

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

GOLDEN ACRE FARMS, INC.,)	
)	
Respondent,)	Case No. 95-CE-18-EC
)	
and)	
)	
JUAN RANGEL, NICOLAS LOBATOS,)	22 ALRB No. 14
ESAUJ VERDUGO GARCIA, DANIEL VEGA,)	(November 19, 1996)
JOSE ANGEL AGUILAR, EDUARDO)	
GONZALEZ, HORACIO VEGA, MARIO)	
RAMIREZ, JAIME JAUREGUI GOMEZ,)	
JOSE HENRY GARCIA, ALEX ARMANDO)	
GOMEZ, SANTOS A. ALFARO, JOSE)	
VICTOR CANALES, JUSTINO ORDONEZ,)	
LUZ RANGEL, ROBERTO SANCHEZ,)	
FRANCISCO VEGA, RAMON RANGEL, and)	
OCTAVIO RANGEL,)	
)	
Charging Parties.)	

DECISION AND ORDER

On June 18, 1996, Administrative Law Judge (ALJ) Thomas Sobel issued the attached decision in the above-referenced case, in which he found that Respondent Golden Acre Farms, Inc. (Respondent or Employer) had violated section 1153(a) of the Agricultural Labor Relations Act (ALRA or Act) by laying off and then discharging employees who worked in the corn harvest under foreman Magdaleno Lopez because of their protected concerted activities. Respondent timely filed exceptions to the ALJ Decision, along with a supporting brief, and General Counsel timely filed a reply brief.

The Agricultural Labor Relations Board (Board) has considered the record and the ALJ's decision in light of the exceptions and briefs submitted by the parties and affirms the

ALJ's findings of fact and conclusions of law, and adopts his recommended remedy.^{1 2}

¹Applying the National Labor Relations Board's (NLRB or national board) current objective standard for evaluating allegations of strike misconduct, Chairman Stoker would find that certain employees engaged in threats of physical harm to nonstrikers which warrant a denial of reinstatement under *Clear Pine Moldings* (1984) 268 NLRB 1044 [115 LRRM 1113], *aff'd* (9th Cir. 1985) 765 F.2d 148 [120 LRRM 2631], *cert. den.* (1986) 474 U.S. 1105 [121 LRRM 2363].) The activity in question here is whether a relatively small group of employees engaged in misconduct when they attempted to force other employees to withhold their labor in support of a wage increase in the corn harvest. Employees were told they would become the target of "corn blows" if they proceeded to work. In the cited case, the national board held that a striker may be denied reinstatement, even where there was no evidence that the threat was accompanied by either physical acts or gestures, and that the appropriate test in such cases is an objective one in which the only question is whether the conduct was such that it reasonably would tend to coerce or intimidate nonstrikers. As the national board observed in *United Parcel Service, Inc.* (1993) 311 NLRB 974 [150 LRRM 1042], it is well settled Board precedent that "the manner in which an employee exercises a statutory right can be so extreme as to lose the Act's protection." (Citations omitted.) The Chairman would apply this principle equally to all cases in which the conduct may be evaluated according to the objective standard. Accordingly, in order to promote what section 1 of the ALRA characterizes as "stability of labor relations," he would apply the same level of scrutiny wherever there is evidence that employees have abused their section 1152 rights or employers or unions have engaged in the type of restraint or coercion which the Act proscribes. Unlike his colleagues, Chairman Stoker relies on the virtually uncontroverted testimony of supervisor Pedroza who named five employees he heard threaten to throw corn at anyone who attempted to begin working. In General Counsel's case-in-chief, one of the identified employees (Roberto Sanchez) answered "no" when asked in general terms only if he engaged in any threatening conduct. None of the other employees was asked a similar question and there was no rebuttal testimony. Since the ALJ did not reject Pedroza's account on the basis of demeanor, the Chairman believes he is free to draw his own conclusions based on the record as a whole.

²We agree with Chairman Stoker that under applicable National Labor Relations Act precedent, an employee who exercises a statutory right in an extreme manner may lose the statute's protection (*United Parcel Service, Inc.*, *supra*, 311 NLRB 974)

(continued...)

ORDER

By authority of Labor Code section 1160.3 of the Agricultural Labor Relations Act (Act), the Agricultural Labor Relations Board hereby orders that Respondent Golden Acre Farms, Inc., its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Laying off or discharging any agricultural employee because he or she has engaged in activity protected by section 1152 of the Act;

(b) In any like or related manner, interfering with, restraining or coercing agricultural employees in the exercise of their 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 layoffs and discharges of Juan Rangel, Nicholas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose

²(...continued)

and, more specifically, a striking employee who engages in threats of physical harm to nonstriking employees may be denied reinstatement (Clear Pine Moldings, supra, 268 NLRB 1044). Had the facts herein been sufficient to support a finding that specific striking employees engaged in such misconduct, we would have found it appropriate to deny reinstatement to such employees. However, the ALJ found that the testimony of Jaime Pedroza (upon which Chairman Stoker relies to find that certain employees engaged in threats) was vague, inconsistent and uncorroborated, and thus insufficient to meet the Employer's burden to prove that identifiable individuals engaged in serious strike misconduct. (Sunrise Mushrooms, Inc. (1996) 22 ALRB No. 2, pp. 10-11.) After reviewing all the testimony and other record evidence in this case, we find no basis for overturning the ALJ's determination.

(a) Rescind the layoffs and discharges of Juan Rangel, Nicholas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gomez, Jose Henry Garcia, Alex Artnando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega, Ramos Rangel and Octavio Rangel and offer them full and immediate reinstatement to their former positions of employment, or if their positions no longer exist, to substantially equivalent employment without prejudice to their seniority and other rights and privileges of employment.

(b) Make whole Juan Rangel, Nicholas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gomez, Jose Henry Garcia, Alex Armando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega, Ramon Rangel and Octavio Rangel for all losses of pay and/or other economic losses they have suffered as a result of being laid off and 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 makewhole amounts due these 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 translation 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 May 8, 1995, until May 7, 1996.

(f) 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.

(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 time lost 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 matter.

(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: November 19, 1996

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. PRICK, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating a charge that was filed in the El Centro Regional Office of the Agricultural Labor Relations Board (ALRB or Board), the General Counsel of the ALRB issued a complaint that alleged that we, Golden Acre Farms, Inc., 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 laying off and then discharging Juan Rangel, Nicholas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gomez, Jose Henry Garcia, Alex Armando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega, Ramon Range) and Octavio Rangel.

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 (union);
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 union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

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 layoff or discharge, or otherwise retaliate against employees because they protest about their wages, hours or other terms and conditions of employment.

WE WILL offer reinstatement to Juan Rangel, Nicholas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gomez, Jose Henry Garcia, Alex Armando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega, Ramon Rangel and Octavio Rangel to their former positions of employment, and make them whole for any losses they suffered as a result of our unlawful acts.

DATED:

GOLDEN ACRE FARMS, INC.

By:

(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, California 92243. The telephone number is (619)353-2130. This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

GOLDEN ACRE FARMS, INC.
(Juan Rangel, at al.)

22 ALRB No. 14
Case No. 95-CE-18-EC

ALJ Decision

The ALJ found that the Employer had violated section 1153 (a) of the ALRA by laying off and then discharging the corn harvest crew who worked under foreman Magdaleno Lopez because of their protected concerted activities in protesting wages and engaging in an economic strike. The ALJ rejected the Employer's proffered defenses that there was no work available to Lopez' s crew and that some members of the crew should be denied reinstatement because of misconduct connected to their concerted activities.

Board Decision

The Board affirmed the ALJ's findings of fact and conclusions of law and adopted his recommended remedy.

* * *

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

STATS OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

GOLDEN ACRE FARMS , INC. ,

Respondent,

and

JUAN RANGEL, NICOLAS LOBATOS,
ESAU VERDUGO GARCIA, DANIEL
VEGA, JOSE ANGEL AGUILAR,
EDUARDO GONZALEZ, HORACIO VEGA,
MARIO RAMIREZ, JAIME JAUREGUI
GOMEZ, JOSE HENRY GARCIA, ALEX
ARMANDO GOMEZ, SANTOS A. ALFARO
JOSE VICTOR CANALES, JUSTINO
ORDONEZ, LUZ RANGEL, ROBERTO
SANCHEZ, FRANCISCO VEGA, RAMON
RANGEL, and OCTAVIO RANGEL

_____Charging Parties. _____

Case No. 95-OS-13-EC

Appearances:

Larry Dawson
Western Growers Associates
for Employer

David Liman Saldivar
California Rural Legal Assistance
for Charging Parties

Kristine Rodriguez
El Centro ALRB Regional Office
for General Counsel

THOMAS SOBEL, Administrative Law Judge: This case was heard by me in Indio, California on June 4th and 5th, 1996. In a duly issued complaint, General Counsel alleged that Respondent, an admitted agricultural employer, (See, Answer,) first laid off, and then discharged, one of its crews in retaliation for the concerted activities of its members.¹ At the Pre-Hearing Conference, Respondent admitted it laid off the crew in question, (See, Pre-Hearing Conference Order,) but denied that it thereafter fired the crew or that it acted for discriminatory reasons. Respondent also contended that there was no work available to Lopez's crew because there was generally less work in the corn. At the Hearing, Respondent argued that some members of Lopez's crew should be denied reinstatement because of misconduct connected with their concerted activities. Both parties waived the filing of Post-Hearing Briefs.

INTRODUCTION

Respondent has two major crop seasons, only one of which

¹The original complaint identified Juan Rangel, Nicolas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gotnez, Jose Henry Garcia, Alex Armando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega and Ramon Rangel as discriminatees. At the Pre-Hearing Conference General Counsel moved to add Octavio Rangel as a discriminatee. I granted the motion. [See, 8 Code of California Regulations Section 20222(a) , General Counsel may amend any complaint as of right up to three days after the Pre-Hearing Conference.] In its Answer, Respondent admitted the agricultural employee status of the originally named discriminatees, but was not prepared to admit the status of Octavio Rangel. Based upon the uncontradicted testimony of various witnesses, I find that Rangel was an agricultural employee at all pertinent times.

concerns us here, namely, the corn harvest which runs from May to June or July. The alleged discriminatees were members of the corn-harvesting crew of Magdalene Lopez. Lopez himself had worked for Respondent for approximately 17 years, putting together his own crew at the start of the corn-harvest. At least for the 1994 and 1995 seasons, Lopez's crew was the first crew to start the harvest and, of the three crews that would eventually work it, Lopez's was one of the two that finished the harvest. RT I:20.

Lopez's corn harvesters were paid piece rate with the entire crew dividing the pay for the total amount of boxes picked. As a result, if the rate paid per box stayed the same, the addition of employees to the crew reduced the share of every employee's wage. The events in this case were set in motion when the employees in Lopez's crew discovered that Respondent added employees to the crew.

FACTS

The 1995 harvest season began on Thursday, May 4.² While Roberto Sanchez testified that at the "start of work," Lopez told the crew they would have to share their wages with the

²There was some confusion about exactly when the 1995 harvest began, with various witnesses placing it on the 3rd, 4th or the 5th of May. Based upon the payroll summaries in evidence as RX 1, I find that the 1995 harvest began on May 4th. I should also note that the corn harvest is conducted at night starting at around 7:00 p.m. and continuing through the early morning hours. Such a schedule obviously spans two calendar days. I infer that when Respondent's payroll records treat the harvest as starting on the 4th, they mean on the evening of the 4th, even if the "workday" ended on the 5th.

two drivers, RT I:38, Lopez testified that the crew asked him on May 5, "how were the drivers going to be paid?" RT I:46. No matter when the crew actually discovered the drivers would share in the piece rate, everyone agrees that it was not until May 5 that the crew asked Lopez about it. He told them to speak to Donald Imoto, Respondent's Manager.

Sometime during work, the crew stopped work to speak to Imoto. Esaul Verdugo testified that he asked Imoto about the drivers' pay and Imoto told them he could not pay them separately because of insurance concerns. RT I:71 Imoto testified they also asked for a raise in the piece rate.² Everyone agrees that Imoto said he was "not sure" and he would have to ask "the boss", Joe Kitagawa, who was not available at the time because he was vacationing in Alaska. Based upon Verdugo's testimony that Imoto told the crew he could not pay the drivers separately, I find, as Imoto testified, that the crew also asked for a raise since that was the only matter about which he could not be "sure."

Sanchez testified he told Imoto to talk to Joe Kitagawa because it was important the crew be paid fairly. According to Verdugo, Sanchez, and Daniel Vega, Imoto agreed to have an answer .by Sunday, May 7, which would be the next workday since the crew does not work on Saturdays. While agreeing that he told the crew he would get back to them, Imoto denied promising them an answer

³Imoto actually testified that "either the Friday or Saturday before" the crew eventually walked out (which, as I shall relate, took place on May 7), they asked for a raise. Since the crew did not work on Saturday, I take it that Imoto was referring to the conversation on May 5 described above.

by Sunday.⁴ The crew went back to work.

On Sunday, May 7, the crew reported to work in the early evening. RT I:43. The corn had already been cut and was waiting in the field to be harvested and packed by Lopez's and Jaime Pedroza's crews. The presence of another crew was not unusual for, as previously noted, Respondent typically used more than one crew during the corn harvest, and as RX 1 shows, during the 1994 season, Pedroza's crew was the next to be called after Lopez's. According to Sanchez, the two crews were milling about at the start of work, talking about the unfairness of adding new drivers to the crew. RT I:99.

Pedroza, however, testified that some of the members of the Lopez crew went beyond discussion and threatened⁵ his crew by saying "if [anyone] went into work they were going to throw corn [at them], "RT:127, or "if they were not going to work that [Pedroza's] crew was not going to work." RT II.-128. Pedroza identified Daniel Vega, Horacio Vega, Roberto Sanchez, Angel Aguilar and Nicolas Lobatos (Chino) as making these kind of statements. RT II:130. General Counsel's witnesses generally

⁴There is no need to resolve the matter since the nature of the crew's activity does not depend upon what sort of commitment Imoto made.

⁵Pedroza related a variety of statements which he attributed to Lopez's crew; most of the statements which he related were clearly protected. Thus, exhorting people not to go into work "because [Lopez's crew] wanted a raise," RT 11:127, or trying to enlist support by pointing out "that they couldn't do anything to us because we had the right to get a raise per box, "Ibid, or saying "that neither of the two had to go into work, RT II:128, are protected under the Act because they only promote group action.

denied hearing any threats about throwing corn directed at anyone. Because Respondent argued at the hearing that such statements were a defense to -the reinstatement of the employees who allegedly made them,⁶ I will quickly discuss the credibility of Pedroza's testimony on this point.

The more Pedroza was pressed about exactly what he heard any of the above-named employees actually say, the more vague his testimony became until he admitted he could not specifically say who said what: "[W] hat one repeated all of them said"; and "I am telling you I cannot specifically tell you what one person said. I was paying attention to all of them." RT II:133. Pedroza also testified that at least 10 members of his crew told him they were "frightened" by the comments. See, pp. 140, II.26-28. Upon further examination, however, he admitted no one specifically said he was afraid, but rather, that they "didn't want problems." RT II:139-40, 141. Moreover, when asked by General Counsel to relate what the first person to "complain" to him actually said, RT II:139, he initially testified: "Not to pay attention, that there were not going to be problems." RT II:140. When General Counsel re-asked the question, Pedroza testified, "That they were yelling. To get down from the trailer because if not they were going to bring them down." Ibid. Pedroza also refused to specifically identify anybody who complained to him. In view of the employees' denials that they heard such statements, and the inconsistencies in Pedroza's accounts of them, I decline to

⁶ See, e.g. Sunrise Mushrooms (1996) 22 ALRB No. 2.

credit his testimony concerning the alleged threats.⁷

With neither crew working, Lopez called Imoto. When Imoto arrived, he agreed to speak to a small deputation of workers from Lopez's crew.⁸ Both Lopez and Jaime Pedroza apparently remained nearby as the discussion commenced.⁹ According to Verdugo, Sanchez asked, and according to Sanchez, Verdugo asked, "for the answer" they contend had been promised them, RT I-74 [Verdugo], 91 [Sanchez.] Imoto said he had no answer because he had not yet spoken to Joe Kitagawa, RT 1:91, and he asked the crew what they wanted.

Sanchez and Jaime Pedroza both testified that Pedroza told the crew to ask for \$.70, but, ignoring the suggestion, Verdugo told Imoto that "it would look fair at \$.68," an \$.08 per box raise. Imoto said that he could probably pay \$.64. Verdugo testified Sanchez asked if Imoto were promising to pay that amount. Sanchez testified he only asked "for something fair and the crew would work." In any event, Imoto said that he could not

⁷Lopez testified that, when he spoke to Diana Kitagawa, the morning after these events, she told him that his crew "formed a line" and blocked prevented Pedroza's crew from entering the field. Lopez denied seeing any such thing, RT I: 60; as did Verdugo, RT I:82; Sanchez, RT I:98; Daniel Vega, RT I:98; Justino Ordonez, RT I:114 and Nicolas Lobatos, RT I:117. Since no percipient witness testified that Lopez's crew physically prevented Pedroza's crew from working, I will take no further account of this hearsay contention.

⁸The witnesses do not entirely agree on either the number or the identity of the employee contingent. It is not necessary to make any more precise findings than that a number of employees spoke to Imoto as representatives of their crew.

⁹Lopez testified that he did not hear the end of the discussion.

even promise \$.64 in Joe Kitagawa's absence.

When Imoto told them it could not be settled in Kitagawa's absence, Sanchez said "if there is no problem, we will wait for Joe to resolve the situation", RT I:93 [Sanchez], and asked if there would be a problem if the crew left. Verdugo and Daniel Vega testified that Imoto told the crew that they could leave and come back the next day, RT I:75 [Verdugo], 105[Vega]; Imoto testified he told them they could leave, but that the corn would have to be picked the next day.¹⁰ Based upon Sanchez's testimony that the crew would work if Imoto promised something fair, I find that, in giving the crew "permission to leave, " Imoto was bowing to the inevitable: the crew had already refused to start work and Sanchez told him they would only start work for a "fair" wage, that is, some kind of raise which he could not give. Despite the element of acquiescence in Imoto's giving the crew permission to leave, I find the crew essentially struck. Moreover, in view of the crew's expressed willingness to wait for "Joe to resolve the situation, " I also find that Imoto was unlikely to have told the representatives to return to work the next day.¹¹

General Counsel's witnesses testified that, as the representatives left Imoto to return to where the crews waited,

¹⁰ Imoto testified that since it was still cool, the corn could wait to be harvested until the next day; however, it would have to be harvested then or it would burn.

¹¹ Lopez and Pedroza testified that Imoto told them (the foreman) to report to Diana the next day. RT II:136

they passed Pedroza's crew who asked them what happened. According to Verdugo, Sanchez and Lopez, the other crew decided not to work either. Pedroza, however, testified that his crew was sent home by Imoto after he told Imoto he could not get his people "in there to work because there were going to be problems," RT II:129. Imoto testified:

Q: (By Respondent's Counsel) : Did you have any conversation with Foreman Jaime with respect to him continuing to work that night?

A: Yes, he approached me later on and said that his crew would harvest that night as soon as whoever did not want to work left.

Q: So why didn't he harvest that night?

A: He came back to me later on -- Nobody was leaving at that time. After I told them okay, then we won't harvest anything tonight, for everybody to go home, everybody was still standing around, milling around. And then he came back to me and said there could be problems with Magdaleno's crew if his crew started to harvest. RT 11:168

This is not the clearest testimony,- Imoto appears to be saying both that he called the entire harvest off ["we won't harvest anything tonight"] in which case even Pedroza's crew would not work and that he expected Pedroza's crew to harvest. While it is possible that he mis-spoke and was merely referring to Lopez's crew when he testified about "telling everybody to go home", this does not explain why he also said "we won't harvest anything tonight." Since I have already discredited Pedroza's testimony that Daniel Vega, Horacio Vega, Roberto Sanchez, Angel Aguilar and Nicolas Lobatos had earlier threatened his crew, I find nothing in Pedroza's and Imoto's confusing testimony to

cause me to conclude that anything they said prevented Pedroza's crew from working.

The following day, May 8, Lopez went to speak to Diana Kitagawa, Joe Kitagawa's wife and Respondent's co-owner. According to Lopez, he did not speak about money, but Diana Kitagawa testified that he did. RT I:33 [Lopez wanted a raise "then and there"]. She admitted he asked her about his crew's returning to work, RT I:40,¹² but she told him, " [U]ntil my husband comes back they were laid-off," RT I:34,38. Lopez recalled the latter statement, RT I:55, and also that she told him she did not want anything to do with his crew, RT I:52, and "that [his] crew had gone on strike at least two or three times." RT I:54.¹³ Although Diana Kitagawa did not recall telling Lopez that his crew had been on strike two or three times, and denied expressing any animus against his crew, RT I:21-22, I credit Lopez on these matters . Since Diana admitted laying off the crew, it seems more likely than not that she did so because she was upset about the immediately preceding events and expressed herself as described by Lopez.

According to Lopez, he went to see Imoto about two or

¹²Since General Counsel has not alleged that Respondent refused to reinstate the crew after an unconditional offer to return, I have no need to determine whether Lopez 1) made a wage demand on Monday, and 2) if he did not, whether his asking about work could constitute an unconditional offer since there is no showing that any of the crew's representatives had withdrawn their demand for a raise at this time.

¹³Since there was no testimony about any incidents other than those discussed above, Diana Kitagawa must have been, and I so find that she was, referring to the incidents of May 5 and 7.

three times, RT 1:56, that week to ask about work. Imoto did not offer him any and told him that he would have to wait until Joe came back from vacation. Lopez testified that on Friday, May 12, "the boss", whom I infer is Joe Kitagawa, told him "there would be no more work for [his] crew." RT I:57.¹⁴ It appears, and I so find, that it was Joe Kitagawa who also told Lopez that the reason his crew would not work the corn was that "business was in very bad shape." RT I-.63. As a result, starting around May 12, Lopez began calling the members of the crew to tell them they had been "laid-off", RT I:66, and they should start to look for work; he also began to look for work for himself. It is undisputed that Respondent called in another crew, the Ulloa crew, that had not previously worked the entire corn harvest before, RT I:65. Lopez's crew did not work again. Justino Ordonez testified that he spoke to Diana Kitagawa on May 17 to ask for work for the crew and she told him, "Not any more. I already have my people." RT I:112-113¹⁵ Based upon Joe Kitagawa's statement that there would be "no more work for [Lopez's] crew" and Diana Kitagawa's similar statement that she already "had her people," I find the crew was discharged.

Respondent contends that Lopez's crew was not recalled to work because there was less work in the corn harvest during the 1995 season. In support of this contention, Respondent

¹⁴ Lopez testified that Joe did not say the crew was fired, but told him, "my crew was not going to work the corn." RT I:62

¹⁵ Diana Kitagawa did not recall making such a statement. RT I:33

introduced into evidence crew-by crew summaries of its 1994/1995 corn harvesting payrolls. These summaries show that in 1994, Respondent used three harvest crews and that in 1995 Respondent also used three harvest crews. As noted above, one of the crews used in the 1995 harvest had never previously worked an entire harvest. Although the summaries show that Ulloa's crew earned a good deal less in 1995 than Lopez's crew earned during 1994, they also show that Avila's crew earned slightly more in 1995 than in 1994, and Pedroza's crew earned slightly less in 1995 than it did in 1994. While it is also true that total corn earnings went down in 1995, that fact alone says nothing about why Respondent selected Ulloa's crew rather than Lopez's to do the work that was available.

ANALYSIS

Labor Code Section 1152 permits agricultural employees to engage in concerted activities for the purpose of mutual aid or protection. Labor Code Section 1153 (a) provides that it is an unfair labor practice for an employer to interfere, restrain or coerce employees for engaging in such activities. In this case, Lopez's crew engaged in two forms of concerted activities, namely, the initial wage protest on May 5th and the ensuing refusal to work and walkout on May 7th. Respondent does not dispute either that the crew engaged in such activities or that Respondent had knowledge of them. I have also refused to find that, in engaging in such activities, any members of the crew exceeded the protections of the Act.

With, the facts of 1) concerted activity and 2) Respondent's knowledge thereof established, the remaining elements of a violation of 1153 (a) are: that Respondent took some form of adverse action against the members of the Lopez crew and that it did so because of the protected activities. See, Lawrence Scarrone (1981) 7 ALRB No. 31 Once General Counsel makes a sufficient showing that protected activity was a motivating, or causal, factor in the employer's decision, the burden of proof shifts to the employer to show that it would have taken the same action in the absence of the protected conduct. Wricrht Line (1980) 251 NLRB 150.

So far as the adverse action element is concerned, Respondent has admitted that it "laid-off" the Lopez crew on May 8, but denied that it fired them.¹⁶ I have found that Joe Kitagawa fired the crew on Friday, May 12. Proof of the causal element in both actions also seems clear: so far as the record shows, Lopez's was the preferred harvest crew and only lost that status after the events of May 5 and 7. Thus, the matter of timing alone strongly supports the inference of a causal connection. Moreover, I have credited Lopez's testimony that Diana Kitagawa strongly expressed her unhappiness with the crew's

¹⁶ Since the employees refused to work in support of their wage demand, Respondent was entitled to either hire temporary replacements or permanent replacements, the difference being that if the strikers made an unconditional offer to return to work, temporary replacements would have to be discharged to make room for the returning strikers. It could not lay the crew off and thereby signal its intention not to take them back until Joe returned even if they made an unconditional offer and it could not discharge them.

concerted activities. As a result, I find that General Counsel met her burden, of proof.

Accordingly, the burden shifted to Respondent to show that it would have both laid off and terminated the crew in the absence of their protected activities. I find that Respondent failed to meet its burden. As noted above, proof that its 1995 crews made less money, while some proof that there may have been less work available throughout the entire harvest, does not show why it retained the Ulloa crew in preference to the Lopez crew. Accordingly, I find that Respondent violated Labor Code section 1153 (a) in laying off and then discharging the members of the Lopez crew.

ORDER

Pursuant to Labor Code Section Respondent Golden Acre Farms, Inc, its officers, agents, labor contractors, successors and assigns shall:

1. Cease and desist from:

(a) Laying off or discharging any agricultural employee because he or she has engaged in activity protected by section 1152 the Act;

(b) In any like or related manner, interfering with, restraining or coercing agricultural employees 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 layoffs and discharges of Juan Rangel,

Nicolas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gomez, Jose Henry Garcia, Alex Armando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega, Ramon Rangel and Octavio Rangel and offer them full and immediate reinstatement to. their former positions of employment, or if their positions no longer exist, to substantially equivalent employment without prejudice to their seniority and other rights and privileges of employment.

(b) Make whole Juan Rangel, Nicolas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gomez, Jose Henry Garcia, Alex Armando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega, Ramon Rangel and Ocfeavia Rangel for all losses of pay -and/or other economic losses they have suffered as a result of being laid off and 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 Co 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 May 8, 1995, until the date of the mailing of the notice.

(f) 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.

(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 time lost 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 matter.

(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: June 18, 1996

A handwritten signature in black ink, appearing to read 'TSOBEL', written over a horizontal line.

THOMAS SOBEL
Chief 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, Golden Acre Farms, Inc., 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 laying off and then discharging Juan Rangel, Nicolas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gomez, Jose Henry Garcia, Alex Armando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega, Ramon Rangel and Octavio Rangel.

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

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 layoff or discharge, or otherwise retaliate against employees because they protest about their wages, hours or other terms and conditions of employment.

WE WILL offer, reinstatement to Juan Rangel, Nicolas Lobatos, Esaul Verdugo Garcia, Daniel Vega, Jose Angel Aguilar, Eduardo Gonzalez, Horacio Vega, Mario Ramirez, Jaime Jauregui Gomez, Jose Henry Garcia, Alex Armando Gomez, Santos A. Alfaro, Jose Victor Canales, Justino Ordonez, Luz Rangel, Roberto Sanchez, Francisco Vega, Ramon Rangel and Octavio Rangel to their former positions of employment, and make them whole for any losses they suffered as a result of our unlawful acts.

DATED:

GOLDEN ACRE FARMS, INC.,

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, California 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