STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONSBOARD

AS-H-NE FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	No. 75-CE-163-M

INTRODUCTION

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

On September 8, 1976, administrative law officer, Louis M. Zigman, issued his decision in this case. All parties filed timely briefs and exceptions.

Having reviewed the record, we adopt the ALO's findings, conclusions and recommendations to the extent they are consistent with this opinion.

I. ACCESS DENIALS

Although the ALO found that AS-H-NE Farms had twice denied union organizers access in violation of 8 Cal. Admin. Code Section 20900, he recommended that no remedial order issue. His recommendation was based on his finding that the employer had taken affirmative action by its speech to its employees and by its granting of access thereafter to substantially and effectively remedy its earlier unlawful conduct. On the record before us we find that the employer's speech was little more than self-serving but agree

that the access it thereafter permitted for a period of three plus weeks before the 1975 election [1/] remedied its earlier unlawful conduct.

II. DISCHARGES

The ALO concluded that the respondent had a discriminatory motive in the discharge of Rudolfo and Isidro Robledo, and therefore violated Sections 1153(a) and (c). The ALO also found, by implication, that there was no discriminatory motive in the discharge of Alfonso Aguilar and the lay-off of three other employees, He concluded that no unfair labor practice was proved as to these employees. We uphold these conclusions, but wish to clarify several points.

First, the existence of "independent grounds" for the discharge of an employee does not preclude a finding that the motivation for the discharge arose in part from the employer's anti-union animus. Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977). Secondly, we disavow any implication that a discriminatee must be "very active" in union affairs before the employer's knowledge may be inferred. Such knowledge may be inferred as to any union adherent from the record as a whole. Finally, there are circumstances in which discharges and lay-offs could constitute a violation of Section 1153(a) without a finding that the employer had knowledge of the dischargees' union activities, as when employees are discharged as part of a "get-tough" policy to demonstrate

[1/] The results of the October 23, 1975 election were: NO Union - 45;UFW - 32; Western Conference of Teamsters - 2; Void. Ballots - 1; and 6 Challenged Ballots. A second election was held on December 28, 1976 which the UFW won; the UFW was certified as the exclusive bargaining agent for all the employer's agricultural employees on March 31, 1977.

the employer's power and hostility to unionization. Cf. Wilson Manufacturing Co., 197 NLRB 322, 325-326, 80 LRRM 1691 (1972).

III. REMEDY

We modify the recommended order of the ALO on posting and mailing of notice to the extent necessary to clarify the respondent's obligation and we further order that the notice be read to employees and that immediately following this reading a Board agent be given an opportunity to answer employees' questions regarding their rights and the Act.

ORDER

We hereby order that the Respondent, AS-H-NE Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) threatening employees with layoff, suspension, or termination because of their union activities;

(b) discharging or otherwise discriminating against employees because of their union activities;

(c) threatening to withdraw or promising to grant benefits conditioned expressly or implicitly upon employee unionization;

(d) soliciting employee agreements which by their terms tend to interfere, restrain, or coerce employees in violation of Section 1153(a);

(e) and in any other manner interfering with, restraining, or coercing employees in the exercise of those rights guaranteed them by Section 1152.

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

(a) Offer Rudolfo and Isidro Robledo immediate and full reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges and make them whole for any losses they may have suffered by reason of their discriminatory discharge including interest measured thereon at seven percent per annum;

(b) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order;

(c) Destroy and give no effect to all copies of the "employment information sheet" still within its possession.

(d) Immediately notify the regional director of the Salinas 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 employees. Copies of the notice shall be furnished by the regional director in Spanish, English, and other appropriate languages. The respondent shall post the notices when directed by the regional director. The notices shall remain posted throughout the respondent's 1977 harvest period or for 90 days, whichever period is greater. The respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(e) Arrange for a representative of the respondent or a Board agent to read the attached NOTICE TO WORKERS to the assembled employees in English, Spanish, 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 harvest season. Immediately following each reading, a Board agent will be afforded an opportunity, outside the presence of supervisors and management, to answer any questions the employees might have regarding their rights and the Act, The regional director will 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 day, time, and place for the readings shall be designated by the regional director after consultation by a Board agent with respondent.

(f) Hand out the attached NOTICE TO WORKERS (to be printed in English, Spanish, and other languages as directed by the regional director) to all present employees,

and to all new employees and employees rehired in 1977, and mail a copy of the Notice to all of the employees listed on its master payroll for the payroll period immediately preceding the filing of the petition for certification in October, 1975.

(g) Notify the regional director, in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it. Upon request of the regional director, the respondent shall notify him periodically thereafter, in writing, what further steps have been taken.

IT IS FURTHER ORDERED that the Complaint be dismissed insofar as it alleges unfair labor practices not found herein.

Dated: July 5, 1977

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

NOTICE TO WORKERS

After a hearing in which all parties presented evidence, an administrative law officer of the Agricultural Labor Relations Board has found that we have engaged in violations of the Agricultural Labor Relations Act, and has ordered us to notify all of our employees, including all employees hired after September 29, 1975 that we will remedy those violations and that we will respect the rights of all of our employees in the future.

We 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:

(1) We will reinstate Isidro Robledo and Rudolfo Robledo to their former jobs and compensate them for any losses that they have sustained as a result of their discharge.

(2) We will not discharge employees for engaging in union activity.

(3) We will not threaten employees with discharge in order to discourage union activity.

(4) We will not urge employees who desire unionization to seek employment elsewhere.

(5) We will destroy and give no effect to all copies of the employment information sheets which were distributed in late August and early September, 1975.

(6) We will not require employees to execute agreements in which they state that unions are unnecessary at our facility, or any other agreement which interferes, coerces, or restrains union activities.

(7) We will not threaten to cut out overtime, nor cut back on weekly hours or work on holidays in order to discourage union activity.

(8) We will not threaten to impose more onerous conditions in order to discourage union activity.

(9) We will not promise benefits in order to discourage union activity.

(10) We will not tell employees that we will never sign a collective bargaining agreement.

(11) We will not materially misrepresent our financial condition in order to discourage union activity. Any impression you may have gathered from the charts or speech of September 30, 1975 indicating that unionization would adversely affect your earnings should be disregarded by you since our profits and

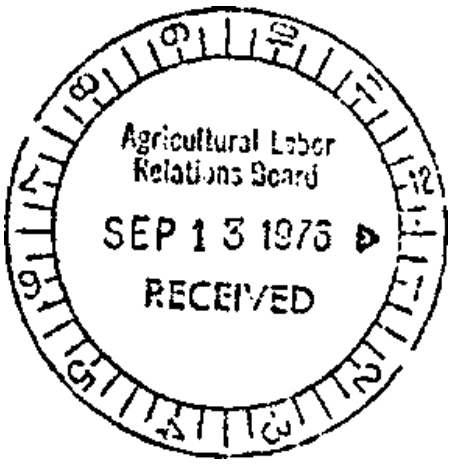
costs as presented that day were deliberately misstated.

Dated:

AS-H-NE 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 !!



STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

AS-H-NE FARMS, Respondent, and UNITED FAKM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No.75-C-163-M

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Fredrick Morgan,Esq. of Sanfrancisco,
California for Respondent

Karrolis, Mcternan, Scope & Sacks, by
John mcternan and Elizabeth Spector, Esq.,
Of Los Angeles, California
For the Charging Party

Peyton & Boone, by
J.Daniel Boone Esq., and David Bacon
of xxxxx Maria, California
for ths Charging Party

DECISION

Statement of the case

xxxxx

Labor Relations Act, herein the Act, and violation of Emergency Regulation Section 20900, by AS-H-NE Farms, herein called Respondent. The complaint is based upon charges and amended charges filed by the United Farm Workers of America, AFL-CIO, herein the Union, on October 3 and November 5, 1975. Said complaint was amended at the hearing alleging additional violations of Section 1153 (a) and (c). Copies of the charges and amended charges were duly served on Respondent.

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

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

I. Findings of Fact

Respondent, a corporation located in Santa Barbara County, is engaged in the production of cut flowers and potted plants at its facility' located on Bonita School Road, Santa Maria, California. In its Answer Respondent admitted that it is an Agricultural employer within the meaning of Section 1140.4 (c) of the Act. Based on the Answer of Respondent and upon the testimony I find that Respondent is an agricultural employer within the meaning of the Act.

II. Labor Organisation Involved

United Farm Workers of America, AFL-CIO is a labor organization within Section 1140.4 (f) of the Act, as it exists for the purpose of bargaining with employers, on behalf of employees, for wages, hours and working conditions.

III. The Alleged Unfair Labor Practices

The Complaint and amendments allege that Respondent violated Section 1153 (a) by conduct which amounted to threats, unlawful interrogation, promises of benefit, misrepresentations and unlawful surveillance. In addition the Complaint alleges that Respondent denied the Union access to its premises as required by Section 20900 of the Agricultural Labor Relation Board's emergency rules. Furthermore the Complaint alleges that Respondent violated Section 1153 (c) of the Act by the discriminatory discharge of Ramon Frias, Rafael Torres Contreras, his wife Pauline Torres Contreras, Alfonso Aguillar, Isidro Robledo, and his brother Rudolfo Robledo.

Respondent denies that it has engaged in any conduct violative of Section 1153 (a), or that it engaged in any conduct violative of Section 20900 of the Emergency Rulos. Respondent denies that employees Frias, Rafael Torres Contreras, herein R.Torres, and Pauline Torres Contreras, herein P.Torres, were Discharged. Rather, Respondent asserts that these three employees were laid off and that their

layoffs were not unlawfully motivated. Finally, with respect to the discharges of Aguillar and the Robledo brothers, Respondent denies that their discharges were unlawfully motivated.

A. Background of Respondent's Operation

Respondent is engaged in the production of cut flowers at its facility located on Bonita School Road approximately halfway between the cities of Santa Maria and Guadalupe. The principal crops are roses, carnations, crysanthemums, pompoms, large crysanthemums, and green foilage plants which are more commonly referred to as potted plants. There are approximately seventeen acres in the greenhouse cover and approximately one hundred acres in total area of Respondent's flower farm. The farm also includes a shed which packs and ships Respondent's flowers.

Respondent employs approximately ninety employees on a year round basis and during its two peak seasons the employee complement may increase to- as many as one hundred and twenty-five in toto. These seasonal peaks occur in December and from the period of April through June.

B. Sequence of Events

During the first week of July [1/] four organizers from the union appeared on Respondent's premises and began talking to employees about the recently passed Act. After a few minutes George Neidens, Respondent's President, saw them and ordered them to leave. They complied and no further attempt was made by the union to enter Respondent's premises until September 27. In the interim period Neidens attended several employer/grower meetings to learn more about the Act.

In anticipation of further union organizational efforts, during the latter part of August and the first few days of September, Respondent prepared and distributed to its employees, documents which are entitled Employment Information. [2/] These employment information sheets were distributed in both English and Spanish and eighty three of the approximately one hundred and four employees signed and returned their sheets to Respondent.

1/ Unless otherwise indicated all dates refer to 1975.

2/ Said document which was referred to as a Yellow Dog Contract appears in its entirety as follows:

AS-H- NE FARMS, INC.

Employment Information

As-H-Ne Farms produces cut flowers and plants on a year round basis. We offer year round employment at five and one half days a week, rain or shine, (continued on page 4)

4/ (continued)

1. Current pay scale ranges from $2.00 to $2.50 per hour, and higher for individuals showing initiative and leadership. These are currently the competing rates in the floral industry.
2. You receive one week paid vacation after one year and two weeks paid vacation each year thereafter.
3. Christmas is a paid holiday for full time employees.
4. Other benefits are given relating to time with the company, for example- Advances, Insurance, etc.

We believe in the individual private rights and do not believe a union is necessary for our operation. If at any time you. are dissatisfied with our working conditions you are encouraged to bring the matter to our attention. Should we be unable to improve the situation to your satisfaction you are free to leave and find employment elsewhere.

AS-H-NE FARMS, INC.

By: /s/ George Neidens
President

I have read and understand the above statement and agree with its principles.

Dated: _____

_____
Employee

In addition to preparing the employment, information sheets Respondent purchased walkie talkies which it used during the union's initial organizational efforts. Respondent also acquired a large German Shepherd dog for use as a safety precaution.

On Saturday, September 27, Union organizers returned to Respondent's facility and were ordered again to leave. They did so. Thereafter on Monday, September 29, the organizers again returned and after a brief altercation they were permitted access to the premises and to the employees. Since that time Respondent has permitted the union access to its premises.

On September 30, Respondent, through its president, Neidens, held two meetings of employees to discuss the union's organizational attempt. The substance of Neiden's remarks is in dispute. The General Counsel contends that Neidens unlawfully threatened employees, promised benefits, and misrepresented Respondent's financial structure in an effort to intimidate and coerce its employees Respondent, through Neidens, denies those allegations.

On October 1, Respondent laid off employees Frias, R.Torres and P. Torres and on October 3, R. Torres was recalled back to work. When R. Torres returned on October 7, his wife, P. Torres, was with him and she too was reinstated. As of the time of the hearing Frias had not been returned to work.

On October 14, Respondent notified Aguillar and the Robledo brothers that they were discharged for missing too many days and for not returning to work.

C. The Employee Information Sheet

The facts with respect to this allegation are not in dispute. Neidens admitted that he drafted the information sheet in specific contemplation of anticipated union activity. The sheets were passed out by Neidens, other supervisors and other employees and the employees were instructed to sign them. The evidence also demonstrated that supervisors followed up to make sure that their employees returned signed information sheets. As previously indicated, 83 of 104 employees returned sign sheets. These sheets are presently maintained in the employer's files.

The General Counsel contends that the employment information sheets constitute unlawful yellow dog contracts and therefore constitutes unlawful interference with employees' rights under Section 1152 of the Act. Respondent denies that these are in fact yellow dog contracts or that they constitute unlawful interference because it asserts that there are explicit promises not to join or remain a member of a union; nor is there an explicit promise on the part of the employee to withdraw from employment in the event that the employee joins or remains a member of a union.

D. The Acess Issue

The facts on this issue are also little in dispute. On Saturday, September 27, at noon, union organizers attempted to enter the property of AS-H-NE Farms for the purpose of meeting with employees pursuant to Section 20900 of the Board's emergency rules. The uncontradicted testimony showed that Neidens refused the organizers permission to enter and he ordered them to leave.

The following Monday, September 29, several union organizers returned at noon. Neidens testified that he approached their car in the parking lot and informed them that they were trespassing and that, he wanted them to leave. The organizers responded by telling Neidens that they had a right of access both to the property and to the employees. Neidens further testified that he called for his large German Shepherd and that it was brought to him as he continued arguing with the organizers about the access rule. After a few minutes the organizers began to drive their car slowly to Respondent's other parking lot and Neidens followed with his dog. When one of the organizers tried to get out of the car Neidens leaned his hand on the door to stop him. The credited testimony of the organizers also showed that Neidens warned them to stay in the car because he could not be responsible for his dog's actions should they get out. Neidens himself testified that his purpose in bringing the dog out was his feeling that if the dog was there the organizers would stay in their car.

After a few minutes, a San Luis County sheriff, who had been previously called by Neidens, arrived on the scene. The sheriff told Neidens to put his dog away and then the sheriff called the County Counsel's office for advice. The advice was that the organizers had a right to be on Respondent's property and when informed of this Neidens complied by allowing the organizers to get out of their car, to talk to employees, and to pass out literature in the parking lot. Throughout this time there were about thirty employees in the parking area as well as several supervisors with walkie-talkies.

On September 30, Neidens called the employees together for two separate meetings. Although much of the substance of those meetings is in dispute, there was uncontradicted testimony that Neidens did talk to them about the access rule and about the problems with the organizers. Neidens told the employees that the union organizers had been on the property against Respondent's wishes and that Respondent had resisted and had called the sheriff to have them removed. He told them that he had repeated this on September 29, but when the sheriff contacted the County Counsel he was told that the organizers had a right to be on the property one hour before and after work and during the lunch period. Neidens told them that Respondent would comply with the rule but that they felt that this access was against Respondent's property rights and it was now in the courts and until there was a final decision they would abide by the rule.

Since September 29 Respondent has permitted the union full access to its property and employees in conformity with the access rule. Thereafter on October 23, an election was held by the Board and the majority of employees voted for no union. Objections were filed to the election but they were not litigated at the hearing. However the parties stipulated that the record in the instant proceeding be included in the record of the hearing on Objections, if and when ordered.

Respondent admits that it denied the organizers access on September 27,and for a limited period on September 29, but asserts that its conduct immediately thereafter cured this "technical" violation.

The General Counsel and Charging Party argue that the violation was not cured by Respondent's mere discontinuance and that a Board remedy must be secured to rectify the serious and flagrant coercive impact caused by Respondent by its use of the dog and the walkie talkies on that day. They further argue that this was a heavy handed interference and far from a de minimus violation.

E. The Statements of George Neidens

On September 30, Neidens held two separate meetings with employees to discuss the union's organizational activities. The first meeting took place at about 1:30 p.m. in the packing shed with the rose crew. There were between 14 and 20 employees at that meeting. Neidens spoke at that meeting and his statements were translated into Spanish by another employee.

Aguillar, who attended that meeting, testified that Neidens told them that a union was not really necessary because not all businesses needed a union. Aguillar stated that Neidens told the employees that if they wanted to be involved with the union they could go to the union’s office, read their literature, attend their meetings, but that if they didn't like the working conditions they were free to leave. Aguillar further testified that Neidens took out a piece of union literature and crushed it with his fist. Aguillar also recalled that Neidens said something to the effect that things would be tighter if there was going to be a union.

The second meeting was held at about 2:30 p.m. in the carnation grading area and approximately 70 employees attended. Neidens again spoke in English and his statements were translated into Spanish. Frias testified that Neidens told them that he didn't want anything to do with the union and that anyone who wanted to work for the union could go and work where there was a union.

Employee Siordia testified that she attended the meeting and that Neidens told them that he didn't want the employees to be with the union and that he had not signed any contract with any union and that he had no intention of doing so. Siordia further testified that Neidens told employees that those employees who wanted the union would best look for work elsewhere. He also told them that he could not pay them $3.10 an hour because his customers could

not purchase,his flowers at a higher price. Neidens went on by saying that perhaps he could give better benefits than the union and he explained that the company might be able to pay for dependent medical coverage and that at Christmas they could get more money. He also told/them that if they did good work he would increase their pay. [5/]

5/ Neidens testified that he called the meetings to explain the company's position with respect to the union activity. He denied stating that he would never sign a contract and he also denied telling the employees who supported the union to go to work elsewhere. According to Neidens he told the employees that if they could come to an agreeable settlement, a contract would be signed, but if they could not then there would be no contract. With respect to the allegation that union supporters could go elsewhere, Neidens testified that he explained the company's benefits, that if anyone had any problems they could discuss them with their foremen and/or with himself. If however the problem couldn't be resolved to everyone's satisfaction, then the employee was free to find another place of employment.

Neidens also testified that he used charts to help explain the company's financial position and he also used charts to compare its benefits to those of the union. Neidens explained that if the union was successful that there wouldn't be any work on holidays; that the employees would work fewer hours and thereby receive less pay. With respect to the company's financial condition and ability to pay "union rates", Neidens used a chart which listed the company's major expenses. The evidence disclosed that Neidens overstated its average monthly expenses while at the same time greatly understating its average monthly income.

F. The Statements of William Sachau

Aguillar testified that his supervisor, William Sachau, approached him while he was working in the greenhouse. This occurred the day after the meeting with Neidens and Sachau spoke to him about the effects of unionization. Sachau showed him a piece of paper and told him that if the union did win there would be some changes in that the employees would work shorter hours. According to the testimony of Aguillar, Sachau asked him if he was involved with the union and Aguillar replied that he was not. Sachau testified that he told Aguillar that if the union came in they would only work a forty hour week because the company could not afford to pay overtime at the "union rate". Sachau explained that they would make less money per week because of this. Sachau admitted that he did not have access to the company books or records and that he was just making his own educated guess as to what he felt the company could afford. Sachau also testified that he told Aguillar that if the union came in Aguillar would not be allowed to miss as much of the work or to come in as late as he had been doing before. Sachau also told him that he would crack down on his tardiness.

G. Surveillance & Impression of Surveillance

The evidence concerning unlawful surveillance dealt with three days, September 29, 30 and October 1, in Respondent's parking lot. There is no dispute that Neidens and several supervisors were in the parking lot, with walkie talkies, on September 29, when the organizers approached. Aguillar testified that on September 30, he saw Neidens standing around near the parking lot for about twenty minutes. He also stated that he saw a supervisor named Bill walking near the parking lot when .the lunch bell sounded on the first. Both Aguillar and Frias testified that they saw supervisor Palpant drive through the parking lot on his way to lunch on the 29th. This was Palpant's normal routine as he would go to his house to eat lunch.

H. Discharge of Alfonso Aguillar

Alfonso Aguillar was originally hired by Respondent in August, 1973, and he was discharged for absenteeism in June, 1974. In September, 1974 he was rehired and on October 14, 1975 he was again discharged for absenteeism. Aguillar worked in the rose crew and his duties included cutting and trimming roses and spraying insecticides.

Aguillar's union activity consisted of his signing a union authorization card on September 29, after the organizers were given access to the farm. There were approximately thirty employees in the parking lot at the time and about eight organizers. The organizers were talking to employees, distributing literature and soliciting signatures on authorization cards. Aguillar was sitting in his car with another employee when an organizer approached, spoke to them about the union and solicited their signatures. Aguillar signed while sitting in the car. The following day Aguillar attended the meeting called by

Neidens, as described herein above, and the next day Sachau discussed the potential effects of unionization.

Aguillar was to go on vacation beginning October 3, and was told to return on Friday, October 10. He did not return until Tuesday, October 14, and he admitted that he did not call Respondent to inform them where he was or when he would return. When Aguillar returned to work Tuesday morning he was told that he had been terminated for absenteeism.

Respondent asserts that Aguillar was discharged because he did not return to work and because he failed to notify anyone. Neidens stated that the decision to terminate was made on Monday, October 13, when Sachau told him of employee Ray Dominguez's conversation with Aguillar. Dominguez told Sachau that he had seen Aguillar on Sunday and asked him why he didn't call. Aguillar told Dominguez that he didn't feel like it and that he would return when he felt like it. After hearing this and noting that Aguillar still hadn't returned on Monday it was decided to terminate him then. Although Aguillar denied making such a statement, both Dominguez and Sachau corroborated Neidens' testimony.

The evidence demonstrated that Aguillar had a rather spotty record with respect to absences and tardiness. Aguillar admitted to being late almost 40% of the time but he did state that he always notified Respondent, whenever he was absent. Aguillar also admitted that Sachau had given him a verbal warning about his work sometime in August before the union organizational attempt began.

The General Counsel argues that Respondent seized on Aguillar's failure to report as a pre-text to cover its real motive for discharge and that the real motive for the discharge was to eliminate a known union sympathizer.

I. Discharge of Isidro Robledo

Isidro Robledo was hired in January 1973 and was terminated on October 14, 1975. He performed several jobs including the building of greenhouses, plumbing, electrical work, miscellaneous repairs and deliveries.

Robledo testified that he signed a union authorization card a few days after September 29, and that he signed the card in the parking lot at noon. At the time there were between 15 and 20 other employees also in the parking lot as well as several organizers. Robledo said that he placed the card on the top of the roof of his car and signed it in that manner. He further testified that he saw Neidens standing by the door at the packing shed and he thought that Neidens could see him signing the card.

Thereafter on Monday, October 13, and Tuesday, October 14, Robledo did not report to work. When he called in on Tuesday he told Neidens that he had been in jail overnight and in court. Neidens asked about his brother Rudolfo, and Isidro said that he was at home. Neidens then told him that they had been out too much and they should both come in and pick up their checks.

Respondent asserts that Isidro was discharged because of his record, of absenteeism. Neidens testified that beginning in June, Isidro began missing days and in September he began missing every Monday. In October he missed the first two Mondays and Tuesdays consectutively. Neidens also testified that he needed the Robledobrothers for a specific job on those two days and therefore was particularly upset when they failed to report for work.

The evidence disclosed that although Robledo was supposed to work M-5 hours a week, in the 20 bi-weekly payroll periods between January and October Robledo worked a total of 90 hours only four times. Altogether in 16 of the 20 payroll periods he worked fewer than 90 hours and in 7 of those periods he worked fewer than 80 hours. Isidro testified that he had a very loose and flexible schedule and that he often missed Mondays without any reprimand whatsoever. Moreover neither he nor his brother received any reprimand for missing the previous Monday and Tuesday.

J. Discharge of Rudolfo Robledo

Rudolfo Robledo was hired at about the same time as his brother and worked with his brother performing the same duties. Rudolfo did not report to work on Monday or Tuesday, October 13 and 14, because his brother had the car and he had no other transportation.

Rudolfo testified that the union organizers spoke to him on two ocassions while he was in the parking lot. He apparently did not sign a union authorization card but he did tell employee Roy Alien that he would vote either for the United Farm Workers or for the Teamsters who were also on the ballot as intervenors.

Respondent advanced the same reasons for discharging Rudolfo as it did for discharging Isidro. Rudolfo's payroll records indicate that his attendance record was far worse than Isidro's. Of the 18 payroll periods that he worked from January to October, Rudolfo never once worked as many as 90 hours and in 15 of the 18 he worked fewer than 80 hours in the two week payroll periods.From June 'through October the highest number of hours he worked was 75.The parties also stipulated that Rudolfo missed 35 days during 1975 and that 32 of them were Mondays. Rudolfo further testified that although he was "supposed" to work on Mondays he frequently had a hang over and he was never reprimanded for failing to report. In fact Rudolfo stated that he was often told that he was doing good work and Respondent did stipulate to that fact at the hearing.

K. Layoff of Ramon Frias

Ramon Frias was hired on August 22 and worked in the foilage crew. On October 1, he was told that he was being laid off for three weeks because work was slow.

Frias' union activity was limited to his signing a union authorization card in the parking lot, at noon, on September 29. Frias stated

that he signed the card on the roof of his car and as he did so he heard one of the pick-up trucks, commonly driven by Palpant, going by.

Respondent stated that work in the greenhouse was diminishing and that on October 1, a decision was made to lay off three employees, the Torres and Frias, and the next two days the crews worked shorter hours. Neidens explained that Respondent tries to follow a policy of seniority with respect to layoffs and that Frias was low on the seniority list. Neidens stated that Frias was a good employee but despite that Frias has not been recalled although the records showed that Respondent hired several new employees since October 1, although the exact number is in dispute. Respondent asserts that only one employee was hired in Frias' crew and that individual Joe Espinoza was also a former employee.

L. Layoff of Rafael & Pauline Torres

Rafael and Pauline Torres were hired on August 20, Rafael worked in the rose crew and Pauline worked in the foilage crew. Both were laid off for lack of work on Wednesday, October 1. On Friday, October 3, Respondent recalled Rafael back to work and he returned on Tuesday, October 7 with his wife Pauline. She was also rehired on that date.

Rafael's union activity was limited to his signing a union authorization card at a school in Guadalupe sometime before October 1. Pauline Torres did not testify and there was no evidence that she engaged in any union activity. As related hereinabove, R. Torres testified that on September 29, as he was getting ready to leave the greenhouse for his lunch break, Neidens opened the door and said words to the effect that someone was here and waiting for him. Torres stated that he was coming out of the house with other employees and that the comment seemed directed at no one in particular but rather at all who were leaving. Torres then went to his car in the parking lot, had lunch with his wife, and spoke to some organizers as they sat in their car.

Torres testified that he went to punch out on October 1 and was told by Neidens that he was being laid off for three weeks and he replied that it was just like being fired. Neidens agreed and told him that he was fired. Torres then left with his wife and notified the union. On October 3, the union filed charges with the Board and on the same day Neidens recalled him.

Two days before the hearing in the instant case Neidens came to Torres' home and showed him some letters of recommendation that he, Neidens, had written for Torres' brothers. These letters had been written for immigration purposes and when Torres replied that they were indeed his brothers, Neidens just said that this was a reminder and then he left.

Respondent asserted that Rafael and Pauline Torres were laid off along with Frias because there was a slowdown in the work and that R. Torres was recalled as soon as Respondent learned that

Castillo was going to Texas, Neidens denied telling R.Torres that he was fired and he stated that he did not know about the filing of the unfair labor practice charges before recalling him. The unfair labor practice charges were served on Respondent sometime during the day on October 3.

Sachau testified that he selected R.Torres for layoff and that he did so by seniority. Sachau admitted that he made a mistake because employee Adame actually had been hired four days after R.Torres but at the time he thought that R.Torres was the most junior. Neidens testified that one of the other reasons for laying off P.Torres was because both Torres' drove in the same car and with her husband not working she would have a transportation problem.

With respect to Neidens' visit to Torres' home, Neidens testified that he stopped by on the way to see his attorney and he just happened to ask R.Torres if the letters were for his brothers. Neidens gave no further explanation.

M. Discussions of the Issues and Conclusions

The evidence adduced at the hearing established that Neidens drafted the "employment information sheets" in specific contemplation of anticipated union activity and Respondent, in its brief, concedes that most employees felt that, they had to sign the information sheet. It is clear that any fair reading of the information sheet makes the message clear that Respondent does not want the union at his facility While at the same time telling its employees that if management can't resolve their problems directly, then they should quit.their jobs. This point is driven home by the fact that the employee was required to sign and execute his agreement with Respondent's principles. Respondent's argument that the information sheets, distributed in late August and early September, were not coercive since organizing activities continued to take place is not persuasive nor is the contention that Respondent has cured any possible violation because it ceased distributing said information sheets.

There is little question that the whole purpose and tenor of Respondent's action was to deprive its employees of their right to self organization and collective bargaining. This purpose is made more evident when also viewed in context of Respondent's other actions and other independent violations of the Act. Williams Mfg. Co., 6 NLRB 135,140; 2LRRM 124. See also Atlas Bag and Burlap Co., Inc., 1 NLRB 292; 1 LRRM 385. Certainly an employee executing such a document could rationally assume that he is promising not to join or remain a member of a labor organization.

The facts establishing the denial of access are not in dispute. Respondent admits that it denied access one day, September 27. and for a brief time on September 29. However Respondent contends that it remedied its conduct immediate ly when so advised by the County Counsel. The evidence was also uncontradicted that on the next day. September 30, Neidens told the employees that Respondent had resisted acess because it felt that this was an unconstitutional infringement

of its property rights. Neidens further explained the access rule and told the employees that they would comply with it while the rule was being contested in the courts. Thereafter the union organizers appeared on a daily basis without any further interruptions. Contrary to the General Counsel's assertion that Respondent did no more than discontinue its unlawful practice I find that Respondent did take affirmative action by informing the employees of what had transpired and of the Board's acess rule. Inasmuch as access was denied for only one day and as Respondent did take affirmative action in seeking to remedy its conduct, I find that Respondent did substantially and effectively remedy its earlier unlawful conduct. Hoerner-Waldorf Paper Products Company. 163 NLRB No. 105, 64 LRRM 1469.

With respect to the statements attributed to Neidens during his two meetings on September 30, I credit the testimony of employees Frias, Siordia and Aguillar. During these meetings Neidens further demonstrated Respondent's strong feelings against unionization when he told his employees that he didn't want anything to do with the union, that if anyone signed with the union they could go to work elsewhere and that if anyone wanted the union they could go work for it. He also threatened that things would be tighter and that he would never sign a contract with the union. He also told them that he could not afford to pay the "union scale" because his customers couldn't absorb the higher prices and he attempted to demonstrate that Respondent would become uncompetitive because of these increased labor costs. In order to prove his point he had a chart prepared which listed Respondent's average monthly expenses and average monthly income and there was no question that Respondent significantly understated income while at the same time overstating expenses. Neidens further explained through the charts that if the union was successful they would have to cut out overtime, cease working on holidays and they would have to reduce weekly hours from the present 50-60 hours to 40 hours. Respondent's animus was further demonstrated when he took a union leaflet, crumpled it in his fist, and said they could could wipe their ass with it.

Neidens admitted that Respondent preferred not to have the union and he admitted telling employees that Respondent would have to cut out overtime, reduce hours and cease work on holidays but he said that these statements were couched in terms that this would happen only if the union insisted on its "union rates" of $3.10 per hour. Neidens also conceded telling employees that if they weren't happy they always had the option to leave and seek employment elsewhere. He denied threatening them and he also denied making promises of additional medical benefits or additional pay during Christmas in order to persuade the employees from not voting for the union. He also denied that Respondent's expenses and income was significantly in error.

Neidens conceded that he used Spanish speaking interpreters while speaking to the employees and while he denied some of the statements attributed to him and the characterization of none of his remarks, it is noteworthy that none of the interpreters were called by Respondent to testify on its behalf. More significantly two of the

interpreters were actually present in the hearing room for several days and presumably able to testify.

I find the testimony of the three employee witnesses to be more reliable with respect to the meetings with Neidens for the following reasons: 1) the essential similarity of their testimony; 2) Respondent's extremely strong anti-union sentiments as evidenced by Respondent's initial use of dogs and walkie talkies to keep the union out, and also its use of the unlawful employment information sheet. Said information sheet also corroborates some of the allegations made by the employees; 3) the failure of Respondent to call its interpreters to either admit, deny, or to explain the statements which were actually attributed to them for the most part.In its brief Respondent even points out"that bearing in mind the dual language problem, it is certainly conceivable that some of the hearers might have made erroneous conclusions as to what was meant."Therefore, even under the precedents of the National Labor Relations Act, as amended, an adverse inference can be drawn by the failure to call such witnesses. Scott Gross Co. Inc., 154 NLRB 1185, 60 LRRM 1114; 4) Neidens in his testimony appeared anxious to demonstrate that Respondent's real motives were to educate the employees about the union so that they would see the problems and therefore could make a free and knowledgeable choice.This is inconsistent with the other evidence.

Based upon the foregoing and particularly on my observation of the demeanor of the witnesses' testimony, I find that Respondent did violate Section 1153 (a) of the Act by telling employees that it had no intention of signing a contract with the union, American Building Components, 203 NLRB No. 131; 83 LRRM 1297. In addition Respondent violated the Act by inviting employees who wanted a union to go elsewhere. Logging Meat Co., 199 NLRB No. 38, 81 LRRM 1429. Furthermore the promise of medical benefits and more money at Christmas was an unlawful promise of benefit. NLRB v. Exchange Parts Co.. 375 U.S. 405, S & H Grossingers. Inc., 156 NLRB No.20, 61 LRRM 1025. The remarks concerning the elimination of overtime, holiday work and reduction of hours were also unlawful threats made to thwart union activity. NLRB v. Gissel Packing Co.. 395 U.S. 575. Equally unlawful are the threats that things would be tighter if the union was successful. Ashland Oil Co.. 199 NLRB No. 42, 81 LRRM 1656.And finally I find that the deliberate mischaracterizations of Respondent's financial condition also interfered with employee rights guaranteed under the Act. I further find that each of these statements was made with the intent to thwart the employess' union activities and they constituteinterference restraint and coercion as defined in Section 1153(a) of the Act.

As to the statements attributed to Sachau, he admitted telling Aguillar that Respondent could not afford to pay the union rate and Respondent would therefore have to eliminate overtime and holiday work while at the same time reducing the work schedule to 40 hours. Sachau, an admitted supervisor, stated that he was voicing his own opinion and that he had not seen the financial records of the company. Such statements by a supervisor even though his own personal opinion are a violation of the Act.

Yankee Trader, Inc. 184 NLRB No. 81, 74 LRRM 1595.

I do not credit Aguillar as to the alleged questionning of his union activity, denied by Sachau, because Aguillar, in testifying appeared anxious to favor the union on every possible point, while Sachau seemed quite straight forward in his testimony. While I have credited Aguillar with respect to the meeting with Neidens, that conversation was consistent with other credited testimony.

With respect to the allegation concerning surveillance by Respondent, the only evidence presented was that on one occasion, September 30, Neidens was standing around near the parking lot for about 20 minutes. Inasmuch as this occurred on only one occasion, and on the day following the granting of access, I cannot find that Neidens did this for the purpose of viewing the employees' union activity but rather because of his seeming concern for his property and of the unknown consequences of such action. Contrary to the General Counsel's position the record does not establish that Neidens, Sachau or supervisor Palpant were repeatedly in the parking lot during the lunch hour. Therefore I find that the General Counsel has failed to carry its burden of establishing unlawful surveillance.

With respect to the discharges and layoffs, the General Counsel contends that the Robledo brothers and Aguillar were discharged in order to eliminate three known union sympathizers and also to create the impression among other employees that union activity would result in a stricter policy towards attendance and tardiness. General Counsel also contends that the Torres' and Frias were in effect terminated when notified of their layoffs and they were effectively terminated because Respondent wanted to eliminate three other known union sympathizers.

In support of its contention the General Counsel alleges that Respondent was engaged in a massive and vehement anti-union campaign which was illustrated by its use of serai-military tactics in trying to thwart access and by its numerous independent violations of Section 1153 (a) and by its surveillance of employees' union activities. Contrary to Respondent's assertion that it was a relative neophyte and thus may have inadvertently made several errors, the General Counsel asserts that Neidens was quite knowledgeable as he attended several grower association meetings in the summer in order to become more familiar with the new law. Therefore Neidens' actions in drafting the employment information sheet and denial of access were not mere unintentional errors but rather a deliberate attempt to thwart organizational activity at his facility.

It appears that at least five of the six employees, the Robledo brothers, Aguillar, Frias and R. Torres had been engaged in union activity, albeit rather limited, in that they signed union cards. Three employees Isidro Robledo, Aguillar and Frias all signed union cards in the parking lot, on Septumber 29 or 30, and allegedly could have been seen doing so by Neidens. In addition to this direct evidence of their union activity, General Counsel contends that

there is sufficient evidence to warrant an inference that Respondent knew of these employees* union sympathies because of its surveillance, and by the fact that the only three employees who were discharged happened to be union sympathizers and also because of the timing of the discharges. Therefore the General Counsel submits that Respondent's knowledge of the union activities and sympathies of the six employees was clearly established by a preponderance of both direct and indirect circumstances.

Thus in light of the employees' union activity, knowledge by the Respondent, animus against unionization and timing of the discharges and layoffs the General Counsel submits that Respondent violated Section 1153 (a) and (c) of the Act.

Contrary to the assertions of the General Counsel there was no evidence that Respondent was aware that R.Torres had signed a union authorization card. R.Torres did sign a union authorization card but it was off the premises at a local, school in Guadalupe. He could not recall the day when he signed the card. Although R.Torres testified that when heopened the door to leave the greenhouse for lunch, on September 29, Neidens told him words to the effect that the union was waiting in the parking lot to see him, Neidens explained that he directed such comment to all the employees as he had just relented and had permitted access. Inasmuch as R.Torres conceded that Neidens' comments appeared to be directed at all of them who were going to lunch and inasmuch as as these words were said within minutes after the granting of access and finally because there was no evidence that R.Torres had even signed ~a union card at that time, I cannot conclude that by Neidens' statement that Respondent had knowledge of R.Torres union sympathies. R.Torres admittedly did not engage in any other union activities and there was no evidence that his wife, Pauline, had even signed a card.

Moreover, the circumstances and reasons for the layoff of the Torres' do not warrant a finding of unlawful treatment. The evidence indicated that Respondent did have a curtailment of work during the first few days of October and they had to cut the hours of the crews several hours on October 2 and 3. In addition the oral and documentary evidence was uncontradicted that R.Torres was immediately recalled on October 3, when Castillo was called out of town. The assertion that R.Torres was recalled only after the filing of the unfair labor practice charge is at best an inference and not supported by the weight of the testimony. I also note that Frias whose name was also on the charge was not recalled. And finally, although R. Torres was not the least senior employee on the crew, I credit the testimony of Sachau when he said that he selected R.Torres because he thought that R.Torres was the least senior, but in fact he was mistaken because there was one man in the 25-30 man crew who was four days less senior than R.Torres.

The evidence concerning knowledge of Frias' union activities was limited to Frias' statement that when he signed the card he heard a pick-up truck, normally driven by Palpant, drive by. Frias did not lok up to see who was driving and conceded that other employees

also drive the pick-up on occasion. In view of this and of Palpant's credited denial of knowledge 1 cannot conclude that Respondent had knowledge of Frias' union sympathies.

Moreover the circumstances concerning his layoff do not demonstrate unlawful discrimination. Although Respondent asserted that both Frias and the Torres' were good employees, the evidence demonstrated that there was some curtailment in work and Frias as the junior employee in his crew was selected along with P.Torres for layoff. Despite General Counsel's assertion that at least two other employees were hired after he was laid off, only one individual, Joe Espinoza, was hired for the rose crew and Espinoza himself was a former employee.

Therefore based on the evidence, noting particularly the lack of union activity by Frias and the Torres' and lack of knowledge by Respondent, I cannot conclude that any of the three were laid off on October 1, in violation of Section 1153 (a) and (c) of the Act.

With respect to the Robledo brothers the evidence was established that Respondent knew that Isidro had signed . union authorization card and that Rudolfo favored either the United Farm Wokers or the Teamsters rather than no union.

The prima facie case with respect to the Robledo brothers is very strong inasmuch as all the criteria necessary for establishing a violation are present. It was undisputed that Respondent had knowledge of Isidro's sympathies for a union and Respondent was certainly hostile to the idea of unionization. In addition the timing of the discharges was certainly questionnable when viewed in context with Respondent's long toleration of their conduct. Moreover when viewing Respondent's alleged justification for its action, I cannot conclude that they have negated the adverse inferences demonstrated by the General Counsel's case. Rather the testimony serves to add weight to the General Counsel's case.

Neidens testified that he terminated the Robledos because of their absence and failure to report on October 13 and 14. He stated that he had important work for them to do and he was upset because although they had been fairly loose in the past, they got to a point where work had to be done and if the people were not there he would not tolerate it. Moreover he also stated that although they had been habitually late in the past, they had both missed the previous Monday and Tuesday and he didn't want this to develop as a new pattern.

On cross examination it was demonstrated that Neidens often called the Robledo's at home when and if he had a special work assignment and that he did not do so on either October 13 and 14.In addition, despite the fact that he had important work for them he later testified that he really had little work for them and therefore they were never replaced. In noting the shifting and inconsistent reasons offered I also note that Neidens assertions about a special project were all self-serving statements without any other oral or documentary evidence to support his averrments.

Neidens also testified with respect to Torres' situation that many employees have transportation problems and if the driver or owner of the car is sick, then the others cannot get to work. Therefore when Neidens was informed of Isidro's situation he should have understood why Rudolfo wasn't at work since he had no way to get there Moreover, according to the attendance records, neither brother was really expected to be at work on Monday because it was a joke, although an accepted one, that they usually didn't come to work on Mondays because of hangovers.

All parties concede that Respondent tolerated and even condoned the Robledos' prior absences. Respondent conceded that they were good employees and had been employed for several years. Why then did Respondent suddenly stop its practice of toleration and when did they do so? Sachau stated that Respondent started hardening up in its personnel practices in October while Neidens stated that it was much earlier in the summer. Neidens testimony was again filled with inconsistencies and self-serving statements. Despite the fact that Respondent allegedly began to tighten up in June, it was undisputed that Rudolfo's record of absenteeism got worse and no action was taken for several months until after the adver. of the union. In addition Neidens stated that he began to tighten up because of the pressures of increased costs, but despite those pressures he admittedly gave the employees a rather substantial wage increase at that time. No documentation or other evidence, was submitted in support of these rather general statements.6/

In short I cannot credit Neidens' testimony with respect to his reasons for discharging the Robledo brothers. Not only was his testimony self-serving and devoid of any corroboration but he and Sachau both admitted to a general tightening up of procedures. When viewed in context of Neidens' other actions and statements at the employees' meetings the real motive is readily apparent. Neidens was extremely anti-union and this was demonstrated not only by his statements but by his conduct in going to Torres' home two days before the hearing in an obvious attempt to intimidate him.[7/] Thus as the General Counsel asserts, Neidens was attempting to drive home his point about things getting tighter should the union win by demonstrating the fact at that point. In short Neidens seized on their absences as a pre-text to cover its real motive for discharging these employees and the real motive was to rid itself of two known union sympathizers while at the same time making a point with the other employees.

6/ Although I have credited Neidens in certain instances I have done so because of the circumstances not only of his demeanor in those situations but also because of the other evidence bearing on his testimony.

7/ Although I view Neidens actions with alarm, there was no pleading of a violation of Section 1153 (d) and therefore no finding is made with respect thereto.

Many of the same arguments concerning the discharge of the Robledo brothers can be made on behalf of Aguillar with some noteable exceptions. Aguillar conceded that he had been reprimanded shortly before the union organizing began and he also had a rather spotty record with respect to being tardy. He also conceded that whenever he was out of work in the past he always telephoned to let Respondent know, as that was the policy as he understood it. Aguillar further admitted that he was due to report back from vacation on October 10 but that he did not report back until October 14 nor did he notify Respondent during any of that time.

Sachau testified that he took over as supervisor of the rose crew in June and that he was having constant difficulty with Aguillar. He stated that he was often warning him to come in on time and that he finally told Aguillar, shortly before the organizing began, that if he didn't improve that he would have to take action. One of the reasons Sachau did not take action sooner was because he was relatively new as a supervisor and because Respondent had tolerated this in the past. However Sachau credibly testified that the decision to discharge was made immediately after Dominguez informed he and Neidens that Aguillar was home and that he told Dominguez that he would return when he decided to. Sachau recommended discharge because he was already angry about the fact that Aguillar had not returned to work and they were entering into a very critical period and that Aguillar knew -that. Although Aguillar denied telling Dominguez this, I credit Neidens in this instance as he was corroborated by Dominguez, a friend of Aguillar's, and by Sachau whom I found to be a reliable witness.

Inasmuch as Respondent did have independent grounds for discipline it cannot be demonstrated that General Counsel has established that the discharge of Aguillar was in violation of the Act.

The General Counsel, in its brief, set forth some very able arguments in support of the position that direct knowledge of union activity is not a "sine qua non" for finding that an employee has been discharged for union activities, but that such knowledge can be inferred from the record as a whole. However in nearly all the cases cited by General Counsel the dischargees were very active, if not in fact the leader, in the organizational attempt. Therefore the argument in those cases was that in light of the other evidence Respondent must have been aware of the dischargee's activity. But in the instant case the alleged discriminatees did no more than sign union authorization cards. In light of this and more particularly in light of the record as a whole the evidence was insufficient for demonstrating knowledge most noteably to those who were laid off.

For the foregoing reasons I find that Respondent violated Section 1153 (a) of the Act and 1153 (c) of the Act with specific reference to the discharge of Isidro and Rudolfo Robledo.

IV. The Remedy

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 1153 (a) and (c) of the

Act, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully discharged Isidro and Rudolfo Robledo, I will recommend that Respondent be ordered to offer them immediate and full reinstatement to their former or substantially equivalent jobs.[8/] I shall further recommend that Respondent make whole Isidro and Rudolfo Robledo for any losses they may have incurred as a result of its unlawful discriminatory action by payment of a sum of money equal to the wages they would have earned from the date of their discharge to the date they are reinstated or offerred reinstatement, less their net earnings, together with interest thereon at the rate of seven per cent per annum, and that loss of pay and interest be computed in accordance with the formula used by the National Labor Relations Board in F.W. Woolworth Company, 90 NLRB 289, and Isis Plumbing and Heating Co., 138 NLRB 716.

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

The General Counsel urges that the employees be given remedial notices by means other than posting at Respondent's premises. I believe that a notice should be posted by Respondent at its facility together with the mailing of copies to each employee who worked for Respondent from September 29, 1975 to the present. Inasmuch as Respondent has a relatively high turnover rate, 35%, many of the workers employed at the time of the unfair labor practices or subsequent thereto and have left during the interim period would have no other way of being notified of the outcome of the charges. Employees should be informed of the outcome of unfair labor practice charges that occurred while they working or that occurred prior to their employment because they are interested parties, and because informing them may encourage them to participate in other Board proceedings.

8/ In a post brief communication Respondent urges that the Board has no jurisdiction to adjudicate the discharges of Isidro and Rudolfo Robledo because they are not agricultural employees within the definition of the Act. This contention was not raised at any time during the proceedings; however the evidence adduced indicated that they do perform agricultural duties and there was insufficient evidence to show that they performed duties, other than agricultural, on any regular or significant basis.

The General Counsel also urges that Respondent be ordered to award costs to the General Counsel and to the Charging Party.While it is not the general practice of the National Labor Relations Board to make such awards, the Board has yet to make any policy in this matter and it would be inappropriate to make a recommendation at this time, and I will not do so.

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

ORDER

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

1. Cease and desist from:

(a) Discouraging membership of any of its employees in the Union, or any other labor organization, by using the employment information sheets, by threatening employees with discharge or other more onerous working conditions, by illegal promise of benefits, by informing employees that it would not sign a collective bargaining agreement, and/or by deliberate misrepresentation of the Respondent's financial condition, 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 in Section 1153 (c) of the Act.

(b) In any other manner interfering with, restraining and coercing employees in the exercise of their right to self-organization, to form, join or assist labor organizations, 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 requiring membership in a labor organization as a condition of continued employment as authorized in Section 1153 (c) of the Act.

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

(a) Offer to Isidro and Rudolfo Robledo immediate and full reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights and priveleges, and make them whole for any losses they may have suffered as a result of their termination in the manner described above in the section entitled "The Remedy".

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

(c) Post in conspicuous places, including all places where

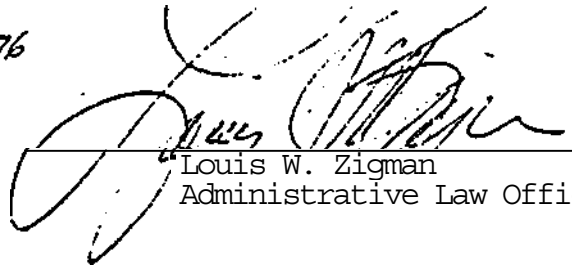
notices to employees are customarily posted, copies of the attached notice marked "Appendix". Copies of said notice shall be posted by Respondent immediately upon receipt thereo and shall be signed by Respondent's representative. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by any other material. Said notice shall be posted for a period of 60 consecutive days.Said notice shall be in English and Spanish.

(d) Mail to each employee who was employed by Respondent on or after September 29, 1975 to the present a copy of said notice to the employee's last known address. Said notice shall be in English and Spanish.

(e) Notify the Regional Director in the Salinas Regional Office, or the Executive Secretary at the Board's main office in Sacramento, within twenty days from receipt of a copy of this Decision of steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

It is further recommended that the allegations of the complaint alleging violations of Section 1153 (a) by engaging in surveillance and by acts creating the impression of surveillance, be dismissed, and that the allegations with respect to violation of the access rule and unlawful interrogation be also dismissed. It is also recommended that the allegations of violation of Section 1153 (c) with respect to the discharge of empolyee Aguillar and layoffs of employees Frias, R.Torres and P.Torres also be dismissed.

Dated: September 8, 1976



Louis W. Zigman
Administrative Law Officer

APPENDIX

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we have engaged in violations of the Agricultural Labor Relations Act, and has ordered us to notify all of our employees,including all employees hired after September 29, 1975, that we will remedy those violations, and that we will respect the rights of all of our employees in the future. Therefore we are telling each of you:

Robledo

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

(2) We will reinstate Rudolfo Robledo to his former job and give him back pay for any losses that he had while he was off work.

(3) We will not discharge employees for engaging in union activity.

(4) We will not threaten employees with discharge in order to discourage union activity.

(5) We will not urge employees who desire unionization to seek employment elsewhere.

(6) We will not give effect to the employment information sheets which were distributed in late August and early September, 1975.

(7) We will not require employees to execute agreements in which they state that unions are unnecessary at our facility.

(8) We will not threaten to cut out overtime, nor cut back on weekly hours or work on holidays in order to discourage union activity.

(9) We will not threaten to impose more onerous conditions in order to discourage union activity.

(10) We will not promise benefits in order to discourage union activity.

(11) We will not tell employees that we will never sign a collective bargaining agreement.

(12) We will not materially misrepresent our financial condition in order to discourage union activity.

All our employees are free to support, become or remain members of the United Farm Workers of America, or any other union. We will not in any other manner interfere with the rights of our employees to engage in these and other activities, or to refrain from engaging in such activities, which are guaranteed them by the Agricultural Labor Relations Act.