Brawley, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BRUCE CHURCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party, and MANUEL TORRES V., Charging Party.	)	Case Nos. 76-CE-124-E 76-CE-142-E 77-CE-65-E 77-CE-74-E 77-CE-121-E 77-CE-21-M 5 ALRB No. 45

DECISION AND ORDER

On May 14, 1978, Administrative Law Officer (ALO) Jennie Rhine issued the attached Decision in this matter. Thereafter, Respondent timely filed exceptions and a supporting brief with addendum and General Counsel filed a brief in reply to Respondent's exceptions.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO only to

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the extent consistent herewith.[1/]

Respondent excepts to the ALO's finding that employees Sergio Padron, Miguel Delgado, and Marco Antonio Arambula were discharged for protesting a change in their working conditions, in violation of Section 1153 Ca of the Act. We find merit in this exception.

The three employees were loaders in a ground crew which harvested lettuce for the Employer. In the morning of February 3, 1977, Respondent's area supervisor Jim Pyle, due to unusually wet field conditions, switched from the three-bed to the four-bed method of harvesting during the first cutting, which required the loaders to carry boxes across more rows of lettuce in order to reach the truck. The three loaders protested the change to field supervisor Marciel Luna, who told them that they were required to follow the instructions. The loaders refused to obey the work order, telling Luna that they intended to inform their Teamsters Union representative of the change in operations, and left the field. Luna did not consent to their departure. When the loaders returned two to three hours later with a union representative, they were told that they had been discharged.

At the time of the incident, a three-year collective bargaining agreement between the Employer and the Teamsters Onion was in effect. The agreement contained a no-strike provision and

[1/]The ALO recommended dismissal of the allegations in the complaint concerning the discharges of employees Jose Gutierrez Gabriel Contreras, Juan Aguilar, and Manuel Torres, As no exceptions were taken to these recommendations, the said allegations are hereby dismissed.

a grievance/arbitration provision.[2/] In the absence of a contractual no-strike provision, the loaders' actions in refusing to work and protesting the change in their working conditions might constitute concerted activities protected by Section 1152 of the Act. However, a no-strike provision in a collective bargaining agreement may act to waive employees' rights to engage in protected activity and the participating workers may be lawfully discharged. See Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 37 LRRM 2587 (1956). To decide whether Respondent violated the Act, we must construe the collective bargaining agreement to determine whether the employees' activities constituted a breach of the no-strike provision.[3/]

The no-strike clause in the agreement reads, in pertinent part:

> The Union and the Employer agree that there shall be no lockouts, strikes, slowdowns, job or economic action, or other interference with the conduct of the company business during the life of this Agreement.

The ALO, in examining the effect of the loaders' departure on work production, found that they were immediately replaced by other workers and concluded that, because their actions resulted in minimal interference with Respondent's operations, such

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[2/]Collective bargaining agreements entered into prior to the effective date of the Act are enforceable agreements, under Section 1.5 of the Act. Western Conference of Teamsters, Local 946, 4 ALRB No. 46 (1978).

[3/]The Board has the power to construe collective bargaining agreements in deciding unfair labor practice cases. NLRB v. C & C Plywood Corp., 385 U.S. 421, 64 LRRM 2065 (1967); Mastro Plastics v. NLRB, 350 U.S. 270, 37 LRRM 2587 (1956).

interference did not violate the no-strike clause. We disagree.

We find that the loaders' actions, 'leaving the field during working hours to protest their working conditions, fall within the contract's broad no-strike provision. Although their activity might not be termed a "strike", it clearly constitutes a "job or economic action or ... interference with the conduct of the company business ...." The collective bargaining agreement contained a grievance and arbitration provision. Grievance procedures, developed as a peaceful alternative to strikes, have generally been regarded as the quid pro quo for an agreement by a union not to strike. Textile Workers v. Lincoln Mills, 353 U.S. 448, 40 LRRM 2113 (1957). The proper course for Respondent's loaders to take in order to resolve their dispute was to file a grievance pursuant to the contract's grievance procedure.[4/]

4/ Strikes and work stoppages may be protected activity when the cause of the protest is not covered by the grievance and arbitration provisions of the contract. Gary Hobart Water Corp. v. NLRB, 511 F.2d 284, 88 LRRM 2830 (7th Cir. 1975), cert, denied, 423 U.S. 925, 90 LRRM 2921. However, we find that here the loaders' grievance was covered by the grievance procedure, which reads, in part:

> Should any dispute be raised by the Union as to the meaning or interpretation of any provisions of this Agreement, the parties hereto agree to resolve such disputes in the following manner ...

The dispute over the change in harvesting methods involved the meaning of the Management Rights clause:

> All the functions, rights, powers and authority which the Company has not specifically modified by this Agreement are recognized by the Union as being retained by the Company, including, but not limited to, the exclusive right to direct the work force, the means and accomplishment of any work, the determination of size of crews or the number of employees and their classifications in any operation, the right to decide the nature of equipment, machinery, methods, or process used, introduce new equipment, machinery, method, or process, and to change or discontinue existing equipment, machinery, methods, or processes.

Instead of refusing to work according to instructions, they should have waited until a break or the end of the work day to contact their union representative. He are aware that, in the agricultural setting, employees attempting to contact their union representatives may encounter difficulties which do not arise in a typical industrial plant. However, in this case, we find that the workers' absence for two to three hours violated the no-strike provision. Accordingly, we hereby dismiss those allegations of the complaint which pertain to the discharges of Padron, Delgado, and Arambula.[5/]

Respondent excepts to the ALO's conclusion that Jose Rosales was discharged in violation of Sections 1153(c) and (a) of the Act. We find no merit in this exception. The issue is whether Respondent used Rosales' departure from the lettuce field in April 1976 as a pretext to discriminatorily discharge him.[6/] The ALO credited Rosales' testimony concerning the incident over that of foreman Oliveros. This credibility resolution is supported by the

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[5/] Resetar Farms, 3 ALRB No. 18 (1977) is distinguishable on the facts from the instant case. There we upheld the ALO's conclusion that seven workers were discharged in violation of Section 1153 (a) for refusing to work in protest of a change in their working conditions, although they were covered by a contract with a no-strike clause, finding that the foreman had in effect condoned the arguable breach of the no-strike clause by not discharging the majority of the workers who had participated in the protest.

[6/] We affirm the ALO's finding that foreman Oliveros knew of Rosales' support for the UPW. Both Rosales and co-worker Cipriano Herrera testified that workers made statements about Rosales' union adherence to or in the presence of Oliveros, and Oliveros did not deny knowledge.

record.[7/] Rosales testified that he spoke to Oliveros before leaving the field to inform him that the cutting hurt his back and to make arrangements to rejoin the crew in Poston. His testimony that he spoke to Oliveros before leaving was corroborated by Cipriano Herrera, whom the ALO found to be a credible witness. Oliveros denied that he spoke to Rosales that day and stated that, upon seeing Rosales leave the field, he called Rosales' departure to the attention of field supervisor Carlos Rodriguez. Oliveros stated that he discharged Rosales for leaving work without notifying him. Oliveros' testimony was uncorroborated, although Respondent could have called Rodriguez to corroborate.[8/] In sum, the record supports the ALO's finding that Respondent's asserted reason for discharging Rosales, that he left his work without notice to or permission from Oliveros, was pretextual.

At no time did Respondent produce any convincing reason for discharging Rosales, its employee of eight years. As Respondent has not come forward with any legitimate and substantial

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[7/]The ALO based her credibility resolutions in part on the demeanor of the witnesses. To the extent that the resolutions were based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1977); El Paso Natural Gas Co., J93 NLRB 333, 78 LRRM 1250 (1971); Standard Dry Wall Products, 91 NLRB 544, 26 LRRM 1531 (1950).

[8/]We agree with the ALO's finding that Oliveros' testimony that he did not speak to Rosales that day is implausible. According to Oliveros, he watched Rosales walk off the job a short distance away, but said nothing to him although Rosales, working as a cutter in a trio of two cutters and a packer, must have hampered the work of the trio by leaving. Furthermore, Rosales did not leave immediately but instead stayed by the edge of the field for the rest of the work day; it appears incredible that Oliveros did not speak to him about his departure at any time that day.

business justification for the discharge, we affirm the ALO's conclusion that Rosales was discriminatorily discharged in violation of Sections 1153 (d and (a) of the Act. NLRB v. Great Dane Trailers, Inc., 388 U.S. 26, 65 LRRM 2465 (1967).

In affirming the ALO's conclusion, we also conclude that the unfair labor practice charge was timely filed. Section 1160.2 of the Act requires a charge to be filed within six months after the date of the alleged unfair labor practice. The unfair labor practice occurred in early May 1976 and the charge was filed on December 29, 1976, more than six months later. However, Rosales did not know of his termination until October 1976. Under NLRA precedent, the six-month period does not begin to run until the aggrieved party knows, or reasonably should have known, of the illegal activity which is the basis for the charge. NLRB v. Local 30, International Longshoremen's & Warehousemen's Union, 549 F.2d 698, 94 LRRM 3072 (9th Cir. 1977); Hot Bagels and Donuts Of Staten Island, Inc., 227 NLRB 1597, 95 LRRM 1586 (1977). Therefore, we find that the charge was timely filed.

ORDER

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

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employees to discourage their union activities; and

(b) In any manner, interfering with, restraining, or

coercing employees in the exercise of their right to engage in union activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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

(a) Offer Jose Rosales immediate and full reinstatement to a loader's job or comparable employment, without prejudice to his seniority or other rights and privileges;

(b) Make whole Jose Rosales for any loss of pay or other economic losses suffered by reason of his termination, plus interest thereon computed at the rate of 7 percent per annum, and reimburse him for travel expenses or other expenses he has incurred in his efforts to obtain interim employment, as prescribed in Butte View Farms, 4 ALRB No. 90 (1978);

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

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

(e) Within 30 days after issuance of this Order, mail a copy of the attached Notice in appropriate languages to each of the employees on its payroll at any time during the period from

October 1, 1976, until the end of the 1976-77 harvest season and also provide a copy to each of its employees employed at any time during its 1979 peak season;

(f) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its properties, the time(s) and place(s) of posting 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;

(g) 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 rate of compensation 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; and

(h) Notify the Regional Director within 30 days after the issuance of this Order of the steps it has taken to comply herewith, and continue to report periodically thereafter, at

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the Regional Director's request, until full compliance is achieved.

Dated: June 29, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After charges were made against us by the United Farm Workers Union and a hearing was held where each side had a chance to present its side of the story, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers to freely decide whether they wanted a union and to act together to help one another as a group. The Board has ordered us to distribute and post this Notice.

We will do what the Board has ordered, and also tell you that the Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;
2. To form, join, or help unions;
3. To bargain as a group and to choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help and protect one another; and
5. To decide not to do any of these things. Because

this is true, we promise that:

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

Especially:

WE WILL NOT fire or lay off any employee because he or she joined or supported a union or acted together with other employees to help and protect one another.

WE WILL offer Jose Rosales his job back, and we will pay him any money he lost because, we fired him, plus interest thereon at 7 percent per annum.

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One is located at 112 Boronda Road, Salinas, California 93907; telephone (408) 443-3160.

Dated: BRUCE CHURCH, INC.

By: _____
Representative Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Bruce Church, Inc. (UFW)

5 ALRB No. 45
Case Nos. 76-CE-124/142-E
77-E-65/74/121-E
77-CE-21-M

ALO DECISION

The ALO concluded that Respondent violated Sections 1153 (c) and (a) of the Act by discriminatorily discharging Jose Rosales, a UFW supporter, finding Respondent's asserted reason for discharge to be pretextual. The ALO concluded that the underlying OLP charge filed on December 29, 1976, was timely filed under Section 1160.2 of the Act, where Rosales, although discharged in early May 1976, did not know and could not reasonably have discovered this fact until October 1976 when he attempted to resume employment. The ALO concluded that the six-month filing period began to run in October.

The ALO found that the General Counsel had not met his burden of proving: (1) that Gabriel Contreras, Juan Aguilar, and Manuel Torres were discharged for union activity; and (2) that Jose Gutierrez was not rehired due to his engaging in protected activity, in absence of evidence showing that work was available.

The ALO concluded that Respondent discharged three loaders in violation of Section 1153 (a) because they left the field to protest a change in their working conditions and to inform their union representative. The ALO found that the no-strike clause in the collective bargaining agreement between Respondent and the Teamsters was not breached, because the workers' departure constituted only minimal interference with production. The ALO further concluded that the no-strike clause in this pre-Act contract was unenforceable because there was no evidence that the workers had freely selected the Teamsters as their collective bargaining representative.

BOARD DECISION

The Board reversed the ALO's conclusion that the loaders were illegally discharged. Finding that pre-Act collective bargaining agreements are enforceable under Section 1.5 of the Act, the Board concluded that the loaders' activities constituted a breach of the no-strike clause of the agreement. The Board found that the workers should have sought recourse under the grievance procedure, which covered the subject matter of the dispute, by contacting their union representative during nonwork time. The Board held that although agricultural employees' attempts to contact their union representatives may encounter difficulties not arising in a typical industrial situation, the loaders' absence for two to three hours violated the no-strike clause.

The Board affirmed the ALO's conclusion that Jose Rosales was discriminatorily discharged, finding that Respondent's asserted reason for discharge was pretextual and that Respondent did not come forward with any legitimate and substantial business justification.

REMEDIAL ORDER

The Board ordered Respondent to cease and desist from its unlawful practices, to offer Jose Rosales reinstatement and to make Rosales whole for economic losses suffered due to the discharge, and to sign, mail, post, and arrange for the reading of a remedial Notice to Employees.

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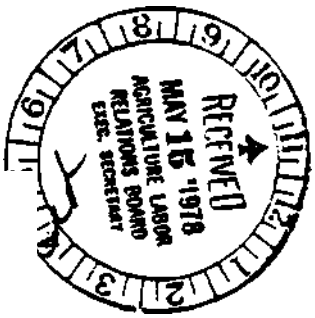

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BRUCE CHURCH, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party, and MANUEL TORRES V. , Charging Party.	CASE NOS. 76-CE-124-E 76-CE-142-E 77-CE-65-E 77-CE-74-E 77-CE-121-E 77-CE-21-M DECISION

Robert W. Farnsworth, Salinas, for the General Counsel

Kenneth E. Ristau, Jr. and William D. Claster (on the brief) of Gibson, Dunn & Crutcher, Newport Beach, for the Respondent

Anita Morgan, Calexico, for the Charging Parties

STATEMENT OF THE CASE

Jennie Rhine, Administrative Law Officer: This action arises from six separate charges that the respondent, Bruce Church, Inc. (BCD, committed unfair labor practices in violation of sections 1153(a), 1153 (c) and/or 1153(d) of the Agricultural Labor Relations Act (ALRA) (Cal. Labor Code §§ 1153(a), (c), and (d); all statutory citations are to the Labor Code, unless otherwise stated). The charges and the two complaints issued thereon allege that in 1976 and 1977, the

employment of eight BCI workers was terminated, by either their discharge or the company's refusal to rehire them, because of their participation in legally protected activities.

The respondent filed timely answers, the cases were consolidated, and a hearing was conducted at Salinas and El Centro, California, on eleven days during the period from 12 September through 7 October 1977. All parties were represented[1/] and had an opportunity to present evidence and examine witnesses. Counsel for the respondent and the general counsel filed briefs after the hearing.

THE EVIDENCE

I. INTRODUCTION

A. Background

A corporation, Bruce Church, Inc., is one of the nation's leading lettuce producers. It grows and harvests lettuce and some secondary crops in the Salinas, Santa Maria, San Joaquin, and Imperial Valleys of California, as well as parts of Arizona. Its headquarters is in Salinas, California. At its peak harvest season it employs approximately 1500 workers. Some harvest crews move from one valley to another as the lettuce is ready for harvesting, while others are formed for a single area. Some

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[1/] Manuel Torres V., who filed his own charge, appeared and intervened on his own behalf at the beginning of the hearing. The United Farm Workers of America, AFL-CIO (UFW), which filed the charges on behalf of the other workers, intervened when the hearing was reconvened in El Centro on 19 September 1977. I was subsequently advised that Torres would be represented by the UFW (see General Counsel Ex. 1-L). Both Torres and the UFW were absent from portions of the hearing, each having waived the right to be present throughout.

workers stay with the crews as they are shifted from area to area while others work in only one or two areas. Each harvest crew works under the direction of a crew foreman, who gets his orders from a harvest or field supervisor. The harvest supervisors work under the direction of the harvest manager, who throughout the material period was Noel Carr.

Bruce Church, Inc., and the Teamsters Union have had a series of collective bargaining agreements covering the field workers since July of 1970. A 3-year contract signed in July 1975 (Respondent Ex. 4) covers the period of the events at issue. There is no evidence that the field workers were consulted about the designation of the Teamsters as their bargaining agent prior to the negotiations of any of the contracts, though there is evidence that some workers participated in the ratification of 1976 modifications of the 1975 contract. The workers who testified were generally aware of the existence of the contract, but none was familiar with its provisions. The BCI truck drivers have been covered by a separate agreement with the Teamsters.

Late in 1975, after the ALRA came into effect, separate elections between the Teamsters and the United Farm Workers of America, AFL-CIO (UFW), were held in three geographical areas. These elections were set aside when the Agricultural Labor Relations Board (ALRB) determined that a statewide bargaining unit was appropriate. Bruce Church, Inc., 2 ALRB No. 38 (1976). A statewide election in which the UFW received a majority of the votes was held on 30 January 1976. At the time of the hearing

in this matter objections were pending, but official notice is taken that the UFW has since been certified by the board as the representative of all California BCI field workers. Bruce Church, Inc., 3 ALRB No. 90 (1977).

B. Personnel Policies

Crew foremen generally have the authority to hire, fire, assign work positions, grant leaves of absence and give warnings to workers in their crews, in conformity with company policy, which itself accords with the company's contract with the Teamsters Since the exercise of these powers is involved in each of the terminations at issue, a general discussion of the personnel policies is appropriate prior to the discussion of the individual cases.

New employees are to be hired only if no one with seniority is available; within that framework, during the material period a foreman could hire as a new employee someone who had previously been terminated by the company. Company policy requires a written warning to be issued to a worker who misses work without either prior authorization or good cause. The foremen have the authority, subject to review, to grant permission for an absence and, if approval was not obtained in advance, to review the reason for an absence and determine whether to issue a warning. A worker is supposed to be terminated upon receiving within six months a third warning for related offenses such as unapproved absences. It is also company policy to terminate a worker who misses more than three consecutive workdays without notifying the company; such a worker is deemed to have quit voluntarily.

While these policies nominally have been in effect since at least 1972, enforcement was lax and the foremen had great latitude in applying them until sometime after Noel Carr assumed the position of harvest manager around September of 1975. Under his direction, the policies were enforced more strictly.

Supervisors review the decisions of their foremen, and normally cosign notices of warnings or terminations. They also make personnel decisions in the absence of the foremen. They may overrule their foremen, though this rarely happens. A supervisor may also make a personnel decision himself or at the direction of Noel Carr, even though a foreman is present.

Once a warning or termination notice has been submitted to the office, only Noel Carr can rescind it. In the case of serious infractions which are cause for immediate dismissal, such as drunkenness or insubordination, the worker is usually suspended for 24 hours while Carr reviews the situation with the foreman or supervisor to determine if the termination is justified. In general, however, the hierarchical structure is respected, and the crew foremen, as the direct supervisors of the workers in their crews, have the authority to make most individual personnel decisions.

C. The Company's Attitude Toward The UFW

Employer animosity to the UFW is alleged to be a motivating factor in the termination, over an 18-month period following the UFW victory, of five individuals in this case. Regarding the company's attitude toward the UFW[2/], various field

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[2/] Distinguished from that of the foremen involved in particular terminations, which will be discussed below.

supervisors and crew foremen (including one called by the general counsel) currently employed by BCI denied categorically ever having been instructed to treat UFW supporters differently than Teamster supporters. They also denied being told to identify the UFW supporters among their crews. The only instructions they recalled being given about unions or elections had to do with directions about getting their crews to the polls in the various elections. None recalled statements from management to the effect that the company would not negotiate with the UFW.

Harvest manager Carr generally corroborated the foregoing. He also testified that the company's policy regarding the elections was one of neutrality, and the foremen and supervisors were not supposed to take sides. The company was aware that some employees supported one union, some supported the other, and some were indifferent; in some instances the company knew the identity of the supporters (Tr. IX, pp. 65-69).

Joe Robledo was called by the general counsel to rebut the evidence of company neutrality. Robledo worked for BCI for 18 years, the last 10 as a foreman of a crew. In naid-1976 Noel Carr fired him because he had been unable to obtain a permit required for driving a crew bus. On direct examination Robledo testified in essence that in meetings during the 1975 election campaigns Carr urged the foremen to tell the workers the Teamsters was the better union and if they chose the UFW there would be no jobs. Carr also told the foremen their jobs would be tougher

if the UFW won. He instructed the foremen to turn in a list of their crews, identifying the supporters of each union. The foremen were also told to inquire about the union sympathies of people who applied for work, and not to hire UFW supporters.

Robledo further testified that after the UFW victory in the January 1976 election the attitude of management hardened: the foremen were pressured to fire UFW members and to enforce strictly company policies (about absenteeism, for example) in areas which previously had been left to their discretion. Robledo himself supported the Teamsters and once bought beer for his crew to celebrate an earlier Teamster election victory, thinking, based on what Carr had said, that a UFW victory would mean the foremen's jobs were less secure because the workers would no longer take orders from the company. Tr. XI, pp. 119-143.

Visibly shaken by an aggressive exposure of his hostility toward Carr for firing him, on cross-examination Robledo recanted much of his direct testimony. What remained was that while Carr had told the foremen the Teamster contract was better for the workers than the UFW contract for various reasons, and told them to relay that to the workers, he also told the foremen to treat UFW and Teamster supporters, and all workers, equally. Some hardening of personnel policies coincided with Noel Carr's becoming harvest manager in mid-1975 and with the inclusion in the 1975 Teamster contract of a provision that a worker be given two warnings before being discharged. Other changes, including clearing the numbers and names of new hires with field supervisors (which the foremen were told was to prevent people from

jumping from one crew to another), occurred soon after the 1976 UFW victory. Robledo also testified that before the elections the company distributed leaflets saying it didn't care which union the workers voted for, the important thing was that they vote, and the foremen were told to urge people to vote. Robledo still maintained that the night before one election the foremen, following instructions, included on their payroll sheets an indication of who supported which union and that after the 1976 UFW victory, the foremen were told to watch out for Chavistas[3/] and union "agitators" who caused trouble by urging strikes or work stoppages. He also said that he himself had never hired, fired, or treated a worker differently in any way on the basis of the worker's support for a particular union. Tr. XI, pp. 148-194.

II. THE TERMINATIONS

The five terminations allegedly motivated by union activity, each factually distinct, are reviewed in chronological order. A discussion of the sixth charge, involving the discharge of three workers who left their jobs in a protest over working conditions, follows.

A. Jose Rosales

The complaint alleges that Jose Rosales was denied employment on or about 8 October 1976 because of his suspected

[3/] I.e., UFW members and supporters, so-called from the name of the union's president, Cesar Chavez.

support for and activities on behalf of the UFW. The respondent contends that Rosales was terminated on 3 May 1976 solely because he left his job and was absent more than 3 days without authorization or explanation.

Rosales had been employed by BCI for approximately eight years, the last three as a loader in a ground crew. Loaders pick up boxes of cut and packed lettuce and put them on a truck as it moves up and down the field. Rosales had previously done a variety of field jobs, including cutting lettuce. He transferred into the crew directed by Felix Oliveros in October or November of 1975. Rosales worked as a lettuce cutter briefly, but in mid-November replaced one of the crew's four loaders, Victor Torres, who took a leave of absence when the crew completed its work at one location and was about to move. Foreman Oliveros testified that he told Rosales the loader's job was his until Torres returned.

In April 1976, in Poston, Arizona, Oliveros gave Rosales a month's leave until May 2nd (Respondent Ex. 2). Rosales testified that before leaving he asked Max Curiel and Ramiro Arzola, two employees who handled personnel matters, whether he would have his seniority when he returned, and both of them said he would. Cipriano Herrera, a friend of Rosales and another loader in Oliveros[1] crew, testified that in his presence Rosales asked not only Curiel and Arzola, but also Oliveros, and Herrera heard all of them tell Rosales he would have his job back when he returned.

Rosales returned early from his vacation, rejoining the crew on April 26[4/] in Firebaugh, in the San Joaquin Valley. Oliveros told him when he returned that he could not work as a loader because Victor Torres had returned and resumed work, and Torres had more seniority than he. When he disagreed, according to Rosales, Oliveros told him he had no seniority on the "north side" (the San Joaquin and Salinas Valleys), only on the "south side" (Arizona and the Imperial Valley). Oliveros testified he told Rosales he had no seniority either in Firebaugh or in the crew.[5/] Oliveros also testified that he told Rosales he would have the next available job as a loader; Rosales denied that Oliveros said anything like that.

Rosales worked as a cutter part of the day he returned, and for a brief period the second day. After working about 1-1/2 hours he stopped, he testified, and told Oliveros that he (Rosales) could not cut because his back ached.[6/] Oliveros

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[4/] Resale's said he returned between the 19th and 22nd of April, but time cards (Respondent Exs. 38 and 48) corroborate Oliveros[1] testimony that Rosales returned on the 26th.

[5/] Considerable evidence concerning seniority was proffered. The basis contract provision is Article XII (Respondent Ex. 4, pp. 9-10). Harvest manager Carr, field supervisors, foremen, some workers, and Roy Mendoza of the Teamsters Union were examined on their understanding of the way in which the provision was applied in practice. Since it is not essential in my view of the case, this evidence is not set forth in detail.

[6/] Oliveros himself testified that loaders who stand erect and walk, carrying boxes, much of the time, often have difficulty cutting, which involves constant bending over, and complain that it hurts their backs. Cutters frequently have the same complaint about loading.

replied that it was too bad, there was nothing he could do. Rosales then said that he was leaving but would return when the crew was in Poston again, where he had seniority. Oliveros said that that was all right, he would see what arrangements could be made. Rosales did not resume work but, he said, stayed around the field for the rest of the workday. Herrera said that from a distance he saw (but did not hear) Rosales and Oliveros talking, and that Rosales then came to where Herrera and the other loaders were working, stayed there for a while, and then left the vicinity. Herrera did not know whether he left the field.

Oliveros testified that Rosales never said anything to him about stopping work, being unable to cut because of his back, or rejoining the crew in Poston. According to Oliveros, he did not know Rosales was leaving until a co-worker of Rosales said he was gone. Oliveros then noticed Rosales, about 100 feet away, at the edge of the field. Oliveros did not call after him to find out where he was going, or why, but did call the fact of his leaving to the attention of the field supervisor, Carlos Rodriquez, who was about 50 or 60 feet away. Oliveros said he did not see or talk to Rosales again until October. On 3 May 1976, after Rosales had been gone for more than three days,

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Oliveros wrote out a termination notice.[7/]

Rosales' next contact was when he went to the company office in Huron sometime in October 1976, and told Max Curiel he was returning for his job. He then first learned that he had been terminated. He returned the following afternoon when Felix Oliveros was present. According to Rosales, Oliveros told Curiel and him that he had been terminated for being absent without notifying Oliveros, the termination said everything, and there was nothing else to discuss. Oliveros said to Curiel that if he, Max, wanted Rosales to go back to work, Rosales could go back to work. Curiel did not reply. Oliveros told Rosales that he was a troublemaker, and Ramiro Arzola, who was also present, told Rosales there was nothing else to discuss, the termination was final. Rosales then went to the Teamsters Union.

As a result of a phone call by a Teamster representative there was another meeting in Boston, sometime in December, of Rosales, Curiel, Oliveros and an unidentified Teamster. At this meeting, Rosales testified, Oliveros told him that he

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[7/] The termination notice (Respondent Ex. 3, translated at Tr. VIII, p. 4) states:

> Jose H. Rosales returned from a leave that had been given him. He was a loader but he had no seniority in Firebaugh, so I put him to cut and he worked two half days, and he would stop. Then he stopped coming without hearing any more from him. Since he has been absent for several days, this is the reason that I-make this termination.

should not play the fool, that Oliveros had told him before to wait, and he would be given the next available job as a loader. Rosales told Oliveros that if he had said that before, Rosales would have stayed. Rosales was not reinstated, and the UFW subsequently filed the instant charge on his behalf.

The only other witness who testified about Rosales' termination, harvest manager Noel Carr, said that he did not know Rosales but vaguely remembered being contacted about him by a Teamster agent in October or November 1976, and understood there to be some question about a back problem. The termination was then six months old. He advised the business agent that if Rosales were to supply a doctor's certificate stating he was physically able to work, the company would try to place him as a new employee. Carr heard nothing further from either the Teamster representative or Rosales. Rosales testified that he was never told the company would rehire him if he supplied a doctor's note.

Regarding his union activity, Rosales testified that at the time of the election in January 1976, while he was in Oliveros' crew, he supported the UFW. He participated in conversations among the crew about the union, and on one day wore a UFW button. He also said that one time he heard a co-worker, Alberto Ruiz, tell Oliveros that he (Rosales) was a Chavista and should be fired. Oliveros did not say anything

in response. Another time Rosales heard Oliveros say that the UFW was a bunch of thieves and only screwed the people.[8/] Herrera also testified that he heard Rosales identified more than once as a Chavista in Oliveros' presence.

Oliveros testified that he didn't remember an Alberto Ruiz's ever working in his crew, and that no one ever called Rosales "names" in his presence or told him he should fire Rosales. He also denied making the statements about the UFW that Rosales attributed to him, and saying at the meeting in Huron that Rosales was a troublemaker. He did not deny knowing that Rosales was a UFW supporter, though he said he saw Rosales before his leave of absence talking in what appeared to be a friendly manner with Teamster business agents. Oliveros said that his only reason for terminating Rosales was his leaving without notice.

B. Jose Gutierrez

The general counsel alleges that on or about 9 December 1976 the respondent refused to rehire Jose Gutierrez because of his participation in concerted activity and his support for and activities on behalf of the UFW. Gutierrez worked at Bruce Church from 1970 until 30 April 1976 in Joe Robledo's crew. His testimony about his job and his efforts to return to work is uncontradicted.

[8/] Contrary to counsel's assertion that the remark attributed to Oliveros was a general anti-union comment (see respondent's brief, page 33), I think it is clear from the context that the statement referred to the UFW (Tr. VI, p. 34).

From 1970 through 1975, with the consent of his foreman, he left the crew in the spring and returned to it in September or October. During the summers he visited his family and picked melons for other employers. In 1976, following his usual practice, he left the crew on April 30th, telling Robledo he'd return in October. Robledo agreed. Over the summer Robledo was terminated. (When he testified, he was not questioned about Gutierrez.) In October Gutierrez returned to the vicinity of the crew, which was working in the San Joaquin Valley. Hearing from other workers that there were guards at the gate,[9/] Gutierrez did not go to the work site or, at that time, actually apply for reinstatement.

Gutierrez next attempted to be reinstated in Calexico sometime during December 1976. First he asked for work thinning lettuce from drivers of the buses that picked up the workers; he was told there was no work. Within the following week he applied unsuccessfully to five crew foremen and three field supervisors. On cross-examination Gutierrez said he was told by them that the crews were complete. He next went to the ALRB, and subsequently accompanied two board agents to "the Hole" in Calexico, the pick-up site for workers to be transported to the fields and a place where people frequently applied for work. He heard Max Curiel tell the agents that he, Curiel, could do nothing

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9/ The parties stipulated that BCI leased a portion of a large ranch, and the lessor maintained security guards at the entrance to the ranch.

about Gutierrez[1] job, they would have to talk to the company.

Marcelino Sepulveda had been an assistant foreman under Joe Robledo and took over the crew after he was terminated. Sepulveda confirmed that Gutierrez regularly left the crew over the summer. In 1976 Sepulveda was told by Robledo that he had given Gutierrez a written leave of absence, but Robledo didn't say for how long. Sometime later in the year, Sepulveda testified, he was advised by the company that he should fill out termination slips on Gutierrez and three others who had not returned at the end of leaves, and he did.

Sepulveda was one of the foremen Gutierrez asked for work in December. Sepulveda replied that he already had too many workers in the crew because some others had recently returned from their vacations. According to Sepulveda, Gutierrez did not say anything about his leave of absence. The others to whom Gutierrez said he applied and who testified, either were not asked about him or did not remember him. No documentary evidence directly relevant to Gutierrez was introduced. He admitted under cross-examination that he filed a claim for unemployment insurance in May 1976.

Gutierrez testified about the following participation in protected activities. In January 1976 he, along with other workers, signed a petition asking that the company stop deducting Teamster dues from the workers' paychecks. He also helped

circulate the petition on the bus on the way to work, handing it to people and encouraging them to sign. The bus was driven by Marcelino Sepulveda, who told Gutierrez, according to him, that "it didn't correspond to me [Gutierrez] to agitate the people." Gutierrez responded that it was their right, to which Sepulveda replied that they didn't know what they were doing. (Tr. V, p. 102.) The petition was not introduced, and the evidence does not establish either that the company received it or that it was sponsored by the UFW.

Sometime in February 1976 a work stoppage was initiated by some machine crews, and the ground crews, including Gutierrez, were asked to stop work in support. Gutierrez testified that he, in the presence of Sepulveda and a field supervisor, Sylvio Basetti, urged his crew to participate in the stoppage. On cross-examination he testified that he was not alone in urging the crew to support the stoppage, and that the entire crew did stop working. The work stoppage lasted about two hours.

Marcelino Sepulveda was not questioned in detail about these events. He said only that he never threatened Gutierrez for union activity.

C. Gabriel Contreras

The general counsel contends that Gabriel Contreras Romeros was discharged because of his union activity, while the employer contends that he was legitimately terminated for failing to report for work without notifying the company.

Contreras, who worked for Bruce Church for seven years, last worked on Friday, 28 January 1977. At the end of the workday, he testified, he felt ill but did not mention it to his crew foreman, Marcelino Sepulveda, because he thought he would be able to work the next day. Saturday, feeling worse, he did not go to work but did drive himself about six miles from his home to a doctor in Mexicali. He was ill through the following week, so ill that on Wednesday his wife went by bus to get more medicine from the doctor, and a nurse in the area came to his home to administer an injection. Friday, a week after he last worked, he had a friend drive him to the field so he could get his paycheck, which he needed for his medical expenses. When he got his check from Ramiro Arzola, he learned that he had been terminated, and could not get his job back without the approval of Noel Carr, who was not in the area that day. He was also told by Arzola that he would need proof that he was ill.

It is uncontested that Contreras did not contact the company for a week after he last worked. Contreras said that he himself was too ill to go or telephone on Saturday, when he went to the doctor, or through the following week. He had no telephone in his home, and no relatives who worked for the company and could relay a message. All his body ached, particularly his throat (where he had first felt the illness coming on), stomach and joints. Although he later said he had told no one (Tr. V, p. 63), Contreras said on cross-examination

that he told Arzola he, Contreras, had not contacted the company because he was unable to talk (Tr. V, p. 38).

Sepulveda, the foreman, testified that he terminated Contreras for missing work without notifying the company, and for no other reason. His understanding of company policy was that if someone who had two prior warnings missed work for more than three days, without notice, the worker was to be terminated on the fourth day. Contreras, as he admitted, had received two prior warnings within the previous six months (Respondent Exs. 41 and 42). Sepulveda recalled that he actually made out the termination[10/] on Thursday, the fifth day of work Contreras missed. Sepulveda's explanation is corroborated by the language of the notice:

> This person is terminated voluntarily. He has been absent four days and he hasn't even notified nor telephoned. For this reason it is given to understand that he retired voluntarily. For this reason he is terminated, and he has two warnings. [11/]

Sepulveda also said that though an absence may be excused by his foreman if the worker brings proof of a good reason, once the foreman has turned the notice in to the company he cannot do anything about it.

The following Saturday Contreras went once again to the doctor, and obtained a note saying he had received medical

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[10/] The notice is dated 28 January 1977 (Respondent Ex. 47), the last day Contreras worked.

[11/] Respondent Ex. 47, translated at Tr. X, p. 71.

attention and was unable to work from 28 January to 3 February (General Counsel Ex. 5). On Monday he went to the Hole, where Sepulveda refused to allow him to return to work. He was told by Sepulveda that he had been "pushed" to terminate him, Contreras said (Tr. V, p. 16), but Sepulveda denied saying anything like that (Tr. X, p. 65).

Frustrated in several attempts to see Carr, Contreras went to a Teamster business agent. Carr testified that as a result of being contacted by the Teamster representative, he had Arzola contact Contreras[1] doctor. Arzola reported back to him that according to the doctor Contreras had suffered from some sort of stomach flu, but nothing that would have prevented him from contacting the company.[12/] Based upon this information, Carr said, he decided not to reverse the termination.

Contreras testified about union activity consisting of serving as a UFW observer for his crew at a September 1975 election in Salinas, and carrying a flag in a UFW rally in the Hole the night before the January 1976 election. While Sepulveda denied knowing that Contreras served as an election observer, such knowledge must be imputed to the company. Contreras said he wore a UFW button the day of the election, and at the polls was given an armband used to identify observers. No field supervisors or foremen were present, but notice is

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12/ This evidence is not considered for the truth of the matter stated, but merely as information upon which Carr's decision was based.

taken of the fact that the company had its own observers. Furthermore, according to Contreras, Max Curiel was present in the voting place and gave him a ride back to the field after all the ground crews had finished voting, sometime after Sepulveda had driven the rest of Contreras' crew back. With respect to the rally, Contreras said "all" the company supervisors were observers, and Curiel exchanged some words with him. He also said thousands of people, including hundreds of BCI employees, most of whom had flags or banners, participated in the rally.

D. Juan Aguilar

Juan Aguilar Ramirez[13/] missed work on Saturday, 29 January 1977, and was discharged the following Monday. The general counsel contends that his foreman had been advised he would be absent and Aguilar's missing work was merely a pretext for getting rid of a known UFW supporter. The respondent contends that Aguilar was fired solely because after having received several warnings he missed work without notifying the company.

On direct examination Aguilar testified that he had to take his grandmother to the bus depot on Saturday, and that before leaving the company bus in the Hole Friday evening he told his foreman, Jose Corona (who also drove the bus), he would not be at work the next day. Corona replied that he

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13/ Aguilar's testimony appears in the transcript under the (incorrect) surname Ramirez. See Tr. I, p. iii.

didn't give a damn if Aguilar was absent. Other workers were present, including Manuel Torres.

Aguilar was reminded on cross-examination that he had previously said in a declaration that his conversation with Corona had taken place with Corona inside the bus and Aguilar outside.[14/] He then testified that after his initial exchange with Corona, he left the bus, went around it and opened the window by Corona, and reminded Corona he had told the workers to notify him when they were going to miss work. Without replying. Corona just closed the window.

Ramon Rubio Rivera,[15/] whose presence Aguilar did not mention, was called to corroborate him. Rubio testified that while he could not remember what day it was (on cross-examination he said it was a Friday), he was with Aguilar at the Hole early one morning, standing outside the bus, and heard Aguilar tell Corona that he (Aguilar) could- not go to work because he had to take his grandmother to the doctor. Corona responded that he didn't give a damn about that, and closed the door to the bus, shutting both men out. Rubio said he did not know if Aguilar went to work on the day of this exchange, but he did not go to the bus. He also said Aguilar was telling Corona about taking off the following day. He himself was ill

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[14/] Tr. I, p. 67. Aguilar also said in his declaration that he was taking his grandfather, not his grandmother, to the bus, Tr. I, p. 65. Aguilar testified at the hearing that his grandfather is deceased.

[15/] Rubio's testimony appears under the surname Rivera in the transcript. See Tr. II, p. iii.

and was there to ask Corona for time off. Since Corona neither granted nor denied his request, he telephoned the company office for authorization. Rubio said that this was the only time he called the office.

Company records indicate that on 21 January 1977 Rubio telephoned that he was ill and wanted time off, and he was given a leave of absence until 15 February; on 15 February he again telephoned and asked for, and was granted, further leave until 23 February (Respondent Exs. 36 and 37, roughly translated at Tr. VIII, pp. 125-127).

Harvest manager Carr testified that when he received the count of people at work in the various crews on 29 January, 1977 (the day Aguilar missed work), he became angry at the number absent. In Jose Corona's crew only nine were at work; the usual crew size was about 30 (Respondent Ex. 5). Carr said he issued specific instructions that anyone who was absent that day without authorization was to get a warning; while normally a, third warning was grounds for discharge, only those for whom this was the fourth or subsequent warning were to be terminated since this was an unexpected crackdown. When he issued the instructions, he testified, he did not know who had four or more warnings and consequently would be terminated.

While Aguilar maintained that he had not received any

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prior warnings,[16] the company produced copies of four other warnings issued within the preceding two months (Respondent Ex. 29). The authenticity of the documents was not challenged. The company also produced a summary of its records (Respondent Ex. 6) which shows 56 warnings (an unusually large number) issued on 29 January for not appearing for work, and two terminations. The other discharged worker was also a member of Corona's crew, and documents show he had more than three prior warnings (Respondent Ex. 28). There is no evidence that he too was a UFW supporter.

Jose Corona did not mention Carr's instructions about the 29th in his testimony. Corona denied being told by Aguilar that he would be off. He testified that he asked Aguilar on Monday why he had missed work Saturday, and Aguilar said that he had yelled at Corona. Corona replied that he had not heard him.

During the week preceding his discharge, Augilar acknowledged on cross-examination, he had asked Corona for a day off to go to the bank for money for a car payment. Corona gave permission, and Aguilar did not receive a warning. Company records (Respondent Exs. 30 and 31) confirm that Aguilar did not work on January 27th.

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[16] Aguilar appears to acknowledge on cross-examination that he received a warning for missing the previous Saturday, 22 January (Tr. I, pp. 48-49); however, I conclude that he did not comprehend the significance of the date and was referring to the 29th (see Tr. I, pp. 73-74).

Regarding his support for the UFW, Aguilar testified that during the election campaign in early 1976 he distributed UFW leaflets and buttons. He said that on one occasion on the bus, Corona, saying he did not want to see any flyers on the bus, took leaflets away from Aguilar, and another time Mike Payne, a company official, came onto the bus and took leaflets away from both Aguilar and Ramon Rubio. Aguilar also testified that at a time when he and Rubio were UFW representatives for their crew, Noel Carr told Aguilar not to mix with Rubio because he was crazy, and Aguilar was going to get in bad with the company.

Other witnesses corroborated Aguilar's testimony about Corona's hostility toward the UFW. Ricardo Corrales testified that Corona supported the Teamsters in the 1975-76 election period and on many occasions spoke derogatorily of the UFW. As recently as the spring of 1977 Corona had said that if it ever had to sign a contract with the UFW, the company would stop farming and would plant alfalfa or something else (requiring less labor). Corrales also testified that Corona was very critical of his work, which no other foreman has been, and of the work of the other UFW supporters, Aguilar, Manuel Torres, and Ramon Rubio; however, Corrales never received any written warnings from Corona about his work or anything else.

Ramon Rubio, well known for his UFW support, testified that he heard Corona tell Aguilar and others nor to pay

attention to him (Rubio), that he and the union were crazy, and that it was bad for them to believe in what he .said. He heard Corona say things like "'the Chavistas are crazy, the Chavistas are to rob you only'" (Tr. II, p. 80). Rubio also described how Corona made work more onerous for two workers he identified as UPW supporters.

Corona denied having harrassed or treated workers differently because they were UFW supporters, telling Aguilar that Rubio was crazy or to stay away from him, discussing unions with his crew, or saying the company would have to go out of business or plant alfalfa if the UFW won. He said he criticized Aguilar's and Corrales' work, but Torres and Rubio were good workers. While he denied knowing that Aguilar was a UFW supporter, he admitted having seen Aguilar wearing UFW buttons.

E. Manual Torres

Jose Manuel Torres Ventura[17/] was allegedly terminated because of his known support for the UFW and/or because it became known ,that he intended to testify to the ALRB about the discharge of Juan Aguilar. The employer contends that he was lawfully discharged for missing work without prior authorization or good cause after having received two prior warnings.

The sequence of events at the time of his discharge on 14 May 1977 is uncontested. Having been transferred on the

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17/ Torres is identified incorrectly in the transcript by the surname Ventura. (See Tr. I, p. iii.)

basis of seniority a little more than a week earlier from Jose Corona's crew, which had been disbanded because of a reduction in work, Torres was working as a cutter and packer in Tony Gonzales' crew. On Saturday, May 14th, he accepted a ride from the company labor camp, where he lived, to the work site with Jorge Velasquez, another worker in the crew.

Torres usually rode the company bus driven to and from the fields by the crew foreman. The company had a policy, of which Torres was aware but which was not strictly enforced, against cutters and packers driving their own cars to the fields; loaders, who worked later than the others, were excepted. Generally, those who drove their own cars, but not those who rode the bus, were told where the next day's work was to take place. Velasquez, who worked mostly as a cutter or packer but occasionally as a loader, usually drove his own car, according to Torres.

At any rate, that Saturday Torres did not know what field the crew was to work in, and neither, it turned out, did Velasquez. The two went to a field where the crew never appeared. For several hours, until 10:00 or 10:30, they waited for the crew and assisted some workers from another company who were picking strawberries in an adjoining field. Velasquez and Torres then returned to the labor camp, where they learned from the camp cook that two supervisors had been there looking for them. They stayed at the camp the rest of the afternoon,

but did not make any effort to locate the crew or explain their absence. The main office of Bruce Church was across the road from the labor camp, and in the camp itself was a personnel office that was staffed on Saturdays. Torres' explanation for not doing anything was that they didn't think of it, there was no point because someone had already .come looking for them.

The company's perspective emerges from the testimony of crew foreman Tony Gonzales, his field supervisor Ramon Robledo, and Noel Carr. When Carr received the crew head count that Saturday morning he was perturbed at the low count, particularly in Gonzales' crew. Robledo and another supervisor came to the office from the field at Carr's instructions, and Robledo told him that according to the foreman three workers were in the labor camp. [18/] Carr sent the supervisors to the camp to look for the missing men. The supervisors looked around the camp and, not finding the men, returned to Carr. He told Robledo to give them a warning, and if it was their third warning, to terminate them. Robledo returned to the field, and he and Gonzales filled out and signed termination notices for Torres and Velasquez, and a warning notice for the third person (Respondent Exs. 21, 12, and 25, respectively).

Torres testified that he had received only one prior warning; however, the company produced copies of three warnings

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[18/] Gonzales testified he saw Velasquez in the dining hall that morning, appearing unready to go to work, and he heard that Torres was out late the night before. The latter as uncorroborated hearsay is not considered for the truth of the matter stated, and Torres' own statement that he did not leave the camp the previous evening is credited.

issued to Torres by Corona for missing work in December 1976 and January 1977 (Respondent Exs. 15 and 16). Their authenticity was not challenged. Torres said that in the camp Saturday evening Corona told him he and Velasquez were fired for not reporting for work that day. Torres told Corona what had happened, but Corona said there was nothing he could do. Corona testified that he did not remember any such conversation. The following Monday when Gonzales gave Torres a copy of the termination notice, Torres did not try to explain what happened. It appeared to Gonzales that Torres already knew he had been terminated.

Carr testified that he did not single out Torres and Velasquez on 14 May; he did not know them and did not know their union sympathies. Velasquez was subsequently, reinstated, with seniority but without back pay. Carr said he was convinced by a Teamster representative that one of Velasquez' earlier warnings should be rescinded because Velasquez had had a good reason for missing work. No question was raised about the termination warning. Corroborating documentary evidence was introduced (Respondent Exs. 13a, 13b, and 14).

Carr also said he was not aware of anyone's contacting him or the company to contest the appropriateness of Torres' termination.

Juan Aguilar gave the only evidence of the treatment received by others who went to the wrong field. He testified

that one time when that happened to him and some other workers, not only did they not receive warnings, but after a meeting between Carr and Teamster representatives they were given four hours pay for the day. It turned out, however, that they had reported to the field as instructed the day before, but a last minute decision changed the field the crew was assigned to. Usually in such instances, though not on the occasion about which Aguilar testified, a supervisor goes to the field originally designated to redirect workers who report there. No evidence was introduced that suggested a last minute change of field assignment the day Torres and Velasquez went to the wrong one.

While in Corona's crew, Torres was friendly with both Juan Aguilar and Ramon Rubio, and had supported the UFW during the 1976 election campaign by distributing leaflets and buttons. He himself wore a button. He too testified, that Corona had warned him to stay away from Rubio. About a month after Aguilar was fired, according to Torres, Aguilar came to the field and asked him to testify. Corona asked Torres why Aguilar had come, and Torres told him. In what appears to be a more recent conversation with Corona about testifying for Aguilar, Torres said Corona told him "not to be too trusting, that [he] was hanging to a wall like a fly and with the least blow [he] was going to fall" (Tr. I, p. 89). Torres did not tell any supervisors at Bruce Church that he thought he was being fired because Corona knew he was going to testify for Aguilar, but

he said he did tell a Teamster representative. The Teamster business agent reported that he was unable to do anything, so Torres went to the ALRB.

Corona admitted being told that Torres was going to testify for Aguilar,[19/] but said he did not tell anyone. Corona also knew that Torres was a UFW supporter by his wearing union buttons, but said that was not a factor in issuing warnings to Torres for missing work. There was evidence that Corona granted leaves of absence to Torres when he requested them (see Respondent Ex. 19).

F. Sergio Padron, Miguel Delgado, and Marco Antonio Arambula

The general counsel contends that because Sergio Padron, Miguel Delgado Villalobos, and Marco Antonio Arambula were fired for protesting a change in working conditions, their discharges violate section 1153(a) of the Act. Respondent contends that they were lawfully discharged for refusing to follow orders and walking off their jobs in violation of the Teamster contract.

The men were three of four loaders in foreman Ramon Palacio's ground crew. On 3 February 1977 that crew and another, approximately 60 workers in all, were harvesting lettuce at the Corral Ranch in the Imperial Valley under the direction of field supervisor Marciel Luna ("Chino"), who in turn was directed

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19/ Corona said he was not told by Torres until after Torres had also been fired (possibly the second conversation referred to by Torres). Corona also said, however, that he was told by Aguilar when Aguilar visited the field (after he was fired, but before Torres was). I do not consider it important to determine who told Corona.

by area supervisor Jim Pyle. Soon after work began that morning Luna issued instructions to the loaders which they refused to follow.

An understanding of the distinctions between "three-bed" and "four-bed" harvesting is necessary to understand Luna's directions and the loaders' protest. Four-bed harvesting is generally done only when the field is unusually wet, to minimize the impaction of soil caused by the truck on which the lettuce is loaded, or after the field has been cut at least once and there is relatively little lettuce to be harvested. While three-bed harvesting was usually done at BCI, on the day in question the four-bed method was instituted by Jim Pyle, even though it was a first (and heavy) cutting for the field.

A "bed" is a row of lettuce (two heads wide) separated from the adjacent rows by furrows. As the term implies, in three-bed harvesting two cutters and one packer (called a "trio") cut the heads of lettuce from three beds at one time and pack them in boxes. As all the trios in a crew move through a field, the packed boxes are left lined up in every third furrow for loading. In four-bed harvesting, each trio cuts four beds at once, and the "lines" of boxes are left in every fourth furrow. Each box contains two dozen heads of lettuce, and weighs about 55 pounds.

The truck on which the lettuce is loaded is driven in the furrows, its axles straddling two beds and the furrow in

between them. Since the truck occupies three furrows in all, in three-bed harvesting a loader precedes it up the field, removing the boxes from the furrow in which the truck is running and setting them in the next empty furrow ("opening up the road"). Two more loaders, one on either side of the truck, lift the boxes over the intervening bed to the truck (about 3-1/3 feet), where the fourth loader stacks them. When one pass of the field is completed the truck is reversed down the field in the same furrows or "road," and the loaders on either side carry the boxes to the truck from the next closest lines, which on one side are three beds (10 feet) away from the truck, and, on the other side, four beds (13-1/3 feet) away. In four-bed harvesting the truck can pass up the field in the three furrows between the lines, and opening up the road is unnecessary. On the first pass, loaders on either side pick up the closest lines, one bed away from the truck. The dispute at Bruce Church arose over the second pass of the day.

There were seven trios in the crew that day (instead of the usual eight), so after the first pass when the loaders picked up two lines on one side of the field, five- lines remained to be loaded. As the loaders prepared to make their second pass on another road between the next two lines, Luna arrived on the scene. He had the truck positioned so that three lines were on one side and two on the other, and instructed the loaders to pick up the remaining five lines on two passes over a single road. If

the truck is reversed over the same road in four-bed harvesting as it is in three-bed harvesting, the outer lines are separated from the truck by five beds, or 16-2/3 feet. In this instance, the fifth line would have been nine beds, or 30 feet from the truck.

One of the loaders testified that because the field was cut for the first time that day, the boxes were about a foot apart from each other, whereas on the third or fourth cutting, when four-bed harvesting is commonly used, the boxes lie about every eight feet. Additionally, the field was set, making walking more difficult. The loaders considered the work more dangerous, as well as harder than usual. They said they would almost have to run to keep up with the truck, and were in danger of slipping under its wheels. Evidence that the loaders could control the speed at which the truck moved was uncontradicted, and no evidence substantiating a higher accident rate was introduced. The loaders' pay was unaffected.

Padron spoke for the loaders, [20/] in essence telling Luna they would not work the -way he directed, though they were willing to work in the usual manner. Luna replied that they had to work as he directed, and if they did not he would get others to do it. Padron told him they were going to the Teamsters

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20/ The extent to which the fourth loader participated is not clear. He was present during the conversation with Luna, but did not leave the field with the three who were subsequently discharge Padron said he was left behind to prevent the load from being picked up while they were gone, but he apparently returned to work as directed.

so that a union representative would see what the workers were being told to do. Luna did not tell them they would be fired if they left. [21/] The three then left the field.

Luna's version of this conversation is somewhat different. He testified that after he told the loaders they had to do the work as he directed, the person speaking just said they weren't going to, but did not say anything about the union. Luna did not respond but walked away, leaving the four standing there. He saw three .men walking towards the cars, but did not say anything to them at that time. None of the people in the other crew nor any cutters or packers in Palacio's crew raised any objections to the method of work.

The three drove to Brawley to the nearest phone, and telephoned the Teamster office in Calexico. They waited for a Teamster representative to join them, and then returned to the field during the lunch break, one to two hours later. In the meantime Luna replaced the three loaders and decided to terminate them. Noel Carr arrived at the field and approved Luna's decision. (Carr said he "instructed" Luna to terminate the three.) At Luna's direction Palacio completed termination notices discharging the three for refusing to follow orders and abandoning work, which Luna read over and signed (Respondent Exs. 44, 45, 46).

When the three returned to the field with the Teamster representative, Carr told the union agent they were already terminated because they had abandoned work, and he relayed that to

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[21/] Padron testified that Luna also told them they could "rest" if they didn't want to work as he directed; Delgado testified that Luna said they could leave.

them. Carr did not speak to the loaders. Padron was later told by a Teamsters agent the union could do no more, and no further grievance procedure was followed.

The Teamster contract contains a "Rights of Management" clause giving the company "the exclusive right to direct . . . the means and accomplishment of any work . . . [and] the right to decide the . . . methods . . . used," as well as a "No Strike -No Lockout" cause prohibiting "lockouts, strikes, slowdowns, job or economic action, or other interference with the conduct of the company business ..." (Respondent Ex. 4, pp. 21 and 22, respectively). I credit the workers' testimony that they had never seen copies of the contract.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following findings of fact and conclusions of law.

I. JURISDICTION

In its answers the respondent admits facts which establish jurisdiction under the ALRA, but denies the jurisdictional conclusions. Thus, while admitting it is engaged in growing and harvesting lettuce in California, the respondent denies it is an agricultural employer within the meaning of section 1140.4 (c). No evidence or argument was submitted in support of its denial. The uncontradicted evidence supports the conclusion that BCI is

a corporate agricultural employer, and I find accordingly.[22/]

The evidence is also uncontradicted that the workers whose terminations are at issue were all employed by the respondent solely to perform agricultural functions such as thinning, cutting, packing, and loading lettuce, and I accordingly find them to be agricultural employees within the meaning of section 1140.4(b).

The respondent denies, based on lack of information, that the DFW is a labor organization within the meaning of section 1140.4(f). Official notice was taken of the fact that in all cases concerning the UPW that the board had considered, it assumed or found the union to be such a labor organization; I also so find.

II. SUPERVISORS

Of the individuals alleged to be supervisors within the meaning of section 1140.4 (j) of the Act, the respondent in its answers concedes that all but two are "supervisors or foremen with supervisory authority."[23/] The individuals admitted to have

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[22/] Without expressly discussing the issue, the board has previously considered this company to be within its jurisdiction. See Bruce Church, Inc., 2 ALRB No. 38 (1976); Bruce Church, Inc., 3 ALRB No. 90 (1977).

[23/] General Counsel Exs. 1-G and 1-1. As with the jurisdictional issues, the respondent admits the fact but denies the conclusion. Again, no evidence or argument was submitted in support of its contention.

Considerable evidence was presented concerning two employees, Max Curiel and Ramiro Arzola, whose supervisorial authority was denied. My analysis of the case does not require a resolution of the issue, but I note for the record my conclusion that the supervisorial status of the two, who apparently held personnel and/or bookkeeping positions, has not been proved by a preponderance of the evidence. However, their involvement in personnel matters was so extensive as to give workers a reasonable basis for believing they had the authority to speak for the company on such matters, and I find them to be agents with apparent authority to bind the respondent insofar as they made statements regarding personnel matters.

supervisory authority comprise crew foremen who directly supervise the harvest crews in which the terminated employees worked, "harvest" or "field" supervisors to whom one or more foremen report, and Noel Carr, the overall manager of the lettuce harvest to whom the supervisors report. I find them all to be "supervisors" as defined by the Act.

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III. THE TERMINATION OF THE FIVE INDIVIDUAL WORKERS

A. Introduction

In large part common legal principles apply to the five workers who severally lost their jobs in different incidents. (The discharge of the three loaders involves a different legal analysis and will be considered separately.) In each instance violations of sections 1153(c) and (a) are alleged.[24/] Section 1153(c) makes it an unfair labor practice for an agricultural employer, "b[y] 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." Under section 1153(a) it is an unfair labor practice for an agricultural employer "[t]o interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152," which include "the right ... to form, join, or assist labor organizations." A violation of section 1153(a) necessarily follows from a violation of section 1153(c). Maggio-Tostado, Inc., 3 ALRB No. 33, p. 4 (1977); Tex-Cal Land Management, Inc., 3 ALRB No. 14, p. 5 (1977).

For a discharge to violate section 1153 (c), there must be discrimination, and the purpose of the discrimination must be to encourage or discourage union membership. Radio Officers'

[24/] In the case of Manuel Torres a violation of section 1153(d) is also alleged; this will be discussed below, when his case is considered.

Union v. NLRB, 347 U.S. 17, 42-43, 33 LRRM 2417 (1954).[25/] Specific evidence of intent to encourage or discourage is not an indispensable element of proof; where encouragement or discouragement is a natural and foreseeable consequence of the employer's action, it is presumed that the consequence was intended. Id., 347 U.S. at 44-45. Where an employee is allegedly discriminated against because of his or her union activity, employer knowledge of the activity must usually be shown. See NLRB v. Atlanta Coca-Cola Bottling Co., Inc., 293 F.2d 300, 309, 48 LRRM 2724 (5th C., 1961); but see AS-H-NE Farms, 3 ALRB No. 53, pp. 2-3 (1977).

The employer has the burden or proving that it was motivated by legitimate objectives once the general counsel has shown that the employer engaged in discriminatory conduct which could have adversely affected employee rights. NLRB v. Great Dane Trailers, Inc., 388 U.S. 26, 34, 65 LRRM 2465 (1967); Maggio-Tostado, Inc., 3 ALRB No. 33, p. 4 (1977). If evidence of a business justification is introduced, the trier of fact must weigh the evidence to determine the "real" reason for the termination. See Morris, The Developing Labor Law 116 (1971).

Turning to the issue of anti-UFW motivation in the present case, after considering the evidence as a whole, I conclude that the company's asserted position of neutrality between the Teamsters and the OFW, as testified to by Noel Carr, is disingenuous at

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25/ The pertinent part of section 8(a)(3) of the NLRA is identical to the quoted portion of section 1153 (c) . Applicable precedents of the NLHA shall be followed by the board. Section 1148

best. My conclusion is based in part upon the testimony and demeanor of former crew foreman Joe Robledo. While his direct testimony was impeached and is disregarded, the remainder of his testimony was credible. Carr urged the foremen to relay to the workers the management view that the Teamsters Union was preferable, and on one occasion had the foremen identify which workers they perceived to be supporters of each union. [26/] After the 1976 UFW victory, foremen were alerted to be on the lookout for UFW troublemakers. I find that BCI was hostile towards the UFW,[27/] a factor to be considered in determining the "real" reason for each of the terminations.

B. Jose Rosales

Jose Rosales, a UFW supporter, returned from a leave of absence to Felix Oliveros[1] crew in late April 1976 and, not being assigned to the loading job he desired, left after a few days. When he. returned to the company in October 1976, he was refused work.

Preliminarily, I conclude that while Rosales was not entitled to the loader's job when he returned from his leave of

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[26/] Counsel for the respondent concedes as much in the brief (page 61) by suggesting that the purpose was predicting the results of the election.

[27/] A distinction is being made here between the anti-UFW animus of the company and that of particular foremen, though evidence of the latter, as well as the company's longtime, voluntary relationship with the Teamsters, contributes to this finding. The attitudes of particular foremen and supervisors will be discussed as relevant to particular cases.

absence,[28/] essentially the seniority issue is a false trail. The crucial question is whether when he left his job Rosales simply walked off without saying anything, and was therefore justifiably terminated, or whether his foreman used his departure as a pretext for terminating him.

The testimony of Rosales and Oliveros, the only two with first-hand knowledge of what took place between them that day, is in direct conflict. Rosales says he told the foreman the cutting hurt his back and he was going to leave and return to the crew later, at a location where Oliveros had told him he had seniority for a loader's job, and Oliveros ageeed. Oliveros says Rosales just left the field without saying anything. I accept Rosales' version for several reasons.

[28/] The basic seniority provisions are set' forth in Article XII of the contract between BCI and the Teamsters (Respondent Ex. 4, pp. 9-10). The record shows that interpretations of the contract provision vary; the crew foremen do the interpreting in the first instance, with little in the way of training or guidelines. While no one was absolutely entitled to a particular job classification by virtue of seniority, as a general rule someone returning from a leave of absence returned to his old job classification, and his replacement returned to the work that person had been doing previously. In this instance both Victor Torres and Rosales could not return to "the single available position of loader. Torres, having worked longer in the crew as a loader and returning first, would reasonably retain the position rather than the later returning Rosales, who obtained it by replacing Torres.

Rosales asked Curiel and Arzola whether he would have his job when he returned from his leave, and they responded affirmatively. The replies were ambiguous, however; they may very well have been referring to a position in the crew rather than the particular job of loader.

First, from his demeanor while testifying, I generally found Rosales to be straightforward, candid, and credible. Second, on several points, including the key one of whether he talked with Oliveros before leaving, he is corroborated by Cipriano Herrera. Herrera said he saw Rosales and Oliveros talking together before Rosales, not leaving the field immediately, came over to talk to him and the rest of the loaders.[29/] Further, considering the evidence of the entire incident, Oliveros[1] version that Rosales walked off the job without a word and Oliveros watched from a short distance away without saying anything to him, but called his departure to the attention of a nearby harvest supervisor, is simply not plausible. It makes even less sense if, as he said he did, Oliveros had already told Rosales that the first available loader's job would be his. (I credit Rosales' denial of this.)

Having found Oliveros unbelievable' in the specifics of Rosales' departure, to which he had in fact consented, I discount his testimony in other particulars. I find that Oliveros was

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29/ I also found Herrera credible, in spite of attempts by respondent's counsel to impeach him. Counsel for the respondent attempted to impeach Herrera by focusing on his ability to remember in detail Rosales' conversations regarding his seniority and job with others, while Herrera was unable to recall even the substance of other workers' conversations on the same topics with the same people. However, Herrera makes it clear that he was specifically asked by Rosales, his friend, to witness the conversations (Tr. VI, p. 150), a satisfactory explanation of the difference.

told and otherwise knew of Rosales' support for the UFW, and did say that the UFW was a bunch of thieves that screwed the people. I also find that at the October meeting in Huron, Oliveros called Rosales a troublemaker.

A few days after Rosales left, Oliveros completed a notice saying in essence Rosales was terminated because he left the field and was absent for several days without notice or explanation. The company contends that this was the sole reason for Rosales' termination, and the refusal to reinstate him in October. Since Rosales received Oliveros[1] permission to leave the crew and return later, the explanation does not withstand scrutiny. Oliveros' anti-UFW animus and knowledge of Rosales' UFW sympathies are established by the evidence. The conclusion that Oliveros was motivated by anti-union animus is buttressed by his calling Rosales a troublemaker. Since he is a supervisor within the meaning of the Act, Oliveros[1] actions are attributable to BCI even if BCI were not itself hostile to the UFW. I conclude that the respondent has not overcome the prima facie case established by the general counsel, and the general counsel's contention that Rosales was not reinstated because of his union activities is supported by a preponderance of the evidence.

Counsel for the respondent asserts as an affirmative defense that the charge was not timely under §1160.2 of the

Act, which requires it to be filed within six months of the alleged unfair labor practice.[30/] The charge was filed and served on 29 December 1976. The basis for the contention is that the alleged unfair labor practice occurred in early May, more than six months prior, when Oliveros issued the termination notice (Respondent Ex. 3), a copy of which was sent to the Teamsters (see Respondent Ex. 7).

Section 10 (b) of the NLRA, 29 U.S.C. 160 (b), is identitical to section 1160.2 insofar as the six-month limitation period for filing a charge is concerned. NLRB precedent holds that the period does not begin to run until the employer's unlawful activity which is the basis for the charge becomes known to the charging party. NLRB v. Allied Products Corp., 548 P.2d 644, 94 LRRM 2433, 2437 (6th C., 1977); NLRB v. Shawnee Industries, Inc., 333 P.2d 221, 56 LRRM 2567 (10th C., 1964). As the Sixth Circuit stated in Allied Products, "this is only a specific application of the general rule that, a limitation period begins to run 'when the claimant discovered, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged [violation] .'" Ibid, (citations omitted). No reason to interpret

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[30/] Section 1160.2 provides in part:

> ... No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the board and the service ,of a copy thereof upon the person against whom such charge is made[.] ...

section 1160.2 differently has been suggested.

Rosales' denial of knowledge of his termination in early May (Tr. VI; p. 21) is uncontradicted. There is no reason he should have known, since he left with his foreman's permission. Rosales did not know he had been terminated until October 1976, when he returned but was refused a job. Therefore, the filing of the charge on 29 December 1976 was well within the six-month limitation period.

B. Jose Gutierrez

As had been his practice for a number of years, Jose Gutierrez took a leave of absence from his job in April 1976, intending to return in the fall. However, his attempt to return to his crew in October as usual was thwarted. The testimony of the new crew foreman Marcelino Sepulveda that he terminated Gutierrez sometime in November or early December because he was advised by the company that Gutierrez had overstayed his leave is uncontradicted. Gutierrez applied for work unsuccessfully in December 1976. [31/]

[31/] Counsel for the respondent argues that Gutierrez could not have had a six-month leave of absence because the Teamster contract limits leaves to two months (Respondent Ex. 4). That ignores the uncontested fact that with the consent of his foreman, Gutierrez had taken six-month leaves in each of the prior five or six years. The company therefore condoned the lengthy leave, regardless of the contract provisions. Furthermore, respondent was in a position to prove that the leave was for a shorter period by producing a copy of the document (as it did in numerous other instances); it failed to do so.

Counsel also argues that because of a contract provision that leaves shall not be granted for or used by employees to work elsewhere, as Gutierrez admittedly did, the company had good cause to terminate him. Regardless, the fact is the company did not terminate Gutierrez because he worked for other employers while on a leave of absence. Nothing indicates the

While the precise duration of Gutierrez's leave was not established, he apparently did overstay it. In the past he had returned in September or October, and Sepulveda was advised late in the year that the leave had expired. Gutierrez's unsuccessful attempt to return in October cannot be attributed to the company. The evidence does not establish that respondent was responsible for the guards stationed at the entrance to the ranch where the crew was working, or that the guards in fact would have denied entry to Gutierrez, had he presented himself and explained his purpose. Nor is it clear that other reasonable efforts by Gutierrez to return to work, for example, contacting the nearby company office in Huron, would have been unsuccessful.

Having overstayed his leave of absence, Gutierrez did not have an unqualified right to reinstatement in December 1976. However, even if he is considered ah ex-employee with no particular right to a job, a refusal to rehire him because of his participation in protected activities would nonetheless be an unfair labor practice. See Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 9 LRRM 439 (1941); Atlantic Maintenance Co. v.

[31/] (continued)
company was even aware of that until the hearing.

Counsel further contends that Gutierrez voluntarily quit his employment in April 1976, as evidenced by his filing a claim for unemployment insurance in May. The mere filing for unemployment insurance does not belie his intention, as shown by his testimony and by his practice over the preceding years, to return in the fall of 1976.

NLRB, 305 F.2d 604, 50 LRRM 2494 (3d C., 1962).

Gutierrez's participation in protected activities is uncontradicted. Signing and circulating a petition concerning paycheck deductions for union dues, and supporting and urging others to support a work stoppage are indisputably "concerted activities for the purpose of ... mutual aid or protection." Section 1152. However, no connection was established between these activities and the UFW, nor was there evidence that Gutierrez was known as a UFW member or supporter. Thus, no possible violation of section 1153 (c) was established, and only section 1153(a) is involved.

The uncontradicted evidence is that Marcelino Sepulveda, at the time a second foreman of the crew, was present in both instances, and Sylvio Bassetti, a field supervisor, was present during the work stoppage incident. Because of his position, Bassetti's knowledge can be imputed to the company; the situation concerning Sepulveda is not so simple. The evidence does not establish that second foremen (a position subsequently eliminated) had independent authority to hire, fire, or take over personnel action; therefore, they were not supervisors within the meaning of section 1140(j), and Sepulveda's knowledge cannot be imputed to the company.

However, by December 1976 when Gutierrez applied to him for work, Sepulveda was a crew foreman, and in a position

to use the knowledge obtained previously as a reason for not rehiring him. Sepulveda testified that when Gutierrez asked him for work his crew was already larger than usual, and this was his only reason for not hiring Gutierrez. Gutierrez himself testified that not only Sepulveda, but also the other foremen and supervisors whom he asked for work, all told him the crews were full. No evidence indicates that work was actually available when Gutierrez applied.

Gutierrez impressed me as a sincere and sympathetic person who only tried to do in 1976 what he had done in previous years, this time unsuccessfully. Yet in the absence of evidence showing that work was available, the general counsel has failed to establish that the reason Gutierrez was not rehired was his participation in protected activities. I shall recommend that this charge be dismissed.

D. Gabriel Contreras

The evidence is uncontested that on 28 January 1977 Gabriel Contreras became ill, and as a result was unable to work. He did not contact the company until a week later. During his absence he was terminated by his crew foreman, Marcelino Sepulveda, whose decision was subsequently reviewed and upheld by Noel Carr. Contreras[1] union activity, knowledge of which can be attributed to the employer, consisted of serving as a UFW election observer and participating in a UFW rally a year before his termination.

Sepulveda asserted that his only reason for the termination was his understanding of company policy: Someone with two prior warnings who was absent more than three days without notice was to be terminated. (In fact, company policy was to terminate in the event of an absence of three days without notice or good cause, regardless of prior warnings.) Contreras admitted receiving two prior warnings, and Sepulveda's explanation is corroborated by the language of the notice he wrote. No connection was shown between Contreras' union activities and Sepulveda, nor was there proof of anti-union animus on the part of Sepulveda individually. In the absence of such evidence, Sepulveda's stated reason is accepted as true.

Noel Carr testified that he had someone attempt to verify Contreras[1] inability to notify the company, and on the basis of that person's report, upheld Sepulveda's decision. Contreras said that he had no phone and nobody who could relay a message, and he himself was too ill to get to where he could contact the company. However, the issue is not whether Contreras was in fact unable to notify the company; it is whether Carr's decision was motivated by Contreras[1] union activity. Carr's testimony about the basis for his decision was credible and unrebutted. I conclude that the evidence does not sustain a violation of section 1153 (c) or 1153 (a), and recommend that the charge be dismissed.

E. Juan Aguilar

Juan Aguilar Ramirez was discharged after having missed work on Saturday, 29 January 1977. There is credible evidence that Jose Corona, Aguilar 's crew foreman, was hostile to the UFW and knew that Aguilar actively supported the UFW; I find accordingly. Under the circumstances the issue is whether either Corona or harvest manager Carr used Aguilar's absence as a pretext for getting rid of a known UFW supporter.

Even though anti-UFW animus is attributable to the respondent, Noel Carr's explanation of the crackdown on absenteeism on the Saturday in question is persuasive. Company records support his testimony that absenteeism was relatively high that day, particularly in Corona's crew. The unrebutted fact that an exceptional number of warnings for missing work were distributed throughout the crews corroborates Carr ' s testimony that he expressly directed his foremen to issue warnings £o all absent without authorization, and to terminate those for whom this was the fourth or subsequent warning. While only one other person besides Aguilar was discharged, there was no evidence either that others with four or more warnings were not discharged or that the other person discharged was also a UFW supporter. In short, evidence does not support a conclusion that because of his union activities Aguilar was singled out by Carr.

The question remains whether Aguilar was singled out by foreman Corona. Contrary to the general counsel's contention, it does not appear that Corona initially authorized Aguilar's absence and subsequently disavowed it. Manual Torres, who Aguilar said was present, testified at the hearing but was not asked to corroborate Aguilar's testimony about notifying Corona of the intended absence. Ramon Rubio, whose presence Aguilar had not mentioned, gave a version of the purported notification that varied in many significant details from Aguilar's.[32/] Considering the inconsistencies in Aguilar's own testimony, the absence of corroboration from Torres, and the failure of Rubio's testimony to support Aguilar, Corona's denial of advance knowledge of Aguilar's intended absence is credited.

With respect to the contention that Corona arbitrarily denied authorization for absences to UFW supporters, it is noted that during the week immediately preceding his discharge Aguilar himself received permission from Corona to take a day off to take care of personal business. Regarding

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32/ Among other discrepancies, Rubio said it occurred in the morning, while Aguilar said after work. From Rubio's report, Aguilar got to work by some other means after Corona closed the bus door on the two, a fact Aguilar surely would have mentioned. It is unlikely that Rubio was even in the Hole the day before Aguilar missed work. Rubio did not remember what day he was there, but said it was the first day of a three-week leave. Company records show that Rubio's leave began a week earlier.

prior warnings, even if Aguilar did not know it,[33/] four had been issued within the preceding two months, and neither their authenticity nor the justification for giving them was challenged. Finally, the other person discharged that day was also in Corona's crew, and was also shown to have been issued more than three prior warnings.

The general counsel's contention that Juan Aguilar was singled out because of his union activities is not supported by the evidence, and I shall recommend that this allegation be dismissed.

F. Manuel Torres

Jose Manuel Torres Ventura was discharged after he missed work on 14 May 1917 by going to the wrong field. I find that his former foreman, Jose Corona, knew of Torres' UFW sympathies, as well as the fact that he had been asked to testify on behalf of Juan Aguilar, who had been terminated previously by Corona. However, no evidence connects Corona to the decision to terminate Torres.

Even if Corona's knowledge is imputed to the company, an independent justification for the discharge was demonstrated.

33/ While workers were supposed to be asked by the foreman to sign the warning notices, and to receive copies as well, it is possible that Aguilar did not. know about his earlier warnings. He testified that he used to see Corona make them out, but did not see him give them to anyone (Tr. I, p. 48). And while Corona said that he did give the workers copies, he also said they told him the papers were to "wipe their ass" (Tr. XI, p. 84); he may very well not have made what he considered a futile gesture.

Though he may not have known it,[34] Torres had two prior warnings for missing work. While the application of the company's policy on terminations may have been harsh, given that Torres inadvertently went to the wrong field, the evidence does not establish that he was singled out because of his engagement in protected activities. Two other employees not shown to have been similarly active also missed work that day, and also were disciplined, one receiving a warning and the other being discharged along with Torres. While the latter was later reinstated, an explanation for that action unconnected to any discrimination was provided.

The general counsel did not produce evidence to rebut the company's justification, and thus failed to-prove that Torres would not have been discharged but for his involvement in protected activities. I shall recommend that the charge be dismissed.

V. THE DISCHARGE OF THE THREE LOADERS

A. Introduction

Discrimination because of union activity is not alleged in the discharge of the three loaders. Sergio Padron, Marco Antonio Arambula, and Miguel Delgado Villalobos refused to follow directions to load boxes of lettuce onto the truck over a greater distance than usual. After a discussion with field supervisor Marciel Luna, the three loaders left their

[34] See note 33 above.

work to contact the Teamsters Union. I find that while they told Luna where they were going, he did not consent. When they returned two to three hours later accompanied by a union representative, they were advised through him that they had been terminated. The decision had been made during their absence by Luna, and approved by harvest manager Carr.

The facts support the reason given for the terminations: the loaders refused to follow orders and left the field while work was continuing. Since they did so in an effort to affect their working conditions, [35/] the issue is whether their discharge violates section 1153(a) because they were engaged in "concerted activities for the purpose of ... mutual aid or protection," a right guaranteed by section 1152 of the Act. The respondent asserts that the no-strike clause in its contract with the Teamsters removes whatever legal protection the workers' action might otherwise have.

As counsel for the respondent concedes, under the National Labor Relations Act it is well established that in the absence of a contractual no-strike provision or other complicating circumstances, a single spontaneous work stoppage to protest working conditions is "concerted activity" protected by section 7, 29 U.S.C. §157, and, consequently, the

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[35/] With a view to the analysis which follows, I consider it unnecessary to determine the merits of the loaders' complaint except to note that any claim of abnormally dangerous working conditions is not supported by the evidence.

discharge of workers so engaged is an unfair labor practice under section 8(a)(l), 29 U.S.C. S158(a)(l).[36/] The merit of the workers' complaint is not material.[37/] Since the protest is protected the workers may not be discharged for insubordination or for walking off the job.[38/]

Generally, if a work stoppage violates a no-strike provision in a collective bargaining agreement, the action is no longer protected by section 7, and the participating workers may be lawfully discharged.[39/] Nevertheless, regardless of no-strike clauses, strikes and walkouts are protected activity when they are to protest abnormally

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[36/] E.g., NLRB v. Washington Aluminum Co., 370 U.S. 9, 50 LRRM 2235 (1962); NLRB v. Phaostron Co., 344 F.2d 855, 59 LRRM 2175, 2177 (9th C., 1965) (and cases cited therein); Vic Tanny Int'l., Inc., 232 NLRB No. 57, 96 LRRM 1438 (1977); General Nutrition Center, Inc., 221 NLRB No. 130, 90 LRRM 1736 (1975); Metal Plating Corp., 201 NLRB No. 28, 82 LRRM 1156 (1973).

[37/] Metal Plating Corp., supra, 82 LRRM at 1156 n.2; also see NLRB v. Washington Aluminum Co., supra, 370 U.S. at 16.

[38/] NLRB v. Washington Aluminum Co., supra, 370 U.S. at 17; Vic Tanny Int'l., Inc., supra; General Nutrition Center, Inc., supra; Metal Plating Corp., supra, 82 LRRM at 1157.

[39/] E.g., NLRB v. Rockaway News Supply Co., 345 U.S. 71, 31 LRRM 2432 (1953); NLRB v. Sands Mfg. Co., 306 U.S. 332, 4 LRRM 530 (1939); Arlan's Department Store, 133 NLRB 802, 37 LRRM 2587 (1961).

dangerous conditions [40] or unfair labor practices,[41] when the cause of the protest is not something covered by the grievance arbitration provisions of the contract,[42] and when the no-strike clause is contained in an agreement negotiated with a union supported or dominated by the employer.[43]

The only reported case in which the ALRB has considered a situation similar to the one here is Resetar Farms, 3 ALRB No. 18 (1977). There too the employer had a pre-Act collective bargaining agreement with the Teamsters that contained a no-strike clause; in fact, the language of the

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[40] Knight Morley Corp., 116 NLRB 140, 38 LRRM 1194 (1956), enforced, 251 F.2d 753, 41 LRRM 2242 (6th C., 1957) (stopping work because of "abnormally dangerous conditions" is not a "strike" under section 502 of the LMRA, 29 U.S.C. §143).

[41] Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 37 LRRM 2587 (1956); cf. Arlan's Department Store, supra, 133 NLRB 802, 37 LRRM 2587 (1961).

[42] Gary Hobart Water Corp. v. NLRB, 511 F.2d 284, 88 LRRM 2830 (7th C., 1975), cert, denied, 423 U.S. 925, 90 LRRM 2921.

[43] NLRB v. Summers Fertilizer Co., 251 F.2d 514, 41 LRRM 2347 (1st C., 1958); H. N. Thayer Co., 99 NLRB No. 165, 30 LRRM 1184 (1952), remanded on other grounds, NLRB v. Thayer Co., 213 F.2d 748, 34 LRRM 2250 (1st C., 1954), cert, denied, 348 U.S. 883, 35 LRRM 2100.

provision is identical.[44/] A group of apple pickers refused to follow directions to pick apples in a new manner which they were concerned would adversely affect their pay. After an inconclusive discussion, the foreman, whose presence in the orchard was necessary for work to proceed, told the workers that those who wanted to work should return the following day, and he left the orchard. The workers then also left. The next morning the proposed picking system was modified in a way that was satisfactory to the workers, and most of them returned to work. However, the members of one family, whom the employer identified as ringleaders of the protest, were not permitted to resume work.

The administrative law officer (ALO) concluded that those workers were discharged in violation of section 1153(a), stating three separate grounds. He decided that the employees should not be bound by the no-strike clause because they knew virtually nothing about the contract or its provisions and had never indicated their support of the Teamsters as their collective bargaining representative. He also found that no work stoppage or strike had occurred

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[44/] The Union and the Employer agree that there shall be no lockouts, strikes, slowdowns, job or economic action, or other interference with the conduct of the company business during the life of this Agreement. ..." Compare Respondent Ex. 4, p. 22, with Resetar Farms, supra, ALO's decision at p. 10, n.10.

since the departure of the foreman prevented work from proceeding. Alternatively, if the no-strike clause were breached, the violation was condoned with respect to most of the workers by the employer, who was thereby foreclosed from asserting it selectively. Resetar Farms, supra, ALO's decision at pp. 10-13.

Exceptions to the ALO's decision were filed by the charging party but not by the respondent employer, so the determination of an 1153 (a) violation was not directly appealed. In the course of upholding the ALO's determinations of other issues, the board, as usual, "adopt[ed] the law officer's findings, conclusions and recommendations to the extent consistent with [its] opinion." Resetar Farms, supra, 3 ALRB No. 18 at p. 1.

I agree with the respondent's contention that the ALO's decision in Resetar is not binding on me in determining the present case. Since no exception was taken to the finding of an 1153(a) violation, the board neither discussed nor expressly adopted it. [45/] Moreover, the ALO's result was based upon three separate grounds, at least one of which (the

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[45/] Approval of the result can be inferred, however, not only from the general statement of adoption but also from the absence of any express disapproval. On another issue the board indicated its disapproval of the ALO's reasoning while adopting his conclusion (see Resetar Farms, supra, 3 ALRB No. 18 at p. 3, n.2), and at other times the board has ex-pressed disapproval of an ALO's conclusion in the absence of any exception. See, e.g., William Mendoza, 3 ALSB No. 53, p. 1, n.l (1977).

employer's condonation of the workers' action) is not present here. Nevertheless, I find persuasive the ALO's reasoning about the no-strike clause, for reasons discussed below.

Considering the present case without the no-strike provision for the moment, I think it indisputable that by protesting the manner in which they were directed to load lettuce and leaving their jobs, the three BCI loaders were engaged in "concerted activit[y] for the purpose of ... mutual aid or protection" as contemplated by section 1152. This is in keeping with the stated policy of the Act "to encourage and protect the right of agricultural employees . . to negotiate the terms and conditions of their employment," section 1140.2, as well as federal precedent.[46/]

Unlike the situation in Resetar, the employer in the present case did not condone the workers' conduct. While the three loaders told the field supervisor they were going to the Teamsters, he did not consent to their departure. Even though they returned within a few hours, they were not permitted to resume work (assuming they were willing), the decision to terminate them having already been made. Thus, the first issue which must be faced is whether their conduct violated the no-strike clause.

B. No-Strike Clause Not Breached

Arguably, the three loaders' walkout did not violate the no-strike clause. The provision prohibits "lockouts,

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[46/] See notes 36-38, above, and accompanying text.

strikes, slowdowns, job or economic action, or other interference with the conduct of the company business" (see note 44, above; emphasis added). The walkout of three workers out of two crews totaling approximately 60 can hardly be said to be a "strike" or a "slowdown." In order to violate the clause, it must fit into "job . . . action or other interference with the conduct of company business," namely, with production. And, obviously, the provision does not prohibit all interference with production. Production is interfered with, for example, by a person missing work or becoming ill, which by no reasonable interpretation of the clause would be prohibited.

While little direct evidence of the effect of the loaders' departure on production was adduced, it appears to have been minimal. Three cutters from the crew were immediately assigned to take their places. The crew, it is true, had the same amount of lettuce to cut, pack, and load with three fewer workers, but there is ample evidence in the record that crew size was always a variable.[47/] The supervisor testified that the crew was not seriously behind

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[47/] See, for example, Respondent Ex. 5, which shows crew counts for the weeks immediately preceding this incident and reveals that the crew the loaders worked in, number 9, ranged from 22 to 38 workers (excluding the one Saturday that crew worked, when it numbered only 14).

in its work when the loaders returned to the field. Had they been given and accepted an opportunity to resume work at that time, the resulting interference with production would, of course, have been even less.

The conclusion that such a minimal interference with production does not violate the no-strike clause is supported, in general, by NLRA authority to the effect that no-strike clauses in collective bargaining agreements should be narrowly construed. For example, in Mastro Plastics the Supreme Court held that a broadly worded prohibition [48/] in fact applied only to economic strikes and not to unfair labor practice strikes. Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 37 LRJRM 2587, 2591-93 (1956). And in Gary Hobart Water Corp. the Seventh Circuit held that a sympathy strike was not prohibited by a no-strike clause in a contract which also contained a grievance-arbitration procedure, because the grievance procedure did not cover the situation. [49/] The court said

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[48/] The no-strike clause provided:

> 5. The Union agrees that during the tern of this agreement, there shall be no interference of any kind with the operations of the Employees, or any interruptions or slackening of production of work by any of its members. The Union further agrees to refrain from engaging in any strike or work stoppage during the term of this agreement.

Mastro Plastics Corp. v. NLRB, supra, 37 LRRM at 2591.

[49/] It cannot be determined whether the dispute in the present case would be subject to arbitration; a significant portion of the grievance and arbitration provision is missing from the copy of the contract provided by respondent (page 32 of Respondent Ex. 4). In any event, through no fault of the workers, no grievance was pursued.

that any waiver of a collective bargaining right must be in "clear and unmistakable language." Gary Hobart Water Corp. v. NLRB, 511 F.2d 284, 88 LRSM 2830, 2832 (7th C., 1975) cert. denied, 423 U.S. 925, 90 LRRM 2921 (citation omitted).

Construing the no-strike clause narrowly to prohibit only significant interference with production and finding that the effect of the three loaders' walkout on production was minimal, I conclude that their conduct did not violate the no-strike clause. Even if it did, I conclude that the clause is unenforceable for the reasons discussed below.

C. No-Strike Clause Unenforceable

As counsel for respondent argues, section 1.5 of the ALRA. provides that collective bargaining agreements entered into prior to the effective date of the Act are not automatically voided by the Act, but become void upon board certification of the results of an election held pursuant to the Act. [50/] However, section 1.5 cannot be read in isolation

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[50/] Section 1.5 of the Act states:

> It is the intent of the Legislature that collective-bargaining agreements between agricultural employers and labor organizations representing the employees of such employers entered into prior to the effective date of this legislation and continuing beyond such date are not to be automatically canceled, terminated or voided on that effective date; rather, such a collective-bargaining agreement otherwise lawfully entered into and enforceable under the laws of this state shall be void upon the Agricultural Labor Relations Board certification of that election after the filing of an election petition by such employees pursuant to Section 1156.3 of the Labor Code.

from other legal principles and statutory provisions. Any waiver of the right to strike and other concerted activity protected by Section 1152 rests squarely upon such rights being bargained away by a representative freely chosen by a majority of the workers. As the Supreme Court stated regarding the NLRA:

> National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. . . . Thus only the union may contract the employee's terms and conditions of employment, and provisions for processing his [or her] grievances; the union may even bargain away his [or her] right to strike during the contract term[,51] . . . "The majority-rule concept is today unquestionably at the center of our federal labor policy/'

NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 65 LRRM 2449, 2450-51 (1967) (emphasis added; citations ,and footnotes omitted). The same policy is embodied in the ALSA, which, contrary to the NLHA, provides that a collective bargaining agreement may be negotiated only with a representative selected in a secret ballot by the majority of the workers and subsequently certified. [52/]

[51/] Quoted with approval in Emporium Capwell Co. v. WACO, 420 U.S. 550, 88 LRBM 2660, 2665-66 (1975).

[52/] See Eugene Acosta, 1 ALRB No, 1, pp. 17-18 (1975); §§1156, 1159,1153(f). These provisions must of course be reconciled with section 1.5.

The right to strike is given explicit protection by section 1166 of the Act, which provides as follows:

> Nothing in this part, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

As the Supreme Court noted with respect to the identical provision in the NLRA, section 13 (29 U.S.C. $163), parts of the Act which otherwise might be read to interfere with, impede or diminish the right to strike may be so read "only if such interference, impediment or diminution is 'specifically provided for in the Act." Labor Board v. Rice Milling Co., 341 U.S. 665, 28 LRRM 2105, 2108 (1951).

Thus, in considering no-strike provisions in collective bargaining agreements entered into prior to the effective date of the ALRA, the protection given the pre-Act agreements by section 1.5 must be considered in the context of the protection given the right to engage in concerted activities, including the right to strike, and the policy supporting a waiver of these rights only by a representative freely chosen by the majority of the workers. I hold that, at least in the absence of a reasonable, good faith belief on the part of the agricultural employer that the union it has recognized as the exclusive bargaining agent of its agricultural employees is desired by a majority of the relevant employees, the

no-strike provisions of a pre-Act agreement are not enforceable to strip legal protection from an otherwise lawful exercise of section 1152 rights, section 1.5 notwithstanding.

This conclusion is consistent with the federal rule that workers are not bound by no-strike provisions in a contract made with a union that has been unlawfully assisted by the employer,[53/] and with the California Supreme Court holding that in order to avoid the consequences of improper "interference" with a labor organization, an employer must at least possess a reasonable, good faith belief in the majority status of the union he recognizes. Englund v. Chavez, 8 C.3d 572, 593, 105 C.R. 521, 536, and n.12 (1972).

In Englund, as here, the concern was the effect to be accorded collective bargaining agreements executed by the Teamsters and agricultural employers before the ALRA was ratified. The Court found that at the time the contracts were negotiated and executed, neither the growers nor the Teamsters gave any consideration to whether the Teamsters represented a majority of the field workers to be covered. In fact, the Court found, a substantial number and probably the majority of the field workers desired to be represented by the UFW. The Court held that the employers' conduct in

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[53/] E.g., NLRB v. Summers Fertilizer Co., 251 F. 2d 514, 41 LRRM 1347 (1st C., 1958), enforcing 117 NLRB 243, 39 LRRM 1201; H. N. Thayer Co., 99 NLRB No. 165, 30 LRRM 1184 (1952), remanded on other grounds, NLRB v. Thayer Co., 213 F.2d 748, 34 LRRM 2250 (1st C., 1954), cert, denied, 343 U.S. 883, 35 LRRM 2100.

recognizing a non-representative union constituted "interference" with the union within the meaning of Labor Code section 1117, on the basis of precedent interpreting section 8(a)(2) of the NLRA.[54/]

Employer interference with a union which occurred prior to the effective date of the Act is not an unfair labor practice. Cf., e.g., S. Kuramura, Inc., 3 ALRB No. 49, pp. 15-16 (1977). Nor is the contract entered into under such circumstances illegal, even though the union is not representative. Englund v. Chavez, supra, 8 C.3d at 596, 105 C.R. at 538; Eckel Produce Co., 2 ALRB No. 25, p. 4 (1976). However, unless the absence of such interference is established, the no-strike clause of such a contract should not be enforced to remove the protection afforded peaceful concerted activities by the Act.

[54/] Englund v. Chavez, supra, 8 C.3d at 567-82, 105 C.R. at 523-28, summarized in Eugene Acosta, 1 ALRB No. 1, p. 5 (1975) In Englund the growers attempted to enjoin a recognitional strike by the UFW's predecessor, the United Farm Workers Organizing Committee, under the California Jurisdictional Strike Act, Labor Code §§1115-et seq. The Court held the injunctions improper.

Section 8(a)(2) of the NLRA, 29 U.S.C. §158(a)(2), is essentially identical to section 1153(b) of the ALRA.

In Acosta the board, considering the effect of pre-Act Teamster-grower agreements on the designation of an appropriate bargaining unit, found Teamster enjoyment of majority status "questionable." Eugene Acosta, supra, 1 ALRB Mo. 1 at p. 18.

Further reason for this conclusion is found in the facts of this case, which, like those in Resetar, demonstrate that the field workers were not familiar with the contractual provisions purportedly negotiated on their behalf. See Resetar Farms, supra, 3 ALRB No. 18, ALO's decision at pp. 10-11. It is one thing to bind workers by a no-strike clause they do not know about when they have freely selected their collective bargaining representative. It is quite another when they have little voice in the selection of their representative and lack knowledge of what it has done on their behalf.

In the present case there is no evidence that the Teamsters Onion was desired or freely selected by a majority of the BCI field workers as their collective bargaining representative , or that BCI had a. reasonable, good faith belief that it was. On the contrary, the first Teamster-BCI contract covering field workers was executed at the same time as the Englund contracts. The contract covering the period in question was executed at the same time as the agreement considered in Acosta, just a few weeks before the ALRA became effective, when its provisions, including section 1.5, were publicly known. No elections were held before the Act went into effect. In January 1976, a year before the discharges at issue and six months after the current contract was executed, the UFW defeated the Teamsters in a board-conducted secret ballot election and has subsequently been certified as the exclusive bargaining

representative of the BCI agricultural employees working in California. Bruce Church, Inc., 3 ALRB No. 90 (1977).

D. Conclusion

Thus, I conclude that the walkout of the three loaders either did not violate the no-strike provision of the contract between BCI and the Teamsters, or, if it did, that provision is unenforceable under the circumstances, section 1.5 of the Act notwithstanding. In either event, their conduct was protected by section 1152 and the discharge of the loaders constitutes an unfair labor practice under section 1153(a).

THE REMEDY

Having found that the employer committed unfair labor practices within the meaning of sections 1153(a) and 1153(c) of the ALRA, I recommend that it be ordered to cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

The respondent should offer reinstatement to Jose Rosales, Sergio Padron, Marco Antonio Arambula, and Miguel Delgado Villalobos, and compensate them in the manner set forth in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977), for the loss of wages suffered as a result of their unlawful discharges. Jose Rosales should be offered a loader's position, since he would have had such a job long ago had he not been terminated.

The attached notice should be reproduced in English and Spanish. It should be posted conspicuously throughout the various areas of the respondent's operations, and distributed to all agricultural employees during peak season, at a time designated by the Salinas regional director. Because of the limited nature of the unfair labor practices compared to the size of the employer's operations, I consider mailing the notice to past employees and reading it to assembled employees unnecessarily burdensome.

Accordingly, pursuant to section 1160.3 of the Act, I recommend the following:

ORDER

Respondent Bruce Church, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from interfering with, restraining, and coercing employees in the exercise of their right to engage in union activities or other concerted activities for the purpose of mutual aid and protection, and from discriminating against employees to discourage their union activities, by way of discharge or in any other manner, except as permitted by an agreement of the type authorized by section 1153(c) of the Act;

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

(a) Offer Jose Rosales, Sergio Padron, Marco Antonio Arambula, and Miguel Delgado Villalobos immediate and

full reinstatement to loaders' jobs or their equivalent, without prejudice to their seniority or other rights and privileges;

(b) Hake the named workers whole for any loss of pay suffered by reason of their termination. Loss of pay is to be determined by multiplying the number of days the person was out of work by the amount he would have earned per day. If on any day the worker was employed elsewhere, the net earnings of that day shall be subtracted from the amount he would have earned at Brace Church, Inc., for that day only. The award shall reflect any wage increase, increase in work hours, or bonus given by respondent since the discharge. Interest shall be computed at the rate of 7 per cent per annum.

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

(d) Post at its premises throughout the state copies of the attached NOTICE TO WORKERS. After said NOTICE has been duly signed, copies in both English and Spanish shall be provided by the Salinas regional director. They shall be posted in conspicuous places, including each employee toilet, wherever located on respondent's premises, utility poles,

all places where notices to employees are customarily posted, and other conspicuous places in work areas and other locations where employees congregate. The notices shall remain posted for 90 days. Respondent shall exercise due care to replace any notice which is covered, altered, defaced, or removed.

(e) Distribute copies of the attached NOTICE TO WORKERS in both English and Spanish to all its agricultural employees during peak season, at a time designated by the Salinas regional director.

(f) Notify the Salinas regional director within 20 days from receipt of a copy of this order of the steps respondent has taken and will take to comply herewith, and continue to make periodic reports as requested by the regional director until full compliance is achieved.

IT IS FURTHER ORDERED that the allegations contained in the complaints and not specifically found herein to violate the Act shall be, and hereby are, dismissed.

Dated: 14 May 1978.

JENNIE RHINE
Administrative Law Officer

NOTICE TO WORKERS

After charges were made against us by the United Farm Workers Union and a trial was held where each side had a chance to present its side of the storry, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers to freely decide whether they wanted a union and to act together to help one another as a group. The Board has told us to distribute and post this notice.

We will do what the Board has ordered, and also tell you that the Agricultural Labor Relations Act is a law that gives all farm workers these rights:

1. To organize themselves;

2. To form, join, or help unions;

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

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

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

Because this is true, we promise that:

We will not do anything in the future that forces you to do, or stops you from doing, any of the things listed above. Especially:

WE WILL NOT fire you or lay you off because you support the union or act together to help and protect one another;

WE WILL offer Jose Rosales, Sergio Padron, Marco Antonio Arambula, and Miguel Delgado Villalobos their jobs back, and we will pay each of them any money they lost because we fired them.

If you have any questions about your rights as farm workers or this notice, you may contact any office of the Agricultural Labor Relations Board. One is located at 21 West Laurel Drive, Suite 65-M, Salinas, California 92120, Telephone: (408) 449-7208.

Dated: BRUCE CHURCH, INC.

By_____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

INDEX OF EXHIBITS

Party and Number	Description	Admitted
General Counsel's		
Ex. 1-A	Charge #76-CE-124-E	Yes
Ex. 1-B	Charge #76-CE-142-E	Yes
Ex. 1-C	Charge #77-CE-65-E	Yes
Ex. 1-D	Charge #77-CE-74-E	Yes
Ex. 1-E	Charge I77-CE-121-E	Yes
EX. 1-F	Order Consolidating Cases and Notice of Hearing and Complaint (7/18/77)	Yes
Ex. 1-G	Answer to Complaint (8/1/77)	Yes
Ex. 1-H	Order Consolidating Cases and Notice of Hearing and Complaint (8/25/77)	Yes
Ex. 1-I	Answer to Complaint (9/6/77)	Yes
Ex. 1-J	Charge #77-CE-21-M	Yes
Ex. 1-K	Notice of Reconvened Hearing (9/21/77)	Yes
Ex. 1-L	Letter from UFW to Robert Farnsworth (9/29/77)	Yes
Respondent's		
Ex. 1	Newsletter, Red Coach Express (2/1/77)	Yes
General Counsel's		
Ex. 2	Diagram of field #1 -	Yes
Ex. 3	Diagram of field #2	Yes
Ex. 4	Diagram of field #3	Yes
Ex. 5	Note from Dr. Sigifredo Haro Torres (2/5/77) with translation attached	Yes
Respondent's		
Ex. 2	Notice to Employee Jose H. Rosales (4/2/76) with translation attached	Yes
Ex. 3	Notice to. Employee Jose H. Rosales (5/3/76) with translation attached	Yes

Party and Number	Description	Admitted
Respondent ' s		
Ex. 4	Contract, Bruce Church, Inc., and Western Conference of Teamsters	Yes
Ex. 5	Record of Daily Crew Count	Yes
Ex. 6	"Employees Receiving Warnings, ..."	Yes
Ex. 7	Page from log of employee notices	Yes
Ex. 8	Seniority Clause, Truck Drivers Contract	Yes
Ex. 9	Memorandum of Understanding (5/27/77)	No
Ex. 10	Newsletter, Red Coach Express (5/15/77)	No
Ex. 11	Memorandum to All Harvest Foremen and Supervisors (9/7/77)	No
Ex. 12	Notice to Employee Jorge Velascuez (5/14/77)	Yes
Ex. 13-A	Note on letterhead of Dr. Celicio Echevarria Almazan (2/11/77)	Yes
Ex. 13 -B	Note on letterhead of Dr. Rodolfo Cabrera Perez (2/11/77)	Yes
Ex. 14	Note to Payroll (6/3/77)	Yes
Ex. 15	Notice to Employee Manual Torres (12/4/76)	Yes
Ex. 16	Notices to Employee Manuel Torres (1/22/77 and 1/6/77)	Yes
Ex. 17	Summary, January-July 1977 Harvest	Yes
Ex. 18	Letter, To All Bruce Church Employees	Yes
Ex. 19	Notices to Employee Manuel Torres (4/26/77 and 2/28/77)	Yes
Ex. 20	Notice to Employee Manuel Torres (5/5/77)	Yes
Ex. 21	Notice to Employee Manuel Torres (5/14/77)	Yes

Party and Number	Description	Admitted
Respondent ' s		
Ex. 22	6 pages, top page headed El Centro Election	No
Ex. 23	6 pages, top page a letter from ALKB to Bruce Church (12/28/76)	No
Ex. 24	Letter from ALRB to Jose Gutierrez (2/28/77)	No
Ex. 25	Notice to Employee Genario Jimenez (5/14/77)	Yes
Ex. 26	Notice to Employee Genario Jimenez (5/22/77)	No
Ex. 27	Packing Procedures (3 pages)	Yes
Ex. 28	Notices to Employee Richard Reyes (8/7/76, 10/2/76, 12/4/76, 12/13/76, 1/22/77, 1/31/77) (4 pages)	Yes
Ex. 29	Notices to Employee Juan Aguilar (1/31/77, 1/22/77, 12/29/76, 12/15/76, 12/4/76, 6/16/76) (4 pages)	Yes
Ex. 30	Crew Time Card (Jose Corona, 1/27/77)	Yes
Ex. 31	Portion of Payroll, week beg. 1/26/77	Yes
Ex. 32	Portion of Payroll, week beg. 12/28/76	Yes
Ex. 33	Crew Time Card (Felix Oliveros, 11/11/75)	Yes
Ex. 34	Crew Time Card (Felix Oliveros , 11/12/75)	Yes
Ex. 35	Notice to Employee Ramon Rubio (12/4/76)	Yes
Ex. 36	Notice to Employee Ramon Rubio (1/21/77)	Yes
Ex. 37	Notice to Employee Ramon Rubio (2/15/77)	Yes
Ex. 38	Crew Time Card (Felix Oliveros, 4/26/76)	Yes
Ex. 39	Crew Time Card (Roman Palacio, 2/3/77)	Yes
Ex. 40	Notice to Employee Victor M. Torres (5/6/76)	Yes
Ex. 41	Notice to Employee Gabriel Contreras (10/2/76)	Yes

Party and Number	Description	Admitted
Respondent'S		
Ex. 42	Notice to Employee Gabriel Contreras (12/28/76)	Yes
Ex. 43	Crew Time Card (Felix Oliveros, 11/17/75)	Yes
EX. 44	Notice to Employee Marco Antonio Arambula (2/3/77)	Yes
Ex. 45	Notice to Employee Sergio Padron (2/3/77)	Yes
Ex. 46	Notice to Employee Miguel Delgado (2/3/77)	Yes
Ex. 47	Notice to Employee Gabriel Contreras (1/28/77)	Yes
Ex. 48	Crew Time Card (Felix Oliveros, 4/27/76)	Yes
Ex. 49	Crew Time Card (Felix Oliveros, 1/29/77)	Yes
Ex. 50	1975-1978 Contrato Principal de Agri-cultura en California	Yes
Ex. 51	1975-1978 California Agriculture Master Agreement	Yes
Ex. 52	Letter from BCI , Noel P. Carr (7/1/76)	Yes
Ex. A*	Motion for Extension of Time for Filing Briefs (10/31/77)	Yes
Ex. B*	Order Granting Motion (11/3/77)	Yes
Ex. C*	ALO's Letter (1/4/78)	Yes
Ex. D*	Respondent's Letter (1/11/78)	Yes

* Added after hearing