

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

JACK T. BAILLIE CO. , INC. ,	)	
	)	
Respondent ,	)	Case No. 75-CE-234-M
	)	
and	)	3 ALRB No. 85
	)	
UNITED FARM WORKERS OF AMERICA ,	)	
AFL-CIO ,	)	
	)	
Charging Party.	)	

---

DECISION AND ORDER

Pursuant to the provisions of Labor Code Section 1146, the Board has delegated its authority in this matter to a three - member panel.

On April 5, 1977 the attached decision of Administrative Law Officer (ALO) Mark E. Merin in this proceeding was issued. Thereafter, Respondent and the General Counsel filed timely exceptions and a supporting brief and the General Counsel filed a brief in answer to the Respondent's exceptions.

The Board has considered the record and the attached decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO only to the extent consistent with this opinion.

The ALO found that the Respondent's layoff of its hoeing-thinning and celery transplanting crews, totaling 67 persons, on August 28, 1975, violated §§ 1153 (c) and (a) of the Act. As we do not find adequate support for the ALO's conclusion we shall

order that the complaint<sup>1/</sup> be dismissed in its entirety.

The General Counsel contends that the company, aware of organizing activity among its employees in the summer of 1975, and with knowledge that the crews at issue here were overwhelmingly supportive of the UFW, laid the crew members off for that reason. The General Counsel further maintains that the action was taken to preclude the employees' eligibility in any election which might be scheduled, or if they be ruled eligible, in the hope that the impact of migratory employment patterns and economic need would disperse these voters, thereby assuring a low election turnout among this group.

We find that the company was aware that UFW organizing activity was taking place among its employees in the summer of 1975. Indeed, it was conceded by the Respondent that its supervisory personnel believed these two crews to be 90-100% supportive of the UFW. Clearly identifiable employee-organizers were operating in the two crews. There is also no doubt that the company was anticipating an election in September, 1975; pay checks distributed to those laid off on August 28th and those paid for the payroll period ending September 3, 1975, contained the notation "Keep this stub as identification for election". An election was in fact conducted on September 17, 1975. The turnout of those in the laid-off crews was substantially lower than that among the employees still working on the day of the election. Only 40.3% of

---

<sup>1/</sup>The complaint alleged several independent violations of § 1153 (a) of the Act, all of which occurred prior to its effective date. As the ALO properly concluded, these pre-Act incidents could not constitute unfair labor practices. The events themselves are, however, evidence which may be properly considered in the resolution of the remaining allegations of the complaint.

the laid-off employees in these crews voted; while among those employed on the day of the election there was a 77.9% turnout.

Beyond the realm of the above facts there is substantial dispute. On the record as a whole, however, we find that the evidence shows that the layoff was motivated by economic considerations. Specifically, there is no evidence that after August 28th there was any work for the celery planting crew and, on balance, the evidence is that there was insufficient hoeing and thinning work to justify the retention of that crew. Documents introduced at trial disclose that in 1973 the last day of celery planting for the company was August 21st; this was also true in 1974. In both 1975 and 1976 the planting ceased on August 28th. We therefore find no basis for the ALO's conclusion that in 1975 the company ceased its celery planting operations earlier than usual. Nor is there evidence to support the ALO's finding that the company ceased planting earlier than was required to achieve compliance with the county disease control ordinance which forbade celery above ground in January. Moreover, while the ALO failed to distinguish between the two groups of workers in his analysis, it is clear to us that they must be separately considered. The evidence is that after August 28, 1975, pursuant to a seasonal pattern which appears independent of the passage of the ALRA, there was no more work for the celery planting crew. No replacements were hired to perform this function.

Insofar as the hoeing and thinning crew are concerned, the issue is more ambiguous. Here, the record shows that in other relevant years there has been thinning and hoeing after the date

of this layoff. Yet the company's explanations of this fact - that there was some change of crops over this period of time, that one season had more rainfall, requiring more weeding than others, that there had been a switch to a greater proportion of transplanted celery (requiring no thinning and comparatively less weeding) during this period, that there were contractual agreements in other years which were not present in 1975 - remain substantially unchallenged by the General Counsel's evidence. Moreover, despite speculation regarding how the company might have manipulated the layoff of these workers by failing to order weeding which was required by sound agricultural practice, there is no evidence that the weed problem encountered by the celery harvesters in 1975 was greater than in other comparable years.

The ALO found on the basis of an employee's testimony that Respondent's supervisor Ramos told crew members in mid-August 1975, that the company had hired a labor contractor to insure that the work would be completed before an election could be scheduled. Ramos denied making such a statement. While we accept the ALO's credibility determination that such a conversation did occur, because of other evidence we do not agree that the statement by itself is sufficient to establish the fact for which it was offered. Documentary evidence shows that in 1973 the company utilized labor contractor crews more often than during the comparable period in 1975, although the average size of the crews was slightly smaller than in 1975. In 1974, contractor crews were used with the same frequency as in 1975, but the average crew was larger. In 1976 the company utilized labor contractors three times as frequently as in 1975, but the average crew size was significantly smaller.

The total of this evidence, including the credited testimony set forth, above, does not preponderate in favor of the conclusion that the employer utilized labor contractors in August of 1975 to accomplish a work speed-up.

The ALO additionally found that on August 28, 1975, Ramos falsely told the laid-off employees that the labor camp was closing and that they should vacate immediately. We find that Ramos said, as testified to by the General Counsel's witnesses, that the camp was going to be closed and he was going to take them to the store to buy food. This is not inconsistent with the testimony of Ramos, corroborated by portions of the testimony of the UPW organizer Franco, who had himself lived at the Baillie camp in years prior to 1975. These witnesses established that while by custom it was possible to stay in the Respondent's labor camp after work had ended, food would not be provided. Each occupant had to separately pay for it, procure it elsewhere, or make some arrangement with the cook. When juxtaposed with this other evidence, the ALO's conclusion that Ramos falsely told the employees the camp was going to close is not supportable.

The ALO also found that in August, 1975, Ramos threatened workers with firing if they were supporters of Chavez, that is, the UFW. Ramos ordered the crew to continue working past the normal quitting time so that the field they were working on could be finished that day. Pete Gonzalez, recognized by all as an inside organizer for the UFW and vocal in his support for that union, refused to stay late, together with his wife, on the ground that they had a personal appointment which they had to honor. They walked out of the field. The rest of the crew stopped working and

watched them depart. When it became clear to Ramos that the crew was not going to continue to work he stated "Well, since you are just standing around anyway, you might as well go home. All you are doing is standing by, looking at that striker and that Chavista. And you know what is really going to happen? The outcome is the rancher is going to fire all of you". The crew stopped work for the day. In the context in which it occurred, this statement does not, in our view, constitute a threat to fire UFW supporters. The Gonzalezes' refusal to work was the result of purely personal commitments which they chose to honor. It was not an exercise in concerted activity. It appears that the reference to him as a "Chavista" or striker was descriptive of his well-known status, not a threat to others in the crew.

In view of the above findings, we conclude that the allegations in the complaint have not been established.

Accordingly, pursuant to Labor Code § 1160.3, it is ORDERED that the complaint in its entirety be, and it hereby is, dismissed.

DATED: November 22, 1977

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

ROBERT B. HUTCHINSON, Member

STATE OF CALIFORNIA  
BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of: )  
JACK T. BAILLIE COMPANY, INC., )  
Respondent, )  
and )  
UNITED FARM WORKERS OF AMERICA, )  
AFL-CIO, )  
Charging Party. )

---

Case No. 75-CE-234-M  
Proposed Decision of  
Administrative Law Officer

Appearances:

LUPE MARTINEZ, 21 West Laural Drive, Salinas, California,  
Telephone: (408) 449-9111, for the General Counsel of the  
Agricultural Labor Relations Board

DARRELL H. VOTH, 911 Blanco Circle, Salinas, CA 93901, Telephone:  
(408) 422-8113; and DRESSLER, STOLL & JACOBS, 1811 Quail Street  
(P.O.Box 2130), Newport Beach, CA 92663, for Respondent JACK T.  
BAILLIE COMPANY, INC.

ALLYCE KIMERLING, 14 S. Wood Street, Salinas, CA 93901, Tele-  
phone: (408) 424-1581; and PHILIP A. BAPTISTA, P.O.Box 1049,  
Salinas, CA 93901, Telephone: (408) 424-0761, for Charging Party,  
UNITED FARM WORKERS OF AMERICA, AFL-CIO

DECISION

Introduction:

MARK E. MERIN, Administrative Law Officer, sitting by  
assignment: This case was heard before me in Salinas, Califor-

nia during the five day period from March 7 through March 11, 1977, inclusive. The complaint, dated December 10, 1975, and filed December 15, 1975, is based on written charges made on November 3, 1975, against Respondent by the United Farm Workers of America, AFL-CIO charging Respondent with committing unfair labor practices in violation of Section 1153 Ca) of the Labor Code. Respondent served its answer to the complaint on December 19, 1975 and therein denied committing the acts alleged to be unfair labor practices and raised various affirmative defenses including the assertion that the acts allegedly constituting violations of 1153(a) occurred prior to the effective date of the Agricultural Relations Act of 1975 (hereinafter sometimes referred to as the "Act").

The parties each called, examined and cross-examined various witnesses and introduced exhibits at the hearing. The Administrative Law Officer subpoenaed various records from Respondent which were delivered to all parties subsequent to the close of the taking of testimony. These documents have been included as exhibits and are being transmitted to the Agricultural Labor Relations Board along with the other exhibits admitted into evidence at the hearing. After the close of the taking of oral testimony, General Counsel, Respondent and the charging party each filed a brief in support of its respective position.

Upon consideration of the testimony of witnesses, the documentary evidence produced at the Hearing and that submitted after the close of the taking of testimony, and after a review of the applicable law, I hereby make the following findings of

fact and conclusions of law:

#### I. JURISDICTION

Respondent, JACK T. BAILLIE COMPANY, INC. (hereinafter sometimes referred to as "the company"), is a corporation engaged in agriculture in the county of Monterey, California, and is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

Charging party, UNITED FARM WORKERS OF AMERICA, AFL-CIO (hereinafter sometimes referred to as the "UFW" or "the union"), is a labor organization within the meaning of Section 1140.4(f) of the Act.

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges in paragraph 6 thereof that Respondent interfered with, restrained, and coerced certain of its employees in the exercise of rights guaranteed to them by Section 1152 of the Act, in violation of Section 1153(a) of the Act by:

a. On or about August 15, 1975, hiring labor contractors to furnish a number of employees to complete Respondent's work before the date of union representation elections so that employees known to be supporters of the union could be terminated early; and

b. On or about August 20, 1975, threatening, through its foreman Frank Ramos, certain of Respondent's employees with discharge for union activities; and

c. On August 28, 1975, discharging for union activities certain employees including twenty-nine C291 employees named in the complaint; and

d. On or about August 28, 1975, falsely representing to

certain employees, through its foreman Frank Ramos, that Respondent's labor camp was closing on said date thereby causing certain employees to leave the area and miss their opportunity to vote in the representation election subsequently scheduled for September 17, 1975.

Respondents deny the allegations of unfair labor practices and allege that:

a. A labor contractor was utilized during the month of August, 1975, but only to accomplish work which could not be performed by the existing hoeing and thinning crews; and

b. Frank Ramos was not authorized to fire employees and did not make the alleged threat; and

c. The employees discharged on August 28, 1975, were laid off because the work had been completed and there was nothing further for them to do and that the discharge was merely a seasonal lay-off; and

d. That Frank Ramos not only did not represent to employees that Respondent's labor camp was closing, but, in fact, the camp remained open throughout the year.

### III. DISCUSSION

The company is a family-owned corporation whose president, Jack T. Baillie, built a family farm into one of the largest producers of celery in the country. The company also produces lettuce, cauliflower, and other crops.

The company's operations typically include the preparation of land for planting, the seeding or planting process, irrigation, hoeing (weeding) and thinning and, ultimately, harvesting. While some of these processes -- cultivation and preparation for

planting, irrigation, herbicide application, and, in some cases, harvesting -- are partially if not totally mechanized, many processes are still performed almost entirely by manual labor.

Machines plant seeded celery but transplanted celery which matures more quickly than seeded celery, thereby making double cropping possible, requires manual transplanting of young shoots from a seed bed into the ground. This process has been performed at the company by a crew of twenty-four people on two planting machines. This crew is provided plants four to six inches high for transplanting by another crew of variable size which pulls the young plants out of the seed bed for transplanting. This celery pulling crew also performs the hoeing and thinning operations, to wit: thinning the lettuce to separate the plants the required distance; hoeing the ground around the lettuce plants; thinning the seeded celery, when necessary. The transplanted celery, as opposed to seeded lettuce and seeded celery has, so to speak, a head start on the weeds whose growth is inhibited through application of herbicides. Weeds do grow in these fields, however, and are, at times, an irritant to the harvesters if not an appreciable obstacle to the harvesting of the mature celery plants.

Various types of weeds are common in fields in the Salinas Valley, as one witness testified, including varieties of stinging nettles which cause itching and burning. Harvesters have been known to refuse to work in fields which are too "weedy." Weeds may affect not only the harvesters, but the size and quality of the crop as well. Celery harvesters working at the company's fields in 1975 earned less than in other years working on a piece rate because the growth of weeds in the fields harvested after

August interfered with the cutting of the celery plants.

As a proportion of the total cost of the crop, the cost of labor of the hoeing and thinning crew whose members are paid on an hourly basis, is nominal. Higher paid harvesters work in teams on a piece rate basis assisted by a mechanical device called a hump. The speed with which the celery harvesting crew can move through a field depends primarily upon the speed with which the cutters can cut the celery. Weeds may slow a harvest but does not increase the cost of the operation since the harvesters are paid on a piece rate. Although nominal, a weedy field also represents some saving in the form of wages of the hoeing and thinning crew workers.

In the years 1973, 1974 and 1976, the number of workers in the hoeing and thinning crew decreased gradually through August and into September with hoeing and thinning and pulling of celery plants for transplanting continuing into September. Advance notice was given in these years to the crews of impending lay-offs. In 1975, however, the crew's size increased steadily throughout the month of August until the entire crew was terminated abruptly, without notice, on August 28. It is principally this abrupt termination which forms the basis for the unfair labor practices alleged in the complaint here under consideration. The thrust of the evidence presented by the General Counsel and the UFW was to establish that the company modified its settled procedures to layoff crews, prior to an impending election, which it knew to be heavily for the union, in line with its expressed desire to see the union lose in the election. The company's evidence went to rebut the charges that it had expressed its anti UFW position and

further to explain the apparent variation in its usual practices with a view toward establishing that it acted solely in response to the dictates of the economic realities of business life. As this opinion indicates, I have concluded that the witnesses who testified in support of the UFW's position were credible and convincing in their report of threats and comments made to them by company supervisors, and that the company's explanations of its motivations in varying from its usual practices was neither convincing nor, even if believed, sufficient to excuse the layoffs which, coming in the midst of an organizing drive and before an impending election and in an atmosphere of expressed anti-UFW sentiment, I hold to constitute an unfair labor practice in violation of sections 1153(a) and 1153(c) of the Act.

In the years 1973 through 1975, the company increased its acres planted in transplanted celery while decreasing its seeded celery acres, although in 1975 seeded celery acres were up 20% from the year earlier. Throughout these years it has had a labor contract with the Western Conference of Teamsters (hereinafter sometimes referred to as "Teamsters") who have had strong support among the piece rate workers.

In the summer of 1975, the UFW began an organizing drive among the company's workers and received almost 100% endorsement from the workers in both the celery transplanting crew and in the hoeing and thinning crews. Since all of the company's agricultural workers in the Salinas and Pojaro Valleys were to be included in a proposed bargaining unit, the union organizers concentrated in the crews where support for the UFW was the weakest.

It was general knowledge among the company's workers in

July and August, 1975, and the company's management and supervisors also knew, that a UFW organizing drive was underway and that when a certain number of authorization cards was obtained, an election would be scheduled at which the workers would select their representative, if any. UFW authorization cards were signed openly in front of foremen and collected in front of a teamster union shop steward. Supporters of the UFW in the celery planting and hoeing and thinning crews were vocal in their support of the Chavis union and were known as "Chavistas."

Frank Ramos, foreman of the hoeing and thinning crew for six years, and Antonio Perez, foreman of the planting crew, were not only aware of their crews' support for the UFW, but commented on the fate they would suffer if they did not watch out -- firing -- and Perez even fired one worker illegally in May of 1975 whom he knew to be a UFW supporter. These foremen reported to and were supervised by Santos Curranco who was in regular contact with his supervisors in the highest levels of company management. The foremen and Santos Curranco, with the power to hire and fire workers in the crews his foremen supervised, knew what was openly stated by company officials, that the company favored the teamsters over the UFW and Teamster-organized growers and concluded that the UFW filed more grievances on behalf of its members and the workers exercised more control over the "pack" in UFW-organized operations, two facts leading them to prefer the Teamsters over the UFW.

Anticipating the impending representation election, the company on August 27 and again on September 3, printed on its payroll checks the inscription "Keep this stub as identification for election." Obviously aware of the probable effect on the election at which workers were to choose their representative, Curranco on August 27, summoned Teamster representatives to eject Juan Franco, a UFW organizer, from a field in which the piece rate harvesting crew was completing work. Force was used and thereafter Franco found it difficult to approach the intimidated workers who began giving him incorrect names.

It was common knowledge among workers that it was the company's plan to wind up the "Chavistas" work before the election. Aware of the company's strategy, the UFW sought to obtain a majority of authorization cards while the company was still at peak. The company, on the other hand, was engaging through August in a speed-up campaign in an attempt to get the essential work completed before the election, as explained to some workers by Frank Ramos. The company hired a labor contractor at a premium over the wage it paid its employees to assist the hoeing and thinning crew and foreman Ramos explained to inquisitive workers in his crew that the contractor was there so that the work would be finished before the election. The company used more herbicide for weed control, eliminated the weeding process entirely in some fields of transplanted celery, and ceased the planting of celery earlier than in previous years, and earlier than

necessary to avoid the mozaic-free period. Finally, with no election petition having yet been filed, Santos Curranco, on the morning of August 28, informed Frank Ramos and Antonio Perez that they should prepare lay-off slips for their crews and terminate them at the conclusion of that day, with no prior notice.

Regardless of the intent of the corporate officers, the significance of the company's actions, effected through its foremen and Santos Curranco, were not lost on workers in crews still on the job. Alex Hernandez, one of these workers working as a piece rate harvester of celery at the time, testified convincingly that when he heard of the layoffs he was intimidated and stopped telling people that he supported the UFW as he was concerned that he be identified as a UFW backer.

That the two crews laid-off were UFW supporters was widely known, as were Frank Ramos' comments to his crew which revealed his knowledge of the company's anti-UFW bias. Ramos, in mid August, had predicted to his hoeing and thinning crew that it would be fired by the company if it continued to follow the UFW organizers in the crew, Pete and Edna Gonzales, who had refused, on one occasion, to work more than 10 hours in what they considered a futile attempt to finish a field before sundown.

Although the 67 workers laid-off were eligible to vote in the union representation elections, many of them left, the area quickly, as was common practice and the dictate of economic exigencies, either looking for other work or

returning to Mexico. Those who had lived at the company's labor camp were falsely informed by Ramos, the supervisor of the camp, that the camp was closing and that they should vacate immediately. Only two of the members of the laid-off crew were at the camp two days after the lay-offs when Juan Franco, the UFW organizer, visited.

On September 9 the Teamsters and on September 10 the UFW filed petitions for an election. On September 17, an election was held in the company's labor camp but only 27 of the 67 eligible laid-off workers or 40.3% voted, as compared to 77.9% of the 154 workers still employed by the company. The company unsuccessfully challenged the votes of all workers who had been laid off on August 28. The UFW lost to the Teamsters by a vote of 96 to 47. While not dispositive of the issue of motive for the lay-off, the company's mechanical challenge to the vote of every worker laid off on August 28 suggests the company's consciousness that the laid off workers were likely to favor the UFW.

#### CONCLUSIONS

The purpose of the Act when it went into effect on August 28, 1975, was to change the conditions in agricultural labor relations in California. The company's practices were now subject to legislative control. While comments such as those made by Ramos in opposition to the UFW, were perhaps common before the passage of the Act, such derogatory remarks against unions were made unfair labor practices if they had the effect of interfering with the

worker's right to organize. At the time they were uttered, however, Ramos' remarks may have reflected the company's position but they were not proscribed by statute.

Neither was the calling by Santos Curranco of the Teamster representative to obstruct the UFW's organizer's attempt to reach the company's workers at the conclusion of work at the work site before they scattered to home illegal at the time, though now it would certainly be a violation of Section 1153(a) of the Act in that such actions clearly interferes with the workers opportunity to organize.

None of the company's practices before August 28, 1975, which were described by the General Counsel and the charging party -- threats to workers who supported the UFW to fire them for their activities, use of labor contractors to finish work faster, longer hours to finish fields faster and before the election -- at the time they took place were made illegal by any statutes in force at the time, though clearly such activities would now be violations of §1153(a) of the Act if the effect of such actions was to interfere with the worker's untrammelled right to organize themselves, be organized by others, and learn about the advantages of organization in an open environment, free from coercion and intimidation.

The company's lay off of the workers on August 28, occurred when the Act was just coming into effect. The lay off itself, out of context, and in view of subsequent events -- the lack of replacements, the ceasing of all planting and most hoeing and thinning operations -- may appear

ordinary and a natural result of some business calculation of maximum return. In this way, using the maximization of gain as the measure of the legitimacy of a business action, could easily lead to recognizing anti-union activity as a legitimate business procedure. It is not. The Act identifies impermissible anti-union activity and calls it "unfair labor practice." The question, then, is: was the lay-off, itself, an unfair labor practice? The answer to this question may not be gleaned by looking only at the things previously mentioned, one must look as well to the perception of the workers of the company's activity because it is their right to organize which is protected by the Act. Getting the perceptions of those directly affected is one of the principle reasons for a hearing. It is both natural and expected that those who testify on behalf of the union will be affiliated with the union, and expected that those affiliated with the company who testify will stress business purpose as the reason for most of the company's activities while explaining that its supervisory employees may have made unauthorized anti-union remarks.

In the hearing of the dispute between the company and the union, several aspects were explored:

- 1) The union organizer, Juan Franco, said that before the election he could not find many of the workers who were laid-off because they had left the area. This is an entirely expected result of the lay off and is independent of the possible effect on some workers of the false statement that the company's labor camp was closing.

2) The "expert" worker, Alex Hernandez, recalled two facts; first that he associated the lay-offs with union support and therefore was concerned that he would be laid off because he was a known UFW supporter and he thereafter kept quieter about his union affiliation. Secondly, he remembers that he did not earn as much in the fall of 1975 harvesting celery at the company because his crew could not go very fast because of the weeds in the fields.

3) Worker-witnesses who supported the UFW openly testified that through August they felt they were being driven harder because of the company's desire to get the work done before the election so that the crew could be laid off. These workers, who, with the exception of the adverse company witnesses he called, provided the bulk of the General Counsel's case, expressed their feelings of being denied the benefit of organization. To them the lay offs, coming earlier than usual, being unexpected, preceeding the election, and hitting the crews which were- solidly "Chavista," were definitely related to the organization effort and were unfair.

4) The foreman, Frank Ramos, described how he followed the direction of Santos Curranco and was not given any advance notice of the lay-offs. Since his earlier remarks, previously discussed, were not unfair labor practices at the time they were uttered, we will not deal with them, and that he was identified with the company's anti-union stance is irrelevant since his part in the lay offs was merely as the conduit for Curranco's orders.

5) Santos Curranco gave the lay off order because,

he said, there was no more work to do. He did not get the lay off order from any one higher up, and gave no warning partly out of inexperience (his first year as a supervisor with that power) and partly because he just realized that day that there was no more work, i.e. lack of planning. Both explanations could be innocent explanations of an apparently consciously obstructive act which would otherwise be an unfair labor practice.

6) The company's secretary-treasurer, Donald W. Johnson, and the wealth of technical data as to crop production, amount of labor performed at various states of the crop, and labor contractor use, provided explanations of the business reasons behind many of the company's activities which seemed to be designed to obstruct the union and its organizational effort.

The company's explanations of its lay off, fail to recognize that it is a violation of the Act and an unfair labor practice for the company to express its anti-union position in a way which interferes with, restrains or coerces its agricultural employees in their efforts to organize. To make an employee fear that his job will be in jeopardy if he expresses his sympathy for a union is to interfere with that employee's rights and could seriously impede his ability to organize with others. When the company, as it did, made its position of opposition to the UFW known before the effective date of the Act, it had the affirmative obligation, after the Act became effective, to change its practices to dissipate

that anti-union character or suffer the consequential adverse presumption that its apparently anti-union acts were what they seem. Here the company's lay-off is presumed to be an unfair labor practice, a presumption given significant added weight by the testimony of the worker-witnesses and not convincingly rebutted by the company's explanation of its business. It was not sufficient for the company to show that it did not lose money through the lay off to justify the lay off as business dictated. Therefore, I find that the lay off of 67 workers on August 28, 1975 constituted an unfair labor practice.

#### REMEDIES

Remedies under the Act are designed, among other purposes, to make employees whole, as well as to eradicate the effects of the unfair labor practice. These purposes, in the situation here under consideration, can best be effectuated as follows and such relief is hereby ordered:

1. All workers laid off on August 28, 1975, shall be given two weeks back pay, computed as the average weekly pay which they had earned in the four weeks preceeding the lay off. While the company shall make good faith efforts to locate and give such back pay to each affected worker, if the company has not been successful after six months from the effective date of this order, the funds not distributed shall be given to the UFW for them to hold for the workers' benefit for another six months and, if not claimed by that time, to use for their own purposes.

2. The UFW organizers shall be permitted expanded

access to the company's crews during the entire calendar year of 1977, which access shall include the right of two designated representatives of the union to contact the company's workers on the company's property for one hour before the beginning of work, for one hour during breaks and meals, and for one hour at the conclusion of work.

3. The company, in the presence of agents from the Agricultural Labor Relations Board, shall, at the beginning of the season and each month thereafter, announce to the crews assembled together that it will not interfere with the workers in their rights to organize, nor discriminate in any way against any worker who supports any labor organization. No worker shall be docked pay for attending such assemblies.

4. The company shall cease and desist from all unfair labor practices of the type and kind discussed herein.

5. The company shall give priority in hiring, during the calendar year 1977, to all persons laid off on August 28, 1975, with the exception that workers employed at the company before that date shall not be replaced by said laid-off workers if the other workers had an equal amount of time or greater amount of time with the company as the laid-off workers.

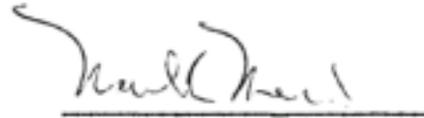
6. The company shall pay as damages to the UFW the sum of one thousand dollars (\$1,000).

7. The company shall give its agricultural employees at least one week's notice of impending seasonal layoffs.

8. The company shall post in conspicuous places, including where notices are customarily posted, copies of the attached notice marked "Appendix." Copies of said notice shall be

posted by the company immediately upon receipt thereof and shall be signed by the company's representative. Said notice shall be posted for a period of six months and shall be in English and Spanish.

DATED: April 1, 1977.

A handwritten signature in cursive script, appearing to read "Mark E. Merin", is written above a solid horizontal line.

MARK E. MERIN

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 the company, JACK T. BAILLIE COMPANY, INC., engaged in a violation of the Agricultural Labor Relations Act when we laid off the celery planting and the hoeing and thinning crews in August, 1975, before the union representation election making it difficult for those workers to vote in the election and interfering with their rights and the rights of other workers to organize. We have been required to make back wages payments to the affected workers and to post this notice so that all of our employees can understand that we will make the following commitments:

1) We will not in any manner interfere with the rights of our employees to organize, to support others in their attempts to organize, to express their support for any union, or to refrain from such activities.

2) The company will not discriminate against any workers in relation to job assignment, length of work, lay-off, or in any way because of support for or opposition to any union,

3) As part of a change in company policy and to insure that our employees know that we are not terminating them to discourage any legitimate union activity, we will give at least one week's notice of seasonal lay-offs.

4) We will give priority in hiring to all workers who were laid off on August 28, 1975, but other workers who were employed by the company before then will not be replaced by these laid-off workers if they had an equal amount of time or greater amount of time with the company than the laid off workers affected by this order.

5) The company, will pay to each of the workers laid off on August 28, 1975, two weeks wages to compensate them for being laid off earlier than they would have been if the company were not concerned about the results of the election which was to take place, and did take place after the lay-off.



Mr. Lupe Martinez  
Staff Counsel  
ALRB  
21 West Laurel Drive,  
Salinas, CA 93901

Suite M-65

Ms. Allyce Kimerling, 14 S. Wood Street  
Salinas, CA 93901

Mr. Philip A. Baptista  
P.O.Box 1049 Salinas, CA  
93901

Mr. Darrell H. Voth 911  
Blanco Circle, Salinas,  
CA 93901

DECLARATION OF SERVICE BY MAIL I AM  
A CITIZEN OF THE UNITED STATES AND  
EMPLOYED IN SACRAMENTO, CALIFORNIA. I  
AM OVER THE AGE OF EIGHTEEN YEARS AND  
NOT A PARTY TO THE WITH-IN ABOVE  
ENTITLED ACTION. MY BUSINESS ADDRESS IS  
1014. 9<sup>th</sup> STREET, SACRAMENTO, CALIFORNIA.  
ON THIS DATE I SERVED THE FOREGOING  
DOCUMENT BY PLACING A TRUE COPY  
THEREOF ENCLOSED IN A SEALED ENVELOPE  
WITH POSTAGE THEREON FULLY PREPAID IN  
THE UNITED STATES POST OFFICE MAIL BOX  
AT SACRAMENTO, CALIFORNIA ADDRESSED  
IN THE MANNER SET FORTH IMMEDIATELY  
ABOVE THIS DECLARATION.

I DECLARE UNDER PENALTY OF PERJURY THAT  
THE FOREGOING IS TRUE AND CORRECT. DATED AT  
SACRAMENTO, CALIFORNIA ON 4/4/77

Karen Curtis