

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

AGRO CROP,)	
)	
Respondent,)	
)	
and)	
)	Nos. 75-CE-207-M
WESTERN CONFERENCE)	75-RC-211-M
OF TEAMSTERS,)	75-CE-3-V
)	
Petitioner,)	
)	
and)	3 ALRB No. 64
)	
UNITED FARM WORKERS)	
AMERICA, AFL-CIO,)	
)	
Intervenor.)	

An election was held on October 22, 1975 and the official Tally indicates the following results:

Teamsters 27 Votes
UFW 25 votes
Challenged Ballot 1 vote

The UFW filed timely objections and unfair labor practice charges.

A consolidated hearing was held before Administrative Law Officer Clarence Lowe, Jr. The ALO found several unfair labor practices and recommended that the election be overturned. All parties filed timely exceptions. Having reviewed the record, we adopt the ALO's findings, conclusions and recommendations to the extent they are consistent with this opinion.^{1/}

^{1/}The attached decision of the ALO has been changed from the original only to correct typographical errors on pages 3,4, and 19,

The ALO found that respondent provided unlawful assistance to the Teamsters; however, the General Counsel failed to sustain his burden to demonstrate that the conduct in question occurred after the effective date of the Act. We therefore dismiss this allegation.

The hearing officer suggested dismissal of the UFW's objections petition for failure of service, but recommended that the Board set aside the election as a remedy for the unlawful assistance. We do not think the objections petition should be dismissed. The record indicates that the UFW timely served both the petition and the detailed statement of facts on respondent's attorney. It is therefore appropriate for us to rule on the objections. We agree with the ALO that the election should be set aside; however, we base this conclusion on the merits of the objections petition.

An election observer testified without contradiction that six challenged voters were allowed to place their unsegregated ballots in the same box with the other ballots. The official Tally indicates that there was only one challenged ballot. The Teamsters won the election by two votes. There is no way to identify which ballots were in fact challenged nor is there anything on the record to indicate whether these challenges would have been overruled. In Hatanaka & Ota Co., 1 ALRB No. 7 (1975), we set aside the election where ballots sufficient in number to affect the outcome were not segregated and thus could not be counted separately and where the polls opened late and disenfranchised a significant number of voters. The Board agent's failure to segregate six ballots could have affected

the outcome of the election and thus warrants setting aside this election. It is therefore unnecessary to reach the other objections.

REMEDIES

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

(1) Respondent shall be ordered to cease and desist from:

a) Discriminating against employees in their hiring or tenure of employment because of their union activities;

b) Interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in § 1152 of the Act;

(2) The attached "Notice to Workers" shall be posted at respondent's premises for six months;

(3) The notice shall be mailed to all harvest employees who were employed by respondent in 1975 and 1976;

(4) The notice shall be read by respondent or a Board agent on company time and there shall be a period for employees to ask questions of the Board agent;

(5) Antonio Gallardo and Carmen Gallardo shall be reinstated pursuant to determination by the regional director of the appropriate period for such reinstatement;

(6) Respondent shall make Antonio Gallardo and Carmen Gallardo whole for their losses of earnings suffered by reason of the discrimination against them;

(7) Respondent shall 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 herewith. Upon request of the regional director, respondent shall notify him or her periodically thereafter, in writing, of what further steps have been taken to comply herewith.

ORDER

Respondent Agro Crop, its officers, agents, successors, and assigns, shall:

1) Cease and desist from:

a) Discouraging membership of employees in the UFW or any other labor organization by unlawfully discharging or laying off employees, or in any other manner discriminating against employees in regard to their hire, tenure, or terms and conditions of employment, except as authorized by Labor Code § 1153 (c).

b) In any other manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Labor Code § 1152.

2) Take the following affirmative action:

a) Post copies of the attached notice at times and places to be determined by the regional director. Copies of the notice shall be furnished by the regional director in appropriate languages. The respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

b) Mail copies of the attached notice in all appropriate languages, within 20 days from receipt of this Order, to all employees employed during the payroll periods

which include the following dates: 1975 and 1976 harvest seasons.

c) A representative of the respondent or a Board agent shall read the attached notice in appropriate languages to the assembled employees of the respondent on company time. The reading shall be at such time and place as is specified by the regional director. Following the reading, the Board agent shall be given the opportunity outside the presence of supervisors and management, to answer any questions employees may have concerning the notice of their rights under the Act.

d) Immediately offer Antonio Gallardo and Carmen Gallardo 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 as a result of the discrimination against them.

e) 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 herewith. Upon request of the regional director, respondent shall notify him or her periodically thereafter, in writing, of what further steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the election held at Agro Crop on October 22, 1975 be and hereby is, set aside. Dated: August 8, 1977

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

HERBERT A. PERRY, 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. This Board has told us to send out, and read 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 refuse to rehire you because of the union;

WE WILL OFFER Antonio Gallardo and Carmen Gallardo their jobs back and pay them any money they lost because we didn't rehire them.

Dated:

AGRO CROP

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.

1 Farm Workers of America, AFL-CIO (hereinafter the Farm Workers), and
2 one ballot was challenged. On October 28, 1975, the Farm Workers filed
3 objections to certain conduct affecting the results of the election
4 pursuant to Section 1156.3(C) of the Act. The Certificate of Service of
5 the Objections indicates that the Objections were served on Donald
6 Dressler for the Employer and on George Pappy for the Teamsters. Not-
7 withstanding this fact, on January 21, 1976, the Regional Director
8 ordered the Farm Workers to serve the Objections or the declarations in
9 support thereof on the other parties in this matter; January 13, 1976,
10 the Regional Director ordered the Objections Consolidated for hearing
11 with the unfair labor practice charges.
12

13
14 The unfair labor practice charges were filed by the Farm Workers on
15 December 23, 1975 and January 7, 1976. A complaint and Notice of Hearing
16 and the Order Consolidating the Cases were issued on January 21, 1976.
17 The Complaint alleges that the Employer has violated Sections 1153(a) and
18 (c) of the Act by discriminatorily laying off Belia Magana in mid-
19 September, 1975 and by demoting Antonio Gallardo from his tractor driver
20 position on October 23, 1975 because of said employees' sympathies or
21 activities on behalf of the Farm Workers. The Complaint further alleges,
22 that the Employer illegally assisted the Teamsters organizing effort by
23 its foreperson Luis Perez signing an authorization card for the Teamsters
24 and his assistance in obtaining other employees signatures for the
25 Teamsters in violation of Section 1153(b) of the Act. Although the
26 Certificate of service on the Complaint and Notice of
27
28

1 hearing indicates that it was mailed to the Employer's Santa Maria
2 offices, on January 21, 1975, the Employer has denied
3 receiving it. Thus, the Employer failed to file an answer to
4 the January 31, 1976 Complaint. 1/

5 A second notice of hearing was served on the Employer at its
6 ARROYO GRANDE, California offices on December 17, 1976. However,
7 although the Employer failed to file an answer on both of these
8 occasions, the General Counsel has not moved for Summary Judgement based
9 on the Employer's failure to answer the complaint. ^{2/} In fact, and to the
10 contrary, the Employer at the hearing entered its Answers denying the
11 violations alleged in both the Complaint and the Objections, without
12 objections. These cases were tried in Santa Maria, California on
13 January 24, 25, and 26, 1977.

22 1/ At the hearing, the Employer stated that he does not receive
23 any mail at the 1891 W. Main Street, Santa Maria, California
address.

24 2/ At the hearing the Employer acknowledged its receipt of
25 the second Complaint and Notice of hearing as served on
26 December 17, 1976, and stated that it had submitted a letter
to the Board's Sacramento office denying each allegation of that
27 Complaint. However, the Employer did not have a copy of that
letter, and the Board's Executive Secretary's office has been
unable to locate such letter.

1 visits beginning in the latter part of September and continuing
2 until the election, October 22, 1975. The Teamster's campaign
3 was significantly less vigorous. In fact, the Employers'
4 witnesses testified, without contradiction, that the Teamsters
5 has visited the Employer's fields only three (3) times before
6 the election.

7 In 1975, the Employer cultivated approximately one thousand
8 (1000) acres. Approximately four hundred (400) of those acres
9 were used to grow cauliflower; the balance of the land was used
10 to grow broccoli, beets and beans. The employer employed two (2)
11 field supervisors for its harvesting crews Esperanza Gonzales
12 and Luis Perez. 3/ These supervisors were responsible for the
13 selection, hiring and firing of the employees on their respective
14 crews.

15 A. The September, 1975 Lay-offs

16 During the peak harvest season, August, 1975, foreman
17 Gonzales employed approximately sixty (60) persons whose work
18 involved hoeing and thinning around the crops and the tying
19 of the growing cauliflower leaves to protect the plant from the
20 sun. Foreman Perez supervised from seventeen (17) to twenty (20)
21 employees whose job was principally to cut and harvest the
22 matured produce. 4/
23
24

25 3/ The Parties stipulated and I find that these persons are and
were supervisors within the meaning of the Act.

26 4/ The cutting operation involves the use of a tractor which
27 pulls a bin down the rows of crops into which the employees
place the harvested produce. Once the tractor reaches the
28 end of a row, an employee turns it and re-directs it down
another row. That employee is called a trailer-puller. The

1 Belia Magana was hired by foreperson Gonzales on July
2 17, 1975 to work on the Gonzales crew. Prior to 1975, Magana
3 had worked on foreperson Gonzales¹ crews in 1973 from June
4 until the end of the season, and in 1974 from July 11 until
5 September 13. Unlike many of the harvest workers, Magana is
6 a full-time resident in the area, residing in Guadaloupe,
7 California, only five (5) miles from Santa Maria, California.

8 On September 11, 1975, during one of the Farm Workers'
9 organization visits to the Employer's fields, Magana signed an
10 authorization card for the Union. 5/ Magana was not an active
11 supporter of the Farm Workers. Her only overt act of support
12 was her signing the authorization card. However, Magana
13 testified that forewoman Gonzales observed her signing the
14 Farm Worker card.

15 On September 12, Magana was informed of her lay-off by
16 forewoman Gonzales, and she was told that she would be re-
17 called to work within a short period of time. Magana testi-
18 fied that Gonzales did not state the reason for her lay-off.

19
20
21
22 4/ contd.- trailer puller position is the position from which
23 the Employer allegedly demoted Antonio Gallardo in October, 1975,
24 5/ The General Counsel offered two authorization cards containing
25 Magana's purported signatures. Magana testified that
26 she signed General Counsel's exhibit 5 on September 11, 1975
27 while still in the Employer's employ and that General Counsel's
28 4 was signed for her during a Farm Worker organizer's visit
to her home, while she was taking a bath. Magana testified
that she could tell the difference because the handwriting
on General Counsel's 4 was too good to be her own. I accept
this explanation and credit the witness's testimony on this matter.

1 Magana was not recalled to work after her lay-off in 1975.

2 According to her testimony, Magna did not apply to the
3 Employer for work in 1976 because of a friend of her's
4 Alicia Ruiz Perez, had requested work for both of them to fore-
5 woman, Gonzales and had been told that there weren't any openings.

6 As regards the lay-off of Magna, Gonzales testified that
7 in Mid-September, 1975 she laid off over half of her crew, and
8 that she informed the employees that the lay-off was because
9 of a lack of work. The balance of her crew was laid off with-
10 in a short period of time because they had caught up in the
11 tieing of the cauliflower and had to wait for the next crop to
12 come in. Gonzales stated, without contradiction, that the lay-
13 offs are normal in the early fall during the Employer's harvest
14 season.

15 Gonzales testified the she took a two (2) week vacation
16 during the 1975 lay-off, and that she has regularly used this
17 period for her vacations. Gonzales also denied having any
18 knowledge concerning Magana's Union sympathies.

19 Paragraph 5(a) of the Complaint alleges that Magana was
20 laid off out of line of her seniority because of her support
21 for the Farm Workers. However, at no time during the trial of
22 this case did the General Counsel produce any evidence to
23 indicate the seniority of those employees who had been
24 retained by forewoman Gonzales crew after Magana's lay-off.
25 In fact, Gonzales testified without contradiction, that she
26 laid off her entire crew in September, 1975.

27 The General Counsel urges the fact that Magana had signed
28 an authorization card for the Farm Workers as a basis for

1 finding anti-union animus in Magana's lay-off. The facts,
2 however, indicate that although Magana signed a Farm Worker
3 card while on the Employer's premises, so did a number of her
4 co-workers, at the same time.
5 Even if we assume, in the face of Gonzales denial, that
6 Gonzales had known that Magana was a Farm Worker supporter,
7 that fact would not, perforce, require an inference that Magana
8 was laid off because of her Farm Worker sympathies. The facts
9 adduced at trial show that Gonzales laid off her entire crew in
10 mid-September because of a lack of work for that crew.

11 The General Counsel has the burden of proving by a pre-
12 ponderance of the evidence that Magana's lay-off was motivated
13 by anti-union animus. DSL Mfg. Inc. 202 NLRB 970(1973) 82
14 LRRM1812; Industrial Products, Inc. 216 NLRB No. 24(1975),
15 88LRRM 1648. In proving such motivation, the General Counsel
16 is not required to produce direct proof of the employer's state
17 of mind, but may rely upon circumstantial evidence. Lapeer
18 Metal Products Co., 134 NLRB 1518(1961) 49 LRRM 1380; Standard
19 Dry Wall Products, Inc. (CA-3, 1961) 188 F.2d 362, enforcing
20 91 NLRB 544. However, such indirect circumstantial evidence
21 must be substantial and sufficient to support an inference of
22 discriminatory motivation of the employer charged with having
23 violated the Act. NLRB v. FORD RADIO S MICA CORP. (CA-2, 1958)
24 258 F.2d 457, 42 LRRM 2620 denying enforcement to 115 NLRB 1046;
25 European Cars Ypsilanti, Inc. 136 NLRB 1595 (1962), 50 LRRM
26 1058; Phillips & Buttorff Mfg. Co. 96 NLRB 1091 (1951), 29 LRRM
27 L)). In view of the foregoing, I find that the General Counsel
28 has failed to carry his burden of proof on this issue, and I,

1 accordingly, find that Magana's lay-off proper.

2 At the beginning of the hearing in this case, the General
3 Counsel moved to amend paragraph 5(a) of the Complaint to
4 include the names of Alicia Ruiz Perez and Jose Perez as
5 additional alleged discriminatees. I will permit the Amend-
6 ment and, treat it as denied by the Employer. I am granting
7 the amendment because the amendment relates directly to alle-
8 gations which were made in the original Charges, and because
9 the Employer was given an opportunity and did present contra-
10 dicting evidence in support of its position that the lay-offs
11 were lawful. Moreover, the Employer did not claim to be pre-
12 judiced in its ability to defend against the proffered amend-
13 ment, and these issues have been fully litigated at trial.
14 Starkville Inc. 219 NLRB No. 118 (1975), 90 LRRM 1154; NLRB v.
15 DINION COIL CO. (CA-2, 1952) 201 f.2d 484, 31 LRRM 2233, en-
16 forcing 96 NLRB 1435; NLRB v. JACK LA LANNE (CA-2,1976) 539
17 F.2d 292, 92 LRRM 3601, enforcing 218 NLRB No. 134, 89 LRRM
18 1836; Majestic Metal Specialties, Inc. 92 NLRB 1854 (1951),
19 27 LRRM 1332.

20 Alicia Ruiz Perez worked for the Employer from July 14,
21 1975 until September 2, 1975. During one of the Farm Worker's
22 visits to the Employer's fields Alicia signed an authorization
23 card for the Farm Workers. Alicia testified that she did not
24 actively engage in campaigning for the Farm Workers, and that
25 her signing the authorization card was the only Union activity
26 that she had engaged in. Alicia also testified that Gonzales
27 had not been present when she signed the card. However, Alicia
28 stated that Doris Noonez, a leadwoman on her crew had observed

1 her signing the Farm Worker card. 6/ As a result of this alleged threat,
2 and despite the fact that she had wanted to work until the end of the
3 harvest season, Alicia quit her job with the Employer on September 2,
4 rather than be laid off. After quitting the job Alicia immediately returned
5 to Mexico, and did not again
6 seek work with the Employer until the summer of 1976.

7 In July 1976, Alicia applied for work to foreperson
8 Gonzales. Alicia was told that there was no available work
9 because the Employer had planted less cauliflower than in the
10 year before. 7/ Accordingly, Alicia was not hired by the employer
11 in 1976.

12 Foreperson Gonzales denied having had any conversation
13
14
15
16
17
18
19
20
21
22

23 6/ During the hearing extensive testimony was taken on the issue
24 of whether Noonez was a supervisor within the meaning of the
25 Act. In view of my ruling on the issue of Alicia's alleged
26 lay-off, I will not rule on this issue.

27 7/ Alicia testified that she had applied for work twice in
28 1976, once by telephone to Gonzales in June and again in
person in July. However, Gonzales testified that Alicia
applied for work only one time in 1976. In view of my
ruling concerning events occurring in 1976 involving Alicia and
Magana, it is not necessary for me to resolve the credibility
issue posed by this conflicting testimony.

1 with Alicia concerning employers signing cards for the Farm Workers.
2 According to Gonzales, Alicia informed Gonzales that she and her sister
3 were quitting because they wanted to return to to Mexico. Gonzales also
4 testified that it had been Alicia's practice in the past two years to
5 quit work in the early fall of the year.

6 By her own testimony, Alicia admits and I find that she voluntarily
7 quit her job on the Employee's crew on September 2, 1975. The General
8 Counsel urges/ however, that Alicia's quitting was caused by forewoman
9 Gonzales' statement to Alicia wherein Gonzales told Alicia of her intent
10 to lay-off those employees who had signed cards for the Farm Workers. I
11 do not credit Alicia's testimony concerning this alleged conversation.
12

13 First of all, it is manifestly clear from the record evidence
14 that Alicia normally quit her job on the Employer's crews in the
15 early Fall and returned to Mexico. 8/

16 After quitting her job in September, 1975, Alicia followed her
17 usual practice and returned to Mexico. In light of the above, I am not
18 convinced by Alicia's testimony that she had intended to work at the
19 Employer's fields until the end of the 1975 season. If she had had such
20 intent, it would appear that she would have worked until being laid off.
21

22 To draw a contrary conclusion would require the
23 unreasonable finding that Alicia had quit before being laid off because
24
25

26
27 8/ Alicia's work record with the Employer was as follows: 1973, from July
28 30 until September 18, 1974 from July 15 until August 24, and 1975 from
July 14 until September 2.

1 she feared being laid off. Prior to this time, Alicia had
2 been, for the past three years, a seasonal farm worker.
3 Surely, in that period of time she had experienced being laid
4 off. It is therefore an unwarranted inference to find that
5 she was afraid of being laid off by the Employer in 1975.
6 Accordingly, I find that forewoman Gonzales did not threaten
7 Alicia as above discussed, and I find that Alicia's resignation
8 from her job with the Employer in September, 1975 was a
9 voluntary act in accord with her previous work history with the
10 Employer.

11 Although the General Counsel sought to amend the Complaint
12 to allege that Jose Ruiz had been unlawfully laid off, no
13 evidence was offered in support of this allegation. Inasmuch as
14 this allegation is presumptively denied, I find that Jose Ruiz
15 was properly laid off. DSL Mfg. Inc., supra.

16 The Employer concedes that it re-called certain employees
17 after its September, 1975 lay-off. It is also clear that the
18 Employer did not recall Magana after that lay-off. In fact,
19 Magana has not worked for the Employer since her lay-off.

20 The General Counsel urges that the Employer be found
21 guilty of violating Section 1153(c) of the Act by it's
22 failure to recall Magana and Alicia Ruiz following the
23 September, 1975 lay-off and by the Employer's failure to employ
24 them in the 1976 season. Though both of the Charges underlying
25 this Complaint raised allegations of illegal discrimination
26 the Employer's recall of workers following the September, 1975,
27 lay-off, the alleged discriminatory refusals to recall Magana
28 and Alicia Ruiz Perez were not raised in the Complaint.

1 Notwithstanding this fact, these issues were, in fact, litigated
2 by the Parties at the trial of this case. Under the circum-
3 stances, it would have been proper to amend the Complaint to
4 include such allegations. Starkville Inc., Supra.

5 Even though the Employer's failure to rehire Magana and
6 Alicia during the 1976 season occurred after the Complaint had
7 been issued, the Complaint could have been amended to include
8 additional Allegations of unlawful interference and discrimina-
9 tion because such amendments would have involved similar and
10 related acts occurring after the Charges, and they would not
11 have involved allegations of the violation of previously
12 unmentioned provisions of the Act. Marine Cooks & Stewards
13 (Pacific American Shipowners Assoc.) 60 NLRB 1099 (1950), 26
14 LRRM 1316; NLRB v. FANT MILLING CO. (US Sup Ct, 1959) 360 US
15 301 44 LRRM 2236 reversing 258 F.2d 851, 42 LRRM 2566; NLRB v.
16 ANCHOR ROME MILLS, INC. (CA-5,, 1956) 228 F.2d 775 37 LRRM 2367
17 enforcing 110 NLRB 956, 35 LRRM 1172.

18 However, General Counsel has not moved to amend the
19 complaint to encompass the Employer's alleged discriminatory
20 failure or refusal to recall Magana and Alicia Ruiz in 1975
21 or to rehire them for the 1976 season. I therefore, will not
22 rule on those issues because they are not properly before me.
23 Glasgow Industries, Inc. 210 NLRB 121 (1974) 86 LRRM 1203;
24 American Motros Corp. 214 NLRB 455 (1975) 87 LRRM 1393; Florida
25 Steel Corp. 224 NLRB No. 8 (1976), 92 LRRM 1266.

26 B. THE ALLEGED ILLEGAL ASSISTANCE

27 As stated earlier, foreman Luis Perez was the foreman
28 over the Employer's cutting crew. During the trial of this

1 case, two employee members of that crew testified and foreman
2 Ruis admitted the following sequence of events: In late July or
3 early August, 1975, at about 2:30 p.m., organizers for the
4 Teamsters Union came into the fields where Perez's crew, about
5 17 employees were working. Upon seeing the organizers, Perez
6 stopped his crew from working and allowed the Teamsters to
7 talk with the employees and solicit their signatures to
8 authorization cards. Perez himself signed a Teamster card
9 during this incident in plain view of the employees on his
10 crew. Other employees signed Teamster cards during this
11 interruption including the Employer's witness, Miguel Sanchez.
12 The Farm Worker's witness, Patricio Flores, testified that he
13 observed Perez signing the Teamster card during this incident,
14 and that Perez had urged to him to come down to where the
15 Teamster organizers were assembled with the other workers
16 during this interruption.

17 This is a clear violation of Sections 1153(a) and (b)
18 of the Act. By permitting the Teamsters to come into the
19 fields during the employees working time and to solicit
20 authorization cards on such occasion, foreman Perez clearly
21 rendered illegal assistance to the Teamster's organizing efforts,
22 Howard Creations, Inc. 212 NLRB 179 (1974) 87 LRBM 1466; Senco
23 Inc., 177 NLRB 882. By urging employee Flores to come and talk
24 with the Teamster organizers, I find that Perez was soliciting
25 employee Flores to sign a Teamster authorization card in viola-
26 tion of Sections 1153(a) and 1153 (b) of the Act. Seaview Manor
27 Home, 222 NLRB No. 94, 91 LRJRM 1198? Vic's Shco 'n Save, 215
28 NLRB No, 25, 88 LRRM 1478. Moreover, I find that foreman's

1 Perez's act in signing a Teamster card, under these circumstances,
2 and in full view of the employees whom he supervised constituted
3 a separate violation of Sections 1153(a) and (b) of the Act.
4 The coercive effect upon an employee reviewing this act while
5 being requested by a Teamster Agent to sign a card, while in
6 full view of foreman Perez, cannot be challenged.

7 C. THE ALLEGED DISCRIMINATION AGAINST
8 ANTONIO GALLARDO AND HIS DAUGHTER
9 CARMEN

9 In paragraph 5(d) of the Complaint, the General Counsel
10 alleged that the Employer had discriminated against Antonio
11 Gallardo because he had served as the Farm Worker's Observer
12 in the election by demoting him from the tractor-puller job.
13 However, the record evidence indicates that Gallardo only per-
14 formed this work three (3) times in 1975, and all three of
15 those occasions occurred after the election, i.e. on October 30,
16 November 6 and 7. Accordingly, I find that Gallardo was not
17 discriminated against in the assignment or tractor-puller work
18 as charged in the Complaint.

19 At the hearing, I permitted the General Counsel to amend
20 the Complaint to allege that in February, 1976, and continuing
21 thereafter, the Employer discriminated against Antonio Gallardo
22 and Carmen Gallardo by refusing to employ them for the 1976
23 season. I granted such permission even though the alleged
24 conduct had occurred after the Complaint had been issued
25 because the facts concerning the alleged violation were
26 completely within the Employer's knowledge and involved the
27 same witnesses who were needed and scheduled to testify con-

1 cerning the original Complaint Majestic Metal Specialties, Inc.,
2 supra. Moreover, the Employer did not claim prejudice to its
3 ability to defend against the amendments, and the amendments did
4 not allege violations of previously unmentioned provisions of
5 the Act. Pacific American Shipowners Assn., supra.

6 Antonio Gallardo has a .long history of working for this
7 Employer, going back to 1965*, when he was fired for drinking on
8 the job. He didn't work for this Employer again until 1972.
9 Since 1972, Gallardo has worked each season for this Employer,
10 and his periods of such employment are:

11 March 1, 1972 until November 5, 1972
12 April 9, 1973 until November 3, 1973
13 February 21, 1974 until November 2, 1974
14 September 9, 1975 until November 18, 1975.

15 During the Union campaign of 1975, Gallardo was an open
16 supporter of the Farm Workers. He wore a Farm Worker button,
17 and passed out Farm Worker literature to other employees while
18 on the Employer's premises, and he distributed Farm Worker
19 leaflets at retail stores in the area on the weekends. Antonio
20 also served as the Farmer Worker observer at the October
21 election held among the Employer's employees. Antonio's
22 supervisor in 1975 was forewoman, Gonzales.

23 Both Gonzale's and the Employer's owner, Sanbonmatsu admit
24 that they knew of Antonio's union sympathies.

25 Antonio worked until the end of the 1975 season. However,
26 when he and his daughter applied for work at this Employer
27 for the 1976 season they were not rehired.

28 Carmen Gallardo is Antonio's daughter. She, too, has
regularly worked for this Employer, and her periods of such

1 employment are as follows:

2 November 5, 1972 until November 19, 1972
3 October 10, 1973 until November 3, 1973
4 March 6, 1974 until November 2, 1974
5 July 5, 1975 until November 18, 1975

6 Gonzales was also Carmen's supervisor. In fact Gonzales
7 had hired both Antonio and Carmen in 1974 and 1975.

8 In February or March, 1976 Antonio and Carmen Gallardo
9 asked forewoman Gonzales for a job for 1976 season. Gonzales
10 told the Gallardos that she didn't have authority to hire them,
11 and that they would have to talk with the owner, Sanbonmatsu.
12 The Gallardos went directly to the Employer's offices where
13 Carmen, who speaks fluent English, then repeated the request for
14 jobs for herself and her father to Mr. Sanbonmatsu. According
15 to Carmen's testimony, Sanbonmatsu refused to hire them saying
16 that he didn't have work for them, and that he didn't plan to
17 plant much cauliflower in 1976. Carmen further testified that
18 during this conversation, Sanbonmatsu mentioned the fact that
19 her father had been named in 'Unfair Labor Practice Charges
20 filed against the Company by the Farm Workers.

21 Gonzales admitted refusing to hire the Gallardos and
22 referring them to Sanbonmatsu, but she denied telling them that
23 she didn't have authority to hire them. Gonzales explains her
24 actions regarding the Gallardos by stating that she was having
25 personal problems, and that she was considering quitting her job
26 at the time. However, Gonzales didn't quit her job, and she
27 admits that she hired other people for her crew after the
28 Gallardos had applied for work.

Sanbonmatsu admits refusing to hire the Gallardos, but
denies mentioning the Unfair Labor Practice Charges.

1 Sanbonmatsu also admits that he didn't advise or request that
2 Carmen and or her father re-apply for work at a later time in
3 the season. He explained this omission by stating that he
4 thought that it would be better for them to stay wherever they'd
5 be able to locate steady work.

6 Sanbonmatsu testified that he had decided to reduce his
7 crop of cauliflower by fifty percent (50%) in the 1976 season
8 because he had not been satisfied with the market price of
9 cauliflower. This decision significantly reduced his need for
10 workers because the crops which he increased in his acreage
11 did not require as much manual labor as cauliflower. For
12 example, beets are harvested by a digger machine and truck, and
13 beans are harvested by machine.

14 Carmen Gallardo testified that although she doesn't know
15 how much work the Employer had when she applied for work;
16 the Employer usually started thinning the crops in March or
17 April of each year. The Employer admits that the Broccoli harvest
18 season for 1976 began in February of that year. Although,
19 Gonzales admitted that she hired additional employees for her
20 crew after the Gallardos had applied for work, no evidence was
21 offered to show exactly when Gonzales hired her next worker in
22 1976 or the number of workers hired at that time.

23 In my view, evidence concerning the date and number of
24 the next workers hired by Gonzales is unnecessary. It is
25 apparent to me that the Employer disregarded its normal hiring
26 procedures when confronted with the applications of Carmen and
27 Antonio Gallardo, and I am not persuaded of the necessity for
28 that deviation as testified to by Gonzales. Throughout his

1 testimony Sanbonraatsu repeatedly stated that he did not hire
2 employees for his harvest crews. He also repeatedly deferred
3 answering questions about the Employer's hiring practices by
4 explaining that his supervisors handled such matters. Notwith-
5 standing these facts, he elected to pass on the Gallardos'
6 applications. Moreover, Sanbonmatsu admitted that he had
7 received the Unfair Labor Practice Charges from both the Board
8 and the Union; (It might be noted that the Union had addressed
9 the Charges to the Employer's 1891 West Main Street, Santa Monica
10 address) he also admitted discussing those charges with the
11 Board's investigating agent in January, 1976. In view of the
12 short period of the Board's existence, and its controversial
13 nature, it is more than conceivable that Sanbonmatsu remembered
14 and mentioned those charges in his conversation with Carmen
15 Gallardo.

16
17
18
19
20
21 Accordingly, I will credit Carmen's testimony concerning her
22 conversation with Sanbonmatsu.

23 Gonzales testified that she had disavowed having authority
24 to hire the Gallardos because she was considering quitting her
25 job. Sanbonmatsu testified, however, Gonzales had the
26 authority to hire the Gallardos when they applied. Yet is is
27 not explained why their applications had to ereferred to him
28 During her testimony concerning this incident, Gonzales was,

1 | in my opinion extremely evasive. Her demeanor while testifying
2 | on this matter was agitated and nervous unlike the confident,
3 | forthright demeanor which she exhibited when testifying on
4 | other matters including the times when she admitted engaging
5 | in certain conduct complained of in the Objections. Gonzales
6 | has been employed by this Employer since 1961, and she has
7 | been hiring workers for this employer for at least three (3)
8 | years. Having exercised this authority, and knowing the
9 | Employer's needs, there is absolutely no reason given regarding
10 | why she would defer hiring employees for her crew to Sanbonmatsu
11 | as she did in the Gallardos' case.

12 | Sanbonmatsu admitted that he suspected that Carmen Gallardo
13 | was a Farm Worker supporter; Gonzales admitted knowing of
14 | Carmen's Union sympathies. It is apparent that both knew of
15 | Antonio's activities as Observer for the Farm Workers in the
16 | election.

17 | Prior to the hearing of this case, General Counsel had
18 | subpoenaed the Employer's payroll records. Copies of the
19 | payroll records for 1975, Employer's Exhibit 2 and for 1976,
20 | Employer's Exhibit 3 were admitted into the record. Having
21 | reviewed those records, I can only conclude that they are
22 | incomplete. The records purport to show the entire crews
23 | supervised by forewoman Gonzales during the Employer's August
24 | peak season of both years. However, the 1975 record, Exhibit
25 | 2 doesn't contain Antonio Gallardo's name, and there is no
26 | pte that he worked on the Gonzales crew. The 1976 record,
27 | Employer's Exhibit 3 purports to contain the names of Gonzales's
28 | crew on the first two (2) sheets of that document. Thirteen

1 of the names on the second page are repeat entries off the
2 first page. Moreover, of the two (22) people shown to be
3 employed on Gonzales crew during August, 1976, twelve (12)
4 of them are not shown as having worked on her crew in the
5 previous year.

6 Although I am mindful o-f the fact that we are dealing,
7 here, with migratory seasonal workers, I am impressed with the
8 astonishment shown by Mr. Sanbonmatsu when he was shown the
9 composition of the 1976 crew. Sanbonmatsu admitted that it
10 would be unusual for him to find seven (7) new names out of a
11 crew of twenty (20) people.

12 Sanbonmatsu also testified that he visited his fields
13 everyday. In view of that fact, I would expect that he would
14 have noticed the number of new people being hired by his super-
15 visors. Nevertheless, he admitted that his supervisors normally
16 give preference to their former employees when hiring workers
17 for the new season. Even if there were no work available when
18 the Gallardos applied, and I don't think that there is suffi-
19 cient evidence to so find, it would appear that the Employer
20 would have deferred to its established policy by either
21 advising the Gallardos when work would be available or advising
22 them to apply later. I can only conclude that the Employer's
23 deviation from its established hiring policy and procedure
24 in the Gallardos' case was because of the Gallardos sympathies
25 and prior activities on behalf of .the Farm Workers and in order
26 to chill such support or similar activities in violation of
27 Section 1153(a), and (c) of the Act. Gould, Inc., 222 NLRB No. 28
28 (1976) 91 LRRM 1223.

1 It is true that the Employer rehired Patricio Flores in
2 the 1976 season. That fact alone doesn't rebut the inference
3 or discrimination caused by the Employer's actions towards
4 the Gallardos. Reserve Supply Corp. of Long Island, Inc.,
5 140 NLRB 330 (1962) 52 LRRM 1012, enforced (CA-2, 1963) 317 F.2d
6 785, 53 LRRM 2374. Flores quit his job before the election and
7 didn't vote, and he wasn't the Farm Workers Observer. To chill
8 union activity it's not necessary for the Employer to refuse to
9 re-hire every laid-off Union adherent. Such discouragement can
10 be accomplished by making an example of some of them.
11 NLRB v. SHEDD-BROWN Mfg. Co. (CA-7, 1954) 213, F.2d 163, 34
12 LRRM 2278, enforcing 103 NLRB 905, 31 LRRM 1591; NACHMAN CORP. v.
13 NLRB (CA-7), 1964) 337 F.2d 421, 57 LRRM 2217, enforcing 149
14 NLRB 23, 55 LRRM 1249.

15 III. The Objections

16 As noted earlier in this Decision, on January 21, 1976 the
17 Director for the Salinas region ordered the Farm Workers to
18 serve the Objections or Declarations in support thereof on the
19 other parties in this matter. However, the Employer denies
20 being served in accord with that order. Neither the General
21 Counsel nor the Farm Workers have offered any proof to rebut
22 the Employer's denial of service. Under the circumstances,
23 it is my conclusion that the Objections should be dismissed
24 because the Farm Workers have failed to properly file them in
25 accord with Section 20365 of the Board's regulations.
26 Interharvest, Inc. 1 ALRB No. 2; Fulton Instrument Co., 196
27 NLRB 213, (1972) 79 LRRM 1661; Warner Brake & Clutch, PSI Div.,
28 194 NLRB 499(1971) 78 LRRM 1688.

1 Notwithstanding my dismissal of the Objections, it is my
2 conclusion that the Election should be set aside. I draw this
3 conclusion because it is my finding that foreman, Perez's illegal
4 assistance to the Teamsters during their organizing campaign illegally
5 interfered with the election in this case. Mission Tire and Rubber Co.,
6 208 NLRB 84 (1974) 85 LRSM 1550.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 IV. Recommended Order

2 For the reasons discussed above, I recommend that the
3 following Orders be issued by the Board in this matter:

- 4 1. That allegations numbers 5(a) and 5(d) of the Complaint
5 and the Objections to the Election be dismissed in their
6 entirety;
- 7 2. That the Board refuse to Certify the results of the
8 October 22, 1975 Election and order that a new election
9 be held at the Employer's premises in its peak harvest
10 season of 1977;
- 11 3. That the Employer be ordered to place the names of
12 Antonio and Carmen Gallardo on a preferential hiring
13 list for the 1977 season for employment on the first
14 available open positions consistent with their skills
15 and availability;
- 16 4. That the Employer be ordered to pay back-pay to Antonio
17 and Carmen Gallardo, less their interim earnings,
18 computed quarterly starting on the date that they were
19 first refused employment by the Employer in 1976 until
20 the date on which the last seasonal harvest worker
21 worked for this Employer in the 1976 harvest season;
22 That the Employer be Ordered to Cease and Desist
23 engaging in Conduct violative of the Act;
24 That the Employer be Ordered to mail the following
25 Notice to all harvest employees whom it employed in
26 1975; and to read it at an assembled meeting of its
27 harvest employees at a time and place to be determined
28 by the Board, and to post the said Notice in its Offices

1 and on All employee bulletin boards from July 1, 1977
2 until November 1, 1977:

3 NOTICE
4 TO ALL EMPLOYEES

5 THE STATE AGRICULTURAL LABOR RELATIONS BOARD HAS FOUND
6 THAT AGRO CROP HAS VIOLATED "CERTAIN PROVISIONS OF THE STATE'S
7 AGRICULTURAL LABOR RELATION'S ACT. THEREFORE, THE MANAGEMENT
8 OF AGRO CROP HAS BEEN ORDERED TO ADVISE YOU OF THE FOLLOWING
9 MATTERS.

10 OUR EMPLOYEES ARE FREE TO FORM OR JOIN OR ASSIST ANY
11 LABOR UNION WHICH THEY DESIRE TO REPRESENT THEM FOR THEIR JOBS
12 WITH THIS COMPANY.

13 NO MEMBER OF THE MANAGEMENT OR SUPERVISION OF AGRO CROP
14 WILL INTERFERE WITH YOUR EXERCISE OF THOSE RIGHTS; NOR WILL
15 ANY MEMBER OF MANAGEMENT GIVE ANY UNLAWFUL ASSISTANCE TO ANY
16 UNION WHICH IS SEEKING TO REPRESENT YOU.

17 WE WILL EMPLOY CARMEN AND ANTONIO GALLARDO ON THE FIRST
18 AVAILABLE JOBS CONSISTENT WITH THEIR SKILLS AND AVAILABILITY
19 IN THE 1977 SEASON.

20 WE WILL ALSO PAY BACK-PAY TO BOTH CARMEN AND ANTONIO
21 GALLARDO FOR THE WAGES WHICH THEY LOST BECAUSE OF OUR REFUSAL
22 TO EMPLOY THEM IN THE 1976 SEASON.

23 Agro Crop

24 This Decision and the foregoing "Recommended Orders are hereby
25 hereby respectfully submitted.

26
27
28



CLARENCE LOWE, JR.
Ad hog Administrative
Law Judge