Hanford, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

NICHOLS FARMS, a California Corporation, Respondent, and JOSE VIDALES, Charging Party.	)	Case No. 92-CE-34-VI 20 ALRB No. 17 September 21, 1994

DECISION AND ORDER

On May 4, 1994, Administrative Law Judge (ALJ) Douglas Gallop issued the attached Decision and Recommended Order in this matter. Thereafter, General Counsel filed exceptions to the ALJ's Decision along with a supporting brief, and Respondent filed an answering brief.

The Board has considered the record and the ALJ's Decision in light of the exceptions[1] and briefs of the parties, and has decided, except as noted below, to affirm the ALJ's rulings, findings and conclusion, and to issue the attached order.

The governing legal principle in this case is that employees, particularly unrepresented employees, who concertedly leave work over a complaint without clearly stating if they are

[1] General Counsel has excepted to some of the ALJ's credibility findings. The Board's established policy is not to overrule an ALJ's credibility resolutions unless the clear preponderance of all relevant evidence convinces us that they are incorrect. (Standard Dry Wall Products (1950) 91 NLRB 544 [27 LRRM 2631] enfd. 188 F.2d 362.) We have carefully examined the record and find no basis for reversing the findings.

striking or quitting, may be properly viewed as engaged in a protected work stoppage, unless some other fact shows they have quit. In NLRB v. Washington Aluminum (1962) 370 U.S. 9 [82 S.Ct. 1099] , the employees, after complaining about frigid conditions in the shop, walked out without saying whether they were quitting or striking. They were found to have been engaged in a protected concerted work stoppage and not to have engaged in unprotected conduct analogous to a resignation.

In this case, the five employees' failure to state that they were going on strike on the evening of July 11, 1992, or to indicate at that time that they intended to return at any definite time, are as consistent with striking as quitting. To hold that such facts are independent evidence of an intent to quit, without more, would be highly destructive of the right of unrepresented employees to strike.[2]

However, the employees' conduct after July 11 resolved the potential ambiguity arising from their actions that evening.

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[2] We further do not agree that Carriage Ford (1984) 272 NLRB 318 [117 LRRM 1249], enfd. 772 F.2d 283 is applicable to the facts here. In Carriage Ford, the employer pointed out to a group of salesmen that they could resign if they did not want to work under the employer's changed work schedule, and the salesmen accepted the resignation option by shaking the Employer's hand and thanking him for having given them the opportunity to have worked for him, and then left. Here, Santos' statement that the employees should leave if they did not wish to work, is insufficient to establish that Santos tendered resignation as an option or that the employees, by leaving without comment, had manifested an intent to permanently sever their employment. Their conduct at that point was at most ambiguous as to whether they were quitting. At the same time, Vidales' threat to quit and take a job at Boswell when Santos refused to consider the employees' request for raises clearly raised the possibility that the employees' actions constituted a quit.

They did not seek reinstatement until after two of them, Jose Vidales and Luis Lara, had sought and been denied unemployment insurance benefits and shared this information with the other three. Vidales and Lara were specifically denied such benefits because they indicated in their applications that they had quit their former employer. The unemployment insurance application forms expressly presented these employees with an opportunity to state as an alternative basis for leaving, that they were "on strike or locked out." We note further that none of the five employees denied or disagreed with their Employer's statement that they had quit as the principal reason for denying their request for reinstatement. These circumstances are sufficient to support the ALJ's conclusion that the weight of evidence fails to establish that the employees were engaged in a protected work stoppage.

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby dismisses the complaint herein.

DATED: September 21, 1994

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON,

Member LINDA A. FRICK, Member

CASE SUMMARY

Nichols Farms, a California Corporation
(Jose Vidales)

20 ALRB No. 17
Case No. 92-CE-34-VI

ALJ Decision

The Administrative Law Judge (ALJ) found that five employees, who joined in protesting the amount of salary raises and left work after their primary spokesman said he would quit and take another job, had quit rather than having engaged in a protected work stoppage. The employees did not return to work the next work day. Their first step was for two of them to file for unemployment insurance benefits. Both responded on the claim forms that they had quit, rather than checking a box stating that they had gone "on strike" or been "locked out." The two who had applied were advised that their claims were denied, and they advised the other employees. The five then contacted the Labor Commissioner and ALRB Regional Office, and thereafter made an offer to return to work that day, though they continued to protest the level of raises. The Employer declined to reinstate them, stating that they had quit. None of the five employees, according to the credited testimony, disagreed with this assertion that they had quit. Based on the foregoing, and the employees leaving without indicating that they would be back or stating that they were on strike, the ALJ found that General Counsel had failed to establish by a preponderance of evidence that the five were engaged in a protected work stoppage.

Board Decision

The Board declined to disturb the ALJ's credibility resolutions. Based on these, the Board found that the evidence failed to show that the employees were engaged in a protected work stoppage from the time they left Respondent's premises. The Board disagreed with the ALJ to the extent that his findings implied that their failure to state that they were striking or were leaving indefinitely was independent evidence of a resignation. The Board did find that the reference to quitting during the conversation preceding their leaving raised the possibility that they were quitting. The responses on the unemployment insurance forms and the employees' failure to disagree with the Employer's statement that he would not reinstate them because they had quit were sufficient evidence to support the ALJ's conclusion that General Counsel had failed to carry the burden of proof that the leaving was a strike rather than a resignation.

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: NICHOLS FARMS, A California Corporation, Respondent, and JOSE VIDALES, Charging Party.	)	Case No. 92-CE-34-VI

Appearances:

Lee Tarkington Lundrigan
Western Legal Associates
Modesto, California
for the Respondent

Stephanie Bullock.
Visalia ALRB Regional Office
Visalia, California
for the General Counsel

May 4, 1994

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DOUGLAS GALLOP: This case was heard by me on March 15, 16 and 17, 1994, in Visalia, California.

It is based on a complaint, issued on November 5, 1993, which alleges that Nichols Farms, A California Corporation (hereinafter Respondent) violated section 1153(a) of the Agricultural Labor Relations Act (hereinafter Act) by refusing to reinstate the Charging Party, Jose Vidales Ribera (hereinafter Vidales or Charging Party) and four co-employees when they unconditionally offered to return to work, on July 13 and 14, 1992, after engaging in an economic strike. Respondent filed an answer to complaint, denying the commission of unfair labor practices, and contending the employees voluntarily quit their positions of employment. The Charging Party did not intervene.

Upon the entire record, including my observations of the witnesses, and after careful consideration of the briefs filed by General Counsel and Respondent, and the arguments made at the hearing, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. Jurisdiction

The charge was served on Respondent on July 14, 1992,[x] and filed on July 15. Respondent is a California corporation engaged in farming, with an office and principal place of business located in Hanford, California, and is an agricultural employer

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[1]All dates hereinafter refer to 1992, unless otherwise indicated.

within the meaning of §1140.4(c) of the Act. Foreman Dennis Santos and Manager Charles Clarence Nichols have been supervisors of Respondent within the meaning of §1140.4(j). Vidales, Jose Luis Lara Rodrigues (Lara), Jose Palomares, Anselmo Lopez and Jorge Alvarez are agricultural employees under §1140.4(j).

II. Background

Respondent grows alfalfa, cotton and sugar beets. It employs irrigators, primarily on a seasonal basis, with the main irrigating season beginning in May and lasting for three or four months, although watering takes place at other times as well. During the main irrigating season, irrigators are assigned to water various fields using watering trucks, and often work in pairs. Irrigating takes place day and night during the season, and employees rotate shifts on a bi-weekly basis, with only one day off per rotation. Prior to beginning their shifts, most irrigators meet as a group with the irrigation foreman at a designated location to receive their work assignments. Santos was hired for this position on May 18, 1992.

Respondent generally reviews its employees' wages two times each year. Although seniority is considered, wage increases are primarily determined by performance. Nichols decides whether there will be any wage increases, and the amount. The irrigation foreman then decides whether individual irrigators will receive raises, and how much, within the parameters set by Nichols.

III. Credibility

The five alleged discriminatees and Marianne Mancilla,

vidales' common-law wife, testified for the General Counsel. Santos was Respondent's most critical witness concerning the events of July II,[2] while Nichols and office employees Mary Ellen Coffelt and Antoinette Lourds Azevedo provided circumstantial corroboration, and direct testimony concerning events which took place on July 13 and 14.

Between Santos and General Counsel's witnesses, Santos was clearly the more reliable, although his testimony was slanted to a degree by his desire to avoid any appearance of having prompted the employees' departure on July 11, a desire it appears was initially based on concerns with potential unemployment insurance claims. Nevertheless, Santos' version of the events was in most respects more strongly supported by the documentary and circumstantial evidence, was given in more detail and with a more confident demeanor, certainly was more logical in several respects and was unshaken by cross-examination.[3]

[2]Another witness testified concerning these events, after reportedly stating he would refuse to testify unless granted anonymity. The witnesses' testimony begins at page 116, volume III of the transcript. After initially corroborating Santos' written account of the incident, the witness retreated into a series of alleged lapses in recall, and denials that he heard or observed various events. The undersigned considers this witnesses' testimony essentially useless in determining the facts of the case.

[3]General Counsel's contention, that Santos should not be credited because he did not repeat certain statements he initially made when cross-examined is not accepted. Although consistency under cross-examination is an important factor to consider, the failure to repeat statements earlier made is far less serious than to make inconsistent and contradictory statements, as was the case with several of General Counsel's witnesses.

All of General Counsel's witnesses testified in a summary and conclusory fashion, and frequently contradicted each other on important points. Vidales and Lara were particularly unimpressive, because their testimony was replete with internal inconsistencies, add-ons, deletions, modifications, non-responses and clear inaccuracies. Palomares was also inconsistent on portions of his testimony, and was evasive on the issues of whether any mention was made of quitting or striking on July 11. While Lopez and Alvarez were more consistent in their testimony, they gave highly abbreviated, slanted versions of the events designed to give the impression that the employees in no way indicated they might leave work on that evening. Rather, they were essentially discharged by Santos, who simply ordered them away, a position not taken by General Counsel or by Vidales. Finally, the testimony of Mancilla, attempting to explain the contents of Vidales' unemployment insurance forms, was improbable, unconvincing and in some instances, also inaccurate. Accordingly, the facts set forth below are based on Santos' testimony, unless otherwise indicated.

IV. The July 11, 1992 Incident

Respondent had granted some of its employees wage increases, which were first paid in the paychecks of June 25. Some employees received no wage increase, including Palomares, Lopez and Alvarez; others were increased 25 cents per hour, including

Vidales[4] and Lara; and two irrigators received 50-cent increases. The alleged discriminatees soon discovered that a recently-hired irrigator had received a wage increase of 50 cents per hour. This upset the employees, some of whom had worked for Respondent in prior seasons. Vidales was particularly upset, because he had been paid $5.10 per hour by Respondent in 1990, but had been reduced to $5.00 per hour when hired in 1992.[5]

The alleged discriminatees were scheduled to work the night shift on July 11, from 6:00 p.m. to 4:00 a.m. Normally, they drove to the meeting location individually or in pairs, but on that evening, they all arrived in Vidales' vehicle.[6] They gathered around Santos, and Vidales began protesting his wage increase, because he knew another irrigator had received a higher raise. The two conversed in a mixture of English and Spanish. Santos is primarily English-speaking, but speaks some Spanish,

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[4]After initially testifying that Respondent "didn't want to give them" a wage increase, Vidales admitted he had received a raise, but wanted the raises to be equal. Mancilla testified both she and Vidales told a representative from the Employment Development Department (EDD) that Vidales had not received a wage increase, and Vidales' employment separation statement, filed in connection with his unemployment insurance claim, states that he was not given the pay raise.

[5]Vidales distorted this by claiming Santos had been "reducing" his wages.

[6]A11 of the employees deny they arrived together in one group. Then again, Lara, Palomares, Lopez and Alvarez denied any knowledge of Vidales' intended course of action for the evening, while Vidales testified he told them he planned to protest the wage increases. It is apparent to the undersigned that, for whatever reason, the alleged discriminatees have been determined to conceal any conduct which might give the appearance of a preplanned concerted action.

while Vidales is primarily Spanish-speaking, but understands English well, and can speak many words in that language."[7]

Santos said the raises were based on merit and performance, and told Vidales he was wasting too much water on the crops. Vidales said he was not using any more water than Lopez, and contended Santos had never complained about this. Vidales told Santos it was unfair to give out unequal raises, and called this discrimination. Santos said he did not think so, and that Vidales did not understand what the word, "discrimination," means. Vidales repeated that the unequal raises were discrimination. He told Santos, in English, he had another job with higher pay he could take at the Boswell company, and if Santos did not give him another raise, he would quit. Santos responded that if Vidales had a job which paid more money, he had the right to better himself. Vidales continued to protest the wage increases, and Santos replied he would decide who received wage increases and how much they would be.[8] Lopez then

[7]Vidales initially testified he does not speak English, but after claiming he told Santos, in English, the employees were going on strike, admitted he knows how to say many words without the need for an interpreter. Another irrigator, Adolfo Chavez, interpreted part of the conversation for some of the other employees.

[8]This last statement comes from the employee witnesses' testimony which is credited, because the undersigned believes Santos was more assertive in his role as foreman than was the appearance he gave as a witness, and it is logical he would have become somewhat aggravated by the threat to quit and repeated allegations of discrimination.

Vidales and other employee witnesses deny Vidales said he had a job offer at Boswell's. Vidales, however, also initially denied working for that company after 1990, but later admitted he returned to work there in 1992, after leaving his employment with

protested the failure to grant him any wage increase, to which Santos replied that Lopez and Palomares, who apparently had been

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Respondent. Even if Vidales did not actually have such a job offer at the time he made the statement, this certainly would not stop him from claiming he did. There is no evidence how Santos would have known that company's name, other than from Vidales.

Santos[1] testimony, that Vidales said he would quit, is corroborated by the initial claims for unemployment insurance benefits for Vidales and Lara, and their employment separation statements, which contain several references to the employees having quit their positions. Vidales' forms were at least partially completed by Mancilla, and each form was reviewed by a bilingual EDD representative. One or both of Lara's forms were at least partially completed by a stranger to whom Lara paid a small fee, and Lara was also interviewed by a bilingual EDD representative. Vidales, Mancilla and Lara gave highly improbable, evasive, vague and totally unconvincing testimony attempting to explain these admissions. In addition, Santos' assertion is corroborated by a written memo he wrote shortly after the incident, which states the employees quit. General Counsel's argument, that because the memo does not identify Vidales as telling Santos he was quitting, there is no corroboration, is unpersuasive. Nichols' testimony concerning his conversation with Santos on the night of the incident also corroborates Santos' claim that Vidales said he was quitting.

The alleged discriminatees deny Vidales said he would quit. Vidales, in his testimony, initially omitted any reference to telling Santos he might not work on July 11. He later testified that he told Santos he was leaving, and would go to some office to seek assistance. Vidales also testified he understands the term, "strike," to mean seeking such assistance. Vidales has worked in this country for many years, and the undersigned believes he is fully aware of what a strike is. Most likely, Vidales, knowing the employees had not engaged in traditional strike activity, invented this definition to add credence to the allegation there had been a strike.

Lara, on the other hand, testified that both Vidales and Lopez told Santos they were not going to work under his conditions. He also testified that it was Santos who told the employees they were quitting, an assertion made by no other witness. Lopez and Alvarez, contradicting both Vidales and Lara, denied they or anyone other than Santos said anything about leaving work, and because they were told to leave, believed they had been discharged. Similarly, Palomares initially testified that the employees left because Santos told them to go home; however, he finally admitted that if Santos had offered to seek another wage increase for them, they would have stayed, indicating the employees chose to leave.

working together, also wasted too much water.[9]

Vidales repeated the accusations of discrimination, and urged the others to leave. He asked them how they could continue to work for someone who discriminates. The employees thought they saw Nichols in the area. Contrary to Santos' testimony, they asked Santos to speak with Nichols about their raises, and Santos told them he was in charge of the matter. Vidales told Santos he would not work under these terms, and was leaving. He said he would go to an office and find someone who would listen to him. Also contrary to Santos' testimony, at this point, Santos told Vidales if he did not want to work for Respondent, to leave or to go. The alleged discriminatees got into Vidales' automobile, although Lara hesitated, and Santos offered to give him a ride to pick up Lara's vehicle. When Lara joined the others, Vidales drove off.[10] Santos' contention, that Alvarez,

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[9]Vidales and Lopez testified that Santos simply told them their work was "no good," hardly a likely response from an individual trying to justify wage-related decisions face-to-face with his crew members, and particularly unlikely with respect to Vidales, who had been given a raise.

[10]lt is logical that the employees, who did later speak with Nichols, would have asked to do so on July 11, and that Santos, as a relatively new supervisor, would have discouraged this and would now be hesitant to state, with Nichols present during his testimony, that he had done so. It is also clear that from the outset, Santos has seen the need to avoid giving the impression that he was in any way responsible for the employees leaving. With respect to Santos telling the employees to leave or to go, these were Vidales' initial assertions, which underwent various alterations through his, and the other witnesses' testimony. Vidales' testimony is being credited in this instance, because Nichols similarly testified that Santos told him he had said the employees could work, or do what they had to do. Santos is otherwise credited on this portion of the incident based on his generally superior credibility, and the unlikelihood he would

Palomares and Lara did not speak is credited over the conflicting evidence on this issue by some of General Counsel's witnesses.[11]

At no time did the employees tell Santos they were going on strike.[12] In addition, at the time they left, the employees gave no indication they planned to return, and indeed, they did not contact Respondent in any manner on the following day, a scheduled workday.

V. The Post-July 11 Events

On July 12, the alleged discriminatees met and made plans for the following day. On Monday, July 13, they first went to an EDD office where, according to Lopez, they were told they did not qualify for benefits. The employees were referred to the labor

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have invented the details regarding Lara's reluctance to leave.

[11]Lara, for example, initially testified he did not speak to Santos, but the other four did. On cross-examination, however, he contended he had spoken, and gave the alleged details, vidales, Lopez and Palomares testified that all five spoke to Santos, but Alvarez admitted he did not say anything.

[12]After initially making no reference to having made such a statement, Vidales testified he told Santos, "We're going on strike," as he was on the way to his vehicle. When questioned further, Vidales claimed the comment "just came out of my mouth," and referred to his intention to seek assistance in the wage complaint. Palomares, who also failed to mention this in his initial testimony, later contended that not only Vidales, but all the employees said they were going on strike. On further examination, Palomares claimed he really did not remember whether anyone mentioned going on strike. The other three alleged discriminatees denied any mention of a strike, and Counsel for the General Counsel did not claim, during the prehearing conference in this case, that such a statement was made. Furthermore, it is undisputed that none of the employees has ever contended any of them told Nichols or a representative for the ALRB that they were on strike, although Palomares' initial unemployment insurance claim states he left work for this reason.

commissioner's office, who referred them to the Visalia office of the ALRB. An ALRB representative advised them to return to work and ask for their jobs back. He also advised them that if they were on strike, they might have a right to reinstatement, but if they quit, they did not.

The five employees went to Nichols' office on July 13, and asked to speak with him. Earlier that day, Nichols had informed Azevedo and Coffelt that the employees had quit, and to prepare their final paychecks. Nichols and the employees communicated through Azevedo, who is bilingual. Vidales repeated his complaint concerning the wage increases, and told Nichols the employees wanted their jobs back. Nichols replied that Respondent does not give employees their jobs back when they quit "in the middle of the night," that they had told Santos they quit, and they had been replaced. It is undisputed that none of the employees disputed these allegations, although Vidales might have explained that they left their jobs because they were angry about their wages.[13] Vidales and Lopez continued to complain about the wage increases, and Nichols said he would stand by Santos' decisions. Nichols informed them their paychecks were ready, and they could have them, except for one employee who was required to return Respondent's equipment first, or have money deducted from his check until he did so.

On July 14, the employees returned to the ALRB office, and a

[13]Azevedo recalls such an explanation, while Nichols did not refer to it in his testimony, and Vidales did not refer to having told Nichols the employees had left work at all.

representative prepared an unconditional offer to return to work. This was delivered to Nichols' office on that date, but since Nichols was out of the area, he did not see it until July 15. Respondent has not offered employment to any of the employees since July 11, and contends they have been permanently replaced.

As noted above, Vidales' and Lara's unemployment insurance claim forms and employment separation statements contain several references to their having quit their employment, and their attempted disassociation from the documents is not credited. Furthermore, at one point in his testimony, Vidales admitted he voluntarily left his job, but then quickly retreated, alleging he had not understood the question.[14] When asked if he told Santos he was quitting, Palomares equivocated stating, "It seems as though I did, but then no, we told him that we were striking because of that." Palomares subsequently backed off from this position, testifying he did not recall whether anyone used the word, "strike."

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[14]The question Vidales allegedly did not understand was, "Did you quit?" As noted above, Vidales both understands and can say the word, "quit," in English, and heard the word over and over again prior to this question. To avoid any possible confusion with the translation, Vidales' answer was taken based on the interpreter's statement that he had used the term, "voluntarily left." The only distinction Vidales raised between the terms is that when an employee quits, he does so at the end of a shift and on amicable terms, while if he leaves voluntarily, it means he leaves in the middle of his shift and does not return. Vidales then contradicted his earlier testimony and denied he had left work voluntarily on July 11.

ANALYSIS AND CONCLUSIONS OF LAW

General Counsel contends the employees engaged in a joint protest of their wage increases and work stoppage, while Respondent contends only two of the employees engaged in individual wage complaints, and the employees quit their jobs, neither of which constitutes activity protected under the Act. Under §1152 of the Act, agricultural employees have the right, inter alia, to engage in concerted activities for the purpose of mutual aid or protection, and §1153(a) makes it an unfair labor practice to interfere with, restrain or coerce agricultural employees in the exercise of §1152 rights. Clearly, the issue of wages pertains to employment, and therefore, this constitutes a protected subject. J & L Farms (1982) 8 ALRB No. 46; Lawrence Scarrone (1981) 7 ALRB No. 13. For conduct to be considered protected, however, the employee action on the protected subject must be concerted. This means the employee must act in concert with, or on behalf of others. Meyers Industries (1984) 268 NLRB 493, revd, (D.C. Cir. 1985) 755 F.2d 941, decision on remand, (1986) 281 NLRB 882, affd, (D.C. Cir. 1987) 835 F.2d 1481, cert, denied, (1988) 487 U.S. 1205; J & L Farms, supra.

Respondent contends that the alleged discriminatees' conduct was not concerted because only two employees spoke, and referred only to their individual wage complaints. As General Counsel points out, what may begin as a personal complaint becomes a concerted protest if other employees join with the complaint, and employees who, as a group, raise individual complaints are

implicitly coming to each other's mutual aid and defense. Armstrong Nurseries, Inc. (1986) 12 ALRB No. 15; Harlan Ranch Company (1992) 18 ALRB No. 8. Furthermore, it is not necessary for each employee in the group to personally contribute to the discussion to be considered a participant in the concerted activity. J & L Farms, supra; Matsui Nursery, Inc. (1979) 5 ALRB No. 60. In this case, Santos saw these employees acting as a group, because they arrived together, gathered around while Vidales and Lopez spoke, and the subject of unequal wage increases affected all of them.

Even if this issue were to be decided in Respondent's favor, it is well established that employees who jointly engage in work stoppages are engaged in protected concerted activity. Lawrence Scarrone, supra; Armstrong Nurseries, Inc., supra; NLRB v. Washington Aluminum Company (1962) 370 U.S. 9 [50 LRRM 2235]. It is undisputed that the five employees in this case left work as a group, and if this leaving is construed as a work stoppage, the conduct was protected and concerted.[15]

The test for whether employees who leave work are engaged in

[15]General Counsel does not allege, and the evidence does not establish that Respondent discharged the employees for complaining about the wage increases or refusing to work. Rather, Santos permitted the employees to discuss their grievances during working time. As noted above, the testimony by some of General Counsel's witnesses, that they only left because Santos told them to, is not credited. Rather, the credible evidence shows that all of the employees left of their own accord. Cf. Modern Iron Works, Inc. (1986) 281 NLRB 1119 [124 LRRM 1052]. Whether each one left based on his conviction in the "cause," or so as not to appear to be deserting the others, or a combination of these factors, is irrelevant in determining whether their actions were protected or concerted.

a work stoppage, or are voluntarily quitting their employment is whether the employees are temporarily withholding their services in order to gain work-related concessions, or are permanently severing the employment relationship. Employees who engage in work stoppages are entitled to reinstatement under conditions which vary, depending on the nature of the work stoppage and, in economic strikes, the existence of permanent replacement employees from the time the strikers unconditionally offer to return to work. Seminole Manufacturing Company (1984) 272 NLRB 365 [117 LRRM 1287]; Modern Iron Works, Inc., supra. Employees who voluntarily quit their employment have no right to reinstatement, even if they resign as a group over legitimate protests concerning their working conditions. When employees are given the option of working under the protested conditions or leaving work, and they choose to leave, such leaving is considered a voluntary quit in the absence of sufficient evidence showing they intend to return once their conditions are met. Carriage Ford, Inc. (1984) 272 NLRB 318 [117 LRRM 1249]; Raymond R. Hufford d/b/a H & H Pretzel Company (1985) 277 NLRB 1327 [121 LRRM 1110]. It is General Counsel's burden to preponderantly establish that employees have engaged in protected concerted strike activity.

The credited direct and circumstantial evidence more strongly points to a voluntary quit than a work stoppage. When the wage demand was rejected by Santos, Vidales stated he was going to quit, and that he had other employment, very strong

indications of intent.[16] Although no other employee made these statements, they were present and heard them, and later chose to join Vidales when he left. It has been found that none of the alleged discriminatees said he was striking, and more significantly, no mention was made of returning.[17] Also missing from the testimony of these employees is a claim they ever intended to return to work for Respondent, at the time they left on July 11.

On the other hand, the request to speak with Nichols and Vidales' vague reference to going somewhere else to seek assistance could be viewed as support for the assertion that when the employees left, they were not permanently severing their ties

[16]Counsel for the General Counsel incorrectly cites Rayglo Corporation d/b/a the Dirt Digger. Inc. (1985) 274 NLRB 1024 [119 LRRM 1062] as a case where the NLRB found a protected work stoppage, even though at least one employee said he was quitting. In that case, the administrative law judge found no employee had said this. In his decision, the judge did cite ABC Prestress & Concrete (1973) 201 NLRB 820 [82 LRRM 1406], where such a finding was made. There, the employee was found to have told other employees, and not the employer, he was ready to "quit" until everything was settled to his satisfaction. Also, the walkout took place in the context of ongoing negotiations, unlike the instant case, and many other facts pointed to a work stoppage, rather than a voluntary quit.

[17]Counsel for the General Counsel asserts, "This is not a game of semantics," and the agricultural employees need not know the legal significance of their actions in order to be protected. Nevertheless, in determining the intent of the employees, their use or non-use of familiar terms is relevant. In this case, the significance is substantially increased, because all of the alleged discriminatees untruthfully denied that Vidales used the word, "quit," and Vidales and Palomares untruthfully alleged they used the word, "strike," on the evening of July 11.

with Respondent.[18] So, what did the employees do after leaving on July 11? One thing they did not do on July 12 was to make any attempt to contact Nichols or Santos to pursue their wage complaint, and there is no evidence they could not have done so. On the following day, they first chose to visit an EDD office, where they apparently inquired about receiving unemployment insurance benefits, since they were admittedly told they did not qualify. It is significant that this was the office they chose to visit, since Vidales, and quite likely the others, knows full well what functions are served by the EDD.

It was not until they were informed by EDD representatives they were ineligible for benefits that the employees took tangible action showing they wished to resume their employment. Nevertheless, they did not speak with Nichols until advised to do so by the ALRB representative. When they did, it is very significant none of them denied Nichols' statement that they had quit, particularly since the ALRB representative had just explained the significance of quitting, as opposed to striking, to their employment rights. Finally, there are the admissions of having quit in the unemployment insurance claims and employment separation statements of Vidales and Lara, based on the information they supplied concerning the reason they were no

[18]Such support is far from unequivocal. By the time they left, Santos had denied their request to speak with Nichols, and they did not resume their attempt to speak with him until several intervening events, discussed below, took place. Vidales' reference to seeking assistance elsewhere could mean a variety of things, including a wage complaint or civil lawsuit, which could be pursued after the employees quit.

longer working for Respondent. Based on all of these factors, it is concluded that General Counsel has failed to preponderantly establish a protected work stoppage. Rather, the evidence shows the alleged discriminatees voluntarily quit, and subsequently changed their minds when it appeared they would be unable to collect unemployment insurance benefits. Since General Counsel has failed to establish a protected work stoppage, Respondent had no obligation to reinstate the employees, and did not commit unfair labor practices by refusing to do so. Therefore, it is unnecessary to determine whether, by his statements on July 13, Nichols discharged the employees (an issue first raised by General Counsel in the post-hearing brief), or whether Respondent complied with reinstatement obligations applicable to striking employees.

ORDER

The complaint is dismissed in its entirety.

Dated: May 4, 1994.

DOUGLAS GALLOP
Administrative Law Judge