

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

BROCK RESEARCH, INC. ,	)	
	)	
Respondent,	)	Case No. 76-CE-88-E ( R )
	)	
and	)	4 ALRB No. 32
	)	
UNITED FARM WORKERS OF AMERICA,	)	
AFL-CIO,	)	
	)	
Charging Party.	)	
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DECISION AND ORDER

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

On June 17, 1977, Administrative Law Officer (ALO) Phillip M. Sims issued the attached Decision in this proceeding, in which he concluded that Respondent had violated Section 1153 ( a ) of the Act by promising and granting a wage increase to its employees to discourage their support of the UFW's organizing campaign at its premises, and by implicitly and expressly threatening employees with loss of employment if they supported the UFW's said organizing campaign. The ALO found, however, that the Respondent did not violate the Act by its layoff of the so-called "Casillas crew. "

The General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in reply to the General Counsel's exceptions .

The Board has considered the record and the attached

Decision in light of the exceptions and briefs <sup>1/</sup> and has decided to affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order as modified herein.<sup>2/</sup>

The General Counsel's exception to the ALO's failure to find unlawful the layoff of the Casillas crew is, in large measure, an attack on the credibility resolutions of the ALO. As we have previously held, such resolutions will not be overturned unless a clear preponderance of the relevant testimony shows them to be erroneous. See, e.g., Tex-Cal Land Mgt., Inc., 3 ALRB No. 14 (1977). We have carefully reviewed this record and, as we find no basis for overturning the ALO's credibility resolutions, the General Counsel's exceptions are hereby dismissed.

#### ORDER

Pursuant to Labor Code Section 1160.3, Brock Research Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Interfering with, restraining, or coercing its agricultural employees in the exercise of rights guaranteed in

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1/Respondent did not except to the ALO's findings. Its brief is limited to the contention that the General Counsel's exceptions were untimely filed. We do not agree. Exceptions were due on September 5, 1977. However, as that was a legal holiday (Labor Day), the exceptions were timely filed on September 6. 8 Cal. Admin. Code Section 20480 (1976). Treating Respondent's brief as a motion to strike the exceptions, the motion is hereby denied.

2/We make the following corrections in the ALO's Decision: p. 8 11. 12-13, correct citation to, Rupp Industries, 217 NLRB 385, 88 LRRM 1603 (1975); p. 8, 11/24-25, NLRB v. Exchange Parts Co., 375 U.S. 405, 55 LRRM 2098 (1964); p. 13, 1. 4, substitute "words" for "workers"; p. 15, 1. 21, correct date of decision, 1952? p. 16, 1. 19, correct citation to, Aircraft Hydro-Forming, Inc., 221 NLRB No. 117.

Section 1152 of the Act by promising or granting wage increases or other employment benefits, or by otherwise modifying the terms and conditions of their employment to discourage them from joining or supporting the United Farm Workers of America, AFL-CIO, or any other labor organization; provided, however, that nothing in this Order shall be construed as requiring Respondent to rescind or withdraw any wage increase, economic benefit, or other term or condition of employment it has previously established.

b. Interfering with, restraining, or coercing its agricultural employees in the exercise of rights guaranteed in Section 1152 of the Act by threatening them, expressly or implicitly, with loss of employment if they support, join, or assist the United Farm Workers of America, AFL-CIO, or any other labor organization.

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

a. Sign the Notice to Employees attached hereto.

Upon its translation by a Board Agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

b. Post copies of the attached Notice for 90 consecutive days, the posting period and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

c. Mail copies of the attached Notice in appropriate languages, within 30 days from receipt of this Order, to all employees employed during the pay period which included February 21, 1976.

d. Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at peak season 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 Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question and answer period.

e. Notify the Regional Director in writing, not later than 30 days from the date of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

DATED: May 25, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After a hearing at which all sides had the chance to present evidence and state their positions, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act by granting wage increases to our employees to discourage them from supporting the UFW organizing campaign and by threatening them with loss of their jobs if they supported that campaign. The Board has ordered us to post this Notice and take other action. We will do what the Board has ordered, and also tell you that:

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

(1) to organize themselves;

(2) to form, join, or help any union;

(3) to bargain as a group and to choose anyone they want to speak for them;

(4) to act together with other workers to try to get a contract or to help or protect each other; and

(5) to decide not to do any of these things.

Because this is true we promise you that:

WE WILL NOT in the future change the pay or other benefits of our employees to discourage them from supporting any union.

WE WILL NOT threaten our employees with loss of employment for supporting any union.

BROCK RESEARCH, INC.

DATED: \_\_\_\_\_ 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.

BROCK RESEARCH, INC.

Case No. 76-CE-88-E(R)

ALO DECISION

The amended complaint alleged three violations of the Act: 1. that the Respondent discharged seven of its asparagus harvesters in retaliation for their engaging in activity in support of the UFW; 2. that the Respondent interfered with its employees Section 1152 rights by raising its wages during the UFW organizing campaign; 3. that on the occasion of the announcement of the wage increase the Respondent, by its supervisor, implicitly and expressly threatened its employees with loss of employment if they supported the UFW.

The ALO concluded from the timing of the wage increase (during the UFW campaign, on a day when the UFW organizers had been with the crews), its unusual size, the incongruity between the size of the increase and the Respondent's stated rationale for an increase, and the setting in which the increase was announced, that it constituted interference with the employees' free choice regarding unionization. The ALO cited *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 55 LRRM 2098 (1964) and *Hansen Farms*, 2 ALRB No. 61 (1976) for his conclusion that in these circumstances the grant of benefits was violative of the Act.

On the basis of credited testimony by General Counsel witnesses the ALO found that the statements made by the supervisor at the time of the wage increase announcement constituted unlawful threats of loss of employment for support of the UFW. However, the ALO found no violation in the layoff of the "Casillas crew". While finding that the company was generally aware of the union sympathy and support of some of its employees, including the Casillas crew, he found no evidence that this crew was in any way more conspicuous in this connection than any other. The ALO found also that there was no evidence that the Respondent knew that the Casillas crew had signed UFW authorization cards. Finally, he found credible the Respondent's evidence that all asparagus harvesting by its direct-hire employees was terminated and assigned to contracted employees for legitimate business reasons, and that the Casillas crew was not reassigned other work because in the Respondent's view its members did not have the requisite experience in the available farming activity.

BOARD DECISION

The Board decided to affirm the findings, rulings, and conclusions of the ALO, and to adopt his recommended Order with some modifications.

The Respondent did not take exception to the ALO's Decision, but did move in essence to strike the General Counsel's exceptions and brief as untimely filed. The Board denied the motion. As the date the exceptions were due, September 5, was a legal holiday (Labor Day), the General Counsel's exceptions were timely when filed September 6, under the terms of 8 Cal. Admin. Code Section 20480 (1976). Characterizing the General Counsel's exceptions as essentially constituting an attack on the ALO's credibility determinations, the Board declined to overturn these findings as its review of the relevant testimony failed to show by a clear preponderance that they were incorrect. Citing Tex-Cal Land Mgt., Inc., 3 ALRB No. 14 (1977).

This summary is furnished for information only and is not an official statement of the Board.

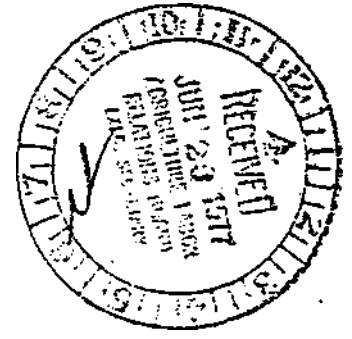
STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
 )  
 BROCK RESEARCH, INC., )  
 )  
 Respondent, )  
 )  
 and )  
 UNITED FARM WORKERS OF AMERICA, )  
 AFL-CIO, )  
 )  
 Charging Party. )

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CASE NO. : 76-CE-88-E(R)  
 SECOND AMENDED COMPLAINT



D E C I S I O N

PHILLIP M. SIMS, Administrative Law Officer:

This case was heard by me in El Centro, California during five (5) days of hearing beginning February 14, 15, 16, 17, 18, 1977. The hearing was held pursuant to the Complaint and subsequently amended, issued by the Sub-Regional Director of El Centro of the Agricultural Labor Relations Board ("Board") and based on charges filed by the United Farm Workers of America, AFL-CIO ("UFW").

All parties were represented at the hearing and were give a full opportunity to participate in the proceedings. General Counsel and Respondent filed briefs after the close of the hearing.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Respondent, I make the following:



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FINDINGS OF FACT

I. JURISDICTION:

Respondent, BROCK RESEARCH, INC., is a corporation engaged in agriculture in Imperial County, California, as was admitted by the Respondent in its Answer. Accordingly, I find that the Respondent *is* an agricultural employer within the meaning of Section 1140.4 (c) of the Act.

It was also admitted by the parties that the UFW is a labor organization within the meaning of Section 1140.4(f) of the Act, and I so find.

II. THE ALLEGED UNFAIR LABOR PRACTICES:

The Complaint as amended,<sup>3</sup> alleges certain violations as follows:

1. On or about March 2, 1976, the respondent, through its Foreman, RUBEN P. GARCIA, at its Imperial County premises near Yuma area, discharged FAUSTINO CUEVAS, RAFAEL CASILLAS, GILBERTO PENA, JUAN MOLINA, JESUS CASILLAS, MARCOS CASILLAS, and HECTOR VILLALOBOS for engaging in Union activity for the UFW and has failed and refused and continues to fail and refuse to reinstate them to their former, or substantially equivalent, position of employment.

2. On or about February 21, 1976, the respondent did raise the hourly rate of the asparagus workers from \$2.50 to \$3.00 to discourage them from signing UFW authorization cards.

3. On or about February 21, and on the same day as the announcement of the hourly rate change as described in the preceding paragraph herein, respondent through RUBEN GARCIA, a foreman, made statements that the boss did not want a Union, that

1 the boss did not want the workers to sign union authorization  
2 cards, that the boss wanted to be free, that if the union came to  
3 Brock workers might lose their jobs as a result of a job classifi-  
4 cation system that would be imposed, and that minors, specifically  
5 the children of present workers, would not be able to work. Such  
6 statements were made with the intent to and did in fact engender  
7 fear of loss of employment in the workers if they participated in  
8 the UFW organizing campaign occurring at Brock; and,

9 4. Therefore, these activities did violate Sections  
10 1153(c) 114C.4(a), 1152, and 1153(a) of the Agricultural Labor  
11 Relations Act ("Act").

12 Respondent denies that it violated the Act in any respect.  
13 Respondent admits that RUBEN P. GARCIA is a Supervisor within the  
14 meaning of Section 1140.4(j) of the Act, and I so find.

15 III. FACTS;

16 Respondent BROCK RESEARCH is a grower in the Imperial  
17 Valley of California. In February of 1976, there were some 75  
18 acres of asparagus being grown and packed by 30 to 40 employees at  
19 the Brock Research property. Additionally, Respondent grew  
20 oranges, tangerines, lemons, grapefruits, for which pickers were  
21 hired, as well as other employees who did miscellaneous field work  
22 (i.e. irrigation, weeding, and spraying).

23 The asparagus crews worked in small groups of seven and  
24 usually, but not always, came to work in one car together.  
25 During this period, RAFAEL CASILLAS formed a crew which rode with  
26 him in his camper consisting of GILBERT PENA, JESUS and MARCOS  
27 CASILLAS (RAFAEL CASILLAS' sons), HECTOR VILLALOBOS, JUAN  
28 PEDRO MOLINA, and FAUSTINO CUEVAS.<sup>5</sup> The CASILLAS crew all had  
work

1 experience with BROCK RESEARCH prior to the 1975/76 asparagus  
2 season, except HECTOR VILLALOBOS.<sup>6</sup> PENA, CUEVAS, and MOLINA had  
3 experience in the lemon and tangerine harvest of 1974 at BROCK  
4 RESEARCH<sup>7</sup> and either worked in grapefruit or wrapped trees the  
5 first quarters of 1975 as well as worked in the asparagus harvest.<sup>8</sup>  
6 RAFAEL CASILLAS testified that he was not a picker. It should be  
7 noted that the picking of lemons and tangerines are harvested  
8 differently than grapefruit and oranges. The former are clipped  
9 with a special type of scissor requiring some degree of skill while  
10 the latter are plucked by hand, requiring a different skill level.<sup>9</sup>

11 Testimony of RAFAEL CASILLAS indicates that RUBEN GARCIA  
12 the foreman who hired RAFAEL CASILLAS and the CASILLAS crew, knew  
13 that the members of the crew had been active in the UFW in Yuma in  
14 1974 and they had participated in a strike at that time. Testimony  
15 shows that many of the employees of BROCK RESEARCH during this  
16 period had also participated in the 1974 Yuma strike.

17 The first week of the asparagus harvest there were no in  
18 complaints about the packing of field boxes of asparagus.<sup>10</sup>  
19 However, later Garcia, the foreman, complained to the packers that  
20 boxes were not fully packed. Garcia told RAFAEL CASILLAS that he,  
21 CASILLAS, should fill the boxes full<sup>11</sup> as did FILIBERTO FUENTES,  
22 an apparent assistant foreman. There was no testimony that other  
23 than RAFAEL CASILLAS, any of the CASILLAS crew knew of the  
24 complaints of inadequately packed boxes. FAUSTINO CUEVAS testified  
25 the FILIBERTO FUENTES did complain about packing to RAFAEL  
26 CASILLAS.<sup>12</sup> ALFONSO SURREAL, not a member of the CASILLAS crew,  
27 testified that FILIBERTO FUENTES had complained to him two (2) or  
28 three (3) times about the poor packing.

1           Testimony was that the asparagus packing done at BROCK  
2 RESEARCH resulted in a much lower pack-out crate ration than had  
3 been experienced in the company before. It was in the low .40's .  
4 They used to be .65 for the whole season. DON BROCK testified that  
5 the pack-out ratio meant the number of field boxes that were used to  
6 pack a crate that was to be shipped out to a customer.

7           During February of 1976, in the middle of the asparagus  
8 harvest season, the UFW began an organizational effort. During that  
9 month usually two (2) organizers would meet with the workers asking  
10 for support and to sign union authorization cards.<sup>13</sup> LUPZ CORDOVA, a  
11 union organizer, testified that RUBEN GARCIA saw him talk of the  
12 RIOS crew; ALFONSO BULLREAL testified he knew RUBEN GARCIA saw him  
13 and his crew talking to the UFW organizers; GARCIA himself testified  
14 that he saw the SOTO crew sign authorization cards.

15           CORDONA testified that he visited the BROCK RESEARCH farm  
16 some four (4) times: The first visit, CORDONA and GARCIA discussed  
17 the lack of gloves for the asparagus workers and low wages of all  
18 of the crews. The second visit was with the CASILLAS crew and  
19 other crews. The third visit was with all the asparagus pickers,  
20 and a fourth meeting with the CASILLAS crew after work, at which  
21 time the CASILLAS crew testified they signed union authorization  
22 cards. FAUSTINO CUEVOS testified that he recalled only one (1)  
23 time that GARCIA saw the CASILLAS crew talking to the organizer.

24           The afternoon of the third meeting with CORDONA and the  
25 asparagus workers (February 21, 1976), RUBEN GARCIA announced that  
26 BROCK RESEARCH was raising the hourly pay to the workers from \$2.50  
27 to \$3.00 per hour. The hourly rate in 1974/75 was \$2.41 per  
28

1 hour and in 1975/76 it was \$2.50 per hour. At the time of  
2 the announcement by GARCIA of the raise, testimony is given  
3 that he stated "Now here comes the Second Chavista."

4 Testimony was given that the workers had complained of the \$2.50  
5 wage since the beginning of the season.<sup>14</sup> DON BROCK stated that the  
6 raise to \$3.00 per hour had been contemplated for some time.

7 Approximately several days later , the asparagus crew went  
8 to a piece rate ( i . e . , rather than be paid for every hour worked,  
9 workers would be paid by the amount of asparagus cut and packed. The  
10 workers would be paid by the volume of -work as opposed to the hours  
11 worked.)

12 Testimony of witnesses indicate that this was the  
13 approximate time when the complaints began about the boxes  
14 not being properly packed.

15 On approximately March 3, 1976 , the CASILLAS crew was  
16 laid off <sup>15</sup> and a contract company and crew, EL DON was brought  
17 in to continue the asparagus harvest.<sup>16</sup> Not all asparagus workers  
18 were laid off as was the CASILLAS crew, they were given  
19 various jobs, including picking oranges, grapefruit,  
20 asparagus picking, weeding, spraying, irrigation, and general  
21 work. All workers, however, were taken from the asparagus picking  
22 on March 3, 1977. Some did, however, return in the middle of  
23 March <sup>17</sup> to harvest asparagus.

24 The reason given for the lay-off of the CASILLAS  
25 crew by RUBEN GARCIA, the foreman, was that the grapefruit was  
26 ready for harvest and the poor quality of the packing and the  
27 immediate future need of grapefruit pickers. He did not recall  
28 anyone in the CASILLAS crew having grapefruit picking  
experience, and he kept the cars which people rode in as a  
group who he recalled as having

1 grapefruit picking experience and not particular individuals.<sup>18</sup>

2 Additionally, GARCIA testified that there was no seniority system  
3 as such at BROCK RESEARCH.

4 RAFAEL CASILLAS testified that GARCIA had told him that there  
5 were to many bugs in the asparagus and BROCK was not going to continue to  
6 harvest. All of the members of the CASILLAS crew who testified state  
7 that that was what CASILLAS told them that GARCIA had said. GARCIA  
8 denied making the statement.

9 The next day, members of the CASILLAS crew saw asparagus workers  
10 picking oranges.

11 GILBERTO PENA asked GARCIA the day after the discharge whether  
12 there was any work for him. GARCIA replied that he didn't have- any more  
13 work but that in a few days he, GARCIA, might have  
14 work picking oranges or something, but nothing presently.<sup>21</sup>

15  
16 Prior to the termination of the CASILLAS crew on March 1, 1976,  
17 the crew that testified signed union authorization cards. This event  
18 occurred one day after work in RAFAEL CASILLAS' camper. UFW organizers  
19 CORDONA and KIRKLAND were present. The crew, except for two, were inside  
20 the back part of the camper pickup. While inside the camper, they signed  
21 the cards. While the crew was discussing the union and/or signing the  
22 cards, RUBEN CHAVEZ, an employee of Brock Research and a member of another  
23 crew, drove past them on a road which was across an irrigation canal from  
24 the CASILLAS camper.<sup>21</sup> CASILLAS crew members could not testify as to  
25 whether or not CHAVEZ saw them sign cards or not and CHAVEZ testified he  
26 could not tell what was going on inside the camper. He did recognize the  
27 two ( 2 ) UFW organizers standing outside the camper.<sup>22</sup> There was no  
28 credible testimony indicating RUBEN GARCIA saw the

1 the events at the CASILLAS camper.<sup>23</sup>

2 All of the members of the CASILLAS crew which testified at  
3 the hearing denied key and substantive matters in the declarations  
4 which had been filed on their behalf by the UFW. The declarations,  
5 therefore, are not used for consideration or determination in  
6 the decision of the Hearing Officer.

#### 7 ANALYSIS AND CONCLUSION

8 RESPONDENT VIOLATED SECTION 1153(a) OF THE ACT  
9 BY PROMISING AND PROVIDING A PAY INCREASE OF  
10 \$2.50 TO \$3.00 AN HOUR ON FEBRUARY 19, 1976.

11 NLRB precedent states clearly that a wage increase can be a  
12 violation of the law if its intent or effect is to interfere with the  
13 organizational rights of workers. Rupp Industries, vs. NLRB  
14 (1975) 55 LRRM 2098; International Shoe vs. NLRB (159) 43 LRRM 2093.  
15 In many cases, the increase occurred just prior to representation  
16 election, a violation found and the election set aside. In other  
17 cases, the wage increase occurred during a union organizational drive  
18 and was nonetheless considered a violation of the Act. NLRB v. Aircraft  
19 Corp. (1972) (CA, 5) 81 LRRM 2613; NLRB v. WKRG-TV, Inc. (1973) 83  
20 LRRM 2146. Even wage increases after an election were held to be in  
21 violation NLRB v. Furnas Electrical Co. (1972) 80 LRRM 2836 (CA, 7).  
22 It is not necessary for there to be any threats made at the time of the  
23 increase or for the increase to be conditioned upon non-participation  
24 of employees in union activity for an increase in benefits to be a  
25 violation. Exchange Parts, (supra).

26 The Courts, generally, have held that an increase in wages or  
27 benefits made during an organization campaign is presumed to have been  
28 done with the intent of interference with the employees

1 right of free choice. Consequently, when such an increase occurs  
2 during an organization campaign or just prior to an election, the  
3 employer has the burden of explaining such:

4 "The mere grant of benefits during the pendency  
5 of an election petition raises a presumption of  
6 impropriety unless satisfactorily explained  
by the employer." Rupp Industries, supra.

7 The ALRB has once decided the effect of an employer's  
8 promise of benefits to his employees made during a vigorous campaign  
9 in Hansen Farms v. UFW, 2 ALRB No. 61. The Board adopted the  
10 "economic realities" analysis found in NLRB cases. The first  
11 issue is whether the increase was an unfair use of the employer's  
12 economic position. If so, did it interfere with protected employee  
13 rights? The analysis of the Hansen case can be used to decide whether a  
14 wage increase interfered in the employee's right to participate or not  
15 in the organizing drive occurring at BROCK RESEARCH.

16 In BROCK, the increase occurred, February 19, during the heat  
17 of the UFW organizing drive there. Respondent explained that he made  
18 the increase to equalize the rates at BROCK RESEARCH and SIGNAL  
19 PACKING, a brother company in Imperial County and because he was  
20 afraid of losing workers at BROCK when SIGNAL PACKING change to piece  
21 rate on February 19. Timing and other circumstantial evidence can be  
22 used to prove intent. Exchange Parts supra.

23 Asparagus pickers in and around Calexico and including  
24 BROCK RESEARCH'S other company, SIGNAL PACKING, were  
25 receiving \$3.00 hourly rate. Workers in and around Winterhaven,  
26 Yuma and San Luis, Arizona were receiving \$2.50 hourly rate. BROCK  
27 RESEARCH



1 is generally closer to Arizona than Calexico and historically,  
2 has had a pay scale with the Yurna area (DON BROCK, RUBEN GARCIA  
3 testimony). RUBEN GARCIA testified that the workers had been com-  
4 plaining about the wage difference since the beginning of the season  
5 and that he had taken the complaint to DAVID BROCK. DON BROCK  
6 testified that he had, in the back of his mind, been thinking about  
7 it and intending to equalize rates at his two ( 2 ) companies for some  
8 time. He further explained that the increase went into effect  
9 February 19 because workers at SIGNAL went to piece rate that day.  
10 The keys to understanding the intent behind the increase  
11 are the amount of increase, the timing, and the events which occurred:  
12 at the time of its announcement. In 1975, the hourly rate for  
13 picking asparagus was \$2.41. In 1976 it was increased by \$.09 to  
14 \$2.50. In this context, a \$.50 raise is highly suspect. RUBEN  
15 CHAVEZ who has been with BROCK RESEARCH ten (10) to twelve (12)  
16 years, did not remember if there had ever been an increase in the  
17 asparagus rate of more than \$.20, much less \$.50. As stated in  
18 Exchange Parts, supra:

19 "The danger inherent in well-timed increases in  
20 benefits is the suggestion of a fist inside the  
21 velvet glove. Employees are not likely to miss  
22 the inference that the source of benefits not con-  
23 ferred is also the source from which the future  
24 benefits must follow and which may dry up if is  
25 not obliged."

26 If workers really are accustomed to different rates, as DON  
27 BROCK testifies, and he merely wanted to decrease the risk of their leaving  
28 when the Calexico area went piece rate, he could have raised the wages  
slightly. The facts indicate the raise to \$3.00 was to suggest to the workers  
that they don't need a union to get union wage rates. RUBEN GARCIA testified  
that at the time of the

1 announcement, GILBERTO PENA stated, "With that salary, why do we need  
2 a union?"

3 DON BROCK testified that he had been thinking about equalizing the  
4 rates for a while. The timing appears based upon the fact that BROCK had  
5 thought many times about the wage differentials in his two (2) companies,  
6 but understood it could exist because of the different labor pools. To  
7 preclude the union affiliation, it appears BROCK RESEARCH granted a wage  
8 increase during the organizing drive. If BROCK RESEARCH seriously wanted  
9 to equalize the rates,

10 he would have done so before the SIGNAL workers changed to piece  
11 rate for it to have optional impact on workers and it would have  
12 lasted for more than one day. The timing is further suspect because it  
13 occurred the same day of and only two hours after the UFW noon meeting  
14 with workers at which RUBEN GARCIA was present (CUEVAS testimony). (It  
15 is important to note that workers at BROCK

16 RESEARCH and Winterhaven/Yuma generally live in Arizona which has  
17 a different minimum wage law, etc., than California.)

18 When RUBEN GARCIA announced the pay raise, he first  
19 presented himself as the "Second Chavista" and then announced the "good  
20 news" of the raise. (CUEVAS, MOLINA and PENA testimony is  
21 credible on these statements.) Such a label clearly indicates the  
22 intent behind it—that the company was presenting a counter-offer.  
23 In effect, it was saying to workers: The Union offered you  
24 various things at noon, the Company is presenting you immediately  
25 with a substantial raise—whose offer do you accept? The workers  
26 testified that RUBEN GARCIA made various statements regarding the  
27 unions at the announcement. The workers stated that they understood  
28 the raise to be a substitute for union affiliation (CUEVAS, MOLINA

1 and PENA testimony is also credible in these statements.) RAFAEL  
2 CASILLAS, who was told of the raise individually by RUBEN GARCIA,  
3 understood the same thing.

4 RUBEN GARCIA testified that he did not participate in or make  
5 recommendations, concerning the decision to raise the wages. DON BROCK  
6 testified that he made the ultimate decision for the raise. He stated he  
7 talked with DAVID, his brother and manager of BROCK RESEARCH, but does not  
8 remember the conversation specifically. He does not remember an  
9 organizing drive at BROCK RESEARCH. Respondent did not call DAVID  
10 BROCK as a witness, even though he is the manager of BROCK RESEARCH  
11 and RUBEN GARCIA's boss. DON BROCK's lack of memory regarding the  
12 decision to raise the wages, the absence of an explanation by DAVID  
13 BROCK and the other evidence presented above indicate persuasively  
14 that the \$.50 raise was instituted for the purpose generally of  
15 interfering with the workers' free choice regarding unionization.

16 RESPONDENT VIOLATED SECTION 1153(a) OF THE ACT  
17 BY STATING AND IMPLYING THAT THE WORKERS WOULD  
18 LOSE THEIR JOBS- IF THE UFW ORGANIZED  
SUCCESSFULLY AT BROCK RESEARCH.

19 Section 1153(a) of the ALRA, which corresponds exactly  
20 with Section 8(a)(1) of the NLRA provides that it is an unfair  
21 labor practice for an employer to "interfere with, restrain or coerce  
22 agricultural employees" in the exercise of their rights  
23 under Section 1152 .to "form, join, or assist labor organizations" or  
24 to refrain from so doing. Section 1155 of the ALRA, . protects an  
25 employer's right to free speech only to the extent that his state-  
26 ments do not contain any "threat of reprisal or force, or promise  
27 of benefit." Free speech does not protect statements which are  
28

1 implied threats of reprisal. Speech need not contain an explicit threat  
2 of loss of employment for the Act to be violated. Cooks United, Inc. , 208  
3 NLRB No. 16 (1974) , 85 LRRM 1071.. Statements made must be analyzed in  
4 their context because workers are not pebbles in alien juxtaposition; but  
5 take their meaning from their surroundings, quoting Justice Learned Hand  
6 in NLRB v. Featherbank Company, Inc. , 121 F2d 254; Spartaca Corp. , 195  
7 NLRB No. 17, 79 LRRM 1351 (1972.)

8 The statement made by RUBEN GARCIA at the time of his 10  
9 announcement of the \$.50 raise violated 1153(a) . The entire  
10 incident occurred only two ( 2 ) hours after a UFW lunch meeting with 12  
11 workers. RUBEN GARCIA began by calling himself ( i . e . , the company) the  
12 "Second Chavista" and announcing a raise. Then he stated, in fact or in  
13 effect, that the boss didn't want problems with a union, the boss wanted  
14 to stay free (CUEVAS, MOLINA and PENA testimony is credible), the boss  
15 didn't want the workers to sign authorization cards (CUEVAS, MOLINA  
16 testimony is credible), that the workers would lose work if the UFW won  
17 (MOLINA, PENA testimony is credible). Given the context in which they  
18 were made, the statements became a threat of reprisal to the workers.

19 RESPONDENT DID NOT VIOLATE SECTION 1153 ( c ) OF THE  
20 ACT, AND DERIVATIVELY SECTION 1153( a ) , BY DISCHARGING  
21 GILBERTO PENA, RAFAEL CASILLAS, JESUS CASILLAS,  
22 MARCOS CASILLAS, HECTOR VILLALOBOS, JUAN PEDRO  
23 MOLINA AND FAUSTINO CUEVAS.

24 The California Agricultural Labor Relations Act of 1975  
25 Section 1153( c ) states:

26 "By discrimination in regard to the hiring or tenure  
27 of employment", or any term or condition of employment  
28 to encourage or discourage membership in any labor  
organization."

1 and Section 1153( a ) :

2 " It shall be an unfair labor practice for an  
3 agricultural employer to do any of the following:

4 "( a ) To interfere with, restrain, or coerce  
5 agricultural employees in the exercise of the  
6 rights guarantee in Section 1152. "

7 The proof required to show a 1153 ( c ) violation of 6  
8 Agricultural Labor Relations Act is the same as required under the  
9 Labor Management Act , Section 8 ( a ) ( 3 ) . In proving that the  
10 discharge violated LMRA 8( a ) ( 3 ) or ALRA 1153 ( c ) , the Board has the  
11 burden of showing that the discharge: ( 1 ) constituted discrimination ( 2 )  
12 was motivated by an intent to encourage or discourage union membership, and  
13 ( 3 ) actually resulted in encouraging or discouraging union membership. In  
14 regards to 8( a ) ( 3 ) Unfair Labor Practices, the U. S . Supreme Court said "  
15 . . this section does not outlaw the encouragement or discouragement of  
16 membership in labor organizations only such as is accomplished by  
17 discrimination is prohibited. Nor does this section outlaw discrimination  
18 in employment as such; only such discrimination as encourages or  
19 discourages membership in a labor organization is proscribed." Radio  
20 Officers v. NLRB, US Sup Ct . , 1954, 33 LRRM 2417.

21 Under LMRA Section 8( a ) ( 1 ) and ALRA 1153( a ) , on the other  
22 hand, it is necessary only to show that the discharge interfered with the  
23 employees' right to engage in concerted activities for their mutual aid  
24 or protection.

25 To establish a discriminatory discharge of an employee for  
26 engaging in union organizing or other protected concerted activity, it must  
27 be shown that the employer knew that the employee was so engaged. NLRB v.  
28 Whitin Machine Works, CAL, 1953, 32 LRRM 220 :

1 An employer is under no duty to determine whether a given  
2 employee engaged in concerted activity prior to a discharge.  
3 NLRB v. Westinghouse Electric Corp., CA6, 1949, 25 LRRM 2247.

4 The NLRB's general counsel "has the burden of proving this  
5 'employer' knowledge. . .and it is not sufficient that proof be  
6 based on suspicion or surmise." NLRB v. Shen-Valley Packers,  
7 CA4, 1954, 33 LRRM 2769.

8 An employee "may be discharged by the employer for good  
9 reason, a poor reason, or no reason at all, so long as the terms  
10 of the statute are not violated." NLRB v. Condenser Corp., CA3  
11 1942, 10 LRRM 483.

12 The U.S. Supreme Court said the Act "permits a discharge  
13 for any reason other than union activity or agitation for  
14 collective bargaining." Associated Press v. NLRB, 1937, 1 LRRM 732,  
15 also Radio Officers Union v. NLRB, NLRVN, v Teamsters (Gaynor  
16 News Company), US Sup.Ct., 1954, 33 LRRM 2417.

17 One court noted that an employee's "union activity. . .  
18 in itself" is no bar to discharge so long as the discharge isn't  
19 motivated by the desire either to discourage union membership or  
20 to encourage membership in a particular union. NLRB v. Williams  
21 Lumber Company, CA4, 1962, 29 LRRM 2633, cert. den. US Sup. Ct.,  
22 1956, 1952, 30 LRRM 2712.

23 From the preceding case law, it is abundantly clear that  
24 BROCK RESEARCH did have the right to terminate or lay off any or  
25 some of the asparagus crew as long as such an action did not inter-  
26 fere with the rights of the agricultural workers as provided for  
27 in the Act.

28 The testimony of DON BROCK, RUBEN GARCIA and FUENTES is

1 is credible that the entire asparagus crew was not picking and packing  
2 the asparagus efficiently as had been done in the past  
3 and at other ranches; and that the packers had been warned to pack  
4 more efficiently. " A discharge for inefficiency during a union  
5 organizational drive is not necessarily biased. NLRB v. Materials  
6 Transporation Co., 412 F2d 1074, 1078, 71 LRRM 2930 (CA5, 1969).

7 If an employee is inefficient his engagement in union activities  
8 does not alone destroy the just cause for the discharge. NLRB  
9 vs. Birmingham Publishing Co., 262 F2d 2, 9, 43 LRRM 2270 (CA5,  
10 1955). The employer did not violate the LMRA when it discharged three  
11 (3) piece rate employees who were known union adherents for their low  
12 production. NLRB v. Bogart SportswearMfg.Co., 84 LRRM 2311 (1973).

13 Discharge of known union adherents did not violate the Act since  
14 the evidence does not establish that the discharge was for union  
15 activities rather than for cause, it appearing that the employee failed to  
16 meet production standards. Vermeer Mfg. Co. (187 WLRB, 1971), 76 LRRM  
17 1335, see also Aircraft Hydro-Forming Inc., 22 NLRB 117 (1975), 91 LRRM  
18 1027.

19 The next issue is whether the failure to give the CASILLAS crew  
20 jobs in other areas of BROCK RESEARCH'S ranch shows sufficient facts to  
21 warrant a charge of an unfair labor practice.

22 Testimony of GARCIA is credible that he was familiar with  
23 CASILLAS' crew as "tree wrappers" rather than grapefruit pickers. He  
24 further testified the grapefruit was nearly ready for harvest and he wanted  
25 to keep as many grapefruit harvesters at the BROCK RESEARCH ranch as  
26 possible. The summary records does indicate most of the asparagus crew  
27 that remained after March 1

1 either worked in oranges and/or grapefruit. The majority of the  
2 CASILLAS crew did not have such experience. Further, CASILLAS and  
3 GARCIA both testified, in effect, that crews are usually hired by  
4 cars. Inasmuch as there was no formal seniority system, and the  
5 foreman had to make a decision based upon what he knew his immediate  
6 future needs were, there is a rational basis for believing he had a  
7 business reason for the discharge of the CASILLAS crew. PENA did have  
8 substantial seniority with BROCK RESEARCH but at that time there was no  
9 arrangement that guaranteed PENA. a job over less senior people. In  
10 Central Engineering and Construction Company, 200 NLRB 71 (1972), 82  
11 LRRM 1413, it was determined that ". . .[E]ven though other drivers  
12 who had less seniority than the laid off drivers were retained, the  
13 layoff was effectuated in accordance with the employer's practice of  
14 (1) laying off an entire crew, and (2) retaining the best men  
15 available. (emphasis added) .

16  
17 The employer lawfully laid off four employees although the  
18 employer did not select the employees for layoffs on the basis of  
19 seniority, since it was not obligated to do so. Metzger Machine and  
20 Engineering Company, 209 NLRB 905 (1973) , 86 LRRM 1229

21 The record and testimony are clear in showing that BROCK  
22 RESEARCH, through its agents, was well aware of the UFW activity.

23 RUBEN GARCIA saw UFW organizers talking to the entire  
24 asparagus crews, as well as seeing individual asparagus crew members  
25 not CASILLAS' crew, though, sign authorization cards. Those members of  
26 CASILLAS' s crew which testified at the hearing indicated that other than  
27 signing a union authorization card, which GARCIA did not see or know  
28 about, as far as they know, and participate



1 in general discussion with UFW organizers as did other members of '  
2 asparagus crews. ALPHONSO BURREAL testified that no one in the  
3 asparagus crews had any more conversations with UFW7 than any other  
4 workers. (BURREAL's testimony is credible.) The evidence and  
5 testimony indicate that CASILLAS engaged in no more union activity  
6 than any other crew. The evidence and testimony indicate that other  
7 crews were much more open about their union activities.

8 Inasmuch as the CASILLAS crew did not do anything different  
9 than the other crews, it is important to determine if the employer  
10 knew, either directly or indirectly, that CASILLAS<sup>1</sup> crew signed  
11 authorization cards and that was the reason for the discharge.  
12

13 The discharge of an employee who had signed the union  
14 authorization card was lawful, even though knowledge of the employer  
15 can be imputed, since there is no evidence that the employer was  
16 actually informed of it; there was no proof of the employer's animus  
17 toward the employee; and the employee had been warned of the  
18 employer's dissatisfaction with his work. Hyster Co., (CA8 (1972),  
19 80 LRRM 2358.

20 When RUBEN CHAVEZ drove by the day the CASILLAS crew  
21 signed the cards, CHAVEZ testified he could not see what was going  
22 on. He could only see the UFW organizers outside the back of the  
23 pickup. General Counsel., in the post hearing brief, acknowledges  
24 that CHAVEZ continued past the truck ". . .without his curiosity  
25 completely 'satisfied.'<sup>25</sup> As previously noted, there was on credible  
26 testimony that indicated RUBEN GARCIA ever saw the activates at the  
27 camper.<sup>26</sup>  
28

1 General Counsel request that the Administrative Law Officer infer  
2 that the employer had knowledge from the travels of CHAVEZ. There was  
3 no evidence presented that CHAVEZ ever told GARCIA of the camper  
4 incident. As a matter of fact, both parties testified that there,  
5 in fact, had been no discussion.

6 There must be some evidence presented to even infer that there was  
7 some communication between CHAVEZ and GARCIA other than the suspicions of  
8 the signatory. If General Counsel had presented some evidence, other than  
9 the testimony of MARCOS CASILLAS, that would support the theory contained  
10 in footnote 7 of the Post Hearing Brief then there would at least be some  
11 factual basis for finding or at least inferring the employer had knowledge  
12 of the CASILLAS crew signing UFW union authorization cards on February  
13 26, 1976.

15 Further, there is nothing in the record nor in the testimony  
16 that indicates the employer's agent, RUBEN GARCIA, had any animus or  
17 hostility to the members of the crew.

18 There is testimony that GARCIA did, in fact, go to CASILLAS' home  
19 with PENA to ask RAFAEL CASILLAS to come to work in November, However,  
20 it was on the recommendation of PENA that GARCIA go to CASILLAS' home.  
21 Other than three (3) weeks in 1973 when RAFAEL CASILLAS was packing  
22 nursery trees, there is no evidence that GARCIA knew of CASILLAS'  
23 performance to that November he was hired, as General Counsel alludes to  
24 in footnote 3 of that Post Hearing Brief.<sup>28</sup>

26 Additionally, PENA, who was present at the time the job offer was  
27 made to CASILLAS, testified that there was not an offer of a permanent  
28 job, just a general job, and at that time, BROCK apparently had work.<sup>29</sup>



1           1. Respondents, their officers, their agents, and  
2 representatives, shall cease and desist from:

3           a. Discouraging membership of any of its employees in the -  
4 United Farm Workers of American AFL-CIO, or any other labor organization,  
5 by unlawfully promulgating and enforcing a rule against union activities  
6 or, in any other manner discriminating against individuals in regard to -  
7 their hire or tenure of employment or any term or condition of  
8 employment, except as authorized in Section 1153(c) of the Act;

9           b. In any other manner interfering with, restraining and  
10 coercing employees in the exercise of their right to self organization,  
11 to form, join or assist labor organizations, and to engage in other  
12 concerted activities for the purpose of collective bargaining or other  
13 mutual aid or protection, or to refrain from any and all such activities  
14 except to the extent that such right may be affected by an agreement  
15 requiring membership in a labor organization as a condition of continued  
16 employment as authorized in Section 1153(c) of the Act;

17           2. An order requiring a public reading of a "Notice to  
18 Employee" by the respondent in the presence of a Board agent to its  
19 employees during the next harvest season, stating that the respondent  
20 will not engage in the conduct herein complained of, the manner, method  
21 and substance of which to be decided by the Board. The public reading  
22 shall be in English and Spanish.

23           3. An order, requiring the respondent to post in writing the  
24 terms of the Board's Order in a "Notice to Employees" as provided by  
25 the Regional Director in English and Spanish referred to herein above  
26 in paragraph 2 in conspicuous places on the

1 respondent's property for no less than sixty ( 60 ) days during  
2 the next harvest season.

3 4. An order requiring the respondent to mail the "Notice to  
4 Employees" referred to herein above in paragraph 2 to the last  
5 known home address of all harvest season employees.

6 5. An order requiring periodic reports by the respondent to  
7 the designated agent of the Board, under penalty of perjury,  
8 illustrating compliance with the Board's order;

9 With respect to the General Counsel's request that respondent  
10 read the contents of the notice to its employees, the existence of  
11 significant illiteracy and semi-literacy among agricultural employees  
12 necessitates the adoption of such oral communication in order to  
13 provide an effective remedy. The Board has already recognized that  
14 there exists among agricultural employees a significant degree of  
15 illiteracy and semi-literacy. See Samuel v. Verner Company, 1 ALRB No.  
16 10, p. 10-11 (1974). Additionally, such means of communication are  
17 especially necessary in the agricultural industry in order to remedy  
18 the violations, since employees are employed for such relatively brief  
19 periods of time.

20 Although the National Labor Relations Board generally requires  
21 that respondent merely post copies of the "Notice to Employees" in  
22 conspicuous places, the NLRB has consistently found, in circumstances  
23 where there is a significant number of illiterate employees, that it  
24 is necessary that the notice be read and mailed to employees, in order  
25 to effectively inform them of its contents. Bush Hog, Inc., 161 NLRB  
26 1757, 63 LRRM 1501, enf'd 405 F.2d 755, 70 LRRM 2070 (5th Cir.,  
27 1963); Texas Electric Cooperatives, Inc., 160 NLRB 440, 62 LRRM 1631  
28 (1966) enf'd.,

1 398 F2d 722, 68 LRRM 3008, 3123 (5th Cir., 1968). Laney and Duke Storage  
2 Warehouse Co., 151 NLRB No. 28, 58 LRRM 1398, 1393 (1964); Jackson  
3 Tile, 122 NLRB 764, 43 LRRM 1195 (1958), Marine Welding and Repair Works v.  
4 NLRB, 439 F2d, 76 LRRM 2661 (8th Circ., 1971), enforcing 174 NLRB No.  
5 102, 70 LRRM 1329 (1960). Moreover, this remedy is particularly  
6 appropriate to the facts of the present case, in which the respondent  
7 itself utilized the delivery of speeches to the employees as a method of  
8 communicating with them.

9 Dated: June 17, 1977

10  
11 AGRICULTURAL LABOR RELATIONS BOARD

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13 

14 By: PHILLIP M. SIMS  
15 Administrative Law Officer  
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FOOTNOTES

1. General Counsel's Exhibit, G.C. 9.
2. General Counsel's Exhibit, G.C. 3.
3. General Counsel's Exhibit, G.C. 9
4. Testimony of RUBEN GARCIA, RAFAEL CASILLAS
5. JESUS CASILLAS and HECTOR VILLALOBOS did not appear nor testify at the hearing as to what union activities they engaged in or to offer any other evidence of an unfair labor practice.
6. See Exhibit Summary of Work History of Employees at Brock Research, provided in correspondence dated March 4, 1977.
7. Ibid.
8. Ibid.
9. Testimony of RUBEN GARCIA, Foreman.
10. 'RAFAEL CASILLAS' testimony.
11. Ibid.
12. CUEVAS testimony.
13. Testimony of LUPE CORDOVA and RAFAEL CASILLAS.
14. Testimony of GARCIA and R. CASILLAS
15. Testimony of all witnesses.
16. Testimony of GARCIA, CASILLAS, and BROCK
17. See Exhibit Summary of Work History of Employee at Brock Research, provided in correspondence dated March 4, 1977.
18. RUBEN GARCIA testimony.
19. Ibid. (There was also conflicting testimony as to whether RAFAEL CASILLAS had asked for \$15.00 for gas as opposed to accepting \$5.00 for gas, the amount that was paid to other drivers which brought crews to work.)
20. Testimony of PENA and GARCIA.
21. Testimony of CHAVEZ, CASILLAS crew who testified.
22. CHAVEZ testimony
23. The testimony of MARCOS CASILLAS stating he saw RUBEN GARCIA in his truck come towards the CASILLAS camper and then back up is not credible.

- 1 24. RAFAEL CASILLAS, FUENTES, GARCIA and BULLREAL testimony.
- 2 25. General Counsel's Brief, page 7, line 22.
- 3 26. MARCOS CASILLAS alone testified, with no prior or subsequent  
4 corroboration by other witnesses, that he saw RUBEN GARCIA come  
5 towards the pickup and then back up. This particular witness's  
6 entire testimony was highly suspect and required, at the time, a  
7 discussion of the penalties of perjury. Even if his testimony  
8 should be given weight, the physical relationship of the two  
9 trucks would preclude any visible means of determine who was in  
10 the back of the truck much less what was being done in the back  
11 of the enclosed camper.
- 12 27. General Counsel's Post Hearing Brief, page 8, line 19-28.
- 13 28. General Counsel's Post Hearing Brief, page 10, line 22-28.
- 14 29. There was testimony that indicated the CASILLAS sons left a job  
15 at Interharvest to take the job at BROCK, but testimony indicated  
16 that the particular job they were doing, weeding and trimming  
17 lettuce, was nearly at an end.

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