Lindsay, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SIERRA CITRUS ASSOCIATION, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 77-CE-30-F 77-CE-42-D 5 ALRB No. 12

DECISION AND ORDER

On July 14, 1978, Administrative Law Officer (ALO) Les N. Harrison issued the attached Decision and Order in this case. Thereafter, Respondent timely filed exceptions [1/] with a supporting brief and General Counsel timely filed a reply brief.

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.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to

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[1/] Respondent excepts to the ALO's credibility resolutions. To the extent that such resolutions were based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 C1977); El Paso Natural Gas Co., 193 NLRB 333, 78 LRRM 1250 (1971); Standard Dry Wall Products, 91 NLRB 544, 26 LRBM 1531 (1950). We have reviewed the record and find the ALO's credibility resolutions based on demeanor to be supported by the record as a whole. Although we agree with the ALO's credibility resolutions concerning the testimony of Dale Grimsley, we rely upon that testimony as a whole rather than the single statement that despite having worked in California agriculture for most of his life, he had no opinion of the United Farm Workers of America, AFL-CIO (UFW).

affirm the rulings, findings and conclusions of the ALO as modified herein and to adopt his recommended Order, with modifications.

Employment Status of Jose Ponce

We find merit in Respondent's exception to the ALO's conclusion that Jose Ponce, a truck driver, was an agricultural employee within the meaning of Labor Code Section 1140.4 (b).

Ponce was employed by Respondent and had three primary areas of responsibility. He transported empty orange bins from the packing shed to fields being harvested by Respondent. After pickers had filled the bins, they were loaded onto Ponce's truck by co-supervisor Dale Grimsley who was also the field hoister. Ponce then transported the bins to the packing shed. In addition to the above tasks, Ponce repaired damaged bins at the packing shed.

Respondent is a nonprofit corporation owned entirely by growers. It harvests and packs fruits owned and grown by the individual shareholders. Respondent owns the property upon which the packing operation is located but owns no land used for cultivation.

Our recent decisions, Bonita Packing Co., Inc., 4 ALRB No. 96 (1978) and Romar Carrot Co., 4 ALRB No. 56 (1978), and an earlier National Labor Relations Board case, Guadalupe Carrot Packers dba Romar Carrot Company, 228 NLRB 369, 94 LRRM 1734 (1977), restate the basic principle that one engaged in secondary agricultural activity, such as truck driving, is not within the purview of Section 1140.4 (b) unless the work is performed on a farm or by a farmer. They make clear that a farmer's cooperative which

harvests and packs the products of its shareholders is not a fanner and that one who does not work on land used for cultivation does not work on a farm. Therefore, Jose Ponce is not an agricultural employee within the meaning of Labor Code Section 1140.4(b) and was, consequently, not discriminatorily discharged in violation of Labor Code Section 1153(c) and (a).

Unlawful Discrimination Against Members of the Grimsley Crew

We find merit in Respondent's exception to the ALO's conclusion that Magdeleno Mata, Jose Covarrubias, Elvia Villareal and Saul Villareal were discriminated against in violation of Labor Code Section 1153(a).

Dale Grimsley was the co-supervisor of the crew in which these four employees worked. In February 1977, Magdeleno Mata first began to work in the crew. Around the beginning of March, Mata and another crew member, Magdeleno Correa, began to speak with other employees in an attempt to convince them to choose the United Farm Workers of America, AFL-CIO (UFW) as their collective bargaining representative.[2/] In April 1977, Jose Covarrubias and the Villareals placed UFW bumper stickers on their cars which they regularly drove to work and parked adjacent to or near Grimsley's car.[3/]

Respondent computed wages on a piece-rate basis and employees in the Grimsley Crew were often able to pick as much as they wished. However, co-supervisor Dale Grimsley periodically

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[2/]Grimsley admitted that he knew of Mata's union activities,

[3/]Respondent did not contest the issue of whether it had knowledge of Covarrubias' and the Villareals' union sympathy.

allowed some employees to work more than others either because there were not enough trees ready to be picked or because of artificial limitations imposed by the Navel or Valencia Orange Administrative Committees.

The ALO found that Grimsley discriminated against Mata, Covarrubias and the Villareals in violation of Labor Code Section 1153 (a)[4/] because he did not allow them to work as much as the others. He relied mainly upon documentary evidence which demonstrated that, on the average, these four employees worked fewer hours per month than anti-UFW members of the crew during the months of March through June, the period in which Mata and Correa were actively organizing the crew.

We find no violation because the evidence does not establish that Grimsley discriminated against these four employees through his work assignments or that his pattern of work assignments interfered with the exercise of employees' Section 1152 rights. The evidence instead reveals that Grimsley's work assignment patterns did not change significantly following the inception of union activity in the crew and that these four individuals worked roughly the same number of hours as the average crew member.

The ALO correctly points out that Jose Cova-rrubias ranked 15th of the 15 regular members of Grimsley's crew in terms of number of hours worked between March and June 1977. (It appears

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[4/]The ALO, apparently because he was unconvinced that Grimsley acted from anti-union animus, failed to find a violation of Section 1153 (c).

that April through June would have been a more appropriate period to use as Covarrubias' union activity did not begin until April.) However, Covarrubias also ranked in the middle of the crew during the months of January and February, before any organizational activity began. His ranking changed very little throughout the first six months of 1977 except for a fluctuation in April and May. In April, his ranking fell. However, he admitted that he occasionally missed work because he was a fire-fighter and he remembered one occasion in April 1977 when he was absent because of his fire fighting duties. Moreover, in May, he ranked among the highest of the workers in the crew. On these facts, we find neither discrimination nor a tendency to interfere with employees' exercise of Section 1152 rights.

The Villareals may be treated together as their situations are similar. Like Covarrubias, they became visible UFW supporters in April 1977. Between the months of March and June 1977, they worked, on the average, fewer hours per month than most of the other crew members. However, in January and February, they also worked fewer hours than most of the other crew members. On cross-examination, Elvia Villareal testified that home duties and "other things" prevented her from working full time. Once again, neither discrimination nor a tendency to interfere with the exercise of Section 1152 rights can be found on the basis of these records.

Mata was a vocal UFW supporter and a primary figure in the organizing activity which occurred in the Grimsley crew between March and May 1977. Mata worked an average of 77 hours per month

during that period. Although this is the lowest figure of any regular crew member, it is not an accurate indicator of his employment pattern.

During the months of March and April, Mata's average number of hours worked ranked in the middle of the crew. In April, this was true despite the fact that he missed four days of work due to a dispute with Dale Grimsley. His overall average was low, however, because he worked very few hours in May, far less than almost every other regular crew member. Although he ranked among the highest during the early part of May, he did not work for Sierra Citrus at all after May 16.[5/]

Allowing for his absence in the second half of May, it appears that Mata actually ranked somewhere in the middle of the crew throughout the period he worked for Respondent. Again, the pattern of Grimsley's work assignments to Mata reveals neither discrimination nor a tendency to interfere with employees' Section 1152 rights.

Although we find that Grimsley's general pattern of work assignments violated neither Labor Code Section 1153 (c) (because there was no discrimination) nor Section 1153 (a) (because there was no tendency to interfere with the exercise of employees' Section 1152 rights), one specific incident occurred which requires separate treatment. Mata testified that one day during the navel season, Grimsley prevented him from working during the first 50

[5/]The complaint alleged that Mata left the employ of Respondent because he was constructively discharged. That issue is discussed infra.

minutes or so of the work day. He told Mata that there were no bins for him to fill. Mata waited in his car by the side of the road for some 50 minutes until Grimsley allowed him to begin working. Magdeleno Correa corroborated Mata's account and also testified that there were empty bins at the field not in use at the time.

We find Grimsley discriminated against Mata by not allowing him to work. The incident occurred during a period in which Mata was a vocal union organizer and had had several arguments with Grimsley concerning the union. Respondent offered no explanation for the conduct but, instead denied that it occurred. In view of the lack of any justification offered by Respondent, we find that Respondent discriminated against Mata because of his union activity and conclude that such conduct violated Labor Code Section 1153Cc} and (a). S. E. Nichols Marcy Corp., 229 NLRB 75, 95, LRRM 1110 (1977].

The Constructive Discharge of Magdeleno Mata

We also find merit in Respondent's exception to the ALO's conclusion that Magdeleno Mata was constructively discharged in violation of Labor Code Section 1153 (c)and (a). The ALO based his conclusion upon his findings that Respondent had discriminated against Mata in the assignment of work and had been subjected to verbal abuse from Dale Grimsley. As we have already found that Mata was not subjected to discrimination in the assignment of work, that factor may not be used to establish a constructive discharge.

Verbal abuse alone is ordinarily insufficient to establish a constructive discharge. A constructive discharge

occurs when an employer renders an employee's working conditions so intolerable that the employee is forced to quit. When an employer imposes such intolerable conditions because of the employee's union activity or union membership, it is a violation of Labor Code Section 1153 Cc} and (a]. Tanaka Brothers, 4 ALRB No. 95 (1978); J. P. Stevens & Co. v. NLRB, 461 F.2d 490, 80 LRRM 2609 (4th Cir. 1972). We find that the verbal abuse suffered by Mata did not reach an intolerable level.

However, we conclude that the verbal abuse constitutes an independent violation of Section 1153(a). The ALO found that Grimsley threatened Mata with mayhem during a conversation in which he also told Mata that he did not want UFW people working in the crew. Such statements clearly interfere with the exercise of employees' Section 1152 rights. Allegheny Corp., Jones Motor Co. Div., 202 NLRB 123, 82 LRRM 1632 (1973).

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Sierra Citrus Association, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Interrogating any of its employees about their interest or membership in the UFW or any other union;

(b) Verbally abusing or threatening bodily harm to any employee because of her or his interest, membership or activities on behalf of the UFW or any other union; and

(c) Preventing any employee from working because of

his or her interest, membership or activities on behalf of the UFW or any other union.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Sign the attached Notice to Employees and, after it has been translated by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes hereinafter set forth.

(b) Post copies of the attached Notice on its premises at times and places to be determined by the Regional Director, such notices to remain posted for a period of 60 consecutive days. Respondent shall promptly replace any notices which are altered, defaced, covered, or removed.

(c) Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order, to all employees who worked in the Grimsley crew during March, April or May 1977.

(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 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.

Dated: February 15, 1979

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out, and post this Notice.

We will do what the Board has ordered, and also tell you that:

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

(1) To organize themselves;

(2) To form, join or help unions;

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

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

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

Because this is true we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT question any employee(s) about their union membership or union sympathy.

WE WILL NOT threaten bodily harm to any employee or verbally abuse any employee because of his or her union membership or union sympathy.

WE WILL NOT prevent any employee from working as much as other employees because of his or her union membership or union sympathy.

Dated: SIERRA CITRUS ASSOCIATION

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

Sierra Citrus Association 5 ALRB No. 12
Case Nos. 77-CE-30-F/77-CE-42-D

ALO DECISION

The ALO concluded that Respondent violated Section 1153 (a) of the Act by interrogating Elvia Villareal about her union membership, and by not allowing union supporters Jose Covarrubias, Magdeleno Mata, Elvia Villareal and Saul Villareal to work as many hours as others in the crew, and violated Section 1153(c) and Ca) of the Act by constructively discharging Magdeleno Mata. He found that the discriminatory pattern of work assignments and the verbal abuse to which Mata was subjected rendered the working conditions intolerable.

The ALO found that the General Counsel failed to prove that Respondent's questions of Magdeleno Correa concerning the cause of a fight at the workplace violated the Act, or that the work assignments given to Magdeleno Correa violated the Act.

The ALO concluded that truck driver Jose Ponce was an agricultural employee within the meaning of Section 1140.4 (c) of the Act and that Respondent discharged him in violation of Section 1153 (c) and (a), and found that Respondent's business justification for the discharge was pretextual.

BOARD DECISION

Respondent excepted to the ALO's conclusion that it violated Section 1153 (a) of the Act by interrogating Elvia Villareal about her union membership. The Board affirmed the ALO.

Respondent excepted to the ALO's conclusion that it violated Section 1153 (a) of the Act by discriminating against four union supporters through its general work assignments. The Board overruled the ALO on that issue, finding that the General Counsel failed to prove that such assignments were discriminatory or interfered with employees' protected rights. The Board concluded, however, that Respondent violated Section 1153 (c) and Ca) of the Act by failing to allow Magdeleno Mata to work during the first fifty minutes of a workday.

Respondent excepted to the ALO's conclusion that it violated Section 1153 (c) and Ca} of the Act by constructively discharging Magdeleno Mata. The Board overruled the ALO, finding that Mata was not subjected to unlawful discrimination through work assignments and that the verbal abuse he suffered did not render the job so intolerable as to warrant a finding of constructive discharge. However, the Board concluded that Respondent violated Section 1153 Ca) of the Act by verbally abusing Mata for his union sympathies.

Respondent excepted to the ALO's conclusions that Jose Ponce was an agricultural employee and that Respondent discharged him in violation of Section 1153 (c) and Cal of the Act. The Board overruled the ALO, concluding that Ponce was not an agricultural employee and that his discharge therefore did not constitute a violation of the Act. The Board affirmed the ALO's conclusion that the General Counsel failed to prove the allegations as to Magdeleno Correa.

REMEDIAL ORDER

The Board ordered Respondent to cease and desist from interrogating or verbally abusing employees, and from discriminating against employees with respect to work assignments because of their union sympathies. The Board also ordered reading, posting, distributing and mailing of a Notice to Employees.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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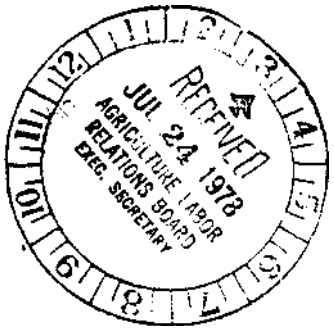

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the matter of SIERRA CITRUS ASSOCIATION, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 77-CE-30-F 77-CE-42-D

PROPOSED DECISION

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of SIERRA CITRUS ASSOCIATION, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 77-CE-30-F 77-CE-42-D PROPOSED DECISION

Martin Fassler and Richard Ornelas ,
for General Counsel;

J. Richard Glade, of Gordon & Glade,
for Respondent;

Debbie Miller, Representative of
United Farm Workers of America,
for the Charging Party.

STATEMENT OF THE CASE

LES N. HARRISON, Administrative Law Officer: This case was heard before me on October 24, 25, 26, and 27, 1977, in Exeter, California. The United Farm Workers of America, AFL-CIO (hereinafter referred to as "UFW") filed charge 77-CE-30-F on March 16, 1977 with the Agricultural Labor Relations Board (hereinafter referred to as the "Board" or "ALRB") against Sierra Citrus Association (hereinafter referred to as "Respondent" or "Sierra Citrus"), and on June 16, 1977, the United Farm Workers of America, AFL-CIO, filed charge 77-CE-42-D against

Respondent with the Agricultural Labor Relations Board. These charges were respectively served by the UFW to Respondent on March 16, 1977 and June 16, 1977. On August 17, 1977, at Delano, California, the Regional Director of the Board issued a complaint against the Respondent, and upon order of the Regional Director of the Board, the above-mentioned charges were consolidated within the complaint. The complaint charges that Sierra Citrus Association, in violation of Section 1152 of the Agricultural Labor Relations Act (hereinafter referred to as the "Act") interfered with, restrained, and coerced its employees in the exercise of their Section 1152 rights by: (a) threatening an employee named Magdaleno Mata with physical harm because of his activities on behalf of and support for the United Farm Workers on or about April 11, 1977, and that during April and May, 1977, the Respondent, by and through its agent Dale Grimsley, prevented employees Magdaleno Mata and Magdaleno Correa from speaking with other employees about the advantages of and the need for joining the United Farm Workers. Furthermore, the complaint charges that on or about March 8, 1977, Respondent, by and through its agent Dale Grimsley, interrogated employee Magdaleno Correa about his activities on behalf and support of the United Farm Workers.

The complaint also alleges that Respondent violated Sections 1153(a) and 1153(c) of the Act, in specifically engaging in discrimination in regard to hiring practices, tenure of employment, and terms and conditions of employment with the motivation

in discouraging membership and labor organization by, on or about May 23, 1977, and through its agent, Mark Dickerson, terminating the employment of Jose Ponce, because of his support for and activities on behalf of the United Farm Workers. Furthermore, the complaint alleges that on or about April and May, 1977, Respondent, by its agent Dale Grimsley, violated Sections 1153 (a) and 1153(c) of the Act by denying Esrela Mata, Magdaleno Correa, Lupe Correa, Saul Villareal, Elvia Villareal, Manual Covanuvios, Benjamin Courruvios, Rodolfo Martinez, and Magdaleno Mata, work picking oranges. Pursuant to regulation Section 20222, on the first day of the hearing, October 24, 1977, I admitted typographical amendments to the complaint wherein the date of the filing of charge 77-CE-30-F pursuant to an amended complaint, was changed to March 16, 1977, as stated served by the UFW on Respondent on March 16, 1977.

Similarly, on October 27, 1977, I allowed General Counsel to amend his complaint to add Paragraph 6d in which the complaint alleged that Respondent, through its agent Dale Grimsley, in April, 1977, interrogated Elvia Villareal about her membership in the United Farm Workers Union in violation of Section 1153(a) of the Act, and by the addition of Paragraph 7c wherein the complaining party alleged that in March, April and May, 1977, Respondent violated rights protected under Section 1152 of the Act, by changing the working conditions and thereby constructively discharging Magdaleno Mata, thus accruing violations of Sections 1153(a) and 1153(c) of the Act. These amendments,

merely conforming to proof presented at the hearing and imposing no additional burden on Respondent (with witnesses from both sides being present at the hearing) were allowed.

At the close of presentation of the evidence by General Counsel, I allowed Respondent's motion to dismiss allegations of the complaint relating to Esrela Mata, Lupe Correa, Benjamin Courruvios, and Rudolfo Martinez wherein I determined General Counsel had not made a prima facie showing of discrimination against the four workers. None of the workers mentioned had testified in the hearing, and the only reference to them in testimony was that they had been in a car with a UFW bumper sticker. Admittedly, some of these individuals were "family" of other alleged discriminatees, yet no evidence was presented as to the hours these individuals might have worked "but for" the alleged discrimination, and thus I ruled in Respondent's favor.

It was stipulated by Respondent that Eldon Smith, Mark Dickerson, Doris (June) Grimsley and Dale Grimsley were supervisors who, within the meaning of Section 1140.4(j) of the Act, and were agents of Respondent acting on its behalf. Respondent denied all other material allegations of the complaint relating to the alleged unfair labor practices.

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 positions.

Upon 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

Sierra Citrus Association, at the time of the facts set forth in the complaint, was engaged in agriculture in Tulare and Kern Counties, California, within the meaning of Section 1140(c) of the Agricultural Labor Relations Act.

Further, the United Farm Workers of America, AFL-CIO, is a labor organization representing agricultural employees within the meaning of Section 1140.4(f) of the Agricultural Labor Relations Act.

II

STATEMENT OF FACTS

The respondent, Sierra Citrus Association, is a non-profit California corporation engaged in harvesting, packing, and shipping oranges grown by its "grower members". Sierra Citrus Association (hereinafter referred to as "Sierra Citrus" or "Respondent") does not itself own, or lease farm land, but operates a packing house in Lindsay, California, where oranges of the Association's members are processed and stored.

In its packing house, Sierra Citrus can store between 35,000 and 40,000 boxes of oranges, and in the normal course of its business can process between 6,000 and 7,000 field boxes daily during the harvesting season. A "pro-rate" established by an industry committee and dictated by Federal law determines how many field boxes may be distributed in any given week.

Eldon Smith has managed Sierra Citrus since 1971, with the assistant manager being Jim Glausen. Clausen has responsibilities over all aspects of Respondent's business, whereas Mark Dickerson could be termed the supervisor who has control over the field operations of Sierra Citrus Association.

Primarily serving orange growers in Tulare and Kern Counties, the harvesting season in which Sierra Citrus Association has peak employment begins in November and extends through June or July of the next year. In 1977, the last harvesting date of Sierra Citrus Association was July 13, 1977.

To effect the harvesting of the orange crop, Sierra Citrus, in 1977, employed five (5) separate picking crews with approximately 25 to 30 regular pickers in a crew. Each working day, empty bins would be placed among the orange trees, (a bin being a wooden box approximately five feet by three feet and weighing, empty, approximately 200 pounds) and would be filled with oranges by the pickers of a particular crew. The pickers' pay rate was not on an hourly basis but rather on a "piece rate"; in 1977, this piece rate paid by Sierra Citrus to the pickers varied between $6.75 to $7.50 per bin. Quite clearly, being paid on

the "piece rate", it is advantageous for each crew to pick as many oranges as possible. Testimony was offered, however, that the piece rate paid (as stated above, ranging from $6.75 to $7.50 per bin) varied by the difficulty of the grove, size of tree, weather conditions, quantity of fruit per tree, etc. Similarly, the amount of time that each crew could work was governed in some degree by weather conditions, but as crew leaders and crew itself are paid by the piece rate, each crew would attempt to work as long and as much as possible.

Crew leaders are similarly paid on a piece rate. For the crew which is the object of this hearing, Dale and Doris Grimsley were the crew leaders. Doris Grimsley received a piece rate of $.60 a bin picked by her crew, whereas Dale Grimsley received $.20 a bin picked by his crew as he would also operate the field host within a particular orange grove in adjusting the placement of empty and full bins. The bins themselves were delivered to the orange grove by a driver who also would pick up the filled bins at the edge of the grove where Dale Grimsley placed them. Filled bins would then be returned to the packing house where they would be either stored or processed.

Hiring and firing a specific crew was most normally handled by the crew boss or foreman. In the instant case, Doris and Dale Grimsley hired the members of their crew, and in the 1977 growing season hired a total of 75 different pickers in order to keep a consistent crew of approximately 30 pickers.

III

APPLICABLE AGRICULTURAL LABOR RELATIONS ACT AND NATIONAL LABOR RELATIONS ACT PROVISIONS

Section 1152 of the Agricultural Labor Relations Act defines the basic rights of agricultural employees:

> "Employees shall have the 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..."

Section 1153 of the ALRA defines what constitutes an unfair labor practice for an employer by stating:

> "It shall be an unfair labor practice for an agricultural employer to do any of the following:
>
> (a) to interfere with, restrain, or coerce agricultural employees in exercise of the rights guaranteed in Section 1152.
>
> * * *
>
> (c) by discrimination in regard to the hiring or tenure of employment, or any term of employment, to encourage of discourage membership in any labor organization."

Section 1148 of the ALRA directs the Board to follow, "applicable precedents of the National Labor Relations Act as amended," and thus it is important to note that Sections 1153(a) and (c) of the Agricultural Labor Relations Act are essentially identical to Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act. Likewise, the rights protected by Section 1152 of the Agricultural Labor Relations Act closely parallel those same rights protected by Section 7 of the National Labor Relations Act. Similarly, the Agricultural Labor Relations Board shall

consult federal precedent under the NLRA for guidance in determining what conduct constitutes an unfair labor practice.

Standards of Proof

It may generally be stated that a violation of Section 1153(c) requires proof by a preponderance of the evidence that the discharge was illegally motivated by a discriminatory intent to discourage union membership. (Section 1160.2 of the Act sets forth the standard of proof necessary for establishing the commission of an unfair labor practice as the preponderance of the evidence.)

Different proof requirements stand in alleging a violation of Section 1153(a) and 1153(c) of the Act. A violation of Section 1153(a) of the ALRA occurs if it is shown that the employer engaged in conduct which, it may be reasonably said, tends to interfere with the free exercise of employee rights as guaranteed under Section 1152. There is no necessity to prove that the employer acted out of animosity or anti-union animus, or that the interference, coercion, or restraint to the employees in any way achieved the affect of truly hindering employees Section 1152 rights. NLRB v. Corning Glassworks, 293 F.2d 784, 48 LREM 2759 (1st Cr., 1961). Thus, if an employee is discharged in abrigation or his Section 1152 rights, there would then follow a violation of Section 1153(a), though perhaps not necessarily a violation of Section 1153(c), absent a showing of anti-union animus or employer conduct "inherently destructive" of employee 1152 rights.

A violation under Section 1153(c), where the employer has discriminated in regard to hiring or tenure of employment in order to (in this instance) discourage membership, in any labor organization, necessitates a showing that the employer's motive was the discouragement of such membership in a labor organization

The Board must prove that an employee would not have been discharged but for his union activity in order to establish a violation of Section 1153(c), but in proving the discriminatory motive of a discharge, General Counsel is not required to produce direct proof of the employer's state of mind, but may rely upon circumstancial evidence. In "discharge" situations, direct evidence of intent is often a difficult commodity to obtain, and thus, circumstancial evidence must suffice as it may be all that is available to prove quite motive in any type of case. NLRB v. Putnam Tool Company, 290 F.2d 663, 48 LRRM 2263 (6th Cir., 1961).

IV

DISCUSSION OF ISSUES AND CONCLUSIONS

When I analyzed the totality of this action, I find a complaint alleging only one discriminatory discharge, that of Jose Ponce, one alleged constructive discharge, that of Magdaleno Mata, and alleged discrimination in the conditions of employment along with interference and illegal interrogation relating to five (5) employees of Respondent, Magdaleno Mata (where there is also an allegation of a constructive discharge), Magdaleno Correa, Saul Villareal, Elvia Villareal and Jose Cobarrubias.

Putting aside the matter of Jose Ponce for later discussion, it becomes immediately apparent, and General Counsel concedes, that the above-mentioned orange pickers were not the "victims" of regular and patterned discrimination on the part of Respondent. Testimony offered by General Counsel relates to a few sporadic incidents of "interrogation" coupled with some harassment, and attempt to show economic loss through the alleged anti-union motivation of Respondent.

As is often the case in a situation of this type, the statistical exhibits presented by Respondent and General Counsel tend to confirm various elements of both sides. With this in mind, I was forced to examine even more closely the testimony of the witnesses at the hearing, with specific reference to the above-mentioned complainants and their immediate supervisors, Dale and June Grimsley. In General Counsel's post-hearing brief, he speaks at length about the credibility of Mr. Grimsley and how that credibility must be challenged by Grimsley's replies to queries as to whether or not he had formed an opinion about Ceasar Chavez or the United Farm Workers Union. Mr. Grimsley testified he had been with Sierra Citrus for approximately ten (10) years and had worked in agriculture almost his entire life (he is now 60) and yet stated in response to questions by Martin Fassler:

(Q) Have you formed an opinion about Ceasar Chavez?

(A) No, I haven't.

(Q) Have you formed an opinion about United Farm Workers?

(A) No, sir.

My own notes and observations coincide with that of General Counsel in this regard. It seems inconceivable that one engaged as a crew boss for an agricultural concern in Kern and Tulare Counties for the past ten (10) years would have "no opinion" as to Chavez or the UFW. Perhaps Grimsley was afraid to voice either negative or favorable comments relating to the UFW, but I found his less than candid reply in this instance to be a recurring phenomenon throughout his testimony.

It is with this point in mind, an indelible point which colored my attitude for the remainder of Dale Grimsley's testimony, that I examine the specific issues brought forth in the hearing.

A. Interrogation of Employees

1. Elvia Villareal

According to Elvia Villareal, at some time during the 1977 growing season (between April and June), Dale told Elvia Villareal that she and her husband were to pick only one set of oranges rather than two. When Villareal asked Grimsley the reason for this restriction, he asked her whether she and her husband, Saul Villareal, were members of the UFW. Similarly, Grimsley told Villareal that if "she didn't like it (the one bin restriction), they could both go to hell." Villareal also testified that Grimsley told her that since "you and your husband have been talking to Correa, you have turned against me."

Lastly, Elvia Villareal testified that Grimsley told her that the Union didn't scare him because Felipe Tovar (a member of a previous Grimsley crew) had had an "action" and all the company had to pay was $300.00.[1/]

To counter the allegations of Villareal, Grimsley stated that the only conversation held with Villareal was to tell her and her husband to improve their work by picking more oranges, especially the big trees. Obviously, one is again faced with a complete contradiction in testimony.

To support the respective contentions, Respondent states that Elvia Villareal and her husband Saul Villareal both worked right up to the last of the season, and specify the number of hours each worked throughout the months of March, April, May and June. (Respondent's Brief, page 13.) In an interesting chart devised by General Counsel from Respondent's Exhibit 13, however, one finds that of the 24 permanent members of Grimsley's crew, Saul Villareal ranked tied for 17th in total average hours per month during the growing season, and Elvia Villareal ranked 19th in the total number of hours worked within the growing season. Obviously, this is open to two different interpretations: One being that the Villareals simply did not want to work as much as the other members of Grimsley's crew; or, pointing to a pattern of discrimination among the Villareals and the other complainants. As to this specific interrogation, as well

[1/] "Action" seemingly referring to a previous Unfair Labor Hearing against Sierra Citrus.

as subsequent acts and the alleged discrimination relating to working hours, I will reserve my opinion until I further discuss the facts and issues.

2. Magdaleno Correa - Illegal Interrogation

Magdaleno Correa testified that after a fight between Magdaleno Mata and the Tapia brothers on the morning of March 8, 1977, Grimsley came to his house to discuss the matter with him. According to Correa, Dale asked him if the "problem" between Mata and the Tapia brother arose from Mata asking the Tapias to sign union authorization cards. Correa replied that he did not know if this was the reason for the fight. Again, Grimsley denies this conversation. General Counsel contends that the mere asking of this question in itself is "intimidating" and in violation of an employee's Section 1153(a) rights.

3. Conclusion as to Interrogation

Given the lack of credibility throughout much of Grimsley's testimony, (other conflicts such as to the amount of oranges a worker could pick will be brought out infra) and examining the demeanor of the witnesses, I find Villareal's and Correa's testimony to be credible and an accurate reflection of events that took place. I am thus left with determining whether or not this interrogation was a violation of their Section 1153(a) rights.

The interrogation of an employee as to union sympathy of affiliation to a union can be violative per se "because of its natural tendency to instill in the minds of employees fear of discrimination on the basis of the information the employer has obtained." NLRB v. West Coast Gasket Co., 205 F.2d 902,904; 32 LRRM 2353 (9th Cir. , 1953). Similarly, General Counsel cites the case of Struksness Construction Co., 165 NLRB 1062 for establishment of the fact that questioning employees as to their union sympathies is not looked on as an expression of views or opinions that is protected under the Act (here the National Labor Relations Act) when the purpose of an inquiry is "not to express views but to ascertain those of the person's question."

In the instant case, asking Elvia Villareal whether or not she and her husband were union members in the middle of an admittedly heated exchange would appear to be exactly what the Act intends to discourage; namely, the implied threat inherent in inquiring as to union status at an inappropriate time (in this situation that of a disagreement). I feel it makes no difference as to the "justification" or lack of justification in Villareal's discussions with Grimsley, and in fact this will be examined at a future time. For the instant matter, however, I find that Grimsley's questioning as to union affiliation at this time with Villareal was a violation of both her and her husband's rights under Section 1153(a) of the Agricultural Labor Relations Act.

As to Correa and his alleged interrogation, one finds a closer case. Again, at the outset, I am accepting Correa's statements of what took place as more accurate than Grimsley's denial, yet we find Grimsley not asking Correa directly whether or not he was a union member, but only as to if Mata was passing out authorization cards at the time of a disagreement between Mata and the Tapia brothers.. Here, while such *a* conversation would permit a finding of a violation of Section 1153(a) (if questioning places an employee in a position of acting as an informer, that questioning will be unlawful, Abex Corp., 162 NRLB 328, 64 LLRM 1004 (1966)), I do not feel that given the totality of the circumstances in which Grimsley spoke to Correa at this time, that Correa's rights under the Act were violated.

B. Alleged Discrimination in Working Conditions Against the UFW Supporters in Dale & Doris Grimsley's Crew

In examining this issue, I am again forced to look at a key statement of Dale Grimsley in assessing his credibility as opposed to the witnesses put forth by General Counsel. While one finds no "unbelievable discrepancy" as when Grimsley testified he had no opinion as to Chavez or the United Farm Workers Union, I found in the testimony of Grimsley and that of General Manager Eldon Smith a conflict which goes to the heart of the issue presented at the hearing.

In discussing whether or not the number of bins which a specific crew could fill with oranges during a shift is ever

limited by Respondent, Dale Grimsley testified that basically there is no limit, and a worker can earn as much money as he wants depending on how fast he works and how many' bins he fills. This testimony was offered to show that those alleged discrimin-atees and complainants before this hearing earned less money only because they worked less hours on a voluntary basis. Grimsley tested that the marketing assignments set forth by the Association (supra) limited the amount of bins a worker could pick no more than ten percent (10%) of the time. Eldon Smith, however, General Manager of Sierra Citrus, stated under a question from the Hearing Officer that "absolutely" the "pro-rate" set by government regulations and the Association can and does affect the hours that each individual works in each crew. Respondent, in refuting General Counsel's prima facie case, relied only on Grimsley's assertions that the complainants simply did not work as hard as other workers, or in the alternative, that the complaining individuals did in fact receive as much work and compensation as other members of Grimsley's crew. The conflict in the testimony between Grimsley and Smith again demonstrates, however, that perhaps Grimsley was being less than candid in emphasizing that the only reason the complainants earned less was that they chose to work less.

Putting aside the constructive discharge of Magdaleno Mata for later discussion, one then must ask if Magdaleno Correa, Mata, Saul and Elvia Villareal, and Jose Covarrubias were denied work picking oranges because of their activity on behalf and support

for the United Farm Workers.

It is indisputable that the above-mentioned individuals were supporters of the United Farm Workers. Magdaleno Mata had been a United Farm Worker Union member since 1967, and helped pass out UFW bumper stickers to members of Grimsley's crew. Similarly, Correa also passed out UFW bumper stickers to his fellow crew workers, and both Mata and Correa would drive their UFW bumper sticker adorned cars to work. Correa, like Mata, also distributed union authorization cards. Similarly, Saul and Elvia Villareal and Jose Covarrubias had bumper stickers for their cars. Testimony was offered that only five (5) cars of the Grimsley crew had bumper stickers; those of the Mata family, Correa family, Villareal family, Covarrubias family, and that of Rodolfo Martinez. This fact alone substantiates imputed knowledge to Dale Grimsley of union support among the above-mentioned individuals.

Some incidents of alleged discrimination and "harassment" were testified to by Mata, Correa and Covarrubias relating to them and Dale Grimsley. At one point, Mata testified that Dale Grimsley accused him of lying because he had not informed Dale that he was a UFW member when he began work. At another point, during a heated exchange between Magdalena Mata and Dale Grimsley, Mata testified that Grimsley exhibited a pocket knife and told him "I'm going to cut your balls off and take them to Chavez."

Correa testified about additional incidents in attempting to show that Grimsley economically discriminated against him.

Perhaps most important is a conversation that took place between Grimsley and Correa on April 28, 1977. That afternoon, Gorrea was told that the Valencia season would not begin until May 3rd, and that as there were no more navals to pick, Correa would not have to return to work until next week. After a discussion with Jose Ponce about this temporary layoff, Correa was informed that Ponce had delivered empty bins to a field where Grimsley's crew would still be picking navals. That next morning, Correa went to the field and saw Grimsley's crew at work. Again, a heated exchange took place where Correa testified that Grimsley told him that he would be just as happy if Correa never returned to work, and attacked Correa's support for the United Farm Workers. Correa admits that at this point Grimsley offered Correa work in this field, but that Correa declined the offer based on the fact that Grimsley was "too angry". Grimsley, on the other hand, denies these conversations taking place, with special reference to any insinuation of anti-union statements.

As to the documentary evidence, I believe special attention should be drawn to General Counsel's Exhibit 6 and Respondent's Exhibit 18. As stated at the outset, conflicting interpretations can be given to the documentary evidence presented, yet I feel Respondent's Exhibit 18 in effect lends some support to General Counsel's interpretations. Respondent's Exhibit 18 is the total list of individuals who worked in Grimsley's crew during the 1977 growing season and Respondent uses said chart to show the earnings of Correa, the Villareals, Cobarrubias, and

Mata, to be respectively, 5th, 11th, 12th, 14th and 22nd greatest of the 72 workers of Grimsley's crew. More accurately, however, is an examination of those earnings in relation to the 24 regulars in Grimsley's crew. In General Counsel's Brief, on page 27, using figures supplied from Respondent's Exhibit 18, one finds that in hours worked the five (5) complainants ranked tied for last, 18th, 17th, 15th and 5th of the 24 regular members of Grimsley's crew.

Five of the top nine workers for Grimsley's crew relating to average hours worked consisted of members of the Tapia and Hernandez families. Evidence was presented that the Hernandez and Tapia families were friends of Dale and June Grimsley and not particularly prone to UFW support. Given this fact, coupled with the apparent UFW support shown by the complainants, one must question that if it is more than coincidence that the UFW supporters rank near the bottom in total hours worked for Grimsley's crew.

I have taken into account and do believe Respondent's testimony that certain family groups were "more able" to pick or wanted to work more, but remembering inherent conflicts within Grimsley's testimony, I came to the inescapable conclusion that a suttle form of economic discrimination did indeed take place. Quite frankly, I feel that perhaps even Grimsley was not totally conscious of what he was in effect doing ... that perhaps he thought he was only favoring friends instead of actually harboring anti-union animus reflected by restrictive work hours for

UFW members. Nonetheless, however, the fact remains that for at least four of the five union supporters, a type of economic discrimination did indeed take place, relating to a violation of Section 1153(a) in relation to Magdaleno Mata, Benjamin Covarrubias, and Elvia and Saul Villareal. I cannot make this finding in relation to Magdaleno Correa, as by interpretation of the documentation evidence, he ranks extremely high in hours worked and wages received.

C. The Constructive Discharge of Magdaleno Mata

In the middle of May, 1977, Magdaleno Mata ceased working at Sierra Citrus. According to Mata, he quit because of the "pressure" he felt from Dale Grimsley. As previously stated, evidence was introduced at the hearing that a fight ensued between Mata and the Tapia brothers (also members of Grimsley's crew) on March 8, 1977. The Tapias were not agents of Respondent , and one factor I weighed in determining whether there was or was not a constructive discharge of Magdaleno Mata was the influence of this inter-crew conflict on Mata's voluntary termination. Evidence was introduced as to Mata's dissemination of UFW bumper stickers, and the fact that he placed one on his car. Mata also testified that on or about March 8, 1977, Grimsley accused Mata of "lying" in his failure to tell Grimsley that he was a UFW member when he was hired. Lastly, there is the event that occurred on or about April 11, where Mata claims that in a heated discussion with Dale and June Grimsley, Dale

Grimsley flatly told Mata he should leave and that the workers didn't want a union, and that as things got more heated Grimsley pulled a knife and threatened to "Cut your balls off and take them to Chavez."

Once again, Grimsley denies the allegations of Mata, and as to the knife allegation showed evidence that with a badly damaged right hand it would have been impossible for him to pull the knife from his right pocket. It may well be that either Mata misjudged the hand from which Grimsley pulled the knife, or greatly exaggerated the knife incident, but nonetheless I find that Mata's leaving Sierra Citrus because of "pressure" from Grimsley is what in fact took place and a constructive discharge under Section 1153(c) of the Act.

Animosity shown Mata from Grimsley coupled with the fact that Mata averaged only 77 hours per month for the three months he worked at Sierra Citrus (as opposed to 107 hours, 109 hours, 112 hours and 116 hours for the four Tapia family members) leads to the inescapable conclusion that the employer, here through the acts of Dale Grimsley, all but made working conditions intolerable for Mata. It is well established that when an employer makes an employee's working conditions intolerable and forces that employee to quit his job 'because of union activities or membership, that a constructive discharge has indeed taken place. J. P. Stevens & Co., v. NLRB, 461 F.2d 490, 80 LLRM 2609 (4th Cir., 1972).

D. The Discharge of Jose Ponce

1. Facts

In October, 1976, Jose Ponce was hired by Mark Dickerson to work for Sierra Citrus as a sprayer. Dickerson was the field supervisor for Sierra Citrus, and, being impressed with Ponce, helped him obtain his Class 1A drivers license so he could become a truck driver for Sierra Citrus.

Ponce began driving a truck for Sierra Citrus in January 1977. Basically, his duties would consist of delivery of empty wooden bins to the various orange groves where Respondent's crews were working. After dropping the empty bins, Ponce would then load full bins into his truck and deliver these to Sierra Citrus' packing house in Lindsay, California.

In essentially uncontroverted testimony, it is clear that the job of a truck driver entailed slow periods. During these times, many of the drivers would repair the wooden bins which were used to crate the oranges as in the normal course of usage these bins would require upkeep and maintenance. According to Respondent's testimony, there was always many empty bins in the warehouse, and the "bin fixing" was essentially a non-vital function used to fill up "dead time". Ponce testified that in the five months he worked as a truck driver for Sierra Citrus, he was ordered to fix the bins approximately twenty (20) times.

On October 25, 1976, Ponce began his activities for the United Farm Workers when Magdalena Mata gave him three United

Farm Worker authorization cards. Ponce distributed two of these cards to workers, and one he kept for himself on the dashboard of his car. According to Ponce, his immediate supervisor, Mark Dickerson, was aware of his UFW activities and that the aforementioned authorization card was visible from Ponce's dashboard.

Testimony was offered that through the harvest season of 1977, Ponce would have many conversations with the pro-union members of Grimsley's crew, especially Mata and Correa. Ponce's job as a truck driver put him in a position where he was able to know exactly what groves would be harvested, and on more than one occasion, Ponce "tipped off" Correa and/or Mata that work was being conducted even when Grimsley said there was no more work to be had. This specific event took place on April 28, 1977, and led to Dale Grimsley asking Ponce on April 29, 1977, if Ponce had told Correa about the location of Dale's crew. Ponce replied in the negative, even though he had in fact told Correa that Grimsley's crew was still picking oranges, and Ponce testified that after this conversation, Dale was extremely agitated, cursing as he left quickly from the scene. Whereas Grimsley denies both the conversation with Ponce and Correa, I cannot help but wonder (with my previous comments about the credibility of Dale Grimsley) if the discharge of Ponce less than one month later was an unrelated event to this prior interchange.

On May 23, 1977, the day that Ponce was discharged, Ponce went to the shop and began to warm up his truck. As the truck was warming up, fellow workers noticed a radiator leak and, being

unable to drive, Ponce was asked by Jim Clausen (assistant manager Jim Clausen) to work on repairing the bins in the packing house and to wait for Mark Dickerson to give him further orders. After approximately two and one-half hours of bin repair, Ponce left his job to "look for a translator" who could talk to the company mechanic about his truck. At this time, Dickerson appeared and, according to Ponce, was extremely upset because Ponce was not repairing bins as he had been ordered. After being told by Dickerson to return to the bin area and continue repairing bins, Ponce complied.

At 11:00 a.m., Ponce testified that he went to the company office and asked a secretary, Anna Belle Jauregi, to locate Mark Dickerson. According to Ponce, Jauregi told him she did not know where Dickerson was, but would try to reach him over the C.B. radio. Jauregi flatly contradicted Ponce's testimony at this point, but other testimony was introduced relating to personal encounters between Ponce and Jauregi that would lend the ALO to discount this aspect of both Ponce's and Jauregi's testimony.

In any event, Ponce left the premises of Sierra Citrus only to return at 4:00 p.m. to pick up his check. At this time, Ponce again met up with Dickerson, wherein Dickerson promptly told Ponce that "This is your last day", and terminated him.

If this were all the testimony offered, I might be tempted to find that the firing of Ponce was not dictated by anti-union

animus, but by behavior which on its face would seem to be irresponsible. Dickerson himself testified, however; that Sierra Citrus' policy towards the "absences" of truck drivers assigned to repair bins was quite flexible. As truck drivers were paid by an hourly rate, and as fixing bins was of lower priority than truck driving itself, it was not unusual for a truck driver to leave in the middle of the day after repairing the bins for only a short time. Dickerson testified of instances where, after the fact, he had been informed by a truck driver who had been assigned to repair bins that the driver had left for the day. In his six years as a supervisor, Dickerson had never previously fired a truck driver for his absence from the work of repairing bins. By Dickerson's own testimony, he made a decision to fire Ponce only after hearing Ponce's "explanation" for his unauthorized absence from work.

2. Jurisdiction

Respondent has raised the issue of whether or not Ponce, as a truck driver for Sierra Citrus Association, comes within the purview of the Agricultural Labor Relations Board (Second Affirmative Defense of Respondent). As previously stated, I have found Sierra Citrus Association to be an agricultural employer within the meaning of the ARLA Section 1140.4 (c). In the definition of "agriculture" under Section 1140.4(a) of the Act, the same "standard" is sued by the Agricultural Labor Relations Act as the National Labor Relations Board employs;

namely, Section 3(f) of the Federal Fair Labor Standards Act 29 U.S.C. 203 (f), which in defining agriculture states:

> (Agriculture) any practices performed by -a farmer or on a farm as an incident or in conjunction with such farming operations, including preparation for market, delivery to storage, or to market or to carriers for transportation to market.

Manega v. Waialua Agricultural Co., 349 U.S. 254, 75 S. Court ,719 (1955) as cited by the NLRB in 1977 in Employer Members of Grower-Shipper Vegetable Association of Central California, 230 NLRB 150 confirms the "(agricultural) exemption clearly covers the transportation of farm implements, supplies, and field workers to and from the fields." Obviously, on a farm or in conjunction with such farming operations this activity is a necessary part of the agriculture enterprise. Manega, 349 U.S. 261-262.

If Sierra Citrus Association hauled, packed, stored, or sold oranges which its members did not harvest, then perhaps Ponce's role as a truck driver for Sierra Citrus Association could conceivably take him into NLRB rather than ALRB jurisdiction. Sierra Citrus Association, however, hauls only those oranges which its members harvest, and specifically the role of Ponce as one who would transport the boxes to the fields and the filled boxes back to storage, clearly places him as an employee of Respondent and one coining within the purview of the Act.

I am convinced that Jose Ponce does come within the jurisdiction of the Agricultural Labor Relations Board, and have

made GENERAL COUNSEL'S RESPONSE TO MOTION OF RESPONDENT FOR PARTIAL DISMISSAL a part of the record with further elaboration on this jurisdictional argument.

3. The Discharge of Jose Ponce Violated Sections 1153(a) and 1153(c) of the Act

In making this finding, an extremely close situation, I am influenced by the fact that there is little economic motivation used as a justification for the termination of Ponce by Respondent, and likewise come to the conclusion that the "anger" exhibited by Respondent's agent because of Ponce's unauthorized absence was but a pretext used to otherwise terminate an employee who was not only a union organizer, but also have given information to other union organizers which "embarrassed" the Respondent.

Ponce's five hours absence on May 23rd seems to be the only blemish on an otherwise excellent work record (some reference, unsubstantiated, was made by Respondent to oral reports from unnamed individuals about additional unsatisfactory work by Ponce, but the date, number, and source of these reports were not testified to).

The instant case lends itself well to analysis with Evans Packing Co., 190 NLRB 70, 77 LRRM 1207 (1971) a case cited by General Counsel. In Evans Packing Co., the NLRB found an employer in violation of Section 8(a)(3) (Section 1153(c) of the Act) where an employee was terminated for absenteeism and tardiness when in fact the employer actually tolerated absenteeism and

tardiness by its employees without penalty and also failed to show that the fired employee's absence and tardiness was worse than any other employee. Further, in Evans, the fired employee was a good worker, yet, unlike Ponce, had been warned about his attendance record. As stated previously, Dickerson did testify that as a general rule truck drivers could leave in the afternoon when no truck driving was available, rather than sit and repair bins, and similarly, no evidence was introduced showing that Ponce's record was worse than any other truck driver. In fact, Dickerson testified that he had not made up his mind to fire Ponce until hearing his explanation for the five-hour tardiness on the specific date in question. Lastly, no warnings were given Ponce, and this itself would seem to indicate that Ponce was a good worker.

General Counsel argues at length that a comment made by Dale Grimsley at 10:00 a.m. on the date of Ponce's firing (Ponce not being terminated until between 4:00 and 4:30 of the same date) indicates that Respondent had planned the firing of Ponce well in advance. In finding a discharge motivated by anti-union animus I do not see the necessity in considering this point, as I find that after having made a prima facie case for Ponce, Respondent has offered no credible evidence to justify the termination.

There cannot be an economic justification as the five hours Ponce missed from work were not being billed to an employer, and as stated above, all indications point to the fact that an

average truck driver in a similar situation would not be terminated for a five-hour unauthorized absence.

Having found a violation of Section 1153(c)-by Respondent towards Jose Ponce, it necessarily follows that the Section 1153(a) rights of Ponce were also violated by the actions of the employer.

V

REMEDY

Having found that Sierra Citrus Association has engaged in certain unfair labor practices within the meaning of Sections 1153(a) and (c) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policy of the Act. As Sierra Citrus Association discharged Jose Ponce in the violation of his Section 1153(a) and (c) rights and constructively discharged Magdaleno Mata in violation of his Section 1153(a) and (c) rights, both Ponce and Mata should be made whole for any losses they may have incurred as a result of their unlawful discriminatory discharge with their loss of pay computed at the rate of seven percent (7%) pursuant to Valley Farms and Rose J. Farms, 2 ALRB No. 41 (1976).

I also will order that Respondent offer Jose Ponce and Magdaleno Mata employment in their former positions without prejudice to their seniority or other rights and privileges. Furthermore, Respondent will be ordered to compensate for the

1977 growing season Saul and Elvia Villareal, Jose Covarrubias, and Magdaleno Mata for any losses they may have incurred through the illegal discrimination and abrigation of their rights under Section 1153(a) of the Act.

Furthermore, I will order that a NOTICE TO EMPLOYEES be read to Respondent's employees by a Board agent, said notice being paraphrased in English and Spanish to assembled employees on company time and property at a date and time to be determined by the Regional Director of the Board, informing the employees of this decision, and giving the Board's agent an opportunity to answer questions which employees may have regarding their rights under Section 1152 of the Act.

I will not order that a notice be mailed to all 1977 employees not employed at the time of the "notice reading" referred to above, as I feel that many of the problems relating to this instant complaint and Sierra Citrus Association revolve around Dale Grimsley, and will be resolved by the reading of the notice (supra) and other remedies which I will enumerate.

The notice referred to above shall also be posted at a date to be determined by the Regional Director of the Board for a period of not less than sixty (60) days at approximate locations near employee work areas, including places where notices to employees are customarily posted. This notice (see Appendix A) shall inform the employees of the nature of the allegations made against Respondent, the outcome of this hearing, and shall include a statement of the rights guaranteed the workers under

the Agricultural Labor Relations Act, and a statement of the intention of the Respondent to honor those rights.

I shall also recommend, with particular emphasis, that agents of the Agricultural Labor Relations Board confer with employees of the Grimsley crew at regular intervals throughout the entire 1978 harvest. The timing of the conferences should take place with no more than four (4) weeks between said meetings, and shall take place during normal working hours, but preferably before the actual harvesting of the field, the meeting to last no longer than one hour, and no employee who participates in the meeting shall suffer any monetary loss by reason of his or her participation.

Lastly, I shall recommend that Sierra Citrus Association be ordered to cease and desist from interrogating any of its employees about their interest or membership in any union and/or shall cease and desist from asking any of its employees about their fellow workers' union interest and/or membership, as this form of interrogation serves no protected employer purpose. Similarly, Sierra Citrus Association shall be ordered to cease and desist from interfering in any way with the activities of its employees in support of the United Farm Workers Union.

Ample case law justifies the right of a "make whole compensation plus interest" remedy (Tax-Cal Land Management, Inc., 3 ALRB No. 11 (1976)) and Sunnyside Nurseries, 3 ALRB No. 3 (1976).

It is further recommended that the allegations of the

complaint alleging violations by Respondent of Sections 1153(a) of the Act in relation to Magdaleno Correa be dismissed.

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

ORDER

Respondent, its officers, agents, and representatives, shall:

1. Cease and desist from:

a. Interrogating any of its employees about their interest or membership in any union. Similarly, Respondent shall cease and desist from asking any of its employees about their fellow employees' union interests and/or membership, and Respondent is to cease and desist from interfering in any way with the activities of its employees in support of the United Farm Workers.

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

a. Make whole Jose Ponce and Magdaleno Mata for any losses they may have suffered as a result of their termination, using for guidelines the manner described above in the section entitled "Remedy".

b. Immediately offer Jose Ponce and Magdaleno Mata employment in their former positions without prejudice to their seniority or other rights and privileges.

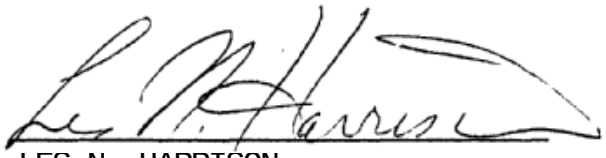
c. Compensate for any hourly financial losses incurred by Saul and Elvia Villareal, Jose Covarrubias, and Magdaleno Mata in the 1977 growing season by reason of the illegal discrimination against them by Respondent.

d. Within ten (10) days of any orange harvest operation by Respondent, an agent of the Agricultural Labor Relations Board shall be allowed to read the attached notice (see Appendix A) to assembled employees on company time and property at a date and time to be determined by the Regional Director. The agent of the Board is to be afforded an opportunity to answer questions which employees might have regarding the notice and their rights under Section 1152 of the Act. Furthermore, this notice shall be posted for a period of not less than sixty (60) days at approximate locations near employee work areas, including places where notice to employees are customarily posted. The designated sites for posting shall be determined by the Regional Director.

e. Sierra Citrus Association shall allow agents of the Agricultural Labor Relations Board to meet with employees of Dale and June Grimsley's crew at regular intervals throughout the 1978 and 1979 harvest season, at such intervals being of no more than four (4) weeks duration. These conferences shall take place during normal working hours, but preferably before the day's harvest begins, with the meetings scheduled to last no more than one hour, and no employee who participates in these meetings shall suffer any monetary loss by reason of such participation.

3. Respondent shall notify the Regional Director of the Agricultural Labor Relations Board in Fresno, California, within thirty (30) days from receipt of a copy of this decision of steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

DATED: July 14, 1978



LES N. HARRISON
Administrative Law Officer

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 orange picking season that we will remedy those violations, and that we will respect the rights of all employees in the future. Therefore, we are now telling each of you:

1. That Magdaleno Mata and Jose Ponce will receive their wages and back pay they lost as a result of our illegal firing of them in the last orange harvest. That Saul and Elvia Villareal, Jose Covarrubias, and Magdaleno Mata will be reimbursed for the hours from work they lost as a result of illegal discrimination by their crew bosses, Dale and June Grimsley.

2. We will not fire or discharge any employees because of their activities in the United Farm Workers Union or any other union, and we will not give special hiring privileges to any employees simply because we think they are not in favor of a union.

3. All of our employees are free to support, become or remain members of the United Farm Workers of America, or of any other union.

DATED:_____

_____
SIERRA CITRUS ASSOCIATION

APPENDIX A

LIST OF EXHIBITS

General Counsel No.	1a	Charge Against Employer 77-CE-30-F, In Evidence
General Counsel No.	1b	Charge Against Employer 77-CE-42-D, In Evidence
General Counsel No.	1c	Charge Against Employer 77-CE-42-1-D, In Evidence
General Counsel No.	1d	Complaint, In Evidence
General Counsel No.	1e	Answer to Complaint, In Evidence
General Counsel No.	1f	Amended Answer, In Evidence
General Counsel No.	1g	Amended Complaint, In Evidence
General Counsel No.	2	Photographs of vehicle front, In Evidence
General Counsel No.	2a	Photographs of vehicle rear, In Evidence
General Counsel No.	3	Bumper Sticker, In Evidence
General Counsel No.	4	Declaration of Magdaleno Mat a, In Evidence
General Counsel No.	5	Payroll Summaries, In Evidence
General Counsel No.	6	Comparison of hours, In Evidence
General Counsel No.	7	Comparison of earnings, In Evidence
Respondent No. 1		ALRB charge, In Evidence
Respondent No. 2		Subpoena Duces Tecum re employment documents, In Evidence
Respondent No. 3		Letter to Sierra Citrus dated 03/16/77, In Evidence
Respondent No. 4		Letter to ALRB dated 03/21/77, In Evidence
Respondent No. 5		Second letter to Sierra Citrus dated 03/25/77, In Evidence
Respondent No. 6		Letter re charge 77-CE-42-D dated 06/01/77, In Evidence
Respondent No. 7		Sierra Citrus reply letter dated 06/08/77, In Evidence

Respondent No.	8	Document signed by Elvia Villareal, In Evidence
Respondent No.	9a(l)	Time Books, In Evidence
Respondent No.	9b(2)	Time Books, In Evidence
Respondent Mo.	9c(3)	Time Books, In Evidence
Respondent No.	10	Short Job Sheet, Not Into Evidence
Respondent Mo.	11	NLRB Tally - 1966, In Evidence
Respondent No.	12	Certification - Sierra Citrus - 1966, In Evidence
Respondent No.	13	Tally of Ballots - Sierra Citrus - 1968, In Evidence
Respondent No.	13a	Certification - Sierra Citrus - 1968, In Evidence
Respondent No.	14	Insurance papers - Sierra Citrus - 1963, In Evidence
Respondent No.	15	Complaint against Tapias, In Evidence
Respondent No.	16	Work permit - Victor Mata, In Evidence
Respondent No.	17	Scratchnote, Not In Evidence
Respondent No.	18	1977 Wage & Hour Chart, In Evidence