

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PAUL W. BERTUCCIO and)	
BERTUCCIO FARMS,)	
)	Case Nos. 77-CE-54-M
Respondent,)	77-CE-64-M
)	77-CE-67-M
and)	77-CE-68-M
)	77-CE-69-M
UNITED FARM WORKERS OF)	77-CE-70-M
AMERICA, AFL-CIO,)	77-CE-70-1-M
)	77-CE-74-M
Charging Party.)	
<hr/>		5 ALRB No. 5

DECISION AND ORDER

On May 30, 1978, Administrative Law Officer (ALO) Paul Albert issued the attached Decision in this proceeding, in which he concluded that Respondent had violated Section 1153 (a) and (c) of the Agricultural Labor Relations Act. Thereafter, Respondent and the General Counsel each filed exceptions and a supporting brief and each filed a brief in opposition to the exceptions of the other.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the ALO, as modified herein, and to adopt his recommended Order with modifications.

General Counsel excepted to the ALO's conclusion that

the layoff of irrigators Odelon Ramirez and Calexta Barrera did not violate the Act. The ALO credited Respondent's business justification for the layoffs and found, based on a credibility determination,^{1/} that Respondent informed Barrera of the availability of alternative work for him and Ramirez. We reject the ALO's finding that Barrera's failure to tell Ramirez of this offer could not be attributed to Respondent and agree with the General Counsel that it was unreasonable of Respondent to depend upon Barrera to inform Ramirez. However, as there was no finding that either of these two layoffs was motivated by anti-union animus, Respondent's failure to offer employment at the Balsa Road Ranch location to Ramirez does not constitute a violation of the Act.

We affirm the ALO's finding that Respondent's business justification for the layoff of the Chapa crew was not shown to be pretextual. Although it is apparent that Respondent had anti-union animus and had knowledge of the employees' union activity, there was insufficient evidence to overcome Respondent's affirmative defense of insufficient work and poor performance by this crew.

Respondent contends that Lupe Cordova was not a supervisor and therefore it cannot be held liable for any violation of the Act on her part. It is not necessary to find Lupe Cordova a supervisor in order to attribute her conduct to Respondent. The

^{1/} We will not reverse an ALO's credibility resolution unless the clear preponderance of all the relevant evidence convinces us that it is incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, 26 LRRM 1531 (1950); *Adam Dairy dba Rancho Dos Rios*, 4 ALRB No. 24 (1978). We find the ALO's credibility resolutions herein are supported by the record as a whole.

record establishes that Tina Bertuccio gave Lupe Cordova permission to conduct a meeting of the shed employees to discuss the impending, union election. Although Respondent did not initiate the meeting convened by Cordova, it can be held liable because of the apparent authority it vested in her.

Tina Bertuccio testified that Cordova was her "assistant", that she kept track of the workers' time and took a daily inventory of the cartons. In the absence of Paul or Tina Bertuccio, who were at the shed infrequently, Cordova "would watch over ... the operation and then if anything came up or whatever, she would come to the office and talk to [Tina Bertuccio]" When Tina Bertuccio was trying to obtain workers' addresses, she asked Cordova to help her. Cordova herself testified that she did not vote in the election because she was told she "wasn't supposed to because I run the people." Also, she was invited to a meeting called by top management to discuss the union campaign but was not allowed to attend crew meetings regarding the election. Thus, when she assembled the workers for a meeting, it is most probable that they considered her action not as a request by a fellow worker but as a command from Respondent. As we agree with the ALO that it was reasonable for the employees to believe that Cordova was acting as an agent of Respondent because of the cloak of authority which Respondent had given to her, we affirm his conclusion that the interrogation by Cordova was a violation of Section 1153 (a) attributable to Respondent.

The Remedy

We find no merit in the General Counsel's exception to

the ALO's failure to order reimbursement to Rodrigo Navarette for deductions from his paycheck subsequent to the deduction for October 21, 1978. Uncontroverted evidence was presented that no deductions occurred thereafter and that soon after that date Navarette had the electricity bill put in his own name, as he had previously agreed to do.

We agree with Respondent that expanded-access remedies for its failure to provide an employee list, as required by our Regulations Section 20910 (c), are not warranted here, inasmuch as the UFW was certified by the Board as the exclusive collective bargaining representative of Respondent's agricultural employees on November 17, 1978. See Paul W. Bertuccio & Bertuccio Farms, 4 ALRB No. 91 (1978).

This Board has previously held that expanded access is not warranted as a remedy for an employer's failure to provide a list when a subsequent union victory indicates that such failure did not prevent successful communication between the employees and the union. Accordingly, we shall order Respondent to cease and desist from failing or refusing to provide an employee list as required by 8 Cal. Admin. Code Section 20910 (c) (1976). Laflin & Laflin, et al., 4 ALRB No. 28, pp. 19, 20 (1978).

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, Paul W. Bertuccio and Bertuccio Farms,, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

4.

(a) Interrogating employees concerning their union activities or affiliation;

(b) Threatening employees with layoff, loss of housing, discharge, or any change in the terms and conditions of their employment because of their union activities;

(c) Threatening employees with deportation because of their union activities;

(d) Spying on, or giving the impression of spying on, employees engaging in union activity or other protected concerted activities;

(e) Failing or refusing to submit to the ALRB an employee list, as defined in 8 Cal. Admin. Code Section 20310(a)(2), in the circumstances set forth in 8 Cal. Admin. Code Section 20910(c)(1976);

(f) Discouraging membership in the UFW or any other labor organization by discharging, or in any other manner discriminating against, any employee with respect to such employee's hire, tenure of employment or any other term or condition of employment; and

(g) In any other manner interfering with, restraining or coercing any employee in the exercise of rights guaranteed by Section 1152 of the Act.

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

(a) Offer Maria Castillo immediate and full reinstatement to her former position or a substantially equivalent job without prejudice to her seniority or other rights and

privileges, and make her whole for any loss of pay and other economic losses she may have suffered as a result of her layoff, pursuant to the formula set forth in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

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

(c) Make whole Rodrigo Navarette by payment to him of the \$58 deducted from his paycheck of October 21, 1977, plus interest thereon computed at 7 percent per annum.

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

(e) Post on its premises copies of the attached Notice in all appropriate languages for 90 consecutive days, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(f) Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order, to all employees employed since July 15, 1977, and hand a copy of this Notice in the appropriate language to each employee hired within the 120 days following issuance of this Order.

(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.

(h) Notify the Regional Director within 30 days after issuance of this Decision and Order of the steps it has taken to comply herewith and continue to report periodically, at the Regional Director's request, until full compliance is achieved.

Dated: January 24, 1979

RONALD L. RUIZ, Member

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a hearing at which each side had a chance to present its facts and state its position, the Agricultural Labor Relations Board ; has found that we have violated the Agricultural Labor Relations Act. The Board has told us to send out and post this Notice.

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

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

- (1) To organize themselves;
- (2) To form, join or help unions;
- (3) To bargain as a group and choose whom they want to speak for them;
- (4) To act together with other workers to try to get a contract or to help or protect one another; 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 ask you whether or not you belong to the UFW or any other union or how you feel about any union.

WE WILL NOT listen to or watch workers while they are talking about the union or engaging in other union activities.

WE WILL NOT discharge, lay off, or otherwise discriminate against employees by changing the terms on which we rent them houses because of their support of the UFW or any other union.

WE WILL NOT threaten workers with loss of employment or eviction from their homes for supporting the UFW or any other union.

WE WILL NOT fail or refuse to submit to the Agricultural Labor Relations Board a current list of employees when the UFW or any union has filed a Notice of Intention to Organize our agricultural employees.

WE WILL offer Maria Castillo her job back, and will give her backpay, plus interest at 7 percent, for the time she was out of work.

Dated:

PAUL W. BERTUCCIO
BERTUCCIO FARMS

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

Paul W. Bertuccio and Bertuccio Farms

5 ALRB No. 5

Case Nos. 77-CE-54-M, 77-CE-64-M, 77-CE-67-M, 77-CE-68-M,
77 CE-69-M, 77-CE-70-M, 77-CE-70-1-M,
77-CE-74-M

ALO DECISION

The ALO concluded that Respondent's failure to provide an accurate pre-petition list violated Section 1153 (a) of the Act, The list which Respondent did provide omitted a substantial number of names and street addresses.

The ALO found that the General Counsel failed to prove that the layoff of Calexto Barrera, Odelon Ramirez, and Alberto Martinez violated the Act, and that they were laid off because they were no longer needed at the ranch where they had been working.

The ALO found that the General Counsel failed to prove that Respondent's reduction in work hours, layoffs, and failure to rehire experienced members of the Chapa crew violated the Act. He found that all crews had their hours reduced and that this occurred because the packing shed was overloaded. He also found that the Chapa group was the logical crew to lay off and that rehiring was accomplished through a reasonable procedure, not motivated by union animus. The ALO concluded that Respondent engaged in surveillance of the Chapa crew by silently observing them two days before the election without explanation and in a tense atmosphere created by Respondent's threats.

The ALO concluded that the layoff of Maria Castillo violated Section 1153 (c) and (a) of the Act, based on his finding that Respondent had always provided work to members of the Castillo family when possible, but departed from that policy in this case because he was angry over her support of the union.

The ALO concluded that Respondent violated Section 1153(a) of the Act by interrogating and threatening employees and Section 1153 (c) and (a) by attempting to evict employees from their residence because of union activities. Respondent also threatened to close its business, questioned employees about how they would vote, and threatened to evict employees because of their union support.

The ALO found that the General Counsel failed to prove that Respondent's remarks about a possible wage increase violated the Act, as no promise of benefits was involved.

The ALO concluded that Respondent withheld \$58 from Rodrigo Navarette's paycheck in violation of Section 1153 (c)

and (a) of the Act, as the timing of the deduction and the context in which it was discussed demonstrated that the deduction was in retaliation for Navarette's union activities.

The ALO found that the General Counsel failed to establish that the work assignment of Rodrigo Navarette as a chili picker violated the Act, as no other work was available for Navarette at the time.

BOARD DECISION

The General Counsel excepted to the ALO's conclusion that Calexto Barrera, Odelon Ramirez and Alberto Martinez were not laid off in violation of the Act. The Board affirmed the ALO, finding there was no anti-union animus.

The General Counsel also excepted to the ALO's conclusion that the layoff of the Chapa crew did not violate the Act. The Board affirmed the ALO, finding insufficient evidence to overcome Respondent's business justification of insufficient work and poor performance.

Respondent excepted to the ALO's conclusion that the actions of Lupe Cordova were attributable to Respondent. The Board affirmed the ALO, concluding that Cordova acted with apparent authority.

REMEDY

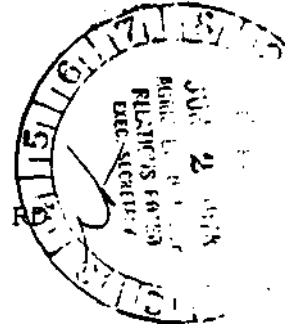
The Board ordered Respondent to cease and desist from interrogating, threatening or engaging in surveillance of employees. The Board also ordered Respondent to cease and desist from failing to provide an employee list and from discriminating against employees because of their union activities. The Board ordered Respondent to reinstate Maria Castillo and to reimburse her for any loss of pay and other economic loss she suffered as a result of discrimination. The Board ordered Respondent to reimburse Rodrigo Navarette for the \$58 deducted from his paycheck. Reading, posting, distributing, and mailing of notices was also ordered.

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

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STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



PAUL W. BERTUCCIO and BERTUCCIO FARMS,)	CASE NOS.	77-CE-54-M
Respondent,)		77-CE-64-M
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and)		77-CE-68-M
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)		77-CE-70-M
UNITED FARM WORKERS OF AMERICA, AFL-CIO,)		77-CE-70-1-M
Charging Party.)		77-CE-74-M
)		
)		

NORMAN K. SATO and MARIA LESLIE
for the General Counsel.

DARRELL H. VOTH of Dressler, Stoll & Jacobs
for the Respondent.

CAROLYN SCHOUR and GERARDO VAZQUEZ
for the Charging Party.

Before: PAUL ALBERT, Administrative Law Officer.

DECISION

STATEMENT OF THE CASE

This case was heard by me on 17 days commencing December 8, 1977 and ending January 27, 1978 in Gilroy, California. The complaint was filed November 23, 1977. Amendments to the complaint were filed December 12 and December 27, 1977. The complaint as amended is based on eight charges filed by the United Farm Workers of America, AFL-CIO (hereafter the "UFW"). The charges, complaint and amendments were duly served on the Respondent. The complaint

alleges that the Respondent committed various violations of the Agricultural Labor Relations Act (hereafter the "Act").

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

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

FINDINGS OF FACT.

I. Jurisdiction

Respondent Paul W. Bertuccio admitted that he operates a sole proprietorship engaged in agriculture in San Benito County, California, as an agricultural employer within the meaning of Section 1140.4(c) of the Act, and I so find.

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

II. The Alleged Unfair Labor Practices

The complaint as amended alleges that Respondent violated Section 1153(c) of the Act in the following respects: The change of the terms and conditions of workers' employment by layoff, discharge, failure to provide sanitary facilities, reduction in work hours, excessive work pressure, threatening to change housing conditions and creation of financial hardship for engaging in protected union activities, and the failure to hire employees for engaging in protected union activities.

The violations of Section 1153 (c) are also alleged to violate Section 1153 (a) of the Act. The complaint as amended alleges that Respondent violated Section 1153 (a) in the following additional respects: Failing to provide an employee list in conformance with Section 20910 (c) of the regulations of the Board, interrogating employees as to their union activities, promising benefits to employees if they refrained from engaging in protected union activities, threatening employees if they engaged in protected union activities, and engaging in or creating the impression of engaging in surveillance of employees engaged in protected union activities.

Respondent filed an answer to the complaint on December 7, 1977, and an amended answer to the complaint and an answer to the amended complaint on December 23, 1977. Respondent generally denied committing any violation of the Act, but failed to deny in the answer to the amended complaint the charge in sub-paragraph 6(0) of the amended complaint. However, this charge will be deemed denied. 8 Cal . Admin. Code § 20230 (1978). In addition, Respondent raised as affirmative defenses that he has been denied a fair and impartial procedure and that the UFW, its agents and allies, have engaged in misconduct. As to these defenses, Respondent presented no evidence that he was denied a fair and impartial procedure and I recommend that this defense be dismissed. The affirmative defense that the Charging Party engaged in misconduct is improper and is hereby stricken from Respondent's answer. See Anderson Lithograph Co., 124 NLRB 920 (1959).

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III. The Facts

A. Introduction

Respondent operates a sole proprietorship engaged in the business of growing, harvesting and packing various agricultural commodities. Respondent's operations are spread over a wide area of San Benito county on numerous noncontiguous parcels of land. Crops grown in 1977 included onions, bell peppers, chile peppers, corn, gourds, lettuce, sugar beets, tomatoes, apricots, walnuts, squash, garlic, cardone and sweet anise. Some of these crops were also packed and shipped by Respondent. These crops included bell peppers, corn, chile peppers, squash, onions and potatoes. Peak season occurred in September and October, during which Respondent employed between 700 and 800 workers.

Paul Bertuccio is in charge of the overall operation of the business. He is closely assisted by his wife, Tina Bertuccio, who deals with sales, payroll and general supervision of most of the packing sheds. Clay Alsberge is one of Respondent's top-level supervisors. His areas of responsibility include weeding and thinning and harvesting the bell peppers and other crops.

Respondent employs the services of labor contractor Jesus Quintero in the harvesting of some crops. For example, the onion harvest is done entirely by Quintero while the bell peppers are harvested with the use of both Bertuccio and Quintero crews.

In June 1977, five Bertuccio employees approached the UFW and requested that the union organize and represent Respondent's workers. As a result, an organizational campaign began and an election was held on October 17. The election results were 218 for the UFW, 93 for no union, and 52 challenged ballots. Respon-

dent has filed objections to the election. This matter is currently pending and has not been finally determined by the Board.

B. The Employee List

Findings of Fact

The UFW filed a Notice of Intent to Take Access on Respondent on September 9, 1977, pursuant to Section 20900 of the Board's regulations. A Notice of Intent to Organize was filed on September 12, 1977. Section 20910(c) of the Board's regulations requires an employer to submit to the Board's regional office within five days thereafter a list of all agricultural employees in the immediately preceding payroll period with their current street addresses and job classifications. Respondent delivered an employee list to the Board's regional office on September 16th. The list on its face did not comply with the regulations inasmuch as a large number of the addresses given were post office boxes and no address at all was given for many workers. On September 19th, a subpoena duces tecum was issued by the Board commanding Respondent to deliver a complete and accurate list as required by the regulations to the regional office on or before September 23rd. When Respondent failed to provide the list, the regional director applied to the Superior Court of the County of San Benito for an order requiring obedience to the subpoena. On October 11, 1977, the Court ordered Respondent to comply with the subpoena. A second list of employees was subsequently delivered to the regional office.

The first list contained a total of 389 names. No address at all was given for 69 employees and a post office box address was given for 41. Moreover, the record reveals that a number of

employees were not listed at all. For example, Rodrigo Navarette -- an employee of nineteen years who rented a house from Respondent -- was not listed.^{1/} Of the twenty-three members of the Juan Lopez crew -- a Quintero crew which worked for Respondent during the relevant payroll period -- thirteen were not listed.

The inadequacies of the list made it very difficult for union organizers to contact workers outside of the limited time periods permitted by the Board's access regulations for organizing in the work areas. Union organizers solicited the assistance of Respondent's workers in an effort to obtain a more accurate list.

Respondent maintains that the best possible effort was made to supply a list which conformed with the Board's regulations. Upon being notified that a list was required, Tina Bertuccio assumed responsibility for compiling it. She immediately contacted Hope Beltran, office supervisor for Quintero, and instructed Beltran to provide her with a list of the names and street addresses of all Quintero agricultural workers supplied to Respondent during the relevant payroll period. Beltran supplied her with a list. However, Respondent explains that the lists compiled by Beltran and Bertuccio did not have the street addresses of many employees as the employment records did not contain this information.

1/ His son, also an employee, was listed without an address.

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Discussion and Conclusions

The evidence suggests that the number of workers omitted from the list may be extensive. Paul Bertuccio testified that between 700 and 800 workers were employed at peak season, yet the list contained only 389 names. The fact that Respondent's tenant Rodrigo Navarette was not listed reveals the lack of thoroughness with which the list was prepared. As for Quintero employees, the record reveals that 56 percent of the members of the Juan Lopez crew were not listed. These omissions were in addition to the large number of employees whose street addresses were not given.

An agricultural employer is responsible for maintaining and making available to the Board upon request accurate and current payroll lists containing the names and street addresses of workers directly employed as well as those supplied by a labor contractor. Tenneco West, Inc., 3 ALRB No. 92 (1977). The failure to provide an accurate list of employees and their street addresses pursuant to Board Regulation 20910(c) has been held a violation of Section 1153(a) of the Act. See id. Because the omissions from the list supplied by Respondent were substantial, it is my conclusion that Respondent violated Section 1153(a) by failing to provide an accurate pre-petition list as required by the regulations.

C. The Layoff of Three Irrigators

Findings of Fact

Respondent had a three year lease during the period from January 1975 to December 1977 on land near the town of Paicines,

some ten miles from Respondent's office. In 1977, Respondent grew onions, potatoes, garlic and lettuce on this property. In early September 1977, the irrigation crew at Paicines consisted of five men. Work was assigned and overseen by Marin Arreola, a long-time employee of Respondent. He in turn received instructions as to what work was to be performed and the number of irrigators to hire from Jose Martinez, one of Respondent's top-level supervisors.

On September 2nd, union organizer Roberto San Roman visited the field in which the irrigators were working. He spoke first to Marin Arreola, who told him it would be best if he talked to the workers at the end of the work day. San Roman returned at that time. After he talked with the assembled crew members, three irrigators – Calexto Barrera, Odolon Ramirez, and Alberto Martinez – signed union authorization cards. Although there is conflicting testimony on the issue, it is my finding that on September 2nd Arreola was aware of which irrigators had signed cards.

The three irrigators who had signed cards were laid off on September 8th. The amount of irrigation work at Paicines declined at that time. Only two relatively small parcels of lettuce needed occasional irrigation over the next two months. Although miscellaneous jobs such as picking up onion sacks became available at Paicines from time to time, the sporadic nature of this work did not warrant the employment of a full-time crew.

There was irrigation work at the time of the layoffs at another parcel of land farmed by Respondent located on Balsa Road near Hollister. A factual dispute exists as to whether or not

the irrigators were offered work on this land.

Marin Arreola testified as follows: Two weeks before the layoff, he informed Barrera that work at Paicines would soon be ending and asked him if he wanted to work at the property near Balsa Road. Barrera stated he would not accept employment there as he feared arrest by immigration authorities due to the close proximity of the property to the town of Hollister. Barrera and Ramirez had expressed similar fears earlier that year when they were assigned to the Balsa Road property for brief periods of time. On the day of the layoff, Arreola repeated the offer of employment to Barrera and was turned down again. Arreola never talked directly to Ramirez about the layoff but asked Barrera to convey to him information about it and the availability of work at the Balsa Road property.

Arreola's testimony was in part substantiated by his friend tractor driver Francisco Villagomez. Villagomez testified that he was present when Arreola informed Barrera on September 8th that work had ended at Paicines. Both he and Arreola urged Barrera to work at Balsa Road. Barrera was adamant in his refusal to do so, reiterating his fear of the immigration authorities.

Barrera testified that Arreola first informed him that work would soon be ending some five days before he signed the union authorization card. He spoke to Arreola again about the layoff on September 8th and was informed that there would be no more work after that day. At no time was he told of the availability of other work. If he had been offered work at the Balsa Road property he would have accepted it. He had worked there earlier in the year. At that time he explained to Arreola that

he did not want to work at Balsa Road because there was work still available at Paicines. He did not -say that he feared the immigration authorities.

Ramirez testified that he first learned of the layoff on September 6th. Arreola told him on this date that there would shortly be no more work at Paicines. This was the only conversation he had with Arreola concerning the layoff and he was never informed of the availability of other work.

Alberto Martinez did not testify. Arreola testified that Martinez told him in early August that he would not work for Respondent after work at Paicines ended because he planned to seek employment with another grower.

From a consideration of this testimony, I make the following findings of fact:

1. Arreola first informed Barrera of the impending layoff prior to the day the irrigators signed the union authorization cards. The testimony of Barrera substantiates Arreola's claim in this regard.

2. Arreola informed Barrera at this time that work would be available at the Balsa Road property. This finding is based on the fact that even assuming that Arreola would discriminate against pro-union workers, there was no reason for him not to offer this work to the irrigators prior to the signing of the cards. Barrera and Ramirez had worked at Balsa Road earlier in the year, although expressing reservations about doing so. It would be natural for Arreola to ask them if they wanted to work there in September. I therefore credit Arreola's testimony as to the offer of work prior to the signing of the authorization cards.

3. Arreola repeated the offer of work to Barrera on September 8th when informing him of the end of work at Paicines. This finding is based on a credibility determination. Barrera did not recall being informed of the availability of work during the conversation with Arreola prior to the signing of the card. His testimony with respect to the conversation on September 8th must therefore be given less credence than the testimony of Arreola. In addition, Barrera's testimony in general was filled with uncertainties and confusion.

Discussion and Conclusions

A preponderance of the evidence supports Respondent's assertion that the irrigators were no longer needed on a full-time basis at Paicines. Respondent attempted to employ Barrera and Ramirez elsewhere and laid them off when they did not accept alternative employment. Although Ramirez never was informed of the offer of employment at Balsa Road, this communication failure was the fault of Barrera and not attributable to Respondent. The evidence that Alberto Martinez did not want to work for Respondent after termination of the work at Paicines was uncontroverted. It will therefore be my recommendation that the charge that the layoff of the irrigators violated the Act be dismissed.

D. The Chapa Crew

Findings of Fact

Paul Bertuccio uses both his own crews and the crews of labor contractor Jesus Quintero in the harvesting of peppers each year. Bertuccio usually starts the harvest with his own crews and uses Quintero crews as the volume of work increases. Bertuccio 's crews are then transferred back and forth as needed from

pepper harvesting to other jobs while the Quintero crews remain picking peppers.

In 1977, the pepper harvest began on August 23rd with two Bertuccio crews. The first Quintero crew began work in the harvest on September 6th. This was the Juan Lopez crew, considered by supervisor Clay Alsberge to be one of the best crews. It worked from September 6th until the end of the pepper season in mid-November. Two other Quintero crews -- the Manuel Chapa crew and the Guadalupe Ramos crew -- began work in the pepper harvest on September 15th. These crews worked for only two days before being transferred to other growers. The Ramos crew returned to harvest peppers for Respondent on September 26th and worked until the end of the season. The Chapa crew returned on October 1st and worked until October 17th.

Most of the members of the Chapa crew on October 1st had not worked in the crew in mid-September. The crew was actually a combination of two crews. Ana Zaragoza was the forewoman of a Quintero crew which had worked on tomato machines during late September. When this work ended, her crew was assigned to work with the Chapa crew picking peppers. The augmented crew was then transferred to Respondent on October 1. Although treated as one crew by Respondent, Quintero kept the pay records of the Chapa and Zaragoza sections separately.

There were thus three Quintero crews picking peppers for Respondent during the first week of October. Several Bertuccio crews also picked peppers on various days during this week. These crews tended lettuce or harvested other crops on other days.

Union organizer Roberto San Roman visited the pepper crews several times during this week to distribute union buttons and solicit support. The Chapa crew was the most supportive of the Quintero crews. Everyone in the Chapa crew openly wore a union button as compared to less than half the members of the other Quintero crews. There was also strong support for the union among the Bertuccio crews. Supervisor Clay Alsberge came to the field three times a day and noticed the extent of union support in the various pepper crews.

Quintero workers picked up their weekly paychecks each Saturday at the Quintero office. The checks were prepared and distributed by Quintero's chief assistant, his daughter Hope Beltran. When passing out the checks one Saturday in early October, Beltran told a group of workers that she pitied the persons who voted for the union as the immigration police was going to come and deport them. The statement became the subject of much discussion among the workers and heightened the tensions of the election campaign.

The standard work week during peak season was ten hours a day for six days and fewer hours or no work on Sunday. On three week days during the period of October 8th to 15th, the Chapa crew worked significantly fewer hours. On October 8th, the majority of the crew worked only five hours; on October 14th, they worked five and one-half hours, and on October 15th they worked seven hours.

Two days before the election, Margaret Quintero --daughter of Jesus Quintero -- transported shed employee Margarita Villegas to the field where the Quintero pepper crews were

working. Quintero brought Villegas to the field at the request of Hope Beltran who wanted Villegas to become acquainted with the workers so that she could act as an election observer for Respondent.

Workers in the Chapa crew saw Villegas arrive in a vehicle usually driven by Beltran. Villegas first spent two hours observing the Lopez and Ramos crews. On arriving at the Chapa crew, she mounted the trailer into which the peppers were dumped and remained there until the end of the work day. She did not work or speak to the workers but silently observed them. No explanation was given for her visit. The workers felt they were being spied upon by Respondent and Quintero in connection with the election. On election day, Villegas acted as an election observer for Respondent.

On October 17, the day of the election, the Chapa crew members voted shortly after coming to work in the morning. At noon, Clay Alsberge told Chapa that the crew was laid off for a couple of days. He had laid off one of the Bertuccio crews earlier in the day. The remaining pepper crews worked reduced hours on October 17th and 18th. No crews worked on October 19th because Respondent's business was closed for the funeral of Paul Bertuccio's mother.

Upon being informed of the layoff, six of the Chapa crew members immediately went to the UFW office in Hollister to file a complaint. It was their feeling that the reduction in work hours and the layoff were the result of their support for the union. After giving statements to union representatives, they returned to the pepper field and the crew was transported back

to its home base in Watsonville.

Hope Beltran first learned of the layoff that evening. She was surprised that Chapa had not come to the office that day to inform her of it as there was work available at other farms harvesting onions. It was standard procedure for forepersons to report to her immediately after a layoff. Chapa had been transferred between farms in midday earlier that season and was aware of this procedure.

Beltran telephoned Chapa the following day and asked him why he had not reported to her after the layoff. He informed her that he did not think that other work was available. Beltran offered him work harvesting onions and he stated that he would not be available for work for a few days as his back was bothering him and he was going to see a doctor in Fresno. On October 26th, Beltran went to Chapa's home and asked him to return to work. He did so the next day, working a week picking peppers for another grower and then two days harvesting onions for Respondent. He subsequently left the Hollister area.

Ana Zaragoza went to the Quintero office two days after the layoff – October 19th – to submit the timecards for her crew. She asked Beltran if there was any work available. There is conflicting testimony as to Beltran's reply. Beltran testified that she told Zaragoza that the only available work was harvesting onions and that Zaragoza said that her crew members did not want this work. Zaragoza testified that Beltran told her there was only work for people who resided in the Quintero labor camp and that she might have work for Zaragoza next year. However, I credit Beltran's recollection of this conversation.

It is supported by other evidence which reveals that there was work available harvesting onions at this time, that Quintero was anxious to employ as many workers as possible, and that workers considered onion harvesting to be undesirable as the work was difficult and the pay less than that received for picking peppers. In addition, Beltran offered Chapa work on the day after the layoff and there is nothing in the record which would indicate a reason for her to treat Zaragoza differently. In fact, Beltran considered Zaragoza to be the better foreperson.

On the evening of October 19th, Paul Bertuccio telephoned Beltran at her home. He told her that he would need an additional pepper crew the following day. He wanted to harvest a large volume of peppers as the sheds were empty, having been closed that day because of the funeral, and as he had made arrangements to use the packing shed of a neighboring grower. Beltran contacted Jesus Quintero about this early the following morning and a crew was quickly created with workers drawn from various other crews. This crew worked for Respondent only one day, October 20th.

Zaragoza went to the fields to talk with Juan Lopez about the availability of work on October 24th. He in turn talked to Quintero who asked him to tell Zaragoza to return to work the following day. She did so with 13 crew members and was assigned to pick peppers. She was employed until mid-November, although she never worked for Respondent.

The General Counsel has charged that the reduction in work hours, the layoff and the failure to rehire members of the Chapa crew was discriminatory and motivated by retaliation for

the union support of the crew members. Respondent has asserted a business justification for the reduction in work hours and the layoff. There are essentially three aspects to this explanation: (1) the crews were picking peppers faster than the packing shed could handle them during the week before the election and so a reduction in the number of hours of pepper picking was required; (2) Bertuccio crews were transferred to the pepper harvest in mid-October as work in other crops came to an end? and (3) the Chapa crew had the least seniority of the three Quintero crews and was not a particularly good crew.

A discussion of the process by which peppers are picked and packed is necessary for an understanding of this explanation. It is important to pick peppers soon after they ripen. If ripe peppers remain unpicked for more than one week, they turn brown and eventually red. It is normally difficult to sell brown peppers, although in 1977 the market was so good that Respondent had orders for all three types of peppers.

The peppers are packed by color. The vast majority of picked peppers are green. When packing green peppers, it is necessary to sort out and store the brown and red peppers until there are sufficient orders to warrant packing them. This process slows down the work of the packing shed.

Peppers are transported from the field to the shed in trailers. It is Clay Alsberge's job to coordinate the work in the fields and in the shed. If the quantity of peppers brought to the shed exceeds that which can be handled, trailers filled with peppers accumulate. This results in a decline in the freshness and quality of the peppers when they are marketed.

The pepper crop in 1977 was a bumper crop yielding more peppers per acre than in prior years. As the crews were not able to pick all the peppers which ripened during September, there was an unusually large number of brown peppers in the fields in October. The necessity of sorting these peppers at the shed slowed the packing operation. As a result, trailers began accumulating at the shed during the week prior to the election. Also during this week, three Bertuccio crews finished work assigned to them in other crops and were transferred to the pepper fields. There were thus six crews assigned to the pepper harvest from October 14th to 17th.

The volume of peppers picked by six crews could not be handled at the shed . It thus became necessary to reduce the total number of worker-hours of the pepper pickers. This could be done either by reducing the hours of each crew or by laying off a crew. Clay Alsberge would normally prefer to lay off one of the less experienced Quintero crews because a Quintero crew was more expensive to employ than one of Respondent's own crews and because Alsberge felt it was important to favor the best Quintero crews with full employment so that they would be available when he needed them.

The Chapa crew was an inexperienced crew few of whose members had picked peppers before the 1977 season. It also had the least seniority of the three Quintero crews. Alsberge thus was inclined to lay off this crew in the week prior to the election. However, Paul Bertuccio told him that a layoff was not possible until after the election because of an agreement he had made with the Board's regional office. Alsberge therefore reduced

the hours of four pepper crews on October 14th and of all six crews on October 15th. On the day of the election, October 17th, he laid off a Bertuccio crew in the early morning^{2/} and the Chapa crew at noon.

Alsberge was not certain what his need for labor would be later in the week. He thus told Chapa at the time of the layoff that the layoff was only for a couple of days. Although the Chapa crew was not a first rate crew, it was typical of the sort of crew Alsberge expected to get at peak season and he was open to rehiring it should the need for more pepper crews arise.

Discussion and Conclusions

1. The Reduction in Work Hours, Layoff, and Failure to Rehire.

The evidence reveals union animus and knowledge attributable to Respondent of the strong union sympathies of the Chapa crew members. However, it is my conclusion that the General Counsel has failed to successfully challenge Respondent's asserted business justifications for the work reductions and layoff and that the facts do not warrant a finding that the work reductions, layoff and failure to rehire were motivated by union animus. These conclusions are based on a number of considerations.

(1) The business records substantiate the transfer of Bertuccio crews from other crops to the pepper harvest on October 13th and 14th. These crews continued to pick peppers until the end of the month. Respondent asserts that the transfers occurred because work in the other crops had ended. The General Counsel has not produced evidence to the contrary and

^{2/} The Bertuccio crew was laid off for only one day.

it is my conclusion that these transfers were made for legitimate business reasons.

(2) The Chapa crew was not the only pepper crew which worked less than 10 hours on October 8th, 14th and 15th. On October 8th, the other crews all worked reduced hours, although longer than the Chapa crew. On October 14th, the Chapa crew worked the same number of hours as two of the other crews, and on October 15th the Chapa crew worked more hours than the three Bertuccio crews. Although a reduction in work hours of the other crews does not preclude a finding that the cutback in the hours of the Chapa crew was improperly motivated^{3/}, I do find that it substantiates Respondent's assertion that the packing shed was overloaded at this time. The overloading of the shed is further substantiated by evidence that it was a bumper crop with many brown peppers in the field and by Respondent's use of the packing shed of a neighboring grower in late October.

(3) It is undisputed that the Chapa crew had worked the least number of days of any of the Quintero crews in the pepper fields and that nearly all of the crew members were inexperienced. Assuming arguendo the necessity of reducing the number of hours worked by Quintero crew members, the Chapa crew was the logical crew to be laid off.

(4) The General Counsel's own witnesses confirmed that Alsberge told Chapa that the layoff was only for a few days. In fact, except for the day after the funeral, Respondent did not use more than two Quintero crews to pick peppers until October 28th,

^{3/} See Tex-Cal Land Management, Inc., 3 ALRB No. 14 at P. 5 (1977).

when four crews were employed. Nonetheless, it is my conclusion that Alsberge's statement substantiates his testimony that he did not know exactly how much work would be available later in that week and that he was open to rehiring the Chapa crew. Such an attitude does not comport with the assertion that the Chapa crew was fired for union activity.

(5) The most puzzling aspect of the facts actually arises from the General Counsel's case: Why did Chapa not report to Beltran for reassignment to another grower on the day of the layoff? Although Beltran testified that Chapa told her he did not think that work was available, I do not accept this explanation as it was peak season and Chapa was an experienced farm laborer. On the other hand, it is undisputed that Chapa himself did not want additional work and stated that he had a medical problem. It is my conclusion that the failure of Chapa to report to Beltran after the layoff was due at least in part to his lack of interest in obtaining additional work on that day.

(6) The circumstances surrounding the employment of a Quintero crew on October 20th do not support a finding of discriminatory refusal to rehire. Hope Beltran made an effort to rehire Chapa on October 18th. The following night, she was contacted by Paul Bertuccio at her home and asked to supply an additional crew the next morning. Even assuming that she had Zaragoza's telephone number at her office (a disputed question of fact), she could not have hired Zaragoza that night without making a special trip to the office and also arranging for transportation of the crew. Instead, she contacted Quintero the following morning. It is my finding that this was a

reasonable procedure under the circumstances. After October 20th, only two Quintero crews were used by Respondent to harvest peppers until October 28th. By this date, both Chapa and Zaragoza had returned to work for Quintero.

For these reasons, I conclude that the General Counsel has failed to prove by a preponderance of the evidence that the reduction in work hours, layoff, and failure to rehire of the Chapa crew were motivated by union animus. I shall therefore recommend that these charges be dismissed.

2. Section 1153(a) Violations

The statement by Hope Beltran that she pitied the workers who voted for the union as the immigration police was going to deport them is a threat and clearly discouraged employees from support of the union. It is a violation of Section 1153(a) of the Act (Butte View Farms, 3 ALRB No, 50 {1977}) and attributable to Respondent (Frudden Produce, Inc., 4 ALRB No. 17 (1978)).

The silent observation by Margarita Villegas of the Chapa crew fostered an impression among the crew members that they were being spied upon in order to discover their union sympathies. Such an impression was entirely reasonable and predictable in light of the timing of the surveillance just two days before the election, its unexplained nature, the arrival of Villegas in Hope Beltran's vehicle, and the tensions in the crew due to the election and the threat made earlier by Beltran, yet no steps were taken by Beltran to avoid fostering the impression.

It is an unfair labor practice for an employer to take steps which lead employees to think that they are under surveillance if such action has a reasonable tendency to affect employee

exercise of statutory rights under the Act. NLRB v. Kaiser Agricultural Chemicals, 473 F.2d 374, 380, 82 LRRM 2455 (5th Cir. 1973); Hendrix Mfg. Co. v. NLRB, 321 F.2d 100, 53 LRRM 2831 (5th Cir. 1963). Under the circumstances, it is my conclusion that the conduct of Beltran in arranging for surveillance of the Ghana crew constitutes an unfair labor practice in violation of Section 1153(a) of the Act which is attributable to Respondent. Frudden Produce Co., 4 ALRB No. 17 (1978).

E. The Castillo Family

Findings of Fact

1. The Castillo Residence.

Serafin and Felicitas Castillo first came to the Bertuccio property sixteen years ago. They and their children lived in tents on the property for two years while working for Respondent. When Serafin Castillo told Paul Bertuccio that they would leave if they were not provided with better housing, Bertuccio arranged for the family to move into a house located near the main office which had previously been occupied by his parents. The Castillo family has lived in this house since 1964 and pays rent of \$60.00 per month. Felicitas Castillo and three of her daughters -- Maria, Lupe and Teresa -- lived in the house during most of 1977. Serafin Castillo stayed there from time to time as did other relatives.

The Castillos have ten children all of whom have worked for Respondent. The family members supported the union. As early as 1974, Maria and Serafin Castillo told Paul Bertuccio that the workers would unionize if they did not receive a raise. Maria Castillo was a member of the group of Bertuccio workers who

asked the UFW to organize at Respondent's farm in 1977. She and her sister Carmen Betancourt were vocal UFW supporters.

In October 1976, the Bertuccios purchased a fruit stand. The sale of fruits and vegetables at the stand was to be Tina Bertuccio's hobby and not a part of the usual business aspects of Respondent's operations. The stand was brought to Respondent's property in a dismantled state.

Tina Bertuccio told Carmen Betancourt in November 1976 that she planned to erect the stand on the site of the Castillo residence. She said that the house would be moved and that the Castillo family would have to find someplace else to live. After hearing of this, Maria Castillo approached Paul Beruccio to find out if it was true. The house belonged to his parents, and the Castillos were accustomed to dealing with him on important matters. Paul Bertuccio stated that they would have to move but not until he told them to do so himself. The wishes of his parents regarding the house were not as yet settled.

In January 1977, Paul Bertuccio's mother told him not to move or destroy the house. The Bertuccios then decided to construct the fruit stand in front of the house and cleared this area of a number of old buildings. The stand was erected in May and Tina Bertuccio sold fruits and vegetables during the remainder of the season.

In February, Tina Bertuccio met Maria, Lupe and Teresa Castillo while delivering mail to the house. She asked them if they had found another house and referred them to a house she knew was for sale. Maria Castillo said she would look at it as a home for herself alone. Bertuccio said she would give them

time to find another place and was not trying to push them out of their home. In April, Tina Bertuccio asked Carmen Betancourt if her mother had found a house and was told that she had not.

Tina Bertuccio and Carmen Betancourt had a conversation in July about the union. Bertuccio stated that she would not care if the union won as Paul Bertuccio was tired of working and thinking of closing the business. Betancourt asked what would happen to the workers' houses if the business was closed. Bertuccio replied that as the workers would leave due to lack of work, she was going to fix up the houses and rent them to white people. In early August, Tina Bertuccio had another conversation with Betancourt in which Bertuccio asked her whether she was going to be on the same side as her family in the election. When Betancourt replied that this depended on which side her family supported, Bertuccio said that "one of you guys has to be smarter . . . and think it over."

Tina Bertuccio approached Felicitas Castillo in late August. With the aid of a translator, she told Castillo that she would have to move as the house was going to be torn down to make room for a parking lot. She gave her ninety days to vacate the house. This was the first time that Tina Bertuccio had spoken to Felicitas Castillo about the eviction. In September, Tina Bertuccio reaffirmed to Carmen Betancourt that the house was going to be torn down and the site used for a parking lot.

Paul Bertuccio approached Carmen Betancourt at work in early October. He was very perturbed as he had heard that Betancourt wanted to change the work hours of the crew. He told her that he knew she was a union ringleader in the shed but that he

was the boss and in charge of setting the work hours, that he was going to start acting like a boss, and that he was tired of union supporters. He added that he had done "a lot of favors" for the Castillo family.

Felicitas Castillo attempted to find another house after being informed of the eviction by Tina Bertuccio in August. She looked at many houses but had difficulty in finding a house large enough for her family. Rentals were scarce and the houses for sale were expensive. Finally in November a house was located which the family could afford to purchase. A deposit was left on it and Carmen Betancourt asked Tina Bertuccio for an additional month before having to move. Bertuccio granted this. However, the house was never bought because the seller increased the purchase price.

Serafin and Lupe Castillo approached Paul Bertuccio on November 22nd for an explanation of the reason for the eviction. Bertuccio became very angry. He answered that he did not want to do any more favors for the Castillo family and reprimanded Serafin Castillo because Maria Castillo had made numerous complaints "to Salinas" during the union campaign and was a union leader and because his daughters took frequent bathroom breaks at work. Bertuccio said he wanted their house for a storage area.

2. The Layoff of Maria Castillo.

Maria Castillo started to work for Respondent in 1965. She was a good worker and eventually was made forewoman of the onion shed. In 1975 she became unhappy with this job because of difficulties she encountered overseeing some of the men in the shed and she requested a transfer. In 1976 she worked in the

other packing sheds from the beginning of January to early December. In November 1976 she sorted bell peppers until the end of the pepper season and then was asked by Paul Bertuccio to make boxes. She worked until early December.

In 1977 Maria began work for Respondent in mid-May. She worked in the sheds operating machinery, cutting pears, packing squash and sorting a variety of crops. In October she was assigned to sort bell peppers. At the end of the pepper season on November 21st, she was laid off.

There were fifteen to twenty workers sorting peppers at the end of the season. Five of these workers were assigned to other tasks by Respondent. Work continued in the potato shed until mid-December and in the onion shed until January.

Discussion and Conclusions

1. The Layoff of Maria Castillo.

The General Counsel has alleged that the layoff of Maria Castillo was discriminatory and motivated by retaliation for her union activity. Respondent has asserted that she was laid off because no work was available. It is my finding, however, that the layoff was motivated to a substantial degree by union animus.

It had been Paul Bertuccio's practice in prior years to attempt to hire members of the Castillo family when possible. Paul Bertuccio admitted doing more such favors for the Castillos than for any other family and felt a sense of closeness to them. This feeling changed to extreme bitterness as a result of the support of family members for the union. The bitterness was particularly directed at Maria Castillo whom he knew to be a leader of the pro-union workers. The intensity of this bitterness

and anger was evident from Bertuccio's demeanor at the hearing when testifying of the family's union support. ^{4/} His attitude is well-summarized by his statement to Serafin Castillo (which was reaffirmed with intensity at the hearing) that he intended to do "no more favors" for the Castillo family. This statement was also made the day after Maria Castillo's layoff.

It is my finding that the principal reason Maria Castillo was not employed in late November is that Paul Bertuccio was angry at her. Although there is no question that there was a decrease in the amount of work available with the close of the pepper shed, some of the workers were not laid off. Five of the fifteen to twenty workers in the pepper packing crew continued to be employed after Castillo's layoff. In addition, at least three shed workers were employed through Quintero in the potato shed. Bertuccio testified that it was his practice to give preference in hiring to his own employees over Quintero employees and to give preference to employees who rented houses from him. These employment preferences, when considered with Bertuccio's past practice of providing members of the Castillo family with work when possible, the availability in November of work for other pepper packers and Quintero workers, and the fact that Maria Castillo had worked for Respondent for twelve years, lead me to the conclusion that Bertuccio's anger at Maria Castillo was a substantial consideration in his failure to select her for work. As this anger was caused by her support of the union, it is my finding that the layoff was retaliatory in nature and a violation of Sections

4/ Bertuccio's demeanor also revealed intense anger when talking of Rodrigo Navarette's union support. It is my finding that Bertuccio felt betrayed and very angry when employees for whom he felt he had done favors supported the union.

1153(c) and (a) of the Act.^{5/} See S. Kuramura, Inc., 3 ALRB No. 49 (1977).

2. Interrogation, Threats and Eviction Demands

Remarks of Tina Bertuccio to Carmen Betancourt in July and August of 1977 constitute violations of Section 1153 (a) of the Act. In July, Bertuccio told Betancourt that she did not care if the union won the election as she and her husband were tired of working and thinking of closing the business and that if they did so she was going to fix up the workers' houses and rent them to white people. The law requires that employer predictions as to the effect of a union victory on the operation of a business be carefully phrased on the basis of objective fact to convey a belief as to demonstrably probable consequences beyond the employer's control. NLRB v. Gissel Packing Co., 395 U.S. 575, 618, 71 LRRM 2481 (1969). Tina Bertuccio's statement does not meet this criterion as the reason advanced for closing the business is a personal one not related to economic necessity. The statement clearly conveyed a threat and constitutes an unfair labor practice.

In August, Tina Bertuccio asked Carmen Betancourt whether she was going to be on her family's side in the election, and stated that "one of you guys has to be smarter . . . and think it over." This constitutes both an unlawful interrogation and a threat. The test for whether an employer's statements constitute a violation of Section 1153(a) is whether the statements would

^{5/} During the course of the hearing, counsel for the General Counsel alleged that the layoff of Felicitas Castillo in October 1977 was also motivated by union animus. He has since informed me that he does not intend to pursue this charge and it was not addressed in his post-hearing brief. It is my finding that the facts do not warrant a finding that this layoff was a violation of the Act.

reasonably tend to interfere with or restrain employees in the exercise of their rights guaranteed by the Act. Jack Brothers and McBurney, Inc., 4 ALRB No. 18 (1978). The Board has noted the intimidating effect of the interrogation of an employee about union sympathies. See, e.g., id. The statement that it would not be "smart" for Carmen Betancourt to side with her family is clearly a threat which would tend to discourage union activity. This statement and the interrogation constitute an interference with Betancourt's statutory rights under the Act.

With respect to the Castillo residence, it is my conclusion that although Tina Bertuccio's request in November 1976 that the family vacate the residence was not related to union activity, the eviction demands from August to November 1977 were motivated in reprisal for protected activities. There are several factors which lead me to this conclusion.

The circumstances surrounding Tina Bertuccio's notice to Felicitas Castillo in August are probative of the motives behind it. Although she worked in the fruit stand next to the Castillo residence commencing in May and regularly delivered mail to the house, Tina Bertuccio had talked to residents of the house about moving on only one occasion during the first seven months of 1977. During this conversation she had said that she was not trying to push them out of the house. In August, however Bertuccio's attitude changed. She warned Carmen Betancourt that it was not "smart" to be on her family's side in the union campaign. She then arranged to talk to Felicitas Castillo, the head of the household, and gave her a 90-day notice. This change in attitude came about shortly after the start of the union

campaign. The closeness in time of the eviction demand to the start of the union campaign and to the threat made to Betancourt is circumstantial evidence that the demand was motivated by the union activity of the Castillo family members.

Paul Bertuccio's attitude as revealed by his testimony and angry demeanor at the hearing is evidence that the family's support of the union was a significant factor behind the eviction demands. When asked about the eviction, he angrily told Sera fin and Lupe Castillo that he would do no more favors for the family because Maria Castillo had made frequent complaints "to Salinas"^{6/} during the union campaign and was a union leader.^{7/} As discussed in the preceding section, he felt that he had done more favors for the Castillos than for any other family and that they had betrayed him. Clearly he conceived of the residence with its low rent and convenient location as one of these favors.

Also probative is the fact that a variety of different reasons have been given for the necessity of the eviction. The original reason was that the stand would occupy the site of the house. However, the Bertuccios changed this plan and a number of other buildings were torn down in order to locate the stand nearby. In explaining the eviction subsequent to August 1977, the Bertuccios have said at various times that they wanted the residence as a storage area, or to be torn down for a parking lot or simply that the parked motor vehicles of the family members

6/ The Board's regional office is located in Salinas.

7/ Bertuccio testified that he was also angry because of the frequent bathroom breaks taken at work by Castillo family members. However, I find this to be an insignificant aspect of his anger.

interfered with the efficient operation of the stand. However, based on the factors discussed above and the fact that in the past Paul Bertuccio had extended himself to protect the family, it is my conclusion that Paul Bertuccio's anger at the family was a much more significant motivating force for the eviction than any of the various other reasons advanced to explain it.

Paul Bertuccio's statements to Serafin and Lupe Castillo constitute a violation of Section 1153(a) of the Act as he forcefully linked the withdrawal of favors and eviction to Maria Castillo's union activities. In this context, the statements clearly tended to interfere with the rights of employees to engage in activities in support of the union. Wichita Eagle and Beacon Publishing Co., 199 NLRB 360, 81 LRRM 1606 (1972). In addition, as discussed above, it is my conclusion that the eviction demands commencing in August 1977 were punitive and motivated in substantial part by the intense hostility of Paul Bertuccio arising from union activities of family members. As the rental of the residence was a valuable incident of the employer-employee relationship within the meaning of Section 1153(c) of the Act,^{8/} it is my conclusion that Respondent violated Sections 1153(c) and (a) by these eviction attempts. Florida Citrus Cannery Cooperative, 124 NLRB 1182, 44 LRRM 1613 (1959); L. J. Williams Lumber Co., 93 NLRB 1672, 27 LRRM 1629; Supplemental Decision 96 NLRB 635, 28 LRRM 1545 (1951); S. Kuramura Inc., 3 ALRB No. 49 at p.12 (1977).

8/ The rental of the Castillo residence is closely tied to employment of family members. The residence is situated on Respondent's property near to the main office and sheds. It is rented to the Castillos for a modest sum. The rent is usually deducted from pay owed to one or another family member. Paul Bertuccio testified that he would not rent it to the Castillos if members of the family residing in it were not working for him. See Florida Citrus Cannery Cooperative, 124 NLRB 1182, 44 LRRM 1613 (1959).

F. The Shed Meetings

Findings of Fact

Two employee meetings were held in the bell pepper shed at which the union election was discussed. The first was held in late September, the second in early October. Respondent has been charged with unfair labor practices due to statements made at these meetings.

The first meeting was called together by Lupe Cordova. Cordova was in charge of the day-to-day operation of the shed. Her duties included keeping track of the time worked by the employees, transferring workers among the various jobs in the shed, ensuring that there was a sufficient inventory of packing boxes, reprimanding employees who were not attentive enough to their work and passing out checks. When she was not attending to these responsibilities, she worked on the packing machines with the other employees. She was paid the same salary as the other workers and she had no power to hire or fire employees or to make decisions as to what work was to be done. Such decisions were made by Tina Bertuccio. However, Cordova was regarded by the shed employees as their supervisor and conveyed to them decisions made by Bertuccio.

Cordova approached Tina Bertuccio on a Sunday morning in late September to ask permission to hold a meeting planned by herself and some other workers to discuss the union and to find out which workers supported it and which opposed it. Tina Bertuccio testified that Cordova told her that it was to be a "private meeting" and it is my finding that Bertuccio knew that the purpose of the meeting was to discuss the union. Bertuccio

gave her permission to hold the meeting.

Cordova called the workers together at the end of work that day, shortly after noon. In attendance were the bell pepper shed workers, several workers from other sheds, and two union organizers. There is a difference in testimony as to what Cordova said. She testified that she told the workers to gather together to talk about the union. Maria, Teresa and Lupe Castillo each testified that Cordova said she came representing the Bertuccios to offer a 25-cent raise and that first the workers should divide themselves and raise their hands if they supported the union. Union organizer San Roman testified that Cordova asked those who favored the union to raise their hands, but that he did not hear her say that she represented the Bertuccios.

It is my finding that San Roman's testimony is the most credible on this issue. As a union organizer, he would have been extremely attentive to every word which Cordova spoke. His failure to testify that Cordova made statements regarding representation of the Bertuccios and the raise places the preponderance of the evidence against these statements having been made. On the other hand, Cordova was not a credible witness. For example, she denied ever talking to Tina Bertuccio about the meeting, while Tina Bertuccio testified that they had discussed it twice. She was vague and evasive on other issues. Her testimony that the purpose of the meeting was to find out which workers supported the union buttresses San Roman's description of the manner in which Cordova started the meeting. It is therefore my finding that Cordova asked the workers who supported the union to raise their hands.

The meeting was interrupted at this point by one of the union organizers. He said that the workers should not reveal their support as they could get fired. A discussion ensued between the union organizers and the workers. Roberto Salcedo, an anti-union worker, engaged in a ten-minute dialogue with the organizers and workers about alternatives to the union. He suggested that the workers negotiate their own salary increases and attempted to get them to agree on certain demands which he offered to convey to the Bertuccios. When this failed, the meeting ended. Cordova reported to Tina Bertuccio two days later that the union organizers had disrupted the meeting and that the workers had not discussed the union.

The second shed meeting occurred a week to ten days after the first. Paul Bertuccio and Clay Alsberge went to the shed to address the workers. Bertuccio first read a short statement to the effect that he could not give a wage increase or change in benefits during the union organizational campaign, that he had been their friend and good employer for 37 years and that he did not want a union and preferred that they not support the union. His statement was then read in Spanish by Alsberge and distributed to the workers on a leaflet.

Several questions were asked. Maria Castillo asked about changes in benefits. This question was not answered. However, two other questions were answered. A worker asked how much of a wage increase they would get if the union lost the election. There is a conflict in testimony as to how this question was answered. It is my finding that Paul Bertuccio answered the question by stating that he could not promise a wage increase

at that time because his hands were tied during the election campaign and he was not even permitted to discuss the matter.

Carmen Betancourt asked whether or not it was true that Bertuccio would plant sugar beets and alfalfa if the union won the election. Bertuccio had told her sister Maria Castillo in August that he would plant these crops (which require less labor) if the union won. There is also a conflict in testimony as to how this question was answered. It is my finding that Bertuccio answered the question in English and Alsberge answered it in Spanish. Bertuccio and Alsberge stated that if the union won and the cost of doing business rose, that they would have to change their method of farming and grow crops that required less labor. The statement caused workers to worry lest their jobs be lost after a union victory. After answering these questions, Bertuccio and Alsberge left the shed.

Discussion and Conclusions

The issues presented by the first meeting are whether Lupe Cordova's conduct reasonably tended to interfere with the free exercise of the employees' rights under the Act and whether her conduct should be attributed to Respondent. The evidence establishes that the shed workers regarded Cordova as their supervisor. She conveyed to workers orders from Tina Bertuccio, verbally disciplined workers, and transferred workers from job to job within the shed. Shed employees referred to her as their supervisor. She was unquestionably a figure of authority and regarded as Respondent's representative in the shed.

There is no question that the interrogation of the shed workers about their union sympathies by this authority figure

was intimidating. It was foreseeable that workers would conclude that Cordova was attempting to ascertain their union sympathies in order to convey this information to the Bertuccios. It is my finding that the interrogation by Cordova reasonably tended to restrain employees from support of the union.

It is also my conclusion that Cordova's behavior in interrogating workers should be attributed to Respondent. Tina Bertuccio was in close contact with the operation of the shed and aware that Cordova was an authority figure to the workers. She was aware that Cordova was against the union^{9/} and that the workers knew she conferred often with Cordova and delivered messages from her. It was predictable that workers would feel intimidated at a meeting about the union conducted by Cordova. Nonetheless, Bertuccio authorized Cordova to conduct a meeting the purpose of which was to discuss the union. Under these circumstances, Cordova's conduct is attributable to Respondent because it was reasonably foreseeable that the employees would believe Cordova was acting as an agent of Respondent due to the cloak of authority which Respondent gave to her (see Owens-Corning Fiberglass Corp., 185 NLRB 75, 75 LRRM 1046 (1970)) and because the law requires that Respondent be held accountable for the reasonably foreseeable consequences of Tina Bertuccio's authorization of the meeting. Baltimore Catering Co., 148 NLRB 970, 975, 57 LRRM 1106 (1964). It is therefore my conclusion that Cordova's interrogation constitutes a violation of Section 1153(a) of the Act which is attributable to Respondent.

9/ Tina Bertuccio invited Cordova to a meeting designed to be attended only by supervisors and workers sympathetic to the company. The purpose of the meeting was to determine how many workers supported the union and to develop a strategy to defeat the union at the election.

With respect to the second meeting, it is my conclusion that no violation was committed by the manner in which Paul Bertuccio responded to the question about a wage increase. Bertuccio stated clearly in his opening speech and in response to the question that he could not comment on the possibility of a wage increase. No promise of benefits was made in contravention of the Act,^{10/} and I do not find that a violation occurred.

The remarks of Bertuccio and Alsberge concerning the planting of less labor-intensive crops present a different issue. The law requires that an employer ensure that an economic prediction be

"carefully phrased on the basis of objective fact to convey [a] belief as to demonstrably probable consequences beyond his control. . . . If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion. . . ." NLRB v. Gissel Packing Co., 395 U.S. 575, 618, 71 LRRM 2481 (1969).

In considering whether an economic prediction violates this standard, the context in which the remarks were made is highly relevant. As the courts have noted:

"The question is not only what the employer intended to imply but also what the employees could reasonably have inferred. . . . The scope of inquiry must encompass the entire pattern of employer conduct. Remarks that may not appear coercive when considered in isolation may take on a different meaning when evaluated with respect to the totality of the circumstances." NLRB v. Kaiser Agricultural Chemicals, 473 F.2d 374, 380-81, 82 LRRM 2455 (5th Cir. 1973).

^{10/} See Anderson Farms Co., 3 ALRB No. 67 at pp. 17-18 (1977).

As Kaiser Agricultural Chemicals makes clear, earlier remarks to shed workers are relevant to a consideration of the inferences which workers could reasonably have made from the answers of Bertuccio and Alsberge to the question about the planting of alfalfa. The interrogation of Lupe Cordova is relevant as are remarks of Tina Bertuccio to Carmen Betancourt in July and August and the prior statement of Paul Bertuccio to Maria Castillo that he would plant alfalfa if the union won the election. It could be expected that the latter statement would be discussed among the workers and it was thus not surprising that Bertuccio was asked about it at the meeting.¹¹ In light of this background of threats and interrogations, it is my conclusion that the remarks concerning the planting of less labor-intensive crops violated the standards set forth in Gissel and Kaiser Agricultural Chemicals. It is therefore my finding that these remarks constitute a violation of Section 1153 (a) of the Act.

G. Rodrigo Navarette

Findings of Fact

Rodrigo Navarette has been employed by Respondent for nineteen years. In 1977, he began work in late February and worked the rest of the year. From April to October he worked as an irrigator.

Navarette was a supporter of the union. When union organizer San Roman told him that the employee list submitted by Respondent was inadequate, Navarette volunteered to help obtain

11/ See Hanes Hosiery, Inc., 219 NLRB 338, 339, 90 LRRM 1027 (1975); Standard Knitting Mills Inc., 172 NLRB 1122, 68 LRRM 1412 (1968).

the names and addresses of his co-workers. He asked his supervisor, Manuel Arreola, for assistance in identifying workers whom he did not know. One evening, he accompanied union organizer when they visited workers in the labor camps.

Paul Bertuccio was informed by two or three persons -- including Manuel Arreola -- of Navarette's activities on behalf of the union. He became extremely angry and told Arreola to send Navarette to the office for a talk. It was highly unusual for Bertuccio to talk to a field worker in his office. Arreola -- a long-time employee -- testified that he did not recall this happening before.

Paul and Tina Bertuccio and another man were present when Navarette arrived at the office. Paul Bertuccio asked Navarette about his union activities and accused him of taking an unauthorized absence from work to assist the union. Bertuccio became extremely angry -- as he did at the hearing when talking about Navarette. He told Navarette that it was "not good" for him to be involved in "those things." Navarette became defensive and denied aiding the union beyond signing a union card.

Bertuccio next talked to Navarette about the amount of electricity Navarette was using to operate the water pump which irrigated the garden at his home. Navarette rented a house from Bertuccio and has had a vegetable garden there for the past four years. The electricity bill for the water pump was in Bertuccio's name with the utility company and Bertuccio had asked Navarette to put it in his own name on several occasions during the preceding year. Navarette had agreed to do this but had not done so as of the day of the meeting. Bertuccio told Navarette at the

meeting that he was going to deduct the charge for the electricity from his next paycheck. Navarette said he was willing to pay for the electricity which he actually used but that some of the water was used by other Bertuccio employees in washing themselves and their vehicles. Bertuccio subsequently deducted \$58.00 from Navarette's paycheck of October 21st for electricity used during the preceding months.

In the latter part of October, Navarette's job assignment was changed. He was assigned for one week to work fixing and cleaning pipes. Manuel Arreola then asked him if he was willing to work moving pipes and Navarette said that he physically could not do this type of work. He was then assigned to pick chiles and subsequently to carry boxes to lettuce pickers.

This work was harder than work Navarette had previously been assigned. In prior years, he had picked up empty sacks in late October. In November of the preceding three years, he had left Respondent for approximately three months to work for a neighboring grower. This grower did not need him in 1977. The record does not reveal whether Navarette worked for Respondent in November and December of earlier years.

Navarette saw people picking up sacks and doing row irrigation after his assignment to chile picking. Respondent does not deny that such work was going on but explains that the row irrigation was confined to two small parcels of land where lettuce was irrigated at infrequent intervals. This work was assigned to another regular employee who had worked in the field on previous occasions. On the other hand, the sack collecting work was basically the responsibility of the contractor Quintero, who

contracted to harvest the onions -- including picking up the sacks -- at a flat rate per ton. At times, Quintero workers were remiss in their obligation to pick up the sacks and Bertuccio employees would do so. However, such work became available at infrequent intervals and even then would only take a few hours. Respondent would assign this work to irrigators or other workers who had a few hours in which they were not needed in their usual assignments.

Discussion and Conclusions

Paul Bertuccio's angry questioning of Rodrigo Navarette about his union activities was very intimidating and clearly interfered with Navarette's right to assist the union's organizing campaign. As such, it constitutes an unfair labor practice. Jack Brothers and McBurney, Inc., 4 ALRB No. 18 (1978). The statement by Paul Bertuccio that it was "not good" for Navarette to be involved in "those things" was a veiled threat. It was clear from the context that Bertuccio was referring to Navarette's union activities. As such, the statement clearly interfered with Navarette's protected right to engage in union activities and constitutes a violation of Section 1153 (a) of the Act. Wichita Eagle and Beacon Publishing Co., 199 NLRB 360, 81 LRRM 1606 (1972).

It is my finding that the \$58.00 paycheck deduction for electricity was a change in the terms and conditions of Navarette's employment which was motivated in substantial part in retaliation for his union activities. The manner in which the bill was brought up in the heat of the discussion about the union is evidence that Paul Bertuccio was seeking to demonstrate to Navarette that things were going to be tougher for him because of his

support of the union. Although Bertuccio had asked Navarette to have the utility bill placed in his name prior to the day of the discussion in his office, Bertuccio had never actually deducted this amount from Navarette's paycheck and had been lax about deduction of rent payments. The timing of the \$58.00 paycheck deduction, the context in which it was discussed and the change in the manner in which Bertuccio treated Navarette lead me to the conclusion that the deduction was punitive and made in substantial part in retaliation for Navarette's union activities. See NLRB v. Princeton Inn Co., 424 F.2d 264, 73 LRRM 3002 (3rd Cir. 1970). Because the rental of the house from Bertuccio represented a term and condition of Navarette's employment^{12/} the deduction constituted a violation of Sections 1153(c) and (a) of the Act. S. Kuramura, Inc., 3 ALRB No. 49 at p. 12 (1977); L. J. Williams Lumber Co., 93 NLRB 1672, 1676-77, 27 LRRM 1629; Supplemental Decision 96 NLRB 635, 28 LRRM 1545 (1951); Akitomo Nursery, 3 ALRB No. 73 at p. 2, n. 1 (1977).

It is a violation of Section 1153(c) of the Act for an employer to discriminate against an employee by transfer to less desirable job assignment for the purpose of discouraging protected activity. Southeastern Pipe Line Co., 103 NLRB 341, 31 LRRM 1536 (1953). The General Counsel has the burden of proving by a preponderance of the evidence that the transfer was illicitly motivated. It is my conclusion that the General Counsel has failed to meet this burden with respect to the work transfer of Rodrigo

12/ Navarette has rented housing from Respondent for nineteen years, the same period as his employment. Paul Bertuccio had felt a sense of responsibility for providing Navarette with housing. Rent was normally deducted from Navarette's paycheck. See Florida Citrus Cannery Cooperative, 124 NLRB 1182, 44 LRRM 1613 (1959)

Navarette in November 1977.

The fact that Navarette had worked for Respondent for nineteen years without ever being assigned work as a chile picker or lettuce box carrier is circumstantial evidence that the work transfer was retaliatory. However, the General Counsel did not establish that Navarette ever worked for Respondent in November and December of prior years and Respondent has produced evidence that there was no other work available for Navarette in November 1977. The only evidence produced by the General Counsel to rebut this assertion is testimony of Navarette himself that he saw workers picking up sacks and row irrigating. Respondent demonstrated that the sack work was only occasionally available and basically the responsibility of the Quintero crews, and that only two small fields were being row irrigated. Without stronger proof that other work was available, it is my finding that the General Counsel has failed to meet his burden of proof. It shall therefor be my recommendation that this charge be dismissed.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 1153(a) and Section 1153(c) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

With respect to Respondent's failure to supply an employee list pursuant to the Board's regulations, I shall recommend the remedies set forth in Laflin & Laflin, 4 ALRB No. 28 (1978) for cases in which final election results have not been determined

as necessary to effectuate the policies of the Act in this case. With respect to the violations involving threats, interrogation, the appearance of surveillance, layoff, and eviction demands, I shall recommend the remedies set forth in Tex-Cal Land Management, Inc., 3 ALRB No. 14 (1977) as necessary to effectuate the policies of the Act in this case. With respect to the charge for electricity deducted from Rodrigo Navarette's paycheck, I shall recommend that he be reimbursed this sum with interest computed at the rate of 7% per annum. See Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

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

ORDER:

Respondent Paul W. Bertuccio and Bertuccio Farms, their officers, agents, successors and assigns, shall:

1. Cease and desist from:
 - (a) interrogating employees concerning their union affiliation and sympathy;
 - (b) threatening employees with layoff, termination, loss of employment or change in the terms and conditions of their housing because of their union activities;
 - (c) discouraging or otherwise discriminating against or punishing employees because of their union activities;

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(d) engaging in surveillance or the appearance of surveillance of employees engaged in protected activities;

(e) refusing to provide the Agricultural Labor Relations Board with an employee list as required by 8 Cal. Admin. Code Section 20910(c) (1976); and

(f) in any other manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Labor Code Section 1152.

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

(a) Offer Maria Castillo immediate and full reinstatement to her former or substantially equivalent job without prejudice to her seniority or other rights and privileges, and make her whole for any losses she may have suffered as a result of her layoff pursuant to the formula set forth in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

(b) 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 due to the foregoing named employee.

(c) Repay Rodirgo Navarette the \$58.00 deducted from his paycheck of October 21, 1977, plus interest computed at the rate of seven percent (7%) per annum.

(d) Provide the Agricultural Labor Relations Board with an employee list forthwith as required by 8 Cal. Admin. Code Section 20910(c) (1976).

(e) Provide the Agricultural Labor Relations Board with an employee list as described by 8 Cal. Admin. Code Section 20910(c) (1976) if during the 1978 growing season the UFW files a Notice of Intent to Take Access as described by 8 Cal. Admin. Code Section 20900(e)(1)(B) (1976). The list shall be provided within five days of the service on Respondent of the Notice of Intent to Take Access.

(f) Allow UFW organizers to organize among its employees during the hours specified in 8 Cal. Admin. Code Section 20900(e)(3) (1976) in the next period in which the UFW files a Notice of Intent to Take Access. The UFW shall be permitted, in addition to the number of organizers already permitted under Section 20900(e) (4) (A), one organizer for each fifteen employees.

(g) Respondent shall provide that the UFW have access to its employees during regularly scheduled work hours for one hour, during which time the UFW may disseminate information to and conduct organizational activities among Respondent's employees. The UFW shall present to the Regional Director its plans for utilizing this time. After conferring with both the Union and Respondent concerning the Union's plans, the Regional Director shall determine the most suitable times and manner for such contact between organizers and Respondent's employees. During the times of such contact, no employee will be required to engage in work related activities, or forced to be involved in the organizational activities. All employees will receive their regular pay for the one hour away from work. The Regional Director shall determine an equitable payment to be made to

non-hourly wage earners for their lost production time.

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

(i) Post copies of the attached Notice for ninety consecutive days, to be determined by the Regional Director, at places to be determined by the Regional Director. Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

(j) Mail copies of the attached Notice in all appropriate languages within thirty days from receipt of this Order to all employees employed between July 15, 1977 and December 15, 1977.

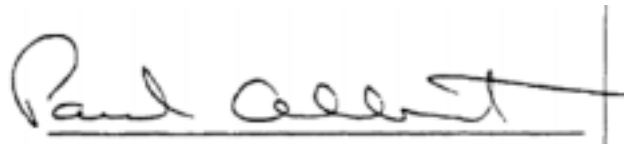
(k) Provide for a representative of Respondent or a Board Agent to read the attached Notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employee to compensate them for time lost at this reading and the question and answer period.

(l) Notify the Regional Director in writing, within thirty days from the date of the receipt of this Order, what steps

have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him/her periodically thereafter in writing what further steps have been taken in compliance with this Order.

It is further recommended that all allegations of the amended complaint not found herein to be violations of the Act be dismissed.

DATED: May 30, 1978.

A handwritten signature in cursive script that reads "Paul Albert". The signature is written in dark ink and is positioned above a horizontal line. To the right of the signature, there is a vertical line that extends from the top of the signature down to the bottom of the page.

PAUL ALBERT
Administrative Law Officer

NOTICE TO EMPLOYEES

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

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

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

- (1) to organize themselves;
- (2) to form, join, or help unions;
- (3) to bargain as a group and choose whom they want to speak for them;
- (4) to act together with other workers to try to get a contract or to help or protect one another;
- (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 ask you whether or not you belong to any union or how you feel about any union.

WE WILL NOT listen to or watch workers while they are talking about the union or engaging in union activities.

WE WILL NOT layoff workers or punish workers by changing the terms on which we rent them houses because of their support of any union.

WE WILL NOT threaten workers with loss of employment or eviction from their homes for support of any union.

WE WILL NOT refuse to provide the Agricultural Labor Relations Board with a current list of employees when the UFW or any union has filed its "Intention to Organize" the employees at this ranch.

Also, we will offer Maria Castillo her job back, and will give her back-pay for the time she was out of work.

PAUL W. BERTUCCIO
BERTUCCIO FARMS

Dated: _____ By: _____
Representative (Title)

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

DO NOT REMOVE OR MUTILATE.