

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

HEMET WHOLESALE,	)	
	)	
Respondent,	)	Nos. 75-CE-12-R
	)	75-CE-12-A-R
and	)	75-CE-39-R
	)	
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	3 ALRB No.47
	)	
Charging Party.	)	
	)	
	)	
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This decision has been delegated to a three-member panel.  
Labor Code Section 1146.

On March 5, 1977, Administrative Law Officer David C. Nevins issued his decision in this case. The Respondent filed timely exceptions to the decision of the administrative law officer and the General Counsel timely filed an answering brief. Having reviewed the record, we adopt the law officer's findings and conclusions except as indicated herein.

The sums due under the make-whole remedy shall be calculated in accordance with the formula adopted by this Board in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977), and we modify the administrative law officer's recommended order accordingly.

We direct that the notice to employees be read in English and in Spanish by a company representative or Board agent to all current employees on company time. Following this reading, the Board agent shall be given the opportunity to answer employees' questions concerning the Act. We further

direct that the notice to employees shall be mailed to all employees of the Respondent between August 1, 1975 and the date of mailing, who are no longer employed by Respondent. In addition the notice to employees shall be posted in one or more prominent places at Respondent's nursery, in any area frequented by employees or where other notices are posted by Respondent, for a period of six months following Respondent's initial compliance with this order. We delete from the recommended order the requirement that copies of the notice be handed to current employees and those hired over the next six months.

Pursuant to Labor Code Section 1160.3, the Board hereby adopts as its order the recommended order of the administrative law officer as modified, and hereby orders the Respondent Hemet Wholesale, and its officers, agents, and successors to abide by the terms of the modified order.

Accordingly, IT IS HEREBY ORDERED that Respondent, its officers, agents and representatives 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 Section 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, refusing to hire, 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.

(c) Interrogating its employees concerning their support for the UFW or any other labor organization, and threatening to discharge, lay off, or close the business in respect to employee support for the UFW or any other labor organization.

(d) Enforcing its invalid no-solicitation rules, or from effectuating work rules drafted as a result of the UFWs organizing campaign.

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, and to make them whole for losses they may have suffered as a result of their terminations by payment to them of a sum of money equal to the wages they each would have earned from the dates of their respective discharges or transfers or layoffs to the dates on which they are each reinstated or offered reinstatement, less their respective net earnings, together with interest thereon at the rate of 7% per annum, such back pay to be computed in accordance with the formula adopted by this Board in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977): Javier Santibanes, Donate Ambriz, Justo Garcia, Jr., Antonio Bernal, Isaac Primo, and Jesus Jurado.

(b) Restore to their former jobs the following employees who were unlawfully transferred: Jose Sandoval, Julio Abarca, Elias Morales, and Jesus Jurado.

(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) Mail, post and read the attached notice to employees in the manner set forth below:

(1) Furnish the regional director for the San Diego region, for his or her acceptance, copies of the notice, accurately and appropriately translated.

(2) Mail the notice to all employees of the Respondent between August 1, 1975 and the date of mailing, who are no longer employed by Respondent. (The notices are to be mailed to the employees' last known addresses, or more current addresses if made known to Respondent.)

(3) Post the notice in one or more prominent places at Respondent's nursery, in any area frequented by employees or where other notices are posted by Respondent, for a period of six months following Respondent's initial compliance with this order.

(4) Have the notice read in English and Spanish by a company representative or Board agent to all current employees on company time, and, if the notice is read by a Board agent, afford said agent the opportunity to answer employees' questions concerning the Act.

(5) Furnish such proof as requested by the regional director, or agent, that the notice has been mailed and made known in the required manner.

(e) Give to the UFW the names and addresses of all past employees who, as set forth above, are to receive the notice, as well as making available to the UFW for six months access to a conveniently located bulletin board so as to allow the UFW to post notices and the like.

(f) Allow the UFW to have its representatives meet and talk with employees at its nursery, under the terms and conditions of the Board's current access regulation, for a period of two months from the time that Respondent initially complies with this decision and order.

(g) Notify the regional director of the San Diego 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: June 17, 1977

Richard Johnsen, Jr., Member

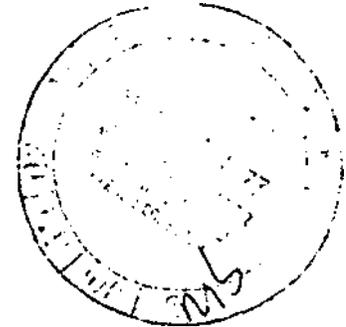
Robert B. Hutchinson, Member

Ronald L. Ruiz, Member

STATE OF CALIFORNIA  
BEFORE THE  
AGRICULTURAL LABOR RELATIONS BOARD)

HEMET WHOLESALE COMPANY )  
Respondent )  
and )  
UNITED FARM WORKERS OF AMERICA, AFL-CIO )  
Charging Party )

Case Nos. 75-CE-12-R-  
75-CE-12-A-R



Michael H. Kalkstein and Ellen Greenstone,  
appearing for the General Counsel;

Norman E. Jones, of Jones, Jones & Jones, Los  
Angeles, California, appearing for the  
Respondent;

John Rittmayer, of San Jacinto, California,  
appearing for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID C. NEVINS, Administrative Law Officer: This case was heard by me between January 5 and 14, 1976, in Hemet, California. The complaint, dated December 8, 1975) is based on charges filed by the United Farm Workers of America, AFL-CIO (hereafter the "UFW" or the "Union").<sup>1/</sup>The charges were filed and duly served on the Respondent, Hemet Wholesale Company, during October, 1975.<sup>2/</sup> The complaint alleges that Respondent committed several

<sup>1/</sup> Unless otherwise specified, all dates herein refer to 1975.

<sup>2/</sup> Respondent initially complained that a copy of the charge numbered 75-CE-39-R was not served on it until December 15, a week after the complaint. However, the testimony of Respondent's personnel manager, Tom Hamblin, indicates that the charge was received by Respondent on October 30, although it was at that time unnumbered. Some confusion surrounded that charge, since it was identical to the charge numbered 75-CZ-5-R, originally (cont.)

1 violations of the Agricultural Labor Relations Act (hereafter the "Act").  
2 The hearing was held pursuant to an order consolidating the various unfair  
labor practice charges.

3 All parties were represented at the hearing and were given a  
4 full opportunity to participate in the proceedings. The General Counsel  
submitted a brief following the hearing. The Respondent filed a motion  
5 requesting an extension of time in which to file its post-hearing brief,  
which motion was denied by the Board. Respondent submitted no brief.

6 Upon the entire record, including my observation of the demeanor  
of the witnesses, and after consideration of the arguments of the parties  
7 and the brief submitted by the General Counsel, I make the following:

8 FINDINGS OF FACT

9 I. Jurisdiction.

10 Respondent, Hemet Wholesale Company, was in latter 1975 a  
11 limited partnership engaged in agriculture in Riverside County,  
California. Respondent was admittedly an agricultural employer within the  
meaning of Section 1140.4(c) of the Act, and I so find.

12 Although the Respondent did not admit to such, I also find that  
13 the UFW is a labor organization within the meaning of Section 1140.4(f) of  
the Act. That the UFW is a labor organization is a fact of such common  
14 knowledge within the Board's territorial jurisdiction and a fact not  
reasonably subject to dispute, that a sufficient basis exists for taking  
15 judicial notice of the UFW's status as a labor organization pursuant to  
California Evidence Code Sections 452(g) and (h).

16 II. The Alleged Unfair Labor Practices.

17 The complaint, as amended at the hearing, puts into issue two  
18 categories of alleged violations. First, the complaint charges that  
Respondent violated Section 1153(a) of the Act by promulgating and  
19 enforcing new work rules in response to its employees' protected  
activities, threatening employees with the loss of employment,  
20 interrogating employees concerning their UFW activity, and threatening an  
employee in regard to his testimony at a hearing conducted by the Board.  
21 Second, the complaint charges that Respondent violated Sections 1153(a)  
and (c) by transferring certain employees to new or different work duties  
and discharging such employees or other employees in response to their  
22 support for the UFW, and by its refusal to re-hire such employees.

23 The Respondent denied it violated the Act.

24 //  
25 //

26 2/ (continued) --served on September 24 and initially dismissed  
27 by the

28 Regional Director on October 5. The charge was thereafter resubmitted en  
October 31 as 75-CE-39-R and accepted by the Regional Director. Thus, no  
prejudice has resulted to the Respondent, and no reason exists to  
disregard the charge numbered 757CE-39-R.

1 III. The Facts.

2 A. Background:

3 Respondent operates a nursery, growing, tending, and selling orna-  
4 mental nursery stock. Its nursery encompasses about 160 acres, employing  
5 some 130 to 135 employees. During the year the work force varies some 20  
6 to 30 employees. Respondent also maintains a 13-acre propagation area.

7 The Respondent's operations are carried on through the work of  
8 various crews led by foremen. William Russell, commonly known to  
9 employees as "Colorado" (i.e., the "redhead" or the "red one"), is in  
10 charge of a crew that works on plants contained in five-gallon  
11 containers. Frank Antichevich, commonly known as "Frank, " is in charge  
12 of a crew responsible for plants contained in one-gallon containers.  
13 Duane Forbes, commonly known as the "Indian" or "Indio," has a crew that  
14 concentrates on irrigation, watering the plants by hand-held hoses and  
15 portable sprinklers. Jack Knight's crew is in charge of various plants  
16 and also performs some irrigation work. Deemus Weatherby, not involved in  
17 this proceeding, is the fifth foreman. And until sometime in October,  
18 Bert Tate, commonly known to employees as "the bird, " was also a  
19 foreman; when he left his crew was absorbed by Jack Knight.

20 The foremen have various assistants who lead portions of their  
21 crews. The Company insisted at the hearing that these assistants are  
22 known as "leadmen," but both they and their foremen (named above)  
23 indicated through their testimony that they are also referred to as  
24 "crew foremen." In addition to others not named in the complaint, Manuel  
25 Quintana is the "second foreman" (a term I shall employ in this Decision)  
26 for Jack Knight, Famon Mendez is the second foreman for Duane Forbes, and  
27 Vincente Valenzuela is the second foreman for William Russell. In  
28 addition to other duties, these three second foremen are responsible for  
translating messages between their foremen and the Spanish-speaking  
workers, who in latter 1975 comprised approximately 50\$ to 75\$ of  
Respondent's work force.

Sometime in July, the UFW began an organizing drive at  
Respondent's nursery. At least by early August the Respondent knew of the  
organizing drive. On August 20, the Respondent held a meeting between  
its foremen (except for Antichevich, who was then on vacation), all  
admitted supervisors under Section 1140.4(j) of the Act, and the  
Respondent's attorney at the time The UFW's organizing drive was  
discussed for some three hours, and the foremen were instructed as to  
what actions they could and could not lawfully take in response to the  
drive. The Respondent made clear to its foremen that it opposed the UFW's  
organizing activity. Although the basic thrust of the meeting was  
described as giving the foremen the "do's" and "don'ts" in regard to  
the organizing drive, Foreman Russell conceded that both he and other  
foremen left the meeting with the distinct impression that Respondent  
might cease its operations if the UFW were successful in winning the  
support of employees.<sup>3/</sup>

<sup>3/</sup> It was stipulated by Respondent at the hearing that no basis in fact  
existed for any probability that Respondent would cease operations if  
the UFW won the election and that if such a prediction was made it was  
made without any factual basis.

1 By latter August the Respondent had prepared a number of  
2 leaflets in Spanish and English, indicating its opposition to the UFW.  
3 The leaflets were distributed during the last half-hour or so of the  
4 working day by the Respondent's foremen on August 25, 27, 28, 29, and  
5 30.

6 Two other features emerged during that period of time. On  
7 August 2, the Respondent implemented a general wage increase for its em-  
8 ployees, the first such general increase since April of 1974. Prior to  
9 that increase, wages had not been generally raised since September,  
10 1970.

11 Second, through various meetings among Respondent's  
12 management officials a complete set of employee work rules was drafted  
13 for distribution. The "Work Rules" were not physically distributed to  
14 employees until latter October, but on their face the Rules proclaimed  
15 they became effective on September 1. Among the Rules were the following  
16 prohibitions:

17 -- Threatening, intimidating, coercing, or  
18 interfering with fellow employees on the premises at  
19 any time.

20 -- Working on personal projects during working  
21 hours.

22 -- Initiating, distributing or posting of any  
23 literature, handbills, petitions, pictures or other  
24 material on Company properties without permission of  
25 the Company.

26 The Work Rules contained some 26 prohibitions, the first 10 of which  
27 called for immediate termination if violated, and the second 16 leading  
28 to termination for a second infraction.<sup>4/</sup>

29 In addition to the Work Rules, the Respondent also devised  
30 for the first time a separate "no-solicitation rule." This rule  
31 provided:

32 NO OUTSIDER is permitted to solicit our employees for  
33 any reason on the employer's premises during working  
34 hours or non-working hours.

35 NO EMPLOYEE is permitted to solicit our employees for  
36 any; reason during working hours. Any employee  
37 wishing to solicit other employees in connection with  
38 union activities, charitable contributions or  
39 anything else must do so before or after work periods  
40 on the employee's own time.

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4/The Respondent's personnel manager, Tom Hamblin, asserted  
that the Work Rules were simply a recodification and collection of the  
then-existing rules, but from a review of the subpoenaed documents it is  
clear that Respondent had had no such complete set of work rules for its  
employees, Indeed, except for some existing rules concerning employee  
vacations, the Respondent had no published set of work for its employees  
at the time.

1 If necessary, employees violating this rule will be  
2 disciplined. We ask you to cooperate so that this will  
3 not be necessary and so that we can maintain normal  
4 productivity.

5 Apparently, the foregoing rule was modified by the Respondent so as to  
6 allow employees to solicit support for the UFW during lunch time.  
7 However, at no time did the Company voluntarily allow UFW organizers to  
8 come on its property to talk with employees, and on occasion not only  
9 asked such organizers to leave but had one or more arrested by the  
10 police.

11 On September 9 a representation election was conducted  
12 by the Board. The UFW won the election, but was not certified until  
13 February, 1976. Hemet Wholesale, 2 ALRB No. 24 (2/2/76).

14 The complaint alleges that Respondent supervisors  
15 committed many other acts constituting violations of the Act, both before  
16 the September 9 election and after it. The evidence in regard to such  
17 alleged conduct is summarized below.

18 B. Frank Antichevich's Crew:

19 Frank Antichevich worked for the Respondent since about  
20 1958. Although he was a foreman, he was paid an hourly wage. During  
21 August of 1975 Antichevich was on vacation, returning on September 1 or  
22 2, about a week before the election.

23 Several employees on Antichevich's crew testified that prior  
24 to the representation election, Antichevich questioned them about the  
25 UFW. Just Carcia, Jr., recalled the Foreman asked him several times if he  
26 would join the Union. Jose Sandoval, an employee on the crew since 1972,  
27 recalled Antichevich asking him what he wanted from the Union and whether  
28 he was in it Sandoval also recalled the Foreman said that if the UFW lost  
the election those who voted for it would be dismissed by the Respondent.  
Antichevich also mentioned to Sandoval that Respondent would never sign a  
contract with the Union and that Respondent would eventually get another  
election with a set of new employees who favored the Respondent. And, in  
connection with a conversation between Antichevich and Sandoval, the  
Foreman referred to the appearance of UFW battons and mentioned that the  
Respondent could discharge employees for anything they did. Julio Abarca,  
another worker, recalled similar conversations with Antichevich, wherein  
the Foreman mentioned that Respondent would not accept negotiations with  
the Union and that Respondent would discharge employees who favored the  
Union if the UFW lost the election. All three employees, Garcia,  
Sandoval, and Abarca, were strong supporters of the UFW and were  
admittedly known as such by Frank Antichevich.<sup>5/</sup>

Little doubt can exist that Antichevich was deeply concerned  
about the advent of the UFW. Although he repeatedly told employees  
feelings about the UFW did not concern him, his actions belied such  
statements.

For example, as Foreman Antichevich hired new employees,  
"beginning in latter September (after the election), he kept his new  
employees

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<sup>5/</sup>In his testimony at the hearing, Antichevich did not deny saying any of  
the things attributed to him by the three employees named in the above  
paragraph.

1 separate from the rest of his crew. He repeatedly told Michael Hernandez,  
2 one of the new employees, not to mingle with, those who supported the  
3 UFW, naming in particular Garcia, Sandoval, and Abarca. He cautioned  
4 Hernandez that those three workers were troublemakers and that if the UFW  
5 did not succeed that those who supported it would lose their jobs.  
6 Antichevich's derogatory remarks aimed at UFW supporters were also  
7 evident in his treatment of Hernandez's temporary absence' from work.  
8 After being absent a few days due to his daughter's illness, Hernandez  
9 was told by Antichevich that no report would be filed against him despite  
10 the lack of notice concerning his absence, because Hernandez was not  
11 involved with the Union.

12 On September 27, Mr. Antichevich discharged one of his  
13 crew's leading proponents for the UFW, Just Garcia, Jr. The testimony  
14 concerning' that discharge is in conflict.

15 Mr. Garcia testified that on September 26 he was assigned to  
16 work with Constantine Topkov, a worker known among the crew as being lazy  
17 and slow. On the following morning, a Saturday, Antichevich complained  
18 that the two had performed their work too slowly. Garcia claimed he then  
19 complained to Antichevich about working with Topkov" and insisted that he  
20 be relieved from being Topkov's partner. At first the Foreman refused, but  
21 when Garcia remained adamantly opposed to working with Topkov, Antichevich  
22 relented and sent Garcia to perform weeding work, which he did. During  
23 their conversation, Garcia recalled that Antichevich told him that Topkov  
24 would be fired but mentioned nothing about discharging Garcia. That  
25 conversation took place at approximately 8:00. Garcia recalled that at  
26 about noon, Antichevich returned to the crew and gave Garcia his check,  
27 informing him that he too was discharged.<sup>6/</sup>

28 All Antichevich said to Garcia when he handed him and Topkov their pay is  
that there would not be no more problems. However, other events had  
preceded this discharge. For one thing, several days before September 27,  
Garcia was accused of cutting a hole in one of Respondent's watering hoses  
during an incident where Foreman Forbes or Antichevich accused the UFW of  
sabotaging Respondent's equipment. Also, a few days before his discharge,  
Garcia was labeled a "policeman" or "informant" for the Union by  
Antichevich. Admittedly, Antichevich believed that Just Garcia (as well as  
his father) were both elected representatives on an employee committee  
known as either the "Ranch Committee" or "Negotiating Committee."<sup>7/</sup>

<sup>6/</sup>Topkov was also discharged on September 27- However, shortly  
afterward he was given employment with Howard Rose Company. Howard Rose  
Company is a corporation that shares office space with Respondent as well  
as its personnel manager, Mr. Hamblin. Four of the six general partners of  
Respondent are officers of Howard Rose, and it is not uncommon that when  
employees **are** hired by either company there is a review of existing  
employee records for the other company to see if the employees are  
acceptable.

<sup>7/</sup>A day or two following the representation election, Respondent's  
employees elected one representative for each of the work crews to serve  
en the Ranch Committee. Those elected were Jose Sandoval, Javier  
Santibaniz, Elias Morales, Jesus Jurado, Vicente Garcia, Guillermo Bernal,  
and Robert Dale. Antichevich made it a point a day or two following the  
Committee's selction to mention to his crew that he knew of the election  
and named those elected, except he mistakenly thought that Justo Garcia  
was elected rather an Jose Sandoval. At the time, according to Julio  
Abarca, Antichevich (cont.)

1 Foreman Antichevich claimed he discharged Garcia for  
2 insubordination due to his refusal to follow a work order. Antichevich  
3 recalled that after he complained to Garcia and Topkov about their slow  
4 work, and after Garcia insisted on being separated from Topkov, that  
5 Garcia was ordered to weed plants, which Garcia refused to do.  
6 Antichevich claimed he then informed Garcia that he was discharged,  
7 although he later found Garcia still working with the crew.

8 Within a week or so after the Garcia discharge, Antichevich  
9 also separated Jose Sandoval and Julio Abarca from the rest of their  
10 crew. Normally, according to their undisputed testimony, when weeding  
11 work is performed, as they were ordered to do, the entire crew (or at  
12 least half of it) works together on the weeding. Yet, during the first  
13 week or so of October the two employees were taken by Antichevich about  
14 a quarter of a mile from the remainder of the crew and kept there on and  
15 off for the next week or so.

16 According to the testimony of Sandoval, Antichevich informed  
17 him as he was taking them away from their crew that their separation was  
18 because Antichevich did not want the two employees to talk to the new  
19 employees. He had orders, said Antichevich, to separate those who  
20 supported the Union from other employees. Abarca was given no reason for  
21 the separation by Antichevich. But, according to Michael Kernanc3ez,  
22 Antichevich announced to the rest of the crew that he transferred  
23 Sandoval and Abarca to keep them away from the rest of the crew, because  
24 they -- like Garcia--were troublemakers.<sup>8/</sup>

#### 25 C. William Russell's Crew;

26 During the months that followed the representation  
27 election Russell's crew lost three UFW supporters through discharge,  
28 two of them being the UFW's most active supporters. A summary of  
29 their discharges follows.

30 Donate Ambriz -- Donate Ambriz worked for the  
31 Respondent for the last 12 to 13 years. He was the "number 3" man on  
32 Russell's crew, behind Second Foreman Vincente Valenzuela. During  
33 four months of each year Ambriz was in charge of a portion of the  
34 crew, directing its work efforts.

35 Ambriz became interested in the UFW very early, in July. He  
36 spoke with fellow employees in favor of the Union and passed out four  
37 or five UFW authorization cards. He had no knowledge of whether Foreman  
38 Russell knew of his support for the UFW, but he recalled being observed  
39 by Russell once speaking with one of the UFW's known organizers

40 On about August 5, Ambriz left on a three-week vacation to Mexico. He  
41 was due to return to work on August 26 or so. Ambriz, however,

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42 <sup>7/</sup>( continued)--told employees that Respondent would keep an  
43 eye on the Committee members, accusing the Committee of wanting to give  
44 orders to the Respondent.

45 <sup>8/</sup>Hernandez worked for Respondent between latter September and  
46 early November. At the time of the hearing he was no longer an employee.  
47 I find his testimony credible. His demeanor was convincing, despite some  
48 testimonis differences from a written statement he had subscribed to,  
49 and lie had no known interest in the outcome of this proceeding.

1 failed to return to work at the scheduled time, arriving tack in the Hemet  
2 area on August 28 or 29 He was at the time not feeling well and told hi  
3 son (a fellow employee) to inform Russell that he would return to work on  
4 September 3, Despite his son having informed him that his absence was ex-  
5 plained to Russell, on September 2 his son returned from work with his  
6 father's final pay and the information that Ambriz was fired. Russell  
7 wrote out an "employee record," commonly referred to an a "pink slip,"  
8 indicating that Ambriz was discharged on August 30 for "No Show. Fired."

9 According to Ambriz, he had an exemplary record of work  
10 attendance through the years. He recalled only one instance of having  
11 missed work--namely, in 1974, when he returned a few days late from his  
12 vacation. He recalled no reprimand at the time from Russell.

13 Even though he had been informed of his discharge, Ambriz  
14 returned to work on September 3. Russell informed Ambriz he no longer had  
15 a job and said that because of orders Ambriz could not reapply for work;  
16 Russell also mentioned something about the Respondent's lawyer reviewing  
17 some papers, but Ambriz did not know what Russell meant. During his  
18 conversation with Russell, Vincente Valenzuela joined the discussion and,  
19 after . I speaking with Russell, Valenzuela told Ambriz that Respondent  
20 was not hiring that it was possible that Respondent would close because of  
21 the Union. Admittedly, both the Respondent and Foreman Russell were  
22 hiring during early September.

23 Russell claimed he discharged Ambriz for failing to return free  
24 vacation on schedule. He claimed that he warned Ambriz both in 1974 and  
25 1975 that he would no longer tolerate a tardy return from vacation.  
26 Russell produced a pink slip he wrote concerning Ambriz's 1974 vacation  
27 which stated inter alia, "He Always Manages To Come Back Late Expecting  
28 That The Whole Damn World Will Wait For Him. This The last Time." Russell  
29 asserted that Ambriz always returned late from his vacations, although no  
30 other pink slip or other written reprimand concerning such conduct was  
31 placed in his file.

32 Several incongruities surround Foreman Russell's testimony. For  
33 example, he claimed that Respondent's vacation policy called for disci-  
34 pline or discharge when an employee failed to timely return from vacation.  
35 The then existing policy, however, only stated that employees would lose  
36 their seniority and vacation pay for returning late. Russell also admitted  
37 that he normally gave employees anywhere from a five-day to a nine-day  
38 grace period when returning from an authorized leave, and in the case of  
39 one relatively new employee, named Chicano, Russell waited some nine days  
40 before discharging the employee for unilaterally extending his leave.  
41 Russell con-ceded he could recall of no prior instance of having  
42 discharged an employee who failed to timely return from vacation.

43 Some three weeks after his discharge, Ambriz returned to the  
44 Respondent looking for work. He spoke with Bert Tate, who was then still a  
45 foreman. Tate left the conversation for a brief time, and when he returned  
46 he told Ambriz he had to leave the Respondent's property immediately,  
47 escorting the ex-employee from the premises. Russell admitted speaking to  
48 Tate about Ambriz, apparently on that same day, but denied discussing hiring  
49 the ex-employee. Hiring past employees was not unusual, the record  
50 indicating that Russell himself had hired some six ex-employees who had  
51 worked for other crews, even hiring ex-employees whose previous records were  
52 unfavorable.

1 Antonio Bernal-- Antonio Bernal worked for the Respondent;  
2 since 1972. In mid-July he became an active UFW supporter, wearing a  
3 Union button and speaking to fellow employees about the Union. According  
4 to his testimony, he and Javier Santibanes were the two most active UFW  
5 supporters in Russell's crew. Bernal's son, Guillermo, known by  
6 Russell, was selected another crew as its representative on the Ranch  
7 Committee.<sup>9/</sup>

8 Bernal recalled that before the representation election  
9 Russell questioned him about why he wanted to belong to the UFW.  
10 Bernal also recalled that in one of the crew meetings held before the  
11 election, Russell, when discussing the upcoming election, pointed to  
12 Bernal and said that if the Union lost Bernal would be the first  
13 person he would get rid of.

14 On the evening of October 2 Bernal was arrested at his home be-  
15 cause of some past traffic tickets. He was taken by the police to jail,  
16 where he remained the next six days. Before he left his home, however,  
17 he instructed a fellow worker, Jesus Zavalla, who was then living with  
18 Bernal, to inform Vincente Valenzuela that he was arrested and would not  
19 be at work.

20 On the following day, Zavalla informed his second foreman,  
21 Quintana, that he wished to tell Russell that Bernal would be absent  
22 because of his arrest. Quintana told Zavalla to pass the message through  
23 Vincente, who was then in the area. Zavalla walked over to Valenzuela  
24 and told him that Bernal had been arrested and would not be at work;  
25 Zavalla asked if Valenzuela would inform Russell and the Second  
26 Foreman said "okay." At the time of their conversation Russell was some  
27 35 to 40 feet away. Elias Morales, a fellow employee of Zavalla's on  
28 Bert Tate's crew, recalled seeing Zavalla talking with Valenzuela the  
same day on which Zavalla told him he wanted to notify Valenzuela of  
Bernal's absence.

Russell denied ever being notified of the reason for  
Bernal's absence. He asserted that he wrote out pink slips concerning  
the absence on October 3, 4, 6, and 7, several of them stating that no  
explanation for the absence was given by either Bernal or anyone else.  
On October 8, Russell wrote out a pink slip discharging Bernal for "Five  
Days Absence With Out Any Type of Notification By Employee or Anyone  
Else." Bernal returned to work on October 9.

When Bernal returned to work he noticed two new employees  
on his crew. The Respondent's records also indicate that Russell hired  
at least five new employees between October 11 and October 28. Russell  
refused to re-employ Bernal despite his almost spotless employment  
record.<sup>10/</sup>

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<sup>9/</sup> Identity of the Ranch Committee representatives was known to  
Respondent's foremen. A day or two following Justo Garcia's discharge,  
on September 27, the Ranch Committee delivered a signed letter to  
Personnel Manager Hamblin, protesting Garcia's discharge. Hamblin  
afterward discussed This letter with each of Respondent's foremen,  
pointing out to them the identity of the Ranch Committee, which--as  
Hamblin recalled--the foremen were already aware of.

<sup>10/</sup> From at least October through December Respondent has  
posted at its premises a notice, written only in English, that it was  
hiring new employees. Russell admitted hiring some 10 English-speaking  
employees between approximately September and December, five of them  
being hired in October.

1                   When Russell discharged Bernal, he acted contrary to  
2 Respondent's written rules, prior to the promulgation of employee rules  
3 the Respondent had no formal, written rule dealing with unexcused  
4 absences; even after the rules were drafted they merely provided the  
5 following: "Absence of three or more days without notification is  
6 considered a voluntary quit." Russell even conceded that his discharge  
7 of Bernal conflicted with his own practice: on one occasion, in  
8 December, he refused to discharge employee Chacon despite his absence of  
9 eight days; on another occasion, Russell voided a termination slip when  
10 he later learned that the absent employee was ill. Furthermore, Russell  
11 admitted making no effort to learn of Bernal's whereabouts even  
12 though he knew his son and saw him daily.

13                   Javier Santibanes--Mr. Santibanes was perhaps the UFW's  
14 leading proponent on Russell's crew. In early August he was elected to go  
15 to a UFW convention, after which Russell announced that he knew  
16 Santibanes had attended the convention. Russell also admitted knowing  
17 that Santibanes was distributing UFW literature among employees prior to  
18 the election, and that he knew that after the election that Santibanes  
19 was selected as a member of the Ranch Committee.

20                   Santibanes was hired by Respondent in mid-1974. In October of  
21 1974 he received a written reprimand for having an accident with a  
22 tractor 12 in which some plants were damaged. No other employment  
23 difficulty existed, until August, 1975; after which Santibanes became the  
24 frequent subject of reprimands.

25                   On August 29, after having spent some two to three months  
26 working with a mechanical sprayer, Santibanes was transferred. On that  
27 day he was accused by Russell of standing idly by on several occasions  
28 while his spraying partner, Juan Haro, continued to work. Although  
Santibanes denied any idleness on his part and claimed that Haro also  
stood to his defense with Russell, the Foreman issued a written  
reprimand for a "Very Obvious work Slowdown." Santibanes was then  
transferred to watering an enormous dirt pile, which kept him working  
near Second Foreman Valenzuela and away from the remainder of his crew.  
Santibanes did not return to his crew until a day or two before the  
election.

                  On October 20 Santibanes was again reprimanded by Russell.  
On this occasion he and his father, also on Russell's crew, misunderstood  
their work instructions and each went to where the other was directed to  
work. Russell wrote another pink slip on Javier, claiming the employee  
would not understand instructions in either English or Spanish, despite  
the fact that Russell admitted under strenuous cross-examination that he  
had only given his work instructions to the two Santibaneses in  
English.11/

                  Santibanes also received a second reprimand on October 20. This  
second one dealt with his leaving work some eight minutes early.  
According to Russell early departures were a common problem in his crew,  
and on October 20 he wrote pink slips concerning the problem on every  
crew member but one.

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                  11/Contrary to his customary practice, Russell had two other  
crew members sign the pink slip as witnesses to the reprimand.  
Russell explained that he designated the two as witnesses because he  
thought someone might be trying to get him, or because he wanted to  
protect himself.

1 On October 21, Santibanes was discharged. Russell characterized  
2 Santibanes's alleged infraction as a "work stoppage."

3 On the day of his discharge, Santibanes was told by Russell to  
4 bring a certain red tractor, claimed by Santibanes to be notoriously slow,  
5 from the vehicle area to where the crew was working. According to the  
6 employee, the tractor was difficult to start and remained cold for some  
7 time, making it very difficult to drive quickly to the area. According to  
8 Russell, he observed Santibanes going very slowly in the tractor, holding  
9 up other vehicles. Although Santibanes explained to Russell that the  
10 tractor was cold, Russell made no effort to test or inspect the vehicle.  
11 When Santibanes arrived at his crew's work area, Russell informed him he  
12 was discharged and reminded him of the Respondent's no-solicitation rule,  
13 warning Santibanes to keep off Respondent's property.

14 The precise circumstances surrounding the October 21 "work stoppage"  
15 from Russell's point of view are difficult to understand. Initially,  
16 Russell exaggerated Santibanes's slowness, almost making it appear that a  
17 significant number of vehicles were held up by the sputtering tractor.  
18 Then, after exacting cross-examination leading to the conclusion that  
19 Santibanes took over 40 minutes to reach his crew, the written reprimand  
20 was cited, indicating that the entire incident could not have taken mere  
21 than 20 minutes. It was never made clear by Russell just how many vehicles  
22 were actually held up by Santibanes or just how serious the problem really  
23 was.

#### 24 D. Duane Forbes's Crew:

25 The General Counsel's complaint alleges that two employees on  
26 Duane Forbes's crew were unlawfully discharged. They are Jesus Jurado and  
27 Isaac Primo.

28 Mr. Jurado was another long-term employee, having been employed by  
Respondent since 1966. He had been on the "irrigation crew" since about  
1967, and under Duane Forbes's supervision for the last seven or eight  
years. About 17 employees worked on the crew; Forbes admittedly  
considered Jurado one of his best, steadiest employees. Jurado recalled not  
one single problem with the Respondent in all his years of employment.

Jurado was an active UFW supporter. Before the representation  
election Foreman Forbes told him he should not join the UFW, and Second  
Foreman Ramon Mendez told the crew that Forbes had said if the Union lost  
the election that employees would probably be fired. After the election,  
Jurado was selected for the Ranch Committee and he took part in the protest  
over Justo Garcia's discharge in latter September.

Mr. Jurado's job with the Respondent had always been watering the  
plants with hand-held hoses. In mid-September, however, he was given the  
added job of working with portable sprinklers. Until only a week or two  
before no one on the crew had worked with the portable sprinklers.

Working with the sprinklers involved setting them up in the morning  
and then moving them about every hour one-half. In performing his sprinkler  
work Jurado got quite wet, since the sprinklers were moves while still  
running. He got wet despite his wearing a complete wet suit, including  
rubber pants, coat, apron, hat, and boots. When he worked with the hoses,  
Jurado wore only rubber boots.

1           The wetness bothered Jurado a great deal because he had  
2 arthritis, a condition he suffered from for the last four or five years.  
3 According to Jurado (and denied by Forbes), both Forbes and Mendez  
4 knew he had arthritis. During the first two weeks he worked with the  
5 sprinklers Jurado complained to Mendez several times about getting  
6 wet, mentioning his arthritic condition.

7           On October 7 Jurado left for a two-week vacation, returning  
8 on October 24. On his first day back he was again assigned to work with  
9 the sprinklers. He was the only one of the 14 or 17 crew members who  
10 worked the sprinklers.

11           On October 25, after working with the sprinklers during the  
12 morning and again getting wet, Jurado complained to Mendez. He told  
13 Mendez that he had to go home because he was wet and that he could no  
14 longer work with the sprinklers. Mendez told him he would tell Forbes,  
15 and eventually both Forbes and Mendez discussed the matter with Jurado.

16           The conversation was brief. Forbes tanked Jurado if he would  
17 continue working the rest of the day or whether he wanted his check then,  
18 according to Jurado's testimony. Forbes recalled tolling Jurado he needed  
19 Jurado to work with the sprinklers because Jurado was his steadiest  
20 employee. Although Forbes suggested that Jurado never explicitly  
21 mentioned his objection to working with the sprinklers, Forbes conceded  
22 on cross-examination that he knew Jurado's complaint related only to the  
23 sprinklers. Both Forbes and Jurado agree that Forbes never offered to  
24 transfer Jurado back to working only with the hoses or asked the employee  
25 to remain on the sprinklers until another employee could replace him.<sup>12/</sup>

26           A week following his "quit," Jurado sought other employment  
27 with Respondent. He approached Foreman Russell asking for work, but  
28 Russell informed him he would have to wait a long time before working for  
Respondents again and then Jurado would have to talk with the "big  
bosses" before being rehired. In latter November, Jurado sought  
employment with Howard Rose Company. But, after submitting an  
application, he called Howard Rose and was told his application had been  
lost.

          Isaac Primo was discharged or "laid off" in mid-October. He  
too was an irrigator for Forbes.

          Historically, for the last nine years of his employment with  
Respondent, Primo came to work between February and April of each year,  
working until October or November, returning then to Mexico.<sup>13/</sup>

12/ Forbes attempted to claim he wanted only Jurado to work  
with the sprinklers because he was so steady and accountable. But,  
Forbes was never able to adequately explain why he would risk losing his  
valuable employee by not offering some change in job functions. Clearly,  
if Jurado would not continue working with the sprinklers, then Forbes  
would be confronted with exactly the situation he assertedly desired to  
avoid—namely, finding another employee to perform the task.

13/ Pursuant to a telegraphic request, primo came all the way  
from Mexico to appear as a witness in this proceeding. Two other  
employees named in the same charging paragraph of the complaint as  
Primo, Margarito Navarrete and Jaime Ambriz, did not appear as witnesses  
and the allegation concerning them was stricken from the complaint.

1 In those years when Primo arrived too early or left too  
2 late to work as an irrigator, the Respondent always made ether use of  
3 hie. Normally, he would return to Respondent whenever he determined to  
4 and would then inform Respondent when he intended to leave. He would  
5 always notify the Respondent and he was never before terminated before  
6 his announced departure date. In 1975, he advised Forbes that he  
7 intended leaving at the end of November, and Forbes agreed.

8 In 1975 however, history changed. In mid-October he was in-  
9 formed by Second Foreman Mendez that he was no longer needed. He was  
10 told that Respondent was cutting back its employees and that he was one  
11 of them. He, along with Navarrete and Jaime Ambriz, were among the first  
12 five to be let go from Forces's crew. His termination came in the middle  
13 of a pay period, also a variation on the historical practice.

14 According to Primo, when he was discharged sufficient  
15 irrigation work remained to be done to allow for his continued  
16 employment. Respondent's witnesses bear out Prime's assertion. It was  
17 admitted by both Hamblin and Russell that 1975 was not unusual in its  
18 weather, the prime factor in determining the need for irrigation.  
19 October 11 and 25, some seven employees left Forbes's crew, constituting  
20 a significant 25% decline in his crew. In 1973 and 1974 the pattern was  
21 to the contrary; in those years the employment remained stable through  
22 October.

23 Primo was another of Respondent's employees who supported  
24 the UFW. When he began wearing his U?W button Forbes told him to remove  
25 it, which Primo refused to do. Forbes previously had told Primo he  
26 believed Primo to be a member of the Union. Primo, as the others, talked  
27 to fellow employees, soliciting support for the UFW. He also told Forbes  
28 that if the Union won the election things at Respondent would change.

After the election, Primo and Forbes had a confrontation  
over the UFW. Primo, defending a fellow worker whose job was changed,  
incurred Forbes's anger; Forces told Primo that he--Forbes--was the boss.  
In response, Primo told the Foreman that now that the Union had won the  
election workers had rights.<sup>14/</sup>

#### 21 E. Jack Knight's Crew and Bert Tate's Crew;

22 Elias Morales initially worked for Bert Tate's crew, but  
23 after October was one of those absorbed in Jack Knight's crew. Knight  
24 had two second foremen, Manuel Quintana, who had worked as such for Tate  
25 previously, and Hasten McCall.

26 Mr. Morales was another UFW supporter. He solicited  
27 authorization cards for the ITFW before the election, spoke in favor of  
28 the Union after the election, wore a UFW button, and was selected to  
serve or the Ranch

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29 14/Unlike its treatment of the other ex-employees who appeared  
30 at the hearing, Respondent's counsel offered Mr. Primo re-employment in  
31 1976 if he chose to return to Respondent. Significantly, this assurance  
32 of re-employment was made only after Primo indicated a substantial  
33 reluctance to return to Respondent if the seine working conditions as  
34 prevailed in 1275 prevailed in 1976.

1 Committee.15/  
2

3 Morales received a subpoena on October 25 to appear at a  
4 Board hearing on October 27 which concerned election objections. When he  
5 received his subpoena, Foreman Forbes was in the area and spoke with the  
6 woman which delivered the subpoena. On Monday, October 27, Morales showed  
7 Second Foreman Quintana the subpoena so that he could attend the hearing.  
8 Quintana informed the employee that he might be fired if he attended the  
9 hearing, according to Morales's testimony.

10 On the following day, Morales and Robert Dale, another  
11 panon Committee representative, were both assigned to work with the  
12 sprinklers. Both had attended the Board's hearing. They had not  
13 performed that work before. Morales recalled that "Quintana' informed  
14 him" he was being assigned to the sprinklers because he had gone to  
15 court and that Knight had been told of his court appearance. On the  
16 following day, the rest of Quintana's crew were assigned to the  
17 sprinklers, all of them being UFW supporters, according to Morales.  
18 Mr. Morales claimed that those who worked for Knight were all "Anglos"  
19 and did not support the Union.

20 Both Knight and Quintana denied Morales's assertions. They denied  
21 knowing of the subpoena, of Morales's attendance at the hearing, and  
22 denied taking any negative action against him for his Union activity.

23 However, several inconsistencies appear in Knight's and  
24 Quintana's testimony. First, contrary to his testimony, Quintana's  
25 sworn statement indicates that only Morales was "loaned" to the water  
26 crew on October 27. Second, Quintana denied he had authority to hire  
27 employees, but at least two witnesses, one of them being directly  
28 involved, testified to Quintana's past hiring of employees. Third,  
despite Knight having denied reacting to Morales's support for the UFW,  
he wrote two reprimands concerning the employee. One dated October 16,  
reprimanded Morales, as follows: "Try To Get People To Sign For The  
Union On Company Time." Admittedly, Knight relied solely on Quintana's  
word in writing out his reprimands, despite Quintana's later claim that  
he never heard employees talking about the Union. Two, on October 28,  
Knight's pink slip indicated that Morales "Slowed down or work talking  
to others away from his work." Facts were not elicited in support of  
either allegation. And, Knight appeared as a most reluctant witness,  
claiming--in essence--that he was free to say anything in his testimony  
because the hearing did not take place in a "regular court of law."

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25 15/ After election Foreman Tate questioned Morales as to  
26 whether he was a member of the UFW, to which Morales replied  
27 affirmatively. Also, before the election, according to Morales's  
28 uncontradicted testimony, Tate told his crew that if the UFW won the  
election it was possible that Respondent would stop its operations and  
that if the UFW lost the election those who supported the UFW would lose  
their jobs.

ANALYSIS AND CONCLUSIONS

I. Introduction.

Before turning to the contested facts in this proceeding two general considerations must be raised. First, it is necessary that we view the contested facts in light of the overall and uncontested factual environment in which they occurred. Second, in order to resolve the contested facts-it is necessary to review certain credibility characteristics relating to the witnesses' testimony.

A. The Respondent's Interference, Coercion, and Restraint or Protected Rights and Its Demonstrated Hostility to the UFW.

As indicated previously, as soon as Respondent learned of the UFW's organizing campaign it took steps to counter it. Literature was prepared and distributed to employees during working time, urging employees to reject the Union; various foremen held crew meetings, discussing Respondent's opposition to the UFW; employee work rules were written, restricting employee conduct and threatening discipline for their infraction; a no-solicitation rule was effectuated that banned UFW organizers from speaking with employees on Respondent's property; and from the testimony of several employees or ex-employees it is clear that pervasive fear was created among them regarding their support for the UFW respondent's campaign against the UFW, while not always stepping beyond the law, establishes a very definite desire on its part to defeat the UFW.

Several undisputed features of Respondent's campaign against the Union, however, did exceed permissible limits. Thus, Respondent's no-solicitation rule and its enforcement barred UFW organizers from its property for purposes of organizing no matter what time of day the organizers sought to solicit employees, barred employees from soliciting fellow employees during lunch time, was enacted because of the UFW drive, and barred organizing activity at the same time that supervisors were permitted to pass out anti-UFW literature. The Respondent's rule was clearly aimed against the UFW's organizing drive and contravened the Board's so-called Access Regulation. 8 California Administrative Code, Section 20900. Possessing the foregoing features, the rule violated Section 1153(a) of the Act. See *Revere Camera Co v. N.L.R.3.*, 30k F.2d 162, 165 (C.A. 1, 1968); *Steel Workers v. F.2d 661, 663 (C.A.D.C. 1968)*.<sup>16/</sup>

Second, Foreman Russell admitted having told his assembled crew that if the UFW won the election that Respondent right cease its operations. Another supervisor, Bert Tate, was described as telling his crew of the same dire consequence associated with a UFW victory, again in uncontradicted testimony. Admittedly such statements were not based in fact, nor were they

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<sup>16/</sup>Although the complaint makes no explicit allegation concerning the Respondent's no-solicitation rule, review of the testimony adduced at the hearing leaves no doubt that on its face and in its enforcement the Respondent's rule was contrary to the Board's Access Regulation. These undisputed, litigated features concerning the rule make it appropriate to base a finding concerning the rule even though, the rule was not expressly raised in the complaint. See *N.L.R.B. v. Thompson Transport Co.*, 421 F.2d 154 (C.A. 10, 1970); *Omark-C.C.I., Inc.*, 206 NLRB 469 (1974).

1 carefully phrased to give employees an opportunity to evaluate the basis  
2 for such a prediction. Under such circumstances, these predictive  
3 statements constituted unlawful restraint and coercion of employees.  
4 See Gissel Packing Co., 395 U.S. 575, 618 (1969); Kolmar Laboratories,  
5 Inc., 159 NLRB 805, 809-810 (1966).

6 Third, such supervisors as Antichevich and Forbes (at least  
7 through his second foreman, Mendez) were described--again without  
8 contradiction--as warning various employees of discharge for supporting  
9 the UFW. The record is also replete with instances of supervisors like  
10 Antichevich, Forbes, Russell, and Tate asking employees whether they  
11 supported the UFW or were members of it. Such threats and inquiries  
12 were likewise a violation of the Act, interfering with and coercing  
13 employees in their freedom to support the UFW. See N.L.R.B. v.  
14 Eerggreen & Sons, Inc., 406 F.2d 239, 244 (C.A. 8,1969), cert. denied,  
15 396 U.S. 023; Betts Baking Co. v. N.L.R.B., 65 100M 2568 (C.A. 10,  
16 1967).

17 In short, Respondent and its supervisors waged a strenuous  
18 and unlawful battle to defeat the UFW. Respondent's hostility and  
19 animus howard the UFW also served as a backdrop to its other activities  
20 questioned by the General Counsel's complaint.

21 In addition to the above-described features of Respondent's  
22 anti-UFW campaign, a suggestion emerges from the record that an overall  
23 pattern of conduct was engaged in to rid Respondent of its UFW  
24 supporters. Although Respondent had well over 100 employees in latter  
25 1975, the impression is created that the nine or so job transfers or  
26 terminations put into question by the complaint were not the isolated  
27 acts they might appear as.

28 It is noteworthy that of the seven UFW stalwarts elected by  
their fellow employees to serve as representatives on the Ranch  
Committee, three were separated from their employment, a fourth claimed  
he was threatened and transferred to another job, and a fifth lost his  
father through discharge. Another employee, believed by his foreman to  
be on the Ranch Committee, was also discharged. In all, within some six  
weeks or so from the Board's representation election, won by the UFW,  
the primary leaders of the UFW's campaign either lost their employment  
or claimed other harassment.

The employment terminations discussed at the hearing also  
appear to have been followed by a general hiring program directed by  
Respondent at filling needed positions with non-Spanish-speaking  
employees. Not only did the Respondent post its hiring notices only in  
English, a language not spoken by many Mexican-American farm workers,  
but the testimony--as well as some of Respondent's hiring records--  
indicate that many, if not a majority, of those hired by Respondent in  
October and later were persons without Spanish surnames.

The suggestion is, therefore, created that Respondent  
undertook a program aimed at one sweep to both ridding itself of UFW  
supporters (all but one in the record having a Spanish surname) and  
employing persons who might be expected to show less sympathy toward the  
UFW. In fact, many employees were warned that Respondent would reduce  
its employee ranks and fill remaining positions with these who favored  
the Respondent. Although only a suggestion regarding Respondent's hiring  
intentions is made, that suggestion stands unrebutted in the existing  
record.

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B. The Credibility of Respondent's Supervisors;

Some general observations should be put forward concerning the testimonial credibility of Respondent's foremen. Each in his own way cast serious doubt on his own testimony.

Foreman Russell repeatedly demonstrated more of a desire to "fence" with the General Counsel than to describe facts known to him. He would assert facts in his testimony only to be confronted with contrary assertions put forward in his written statement. Thus, his testimony was in contradiction to his written statement concerning the level of discharges in latter 1975, his knowledge of Santibanes's distribution of UFW literature, and which language he employed when giving Javier Santibanes (and his father) work directions on October 20. His testimony concerning the circumstances surrounding Santibanes's discharge, the reprimand of Santibanes on August 29 (and his failure to reprimand Juan Haro), the basis of his belief that Respondent would stop operating if the UFW won the election, and the extent of his hiring English-speaking employees in latter 1975 all possessed inherently contradictory features. In addition, his demeanor as a witness cast serious doubt on his veracity, Russell indicating a strong desire on his part to "defend" his actions at the expense of eliciting objective facts.

Duane Forbes himself volunteered that his testimony should be doubted. He repeatedly stressed he could not remember events from one day to the next and indicated that his recollection could not be relied upon.

Jack Knight demonstrated disdain for the proceedings. His refusal to admit the obvious and his clear reluctance to cooperate as a witness exemplified his announced belief that he was not bound to accuracy or truth. He simply rejected the Board's authority to conduct unfair labor practice hearings and his testimony corresponded with his belief.

Frank Antichevich's testimony must be viewed with doubt for another reason. Mr. Antichevich demonstrated a strong interest in being helpful and truthful, but his inability to be accurate and precise in his description of events makes acceptance of his testimony at face value difficult. Repeatedly, he demonstrated an inability to direct himself to the question at hand, and his testimony was frequently imprecise and confusing. Such characteristics regarding his testimony will be more fully cited in following pages.<sup>17/</sup>

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<sup>17/</sup>By and large I find credible the testimony of those witnesses preferred by the General Counsel. While at times their recollection appeared faulty, their demeanor appeared aimed at putting forth the truth as they saw it, even when it did not help their cause. Several of the witnesses, like Hernandez, Jose Ortiz Famos, and Jesus Savella were almost neutral bystanders to the issues in question. Several others, like Jesus Jurado, Antonio Bernal, Donato Ambriz, and Isaac Primo were senior employees, men who had long toiled in the fields and appeared beyond reproach.

II Respondent Unlawfully Transferred And Discharged Certain  
1 Employees.

2 Looking first to William Russell's crew, three employees, all  
3 supporters of the UFW, were discharged in September and October. Taking  
4 the employees' terminations somewhat out of chronological order, we look  
5 from the discharge of Antonio Bernal, on October 8.

6 Bernal, it will be recalled, was an active supporter of the  
7 UFW, who was once asked by Russell what he expected to get from the  
8 Union and who was singled out by Russell prior to the September 9  
9 election as the first who would lose his job if the UFW won. Based on  
10 Bernal's credible testimony, much of which was uncontradicted, I find  
11 that Russell knew Bernal was an avid UFW supporter and also knew, as  
12 admitted by Russell, that Eemail' son, Guillermo, was a member of the  
13 Ranch Committee.

14 The circumstances surrounding Bernal's discharge lead me to  
15 conclude it was because of his known support for the UFW. Contrary to  
16 other examples cited in the record, Russell discharged Bernal for  
17 failing to appear at work for some five days even though upon Bernal's  
18 return was informed that the employee had been in jail, and even though  
19 Russell acknowledged that such an absence normally would be overlooked.

20 Although Russell denied having timely notice of Bernal's  
21 absence, I find to the contrary. Bernal told his fellow employee, Jesus  
22 Zavalla, to inform the Respondent of his absence, 'and Zavalla credibly  
23 testified--without contradiction--that he so informed Vincente  
24 Valenzuela, Russell's assistant foreman. I do not credit Russell's  
25 claim that he did not know the basis of Bernal's absence when he  
26 discharged the employee, for I believe that Zavalla not only told  
27 Valenzuela but that Valenzuela told Russell.<sup>18/</sup> The fact that Russell  
28 repeatedly noted on Bernal's pink slips that no one had given notice of  
Bernal's absence lends weight to my conclusions. It is difficult to  
believe that Russell would make such notations if he were not  
establishing a basis for Bernal's discharge and knew that Zavalla's  
timely message might cast doubt upon the discharge.

19 In short, Antonio Bernal, a good employee for some three  
20 years, was abruptly discharged based on a false reason and without  
21 cause. He was discharged only weeks after Russell had publicly pointed  
22 him out as the first one who would lose his job if the UFW succeeded in  
23 the election. I conclude that Russell merely carried out his public  
24 threat when he discharged Bernal.

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23 <sup>18/</sup>Whatever might be concluded in respect to Valenzuela's role  
24 as supervisor, it is clear that both Respondent and Russell placed him  
25 in the position of translating work information to Spanish-speaking  
26 employees and of receiving their messages to the top foreman. Thus, one  
27 of Valenzuela's duties was to inform Russell of messages given by  
28 employees. It is impossible to believe he did not pass Zavalla's  
message on to Russell (particularly since Russell was in the immediate  
area when the message was given), and to ignore Valenzuela's role as an  
agent for Respondent in accepting employee messages--even if Zavalla's  
message was not passed on to higher authority--would not be consistent  
with the authority Respondent openly portrayed Valenzuela as having.  
Proctor-Silex Corp., 159 NLRB 598, 607 (1956).

1 Javier Santibanes lost his job on October 21. He was the  
2 leading UFW advocate on Russell's crew, a member of the Ranch Committee,  
and known to Russell as an arch UFW supporter.

3 It is true that the record reveals a series of formal reprimands  
4 aimed at Santibanes, leading to his eventual discharge. On the other  
5 hand, those reprimands did not start until after he demonstrated his  
open support for the UFW.

6 To begin with, I conclude that on August 29 Santibanes was  
7 transferred from his customary job (spraying chemicals) to another job  
8 (watering a dirt pile) in order to restrict Santibanes's UFW activities.  
9 His transfer removed him from the vicinity of his crew, severing his  
10 ability to talk with fellow crew members, and placed him solely within  
the vantage point of Valenzuela, Russell's trusted lieutenant.  
Coincidentally, Santibanes returned to his crew only a day or two before  
the representation election.

11 Santibanes credibly denied that any factual basis existed for  
12 his transfer to the dirt pile. From a description of his spraying work, I  
13 find it difficult to imagine that he could have repeatedly stood idle  
14 when spraying chemicals on August 29 if his partner Haro continued to  
work, as Pas sell claimed. The spraying machine had two hoses, used by  
Santibanes and Haro, and as the spraying proceeded so did the machine on  
which the equipment was mounted.

15 Furthermore, Russell defended his August 29 reprimand by  
16 claiming that in addition to his idleness Santibanes was to be faulted  
17 for his early break for lunch. However, Haro was with Santibanes, guilty  
18 of the same alleged infraction, and was not reprimanded by Russell.  
19 Finally, it appears spurious to claim, as Russell did, that he  
20 reprimanded Santibanes for what he considered a serious work infraction  
21 and then transferred him to another job which Russell described as his  
easiest position. On the contrary, watering the dirt pile was not  
considered an easy job, at least by Santibanes, and I conclude that  
Russell's transfer of Santibanes was a thinly veiled attempt to keep the  
Union advocate from his organizing fellow crew members, in violation of  
the Act.

22 I likewise conclude that Foreman Russell's repeated reprimands  
23 of Santibanes and 'eventual discharge action also stemmed from  
24 Santibanes 's Union support. Frankly, the reprimand of Santibanes, for  
25 his inability to understand work instructions (for which his father was  
26 also guilty) and for his performance with the red tractor on October 21  
27 appear as nothing more than exaggerated efforts to make a case against  
28 the crew's Ranch Committee representative. Given Russell's undenied  
hostility toward the UFW, and in view of his unlawful threats to  
employees, little or no other conclusion is possible than that the  
discharge was also unlawful. Indeed, having reprimanded Santibanes for  
an alleged "work slowdown" and a "work stoppage, " terms commonly  
associated with union conduct, Russell tipped his hand at his real  
criticism of Santibanes I believe--namely, that Santibanes was an avid  
UFW supporter.

It can be fairly said that Russell's description of the events or  
October 20 and 21 concerning Santibanes was contradictory, not veil  
founded fact, and exaggerated beyond proportion. 19/ The contrivance  
surrounding

19/As long ago recognized, the demeanor of a witness --  
(continued)

1 Russell's accusations against Santibanes inevitably leads to the  
2 conclusion that some unspoken reason existed for the discharge, and that  
3 reason was to rid his crew of the UFW's leading proponent. It is veil  
4 recognized that a finding of discriminatory motive is strengthened when  
5 an employer's for the act in question do not hold up under scrutiny. N.  
6 L. R. B. v. Americas Casting Service, 365 F.2d 168, 172 (C.A. 7, \_\_\_\_\_);  
7 N.L.R.B. v. Dant, 209 f.24 165, 167 (C.A. 9, \_\_\_\_\_).

8 So too do I conclude that Respondent's discharge of Donato  
9 Ambriz was unlawfully motivated, based as I believe it was on either  
10 Ambriz's support for the Union or as an effort to demonstrate to the  
11 crew--before the election--that Foreman Russell could and would  
12 discharge employees if they acted contrary to his desires, desires  
13 manifestly contrary to the UFW.

14 The facts do not support Russell's contention that Ambriz's  
15 discharge followed from a history of tardy returns from vacation. Ambriz  
16 credibly denied any history of violating Respondent's vacation policy, or  
17 that he had been reprimanded for his admitted late return from vacation in  
18 1974. The fact that Russell produced a written reprimand concerning the  
19 1974 is not convincing. I am unpersuaded that Russell in fact wrote out  
20 that reprimand in 1974 the reprimand being in ink (contrary to Russell's  
21 normal use of pencil) and was so detailed in its criticism of Ambriz as to  
22 appear as an after-the-fact treatise against the employee rather than  
23 Russell's more commonly "brief reprimands. Significantly, although Russell  
24 accused Ambriz of having a record of vacation violations, not one  
25 employment record was introduced which might document the fact that Ambriz  
26 had taken more than his allotted vacation time in the past.

27 Furthermore, it seems inherently incredible that Respondent  
28 would have discharged one of its longest employees for a tardy return  
29 from vacation. Indeed, discharge was not even called for by the then  
30 existing policy regarding employee vacations. And, Ambriz was no more  
31 guilty of improperly failing to report for work than less senior  
32 employees who were not so penalized.

33 In sum, I conclude that Donato Ambriz's discharge was because  
34 he was an early supporter of the UFW, It is no answer to that conclusion  
35 to say that proof does not expressly demonstrate that Russell was aware  
36 of Ambriz's Union support, for the record amply shows that Respondent's  
37 foremen kept close eye and ear toward those who were UFW supporters,  
38 knowing their identity. Indeed, when Ambriz was personally notified of  
39 his discharge, it was linked with the Union by Vincente Valenzuela, who  
40 was then translating between Russell and Ambriz, and who told the  
41 employee that Respondent was not hiring and might close because of the  
42 Union. Both of these assertions were contrary to admitted facts.20/  
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44 19/(continued)--"may satisfy the tribunal, not only that the  
45 wit-ness's testimony is not true, but that the truth is the opposite of  
46 his story. ..." N.L.R.B. v. Walton Mfg. Co., 369 U.S. 404, 408 quoting  
47 with approval from Judge Learned Hand in Dyer v. McDougall, 201 F.2d  
48 265, 269 (C.A. 2).

20/The complaint was amended at the hearing to raise the  
question of whether the rejection of Ambriz's subsequent effort to gain  
work with Respondent violated the Act. Again I find that Respondent  
refused to rehire Ambriz due to his Union affiliation. It is noteworthy  
that -- (continued)

1 Turning now to Frank Antichevich's crew, a similar course of  
2 events exists, Antichevich, while openly asserting his lack of concern  
3 over his employees' Union affiliation, nonetheless repeatedly discussed  
4 the UFW with his crew, warning of dire consequences for supporting the  
5 UFW and demonstrating the Respondent's animus toward the UFW.

6 Antichevich's very personalized concern over the UFW is demon-  
7 strated by his treatment of Justo Garcia, who he believed was a leading  
8 proponent for the Union and a member of the Ranch Committee, and who  
9 Antichevich accused of being an informant for the Union. Although  
10 Antichevich protested that he did not discharge Garcia because of the  
11 employee's support for the Union, his underlying motivation emerges from  
12 his admitted feelings about Garcia's strong Union affiliation.

13 Antichevich made clear that Garcia's UFW conduct offended his  
14 notion of "good moral principles." He repeatedly characterized Garcia as  
15 having been poisoned with the Union. He admitted assigning Garcia to work  
16 with Topkov because "Garcia was talking about the Union and trying to  
17 undermine my job of supervisor." Antichevich also admitted his concern  
18 because Garcia was influencing fellow crew members in regard to the UFW  
19 and that he was "poisoned" with Union ideas.

20 Little doubt exists that Antichevich initially assigned Garcia  
21 and Topkov together to make an "example" of Garcia due to his attitudes  
22 concerning the Union, and to keep Garcia away from the rest of the crew.  
23 The Foreman's actions toward Garcia were in keeping with his repeated  
24 treatment and warnings to his new employees, informing them to stay away  
25 from Garcia, Sandoval, and Abarca because they were troublemakers.

26 Thus, the job from which Garcia emerged into the events leading  
27 to his discharge was a job given him largely because of his attitudes  
28 and statements regarding the UFW. That much seems clear even from  
Antichevich's own testimony.

In analyzing Antichevich's motivation for the discharge on  
September 27 a strong inference is also created that the action resulted  
from Garcia's affiliation with the UFW. Thus, although Antichevich urged  
that he discharged Garcia solely for insubordination, a written  
statement given by him to an agent for the Board indicated he then  
argued, somewhat inconsistently, that Garcia was also fired because of  
his slowness. We know, of course, that Garcia did not initially consider  
he was discharged inasmuch as he continued working after his initial  
confrontation with the Foreman that morning.

Further doubt as to motive is created by Antichevich's own  
actions as to whether he discharged Garcia, as he described. For one  
thing, not one but two pink slips were written out that day concerning  
Garcia. The first was written at approximately 8:00 a.m., alleging that  
Garcia disobeyed a work order. But, that pink slip was only a reprimand.  
Then, after speaking with Foreman Russell and Mr. Weaver, a management  
official over crew foremen,

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20/ (continued)--what seemed like a fruitful hiring discussion  
between Ambriz and Foreman Tate soon turned sour, after Tate left; the  
conversation and apparently spoke with Foreman Russell. The fact that  
that Tate then felt compelled to escort Ambriz from the property lends  
weight to the belief that his re-employment was precluded by Russell's  
adamant opposition to the UFW.

1 Antichevich wrote out another pink slip indicating discharge, without  
2 expressing any reason. Still another factor casts doubt on Respondent's  
3 motivation for the Garcia discharge. Topkov, who was admittedly  
4 discharged insubordination, as was Garcia supposedly, was hired shortly  
5 later by Respondant's related company, Howard Rose Company.

6 One final factor is significant in evaluating the discharge.  
7 Despite his inherently conflicting assertions, Antichevich acknowledged  
8 that "perhaps there was many reasons that he was dismissed, at that time  
9 not obeying the order." Then Antichevich went on to acknowledge that one  
10 of the reasons for discharging Garcia was because the Foreman believed  
11 his authority was being undermined because of Garcia's organizing  
12 activity. The was fired with that psychologically (sic) inspired,  
13 poisoned with that."

14 It may be true that Foreman Antichevich believed Garcia to have  
15 been insubordinate, although Garcia denies it, but what emerges most  
16 strongly in respect to Antichevich's motivation is that he saw Garcia's  
17 "insubordination" as part of the employee's strenuous support for and  
18 belief in the Union, and except for what he considered as such a  
19 "poisoned" attitude on Garcia's part Antichevich would riot have  
20 discharged the employee. To Antichevich, Garcia's conduct on September 27  
21 was one more example of Garcia's activity in support of the UFW and he,  
22 therefore, discharged him, Yet, it is clear that even where a valid  
23 reason for discharge may exist, a discharge nonetheless violates the Act  
24 where the moving reason for it relates to an employee's support for a  
25 union. N.L.R.B. v. Linda Jo Shoe Co., 307 F.2d 355, 357 (C.A. 5, 1962).  
26 As was said in N.L.R.B. v. Murray Chio Co., Mfg. Co., 326 F.2d 509, 517  
27 (C.A. 6, 1964), "Even though . . . refusal fo accept a particular  
28 assignment would be good cause for discharge, if the exercise of this  
right is tainted with a discriminatory motive . . . a violation may be  
found." And, from the preponderant evidence I must conclude that the  
moving reason for Antichevich's discharging Justo Garcia was due to  
Garcia's unpalatable support for the UFW. 21/

18 Antichevich's attitude about those in his crew who supported  
19 the UFW can also be seen in his treatment of Jose Sandoval and Julio  
20 Abarca, only days after Garcia was discharged. Both Sandoval and Abarca  
21 were taken from the remainder of their crew and told to weed plants, a  
22 job which the crew normally performed together. Sandoval was told by  
23 Antichevich that the transfer was to keep him and Abarca away from the  
24 rest of the crew, and that Antichevich had orders to keep Union  
25 supporters away from others. Michael Hernandez, then one of the newer  
26 employees, recalled Antichevich telling the crew that he separated  
27 Sandoval and Abarca because they were troublemakers like Garcia.  
28 Earlier, and on several occasions, Antichevich had named the three older  
employees as Union supporters and warned new employees to stay away from  
then—they were troublemakers.

24 Accordingly, the credible evidence establishes that Antichevich  
25 separated Sandoval and Abarca from their crew because of their support  
26 for the Union. Such a transfer violated Section 1153(c) of the Act. See  
27 Plains Cooperative Oil Mill, 154 NLRB 1003, 1031-1032 (1965). In  
28 addition,

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27 21/Of course, merely because an employee supports a union does  
28 not insulate him from discharge. Certain employee activities in behalf  
of a union exceed permissible boundaries and, accordingly, lose their  
protection. However, nothing put forward factually by Antichevich or the  
Respondent leads to the belief that Garcia's activities or statements in  
support of the UFW exceeded the proper bounds.

1 Antichevich's conduct and statements regarding the Sandoval and Abarca  
2 transfers reveal an attitude on his part that reflects back on his  
previous treatment of Garcia, as well.

3 Two more employment terminations are questioned in regard to  
4 Doano Forbes's crew. The first, Jesus Jurado's, is claimed by the General  
5 Counsel to have been a "constructive discharge," where the employee is  
6 given an undesirable task with the hope or anticipation that he will quit  
the distasteful work or refuse to do it and, thus, provide a basis for  
discharge.

7 As noted earlier, Jurado, a senior employee, had become active  
8 at the UFW and was selected for the Ranch Committee. Forbes, of course,  
knew of Jurado's position on the Committee.

9 In mid-September Jurado was assigned to work with portable  
10 sprinklers, even though he had never before worked with them. In carrying  
11 out his new job Jurado inevitably got wet, inflaming his historic  
12 arthritic condition. Based on his credible testimony, I conclude that  
both Forbes and Second Foreman Mendez knew that Jurado had arthritis,  
either before the new work assignment was made or after Jurado began  
performing it.

13 Jurado complained, to Mendez several times about working with  
14 the sprinklers. In response to a refusal by both Mender and Forbes to  
15 reassign him to his old position, Jurado finally quit on October 25. I  
16 believe that Jurado quit his employment because he could not tolerate the  
17 increased wetness resulting from his new work, a condition that Forbes  
18 was aware of, and that Forbes intended that Jurado quit to rid his crew  
19 of a senior supporter and leader for the UFW. Indeed, Forbes obstinately  
20 precluded Jurado from continuing his employment by refusing to return the  
senior employee to his past job and, thereby, forced Jurado to quit. In  
acting as it did, 'Respondent discriminated against Jurado in violation  
of the Act. See Murray Ohio Mfg. Co., supra, 326 F.2d at 516-517; State  
21 Stove & Mfg. Co., Inc., 164 NLRB 84, enforcement, denied on other  
22 grounds, 403 F.2d 656 (C.A.6, 1908).

23 Also noteworthy in respect to Jurado's "quit" is the fact that  
24 Forbes's explanation for the termination is incredible. Forbes argued  
25 that he let his best employee quit because he wanted that employee to  
26 work only with the sprinklers. Yet, by letting Jurado quit Forbes would  
27 nonetheless have to find a replacement on the sprinklers, just what  
28 Jurado was seeking, And, indeed, would have to replace Jurado on his  
other work as well. I find Forbes's explanation of his action simply  
does not make sense.22/

29 Isaac Primo, another senior employee for Forbes, was treated  
30 directly contrary to past practice. After his support for the UFW was  
31 made known to Forbes and after Primo confronted Forbes concerning Union  
32 rights, Primo was prematurely laid off. Contrary to the past, Primo was  
inexplicably laid off even though irrigation work remained to be clone,  
prior to the time when Primo intended (and had announced his intention)  
to leave respondent for

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22/As in the case of Ambriz, the complaint was amended to charge  
Respondent with unlawfully refusing to re-employ Jurado, a claim I believe  
true. The circumstances surrounding Jurado's reinstatement effort, as well  
as his effort in connection with Howard Rose Company, lead me to conclud  
that this senior and historically valuable employee was refused work with  
Respondent because of his known support for and association with the Union.

1 the year, and prior to the end of a pay period. Primo was part of a  
2 very unnatural decrease in the irrigation crew at that time of year.

3 No explanation for Prime's premature "discharge" was put forward by  
4 Respondent. And, the only available conclusion is that Primo's  
5 employment, was severed earlier than customary (and expected) due to his  
6 known support for the UFW.

7 Finally, I conclude the evidence supports the complaint's allegation  
8 that Elias Morales was unlawfully threatened and transferred to a new  
9 position due to his protected activities. It will be remembered that when  
10 Morales notified his second foreman, Manuel Quintana, that he was  
11 subpoenaed, to appear at a Board hearing that Quintana warned the  
12 employee of discharge if he attended. Where an employer bases a discharge  
13 threat on an employee's participation in the processes of the Board, that  
14 employer violates; the Act. See Duralite Co., Inc., 128 NLR3 648, 651-652  
15 (19-50). It is absolutely essential that employees be free to use the  
16 Board's processes without threat or coercion and any such threat or  
17 coercion is a serious infringement on policies embedded in the Act.<sup>23/</sup>

18 Although both Quintana and Knight denied that any threats were  
19 trade to Morales, I do not credit their denials. They would have the  
20 board believe that Morales never informed either of there of his subpoena  
21 or his intended appearance at the Board hearing, yet it is impossible to  
22 believe that Morales attended the hearing without seeking approval from  
23 Respondent for his absence. The evidence firmly establishes that  
24 employees of Respondent customarily advised Respondent in advance of any  
25 intended and known absence and the reason therefor, or the employee's  
26 absence would be carefully scrutinized by the foremen which did not occur  
27 for Morales's absence.

28 In addition, when Morales returned to work after his one-day  
absence, on October 28, he and Robert Dale, another Ranch Committee  
representative, were both singled out and assigned to work with portable  
sprinklers Again this assignment was contrary to their past work. And,  
when the

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<sup>23/A</sup> question arises as to the Respondent's responsibility for  
Quintana's unlawful threat, since Respondent argues that Quintana was not  
a supervisor within the Act's terms. However. I find that Quintana was a  
supervisor within the meaning of Section 1140.4(j) of the Act. In  
addition to the normal duties of a second foreman, such as directing the  
work of a portion of the crew and giving them instructions on how to  
perform work, credible evidence existed that Quintana has hired employees  
in the past and has given them time off before consulting higher  
authority. Even if Quintana were not a supervisor, I would find the  
Respondent responsible for his unlawful threat. Respondent has  
established its second foremen as possessing authority to communicate in  
its behalf with Spanish-speaking employees. Clearly, the Spanish-speaking  
employees looked to the second foremen as spokesmen for the Respondent.  
And, it would be strange indeed if Respondent could hold out to its  
employees the second foremen as spokesmen for it, as the employees' basic  
link to Respondent's higher authority, and then avoid responsibility when  
the second foremen speak or act unlawfully in Respondent's name toward  
employees. Smith and Wesson, 174 NLRB 1040, 10743 (1969), enforced 424  
F.2d 1072 (C.A. 1, 1970); Huberta Coal Co., inc., 168 NLRB 122,  
125(1967), enforced, 408 F.2d 793 (C.A.6, 1969); Petts Baking Co. v.  
N.L.R.B., 65 LRRM 2568, 2569-70 (C.A. 10, 1967).

1 assignment was made, Quintana told Morales that it was due to his  
2 previous attendance at the Board hearing. I credit Morales 's testimony.  
3 Accordingly, I conclude that Respondent's transfer of Morales violated  
4 the Act inasmuch as it stemmed from Morales's participation in or  
attendance at a Board hearing. Block-Southland Sportswear, Inc., 170  
NLRB 936, 938, 961-963 (968), enforced, 71 LRRM 2863 (C.A.D.C.1969).

5 III. The Respondent's Implementation Of Its Work Rules Violated  
6 The Act.

7 Two features emerge in respect to Respondent's newly devised  
8 Work Rules, promulgated in latter October. First, clearly they (as well  
9 as a separately drafted rule) barred lawful organizing activity by  
10 employees. Thus, Rule 19 prohibited the distribution or initiation of  
11 literature, handbills petitions, or other material on Respondent's  
property. That rule, on its face, is an overbroad prohibition of employee  
organizing activity and violated their rights under the Act. See Republic  
Aviation Corp. v. N.L.R.B., 324 U.S. 793 (1945). In addition, and as  
noted earlier, the Respondent' s separately promulgated no-solicitation  
rule unduly violated the Board's Access Regulation, was improperly  
motivated, and aimed at employees supporting the UFW, thus violating the  
Act.

12 Second, although the evidence does not firmly establish that  
13 Respondent actually implemented its Work Rules when discharging or  
14 disciplining employees, to the extent that such Work Pules may have been  
15 relied on by Respondent when unlawfully discharging the employees in  
16 question that specialized enforcement of the Rules would constitute  
17 unlawful discrimination. Nonetheless, since the evidence does not  
18 establish that Respondent or its foremen actually relied on its Rules to  
19 single out Union adherents, it is difficult--if not impossible -- to,  
conclude that Respondent discriminatorily enforced its Rules. However,  
the record does establish that the Work Rules were quickly devised after  
the UFW's organizing campaign began, without apparent reason, and, to  
that extent, I find then an unlawful means of retaliating against the  
employees' protected activity. See Unimasso, Inc., NLRB 400, 402-403  
(1972); Wilson Manufacturing Co ., 197 NLRB 322, 325-326 (1972). The  
rules were prepared, I believe, as a means of controlling employees and  
giving the Respondent some "official" basis for getting rid of employees  
who demonstrated support for the UFW.

20 REMEDY

21 Having found that Respondent engaged in certain unfair labor  
22 practices within the meaning of Sections 1153 (a) and (c) of the Act, I  
23 shall re commend that it cease and desist therefrom and take certain  
24 affirmative action designed to effectuate the policies of the Act.  
25 Having found that Respondent unlawfully discharged some six employees  
26 and unlawfully discriminated against employees by job transfers,  
27 unlawfully interrogated its workers, and unlawfully threatened employees  
28 with discharge and loss of employment, conduct which strikes at the very  
heart and policies of the Act, I also recommend that Respondent be  
ordered to 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 conduct, I believe a so-called "broad"  
cease and desist order is warranted.

29 In order to fully remedy Respondent's unlawful conduct, I also  
30 recommend that certain affirmative steps be taken, as follows: first,  
31 Respondent must publish and make known to its employees that it has  
32 violated the

1 Act and that it has been ordered not to engage in future violations of  
2 the Act. Attached to this Decision is a Notice To Employees, which  
3 should serve to sufficiently apprise employees of Respondent's unlawful  
conduct and promises for the future.

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

6 1. The Notice To Employees, translated into English and Spanish  
7 with approval of the Riverside Regional Director, shall be mailed to all  
8 employees of the Respondent employed between August 1, 1975, and the  
9 time such Notice is mailed, to such employees who are no longer employed  
10 by Respondent. The Notices are to be mailed to the employees last known  
11 addresses, or more current addresses if made known to Respondent. Even  
though employment at Respondent is basically full-time, year-round, the  
turnover in employees and the importance of fully informing farm workers  
of their rights make calling the Notice an appropriate means of  
publication. See Valley Farms and Pose Farms, 2 AL.RB No. 41 (1976).

12 2. For all current employees, and for those hired by the  
13 Respondent for six months following its initial compliance with this  
14 Decision and Order, Respondent, through one or more of its management  
15 officials, is to give by hand to such employees the attached Notice,  
16 appropriately translated into the particular employee's language. In  
17 this connection, Respondent's representative is to inform such employees  
that it is important to understand the Notice and to offer to read the  
Notice to any employee who so desires, in the employee's desired  
language. This means of publication is appropriate to fully advise  
current and future employees of their rights, and is calculated to  
signify the authority of the law which protects the employees .

18 3. For the same six-month period, as noted above, Respondent  
19 is to post the Notice in one or more prominent places at its nursery, in  
20 any area frequented by employees or where other notices are posted by  
21 Respondent. Although to some extent this posting results in a  
22 duplication of publication, the posting will serve as a reminder to  
employees in regard to the Respondent's past violations and a continued  
assurance as to the employees' full 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  
26 the UFW for six months access to a conveniently located bulletin board so  
27 as to allow the UFW to post notices and the like. These measures are  
appropriate to allow the UFW, whose support was so unlawfully challenged  
by 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.

28 Third, because Respondent promulgated an unlawful no-solicitation  
rule, committed other serious unfair labor practices, and then discharged  
its leading UFW proponents, I recommend that for a period of two months  
from the date of initial compliance with this Decision and Order that  
Respondent allow UFW representatives to come on its property to talk with  
employees. Access by such UFW organizers, shall be governed by the terms  
and conditions spelled

1 out in the Board's currently effective Access Regulation, except that  
2 the UFW's existing certification—if any — shall not deprive it of the  
3 right to such access. Since Respondent's unlawful conduct was so  
4 serious, a full opportunity should exist for the UFW to allay any  
5 continuing or residual fear on the part of employees that their  
6 statutory rights will be abused in the future. The opportunity for  
7 personal contact between UFW representatives and employees should be the  
8 best means for allaying such fears.

9 Fourth, having found that Respondent unlawfully discharged six  
10 workers and refused to reinstate some of them, I recommend that Respondent  
11 be ordered to offer such employees immediate and full reinstatement to  
12 their former or equivalent positions. For those employees who I have found  
13 were unlawfully transferred, Respondent should be ordered to return such  
14 employees to positions they worked in prior to their unlawful transfers.  
15 And, I further recommend that Respondent make whole such employees by  
16 payment to them of a sum of money equal to the wages they each would have  
17 earned from the dates of their respective discharges or transfers or  
18 layoffs to the dates on which they are each reinstated or offered  
19 reinstatement, less their respective net earnings, together with interest  
20 thereon at the rate of 7% per annum, such back pay to be computed in  
21 accordance with the formula used in *F. W. Woolworth Co.*, 90 NLRB 289; and  
22 *Isis Plumbing and Heating Co.*, and *Heating Co.*, 138 NLRB 716.

#### 23 ORDER

24 Respondent, its officers, agents and representatives shall:

25 1. Cease and desist from:

26 (a) In any manner interfering with, restraining and  
27 coercing employees in the exercise of their right to self-organization,  
28 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 Section 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, refusing to hire, 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.

(c) Interrogating its employees concerning their support  
for the UFW or any other labor organization, and threatening to  
discharge, layoff, or close the business in respect to employee support  
for the UFW or any other labor organization.

(d) Enforcing its invalid no-solicitation rules, or from  
effectuating work rules drafted as a result of the UFW's organizing  
campaign.

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

