

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

BUTTE VIEW FARMS, )  
 )  
 Respondent, )  
 ) No. 75-CE-7-S  
 )  
 and )  
 )  
 UNITED FARM WORKERS OF AMERICA, ) 3 ALRB No. 50  
 AFL-CIO, )  
 )  
 )  
 Charging Party. )  
 )  
 \_\_\_\_\_ )

This decision has been delegated to a three-member panel. Labor Code Section 1146.

On February 11, 1977 administrative law officer Sheldon L. Greene issued his decision in this case. The respondent, the general counsel and the charging party each filed timely exceptions. Having reviewed the record we adopt the law officer's findings, conclusions and recommendations to the extent consistent with this opinion.

The general counsel excepted to the ALO's failure to find that Surgit Brar was unlawfully discharged. We find this exception valid. The record showed there never had been any complaints about his work, he was given no reason for the discharge, and that the only evidence presented by the respondent regarding his work performance was a hearsay statement in which the employer said Mr. Brar's supervisor told him Brar was a slow worker. Even if he was a slower worker because of his partial blindness, we note that he was a vocal supporter of the union and that he was not discharged until one or two days after he spoke out in favor of the union. We note further that his discharge occurred at approximately the

same time six other employees <sup>1/</sup>were discharged because of their pro-union sympathies. We find the ALO's analysis of Brar's discharge was not satisfactory in light of the entire record. The evidence regarding the respondent's actions indicates that his anti-union animus was a motive in the discharge of Mr. Brar. We therefore find respondent violated Labor Code Sections 1153 (a) and (c)<sup>2/</sup> in discharging Surgit Brar.

The general counsel excepted to the ALO's failure to find that respondent interfered with its employees rights by threats and coercion in violation of Labor Code Section 1153 (a) . The record showed Butte View Farms foreman Bhupinder Singh visited the house of two Butte employees and told them the respondent and he did not like the union and that if the workers persisted in talking about it they would be fired. When one of these employees said he was going to continue talking about the union Bhupinder Singh responded by saying "we are going to fire you." When employee Mohammed Aslam indicated his support for the union, Mr. Singh said "don't you want to work here anymore?" After Mr. Aslam was discharged,<sup>3/</sup> Mr. Singh explained to the other workers "because he was pro-union, and we

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<sup>1/</sup>The ALO found these six employees were unlawfully discharged by the respondent.

<sup>2/</sup>The ALO correctly found that the other six discharges were for union activities or the union activities of relatives, and therefore violated Section 1153 (a) . He failed to find, as he should have; that the discharges also violated Section 1153 (c); but since no party excepted to this failure, we adopt the ALO's report on this matter.

<sup>3/</sup> One of the six discriminatory discharges found by the ALO.

don't like the union, so we fired him." He also told the workers if they wanted a union they should go elsewhere for work. We find the record shows the respondent violated Labor Code Section 1153(a) by threatening and coercing its employees to discourage the exercise of their rights guaranteed by Labor Code Section 1152.

#### The Remedy

We modify the terms of the ALO's recommended remedies in the following respects:

(1) The attached "Notice to Workers" shall be posted at respondent's premises for a period of 90 consecutive days within the following 12 months. These notices shall be posted at the places specified as appropriate by the regional director after a review of the respondent's properties.

(2) The respondent shall mail a copy of the notice in English, Spanish, Punjabi and any other native languages spoken by respondent's employees to all of the employees listed on its master payroll for the payroll periods including the dates of September 2 through September 13, 1975. These notices shall be mailed within seven days following the service of this decision.

(3) We modify the ALO's proposal regarding respondent making a public statement to its employees to order that this notice be read on company time, in English, Spanish and Punjabi,

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<sup>4/</sup> Labor Code Section 1152 states in pertinent part:

"Employees shall have the 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...."

to all the employees employed at the time the regional director determines the notice shall be read, by a company representative or by a Board agent. The Board agent shall be accorded the opportunity, outside the presence of supervisors and management, to answer questions which employees might have regarding the notice and their rights under Section 1152 of the ALRA.

(4) We order that respondent reinstate with full back pay with 7 percent interest the following employees: Mohammad Aslam, Bertha Avila, Raul Avila, Manuel Avia, Gurvinder Dhaliwal, Kulwant Dhaliwal and Surgit Brar.

(5) The respondent shall notify the regional director, in writing, within 10 days from the date of the receipt of this Order, what steps have been taken to comply herewith. Upon request of the regional director, the respondent shall notify him periodically thereafter, in writing, what further steps have been taken to comply herewith.

ORDER

Respondent Butte View Farms, its officers, agents, successors, and assigns shall:

(1) Cease and desist from:

(a) Denying access to respondent's premises to organizers engaging in organizational activity in accordance with the Board's access regulations. 8 Cal. Admin. Code Sections 20900 and 20901 (1976).

(b) Interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 1152 of the Act.

(2) (a) The respondent shall immediately notify the regional director of the Sacramento regional office of the expected time periods in 1977 in which it will be at '50 percent or more of peak employment, and of all the properties on which its employees will work in 1977. The regional director shall review the list of properties provided by the respondent and designate the locations where the attached NOTICE TO WORKERS shall be posted by the respondent. Such locations shall include, but not be limited to, each bathroom wherever located on the properties, utility poles, buses used to transport employees, and other prominent objects within the view of the usual work places of the employees. Copies of the notice shall be furnished by the regional director in English, Spanish, Punjabi and other native languages spoken by respondent's employees. The respondent shall post the notices when directed by the regional director. The notices shall remain posted for a period

of 90 consecutive days. The respondent shall exercise due care to replace any notice which has been altered, defaced or removed.

(b) A representative of the respondent or a Board agent shall read the attached NOTICE TO WORKERS to the assembled employees in English/ Spanish, Punjabi and any other language in which notices are supplied. The reading shall be given on company time to each crew of respondent's employees employed at respondent's peak of employment during the 1977-78 harvest season. The regional director shall determine a reasonable rate of compensation to be paid by the respondent to all non-hourly wage employees to compensate them for time lost at this reading and question and answer period. The time, place and manner for the readings shall be designated by the regional director after consultation by a Board agent with respondent. The reading shall be on a day in which the normal number of employees shall be working on the crew. A Board agent shall have the right to be present for each reading. Immediately following each reading, the Board agent shall indicate to the employees present his or her willingness to answer any questions regarding the substance or administration of the Agricultural Labor Relations Act, and shall answer any such questions. The Board agent shall direct that only employees are present during the question and answer period.

(c) Respondent shall mail a copy of the attached NOTICE TO WORKERS to all of the employees listed on its payroll for the payroll periods including the dates of September 2, 1975 through September 13, 1975.

(d) Offer the following employees full reinstatement to their former positions, without prejudice to their seniority or other rights and privileges, and back pay with seven percent interest: Mohammad Aslam, Bertha Avila, Raul Avila, Manuel Avila, Gurvinder Dhaliwal, Kulwant Dhaliwal and Surgit Brar.

(e) Notify the regional director, in writing, within 10 days from the date of service of this Order, what steps have been taken to comply herewith. Upon request of the regional director the respondent shall notify him periodically thereafter, in writing, what further steps have been taken to comply herewith.

IT IS FURTHER ORDERED that allegations contained in the consolidated complaint not specifically found herein as violations of the Act shall be and hereby are, dismissed.

Dated: June 22, 1977

GERALD A. BROWN, Chairman RICHARD

JOHNSEN, JR., Member ROBERT B.

HUTCHINSON, Member

NOTICE TO WORKERS

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

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

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

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

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

Especially:

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

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



WE WILL NOT change your working conditions or shorten your lunch break because of the union;

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

WE WILL NOT prevent union organizers from coming on our property to tell you about the union when the law allows it;

WE WILL NOT assault union organizers who are trying to talk to you or to leave our property after they have talked to you;

WE WILL NOT interfere with your rights to get and keep union papers and pamphlets;

WE WILL OFFER Mohammed Aslam, Bertha Avila, Alfonso Avila, Raul Avila, Gurvinder Dhaliwal, Kulwant Dhaliwal, and Surgif Brar their old jobs back if they want them, beginning in this harvest and we will pay each of them any money they lost because we laid them off.

Dated:

BUTTE VIEW FARMS

By: \_\_\_\_\_  
(Representative)  
(Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.

BEFORE THE  
AGRICULTURAL LABOR RELATIONS BOARD OF THE  
STATE OF CALIFORNIA

In the Matter of:	)	
	)	
BUTTE VIEW FARMS,	)	
	)	
Respondent-Employer,	)	Case No. 75-CE-7-S
	)	
and	)	
	)	
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Petitioner-Charging Party.	)	
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ADMINISTRATIVE LAW OFFICER'S FINDINGS,  
CONCLUSIONS AND RECOMMENDED ORDER

This matter came on regularly for hearing before Administrative Law Officer Sheldon L. Greene on December 1, 1975 and concluded on January 27, 1976. Michael J. Loeb and Richard Pearl represented the Agricultural Labor Relations Board; Butte View Farms, Inc., the Respondent, was represented by Thomas A. Purtell and Douglas I. Matheson. The United Farm Workers of America, AFL-CIO, intervenor, was represented by Elizabeth Sullivan. Having reviewed the testimony of witnesses and the evidence proffered during the hearing and considered the arguments made in the briefs submitted, the following findings -and conclusions are hereby determined:

1. Butte View Farms is, and was at all times pertinent, a closely held corporation raising tomatoes on about 1500 leased acres in the vicinity of Yuba City, California.

2. In 1975 the corporation was owned and operated by Charles and Kim Nakatani, Frank and Mary Nakatani, and Yuk and

Ann Nakatani.

3. Bupinder Singh was the foreman of farm workers during the 1975 tomato harvest.

4. During 1975 Butte View Farms was an agricultural employer within the definition of Labor Code §1140.4(c).

5. During 1975 the United Farm Workers of America was a labor organization as such is defined under Labor Code §1140.4(f)

6. The 1975 tomato harvest commenced in or about mid-August and terminated early in October.

7. Mohammad Aslam, Bertha Avila, Raul Avila, Alfonso Avila, Gurvinder Dhaliwal, Kulwant Dhaliwal and Surgit Brar were all employed by Butte View Farms at certain times during the tomato harvest of 1975. Charles Nakatani, one of the owners, was in charge of personnel during the 1975 harvest.

8. Respondent manifested an animus against the UFW in connection with the UFW's attempt to organize employees of Butte View during the 1975 tomato harvest. Respondent's anti-union activities were manifested in efforts to discourage and minimize contacts between, employees on or about Butte View fields before work, on breaks, and after work. Respondent did the following:

(a) Agents of Respondent monitored the activities of UFW union organizers in the vicinity of Butte View fields.

(b) Respondent stationed company vehicles at the junction of public highways and access roads onto Butte View fields at a time when UFW organizers were in the vicinity.

(c) Respondent led workers out of the fields by an alternate route to avoid passing UFW union organizers posted at the entrance

to the fields.

(d) Respondent accelerated the commencement or resumption of work to reduce contact between employees and UFW organizers.

(e) Charles Nakatani and agents of Butte View Farms harrassed Albert Rojas, a UFW organizer by posting a Butte View Farms' agent in front of his parked truck to prevent him from leaving a Butte View Farms' parking area following his contacts with Butte View employees on behalf of the UFW.

(f) In contrast, Butte View Farms in 1974 had permitted representatives of the Teamsters Union to speak to workers on Butte View Farms' premises.

9. Butte View retroactively increased wages in the tomato harvest from \$2.75 to \$3.00 per hour and initiated a medical insurance plan. .Both these developments took effect one day prior to the effective date of the Agricultural Labor Relations Act of 1975. Both benefits extended to already employed workers, were announced on or about September 2, 1975 in the midst of the union organizing drive, but were effective August 27, 1975.

Mohammad Aslam:

10. Mohammad Aslam was employed as a sorter on a tomato harvester during the 1975 tomato harvest on or before August 21, 1975.

11. Aslam had been employed in previous tomato harvests by Butte View Farms in 1971 and 1973.

12. During the last week in August and the first week in September, UFW organizers made several attempts to contact Butte View Farms' employees by distributing pamphlets to workers on or

about and in the vicinity of Butte View Farms' fields.

13. On or about September 2, 1975, Respondent held a series of meetings with its employees, at which meetings Charles Nakatani and his agents distributed pamphlets calculated to discourage union participation and made oral statements in opposition to union membership.

14. Mohammad Aslam was present at one such meeting and verbalized support for the union in the presence of Charles Nakatani, the foreman Bupinder Singh, and his fellow workers.

15. On or about September 3, 1975, Barbara Yeager, the supervisor on Aslam's harvester, terminated his employment.

16. Yeager had previously terminated nine workers in the first four days of the harvest, on August 19, 20 and 21, but had not terminated other workers until September 3, 1975 according to the notations on the daily time records.

17. Following the initial culling of the crew, the supervisor frequently admonished the workers to work faster.

18. Mohammad Aslam was generally regarded as a good worker by his peers.

19. Mohammad Aslam's employment in prior harvests and his survival of the initial culling of unsatisfactory workers by the supervisor is evidence that his work was satisfactory.

20. The testimony of the harvester driver that Mohammad Aslam was inattentive to his work prior to his termination was less probable than that of his fellow workers since the harvester driver's multiple responsibilities combined with the difficulty of regular observation through the rear view mirror diminished his

capacity for observation of individual workers.

21. The proximity of Aslam's expression of support for the union and his termination is circumstantial evidence that the termination was in retaliation for Aslam's manifested pro-union sentiments and had the tendency to intimidate other workers thereby inhibiting their support for the UFW.

22. It is more probable than not that Mohammad Aslam was terminated in retaliation for his expression of support for the UFW.

The Avilas;

23. Bertha, Alphonso, and Raul Avila, all minors, were hired at the commencement of the 1975 tomato harvest.

24. All of them had worked in previous years in the tomato harvest for Butte View Farms.

25. Bertha, a high school student, and Raul had in previous years continued to work beyond the opening of the fall term.

26. On or about September 3, 1975, Lydia Avila, a sister of Bertha, Raul and Alphonso, accompanied UFW organizers to the field in which the other Avilas were working.

27. Fujio Wada, an employee of Respondent, met Lydia Avila and the union organizers at the entrance to the farm, recognized her as one of the Avila family and directed them to the field where her brothers and sister were working. Wade Nakatani subsequently assisted them in locating the field.

28. Within sight of a Butte View Farms' supervisor, Lydia and the union organizers solicited memberships, in the union from Butte View Farms' employees on their break and placed UFW pamphlets on employees' cars.

29. Their presence was noted by Butte View Farms' supervisors inasmuch as a supervisor subsequently asked one of the employees who had talked to the organizers to identify them.

30. On or about September 6, 1975, the Avilas<sup>1</sup> crew was laid off because of a temporary lack of work. It was the understanding -of the crew, at the time of layoff, that the harvest would resume in a few days time.

31. Prior to returning to work, Bertha contacted her school advisor, Toshio Sano, to request informal permission to continue working temporarily after the resumption of school.

32. In 1975 high school students frequently obtained informal permission to extend the farm work beyond the start of school.

33. Raul Avila was attending college and intended to return to college on the 13th of September.

34. Alphonso Avila had finished high school and intended to take a pre-college course in Oregon, but intended to work for an additional period in September prior to his departure.

35. On or about September 10, 1975, Mary Nakatani telephoned Bertha to tell her that she and her brothers could not return to the crew when it resumed the next day.

36. The crew resumed work four crew members short.

37. The entire crew was terminated later in September due

to a cutback in the harvest attributable to a cannery cutback.

38. Mary Nakatani's testimony that the termination was based upon the initial hiring of the Avilas on the condition that they would return to school at its start is not the probable reason for the termination, since they had stayed beyond the start of school in prior years and since two of the three were no longer in high school and had no apparent need to terminate when high school started.

39. Had both Mary Nakatani and Bertha Avila previously understood that Bertha could not return to work, school having started on September 10, 1975, there would have been no need to call her on that date.

40. Both Bertha and her brothers had the expectation of being recalled. After they were terminated, they sought other work.

41. It is more probable than not that the Avilas were terminated in retaliation for Lydia's active support of UFW during her September 3 visit to the Butte View Farms.

42. The retention of another sister, Carmen, is not inconsistent with the termination of Bertha, Alphonso and Raul inasmuch as she was married to a farm labor contractor and living away from home.

43. Subsequent to their termination, the Avilas were unable to find immediate employment in the harvest. Bertha returned to school, Raul found work at a packing company and had intended to start college on the 13th of September, and Manuel went to Oregon on the 14th.



Gurvinder Dhaliwal, Kulwant Dhaliwal:

44. Gurvinder and Kulwant Dhaliwal were hired in May, 1975 at Butte View Farms and were employed in the tomato harvest prior to their termination.

45. On or about September 12, 1975 the machine on which Dhaliwal worked was stopped before 11:00 a.m. for an early lunch and the workers were directed to work through the normal lunch period of 12:00 noon to 1:00 p.m.

46. Dhaliwal objected to the deviation from the normal work schedule to Bupinder Singh and also indicated his support for the UFW to Bupinder as a means of protecting the worker.

47. Later that day, Charles Nakatani told the workers on the machine that they would be fired if they refused to obey the boss regarding the times for work and rest.

48. The next day when Dhaliwal and his wife appeared for work, he was told that there was no more work for them inasmuch as they had been replaced.

49. The reason given for the termination at the trial was that Dhaliwal had stated to Bupinder the previous day that he intended to go to San Francisco the following day to seek employment and that he would be gone four to five days.

50. Although there is evidence that Dhaliwal had at one time considered seeking employment in San Francisco and had in the past discussed the prospect with his fellow workers, it is more probable than not that such intention had not been communicated to Bupinder Singh on the day before he was terminated.

51. The fact that both Dhaliwal and Kulwant Dhaliwal appeared on time for work the following day is circumstantial evidence that the plan to seek work elsewhere had neither been specifically formulated nor communicated to his supervisor.

52. Dhaliwal and Kulwant were terminated as a consequence of, and in retaliation for, his expression of support for the UFW in the presence of his supervisor, Bupinder Singh, and in the presence of his fellow workers on the day prior to the termination.

53. After being terminated, Gurvinder and Kulwant Dhaliwal sought other employment in the tomato harvest in the same area as Butte View Farms and two days later found such work.

Surgit Brar:

54. Brar was terminated after about two weeks work as a sorter on a tomato harvester. He had had only a few days prior experience as a sorter and was somewhat impaired in his capacity by the fact that he had only one eye.

55. It is more probable than not that the cause of his termination was unsatisfactory performance of his duties and that the termination was not a consequence of the expression of pro-union sentiment.

56. Inasmuch as the Respondent stood to benefit by the acts of its supervisor in terminating employees who had manifested support for the union in the context of a sustained attempt by the union to communicate with and sign up workers, and inasmuch as the supervisor had the authority to terminate employees, the Respondent is responsible for such acts to the extent that they

constitute unfair labor practices.

57. The retroactive increase in wages and institution of a medical insurance plan to take effect one day prior to the effective date of the Agricultural Labor Relations Act and in the midst of an active campaign by a labor union to organize and recruit Respondent's workers was an inducement to workers to remain outside the union and to that extent was violative of Labor Code §1153(a).

58. The persistent efforts of the Respondent to minimize and frustrate contacts between the UFW organizers combined with the manifestation of anti-union sentiments is circumstantial evidence of the intent of Respondent to terminate employees who manifested support for the union in order to intimidate workers and discourage support for and contact with the union.

59. The termination of an employee in retaliation for his manifestation of support for a union in the context of an organizing drive by the union is violative of Labor Code §1153(a).

60. The termination of a relative of a person who manifests support for a union in the context of a union drive to recruit members among the employees violates Labor Code §1153 (a).

61. The existence of a preliminary injunction against the enforcement of the ALRB access rule, while providing colorable justification for an employer's efforts to prevent union organizers from contacting its employees on the Respondent's property, is nevertheless evidence of the employer's policy with respect to the union's organizing effort and has probative weight in ascertaining whether other related acts were motivated by an anti-union bias.

62. Direct evidence of the supervisor's knowledge of the union activity of a fired employee is unnecessary given knowledge of such activity by the foreman, communication between the supervisor and the foreman prior to the termination, and proof of substantial anti-union bias on the part of the employer.

63. The dissemination of pamphlets "The Grower Speaks" and, "Dear Fellow Employees", and the related verbal presentation of the employer's position at meetings of employees, was consistent with the employer's rights under Labor Code §1155.

64. A valid business reason for granting a retroactive increase in wages and fringe benefits in the midst of a union organization drive was not shown notwithstanding the fact that evidence was presented of comparative wage rates.

WHEREFORE, the following order is recommended:

1. That Respondent pay Mohammad Aslam the equivalent of three days wages; Bertha Avila the equivalent of five days wages; Raul Avila the equivalent of two days wages; Manuel Avila the equivalent of two days wages; Gurvinder and Kulwant Dhaliwal each the equivalent of two days wages, based upon a nine-hour day at the rate of \$3.00 per hour.

2. Further, that Respondent make-a written offer of employment to each of the above-listed persons for the 1977 tomato harvest.

3. Further, that Respondent make a public statement to all workers employed during the 1977 harvest in the form of a written statement to be delivered to each worker within 24 hours

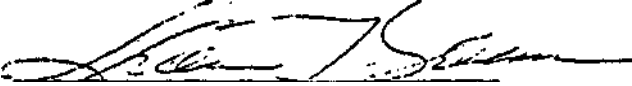
of his commencement of work advising him in his native language that a worker is free to become a member of a labor union and to publicly express his support for a labor union of his choice, on or off the job, and that he will suffer no penalty whatsoever at the hands of his employer for doing so. The statement should also indicate an employee's right to speak with and meet with union organizers during the lunch hour and before and after work on and in the vicinity of the employer's fields.

4. Further, Respondent shall post this statement in a conspicuous place on the employer's property where workers are likely to see it.

5. Further, that Respondent refrain from any acts having a tendency to coerce or induce employees to avoid contact with, or support for, the UFW, its agents or members, or to induce employees by threat, direct or indirect, or promise of benefit to avoid contact with or support for the UFW, and further to refrain from terminating or refusing to hire employees in retaliation for their expression of support for the UFW.

6. Further, that Respondent confirm, under penalty of perjury, to the Executive Secretary of the ALRB Respondent's compliance with the foregoing order, which confirmation is to be made quarterly at the end of the sixth, ninth, and twelfth months of 1977.

DATED: February 11, 1977.

  
SHELDON L. GREENE  
Administrative Law Officer