Thermal, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATION BOARD

KARAHADIAN RANCHES, INC., KARAHADIAN & SONS, AND MILTON KARAHADIAN, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 77-CE-40-C 77-CE-73-C 77-CE-94-C 77-CE-107-C 5 ALRB No. 37

DECISION AND ORDER

On September 8, 1977, Administrative Law Officer (ALO) Kenneth Cloke issued the attached Decision in this matter. Thereafter, Respondent and the Charging Party each timely filed exceptions with a supporting brief, and the General Counsel filed cross-exceptions to Respondent's 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 only to the extent that they are consistent with this opinion and to adopt his recommended order as modified herein.

Transfer. We reject the ALO's finding that Respondent reassigned employee Maria Elena Ferrel from the packing to the

picking of grapes for one day as reprisal for her having distributed union literature.

We have previously recognized an employer's right to assign duties or work schedules for business reasons absent contractual provisions to the contrary or proof that the assignment was effectuated to inhibit employee organization. See, e.g., Rod McLellan Company, 3 ALRB No. 71 (1977). Although Ferrel had handed her supervisor a union leaflet shortly before the transfer, we are not persuaded that there was a causal connection between Ferrel's conduct and her subsequent selection for temporary picking duty.

Ferrel had worked in a 30-person grape harvesting/ packing crew. Twelve members of the crew are normally required to staff a packing trailer which follows the remaining members of the crew as they harvest the crop. Ferrel, along with three other packers, was reassigned to picking during a slowdown in the harvest operations on June 3, 1977. She was the first of the reassigned group to resume packing the next morning.

The ALO relied heavily on his finding that Ferrel's transfer was in violation of the company's seniority policy. Ferrel had worked exclusively as a packer since joining the crew on May 25[1/] but had never been assured that she would work only as a packer. She was asked at the time of hire only whether she knew how to pack. It was her opinion that someone with less seniority should have been selected for the picking assignment. However,

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[1/] Ferrel was initially hired by Respondent on March 14, 1977, to work in the pruning and thinning of grape vines.

Respondent's contention that seniority is not applicable to intracrew transfers is consistent with evidence indicating that at least some of the employees reassigned to picking along with Ferrel had a longer employment history with Respondent than did she.

For the reasons set forth above, we hereby dismiss that portion of the complaint which alleges that Ferrel was discriminatorily transferred.

Discharge. We affirm the ALO's conclusion that Respondent violated Section 1153(c) and (a) of the Act by-its discharge of Ferrel one week after the transfer discussed above. Ferrel was discharged immediately after she handed a union button to another employee at a time when neither employee had actually started to work. There is no evidence that any work was disrupted, although the starting whistle had sounded a few minutes earlier. Respondent contends that Ferrel was properly discharged for her second violation of the company's "no-distribution" rule. Ferrel allegedly violated the rule when she offered her supervisor the union leaflet on June 3. She was advised of the rule at that time and warned that another such infraction would be cause for dismissal.

We do not decide whether the rule was invalid on its face, as the record before us contains only scant evidence concerning the nature and scope of this rule. Even assuming that the rule was valid, however, Ferrel's discharge nonetheless violated Section 1153(c) and (a). A no-distribution rule, even if valid on its face, may not be applied to prohibit conduct which

does not interfere with work, even when the employees are paid for such nonworking time. This includes brief solicitations which occur while employees are waiting to begin work. Mueller Brass Co., 204 NLRB 617, 83 LRRM 1637 (1973), enf'd 501 F. 2d 680, 87 LRRM 2461 (5th Cir. 1974); Exide Alkaline Battery Div. of ESB, Inc., 177 NLRB 778, 71 LRRM 1489 (1969), enf'd 423 F. 2d 663, 73 LRRM 2911 (4th Cir. 1970).

Accordingly, we uphold the ALO's recommendation that Maria Elena Ferrel be reinstated with back pay.

Promise of benefits. The ALO concluded that Respondent violated Section 1153(a) of the Act by its promise of an employee medical insurance program and its implementation of a promised wage increase for all employees. We do not agree.

Prior to the April 15, 1977, expiration of a pre-Act Teamster bargaining agreement under which employees had received medical benefits, Respondent promised to secure for them a substitute medical-coverage program. Respondent also announced that it would continue its prior practice of annually raising employee wages on April 15 to meet the prevailing wage rates in the area. The ALO found that Respondent did in fact raise wages to precisely that level.

The benefit proposals were declared approximately three months prior to the holding of a representation election, during a period in which three labor organizations had served Respondent with notices of intent to take access or notices of intent to organize. The ALO was of the view that while Respondent did not directly link the promised benefits to a "no-union" campaign, the

benefits were such that employees would be likely to conclude that they had nothing to gain from voting for representation by a union.

In May Department Stores Co., 174 NLRB 770, 70 LRRM 1307 (1969), the NLRB set forth a general guideline as follows:

> ... an employer confronted with a union organization campaign should decide the question of granting or withholding benefits as he would if a union were not in the picture; if his course of action in granting or withholding benefits is prompted by the union's presence, he violates the Act.

After a careful review of the relevant evidence, we conclude that Respondent's actions in March and April of 1977 were not prompted by the presence of a union or unions.

The General Counsel has not come forward with evidence to show that the promise of an alternate insurance program was undertaken with an object of discouraging union adherence or promoting the Employer's interest in a representation election. Rockland Chrysler Plymouth, Inc., 209 NLRB 1045, 86 LRRM 1233 (1974); Ripley Industries, Inc., 209 NLRB 481, 85 LRRM 1442 (1974). The ALO's suggestion that these benefits should have been postponed until after the election fails to take into account the fact that Respondent would have no means of knowing when, or even whether, an election would be held. Moreover, the General Counsel has not proven that the increase in wages on April 15 was inconsistent with Respondent's established practice of granting yearly increases at that time of year, comparable to the rates being paid by Respondent's neighboring grape growers. The NLRB has held that an employer may lawfully grant wage increases even when an

election is pending where it was its practice and policy to grant such increases to employees at that time of year. Jimmy Dean Meat Co., Inc., 227 NLRB 1012, 95 LRRM 1235 (1977); Litton Industries, Inc., 193 NLRB 1, 78 LRRM 1429 (1971).

In accordance with these applicable precedents, and based on the record evidence herein, we conclude that Respondent's promise of economic benefits to its employees was not in violation of Section 1153(a) of the Act. Therefore, the allegations in the complaint pertaining to Respondent's promise of benefits are hereby dismissed.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Karahadian Ranches, Inc., Karahadian & Sons, and Milton Karahadian, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discharging, laying off, or otherwise discriminating against any agricultural employees because of their union membership, union activities, or other concerted activities for mutual aid or protection.

b. Threatening employees or subjecting them to surveillance, the impression of surveillance, or interrogation, with respect to their union activities or other concerted activities for mutual aid or protection.

c. In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 1152 of the Agricultural Labor Relations Act.

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

a. Offer to reinstate Maria Elena Ferrel and make her whole for any losses in pay and other economic losses she may have suffered as a result of Respondent's illegal discharge of her on June 8, 1977. The amount of back pay to be paid to her will be the sum she would have earned from June 8, 1977 to the date she is offered reinstatement to the same or a substantially equivalent position, less her net earnings during that period, together with interest on the total award, computed at seven percent per annum.

b. Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records and reports, and other records necessary to determine the amount necessary to make whole employee Maria Elena Ferrel.

c. Sign the Notice to Employees attached hereto. After its translation by a Board Agent into appropriate languages, Respondent shall produce sufficient copies in each language for the purposes hereinafter set forth.

d. Within 31 days after receipt of this Order, mail a copy of the attached Notice in appropriate languages to each of the employees on its payroll at any time between March 24 and June 8, 1977.

e. Post copies of the attached Notice in all appropriate languages for 60 consecutive days in conspicuous places on its property, the period of posting and placement of the Notices to be determined by the Regional Director. Respondent

shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

f. Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice in all appropriate languages to its employees assembled on company property, at times and places to be determined 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 the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable amount to be paid by Respondent to all nonhourly wage employees, to compensate them for time lost at this reading and the question-and-answer period.

g. Notify the Regional Director within 31 days after the issuance of this Order of the steps it has taken to comply herewith, and continue to report periodically thereafter at the Regional Director's request until full compliance is achieved.,

Dated: May 16, 1979

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a hearing in which each side presented evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act by interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 1152 of the Agricultural Labor Relations Act. We have been ordered to notify you that we will respect your rights in the future. We are advising each of you that we will do what the Board has ordered, and also tell you that:

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

(1) To organize themselves;
(2) To form, join or help unions;
(3) To bargain as a group and choose whom they want to speak for them;
(4) To act together with other workers to try to get a contract or to help or protect one another;
(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.

we WILL NOT discharge, lay off, or otherwise discriminate against employees with respect to their hire or tenure of employment because of their union membership or activities.

WE WILL NOT threaten or in any other way interfere with, restrain, or coerce any employee for engaging in union activity or exercising any of the rights listed above.

WE WILL NOT question or spy on employees concerning their union activities, or any other activities by which they help or protect each other.

WE WILL offer to reinstate Maria Elena Ferrel to her former position and reimburse her for any loss of pay or other money losses she has suffered as a result of her discharge on June 8, 1977, plus interest on the total award, computed at 7% per year.

Dated:

KARAHADIAN RANCHES, INC.,
KARAHADIAN & SONS, AND
MILTON KARAHADIAN

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

Karahadian Ranches, Inc., Karahadian & Sons, and Milton Karahadian (UFW)	5 ALRB No. 37 Case Nos. 77-CE-40-C 77-CE-73-C 77-CE-94-C 77-CE-107-C

ALO DECISION

With respect to the alleged unfair labor practices, the ALO concluded: (1) Respondent violated Section 1153(a) by promising its employees a health insurance program to induce them to reject a collective bargaining representative; (2) Respondent violated the Act on April 15, 1977 by implementing a promise to increase employee wages to the level of the prevailing UFW rate. The ALO was of the view that such an increase, coinciding as it did with ongoing union organizing activity, could only result in employees concluding that they had nothing to gain from voting for a union; (3) Respondent discriminatorily changed the conditions of employment of Maria Elena Ferrel, in violation of Section 1153 (c) by transferring her from the packing to the picking of grapes for one day shortly after she had handed a union leaflet to a supervisor; (4) Respondent discriminatorily discharged Ms. Ferrel one week later for handing a union button to another employee on company time. The ALO found that Respondent's reliance on Ms. Ferrel's second violation of its "no-solicitation" rule was a pretext, and concluded that the rule was invalid on its face; (5) General Counsel failed to prove that Respondent refused to rehire Javier Reyes and Oved Valdez on April 27, 1977 because of their union activities; and (6) the ALO credited the testimony of employees Hamiid Ali and Ali Nage and concluded that Respondent violated Section 1153(a) on five separate occasions by interrogating them about their union sympathies or activities, threatening them with reprisals for engaging in such activities, and by unlawfully giving them the impression that they were under Respondent's surveillance for such activities.

BOARD DECISION

With respect to the ALO's conclusions, as numbered above, the Board: (1) Overruled the ALO, concluding that Respondent did not violate the Act by its unilateral offer of a substitute medical insurance program for employees in lieu of similar benefits they would lose upon expiration of Respondent's pre-Act collective bargaining agreement with the Teamsters; (2) overruled the ALO, concluding that Respondent did not violate the Act by increasing employees' wages, especially as the wage adjustment of April 15, 1977 was not shown to be inconsistent with its customary practice of granting increases at that time of year to a level comparable to the rates being paid by neighboring grape growers; (3) overruled the ALO, concluding that Ms. Ferrel,

along with three other packers, was temporarily transferred to picking duty for business necessity rather than because of her union activity; (4) affirmed the ALO's conclusion that Ms. Ferrel was discharged for engaging in union activities but specifically rejected his finding that Respondent's "no-solicitation" rule was invalid, on the basis of insufficient evidence. The Board reasoned that, in the absence of a showing that work was disrupted, Ferrel's act of handing a button to another employee after the starting whistle had sounded but before either employee had been assigned to work was not sufficient basis for finding the discharge was for cause. The Board held that even assuming the no-solicitation rule was valid, it would not justify discharge of Ferrel for such a minimal infraction thereof which caused no disruption or interference with work; (5) affirmed the ALO's finding of insufficient evidence to support allegations that Javier Reyes and Oved Valdez were discriminatorily denied rehire; and (6) affirmed the ALO's findings and conclusions.

REMEDY

The Board ordered Respondent to cease and desist from interfering with, restraining, or coercing employees in the exercise of their Section 1152 rights, to offer Maria Elena Ferrel immediate reinstatement to her former or a substantially equivalent job, to make her whole for any loss of pay and other economic losses she may have suffered by reason of her discriminatory discharge, and to read, post and distribute an appropriate remedial Notice to Employees.

* * *

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

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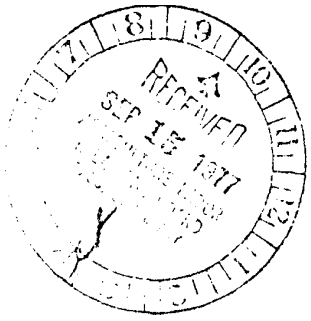
STATE OF CALIFORNIA

AGRICULTURAL RELATIONS BOARD



In the Matter of KARAHADIAN RANCHES, INC., KARAHADIAN & SONS, AND MILTON KARAHADIAN, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	CASE NoS: 77-CE-40-C 77-CE-73-C 77-CE-94-C 77-CE-107-C

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For the Respondent

DECISION

Statement of the Case

Kenneth Cloke, Administrative Law Officer: This case was heard before me in Coachella on June 15, 16, 17, 24, 27, 29, July 1, 14 and 15. The Complaint is based on charges filed on March 24, April 29, June 3 and June 8, and served the same day. The first Consolidated Complaint was filed on May 27, and duly served the same day. An Answer and Motion to Strike were filed on June 9 On the same day, the General Counsel issued an Order Consolidating Cases, adding charges 77-CE-94-C and 77-CE-107-C to the earlier charges 77-CE-40-C and 77-CE-73-C. A Second Consolidated Complaint, although dated May 9th, contains allegations of unfair labor practices arising on June 3 and 8, and proof of service is dated June 9. [See General Counsel's Exhibit l(i)]. will assume, therefore, that the Complaint should have been dated June 9th. Respondents' Answer is also dated June 9 [See General Counsel's Exhibit 1 (p)].

On June 14, three additional charges were filed, as Case No.'s 77-CE-89-C, 77-CE-109-C and 77-CE-115-C, and served on the same day, along with an Order consolidating these cases. A Response was filed by Respondent on June 27.

on June 30, the Executive Secretary issued an Order granting a Motion to Consolidate with the four earlier cases made by General Counsel on June 29, and on July 13, granted Motion to continue made by General Counsel, with respect only to the most recently consolidated cases, and directing that the 28 first four cases be completed as scheduled. It was represented

by the parties at hearing that the Executive Secretary's Office understood this to mandate separate briefing and a separate decision in each group of cases and that consolidation would occur in the event these cases were taken to the Board by exception to the decision of the Administrative Law Officer in each group of cases.

All parties were given full opportunity to participate in the hearing, and to call and examine witnesses, present documentary evidence and argument. At the close of General Counsel's case in rebuttal, Respondent indicated it wished to call Felicitas Espinoza in surrebuttal, but that she was not then available and was leaving town that day, necessitating considerable delay and added cost in relocating the hearing. Due to the limited nature of her expected testimony and its relative unimportance in proving or disproving the charge, I determined that the expense outweighed the anticipated utility, frustrating the purposes of the Act, and ordered the hearing closed. This was especially the case, since her testimony would have been limited to a denial of the accusation that she had "mocked" Ms. Ferrel. (See discussion, infra, §K.)

After the close of hearing, all parties submitted briefs in support of their respective positions.

Upon the entire record, including exhibits, briefs, and my personal observation of the demeanor and credibility of the witnesses, and after considerable research and reflection, I I make the following findings of fact, conclusions of law, and order.

//

FINDINGS OF FACT

I. JURISDICTION:

Respondent, Kahahadian Ranches, Inc., and Karahadian & Sons, are companies engaged in agriculture in Riverside County, California, and they, with Milton Karahadian, are agricultural employers within the meaning of Section 1140.4(c) of the Agricultural Labor Relations Act (hereinafter referred to as the Act). The United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW or the Onion), as a Charging Party, is a labor organization within the meaning of Section 1140.4(f) of the Act.

Juan "Johnny" Agustinez, Tony Luna, Felicitas Espinoza and Beatrice Vela are all supervisors within the meaning of Section 1140.4(j) of the Act. Tony Mendez was, at all times mentioned herein, an agent of Respondent. Hamiid Ali, Ali Nage, Javier Reyes and Maria Elena Ferrel are all agricultural employees, within the meaning of Section 1140.4(b) of the Act, and were, at all times material herein, under the direct supervision of one or more of the aforementioned supervisors.

II. ALLEGATIONS OF UNFAIR LABOR PRACTICES:

The Complaint alleges that Respondents' violated Section 153(a) of the Act in that it interfered with, restrained and coerced its employees in the exercise of their rights under Section 1152 of the Act, by the following acts and conduct:

> "(a) On or about March 3, 1977, at its labor camp, the respondent through its supervisor and agent Johnny Agustine

interrogated its employees as to (his) union affiliation.

(b) On or about April 24, 1977, at its labor camp, the respondent through its supervisor and agent Johnny Augustine created the impression of surveillance of its employees.

(c) On or about April 24, 1977, at its labor camp, the respondent through its supervisor and agent Johnny Agustine threatened to discharge an employee if he engaged in union activity.

(d) On or about April 26, 1977 at its labor camp, the respondent through its supervisor and agent Tony Luna created the impression of surveillance of its employees.

(e) On or about April 26, 1977, the respondent through its supervisor and agent Tony Luna interrogated an employee concerning his union affiliation and activities.

(f) On or about April 27, 1977, at its property near 58th Avenue and Buchanan Street, the respondent through its supervisor and agent Milton Karahadian interrogated its employee concerning his union activities.

(g) On or about April 27, 1977, at its property near 58th Avenue and Buchanan Street threatened to discharge an employee if he engaged in union activity.

(h) On or about March 23, 1977, on its property, the respondent through its agent Tony Mendez, in the course of a speech against unionization promised benefits to its employees, including medical insurance.

(i) On or about April 28, 1977, the Respondent, through its foreman Johnny Agustine threatened to fire any worker who signed an authorization card."

The Complaint further alleges that Respondents' violated Section 1153(c) of the Act in that it discriminated in regard to hiring practices, tenure of employment, and the terms and

conditions of employment, thereby discouraging union membership, by the following acts and conduct:

> "(a) On or about April 27, 1977, the Respondent through its supervisor and agents Johnny Agustine and Tony Luna, hired crews for thinning grapes, and discriminatorily refused to hire Javier Reyes, Obed Valdez.
>
> (b) On or about June 3, 1977, the respondent through its supervisor and agent Felicitas Espinoza discriminatorily changed the conditions of employment of Maria Elena Ferrel because of her union activities, sympathies and affiliation.
>
> (c) On or about June 8, 1977, the respondent through its supervisor and agent Felicitas Espinoza discriminatorily discharged Maria Elena Ferrel because of her union activities, sympathies, and affiliation."

I shall consider each allegation, but in a different order than that used in the Complaint.

III. GENERAL FINDINGS:

The evidence established that Respondent Karahadian Ranches (hereinafter referred to as Karahadian or Respondent) is owned by Milton Karahadian as a family corporation, and farms some 570 acres of grapes, including 140 acres owned by it. Karahadian and Sons is a separate corporation involved in packing and shipping. Milton Karahadian is part owner and principal officer of Karahadian Ranches and Karahadian & Sons. Approximately 250 acres farmed by Respondent are planted with Perlettes, 200 acres with Thompsons, 55 acres with Cardinals, 30 acres with Exotics and 20 acres with Beauty Seedless.

With minor variations, the witnesses agree that the 1977

season began with prunning in mid-December, which continued until near the end of January, at which time workers were laid off.

Suckering began near the middle of March, and lasted only a week. Thinning began with the Perlettes in late March and lasted about 17 days, until the middle of April. A second lay-off took place, and work began again on the Black Beauties on or about the 27th of April. Work then shifted without layoff to the thinning of Thompsons, which lasted about 8 days until the week of the 10th of May. A third layoff took place, and lasted until picking began on the Perlettes around May 25, lasting until about the 9th of June. A fourth layoff of one week ended with the picking of Thompsons in late June.

The number of employees varied widely during this period, from approximately 375 during the thinning of Perlettes, to 200 or 220 during the thinning of Thompsons. The overall number of employees, however, is comparable to that of last year. Milton Karahadian is the overseer and is in charge of labor relations for Respondent. Second in command is Eddie Walker, Ranch Foreman. Under him are the crew supervisors, including Juan Agustinez and Felicitas Espinoza. Under these are the Second Foremen, including Tony Luna, working under Juan Agustinez, and Beatrice Vela, working under Felicitas Espinoza. Although testimony was incomplete, it was established that Second Foremen supervise the operation and may impose discipline or give orders, but do not possess the right to hire or fire. Milton Karahadian, however, testified the Crew Foreman, or Supervisor individually determined whether their Second Foremen possessed this right. Juan Agustinez was not asked whether Tony Luna

possessed the right to hire and fire, and Felicitas Espinoza testified that Beatrice Vela possessed the right to discipline, but not to hire or fire without her approval.

Work generally began at 6:00 a.m. until around June 1st, when work began at 5:30 a.m., with a ten minute break at 8 or 8:30. Work was completed either at noon, or a lunch break would be called for a half hour at 11:30, and work would resume until 2:00 p.m.

Milton Karahadian generally indicates the number of employees required, but does not supervise hiring. The crew Supervisors contact employees by telephone or by person in the camps. Respondent maintains three labor camps which house only its employees. Approximately 50% of the Respondents' employees live in the camps, although some Supervisors and Second Foremen live there, including Tony Luna and Juan Agustinez, along with the crew members who work under them. Neither Felicitas Espinoza nor Beatrice Vela were asked where they lived, but Milton Karahadian testified that Respondent did not provide camp housing for women.

In general, workers in the camps live five to a cabin. They pay no room, but are responsible for board. The Crew Supervisor purchases groceries for all, transmits these figures to the company, and appropriate amounts are deducted from each person's pay check. In the camps, the Supervisors and Second Foremen "try to keep order", and "make sure things are running smoothly". They also are in charge of transporting the crews to the fields and back.

From 1970 to 1973, Karahadian Ranches were under union

contract with the UFW. In 1973, Karahadian Ranches switched its contract to the International Brotherhood of Teamsters (herein-after referred to as IBT), triggering a strike in 1973 called by the UFW. Karahadian remained with the IBT until April 16, 1977. The IBT contract contained both union security and seniority clauses. The latter was understood by Milton Karahadian to require hiring the most senior employees on the first recall. When asked why he went from the UFW to the IBT in 1973, Milton Karahadian testified it was because his employees wished it, but he did not recall ever having received any authorization cards, petitions or any other indication of employee sentiment other than a telegram from the IBT.

Respondent received several Notices of Intent to Take Access in December, January, March and May, and several Notices of Intent to Organize in December or January, March, April, May and June from the UFW. The International Union of Agricultural Workers and Indepnedent Union of Agricultural Workers also filed notices. The UFW conducted an intense campaign, including a march led by Ceasar Chavez, culminating in a representation election on June 24, 1977.

Milton Karahadian testified that Respondent was conducting a "no union" campaign, and had hired Tony Mendez to assist in this campaign sometime in March, through the Farm Bureau. Subsequently, Mr. Karahadian testified that he had hired Mr. Mendez in late December or eraily January, to "help us in a campaign to avoid unionization." Tony Mendez conducted two seminars in that month for Supervisors and Second Foremen on two separate days to instruct them on how to conduct themselves, and on the

requirements of the California Agricultural Labor Relations Act. Juan Agustinez, Tony Luna, and Felicitas Espinoza, attended these sessions. Milton Karahadian and Beatrice Vela did not.

As a further part of this campaign, the company handed out leaflets to its employees on four or five occasions through its Supervisors and Second Foremen. In addition, Milton Karahadian held meetings once or twice a week in his office with Supervisors on the subject of labor relations, where the union was discussed, along with access rights, advice on discipline, and suggestions to supervisors on how to conduct themselves. In subsequent testimony, Milton Karahadian stated they discussed the "do's and don't's" of the law, including not discriminating because of union activity, the "access rule", statements that everything should be documentated including warnings for unsatisfactory work or work habits, etc. Juan Agustinez and Felicitas Espinoza attended these meetings.

The seniority system at Karahadian was crew seniority, rather than ranch seniority. Generally, people stayed in the same crews. The seniority system has not changed over the last four years and is substantially that depicted in the Coachella Valley Grape Crop Agreement, which appears at pages 7 and 8 of intervenors Exhibit Number 1, except that Mr. Karahadian did not remember whether there were seniority lists for 1977 as there were for earlier years. In any event, this was enforced by the individual Supervisors, who knew which employees had most seniority. Furthermore, differing degrees of skill were required for each cultural practice, so "strict" seniority was not followed.

IV. UNFAIR LABOR PRACTICES - A SUMMARY OF THE TESTIMONY;

A. Respondent, as part of its "no-union" campaign, held two meetings with employees chaired by Tony Mendez, during working hours, to discuss a new health benefit plan. Insurance coverage expired with the IBT contract and there was employee concern over whether benefits would continue. No specific plans were introduced into evidence for comparison. Hamiid All, an employee in Juan Agustinez' crew, testified that Tony Mendez, in the course of explaining health plan benefits responded to questions concerning Respondent's "no-union" position, and promised "good benefits, good pay and good insurance" to employees(after the IBT left).

In discussing meetings held between Supervisors and Milton Karahadian, Felicitas Espinoza testified the insurance plan was discussed and she had felt it "would be the main thing for people to vote no-union".

Hamiid Ali testified he had asked Tony Mendez at the first of these meetings who would take care of the workers if there was no union, and that Mendez had replied: "the Foreman, the Assistant Foreman and the Company". When asked what they should do if there was trouble with the Foreman, Mendez reportedly stated: "go to the Company"; and when told the Company would listen only to the Foreman, responded: "I can't help that, go to the union"; to which Ali responded that the union would say there was no contract and they could not help and Mendez did not respond further.

Alicia Lopez, an employee, testified Mendez was asked by her why the boss did not want the union, and only laughed in

response. He said he had come from the Company to offer a medical plan because the Company did not want a union due to what had happened in years past.

At the second meeting an "American" from the Insurance company spoke in English while Tony Mendez translated into Spanish and explained all the benefits the workers would receive under the plan. Lopez did not recall anything said about whether the plan would be effective depending on how they voted in the forthcoming election.

B. On April 15, after expiration of its contract with the IBT, Respondent raised its employees wages to the prevailing Coachella Valley and UFW rate, from a base rate of $2.70/hour to $3.50/hour. Respondent testified it had previously raised wages in April (see, e.g., Intervenor's Exhibit #2).

C. While no violation of the rule against granting discriminatory access was charged, evidence was received relevant to possible anti-union motivation, to the effect that Johnny Macias, an ex-Teamster organizer presently working for the International Union of Agricultural Employees, was seen entering the ranch on or about the 27th of April at about noon, after the 11:30 lunch hour, and that three Supervisors, including Juan Agustinez and Tony Luna saw him enter. Hamiid Ali testified Johnny Macias stated he had been given an hour by the company to speak with the workers, that he stayed 30 or 35 minutes, and that he did not observe any foreman or supervisor ask him to leave. Respondent's witnesses denied any such permission was given, however, and testified Macias was asked to leave after 10 minutes.

D. Hamiid All was employed in March at Respondent's ranch, and has been active in union work since his arrival from Yemen in 1969. He spoke in March, 1977, with "Johnny" (Juan) Agustinez in the company of All Nage and one other worker. Mr. Agustinez inquired whether he was a member of the IBT, to which he responded in the affirmative, and produced, on request, an IBT card. At this point Agustinez reportedly offered him the job, but added, "but I don't want you going to the UFW".

Ali Nage, who had some difficulty understanding questions via translation, but subsequently testified accurately in English, stated that he had been a UFW supporter since his arrival from Yemen in 1975, and that on the date in question Agustinez had stated that if he wanted a job, "don't go with Chavez". Juan Agustinez, on the other hand, denied that this portion of the conversation took place. He testified he asked about IBT membership in order to determine whether it would be necessary to deduct an initiation fee, as well as union dues, from their paychecks.

E. On Sunday, April 24, after a week's layoff, Hamiid Ali spoke with Juan Agustinez in the morning in the camp kitchen in the presence of several other employees, including Ali Nage. When asked when work would start, Agustinez reportedly asked where Hamiid had been for two weeks. When he responded that he had been in Indio, Agustinez reportedly stated, "Liar. You've been in Chavez' office", "I see you all the time behind the Chavez office in Coachella", and, "if you sign card for union, you and your friends will be fired". Hamiid reportedly stated he could not do that, and Agustinez remarked, in Arabic, "no habahaba",

which Hamiid translated as "no make any trouble". Hamiid testified the word might have four meanings: "don't make any trouble", "don't go with the union", "don't make any love" and the last, an apparent obscenity which he refused to translate.

Ali Nage recalled the incident and corroborated Hamiid Ali's testimony. He stated Agustinez said, "I saw you at Chavez' place" but did not know what Agustinez had meant in saying "no habahaba". Nage recalled, however, that Tony Luna was present, and that he had said "I don't want anyone to work with Chavez. If Chavez is going to win, I'm not going to work ever." Ali was not recalled to verify this statement.

Agustinez testified he had not seen Hamiid at the UFW hall in Coachella during layoff, but knew where it was. He testified he had no conversation with Hamiid Ali about the union at that time, and had not been in the camp until just before work started.

F. On April 26, 1977, William F. Monning, an attorney with the UFW legal office normally based in Salinas, met with Hamiid Ali at the UFW field office in Coachella, and at about 10:00 p.m. went with him to the kitchen at one of Respondent's labor camps, where they proceeded to prepare a meal. (See General Counsel's Exhibit #2.) Tony Luna entered the kitchen and, according to Mr. Monning asked, "What's going on here?" and, looking at Monning, "Is he with Chavez?". Mr. Monning was wearing a button with "Victoria Coachella" and the "union eagle" on it. His car had a UFW bumper sticker on the back. Luna returned to the area of the door, stood and stared for about 45 seconds, then left. Monning and Ali ate, discussed the union campaign at Karahadian and in Coachella, cleaned up and began to leave, but

the door, which stuck briefly, then opened and they observed Luna backing away. Luna asked "Are you going with the UFW?" Monning did not respond and left.

Ali's testimony agreed. He recalled Luna asking, "Who's this, with Chavez?", and observing through a window next to the door, Tony Luna's body pressed up with his ear against the door. A light was directly outside the door. He recalled Luna asking, "You from UFW" several times before Monning left, and asking Ali after Monning had left whether he was in Chavez's office.

Tony Luna recalled only asking who the person was, asking his name, getting a drink of water and returning to bed.

G. On April 27, Hamiid Ali testified he was working in the field with Ali Nage when Milton Karahadian arrived, and asked him if he was with Chavez, whether Chavez had shot his friend, which Ali believed had reference to Nage, and whether Chavez could be his friend. Ali interpreted this as meaning Karahadian was trying to convince him Chavez would shoot his people.

Ali Nage, whose car had been shot at a week before thinning, testified he had heard Karahadian say to Hamiid, "What happened to your friend who was shot? Did Chavez send someone to kill him? Do you want your friend to be killed?" and, "Did you like that Chavez sent someone to shoot your friend?".

Milton Karahadian, on the other hand, testified that he spoke with Hamiid but did not recall whether Chavez was brought up. He then testified he had asked, "How is Chavez doing?". He recalled asking how Hamiid's friend was, but did not ask whether Chavez had shot his friend's car, as he had

understood it was a fued between Arabians.

H. On April 28, Hamiid Ali spoke with other employees about signing authorization cards for the UFW and saw Juan Agustinez observing him. Later that day, at about 10:00 A.M. Agustinez came up and asked him to sit down, saying he wanted to talk, and that: "The Company sent me to you. No sign people in field or anywhere. If you do, you and your friends will be fired". Reportedly, Hamiid told "Johnny", "You can't scare the workers - you will get in trouble with the law"., to which Agustinez responded, "It's not me, it's the Company that told me to talk to you." Other workers who were present then said they had heard him say it. Ali Nage corroborated, stating Agustinez had said "I was sent by Milton Karahadian to you. Don't sign up the workers for Chavez. Stop signing, don't pass leaflets to them. If I see you again, I will fire you and your friends." Hamiid reportedly said, "Johnny, don't scare the workers. If you scare the workers I will go talk to the ALRB", at which point Agustinez said he hadn't said it, and other workers who were present said yes, he had.

Juan Agustinez offered no testimony concerning this incident, after then a general denial. At one point, however, he was asked if he knew whether Hamiid was organizing for the UFW and answered that he did not know. A few questions later, Agustinez responded that he saw Hamiid hand out leaflets every day for the union, and had been given a UFW leaflet by him. Hamiid Ali testified he was a member of the UFW Crew Committee for his crew, and had been a UFW organizer from the start at Karahadian. His union activity was open and acknowledged, and took place daily. Ali Nage tes-

tified he had not discussed his testimony with Hamiid, and all quotations cited above as those of Nage, are from the Arabic translator.

I. Javier Reyes was employed at Karahadian on February 27, 1977, and worked in thinning. He was laid off on April 13, and reapplied for work on April 27, during the thinning of "Black Beauties". Juan Agustinez called the evening before the 27th and told him there was more work. Javier Reyes testified he went to work with his father and mother and Oved Valdez, and that he and Oved were located in row 10, (See General Counsel's Exhibit #3), while his father and mother were at the other end. Clippers were handed to everyone but Javier, Oved and Javier's parents. Clippers were first given out, Reyes testified, to rows 8-1, then to rows from 11 to 25. A woman in row 9 was also not given clippers, but belonged in a different crew.

They asked Juan Agustinez why they were not hired and were told only 50 employees were being hired. Other employees, he stated, took their place.

Javier Reyes had signed a UFW authorization card in March, lived with his parents outside the camp and had spoken with UFW organizers about five times a week, everytime they came. He spoke to other employees during his break time and had helped Hamiid Ali translate from Spanish into English for individuals who wished to sign authorization cards 2 or 3 times prior to this incident. He kept UFW literature in his shirt pocket where it was visible, and on one occasion had been approached by a supervisor while he spoke with a UFW organizer.

A layoff followed shortly thereafter, and Agustinez called

Reyes at home and asked him to come back for picking.

Roberto de la Cruz testified he had been an organizer with the UFW for five years and worked at Karahadian. He had known the Reyes family for several years, and they were union supporters He stated Javier Reyes had sought him out when he came to the fields.

Juan Agustinez testified Milton Karahadian had told him to hire only 50 people, a fact confirmed subsequently by Karahadian, and that he told the workers present of this fact before they went into the rows. He then told Tony Luna to hand clippers to the people in rows 1-25, and those in rows 26 or above would not be rehired. Only Tony handed out clippers and Agustinez did not see him do so. He did not see Reyes or Valdez in the vines, but only at the side of the road, and did not talk to them. Only Adrian Reyes, Javier Reyes and Oved Valdez were not re-hired. Two individuals were hired who were not regularly in his crew.

Tony Luna testified generally corroborating Agustinez. He recalled the Reyes, father and son, at the end of the 26th row, and did not recall Oved Valdez. He handed clippers out row by row from row 1 to 26. The two new individuals who were hired were Charlie Ebreo, the brother of Luna's son-in-law, and a woman recommended by Linda Pugal, daughter of a previous foreman (for 15 years). (For details, see Respondents' Exhibit #2). Neither Agustinez nor Luna, by their own testimony, knew of Javier Reyes' union activities. No testimony was heard confirming union activity by Oved Valdez or Adrian Reyes.

Respondents' Exhibit #6, pay records for Juan Agustinez' crew, reveal the names of Regina A. Tugas, Maria G. Marguez,

and Charles II. Ebreo as having worked on this crew for the first time for the pay period ending May 3. In Respondents' Exhibit #2, the word "card" is written behind each of these individual's names, and additionally, after the names of Emma Rodriguez and Betty L. Ebreo, whose names do not appear at all in Respondents' Exhibit #6, but who are shown in Respondents' Exhibit #2 as having begun work the following day, after 3 others had quit.

Juan Agustinez testified Betty Ebreo was Tony Luna's daughter, but she worked only one day, and these two were hired to bring the number back up to 50. The UFW, in its Brief has listed the names of 26 members of Agustinez crew who worked on April 27th but had less seniority than Javier Reyes (at pp. 18-19) , derived from an analysis of Respondents' employment figures, as follows:

Adrian Reyes Beltran, Javier Reyes' father, testified he had been told only 50 people would be hired and that he was in the 26th row with another man. His wife was not there. He stated he saw Javier and Oved in the first 25 rows, and saw Tony passing out clippers the entire time, beginning at Row 1. These four were the only ones who did not receive clippers, and were told they might seek additional work on some other crew.

J. Maria Elena Ferrel had worked as a farmworker for six years during which period she had never been fired, disciplined or had her work critized, and was employed at Karahadian on March 14. She worked from May 25 as a packer, until she was discharged on June 8. She testified she regularly passed out UFW leaflets and buttons every day and tried to obtain signatures on authorization cards. There were no other packers who handed out literature for the union. On June 1, she had passed out

leaflets, for the first time, in the packing trailer at about in 5:40 A.M. Work had started at 5:30, but there were no grapes yet to pack. Felicitas Espinoza, her Supervisor, warned her if she passed out fliers again, on company time, she would be fired.. [see, e.g., Respondents' Exhibit #1 (6)]. She testified she had not been warned not to hand out buttons. She recalled having said there were no grapes and nothing to pack yet, to which Ms. Espinoza responded: "Don't worry, you should be there standing ready." Ferrel testified she was unaware that she was being paid by the company for the period prior to arrival of the grapes.

On June 1, the same day, Beatrice Vela, Second Foreman in charge of packing, approached her and told her to "go and pick" because there were not enough grapes. Ferrel felt this was discriminatory, and prefered packing to picking, citing the following reasons: picking requires more work in the sun; you are required to carry a heavier box further; you must put more into your box; it takes longer to fill a box; in general it is harder work; and the pay is better for packers. This latter assertion was contested.

she said there were "others here with less seniority, why are you taking me down?". Then Beatrice selected some others to go with her. Ms. Ferrel stated she had been offered work as a packer, not a picker, and did not recall any packers ever being taken off before to pick. The first day she picked 25 boxes, and the second day 8, before she was ordered back to

packing.

Beatrice Vela, second in command to Felicitas Expinoza stated Espinoza had made the decision to switch packers to picking and that no one had complained, but Ferrel had asked why, and had been told it was just for that day, but later had said "you took the people with more seniority off the trailer." Vela said shedid not know about seniority. She testified she had asked others to pick before asking Maria Elena, because she was a distance off. She had been present earlier when Espinoza had warned Ferrel about passing out leaflets.

K. On June 5, Ms. Ferrel was interviewed on a local radio station, She identified herself and her employer, her crew and crew-boss, and spoke about the advantages of a union contract. The program was broadcast twice. She regularly prepared a list of workers in the crew to make certain no one was being fired, and checked it each day before work, during the break and after work as well. She has supported the UFW and been a farmworker for six years, since her immigration from Mexico in 1971. No other workers in packing passed out leaflets or buttons. She wore union buttons to work every day from June 1.

On the day she was discharged, Ms. Ferrel passed out about 40 UFW buttons and some leaflets, then waited for the trailer and grapes to arrive. A woman arrived late for picking, Ferrel walked a few feet toward her and handed her a button, and was terminated by Ms. Expinoza [see Respondents' Exhibit #1(a)], who stated from several feet away, over her shoulder, "you're fired."

Felicitas Expinoza testified she had been "crew boss"

since March 15, 1977, and before that had worked as a packer and picker. Her testimony agreed with that of Ms. Ferrel in respect to the warning issued on June 1. She was not a witness to the transfer from packing to picking. Her testimony likewise agreed with that of Ferrel on the events of July 8, leading to her discharge, with one exception. Espinoza testified that on several occasions Ferrel had "mocked" her, by mimicking her orders, laughing, etc. She testified this behavior "got on her nerves", that it was embarrasing and that she had cried about it, but also, testified she had not heard the mimicking herself, but had been told about it by others. She could not remember any incidents with exactitude, and never warned Maria Elena or spoke with her about it. She testified this conduct was "in my mind" when she decided to terminate Maria Elena. She felt people were "losing respect" for her as a crew-boss, and "becoming disorderly" in that before there had been "no complaints" about anything and now there were "complaints about everything" and they were "always complaining about every little thing". She thought Maria Elena was "trying to prove a point to the people that we were afraid of her." Espinoza testified she had warned another UFW organizer, Santiago Orozea, not to hand out union leaflets on Company time, and that he had violated the rule a second time, but had not been fired because Beatrice Vela had been present at the time and witnessed the violation, not she.

Ferrel was recalled as a rebuttal witness, and testified she had never contradicted Espinoza's orders or "got in the way of her orders", or "mocked" her. She did not remember being told she was to pick one day only, but recalled overhearing, with other pickers, Espinoza laughing sarcastically

and stating to Beatrice Vela, within hearing of the crew:
"Nobody around here has got seniority." She felt Expinoza had mocked her. She denied discussing Esoinoza with other workers or making comments behind her back.

Maria Marquez was also called in rebuttal, and testified she had worked in the packing shed across the conveyor belt from Ferrel, and never heard her speak with other members of the packing crew, and did not hear Espinoza give orders or Ferrel mock them.

There were no other witnesses or relevant evidence, and on the basis of the above testimony and my observation of the demeanor of the witnesses, I make the following findings of fact not already indicated in the foregoing summary.

A. The health insurance plan was viewed by Respondent and at least one of its Supervisors as directly related to the union campaign. Respondents' intent was to hire Tony Mendez "to help us in a campaign to avoid unionization." When the same Mendez appeared to explain benefits under the plan, translate for an insurance company representative, respond to questions concerning the company's attitude toward the union, and to state, according to uncontradicted testimony, that he had come from the company to offer a medical plan because the company did not want a union, the burden can certainly be said to be fully on Respondent to offer some explanation, beyond the fact that it thought its employees were interested in such a plan, and the old plan was expiring. This burden Respondent did not meet. This offer of benefit was plainly calculated to influence Respondents' employees in their choice of a collective bargaining representative.

B. The unilateral grant of a wage increase of $.80 an hour, an approximate 30% increase, to exactly the prevailing union wage, in the context of an election campaign, could only result in Respondents' employees concluding they had nothing to gain from voting for the union. Respondent failed to meex. its burden of proof, by failing to come forward with any other rationale than that it had raised wages previously in April. Although Respondent did not directly link a pay raise with its "no-union" campaign, its employees would be likely to make this connection on their own. No specific reasons were offered as

to why the increase could not have been postponed. Again Respondent did not meet its burden of proof.

C. No conclusion of discriminatory assess can be drawn from the conflicting testimony regarding Johnny Macias, particularly, as there is no mention of the incident in the second consolidated complaint, although it is mentioned in the corresponding charge. Neither can any inference of discriminatory animus be drawn, as the testimony concerning Mr. Macias' comments to Mr. Ali as to what had been communicated to him by the company are "hearsay on hearsay" (although this objection was not raised at hearing), and inherently unreliable, given the corroborative testimony of Respondents' witnesses.

D. The statements made to Hamiid Ali, and fully corroborated by Ali Nage, but not recalled by their supervisor, Juan Agustinez, on the occasion of their hire, based on my observation of the demeanor of the witnesses, and the substantial, meshing of the testimony of the two principal witnesses for General Counsel, are found to have been made. The charge, however, is one of interrogation concerning union affiliation, rather than threat, which was the essence of the witnesses testimony. The UFW argues in its Brief (at p.20) that because there was no testimony establishing a closed shop agreement with the IBT, any interrogation concerning union membership is unlawful. With regard to questions concerning membership in the Teamsters, however, it is clear that a company under union contract, where there is a security clause, may inquire into union membership, and therefore, with regard to this portion of the conversation, no violation of the Act occurred. With

regard to that portion referring to the UFW, however, the testimony fairly established that Mr. Agustinez acted beyond his authority under the law, by intimidating, restraining and coercing employees through the use of threats of reprisal for exercising their rights under the Act.

E. With regard to the threats made by Agustinez on or about April 24, again the testimony of Ali and Nage is corroborative, while Tony Luna was not questioned concerning the incident at all, and Agustinez' testimony consisted of a simple denial. Based on my observation of the demeanor of the witnesses, and the fragamentary nature of the testimony given by Respondents' witnesses, these remarks are also found to have been made.

In addition, Agustinez' remarks clearly create an impression of surivellance, indicating that the UFW offices were being watched, and any employees visiting there would be known to their supervisors.

Respondent argues in its Brief (at p.4 and ff.), that Agustinez was not even present in Coachella during the time of the alleged incident. This is by no means, however, clear from the testimony, which permitted considerable time for the conversation to have taken place.

F. Concerning the incident in Respondents' labor camp on or about April 26, the extremely detailed report of Mr. Monning, an attorney, and its corroboration by Mr. Ali, make the simple denial of Mr. Luna incredible. Based on my observation of the demeanor of the witnesses and their detailed recounting of the incident, I find Mr. Luna to have unlawfully interrogated, and created an impression of surveillance of its employee.

G. While certainly not a threat, the admission by Mr. Karahadian that he asked Mr. Ali, on or about April 27, how Chavez was doing, is sufficient to constitute an interrogation concerning union activity. Mr. Kaharadian's recall was hazy, whereas the testimony of Ali, and especially Nage, who, as the concerned party can be expected to have remembered the incident with some accuracy, was precise and detailed. For this reason, I find the alleged interrogation to have taken place. Although Mr. Karahadian may not have intended anything threatening by his remarks, they were fairly understood as containing veiled threat. In part, this may have been due to language difficulties. I find, however, that while an interrogation occurred, a threat did not, since Mr. Karahadian's remark could easily have been misunderstood or misinterpreted.

H. The threat made by Agustinez in the field to Ali was corroborated by Nage, and not referred to at all by Agustinez, except by generally denying having had any conversation with Ali on the subject of the union. The testimony established a clear threat to fire employees for exercising their right to self-organization. While Ali and Nage agreed that Agustinez stated he had been sent by Karahadian, this would again be double hearsay, and was contradicted by general statements made by Karahadian and other witnesses concerning advice given under the ALRA to supervisors as to how to act. In any event, it is inherently untrustworthy, and no conclusion can be reached as to whether Mr. Karahadian personally directed that Mr. Ali be spoken to. For the above reasons, as well as my observation of the demeanor of the witnesses, I find the threat took place as

charged.

I. Concerning Javier Reyes, the testimony is in conflict. While Javier and his father, both General Counsel witnesses, placed Javier and Oved in the first 25 rows, Agustinez did not observe them in the rows and Luna observed them at theend, after the 25th row. Luna's testimony may be discounted, however, not only because of his failure to recall the surveillance incident at the labor camp, but also because the brother of his son-in-law received one of the two disputed positions, in violation of crew seniority, while the friend of a daughter of an ex-supervisor received the other position. Furthermore, on the following day, Mr. Luna's daughter received employment in the crew, again in violation of crew seniority.

Both supervisors, however, testified they had noknowledge of the union activities of Javier Reyes (Valdez and Javier's father were apparently inactive), and Javier Reyes' involvement was not nearly as great as others. While it is clear,therefore, that a violation of seniority took place, it is probable that the motivation of Respondent was nepotisim, rather than anti-union animus. This is confirmed in the fact thatAgustinez called the Reyes' after the layoff and offered them re-employment.

The failure to call Oved Valdez was critical here. While Respondents' supervisors may easily have observed Javier eyes speaking with union organizers, translating for Ali, or pocketing union literature, nothing was offered to prove such knowledge or explain why it was acted on. Neither was Reyes' rehire after layoff explained, or any plausible reason given why

the week of April 27th was more critical to the union's campaign, than the period of his rehire only two weeks later. I find, therefore, that Respondent did not discriminatorily refuse to rehire Javier Reyes and Oved Valdez on April 27, 1977.

J. As regards Maria Elena Ferrel's transfer from packing to picking, the testimony is again in conflict. However, the fact that transfer occurred on the same day as the warning to Ferrel, on the first day she wore a union button and passed out union literature, together with testimony establishing her hire as a packer, without being told she would have to pick, and the fact that this was the only occasion on which these employees were transferred from packing to picking, create an inference that her union activities were the responsible cause. Furthermore, Ferrel's testimony in rebuttal that Espinoza had laughed and loudly denied the existence of seniority, can be added to the fact that Vela admitted having been present during the warning. She also stated that Ferrel had asked her about seniority. She testified, however, that she had picked others first, as Ferrel was some distance off. Yet, her testimony did not make it clear why, if Ferrel was not in the immediate vicinity of the other assigned workers, she nonetheless added her to the group. Since crew-wide seniority was admitted by Mr. Karahadian, and Ms. Espinoza was a supervisor under the Teamster contract, it-should have been followed. I therefore find, for the reasons mentioned above, as well as my personal observation of the demeanor of the witnesses, that a violation of seniority took place in the temporary re-assignment or transfer of Ms. Ferrel to the lower job classification of picking, and that this re-

assignment or transfer occurred by reason of the knowledge of her supervisors that she favored the union, and was a result of their anti-union animus. While a business justification may have existed for the transfer, picking did not, in this instance, require greater skill than packing, and seniority ought to have been followed.

K. With respect to the discharge of Maria Elena Ferrel, it is agreed that she was fired while engaged in organizing activities on behalf of the union, that she violated a company rule against distribution of union literature or buttons on company time, and that she had been warned previously not to pass out literature on company time. The issue, therefore, is one of cause vs. pretext.

Her earlier discriminatory transfer, however, together with the testimony of Ms. Expinoza concerning Ms. Ferrel's alleged "mocking", which was "in my mind" when Expinoza terminated Ms. Ferrel, and Expinoza's comments to the effect that Ms. Ferrel's behavior had diminished her authority and created "complaints about everything", in diminution of her control of the crew are sufficient to raise an inference of discriminatory intent. Moreover, there was no testimony to the effect that work was disrupted by the passing out of a single button, and another worker, who had been similarly warned, was not fired on the second occasion. While this was allegedly a result of the fact that Ms. Espinoza had not been present during the infraction, this reasoning was not explained or obvious to Respondents' employees. A natural consequence would therefore be for Respondents' employees to view its

behavior as discriminatory and punitive. In my observation of the demeanor of Ms. Espinoza, it was clear that the decision to terminate Ms. Ferrel was a highly emotional one, and that she considered the union's organizational drive to be a personal threat to her reputation, position and power. She also testified favorably concerning the company's "no-union policy" and the offer of health insurance.

In sum, I conclude that the discharge of Maria Elena Ferrel was pretextual and, in part, based on her activities as a union organizer. While cause existed for her termination, it was outweighed in the mind of her supervisor by anti-union animus. Her highly subjective and emotional attitudes toward union organizers, and the exercise by employees of their rights to "complain about everything" in a context of great personal hostility, led directly to the discharge.

CONCLUSIONS OF LAW

I. General Discussion of Law:

Respondent is charged with several violations of Section 1153 of the Act, which provides:

> "It shall be an unfair labor practice for an agricultural employer to do any of the following:
>
> > "(a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152 . . . ."

Section 1152 provides, in pertinent part: 11

> "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 air or protection. . . . ."

Respondent is also charged with violating Section 1153(c) of the Act, which declares it an unfair labor practice for an employer "By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization;".

Section 1148 of the Act requires the Board to "follow applicable precedents of the National Labor Relations Act, as amended.".

Only a few of the violations found to have been committed by Respondent require extensive legal discussion, and for this purpose similar fact situations will be grouped together in the sections which follow.

Sections 1153(a) and (c) of the Act are identical to Sections 8(a)(1) and (3) of the National Labor Relations Act,

permitting extended discussion of NLRA precedent.

II. Grant or Promise of Benefit - Health Insurance and Wage Increase Plans:

While the basis of this charge generally consists of statements made by company representatives, Section 1155 of the Act provides:

> "The expressing of any views, arguments, or opinions, or the dissemination thereof... shall not constitute evidence of an unfair labor practice... if such expression contains no.... promise of benefit."

This latter qualification makes clear NLRB policy that promises of benefit are not to be protected as employee "free speech".

The granting of a wage increase or improvement of benefits during an organizational campaign has been held to be an interference with employees' protected rights, on the rationale that "interference is no less interference because it is accomplished through allurement rather than coercion." NLRB v. Crown Can Co., 138 F.2d 263, 267, 13 LRRM 568 (CA 8, 1943), citing Western Cartridge Co. v. NLRB, 134 F.2d 240, 244, 12 LRRM 541 (1943). In Indiana Metal Products Corp., (1952) 100 NLRB No. 161, 30 LRRM 1393, enf d. on this point, 202 F.2d 613, 31 LRRM 249 (CAT, 1953), it was held that a grant of insurance benefits close to an election without satisfactory employer explanation is an unfair labor practice. The court stated:

> "The company argues that no strings were attached to the offer and no threats to withdraw the benefits if the employees persisted in supporting the union, but such considerations are by no means controlling.

> As the court stated in May Deot. Stores Co. v. N..L.R.B. , 326 U.S. 376, 385, 66 S.Ct. 203, 209, 90 L.Ed. 145, 'It interferes with the right of self-organization by emphasizing to the employees that there is no necessity for a collective bargaining agent. ' " .

See also, Medo Photo Supply Corp. v. NLRB, 321 U.S. 673 (1944).

With respect to the wage offer, it is settled that benefit improvements instituted by an employer will not constitute an interference with protected rights under the N.L.R.A. if they are instituted in accordance with an employer's historical pattern of matching or improving benefits granted by competing employers. J.P. Stevens & Co. v. NLRB, 406 F.2d 1017 (4th Cir. 1961).

An employer may, of course, change the existing conditions of employment, even before an election, if the change is separately justified by a legitimate business purpose, NLRB v. Styletek, Div. of Pandel-Bradford, Inc., 520 F.2d 275 at 280 (1975)., and the aforementioned problems do not exist.

The burden, however, is on the employer, International Shoe Co., 123 NLRB 682 (1959)

In D'Yoaville Manor Nursing Home, 217 NLRB No. 36, 89 LRRM 1060 (1975), enforced, 526 F.2d 3, 90 LRRM 3100 (CA1, 1975); Cf. Tommy's Spanish Foods, Inc., 463 F.2d 116, 80 LRRM 3039 (CA9, 1972), it was held that an increase in existing insurance coverage prior to the union representation election constituted a violation of 8 (a) (1), as an offer of prohibited benefit:

> "although an employer previously considered granting health insurance improvement and wage increases prior to the petition for election, its announcement of its intention

> to grant then shortly after a union organizing campaign began was unlawful, since the employer's conduct was calculated to influence the employees to withdraw their support from the union and was thus a violation of the Act."

See also, N.L.R.B. v. Newman Green, 401 F.2d 1 (CA 7, 1968).

It is clear that a grant or promise of medical benefits or a hospitalization plan, for the purpose of discouraging employee organization, is a violation of Section 8 (a)(1). Cedartown Yarn Mills, Inc., 84 NLRB 1(1949); Popeill Bros, Inc., 101 NLRB 1083 (1952); Waters Distributing Co., 182 NLRB No. 141 (1970; Regal Aluminuim, Inc., 436 F.2d 525 (CA 8, 1971); Airlines Parking, Inc., 196 NLRB 1018 (1972).

This is especially the case where the timing of the plan is such as to interfere in the union selection process.

Cedartown Yarn Mills, Inc., supra; Popeill Bros, Inc., supra; Englewood Lumber Co., 130 NLRB 394(1961); Gainsville Publishing Co., 150 NLRB No. 60 (1964).

The same considerations prevail where the employer unilaterally raises wages. Indeed, the untimely granting of wages or other benefits has been held presumptively illegal.

The Board's decision in J.C. Penney Co., Inc. 160 NLRB 279 (1966), emp.d, 384 F.2d 479 (CA10, 1967), has thus been cited for the proposition that "a presumption of illegality attaches to benefits granted prior to an election." See, e.g., Perl, "Granting of Benefits During a Representation Election; Validity of NLRB General Rule", 18 Lab. L.J. 643, 646 (1967). See also Ventre Packing Co., Inc. 163 NLRB No 47 (1967). This is especially true where there are other unfair labor practices.

See Gary Company Inc., 164 NLRB 154 (1967); Borden Cabinet Corp., 159 NLRB No. 99, (1966).

In J.C. Penney , as in this case, the employer's" normal practice was to grant wage increases to its employees approximately once a year. The Trial Examiner, whose opinion the Board adopted, wrote:

> "With a decision in the representation case imminent and the possibility of an election soon thereafter a matter of reasonable expectation, I find it hard to understand why the Respondent felt impelled to grant the increases at the time it did. As matters actually developed, had the Respondent withheld action for another month, the election would have been held and the Respondent would have granted the wage increases within the same span of time it customarily followed..." (emphasis added)

in comment on J. C. Penney, Professor Gorman has written

> "Although the inference that the increase was motivated by a desire to defeat the union - rather than by a desire to perpetuate the past practice - was by no means compelling, the Board and court drew such an inference, and held that the employer could have waited another month until the election had been held before granting the increase while remaining within the practice. The Board has in fact found illegal the announcement of a benefit during art election campaign even though the company decision was made before the advent of the union."
>
> Gorman, Basic Text on Labor Law (1976), 166.

In Engineers & Fabricators, Inc., 156 NLRB 919 (1966), an employer had over several months in 1962 and 1963, granted a substantial number of merit increases to its employees:

> "In 1962, the employer granted merit increases over six different months. With regard to 1963, during the first

> part of the year the employer handed out merit increases in four different months. During the latter part of 1963, the employer handed out additional merit increases in August and on November 21. In 1964, a large number of merit increases were granted in May, and additional merit increases were announced on November 12, six days before an NLRB election. In spite of the employer's past practice of granting a substantial number of merit increases at frequent intervals during each year, and absent any finding that the November 12 increases were prompted by the union, the Board held that November 12 increases violative of Section 8(a)(1) of the Act on the ground that they were "not clearly required by past practices just prior to an election." (emphasis in original)

The Board further stated:

> "The Respondent had no legitimate interest which could not be just as well served by waiting until after the election to announce this large group of merit increases."

See also, International Shoe Co., 123 NLRB 682, 43 LRRM 1520 (1959).

In Northwest Engineering Company & United Steelworkers of America, AFL-CIO, 148 NLRB 1136 (1964), Respondent's employees began circulating petitions through the plant in order to obtain a more satisfactory health and accident insurance plan, to go into effect on the date the old plan expired. Despite employee interest and the correspondence of the date to that of the date of expiration of the old plan, the Board rejected the opinion of its Trial Examiner, and held:

> "It cannot be persuasively maintained that the timing of the announcement was thus governed by factors other than the pendency of the election. Under these circumstances, we conclude that the Respondent deliberately delayed announcement of the new plan until a

> time when it would have the greatest impact on the election and that it thereby violated Section 8(a)(l) of the Act." 3

In a footnote, the Board stated: "The Respondent never claimed that it could not have instituted its new plan prior to the expiration of the old one." (.6, at 1139).

In NLRB v. Exchange Parts, 375 US 405 (1964), the Supreme Court addressed the issue of whether Section 8(a)(1) prohibited the conferral of economic benefits shortly before a representation election. The Court held this section:

> "prohibits not only intrusive threats and promises but also conduct immediately favorable to employees which is undertaken with the express purpose of impinging upon their freedom of choice for or against unionization and is reasonably calculated to have that effect...The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged. The danger may be diminished if, as in this case, the benefits are conferred permanently and unconditionally. But the absence of conditions or threats pertaining to the particular benefits conferred would be of controlling signifigance only if it could be promised that no question of additional benefits or renegotiation of existing benefits would arise in the future; and, of course, no such presumption is tenable, (at 409-10).

This "express purpose" language has been interpreted to require a "specific intent or knowledge" on the part of the employer, to interfere with the selection process. Sea, e.g., 18 Lab. L.J. 643 (1967).

As was stated, however, by the Board in American Freight-ways Co., Inc. 124 NLRB 146 (1959):

> "It is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coericon succeeded or failed. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act."

(Citing NLRB v. Illinois Tool Works, 153 F. 2d 811 (C.A. 7; (1946) See also Cosco Products Company, 123 NLRB 766 (1959)).

Where economic benefits are instituted for the purpose of thwarting self-organization, there is a clear interference in the employee's right to self-organization. See, e.g., Medo Photo Supply Corp v. N.L.R.B., 321, U.S. 678, 686, 64 S. Ct 830, 88 L.Ed. 1007 1944; Joy Silk Mills, Inc., v. N.L.R.B., 185 F.2d 732, 739, (CA DC, 1950); N.L.R.B. v. Kropp Forge Co., 178 F.2d 822, 828, (CA7, 1949).

In Hermann Equipment Manufacturing Co., Inc., 156 N.L.R.B. 716 (1966), the Board expressly rejected the argument that animus was required stating:

> "Nor do we agree that suck a violation may not be found unless the employer's motive to interfere has been established. It has long been held that a company's conduct is violative of Section 8(a)(1) where it tends to interfere with the exercise by employees of their rights under the Act. See, e.g., American Freightways Co., Inc. 124 NLRB 146, 147." (at p.718, in 3.) See also Dundick, Inc. 159 NLRB No. 13 (1966).

The Board reached the same conclusion in Casey Manufacturing Co., 167 NLRB No. 13 (1967), citing language from American Freightways Co., Inc. , supra.

In relation to Exchange Parts, the Board concluded:

> "A reading of that opinion reveals no criticism by the Supreme Court of the reasoning applied by the Board therein. Moreover, . . . Board decisions since then indicate a belief that the Board decision in Exchange Parts is still good law....".

Under NLRA Section 8(a)(1), no proof of coercive intent or actual effect is required, the test being whether the employer's conduct reasonably tends to interfere with the free exercise of employee rights. Munro Enterprises, Inc., 210 NLRB 403, 86 LRRM 1620 (1974); NLRB v. Litho Press of San Antonio, 512 F.2d 73 (CA 5, 1975); Melville Confections, Inc. v. NLRB, 327 F.2d 689 (1964), cert, denied 377 U.S. 933 (1965).

> For example, "inference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act."
> Cooper Thermometer Co., 151 NLRB 502, 503, n.2, 59 LRRM 1767 (1965); American Freightways Co., 124 NLRB 146, 147, 44- LRRM 1302 (1959); see also NLRB v. Illinois Tool Works, 153 F.2d 811 17 LRRM 811 (CA 7, 1946)

As Professor Gorman has pointed out:

> "It is also generally agreed that, to establish a violation of Section 8(a) (1), it is not necessary to demonstrate -by direct testimony of employees or otherwise - that particular employees were actually coerced. It is sufficient if the General Counsel can show that the employer's actions would tend to coerce a reasonable employee. This objective standard obviously facilitates the development of a record and the trial of an unfair labor practice case, and also avoids the need to place employees in the discomforting position of testifying against their employer. The test for a Section 8(a)(l) violation is objective in a second respect. It is sufficient to demonstrate that the employer action has the effect of restraint or coercion. It is not necessary to demonstrate that the employer intended to produce that effect." Gorman, supra.

It is generally accepted, that Section 8(a)(1) is violated, either (1) when any other 8(a) Section is violated, or (2) independently, as 8(a)(1) is broader than any of the more specific sections which follow it. Thus:

> "There is no necessity for reading a state-of-mind requirement into 8(a)(1). Its very purpose, as illuminated in the legislative history, is to serve as a blanketing protection, reaching beyond the limitations of 8(a)(3) and the other 8(a) subdivisions. But otherwise, the purpose of 8 (a) (1) is to afford the Board a vehicle for dealing with employer practices which 'interfere with, restrain or coerce' employees in the exercise of their statutory rights without running afoul of any of the other, more particularized subdividions of 8(a). It undercuts this purpose to saddle 8(a)(1) with a state-of-mind requirement appropriate for 8(a)(3)." (emphasis original). Id. at 496. See also e.g. Republic Aviation Corp. v. NLRB 324 U.S. 793 (1945); NLRB v. Babcock Wilcox Co., 351 U.S. 105 (1956).

The Board, in S.E. Nichols-Dover, Inc., 165 NLRB No. 135 (1967), adopting the opinion of the Trial Examiner, stated knowledge was the principal criterion:

> "The conduct of an employer in promising and conferring benefits upon its employees during, and with knowledge of, their self-organizing activities constitutes interference with employee rights of self-organization in violation of Section 8(a) (1) of the Act."

The Board has held wage increases, on their announcement, violative of Section 8(a)(1), even where motivated by economic considerations, Shelby Williams of Tennessee, Inc., 165 NLRB No. 108 (1967), or when granted to an employee who requested the raise. Gordon Manufacturing Co., 158 NLRB 1303 (1966). See also, Northwest Engineering Company, supra.

In N.L.R.B. v. Douglas Lomanson, 333 F.2d 510 (CA8, 1964), which immediately followed the decision in Exchange Auto Parts, supra, the Court indicated that "knowledge" is a question of fact to be determined by the N.L.R.B., and maintained that these determinations will only be set aside when it "cannot be conscientiously found that the evidence supporting the decision is substantial when viewed in the light of the case in its entirety." This decision was interpreted by the N.L.R.B. as giving it a free hand to determine the conditions for finding an actionable violation of Section 8(a)(1).

In N.L.R.B. v. Styletek Division of Pandel Bradford, Inc., 520 F.2d 275 (CA 1, 1975), the court held that although an offer of benefits may\be for "business purposes" and theoretically unconnected with the union campaign, timing of the announcement is important in determining whether there has been a violation. It continued, stating "the N.L.R.B. has no duty to permit benefits to be husbanded until right before a representation election and sprung upon the employees in a manner calculated to influence their choice." The court held this "calculation" can be assumed from the timing of the announcement, the burden is then on the employer to show specific reasons for the granting of benefits at this time. The N.L.R.B. has extended this burden further, holding in Shelby Williams of Tenneseee Inc., 165 N.L.R.B. 108 (1967) and Gordon Manufacturing, 168 N.L.R.B. 1303 (1966), that even a "sufficient" economic justification is not enough to overcome the presumption of illegality attached to the offering of benefits.

See also, Ventre Packing Co. Inc., 163 N.L.R.B. #47 (1967).

Professors Getman, Goldberg & Herman have added in clarification:

> "While only those grants of benefit that the employer intends to influence employee voting choice are unlawful, the employer's intent need not be communicated explicitly to the employees in order to have the desired influence. For example, in Texas Transport & Terminal Co., the employer decided to give a wage increase during the campaign. The Board found that the timing of the increase was influenced by the campaign. Although the employer did not couple the announcement of the increase with the campaign in any way, the Board assumed that the employees would make the connection on their own.
>
> Even when a change is decided upon for Business reasons unrelated to unionization if it isannounced during the campaign it is assumed that employees will regard it as a response to their efforts to organize."

[Citing Hincline's Meat Plant, Inc., 193 NLRB 867 (1971)

(footnotes omitted)] 27 Stan. L. Rev. 1465, at 1478 (1975).

in Texas Transport & Terminal Co., 137 NLRB 466 (1970),

the Board said:

> "In our experience, an employer rarely couples a wage increase intended [sic] to affect employee desires during an organizational campaign with an explicit avowal of such purpose. The absence of such a statement does not make the announcement lawful however . . . Employees are well able to understand the purpose of well-timed grants of benefit without being told by their grantor that the increases are intended to dissuade them from unionization." (at 468.)

See also, Great Southwest Warehouses, Inc., 183 NLRB

645 (1970).

The Board argued further in Hudson Hosiery Co., 72 NLRB

1434 (1947):

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> "[T]he presentation of economic benefits to employees in order to have them forego collective bargaining is a form of pressure and compulsion no less telling in its effect on employees because benign. . . We can perceive no logical distinction between threats to withdraw economic benefits, for the purpose of thwarting self-organization of employees, and promises of better things to come, for the same objective.
>
> What is unlawful under the Act is the employer's granting or announcing such benefits (although previously determined bona fide) for the purpose of causing the employees to accept or reject a representative for collective bargaining." (footnote omitted, emphasis original).

Professor German has commented, however, that motive

evidence may still be relevant:

> "The Court's emphasis upon the employer's motive is significant, in two respects. First, the requirement that the employer's grant of benefits be motivated by a desire to oust the union permits the employer to grant benefits during the representation election campaigns for other, more 'legitimate,' reasons. Second, this requirement is out of keeping with the usual principle that violations of section 8(a)(1) may be found, even without illicit motivation, when the harm to employee rights outweighs even plausible business reasons the employer may have for its conduct. Prior to the Supreme Court decision in Exchange Parts, the Board had indeed held that it would test a claimed vio lation of section 8(a)(1) for an employer grant of benefits by this weighing process, and that specific proof of bad motive was unnecessary; but the Board subsequently reversed its position in reliance on Exchange Parts. Tonkawa Ref. Co. [175 NLRB 619] (1969) , enf d (10th Cir. 1970) . [434 F.2d 1041] (10th Cir. 1970). The decided cases do indeed tend to invoke the Exchange Parts test of 'intention of inducing the employees to vote against the union.' But there are several cases where the finding of such an intention is dubious at best and where what is articulated as antiunion animus is in truth a finding that the employer has failed completely to explain to the Board why the benefits were granted or a finding that the asserted employer justification is insubstantial.... In substance, then, the Board - generally with court approval - does appear to

> be balancing the discouragement of a vote for the union, stemming from the grant of benefits, against the employer's business reasons for the grant (with the hoped-for defeat of the union not being a substantial business reason). The analysis in the cases is the same regardless whether the employer unconditionally promises that a benefit will be granted or unconditionally grants such a benefit.

Gorman, supra, at 165-6 (citations added).

In Albert C. Hansen dba Hansen Farms, 2 ALRB No. 61 (1976) the ALRB considered the question of promise of benefit in the context of an election challenge, and affirmed an "economic realities" test, looking to "(1) the economic relationship between the speaker and the listener and (2) the message that was actually conveyed." [id. at 16, citing Dal-Tex Optical, 137 NLRB 1782 (1962)]

The ALRB held in Oshita, Inc., 3 ALRB No. 10 (1977) that benefits granted within weeks of "intense union activity and the petitioning for an election" resulted in substantial interference with employer free choice. See also, Anderson Farms Co., 3 ALRB No. 67 (1977).

In Kawano, Inc., 3 ALRB 54 (1977), the ALRB adopted the decision of Administrative Law Officer, Leo Karrowitz, in a factual setting similar to that appearing here. In Kawano, Respondents employees received a substantial wage increase and a health insurance program, and Respondent was aware, at the time the wage increase and benefits were instituted, of the union's organizing campaign. The issue was never joined, however, as the benefits were granted in that case prior to the effective date of the Act. Nonetheless, Karrowitz found they had been

"motivated by Respondent's desire to discourage unionism among its emoloyees." (at p. 9). Relevant here was testimony that:

> "the raise was instituted to keep up with wages in the Chula Vista area which had recently raised its wages to $2.75 an hour. Significantly, he offered no testimony as to what the level of wages had been at Chula Vista just before the alleged wage increase there. He also testified that because some of his employees refused to come to work if they were not receiving a traditional 15¢/hr. differential over what was received by Chula Vista workers, he immediately raised the wages to $2.90. But no employees were offered as witnesses by Respondent to corroborate this explanation for the wage increase. Nor did Respondent offer the testimony of any foremen to corroborate this explanation, despite the fact that Respondent's president testified that it was his foremen who notified him of his employees' displeasure with the fact that they were not getting more than Chula Vista area workers."

Kanowitz cited NLRB precedent to the effect that it accords I in similar circumstances, "little weight to/the/ uncorroborated explanation of the business reasons which led Respondent to grant the raise.", citing Wintex Knitting Mills, 216 NLRB No. 172, 38 LRRM 1566, 1568 (1975).

In the law reviews, a discussion has begun concerning this area of the law, suggesting that employees are unaffected by such grants or offers of benefit and challenging the entire rationale for legal involvement in the electoral process, based on studies of voting behavior done by political scientists, which contradict assumptions held to be implicit in NLRB and court-made precedent. While this objection was not directly raised at hearing, or in the briefs it is a subject of considerable discussion and should be considered in reaching a conclusion.

In a provocative article, Professors Getman, Goldberg and

Herman write of "NLRB Regulation of Campaign Tactics: The Behavioral Assumptions on Which the Board Regulates", supra, and find the rationale for prohibiting oromises and grants of benefits to be as follows:

> "The vice of a last-minute grant of benefits that attempts to demonstrate that employees do not need a union to assure favorable treatment is by no means clear. One theory on which such conduct might be held unlawful is suggested by the court's statement in Exchange Parts that "[t]he beneficence of an employer is likely to be ephemeral if prompted by a threat of unionization which is subsequently removed," In other words, a last-minute grant of benefits for the purpose of discouraging union activity may represent only the employer's response to the immediate prospect of unionization rather than a long-range policy of maintaining a high level of benefits. Because of their assumed lack of sophistication, the employees will be unaware of the ephemeral nature of the last-minute grant of benefits, and hence will be misled into believing that unionization is unnecessary to secure future benefits." (footnotes omitted.)

In a footnote, the authors add:

> "This analysis would be inapplicable to cases such as Hineline's Meat Plant, Inc., 193 N.L.R.B. 867 (1971)", in which the Board relied on Exchange Parts in finding unlawful a last-minute announcement of new benefits which the employer had previously decided to grant for reasons other than to thwart unionism. While the employer was found to have timed the announcement of the new benefits to achieve maximum impact on employee voting behavior, there was little reason to suppose, regardless of the timing of the announcement, that benefits granted for reasons unrelated to the threat of unionization would not survive the employees' decision with respect to unionization.
>
> Still another theory on which a last-minute grant or promise of benefits might be held unlawful is that the employees will be so enthralled by the immediacy of such benefits that they will be unable to put them in proper perspective." (footnote 78 at 1478.)

The authors then present evidence, however, that contradicts these assumptions, arguing:

> "The political vote is not determined by a reasoned choice carefully calculated from the candidates' stands on the issues in the immediate campaign, but primarily by ethnic, class, and family influences which predate and transcend the issues. The implicit model of the omnicompetent citizen who attends to the campaign and carefully weighs alternative positions in the process of making his voting decision is not even an accurate characterization of the political voter.... For those who make up their minds early, the campaign may provide a rationale for their decision. For those who delay their voting decision, the campaign appears primarily to activiate latent predispositions. Since most political voters make early and firm decisions, investigations of campaign effectiveness have focused on those voters who report themselves to be undecided, or who switch from supporting one candidate to another during the course of the campaign. The research shows that the model of the openminded voter is not an appropriate char-acterization of the undecided voters; they have fewer opinions on issues are are less likely to participate in election events or expose themselves to political communications than voters whose decisions are made early. Similarly, the switchers have been found to be "the least interested in the election; the least concerned about its outcome; the least attentive to political material in the formal media of communication; the last to settle upon a vote decision; and the most likely to be persuaded, finally, by a personal contact, not an 'issue' of the election." (footnotes omitted.)

While the authors recognize that the results from political studies may not apply to union representation elections, they also suggest:

> "One condition which might affect the impact of an employer's influence is the degree to which employees are aware of the employer's intent. Union supporters are likely to be sensitive to the employer's purpose. While such sensitivity might heighten perception of the influence attempt, some studies suggest

> it might serve to minimize its impact. The effectiveness of the promised or granted reward should also vary with its value to the employee, the degree to which it is related to the motivation for unionization, and, in the instance of a promise, the perceived likelihood of fulfillment. An employee may interpret a promise in light of previous unfulfilled employer promises and not be influenced. Or, he may distort the intent of the promise or grant of benefit to support his prior opinion, thinking that if the employer will promise or grant this kind of benefit when a union is only a threat, he would be likely to grant even greater benefits if union representation became a reality.... If employees believe that the employer will reward or sanction the group as a whole based on the election outcome, they may influence each other to vote against union representation." (footnote omitted.)

And, they add:

> "Conduct found not to exercise a significant influence on employee voting behavior may nonetheless be forbidden for other reasons. Attempts to influence employees by threats or promises may be proscribed to serve the symbolic function of demonstrating the existence of a national policy disapproving of such behavior. While current forms of campaigning may not be effective in coercing employees to vote contrary to their desires, the withdrawal of governmental regulation might encourage more vigorous efforts that would be effective. Finally, some of the Board's rules do not rest, to any significant extent, on assumptions as to impact, but on a desire to preserve the appearance of fairness in the Board's election processes.

In a critique of the Getman, Goldberg and Herman article, Patricia Eames has emphasized facts not mentioned in the political behavior studies on which they rely, such as:

> "the fact that the union has an uphill fight in the campaign. The employer is already in the plant; the union is not. Inertia is thus central to the campaign. Employees cannot get themselves a union without doing something quite more complicated and energy consuming-getting people to meetings, getting people to sign cards, getting people to read something,

> and ultimately getting people to make a commitment.
>
> A number of reflections of the uphill nature of the union's campaign are evident in the author's data. These include the correlation between a lack of knowledge regarding the union and a procompany vote; the fact thatthe company voters and union voters are equally familiar with the company campaign, but that union voters are considerably more familiar with the union campaign than those who vote company, but that the undecided who vote company are no more familiar with the company campaign than those who vote union, and the fact that the same phenomenon is true for switchers; the fact that of the polarizing of employee attitudes (proemployer and prounion) found by the authors, the pro-employer polarization is more intense; the fact that the union loses more of the voters predictable from attitudes and from intent than does the company; the fact that even in successful union campaigns there is a loss of union voters from those intending to vote union; and the fact that a substantial majority of undecided and switchers vote company."

"An Analysis of the Union Voting Study from a Trade Unionist's Point of View", 28 Stan. L. Rev. 1181, 1182 (1976) (footnotes omitted).

The study was also critiqued for lack of a control group and other methodological errors, and it was pointed out that at least 19% of the group <u>were</u> affected by the campaign. Eames argues further:

> "Similarly, as to employer speech, the significant report is the report of the data showing that the classification of threats and promises which has an impact on employees is the whole class of mid-campaign statements interpretable by employees as threats and promises, not simply that limited segment of mid-campaign statements that violates section 8(a)(l) as limited by section 8(c)."
> (at 1189, footnote omitted.)

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[See also, on this general topic, by Professors Getman, Goldberg and Herman, N.L.R.B. Regulation of Campaign Tactics, 3 The Behavioral Assumptions on which the Board Regulates, Stanford Law Review 1465; Union Representation Elections: Law and Reality, Russel Sage Foundation (1976); The Behavioral Assumptions Underlying N.L.R.B. Regulation of Campaign Misrepresentations; An Empirical Evaluation, 28 Stanford Law Review 263; also, see Getman & Goldberg, The Myth of Labor Board Expertise, 39 U. Chi. L. Rev. 681 (1972). Cf. Bok, the Regulations of Campaign Tactics in Representation Elections Under the National Labor Relations Act, 78 Harv. L. Rev. 38, 46-53, 88-90 (1964); Lewis, Gissel Packing; Was the Supreme Court Right?, 56 A.B.A.J. 877 Lj. 276 (1970). See also Samoff, NLRB Elections: Uncertainty and Certainty, 117 U.Pa. L. Rev. 228 (1968), and Summers, Politics, Policy Making and the NLRB, 6 Syracuse L. Rev 93, 106-08 (1954).

It cannot be concluded, as a matter of judicial perogative, that no rational basis exists for the prohibition against interference by promise or grant of benefit. Until further studies are done of voting behavior, it must be assumed that the finding of "interference, restraint and coercion" in the grant or promise of benefit is not unwarranted.

Respondent agrues in its Brief (at p.47) that General Counsel failed to prove that there was an increase in insurance benefits. This, however, is not dispositive. First, the insurance plan was in Respondents' possession, and the failure to produce evidence within the employer's province is some evidence that it would not be favorable to Respondent's position.

Hill-Behan Lumber Co., 162 NLRB 745, 749 (1967).

Second, it has never been alleged that the plan was identical to the IBT plan, and the employer errs either by decreasing or increasing benefits during an organizational campaign.

Third, the statements of Respondent clearly indicate a promise of increased benefit, whether these were delivered or not.

Respondents' reliance on May Department Stores Co., 174 NLRB 770 (1969), is misplaced, for reasons already stated in the foregoing discussion of "motive", and because Respondent failed to prove the existence of a "substantial" business justification for its wage and benefit changes. Similarly, there was no showing, as in Allis Chalmers Corporation, 224 NLRB 1199 (1976), cited by Respondent, beyond its mere assertion, that these improvements were required to make it competitive.

In NLRB v. Decorel Corp., 397 F.2d 488 (CA 7, 1968), cited by Respondent, the Seventh Circuit was influenced greatly by the fact that:

> "the 'promises' and their subsequent implementation did not vary from the provisions in the contract. The employees were promised nothing more by voting to reject the union than they thought they already had as a result of the contract negotiated with the union."

Respondent made no such showing here, and the tenor of the remarks made by Mendez was exactly opposite to those made in Decorel.

Respondent places great reliance on NLRB v. Modern Plating

Corp., 353 F.2d 46 (CA7, 1966). But there, the Court distinguished NLRB v. Exchange Parts, supra, on the ground that there "the employees had not requested a meeting with their employer", as had been done here. Respondent failed to show any such request in the instant case. Furthermore, the Court found the plan* granted increases to some who requested them and could not have been influenced thereby, while denying them to a larger group, to whom it would have been "an encouragement rather than a discouragement", a fact which is entirely absent here.

The fact that an increase in wages or benefits had been planned prior to organizational activity, which Respondent infers, is not dispositive where benefits are linked with an employer's no-union policy. Phillips Industries, Inc., 172 NLRB No. 232 (1968).

Furthermore, the granting of an unusually large wage increase, virtually 30% in this case, is evidence that an employer is attempting to induce employees to vote against the union, Savings Bank Co., 207 NLRB 269 (1973), so is the fact that wages were raised exactly to union scale for that area. Matthews Lumber Co., Inc., 96 NLRB 322 (1951)

In NLRB v. Grand Control Aircraft Co., Inc. 216 F.2d 572 (CA 9, 1954) a finding that an employer interfered unlawfully under Section 8(a)(l) by granting wage and insurance benefits, was held supported by evidence of collateral threats and inducements calculated to discourage organization.

With respect to Respondent's argument that one of its motives was to respond to legitimate employee requests, this is

insufficient, as was noticed in Scott and Williams, Inc., 99 NLRB 919 (1952). There, the Board ruled that a violation occurred where one of the employer's motives i& granting a unilateral wage increase had been to influence the choice of its employees in a union campaign, and it was impossible to separate the legal from the illegal motives.

Certainly employee interest is probative, but it hardly can be said to outweigh other evidence establishing Respondents' interference in the selection process, thereby intimidating, restraining and coercing its employees in the exercise of their rights under the Act.

While it has been maintained that an employer acts here in peril and cannot avoid violation, the correct course of action was initiated by the NLRB in Curley Printing Co., (69 NLRB 251 (1968) where the Board approved an employer's policy maintaining an existing plan subject to automatic termination upon execution of contract. The Board has also approved freezing wages until after election has been held. Respondent has failed to prove these alternatives were unavailable.

III. Unlawful Interrogation

A. Application for Work

In general in relation to a charge of unlawful interrogation.

> "[t]he coercive effect of the language used should be determined by the entire factual context in which it is spoken" NLRB v. Prince Macaroni Mfg. Co., 329 F.2d 803, 806 (1st Cir. 1964) quoting NLRB v. Armco Drainage & Metal Prod., 220 P.2d 573, 583 (6th Cir. 1955), cert. denied, 350 U.S. 338, 76 S.Ct. 76, 100 L.Ed 748(1955).

It is clear, however, that interrogating applicants for work concerning their union affiliations discouraging them from associating with a union by making derogatory or anti-union comments constitutes interference with employees rights of self-organization. See, e.g., NLRB v. Tidelands Marine Service, Inc., 338 F.2d 44 (CA 5, 1964); NLRB v. Texas Independent Oil Co., 232 F.2d 447 (CA 9, 1956); Roame Hosiery, Inc., 169 NLRB No. 146 (1968).

B. April 24 Conversation with Agustinez

Even after Section 8(c), the "employer free speech" provision, was inserted in the Taft-Harley Act [29 USC Section 158(c)], the NLRB held for a time that any employer interrogation of employees concerning union sympathies was, in itself, unlawful. Standard - Coosa - Thatcher Co., 35 NLRB No. 224 (1949). This "per se" doctrine was only abandoned in Blue Flash Express, 109 NLRB 591 (1954), where the surrounding circumstances were looked to for coercive signifigance.

It was not until 1967, however, that the Board came up with a new set of ground rules, in which interrogation was presumptively unlawful, unless it took the form of a poll designed to determine the truth of a union's claim of majority status, and even then only under stringent conditions. Struksnes Construction Co., 165 NLRA No. 102, 65 LRRM 1385 (1967), approved in NLRB v. Berggren & Sons, Inc., 406 F.2d 239 (CA 8, 1969).

It is clear that asking an employee where he was, then accusing him of being a liar because he had been seen at a union office is a coercive interrogation well within the

meaning of Section 8(a)(l). See, e.g., Lumberjack Meats, Inc., 150 NLRB No. 67 (1964). Indeed, any effort by an employer to discover an employees union affiliation, without communicating a valid purpose or assurance against reprisal is coercive. Charlotte Union Bus Station, Inc., 135 NLRB 228 (1962).

C. April 26 Incident at Respondent's Labor Camp:

The ALRB has held that Labor Code Section 1152 includes the right of workers to be visited by union organizers at their homes, regardless of where their homes are located or who their landlords may be. Silver Creek Packing Co., 3 ALRB No. 13 (1977). See, also, Andrews, 3 ALRB No. 45 (1977). If anything, interrogation in a labor camp would be more coercive than elsewhere, since employees might assume their employer would engage in a retaliatory eviction for answering incorrectly or refusing to cooperate. Although private property, an employee must be held to have First Amendment rights in such settings, including rights of association and privacy. See, e.g., Marsh v. Alabama, 326 US 501 (1946); UFW v. Superior Court, 14 C.3d 902, 537 P.2d 1237 (1975). A general responsibility to "keep order" would not permit inquiry concerning union affiliation.

In addition, the NLRB has sought to prevent interviewing at any place which might be considered a "locus" of managerial authority. People's Drug Stores, Inc., 119 NLRB 634 (1957), In its recently decided Merzoian Bros., Farm Management Co., 3 ALRB No. 62 (1977), the ALRB has held:

> "The right of employees who are residents of a labor camp to receive visitors is akin to the rights of a person in his own home or apartment. The owner or operator of a labor camp cannot exercise for the worker his right not to receive visits from union organizers." (at p. 4.)

D. Karahadian Interrogation on April 27:

Respondent cites Metro Truck Body, Inc., 223 NLRB 988, 990 (1976), and Pepsi-Cola Bottling Co. of Los Angeles, 211 NLRB 870, 872 (1974), for the proposition that casual, amicable conversations are not sufficient to constitute interference. However, these cases are distinguishable on their facts. Furthermore, the NLRB has held:

> "It is no defense that the questions (of employees on unionism) were asked in a bantering tone. Interrogation may be just as effective an invasion of (employee rights) when it is conducted under the guise of an exchange of pleasantries" Monarch Foundry Co., 32 LRRM 1457, (1953).

In Brownwood Mfg. Co., 140 NLRB No. 91 (1963), although the Trial Examiner found the employer's supervisor was merely fraternizing with its employees by entering into a conversation about the union, the Board held, that regardless of the supervisor's motives, his interrogation was a violation of Section 8(a)(l). See also, Hassenfeld Bros, Inc., 86 NLRB 1187 (1949); F.C. Russell Co., 92 NLRB 206 (1950), and, on somewhat similar facts; C.J. Pearson Co., 173 NLRB No. 228 (1968); Monroe Manufacturing Co., Inc., 200 NLRB 62 (1972).

Furthermore, in none of Respondents' cases was the interrogation limited to discussion of a shooting, and in none was the employer aware that he was conversing with one of the union's principle organizers. In Armstrong Cole Co. v. NLRB, 211 F.2d 843 (CA 5, 1954), even a casual question to an employee concerning the progress of an organizing campaign was held unlawful.

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IV. Surveillance and Creating an Impression of Surveillance:

A. Surveillance of All by Luna:

Employer surveillance of union activity is a violation of Section 8(a)(l), and therefore also, of Section 1153 (a), even if the incident is isolated. NLRB v. Clark Bros., Co., 70 NLRB 802 (1946) enf'd., 163 F.2d 373 (CA 2, 1974). In Clark Bros., the Court of Appeals wrote: "A ruling that an employer was privileged to engage in intentional eavesdropping would be likely to deter free discussion by employees of self-organizational matters."

It is sufficient if the employer or its agents behave in such a fashion as to lead employees to believe they are under surveillance, even if, in fact, they are not. See, e.g., Hendrix Mfg. Co. v. NLRB, 321 F.2d 100 (CA 5, 1963); Hotel Conquistador, Inc., dba Hotel Tropicana, 159 NLRB 1220, enf'd. per curiam 398 F.2d 430 (CA 9, 1968). With regard to Mr. Luna's motives, the NLRB has found an 8(a)(1) violation even where a supervisor was motivated solely by his own curiosity. Intertype Co. v. NLRB, 371 F.2d 787 (CA 4, 1967).

B. Surveillance of Ali by Agustinez:

On the other hand, an employer who stands near the doorway of his plant during the employees' lunch hour and observes the distribution of union leaflets on the sidewalk and in the plant does not thereby engage in unlawful surveillance, in view of the open nature of the distribution and its situs. Accacio Guerra (Columbia Casuals, Inc.) 190 NLRB No. 111 (1969). In Mt. Vernon-Woodberry Mills, Inc., 64 NLRB 294, (1945), a supervisor closely watched three employees who were active in

a union campaign, during working hours, and was held not to have engaged in unlawful surveillance, where the supervisor's conduct was a proper incident of his duties. Thus, simple observation of Mr. Ali's activities by Mr. Agustinez cannot be the basis of a finding of unfair labor practice, whereas the actions of Tony Luna are clearly within the statutory prohibition.

Respondent cites Sunnyland Packing Co., 227 NLRB No. 91 (1976); Flint Provision Co., 219 NLRB 523 (1975); Crowley, Milner s Co., 216 NLRB 443 (1975); The NVF Co., Hartwell Division, 210 NLRB 663 (1974); Birdsall Construction Co., 198 NLRB 163 (1972); Struksnes Contruction Co., Inc., 165 NLRB 1062 (1967), all for the proposition that:

> "the surveillance of an employee, even an employee who is engaged in protected activities, is not unlawful unless the surveillance has the coercive effect of inhibiting the employee's protected activities." (Brief, p. 30)

None of these cases, however negates the general proposition that it is sufficient, as Respondent's next cited case establishes, for an employer to act in such a way as to "tend to cause" or otherwise lead his employees to believe he has engaged in surveillance, and that proof of the "furtive nature of the snooping", is sufficient. NLRB v. Mueller Bros. Co., 509 F.2d 704 (CA 5, 1975), quoted in Respondent's Brief at 31. See also, Maggio-Tostado, 3 ALRB No. 33 (1977).

The case cited by Respondent as "similar' to the present one, Aileen, Inc., 218 NLRB 1419 (1975) (Brief, p. 32) has no similarity to the present case whatsoever.

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V. Threats

A. Threat to Discharge by Agustinez:

A direct threat to discharge union adherents for lawfully passing out union literature, buttons or authorization cards is a clear violation of Section 8(a)(l). See, e.g., NLRB v. Newhoff Bros. Partners, 375 F.2d 372 (CA 5, 1967); Almeida Bus Lines, Inc., 140 NLRB 280 (1962).

B. Implied Threat by Karahadian:

Professor German has written that these are the "most vexing" cases, yet he has also stated:

> "It is fairly clear that language which on its face can be read either as coercive or not can be held to constitute an unfair labor practice when the language is read in light of other conduct on the part of the speaker, such as discriminatory discharges, surveillance of employees and threatening interrogation, at least when that other conduct is rather directly related in time and space to the speech which is under consideration by the Board, (emphasis added)".

While none of the other acts which form the subject of this complaint, other than the interrogation which occurred 3.9 in the same conversation, are directly attributable to the 20 speaker, yet as owner and principal corporate officer in charge of labor relations, all acts of Respondents' supervisors are attributable to him. It remains possible, however, to construe Mr. Karahadian's remarks to Mr. Ali and Nage either as innocent inquiries in a spirit of mutual concern and good will, or as a veiled threat that unionization would bring violence. This ambiguity is complicated by language differences, so that regardless of the fact that one message may have been intended by the speaker, another was received by the parties listening.

A number of cases have held that where there are conflicting versions of a statement and multiple interpretations, not all of them coercive, the Board will refuse to isolate one version of the testimony to support a finding of violation,, See, e.g., Valley Feed & Supply Co., 135 NLRB 778 (1962); U.S. Gypsum Co., 93 NLRB 966 (1951); Dayton Vacuum Truck Service, 170 NLRB 192 (1968); 176 NLRB No. 112 (1969)

Since the evidence was unclear and contradictory as to exactly what was said, no clear responsibility of the speaker for the other unfair labor practices charged in the complaint emerged in the hearing, and misunderstanding rather than hostile motive was the probable basis of the conversation, no unfair labor practice can be found.

VI. Discriminatory Refusal to Rehire Oved Valdez;

General Counsels' argument that it need not prove knowledge of union membership is inconvincing here, since Valdez was immediately rehired after layoff, and evidence was conflicting as to the actual cause of the refusal.

While it is true, as General Counsel alleges, that a supervisor's knowledge is often routinely imputed to the employer, NLRB v. Alabama Marble Co., 83 NLRB 1047(1949), and direct evidence of respondent's knowledge of union activity is unnecessary to a finding of discriminatory refusal to rehire, NLRB v. Link Belt Co., 311 U.S. 584, 602 (1940); Rosen Sanitary Wiping Cloth Co., Inc., 154 NLRB 1185 (1965); (General Counsel's Brief at 33-34), knowledge here was plainly insufficient, since

circumstantial evidence pointed not to union affiliation, but nepotism as the true motive, and the evidence was insufficient even with regard to the fact of refusal.

The UFW states in its Brief, although the testimony did not clearly establish this fact, that "Reyes had more than any other Mexican in the crew supported the UFW and alone in the crew had associated with and worked with the Arabian members of the crew" (at p.19). This may have been the case, yet Respondent may still have lacked knowledge of union membership or activity.

The UFW also cites the history of farm labor organizing to establish the point that a pattern o& practice of "grower efforts to segregate different racial groups and to encourage racial division and distrust, both to increase production (by seeding ethnic competition) and prevent effective cross-racial organizing" was responsible for the refusal to rehire Javier Reyes. While these arguments carry some weight, and have been recognized by authors writing the field, they are not sufficiently supported in the evidence, either by expert testimony or requests for judicial notice, sufficient to support a finding of discriminatory refusal to rehire.

VII. Discriminatory Transfer or Reassignment

In general, transfers for the purpose of isolating union adherents from other employees, or in retaliation for union activities constitute a violation of Section 8(a)(1) and (3) of the NLRA, and therefore, also Section 1153 (a) and (c) of the ALRA.

Sunbeam Corp., Dumas Div., 211 NLRB No. 75 (1974).

In an early case, the NLRB made it clear that the standard in discriminatory transfer and reassignment cases, was the desirability of the job to the particular employee with respect to whom discrimination is alleged, regardless of how other employees might consider its comparative desireability. Phelps Dodge Refining Corp., 38 NLRB 555 (1942). It, thus, is unimportant that General Counsel did not prove that a clear wage loss occurred in connection with the transfer of Ferrel.

Furthermore, it is plain that pay should not be the sole criteria for discriminatory transfer or reassignment. More onerous work, Extendicare of Kentucky, Inc., 199 NLRB 395 (1972), or more arduous or less agreeable work, Nassau Glass Corp., 199 NLRB 476 (1972), have also been considered violative of the Act,

In Kansas City Power & Light Co., v. NLRB, 111 F.2d 340 (CA 8, 1940), the transfer of an employee was held discriminatory against a claim by the employer that the transfer was only temporary, where the employer knew the employee was engaged in union activities and the transfer took place at a critical formative stage in the union's organizational campaign. See also, Consolidated Casinos Corp., 164 NLRB 950 (1967) (temporary demotion with no loss of pay).

The timing of Ferrel's transfer, occurring on the opening day of the union's campaign and shortly after learning of her union activity, likewise indicates discriminatory motivation. NLRB v. Lowell Sun Publ. Co., 320 F.2d 335 (CA 1, 1963); Business Supplies Corp., 147 NLRB 121 (1964); Elsa Canning Co., 154 NLRB

No. 139 (1965).

The fact that Ferrel was the only UFW organizer in packing leads to an inference that the transfer was intended to keep her away from those employees during a critical stage in the union's organizing drive. Cedar Hills Theatres, Inc., 168 NLRB 871 (1967); NLRB v. Tanoper, Inc., 522 F.2d 781 (CA 4, 1975); Associated Mills, Inc., 190 NLRB 113 (1971); Erie Technological Products, Inc., 218 NLRB No. 126 (1975).

Timing has also been held critical in cases where the transfers occurred during the critical period for obtaining authorization cards, or, more directly to the point, on the day after an employee first wore a union organizing button. Halliburton Co., 168 NLRB 1091 (1968). In Champa Linen Service Co., 177 NLRB No. 69 (1969), transfer of a union leader a few weeks prior to an election was held discriminatory.

It is not necessary to reach the issue of constructive discharge.

Respondents' reliance on American Bakeries Co., Langen-dorf Bakeries, 200 NLRB 538 (1972), is misplaced, since in this case the employers' motivation for transferring Ferrel was not "solely economic" (Id. at 592, emphasis added). A one-day transfer is sufficient to discourage union membership where the only union activist in a crew is transferred to a less desirable job shortly after being reprimanded for distribution of union literature, and on the first day of the union's campaign.

Respondent, however, distinguishes these cases, arguing Ferrel was "explicitly warned concerning her insubordinate conduct". There is no basis in the evidence for this assertion.

Respondent throughout assumes Ferrel ' s insubordination, a fact hotly contested by the witnesses and, based on my observation of their demeanor, not based on substantial evidence.

VIII. Discriminatory Discharge

The discharge of Ferrel must be considered in light of her earlier discriminatory transfer, and the testimony of Espinoza concerning her motivation and intent.

In general, however, it is exceptional that an employer will admit having a deliberate motive to penalizing union activity or membership.

Thus, in Pennsylvania Greyhound Lines, Inc., 1 NLRB 1, 23 (1935) enforcement denied in part, 91 F.2d 178 (CA 3, 1937), rev.d on other grounds, 303 US 261 (1938), the Board wrote

> "Here, as generally, in discharging these employees the respondents did not openly state that they were being discharged for union membership or activity, so that standing by themselves the actual discharges constitute equivocal acts in the light of the conflicting reasons that are advanced. In reaching a decision between these conflicting contentions, the Board has has to take into consideration the entire background of the discharges, the inferences to be drawn from testimony and conduct, and the soundess of the contentions when tested against such background and inferences...(A)s the Supreme Court has stated 'Motive is a persuasive interpreter of equivocal conduct.'"

Among test-writers and commentators the question of motive and burden of proof in discharge cases has received some attention. Thus, the problem of proof is discrimination cases has been commented on by Professor Morris:

> "The NLRB reports are full of cases in which an employer is accused of having fired an employee in order to discourage union member-

> ship, and the employer offers evidence that some other motive (reduction of force due to slackening production needs, neglect of work, abseenteeism, fighting, refusal to follow orders, poor workmanship, etc.) was the true cause for the termination. It is the Board's task to weigh the evidence, both direct and circumstantial to credit and discredit testimony, to draw inference, and to make ultimate findings of fact as to whether a violation of Section 8(a)(1) has occurred. Morris, The Developing Labor Law, 116 (1971).

And, as Morris comments in a different section, "most Section 8(a)(1) cases turn upon findings of fact and problems of credibility". Id. at 29. Furthermore, as the Ninth Circuit declared in Shattuck Denn Mining Corp. v. NLRB, 362 F.2d 466, 470 (1966) :

> "Actual motive, a state of mind, being the question, it is seldom that direct evidence will be available that is not also self-serving. In such cases, the self-serving declaration is not conclusive; the trier of fact may infer motive from the total circumstances proved. Otherwise, no person accused of unlawful motive who took the stand and testified to a lawful motive could be brought to book."

Circumstantial evidence of motive to discourage union membership is therefore sufficient, since that is all that is generally available. NLRB v. Putnam Toot: Co., (6th Cir. 1961) 290 F.2d 663, 48 LRRM 2263.

Yet, Professor Oberer has written:

> "If an employer discharges an employee who is actively engaged in seeking to organize the employer's plant, the employer may be presumed to intend to discourage union membership, since the latter follows not only forseeably but, it would seem, inescapably from the employer's act, however much he might regret it because of the loss of union leadership and the fear and suspicion generated among his employees. However, if the real

> motive for the discharge is shown to be a breach of shop rules by the employee, the discouragement of union membership is justified or privileged: the employer has committed no offense, despite the unavoidable, and hence intended (pursuant to the common-law presumption), consequence of discouraging union membership." Oberer, The Scienter Factor in Section 8(a)(1) and (3) of the Labor Act: Of Balancing, Hostile Motive, Dogs and Tails, 52 Cornell L. J. 491, 505 (1967).

Oberer concludes, that:

> "the burden should fall upon the employer at least to raise the issue of his justifying motive by the presentation of supporting evidence. Otherwise, the trier of fact (the Board) is entitled to find against him on the basis of what is at minimum a prima facie case." Id. at 506. See also, Gertman, "Section 8 (a)(3) of the NLRA and the Effort to Insulate Free Employee Choice", 32 U. Chi. L. Rev. 735, 743 (1965).

Professor Gorman comments further, in support to Professor Oberer:

> "In any event, it is not necessary that the General Counsel demonstrate that union activities were the sole actuating cause for the discharge or lesser discipline. The record in many cases will justify the inference that the discipline was precipitated in part by union activity and in part by a poor work record. In such cases a violation may be found, although there is no consensus as to what should be the required quantum of anti-union animus in order to make out a violation." Gorman, Basic Text on Labor Law, Unionization & Collective Bargaining, 138.

At least one circuit has held that if improper motive contributed in some part, that is sufficient. S.A. Healy Co. v. NLRB, 453, F.2d 314 (CA 10, 1970), and circumstantial evidence may be relied on. Lapeer Metal Products Co., 134 NLRB 1518, 49 LRRM 1380 (1961), Standard Dry Wall Products, Inc., 188 F.2d 162, Enforcing 91 NLRB 544 (1961).

In Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977), the ALRB held the existence of "independent grounds" for the discharge of an employee did not preclude a finding that the motivation for the discharge arose in part from the employer's anti-union motivation. See also, AS-H-NE Farms, 3 ALRB 53 (1977).

The ALRB also declared in S. Kyramura, Inc., 3 ALRB No. 49 (1977):

> "Discriminatory intent when discharging an employee is normally supportable only by the circumstances and circumstantial evidence. Amalgamated Clothing Workers of America, AFL-CIO v. NLRB, 302 F.2d 186, 190 (C.A.D.C. 1962), citing NLRB v. Link-Belt Co., 311 U.S. 584, 597, 602, 61 S.Ct. 348, 85 L.Ed. 368 (1941). The Board may draw reasonable inferences from the established facts in order to ascertain the employer's true motive. Even though there is evidence to support a justifiable ground for the discharge, a violation may nevertheless be found where the union activity is the moving cause behind the discharge or where the employee would not have been fired "but for" her union activities. Even where the anti-union motive is not the dominant motive but may be so small as the last straw which breaks the camel's back, a violation has been established." Citing NLRB v. Whitfield Pickle Co., 374 F.2d 576, 582, 64 LRRM 2656 (5th Cir. 1967).

Furthermore, the NLRB has held that an employee discharge accomplished under circumstances that give the employee the idea that it was for union activities violates Section 1153(a). NLRB v. Vacuum Plating Co., (1965) 155 NLRB No. 73, 60 LRRM 1401.

The test is thus one that looks to the effect on the employees rather than the intent of the employer.

In Radio Officers Union v. NLRB, 347 US 17 (1954), Justice Reed wrote for the Supreme Court:

> "specific evidence of intent to encourage or discourage is not an indispensable element of proof of violation of §8(a)(3)....Both the Board and the courts have recognized that

proof of certain types of discrimination satisfied the instant requirements. This recognition that specific proof of intent is unnecessary where employer conduct inherently encourages or discourages union membership is but an application of the common law rule that a man is held to intend the foreseeable consequence of his conduct, [citations omitted] Thus an employer's protestation that he did not intend to encourage or discourage must be unavailing where a natural consequence of his action was such encouragement or discouragement. Concluding that encouragement or discouragement will result, it is presumed that he intended such consequence. In such circumstances intent to encourage is sufficiently established." Id. at 44-45.

Futhermore:

"Where encouragement or discouragement of membership in a labor organiztion can be reasonably inferred from the nature of the discrimination, it is not necessary to introduce substantive evidence of employee response to the discrimination." 48 Am. Jur.2d §542, citing Radio Officers v. NLRB,

In NLRB v. Erie Resistor Corp, supra at 228-30, it was further held a finding of intent might be:

"[F]ounded upon the inherently discriminatory or destructive nature of the conduct itself. The employer in such cases might be held to intend the very consequences which foreseeably and inescapably flow from his actions and if he fails to explain away, to justify or to characterize his actions as something different than they appear on their face, an unfair labor practice charge is made out.[Citing Radio Officers, supra] But, as often happens, the employer may counter by claiming that his actions were taken in the pursuit of legitimate business ends and that his dominant purpose was not to discriminate or to invade union rights but to accomplish business objectives acceptable under the Act. Nevertheless, his conduct does speak for itself--it is discriminatory and it does discourage union membership and whatever the claimed overriding justification may be, it carries with it unavoidable conse-

> quences which the employer not only foresaw but which he must have intended."(emphasis original).

In NLRB v. Great Dane Trailers, Inc., 388 U.S. 26 (1967), an employer's refusal to pay strikers the vacation benefits granted to non-strikers was held by Chief Justice Warren to be a violation of the Act. Warren's opinion, however, created two categories of § 8(a)(3) violation; those in which the discrimination is "inherently destructive" of important employee rights, where no proof of anti-union motive is required, even in the face of business justification, and those in which the "adverse effect" on employee rights is "comparatively slight", in which case anti-union motive must be shown, "if" (original emphasis) "the employer has come forward with evidence of legitimate and substantial business justifications for the conduct." Id. at 34,

> "Thus, in either situation, once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that it was motivated by legitimate objectives since proof of motivation is most accessible to him." Id. at 34 (emphasis original)

This approach requires:

> "That the Board assess the degree to which encouragement, or discouragement of membership will result, the degree to which employer or union interests are involved, and to reach a judgment which openly grapples with that which is truly in dispute — the relative advantage or disadvantage which is to be accorded one of the contestants in an economic battle. It is a process of judgment, moreover, which at least attempts the creation of objective standards rather than placing reliance upon the fictions of judicial imagination." Christensen and Svanoe, "Motive and Intent in The Commission of Unfair Labor Practices", 77 Yale L.J. 1269 at 1331.

General Counsel argues in its Brief (at o. 37), that the firing of Ferrel was "inherently destructive" of employee rights, but suggests in the alternative that the totality of the circumstances indicate a sufficient basis for finding discriminatory motivation, citing Tex-Cal Land Management, 3 ALRB No. 14 (1977). Both points are well-taken.

With respect to the specific issue of discharge based on violation of a company rule against union activity on company time, a violation "is not sufficient, by itself, to overcome evidence of anti-union motivation", NLRB v. Illinois Tool Works, 119 F,2d 356 (CA 7, 1946). Testimony did not establish the history or origin or Respondent's no-solicitation "Frule, nor was there testimony to the effect that the rule against solicitation was officially promulgated, posted, explained, or otherwise brought to the attention of employees generally. Wyman-Gordon Co., 62 NLRB 561 (1945). If such rules are not enforced or involved prior to a union's organizational campaign, they may be discriminatory. Commercial Controls Corp. v. NLRB, 258 F.2d 102 (CA 2, 1958).

This becomes more signifigant in light of testimony that Respondent distributed its own literature directed against the union on company time and property. See, e.g., American Thread Co., 101 NLRB 1306 (1952); Ward Body Works, Inc., 103 NLRB 680 (1953).

Timing has been considered an additional factor in determining whether discharge has been discriminatory, particularly where the discharge is for violation of a no-solicitation rule, and occurs at the height of a union's organizational campaign. Greenville Cabinet Co., 102 NLRB 1677 (1953).

In the same way, an employer's fear that union organizers will provoke its employees to oppose company policy and create dissension has been held sufficient to negate an allegation of just cause.

Thus, in Republic Creasoting Co., 19 NLRB 267 (1940), an employer was held to have discriminated in refusing reemployment to an employee pretextually, where his actual concern had been, as he alleged, that the employee was constantly stirring up dissension among fellow employees. See also, Jac Feinberg Hosiery Mills, Inc., 19 NLRB 667 (1940), where the employee was called "a disturbing influence in the mill."

Nonetheless an employer may promulgate reasonable no-solicitation rules and discharge an employee for repeated violations, where anti-union animus plays no part.

It has thus been established that "working time is for work". Republic Aviation Corp. v. NLRB, 324 US 793 (1945), quoting from Peyton Packing Co., (1943) enf'd 142 F.2d 1009 (5th dr.), cert denied, 323 US 730 (1944). Yet, nothing in this record indicates that any interference with the work performance of the packing or picking crews occurred in fact. In Paragon Die Casting Co., 27 NLRB 878 (1940), the Labor Board was influenced by the fact that there was no evidence that distribution of union literature during working hours interfered with employees efficiency. Indeed, in the present case, un-contradicted testimony established that no work was being done. Grapes had not yet arrived for packing and workers were simply standing idly by. See, e.g., Western Corrugated, Inc., 122 NLRB No. 125 (1959).

Milwaukee Electric Tool Corp., 112 NLRB 1135 (1955, G.F. Euenus Equipment, Inc., 214 NLRB No. 151 (1974]

In NLRB v. William Davies Co., Inc., supra, an employer was found to have discriminated in discharging an employee who violated a company rule against union solicitation on company time, where he asked another employee to wear a union button rather than carry it in his pocket. See also, e.g., Crosby Chemicals, Inc., 85 NLRB 791 (1949); Singer Co., 153 NLRB No. 82 (1965); Greentree Electronics Corp., 176 NLRB No. 126 (1969).

In its Brief, the UFW argues (at p.14) that any rule prohibiting union solicitation while on company time but before work has actually begun is "an unreasonable impediment to self organization and therefore, discriminatory in the absence of evidence that special circumstances make the rule necessary" for maintaining "production and discipline", citing Republic Aviation Corp. v. NLRB, 324 US 793, 803, N. 10 (1945). In argument, the UFW further states, drawing on the facts of the instant case:

> "Ferrel was not working when she handed the late arriving picker a button. Nor was the arriving worker. That Ferrel may have been paid for this period of time is immaterial; the time spent waiting to begin packing could be analogized to a paid break or lunch clearly not "working time" for solicitation purposes. Seen in this light, the promulgation and enforcement or Respondent's policy that Ferrel could not hand out union materials to other workers who were not working during the time before she began packing violates the narrow strictures of NLRA precedent defining valid no-solicitation rules and thereby constitutes an independent violation of Section 1153(a),"

The UFW does not cite any ALRB or additional NLRB precedent in support of this proposition, and a search has failed to disclose any case precisely on point, although several similar cases support this proposition. Nonetheless, the argument

is an important one with wide ramifications for agricultural labor. The NLRB has held in similar fact situations that where an employee's union activities have no disruptive effect on operations, and no such claim was made at the hearing, the employer may not prevent the activity by withholding permission. Farah Manufacturing Co., 202 NLRB No. 99 (1973); Bob Henry Dodge, Inc., 203 NLRB No. 1 (1973).

In Talon, Inc., 170 NLRB No. 42 (1968), a violation of Section 8(a)(l) was found where the solicitation, admittedly in violation of a company rule prohibiting solicitation during working hours, took only two to three minutes, and did not interfere with production or cleanup of machines. In the present case, it took only two to three seconds. See also, Dayton Tire & Rubber Co., 207 NLRB 624 (1973).

More directly to the point is Mueller Brass Co., 501 F.2d 680 (CA 5, 1974), in which an employee was discharged for violating a no-solicitation rule by passing a union button to a fellow employee. The Court of Appeals held that the discharge was pretextual, as the real reason for the discharge was the employee's union activity.

In Mueller, the employees had not yet received their work assignments for the evening, and although they were on "company time", the Fifth Circuit held they were not engaged in "actual work", thus:

> "the period during which Blanton passed the union button to Reich, accepting the Company version of the incident, constituted nonworking time. Even though the alleged solicitation, under the Company version, occurred in a working area, the two individuals involved, Blanton and Reich, had not yet received their work assignments, and there

> was no evidence introduced that the mere passing of a union button resulted in or had the potential for the type of disruption which took place in the Patio Foods situation. See NLRB v. Peyton Packing Co. , Inc. , 5 Cir. 1944, 142 F.2d 1009, 14 LRRM 792 enf'g 49 NLRB 828, 12 LRRM 183, cert, denied 323 U.S. 730, 65 S Ct. 66, 80 L. Ed. 585, 15 LRRM 793. Accordingly, we find that Blanton's suspension and subsequent discharge (to the extent based on violation of the. no-solicitation rule) was violative [..] sec. 8(a)(1) of the Act is supported by substantial record evidence and is correct as a matter of law."

In an important footnote, the Court added:

> "The Board in its decision and order at 177 NLRB 778, 71 LRRM 1489 found that the Company's interpretation of the no-solicitation rule "unlawfully restricted solicitation." The interpretation was deemed unlawful because it" "allow[ed] solicitation during times when the employees were on scheduled non-work time such as coffee and lunch breaks, but not when they were on other nonwork time." Id. This is precisely the situation with which we are here confronted." (n.5).

When to these factors are added the failure to discharge a fellow employee for a similar violation and the highly emotional state of the supervisor, an inference may certainly be drawn that the discharge of Ferrel was motivated in part by anti-union animus.

Respondent argues in its Brief (at p.86) that additional cause for Ms. Ferrel's termination arose from her insubordinate behavior, by "mocking" her supervisor. However, the evidence does not fairly establish insubordination as the cause of discharge, and is in confluct as to whether the incidents alleged occurred at all.

Indeed, General Counsel cites this argument as a "shifting

reason" for discharge, in support of its position that the violation of the "no-solicitation' rule was pretextual.

Respondent's reliance in its Brief (at p. 92) on Tri County Medical Center, 222 NLRB 1089 (1976), is misplaced. Tri-County, a Section 8 (a) (1) violation was found for preventing distribution of union literature outside its hospital because the employer had failed to publish or disseminate to its employees a no-access rule concerning off-duty employees. (Cf. dissent by Member Fanning at 1090). No such rule was in effect here, nor was any "employer explanation" placed in evidence. Furthermore, the employers explanation was that the rule did not apply during "nonworking time", and while that term was not defined in Tri-County, in the agricultural labor context it may be intelligently applied to the hours of actual work, as distinguished from the period during which one is being paid. Certainly an employer would not be justified in dis-charging an employee unless it could prove that something more than a purely pro forma violation, without some substantial interference with employer interests in sufficient. Mueller Brass Co., supra (esp.N.5".).

A no-solicitation rule which does not make it clear to employees that they may distribute literature or otherwise solicit for the union except during actual working hours, unduly restricts employee rights to self-organization, in the absence of a clear showing by the employer that "special circumstances" make the rule necessary. Republic Aviation, supra.

For these reasons, I further hold Respondent failed to meet its burden of proof with respect to any "special circum-

stances" which may have existed, and its no-solicitation rule is, therefore, invalid on its face presumptively, as well as in application.

For the foregoing reasons, I issue the following Order.

O R D E R

I hereby order that the Respondent, Karahadian Ranches, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) threatening employees with layoff, suspension, or termination because of their union activities;

(b) discharging or otherwise discriminating against employees because of their union activities;

(c) granting or promising to grant benefits conditioned expressly or implicitly upon employee unionization;

(d) subjecting to surveillance or interrogation or threat of surveillance or interrogation, any of its employees by reason of their union activities;

(e) and in any other manner interfering with, restraining, or coercing employees in the exercise of those rights guaranteed them by Section 1152.

2. Take the following affirmative action deemed neceessary to effectuate the policies of the Act:

(a) Offer Maria Elena Ferrel immediate and full reinstatement to her former or substantially equivalent job without prejudice to her seniority or other rights and privileges and make her whole for any losses she may have suffered by reason

of her discriminatory discharge including interest measured thereon at seven percent per annum;

(b) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order;

(c) Immediately notify the Regional Director of the Coachella regional office of the expected time periods in 1977 in which it will be at 50 percent or more of peak employment, and of all the properties on which its employees v/ill work in 1977. The Regional Director shall review the list of properties provided by the Respondent and designate the locations where the attached NOTICE TO WORKERS shall be posted by the Respondent. Such locations shall include, but not be limited to, each bathroom wherever located on the properties, utility poles, buses used to transport employees, and other prominent objects within the view of the usual work places of employees, and in Respondent' labor camps Copies of the notice shall be furnished by the regional director in English, Spanish, Arabic and other appropriate languages. The Respondent shall post the notices when directed by the Regional Director. The notices shall remain posted throughout the Respondent's 1977 harvest period for 90 days, whichever period is greater. The Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(d) Arrange for a representative of the Respondent

or a Board Agent to read the attached NOTICE TO WORKERS to the assembled employees in English, Spanish and Arabic, and any other language in which notices are supplied. The reading shall be given on company time to each crew of Respondent's employees employed at Respondent's peak of employment during the 1977 harvest season. Immediately following each reading, a Board Agent will be afforded an opportunity, outside the presence of supervisors and management, to answer any questions the employees might have regarding their rights and the Act. The Regional Director will determine reasonable rate of compensation to be paid by the Respondent to all non-hourly wage employees to compensate them for the time lost at this reading and question and answer period. The day, time, and place for the readings shall be designated by the Regional Director after consultation by a Board Agent with Respondent.

(e) Hand out the attached NOTICE TO WORKERS (to be printed in English, Spanish, Arabic, and other languages as directed by the Regional Director) to all present employees, and j to all new employees and employees rehired in 1977, and mail a copy of the NOTICE to all of the employees listed on its master payroll for the payroll period beginning March 1, 1977 and ending June 10, 1977.

(f) Notify the Regional Director, in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it, under penalty of perjury, and notify him periodically thereafter, in writing, what further steps have been taken, until full compliance is achieved.

///

IT FURTHER ORDERED, that the Complaint be dismissed insofar as it alleges unfair labor practices not found herein.

DATED: September 8, 1977

KENNETH CLOKE
Administrative Law Officer.

NOTICE TO WORKERS

After a hearing in which all parties presented evidence, an administrative law officer of the Agricultural Labor Relations Board has found that we have engaged in violations of the Agricultural Labor Relations Act, and has ordered us to notify all of our employees, including all employees hired after March 1, 1977, that we will remedy those violations and that we will respect the rights of all of our employees in the future.

We also tell you that:

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

(1) to organize themselves;

(2) to form, join, or help unions;

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

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

(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:

(1) We will reinstate Maria Elena Ferrel to her former job and compensate her for any losses that she has sustained as a result of her discharge.

(2) We will not discharge employees for engaging in union activity.

(3) We will not threaten employees with discharge in Order to discourage union activity.

(4) We will not attempt to spy on employees who desire Unionization.

(5) We will not promise benefits or grant wage increases In order to discourage union activity.

DATED:_____

KARAHADIAN RANCHES

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!!