STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VALLEY FARMS AND ROSE J. FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Nos. 75-CE-28-F 75-CE-28-1-F 75-CE-62-F 75-CE-63-F 2 ALRB No. 41

DECISION AND ORDER

On December 8, 1975, Administrative Law Officer Louis S. Penfield issued his Decision in the above entitled proceeding, finding that the Respondent has engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Administrative Law Officer's Decision. He also found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that these allegations be dismissed. Thereafter the Respondent filed exceptions and a supporting brief and the General Counsel filed its answer to the Respondent's exceptions and a supporting brief and exceptions to the Administrative Law Officer's recommended remedy.

The Board has reviewed the rulings of the ALO made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the

ALO's decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Administrative Law Officer.[1/]

The Administrative Law Officer recommended that, in addition to restoring the discharged employee with back pay and ordering the employer to cease and desist from specified unlawful activity, the Board should order the employer to give each employee hired up to and including next year's harvest season a notice in English and Spanish which reflects the disposition of this case and the employer's promise to comply. In addition, the Administrative Law Officer recommended that the Board order the employer to read the notice to any employee who so requests. We find that this recommendation will effectuate the policies of the Act and adopt the recommendation. Labor Code § 1160.3.

The General Counsel excepts to the Administrative Law Officer's failure to recommend further remedies. The General Counsel urges the Board to require that, in addition to supplying copies of the notices to employees and reading the notice to individual employees on request, the employer post the notice in a conspicuous place, make a speech to the employees in a group in which a representative of the employer reads the notice out loud, and mail a copy of the notice to employees at their last known address.

In support of posting, the General Counsel argues that posting will reach some employees and it is a basic remedy in the

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[1/]As the exceptions, brief, and the entire record in this case adequately presents the issues and positions of the parties, Respondent's request for oral argument is denied.

agricultural context. In support of the employer's making a speech, the General Counsel argues that some employees, including witnesses in this case, are illiterate and cannot read a notice and may be reluctant to ask the employer to read them the notice. In support of mailing the notice, the General Counsel argues that this is necessary to ensure that the contents of the notice reach former employees and employees absent during the posting period.

In appropriate circumstances, the Board has the authority to grant all of the remedies suggested by the General Counsel.

The remedies suggested have been employed by the National Labor Relations Board in order to effectuate the purposes of that Act. Title 29 U.S.C. §160(c), Cf. Labor Code § 1160.3. The NLRB has required employers to mail copies of the notice to the home address of its employees where there was no place on the employer's premises to post a notice that would be seen by all employees, Darlington Manufacturing Co., 139 NLRB No. 23, where employees would be absent or no longer working during the posting period, Hecks, Inc., 191 NLRB No. 146; Tom Johnson, Inc., 154 NLRB 1352, enforced 378 F 2d 342 (9th Cir. 1967); Clement Brothers Co., 170 NLRB No. 152, or to provide an opportunity for employees to read the notice privately and at home without being watched by the employer, Tiidee Products, 194 NLRB No. 198.

Where an employer has committed serious unfair labor practices and a portion of the work force cannot read, the NLRB has ordered that an employer read the notice prepared by the Board

to the employees. Bush Hog, Inc., 161 NLRB No. 136, enforced 405 F 2d 755 (5th Cir. 1968); Texas Electric Cooperatives, Inc., 160 NLRB 440, enforced 398 F 2d 772 (5th Cir. 1968); Marine Welding & Repair Works, 174 NLRB No. 102, enf. 439 F 2d 395 (8th Cir. 1971); J. P. Stevens and Co., 163 NLRB No. 24, enf. 380 F 2d 292 (2nd Cir. 1967). (Employer present when notice read.)

In the particular circumstances of this case, posting a notice would not serve to inform workers of the outcome of the unfair labor practice proceeding and of the employer's intent to comply with the law. Therefore, we will not require posting. At least some of the employees cannot read, and others may have little opportunity to read a posted notice. In work situations where employees regularly gather at a central and permanent place, posting may be an appropriate remedy.

Mailing copies of notices to each of the employees who worked during the 1975 harvest season would be salutory in this case. Because most of the employees are hired only as they are needed for pruning, tying, and harvesting, the workers employed at the time that the unfair labor practice arose may not necessarily return to work for this employer during the next harvest season and would not otherwise be notified of the outcome of this case. Employees should be informed of the outcome of unfair labor practice charges that occurred while they were working because they are the interested parties, and because informing them may encourage them to participate in other Board proceedings. In addition, workers formerly employed by this employer may be eligible to vote in other elections, and an experience in one election may

influence an employee's participation in another election. In this case, we do not order the employer to mail notices to his former employees solely because the employer does not now have the addresses of the employees or access to information which would provide him with the addresses.[2/]

The remedy of ordering an employer to address his workers by reading them a Board-prepared notice is appropriate to give information to workers and to assure them that the employer will not retaliate against them for union activities. In some cases, it is essential that an employer personally participate in the remedy since only the employer has the ability to remedy the past unlawful activities.

This case does not require such a remedy. The action of the employer in reinstating Manuel Leal and granting him back pay will itself be a communication to workers and the record does not demonstrate the pattern of anti-union activity that would make it necessary for an employer to personally assure workers their rights will be respected in the future.

In addition, since this is the first unfair labor practice case to come before the Board, the Board does not have experience in fashioning remedies that will be effective in

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[2/]The failure to supply addresses is a serious omission and a basis for overturning the election, but cannot now be cured. See Valley Farms, Maple Farms and Rose J. Farms, 2 ALRB No. (1976).

compensating for the effects of unfair labor practices. Accordingly, the Board will request that its agents visit the employer's premises during the period of maximum employment next year to check on the effectiveness of the remedies provided herein in notifying employees coming to work during the next harvest season of the outcome of this case. The Board will also solicit the suggestions of its agents on the nature of remedies that will be effective in preventing future unfair labor practices.

The General Counsel requests that the employer be ordered to award costs to the General Counsel and Charging Party. While the Board, like the NLRB, has discretion to grant attorneys' fees and costs in appropriate cases, this case is not of the nature to warrant attorneys' fees. See Tiidee Products, 194 NLRB No. 198; Local 386, Teamsters (United Parcel Service), 203 NLRB No. 125, enforced 502 F 2d 1075 (9th Cir. 1975). The employer's request for attorneys' fees and costs is also denied.

Accordingly, IT IS HEREBY ORDERED that the findings of fact, conclusions and suggested remedies of the administrative law officer are adopted in their entirety and an order be issued that the employer comply with the remedies outlined in the decision of the administrative law officer.

Dated: February 25, 1976

Roger M. Mahony, Chairman

Richard Johnsen, Jr., Member

LeRoy Chatfield, Member

Joseph R. Grodin, Member

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATION BOARD

In the Matter of:	
VALLEY FARMS and .ROSE J.. FARMS,	
Respondents	Case Nos. 75-CE-28-F 75-CE-28-1-F 75-CE-62-F 75-CE-63-F
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO	
Charging Party	

Robert LePrOhn . Esq . , and Robert Bazemek. Esq. ,
of Sacramento, Calif, and Fresno, Calif.,
respectively, for the General Counsel

Saverson. Werson. Berke & Melchior, by
J. Mark Montobbio . Esq. , and John Faldman.III.Esq.,
of San Francisco, Calif, for Respondents

Barry Winograd. 5so. , and C. F. Zermano, of Selma,
Calif., for the Charging Party

DECISION

Statement of the Case

LOUIS S. PENFIELD, Administrative Law Officer: These cases were heard before me in Fresno, California, on October 14, 15, and 16, 1975. The order consolidating cases and the first amended consolidated complaint issued on September 29, 1975. The complaint alleges violations of Section 1153(a) and (c) of the Agricultural Labor Relations Act, herein called the Act, by Valley Farms and Rose J. Farms, herein collectively called Respondents. The complaint is based on charges and amended charges filed, on September 15, 17, and 18, 1975, by United Farm Workers of America, AFL-CIO, herein called the Union. Copies of the charges and amended charges were duly served upon Respondents.

All parties were given full opportunity to participate in the hearing, and after the close thereof the General Counsel and Respondents each filed a brief in support of its respective position.

After the close of the hearing the General Counsel filed a motion to correct the transcript. There was no opposition thereto. I find the corrections appropriate, and the motion is hereby granted.

Upon the entire record, including my observation of demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

Findings of Fact

I. Jurisdiction

Valley Farms is owned as a partnership by Mike Garabedian, Charles Garbedian, and Joseph Garabedian, three brothers. It is engaged in agriculture in fresno County, California, and is an agricultural employer within the meaning of Section 1140(c) of the Act. Rose J. Farms *is* a sole proprietorship owned, by Rose Garabedian, the mother of the Garabedian brothers. It is engaged in agriculture in Fresno County, California, and is an agricultural employer within th.3 meaning of Section 1140(c) of the Act. The Two farms are adjacent, both produce grapes, and each consists Of forty acres. The record establishes that both farms are managed and operated on a joint basis by the Garabedian brothers, and that there is frequent interchange among employees working on both farms. Accordingly, I find Respondents to be joint agricultural employers engaged in agriculture within the meaning of Section U40(c) of the Act.

I further find the Union to be a labor organization representing agricultural employees within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleges that Respondents violated Sections U53(c) of the Act by the discriminatory discharge of Manual Leal, and by a discriminatory refusal to re-employ five named employees. The complaint further alleges unlawful interference violative of Section 1153(a) by Respondents with the rights guaranteed by Section 1152 of the Act, by conduct which amounted to threats, unlawful interrogation, and unlawful surveillance. ..Paragraphs 10(a) and (b) of the complaint contain the allegations regarding the unlawful threats, No evidence was adduced at the hearing in support of such allegations, and a motion to dismiss each sub-paragraph was granted.

Respondents deny the discharge of Manual Leal to have been unlawfully motivated, or that any failure to rehire the five named employees related to their union activities. Respondents farther deny that they engaged in unlawful interrogation or surveillance.

A. The Operation of the Farms

The Garabedian brothers operate the two farms noted above as well as a machinery business known as Valley Welding and Machinery Company. On the two farms they grow_ only Thompson seedless grapes which are dried to make raisins.

On each farm vines are planted in long rows. The fields must be cultivated, irrigated, fertilized, sprayed, and generally maintained throughout the year. Harvesting of the grapes normally commences in September of each year, and is fully completed in early October. Between that time and the next harvest season there will be a pruning season of two or three weeks, followed by a tying season of comparable length when the new growth will be tied to wires. These will occur in January or February of each year. Thereafter there is continuing work which includes plowing, spraying, fertilizing and irrigating until the new crop matures and is harvested. Joseph Garabedian has his office at Valley Welding and Machinery and spends virtually his entire time there, as does his brother Mike. Charles Garabedian also spends time at Valley Welding, but he also does most of the direct supervision of the farm work. The three brothers meet almost daily at lunch to discuss various aspects of their business enterprises.

When the harvest season commences some fifty pickers will be hired. Their task is to pick the grapes, and to place them on paper trays on terraced ground between the rows. The grapes are left on these paper trays for approximately two weeks to dry. About half way through the drying process the grapes are turned over so that they may dry on the other side. When the grapes are sufficiently dry all over, the paper trays are formed into rolls which are picked up by a machine. The last step

of the harvest is to box the raisins. The largest number of employees is required for the picking, and a considerably smaller number is used for the turning, rolling, and boxing. The same employees do not necessarily work on each of the harvest operations .

B. The Discharge of Manual Leal

Manuel Leal was discharged on September 13, 1975.' Leal was first employed by Respondents in late 1973 or early 19?4 as their only full time year-around employee. He was given the responsibility of doing the needed plowing, irrigating, cultivating, plant leveling, planting, spraying, and general maintenance required to keep both farms operating properly. Respondents classify him as ranch foreman. During nine months of the year, however, Leal worked primarily by himself without assistance from others. During the pruning and tying seasons which follow one another in January and February, Leal was given the responsibility to hire the employees necessary to assist in pruning and tying the vines. At all times Leal was paid on an hourly basis. Initially his pay was $2.75 per hour. Leal received regular wage increases, however, and at the time of his discharge he was receiving 33.75 per hour. In addition Leal was given certain fringe benefits. In the harvest season of 197k Respondents hired someone else to obtain a crew and supervise the picking operations. In 197^, however, Leal did assume the responsibility for obtaining crews and directing the turning, rolling, and boxing operations. Leal had authority to make purchases of certain items, such as sprays, needed to carry on his work.

Following the close of the 197^ harvest season. Leal remained as Respondents' sole employee. Referring to teal's work during the year 1974, and explaining why *ha* had been kept on following the harvest of that fall, Joseph Garabedian testified that Respondents had "kept Mr. Leal on . . . .because he did such a beautiful job in 197^ running 120 acres practically by himself, except for the harvesting and pruning." In January and early February of 1975 Leal had charge of the pruning and tying, and hired workers to assist him. In mid-January, ha/ever. Leal was involved in an automobile accident not related to his work duties. He continued working until approximately February 15, at which time he was forced to leave work by orders of his doctor. He remained absent from work until April 21, at which time he returned for approximately three weeks, when he again had to leave because of his injuries. Ha remained off until some time in June when he returned and resumed his job on a full-time basis.

Leal's absence created problems for Respondents. It became necessary for Charles Garabedian to devote more time to work on the farms. Respondents found it necessary to hire others to perform some of the work that had been Leal's responsibility. For the spring plowing and some other tasks, Respondents hired Armando Reyna. Reyna continued in their employ until Leal returned. In the spring of 1975 the house on Rose J. Farms was rented to Maria de la Paz Farnandez. Farnandez, and another girl who lived with her, thereafter undertook to do some of the needed suckering and some miscellaneous odd jobs that would normally have been done by Leal. Respondents were impressed with the quality of the work done by Fernandez. As a result of this, at some time in the summer Respondents reached an understanding with Fernandez whereby she was to hire the crew and direct the entire 1975 harvest operations, including picking, turning, rolling and boxing.

With Leal's return to work on a full-time basis there started what Joseph Garabedian describes as a "battle royal" between Leal and Fernandez. Precise causes of the conflict at the outset were not fully developed, but the emotional testimony of Fernandez disclosed its focus by September 1, when the harvest season commenced. Leal was a known supporter of the Union from the time he was first hired by Respondents. Leal regularly wore a Union button and a belt carrying a Union insignia. Respondents at no time had raised objections to this. The conflict between Leal and Farnandez came to a head when the picking commenced on September 1. Fernandez had hired a crew of some fifty employees to perform this work. Leal was not a part of this crew. According to Fernandez, "Leal used to go tell me about the Union and I was sick and tired of him telling me that." Fernandez testified that Leal had told her that it was his intention to bring in Union authorization cards for members of the harvest crew to sign. Fernandez was opposed to the Union, and felt

that this would upset the people she had hired. She states that she was that her crew members "wanted just to be free. . . nobody to tell them nothing about Union." The issue so concerned Fernandez that she reported it to the Garabedians. Fernandez told the Garabedians of Leal's Union activities and sought their assistance to get him to stop bothering the pickers because the "crew got scared" and "some of them didn't want the Union." Fernandez states that she told Mike Garabedian that she "didn't want Leal on her back" - that she wanted Garabedian "to tell Manuel just not to bother my people" - that she "don't know the way you do it or whatever; I just don't want him there. If he is going to be there, I quit, and that's it." Joseph Garabedian testified that the conflict between Fernandez and Leal became "unbearable" to the brothers, and that they discussed ways to "get out of this mess."

The cutting of the grapes which had commenced on September 1 continued until September 13. At that tine all the employees who had been engaged in picking were laid off. With the picking completed, the turning commenced, followed by the rolling and. boxing. Like the picking, both were directed by Fernandez. In July Fernandez had made arrangements with Reynaldo Villareal to handle the turning and rolling, using members of his family and any additional workers he needed to get the job done. Fernandez had been instructed by the Garabedians to hire only women to do the boxing. As a result, there were few who had engaged in the picking who later worked at turning, rolling, or boxing.

On September 12 the Union filed a petition with the Board for an election among Respondents' employees. The Garabedians first became aware of this on the afternoon of September 12. On September 13 Joseph Garabedian called in Leal and told him that ha was "laying him off because we are either going to run the ranch ourselves or sell it." Leal was instructed to turn in the kaya to the automobiles and other facilities, and to gather any of his personal belongings and leave the property. Leal made no response whatsoever, but did as he had been instructed.

The entire harvesting operation was finally completed on October 6. At the time of the hearing no one had been hired as a year-around employee to replace Leal.

Respondents deny that Leal was terminated because of his Union activity. Asserting that he was discharged for cause because of the unsatisfactory nature of his work performance during the year 1975. Respondents cite various derelictions on Leal's part which commenced in February and continued up to the time of his discharge. These include Leal's failure to hire a satisfactory tying crew in February, his failure properly to supervise the pruning crew, resulting in some of the work not being done in accord with Respondents' requirements, problems arising from irrigation water overflowing and flooding on two occasions in the summer, and Leal's failure properly to spray an infestation of worms on some of the vines. Leal does not dispute that the incidents occurred, or that on occasion one or the other of the Garabedian brothers had expressed concern or displeasure regarding the events. He views each incident as a matter of no great magnitude, and notes that during the course of his employment he was neither reprimanded nor disciplined by the partners with regard to any one of the incidents, nor had they warned or suggested to him at any time that unless his work performance showed improvement he might be terminated. While it is clear that Leal's injury and prolonged absence caused problems and inconvenience to the Garabedians, at no time which he was absent did any brother suggest that such problems had reached a point which required that they make other permanent arrangements. It may also be noted that by September when Leal was discharged he had bean back on the job on a full-time basis for a period of nearly three months.

Regardless of other considerations Respondents assert that Leal is properly classified as a supervisor within the meaning of the Act, and that as a supervisor he is not entitled to the protections accorded other employees, and thus regardless of Respondents' motivation his case cannot be sustained.

B. The Interrogation *on* September 18

A Board conducted election was scheduled and held on September 19, 1975. Five enployees, Abel Correa, Santos Flores, Gaspar Gutierrez, Ignacio Cubillo Moreno, and Antonio Navarro, had worked as pickers for Respondends during the 1975 harvest season. All five had ceased working for Respondents by September 13 when the picking ceased. It is not claimed that their layoffs at this time were discriminatory. The five were nationals of Mexico and did not have "immigration papers" or social security numbers. Fernandez had put then on Respondents' payroll using other names and social security numbers. After their layoffs they had kept in close touch with Fernandez because they rented a room in her house . They had sought her assistance in obtaining other jobs, and Fernandez had been instrumental in finding some picking jobs for then at locations not operated by Respondents, or in which she was involved in any way.

The five were at the Fernandez premises on September 18, the day before the Board election, when Leal and a Union organizer appeared to advise them of the election on the following day, and to urge them to vote. Leal and the organizer were still there when Fernandez arrived. Fernandez expressed intense anger at Leal's presence and ordered him to leave her premises immediately. Fernandez and the Union organizer carried on a private conversation for a time and, when he departed, Fernandez questioned the employees concerning their conversations with the Union representatives before she had returned. According to the consistent and credible testimony of Correa and Flores, Fernandez asked them if they were going to vote in the election and, when they expressed uncertainty, told then that they "couldn't vote because they didn't have papers and (they) wars illegals." Fernandez denied that she told the employees that they were "illegals." She admits, however, that she questioned them concerning voting and told then "not to go and vote, because the reason that you paid on another social security number, because you didn't have a social security number and you were not on the list."

Subsequent to their conversation with Fernandez, the five decided that they would vote despite Fernandez' admonitions. Apparently they did not wish to make this known to Fernandez, and so they left her premises that night and went to a labor camp. The following day a Union organizer drove them to the polling place. Since their names were not on the eligibility list used in the polls, all five voted challenged ballots. Before all the ballots were counted, however, it was ascertained that the five had been employed during the eligibility period, and by agreement of the parties the challenges wars opened and the ballots of the five mixed with the others. The results showed eleven for no union and five for the Union. Fernandez was present at the count.

C. The Refusal to Rehire

Correa and Flores testified that on September 18, the day before the election, Fernandez had promised them that she would get them further work with Respondents. Fernandez testified that, while she had told them she would continue to help than get work, at no time had she promised them work with Respondents because no such work was available, inasmuch as the remaining harvest work involved only turning, rolling, and boxing and Villareal was handling the turning and rolling and she was hiring only women to do the boxing work. As we have seen, the five employees named above had gone to the polls and voted. The challenges to their ballots had been overruled, and their ballots had been counted with the others. Fernandez was present when this ruling was made, and although their ballots ware mixed with the others and could not be identified, she was made aware that only five of the eligible voters cast ballots for the Union. Two or three days after the election, Fernandez net the five at the labor camp where they were then living. Correa asked her who "won" the election, and if she had any work for then. According to Correa she responded that although Respondents had won the election "it wasn't due to (us) or by (our) efforts." At the same time Correa states that Fernandez told them "not to count on her for anything regarding work." Floras' testimony corroborates in substance that of Correa, Fernandez denies telling any of them that she would no longer help then, or that she wanted nothing further to do with them because it appeared that they had voted for the Union.

D- The Unlawful Surveillance.

In paragraphs 10(d) and (e) of the complaint it *is* alleged that on September 19 Fernandez created the impression of surveillance and engaged in surveillance of Respondents' employees' Union activities. There is considerable evidence in the record regarding the circumstances surrounding the appearance of Fernandez at the voting place at the tine of the election on September 19. No purpose will be served in examining this with particularity. Fernandez did drive people to tae polls, and did return to the polling area on one occasion while voting was still going on, and was observed by some of the voters, *I* an not convinced, however, that it was her intent, or that it has been established, that this conduct constituted unlawful surveillance. The election was hastily set up. Both the employer and the Union were asked by Board agents to take all possible steps to notify eligible voters that an election was taking place, and to assist in getting voters to the polls. Both the Union and the employer cooperated with the Board request in this regard. I view the appearance of Fernandez at the polls more nearly as an effort to comply with this request, than as a showing of unlawful surveillance. Accordingly I shall recommend that these allegations in the complaint be dismissed.

E. Discussions of the Issues and Conclusions

Contrary to the contention of Respondents, I find the allegations of unlawful interrogation, found in Paragraph 10(c) of the complaint, to have merit. While it is true that on September 18 the five employees had been lawfully laid off, they retained employee status for eligibility purposes in the forthcoming election. Fernandsz[1] statements were directly aimed at discouraging them from voting in this election. Whether Fernandez told them that they could not vote because they were illegal, or whether she told them that they could not vote because they had no social security numbers and their names were not on the eligibility list, is of little importance. By her own admission she told them not to vote in the election. Fernandez had been the person who had hired them to work for Respondents, who cashed their checks for them, and was the one toward whom they were still looking to help them obtain future employment. She was still functioning as the harvest supervisor.

Freedom to choose a bargaining representative without interference is a basic right guaranteed by the Act to all agricultural employees. Fernandez may have honestly believed the status of the five rendered them ineligible, and that their interests were best served by not voting. Their actual eligibility, however, was a matter for the Board to determine, and it was not the province of a representative of the Employer, regardless of motivation, to make representations calculated to discourage employees from undertaking a determination of their eligibility status through an appropriate channel. Fernandez bluntly told the five that they could not and should not vote. Not only did she make such statements after querying them as to their voting intentions, but it came only a short time after her open display of anger and hostility toward Leal, who, as a Union representative, had corns to urge the five to vote. Under the circumstances I view Fernandez[1] statements as a flagrant interference with the statutory rights of these employees and as constituting conduct violative of Section 1153(a) of the Act, and I so find.

Different considerations prevail, however, with regard to the alleged discrimination affecting the sane employees. It is charged that on September 18, or thereabouts, Fernandez promised them employment with Respondents, but that after the election when it appeared that these five were the only voters favoring the Union she had refused to give them work.[1/] Correa and Flores testified credibly that

[1/] Of course Fernandez had no way of knowing whether the five votes cast in favor of the Union had been cast by these five individuals. She knew they had voted, however, despite her admonitions not to do so. She also knew that they had moved away from her premises, and had been brought to the polling place by a Union organizer. It is thus a fair inference that she would consider it likely that their[1]s were the five votes which favored the Union.

Fernandez had expressed displeasure at their participation in the election, and indicated to them that she would no longer help then; as far- as finding work was concerned. Had work been available at Respondents' farms which they might have performed, it is possible that this Right establish a violation. The record, however, does not indicate this to be the case.

It is undisputed that when the picking operations were completed on September 13, all those who had been engaged in picking were laid off. It is also undisputed that Fernandez had made arrangements with Villareal in July to handle the turning and rolling which followed the picking, and that Villarsal was going to do the work using members of his own family and such others as he night need to hire. It is similarly undisputed that, Fernandez had been directed by the Garabedians to hire women to do the boxing work. The turning, rolling, and boxing were the only acts still to be done in order to complete the 1975 harvest. Thus it appears that Fernandez had no jobs open at Respondents' farms which she could have offered to any one of these former pickers. I think it likely that Correa and Flores midconstrued Fernandez' offer to help them find work as a promise on her part to give then work with Respondents. Prior to the election she had been instrumental in getting then jobs at a farm unrelated to Respondents and with which she had no direct connection, "o doubt Fernandez did tell the five that she would continue to help them in a similar fashion. However even if we assume that she withdrew such offer to help after concluding that the five had voted for the Union, this does no more than demonstrate an anti-union animus on Fernandez[1] part which is not related to Respondents. It is Respondents alone who are charged in this complaint with a discriminatory refusal to rehire. Such a charge against them cannot be sustained because there were no jobs then available at their farms. Respondents cannot be held responsible for conduct of Fernandez in areas not related to their enterprise. Accordingly I shall recommend that the allegations of discriminatory refusal to rehire the five named individuals be dismissed.

The alleged discriminatory discharge of Manuel Leal on September 13 raises two issues: (1) was Leal a supervisor not protected by the provisions of the Act? And (2) assuming he was entitled to the protections of the Act, is there sufficient evidence that his discharge was discriminatorily motivated?

Respondents claim Leal to have been a supervisor at all times. I am not convinced that the record sustains such a conclusion. Respondents classified Leal as ranch foreman, but a supervisory title does not alone give a man supervisory status. Leal stands out as Respondents' only year-around employee who was given many *and* varied tasks 'to perform relating to the maintenance of the farms but who, for the most part, performed such tasks by hinself alone. It was only during the six weeks or so of the pruning and tying seasons in 1974 and 1975 and part of the 1974 harvest season that Leal had hired and directed any others while doing his job for Respondents. In 1974 the hiring and direction of the picking crew had been given to someone else. In 1975 the hiring and direction of all harvest operations was given to Fernandez. At the time of his discharge it appears that Leal had been stripped of even the limited supervisory authority he had previously exercised with respect to the pruning and tying seasons. Thus we find Joseph Garabedian testifying that from June of 1975 Leal had no responsibility for hiring and firing employees, and had no authority to do either. This would indicate that on September 15, when Leal was discharged, he was functioning solely as Respondents' one year-around rank and file employee, working under the direction of the Garabedians.[2/] Accordingly.

[2/] I view the testimony regarding Leal's authority since June 1975 as dispositive of the issue. However even if we are to view Leal's status from a broader perspective, I an convinced, and would find, that the limited supervisory authority which he had previously exercised during the pruning and harvest seasons was insufficient to make him a supervisor within the meaning of the Act. For the entire balance of the year he worked by himself and directed no one. In some situations issues might arise as to his relationship to those employees he actually hired and directed, but his overall year-around relationship to Respondents was basically that of a rank and file employee.

I find that Leal was not a supervisor within the meaning of the Act, and that he is entitled to all the protections the Act accords agricultural employees.

Respondents further defend the discharge of Leal on tha ground that the General Counsel has failed to establish unlawful motivation. Respondents urge that from the outset of his employment they ware well aware that Leal was a union supporter, and that it is not shown that at any tine they had raisad objections to his union activity, or suggested that such might adversely affect hie. Respondents contend that Leal[1]s discharge case about, not for his union activities, but because his work performance had deteriorated markedly, and that they discharged him solely because he had become an unsatisfactory worker. I disagree.

While it is true that Respondsnt3 had full knowledge of Leal's interest in the Union, it does not appear that prior to the harvest season of 1975 he had taken any steps to channel such interest in the organization of Respondents' enployees. Leal's.injuries earlier in the year had brought about the hiring of Reyna and Fernandez. Reyna departed with Leal's return to work full time, but Fernandsz not only retrained on but was also chosen to hire and direct employees needed for all harvest operations. Leal's return to work in June coincided with the passage of the Agricultural Labor Relations Act. This was calculated to trigger organizational activity and the first elections in the agricultural industry. Leal's strong pro-Union convictions and Fernandez' vigorously expressed anti-Union sentiments brought on the "battle royal" between them. With the opening of the harvest season and Leal's undertaking to carry out his previously announced intent to organize the picking crew, the conflict became so intense that Fernandez sought the aid of the Garabedians to forestall Leal's organizational efforts. Fernandez even threatened to quit if the Garabedians took no steps to protect her crew from Leal's organisational efforts. As Joseph Garabedian testified, they "didn't want to lose the girls" and they saw the situation as becoming "unbearable."

Matters came to a head with the filing of the petition for an election on September 12. In the light of the reports Fenandez had been naking to them about Leal's activities, the Garabedians almost certainly viewed this as having come about as a result of Leal's organizational efforts. The next day Respondents discharged Leal, telling him only that they "were going to run the ranch (themselves) or sell it," From such a sat of circumstances the inference is compelling that Leal[1]s organizational activities and his clash with Fernandez over continuing such activities played a significant role in bringing about his discharge.

Respondents undertake to refute such an inference by claiming Leal's work performance since 1975 to have been so unsatisfactory that it alone occasioned the discharge. The incidents relating to poor work performance have been noted above. In some measure Leal may have been responsible therefor. However whether we consider the incidents individually or collectively, they scarcely appear to be of such an aggravated nature that they would likely bring about the discharge of an employee whose work had been viewed as "beautiful" during the preceding year. It is of the utmost significance that it is not shown that any of the Garabedians had reprimanded or disciplined Leal for his part in letting the incidents occur, or had suggested that his work performance must improve or he would suffer the consequences. Although the inconveniences of Leal's protracted absence and uncertain return initially may have posed sufficient problems to Respondents to have justified their making other permanent arrangements, they elected not to do so. It is thus reasonable to assume that with Leal's return to work in June on a full-time basis Respondents regarded these problems as now solved and contemplated his continuing to work for the foreseeable future. Under the circumstances I view the defense of poor work performance to rest on an insubstantial base, and as most unlikely to have brought about the sudden discharge of an employee who had previously demonstrated an ability to do his job exceedingly well, and I so find.

If the poor work performance lacks substance as a reason and appears to be more an afterthought than the real reason, we must seek the latter elsewhere. Leal's organizational activities and the results they brought about are outlined above. Respondents voiced no objection to Leal's known Union support when it was limited to his wearing Union insignia. Similarly, it voiced no objection directly

to Leal when his activities turned to organization of the employees. However they reacted to the consequences of this conduct. Leal"3 efforts brought about a clash between him and Respondents' strongly anti-union harvest supervisor. When this was made known to the Garabedians, they made no effort to require Fernandez to observe the neutrality the statute demands of supervisors in their relationship to employees. Instead they effected the discharge of Leal immediately after it appeared that his efforts had been successful enough to bring about an election. His discharge at this time would serve several purposes. It would appease the anti-union Fernandez who had been demanding that the Garabedians do something about Leal. It would rid Respondents of a strong Union adherrent, and at the same time serve notice on other employees prior to the election of the fate that might await them should they continue open Union support. These considerations, coupled with the inadequacy of Respondents[1] ostensible defense, lead almost irresistibly to the conclusion that it was Leal's organizational activities among Respondents' employees that constituted the real reason for his discharge. In addition, Joseph Garabedian stated to Leal at the time of the discharge that he was letting him go because Respondents were going to "run the ranch themselves" or go out of business. This implies a belief on Garabedian's part that with the advent of the Union Respondents would no longer be able to run their business. This tends to buttress my conclusion as to the true motivation of the discharge. For the foregoing reasons I find that Leal was discharged for his organizational activities on behalf of the Union, and that by such discharge Respondents have discriminated against Leal hereby violating Section 1153(c) of the Act.

III. The Remedy

Having found that Respondents have engaged in certain unfair labor practices within the meaning of Section 1153(a) and (c) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents unlawfully discharged Manual Leal, I will recommend that Respondents be ordered to offer him immediate and full reinstatement to his former or substantially equivalent job. I shall further recommend that Respondents make whole manuel Leal for any losses ha may have incurred as a result of their unlawful discriminatory action by payment to him of a sum of money equal to the wages he would have earned from the date of his discharge to the date he is reinstated or offered reinstatement, less his net earnings, together with interest thereon at the rate of seven percent per annum, and that loss of pay and interest be corputed in accordance with the formula used by the National Labor Relations Board in F. W. Woolworth Company 90 NLRB 289, and lsis Plumbing and Heating Co. 133 NLRB 716.

The unfair labor practices committed by Respondents strike at the heart of the rights guaranteed to employees by Section 1152 of the Act. The inference is warranted that Respondents maintain an attitude of opposition to the purposes of the Act with respect to protection of employees in general. It will accordingly be recomended that Respondents cease and desist from infringing in any manner upon the rights guaranteed in Section 1152 of the Act.

The General Counsel urges that the employees be given remedial notices by other means than posting such at the farms. I agree that the unique nature of the agriculture industry renders the typical posting required by the National Labor Relations Board to become almost meaningless. If we are to achieve the object of notifying the employees that the employer has been found to have engaged in unfair labor practices, has remedied such violations, and will not engage in future violations with respect to them, some other approach should be sought. The Board has as yet established no guidelines for the agricultural industry in this regard. The General Counsel urges a combination of mailings, posting, and speeches to accomodate the purpose. I view this as tending to become over complicated, and I am of the opinion that the object can be achieved by making sure that each employee who comes to work for Respondents from now to the end of the next harvest season is personally given an appropriate notice by Respondents. Accordingly I shall recommend that Respondants hand each employee a copy of the notice attached at the time he is hired. Such notice shall be given both in English and Spanish. Sitmultaneously with handing out such notices, Respondents shall advise each employes that it is important that he

understand its contents, and to offer, if the employee so desires, to read the notice to him in either English or Spanish.

The General Counsel urges that Respondents be ordered to award costs to the General Counsel and the Charging Party. This is a policy ratter which the Board has yet to consider. It was not the general practice of the National Labor Relations 3oard. I would deer, it inappropriate to make a recommendation at this time, and will not do so.

Upon the basis of the entire record, the findings of fact, and conclusions of law, and pursuant to Section 1160.3 of the Act, 1 hereby issue the following recommended:

ORDER

Respondents, their officers, their agents, and representatives, shall:

1. Cease and desist from:

(a) Discouraging membership of any of its employees in the Union, or any other labor organization, by unlawful interrogations or by telling them not to vote in an employee election, or by discharging, laving off, or in any other manner discriminating against individuals in regard to their hire or tenure of employment or any tern or condition of employment, except as authorized in Section 1153(c) of the Act.

(b) In any other manner interfering with, restraining and coercing employees in the exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose or collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be a ?f acted by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in Section 1153(c) of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Offer to Manuel Leal immediate and full reinstatement to his former or substantially equivalent job without prejudice to his seniority or other rights and privileges, and make him whole for any losses he may have suffered as a result of his termination in the manner described above in the section entitled "The Remedy."

(b) Preserve and make available to the Board or its agents, upon request, for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and other records necessary to analyze the back pay due.

(c) Give to each employee hired up to and including the harvest season in 1976 copies of the notice attached hereto and marked "Appendix." Copies of this notice, including an appropriate Spanish translation, shall be furnished Respondents for distribution by the Regional Director for the Fresno Regional Office. Respondents are required to explain to each employee at the time the notice is given to him that it is important that he understand its contents, and Respondents are further required to offer to read the notice to each employee if the employee so desires.

(d) Notify the Regional Director in the Fresno Regional Office within twenty (20) days from receipt of a copy of this Decision of steps Respondents have taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

It is further recommended that the allegations of the complaint alleging violations by Respondents of Section 1153(a) by engaging in surveillance and by acts creating the impression of surveillance be dismissed, and that the allegations of violation of Section 1153(o) by their refusal to hire five named employees following their layoff also be dismissed.

Dated:

Louis S. Penfield
Administrative Law Officer

APPENDIX

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrativa Law Officer of the Agricultural Labor Relations Board, has found that we have engaged in violations of the Agricultural Labor Relations Act, and has ordered us to notify all persons coning to work for us in the next pruning, tying, and harvest seasons that we will remedy those violations, and that we will respect the rights of all our employees in the future. Therefore we are now telling each of you:

(1) We will reinstate Manual Leal to his former job and give him back pay for any losses that he had while ha was off work.

(2) We will not question any of our employees about their support of the United Farm Workers of America, or any other labor organization, and we will not tell them not to vote or how they should vote in any election which may be ordered among our employees,

(3) All our employees are free to support, become or remain members of the United Farm Workers of America, or of any other union. Our employees may wear union buttons or pass out and sign union authorization cards or engage in other organizational efforts including passing out literature or talking to their fellow employees about any union of their choice provided this is not done at times or in a manner that it interferes with their doing the job for which they were hired. We will not discharge, lay off, or in any other manner interfere with the rights of our employees to engage in these and other activities which are guaranteed them by the Agricultural Labor Relations Act.

Signed:

Dated:

VALLEY FARMS and ROSE J. FARMS

By:_____

(Title)