Perez on the radio, and did not hear from Jose

(Footnote Continued)

rapid growth to the berry in a short period of time. The acid is applied by a tank sprayer hooked onto a tractor. One hundred percent coverage of the berries is critical, as the hormone will only affect what it comes into contact with. Timing is also important as "gibbing" must be rotated from ranch to ranch and then repeated during the ripening season. (See R . T . , Vol. IV, pp. 4-7; 9-10 .)

⁴²The only real difference in the testimony seems to be the interpretation Saldana gave to Wilson's command not to work. Wilson meant for the employee to wait for the arrival of foreman Gustavo Perez (and the appropriate tools). Thus, the General Manager specifically denied firing Saldana on 17 May. Saldana interpreted the remarks to mean he was fired.

Saldana until the latter arrived 2-3 days after 17 May to ask to come back to work. According to Mark Wilson, Saldana explained that he had not quit, but that he had just walked off the job on the 17th because he was mad. (R.T., Vol. IV, pp. 10-11.) Wilson said that he would not rehire Saldana because the latter had "left him in a jam" during the critical "gibbing" process, and that he had had to go and find a new person to replace the tractor driver.⁴³

2. Analysis and Conclusions;

I conclude the General Counsel has been unable to present a prima facie case of discriminatory discharge because of the lack of evidence of a causal relationship or connection between Mr. Saldana's protected activity and the adverse action taken against the employee. Mr. Saldana's union activities -- speaking on occasion with organizer Juan Cervantes -- do not distinguish him from any other tractor driver or irrigator who also engaged in such conversations at the same time as Saldana. By his own testimony, Saldana never admitted to having signed a union authorization card, so there was no basis on this record to

⁴³According to Wilson, gibbing is one of the more complex tractor driver tasks. Normally he preferred to train his personnel (in "leaf feeding" -- applying minor chemicals and fertilizers) before the gibbing operation. Jose Saldana had 'received this training and Wilson felt that the latter was now capable of doing the gibbing work. He was thus forced to retrain new personnel.

explain why Wilson would be particularly suspect of Saldana's union sympathies and/or participation.

Both Saldana and Wilson attributed the firing to the argument the two had on 17 May. It is apparent from their testimony that the two had a misunderstanding as to what Wilson had ordered when Saldana was refused the general manager's tools. Wilson told Saldana not to work until foreman Gustavo Perez arrived with the necessary equipment; Saldana perceived the remarks as an order to cease work. As the conversation was in English, Saldana conceded on the witness stand that his understanding of English was very limited, and the latter could only recall certain portions of the remarks, I credit Mark Wilson's version that the employee was not fired on the day in question but walked off voluntarily and was not allowed to resume employment upon his return 2-3 days later. Indeed, Wilson credibly testified that during the conversation of May 20, Saldana conceded having walked off the job on the 17th.

I further credit Wilson's explanation of the reason for the decision not to allow Mr. Saldana to return -- namely that the employee left him in a serious predicament in the midst of the gibbing operation.⁴⁴

Wilson's treatment of Jose Saldana, Jr., -- who was also

⁴⁴This "predicament" suggests a legitimate, non-discriminatory rationale for Wilson's apparent condensation of Jose Saldana, Jr.'s similar early departure on 17 May.

allegedly suspected of being a UFW sympathizer and/or participant -- further belies any causal nexus between the unfortunate termination of Jose Saldana and any anti-union animus on the part of Respondent. Jose Saldana, Jr. , conceded that Mark Wilson offered him his job on May 20 despite the dispute with his father. Such conduct does not suggest unlawful motivation under the circumstances, and I recommend that this paragraph of the complaint be dismissed.⁴⁵

VI. Summary

I find that Respondent violated section 1153(a) of the Act by the unlawful interrogation of employees Jose Saldana and Jose Saldana, Jr. , (by general manager Mark Wilson and foreman Gustavo Perez) in April 1985. I further find that Respondent violated section 1153(a) and (c) of the Act by its failure and/or refusal to rehire employees Rodolfo Madronero, Marina Palacios, Lara Palacios, Pedro Vidal, Jesus Reyes, Jessie Munoz, Vidal Payan, Virgilio

⁴⁵I thus reject General Counsel's contention (Post-Hearing Brief, pp. 26-27) that no reason was given for the termination. Wilson credibly testified that he explained to Saldana why the latter could not return on the day in question (R. T. , Vol. IV, pp. 12-13). Of course, under the Act, the reasons for the discharge could be good, bad, or indifferent, so long as they are not for prohibited reasons. See Bruce Church, Inc. (1982) 8 ALRB No. 81. In the instant case, I find no causal connection between Mr. Saldana's protected concerted (union) activities and his termination.

Castillo, Antonia Palacios, Gilberto Serna, Saul Callahan, Rico Parcez, Miguel Duran, Ramiro Reyes, Ernie Abuyen, Bill Abuyen, Tony Montana, Ernesto Cruz, and Artemio Centeno on 19 April 1985 and Renee Gonzalez and Francisca Camaddo on 20 April 1985.⁴⁶ I recommend dismissal of all other fully litigated allegations raised during the hearing. Because of the importance of preserving stability in California agriculture, and the significance of protecting employee rights, I recommend the following proposed:

ORDER

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

1. Cease and desist from:

a. Interrogating any agricultural employees concerning whether or not they have signed UFW authorization cards or have engaged in any other concerted or union activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

b. Discouraging membership of employees in the United Farm Workers of America, AFL-CIO, or any other

⁴⁶The backpay period for each of the discriminatees except Gonzalez and Camaddo commences 20 April 1985 -- the first day work was available for the Carreon crew members. As Ms. Gonzalez and Ms. Camaddo arrived late on 20 April, their backpay period should commence the next day -- 21 April 1985.

labor organization, by unlawfully refusing to rehire or hire any of its agricultural employees or in any other manner discriminating against individuals in regard to their hire or tenure of employment or any term or condition of employment, except as authorized by section 1153(c) of the Act.

c. In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of his/her 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 Rodolfo Madronero, Marina Palacios, Lara Palacios, Pedro Vidal, Jesus Reyes, Jessie Munoz, Vidal Payan, Virgilio Castillo, Antonia Palacios, Gilberto Serna, Saul Callahan, Rico Parcez, Miguel Duran, Ramiro Reyes, Ernie Abuyen, Bill Abuyen, Tony Montana, Ernesto Cruz, Artemio Centeno, Renee Gonzalez and Francisca Camaddo to their former or substantially equivalent positions if it has not already done so, and make them whole for losses of pay and other economic losses they have suffered 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 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, photocopying, and otherwise 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 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 thirty days after the date of issuance of this Order, to all agricultural employees employed by Respondent from April 1985 to the present.

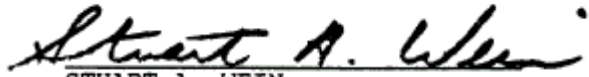
e. Post copies of the attached notice, in all appropriate languages, in conspicuous places on its property for 60 days, the times and places of posting to be determined by the Regional Director and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

f. Arrange for a representative of Respondent or a Board agent to read and distribute the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at times and places 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 their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees in order to compensate them for time lost at the reading and during the question and answer period.

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

Dated: November 8, 1985


STUART A. WEIN
Administrative Law Judge

APPENDIX A

Respondent Work Force - Foronda Thinning Crew
April 19 - May 6

<u>Date</u>	<u>Number of Employees*</u>	<u>New Hires</u>
April 19	5	5
April 20	36	31
April 21	34	8
April 22	43	9+ ⁴⁷
April 23	46	4
April 24	5	0
April 25	6	0
April 26	34	1
April 27	39	3
April 29	41	2+
April 30	43	5
May 1	51	8
May 2	51	0
May 3	51	0
May 4	50	0
May 6	36	0

*Excluding Marcello Tomsì, William Foronda and
Julita Foronda (GCX 2)

⁴⁷For April 22 and April 30, there is no readily apparent way of ascertaining how many of the employees hired on those dates were "new" hires. The number reflects merely the difference in the total from the preceding day.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, DUKE WILSON COMPANY, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by interrogating employees Jose Saldana and Jose Saldana, Jr., regarding whether or not they had signed union authorization cards and by refusing to rehire employees Rodolfo Madronero, Marina Palacios, Lara Palacios, Pedro Vidal, Jesus Reyes, Jessie Munoz, Vidal Payan, Virgilio Castillo, Antonia Palacios, Gilberto Serna, Saul Callahan, Rico Parcez, Miguel Duran, Ramiro Reyes, Ernie Abuyen, Bill Abuyen, Tony Montana, Ernesto Cruz, Artemio Centeno, Renee Gonzalez and Francisca Camaddo because of their protected, concerted 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 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. Specifically,

WE WILL NOT interrogate any agricultural employee regarding whether or not he or she has signed a union authorization card and/or has engaged in any protected concerted or other union activity.

WE WILL NOT refuse to rehire any employee for engaging in any protected/ concerted and/or union activity.

WE WILL reimburse Rodolfo Madronero, Marina Palacios, Lara Palacios, Pedro Vidal, Jesus Reyes, Jessie Munoz, Vidal Payan, Virgilio Castillo, Antonia Palacios, Gilberto Serna,

Saul Callahan, Rico Parcez, Miguel Duran, Ramiro Reyes, Ernie Abuyen, Bill Abuyen, Tony Montana, Ernesto Cruz, Artemio Centeno, Renee Gonzalez and Francisca Camaddo for all losses of pay and other economic losses they have suffered as a result of our discriminating against them plus interest, and in addition offer them immediate and full reinstatement to their same or substantially equivalent position.

DATED:

DUKE WILSON COMPANY

By: _____
(Representative) (Title)

CASE SUMMARY

DUKE WILSON COMPANY
(UFW)

Case Nos. 85-CE-61/67-EC
12 ALRB No. 19

ALJ DECISION

The ALJ found that Duke Wilson Company, through its foreman William Foronda, refused to rehire a group of grape harvest employees because of their organizational activity on behalf of the UFW. The ALJ found that Foronda informed the employees that those who had signed union authorization cards would be blacklisted by the company. The ALJ found that subsequent attempts by former employees to obtain work confirmed the unlawful hiring practices of the company.

The ALJ also found that the company unlawfully interrogated a tractor driver and his son through the questioning of supervisor Mark Wilson. However, the ALJ rejected the charge that the tractor driver was terminated or refused rehire for unlawful reasons.

BOARD DECISION

The Board affirmed the findings of the ALJ and adopted his proposed order.

* * *

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

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