

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

PLEASANT VALLEY VEGETABLE CO-OP,) CASE NO. 76-CE-6-V
Respondent,) 4 ALRB NO. 11
and)
UNITED FARM WORKERS OF AMERICA,)
AFL-CIO,)
Charging Party.)
_____)

ERRATUM

In our Decision and Order which issued in this matter on March 16, 1978, the second paragraph on the first page was inadvertently included and is hereby deleted.

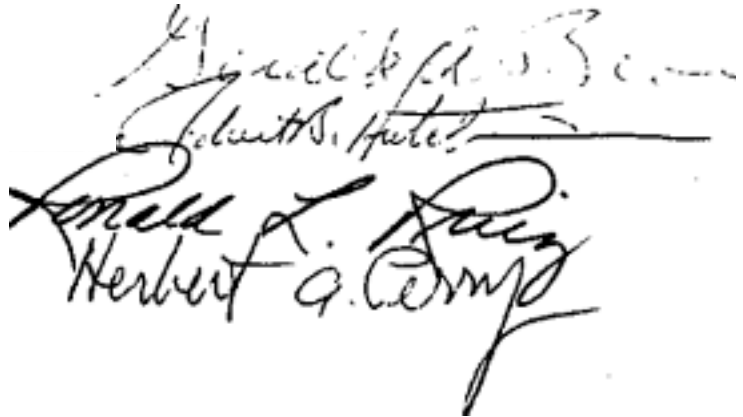
Dated: March 23, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RONALD L. RUIZ, Member

HERBERT A PERRY, Member



Handwritten signatures of the board members: Gerald A. Brown, Robert B. Hutchinson, Ronald L. Ruiz, and Herbert A. Perry.

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DECISION AND ORDER

On April 18, 1977, Administrative Law Officer (ALO) Leonard M. Tillem issued his Decision in this proceeding. Thereafter, Respondent and the General Counsel each filed exceptions and a supporting brief.

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 herewith.

The ALO found that Respondent violated Section 1153 (a) by an assault on employee Adalberto Gomez, violated Section 1153 (c) by its discriminatory failure to rehire Gomez after an economic layoff and violated Section 1153 (a) by several actions which had the effect of restraining employees in the exercise of their Section 1152 rights.

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DECISION AND ORDER

On April 18, 1977, Administrative Law Officer {ALO} Leonard M. Tillem issued his Decision in this proceeding. Thereafter, Respondent and the General Counsel each filed exceptions and a supporting brief.

Pursuant to the provisions of Section 1146 of the Labor Code, ^{1/} the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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 herewith.

The ALO found that Respondent violated Section 1153(a) by an assault on employee Adalberto Gomez, violated Section 1153 (c) by its discriminatory failure to rehire Gomez after an economic layoff and violated Section 1153(a) by several actions which had the effect of restraining employees in the exercise of their Section 1152 rights.

^{1/}All references herein are to the Labor Code.

The Employer is an agricultural cooperative engaged in planting, cultivating and harvesting agricultural products in Ventura County. At the time the events described herein occurred, Adalberto Gomez had been working for the Employer for almost a year.

Gomez was an active supporter of the UFW. His activities for the union included walking on union picket lines at the Employer's premises and those of neighboring growers. The Employer and its supervisors were admittedly aware of his union activities at the time he was hired by the Employer in late 1974. He continued to be an active supporter of the union during the months preceding his layoff on October 31, 1975. He attended a United Farm Workers of America, AFL-CIO (UFW) convention in August 1975, handed out organizational literature and authorization cards and was active in the UFW's attempt to have a representation election at the Employer ranch.^{2/}

Following his layoff by the Employer on October 31, 1975, Gomez was rehired on March 1, 1976, and was working for the Employer at the time of the hearing in this case on March 16, 17 and 18, 1977.

THE ASSAULT ON ADALBERTO GOMEZ

The record testimony reveals, and the ALO found, that the Employer's supervisor, Guillermo Oliveres, attacked Adalberto Gomez on or about October 21, 1975, at a barbeque given by the Employer at the end of the tomato harvest.

^{2/} This campaign culminated October 22, 1975, in the dismissal of the UFW's petition for certification which had been filed on October 14, 1975.

The ALO found that this assault constituted a violation of Section 1153(a). We disagree. The testimony of the two participants and a witness to the attack indicate that there was no substantial relationship between Oliveres' actions and any employee's exercise of his Section 1152 rights. We note that both men had been drinking for more than six hours and that other incidents of disorderly conduct and numerous fights occurred during that afternoon. We do not find there is substantial evidence to show that the supervisor's attack on Gomez was motivated by anti-union animus. We therefore find that this assault does not constitute a violation of Section 1153(a) of the Act. Accordingly, we shall dismiss this allegation.

THE DELAY IN RECALLING GOMEZ

We agree with the ALO's finding that Respondent's failure to recall Gomez during the four months after his layoff was discriminatory and therefore a violation of Section 1153(c).

Although strict seniority was followed in the layoff of about 10 members of Gomez¹ crew on October 31, 1975,^{3/} it appears that Respondent did not thereafter rehire the employees according to seniority, notwithstanding the testimony of foreman Valenzuela that he rehired people according to his memory of their seniority, and the testimony of vice-president Jean Dufau who emphasized that experienced employees are valued by the company and rehired from season to season in preference to new employees. When Olivares finally recalled Gomez about February 28, 1976, he said

^{3/} It should be noted that at the time of the layoff Gomez was assured he would be recalled in two or three weeks.

the company needed a worker and that according to seniority it-was Gomez' turn. However, several former employees with less seniority had been rehired before Gomez and several new employees previously had been hired. Gomez testified that on one of the occasions when he approached foreman Valenzuela about returning to work, Valenzuela said that supervisor Olivares had told him he needed another worker. Valenzuela asked Olivares whether he had contacted Gomez, and Olivares replied that Valenzuela should hire someone else at that time, and Gomez could be hired later.

We find the various shifting reasons given by Respondent for its failure to recall Gomez to be pretextual. The true reason may be inferred from its conduct toward him. After the layoff, Gomez returned three or four times to the field to seek reemployment. The last time he went to the field he was required to go to the office to fill out an application. There was no evidence that other workers , either rehires or new hires , were required to fill out an application in that period. Respondent claims it did not recall Gomez because it did not have his phone number. Yet, after he filled out an application with his phone number, two new workers were hired before he was finally called. It is noted that Gomez was not offered reemployment until two weeks after the UFW had filed the charge herein on his behalf. Cf. Beaumont Steel Construction Co . , 179 NLRB 487, 74 LRRM 1026 (1969) .

Accordingly, we order that Respondent make Gomez whole for any losses he suffered as a result of its failure to rehire him at the time Gomez first appeared on December 18, 1975, and asked for work.

INCIDENTS NOT ALLEGED IN THE COMPLAINT

The ALO found that Respondent violated Section 1153(a) by several acts, evidence of which was received without objection at the hearing. Respondent excepts to this finding because the acts were neither alleged in the original complaint nor added to it thereafter by amendment. When an incident not included in the complaint has been fully litigated by the parties, we are not precluded from determining whether the conduct violates the Act. Anderson Farms Company, 3 ALRB No. 67 (1977), fn. 6. However, in the instant case, we do not consider that the incidents were fully litigated, and we note that the General Counsel's representative did not argue, either at the hearing or in her post-hearing brief to the ALO, that the incidents should be found as independent violations of Section 1153(a) of the Act. Accordingly, we reject the ALO's conclusions with respect to the incidents.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, Pleasant Valley Vegetable Co-op, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Discouraging employees' membership in, or activities on behalf of United Farm Workers of America, AFL-CIO, or any other labor organization, by refusing to rehire employees or by otherwise discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment ;

(b) In any other manner interfering with, restraining or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Act.

2. Take the following affirmative actions which will effectuate the policies of the Act;

(a) Make Adalberto Gomez whole for any loss of pay he may have suffered because of the discriminatory refusal to rehire him from December 18, 1975, until March 1, 1976, " together with interest thereon at the rate of 7 percent per annum.

(b) Reinstate Adalberto Gomez to his previous standing in seniority dating from his original hire date of December 3, 1974.

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

(d) Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth here.

(e) Post copies of the attached Notice to Employees at times and places to be determined by the Regional Director. The notices shall remain posted for 60 days. Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(f) Mail copies of the Notice in all appropriate languages, with 20 days from receipt of this Order, to all

employees employed between December 18, 1975, and March 1, 1976.

(g) Have the attached Notice distributed and read in appropriate languages to the assembled employees of the Respondent on company time. The distribution and reading, by a representative of Respondent or a Board Agent, shall be at such times and places as are 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 or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by the Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question and answer period.

(h) 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 in compliance with this Order.

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

Dated: March 16, 1978

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a hearing at which all sides had an opportunity to present evidence and state their positions, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act, and has ordered us to post this notice.

The Act gives employees the following rights:

- (a) To engage in self-organization;
- (b) To form join or assist any union;
- (c) To bargain collectively through representatives of their own choosing;
- (d) To engage in activities together for the purpose of collective bargaining or other mutual aid or protection;
- (e) To refrain from the exercise of any such activities.

WE WILL NOT refuse to rehire or otherwise discriminate against any employee because such employee exercised any of such rights.

The Agricultural Labor Relations Board has found that we discriminated against Adalberto Gomez, by refusing to rehire him after a lay-off, and has ordered us to reimburse him for any loss of pay he may have suffered because of our discrimination against him and reinstate him to his previous seniority, together with interest as provided in the Board's Order.

WE WILL comply with the Board's Order.

Dated:

PLEASANT VALLEY VEGETABLE CO-OP

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.

CASE SUMMARY

Pleasant Valley Vegetable
Co-op (UFW)

4 ALRB No. 11
Case No. 76-CE-6-V

ALO DECISION

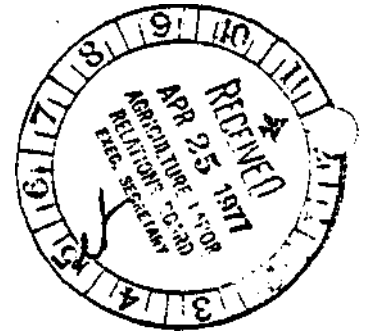
A hearing was held on a complaint filed by the United Farm Workers of America, AFL-CIO, against Pleasant Valley Vegetable Co-op, an agricultural employer engaged in cooperative planting, cultivating and harvesting in Ventura County, after which the Administrative Law Officer issued his decision finding: 1) that the Employer had not discriminatorily discharged but had discriminatorily delayed re-hiring Adalberto Gomez; 2) that an assault on Gomez by a supervisor violated Section 1153(a); and 3) that several acts of the Employer, although not alleged in the complaint, amounted to a violation of Section 1153(a) of the Act.

BOARD DECISION

The Board affirmed the ALO's finding that the initial layoff of Gomez, a known union adherent, was not discriminatory, but was based on seniority and that the Employer's subsequent delay in rehiring Gomez was substantially based on his support and activities on behalf of the Union. The Board rejected the ALO's conclusion that the supervisor's assault on Gomez, at a party where many fights occurred and the participants had consumed large quantities of alcohol, was motivated by anti-union animus. It also rejected the ALO's conclusion that several acts of the Employer, which were not alleged in the complaint amounted to a violation of Section 1153(a), noting that such matters had not been fully litigated at the hearing and that General Counsel had not sought a finding that such acts were unlawful.

Finding of discriminatory failure to recall employee Gomez after a layoff upheld. Remedial order requires Employer to make the employee whole for lost wages and reinstate him to previous seniority. Other allegations of the complaint dismissed.

STATE OF CALIFORNIA
BEFORE THE AGRICULTURAL LABOR RELATIONS
BOARD



In the Matter of:)
)
 PLEASANT VALLEY VEGETABLE CO-OP,)
)
 Respondent,)
)
 and)
)
 UNITED FARM WORKERS OF AMERICA, AFL-CIO,)
)
 Charging Party.)
 _____)

Case No. 76-CE-6-V

Harry Delizonna, Esq., General Counsel
 Agricultural Labor Relations Board of
 Sacramento, California, by Jane Rasmussen,
 Attorney at Law, Legal Counsel, Agricultural
 Labor Relations Board of Oxnard, California,
 for the General Counsel

Dressier, Stoll, and Jacobs
 of Newport Beach, California, and
 Oxnard, California, by Scott
 Wilson, Esq., of Oxnard,
 California, for Respondent

Fritz Conle, of Oxnard, California,
 representative for
 the Charging Party

DECISION

Statement of the Case

LEONARD M. TILLEM, Administrative Law Officer: This case was heard before me in Oxnard, California, on March 16, 17, and 18, 1977. The complaint alleges violation of Section 1153 (a) , (b) , and (c) of the Agricultural Labor Relations Act, herein called the Act, by the Pleasant Valley Vegetable Co-op, herein called Respondent.

The complaint is based on the original charges filed February 19, 1976, by the United Farm Workers of America, AFL-CIO, herein called the UFW. Copies of the charge were duly served upon Respondent on February 12, 1976. The complaint was issued on January 27, 1977.

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

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

FINDINGS OF FACT

I. Jurisdiction

Pleasant Valley Vegetable Co-op is a California cooperative engaged in agriculture in Ventura County, California.

In its answer to the complaint, Respondent admits that the Pleasant Valley Co-op is a California cooperative engaged in agriculture. Accordingly, I find the co-op to be an agricultural employer within the meaning of Section 1140.4(c) of the Act. Respondent admits, and therefore I find, that Gregorio Valenzuela and Guillermo Olivares occupied the positions of foreman and supervisor, respectively, and have been and are now supervisors within the meaning of Section 1140.4(j) of the Act and agents of Respondent acting on its behalf.

In addition, Respondent admits and I find Adalberto Gomez to have been at all relevant times herein an agricultural employee within the meaning of Section 1140.4(b) of the Act. I further find

the UFW to be a labor organization representing agricultural employees in the meaning of Action 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleges that Respondent violated Section 1152 and Section 1153(a), (b), (c) of the Act by the discriminatory laying off of Adalberto Gomez, hereinafter referred to as Gomez, and by a discriminatory refusal to rehire or reinstate said Adalberto Gomez despite his repeated requests for work after being laid off. The complaint further alleges that Respondent reinstated workers with less seniority than Gomez and that new workers were hired before Adalberto Gomez was rehired or reinstated.

The complaint also alleges unlawful interference violative of Section 1153(a) by Respondent with the rights guaranteed by Section 1152 of the Act by conduct which amounted to an unprovoked assault and battery upon Gomez by Guillermo Olivares. Paragraph 6 G contains this allegation regarding the alleged assault. Respondent denies the laying off or refusal to reinstate Gomez to have been unlawfully motivated or that any alleged assault committed by Guillermo Olivares upon Gomez to have in any way been related to Gomez¹ union activities. Respondent further denies that it was engaged in any unfair labor practices.

No evidence was adduced at the hearing in support of the alleged violation of Section 1153(b) of the Act, and the General Counsel admits this in her brief. Therefore I hereby dismiss from the complaint the charges relating to violations of Section 1153(b) only.

A. The Operation of the Cooperative

The Pleasant Valley Vegetable Co-op employs approximately 400 employees in planting, cultivation and harvesting of celery, lettuce, cabbage, spinach, other leafy vegetables, tomatoes, strawberries, and cauliflower. This number varies according to the crop and the season.

The cooperative attempts to harvest the same crops at the same time of the year each year. One of the major problems of the cooperative is determining their schedule in relation to the elements, Nature and the elements can vary the time of year for each harvest by as much as three weeks. An important factor in which crops are planted is supply and demand. Market conditions will affect the choice of crops to be planted and the timing of the harvest. These market conditions of supply and demand also determine the hiring practices. One of the difficulties in this industry is that crops are perishable and therefore they cannot wait.

When the general office receives orders from a buyer, these orders are then sent to the field superintendent, and he then determines how many employees to use for harvesting of the crops that were ordered. Up until June, 1976, he then would instruct the foremen who would do the hiring, usually in the field or by telephone.

The crop we are primarily concerned with in this case is lettuce and the harvest season commencing in late fall. During the harvesting of lettuce more workers are hired and put to work by the cooperative. These workers are paid on a piece work basis; the more produce that is picked and boxed, the greater the pay to

the workers. After the harvest of the lettuce is completed, fewer workers are needed. The remaining workers that stay on are paid on an hourly basis for cultivation and related tasks, known as "general field work." This pay is less than the workers would receive working on a piece work basis. The largest number of employees is required for harvest and a considerably smaller number for general field work. The same workers do not necessarily work on each of the harvest operations. Workers commonly leave the cooperative voluntarily after the lettuce harvest season to seek higher paying work elsewhere.

Until January, 1976, Respondent's generally acknowledged procedure for hiring and rehiring workers was for the foreman in the field to be given specific authorization by the supervisor to hire a certain number of workers when the need arose for additional labor. The foreman would do the hiring from men who came to him in the field to ask for work, or he would hire by telephoning or personally contacting men who had previously worked for the Co-op or men whose names had been recommended to him by friends or relatives who were employees of the cooperative.

In rehiring, a loose and flexible system of seniority was recognized: workers who had the longest continuous employment with Respondent were given priority over those with shorter continuous employment. However, this system was not reduced to writing and was based upon what the supervisors or foremen remember concerning a specific employee's seniority. (Company layoff periods apparently did not affect the seniority standing.)

The Co-op's procedure for layoffs was similar. The

supervisor gave the foreman general instructions to lay off a certain number of workers. He might designate from which crew the men were to be laid off. It was apparently up to the foreman in the field to determine which men to lay off. Again, a general seniority system prevailed, although according to foreman Valenzuela's testimony, he relied upon his memory and did not refer to records as to actual dates of hire. From the testimony introduced, however, it would seem that most of the men in the field, including the supervisors and foremen, had a very good idea of the seniority standing of all of the workers.

B. Employment History of Adalberto Gomez for Pleasant Valley

Adalberto Gomez, aka "Alberto Gomez," was first hired by Pleasant Valley Vegetable Co-op in November, 1969. Except for brief layoffs, he worked for the Co-op for more than two years, through early 1972. In mid-1972, he asked Foreman Gregorio Valenzuela for work, but Gomez was ill, and Valenzuela told him to come back when he was well. During the time he was out, he broke his arm and was unable to work for an additional five months.

He then went to work for five months for Mel Finerman Company, beginning in January, 1973. When the contract expired in June, 1973, Finerman fired all UFW supporters, which resulted in a strike of approximately three months' duration. Gomez was active during that strike. According to his unrefuted testimony, he was observed on the picket line by at least one and possibly a second supervisor from Pleasant Valley . (Jenaro de la Cruz and Guillermo Olivares).

At the end of this strike, Gomez went to work for Inter-

harvest under a DFW contract and was there for the better part of a year. By his admission, he devoted a good deal of his free time to Union activities, including the picketing of strawberry fields of the Dave Walsh Company. According to Gomes' declaration and testimony of Supervisor Olivares, Gomez was observed in this picket line by Supervisor Olivares of Pleasant Valley in the early part of 1974. By admission of all parties, the UFW activities of Gomez were well known at Pleasant Valley.

In November, 1974, after seeking work at Pleasant Valley several times, Gomez was rehired in the field by Gregorio Valenzuela, foreman for Respondent. According to unrefuted testimony of Gomez and Jose Perera, a field worker for Respondent in Gregorio Valenzuela's crew, Respondent was very reluctant to hire Gomez because of his reputation as an organizer for the UFW. In December, 1974, Valenzuela told Gomez that Respondent had not wanted to rehire him because of his UFW activities. Some months later, a conversation between Gomez and Supervisor Guillermo Olivares confirmed that Respondent had been unwilling to hire Gomez in 1974. Respondent had received advice from Thomas Vujovick, an agricultural employer involved in the strawberry strike of 1973, that Gomez was an active "Chavista" whom they should avoid hiring.

Olivares testified that only assurances from Gregorio Valenzuela to the effect that Gomez had changed and was only interested in working convinced Respondent that Valenzuela could hire Gomez. Respondent admitted in testimony by Pleasant Valley vice-President Jean P. Dufau that Respondent was very concerned about union activity at the Co-op. Olivares himself stated that Pleasant

Valley did not want the Union to become active at the cooperative.

Foreman Valenzuela must have had doubts himself or have known that there would be some question by his superiors about hiring Gomez. According to Olivares¹ declaration, Valenzuela "asked permission" to hire Gomez. However, according to testimony from Olivares, Dufau, and Valenzuela, at that time the foreman in the field had the authority to select workers at his discretion, being told by his superiors only how many to hire, not whom to hire.

According to the testimony given by witnesses for the UFW and-for Respondent, during the course of 1975, Gomez continued to be quite active in talking with workmates about the UFW, distributing leaflets after the passage of the Act, getting workmates to sign union authorization cards, and attending UFW meetings. Throughout the year there were many small incidents which indicated that the Respondent's supervisors were very aware of and irritated by Gomez' union activities. According to unrefuted testimony by Gomez, assistant supervisor Jenaro de la Cruz taunted Gomez about being a supporter of Chavez, told a worker in the presence of Gomez that Respondent wanted no unionization, but if it was necessary, they would prefer the Teamsters rather than "that bastard Chavez."

In August, 1975, Gomez was selected to represent the workers of Pleasant Valley Co-op at the annual UFW convention in Fresno. The UFW sent a letter to Respondent (Exhibit ID) informing them of his intention to attend the convention and warning them of the illegality of any discriminatory action against Gomez because of this or any other union activity.

Prior to the convention, UFW called a meeting, after work hours, for Pleasant Valley employees. At this meeting, Supervisor

Guillermo Olivares, according to Gomez' unrefuted testimony, asked two UFW organizers to leave under threat of calling the police to eject them.

Gomez' unrefuted testimony established that in September, 1975, Gomez was questioned in the field by Foreman Gregorio Valenzuela about the Union authorization cards Gomez was encouraging fellow workers to sign. Gomez confirmed that he was engaged in this activity. Valenzuela inquired who had signed the cards. Gomez informed Valenzuela that asking such a question was in violation of the new labor law. Gomez would not reveal the names of employees who had signed. Valenzuela told Gomez that Respondent had charged Valenzuela with locating the "agitator" among the workers, and Gomez replied that undoubtedly it was he, Gomez, that was meant, but that he was not an agitator.

Later that month, Gomez was taunted by assistant supervisor de la Cruz about the UFW election loss at a neighboring company, and de la Cruz suggested to Gomez that he advise co-workers to tear up their union cards as worthless.

C. The Assault by Guillermo Olivares on Adalberto Gomez

It was established by testimony of Gomez and Rogelio Manzo, a field worker at Pleasant Valley on Gregorio Valenzuela¹'s crew, and admission of Olivares, that there was a physical assault by Guillermo Olivares upon Adalberto Gomez in the course of a company barbecue at the end of the tomato harvest in October, 1975. This appears to have been a result of ill-feeling and agitation on the part of Olivares at the end of a long party at which there had been general rowdiness, several small fights, long waits for

insufficient quantities of food (which Olivares was serving, and thereby perhaps taking the brunt of the unhappiness about it), and at which Olivares testified that he himself was quite drunk.

Olivares came up to the pickup truck where Gomez and several other were sitting toward the end of the barbecue. Olivares states he asked the worker in the cab of the truck to change the music. Gomez states that he offered Olivares a beer. Olivares began insulting Gomez, calling him names, and said that Gomez was working at Pleasant Valley thanks to Olivares. Olivares pulled Gomez off the back of the truck where he was sitting and pushed him to the ground. Gomez refused to fight and returned to the truck. Olivares threw Gomez down again and shouted at him words to the effect of, "Why don't you go tell your union lawyers about it? Don't let them think I'm afraid of them." Olivares left, and Gomez' companions urged Gomez to leave before Olivares returned. Olivares stated in his deposition that he had never had any disputes with Gomez, but in testimony he essentially substantiated Gomez' version of the barbecue incident.

D. The Layoff of Adalberto Gomez

On another occasion in October, 1975, by unrefuted testimony of Rogelio Manzo and Gomez, after the UFW petition for election had been filed, Foreman Gregorio Valenzuela told Gomez and several others in conversation that Gomez' job was endangered by his open activities in the union. He said that Gomez was "crazy" to be so active in the union. The tenor of his speech was one of friendly advice. He told Gomez that Respondent was very rich and that they could, in Gomez' works, "Run me out or fire me any time

they wanted." When Gomez replied that that would be against the new law, Valenzuela replied that Respondent was rich enough to hire good lawyers to back them up, and that they would not mind paying money to get Gomez out of the company. By Gomez' declaration, Valenzuela told his crew that he had orders to fire Gomez, "But since he is a good steady worker, how can I fire him?"

Ten days later, on October 31, 1975, after the end of the tomato harvest and just before the lettuce harvest, while the workers were engaged in "general field work"--paid on an hourly basis, approximately ten of Valenzuela's crew were laid off, including Gomez. According to Gomez' unrefuted testimony and that of Rogelio Manzo, the workers were told that they would be off for two or three weeks, and Gomez was given one week's vacation pay. Valenzuela's testimony affirmed that he told the men that they - would be recalled when they were needed. Manzo testified that Valenzuela said he would call them back by telephone. Gomez states in his declaration that Valenzuela told the workers they would be recalled by seniority, and this was unrefuted by Respondent. Witnesses for Respondent, however, testified that the system of seniority, as noted here, was not a formal or written one.

Olivares' testimony established that there was only one other crew besides Valenzuela's at the cooperative at that time. In September, 1975, 12 to 15 of the men out of the 50 on that crew had been laid off. Valenzuela's crew had 23 men immediately prior to the layoff of his men.

Testimony as to the number of men laid off along with Gomez was in conflict. Respondent stated that twelve were laid off.

The declaration of Gomez states that seven were laid off. While the rolls were reduced by twelve after the layoff, one of those twelve was ill, smother was a student, a third was from another crew, and two had been working for Respondent for less than two months. On the Master payroll record (Exhibit IK) the names of those laid off were marked with an " X " . There are ten such " X " s . Neither the name marked "From Crew T-5" nor the one marked "Student" is marked with an " X " , nor does either name appear on the subsequent payroll record. By the names of five of those laid off is marked the letter "R" and a date, presumably the date of rehire. By the names of "Alberto Gomez" (Adalberto Gomez) and two others (those with less than two months with the company) is written the word "NO" , which is circled. Effectively, a maximum of ten workers were actually laid off that might otherwise have continued working.

According to Gomez, a layoff at this time was unusual. Normally, there is enough natural attrition din the ranks due to workers seeking more lucrative piecework elsewhere to reduce the work force from harvest maximum to the much smaller number needed for general field work.

E. The Rehiring of Adalberto Gomez

Despite numerous requests for work to the field boss, and despite filing a written application for work in mid-January, Gomez was not rehired until March 1, 1976, four full months after he was laid off. During that period, Respondent had hired thirteen new workers and rehired five workers with less seniority than Gomez.

According to Gomez' unrefuted testimony, at least one of the workers laid off on October 31, 1975, was rehired the following

day. Gomez' testimony, supported by Respondent, was that he returned to the field several times to ask Valenzuela for work. According to his declaration, on December 18, he observed that four new workers were in the fields. Valenzuela told him, "One of these days we'll call you." Valenzuela told him that he had needed a worker and had asked Olivares if he could call Gomez. Olivares had said, "No, call someone else first and Patito (Gomez) later." Valenzuela testified that he had told Gomez there was no work for him, but he did not deny Gomez' testimony.

When Gomez returned to the field in mid-January, he was informed that the company had a new policy requiring all workers to file an application with the office and be hired through the office. The next day (January 13, 1976) Gomez filed an application with the office.

Respondent company's Vice-President, Jean Dufau, states that the effective date for the new personnel policy of hiring exclusively through applications presented to the management was June, not January, 1976. The new policy of requesting applications began in January, 1976, but did not become firm practice at that time. No evidence was presented of any application having been required or filed other than that of Adalberto Gomez.

Several weeks later, as he had still not been recalled for work, Gomez went to seek help at the UFW office, and on February 19, 1976, a charge of unfair labor practices was filed against Respondent. Less than two weeks later, on March 1, 1976, Gomez was rehired. By admission of Olivares' declaration, the first time Gomez had been telephoned by Respondent was on February 26 and 27--

after the UFW charge had been filed.

Respondent's testimony that they could not reach Gomez to recall him because they did not have his telephone number does not stand up at all. Valenzuela had telephoned Gomez frequently in the past, he had visited Gomez at his home, and many of Gomez¹ friends and coworkers were working at Pleasant Valley and could have been asked to contact Gomez even had Gomez not come to the field requesting work.

Between the time of Gomez' layoff and his rehiring, from evidence of Respondent's Master payroll lists and Master file lists (Exhibits 1K and 1H, respectively), thirteen new workers had been hired and five workers with less seniority than Gomez had been recalled. Even after Gomez' filing of an application in the company office, after which time there is no dispute about Respondent having Gomez' telephone number, and in the period prior to their alleged attempt to call him on February 26, two new workers were hired and one worker with one week's more seniority than Gomez was rehired. After that time and still prior to Gomez' rehire, six other new workers were hired. The new Master File list (Exhibit 1H) gives Gomez a new employee number and gives his date of beginning last continuous employment as March 1, 1976.

DISCUSSION OF THE ISSUES AND
CONCLUSIONS OF LAW

I. The Assault Upon Adalberto Gomez

In October, 1975, at a barbecue sponsored by Respondent, Gomez was assaulted by Guillenno Olivares. Olivares shouted insults at Gomez and told him to tell his union lawyers about the assault.

I find this assault to have been unjustified and without provocation. In the light of all that had occurred at this barbecue, it does not appear that the assault was totally or principally motivated by anti-union animus. It is quite possible that the events at the barbecue prior to the assault precipitated Olivares' behavior. However, Olivares¹ taunt to Gomez to "Go tell your union lawyers" reinforces my finding that strong anti-union animus did exist among the Respondent's supervisors.

Furthermore, because it was well known that Gomez was active in the union and that Olivares was opposed to such activity, the effect of this assault and of Olivares' statement after his assault could only have been one of intimidation and coercion of Gomez and those employees immediately present at the incident.

It is the employer's contention that this event was nothing more than an isolated incident at a rowdy and drunken party. I do not agree with this contention. It was well established that the use of physical violence by an employer or agents of an employer against employees due to their union activities is in violation of the Agricultural Labor Relations Act, Section 1153(a) and is a Section 8(a)(1) violation of the NLRA.

Motive according to the NLRB is not a crucial or critical element of a Section 8(a)(1) violation. The Board's established

test has been that

"Interference, restraint and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." Cooper Thermometer Co., 154 NLRB 502, 503, n.2, 59 LRRM 1767 (1965); American Freightways Co., 124 NLRB 146, 147, 44 LRRM 1302 (1959) .

I believe that in the present case, the employer did coerce employees in the exercise of their rights as guaranteed in Section 7 of the NLRA.

It appears obvious to me that a physical assault upon an employee, coupled with a taunt that the employee's union will not be able to protect him from such unlawful assaults, would tend to discourage employees from self-organization and would tend to interfere with the free exercise of employee rights under the Act.

The court stated in NLRB v. Erie Resistor Corp., 373 US 221, 53 LRRM 2121, 2124 (1963), that an employer that commits acts that are so "inherently discriminatory or destructive of employee rights that an employer will be held to have foreseen the unlawful consequences." Other cases have held that it is not necessary to show that an employer acted out of animus toward the union or that the interference, coercion or restraint succeeded. NLRB v. Corning Glass Workers, 293 F.2d 784, 48 LRRM 2759 (1st Cir 1961).

In addition, employers are held liable for the acts and statements of their supervisors. J.S. Abercrombie, 83 NLRB 524 (1949) The acts of Olivares are certinally attributable to Respondent.

Based upon the foregoing conclusions, I therefore find that the assault upon Gomez by Olivares constitutes a violation of Section 1153(a) of the A.L.R.A.

II. The Layoff of Adalberto Gomez

General Counsel has presented an excellent case that an employee was discriminated against because of his union activities, however General Counsel has not overcome Respondent's presentation of a valid economic explanation for its layoff of Gomez.

By unrefuted testimony of several witnesses (Gomez and Jose Perera), Respondent had been extremely reluctant to hire Gomez in the fall of 1974 strictly on account of his union activities. Respondent had been advised against hiring Gomez by a fellow agricultural employer, and only the assurance of Foreman Valenzuela that Gomez was a good worker and that he was no longer an active supporter of Chavez convinced Respondent to allow Valenzuela to hire Gomez in the field.

Throughout his period of employment, Gomez continued his union activities. According to testimony of co-workers and foreman Valenzuela, Gomez was a good worker.

Evidence of the testimony of various witnesses indicates that Gomez got along well with his workmates, that he does not have an abrasive personality, and that his intention concerning his Union activities was never simply to make trouble for the Company. Gomez expressed concern that his union affiliation should cause difficulties for his immediate superior, Gregorio Valenzuela, for whom he showed respect and personal liking.

Beginning in the spring of 1975, Gomez apparently increased his UFW activities, and with the passage of the Act, he began speaking with fellow employees and urging them to sign union authorization cards. He was sent to the UFW annual convention in August,

1975. On at least five distinct occasions during the course of the year, one or another of Gomez' superiors spoke to him or to his co-workers in his hearing about his union activities, indicating that Respondent was opposed to his activities, that his activities would be fruitless, and that he was a fool and was endangering his job by his activities.

Ten days prior to the layoff of October 31, 1975, Gomez was assaulted by his supervisor at a company party. His supervisor shouted that he should "Go tell his union lawyers" about it. Shortly after this incident, foreman Valenzuela spoke with Gomez' entire crew about him, saying that Gomez was "crazy" to be so active in the union.

This issue and the determination of this issue is a matter of

"weighing the interests of employees in concerted activity against the interest of an employer in operating his business in a particular manner and of balancing in light of the Act and its policy intended consequences upon employees' rights against the business ends to be served by the employer's conduct." NLRB v. Erie Resistor Corp. , 373 US 221, 229; 53 LRRM 2121

The burden of proving this violation or discriminatory act is on the General Counsel. NLRB v. Borden, 67 LRRM 2679 (1968); Jubilee Manufacturing, 82 LRRM 1482, 202 NLRB 2 (1973).

In Radio Officers Union v. NLRB, the Supreme Court ruled

"...that this Section [8 (a) (3)] does not outlaw discrimination in employment as such; only discrimination as encourages or discourages membership in a labor organization is proscribed."

An essential element of a Section 1153 (c) violation is proof that the action by the employer -- in this instance the layoff -- was accomplished for the purpose of discouraging membership in a labor organization

or that it could reasonably be anticipated to have that effect. I do not find that this has been shown. I find that the employer has offered adequate evidence that its purpose was not to discriminate but to promote a legitimate business end.

Although there is anti-union bias on the part of the employer in this case, this bias is not an unusual one. Most employers in this type of work are opposed to unionization of their workers. It is agreed by all parties in this case that the period of time between the end of the tomato harvest and the commencement of the lettuce harvest was a slow time. Other testimony indicates that another crew besides the one Gomez was on also had a layoff during that slack season in the fall of 1975. Therefore, I find that this layoff was motivated by economic necessity. In addition there was no evidence indicating, and I cannot find, that any workers who were laid off at this time in question were laid off by any means other than a seniority system.

I recognize that at this time of the year it is slower, and although there may not have been a layoff in the preceding years, this is not to indicate that a layoff was not necessary for economic reasons at this time.

Exhibit 1H and 1K introduced by the General Counsel, as well as testimony, do indicate that the workers who remained on the crew did have more seniority than Adalberto Gomez. Although the company operations do not normally vary much from year to year, it is recognized that such factors as weather and market conditions do affect company procedures, and the company must be free to adapt to these conditions.

In summary, there appears to be a clear economic motive for the layoff of these workers, and however convenient it may have been for Respondent to dismiss Gomez, I do not feel the Charging Party has proved that Gomez was singled out for a discriminatory layoff, nor was the act one which in itself discouraged membership in the union.

III. The Failure to Rehire Adalberto Gomez

By their own admission, Respondent was quite anxious not to become unionized. They state that their pay rates, work conditions, and benefits were superior to neighboring companies' because they felt that that was the best protection against unionization at their company.

By his own admission and the supporting evidence offered by the company, Adalberto Gomez was very active in union organizational work at Pleasant Valley and was generally known to be a UFW supporter. He was frequently jibed by his superiors about his union activities and UFW sympathies.

The Pleasant Valley management was familiar with the Act and understood that it was impossible for them to take any direct action to stem unionization at their company. Furthermore, they knew that Gomez was quite familiar with the law, as he had apprised them of the workers' legal rights when questioned by his foreman in September, 1975, about the identity of those workmates who had signed Union authorization cards. Gomez' union connections were general knowledge both among the workers and the supervisors. During the course of his year in their hire, Gomez' union activities

continued and increased, and his activity centered on Respondent's employees.

It seems highly unlikely that if Respondent felt so strongly opposed to Gomez on account of his union associations in the fall of 1974 prior to hiring him, they would feel any less opposed to such activity after a full year in which his union activity had been quite heavily focussed upon their own laborers. There is no doubt that Respondent would have preferred not to have Gomez working there, and that they would do whatever they legally could not to rehire him after an apparently legal layoff.

It seems clear that Respondent had no positive obligation to seek out any particular worker for rehire after a layoff. It is also clear that Respondent was bound by only a loose system of seniority. However, I find that there was an effective use of such a system in existence. Since Foreman Valenzuela was involved in considerable discussion about the hiring of Gomez in November, 1974, when Gomez began his last continuous period of employment, I feel that he certainly was well aware of Gomez¹ relative standing in seniority. The hiring of thirteen new workers and the rehiring of five workers of less seniority than Gomez prior to his rehire can hardly fall within the scope of even the loosest seniority system.

Respondent's repeated violation of its own seniority system through its failure to rehire Gomez for four months when his standing in seniority would dictate his rehire was discriminatory and therefore an unfair labor practice in violation of Section 1153(c) of the Act.

It is also clear that by the traditional hiring practices

of Respondent and by the assurances of foreman Gregorio Valenzuela at the time of the layoff in October, 1975, a worker with Adalberto Gomez' seniority could reasonably expect to be called back to work when work became available. He could certainly expect to be told when work would become available for him when he inquired of the foreman in the field, even if at the time of his inquiry no work was immediately available. In fact, when the workers were laid off in the end of October, 1975, they were informed that the layoff would be of several weeks' duration and that they would be called back by the company.

Respondent also claimed that they did not recall Gomez because they did not have his telephone number. Not only does this contention not stand up under examination of the testimony given by witnesses for both Respondent and the UFW, but by testimony from both sides, Respondent also had other methods of recalling a worker. Furthermore, Gomez himself had come in person to request work on many occasions. Respondent had Gomez' telephone number on his written application for six weeks before he was rehired.

It is also the contention of Respondent that they did not rehire Gomez because there was no work for him at the times he requested it. In light of the large number of workers who were hired or rehired between the time of Gomez' layoff and his rehire, this seems a very inadequate response.

The fact that Gomez apparently did not return to the field immediately to seek rehire may be sufficient reason for the company to have hired new workers urgently needed prior to his first asking the foreman for work, but it does not excuse their failure to rehire him after that time.

Since, **as** is well established, Adalberto Gomez had a wide reputation as a UFW sympathiser, their failure to rehire him was coercive in its effect both on Gomez and on his workmates under the terms of Section 1153(c) and was therefore violative of that Section,

A discriminatorily motivated failure to recall is an unfair labor practice regardless of whether it follows a legitimate layoff or a discriminatory layoff. NLRB v. Waterman Steamship Corp., 309 US 206, 5 LRRM 682 (1940). Certainly selection of employees for layoff or recall so far out of the order of seniority indicates that a discriminatory motive was involved. This principle has been upheld in Vanella Buick Opel, Inc., 191 NLRB 805 (1971), 77 LRRM 1568; Pittsburg Brewing Company, 220 NLRB n. 109, 90 LRRM 13B4 (1975) .

Furthermore, the rehire of Gomez within two weeks of Respondent's receipt of the complaint filed by the UFW would indicate that Respondent was very nervous of the Union and perhaps felt that the Union could make a strong case for discrimination if they failed to rehire Gomez. However, that belated rehiring does nothing to dispell the impression that Respondent had not intended to rehire Gomez and had done so only under the pressure of the UFW charge against them. The NLRB holds that reinstatement under these circumstances is a further indication of discrimination. Beaumont Steel Construction Co., 179 NLRB n. 77 (1969), 74 LRRM 1036.

It is my impression that had Gomez not had the legal backing of the UFW and the Agricultural Labor Relations Act, he certainly would not now be working for the Pleasant Valley Vegetable Co-op.

IV. General Discriminatory Demeanor of Respondent

Although not specifically requested by the General Counsel under Section 1160 of the Act, I am empowered in the interests of justice to make the following findings and draft an appropriate remedy.

Through the testimony presented by witnesses for both Respondent and the UFW, there has emerged a pattern of seemingly minor and unrelated incidents each of which might not warrant a charge of unfair labor practice by itself, but which when taken as a whole clearly indicate a general demeanor on the part of Respondent's supervisors which have the cumulative effect of intimidation and humiliation of Adalberto Gomez and generally of intimidation and restraint of all of Respondent's employees in the exercise of their rights guaranteed by this Act.

These incidents have been mentioned throughout this brief as supportive evidence of anti-union animus: several statements by assistant supervisor Jenaro de la Cruz teasing Gomez about his UFW sympathies, suggesting to him that he tell his co-workers to tear up their union authorization cards as worthless; supervisor Olivares' acknowledgement that Respondent had not wanted to hire Gomez and had been advised against it due to his union affiliations; foreman Valenzuela's interrogation of Gomez on the identity of those who had signed union authorization cards; foreman Valenzuela's statement to his crew that Gomez was "crazy" to be so active with the union and that his union activities were endangering his job; Olivares' threat to call the police at a UFW organizational meeting; co-worker Rogelio Manzo's testimony that Gomez was singled out

due to his union affiliations for such, disciplinary actions as being given tickets for tardiness.

These acts, taken as a whole, are in violation of Section 8(a)(1) of the N.L.R.A. and of Section 1153(a) of the A.L.R.A.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices within the meaning of Section 1153(a) and (c) of the Agricultural Labor Relations Act, I recommend that they cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

Having found that Respondent unlawfully refused to reinstate Adalberto Gomez, I recommend that Respondent make Adalberto Gomez whole for any losses he may have incurred as a result of their unlawful discriminatory refusal to rehire or reinstate him

I therefore recommend that Respondent be ordered to make payments to Adalberto Gomez of a sum of money equal to the wages he would have earned from a period commencing two weeks after his layoff, that is, from November 14, 1975, until he was rehired on March 1, 1976. Such wages shall be calculated according to the rates of pay in effect during that period and shall be based upon the type of work Gomez would have been doing during that season. The quantity of work for which he is to be paid shall be calculated from the quantity of work produced by Gomez (if he would have been paid on an individual piece work basis) or by the crew on which Gomez worked (if he would have been paid on a crew piece work basis) during said season of 1974-1975. This calculation shall be premised upon continuous employment from November 14, 1975, through

March 1, 1976, with only the normal number of days off for workers during that season.

This back pay order should include reimbursement for vacation benefits, bonuses, pension coverage, and health and medical coverage, etc. Further, Adalberto Gomez is also to be given, in addition to his lost pay, interest of seven percent (7%) on this total reimbursement, which will be computed in accordance with the formula used by the National Labor Relations Board in F.W. Woolworth Co., 90 NLRB 289 through 294, 26 LRRM 1185 (1950).

Further, I recommend that Adalberto Gomez be reinstated to his previous standing in seniority dating from his original hire date of December 3, 1974/ as though his employment had been continuous from that date through the present.

The unfair labor practice committed by Respondent by Guillermo Olivares' attack or assault upon Adalberto Gomez is a rather serious one. Such actions as this must not be permitted to occur. It is my opinion that the entire purpose of the Act would then be frustrated, since very few workers would be willing to unionize or to attempt concerted action to protect their fundamental rights.

It is therefore respectfully recommended that Respondent have Guillermo Olivares apologize to Adalberto Gomez in the presence of those workers who, in the opinion of Gomez, were personally present or who had personal knowledge of this incident. It is further recommended that Respondent post a written apology in Spanish and English versions, signed by Olivares, in a form similar to that recommended in Appendix " B " attached hereto. Such notice shall be posted at a conspicuous place accessible to and frequented by all

Respondent's employees during the next peak harvest season of 1977.

Furthermore it is recommended that a public statement by Respondent's executive employees be made during the next peak harvest season stating that Respondent will not engage in any further discriminatory conduct of this nature and that Respondent recognizes and respects and will not interfere with the rights of its employees as guaranteed by the Agricultural Labor Relations Act. This order is to be posted in a conspicuous place on the employer's property in Spanish and in English.

The remedies requiring public statements to the employees shall take place in the presence of three ALRB agents, at least two of whom are bilingual in Spanish and English. At the end of such session there shall be a question and answer period for the workers with ALRB agents out of the presence of the employers on the subject of the Board's order in this case and/or employee's rights under the ALRA. I recognize that the posting of the recommended notices will not be entirely effective since many of the workers will not see or read them. I therefore strongly recommend that at the question and answer period with the three ALRB agents, additional copies of the Board's order be available for the workers and that they be urged to read this order and that the agents then discuss the order with the workers.

Having found that Respondent's employees engaged in a pattern of discriminatory intimidation through a series of minor acts in violation of Section 8(a)(1) of the NLRA and Section 1153(a) of the ALRA, it is hereby recommended that Respondent instruct all of its employees of the level of foreman, assistant supervisor, supervisor,

and management that they are to cease and desist from all such acts, and that Respondent shall inform such supervisory employees of the legalities of such acts and of employees' rights under the ALRA.

Upon the basis of the entire record, findings of facts, 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 unlawful actions or by telling them not to participate in an employee union, or by discharging, laying off, 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, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organ-

ization 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) Allow Adalberto Gomez to remain at his present job provided it is substantially equivalent to his former job without prejudice to his seniority or other rights and privileges; reinstate his seniority and make him whole for any losses he may have suffered as a result of his termination in the matter 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 records and reports, and other records necessary to analyze the back pay due in the manner provided by law and "The Remedy" above.

(c) Have Supervisor Guillenno Olivares make and post apology in the manner described above in the section "The Remedy."

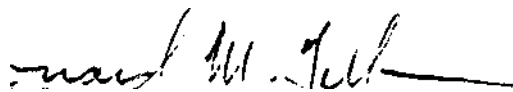
(d) Post and give to each employee hired up to and including the next major harvest season in 1977 copies of the notice attached hereto and marked "Appendix." Provide for public meetings following the issuance of such statement in the manner described in the section "The Remedy" above. Copies of this notice, including an appropriate Spanish translation, shall be furnished to Respondents for distribution by the Regional Director for the area Regional Office. Respondents are required to explain to each employee at the time the notice is given to him that it is important that he understand its contents, and Respondents are

further required to offer to read the notice to each employee if the employee so desires.

(e) Notify the Regional Director in the area. Regional Office within twenty (20) days from receipt of a copy of this Decision of steps Respondents have 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 by Respondents of Section 1153(c) by discriminatorily laying-off Adalberto Gomez be dismissed.

Dated: April 18, 1977.



Leonard M. Tillem
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 persons coming to work for us in the next harvest season that we will remedy those violations, and that we will respect the rights of all our employees in the future. Therefore we are now telling each of you:

(1) We have rehired Adalberto or Petito Gomes to his former job and gave him back pay for any losses that he had while he was off work. He should have been rehired sooner than he was.

(2) All our employees are free to support, become or remain members of the United Farm Workers of America, or of any other union. Our employees may wear union buttons or pass out and sign union authorization cards or engage in other organizational efforts including passing out literature or talking to their fellow employees about any union of their choice provided this is not done at times or in a manner that it interferes with their doing the job for which they were hired. We will not discharge, lay off, or in any other manner interfere with the rights of our employees to engage in these and other activities which are guaranteed them by the Agricultural Labor Relations Act.

Dated:

PLEASANT VALLEY VEGETABLE COOP.

By _____

APPENDIX " B "

NOTICE TO EMPLOYEES

I, Guillermo Olivares, sincerely regret that I assaulted Adalberto Goroez (also known as Alberto Gomez or Betito) and insulted him in the course of a company barbecue after the tomato harvest in 1975.

I apologize for my behavior and admit that I was not provoked by Gomez on this occasion. I admit that I lost my temper and behaved in a manner inappropriate and unbecoming for a supervisor.

I assure you that you are all free to join any union of your choice or to refrain from joining any union. I assure you that I shall not personally bear any grudges or behave any differently toward you on account of your personal choices in this matter.

Dated:

Guillermo Olivares, Supervisor
PLEASANT VALLEY VEGETABLE CO-OP