

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SUNNYSIDE NURSERIES, INC.,)	
)	
Respondent,)	Nos. 75-CE-150-M
)	75-CE-150-AM
and)	75-CE-250-AM
)	75-CE-218-M
UNITED FARM WORKERS OF)	75-CE-218-AM
AMERICA, AFL-CIO,)	
)	3 ALRB No. 42
Charging Party.)	
)	

This decision has been delegated to a three-member panel of the Board. Labor Code § 1146.

On December 19, 1976, administrative law officer David C. Nevins issued his decision in this case. The respondent and the charging party filed timely exceptions.^{1/} Having made a complete and thorough review of the record, we adopt the law officer's findings of facts and conclusions of law in their entirety.^{2/} We modify, however, his recommended remedies as follows:

(1) In place of the law officer's recommendation that respondent distribute by hand and offer to read the Notice to Workers, we substitute an order that the Notice be read by a

^{1/}Respondent filed 25 exceptions to the law officer's decision, Most of these exceptions were no more than a general denial of findings of fact, and did not cite to the "portions of the record which support the exception" (8 Cal. Admin. Code § 20282 (a)). On this basis alone we would dismiss the exceptions. Because of the length and importance of the case, however, we have reviewed the entire record.

^{2/}We note typographical errors on pages 16 and 17: Dubors Fence and Garden Co. , should be Dubois Fence and Garden Co. ; Chris and Pilts of Hollywood, Inc. , should be Chris and Pitts of Hollywood, Inc.

company representative or Board agent to all current employees on company time. The Notice shall be read in English, Spanish, Korean, and any other language which the regional director finds appropriate. Following this reading the Board agent shall be accorded an opportunity to answer employees' questions concerning the Act.

(2) We order that the ALO's recommendation concerning UFW access to a conveniently located bulletin board take effect immediately without regard to the pending representation proceeding.

(3) We order that upon the UFW's filing of a written notice of intention to take access pursuant to 8 Cal. Admin. Code § 20900(e)(1)(B) the UFW shall have the right to take one thirty-day period of access as provided by 8 Cal. Admin. Code §§ 20900(e) (3) and 20901(b) without restriction as to the number of organizers. We deem such access necessary for the UFW to reorganize employees after the unlawful discharge of 25 percent of the known UFW supporters. This period of access shall have no effect on the four access periods allowable under 8 Cal. Admin. Code § 20900(e) (1)(A) if the UFW is not certified in the pending representation proceeding.

(4) We order that the back pay of the 20 unlawfully discharged employees be calculated on a daily basis. Loss of pay shall be determined by multiplying the number of days in the back pay period times the amount the employee would have earned per day. The employee, of course, has a duty to seek alternative employment. If he or she finds work, but is paid less than he or

she would have been making but for the unlawful discharge, respondent shall pay the difference. The award shall reflect any wage increase, increase in work hours or bonus given by respondent since the discharge. Interest shall be computed at a rate of 7 percent per annum. We deem this formula the most simple and just method of awarding back pay in the agricultural context and one which furthers the policy of F.W. Woolworth Co.^{3/}

Accordingly, pursuant to Labor Code § 1160.3, IT IS HEREBY ORDERED that the respondent Sunnyside Nurseries, Inc., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) In any 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 of 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 affected by an agreement the type of which is authorized by § 1153(c) of the Act.

(b) Discouraging membership of any of its employees in the UFW, or any other labor organization, by unlawfully discharging, laying off, or in any other manner discriminating against individuals in regard to their hire or tenure of employment, or any term or condition of employment, except as authorized by § 1153(c) of the Act.

(c) Dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to such labor organization, except as authorized by § 1153 (c) of the Act.

2. Take the following affirmative action:

(a) Offer to the following employees immediate and full reinstatement to their former or equivalent jobs, without prejudice to their seniority or other, rights and privileges: Ninfa Guajardo, Feliciano Perez Merlin, Rafael Flores Lopez, Fedencia Mederos, Lucinda Benavidez, Miguel Angel Ruiz, Angelina Ramos, Virginia V. Bargas (Politron), Luis Castaneda, Josefina Pizarro, Reuben Galves-Gutierrez, Maria Louisa Rubio (Coyt), Delia

^{3/}

90 NLRB 289, 26 LRRM 1185 (1950)

M. Ortiz, Enrique Castaneda, Serafino Alvarez Nunez, Angelina Ceja de Rubio, Ramon Ortiz, Raul Sandoval Hernandez, Maria Theresa Coyt, and Jose Melano.

(b) Make each of the employees named above in subparagraph 2(a) whole for all losses suffered by reason of their termination. Loss of pay is to be determined by multiplying the number of days the employee was out of work by the amount the employee would have earned per day. If on any day the employee was employed elsewhere, the net earnings of that day shall be subtracted from the amount the employee would have earned at Sunnyside for that day only. The award shall reflect any wage increase, increase in work hours or bonus given by respondent since the discharge. Interest shall be computed at the rate of 7 percent per annum.

(c) 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 to the foregoing named employees.

(d) Distribute the following NOTICE TO WORKERS (to be printed in English, Spanish and Korean) to all present employees and to all employees hired by respondent within six months following initial compliance with this Decision and Order and mail a copy of said NOTICE to all employees employed by respondent between September 1, 1975 and the time such NOTICE is mailed if they are not then employed by respondent. The NOTICES are to be mailed to the employees' last known address, or more current addresses if made known to respondent.

(e) Post the attached NOTICE in prominent places at respondent's Salinas nursery in an area frequented by employees and where other NOTICES are posted by respondent for not less than a six-month period.

(f) Have the attached NOTICE read in English, Spanish and Korean on company time to all employees by a company representative or by a Board agent and to accord said Board agent the opportunity to answer questions which employees may have regarding the NOTICE and their rights under § 1152 of the Act.

(g) Make available to the UFW sufficient space on a convenient bulletin board for its posting of notices and the like for a period of six months from respondent's beginning compliance with the mandates of this Decision and Order, and to provide the UFW the names and addresses of all employees who will receive the NOTICE TO WORKERS.

(h) Allow the UFW the right of access for one thirty-day period upon the filing of a written notice of intention to take access. This right of access shall be taken in accordance

with 8 Cal. Admin. Code §§ 20900 (e)(3) and 20901(b), but shall not be restricted as to the number of organizers. The right of access shall be available immediately without regard to the pendency or result of the representation proceeding (Case No. 75-RC-184-M). If the UFW is not certified as the result of that proceeding, it shall have four periods of access as provided by 8 Cal. Admin. Code § 20900(e)(1)(A) without regard to this remedy.

(i) Notify the regional director of the Salinas regional office within 20 days from receipt of a copy of this Decision and Order of steps the respondent has taken to comply therewith, and to continue reporting periodically thereafter until full compliance is achieved.

Dated: May 20, 1977

GERALD A. BROWN, Chairman ROBERT

B. HUTCHINSON, Member RICHARD

JOHNSEN, JR., Member

NOTICE TO WORKERS

After a trial where each side had a chance to present their facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out and post this notice.

We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that **gives** all farm workers these rights:

- (1) to organize themselves;
- (2) to form, join or help unions;
- (3) to bargain as a group and choose whom they want to speak for them;
- (4) to act together with other workers to try to get a contract or to help or protect one another;
- (5) to decide not to do any of these things.

Because this is true we promise that: WE WILL NOT do anything in the future that forces you to do, or stops you from doing any of the things listed above.

Especially:

WE WILL OFFER Ninfa Guajardo, Feliciano Perez Merlin, Rafael Flores Lopez, Fedencia Mederos, Lucinda Benavidez, Miguel Angel Ruiz, Angelina Ramos, Virginia V. Bargas (Politron), Luis Castaneda, Josefina Pizarro, Reuben Galves-Gutierrez, Maria Louisa Rubio (Coyt), Delia M. Ortiz, Enrique Castaneda, Serafirio Alvarez Nunez, Angelina Ceja de Rubio, Ramon Ortiz, Raul Sandoval Hernandez, Maria Theresa Coyt, and Jose Melano their olds jobs back and we will pay each of them any money they lost because we discharged them.

WE WILL NOT ask you whether or not you belong to any union, or do anything for any union, or how you feel about any union;

WE WILL NOT threaten you with being fired, laid off, or getting less work because of your feelings about, actions for, or membership in any union.

WE WILL NOT promise you benefits for not supporting a union,

WE WILL NOT fire or do anything against you because of the union;

WE WILL NOT start, support, assist, interfere with or contribute money to any labor organization unless allowed to do so by law.

Dated:

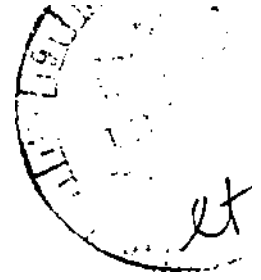
SUNNYSIDE NURSERIES, INC.

By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE!!

STATE OF CALIFORNIA
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD



SUNNYSIDE NURSERIES, INC.)
)
Respondent)
)
and)
)
UNITED FARM WORKERS, AFL-CIO)
)
Charging Party)
)

Case Nos. 75-CE-150-M,
75-CE-150-AM,
75-CE-250-AM,
75-CE-218-M,
75-CE-218-AM

Alison Colgan and Lee Corbett, for
the General Counsel

Frederick Morgan and Thomas Reavely,
Bronson, Bronson & McKinnon of San
Francisco, California, for the
Respondent

Patricia Lerman and Polly Thomas of San
Francisco, California, for the Charging
Party

DECISION

STATEMENT OF THE CASE

DAVID C. NEVINS, Administrative Law Officer: This case was heard by me on November 24, 25, 26, and December 1, 2, 3, 4, and 5, 1975, in Salinas, California.^{1/} The complaint, dated November 7, is based on charges filed by the United Farm workers of America, AFL-CIO (hereafter the "UFW"). The charges were duly served on the Respondent, Sunnyside Nurseries, Inc., between late September and early November. The complaint alleges that the Respondent committed various violations of the Agricultural Labor) Relations Act (hereafter referred to as the "Act"). The hearing was held pursuant to an order consolidating the various charges

^{1/}Unless otherwise specified, all dates herein refer to 1975.

1 against the Respondent.

2 All parties were represented at the hearing and were given a
3 full opportunity to participate in the proceedings. The General Counsel
4 and the Respondent filed briefs after the close of the hearing.

5 Upon the entire record, including ray observation of the
6 demeanor of the witnesses, and after consideration of the arguments and
7 briefs submitted by the parties, I make the following:

8 FINDINGS OF FACT

9 I. Jurisdiction.

10 Respondent, Sunnyside Nurseries, Inc., is a corporation engaged
11 in agriculture in Monterey County, California, as was admitted by the
12 Respondent. Accordingly, I find that Respondent is an agricultural
13 employer within the meaning of Section 1140.4(c) of the Act.

14 It was also admitted by the parties that the UFW is a labor
15 organization within the meaning of Section 1140.4(f) of the Act, and I so
16 find.

17 II. The Alleged Unfair Labor Practices.

18 The complaint, as amended at the hearing, puts into issue two
19 categories of alleged violations. First, the complaint charges that the
20 Respondent violated Section 1153(a) of the Act by interrogating and
21 threatening employees in regard to their support for the UFW and by
22 promising employment changes and benefits to employees to dissuade them
23 from supporting the UFW, conduct which allegedly interfered with,
24 restrained, and coerced employees in the exercise of rights guaranteed by
25 Section 1152 of the Act. Second, the complaint charges that the
26 Respondent violated Sections 1153(a) and (c) of the Act by discharging 21
27 employees (one of which was added to the complaint by way of amendment at
28 the hearing), between early September and early November, the bulk of such
terminations occurring on October 21 and 28.2/

The Respondent generally denies it violated the Act in any
significant respect. It denies it violated Sections 1153(a) and (c), and
affirmatively argues that all but three of the 21 named employees (Maria
Theresa Coyt, Luis Castenada, and Lucia Martinez) were dismissed due to a
lack of work, in accordance with their general seniority within their
respective crews. As

2/Although neither alleged in the complaint nor by way of
amendment, an additional violation is charged against the Respondent by
the General Counsel. In his brief the General Counsel argues that the
Respondent violated Section 1153(b) of the Act by establishing and
dominating, or supporting, a labor organization. This "new" allegation
made by the General Counsel will be discussed infra.

1 for the other three employees, Respondent argues that two of them were
2 discharged for cause and the other voluntarily quit her employment (Lucia
3 Martinez).^{3/} The Respondent, however, admitted that the following persons
4 were supervisors within the meaning of Section 1140.4(j) of the Act
and/or were agents acting on its behalf: Eiichi Yoshida, Shyoge (Sho)
Yoshida, Leland Williams, Robert Castenada, Hajime (Charlie) Iwamuro,
Walter Nishida, Marcos Molinero, Carlos Ramirez, and Masao (Mas) Kato.^{4/}

5 III. The Facts.

6 A. Background;

7 The Respondent operates a nursery in Salinas,
8 California, growing numerous species of plants and flowers. It also
operates nurseries in Ohio and Hayward, California; the latter location
is where its headquarters are located and where its president, Eiichi
Yoshida, is based. As a general rule, Eiichi Yoshida spends no more than
9 a few days at a time at the Salinas nursery; his brother, Sho Yoshida,
Respondent's vice-president, is in overall, daily charge of the Salinas
10 operation.

11 Work at the Salinas nursery is divided into various crew
12 functions. Basically, each crew maintains responsibility over the same
crops from year to year and is assigned to the same work areas (i.e.,
13 particular plastic or greenhouses). The crews perform such tasks as
preparing soil, potting and trimming the plants, watering them, and then
14 preparing the plants for shipment. Several of the crews, or parts of
them, are shifted to assist other crews from time to time, depending on
15 the respective work level of the crews, in order to perform such impor-
tant, periodic tasks as planting, potting, packaging and moving plants
16 for shipment.

17 Because of variation in growing seasons, available space, and
fluctuating business emphasis, it is difficult to identify exactly which
18 crews work on which plants and the extent of their work, at any precise
time. Generally, however, Robert Castenada's crew is responsible for
chrysanthemums, a year-round crop; Marcos Molinera's crew is responsible
19 for foliage plants (e.g., scheffleras, dieffenbachias, philodendrons),
also a year-round crop; Leland Williams's crew is responsible for
20 propagating and growing ferns; Carlos Ramirez's crew is responsible for
lilies and poinsettias, which are, respectively, Easter and Christmas
21 crops; Mas Kato's crew is responsible for the soil shed) (where the soil
is prepared), as well as assisting with lilies and poinsettias; Charlie
22 Iwamuro's crew is responsible for

23 ^{3/}Originally, the Respondent's answer affirmatively claimed
that "each of the" dismissed employees named in the complaint had been
24 dismissed due to a lack of work, but the answer was amended at the hearing
to read as described above.

25 ^{4/}Upon motion of the Respondent, and without opposition from
26 the General Counsel, Paragraph 6(e) of the complaint was dismissed
inasmuch as no supporting evidence was introduced.

1 poinsettias, coleus, cycleman, cynararies and other plants; and Walter
2 Nishida's crew is known as a "floating crew," which has no particular
work area, assisting the other crews, depending on their respective work
loads.

3 In early September, the UFW began an organizing drive among
4 the Respondent's Salinas employees. On approximately September 18, Sho
Yoshida telephoned his brother, Eiichi, who was then in Cleveland, Ohio,
5 and informed him of the UFW's organizing campaign, requesting Eiichi to
come to Salinas "to alleviate the problem of union organizing," as Sho
6 himself described the brothers' conversation. Eiichi arrived in Salinas
soon afterward and, contrary to his usual practice, remained without
7 interruption until latter-September, if not longer.

8 B. Respondent's Early Contacts With Employees:

9 Even before Eiichi's visit to Salinas, the Respondent's
officials were aware of the UFW's organizing campaign. Thus, on an
10 unknown date in early September, Sho Yoshida summoned Sucorro Reyes, a
worker on Walter Nishida's crew, to his office. Admittedly, Ms. Reyes, a
11 UFW supporter, was the only worker summoned for such a private meeting
with the Respondent's top official in Salinas.^{5/} Ms. Reyes credibly
12 testified that Sho began their meeting by asking her if she was unhappy,
after which he gave her a Sunnyside leaflet describing the Respondent's
13 wage and benefit program. According to Reyes, Sho then asked her if she
had any membership cards and, when she said no, said he knew three
14 persons who had come to his office and told him they knew it was Reyes
who was "organizing the people." Sho refused to tell Reyes who the
15 alleged informants were.

16 Also in early September, around the 7th or 8th of the month,
Luis Castenada, a worker on Robert Castenada's crew (no relation), had a
17 conversation with Harold Kinnaman, who was then I the Salinas general
manager, second in charge under Sho Yoshida.^{6/} The conversation took place
18 only one day after Castenada attended

19 ^{5/}Sho testified he requested the meeting because he had been
told by Foreman Nishida that Reyes was "unhappy"; he denied knowing at
20 the time that Reyes was an active UFW supporter. I do not credit Sho
Yoshida's testimony. His testimony, as was the testimony of nearly every
21 witness called by the Respondent (save Ms. Sparling's, Sho's secretary),
was largely evasive, self-contradictory, and self-serving, as such
22 characteristics of the testimony will be more amply cited in subsequent
portions of this Decision. Furthermore, the testimonial demeanor of Mr.
23 Yoshida, his brother Eiichi, and some six supervisors who testified can
be fairly described as demanding the conclusion that their testimony
24 lacks credibility.

25 ^{6/}Although unnamed in the complaint, Kinnaman was a supervisor
within the meaning of Section 1140.4(j) of the Act, as he was in general
26 charge of the hiring and firing at the nursery during his tenure as
general manager. The conversation described above between Kinnaman and
27 Luis Castenada - [continued]

1 a preliminary UFW meeting in Salinas, to which he was invited by Sucorro
2 Reyes. Kinnaman asked the employee what happened at the meeting; he did
3 not say how he knew that Castenada went to the meeting.^{7/} Castenada was
4 selected by his fellow employees at the meeting to serve as the Sunnyside
5 coordinator for the UFW. Kinnaman, a personal friend of Castenada's, said
6 there would be many difficulties and problems in respect to the union,
7 that the Respondent would not be happy with those who voted for the
8 union, and that years before a union had attempted to organize the Res-
9 pondent's employees and many of those who supported the union no longer
10 worked for Sunnyside. Kinnaman also mentioned that just a few days
11 before he was involved in the discharge of a female employee who, he
12 said, was "the principal person" and "was having a lot of problems with
13 the union." This woman employee, Kinnaman said, talked a lot at work,
14 would not work, would get mad when told to do something, and threatened
15 to call the union.^{8/}

9 In latter September, several days after Eiichi Yoshida arrived
10 in Salinas, he requested that Sucorro Reyes and Lucia Martinez meet with
11 him. In their meeting Eiichi asked the two employees (through Louis
12 Carillo, who acted as translator) if they were having any problems with
13 their foreman, and when they voiced complaints about their lead-woman,
14 Eiichi said he would try to solve the problems. Lucia Martinez was,
15 according to Reyes, also a supporter of the UFW.

13 Reyes was then called to a private meeting with Eiichi, on
14 about October 2. Eiichi told Reyes, according to her credible testimony,
15 that she should stop intimidating his workers and stop forcing them to
16 sign the cards. Reyes then asked Eiichi why Jose Ramirez was allowed to
17 talk with the employees and she was not, to which he responded, "If I see
18 you once more talking to my workers, I'm going to run you off." Reyes
19 also testified that when she asked who had told him she was intimidating
20 the workers, Eiichi refused to name them, telling her he had already laid
21 them

18 _____
19 6/[continued]--was not made a subject of the complaint, but
20 the testimony concerning such conversation was not objected to by the
21 Respondent and is described herein as relevant background material.

20 7/Although no conclusive proof establishes how Kinnaman knew
21 of the meeting, Jose Ramirez, a welder at Respondent's nursery, had also
22 attended the meeting. Ramirez, known to many of the employees as hostile
23 to the UFW, subsequently played a prominent role for the Respondent in
24 its campaign against the UFW.

23 8/On September 5, just one or two days before, Maria Theresa
24 Coyt was discharged from Leland Williams's crew, allegedly for working
25 too slowly and for insubordination. Coyt is named in the complaint as
26 having been unlawfully discharged, and it was her that Castenada
27 understood Kinnaman to be referring to. Kinnaman personally played a role
28 in Coyt's discharge.

1 off. He also suggested to Reyes that her actions could or would cause
2 other workers to return to Mexico.^{9/}

3 In early October, Eiichi Yoshida also had two conversations
4 with Lucinda Benavidez, another UFW supporter. During their first
5 conversation, in which Sho also participated, Ms. Benavidez requested a
6 transfer from Leland Williams's crew back to Charlie Iwamuro's crew,
7 where she worked until recently. The Yoshidas suggested that she would
8 lose her job in such a transfer because they were going to cut dawn
9 Charlie's crew. In connection with their discussion regarding a
10 transfer, Eiichi told her that if the union won he would "lay people off
11 because he was going to lose too much money because the union was going
12 to expect too much for the people." But, as Ms. Benavidez credibly
13 testified, Eiichi also said that no layoffs would take place if the union
14 lost, and in that case he would not "hold anything against anybody."
15 Eiichi likewise mentioned that wages would be increased and unemployment
16 benefits improved, although he reassured Benavidez that the unemployment
17 protection would probably not be needed because he did not believe in
18 laying people off. When that conversation occurred, the Respondent was in
19 the process of applying for unemployment compensation coverage for its
20 employees, which coverage was due to begin in early 1976.

21 After having a subsequent disagreement with her foreman,
22 Williams, Ms. Benavidez again spoke to Eiichi, also during the first half
23 of October. During this conversation, Eiichi and Benavidez discussed
24 workers complaining about their foremen; she told Eiichi it was because
25 workers felt they were treated unfairly that they looked to the UFW for
26 assistance. She then suggested that Eiichi could improve matters by
27 occasionally supporting an employee in such disputes and that he could set
28 a good example by supporting her requested transfer to Charlie's crew.
Eiichi responded by offering Benavidez a bargain: if she would tell the
workers to give him a year by voting against the union, tell them that
wages and unemployment benefits would be improved, and if she would
personally think about voting for the UFW, then he would return her to
Charlie's crew. She agreed to carry out Eiichi's requests, although she
had openly supported the UFW and wore one of its buttons. A day or two
after the eventual election, she was transferred back to Charlie's crew
and was laid off some four or five days later.

9/Eiichi denied referring to union activity in his
conversation with Reyes, claiming instead he told her to stop talking
while at work. However, Eiichi (as well as every other witness who was
asked) acknowledged that employees regularly and normally talk while
working, and that no limination was placed on the amount or topics of
their discussion. Nor was evidence put forward to indicate any particular
difficulty in connection with Reyes's work behavior.

1 C. Respondent's General Campaign Against The UFW: 1. The
2 Group Meetings

3 Between approximately September 22 and 26, the Respondent
4 launched a series of group meetings with its employees. One such -meeting
5 was held between Eiichi Yoshida and the Korean, Filipino, and Portugese
6 employees, who were called from their various work crews for the meeting.
7 Approximately 40 employees attended that meeting in the Sunnyside
8 lunchroom, but the record does not reflect what was said at the meeting.

9 Eiichi Yoshida also conducted separate group meetings with
10 each of the crews, including the Spanish-speaking or Mexican-American
11 employees. In attendance at those crew meetings were Eiichi, his brother
12 Sho, Louis Carillo, a crew foreman who served as translator for Eiichi,
13 and Ben (Benito) Lopez, who was I specially hired and paid by Sunnyside to
14 speak to the employees. Generally, Mr. Lopez was employed to explain the
15 new agricultural labor law to Respondent's employees.^{10/} In addition to
16 Mr.Lopez's discussion regarding the new labor law, and in addition to the
17 general comments made concerning Respondent's then existing wage and
18 benefit structure, what follows is a description of what various employees
19 credibly testified as to what else was said at their crew meetings:

20 Charlie Iwamuro's crew--According to Feliciano Merlin, Mr.
21 Lopez told employees that Sunnyside would never agree to having them
22 dispatched by the UFW, and suggested that the employees should consider
23 forming their own union. Maria Rubio Coyt testified that either Eiichi or
24 Carillo said that if the workers voted against the union, no worker would
25 be fired, but if the union won, then workers would be fired. Both Merlin
26 and Josephina Pizarro recalled that Eiichi told the workers that from then
27 on a "suggestion box" would be established in which employees could submit
28 grievances or complaints and, according to Merlin, that "from that day on
things were going to change."^{11/} At the conclusion of the meeting,
employees were each given one free plant.

Walter Nishida's crew--Ramon Ortiz, Serafin Nunez

10/Mr. Lopez, appearing as a witness for the Respondent,
essentially denied he said some of the things attributed to him by
employees who attended the meetings. He also denied, however, that Sho
Yoshida mentioned the UFW's organizing drive as a reason for the meetings,
a denial which neither comports with the obvious nor with Sho Yoshida's
testimony on the point. Generally, I do not credit Mr. Lopez's testimony.

11/At Charlie's crew meeting, both Merlin and Coyt spoke
up, voicing various complaints or indicating that they favored the
UFW, after which Eiichi promised a suggestion box.

and Sucorro Reyes testified concerning this meeting; all of them recalled that Respondent's speakers mentioned establishing a suggestion or complaint box for employees to make known their problems and that an effort would be made to solve such problems. Ortiz recalled that someone from the Respondent asked the employees to remain without a union for one year to see if the Respondent improved the problems. He also recalled that Ben Lopez said that the union would cause employees to lose their existing seniority and begin like new employees. Ms. Reyes recalled, slightly to the contrary, that Lopez said it would make no difference if the union won because the Sunnyside benefits would not change. Ms. Nunez recalled that Eiichi said through his translator that many problems would exist if the union entered and "if we wanted to protect our work, to vote no union."

Marcos Molinero's crew--Enrique Bernal recalled that at the meeting for his crew that Eiichi asked the workers to give him a year without any union to see if "we did not like the benefits he had." Eiichi told them that he could not promise them anything because of the law, but after the election "he could offer us other benefits"; Eiichi likewise mentioned that in January, 1976, unemployment benefits would begin. Bernal also testified that Eiichi said if the employees voted for the union, then all their benefits would start from the bottom up, that their existing benefits would not count, and that the benefits would "stay on the bottom." Once again the grievance or suggestion box was mentioned, and Eiichi told the employees he would personally review the problems to resolve them. Mr. Bernal also remembered being told at the meeting that if the union won, then employee seniority would have to begin anew.

Mas Kato's crew--Jose Melano was among those in Kato's crew who attended the meeting. He recalled that Lopez told the workers "there would be many problems" if the union won the election and that they should give the owners one year without a union to see if "things went on the same." Lopez told them the Respondent had good benefits and mentioned a medical plan. Lopez also said the employees would lose their benefits if the union entered. Once again, the grievance box was announced, and Eiichi said "he would be in the office to work out those problems ."

Leland Williams's and Robert Castenada's crews--
These two crews also had their separate meetings with Eiichi and Sho Yoshida, Lopez, and Carillo. The brief testimony by Lucinda Benavidez regarding Williams's crew meeting indicates that Lopez generally discussed the UFW's organizing efforts and suggested that employees think carefully about wanting a union or not. Findencia Mederas Ruiz attended the meeting for Castenada's crew, during which Ruiz recalled that the grievance box was announced by the Respondent, that the workers were asked to give the Respondent a year without a union to see if they liked it, and that a plant was given to each of the employees at the end of the meeting.

Along with the crew meetings that were held, the

1 Respondent's officials also distributed printed leaflets to employees. One of the leaflets stated, inter alia;

2 YOU ARE TOLD YOU CANNOT LOSE ANYTHING, ONLY GAIN!

3
4 IS IT TRUE?

5 THE FACT IS: YOU CAN LOSE IT ALL, BY

6 LOSING YOUR JOB!

* * * *

7 THINK: DON'T GAMBLE THE SECURITY OF YOUR
8 JOB! DON'T GAMBLE THE GOOD BENEFITS YOU
9 HAVE NOW!

10 REMEMBER: THE UNION DOES NOT PROVIDE
11 JOBS, ONLY YOUR COMPANY CAN SIGN YOUR
12 PAY CHECK.

13 Another Sunnyside leaflet, signed by Eiichi Yoshida, concluded
14 by stating "YOU HAVE A PEACEFUL GOOD STEADY JOB: KEEP IT. VOTE
15 NO UNION."

16 2. The Grievance Committee Meetings

17 Within the week following the crew meetings described above, each of the crews also held meetings at the direction of its
18 foreman to select two representatives from each crew to serve on a special committee. The workers were told by their foremen
19 various reasons for electing two crew representatives, but basically the reason given them was that the representatives were to
20 forward or discuss grievances from their crews to and with management representatives. . Among those elected by their crews to
21 serve on the committee were Feliciano Merlin and Delia Ortiz from Charlie Iwamuro's crew, and Lucy Benavidez from Leland
22 Williams's crew; Walter Nishida's crew decided not to participate in the committee. It appears from the testimony that only the Mexican-
23 American employees were asked to elect representatives to the committee, or were--in essence--elected as the only members of the
24 committee; thus, in the case of Mas Kato's crew, only the Mexican-Americans were asked to choose representatives, as the
25 Korean crew members were not counted when voting for that crew's
26 representatives.

27 The elected representatives were then called to a meeting where Eiichi Yoshida was present. He introduced Jose
28 Ramirez as the "president" of the group and, before leaving, turned the meeting over to him.^{12/} Ramirez indicated he was

12/Jose Ramirez, a welder hired in May at an hourly wage, was given a salary on October 1. The only salaried personnel at Sunnyside were those whom the Respondent considered or referred to as "supervisors." - [continued]

1 speaking for Eiichi and urged the gathered crew representatives to give the
2 Respondent one more year without a union. He also
3 mentioned the grievance boxes and that Eiichi would personally consider
4 their problems. A discussion then ensued in which em-
5 ployee complaints or problems were solicited by Ramirez; the representatives
6 were told by Ramirez that monthly meetings for them
7 would be held. During the meeting, Ramirez made notes of what the
8 representatives said concerning employee problems.^{13/}

9
10 D. The Election And Subsequent Events:

11 An employee representation election was conducted on
12 October 15. Eighty-nine votes were cast in favor of the UFW,
13 80 votes were cast for no labor organization, and 14 ballots were
14 challenged. One day following the election, Eiichi Yoshida held group
15 meetings with the work crews, thanking those who had voted
16 against the UFW. At the time of the instant unfair labor practice
17 hearing the UFW had not yet been certified.^{14/}

18
19 1. The Post-Election Layoffs

20 Within a month following the October 15 election,
21 more than 20 employees lost their employment at Sunnyside. Thus,
22 on October 21, the following employees named in the complaint were
23 terminated: Ninfa Guajardo, Feliciano Merlin, Rafael Lopez,
24 Fedencia Mederos, Lucinda Benavidez, Lucia Martinez, Miguel Ruiz ,
25 Angelina Ramos and Virginia V. Bargas.^{15/} On October 28 Luis Castenada,
26 Reuben Galves-Gutierrez, Maria Louisa Rubio Coyt, Delia Ortiz, Enrique
27 Castenada, Serafin Nunez, Ramon Ortiz, Raul Sandoval Hernandez, and Angelina
28 Ceja de Rubio were dismissed from their employment. On October 31, Josefina
Pizarro was

12/[continued]--Ramirez left his employment with the
Company on October 17, two days after the election.

13/Although Walter Nishida's crew did not elect representatives,
Sho himself met with the men of the crew, about a 20 week or two before
the election. Ben Fuentes, a lead person, translated for Sho, who requested
the assembled members of the crew to tell him their problems and "he would
take care of it." The employees had refused to elect representatives
because, as Ramon Ortiz described it, the crew did not feel it had any pro-
blems with Foreman Nishida

14/The Board subsequently determined certain issues in
regard to the challenged ballots, in 2 ALRB No. 3, dated
January 7, 1976. The record herein, however, does not reflect whether that
Board determination resolved all outstanding issues in connection with the
election; nor is it clear as to what was the eventual result of the
election.

15/Virginia V. Bargas, as named in the complaint,
appears on the Respondent's records as Virginia V. Politron

1 dismissed, and on November 7 Jose Melano was dismissed. When the
2 foregoing employees were dismissed, eight were from Charlie Iwamuro's
3 crew, one was from Carlos Ramirez's crew, two were from Leland Williams's
4 crew, four were from Walter Nishida's crew, one was from Marcos
5 Molinero's crew, one was from Mas Kato's crew, and three were from Robert
6 Castenada's crew.16/

7 Eighteen of the foregoing named employees were allegedly
8 laid off due to a lack of work, as will be discussed in greater detail in
9 subsequent sections. According to the Respondent, the individual crews
10 were divided up into their special work functions (i.e., a group of men,
11 a group of women and, where appropriate, a group for a "water crew"), and
12 the layoff selections were then based on the employees' overall
13 "seniority" with Sunnyside as applied to their "sub-crews" (though
14 exceptions to that general layoff pattern exist). Admittedly, the
15 October layoffs were the first layoffs that were implemented on the basis
16 of employee seniority, a method newly devised because of the advice of
17 counsel.

18 Several relatively undisputed features in regard to the
19 layoffs emerge from the testimony and exhibits. First, not one of the
20 employees who were laid off was forewarned; they were informed of their
21 respective layoffs on what was to be their last day of employment.17/
22 Second, the layoffs came at the time of year when Respondent customarily
23 increased its work force, as demonstrated by employee figures for 1972,
24 1973 and 1974. And, as admitted by several foremen, the October layoffs
25 were the only group or widespread layoffs they had observed as foremen;
26 normally, decreases in Respondent's employee force stemmed from seasonal
27 employees or natural attrition.

28 Third, employees dismissed after the election possessed
two basic characteristics in common: they were all Spanish-surnamed and
they were all supporters of the UFW. Every one of the 17 dismissed
employees who testified supported the UFW. 18/

16/In addition to the 20 employees named above, Maria Theresa
Coyt is also named in the complaint and was dismissed on September 5, as
noted earlier. It should be remembered that she plus two of those named
above allegedly lost their employment due to individual reasons, as will
be discussed in the following section. Also, the record reflects that
several other employees were dismissed during latter October and early
November, assertedly due to a lack of work, but they were not named in the
complaint.

17/The only possible exception to the lack of notice was in the
case of Lucinda Benavidez, who was told generally of potential layoffs in
early October, in response to her request for a transfer from Williams's
to Iwamuro's crew. However, as with the others, her actual layoff came
abruptly, without advance notice or specific warning.

18/Four ex-employees did not testify: Miguel Ruiz, Angelino
Ramos, Virginia V. Bargas (Politron) and Lucia Martinez.

1 Although the exact extent of Respondent's knowledge of their respective UFW
2 activity or support was not clearly established from the testimony, some
3 general observations can be drawn from the evidence:(1) many of the
4 dismissed employees had attended a UFW meeting also attended by Jose
5 Ramirez(Rueben Galves-Gutierrez, Rafael Lopez, Serafin Nunez, Raul
6 Hernandez, Angelina Ceja de Rubio, plus others);(2) several of them were
7 chosen as their crew's representatives, spoke in behalf of the UFW in
8 meetings with Eiichi Yoshida or their supervisors, or made their support
9 for the UFW known by wearing UFW buttons or serving as an election
10 observer for the UFW (Feliciano Merlin, Delia Ortiz, Rueben Galves-
11 Gutierrez, Lucinda Benavidez, Maria Louisa Rubio Coyt, Ramon Ortiz, Enrique
12 Bernal , Fidencia Ruiz, and Jose Melano) ; and (3) others actively spoke to
13 their fellow employees or solicited their support in regard to the UFW
14 (Maria Theresa Coyt, Josefina Pizarro, and Serafin Nunez). Furthermore,
15 Sho Yoshida acknowledged he was given the names of many employees who were
16 reputedly UFW supporters, and the general testimony supports the conclusion
17 that it was obvious who among the employees supported the UFW and who did
18 not.

19 As noted, all 21 complaining employees were of the same ethnic group.
20 Yet, about 25% of Respondent's work force was composed of employees from
21 other ethnic groups, none of which groups experienced layoffs. This apparent
22 disparity in layoffs among the various ethnic groups of employees becomes
23 significant in view of the different treatment afforded the non-Spanish-
24 surnamed employees by way of their having separate meetings with Respondent's
25 officials, their apparent lack of participation in voting for crew
26 representatives, and by their reputation, known not only by employees but by
27 Sho Yoshida, that they (particularly the Korean employees) were generally
28 opposed to the UFW.19/

19 Finally, on Walter Nishida's crew employees were
20 told that the layoffs were due, at least in part, to the UFW. Both Ramon Ortiz
21 and Serafin Nunez credibly testified that Foreman Nishida approached them
22 shortly before they were to stop working their last day (October 28). Nishida
23 told them they were being laid off at the direction of Sho Yoshida, who had
24 said "he was having problems with the union." Ortiz recalled that
25 Nishida said that Sho had also mentioned the lack of work as a reason for the
26 layoff, in addition to having said it was because of problems with the union.
27 Nishida also told his employees

28 19/In this connection, it is worth noting that in several
instances employees junior in seniority to those laid off were retained within
the same crews or "sub-crews." Thus, although the Respondent has put forth
various reasons for inconsistencies in its layoff implementation, such
employees as Jose Ceron, Donna Mae Dare, Consuelo Gonzales and others, who
were known to be against the UFW, were retained by the Respondent even though
junior to those laid off by Sunnyside. If "crew" seniority is put aside, and
if the employees from all crews are ranked in straight seniority order, the
numbers of "junior" non-Spanish-surnamed employees retained by the Respondent
is substantial.

1 they should not think their layoffs were because of him.^{20/}

2 2. The Employment Terminations of Maria Theresa Coyt,
3 Luis Castenada and Lucia Martinez

4 Maria Theresa Coyt was dismissed from her employment on
5 September 5, at a time when the UFW's organizing effort was--at most--in
6 its incipient stage. Ms. Coyt was initially hired on July 23, 1975. She
7 always worked on Leland Williams's crew during her employment with the
8 Respondent.

9 According to Ms. Coyt, she had been a supporter of the
10 UFW since 1970. Shortly after a fellow worker on Williams's crew was
11 dismissed, Ms. Coyt began voicing her support for the UFW to fellow
12 employees, telling them of benefits they could get from the UFW. She
13 spoke to them both during their breaks and while at work. Among those
14 with whom she discussed the UFW was her lead woman, Margarita Sanchez.

15 Ms. Coyt could recall no instance of Leland
16 Williams having criticized her work, except for the day prior to her
17 discharge; she recalled that on September 4 Williams complained to her
18 regarding her slowness. During that conversation, Coyt said she had
19 never worked for an employer where her work had to be finished by a
20 certain time, after which Williams responded by asking her whether that
21 was the way she would repay Sunnyside for the letter it had written for
22 her. The letter to which Williams referred was a letter written by
23 Sunnyside, at the request of Ms. Coyt, regarding available work for Ms.
24 Coyt's husband, who was in Mexico and seeking to enter the United States
25 for work. That letter was written sometime around mid-August; Ms. Coyt's
26 husband was allowed to immigrate around the latter part of September.
27 Also on September 4, Ms. Coyt spoke with General Manager Kinnaman with
28 respect to her discussion that day with Williams; Kinnaman asked her to
try and speed up her work.

On September 5, Williams handed Ms. Coyt her final checks
and told her there was no more work. She denied he gave any other reason
for her dismissal.

Leland Williams, however, testified that on several
occasions he confronted Coyt as to how she performed her work. He
recalled that on September 4 he gave Coyt what he considered a final
warning and that Harold Kinnaman also spoke to Coyt that day. Williams
claimed that Coyt never seemed to follow his advice or instructions on
how to perform her work. On September 5 he dismissed her, recalling he
told her "that it didn't seem to be working out for us."

When initially questioned, Williams said he advised
Respondent's office of two reasons for Coyt's discharge:

20/Neither Nishida, nor his translator, Bennie Fuentes,
testified and the above testimony of Ortiz and Nunez stands
uncontradicted.

1 that she was too slow and that she was insubordinate. After being
2 confronted at the hearing with the fact that Coyt's employee card stated
3 only that her discharge was for insubordination, Williams then testified
4 that he instructed the secretary to put down insubordination as the
5 reason for discharge so as to preclude Coyt's rehiring. Williams denied
6 observing Coyt participate in any activities related to the UFW, but
7 admitted he was told by different employees that Coyt was talking about
8 the union. Contrary to the discharge reason cited by Williams or that
9 found on Coyt's employee card, the cover of Coyt's personnel file,
10 maintained in the Respondent's Hayward office, stated that Coyt was
11 discharged due to "personality conflicts with fellow workers--
12 troublemaker."

13
14 Another employee, Luis Castenada, was discharged by the
15 Respondent also allegedly due to slowness. He began work on April 8 and
16 was discharged on October 28. When Castenada was discharged, two junior
17 employees, Telo Castenada Bernal (a fork-lift driver) and Jose Ciron
18 (listed on the "water crew"), were retained on Robert Castenada's crew,
19 which was the crew on which Luis Castenada worked.

20
21 Luis Castenada's job was to cut grass and clean the areas
22 around various greenhouses, as well as work on roadways, walkways, and
23 canals. He worked alone. He could recall no instance of a reprimand by
24 his foreman in regard to his work. On the contrary, Luis recalled being
25 congratulated on his work by both his own foreman and General Manager
26 Kinnaman. In fact, Luis was privately employed by Kinnaman to work on
27 the construction of Kinnaman's new home, a task which brought him and
28 Kinnaman closely together.

According to Luis Castenada, he was told by Fore-man
Castenada of his dismissal on October 28, about one hour before quitting
time. The foreman told Luis there was very little work and that it was
Luis's turn to be laid off. Foreman Castenada said he was following
orders from Sho Yoshida.^{21/}

Luis's foreman, Robert Castenada, said he discharged Luis
because the employee was too slow. Nonetheless, the foreman could recall
only one occasion when he had ever voiced criticism concerning Luis's
work, and on that occasion, he merely asked Luis to stop what he was doing
and to perform another task. Foreman Castenada also acknowledged that he
failed to tell Luis he was discharging him because of slowness; rather,
the foreman admitted telling Luis that when an opening occurred he would
be recalled by the Respondent.

A significantly different situation is present in

^{21/}It should be noted that Luis had told his foreman, at
some previous time, that he (Luis) had experience as a fork-lift driver
and could perform such work. But the foreman assigned Luis to other work,
telling the employee "I did my work better."

1 the case of Lucia Martinet's departure from Sunnyside. She did not
2 testify. According to Sho Yoshida, Ms. Martinez came to his office on
3 October 21 and announced she was quitting, as noted on her employee card.
4 Sho recalled that during their talk, Martinez said she was not for the
5 UFW. According to Sho, Martinez telephoned him shortly afterward and
6 requested that her "quit" be changed to a layoff so as to allow her to
7 collect unemployment benefits. Initially, Sho denied that he changed her
8 records to indicate she was laid off, but when shown Martinet's time card
9 (which is different from her employee card), Sho then said he did write
10 on her time card "terminated for lack of work." Also, records obtained
11 from Respondent's Hayward office indicated the following: the envelope
12 enclosing Martinet's personnel file stated she was laid off due to "lack
13 of work," and her personnel change form, a form submitted whenever an
14 employee's status changes, states that Martinez resigned but is not
15 eligible for rehire. Yet, Sho Yoshida said during his testimony that he
16 considered Martinez "a nice kid."

17 ANALYSIS AND CONCLUSIONS I.

18 Interference, Restraint and Coercion. • -

19 Section 1153(a) of the Act makes it an unfair labor practice
20 for an agricultural employer to interfere with, restrain, or coerce
21 employees in the exercise of their right "to self-organization, to form,
22 join, or assist labor organizations, to bargain collectively through
23 representatives of their own choosing . . . and . . . the right to
24 refrain from any or all such activities. . . ." In applying the foregoing
25 provisions, the Act directs that the "applicable precedents of the
26 National Labor Relations Act, as amended [29 U.S.C. §151, et. seq., here-
27 after the "NLRA"] shall be followed."

28 In view of the evidence and testimony credited by me, as
generally set forth in preceding sections of this Decision, no serious
dispute can exist that the Respondent engaged in a pervasive campaign
directed against the UFW's organizing efforts. This campaign by the
Respondent frequently and regularly overstepped the permissible boundaries
of conduct as regulated by the Act. Conduct such as the Respondent's has
been traditionally found unlawful under the Act's sister statute, the
NLRA. Nor can it be seriously argued, as the Respondent suggests, that
the conduct of Sunnyside representatives constituted, at worst, "isolated
and . . . minimal" offenses; Respondent, acting through its two chief
operating officials, its president and vice president, as well as through
others, committed serious infractions of the Act which interfered with,
restrained, and coerced its employees in regard to their support of the
UFW.

As will be seen from the following catalogue of acts and the
cited cases, Respondent seriously violated Section 1153 (a) of the Act.

1. In early September, Sucorro Reyes was singled out

1 by Sho Yoshida, requested to meet with him in his office, and asked—in effect—
2 whether she was helping to organize employees for the UFW. She was told by Sho
3 that her organizing activity was observed and reported on. Such conduct by Sho
4 Yoshida constituted both unlawful interrogation of an employee and the unlawful
5 impression of surveillance of her union activity. Information Control Corp.,
6 196 NLRB 504, n. 2 (1972); Federal Stainless Steel, 197 NLRB 489, 495-496
7 (1972); Dubors Fence and Garden Co., 156 NLRB 1003, 1023-1024 (1966).

8 2. On or about September 27 or 28, Sucorro Reyes and
9 Lucia Martinez were singled out by Eiichi Yoshida, taken from their crew, and
10 questioned as to whether they had any complaints regarding their foreman or
11 lead woman. After their complaints were solicited, Eiichi Yoshida assured the
12 two employees that he would try to solve their complaints. Such solicitation
13 of employee complaints and promise to remedy them, contemporaneous A with and
14 initiated during a union organizing drive, violate the Act. See Shulman's,
15 Inc. of Norfolk, 208 NLRB 772 (1974); Ring Metals Co., 198 NLRB 1020 (1972).

16 3. On or about October 2, Sucorro Reyes was warned by Eiichi
17 Yoshida against "intimidating" his employees and forcing them to sign UFW
18 authorization cards, after which Eiichi told her if he learned she was again
19 soliciting employees he would run her off. Inasmuch as no evidence was
20 produced that Reyes was soliciting her fellow workers in improper fashion or at
21 improper times, Eiichi Yoshida's remarks clearly constituted an unlawful threat
22 aimed at Reyes's organizing activity and, creating along with it, the impression
23 of surveillance of her protected activity (particularly since she was singled
24 out three times by the highest management officials). See Del Webb's Townhouse,
25 204 NLRB 1111 (1973); Dubors Fence, supra; Information Control Corp., supra,
26 196 NLRB at 508. Eiichi's remarks were all the more serious since he coupled
27 them with reference to employees having been laid off and the possibility of
28 other employees departing for Mexico.

4. Also in approximately early October, Eiichi Yoshida had a
conversation with Lucinda Benavidez in which he told the employee that layoffs
would result if the UFW won the election, contrasting that to the UFW's defeat
which would mean not only no layoffs but an increase in wages and an
improvement in unemployment compensation. Eiichi's remarks, of course, were
not based on objective facts, nor did they carefully define the basis for his
layoff threat. Threats of layoffs not "carefully phrased on the basis of
objective fact to convey an employer's belief" and promises of benefits
conditioned upon the defeat of a union are acts which clearly violate the Act.
See Gissel Packing Co., 395 U.S. 575, 618 (1969); Helfrich Vending Co., 209
NLRB 596, 602 (1974); Penn Pipe and Supply Co., 208 NLRB 9
(1973).^{22/}

22/Even Eiichi Yoshida's various references to the up-coming
availability of unemployment compensation were improper under the
circumstances. Despite the fact that -- [continued]

1 Also, in a subsequent meeting with Benavidez, Eiichi Yoshida
2 offered her the opportunity to return to Charlie Iwamuro's crew, which
3 Benavidez had requested. But, the opportunity was conditioned on her
4 voicing support for the Respondent and urging fellow employees not to
5 support the UFW. As the General Counsel correctly argues, the Respondent
6 violated the Act by conditioning a promise of better working conditions
7 for Benavidez on her abandoning her public support for the UFW. Mid City
8 Wholesale Meat Co., 202 NLRB 627, 630-631 (1973); Chris and Pilts of Hol-
9 lywood, Inc., 196 NLRB 866, 868-869 (1972).

10 5. Testimony concerning the various crew meetings held by the
11 Respondent in September established that numerous other violations of the
12 Act took place on Respondent's part. Admittedly, Respondent's officials
13 and representatives solicited complaints or grievances from employees and
14 announced formation of a new grievance box in which employees could
15 regularly submit their complaints. Thus, not only was a new grievance
16 procedure instituted, but in several cases it was made known to employees
17 that someone from the Respondent--particularly Eiichi Yoshida--would
18 attempt to remedy the grievances.

19 At several of the crew meetings, employees were ominously
20 warned that if the UFW won the election problems would exist, or that
21 employees would be laid off. It is also clear Respondent's
22 representatives told employees their seniority would be lost if the UFW
23 won the election.23/

24 In addition, Respondent's representatives repeatedly

25 22/[continued]--Respondent may have sought unemployment
26 coverage for its employees before the UFW's organizing campaign began,
27 the announcement of such coverage was timed to coincide with the UFW's
28 campaign, was uttered in the context of unfair labor practices, and was
made to appear as one of those kinds of benefits which the Respondent
would bestow on employees if only they would not support the UFW. See
Goldblatt Bros., Inc., 174 NLRB 747 (1969); The Baltimore Catering Co.,
148 NLRB 970, 975 (1964); N.L.R.B. v. WKRQ-TV, Inc., 82 LRRM 2146, 2150
(C.A. 5, 1973).

29 23/Ben Lopez claimed he told employees their Sunnyside
30 seniority would be lost and replaced by UFW seniority, which he believed
31 would result from the UFW's instituting a hiring hall from which to
32 dispatch employees for work. I am unaware of any existing principle that
33 would permit the UFW to establish such "union seniority" under the Act, or
34 to give employees work preference through such seniority. See Local 357,
35 Teamsters v. N.L.R.B., 365 U.S. 667 (1961); Bricklayers Local 18 v.
36 N.L.R.B., 70 LRRM 2833 (C.A. 3, 1969). Nor do I find that Lopez's remarks
37 regarding seniority were as limited as he described them, since several
38 witnesses credibly recalled that Lopez (or someone else representing the
Respondent) merely said they would lose their present seniority.

1 requested the employees to give the Respondent one year without a union
2 (i.e., to vote against the UFW), coupling such a request with either an
3 explicit or implicit promise that working conditions would improve during
4 that year. Employees were told that if they did not like the benefits
5 established by the Respondent after that year was over, they could select
6 a union then. The implication was clear: things would get better for the
employees during that year, and the grievance box and unemployment
benefits were two examples of that improvement. In at least several in-
stances, crew meetings were even concluded with gifts of free plants for
the employees, the first time such gifts were bestowed on employees.

7 There is little point in citing NLRA authority to support the
8 proposition that the foregoing acts committed by Sunnyside representatives
9 in the crew meetings was conduct unlawfully interfering with, restraining,
10 and coercing rights protected by virtue of Section 1152 of the Act. 'It is
11 fair to say that through the group meetings, led by Sunnyside's two
12 highest officials, wherein threats of dire consequences were coupled with
13 promises of an improved future, both of which predictions were linked to
14 the UFW's election success or failure, that serious and substantial
15 coercive conduct was engaged in by the Respondent. Sunnyside officials
16 presented their employees a dramatic choice: their wages and working
17 conditions would be improved if the UFW were defeated, but they might lose
18 not only what they presently had but their jobs as well if the UFW
19 succeeded. The Respondent's clinched fist was cloaked, but the
20 intimidation and coercion had to stand out to all those gathered Thus,
21 although the various crew meetings included speeches and discussion
22 outside the Act's prohibitions, in many instances Respondent's officials
23 and agents overstepped the boundaries of protected discussion and
24 committed serious violations of Section 1153(a) of the Act.

17 II. The Respondent's Formation Of The Grievance Committee.

18
19 Although the General Counsel's complaint makes no specific
20 allegation concerning the formation of a special grievance committee, the
21 complaint does allege that Respondent "required employees to attend
22 meetings at which complaints about working conditions were solicited and
23 promises of changes and benefits were made." In addition, when testimony
24 was introduced concerning the employee grievance committee formed at
25 Sunnyside, testimony naturally flowing from description of the preceding
26 crew meetings conducted by Respondent, such testimony was introduced
27 without objection. There was a full exposition at the hearing concerning
28 the selection of the committee and its eventual meeting with Eiichi
Yoshida. Where, as in this instance, an issue outside the four corners of
the complaint is raised and fully litigated at the hearing, it is
appropriate for the Board to consider whether the evidence introduced
establishes a new and separate violation of the Act, as the General
Counsel now claims in his brief. See N.L.R.B. v. Thompson Transport Co.,
421 F.2d 154 (C.A. 10, 1970); Qmark-C.C.I., Inc., 208 NLRD 469

1 (1974); Rochester Cadet Cleaners, Inc., 205 NLRB 773 (1973); GTE
2 Automatic Electric, Inc., 196 NLRB 902 (1972).^{24/}

3 Under Section 1153(b) of the Act, it is unlawful for an
4 agricultural employer to "dominate or interfere with the formation or
5 administration of any labor organization or contribute financial or other
6 support to it." And, Section 1140.4(f) of the Act defines a labor
7 organization as an organization of any kind in which employees
8 participate, including any agency, employee representation committee or
9 plan, where such organization exists, in whole or in part, "for the
10 purpose of dealing with employers concerning grievances, labor disputes,
11 wages, rates of pay, hours of employment, or conditions of work. ..."

12 Uncontroverted evidence establishes that the Respondent's crew
13 supervisors instructed employees to elect crew representatives for the
14 purpose of meeting with and making known employee complaints or grievances
15 to management officials. After the election of such representatives, a
16 meeting for them was held at the direction of Eiichi Yoshida, who
17 appointed Jose Ramirez as president of the committee. Mr. Ramirez then
18 conducted a meeting I with the representatives wherein employee complaints
19 were solicited, discussed, and the prospect of their resolution predicted;
20 in addition, the representatives were informed that such committee
21 meetings would be held on a regular, monthly basis.

22 Thus, Respondent itself created an organization to represent
23 employees in the presentation and discussion of grievances (including
24 presumably any complaint regarding work, such as wage complaints or
25 otherwise), selected the leader of that committee, and provided the work-
26 time and space for the conduct of the committee's meeting. Moreover, the
27 selection and meeting of crew representatives occurred in the context of
28 various implicit and explicit promises that working conditions would be
improved during the next year without the UFW; the suggestion also had been
made at one of the previous crew meetings that employees should consider
forming their own union. It is fair to say that the grievance committee
was viewed by the Respondent as a substitute for the UFW. Under these
circumstances, Respondent--in effect--created, supported, and administered
a labor organization to represent its employees in such matters as grie-
vances and working conditions, violating Section 1153(b) of the Act. See
City Welding and Mfg. Co., 191 NLRB 124, 133 (1971); Schwarzenbach-Huber
Co. v. N.L.R.B., 70 LRRM 2805, 2820-2821 (C.A. 2, 1969); N.L.R.B. v. Grand
Foundaries, Inc., 62 LRRM 2444,

24
25 24/The General Counsel also asserts that the grievance
26 committee meeting that took place, wherein employee grievances and
27 complaints were solicited, constituted a further violation of Section
28 1153(a) of the Act. In view of the foregoing discussion and citation of
authority under Point Nos. 2 and 5 in the next preceding section, I
likewise conclude that the solicitation of grievances at the committee
meeting violated Section 1153(a).

1 2449 (C.A. 8, 1966).

2 III. The Employment Terminations.

3 As often recognized under the NLRA, a finding in regard to an
4 employer's discriminatory intent when discharging employees is "normally
5 supportable only by the circumstances and circumstantial evidence."
6 *Amalgamated Clothing Workers v. N.L.R.B.*, 302 F.2d 186, 190 (C.A.D.C.
7 1962), citing *N.L.R.D. v. Link-Belt Co.*, 311 U.S. 584, 597, 602 (1941).
8 The instant case presents such a situation--namely, whether the evidence,
9 largely circumstantial, establishes by its preponderance that the Respon-
10 dent discharged employees for their views, activities, or support in
11 connection with the UFW. In weighing the evidence adduced in this
12 proceeding, several general considerations emerge as strategic: (1) the
13 Respondent's animus toward the UFW; (2) the timing of the discharges in
14 question; (3) the asserted reasons or explanations for the discharges in
15 question; and (4) the extent of and knowledge of the discharged employees'
16 affiliation, or lack thereof, with the UFW and its organizing drive.

17
18 A. The Termination Of Maria Theresa Coyt, Lucia
19 Martinez And Luis Castenada:

20 Maria Theresa Coyt--As noted earlier, two basic conflicts exist
21 between Coyt's testimony and that of her supervisor, Leland Williams, in
22 respect to the circumstances surrounding her discharge. First, Coyt
23 denied being criticized by Williams about her slow work before September
24 4, the day before her discharge, as opposed to Williams's testimony
25 describing his repeated criticism of her. Second, she testified that
26 Williams informed her of her discharge by telling her there was no more
27 work, but Williams claimed he said the discharge was because they could
28 not work out their differences. If Coyt's testimony is credited over
Williams's, the conclusion follows that no serious, long-standing
criticism of her work precipitated her discharge.

For several reasons, in addition to their comparative
demeanor, Ms. Coyt's testimony is the more credible. It is difficult to
conclude that Williams found Coyt's work as unacceptable as he claimed,
inasmuch as she had been on his crew since July 23 and, after some three
or four weeks, had been given a letter by the Respondent which indicated
to government authorities that work was available for her husband at
Sunnyside, a letter which impliedly suggests that Respondent then intended
on retaining Ms. Coyt. Also, Coyt's alleged slowness is not a discharge
reason found on her personnel forms, and Williams's vacillating explanation
as to why "insubordination" instead was designated as the discharge reason
leaves substantial doubt surrounding the real motivation for discharge.
Furthermore, on the cover of Coyt's personnel folder maintained by the
Respondent the reason asserted for her discharge was her "personality con-
flicts with fellow workers--troublemaker," a reason having little to do
with either her slowness or insubordination, but having a lot to do with
Coyt's recent and early efforts to solicit support

1 for the UFW. In view of Respondent's inconsistent explanations regarding
2 Coyt's discharge, the conclusion is strongly suggested that not only is
3 Williams's testimony unworthy of credit but she was discharged for
4 voicing support for the UFW. See Harry F. Berggren & Sons, Inc., 165
5 NLRB 353 (1967), enforced 406 F.2d 239 (C.A. 8, 1969), cert, denied, 396
6 U.S. 823; American Casting Service, Inc., 151 NLRB too. 23 (1965),
7 enforced 365 F.2d 168, 172 (C.A. 7, 1966); Plant City Steel Corp., 138
8 NLRB 839 (1962), enforced 331 F.2d 511, 514-515 (C.A. 5, 1964).

9 In addition, two other significant facts emerge from the
10 testimony. One fact is that Leland Williams admitted he heard from
11 employees of Coyt's support for the UFW before her discharge, indicating
12 that her activity was substantial and generating controversy. The second
13 fact is that within only a day or two after her discharge, General Manager
14 Kinnaman, who had played a personal role in Coyt's discharge, informed a
15 worker friend, Luis Castenada, that a woman employee was discharged, and
16 described her as the "principle person" and as "having a lot of problems
17 with the union," a discussion in which Kinnaman also warned Castenada
18 against supporting the UFW. In view of the timing of this conversation
19 and Kinnaman's role in Coyt's discharge, it is appropriate to infer that
20 the general manager referred to none other than Ms. Coyt. And, in view of
21 the statements by Kinnaman, the Respondent's knowledge of Coyt's UFW sup-
22 port, the timing of her discharge (when she was uniquely the only employee
23 actively soliciting co-workers for the UFW), and the subsequent
24 demonstration of Respondent's strong anti-UFW attitude, the conclusion is
25 solidly produced that Coyt's 'discharge was for her UFW support and,
26 thus, a violation of the Act. Even though Williams may have been
27 displeased with Coyt's work, it does not follow that her discharge was
28 lawful, for even where a valid reason for discharge may exist, a discharge
nonetheless violates the Act where the moving reason for it relates to
union activity. N.L.R.B. v. Linda Jo Shoe Co., 307 F.2d 355, 357 (C.A. 5,
1962). I conclude that the moving reason for Coyt's discharge was her
open, vocal support for the UFW, at a time when such support was unique
among the workers.

19 Lucia Martinez--The Martinez termination stands on a
20 different footing. Martinez failed to testify, and the extent of her UFW
21 support is unclear. Furthermore, Sho Yoshida testified without direct
22 conflict that Martinez voluntarily quit her employment on October 21.

21 Although several circumstances exist which might warrant a
22 finding in the Respondent's disfavor, such as the somewhat conflicting
23 termination reasons that appear on Martinet's employment records, the
24 timing of her termination, and the general lack of credit that can be
25 given to Sho Yoshida's testimony, other considerations exist which
26 persuade me that a finding against the Respondent is not called for.
27 First, it is entirely possible that during the period in question, at
28 least one employee might voluntarily sever her employment. Second,
inasmuch as Martinez was the most junior employee on Walter Nishida's
crew, it is

1 reasonable to expect that she would have been laid off as others
2 admittedly were, if the Respondent had been the moving force behind the
3 termination. In any event, I do not find sufficient, persuasive
evidence to warrant the conclusion that Martinez was unlawfully
discharged on October 21.

4 Luis Castenada--The weight of the evidence swings again in
5 the Respondent's disfavor in regard to Luis Castenada's discharge.
6 Several considerations can be briefly noted as calling for the conclusion
7 that Castenada was unlawfully discharged. First, Castenada was a known
8 UFW supporter and, indeed, was selected by Sunnyside employees to serve
9 in a prominent coordinating role for the UFW. Second, he was cautioned
10 by his friend, General Manager Kinnaman (who left the Respondent on
11 October 17, some nine days prior to Castenada's discharge) that
12 supporting the UFW could cost Luis his job. Third, the alleged reason
13 for Castenada's discharge, namely, his slowness, was neither given to him
14 as a reason for his discharge nor was it the subject of a prior complaint
15 to him. Robert Castenada, Luis's foreman, was so unconvincing in regard
16 to his reason for discharging Luis that it is impossible to credit his
17 lame complaint against Luis, especially inasmuch as Luis had continually
18 worked by himself, without direct supervision, and had performed his job
19 successfully since early April. In short, Robert Castenada's feeble
20 effort to lay blame on Luis for being a slow worker was so unconvincing
21 that the opposite impression emerges. Indeed, Foreman Castenada could
22 not even describe the basis of his complaint against Luis.

23 Contrary to Respondent's assertions, it can only be concluded
24 that a fictitious reason was devised for Luis's discharge.
25 Significantly, Luis had sufficient seniority vis-a-vis his fellow crew
26 members to withstand any reasonable layoff due to a lack of work,
27 especially as his crew performed work of a steady, non-seasonal kind,
28 without past layoffs under similar circumstances. Furthermore, one
cannot ignore the fact that by claiming to have "discharged" Luis
Castenada for cause, the Respondent could possibly avoid explaining why
Jose Ciron, a more junior employee on Luis's crew and who disfavored the
UFW, as well as other junior employees, were retained in their employment
when Luis was not. Luis Castenada testified in a most credible way, and
one could not help but believe him to be a hardworking, serious employee
who, but for this UFW support and activity, would not have been
discharged by the Respondent.

21 B. The Layoffs;

22 1. Introduction: The General Counsel's Prima Facie 23 Case

24 The General Counsel puts forth two distinct but related
25 contentions in regard to the 18 or so "layoffs" that took place between
26 October 21 and November 7. First, the General Counsel argues that the
27 layoffs were discriminatorily motivated and without lawful justification.
28 Second, the General Counsel

1 argues that even if some or all of the layoffs were justified, the
2 method employed by the Respondent in selecting those for layoff was
3 discriminatory and unlawful. In either case, the General Counsel asks
4 that reinstatement of the employees and reimbursement of their lost pay
5 should be ordered as the remedy herein.

6 In first focusing on the lawfulness of the "layoffs"
7 that took place, several preliminary considerations emerge as
8 significant. Of course, Respondent's strong anti-UFW animus has been
9 noted previously, an animus leading to serious incursion into the
10 employees' protected rights vis the UFW, including the two unlawful
11 discharges previously discussed. Furthermore, the layoffs followed and
12 were consistent with several unlawful threats made by Sunnyside
13 officials that such layoffs would result if the UFW succeeded in the
14 election, as it did. Such threats, as well as the Respondent's
15 demonstrated animus against the UFW, establish the backdrop before which
16 the mass layoffs fell.

17 In addition, the disproportionate number of UFW
18 supporters laid off or discharged, in comparison to the non-supporters,
19 creates serious doubt and improbability in regard to the mass layoffs.
20 Although on October 15 some 89 employees had voted for the UFW and some
21 80 employees voted against it, every dismissed employee who testified
22 (17 of them) was a UFW supporter. Other testimony indicates that not
23 one of those dismissed opposed the UFW. The chance of coincidentally
24 laying off only UFW supporters, when nearly half the employees had voted
25 against the UFW just days earlier, is exceedingly doubtful.

26 The layoffs also occurred during a strategic stage of
27 the UFW's organizing effort. Only one or two weeks had passed since the
28 UFW had narrowly won the representation election. And, they occurred as
the Respondent was challenging the results of that election. By
dismissing some 20 UFW supporters, the Respondent could virtually assure
itself that the UFW would be weakened significantly in any eventual
bargaining that resulted, or would be unable to win any new election
that could possibly result.

Two other factors are of major significance. The layoffs
came abruptly, without notice to the employees involved. In every
instance, the employees were advised of their dismissals on their last
day of work. Also, the layoffs were directly contrary to past
experience at Sunnyside: not only had mass layoffs not been a practice
at Sunnyside, but during the months of October and November the
historical practice had been to increase the work force rather than
drastically reduce it. Indeed, 1975 was the only year out of the last
four years in which the Respondent reduced its work force after
September.

Finally, despite Respondent's contrary assertion, I am
convinced that the Respondent had general knowledge of which employees
were, or suspected to be, supporters of the UFW.

1 Several factors lead me to that belief. First, of those dismissed by
2 the Respondent, many were openly supportive of the UPW, such as Maria
3 Theresa Coyt, Luis Castenada, Feliciano Merlin, Delia Ortiz, Rueben
4 Galves-Gutierrez, Lucinda Benavidez, Maria Rubio Coyt, Ramon Ortiz,
5 Enrique Bernal, Findencia Ruiz, and Jose Melano. Second, although other
6 employees served in a leadership role for the UFW and were not
7 dismissed, such as Sucorro Reyes and Luis Molena, their seniority was so
8 substantial as to insulate them from layoff; had the Respondent singled
9 them out for discharge, any remaining doubt regarding Respondent's
10 motivation would be eliminated. Third, testimony established that
11 Respondent generally recognized that such ethnic groupings as its Korean
12 employees did not support the UFW (and no such employees were dismissed)
13 and that a large body of UFW support came from the relatively young
14 Mexican-American or Spanish-speaking employees (and every dismissed
15 employee had a Spanish surname). And, Sho Yoshida admitted being told
16 names of many who purportedly supported the UFW. In contrast to the
17 foregoing, and in view of the importance given by the Respondent to the
18 UFW's campaign, the supervisors' denials that they knew who supported
19 the UFW or even murmured about such subjects with Sho defy belief and
20 credibility. Indeed, from the testimony, it is more than fair to
21 conclude that the UFW was one of the, if not the primary, topics of
22 conversation among employees within their respective crews, of
23 significant concern to Sho Yoshida and his supervisors, and that the
24 identity of UFW supporters and non-supporters was known to not just the
25 employees but their supervisors as well. In this connection, it is also
26 reasonable to infer that Jose Ramirez, who was appointed by Eiichi
27 Yoshida as president of the grievance committee, suddenly given a salary
28 by the Respondent after working only six months, and who abruptly left
his employment after the election, was one of those instrumental in
passing along knowledge in regard to the UFW's support, to deserve such
special consideration as given him by the Respondent. If the Respondent
did not know each and every UFW supporter among its employees, it
nonetheless knew the basic ranks from which the UFW support came.

20 The foregoing factors more than establish a prima
21 facie case that the 18 layoffs were discriminatorily motivated and in
22 violation of the Act. Such a conclusion has been repeatedly reached by
23 the National Labor Relations Board, when dealing with layoffs that
24 similarly pattern the ones present in this case. See Machinery
25 Distribution Co., 211 NLRB 756 (1974); Murcole, Inc., 204 NLRB 228
26 (1973); Olson Bodies, Inc., 181 NLRB 1063 (1970); McGraw-Edison Co.,
27 172 NLRB 1604 (1968), enforced 419 F.2d 67 (C.A. 8, 1969); Austin
28 Powder Co., 141 NLRB 183 (1963), modified on appeal, 350 F.2d 973
(C.A. 6, 1965); Syracuse Tank & Mfg. Co., Inc., 133 NLRB 513 (1961).

26 Having concluded that a prima facie case was established
27 by the General Counsel, however, does not end the inquiry. For, as noted
28 in Syracuse Tank, supra, 133 NLRB at 525:

It is [then] open to the employer to rebut
the presumption by coming forward

1 with a plausible, adequate, and convincing
2 explanation demonstrating that the action
3 taken with respect to each affected employee,
4 and the timing of such action, was based
5 solely upon non-discriminatory
6 considerations. In the last analysis,
7 determination must turn on which is the more
8 persuasive, the inference of discrimination
9 drawn from the circumstances ... or the
10 explanations offered to refute it.^{25/}

2. Respondent's Explanation For The Layoffs

7 Respondent primarily asserts an economic basis for its
8 decision to lay off employees in October and November. It contends that
9 in the summer of 1975 the employment force was maintained at an historic
10 high, contrary to the usual drop in employment after Easter, due to a
11 major venture into the production of hanging ferns and hanging "baskets"
12 ("wandering jews," coleus, "Swedish ivy," "spider" plants, and
13 "piggybacks"). According to Respondent, these hanging plants were hung
14 in greenhouses on top of its traditional crops, thus "doubling" the
15 crops, and were eventually shipped out by October, resulting then in a
16 surplus of employees. The crews assigned to perform work on such
17 hanging plants were those led by Carlos Ramirez, Marcos Molinero, Leland
18 Williams, Mas Kato and Charlie Iwamuro; Iwamuro had hanging plants
19 throughout all his 10 plastic houses for which he was responsible.
20 According to Respondent, about 64,000 hanging plants were produced
21 during 1975's summer, most of which were ordered by Safeway Stores.

16 Hanging plants, it is claimed, required additional work
17 than the other crops in respect to "pinching," watering, and packaging
18 them. Furthermore, since many of the hanging plants were not accepted
19 by Safeway, according to the Respondent, further work was required in
20 order to keep the remaining plants properly trimmed so they could be
21 sold to other customers, as they were. Respondent argues that by
22 October the extra work necessitated by the hanging plants was no longer
23 available for employees, and that the decision was then made to reduce
24 the employee force to approximately the level existing in October, 1974.
25 Respondent emphasizes that after the layoffs occurred and after still
26 other employees voluntarily quit their employment, no new employees were
27 hired, and that the remaining

23 ^{25/}Inasmuch as I have concluded that the General Counsel has
24 met his burden by establishing a prima facie case that the layoffs in
25 question were discriminatorily motivated and, hence, unlawful, I have
26 refrained at this juncture from discussing whether, notwithstanding the
27 legality or illegality of the layoffs, the method used in selecting
28 employees for layoff was discriminatory and unlawful. More will be said
about the Respondent's selection method in subsequent sections.

1 work has been performed without unusual overtime or other increased work
2 burden placed on the existing employee force. In this connection,
3 Respondent also contends that during the tenure of General Manager
4 Kinnaman, a surplus of employees was hired, making the work force
5 inefficient and too large.

6 Respondent likewise denies that it was discriminatorily
7 motivated when selecting employees for layoff. Upon the advice of
8 counsel, it decided to implement layoffs by seniority, it being hoped
9 that by dismissing the most junior employees protests under the Act could
10 be avoided. Thus, the Respondent composed crew lists, dividing the crews
11 into existing segments (e.g., men, women, and a water crew), then
12 selected the most junior employees who were no longer needed from those
13 crew segments. The crew divisions were made only in those crews which
14 actually utilized such "specialized" work segments. Although in a number
15 of instances the most junior employees were not laid off, Respondent has
16 put forth various reasons why its "seniority system" was not uniformly
17 applied.26/

18 3. Analysis And Conclusion In Regard To The Layoffs

19 One of the major difficulties when viewing the Respondent's
20 economic explanation for the layoffs is the general lack of credibility
21 that can be given to its witnesses, particularly in respect to the very
22 circumstances surrounding the layoffs. In describing the decision to
23 reduce his work forces, Sho Yoshida testified that he personally
24 determined the need to eliminate employees in September, and he
25 implemented the decision in the following fashion:

26 26/It is significant to note at this point that certain
27 evidence requested by the General Counsel was not produced by the
28 Respondent. By a Subpoena Duces Tecum, the General Counsel requested,
inter alia, the Respondent's "production records showing areas under
cultivation, crops planted, plants potted, plants raided, for 1973, 1974,
1975" and "sales records for 1973, 1974, 1975 to wholesalers and others,
including but not limited to orders received, shipping invoice records and
daily production records." The Respondent opposed production of such
information by way of a petition to revoke the subpoena, claiming that
"said documents would reveal trade secrets and information that would
damage employer's competitive position in the nursery industry." After
extended argument by the parties, I sustained Respondent's petition to
revoke based on Division 8, Article II, of the Evidence Code, advising the
parties that such ruling would remain in effect until it became apparent
that such information as requested by the General Counsel was of strategic
materiality and relevance. Since Respondent's defense was limited in
scope (i.e. the hanging plant rationale), I did not view it as necessary
at the time to delve into the entire question surrounding Respondent's
sales picture, especially inasmuch as the Respondent did come forth with
certain admissions during the course of the hearing which pertained to its
sales figures.

1 I made up my mind, I walked through the
2 greenhouses, I realized how many people we had in
3 each section and in my mind I would say, how many
4 people do we need, first, and then talk with the
5 supervisors and say how many we should have.

6
7 The actual week of the layoffs, according to Sho, "I checked with my
8 supervisors and I told them: We have to get more efficient. We can't
9 have all these people here. I told them to go ahead and get the number
10 down."

11 Respondent's crew supervisors, however, had their own,
12 differing versions of how the layoffs were determined. Charlie Iwamuro
13 recalled going to Sho in August to tell him the need to cut back
14 employees, and that it was Charlie himself who determined the number of
15 employees to be dismissed. Robert Castenada also (coincidentally)
16 recalled having initiated a discussion with Sho regarding the surplus of
17 employees on his crew, despite the fact that Castenada's crew worked only
18 on chrysanthemums, a year-round crop, and had no prior layoffs under
19 similar circumstances in the past. Marcos Molinero testified that he,
20 too, initiated contact with Sho because he had a surplus of employees
21 and, contrary to the others, claimed he had been previously instructed
22 that layoffs were to **be** based on employee seniority. The testimony of
23 these supervisors appeared as nothing short of a loyal attempt by them to
24 protect Sho Yoshida and, thus, camouflage his own admitted role in the
25 layoffs.

26 Other portions of testimony by Respondent's witnesses are more
27 revealing. Thus, Carlos Ramirez, clearly shaken by his accidental
28 admission, revealed that in September Sho held a group meeting with his
29 supervisors, where Sho discussed both the new farm labor law and laying
30 off employees. It seems strange that these two subjects were taken up
31 together. Ramirez, unfortunately, quickly lost his memory regarding the
32 specific discussion that took place during the meeting, and the other
33 supervisors denied having had such a meeting with Sho. Yet, despite the
34 conflicting testimony, it is clear that after the election on October 15,
35 Sho was prepared to implement layoffs according to a program, for he
36 commissioned the preparation of crew lists that were, for the first time
37 in Respondent's history, divided into crew segments, and when the various
38 supervisors were called in to discuss the layoffs, they were shown such
39 lists and told to use them when selecting employees for layoff.

40 Still other portions of the testimony are significant in
41 measuring Respondent's defenses. As noted, Sho claimed he first
42 determined the need to cut back his work force in September; when asked
43 why he waited until latter October to implement the cut-back!, he
44 testified:

45 The union was knocking on our doors and saying
46 they wanted to put out a petition. And I don't
47 know exactly what date we had

1 received our petition, but at the time we--
2 rather than to lay off our workers, we felt we
3 would rather take a vote at the time and we
4 just--we didn't discharge no people, although we
5 knew that we had to discharge people.

6 The distinct impression was that the success of the UFW's campaign played
7 a moving role in the determination to eliminate employees, as suggested by
8 Sho Yoshida's testimony ,27/ and as reinforced by other factors. Thus,
9 significantly, at the same time Sho was allegedly aware of a surplus of
10 employees, the Respondent's president was suggesting to workers that no
11 layoffs would occur unless the UFW won the election. Respondent's leaf-
12 lets were also advising employees that they could lose their jobs with the
13 advent of the UFW and to keep "a peaceful good steady job" they should
14 vote against the UFW. Admittedly, the Respondent historically had never
15 cut back its employee force due to economic reasons. And significantly,
16 the revealing remark made by Supervisor Nishida to employees being laid
17 off from his crew--namely, that Sho mentioned the UFW as a reason for the
18 layoffs-- stands wholly un rebutted. Furthermore, Sho acknowledged that at
19 the same time he was cutting his employee force, he added three or four
20 new supervisory positions; the purpose of such changes, according to Sho,
21 was to increase his control over employees and I to increase communication
22 between his supervisors and employees, a thinly veiled euphemism, I
23 believe, to describe an effort by Respondent to insure that employee union
24 activity was more easily observed and controlled.

25 Finally, two other features of Sho Yoshida's testimony deserve
26 note. Sho attempted to explain why the employee force was as high as it
27 was during the fall of 1975 by citing the employee surplus resulting from
28 General Manager Kinnaman's hiring decisions, as well as the 1974-1975
29 construction of greenhouses. Neither explanation is credible, however. It
30 is simply incredible that Kinnaman, who was general manager for over one
31 year, could have hired too many workers in view of Sho Yoshida's close
32 personal control and supervision over the nursery. And, the greenhouse
33 construction explains nothing, inasmuch as that construction was completed
34 around February, 1975. Yet, despite its completion, the employee force
35 continued to increase from February to April and remained relatively
36 stable thereafter (until October). Indeed, Respondent's employee cards
37 indicate that some 16 employees were hired in January, 36 in February, 34

38 27/As noted in N.L.R.B. v. Walton Mfg. Co., 369 U.S. 404, 408,
39 quoting with approval from Judge Learned Hand in Dyer v. McDougall, 201
40 F.2d 265, 269 (C.A. 2): the demeanor of a witness "may satisfy the
41 tribunal, not only that the witness's testimony is not true, but that the
42 truth is the opposite of his story; for the denial of one, who has a
43 motive to deny, may be uttered with such hesitation, discomfort, arrogance
44 or defiance, as to give assurance that he is fabricating, and that, if he
45 is, there is no alternative but to assume the truth of what he denies . "

1 in March, 25 in April, 21 in May, 24 in June, 32 in July and 4 in
2 August, hirings which indicate that despite the completion of
3 construction, a Steady influx of employees existed during the first eight
4 months of 1975.28/ Respondent's vacillating, unsupported reasons as to why
5 layoffs were necessitated in October and November establish an inference
6 that the layoffs were discriminatorily motivated.

7 I also find that Respondent has not put forth persuasively or
8 convincingly the explanation that its layoffs were necessitated by the
9 decrease in production of its hanging plant crop. A starting point in
10 analyzing the hanging plant rationale for the layoffs is the distinction
11 that must be made between the hanging baskets and the hanging ferns.
12 Hanging ferns, unlike the baskets, were not a new crop; they were plants
13 which Leland Williams's crew propagated and grew. In other words, the
14 fern production emanated from the work of Williams's crew. Nor does the
15 record warrant the conclusion that further production of hanging ferns
16 was not underway when the layoffs occurred. Williams not only was
17 informed by one of Respondent's officials to ready his propagating beds
18 in September for a "substantial increase" in production, but both his
19 work load and surplus shipments were expanding at the very time other
20 crews were being pared back. Thus, it must be concluded that
21 Respondent's arguments about eliminating hanging plants relate basically
22 (or, at least, primarily) to the hanging baskets and not to the fern
23 production.

24 Of the approximately 64,000 hanging baskets (coleus, wandering
25 jew, spider plants, piggybacks) grown by Respondent in 1975,
26 approximately 48,000 were ordered by Safeway and 15,000 ordered by Von's
27 supermarkets. No dispute appears over the fact that the shipment to
28 Von's was completed in July, thus leaving some 48,000 plants to account
29 for a decrease in work and employment in October and November, some three
30 and four months later.

31 Respondent, however, has unconvincingly linked the loss

32 28/The above calculations are based on the Respondent's
33 employee cards for those who left the Respondent in 1975 and those still
34 active, cards which were introduced into evidence. The cards also indicate
35 that the natural turnover of employees is substantial; thus, 4 employees
36 left (or were dismissed for cause) in January, 14 in February, 14 in
37 March, 38 in April, 30 in May, 14 in June, 18 in July, and 16 in August.
38 A comparison of the hiring and departure of employees during the first
39 eight months of 1975 indicates that approximately 192 employees were
40 hired and 148 left, and of those 148, some 39 can be described as
41 "temporary" or "seasonal" employees (those who return to the Respondent
42 for short periods from year to year), while approximately 38 such
43 employees were hired between January and March. Such employee figures
44 indicate that prior to September and October, the Respondent was
45 continuing to expand its **permanent work force.**

1 of its hanging basket crop with the employee cut-back. Of greatest
2 significance is the fact that no hard, or credible proof was produced by
3 Respondent that would directly link the sale and shipment of its hanging
4 basket crop with the loss of work opportunities for over twenty employees.

5 The only evidence regarding the level and timing of hanging
6 basket shipments was the testimony of Sho Yoshida, who claimed that
7 Sunnyside shipped approximately 10,000 baskets in July, 20,000 in August,
8 20,000 in September, and 10,000 in October. The only "hard" evidence that
9 even purportedly documented the size of the hanging basket crop was an
10 internal company memorandum, which indicated that Safeway Stores had
11 ordered only 48,000 hanging baskets and, of that order, 6,000 were to be
12 shipped after Mother's Day, 27,000 in July, and 15,000 in August, two
13 months before the layoffs in question. The Respondent, however, refused to
14 produce any shipping invoices, which the Respondent admittedly maintains,
15 showing the shipment dates.

16 Inasmuch as the Respondent built its very defense on the
17 decrease in production of hanging baskets, it was obligated, I believe, to
18 establish that defense with the best available evidence, which it failed to
19 bring forth. Nor can I credit Sho Yoshida's testimony in regard to the
20 level of production and timing of shipments. In addition to the general
21 lack of credibility of his testimony, he refused to answer directly
22 several questions put forward in respect to the general level of shipments
23 from the nursery, claiming ironically that he was not personally aware of
24 the extent of his own shipments. Thus, it is difficult to place any
25 particular reliance on Mr. Yoshida's "estimate" of shipments in regard to
26 the hanging basket crop, especially since his estimate conflicts with the
27 only written record brought forward by the Respondent.^{29/}

28 One other significant consideration stands out in regard to
Respondent's hanging basket crop. According to Sho Yoshida, the production
steps in growing hanging baskets were as follow: in February cuttings were
taken and rooted; in March they were potted; and in April the baskets were
hung. Since the bulk of the work connected with the hanging basket
production (i.e., the cutting, potting, pinching) ended by April, it is
difficult--if not

29/ After questions he initially refused to answer regarding
the level of sales and shipments at the nursery, Sho Yoshida finally
stated that his 1975 business was "just about level" with 1974. But,
Respondent's subsequent admissions through counsel established that 1975
sales were up 21% from 1974, 28% for the months of July through October,
and that production was up 10% to 15% over 1974. Thus, Sho hardly
qualified as a reliable witness when describing the sales and shipments
from his own nursery, without any records before him.

1 impossible--to believe that over 20 extra employees were maintained for the
2 next six months to perform the work of watering, periodic trimming, and
3 packing the plants. Although Sho claimed that "substantial" work was
4 involved in watering the hanging baskets, Charlie Iwamuro's crew, which had
5 primary responsibility for the hanging baskets, added only one employee to
6 its "water crew" in April and another in July, the two being laid off on
7 October 21. But, in the case of Mas Kato's and Marcos Molinero's crews,
8 which also worked on the hanging baskets after April, not one from their
9 water crews was laid off. Thus, it cannot be concluded that after April a
10 large number of employees was required to maintain and care for the hanging
11 baskets, and certainly not that suddenly in October and November such extra
12 work in regard to hanging baskets was unavailable.

13 Respondent also emphasizes that even in the face of further
14 employee departures after the layoffs in question, no new hiring took
15 place. Frankly, from the emphasis given by Respondent to its no-hire
16 policy in latter 1975, that policy fits squarely with the view that
17 Respondent did not wish to manifest any need to reemploy its laid off UFW
18 supporters over the short run, before the unfair labor practice hearing.
19 Had Respondent laid off its workers for purely economic reasons, striving
20 to make its work force as efficient as possible (as claimed by Respondent),
21 one would naturally expect it would have dismissed more employees (those
22 who later quit), if those extra positions were really unnecessary .30/

23 What the evidence shows is that during 1975 when Respondent's
24 sales and production were substantially greater than in) 1974 (and expected
25 to increase in 1976), and during a period when; the Respondent normally
26 increased its employee force, preparing for the large Christmas crop of
27 poinsettias, to be followed shortly by production of the even larger
28 Easter crop of lilies, the Respondent inexplicably, for the first time in
its history, eliminated over 20 employees through mass layoffs. I conclude
that the evidence establishes that the reason for such layoffs was
discriminatory, and I so find.31/ More than a preponderance of

30/ Significantly, none of the Respondent's dock workers or drivers was
laid off, indicating that the level of shipments had not drastically fallen.
Nor, for that matter, was work in the soil shed, which produced the
nursery's soil, feeling a decrease then.

31/ In view of my finding above, I have not attempted to analyze whether
the selection method used in implementing the layoffs was, as a separate
matter, discriminatory. I am satisfied, however, that Respondent devised
its new seniority system in order to spread its layoffs among the younger,
Spanish-surnamed employees, wherein a large measure of the UFW support was
known to exist. So many anomolies in Respondent's seniority system are

1 Of the evidence has convinced me that the Respondent, angered at its loss
2 in the election, bent on avoiding unionization, determined to make examples
3 of those who supported the UFW and to rid itself of workers who comprised a
4 large segment of that support by discharging them through the disguise of
economic necessity, No such necessity, however, is demonstrated by the
evidence.

5 THE REMEDY

6 Having found that Respondent has engaged in certain unfair labor
7 practices within the meaning of Sections 1153(a), (b), and (c) of the Act, I
8 shall recommend that it cease and desist therefrom and take certain
9 affirmative action designed to effectuate the policies of the Act. Having
10 found that the Respondent unlawfully discharged 20 employees, unlawfully
11 established and supported a labor organization, and unlawfully threatened
12 and coerced its employees, acts which together, if not apart, strike at the
heart and policies of the Act, I also recommend that the Respondent cease
and desist from infringing in any manner upon the rights guaranteed to
employees by Section 1152 of the Act. Due to the serious nature of
Respondent's violations of the Act, a so-called broad cease and desist order
is warranted.

13 In order to fully remedy Respondent's unlawful conduct, I also
14 recommend that certain affirmative steps be taken, as follow: first,
15 Respondent must publish and make known to its employees that it has violated
16 the Act and that it has been ordered I not to engage in future violations of
the Act. Attached to this Decision is a Notice to Employees, which should
serve to sufficiently apprise employees.

17 Several means of publication of the Notice are available and
18 urged by the General Counsel. I have determined that the following
means are necessary and appropriate:

19 1. The Notice to Employees, translated into English, Spanish,
20 and Korean, with approval of the Salinas Regional Director, shall be mailed
21 to all employees of the Respondent employed between September 1, 1975, and
the time such Notice is mailed, if they are not then employed by Respondent.
22 The Notices are to be mailed to the employees' last known addresses, or more
current addresses if made known to Respondent. Mailing notices to past
employees is a publication method approved as appropriate by the Board.
23 Valley Farms and Rose J. Farms, 2 ALRB No. 41 (1976). Although operations

24 31/ (continued)--detailed in the evidence as to seriously discredit
25 Respondent's seniority system as an objective instrument for
26 implementing its layoffs.

1 are not of a seasonal variety, as in Valley Farms, Respondent has a high
2 rate of turnover in its employee force. Also, as noted in Valley Farms,
3 "Employees should be informed of the outcome of unfair labor practice
4 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." This policy should apply to
Respondent's past employees.

5 2. For all those employees currently working for the
6 Respondent, and for those hired by the Respondent for six months following
7 its initial compliance with this Decision and Order, Respondent, through
8 one of its prominent representatives, is to give by hand to such employees
9 the attached Notice, appropriately translated. In this connection,
10 Respondent's representative is to inform such employees that it is
11 important to understand the Notice and to offer to read the Notice to any
12 employee who so desires in that employee's preferred language. The fore-
13 going method of publication was also approved in Valley Farms and is
14 appropriate in the context of this case to fully inform current and future
15 employees that their rights under the Act are secure from Respondent's
interference.

16 3. For the same six-month period, as noted above, Respondent
17 is to post the Notice in a prominent place at its Salinas nursery, in an
18 area frequented by employees or where other notices are posted by
19 Respondent. Although to some extent this posting results in a duplication
20 of publication, the posting will serve as a reminder to employees in
21 regard to the Respondent's past violations and a continued assurance as to
22 their future protection.

23 Second, I also recommend that Respondent give to the UFW the
24 names and addresses of all past, present and future employees who, as set
25 forth above, are to receive the Notice, as well as making available to the
26 UFW for six months (unless the UFW was not certified as a result of the
27 October 15 election) access to a conveniently located bulletin board so as
28 to allow the UFW to post notices and the like. These measures are
appropriate to allow the UFW, whose support was so unlawfully undercut by
the Respondent, an opportunity to insure that Respondent fully complies
with this Decision and Order and an opportunity to make known to employees
that their support for the UFW cannot be unlawfully interfered with.
Since the Respondent's unlawful conduct was very serious, a full
opportunity should exist for the UFW to allay any continuing or residual
fear on the part of employees that their statutory rights can be abused or
abrogated.

29 Third, having found that the Respondent unlawfully discharged
30 20 employees, I recommend the Respondent be ordered to offer such
31 employees immediate and full reinstatement to their former or equivalent
32 jobs. I further recommend that the Respondent make whole such employees
33 by payment to them of a sum of money equal to the wages they each would
34 have earned from the dates of their respective discharges or layoffs to
35 the dates

1 they are each reinstated or offered reinstatement, less their respective
2 net earnings, together with-interest thereon at the rate of 7% per
3 annum, such back pay to be computed in accordance with the formula used
4 in F. W. Woolworth Co., 90 NLRB 289; and Isis Plumbing and Heating Co.,
138 NLRB 716.32/

5 ORDER

6 Respondent, its officers, agents and representatives
7 shall:

8 1. Cease and desist from:

9 (a) In any manner interfering with, restraining and
10 coercing employees in the exercise of their right to self-organization,
11 to form, join or assist labor organizations, to bargain collectively
12 through representatives of their own choosing, and to engage in other
concerted activities for the purpose of 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 affected by an
agreement the type of which is authorized by Section 1153(c) of the Act.

13 (b) Discouraging membership of any of its employees in
14 the UFW, or any other labor organization, by unlawfully discharging,
15 laying off, or in any other manner discriminating against individuals in
regard to their hire or tenure of employment, or any term or condition of
employment, except as authorized by Section 1153(c) of the Act.

16 (c) Dominating or interfering with the formation or
17 administration of any labor organization or contributing financial or
18 other support to such labor organization, except as authorized by Section
1153(c) of the Act.

19 2. Take the following affirmative action:

20 (a) Offer to the following employees immediate and full
reinstatement to their former or equivalent jobs, without

21 ³²/At the evidentiary hearing herein the parties litigated an
22 issue related to computing back pay—namely, the extent each dismissed
23 employee searched for work following his or her dismissal. Of course,
24 that hearing was in December, 1975, before the Board temporarily ceased
25 its operations, and can have little bearing now on the question of the
26 employees' mitigation of damages. Although the Board has not yet
established formal back pay procedures, I have concluded that the
evidence advanced as to the employees' search for other employment cannot
now be controlling as to the sums of money owed by the Respondent, and
that any dispute over the appropriate amounts of such money be taken up
under whatever procedures are developed by the Board.

1 prejudice to their seniority or other rights and privileges, and to make
2 them whole for losses they may. have suffered as a result of their
3 terminations, as more fully described in the section entitled "The
4 Remedy": Ninfa Guarjardo, Feliciano Perez Merlin, Rafael Flores Lopez,
5 Fedencia Mederos, Lucinda Benavidez, Miguel Angel Ruiz, Angelina Ramos,
6 Virginia V. Bargas (Politron), Luis Castenada, Josefina Pizarro, Rueben
7 Galves-Gutierrez, Maria Louisa Rubio, Delia M. Ortiz, Enrique Castenada,
8 Serafino Alvarez Nunez, Angelina Ceja de Rubio, Ramon Ortiz, Raul
9 Sandoval Hernandez, Maria Theresa Coyt, and Jose Melano.

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

9 (c) Distribute to past, present, and future employees
10 the attached Notice to Employees, as well as explain to present and
11 future employees that the contents of the Notice are important to know
12 and offer to read aloud such Notice, all in a manner as set forth in the
13 section entitled "The Remedy." In addition, the Respondent shall furnish
14 the Regional Director for the Salinas Regional Office for his or her
15 acceptance copies of the Notice, accurately and appropriately translated,
16 and such proof as requested by the Regional Director, or agent, that the
17 Notice has been distributed and made known in the required manner.

14 (d) Post the attached Notice to Employees in the
15 prescribed manner, as stated in the section entitled "The Remedy."

16 (e) Make available to the UFW sufficient space on a
17 convenient bulletin board for its posting of notices and the like for a
18 period of six months from Respondent's beginning compliance with the
19 mandates of this Decision and Order, and to provide the UFW the names and
20 addresses of employees, as set forth in the section entitled "The
21 Remedy."

19 (f) Notify the Regional Director of the Salinas
20 Regional Office within 20 days from receipt of a copy of this Decision
21 and Order of steps the Respondent has taken to comply therewith, and
22 to continue reporting periodically thereafter until full compliance is
23 achieved.

22 Dated: December 19, 1976.

23 AGRICULTURAL LABOR RELATIONS BOARD

24 By David C. Nevins

25 David C. Nevins
26 Administrative Law Officer

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NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer for the Agricultural Labor Relations Board has found that Sunnyside Nurseries violated the Agricultural Labor Relations Act, and has ordered Sunnyside to notify you and others that we violated the Act and that we will respect the rights of all our employees in the future. Therefore, in behalf of Sunnyside Nurseries, I am now telling each of you:

1. We unlawfully discharged the following 20 employees, who we will offer immediate reinstatement to work and reimburse for any lost wages and benefits as a result of their discharges: Ninfa Guarjardo, Feliciano Perez Merlin, Rafael Flores Lopez, Fedencia Mederos, Lucinda Benavidez, Miguel Angel Ruiz, Angelina Ramos, Virginia V. Bargas (Politron), Luis Castenada, Josefina Pizarro, Reuben Galves-Gutierrez, Maria Louisa Rubio, Delia M. Ortiz, Enrique Castenada, Serafino Alvarez Nunez, Angelina Ceja de Rubio, Ramon Ortiz, Raul Sandoval Hernandez, Maria Theresa Coyt, and Jose Melano.

2. We unlawfully questioned employees about their support for the United Farm Workers Union, promised them benefits to persuade them to refrain from supporting the United Farm Workers Union, threatened them with a loss of benefits and jobs for their support of the United Farm Workers Union, and we must remedy such unlawful acts.

3. We unlawfully created a substitute labor organization to persuade employees not to support the United Farm Workers Union, and we must not in the future dominate or interfere with the formation or administration of any labor organization, or contribute financial or other support to a labor organization unless allowed to do so by law.

4. We hereby inform you that all our employees are free to support, become or remain members of the United Farm Workers Union, or any other union, under the limits and protection of the Agricultural Labor Relations Act. Our employees can I engage in any and all activities in support of such union, with out interference, restraint or coercion from us, provided that their activity is not done at times or in a manner that interferes with their job performance. We will not discharge, lay off, or in any other manner interfere with the rights of our

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1 employees to engage in activities which are guaranteed them by the
2 Agricultural Labor Relations Act.

3 Signed:

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5 _____
6 For Sunnyside Nurseries, Inc.

7 Dated:

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