

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

M. CARATAN, INC.,	)		
	)		
Respondent,	)	Case Nos. 77-CE-11-D	77-CE-62-4-D
	)	77-CE-62-D	77-CE-66-D
and	)	77-CE-62-1-D	77-CE-66-1-D
	)	77-CE-62-2-D	77-CE-152-D
UNITED FARM WORKERS OF	)	77-CE-62-3-D	77-CE-168-D
AMERICA, AFL-CIO,	)		77-CE-212-D
	)		
Charging Party.	)	5 ALRB No. 16	
	)		

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DECISION AND ORDER

On May 11, 1978, Administrative Law Officer (ALO) Robert LeProhn issued the attached Decision. Thereafter, the General Counsel and the Respondent each filed exceptions and a supporting 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 affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order except as modified herein.

The ALO concluded that supervisor Ahmed Alomari engaged in unlawful surveillance in violation of Labor Code Section 1153 (a) on April 29, 1977, and again on May 17, 1977, when he entered the labor camp ' s TV room as the UFW was attempting to conduct a meeting with workers and refused to leave. We disagree. We find that Alomari's presence at an unscheduled union meeting in a common

living area, where the supervisor had as much right to be as the workers, does not constitute unlawful surveillance. Mitch Knego, 3 ALRB No. 32 (1977).

Similarly, the ALO concluded that Alomari committed another act of unlawful surveillance on April 6, 1977, when he joined a discussion that a UFW organizer was having with workers in a customary gathering place in the labor camp yard and began arguing with the organizer and then refused to leave. Again, we disagree. Alomari's remarks were protected. Swift Textiles, Inc., 214 NLRB 36 (1974). His presence at this informal discussion at a customary gathering place in the labor camp where he lived with the workers does not constitute unlawful surveillance. Mitch Knego, supra.

The ALO also concluded that supervisor Alomari violated Section 1153 (a) on May 27, 1977, by threatening worker Nagi Mohsin with arrest because of Mohsin's activities on behalf of the UFW. The ALO found that Mohsin's words and conduct were within the perimeter of protected concerted activity, and a threat to call a sheriff to arrest an employee engaged in such activity violated Section 1153 (a) when made in the presence of other workers.

We disagree with that conclusion and hold that the Respondent did not violate Section 1153(a) by this conduct. The case cited by the ALO for the proposition that a threat to call the sheriff to arrest an employee engaged in concerted activities violates Section 1153(a), D'Arrigo Brothers Co., 3 ALRB No. 31 (1977), is distinguishable from the facts here. In D'Arrigo, the threat was to arrest a union organizer to stop him from carrying

out protected organizing activities. In this case, the confrontation between supervisor Alomari and employee Mohsin began with Mohsin's request that Respondent pay for the workers' travel time to its Arvin fields, but then shifted to an argument in which each man said that he was going to cause trouble for the other and each threatened to fight the other. It was only after the conversation about travel pay had ceased, and both men had threatened trouble and talked about fighting, that Alomari stated that he was going to call the sheriff. On the basis of these facts, we find that Alomari did not threaten to have Mohsin arrested because of his protected concerted activities, seeking travel pay for employees.

Although it is not entirely clear that Respondent uniformly followed its own rehiring policy, requiring the filing of job applications, we nevertheless agree with the ALO that the General Counsel has failed to present sufficient evidence to warrant the inference that the Employer had knowledge of Saleh Nagi's UFW activities and refused to-rehire him for that reason, in violation of Section 1153 (c).

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, M. Caratan, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing agricultural employees in the exercise of rights guaranteed in

Section 1152 of the Act by engaging in, or creating the impression of engaging in, surveillance of its employees engaged in union activities or other protected concerted activities.

(b) Interfering with, restraining, or coercing agricultural employees in the exercise of rights guarantee in Section 1152 of the Act by threatening employees with lost of future employment or less desirable working conditions because of their union activities or other protected concerted activities.

(c) Interfering with, restraining, or coercing agricultural employees in the exercise of rights guarantee in Section 1152 of the Act by soliciting employees to engage in 1:1 surveillance of the union activities or protected concerned activities of other employees.

(d) In any other manner interfering with, restraining or coercing employees in the exercise of their rights of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own. choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual, aid or protection or to refrain from any and all such activities except to the extent, that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized by Section 1153 (c) of the Act.

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

(a) Sign a copy of the attached Notice to Employees in each of the languages in which it is to be reproduced, after the

Notice has been translated by a Board agent into all appropriate languages.

(b) Reproduce sufficient copies of the attached Notice in each language for the purposes set forth in this Order.

(c) Post copies of the attached Notice on its premises, at times and places to be determined by the Regional Director. Said Notices shall remain posted for a period of 60 days. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, removed or covered by any other material. Any Notice which has been altered, defaced, covered, or removed shall be replaced by Respondent.

(d) Mail copies of the attached Notice in all appropriate languages, within 20 days after issuance of this Order to all agricultural employees employed by Respondent at any time during the period from April 1, 1977, through October 1, 1977.

(e) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice in all appropriate languages to its assembled employees on company time at such times and places as are specified by the Regional Director. Upon completion of the reading, permit a Board agent to meet, outside the presence of supervisors and management, with the assembled employees for the purpose of answering any questions which employees may have regarding the Notice or their rights under the Agricultural Labor Relations Act.

(f) Reimburse its employees in an amount determined to be reasonable by the Regional Director for time lost at the reading and the question-and-answer period.

(g) Notify the Regional Director in writing, within 30 days from the date of issuance of this Order, what steps have been taken to comply with this Order.

(h) Upon request from the Regional Director, notify him/her periodically in writing what further steps have been taken to comply with this Order.

Dated: March 5, 1979

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a hearing in which each side had a chance to present its side of the story, the Agricultural Labor Relations Board has found that we interfered with the rights of our employees. The Board has ordered us to post this Notice and to take other actions.

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 to choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help and 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 spy on union meetings or conversations between employees and union representatives.

WE WILL NOT threaten employees with loss of employment or change in working conditions because of their union activities or other protected concerted activities.

WE WILL NOT ask any employee to spy on the union activities or other protected concerted activities of other employees.

Dated:

M. CARATAN, INC.

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

M. Caratan, Inc.

5 ALRB No. 16

Case Nos. 77-CE-11/62/62-1/62-2  
62-3/62-4/66/66-1/152/  
168/212-D

ALO DECISION

The ALO concluded that Respondent violated Labor Code Section 1153 (a) by the following acts and statements of its supervisors Ahmed Alomari and Fermin Martinez: (1) on April 4, 1977, Alomari threatened employees with loss of employment, if they joined or supported the UFW; (2) on July 14, 1977, Martinez engaged surveillance of employees at a meeting with UFW agents which had been convened for the purpose of selecting delegates for the forthcoming UFW convention, by sitting among the workers and refusing to leave the meeting when asked to do so; (3) on September 23, 1977, Alomari threatened employees with loss of employment for engaging in union activity or other protected concerted activity, or for utilizing the facilities of the ALRB to protect their rights; (4) in May 1977, Alomari solicited an employee to spy upon the union activities of his fellow employees and to obtain information which could be used against the union; (5) on April 6, 1977, Alomari engaged in surveillance of employees by joining a group of employees who were having an informal, outdoor discussion with a UFW agent at the labor camp, by joining the discussion and arguing with the UFW representative, and by refusing to leave when asked to do so; (6) On April 29 and May 17, 1977, Alomari engaged in surveillance of employees by attending and refusing to leave an informal meeting of employees with UFW agents in the TV room of the Labor Corp; and (7) On May 27, 1977, Alomari threatened to have employee Nagi Mohsin arrested because he engaged in protected concerted activity by seeking travel pay for employees.

BOARD DECISION

In its Decision, the Board affirmed the conclusions of the ALO with respect to the first four unfair Labor practices discussed above, but reversed the ALO's conclusions as to the other three.

On April 6, 1977, supervisor Alomari joined a discussion that a UFW organizer was having with workers in a customary gathering place under the trees in the labor camp yard and began with the organizer and then refused to leave. The Board concluded, contrary to the ALO, that Alomari's presence and participation at this informal discussion, at a customary gathering place in the labor camp where he lived with the workers, did not constitute unlawful surveillance or interference.

The Board concluded, contrary to the ALO, that supervisor Ahmed Alomari did not engage in unlawful surveillance or interference on April 29, 1977, or on May 17, 1977, by entering and refusing to leave the TV room of a labor camp where the UFW was attempting to



conduct meetings with workers. The Board determined that Alomari's presence at an unscheduled union meeting in a common living area, where the supervisor had as much right to be as the workers, did not constitute unlawful surveillance.

The Board concluded that Alomari did not violate Section 1153(a) on May 27, 1977, by threatening employee Nagi Mohsin with arrest. Mohsin had requested that the Employer pay for the workers' travel time to its Arvin fields, but the discussion subsequently degenerated into an argument in which each man said he would cause trouble for the other and each threatened to fight the other. It was only after both men had talked about fighting that Alomari stated that he was going to call the sheriff. The Board held in effect that Alomari threatened to call the sheriff because of Mohsin's hostile threats rather than because he previously asked about travel pay.

#### REMEDY

The Board ordered Respondent to cease and desist from: engaging in, or creating the impression of engaging in, surveillance of its employees' union or protected concerted activities; threatening employees with loss of employment or changed working conditions; soliciting employees to engage in surveillance of the union activities of their fellow employees; or in any other manner interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed to them in Labor Code Section 1152.

The Board also ordered Respondent to sign, post, mail, distribute and read a remedial Notice to Employees in all appropriate languages.

\* \* \*

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  
BEFORE THE  
AGRICULTURAL LABOR RELATIONS BOARD

M. CARATAN, INC.	)	Case Nos.	77-CE-11-D
	)		77-CE-62-D
Respondent	)		77-CE-62-1-D
	)		77-CE-62-2-D
and	)		77-CE-66-D
	)		77-CE-66-1-D
UNITED FARM WORKERS OF AMERICA,	)		77-CE-62-3-D
AFL-CIO	)		77-CE-62-4-D
	)		77-CE-152-D
	)		77-CE-168-D
Charging Party	)		77-CE-211-D

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Jane Rasmussen, Esquire, of Delano.  
California, for the General Counsel

Walter Loomis , Jr., Esquire, of  
Chicago, Illinois, and George 2.  
Preonas, Esquire, and Keith A.  
Hunsaker, Jr. , Esquire, of Los Angelas,  
California, for Respondent

Deborah Miller of Delano, California  
for the Intervenor

DECISION

STATEMENT OF THE CASE

Robert LeProhn, Administrative Law Officer: This case was heard before me in Delano, California, commencing August, 29, 1977, and finishing November 15, 1977. Complaint issued July, 28 1977. A First Amended Complaint issued August 16, 1977 and motions to amend the complaint made during the course of the hearing were granted. Violations of Labor Code Section 1153 (a) (c) and (d) are alleged in the first Amended Complaint and amendments thereto. The charges, complaint, amended complaint and amendments thereto were duly served upon Respondent.

At the outset of the hearing the United Farm Workers of America, AFL-CIO (UFW), as Charging Party, moved to intervene. The motion was granted.

At the close of the General Counsel's case, Respondent moved to dismiss substantially all the allegations of the complaint. The motion was granted with respect to the following paragraphs: 4(b), 4(m), 4(o), 4(p), 4(s), 4(t), 5(a), 5(b), 5(c), 5(d), 5(e), 5(f), 5(g), 5(k) and 5(l). Remaining to be decided are the following questions: whether or not crew bosses Alomari and Martinez are supervisors within the meaning of §1140.4(j) of the Agricultural Labor Relations Act (Act); whether Respondent violated §1153(a) of the Act by engaging in surveillance of its employees by denying a Union organizer access to its labor camp; by threatening employees with loss of employment and modification of conditions of employment; by engaging in conduct reasonably calculated to intimidate workers and thus interfere with their exercise of §1152 rights; by interrogation of employees and solicitation of an employee to engage in surveillance. Whether Respondent violated §1153(a) and §1153(c) by discharging Fadel Karim and Abdulla M. Muthana, and by refusing to hire Ali Shaibi and Saleh Nagi; and whether the Respondent violated §§1153(a) and (d) by threatening employees with reprisals if they gave testimony in the instant proceedings.

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

#### FINDINGS

##### I. Jurisdictional Findings

Respondent, M. Caratan, Inc., is a California corporation engaged in the production, cultivation, growing and harvesting of agricultural commodities in Kern County, California. Respondent employs persons engaged in agriculture.

On the basis of these undisputed facts, Respondent is found to be an agricultural employer within the meaning of §§1140.4 (a) and (c) of the Agricultural Labor Relations Act.

##### II. The Labor Organization Involved

The United Farm Workers of America (AFL-CIO), herein called the UFW or the Union, is an organization in which agricultural employees participate. It represents those employees for purposes of collective bargaining, and it deals with agricultural employers concerning grievances, wages, hours of employment and conditions of work for agricultural employees. The UFW is a labor organization within the meaning of §1140.4(f) of the Act.

### III. Supervisory Status Of Alomari And Martinez

Respondent admitted in its answer that Ahmed Alomari and Fermin Martinez were supervisors within the meaning of Labor Code §1140.4(j). However, during the course of the hearing Respondent requested and was granted leave to amend its answer to deny the supervisory status of each. Testimony was elicited on the issue from which the following findings are made.

Alomari and Martinez are crew bosses. Alomari is in charge of Respondent's Arab crew, and Martinez is in charge of its Mexican-Puerto Rican crew. Their duties and responsibilities are the same.

Respondent maintains two labor camps; one for its Arab workers and one for its Mexican-Puerto Rican workers. Alomari manages and is responsible for the operation of the Arab camp, and, Martinez manages and is responsible for the operation of the Mexican camp. Alomari lives with his family on the premises of the Arab camp in a house provided rent-free by Respondent. Members of his crew are provided only with a bunkhouse room as a place to stay.<sup>1/</sup> There is no evidence that crew members' families are permitted to live in the camp.

Neither Alomari nor Martinez has authority to hire employees. Hiring is done by Mike Anderson, their supervisor, in consultation with Luis Caratan regarding the employee complements needed.<sup>2/</sup> Alomari is customarily contacted by persons of Arab origin regarding work at Caratan. He directs such persons to the office to file applications. Neither Alomari nor Martinez are consulted by Anderson regarding who should be employed.

A crew boss is responsible for providing his crew with adequate drinking water and toilet facilities. He records the work time of crew members and reports it to the office. Each day Anderson provides the crew boss with any tools required to perform the day's work. In turn, the crew boss distributes the tools to crew members.

Anderson makes the daily decisions regarding where crews will work. If the crew has not finished a field by the close of a work day, the customary practice is to return to that field until it is completed. When the field is finished, Anderson tells the crew boss where next to take this crew.

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<sup>1/</sup> Martinez is not provided with in house.

<sup>2/</sup> Respondent admitted the supervisory status of Anderson in its answer.

Anderson makes daily determinations regarding the number of crew members needed the following day. This decision is communicated to the crew boss who determines which individuals in his crew are going to work. The crew boss determines who will work and who will be left in camp for the day.

The crew boss instructs workers in his crew how the work should be performed. If a worker does not perform his work properly, he is warned. Alomari testified he warns a worker up to three times about his work and then reports the problem to Anderson. Alomari and Anderson meet with the worker, and Anderson tells the worker he will be fired if he does not do as Alomari tells him. If the unsatisfactory work performance continues, the worker is fired by Anderson.<sup>3/</sup>

In instances where employees have been discharged for cause other than poor work, Alomari reported the circumstances to Caratan or Anderson, who conducted independent investigations of 10 the events before directing that discipline be imposed.<sup>4/</sup>

Alomari and Martinez are regarded as supervisors by members of their respective crews.

No evidence was presented regarding the wage differential, if any, between the crew boss and the crew members; nor was evidence presented concerning the mode of compensating crew bosses as compared to crew members.

#### IV. The Chronology Of Events

The initial complaint issued July 28, 1977. A first amended complaint issued on August 16, 1977, thereafter there were repeated amendments to the complaint made during the course of the hearing. When counsel for the General Counsel rested her case in chief, at issue were 32 allegations charging Respondent with violations of §§1153(a), 1153(c) and 1153(d) of the Act. Respondent moved to dismiss all but two of the charging allegations. After extensive argument by both counsel and after taking the motion under submission, the Administrative Law Officer dismissed 15 allegations and put the Respondent to proof on those which remained.

April 4, 1977:

Sometime prior to April 4 UFW organizer Ahmed Shaibi

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<sup>3/</sup>These findings are based upon Alomari's testimony.

<sup>4/</sup>These findings are based upon the testimony of Anderson and Caratan.

posted a leaflet in the kitchen at the Arab labor camp. On the fourth Alomari came into the kitchen while some crew members were eating dinner. He saw the posted leaflet and in a loud voice asked who had posted it. When one of the workers said he did not know, Alomari told the workers it could not have been posted with-out their consent. He said they knew who had done it and also said Caratan would be angry if he were aware of the leaflet. He suggested that Caratan might get a copy.<sup>5/</sup>

Following the conversation in the kitchen Alomari and some of the workers went outside. Alomari cursed the workers and threatened to replace those who were happy with the UFW'S activities aimed at getting them their rights and who had joined the Union.<sup>6/</sup>

B. April 6, 1977:

On the afternoon of April 6, 1977, an Respondent's Arab labor camp, Ahmed Shaibi, a UFW organizer, was discussing the UFW with a group of five or six workers. They were sitting under the trees used as an outdoor gathering place by the workers living, at the camp.

About 30 minutes after Ahmed began talking with the workers, Alomari joined the group, having come from his house located on the camp premises.<sup>7/</sup>

Initially, Alomari sat and listened, then he began to argue about everything which Ahmed Shaibi said. When Ahmed told the group that the boss would have to give them a raise now that the UFW won the election, Alomari's response was "bullshit." Alomari told the workers that the Mexicans would always be first with the UFW; that the Arabs came after the Mexicans.

When Ahmed asked Alomari to leave, Alomari said he had a right to stay. He also stated the Union had no right to come to talk to the workers. Alomari remained with the group for about half an hour and then left. Ahmed left soon thereafter because the workers were not asking any more questions. They had ceased

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<sup>5/</sup> These findings are based upon the testimony of Mohamed Alhabeil.

<sup>6/</sup> These findings are based upon the testimony of Mohamed Mohsin, a current employee of Respondent. Alomari did not recall any incident involving a leaflet.

<sup>7/</sup> Since there are several Shaibis whose names will appear, each will, after identification, be referred to by his first name. Ahmed Alomari will be referred to as Alomari.

to ask questions when Alomari joined the group. 8/

C. April 7, 1977:

On the evening of April 7, 1977, UFW representatives Delores Huerta, Steven Hopcraft, Kenneth Schroeder and Ahmed Shaibi arrived at the Arab labor camp to meet with the workers to select a camp representative. The meeting was held in the TV room. Approximately 15 workers attended. When the meeting started, the room was not being used for TV watching.

About 10 minutes after the meeting started Alomari arrived and stood in the doorway. He had just returned from town and was unaware a meeting was in progress. He was told the meeting was for the workers, that he should not be there, and was asked to leave. No business was conducted while he was present. Alomari remained in the doorway for about five minutes talking to the UFW representatives. He contended the room was a TV room and that he had a right to be there. He left the room and returned shortly thereafter to talk to UFW representative Hopcraft.

Alomari reiterated his position regarding his right to be in the room. Hopcraft asked him to step outside to talk, thereafter Alomari did not return to the TV room during the course of the meeting.

The meeting lasted about one-half hour after Alomari left. Nagi Mohsin was selected as the camp representative.

Alomari testified without contradiction that he normally goes to the TV room after work. The room is used for card playing and watching TV. This was the first occasion on which Alomari was ever asked to leave the room.9/

D. April 29, 1977:

On or about April 29 the Union attempted to hold an evening meeting in the TV room. Delores Huerta and two UFW organizers arrived at the camp, and sent Nagi Mohsin to round up workers for the meeting.

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8/These findings are based upon the testimony of Ahmed Shaibi. Alomari testified he had no recollection of this encounter. Mohamed Mohsin testified that he was present and that Alomari threatened to call the police. I do not credit this testimony. If Alomari had made such a statement, it is likely that Ahmed Shaibi, a UFW organizer, would have remembered.

9/These findings are a consensus of the testimony of Ahmed Shaibi, Alomari, Kenneth Schroeder and Mohamed Kaid.

Alomari came into the TV room as Huerta began to speak. Nagi Mohsin, a worker acting as her interpreter, told Alomari that he should not be there and asked him to leave. Alomari refused. He said he was now familiar with the rules, and they could not keep him out of the kitchen or the TV room.

Huerta told the workers she could not talk to them with Alomari present, and she decided to do so despite the orgings of some of the employees present. When Alomari would not leave, the UFW representatives left. No meeting was held that evening.

There is no evidence that Alomari was aware that a Union meeting was about to commence at the time he entered the TV room; nor is there any evidence the UFW requested prior permission to use the room.10/

E. May, 1977:

Sometime in May Fadel Karim had two conversations with Alomari. 11/ During the first Alomari told Karim there were some people causing a disturbance in the camp, that they had caused problems in 1975 and were still doing so. Alomari said those people were responsible for bringing in the Union, and he wanted to get rid of them. He told Karim to bring him something which could be used against the Union. He also asked Karim to bring new workers who hated the Union. Karim agreed with Alomari's views and agreed to bring workers.

In the second conversation Alomari told Karim he wanted him to find out who was which the Union and what they were saying. Alomari said the Company was tired of these people and wanted to get of them.12/

F. May 17, 1977:

On May 17 the UFW made a third attempt to meet with Caratan's Arab workers in the TV room. The UFW and Respondand had met earlier that day for contract negotiations. The purpose of the meeting was to inform the workers about the progress of negotiations.

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10/ These findings are a consensus of the testimony of Mohamed Kaid, Mohamed Alhabeil and Mohamed Mohsin.

11/ Karim had recently been hired into Alomari's crew.

12/ These findings are based upon the testimony of Fadel Karim. Alomari denied having the conversation.



Huerta and Schroeder came to the TV room and asked Nagi Mohsin to gather the workers. Alomari arrived along with some of the workers; he first stood in the doorway and then came in and sat down. The TV was not on. There is no evidence any worker was present for a reason other than attending a UFW meeting. There is no evidence Alomari was aware prior to the time he entered the room that there was to be a Union meeting.

Huerta said she could not speak with Alomari present and asked him to leave. He declined to do so. Huerta made two unsuccessful attempts to reach Luis Caratan by phone to discuss the matter. When she was unable to do so, she told the workers it was impossible to hold the meeting. Thereupon, she and the UFW organizers departed.<sup>13/</sup>

G. May 27, 1977:

About 11:30 a.m. on May 27, while the Arab crew was tying small grape vines, Alomari announced that work was beginning in Arvin the following Monday. He told the workers they could work in Arvin if they wanted and that there would be no more work in Delano. Alomari said that work in Arvin would start at 5:00 a.m. and that the bus would leave the camp at 3:45 a.m. Workers would return from Arvin about 3:30 p.m.

Nagi Mohsin told Alomari the workers wanted to get paid for travel time. Alomari said they would get paid for nine hours, and anything more than that was on heir own time. Mohsin asked Alomari to talk to the "Company" to see whether they would pay travel time. Alomari said they would not pay because they never had. Alomari asked Mohsin whether he wanted to work and told him to get out of the camp if he did not. Alomari told Mohsin that nobody cared for him, and that nobody had accepted him in any other camp.

Mohsin left the row in which he was working and went into the row where Alomari was. He came to within four or five feet of Alomari, and said he was not going to leave before he let Alomari leave. Mohsin told Alomari he was going to cause him a lot of trouble. Alomari asked why Mohsin had left his row. He asked Mohsin whether he came to fight. Mohsin said no and told Alomari that if he wanted to fight, let's go outside. Both men were angry and shouting, and each said "bad" things to the other. Alomari said "I'll how you." In the presence of eight to 12 workers Alomari told Mohsin he was going to call the sheriff. He then got into his pickup and departed in search of Caratan or Anderson.

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<sup>13/</sup> These findings are a composite of credible testimony of Mohamed Alhabeil, Ken Schroeder and Mohamed Kaid.

Alomari found Caratan and told him that Mohsin had threatened him and wanted to fight. Alomari wanted to call the police. Caratan told Alomari to get two people who were present so that he could find out what happened before anyone went to the sheriff. Alomari returned to the field, rounded up two workers and returned to the camp where Caratan spoke to them part of Alomari's presence. Because Caratan did not get from two workers a clear picture of what happened, he went to the field to speak to Mohsin.

Caratan arrived at the field as Mohsin was walking over to pick up his lunch. He called Mohsin aside and told him that Alomari was his (Caratan's) boss, and that he did not want Mohsin to speak to Alomari as he had that morning. He told Mohsin he would be fired if he spoke that way one more time. Caratan said it was Alomari's business to run the crew, and that any type of interference with Alomari's directions by way of threat or challenge to fight would lead to his discharge. Caratan concluded by telling Mohsin he was not firing him at that time because it was not clear to him that Mohsin was in the wrong.<sup>14/</sup>

Alomari told Caratan he wanted to call the sheriff, and Caratan responded that that was his business. Alomari called the sheriff about 1:00 p.m., but got no response prior to time.

When he got back to the camp, he again placed a call to the sheriff. A deputy arrived at the camp between 6:00 and 6:30 p.m. As he arrived, Mohsin was in his car leaving for When Alomari saw Mohsin leaving, he told the sheriff to stop him. The sheriff blew his whistle; Mohsin stopped and drove over: to where the sheriff and Alomari were standing.

The sheriff asked Alomari whether he had called, and if so, why. Alomari told the sheriff that Mohsin was trying to kill him or rob him. He told the sheriff that Mohsin said he might hit Alomari or have someone else do it. When questioned by the sheriff, Mohsin denied having made such statements. He told the sheriff that the workers wanted him to talk to Alomari about travel pay. He admitted having become angry while talking to Alomari. There were no workers nearby while Mohsin was talking with the sheriff. The sheriff departed without arresting Mohsin.

H. June 13, 1977:

One June afternoon as the Arab workers returned to their camp from the fields, Ahmed Shaibi and Delores Buerta

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<sup>14/</sup> This conversation was in English and Arabic. Caratan spoke in English, some of which Mohsin understood, and the balance was translated into Arabic by crew members.

awaited them to invite them to a dinner to be given the following evening at the UFW headquarters at Keene. The invitation was extended as they got off the bus. Alomari had driven the bus and was present when the invitation was extended. Everyone in the crew expressed a desire to go.<sup>15/</sup>

The next afternoon a UFW bus arrived at the camp shortly after the workers returned from the fields. It parked at the entrance to the camp. The driver sent Nagi Mohsin to round up those who wanted to attend the dinner. The bus waited for a period variously estimated as 20 minutes to an hour for the workers.

While the bus was waiting, Alomari was sitting under a tree talking with some workers. He admitted seeing workers board the bus; however, he could not recall any of their names. The location where Alomari was sitting is a frequent after-work gathering place for Alomari as well as the workers.

Nine employees boarded the bus to go to Keene: Mohamed Zamzami, Nagi Zamzami, Mohamed Mohsin, Hizam Massad, Mookbil Obeid, Mohamed Kaid and Abood Saleh.<sup>16/</sup>

I. June 20, 1977:

On June 20 Ahmed Shaibi visited his cousin Ali Shaibi in the latter's room at the labor camp. He arrived between 7:00 and 8:00 in the evening. There is a conflict in the testimony regarding the events of the evening and regarding who was present.

The testimony of the General Counsel's witnesses, Ahmed Shaibi and Saleh Nagi, is substantially the same and may be summarized as follows: approximately an hour after Ahmed arrived, Alomari was observed outside the window to the room, and shortly thereafter he came into the room and sat on the bed. Before Alomari arrived everyone had been drinking beer and talking about personal things as well as Union business. Those present were asking Ahmed about the UFW election in Coachella.

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15/ None of the testimony pinned down the dates upon which these events occurred. The consensus was, and I so find, that the trip occurred the day after the invitation was extended. Respondent in its brief accepts June 12 and June 13 as the days on which the events occurred.

16/ The above findings are a composite of the testimony of Alomari, Mohamed Zamzami, Mohamed Kaid, Nagi Zamzami and Mohamed Mohsin.

When Alomari came in, only Ali and Ahmed continued to talk about the Union. The others talked amongst themselves about personal things. Alomari joined in, their conversation. No one asked Alomari to leave. He remained about one-half hour, and when he left, everyone again began to talk about Union business.

About a half an hour after Alomari left the room, both Saleh Nagi and Ahmed saw him walking back and forth outside the room. Ahmed testified that Alomari passed by the window three or four times in three or four minutes.

Ali Shaibi also testified regarding the events of the evening. His testimony is not credited. It includes a substantial recitation of events not mentioned by anyone else; events which were significant enough to have been recalled by the other General Counsel witnesses had those events in fact occurred. Moreover, in evaluation the reliability of his impeachment by the testimony of Saleh Obaid and his demeanor while testifying.

Mohsin Muthana testified that Alomari did not come into his room the night before his argument with Ali Shaibi. Ahmed Shaibi and Ali were already in the room when he returned from dinner. Mohamed Shaioi arrived later. The group drank beer and talked among themselves until bed time. Muthana did not lead the room during the evening. He did not see Alomari at any time during the evening, either in the room or walking back and forth by the window.

Alomari testified he did not go to Ali's room on June 20; he also testified he did not back and forth in front of Ali's window that evening. Mohsin Muthana, who shared the room with Ali, testified that he was present in the room the entire evening and that Alomari did not come to the room that evening, nor was he seen outside the window. Despite the extensive testimony by Nagi regarding the events of the evening, Muthana, when listing those present, did not list Nagi. Thus with respect to who was present.

Ahmed frequently visited his cousins in the evening. There was nothing unique about the gathering on the 28<sup>th</sup>. There is no evidence that Alomari had previously ever intruded upon the privacy of their room. No explanation is offered for his presence on that particular evening is opposed to any other on which Ahmed Shaibi was present.

It is difficult not to accept the testimony of Muthana. Unlike Saleh Nagi, whose testimony in its entirety is suspect because of his impeachment by credible testimony of Ahmed Omer Mohamed, and unlike Ahmed Shaibi, whose testimony must be

evaluated against the backdrop of his position as a UFW organizer, there is nothing in the record to suggest bias or any other reason for discrediting Muthana. His testimony on behalf of Respondent while still in its employ does not imply a bias reflecting adversely on his credibility.<sup>17/</sup>

The testimony of the General Counsel's witnesses regarding the events of June 20 is not credited. I find that Alomari was not present in Muthana's room that night, and I find that he did not parade outside the window of the room, observing and listening to what transpired. The General Counsel has failed to present convincing proof of the allegations of Paragraph 4(k); therefore I shall recommend that Paragraph 4(k) be dismissed.

J. June 21, 1977:

On June 21 Ahmed Shaibi arrived at the labor camp between 7:00 and 8:00 p.m. He went to Ali's room to talk and drink beer. Mohsin Muthana, Mohsin Shaibi, Ali Shaibi and Saleh Nagi were there. About 8:30 Muthana went to the bathroom. When he returned, he told everyone that he wanted to sleep. He told Ahmed that he wanted him to leave. Ali Shaibi said we are resting and drinking and asked Muthana why they were disturbing him. Ali and Muthana quarreled, and Ahmed left the room. Ali asked Muthana whether he wanted to fight, Muthana said no. Shortly thereafter Ali told Ahmed it was all right to come back to the room. When Ahmed returned, Muthana bundled up his clothes and left, saying that Ali was his cousin and that he would leave the room to him.

As Muthana was going to his car, he met Alomari and told him that he was quitting because they would not let him sleep. Alomari told him to wait\_ until he had a talk with them. However, Muthana declined to do so and got into his car and departed.

Alomari went to Ali's room and told Ahmed he did not want him there. Ahmed said he had a right to visit his cousin. Ali told Alomari it was the first time Muthana ever wanted to sleep early. Alomari told Ahmed to leave. Ahmed said he had not done anything wrong; he was simply staying with his cousin. Alomari said he would call the sheriff if Ahmed did not leave. Ahmed's response was "fuck you." Alomari left.

When Alomari left the room, Ahmed and the others went outside to the parking lot and sat on some parked cars. Ahmed was unable to leave because his car was blocked by a van parked behind it.

The sheriff arrived approximately 20 minutes later.

<sup>17/</sup> Que Enterprises, Inc., 140 NLRB 1001, 1003, fn. 5 (1962).

He talked first to Alomari and two other Company representatives. About five minutes later the sheriff came over to talk to Ahmed. He asked Ahmed for his papers and checked with the station to see whether Ahmed had any record. The sheriff told Ahmed he had to leave the camp. Ahmed told the sheriff that he had no right to ask him to leave since he had done nothing wrong, but Ahmed agreed to leave anyway. He also told the sheriff that he worked for Chavez.18/

Deputy Sheriff Gutierrez visited the labor camp the next day in the company of UFW representatives and representatives, of the Agricultural Labor Relations Board for the purpose of advising the workers of their rights to have visitors. While present, he interviewed Alomari, Ahmed Shaibi, Ali Shaibi and Mohsin Muthana regarding the events of the preceding evening. 19/

Ali Shaibi told Gutierrez that he and Muthana fought after Muthana asked Ahmed to leave the room. They started by cursing each other and then had a fist fight. All told Gutierrez that everything would have been all right if Ahmed had gone. Ali could not understand why Muthana wanted to go to bed so early. Ali said that Ahmed had been around most of the day, both inside and outside Ali's room, and that they had been, drinking beer.

Ahmed Shaibi told Gutierrez that there was a struggle between Ali and Muthana as he was leaving the room. Gutierrez asked Ahmed whether he had been there to organize. Ahmed told Gutierrez that he was visiting his friends, that he had no place to go. He told Gutierrez that Muthana was his cousin. Both interviews were conducted in the presence of Marty Fassler an attorney for the ALRB. Fassler was not called to testify, draw the inference that Fassler had he been called to testify would have corroborated the testimony of Gutierrez regarding was said to him by Ahmed Shaibi and Ali Shaibi.

K. July 7, 1977:

In the late afternoon or early evening of July 7 Mike Anderson told Alomari and Abdul Azeez to gather the workers together. When this was done, Mike addressed them in English and told them there was no more work. He said they would be laid off for about two weeks. He said the kitchen was going to be closed, but that the workers could stay in the camp. He also told the group that if they wanted the cook to cook for them, they would have to pay him.

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18/ These findings are a composite of the testimony of Ahmed Shaibi, Muthana, Saleh Ali Nagi and Alomari.

19/ Gutierrez was not the deputy who responded to the on the 20th.

Mohsin Said asked if the company would pay for half the cook's salary. Mike said he would go check; when he came back, he said if there were not 15 people working, the kitchen would be closed. If there were more than 15 working, the company would pay for the cook. He told them they could not cook for themselves, but if one of the workers would be responsible for keeping the kitchen clean he would leave it open.

When asked whether anyone would be working, Mike said that four or five workers would be needed. No one asked who these would be.

Nagi Zamzami asked why the company was doing some thing new in closing the kitchen. There does not appear to have been any response to this question. Zamzami also asked why they were not getting work, and why new workers were hired. Mike told them to settle it among yourselves with your Arab foreman. He told the workers that he told Alomari how many workers he needed, and that Alomari could pick whomever he wanted to work. Kaid and Mayhoub also complained that Alomari was giving the work to people who had been there only a few days. At this point Alomari told Mike that they did not ask for work, that they were siding with their cousin who had been in an accident with Alomari. Alomari told Mike he wanted them fired, and threatened to quit if they were not.

Anderson was asked why people from South Yemen were given work and not those from North Yemen. 20/ Alomari said this was the first time the question of North versus South Yemen had been raised regarding employment. He was upset and continued to be upset. Alomari told Kaid and Mayhoub to leave and asked Anderson to fire them. Alomari then left. As Anderson started to leave, someone asked whether the two were fired, Anderson said no.

When Alomari returned, he told Kaid and Mayhoub that if the company wanted them to work, it would find another place for them to stay. Both continued to work after July 7 and both continued to live in the camp.21/

Kaid testified that Alomari threatened to call the police if they did not leave the camp. No one else testifying to these events mentioned this statement. Kaid also testified that Alomari asked Anderson to fire Mayhoub and him because they were with the Union. I do not credit this testimony. The most detailed and coherent account of the events is by Ahmed Shaibi, who

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20/ Alomari is from South Yemen.

21/ These findings are based upon credited testimony of Ahmed Shaibi and Mike Anderson.

does not mention such a statement by Alomari. Since Ahmed was a UFW organizer and since this was a confrontation with the "boss," it is unlikely he would, have forgotten such an utterance. It is precisely the sort of statement he would be eager to hear and unlikely to forget if made.

L. July 14, 1977:

On July 12, 1977, UFW representative Moreno visited Caratan's Mexican-Puerto Rican labor camp to arrange for a meeting on July 14. There is no evidence the crew's foreman, Fermin Martinez, had advance knowledge of the meeting.

On July 14 the UFW held a joint meeting of Arab and Mexican-Puerto Rican workers in the courtyard at the Mexican camp. The purpose of the meeting was the selection of delegates to the UFW convention. When the Arab workers arrived, they sat among themselves along one wall of the courtyard. The Mexican workers and their foreman, Martinez, were sitting along another wall.

When Moreno observed the Mexican workers were, not nominating any delegates or otherwise participating, he asked Martinez to leave. Martinez refused, saying he could not be required to leave; so Moreno terminated the meeting.22/

Martinez does not live in the Mexican camp. However his camp-related responsibilities require that he be there frequently. He often drives the bus to and from work, and he sometimes eats in the camp kitchen.23/

M. August 4, 1977:

Abdulla's Muthana also known as Aboril Saibi was employed by Caratan from 1972 to 1975. We was not in the Delano area during 1976. On July 28, 1977, he returned to the Arab labor camp and asked Alomari for work Alomari directed him to the office to file an application. This was done on July 29. He spoke to the secretary who told him to return in three days.

Abdulla returned to the office on August 1. He talked to the secretary and to M. Anderson. He was again instructed to return in three days. When he returned on August 4, he spoke to the secretary, who showed his application to Anderson.

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22/ These firings are primarily upon the testimony of Moreno. The testimony of Mohamed Kaid, Nagi zamzami and Mohamed zamzami corroborated permissions of Morano's testimony.

23/ These findings rest upon the testimony of Luis Caratan.



who told him to return in three or four days and he might get work.<sup>24/</sup>

Abdulla testified that he went back to the office as directed, that the secretary told him he was hired and that she had him sign a piece of paper. His testimony concerning the nature of this "paper" is inconsistent. On direct examination Abdulla testified he signed a paper for his room, that he took the paper to the camp with him that evening and gave it to Alomari. On cross-examination Abdulla testified that he received two papers in the office; one was for the room deposit and one was for work. He said he left the room paper at the office and took the other to give it to Alomari. Alomari testified that the paper which Abdulla brought contained nothing but his name.

The Respondent's usual procedure relating to new hires is as follows: Anderson notifies Alomari that an individual, is to be hired; Alomari notifies the person that he has been hired; the person is then directed to the office to sign the necessary payroll deduction authorization forms. The new hire receives no notice of employment from the office, nor is he given a paper to take to Alomari which tells Alomari he has been hired.<sup>25/</sup>

There is a conflict in the testimony regarding what was said between Alomari and Abdulla when Abdulla went to the camp on the evening of August 4. Abdulla testified that Alomari took the paper and told him that he could not stay in the camp because he was a member of the Union and because Ahmed Shaibi was his cousin. Abdulla said he had to stay in the camp and that he wanted to go back to work. Alomari told him he would have to find a place in town. Abdulla said he had no car and no housing, that he had put a lot of effort into this company, and he wanted to stay in camp. Alomari told him he could not guarantee him work, but he would try to give him work.

I Alomari testified that Abdulla gave him a piece of paper having on it only Abdulla's name. Alomari told him that he could not let him go to work on the basis of the paper; Alomari said that Abdulla could not go to work until Mike said so.

There is also a conflict regarding subsequent events Abdulla testified he returned to the camp each day for three days to speak to Alomari about work and on each occasion was told there was no work. On the fourth day Alomari told him that because he was a Union member and a relative of Ahmed Shaibi, he

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<sup>24/</sup> These findings are based upon the testimony of Abdulla Muthana.

<sup>25/</sup> These findings are based upon the uncontroverted testimony of Mike Anderson.

would have to get an order from Luis Caratan to go to work. How Alomari knew Abdulla was Ahmed's cousin is unexplained.

Alomari denied the conversation and denied knowing anyone named Abdulla Shaibi. Abdulla's work application was in the name of Muthana as is the social security card hearing the social security account number appearing his work application. Alomari admitted knowing an Abdulla Muthana.

Alomari testified that Abdulla telephoned about three days after presenting the paper, and said he was working at another grower. He told Alomari he would like to work at Caratan. Alomari told him if they needed workers, he would let him know. According to Alomari, this was the only occasion after August 4 when Abdulla asked for work.

In 1975 when the UFW won the representation election at Caratan's, there was a victory demonstration in front of the camp in which Abdulla participated. Abdulla testified, there other occasions while employed at Caratan's in 1975 when he joined in demonstrations at other ranches, shouting "Chavez" so that workers would hear and join the UFW. Abdulla testified that he used to tell Alomari, his foreman, when he was leading for demonstrations. On cross-examination, Muthana could not the name of any ranch at which he had demonstrated. There is no other evidence of employer knowledge of this activity nor is there any evidence that Abdulla engaged in any Union activity after 1975.

N. August 10, 1977:

Fadel Karim testified that one afternoon in August Alomari talked to a group of 10 workers sitting near the kitchen about getting a wage increase. Alomari told the workers that Caratan said to tell them that other companies had raised the worker's wages, but he could not do so because the Union would not allow it. Alomari said he was told to tell them that if anyone wanted a wage increase, he must sign a paper to this effect and give it to Alomari who would take it to the company. Alomari said it was better so sign the paper so they could get the raise. He and Saleh Alshoori passed around blank paper to be signed. Alomari asked Karim to sign.

After the meeting Karim contacted workers and told them not to sign the paper. He did this in various places, Delano, the TV room, sometimes outside at the camp, sometimes in the workers' rooms. Karim testified that Alomari saw him talking to other workers, but was never close enough to hear what was said.

Karim testified about a conversation with Alomari

between 6:00 and 7:00 p.m. the evening that Alomari spoke to the workers. Alomari told Karim not to talk to other workers about the paper, just to speak for himself. Karim said it was none of Alomari's business, that he could talk to anyone he pleased. No one else was present. Alomari denied having the conversation. In view of Karim's prior inconsistent statements regarding some of the events of the day, and in view of his failure to include this conversation in his declaration made approximately a month later, I do not credit Karim's testimony regarding this conversation.

Regarding the events of August 10, Mohsin Muthana testified that the workers asked Alomari to raise wages as other companies had done. Alomari said he would talk to the company and get back to them. He later told them that Caratan said he could not give an increase because he was under pressure from the court and the Union. The workers said they were not against either the company or the Union. They were prepared to sign to get a raise. Karim did not sign. There were six or seven people who did not sign. There was no talk about whether or not one had to sign the paper. The paper he signed had a request for a wage increase written in Arabic at the top.

About two weeks later there was a gathering in the parking lot at which Caratan addressed the workers in the parking lot. Alomari translated Caratan's statement into Arabic. Caratan said that he and the Union had reached an agreement which permitted him to raise wages to the same level as other companies in the area. Karim testified he asked whether the increase was to be for everyone or only for those who signed the paper. Alomari told him it was not his business; that if he did not want the increase to write the company and say so.

O. August 12, 1977:

Ali M. Shaibi first worked for Caratan in 1970. He worked in Alomari's crew. He worked for unspecified periods during 1970, 1971 and 1972 and did not again work for Caratan until 1976. He was laid off in October, 1976. He returned to work in May, 1977, and worked until June 22.

Following his layoff, Shaibi went to Arizona for four days, after which he returned to Delano. He started work for El Rancho Farms in Arvin on July 14 under the name of Ali M. Ali. He worked for El Rancho until August 11.<sup>26/</sup>

Sometime prior to August 1 Ali spoke to Alomari about getting work at Caratan. Alomari told him to go to the

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<sup>26/</sup> These findings are based upon the testimony of Ali Shaibi and upon the time records of El Rancho Farms.

office and fill out an application. Ali Snaibi went to the office on August 1 and was given an application by Mike Adders on who assisted him in filling it out. Anderson told him that Caratan was not hiring.

When new workers are to be hired, Anderson reviews the applications on file and selects the required number of workers. He customarily gives the earliest applicants priority; however, he does exercise selectivity based upon personal knowledge of the applicant. Anderson reviewed the applications on August 1 and hired one workers whose application was dated August 1. He did not recall whether he reviewed the applications before or after he talked to Ali. The worker hired on August 1 reported for work the next day. Anderson repeated the process on August 2 and hired another worker for duty on August 3. Anderson had no explanation with respect to why neither Ali Shaibi nor one of the other persons having filed applications were not hired on August 1 or 2. The employee hired on August 2 filed his application that day. The deviation from what Anderson says was the Respondent's hiring practice was not explained.<sup>27/</sup> Nor was any application offered regarding why, with six applications on file which pre-dated August 1, an applicant who filed his application on August 1 was hired.

While Ali was at the office filing his application Anderson told him to be at the office the next day or 10.00 a.m. He did not get there until approximately 3.00 having worked in Arvin that day. He saw Mike in the office parking lot and asked to see Luis Caratan. Mike located told him the camp was full and no workers were needed.

On August 3 or 4 Ali again contacted Anderson seeking work and was told no work was available. No additional employees were hired into Alomari's crew until August 10 and 11.

Ali Shaibi was laid off at El Rancho on August 11. He returned to Delano that day after work. Mohamed Muthana and Alomari talked to Caratan on the 11th about getting work for Ali. Caratan told them the crews were full and that it was impossible to put Ali to work so long as there was no spare bench for him. Alomari testified this was the last day he saw Ali Shaibi.<sup>28/</sup>

The day after the Muthana-Alomari-Caratan conversation, Shaibi returned to the El Rancho camp in Arvin for a few

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<sup>27/</sup> Anderson characterized Ali Shaibi an average worker.

<sup>28/</sup> This finding is a composite of the testimony of Alomari, Caratan and Ali Shaibi (on cross-examination).

days, after which he returned to Delano to seek work with Respondent. He saw Caratan parked alongside the road talking to his cousin and stopped to ask for work. Caratan told him the seedless grapes were about finished, and no new workers 'were being hired. Caratan places this conversation about the 26th or 27th of August. With the exception of Alomari's two sons, no one was hired after August 11. August 27 was the last day of the Delano harvest.

Ali Shaibi testified to a further conversation with Alomari during which he told Alomari that it was not legal to hire people who had never worked for Caratan while not rehiring him, and that he was going to go to the Union and lodge a complaint. Ali further testified that Alomari told him that he had mixed himself up because he was still involved with the Union and that workers had told him that Shaibi had gone to Union meetings. Ali testified that Alomari reminded him of the position he had taken when Alomari called the sheriff to remove Ahmed Shaibi the night Muthana and Ali had their dispute.

Alomari denied having made any of the above statements and also denied that Shaibi threatened to go to the Union. I credit Alomari. I do not credit Ali Shaibi's testimony regarding these conversations with Alomari. Shaibi's testimony was inaccurate in many respects, e.g., the name under which he worked at El Rancho, the length of his service at El Rancho, and was inconsistent regarding his activities during the period after August 1. I find Ali Shaibi to be impeached by his own inconsistent testimony as well as by the contradictory testimony of the El Rancho foreman, and the El Rancho records.

Ali Shaibi has been a member of the UFW since 1970. There is no evidence of Respondent's awareness of this fact. Ali testified that he attended a meeting of the UFW held in the TV room at which Ahmed Shaibi was present. Ahmed attended only the first of the three meetings. In listing those whom he remembered attending that meeting, Ahmed did not name Ali Shaibi as having been present. Ali Shaibi's testimony regarding what transpired at the meeting is inconsistent with the testimony of other witnesses; thus casting doubt on the accuracy of this portion of his testimony.<sup>29/</sup> Ali also attended meetings of the UFW at Forty Acres during the period of his employ by Caratan; however, there

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<sup>29/</sup> Ali testified that the UFW representatives took small groups of workers outside the TV room to talk to them because of the presence of Alomari. None of the other witnesses testifying regarding this meeting so testified. Since Alomari was only briefly present at the meeting, since it continued to its conclusion after he departed, it is unlikely that the events happened as described by Ali. In view of the closeness of the relationship between Ahmed and Ali Shaibi, it is unlikely that Ahmed would have overlooked Ali when he listed the names of those he ..... [continued]

is no evidence of Respondent knowledge of this fact.

As noted elsewhere, All Shaibi was an active participant in the events occurring in his room on June 20 and 21 involving UFW representative Ahmed Shaibi.

P. August 14, 1977:

Saleh Ali Nagi worked for Caratan, during 1975 and 1976. He last worked for Caratan in October, 1976. On June 16 or 17 Nagi arrived at the Caratan Arab labor camp from Stockton. He stayed in the camp until June 23, one day after the layoff.

Two or three days after he got to the camp, Nagi asked Mike Anderson for work; Anderson told him there was no work and that a layoff was impending. A couple of days later he again asked Mike for work and was told there was none. During the course of this conversation, Mike said he was taking some, problems in the Arab camp. Nagi testified that Anderson asked him whether he hated the Union and Nagi responded affirmatively. Anderson then asked why Nagi did not talk to his brother workers about the Union, and Nagi responded that he could not because he did not work there. Mike told him not to worry, that he would get a job.

During July Nagi worked in Arvin for another grower. On the day he finished at Arvin he spoke to Alomari about work on two occasions. Alomari told him to go to office to file an application. Nagi did not do this. Anderson had also suggested that he file an application. Said Aamir who was also seeking work at that time went to work the next day, thus placing the conversation on August 10th. Aamir filed an application for work on August 8. Ahmed Said also filed an application on the eighth and went to work on or about August 14 who had not filed an application with the Caratan office.

While Nagi was employed by Caratan in 1976, representatives of the UFW came to the Caratan camp to take him to testify in an Agricultural Labor Relations Board hearings involving another employer. Nagi testified he made his then supervisor. Fareh Musaid, aware of his involvement. Nagi is a member of the UFW and Musaid had knowledge of his membership. There is no evidence in the record that Musaid, during his period of employment, transmitted his awareness of Nagi's membership in the UFW to any supervisor of Caratan. There is no evidence of any 1977.

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29/ [continued] - remembered being at the meeting. This omission together with inconsistencies between Ali's testimony and that of others in attendance leads me to find that Ali did not attend the first TV room meeting; therefore I do not credit his testimony regarding the events of that evening.

involvement with the Union.

Nagi was present in Ali Shaibi's room during the incidents which occurred on June 20 and 21.

Q. September 8, 1977:

Fadel Karim was discharged September 8, 1977. At about the start of work that day, Karim and Rabo, a member of Karim's group, spoke to Alomari about removing Nasher, the third crew member, from their group.<sup>30/</sup> Karim told Alomari they wanted him to rotate Nasher among all the groups as he used to do. They said Nasher was a slow worker, and they could not make any money. Alomari told them he could not do anything about it, that they must work by the rules or leave. Nasher was not present during this discussion; he had not come to work on the bus that morning.<sup>31/</sup>

About an hour after work commenced Alomari brought Nasher to the field and told him he was to work in their group. Karim and Rabo told Nasher they were not going to work with him. Nasher left and went to talk to Alomari. He told Alomari that he did not want to work with Karim because he was tired and because they always criticized his work. He told Alomari he wanted to quit. Alomari told him he would draw no unemployment insurance if he quit. <sup>32/</sup>

Alomari returned to where Karim and Rabo were working. He told them that Nasher had to work with them by "force." <sup>33/</sup> Karim told Alomari that Nasher used to work with different groups, and that Alomari had left him in their group for three weeks. He told Alomari that he and Rabo wanted Nasher in another group; that Alomari should exercise justice and bring them another worker or alternatively guarantee them as much money as the other workers were making. Rabo voiced the same position. Alomari's response was that they had to work with Nasher "by force." Karim said that Alomari could not force them to work with Nasher. Alomari told them to work or go home. Karim told Alomari to put Nasher in \_\_\_\_\_

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<sup>30/</sup> The workers were picking and packing grapes—they were working in three-person groups.

<sup>31/</sup> These findings are based upon the testimony of Karim and Alomari. Rabo did not testify.

<sup>32/</sup> These findings are based upon the testimony of Saleh Said Nasser, who overheard the conversation. Nasher was not called to testify.

<sup>33/</sup> Apparently the comprehensible meaning to "by force" in this context is by the rules.

another group. Alomari said it was necessary that they work with Nasser until they saw who could be brought. He told Karim he could not change them unless they agreed with another group to make the switch. He said it was OK if the groups changed among themselves. Alomari testified that Karim's complaint was the first he had received regarding Nasser being a slow worker.

Alomari asked Karim whether he wanted to work or whether he wanted to fight. Karim said I want to work by the law. Alomari responded by saying the law was that he had to work with Nasser.<sup>34/</sup> Alomari testified that Karim then said that if you let Nasser work with me I will "anakhisak" you.<sup>35/</sup> Alomari asked those present whether they had heard what Karim said, and then departed to look for Anderson. Alomari interpreted Karim's statement as a threat to stab him or hit him. Karim denies making such a threat.

Deputy Sheriff McNutt who was called to the scene shortly after the above conversation filed a report which was introduced into evidence. It cites Nasser and another witness as telling McNutt that they overheard the argument between Karim and Alomari, and that they heard Karim say I will stab you. McNutt testified that Nasser used the English word "stab." When called to testify, Nasser denied making such a statement.

I do not credit Nasser's denial that he made the statement attributed to him in the sheriff's report. The report was prepared at the time of the occurrence on the basis of McNutt's interviews with the witnesses. It was prepared as part of McNutt's normal duties. No reason has been presented for not regarding it as an accurate representation of what he was told by those whom he interviewed. Moreover, McNutt was available and was cross-examined with respect to the contents of the report. Having credited the report, I find Nasser's testimony denying that Karim said he would stab Alomari to be impeached by his prior inconsistent statement [Evid. C. §780(h)]. I find it to be true that Nasser heard Karim state that he would stab Alomari [Evid. C. §1235]. The Nasser statement to McNutt is substantially consistent with Mike Anderson's testimony regarding what he was told by three persons working in the packing trailer area whom he interviewed prior to terminating Karim. Each told Anderson that he heard Karim tell Alomari that he was going to hit him. None was situated where he could see what happened.<sup>36/</sup>

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<sup>34/</sup>These findings are based upon the testimony of Karim, Nasser and Alomari.

<sup>35/</sup>Several translations of this term are possible. The dictionary lists "goad," "prod" and "prick." The interpreter said it might also be translated as "get" and that a possible translation was get you by the law.

<sup>36/</sup>None of the packers was called to testify.



Ten to 15 minutes after the interaction between Karim and Alomari, Mike Anderson arrived and came into the row where Karim was working. Alomari was not present. Mike asked Karim what had happened; he told Karim that Alomari said that Karim had his clippers out and wanted to fight Alomari. Karim said he had his clippers out but did not try to stick Alomari and denied saying he was going to fight. He told Mike that he could get Alomari through the law. Rabo was present and translated from English to Arabic for Karim and from Arabic to English for Anderson.

Mike left the row and went to talk to three packers to learn what they had observed or heard. They had not seen anything but had heard the argument about the slow worker and had heard Karim say he was going to hit Alomari if he did not get rid of the slow worker. Andersen's conversation with the packers was in English.

Anderson then talked to Alomari and told him he would call the sheriff. Thereafter, he returned to the row to tell Karim he was fired.<sup>37/</sup> The sheriff arrived and Anderson took Karim out of the row to talk to the sheriff.

Deputy McNutt first got Alomari's version of the events and learned that Alomari wanted Karim arrested because he was afraid there would be more problems if Karim were permitted to stay. The deputy interrogated Karim and two other workers (Nasser and Amer) after which Karim was taken to the sheriff's substation in Delano.

He remained at the substation about one-half hour after which Mike Anderson drove him to the camp. Anderson told him he had to leave by 5:00 p.m. that night. However, Karim stayed in the camp three or four days after his discharge. He left when Alomari told him he could no longer use the refrigerator to store his special menu items. While he was staying in the camp, he was looking for work elsewhere, and he did work one or two of those days for another grower.

Either the evening of his discharge or the evening following, Karim had a conversation with Caratan about his discharge. Karim asked why he was discharged and Caratan told him it was because he threatened Alomari with the clippers. Karim denied having done so, saying that he had threatened to stick Alomari with the law. Caratan said he was prepared to listen to any witnesses which Karim had, and if they bore out Karim's story that he would be reinstated. Karim said he did not want to work with

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<sup>37/</sup>Anderson testified that Karim was fired because of his threats to hit Alomari.

Alomari, Caratan said he could be placed in another crew. Caratan wanted the witnesses that evening; Karim wanted, to bring them the next day. Karim said his witnesses were in the camp, but that he had already gone to the state. Finally, he told Caratan, that he would come back to work without witnesses, but if Caratan that he was not the law, there was a court to advisor witnesses 38 The witnesses to whom Karim allowed were neither called to testify nor identified by name.

R. September 28, 1977:

On September 28, some time between 5:30 and 7:00 p.m. Alomari called the workers together for a meeting. Twenty-five to 30 workers were present. Alomari told the group there were some people spoiling the camp. They want to let the kitchen and the camp close. They complained that I locked the kitchen. The day time. Company gave the party. Alomari then asked whether the kitchen had been closed, and the workers responded "no." He said he wanted the workers to be witnesses against the people who wanted the camp closed because he wanted to kick them our of the camp when asked. Alomari identified Nagi Mohsin, Mohamed Kaid, Nagi Zanzami, Mohamed Mohsin and Meyhoub Mohamed as those who wanted the company to close the kitchen for everyone.

Mohamed Mohsin said he told the Union about the kitchen because Alomari had locked it and bad deduced 51.00 from them when the company had the picnic. The meeting lasted about 11 minutes.39/

The kitchen was closed for the noon meal on Labor Day. The company gave its employees a picnic in the park at noon on that day. Kaid and the others who opened nor to go to the picnic were not permitted to ear in the kitchen at noon. It was available to then and other workers for breakfast and winner.40/

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38/The finding regarding the Caratan-Karim conversation is based upon the testimony of both men.

39/These findings are based upon the testimony of Mohamed Mohsin and Mohamed Kaid. The testimony of Ahmed Alomari so far as it is inconsistent with that of Kaid and Mohamed Mohsin has not been credited. Both Kaid and Mohsin were currently employed by Caratan when they testified. Both were in Alomari's crew and were testifying adversely to their employer and more particularly, their crew boss. In so testifying they all have felt they were jeopardizing their own employment. Testimony by current employees contrary to the interests of their employer is like-7 to be true. *Georgil F. v 131 NLRB 1304, in 1 (1961); Wirtz v. B. A. C. steel Products, Inc., 3 2 F.2d 14 (4th Cir. 1963); Gifford & Hill Co., Inc., 188 NLRB 337, 345 (1971).*

40/These findings are based upon the testimony of Mohamed Mohsin.

## ANALYSIS AND CONCLUSIONS

With respect to the allegations still at issue, the chargeable conduct is attributed primarily to Ahmed Alomari, and in one instance to Fermin Martinez. Thus, it is appropriate to begin the analysis by dealing with the question of whether either is a supervisor within the meaning of the Act.

Labor Code Section 1140.4(j) provides:

The term "supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The language of §1140.4(j) is identical to that of §2(11) [29 U.S.C. §152(11)] of the National Labor Relations Act; therefore we turn to applicable precedents under the National Labor Relation Act for guidance in deciding whether Alomari and Martinez are statutory supervisors.<sup>41/</sup>

It is not necessary that an individual possess all of the authorities set forth in §1140.4(j) in order to be a "supervisor." The section, like N.L.R.A. §2(11) is to be read in the disjunctive, and the presence of any of the authorities enumerated therein suffices to establish an individual as a "supervisor." *Arizona Public Service Company v. N.L.R.B.* 453 F.2d 228, 230 (9th Cir. 1971); *N.L.R.B. v. Fullerton Publishing Co.*, 283 F.2d 545, 548 (9th Cir. 1960). Alomari and Martinez possess two authorities which establish them as "supervisors".<sup>1:</sup> the authority to determine which members of their crews shall work on any given day, and the authority effectively to recommend discipline and discharge for poor work.

The crew boss does not determine where his crew will work or how many of his crew will work on a given day; this decision is made by his immediate superior, Mike Anderson. However, it is admitted that once Anderson determines the crew size for the day, the selection of those individuals in the crew who will actually work is left to the crew boss. This authority clearly establishes the supervisory status of crew bosses Alomari and

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<sup>41/</sup>Labor Code §1148.

Martinez. Spotlight Company, Inc., 188 HLRB 774, 776 (1971).

An independent ground for holding the crew bosses to be "supervisors" is their authority effectively to recommend discharge for improper or poor work performance. In Anderson Farms (1971) 3 ALRB No. 67, the Board found authority effectively to recommend discharge where the contested supervisor reputed an employee's improper work performance to his immediate supervisor who then talked to the erring employee. If the contested supervisor thereafter made a second report of improper work performance, the employee was terminated without investigation of the report. Alomari's credited testimony described a procedure substantially similar to that described in Anderson Farms. Martinez and Alomari have identical responsibilities, so it is appropriate to conclude that Martinez also has the authority effectively to recommend discipline for poor work. Although there is no evidence that Martinez has ever exercised this authority, it is its existence rather than its exercise which is determinative of supervisorial status. Eastern Greyhound Lines v. N.L.R.B., 337 F.2d 34 (6th Cir 1964). Although crew bosses lack authority to make effective recommendations for discipline in a situation other than poor work the absence of such authority is no more significant than their lack of authority to hire. The existence of some authority effectively to recommend suffices to find "supervisor" status.

An additional consideration supporting the conclusion that crew bosses are supervisors is the ratio of supervisors to workers which would exist if crew bosses were not supervisors. As times the ratio would be two supervisors to more than 100 workers, furthermore, neither Caratan nor Anderson is fluent in the languages of the crews. Colorflo Decorator Products, Inc., 228 NLRB No. 53, 94 LRRM 1554 (1975).

Finally, in reaching the conclusion the crew bosses are supervisors, note was taken of the fact that Respondent in the answer admitted that Alomari and Martinez were supervisors.

#### I. Unlawful Surveillance

There are multiple allegations of unlawful surveillance still at issue. Employer surveillance of its employees violates §1153(a) if the surveillance has a reasonable tendency to affect employee exercise of statutory rights granted by §1132 Merzorian Brothers Farm Management Company, INC., 3 ALRB No. 62 (1977).

In non-work time situations the mere presence of a supervisor in the vicinity of a union meeting does not suffice to establish unlawful surveillance or the impression then of their purpose, e.g., observing a union meeting. Atlanta Gas Light Co., 162 NLRB 436 (1966); Tomooka Brothers, 2 ALRB No. 52 (1973),

though a supervisor has a legitimate reason for being present in the area during the course of a union gathering, his presence may amount to unlawful surveillance if he intentionally interjects himself and listens to the conversations between union organizers and employees. Dan Tudor & Sons, 3 ALRB No. 69 (1977).

When these principles are applied to Alomari's conduct at the April 6 gathering of a group of employees and to his conduct on the occasions of the TV room Union meetings on April 29 and May 17, violations of §1153(a) are proved.

A. The April 6 Gathering:

Credited testimony establishes that on the afternoon of April 6, Alomari came from his house in the Arab camp and joined a group of workers who were talking with a UFW organizer. It is not clear that he had knowledge of the nature of the gathering prior to joining it. In view of his residence in the camp and in view of the customary practice of gathering under the trees at the camp, the fact that Alomari joined the discussion is not critical. However, once there and learning of the subject matter under discussion, he effectively interfered with employee rights by arguing with the organizer, by insisting upon remaining with the group as a matter of right when asked to leave, and by having a chilling effect upon participation in the discussion by those workers present. The attitude displayed by Alomari to the workers can reasonably be said to have inhibited employees in the free exercise of their §1152 rights, thereby violating §1153(a).

Alomari's April 6 conduct is alleged to be violative of the Act on two separate grounds: unlawful surveillance and interruption of, intrusion upon, and harassment of the workers as they attempted to meet with the organizer.<sup>42/</sup>

Since his presence constituted surveillance, no purpose is served by determining whether the same conduct was violative of the Act on the ground that it constituted harassment. National Labor Relations Board cases finding harassment violative of the Act generally go to conduct evidencing a scheme or pattern of employer conduct designed to interfere with, restrain or coerce employees in the exercise of their statutory rights.<sup>43/</sup> Having found Alomari's conduct on April 6 to be unlawful surveillance and violative of §1153(a) as alleged in Paragraph 4(a), I shall recommend dismissal of Paragraph 4(d) of the complaint.

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42/Paragraphs 4(a) and 4(d) of the complaint.

43/See: Bankers Club, Inc., 218 NLRB No. 7; Kanawha Mfg. Co., 217 NLRB No. 7; Sylacauga Garment Co., 210 NLRB No. 84.

B. TV Room Meetings:

The Union held or attempted to hold three meetings in the TV room at the camp. Alomari is charged with having engaged in surveillance of each of the meetings.<sup>44</sup> /

Alomari arrived at the TV room about 10 minute after the commencement of the first meeting. There is no evidence he was aware that a Union meeting was in progress. When he was told to leave, he said he had a right to be in the room because it was a TV room; however, he did leave. He returned shortly, reiterating his position that he had a right to be present. He was asked to step outside to talk to a UFW representative. He did not return to the TV room after this conversation. The Union meeting continued to its conclusion following Alomari's departure.

Alomari's conduct on this occasion was not unlawful surveillance. As a resident of the camp it was Alomari's practice to use the TV room in conjunction with the workers.<sup>45</sup> This use was acknowledged as proper. Alomari had never before been asked to leave the room by the camp inhabitants. On this occasion, after asserting his right to be present he left. There is no evidence that his presence at the room had an illegitimate purpose. On that his arrival at the room after the commencement of the meeting was anything more than coincidence. Moreover, this conduct upon being asked t leave is consistent with the conclusion that his presence was for a legitimate purpose, i.e., he left without incident. The General Counsel has failed to meet the burden of proof imposed by Tomooka Bros., supra, and by Den Tudor & Sons, supra, i.e., that Alomari had an illicit purpose in being present.

I shall recommend that the allegations of paragraph 4(e) be dismissed.

On April 29 and on May 17 the Union again attempted to meet with Arab workers in the TV room. On both occasions Alomari appeared as the meeting was starting. On both occasions he declined to leave, asserting that he had a right to use the room. On neither occasion did he offer any explanation for needing or wanting to be in the TV room at that particular point in time. His posture was that no one could make him leave; he had a right to be there. In the face of his inflexibility, the UFW representatives reasonably concluded they could not conduce their meeting.

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44/Paragraphs 4(e), (j) and (q) of the complaint.

45/Alomari has a house on the camp premises, a short distance from the buildings housing the kitchen and the workers. Contrary to the assertion of the General Counsel, I find that Alomari resides at the Arab camp.

The evidence supports the conclusion that Alomari was present on both occasions for the purpose of surveillance of the UFW's meeting. While he might have had a legitimate reason for being present, none was expressed. The workers' could reasonably conclude that he was there solely to observe their Union meeting. His conduct on both April 29 and May 17 was unlawful surveillance and violative of §1153(a) of the Act.46/

C. Mexican Camp Meeting:

On July 14 the UFW held a joint meeting of Arab and Mexican workers at the Mexican labor camp for the purpose of selecting delegates to the forthcoming UFW convention. Crew boss Martinez was in the courtyard with members of his crew when the Arab workers and the UFW representatives arrived for the meeting. Martinez sat among the Mexican workers, but made no attempt to participate in or otherwise obstruct the progress of the meeting. When UFW representative Moreno noticed that none of the Mexican workers was participating in the delegate selection process, he asked Martinez to leave. Martinez declined, saying he had a right to be there. Lacking Mexican worker participation, Moreno terminated the meeting. It was held at a later time.

No reason, other than the presence of their foreman, suggests itself for the lack of participation in the meeting by Mexican workers. Contrasting their behavior with that of the Arab workers present, one can permissibly infer that Martinez's presence had a chilling effect upon the members of his crew. When asked to leave, Martinez offered no affirmative reason for not doing so, stating simply that he had a right to be there.

Respondent argues in its brief that proof of surveillance requires proving that Martinez was present during Union activity for the purpose of surveillance, citing Tomooka Bros., 2 ALRB No. 52 (1976), and on the authority of that case urges dismissal of Paragraph 4(f). Tomooka involved a supervisor's presence in the field during the lunch break, and his observation from a distance of the interaction between workers and a UFW organizer. The case is distinguishable on its facts, and application of its test leads to a different result in the present case.

Tomooka requires the General Counsel to present evidence that Martinez was present for the purpose of surveillance at a time when Union organizers are attempting to talk to workers. This burden has been met. Martinez's presence in the middle of the meeting, the chilling effect of that presence, and his unexplained refusal to leave the meeting make a prima facie case of

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46/Merzoian Brothers Farm Management Company, Inc., supra; Dan Tudor & Sons, supra; Atlanta Gas Light Co., supra; Tomooka Brothers, supra.

unlawful surveillance. When those facts were proved, the burden of going forward with the evidence shifted to Respondent to explain the supervisor's refusal to leave the area. Since no such explanation was forthcoming, a permissible inference is that Martinez remained for the purpose of observing the meeting and ascertaining which members of his crew participated. It follows that his conduct on that occasion violated Section 1153(a).

D. Trip To Keene:

Paragraph 4(r) of the complaint alleges that Alomari engaged in surveillance of workers as they boarded a UFW bus for a trip to UFW headquarters at Keene. While the bus was parked at the camp entrance awaiting passengers. Alomari was sitting under a nearby tree with some workers and admittedly saw workers boarding the bus. It was customary for Alomari, as well as the workers, to gather at that location after the evening meal. While Alomari was aware of the invitation to Union headquarters, there is no evidence that his presence under the tree was other than adherence to his habit. Unlike his conduct in the TV room during the second and third Union meetings. Alomari did nothing to lead one to conclude he was engaged in surveillance while sitting under the tree. When the invitation was extended the previous day, someone shouted "we'll all go," but only nine workers ultimately went. Attribution of lack of greater attendance to Alomari's presence under the tree would be sheer speculation.

The General Counsel has failed to present evidence tending to prove that Alomari's presence was for an illegal purpose; therefore I shall recommend dismissal of Paragraph 4(r) of the complaint.47/

II. Daniel of Access:

Ahmed Shaibi's removal from the Arab Labor camp at approximately 10:00 p.m. on June 21, is alleged to be an access denial violative of §1153(a).48/

The fact of removal is on controverted. When Ahmed refused to leave the barracks room shared by Ali Shaibi and Mohsin Muthana, Alomari called the sheriff who affected the removal.

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47/Paragraph (k) alleged unlawful surveillance by Alomari of June 20. As noted above, I find that the General Counsel failed to prove the incident occurred, and, accordingly recommended dismissable of the paragraph.

48/Paragraph 4(1)



Alomari went to the room and asked Ahmed to leave after encountering Muthana leaving the camp because of the dispute between him and Ali Shaibi regarding Ahmed<sup>1</sup>'s continued presence in their room. Alomari's action resulted from Muthana's desire to get Ahmed out of his room and was totally unrelated to Ahmed's status as a UFW organizer as is evidenced from Ahmed<sup>1</sup>'s account to Deputy Sheriff Gutierrez describing himself as being there for the purpose of visiting his friends.

Ahmed<sup>1</sup>'s removal from the camp was not a situation in which an employer acted to effect the removal of a union organizer during an organizational campaign in order to deprive his employees access to information which the union might wish to dispense. It was not a situation in which the employer sought to remove an organizer who was on the premises in his professional capacity and engaged in performing his duties at the time of his removal. Cf. Silver Creek Packing Company, 3 ALRB No. 13 (1977). Here, we are concerned with the resolution of a clash between room-mates regarding their mutual visitor; Alomari sought to assist Muthana in effecting his request that Ahmed leave his room by asking Ahmed to leave. Ahmed refused to leave the room and, in effect, dared Alomari to call the sheriff. The sheriff was called, and Ahmed was removed from the property. If the events described had occurred with respect to a person who was not a UFW organizer, the propriety of Alomari's conduct would not have been questioned. When the sheriff arrived at 10:00 p.m., it was his judgment that the way to calm things down was to order Ahmed to leave. He did not feel it necessary to arrest him.

Ahmed's position as a Union organizer does not insulate him from the obligation imposed upon any visitor to the camp to comport himself in a manner which does not deprive a camp resident of his rights. His behavior on the night of the 21st did not meet that obligation. I shall recommend that the allegations of Paragraph 4(1) of the complaint be dismissed.

The cases cited by the General Counsel are distinguishable. In Merzoian Brothers, supra, the employer refused to permit union organizers in the labor camp on the morning of the election despite the wishes of the workers. The Board recognized that an accommodation had to be made for the right of the tenant to control his home life and placed a heavy burden upon an employer to show that a rule preventing visitors did not restrict tenant rights. Here, no rule is involved, and the Employer's conduct was consistent with the wishes of one of the room's tenants.

In As-H-Ne Farms, 3 ALRB No. 53, the Board adopted the Administrative Law Officer's finding that the purpose of the respondent's action was to deprive employees of their right to self-organization and collective bargaining. Such a finding on the facts of the present case would be totally inappropriate. As

noted above, the Respondent's action was motivated by its desire to end a dispute between two of its employees. No Union activity was involved or being engaged in at the time Respondent caused Ahmed Shaibi's removal. The Board has stated its recognition that accommodation must be made for the rights of not just the owner and the organizers, but also for the tenant who has a basic right to control his own life.<sup>49/</sup> Respondent's conduct on the evening of the 21st represented such an accommodation. fides of Respondent in seeking Ahmed's removal on the 21st is manifest in view of the frequency of Ahmed's presence at camp without incident. There is no suggestion in the record chat he was ever denied access to the camp on any other occasion.

I am not unmindful of the strong position taken by the Board regarding the arrest of or threat to arrest a union organizer. Such employer conduct has been found violative of §1153 (a) on more than one occasion; however, in those cases the employer's conduct was related to furthering its own interests, as opposed to the desires of an employee, i.e., the arrests or threats were grounded on a trespass convention.<sup>50/</sup>

I shall recommend dismissal of the allegations of Paragraph 4(1).

### III. Threat To Discharge Mohsin

Respondent is charged in Paragraphs 4(g) and 4 (g) of the complaint with threatening Nagi Mohsin with arrest and discharge because of his activities on behalf of the UFW. The events occurred on May 27 when Mohsin and Alomari confronted each other regarding travel time pay while working in Arvin.

Alomari announced that work would be available in Arvin the following Monday and that there would be no work in Delano. Mohsin raised a question about travel time and asked Alomari to check it out with the company. Alomari declined to do so, stating the company had never paid and would not pay. The discussion escalated into an argument during which each said "bad" of trouble. Alomari threatened to call the sheriff

Sometime later that day Caratan told Mohsin he would be fired if he ever again threatened Alomari or challenged him to a fight. Caratan said he was taking no action now because it was for clear Mohsin was in the wrong.

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49/ Anderson Farms Company, 3 ALRB No. 67, 21 (1977).

50/D'Arrigo Brothers Co. 3 ALRB No. 31 (1977); Venus Ranches, 3 ALRB No. 55 (1977).

A threat to discharge an employee for engaging in protected concerted activity or in "union" activity violates §1153(a). Such threats have repeatedly been held violative of §8(a)(1) of the National Labor Relations Act. See U.S. Chemical and Plastics Div. Alco Standard Corp 200 NLRB 1133 (1972); Awrey Bakeries, Inc., 197 NLRB 7705 (1972). However, concerted activity or union activity ceases to be protected when the conduct is such as to justify discharge for cause. 51/ Insubordination and denigration of a supervisor in the presence of other employees may be just cause for discharge. 52/ Discharge for just cause does not violate the Act. A threat to discharge for conduct constituting just cause does not violate the Act.

Caratan threatened Mohsin with discharge if, in the future, he was insubordinate and abusive toward Alomari. There are clearly circumstances under which discharge would be an appropriate response to such conduct. It cannot be presumed that Caratan was threatening Nagi with discharge for conduct not amounting to just cause, particularly when he declined to discharge Mohsin for his conduct of that day. Since Caratan only threatened to do what he had a right to do, the threat did not violate §1153 (a) even if heard by the members of Alomari's crew. Thus, I shall recommend dismissal of the allegations in Paragraph 4(g) of the complaint.

Alomari's interaction with Mohsin disturbed him to the point of calling the sheriff. The interaction began with Mohsin's inquiries of Alomari regarding travel pay. These inquiries were clearly protected concerted activity. Alomari's testimony that he could not discern whether Mohsin was speaking on behalf of himself or the group is irrelevant. The nature of the inquiry was such that it was obviously directed toward a work condition affecting all who would work for Caratan in Arvin; since Alomari was aware because of Mohsin's role as the UFW interpreter at the TV room meetings that he was a UFW activist, his testimony is not creditable.

We must next consider whether Mohsin's behavior during his exchange with Alomari placed his conduct beyond the boundary of protected activity. Unquestionably, each behaved in a manner inappropriate to the drawing room. Each used "bad" words, each

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51/American Tel, and Tel. Co. v N.L.R.B, 521 F.2d 1159 (2nd Cir. 1975); N.L.R.B. v. Thor Power, 351 F.2d 584, 587 (7th Cir. 1965).

52/GTE Lenkurt, Inc., 215 NLRB 190 (1974); Blake, Moffitt and Towne, 214 NLRB 859 (1974); N.L.R.B. v. Consolidated D. Elec. Co., Div. of C. Corp. , 469 F.2d 1016 (4th Cir. 1972).

threatened to get each other and there were invitations to fight. But, whether Mohsin's words and conduct exceeded his §1152 rights must be determined in the context of the encounter.<sup>53/</sup> The general impression from the testimony is that each contributed to the escalation of the encounter from a situation involving a request for information about working conditions to a situation in which both were making verbal threats and insulting remarks. Such an impression leads one to conclude that Mohsin's conduct was within the perimeter of protected concerted activity.<sup>54/</sup> A threat to call the sheriff to arrest an employee engaged in such activity violates §1153(a) when made in the presence of other workers. *D'Arrigo Brothers Co.*, 3 ALRB No. 31 (1977). Irrespective of whether the sheriff's arrival at the camp after work was observed by workers, Alomari violated §1153(a) by stating in the presence of his crew that he was going to call the sheriff and by obtaining permission from Caratan to do so.

#### IV . Threat To Discharge Mohammed Kaid And Mayhoub Mohamed

Paragraph 4(n) charges Respondent with threatening to terminate Mohamed Kaid and Mayhoub Mohamed because of their support for and activities on behalf of the UFW.

As Mike Anderson addressed the Arab crew on July 7 regarding an impending layoff, We was as cal questions about the manner in which Alomari selected those who would work, and about the utilization of new workers rather than those having longer service with Caratan. He was also asked why workers from South Yemen were used and not workers from North Yemen. Among those posing questions was Mohamed Kaid.

Alomari became angry and told Anderson that he wanted Kaid and Mayhoub fired, saying he would if such action not taken. Anderson did not react affirmatively to Alomeri's request, and as he left the area, he made in that Kaid Mayhoub were not terminated. Nor did he say anything which could be construed as a threat to terminate them.

Alomari's statement to Anderson cannot be construed as a threat to discharge Kaid and Mayhoub; it was clearly a request by Alomari to his superior that such action be taken. Since Anderson refused to act on this request by discharging them or by any speech or conduct which could be construed as manifesting any likelihood he would accede to the request, the General Counsel has failed to prove the allegations of Paragraph 4(a). I shall

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<sup>53/</sup>*Finesilver Manufacturing Company*, 220 NLRB 648 (1975).

<sup>54/</sup>*N.L.R.B. v. Red Top, Inc.*, 455 F.2d 721 (8<sup>th</sup> Cir 1972).

recommend dismissal of Paragraph 4(n).

V. Threatened Reprisals For UFW Support

Paragraph 4(c) of the complaint charges the Respondent with unlawful interrogation of employees on the afternoon of April 4. Since the General Counsel's evidence did not establish unlawful interrogation, Respondent's motion to dismiss the paragraph was granted. However, the events of the day were fully litigated, and Respondent was put on notice that the evidence would be evaluated to ascertain whether a violation of §1153(a) other than one based upon interrogation was established. Fully litigated conduct may provide the basis for a violation of the Act even if not alleged in the complaint. Prohoroff Poultry Farms, 3 ALRB No. 87 (1977); Anderson Farms Co., 3 ALRB No. 67 (1977); Sunnyside Nurseries, 3 ALRB No. 42, p. 18 (1977).

During the course of loud and antagonistic remarks to those workers present in the kitchen at the time he discovered the UFW leaflet posted on the wall, Alomari told the workers that if they were happy with the UFW getting their rights and were going to join and be part of the Union, he was going to put them out and get a new crew. Such a statement conveys a threat of reprisal in the form of discharge if the worker continues to support the union and thereby interferes with the exercise of rights granted by §1152 in violation of §1153(a). Arnaudo Bros., Inc., 3 ALRB No. 78 (1977); Jasmine Vineyards, Inc., 3 ALRB No. 74 (1977).

V. Threatened Reprisals For Contacting The UFW Or The Agricultural Labor Relations Board

Paragraph 4(i) of the complaint alleges that on September 28 Alomari threatened employees in his crew with loss of employment and changed working conditions if they filed charges with the ALRB or testified in the ALRB hearing. The evidence offered by the General Counsel provides no proof of this allegation.

Neither of the two witnesses presented by the General Counsel gave testimony which could reasonably be construed as a threat of loss of employment or change in working conditions to any person filing charges with the ALRB. On the contrary, it appears Alomari was soliciting persons to testify to their knowledge of the facts about the kitchen being closed on Labor Day. If only the specific allegation of Paragraph 4(i) were of concern, dismissal would be in order. However, the testimony adduced must be examined to ascertain whether it proved any violation of the Act, Anderson Farms, supra.

Alomari called a crew meeting on the night of the 28th. The meeting was held in the wake of testimony by Nagi Zamzami on

the 28th that Alomari discriminatorily closed the kitchen on Labor Day.

Respondent characterizes the meeting as an attempt by Alomari to ascertain whether the kitchen was closed on Labor Day (a fact of which he should already have been aware) and to urge employees to come forth to testify to this effect. This characterization omits credited testimony to Alomari characterization omits credited testimony to Alomari statements that he wanted the workers testimony so that he could remove testimony warrants the inference that a purpose for soliciting worker testimony was to provide a justification for effecting reprisals against those who had already testified in the proceedings and against those who had complained to the UFW about the kitchen. Alomari's statements, in addition to being threats of reprisals against the five complainers, could reasonably be construed by the listening workers as a threat that they risked incurring reprisals if they attempted use either their Union or the ALRB to secure their rights. Such conduct and speech by Alomari violated §1153 (a). *Arnaudo Bros., supra; Jasmine Vineyards, Inc., supra.*

#### VII. Solicitation Of Surveillance

Among the §1153 (a) violations there remains to be considered evidence relating to the solicitation of Fadel Karim to engage in surveillance of his co-workers. This evidence was heard the absence of an allegation in the complaint, however this heard not preclude the Administrative Law officer from finding that Respondent's conduct violated the statute, provided the issue was fully litigated at the trial and provided the evidence proves the violation 55/ An additional consideration in dealing with this contention by the General Counsel is the absence of a specific charge alleging solicitation of surveillance of an unfair labor practice. While the Agricultural Labor Relations Act is §1160.2 requires, as does National labor Relations Act §10(b) [25 C.S.C. §160(b)], that a complaint must be triggered by the filing of a charge, the NLRA section has been literally construed. Thus, in *National Labor Relations Board v. Kohler Company*, the court stated:56/

So long as the Board entered the controversy pursuant to a formal charge, it may allege whatever it finds to be a part of that controversy. But if it gets so completely outside of the situation which gave rise to the

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55/*Prohoroff poultry Farms, 3 ALRB No. 37, P.6 (1977); Sunnyside Nurseries, 3 ALRB No. 42 (1977).*

56/320 F.2d 3, 7 (7th Cir. 1955).

charge that it may be said to be initiating the proceeding on its own motion, then the complaint should fall as not supported by the charge.

The evidence offered with respect to the solicitation of surveillance relates to conduct occurring during the course of the controversy investigated by the Regional Office which gave rise to the complaint. The alleged miscreant (Alomari) was the focal point; of that controversy, the discovery of the solicitation was normal in the course of the litigation and could have been included as a specific allegation in the complaint. 57/ Moreover, since the solicitation occurred subsequent to the initial charges triggering the investigation and issuance of complaint, the conduct could have been alleged in the complaint even absent a charge.58/ Finally, it is noted that Respondent has made no claim of prejudice, nor made a request for the opportunity to reply to the contentions regarding solicitation set forth in the General Counsel's brief.

We turn now to a substantive consideration of the evidence. Fadel Karim's testimony that Alomari asked him to find out who was with the Union and what they were saying, and that on another occasion Alomari asked him to secure information which could be used against the Union has been credited. Such statements and the solicitations of Karim to spy upon his fellow workers violate §1153(a).59/

#### VIII. The §1153(a) Violations

##### A. Refusal To Rehire Saleh Nagi:

Paragraph 5(i) of the complaint alleges a discriminatory refusal to rehire Saleh Ali Nagi on August 14, 1977.

In May or June, 1977, the Employer adopted the policy of having all new hires fill out written applications at the office. Completing the application became a condition precedent to employment for all persons, except those who worked during May and June, 1977, and who remained in camp during the July layoff. Even those who were employed at the time of the June layoff who left camp were required to file an application as a prerequisite of being hired. Admittedly Saleh Nagi was told of this and

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57/ National Labor Relations Board v. Kohler Co., supra

58/ National Licorice Co. v. National Labor R. Board, 309 U.S. 350, 369, 60 S.Ct. 569 (1940); N.L.R.B. v. Fant Milling Company, 360 U.S. 301, 79 S.Ct. 1179 (1959).

59/ Federal Copper and Aluminum. Co., 193 NLRB 819 (1971); Buddy L. Corp., 196 NLRB 603 (1972).

admittedly he did not comply with the Employer's policy.

There is no evidence the policy was not uniformly followed.<sup>60/</sup> Thus, there is no prima facie reason to conclude, that Nagi's failure to file an application was merely a pretext for not hiring him.

Nagi had not worked for Caratan since 1975. Prior to his employment he had engaged in some union activity while employed elsewhere. This activity was know, to his then supervisor at Caratan, Farah Musaid has not worked at Caratan since the end of 1976. There is no union activity since that time evidenced in the record. The General Counsel contends that Nagi's presence in Mohsin Muthana's room at the time of the June incidents is evidence of support for the UFW and attributes knowledge of such support to Alomari by virtue of his presence in the room on June 20. There are two problems with this contention: first, it is grounded upon testimony which has not been credited i.e., that Alomari was present in the room on June 20; second, assuming arguendo Alomari did go to the room. Nagi's presence would not reasonably lead to the conclusion he was a UFW supporter because Nagi shunned the conversation between Ali and Ahmed Shaibi while Alomari was in a separate conversation about personal matters.

In the face of the General Counsel's failure of proof of Employer knowledge of Union activity, there are no facts from which one can draw an inference other than that Nagi's failure to meet the condition precedent to be considered for hire is the reason he was not hired. I shall recommend that the allegations of Paragraph 5(I) be dismissed.<sup>61/</sup>

#### B. Refusal To Rehire Ali Shaibi

The complaint at Paragraph 5(j) alleges that Respondent violated §1153\*c) by refusing to rehire Ali Shaibi on or about

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<sup>60/</sup> It appears that two sons of Alomari were hired on August 17 and 18 without having filed applications. There is no testimony regarding the nature and extent of the work each performed. I do not regard this manifestation of nepotism as indicative of a discriminator application of the Employer's hiring policy. One would reasonably expect the crew bosses' sons would be hired without the formality of filing an application.

<sup>61/</sup> During the course of the bearing Respondent's merion to dismiss the allegations of Paragraph 3(i) on the ground the allegations were not reported by a charge was denied. Respondent renewed the motion in its brief. Since I recommend dismissal of Paragraph 5 (i) for lack of merit, I regard the motion as moot



August 12, because of his Union activities. Ali filed an application on August 1, 1977, he was not rehired on that date nor on any date thereafter. To prove the violation alleged, the General Counsel must prove that Ali engaged in Union activities and establish by a preponderance of the evidence that Respondent had knowledge of such activities.

Ali Shaibi attended Union meetings at the UFW facility in Delano, but there is no direct evidence of Employer knowledge of such attendance, nor is there any circumstantial evidence from which to infer Employer knowledge. Ali's testimony that he attended the first Union meeting in the TV room has not been credited, but even if that testimony were credited, there is no evidence that he participated in any manner which would have made Alomari aware of his presence. Alomari was present for a brief period at that meeting, and while present his attention was devoted to his interchange with UFW organizers present. Assuming arguendo Ali's presence at the meeting, his inconspicuousness is manifest in the failure of Ahmed to remember he was there.

The General Counsel cites his behavior on the occasion when Alomari had Ahmed ejected from the camp as manifesting his support for the Union. This argument is not convincing. Ali's position vis-a-vis Ahmed on that occasion was unconnected with Ahmed's position as an organizer. It related to the fact that Ahmed is his cousin and because Ali was angry with Muthana for "unreasonably" asking Ahmed to leave.<sup>62/</sup>

As noted above and for the reasons set forth there, Ali's testimony regarding conversations with Alomari during early August when he was seeking employment with Caratan have not been credited. It is unlikely that Alomari made the anti-Union statements attributed to him when it is uncontroverted that he, together with Muthana, talked to Caratan about hiring Ali.

The General Counsel has failed to sustain the burden of proving Employer knowledge of Union activity by Ali Shaibi; therefore I shall recommend that the allegations of Paragraph 5(j) be dismissed.

C. Discharge Of Fadel Karim:

Paragraph 5(m) of the complaint alleges that Fadel Karim was discharged for engaging in concerted activities. Although the complaint does not so allege, the General Counsel

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<sup>62/</sup>The General Counsel also relies upon the events of June 20 as establishing a basis for Employer knowledge of Ali's Union activities. As noted above, testimony placing Alomari in Ali's room that night was not credited.

argues that the activities proved were protected as well as concerted.

Section 1152 of the Act provides

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, and shall else have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153.

It is a violation of §1153(a) for an employer to discharge an employee because he has engaged in any of the activities set forth in §1152. The converse of this proposition is that an employer does not violate the statute by discharging an employee for conduct not protected by §1152. Thus, it became important to ascertain whether the conduct for which Fadel Karim was discharged meets the definition of protected concerted activities as that definition has evolved in cases interpreting the identical provision found in the National Labor Relations Act.<sup>63/</sup>

The Court of Appeals for the Ninth Circuit has stated that concerted activity will be held protected only if it satisfies four requirements:

(1) there must be a work-related complaint or grievance; (2) the concerted activity must further some group interest; (3) a specific remedy or result must be sought through such activity; and (4) the activity must not be unlawful or otherwise improper.  
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The initial question is whether the conduct causing Karim's discharge was classified as "concerted activities . . .

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63/ 29 U.S.C. §157 (7) of the NLRB

64/ Shelly & Anderson Furniture Mfg. Co. v. N.L.R.B., 497 F.2d 1200 (9th Cir. 1974).

for mutual aid or protection." He and co-worker Rabo sought a change in working conditions which in the short run would only be of benefit to them. Individual complaints having some potential relevance to the conditions of other employees and which are not the product of "idiosyncratic selfishness" have been protected by the National Labor Relations Board.<sup>65/</sup> But, in a situation where, as is the case here, the dischargee's claim did not rest upon any wage law or upon a collective bargaining agreement, and in which no presentation of a grievance to a collective bargaining agent was involved, the Board held a discharge not to violate the Act even if in retaliation for requesting a wage increase because the employee was not engaged in protected concerted activities.<sup>66/</sup>

Karim's demand that Nasher be rotated among the crews was not based upon any provision in a collective bargaining agreement; it was not based upon any existing wage law; rather it was based upon his desire to earn more money by working with a faster worker. However, unlike Maietta, Karim was not the sole person demanding the change in working conditions. Rabo made the same demand. The protest by the two workers is of sufficient number to make it concerted.<sup>67/</sup> Also, it can be argued that the change sought by Karim, rotation of slower workers among all picking/ packing groups, was of benefit to all the workers. Precedent supports the conclusion that Karim's activity on the day of his discharge was concerted activity.<sup>68/</sup>

Karim's conduct on September 8 met three of the Shelly & Anderson requirements which make concerted activity protected: (1) the work-related complaint; (2) furtherance of a group interest; and (3) seeking a specific remedy. We turn now to whether his conduct was unlawful or otherwise improper.

It is not clear from the record whether Respondent and the UFW had arrived at a collective bargaining agreement as of September 8; we do know that some agreement had been worked out which permitted Caratan to grant a wage increase to his employees and that the parties had engaged in collective bargaining. In light of the attention given by the UFW to Respondent's operations, the absence of an §1153(e) charge suggests that agreement had been reached or bargaining was still in progress as of September 8. It is known that the UFW was the certified bargaining agent for

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<sup>65/</sup> Ohio Oil Co., 92 NLRB 1597 (1951).

<sup>66/</sup> Maietta Trucking Co., 194 NLRB 794 (1971).

<sup>67/</sup> Ohio Oil, supra.

<sup>68/</sup> Emporium Capwell Co. v. Western Addition Community Org'n, 420 U.S. 50 (1975).

Caratan's farm workers as of the eighth of September.

The Act prohibits an employer from bargaining with anyone other than a certified representative. Labor C §1153(f). There is no evidence that Karim attempted to have his bargaining agent resolve the Nasher problem. There is no evidence he ever discussed the matter with the Union or with anyone else prior to the morning of September 3, nor is there evidence Karim was functioning as a UFW representative when he made his demands upon Alomari. Karim sought direct resolution of his grievance, regardless of the posture of his bargaining agent. He sought to force Alomari, and thus Respondent, to bargain directly with him regarding a condition of employment. Meeting such a demand would have required Respondent to violate 1150(f). The unlawful means utilized by Karim in seeking his objective rendered his conduct not protected. The attempt to change the assignment of a member of his group without going through his bargaining agent was an objective contrary to the spirit of the Agricultural Labor Relations Act. Cases decided under the National Labor Relations Act are precedent for conclusion that concerted activity aimed at compelling a violation of the activities loses the protection of §1152. 69/

Assuming arguendo that the direct bargaining objective of Karim's conduct did not render it unprotected his threat to stab Alomari is a respondent reason for finding his conduct beyond the protection of §1152 of the Act. 70/ The threat was the assigned cause for discharge. Such cause could only be regarded as pretextual if the conclusion were that the threat was not made. Such is not the situation here. I find that Karim was discharged for cause, therefore he is entitled to no relief (Lab. C §1160.3).

I shall recommend the dismissal of Paragraph 5 (n) of the complaint upon the ground that Karim's activity was not protected on two grounds: its unlawful object and the threat of physical violence accompanying the conduct 71.

D. Discharge Of Abdulla M. Muthana (Abdulla Shaibi):

Paragraph 5(b) alleges that Abdulla Muthana a/k/a, a Abdulla Shaibi was terminated on August 4, 1977, because of his

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69/ Emporium Capwell Co. v. Western Addition Community Org'n, supra: Thompson Prods, Inc. 72 ALRB 886 (1947).

70/ N.L.R.B. v. Red Top, Inc. 453 F.2d 722, 26 (8th Cir 1972).

71/ Having reached this result, there is no need to consider whether Karim's conduct on August 10 was protected concerted activity.

Union activities.

Before an employee can be terminated he must have been employed. The General Counsel argues that Muthana was hired by the office, directed to the Arab camp to report for work and was discharged by Alomari because of his Union activity in 1975 or alternatively because of the Union activity of his cousin, UFW organizer Ahmed Shaibi.

There are several difficulties with the General Counsel's argument. The first is that Muthana was never employed by Caratan. The evidence supporting his employment was offered by Muthana, who testified the secretary told him he was hired. She was not called to testify; Respondent offered no explanation for not calling her. Under certain circumstances it would be appropriate to infer that Respondent's reason for failing to call the secretary was that her testimony would have reinforced that of Muthana. Those circumstances are not present. The Respondent presented uncontradicted testimony regarding its hiring practices which rebutted Muthana's testimony that he had been hired. Thereafter the General Counsel put forward no evidence explaining why there should have been a total departure from the Company's regular hiring procedures in the employment of Muthana. In the absence of such an explanation, it must be concluded that the General Counsel has failed to prove the allegations set forth in Paragraph 5(h).

Recognizing the difficulty of her position, counsel for the General Counsel puts forth an alternative interpretation of the facts surrounding Mr. Muthana. Counsel argues that when Alomari refused to let Muthana live at the labor camp, it was a refusal to hire him. The difficulty with this argument is that Alomari, Anderson and Caratan each testified without contradiction that Alomari has no authority to hire. Thus, his refusal to permit Muthana to stay in the camp cannot be translated into a refusal to hire. Even if Alomari had permitted him to stay, he would not have had employment until Anderson said so. Alomari's refusal to permit Muthana to stay at the camp was neither a discharge nor a refusal to hire. Since the complaint does not charge Anderson with any wrongful conduct in connection with Muthana's employment and since none was proved, I shall recommend dismissal of Paragraph 5(h).72/

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72/ Since I have concluded the General Counsel failed to prove a discharge or failure to rehire, there is no need to discuss the General Counsel's arguments regarding the Union activities of Muthana or his alleged relationship to Ahmed Shaibi.

REMEDY

Having found the Respondent engaged in certain unfair labor practices within the meaning of Section 1153(a) of the Act. I recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate one policies of the Act.

To this end, I recommend:

(1) That Respondent be ordered to sign the Notice to Workers attached hereto. Upon, its translation by a Board agent into appropriate languages, Respondent shall, reproduce sufficient copies in each language for the purpose set forth herein.

(2) That Respondent be ordered to post copies of the attached Notice to Workers at times and places to be determined by the Regional Director and to leave such Notices posted for a period of 60 days.

(3) The Respondent be ordered to exercise due care to replace any notice which has been altered, defaced or removed.

(4) That Respondent be ordered to mail copies of the Notice in all appropriate languages. Within 20 days after receipt of the Order of the Board, in all agricultural employees employed at any time during the period between April, 1977, and October 1, 1977.

(5) That Respondent be ordered to have the Notice distributed and read in appropriate languages to the assembled employees of the Respondent to company time. The distribution and reading, by a representative of Respondent or a Board agent, shall be at such times and places as are specified by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice.

(6) That Respondent be ordered to compensate its nonhourly rated agricultural employees for time lost at the reading and the question-and-answer period in an amount determined to be reasonable by the Regional Director.

(7) Thus Respondent be ordered to notify the Regional Director in writing, with in days from the date of receipt of the Order of the Board. steps have been taken to comply with the Order.

(8) That Respondent be ordered, upon request from the Regional Director, to notify him periodically thereafter in writ-

what further steps have been taken in compliance with the Board's Order.

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

ORDER

Respondent, M. Caratan, Inc., its officers, agents, successors and assigns, shall:

(1) Cease and desist from:

(a) Engaging in or creating the impression of engaging in surveillance of its employees engaged in Union activities.

(b) Threatening employees with loss of future employment or reduction of working conditions because of their Union activities or protected concerted activities.

(c) Soliciting employees to engage in surveillance of the Union activities of their fellow employees.

(d) Threatening employees with arrest for engaging in Union or protected concerted activities.

(e) In any other manner interfering with, restraining or coercing employees in the exercise of their rights of self-organization, to form, join or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized by Section 1153(c) of the Act.

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

(a) After the Notice attached hereto has been translated by a Board agent into appropriate languages, sign a copy of the Notice in each of the languages in which it is produced.

(b) Produce sufficient copies of the Notice in each language for the purposes set forth in this Order.

(c) Post copies of the Notice as determined by the Regional Director. Said Notices shall remain posted for a period

of 60 days. Reasonable steps shall be taken to insure that said Notices are not altered, defaced or covered by any other material. Any Notice which has been altered, defaced or removed shall be replaced by Respondent.

(c) Mail copies of the Notice in all appropriate languages, within 20 days after receipt of the Order of the Board, to all agricultural employees employed at any time during the period between April 1, 1977, and October 1, 1977.

(d) Distribute and read the Notice to its assembled employees on company time in appropriate language in such times and places as are specified by the Regional Director. The Notice shall be read either by a Board agent or by a representative of Respondent, as determined by the Regional Director. Upon completion of the reading, a Board agent shall meet, outside the presence of supervisors and management, with the assembled, employees for the purpose of answering any questions which employees may have regarding the Notice.

(e) Compensate its employees in an amount determined to be reasonable by the Regional Director for time lost at the reading and the question-and-answer period.


(f) Notify the Regional Director in writing, within 20 days from the date of receipt of the Order of the Board, what steps have been taken to comply with the Order.

(g) Upon request from the Regional Director, notify him periodically in writing what further steps have been taken in compliance with the Board's Order.

It is further recommended that all unproved allegation of the amended complaint be dismissed.

Dated: May 11, 1978.

AGRICULTURAL LABOR RELATIONS BOARD

By   
Robert LeProhn  
Administrative Law Officer



[This is as official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.]

NOTICE TO WORKERS

After a trial in which each side had a chance to present their side of the story, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. The Board has told as to 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 to choose whom they want to speak for them.
- (4) To act together with other workers to try to get a contract or to help and protect one another.
- (5) To decide not to 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 engage in surveillance of Union meetings or of conversations between employees and Union representatives.

WE WILL NOT threaten employees with loss of employment or change in working conditions because of Union activities or protected concerted activities.

WE WILL NOT ask any employee to spy on the Union activities of other employees.

WE WILL NOT threaten to have any employee arrested because of Union activities or protected concerted activities.

Dated: \_\_\_\_\_

M. CARTAN, INC.

By \_\_\_\_\_