Ventura, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

OCEANVIEW PRODUCE COMPANY, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 94-CE-13-1-EC (OX) 21 ALRB No. 8 (September 22, 1995)

DECISION AND ORDER

On March. 2, 1995, following an evidentiary hearing, Administrative Law Judge (ALJ) Douglas Gallop issued the attached Decision and Recommended Order in this matter.[1] Thereafter, Oceanview Produce Company (Respondent, Employer or Oceanview)and United Farm Workers of America, AFL-CIO (Union or UFW) filed timely exceptions to the ALJ's Decision along with supporting briefs, and both parties filed reply briefs.[2] The Agricultural Labor Relations Board (ALRB or Board) has considered the record and the ALJ' s Decision in light of the exceptions and briefs of

[1] On July 19, 1995, the Agricultural Labor Relations Board approved a joint stipulation withdrawing portions of the charges, complaint, ALJ Decision and exceptions herein, relating to a private party settlement agreement entered into by Oceanview Produce Company and United Farm Workers of America, AFL-CIO. The only portion of the case not dismissed concerns the two discharges discussed and ruled upon in this Decision.

[2] Respondent also filed a motion to strike the UFW's exceptions and reply brief on grounds that they were not properly filed or served. We deny the motion, as we find that the UFW's documents were properly filed and served by use of a certificate of mailing. (Cal. Code Regs., tit. 8, §§ 20164, 20166 and 20170.)

the parties and has decided to affirm the rulings, findings and conclusions of the ALJ to the extent consistent herewith, and to adopt his Recommended Order, as modified.

Testimony

On the morning of April 1, 1994,[3] assistant foreman Felipe De Jesus Trejo asked members of foreman Aurelio Rodriguez' celery crew to sign a document labeled, "Safety Training Documentation Employee Training Sign-Up Sheet." The printed parts of the form were in English, but under the portion labeled "Subject (s) covered" there was a handwritten statement in Spanish concerning the need for crew members to use caution in crossing roads when walking to and from fields. Trejo admitted in his testimony that" no safety meeting had been conducted that morning.

Crew member Miguel Ricardo Garcia Cortes (Garcia) signed the sheet. After Garcia signed, Trejo went to the other crew members and told them to sign. Carlos Garcia Nicolas (Nicolas) testified that Trejo told him the document was "from the State." Nicolas refused to sign and told his co-workers that if they did not understand the paper, and did not receive copies, they should not sign, either. When Nicolas asked Garcia why he had signed, Garcia said that he had made a mistake and that the other crew members should not sign if they were not sure what they were signing. Rodriguez told Garcia not to interfere by telling co-workers not to sign the sheet

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[3] All dates herein refer to 1994 unless otherwise specified.

Nicolas and the other crew members asked for a copy of the document but were not given one. Crew members began asking questions about the paper and some were questioning whether they should sign. Garcia said the document was going to cause them problems, because it appeared that if there was an accident the company would use the paper to avoid responsibility. After that, no one else signed the sheet.

At the end of the day, Rodriguez told Garcia and Nicolas to go to the company's office. Both workers refused to go to the office that day,[4] but they went the following Monday after being summoned again. They met with Respondent's personnel manager, Maria De La Cruz, who took them into a conference room where celery department manager Victor Morales and ranch manager Frank Oliver were also present. De La Cruz told Nicolas that he was suspended pending an investigation for refusing to sign the training sheet and for inciting the crew not to sign. She told Garcia that he was suspended pending an investigation for signing the paper and then changing his mind and inciting co-workers not to sign.

Respondent's General Manager, Richard Toman, testified that the employees were suspended so that he could discuss the incident with supervisory personnel and review the company policy regarding insubordination. He stated his belief that the two

[4] We do not address the question of whether the employees' refusal to go to the office might have constituted insubordination, as that conduct was not cited in the Employer's termination notices, nor in the testimony of the Employer's witnesses, as a reason for their discharge.

employees were insubordinate for disobeying an instruction to sign the sheet and for inciting the remainder of the crew not to follow their supervisor's directions. Toman admitted that there was no loss of work production in the crew that day, but said he was concerned about the effect on crew discipline if employees were allowed to stand up to their foreman. After confirming that the company's personnel policies would support his action, he decided to terminate the two employees.

ALJ Decision

The ALJ found that Garcia urged his co-workers not to sign the sheet because he believed it constituted a liability waiver in the event of an on-the-job accident. Since compensation for work-related injuries pertains to wages, hours or other terms and conditions of employment, the ALJ concluded that Garcia's actions were protected. He found that Nicolas' actions in joining with Garcia's activity were similarly protected, regardless of his motive for joining.

The ALJ found that the manner in which Garcia and Nicolas protested was not so unreasonable as to lose its protected status. He noted that such activity loses its protected status only where the conduct is violent or of such a serious nature as to render the employee unfit for further employment. (Citing *D'Arrigo Brothers* (1987) 13 ALRB No. 1, at ALJD, p. 25.) Not every refusal to follow a work order renders an employee's conduct unprotected, he noted, because otherwise

employers would be permitted to order employees not to engage in protected or union activity, and to discipline them for doing so.

The ALJ concluded that Garcia and Nicolas conducted their protest in a manner that was protected. They were being ordered to sign a document which appeared to represent falsely that a safety meeting had been conducted, and if, as Garcia feared, their signature would release Respondent from liability, there would be little they could do once they had signed. Nicolas had asked for a copy of the sign-in sheet, and merely urged other employees not to sign until they had a chance to examine it. Under somewhat similar circumstances, the ALJ noted, the National Labor Relations Board (NLRB) had held that the refusal to sign an attendance sheet did not constitute misconduct justifying discharge. (Citing *Maremount Corp.* (1989) 294 NLRB 11 [132 LRRM 1389].) Garcia's and Nicolas' conduct, unaccompanied by violence, threats or abusive language, was not so egregious as to become unprotected, the ALJ concluded.

Garcia's and Nicolas' conduct was concerted, the ALJ found, because they jointly urged other employees not to sign the sheet. Respondent admitted that it had suspended and discharged the two employees for inciting their co-workers not to sign. Therefore, the ALJ concluded, Respondent had violated section 1153 (a) of the Agricultural Labor Relations Act (ALRA or Act) by discharging Garcia and Nicolas.[5]

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[5] The ALJ concluded that the discharges were not in retaliation for Garcia's and Nicolas' protected activity in a February piece rate dispute.

Analysis and Conclusions

We uphold the ALJ's finding that Garcia and Nicolas were engaged in concerted activity when Nicolas refused to sign the form and when both employees urged their fellow crew members not to sign. The two employees believed (rightly or wrongly) that signing the document would constitute a waiver of Respondent's liability in the event of an on-the-job accident. Since compensation for work-related injuries is within the subject matter of terms and conditions of employment, the protest was undertaken for mutual aid or protection within the meaning of section 1152 of the Act.

Whether Garcia's and Nicolas' concerted activity was *protected* is a- separate question. Employees' rights to engage in concerted activities are not absolute, they must be balanced against the employer's right to maintain order and respect. *(Reef Industries, Inc.* v. *NLRB* (5th Cir. 1991) 952 F.2d 830 [139 LRRM 2435] .) The NLRB and this Board have held that concerted activity is not protected when it is so flagrant, violent or extreme as to render the employees unfit for further service. (Id.; *D'Arrigo Brothers, supra,* 13 ALRB No. 1.) In cases where an employer has disciplined an employee for alleged insubordination, the Board's inquiry must focus on whether the employee's conduct is sufficiently defensible in its context to remain protected under the Act. The issue of defensibility turns

upon the distinctive facts of each case. *(NLRB* v. *Florida Medical Center, Inc.* (5th Cir. 1978) 576 F.2d 666, 673 [98 LRRM 3144].)

In *Highlands Hospital Corporation, Inc.* (1986) 278 NLRB 1097 [121 LRRM 1299], cited in Respondent's exceptions brief, hospital security guards were discharged for refusing to escort nonstriking employees through a picket line or to clean up debris left by strikers on the hospital driveway. The NLRB found that the guards' partial refusal to work constituted unprotected activity, since they had refused to perform legitimate, standard duties which security guards may fairly be required to perform in the line of duty.[6]

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[6]Chairman Stoker believes that employers have the right to require that their employees sign acknowledgments of safety instructions. The preprinted form is not what is significant. The employer could have made compliance of the request to sign the document a condition of employment, i.e., a normal, legitimate job duty, if the request had been made in a reasonably clear manner. What is reasonable must be determined on a case-by-case basis. Additionally, it is clear that if the request made is reasonable the fact that an employee may subjectively believe he or she does not have to sign would not excuse failure to comply with the request. An employer under an objective test of reasonableness has a right to require employees to sign acknowledgments of fact for the purpose of satisfying duties statutorily imposed on employers or to take preventive action to protect himself, herself or itself from potential lawsuits.

One factor here demonstrating the "unreasonableness" in Chairman Stoker's view was that the employer must first make clear to the employees the consequences of continued refusal to sign the form before imposing those consequences, or establish that the employees would have understood that signing the form was a normal part of their job duties. Here, Respondent did not make clear the consequences of continued refusal, except by discharging the two employees most prominent in the concerted activity of urging employees to decline to sign the form. On that basis alone the request cannot be considered "reasonable."

The instant case is distinguishable from *Highlands* in that Garcia's and Nicolas' protest was a one-time occurrence rather than a continuing refusal to perform a particular task required by their Employer. In *Highlands,* the security guards refused on at least two occasions to transport individuals through picket lines and indicated their intention to continue in such refusals because they "did not believe" in crossing picket lines. Such conduct is logically viewed as an unprotected partial strike--i.e., the refusal to perform certain tasks while remaining on the job. (See also, *Lake Development Management Co.*(1981) 259 NLRB 791 [109 LRRM 1027].) Here, Garcia and Nicolas refused and urged their fellow crew members to refuse to sign a document on *one* occasion until they could receive copies and have the document explained to them.[7]

This case is also distinguishable from *Interlink Cable Systems* (1987) 285 NLRB 304 [128 LRRM 1046], in which employees were discharged for concertedly refusing to sign warning slips after returning late from their lunch break. In *Interlink,* the NLRB held that even if the warning slips were issued unfairly, the employees' refusal to sign constituted an unprotected defiance of their supervisor's order. However, the ALJ in

[7]Member Frick believes that *Highlands* is further distinguishable from the instant case in that the employees here were never clearly warned that failure to sign the form was a condition of employment and would subject-them to disciplinary action. She would note that such a warning has often been cited as a factor in cases where the NLRB has found arguably insubordinate conduct to be unprotected. (See, e.g., *Lake Development Management Co.* (1981) 259 NLRB 791 [109 LRRM 1027], Interlink Cable Systems(1987) 285 NLRB 304 [128 LRRM 1046].)

Interlink had emphasized that signing the warning slip merely constituted an acknowledgement that the employee had received the warning and understood it. The warning notice itself contained no admission, but simply stated that the employee had read the notice and understood it. Here, by contrast, the employees were confused about the meaning of the form and were concerned that it might constitute a waiver of liability by the Employer in case of on-the-job accidents. In addition, by signing the document presented to them the employees herein would apparently have been acknowledging that a training session had taken place that morning and that they had participated in it.

We find that the NLRB's decision in *Kysor Industrial Corporation* (1992) 309 NLRB 237 [141 LRRM 1241], represents the most applicable National Labor Relations Act (NLRA) precedent for the instant case. In *Kysor,* the NLRB held that employees had engaged in protected concerted activity when they approached their supervisor's desk to ask for clarification of their work assignment. The evidence in *Kysor* indicated that the employees were confused about their work assignments as a result of two apparently conflicting notices they had just been issued in regard to job classifications and work stations. The NLRB held that by issuing reprimands to the employees who had approached the supervisor, the employer had violated the NLRA by disciplining the employees for concertedly seeking information about their work assignments, a term and condition of employment. (Id., 309 NLRB at 237.)

In the instant case, Garcia and Nicolas were similarly engaged in protected concerted activity when they sought clarification of the safety training sheet before agreeing to sign it. The document would understandably have been confusing to the employees on a number of grounds. First, the pre-printed portion of the form was in English[8] while the handwritten portions were in Spanish. Second, the employees' foreman told them the form was "from the State," but nothing on the form indicated that it was a State of California document. Third, the-form is labeled a "safety training documentation employee training sign-up sheet," and several supervisors testified that the purpose of the form is to document employees' attendance at a safety meeting. Thus, De La Cruz stated that the sheet was a tailgate meeting safety sheet which is required by law[9] whenever the Employer had *a* safety tailgate session, in order to document that the Employer had trained employees on a certain issue.

Richard Toman also called the sheet an attendance sheet and stated that because a large number of employees refused to

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[8] We note that both Garcia and Nicolas testified at the hearing in Spanish and required an interpreter to translate the questions addressed to them from English into Spanish.

[9] It is not clear what statutory requirement De La Cruz was referring to when she stated that the law requires the Employer, whenever it has a safety tailgate session, to document with a sign-in sheet that it had trained the employees on a certain issue. But surely the Employer could not satisfy any such statutory requirement by compelling employees to sign an "attendance sheet" purporting to document their attendance at a training session which never took place. (See, generally, Labor Code sections 6400, et seq., regarding employers' duty to furnish a safe and healthful place of employment for their employees.)

sign the paper, the Employer "didn't have the full record of attendance we expected." (Transcripts, v. VI, pp. 101,120,127.) De La Cruz testified that the Employer's normal practice was to conduct a safety meeting before having employees sign such a form. However, several of the employees testified, and Assistant Foreman Trejo admitted,[10] that there was no meeting conducted that morning on the safety issues described on the form. Garcia and Nicolas both testified that the only time they received safety training from the Employer was at the beginning of each season.

As noted above, NLRB case law clearly holds that employees' rights are not absolute, and that they must be balanced against the employer's right to maintain order and respect in the workplace. *(Reef Industries, Inc.* v. *NLRB,* supra, 952 F.2d 830, 837.) A delicate balance must be struck between the employer's right to run its business and the employees' rights to engage in protected concerted activity. In instances where employees have concertedly refused to carry out a direct order of their employer, there is often a fine line between insubordination and protected concerted activity.

Our conclusion that the employees' conduct herein was protected is grounded in the particular facts of this case. We believe that the discrepancy between what the safety training

[10] De La Cruz, who was not present in the field, first testified that a safety meeting was conducted that day. Later, she admitted that she did not know whether such a meeting had taken place.

form appeared to represent (attendance at a safety training meeting) and what had actually occurred (no training at all) was enough to cause confusion in any employee's mind, even those who may have been able to read and understand all of the words on the form. The employees were justified in refusing to sign the form because they were not sure what they were signing, they were denied the opportunity to obtain copies of the form and have it explained to them, they were confused by the foreman's claim that the form was "from the State" when it did not appear to be an official State document, their refusal was only a one-time occurrence, and the form did not constitute simply an acknowledgment of facts. Other factors weighing in favor of our conclusion are" that the employees communicated the basis for their concern about signing the form to Respondent's agent, the protest did not disrupt work and was carried out in a manner which minimized any undermining of the authority of Respondent's agents to direct work, the refusal to sign the form was conditional and not absolute, and it was clear from the record that the discharges were motivated not so much by the failure to sign the form as by the encouragement of others not to sign, i.e., the very characteristic that made the conduct concerted in nature.

Our decision should not be read to prohibit employers from requiring, as a condition of employment, that employees sign acknowledgments that they have received safety training or any other kind of information. On the contrary, where the purpose of

the document is legitimate, the purpose is made clear to the employees, and the requirement and resulting discipline are applied in a nondiscriminatory manner, we see no reason why such action would be contrary to the ALRA. Further, since we evaluate conduct such as that involved in this case under an objective standard, we note that an employee's mere subjective belief that he or she does not have to sign such an acknowledgment would not make the failure to do so protected. The Board is not relying on any such subjective belief of the employees herein. Rather, their collectively expressed belief that the form might constitute a waiver of the Employer's liability in the case of on-the-job accidents makes their activity *concerted;* their legitimate confusion over the meaning of the form, as well as their request for copies and a chance to have the form explained to them before signing, makes their activity protected.

Different facts might have supported the Employer's position herein. For example, it could have conducted a safety training session in the morning before work commenced, or gathered the crew together at some other time, explaining to the crew the importance of using caution in crossing roads to get to and from the fields. The Employer could then have asked the employees if they had any questions, and further explained any matters the employees had failed to understand. The Employer could then have explained that the training form was merely a paper demonstrating that the employees had attended the training session which had just been conducted, and that their signatures signified only that they were present. In such circumstances, we

would probably find an employee's refusal Co sign the form to be so unreasonable as to lose its status as protected concerted activity.

Under the particular circumstances of this case, however, we find that the delicate balance between the Employer's right to maintain order and direct the work of its employees and the employees' right to engage in concerted activities concerning terms and conditions of employment must be resolved in the employees' favor. Therefore, we hold that the conduct of Garcia and Nicolas in refusing to sign and encouraging fellow employees not to sign the form without an explanation of the purpose of the form and what their signatures would signify constituted protected concerted activity under *Kysor* and other NLRB case law. Consequently, Respondent's discharge of the two employees for engaging in such conduct violated section 1153 (a) of the Act.[11]

ORDER

Pursuant to Labor Code section 1160.3, Respondent Oceanview Produce Company, its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any agricultural employee with regard to hire or tenure of employment, or any term or condition of employment because the

[11] We affirm the ALJ's conclusion that the discharges were not in retaliation for the employees' participation in a February piece rate dispute.

employee has engaged in concerted activity protected under section 1152 of the Agricultural Labor Relations Act (Act) .

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

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

(a) Rescind the discharges of Miguel Ricardo Garcia Cortes and Carlos Garcia Nicolas, and offer them full reinstatement to their former positions of employment, or if their positions no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges of employment.

(b) Make whole Miguel Ricardo Garcia Cortes and Carlos Garcia Nicolas for all losses of pay and/or other economic losses they have suffered as a result of being discharged. Loss of pay is to be determined in accordance with established Board precedent. The amount shall include interest to be determined in the manner set forth in E.W. Merritt Farms (1988) 14 ALRB No. 5.

(c) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records relevant to a determination of the backpay and/or make whole amounts due those employees under the terms of the remedial order as determined by the Regional Director.

(d) Upon request of the Regional Director, sign a Notice to Employees embodying the remedies ordered. After its translations by a Board agent into all appropriate languages, as

determined by the Regional Director, Respondent shall reproduce sufficient copies of the Notice in each language for all purposes set forth in the remedial order.

(e) Mail copies of the Notice, in all appropriate languages, within 30 days after the date of issuance of a final remedial order, to all agricultural employees employed by Respondent at any time from April 12, 1994, until April 11, 1995.

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

(g) Arrange for a Board agent to distribute and read the Notice in all appropriate languages to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and/or 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 lost time at this reading and during the question-and-answer period.

(h) Provide a copy of the Notice to each agricultural employee hired to work for the company for one year following the issuance of a final order in this manner.

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

DATED: September 22, 1995

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

Oceanview Produce Company (UFW) — 21 ALRB No. 8
Case No. 94-CE-13-1-EC(OX)

ALJ Decision

The ALJ found that the Employer violated the ALRA by discharging two employees who refused to sign and urged other employees not to sign a "safety training sheet" circulated by their foreman. The ALJ found that the employees were concerned that their signatures might constitute a waiver of the Employer's liability in the event of an on-the-job accident. He concluded that their protest was not so unreasonable as to lose its protected status under the ALRA.

Board Decision

The Board affirmed the ALJ's conclusion that the employees had engaged in protected concerted activity when they refused to sign and/or urged other employees not to sign the safety sheet. The Board noted that the document would have been confusing to the employees because it was partially in English and partially in Spanish; it contained nothing indicating it was an official State of California document, although their foreman told them it was from the State"; it appeared to document the employees' attendance at a safety meeting, although no such meeting had taken place; the employees' refusal was a one-time occurrence; the form did not constitute simply an acknowledgment of facts; the employees' protest did not disrupt work and was carried out in a manner which minimized any undermining of the authority of the Employer's agents to direct work; the refusal to sign was conditional, not absolute; and it was clear from the record that the discharges were motivated not so much by the failure to sign the form as by the encouragement of others not to sign, i.e., the very characteristic that made the conduct concerted in nature.

The Board emphasized that its decision should not be read to prohibit employers from requiring, as a condition of employment, that employees sign acknowledgments that they have received safety training or any other kind of information. The Board noted that where the purpose of the document is legitimate, the purpose is made clear to the employees, and the requirement and resulting discipline is made clear to the employees, there would be no reason why such action would be contrary to the ALRA. However, the Board held that the employees' refusal to sign the form was reasonable under the circumstances in this case, and that the Employer's discharge of the two employees therefore violated section 1153 (a) of the ALRA.

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NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB) by the United Farm Workers of America, AFL-CIO (UFW), the General Counsel of the ALRS issued a complaint that alleged we, OCEANVIEW PRODUCE COMPANY, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by discharging two employees.

The ALRB has told us to post and publish this NOTICE.

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 a labor organization or bargaining representative;
3. To vote in a secret ballot election to decide whether you want a union to represent you or to end such representation;
4. To bargain with your employer about your wages and working conditions through a bargaining representative chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another and;
6. To decide not to do any of these things.

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

WE WILL NOT discharge or otherwise retaliate against employees because they protest about their wages, hours or other terms and conditions of employment.

WE WILL offer Manuel Ricardo Garcia Cortes and Carlos Nicolas Garcia reinstatement to their former positions of employment, and make them whole for any losses they suffered as a result of our unlawful acts.

DATED: OCEANVIEW PRODUCE COMPANY

By: _____

(Representative) (Title)

If you have any questions 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 South Waterman Avenue, El Centro, CA 92243. The telephone number is (619) 353-2130.

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

DO NOT REMOVE OR MUTILATE.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	Case Nos. 94-CE-13-EC(OX)
OCEANVIEW PRODUCE COMPANY,	)	94-CE-13-1-EC(OX)
	)	94-CE-13-2-EC(OX)
Respondent,	)	94-CE-17-EC(OX)
	)	94-CE-22-EC(OX)
and	)	94-CE-23-EC(OX)
	)	94-CE-26-EC(OX)
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	)	94-CE-27-EC(OX)
	)	94-CE-29-EC(OX)
Charging Party. __	)	94-CE-31-EC(OX)

Appearances :

Theodore R. Scott
LITTLER, MENDELSON, FASTIFF, TICHY & MATHIASON
San Diego, California
for Respondent

Thomas Lynch
MARCOS CAMACHO, A LAW CORPORATION
Keene, California
for Intervenor

Eugene Cardenas
Salinas ALRB Regional Office
for General Counsel

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DOUGLAS GALLOP: This case was heard by me on November 1-4 and December 7-9, 1994, in Oxnard, California. It is based on charges filed by the United Farm Workers of America, AFL-CIO (UFW or Union) , alleging that Oceanview Produce Company (Respondent) violated sections 1153(a) and (c) of the Agricultural Labor Relations Act (Act). The General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint, which has been amended three times (complaint) alleging that Respondent engaged in acts of retaliation against employees and interfered with t-heir rights under §1152. Respondent filed two answers denying the commission of unfair labor practices. The Union has intervened in these proceedings. General Counsel and Respondent filed post-hearing briefs,[1] which have been duly considered. Based on the testimony of the witnesses, the documentary evidence received & the hearing, and the oral and written arguments made by the parties, the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

I. Jurisdiction

Respondent, a California corporation with an office and principal place of business in Ventura, California, is engaged in the business of agriculture, and is an agricultural employer within the meaning of section 1140.4 (a) and (c) of the Act. The Union is, and has at all material times' herein been a labor

[1]Respondent requested it be permitted to exceed the page limit for briefs, which was unopposed by the other parties, and gran

organization within the meaning of section 1140.4 (f) . Respondent denies that the 13 individuals named in paragraph 14 of the complaint were statutory employees under section 1140.4(b). Although Respondent, in its answer, denied the supervisory status of the 11 individuals listed in paragraph 13 of the complaint, it subsequently stipulated that Maria De La Cruz, Personnel Manager; Lidia Maldonado, Forelady; Manuel Vega, Foreman; Victor Morales, Celery Department Manager; and Frank Oliver, Ranch Manager were supervisors as defined by section 1140.4(j). Respondent further stipulated that Stephen D. Highfill, Labor Relations Consultant, acted as its agent, under section 1165.4.

II. The Celery Crew Warning Letters

Most of the events herein took place in April and May 1994.[2] At that time, Respondent employed about 700 employees working in various fields in the Oxnard, California area. The employees worked various fruit and vegetable crops, including celery, broccoli and strawberries. Manuel Ricardo Garcia Cortes (Garcia), Carlos Garcia Nicolas, Elias Zambrano and Jose E. Oros Lucas (Oros) were employed by Respondent as cutters on a celery crew.[3] Their foreman was Aurelio Rodriguez, and his assistant was Felipe de Jesus Trejo.

Throughout the season, the celery crews had been paid a piecework rate of $1.43 per box. In March, the Employer changed

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[2]A11 dates hereinafter refer to 1994 unless otherwise indicated.

[3]There were almost 50 employees on the crew, of whom about 18 were cutters.

the way the celery was packed and, without notice to the crew members, lowered the rate to $1.01 per box. The workers felt it took just as much time to box the celery using the different packing technique.

The crew members first noticed the change in piece rate when they received their paychecks on February 4. At the time, they decided to wait until the following week, to see if there had been a mistake. When the February 11 paychecks were based on the same piece rate, a majority of the crew members asked Rodriguez about it, and he told them he did not know why the change had been made. Garcia asked Rodriguez to tell De La Cruz that the crew wished to speak with her, and Rodriguez agreed to let her know. Garcia was a principal speaker in this, and other incidents related to the change in the piece rate.

On February 14, the crew members repeated their request to Rodriguez. At about 11:00 a.m., De La Cruz was in the area where the crew was working.[4] Many of the crew members began to approach De La Cruz, at which point, Rodriguez told them to select a spokesperson and the others to continue working. Garcia told Rodriguez the issue concerned them all, and everyone would speak with De La Cruz . A brief discussion between the crew members and

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[4]There is a conflict in testimony &s to whether De La Cruz was aware of the change in piece rate as of that time and, inferentially, whether Rodriquez had requested she meet with the crew or, as De La Cruz testified, she was there for another reason. It is unnecessary to resolve this conflict.

De La Cruz ensued, and the employees then returned to work.[5] As a result of this incident, the crew stopped work for some 7-10 minutes. After lunch, Rodriguez began issuing worker notices to the crew members, for refusing to obey his order that only a spokesperson speak with De La Cruz. Garcia received two notices the following day, the additional notice for inciting the crew members to engage in a work stoppage.

Crew members drafted and signed a protest letter dated February 14, which Garcia gave to Celery Department Manager, Morales, who in turn gave the letter to De La Cruz, informing her that Garcia had given it to him on behalf of the crew. Respondent decided, due to the lack of notice to the crew, to change the effective date of the rate change to February 18, and notified the crew members of this decision in a letter dated February 17. Respondent paid the crew for the difference in piece rates up to February 18.

Respondent subsequently decided to rescind the worker notices, and purportedly has destroyed them. De La Cruz testified that she informed the crew, possibly within two weeks, that the notices were not valid. Assistant Foreman Trejo testified this statement was made within one week after the notices were issued. Garcia and Nicolas, who last worked for Respondent on April 1, denied that De La Cruz ever made such a statement in their presence. Oros testified that De La Cruz made this statement two

[5]There is also a conflict in testimony concerning De La Cruz's response to the employees' inquiry concerning the piece rate change, which need not be resolved to decide this case.

or three months later, but later expressed some confusion, and testified it could have been two weeks after they were issued. Oros, however, recalled the announcement was not made until the election campaign, which began on April 13, with the filing of a Notice of Intent To Take Access.

III. The Suspension and Discharge of Garcia and Nicolas

On the morning of April 1, Trejo asked members of the celery crew to sign a safety training sign-in sheet, which alleged that Rodriguez had conducted a safety meeting on the subject of cautioning crew members to exercise care in crossing roads when walking to and from the fields. In fact, no such meeting was conducted, although Trejo may have verbally advised some crew members to exercise such caution when asking them to sign. Several crew members signed the sheet, until Trejo asked the cutters to sign. According to Trejo, after Garcia signed, Nicolas refused, without even reading the sheet, at which point, Garcia and Nicolas repeatedly, and successfully urged the other employees not to sign. Rodriguez, who is no longer employed by Respondent, did not testify at the hearing.

While it is true that Garcia and Nicolas urged other employees not to sign the sheet, Trejo's summary testimony omits additional circumstances, related by Garcia and Nicolas, which are credited.[6] After Garcia signed the sheet, employees began

[6]It is noted that Garcia and Nicolas are not being credited on portions of their testimony concerning the April 15 incident, discussed infra. Nevertheless, it is highly unlikely that they would have simply told the other employees not to sign, with no other discussion taking place. Oros testified concerning

questioning its purpose. They asked Garcia what it meant, and he said he did not know, but it looked like Respondent was trying to avoid responsibility if there was an accident.

The employees continued debating whether to sign, and Garcia, in response to their questions, told them he had made an error by signing, and they should not sign because he believed Respondent would use it to avoid responsibility if there were an accident. Rodriguez approached Garcia, and told him if he did not want to sign, fine, but not to tell others to refuse. Garcia-told Rodriguez that Respondent would use the document to avoid liability, a sentiment also expressed by the other employees. It is unclear whether Garcia continued to urge employees not to sign after Rodriguez told him to stop.

Nicolas, who did not read the sheet, refused to sign, apparently on Garcia's advice. Nicolas recalls Trejo telling him the paper was from the State,[7] but did not believe him, because it was handwritten and had no seal. Nicolas told Trejo he was not going to sign until he was provided with a copy to analyze, and urged other employees not to sign until this took place.

The incident was reported to De La Cruz and Richard Toman, then Respondent's General Manager, who had Garcia and Nicolas summoned for an interview at the end of the workday. Both

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incident, and corroborated some of Garcia's testimony. Oros was unable to hear what Nicolas was saying, due to the distance, and cross-talk by other employees.

[7]Respondent contends the sign-in sheets are required by the State of California to document safety meetings.

refused to go to Respondent's office. Respondent left message their homes to report to the office on the following Monday, April 4. They complied, bringing tape recorders with them, and informed De La Cruz of this. After speaking with Toman, De La Cruz brought Garcia and Nicolas to the conference room, where they were informed they were being suspended pending investigation.

Toman interviewed Trejo and Rodriguez concerning the incident, and contacted Respondent's parent company for advice. He did not interview Garcia or Nicolas, apparently because of the tape recorders, and did not interview any of the crew members. While the employees were under suspension, De La Cruz met with the crew and explained the necessity of signing the sheets. Oros asked what would happen if he still refused to sign, and De La Cruz told him the same thing as had happened to Garcia and Nicolas. Oros then signed, "under threat."

Respondent subsequently discharged Garcia and Nicolas, because they had incited other employees not to sign the sheet, according to Toman. Toman testified he considers supervisory authority to be of paramount importance, and the conduct of these employees seriously undermined that authority. In the suspension notices, this is listed as the reason for the discipline. The discharge letters sent to the employees refer to Respondent's Personnel Policy Handbook rules of conduct, and cite causing disorderly or disruptive conduct and refusing to carry out *a* direct, safe work assignment as the reasons. Both of these are included as grounds for immediate discharge. The handbook lists

the failure to follow supervisory instructions as an offense which may result in suspension or discharge for repeated violations.

IV. The Alleged Access and Related Violations

The Union filed a Notice of Intent to Take Access with the Board's El Centro, California, Regional Office on April 13. During the election campaign, Respondent hired an agency, managed by Jerry Parrent, to provide security services. The Union had a number of organizers and volunteers working on the campaign, including lead organizer Jorge Estrada Ramos. Following their. discharges, Garcia and Nicolas became volunteers in the campaign.

Respondent's agricultural employees generally began their half-hour lunch breaks at 12:00 noon, but if the catering truck arrived early, the break would begin at that time. If employees, worked a full day, they were given morning and afternoon breaks. Respondent did not have an established quitting time. Sometimes, employees would be sent home early, eliminating the need for a lunch or afternoon break.

On April 13, Ramos, Garcia and Organizer Martin Vasquez attempted *to* take access to celery crews under the supervision of Foreman Vega, during the afternoon break. There is a conflict between Vega, and Ramos and Vasquez as to whether the organizers actually spoke with the crew members that day, which does not need to be resolved herein. It is undisputed that Vega told the organizers to leave, because it was not' a proper time to take access. Initially, the representatives refused, and Vega went to his truck, some 10-20 feet away, to call Respondent's office.

Shortly thereafter, the organizers left.

On April 14, Ramos, along with Vasquez, Ricardo Garcia and Primitive Garcia, attempted to take access to strawberry crews under the direction of Forelady Maldonado. There is a conflict in testimony as to whether lunch began at 11:45 a.m. or at noon, with Maldonado contending it began at 11:45, and Ramos and Vasquez stating or implying it began at noon. Ramos, at one point in his testimony, also stated that when they arrived, at the entrance to the fields, the employees were already eating, but the security guards prevented them from entering until noon. Furthermore, Ramos, in a pre-hearing declaration, stated the lunch break began at 11:40 a.m. Therefore, it is found that the lunch period began at 11:45 a.m.[8] When Ramos found out that Maldonado was present, he told her to leave. Maldonado responded that she was eating lunch and did not have to move. When Ramos repeated his request, Maldonado retreated to her truck, parked some 30 to 40 feet away. The organizers spoke with the employees until 12:15 p.m., when Maldonado ordered them back to work. Vasquez questioned why they had been sent back before 12:30 p.m., to which Maldonado responded that the lunch break had begun at 11:45 a.m.

Many witnesses testified concerning an incident at the Callens Ranch on April 15, primarily involving Ramos and Consultant Highfill. Ramos and several other organizers decided

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[8]Vasquez at one point testified that the workers stopped working at noon and complained about being sent back early. Vasquez was not a particularly reliable witness, and this testimony is not credited.

to cake access to the broccoli crews at 3:00 p.m., because they observed the employees were not working. Unknown to them, Highfill was about to begin his first meeting of the election campaign with these workers. Shortly after the organizers pulled up to where the employees had gathered, in two vehicles, De La Cruz approached them, and asked what they wanted. When Ramos told her they were there to speak with the employees, De La Cruz told them to leave, because it was not a proper time to take access. Ramos told Da La Cruz they could take access, because the employees were not working.

Ramos testified that Highfill approached him, spread his arms and said the organizers could not speak with the employees. Ramos initially testified that Highfill simply started pushing him with his chest a total of about six times, while calling him obscene names in a low voice. Ramos, however, later admitted he was attempting to get around Highfill to speak with the employees, and contended Highfill pushed him for four or five minutes. Highfill then purportedly became enraged, turned to the employees, and loudly stated, "You Mexicans are dumb, stupid animals!"

Ramos denied saying anything to the employees after Highfill made this statement. Rather, one of Respondent's supervisors pulled up in a truck and turned on a radio to the point where little could be heard. The employees were sent back to work, and the organizers left.

General Counsel put on several witnesses to corroborate Ramos. In certain key instances, they either failed to

corroborate him, or contracted his testimony. Co-organizer Vasquez did not contend that Highfill made any racial statements. While General Counsel's other witnesses alleged that Highfill made a reference to Mexicans, they also testified that the statement was made to Ramos, and not to the employees. While none of General Counsel's witnesses testified, on direct examination, that Ramos said anything to the employees after Highfill's statement, they admitted, when pressed on cross-examination, that Ramos turned to the employees and shouted, "Did you hear what he called you? He called you a bunch of ignorant, Mexican animals!"[9]

With respect to the alleged pushing, most of General Counsel's witnesses testified that Ramos approached Highfill and the employees, rather than Highfill going to where De La Cruz and Ramos were standing. Two of General Counsel's witnesses did r. contend they saw any pushing by Highfill. General Counsel and the Union argue these witnesses just did not see the pushing. Vasquez testified the pushing lasted for one minute, Organizer Genaro Rocha initially testified he saw four or five pushes, then testified he saw one push and finally claimed there was more than one. Other witnesses reported unspecified pushing by Highfill. Contrary to Ramos' testimony, General Counsel's other witnesses, to the extent they reported any physical contact, stated it took place after Ramos and Highfill began arguing about access rights, and Ramos attempted to pass around Highfill.

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[9]Employee Victoriano Mosqueda first admitted, then denied that Ramos repeated Highfill's alleged statement.

Rocha testified that he heard the low-voice obscenities directed at Ramos by Highfill, and that Highfill directed additional obscenities to him, the latter contention being uncorroborated by any other witness. No other witness claims to have heard the obscenities directed at Ramos, except employee Roberto Duran Fuentes (Duran), who was not even placed in the immediate vicinity by any other witness.[10] Contrary to Ramos and Rocha, Duran contended that Highfill uttered the obscenities in a very loud voice. Vasquez testified that while he did not hear, the obscenities uttered to Ramos, Highfill uttered a low-voice obscenity in his ear when Vasquez attempted to approach the employees.[11]

Highfill testified that after De La Cruz approached Ramos, he and Rocha "blew" by her and approached the employees. Highfill, his assistant, Salvador Pineda, Ranch Manager Oliver, and Danny Urbano, Vice President of Industrial Relations for Respondent's parent company, were in close proximity. Highfill told Ramos it was not access time, but Ramos insisted that it was, because the employees were on break. The two argued about access law, while Ramos attempted to get around Highfill. In response, Highfill, Pineda and Oliver blocked his path, but no physical

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[10]General Counsel alleges that Mosqueda also testified he heard the obscenities. A review of the transcript reveals that Mosqueda only contended he heard the racial remark by Highfill.

[11]This is not to say these were the only inconsistencies in the testimony of General Counsel's witnesses. There were many others, both internal and external, as to the order of events, the words individuals used, the positioning of various persons and so forth.

contact took place. Highfill did not mention uttering any low voice obscenities during the incident, but did not specifically deny such conduct.

Highfill testified that after several minutes of this, he told Ramos, "You are acting like a bunch of ignorant animals," and to leave the area. Ramos then repeatedly shouted to the employees, "Did you hear that? He is calling you a bunch of ignorant Mexican animals!" Highfill told Ramos he was a "goddamned liar." The supervisor then turned up the radio, the employees were sent back to work and the organizers left. Highfill later spoke with some of the employees, denying he had made a racial remark.

Respondent had several witnesses testify to corroborate Highfill's testimony. Only Pineda and Urbano claimed to have heard most of what was said between Highfill and Ramos, and it is of some note that Oliver testified he was not right next to them. Oliver also did not report any participation in blocking the organizers. Respondent's other witnesses, to the extent they reported observing Ramos yelling to the employees, only heard Ramos repeat Highfill's alleged racial remark once. Otherwise, while there are minor discrepancies, the percipient witnesses essentially corroborated Highfill's version of the incident. None of Respondent's witnesses observed any physical contact between Highfill and Ramos, or reported any whispered vulgarities by Highfill.

While Highfill exaggerated the number of times Ramos

shouted Co the employees, and may have erroneously placed Oliver in the fray,[12] his denials of having pushed Ramos or using racial slurs are credited. It is not only inherently improbable, but facially beyond belief, that Highfill, in his first meeting with employees of a major client, and with his assistant, Pineda (who is Hispanic) at his side, would have uttered a racial slur at the employees, who were uninvolved in the dispute, even if in a fit of rage, as contended by Ramos. It is only slightly less incredible, on its face, that Highfill would have uttered such a slur to Ramos, as contended by General Counsel's other witnesses. It is also very unlikely that had Highfill aggressively and repeatedly pushed Ramos, the other organizers would not have intervened, at least to protect Ramos.

Beyond the facially incredible nature of the racial slur allegation, General Counsel's witnesses not only were highly inconsistent in their testimony, but based on inadvertent admissions of group preparation, volunteered testimony, feigned positioning and overt bias, it is found that they engaged in a rather poorly executed attempt to establish unfair labor practices, rather than the truth of what took place. To the extent there is any remaining reason to doubt Highfill's denials, Urbano, although not disinterested in this dispute, and who did not "word by word" corroborate Highfill, was highly impressive as someone who was attempting to honestly relate what took place.

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[12]This is only a possibility, because Oliver did not impress the undersigned as a very reliable witness.

Accordingly, it is found that Highfill did not utter racial slur or push Ramos. If any physical contact did occur, which is not likely, it was minor and incidental to Ramos' attempts to charge by Highfill. Inasmuch as Highfill did not specifically deny making the low-volume obscenities, it is at least possible such remarks were made. Duran, however, is the only statutory employee who allegedly heard those words, and his testimony is discredited, because Duran was clearly a biased, untruthful witness.

The next incident covered at the hearing involved conduct engaged in by Silverio Ambriz and Jerry Parrent. As noted above, Parrent managed the security guard service engaged by Respondent to control access to its fields. Ambriz was employed by one of Respondent's contractors. Respondent does not cont; how its contractors delegate authority to their employees. Organizer Mario Brito testified that on an unspecified date, Ambriz had identified himself as a foreman. No other evidence was presented concerning Ambriz's job duties.[13] Neither Ambriz, nor Parrent testified at the hearing.

The undisputed testimony of Ramos and Brito establishes that on April 29, while they were speaking with employees before work, at a parking lot near the strawberry fields, Ambriz drove up

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[13]General Counsel contends that because Respondent, in its answers, admitted Ambriz was a foreman employed by Respondent, no further proof is necessary on the issue. Respondent, in its answers, did not admit that Ambriz was a supervisor. By operation of §1140.4(c), Respondent is considered the "employer" of employees of its contractors, but by recognizing this, Respondent did not admit it delegated supervisory authority to Ambriz.

to Ramos and insulted him. Holding one of Respondent's anti-Union flyers, with a pig representing the Union, Ambriz told Ramos he was a pig because he exploited the workers. Ramos replied he was not a pig, and told Ambriz to leave, because he was speaking with the employees. Ambriz repeated the insults, and Ramos told him he was the one exploiting the workers. Ambriz got out of the vehicle and repeatedly challenged Ramos to a fight, which Ramos declined. Ambriz told Ramos he knew where Ramos lived, and would beat him up. Ramos told Ambriz his conduct was unlawful, to which Ambriz replied that Respondent had plenty of money to fight the Union.

Parrent, who Brito testified had been a considerable distance away, ran over to them and told Brito he was a "motherfucker, " because he was riling up the employees. Brito said he was not a "motherfucker," and told Parrent he was in no position to have seen what took place. Parrent said he had seen Brito. Ramos told Brito to calm down, and the incident ended with no blows being struck.

Another incident took place on April 30, when several organizers attempted to take lunch break access to strawberry crews working in several fields at the Miller Ranch. Prior to that date, Respondent had permitted the organizers to drive down a private road to a parking lot, before the lunch break, to wait for the employees. Without notice to the Union, Respondent reversed this policy and, on April 30, posted two guards, including Parrent, at the gate to the private road, with instructions not to

let the organizers pass until the employees stopped working.[14] Oliver testified that the policy was changed, because the road is narrow, and Respondent anticipated there would be farm equipment present. There was no mention, however, of there being any such equipment on the road when the organizers arrived, or of anyone telling this to them.

The organizers arrived at about 11:45 a.m, and the security guards refused to let them pass. Brito and Rocha testified that Oliver motioned to the guards not to let them-pass, but Oliver denied this in his testimony. Oliver was a somewhat vague, evasive witness, and Brito and Rocha are credited.[15]

After unsuccessfully attempting to convince the guards to let them pass or about 10 minutes, Brito approached Oliver and demanded they be permitted entry. Oliver shook his head, as say no. At that point, some of the crews began leaving the

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[14]Oliver testified that the employees, in fact, worked a short day on April 30, and had no lunch break. Instead, they were sent home at around noon. Assuming Oliver is correct, this fact does not affect the results herein. Respondent's argument, that the allegation must be dismissed because it refers to lunch break access is rejected. Even assuming Oliver is correct in his testimony, this represents a minor variance in proof, and the allegation was fully litigated.

[15]Ramos testified that they did not arrive until about noon, but he is contradicted by Brito and Rocha, who stated it was about 11:45 a.m. In addition, it appears that the organizers had traditionally arrived before noon, so they could wait for the employees in the parking lot. Ramos also testified he heard Oliver tell the guards not to let the organizers pass, which was not corroborated by Brito or Rocha. Ramos, who has been found willing to bend the facts to establish unfair labor practices, is not credited in these assertions.

fields.[16] The organizers decided to take access on foot, and walked to the employees. The map of the fields, combined with Oliver's testimony, shows it was a considerable distance from the gate to the parking lot. Some of the employees were working close to the gate, while others were in fields located a substantial distance away.

General Counsel presented testimony concerning one more incident, which took place on May 4, when Rocha and two other organizers took access to celery crews during their lunch break. Manager Morales was in the area, speaking with Julio _____, an employee of another company.[17] The accounts of the incident by Rocha and Morales differ only slightly. For the purposes of this Decision, Rocha's account will be used. Rocha approached Morales and Julio _____, and told them to move away. Morales replied they were on their lunch hour and had to be there. Rocha said they were intimidating the employees, and if they did not leave, he would file a charge. Morales told Rocha to do what he liked, but he and Julio _____ did move to the side of Morales' truck, about 15 feet from where Rocha was speaking with employees.

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[16]General Counsel's witnesses testified they had only 10 minutes of access, implying they did not enter the fields until 12:20 p.m. This cannot be correct, since they arrived at about 11:45 a.m, spoke with the security guards for about it) minutes, and Brito only briefly spoke with Oliver. There is no evidence they waited an additional 20 minutes.

[17]The complaint alleges that Julio_____ is "Jose Luis," and a supervisory employee of Respondent.

ANALYSIS AND CONCLUSIONS OF LAW

I. The Warning Letters

The evidence shows that the celery crew employees were issued warning letters for disobeying a direct order not to stop working to speak with De La Cruz. Garcia received an additional warning letter for inciting the other crew members to engage in a work stoppage.

Section 1152 of the Act grants agricultural employees the right, inter alia "to engage in ... concerted activities for the purpose of mutual aid or protection." Under §1153(a), it is an unfair labor practice for an agricultural employer to "interfere with, restrain or coerce" agricultural employees in the exercise of that right. In order to be protected, employee action must be concerted, in the absence of union activity. This mea. the employee must act in concert with, or on behalf of others. Meyers Industries (1984) 268 NLRB 493 [115 LRRM 1025], rev'd (1985) 755 F.2d 941,decision on remand,(1986) 281 NLRB 882 [123 LRRM 1137], aff'd,(1987) 835 F.2d 1481, cert, denied, (1988) 487 U.S. 1205.

Protected concerted activity includes conduct arising from any issue involving employment, wages, hours and working conditions. Protests, negotiations and refusals to work arising from wage disputes are concerted activities, as are concerted complaints to governmental agencies arising from wages, hours and conditions of employment. J. & L. Farms (1982) 8 ALRB No. 46; Lawrence Scarrone (1981) 7 ALRB No. 13; Miranda Mushroom

Farm. Inc,. et. al. (1980) 6 ALRB No.22; Giumarra Vineyards' Inc. 1981) 7 ALRB No. 7; Alleluia Cushion Co. (1975) 221 NLRB No. 162 [91 LRRM 1131].

Retaliation by an agricultural employer against employees, because they engage in protected concerted activities, is considered interference, restraint and coercion under §1153(a). In order to establish a prima facie case of retaliatory interference for engaging in protected concerted activity, the General Counsel must prove: (1) that the employee engaged in such activity, (2) that the employer had knowledge of the activity, and (3) that a motive for the adverse action taken by the employer was the protected activity. Lawrence Scarrone, supra; United Credit Bureau of America. Inc. (1979) 242 NLRB 921, enf'd (CA 4, 1981) 106 LRRM 2751; Mid-America Machinery Co. (1979) 238 NLRB 537 [99 LRRM 1290]. Direct or circumstantial evidence may establish the alleged unlawful motive. Circumstantial evidence includes inconsistent reasons for the adverse action, the expression of anger by a supervisor toward the protected activity and the failure to follow established procedures. Miranda Mushroom Farm, Inc., et al., supra.

Once the General Counsel has established protected concerted activity as a motivating factor for the retaliation, the burden shifts to the employer to rebut the prima facie case. Respondent must preponderantly show that the adverse action would have been taken, even in the absence of the protected concerted activity. J. & L. Farms, supra; Wright Line, a Division of Wright

Line. Inc. (1980) 251 NLRB 1083 [105 LRRM 1169] .

Respondent admits that the brief work stoppage, in itself, was concerted activity protected under §1152 of the Act. An employer violates §1153(a) when it takes adverse action against employees for engaging in such activities. While employees may be disciplined for disobeying a lawful order, an employer cannot base discipline on refusing to obey an order which denies employees their statutory rights. Phillips Industries. Inc. (1963) 172 NLRB 2119, at page 2128 [69 LRRM 1194] . Furthermore, if the work stoppage, for the purposes of discussing the wage issue with De La Cruz was protected, "inciting" other employees to engage in that protected activity was also protected, and discipline based on that activity violated §1153(a). Lawrence Scarrone (1981) 7 ALRB No. 13; Armstrong Nurseries, Inc. (1986) 12 ALRB No. 15; NLRB v Washington Aluminum Co. (1962) 370 U.S. 9 [50 LRRM 2235].

Respondent contends it effectively repudiated this conduct. The Board has adopted the standards for repudiation of unlawful conduct first established by the National Labor Relations Board (NLRB) in Passavant Memorial Hospital (1978) 237 NLRB 138 [98 LRRM 1492] . Anderson Farms Company (1977) 3 ALRB No. 67; J.R. Norton Co. v. ALRB (1984) 162 Cal. App.3d 692 [208 Cal.Rptr. 746]. In order to be effective, the repudiation must be timely, adequately published, admit the wrongdoing or at least identify the protected conduct, give assurances that no retaliation for or interference with future protected activity will occur, and no additional unfair labor practices may be committed.

Even accepting De La Cruz's testimony, her mere statement that the worker notices were not valid did not establish an effective repudiation. De La Cruz does not contend she told the employees they were entitled to concertedly discuss or protest wage issues,[18] or that the warning letters, in fact, had been removed from their personnel files. Most importantly, no assurances were given that such conduct in the future would not be met with interference or retaliation. In addition, the verbal announcement to one crew, among over 700 of Respondent's employees was insufficient and, as will be discussed below, the retraction was followed by additional violations of the Act. It is also at least questionable whether Respondent has established that the repudiation was timely. Since the repudiation was not effective, it is concluded that the issuance of the warning letters violated §1153 (a) of the Act.[19]

II.The Discharges of Garcia and Nicolas

General Counsel and the UFW contend that Garcia and Nicolas were engaged in protected concerted activity on April 1, and if they were discharged for that activity, Respondent violated § 1153 (a) . They further contend that even if the conduct on April

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[18]This failure, in itself, distinguishes this case from Oasis Ranch Management. Inc. (1992) 18 ALR3 No. 11, cited by Respondent. Furthermore, the repudiated conduct in that case involved an interference allegation of promising benefits, far less serious conduct than disciplinary warning letters issued to many employees.

[19]The complaint alleges this conduct to have additionally violated §1153(c) . Since there is no evidence that the warning letters were issued in response to any union activity, this allegation will be dismissed.

1 was unprotected, Respondent was using the incident as a pret to retaliate against Garcia and Nicolas for their protected activity during the piece rate incident. Respondent contends that the discharges were solely based on the April 1 incident, and that the conduct was unprotected as insubordination or a partial strike.

The evidence shows that Garcia urged other employees not to sign the sheet because he believed it amounted to a liability waiver in the event of an accident. Compensation for work-related injuries pertains to wages, hours or other terms and conditions of employment. There is no persuasive evidence to show that Garcia's conduct was not taken in the good-faith belief of his protest. Therefore, the subject of Garcia's actions was protected. Nicolas, in joining with Garcia, was protected to the same ext as Garcia, even if he was unaware of the contents of the letter, and was participating out of loyalty, friendship or some other reason. The motives for employees joining in protected concerted activity are irrelevant.

The question, then, is whether the manner in which Garcia and Nicolas protested the directive was so unreasonable as to lose the protection of the Act. The law allows leeway in presenting grievances related to working conditions. Such activity loses its protection only in cases where the misconduct or insubordination is violent, or of such a serious nature as to render the employee unfit for further service. D'Arrigo Brothers (1987) 13 ALRB No. 1, at ALJD, page 25. In some instances, the

refusal to follow a work order will render the conduct unprotected. Hansen Farms (1981) 7 ALRB No. 2; Mayfair Packing Co. (1987) 13 ALRB No. 20; Sam Andrew's Sons (1983) 9 ALRB No. 21. Not every refusal to obey orders is unprotected, because employees would be permitted to direct employees not to engage in protected or union activity, and discipline them for doing so. An example of this was Rodriguez's directive to the celery crew not to speak with De La Cruz as a group. In another case, the NLRB held the concerted refusal of employees to follow a work order, where they believed to do so would violate Federal Transportation Regulations, was protected. Cintran, Inc. (1989) 297 NLRB 178 [132 LRRM 1311] .

It is concluded that, in the circumstances of this case, the manner in which Garcia and Nicolas conducted their protest was protected. They were being ordered to sign a document which falsely represented that a safety meeting had been conducted by, at the most, a low-level supervisor.[20] If, as Garcia feared, the employees would release Respondent from liability by signing, there was little they could do once they had signed. In this regard, Respondent does not have a formal grievance procedure, and employee attempts to speak with management in the previous dispute had resulted in discipline. Furthermore, since the prior refusal to obey orders, and "inciting" others to engage in a work stoppage had only resulted in the issuance of worker notices, employees were not on notice of the gravity of their conduct.

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[20]Respondent denies that Trejo is a statutory supervisor.

In addition, the evidence shows that Nicolas asked fu copy of the sheet, and only urged employees not to sign until they had an opportunity to examine it. Under somewhat similar circumstances, the NLRB held that the refusal to sign an attendance sheet did not constitute misconduct justifying discharge. Maremount Corp. (1989) 294 NLRB 11 [132 LRRM 1389]. See also Jack Brothers & McBurney, Inc. (1980) 6 ALRB No. 12; D'Arrigo Brothers Company of California (1983) 9 ALRB No. 3. While Respondent had a legitimate interest to maintain discipline in its crews, the conduct, unaccompanied by violence, threats or abusive language, was not so egregious as to become unprotected.

It is clear that Garcia and Nicolas were engaged in concerted conduct, because they jointly urged other employees not to sign the sheet, and some of the other employees also protested the order. Respondent admits it suspended and discharged Garcia and Nicolas for inciting employees not to sign. Assuming Respondent, in good faith, erroneously believed the conduct was not protected, it is well established that such good-faith mistakes do not constitute a defense to the unfair labor practice allegation. Roadmaster Corp. v. NLRB (CA 7, 1989) 874 F.2d 448 [134 LRRM 2483] ; Roemer Industries, Inc. (1973) 205 NLRB 63 [83 LRRM 1720]; Bertuccio Farms (1984) 10 ALRB No. 52.[21] Based on

[21]Respondent's focus on inciting-other employees not to sign raises another issue, since one District Court of Appeals has held that even where the object of the solicitation is unprotected, the solicitation itself is. Thus, where employees solicited others to engage in an unprotected work slowdown, their discipline for the solicitation was held unlawful. NLRB v. Empire Gas, Inc. (CA 10, 1977) 566 F.2d 681. Compare this with the unprotected conduct

the foregoing, Respondent violated section 1153 (a) of the Act by discharging Garcia and Nicolas.

The evidence does not, however, establish that the discharges were in retaliation for the protected activity of Garcia and Nicolas in the February piece rate dispute. While Garcia, to Respondent's knowledge, took a leadership role in that dispute, Nicolas did not. The timing is not persuasive, since about six weeks had passed. In addition, the evidence fails to establish that Respondent was using the April 1 incident as a., pretext to discharge the employees for their earlier conduct. It is clear that Respondent was genuinely upset about what took place, and the subsequent threat to discipline Oros if he did not sign the sheet bolsters this conclusion. While Respondent could have conducted a more thorough investigation, its failure to interview Garcia and Nicolas is explained by their insistence on tape-recording the interviews. With respect to Respondent's rules of conduct, there is a degree of ambiguity as to whether Garcia and Nicolas were subject to being issued worker notices, rather than being suspended and discharged thereunder, but the suspension notice clearly sets forth the conduct upon which the discipline was based. Therefore, while the grounds asserted for the discharges have been found unlawful, they were not pretextual.

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local union president, charged with a higher responsibility in complying with negotiated agreements, who urged employees to engage in a work slowdown, in violation of a collective bargaining contract. International Wire Products Co. (1980) 248 NLRB 1121 [104 LRRM 1018] .

III. The Alleged Access-Related Violations

General Counsel alleges that: the refusal of Vega to leave the area where organizers were taking access on April 13, Maldonado's refusal to leave the access area on April 14, the conduct of Ambriz and Parrent in the access area on April 29, and Morales' refusal to leave the access area on May 4 constituted surveillance of employee Union activity, or created the impression thereof, and/or interfered with access rights. The Board's Regulations, section 20900, et seq., set forth organizational access rights. Subsection 20900(e)(3)(B) states:

> In addition, organizers may enter the employer's property for *a* single period not to exceed one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the one-hour period shall encompass such lunch break. If there is no established lunch break, the one-hour period shall occur whenever employees are actually taking their lunch break, whenever that occurs during the day.
>
> (Emphasis added)

Unjustified interference with access rights reasonably tends to interfere with employees' rights under section 1152. The Board has found that supervisors or agents who remain in areas where access is being taken are engaged in unlawful surveillance, or create the impression thereof if the presence is regular, prolonged or for the specific purpose of observing the activity. An employer, however, is free to conduct his business in a normal fashion, even if it results in its representatives being nearby to union activity. A supervisor or agent otherwise permitted to

remain in the area may not, however, improperly inject his presence into the protected discussion. S & J Ranch, Inc. (1992) 18 ALRB No. *2;* Tomooka Brothers (1976) 2 ALRB No. 52; Ukegawa Brothers. Inc. (1983) 9 ALRB No. 26. See also Metal Industries (1980) 251 NLRB 1523 [105 LRRM 120] .

With respect to the conduct of Ambriz, while it is certainly possible that he exercised some supervisory authority as the contractor's foreman, the evidence fails to establish this. Thus, as an employee of a contractor, it cannot be inferred that he exercised the same supervisory functions as Respondent's foremen, particularly in the absence of evidence showing his authority was determined by Respondent. Since the evidence fails to establish Ambriz's status as a statutory supervisor or agent, no violations can be found based on his actions on April 29.

With respect to Vega, Maldonado and Morales, the evidence shows that they were present as part of their normal work duties, either taking their lunch breaks or, in the case of Morales, engaged in a discussion with an employee of another company. Not only did these supervisors not inject themselves into the access meetings, they moved away, albeit not as far as the organizers might have wished. There is no evidence that they were actively watching the employees. Under almost identical circumstances, the Board found no violation. Ukegawa Brothers, Inc., supra. Thus, while the supervisors' presence might well have a chilling effect on the employees willingness to meet with union organizers, the balance has been struck, in this case, in

favor of Respondent's interests.

In the case of Vega, there is an additional reason why no violation occurred. The Board and NLRB have held that it is not unlawful for an employer to watch union activities, if the organizers have no right to be on the property. S & J Ranch, Inc., supra; Porta Systems Corp. (1978) 238 NLRB 192 [99 LRRM 1251] ; Hoschton Garment Co. (1986) 279 NLRB 565 [122 LRRM 1073] ; Halo Lighting Division of Me Graw Edison Co. (1981) 259 NLRB 702, at page 716 [109 LRRM 1037]; Chemtronics, Inc. (1978) 236 NLRB 178 [98 LRRM 1559] . On April 13, the organizers visited the employees, on Respondent's premises, during their 3:00 p.m. break. CCR §20900 (e) (3) (B) does not authorize access during break periods; rather, it specifically refers to one lunch break of no more than one hour, during the day.[22] Absent authorization to on the premises, by regulation or otherwise, the organizers had no right to be there, and any surveillance which might have taken place was not unlawful.

Although the evidence does establish Parrent as Respondent's agent, his conduct on April 29 did not constitute surveillance, or creating the impression thereof. His initial presence, far from the access discussion, was not unlawful since

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[22]Compare this with former CCR §20900(5) (b) , which read ". . . organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period. If there is an established lunch break, the one-hour period shall include such lunch break. If there is no established lunch break, the one-hour period may be at any time during the working day." (Emphasis added) See K.K. Ito Farms (1976) 2 ALRB No. 52, interpreting the former section in a manner consistent with the current section's wore

there is insufficient evidence to show that he was there to spy on the meeting, rather than as part of his security duties. While Parent did go over to where the meeting was taking place, he did so for the legitimate purpose of responding to a loud confrontation. See Halo Lightning Division of Me Graw Edison Co., supra. Under these circumstances, Parrent's statement, that he had seen Brito, did not reasonably create the impression that Parrent had been observing the meeting, as opposed to observing the confrontation. Accordingly, these allegations will be dismissed.

Similarly, it was not unlawful for Highfill, as Respondent's agent, to deny access to the organizers on April 15, because they were not authorized by the Regulations to be there during the afternoon break.[23] See Hoschton Garment Co., supra; Chemtronics. Inc., supra. A technical trespass does not authorize the use of violence to evict the intruders. Thus, even if the organizers were unlawfully on the property, it would be an unfair labor practice if Highfill aggressively pushed, shoved or struck Ramos. S & J Ranch. Inc., supra; Security Farms (1977) *3* ALRB No. 81; Perry Farms. Inc. v. ALRB (1978) 86 Cal.App.3d 448 [150 Cal.Rptr. 495]. The credible evidence, however, fails to establish that Highfill pushed, shoved or struck Ramos. Any incidental contact which may have taken place was minor, and largely the result of Ramos attempting to get by Highfill.

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[23]It is, therefore, unnecessary to consider .Respondent's argument that it did not violate the Act, because too many organizers attempted to take access.

The Board has held that vulgar, offensive remarks made by management representatives to or concerning union officials, in the presence of employees, or made to the employees, must contain threats of force or reprisal before they can be considered unlawful under section 1153(a). Gourmet Harvesting and Packing, Inc. and Gourmet Farms (1988) 14 ALRB No. 9. As the Board pointed out, the NLRB has not always imposed such a prerequisite, to find that impermissible denigration of such officials or union supporters constitutes unlawful interference with employee free choice. Even in the absence of such a prerequisite, the NLRB cases have recognized that union-related issues are likely to stir heated emotions, and latitude must be given for rough verbal give and take in labor relations matters. Thus, it is not unlawful for a management official to call a union representative a "lair, " to refer to pro-union employees and a union representative as "trash." Precision Castings Co. (1977) 233 NLRB 183, at page 196 [96 LRRM 1540]; Serve-U Stores, Inc. (1976) 225 NLRB 37, at footnote 7 [93 LRRM 1033]. The Board, in Gourmet Harvesting, supra, found no violation where a supervisor used foul language to union supporters, and called them, "chavistas bastards."

The complaint alleges that the vulgar statements made by Highfill to Ramos, Rocha and Vasquez violated §1153(a). Assuming such statements were made, the credible evidence fails to establish that any statutory employee heard them, or that they were accompanied by any unlawful threats. As discussed in detail above, the evidence also fails to establish that Highfill made the

racial remark attributed to him. It may be presumed that employees heard Highfill tell Ramos that the organizers they were acting like ignorant animals, and that Ramos was a "goddamned liar," since these statements were made in a loud voice. Nevertheless, the credible evidence fails to show the statements were accompanied by unlawful threats or violence and, in the context of Ramos' continuing attempt to go around Highfill, these isolated remarks would not otherwise rise to the level of an unfair labor practice. Therefore, the allegations concerning-the April 15 incident will be dismissed.[24]

Turning to the April 30 incident, where the organizers were prevented from entering the Miller Ranch parking lot, Respondent argues that any brief delay in access on that date was caused by the organizer's decision to argue with the security guards and Oliver, and further, access was easily available if they walked. Some support for this argument is found in S & J Ranch, Inc., supra, where there was a slight delay in taking access, and only a few employees had left when the organizer arrived. The Board held the employer's causation of the delay did not violate the Act. In Andrews Distribution Company, Inc. (1989) 15 ALRB No. 6, however, the Board found that where the employer prevented an organizer from entering the company parking lot to

[24]It is, therefore, unnecessary to determine whether the racial epithet allegation should be dismissed based on General Counsel's agreement, during the hearing, not to pursue it, or whether the statement, even if made, would have violated the Act. with respect to the latter issue, argued in the negative by Respondent, the finding herein, that Highfill did not physically assault Ramos, would certainly weaken any argument that there was a violation.

meet with employees until quitting time, it improperly interfere with access rights . The organizer needed to be in the lot before the employees began driving away, and the fact that the organizer did get to speak with some employees did not mean the conduct did not tend to interfere with access.

In this case, the Union had previously been permitted to enter the property before lunch or quitting time, so they would be in the parking lot when the employees arrived. It is clear that the organizers needed to be in the lot, so that employees would not be leaving when they arrived. Oliver's vague and unsubstantiated explanation for the change in policy is unconvincing, as is the contention that the organizers should have walked to the parking lot before the employees left, given the presence of the guards. Thus, in this case, effective access meant that Respondent, as it had previously done, was obligated to forego its property rights for a few minutes prior to the cessation of work. It is also noted that this was not an isolated incident since, although not alleged as a violation, security guards also prevented organizers from taking access to Maldonado's crew, for 15 minutes of their lunch hour on April 14. Therefore, Respondent, in the April 30 incident, interfered with the employees' right to access, in violation of §1153(a).[25]

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[25]The complaint alleges an additional access-related violation, on May 2, and coercive statements by Foreman Arturo Fernandez, on April 23. No evidence was presented concerning these allegations, and they will be dismissed.

REMEDY

Having found that Respondent violated §1153 (a) of the Act by issuing members of the celery crew worker notices, by discharging Manuel Ricardo Garcia Cortes and Carlos Garcia Nicolas, and by preventing UFW organizers from taking lawful access to employees, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

In fashioning the affirmative relief delineated in she following order, I have taken into account the entire record of these proceedings, the character of the violations found, the nature of Respondent's operations, and the conditions among farm workers and in the agricultural industry at large, as set forth in Tex-Cal Land Management, Inc. (1977) 3 ALRB No. 14.

On the basis of the entire record, the findings of fact and conclusions of law, and pursuant to section 1160.3 of the Act, I hereby issue the following recommended:

ORDER

Pursuant to Labor Code §1160.3, Respondent Oceanview Produce Company, its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Issuing worker notices to, discharging or otherwise retaliating against any agricultural employee with regard to hire or tenure of employment, or any term or condition of employment because the employee has engaged in concerted

activity protected under §1152 of the Act.

(b) Preventing UFW organizers or volunteers from taking lawful access to employees.

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

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

(a) Rescind the discharges of Manuel Ricardo Garcia Cortes and Carlos Garcia Nicolas, and offer them immediate and full reinstatement to their former positions of employment, or if their positions no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges of employment.

(b) Make whole Manuel Ricardo Garcia Cortes and Carlos Garcia Nicolas for all losses of pay and/or other economic losses they have suffered as a result of being discharged. Loss of pay is to be determined in accordance with established Board precedent. The amount shall include interest to be determined in the manner set forth in E.W. Merritt Farms (1988) 14 ALRB No. 5.

(c) To the extent Respondent has not already done so, rescind the worker notices issued to celery crew employees for protesting the February 1994 change in piece rate, and remove all reference thereto from their personnel files.

(d) Preserve and, upon request, make available to the Board or its agents for examination and copying, all

records relevant to a determination of the backpay and/or make whole amounts due those employees under the terms of the remedial order as determined by the Regional Director.

(e) Upon request of the Regional Director, sign the attached Notice to Employees embodying the remedies ordered. After its translations by a Board agent into all appropriate languages, as determined by the Regional Director, Respondent shall reproduce sufficient copies of the Notice in each language for all purposes set forth in the remedial order.

(f) Mail copies of the Notice, in all appropriate languages, within 30 days after the date of issuance of a final remedial order, to all agricultural employees employed by Respondent "at any time from February 14, 1994, until the date of the mailing of the notice.

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

(h) Arrange for a Board agent to distribute and read the Notice in all appropriate languages to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given- the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and/or

their rights under the Act. The Regional Director shall determine reasonable rate of compensation to be paid by Respondent, to all non-hourly wage employees in order to compensate them for lost time at this reading and during the quest ion-and-answer period.

(i) Provide a copy of the Notice to each agricultural employee hired to work for the company for one year following the issuance of a final order in this manner.

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

IT IS FURTHER ORDERED that the remaining allegations contained in the Third Amended Complaint are hereby DISMISSED.

Dated: March 2, l995

Douglas Gallop,
Administrative Law Judge

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB) , the General - Counsel of the ALRB issued a complaint that alleged that we, Oceanview Produce Company, had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by issuing worker notices to celery crew employees, discharging two employees and preventing UFW organizers from taking lawful access to speak with employees.

The ALRB has told us to post and publish this Notice. We will do what the ALRB has ordered us to do.

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 employee's and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

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

WE WILL NOT discharge, issue worker notices to or otherwise retaliate against employees because they protest about their wages, hours or other terms and conditions of employment.

WE WILL NOT prevent UFW organizers or volunteers from taking lawful access to our employees.

WE WILL offer Manuel Ricardo Garcia Cortes and Carlos Nicolas Garcia reinstatement to their former positions of employment, and make them whole for any losses they suffered as a result of our unlawful acts.

WE WILL, to the extent we have not already done so, rescind the worker notices issued to celery crew employees for protesting t._ February 1994 change in piece rate, and remove all references to them from their personnel files.

DATED: OCEANVIEW PRODUCE COMPANY

By: _____
(Representative) (Title)

If you have any questions 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, CA 92243. The telephone number is (619) 232-0441.

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

DO NOT REMOVE OR MUTILATE