

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

JESUS MARTINEZ,)	
)	
Respondent,)	Case No. 77-CE-15-X
)	
and)	
)	5 ALRB No. 51
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	
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DECISION AND ORDER

On March 12, 1979, Administrative Law Officer (ALO) Beverly Axelrod issued the attached Decision in this proceeding, in which she concluded that Respondent violated Labor Code Section 1153 (c),(d), and (a) by its failure and refusal to rehire employee Guadalupe Ceballos. Thereafter, Respondent timely filed exceptions^{1/} and a supporting brief.

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

The Board has considered the record and the attached ALO Decision in light of the exceptions and supporting brief and

^{1/}Respondent excepts to the ALO's credibility resolutions. To the extent that credibility resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1978); El Paso Natural Gas Co., 193 NLRB 333, 78 LRRM 1250 (1971); Standard Dry Wall Products, 91 NLRB 544, 26 LRRM 1531 (1950). We have reviewed the record and find the ALO's credibility resolutions to be supported by the record as a whole.

has decided to affirm the rulings, findings,^{2/} and conclusions of the ALO and to adopt her recommended Order, as modified herein.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Jesus Martinez, his officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to hire or rehire any employee because of his or her union activities or union sympathies, or because he or she has filed a charge or given testimony under the provisions of the Agricultural Labor Relations Act, or because the UFW or any other person has filed a charge with the ALRB on behalf of any employee(s).

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

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

(a) Offer Guadalupe Ceballos immediate and full reinstatement to his former job, or a comparable position, without prejudice to his seniority or other rights and privileges.

(b) Make Guadalupe Ceballos whole for any loss of earnings and other economic losses he has incurred by reason of

^{2/}As we find that the record sufficiently establishes Respondent's knowledge of the discriminatee's support for the union, we reject the ALO's reliance on the small-plant doctrine in this matter.

Respondent's discrimination against him, together with interest thereon at the rate of 7 percent per annum. The Regional Director shall determine the date from which back pay shall accrue.

(c) Preserve and, upon request, make available to this Board and its agents, for examination and copying, all payroll records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the back pay period and the amount of back pay due under the terms of this Order.

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

(e) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places on its property, the time(s) and place(s) of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered or removed.

(f) Mail copies of the attached Notice, in all appropriate languages, within 30 days after issuance of this Order, to all employees employed at any time during the payroll periods occurring during February and March 1977, and thereafter provide a copy to each of its employees employed during its 1979 peak season.

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

Dated: August 7, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

After charges were filed against us by the United Farm Workers of America, and a hearing was held at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want a union. The Board has told us to send out and post this Notice.

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

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

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

Because this is true we promise that:

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

Especially:

WE WILL NOT refuse to hire or rehire any worker because of his or her union activity or union sympathy.

WE WILL NOT refuse to hire or rehire any worker because he or she has filed a charge with the ALRB, or because any other person has filed a charge with the ALRB on behalf of any worker(s).

WE WILL reinstate Guadalupe Ceballos to his previous job, and we will pay him any money he lost because we refused to rehire him, plus interest thereon at 7 percent per annum.

Dated: JESUS MARTINEZ

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

Jesus Martinez (UFW}

5 ALRB No. 51

Case No. 77-CE-15-X

ALO DECISION

The ALO concluded that Respondent violated Labor Code Section 1153 (c), (d) and (a) by failing and refusing to rehire employee Guadalupe Ceballos in retaliation for his union activities and because the UFW filed a charge in his behalf with the ALRB. In so holding, the ALO rejected Respondent's defense that no work was available for Ceballos at the time he applied, and that Ceballos did not ask for future employment.

BOARD DECISION

The Board affirmed the ALO's conclusion that Respondent's failure and refusal to rehire Ceballos was in violation of Section 1153(c), (d) and (a), but declined to rely on the "small-plant" doctrine where the evidence established that Respondent was aware of Ceballos' support for the UFW.

REMEDIAL ORDER

The Board issued a cease-and-desist order, and ordered the reading, posting, distributing and mailing of a remedial Notice to Employees. The Board also ordered Respondent to offer Ceballos immediate and full reinstatement to his former or substantially equivalent job without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of pay and other economic losses he may have suffered as a result of Respondent's discriminatory refusal to rehire him, plus interest computed at seven percent per annum.

* * *

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

* * *

herein called the Union. A copy of the charge was duly served upon Respondent.

All parties were given full opportunity to participate in the hearing, and after the close thereof the General Counsel and Respondent each filed a brief in support of its respective position.

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

Findings of Fact

I. Jurisdiction

Respondent is a sole proprietor in San Diego County, California, and is an agricultural employer within the meaning of Section 1140(c) of the Act. Respondent operates a ten acre farm at Chula Vista and a 30 acre farm at Otay Mesa, both of which were used for the production of tomatoes at the times material to this proceeding.

The Union is a labor organization representing agricultural employees within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleges that Respondent violated Sections 1153(a), 1153(c) and 1153(d) of the Act by the discriminatory refusal to rehire Guadalupe Ceballos because of his Union activities and because he previously had filed an unfair labor practice charge against Respondent based on allegations not included in this complaint.

Respondent denies that any failure to rehire Guadalupe Ceballos was unlawfully motivated.

A. The Operation of the Farms

Planting of tomatoes at the Chula Vista Farm begins in January, with a work force of eight to twelve employees. This number increases to about 20 or 21 employees in June or early July, when the tomatoes are harvested. At Otay Mesa, planting begins in June or July, and the harvest is in September or October.

In 1977, there were eight employees on January 31, and 21 in June, when the harvest was completed.

Respondent states that his son, Augustin Martinez, is his overseer, and has been hiring and firing since 1975. Respondent states that he has done no hiring since then, and has never talked to Augustin Martinez about who should be hired and fired. Augustin Martinez's testimony confirms this, although on cross-examination, he stated that perhaps one or two people might have been hired by his father, but he doesn't really remember.

Employees have seniority, based on the amount of time they have worked. Respondent states that employees leave when they see there is no work, and, as work increases, "They come by themselves. They know when there is work. They know it."

Augustin Martinez states that when the workers were laid off in July, 1976, they were told to return on January 1, 1977.

B. The Prior Employment and Union Activities of Guadalupe Ceballos

Guadalupe Ceballos began working for Respondent in 1974, when he worked four or five months. He returned in January, 1975, and was dismissed on September 4th of that year. That dismissal was the basis of an unfair labor practice charge brought by the Union before the Agriculture Labor Relations Board on his behalf. The charge was resolved by a voluntary settlement of the parties, and Guadalupe Ceballos was reinstated in Respondent's employ in January 1976. He was laid off in July 1976, when the tomato season

ended, and has not been reemployed by Respondent since that date.

Guadalupe Ceballos testified that prior to his discharge in 1975, Respondent often ate lunch with him and other workers, and frequently chatted with him after work. On September 3, 1975, a UFW organizer came to the ranch and spoke to the workers during their lunch period. When the organizer left, Respondent asked Guadalupe Ceballos if he liked the Union. Guadalupe Ceballos replied, "Yes". Respondent told him to "look for the Union where it is because there is no Union at this ranch." Guadalupe Ceballos replied, "We are the Union" and offered him a Union list. Respondent picked up his lunch, and angrily left the area. The next day, Guadalupe Ceballos was fired.

Guadalupe Ceballos further testifies that on the day he and two other workers were reinstated, pursuant to a voluntary settlement of charges based on the above incident, the three of them were handed new work rules, which were not given to the other employees until 15 days later. He also states that he was assigned spraying work for three weeks - a job that was too arduous for a man his age, and that he had not done before. Guadalupe Ceballos also states that Respondent never had lunch or social conversation with him after the reinstatement, and that Augustin Martinez told him the Union was "pure communism".

Both Jesus Martinez and Augustin Martinez deny ever speaking to Guadalupe Ceballos about the Union. Augustin Martinez admits seeing Guadalupe Ceballos wearing a Union button, but Jesus Martinez denies knowing anything at all about any Union, or about Guadalupe Ceballos's membership or support of one. Respondents testified that he has never heard of the UFW or Caesar Chavez, and is unaware of any organizing efforts at his ranch. Jesus Martinez testified that the reason he no longer socialized with the workers was that he didn't work in the field after September, 1976, because his wife became ill. Respondent attributes his wife's illness in part to the charges filed by Guadalupe Ceballos in 1976. Augustin Martinez

testified that the spraying work given to Guadalupe Ceballos was rotated fairly among all the workers, since it is a job no one likes.

C. The Attempt of Guadalupe Ceballos to Be Rehired

The testimony concerning Guadalupe Ceballos's attempt to regain employment with Respondent in 1977 is conflicting, both as to the time of the occurrence and the substance of the conversations.

1. The Date

Guadalupe Ceballos says that he went to the ranch around lunchtime on March 11. He is not positive about the date, but is sure that it was a Friday and it was not raining. A declaration executed by Guadalupe Ceballos on August 8, 1977 (Respondent's Exhibit 2) gives the date of his application for work as approximately March 11, 1977. Guadalupe Ceballos states he was driven to work by Pascual Jimenez, a former co-worker elsewhere and also a Union supporter. Guadalupe Ceballos further testified that he went to the ranch on a bus one or two weeks prior to that to get his W-2 form, which Augustin Martinez gave him. It was about 9-9:30 a.m. on a clear day. He did not ask for work on that occasion because he could see that there was none, since only a few workers were there, all of whom had higher seniority. Guadalupe Ceballos said he often passed the ranch on his way to collect unemployment insurance, but he did not make application earlier in the year because he could see there wasn't enough work.

Pascual Jimenez testifies that he did drive Guadalupe Ceballos there on a Friday in March, and also estimates the date to be March 11. He says it was 6:30-7 a.m. and it was raining. Pascual Jimenez says that he had intended to ask for work for himself but did not do so since it was apparent to him that if there was no work for Guadalupe Ceballos there would be none for him.

Jesus Martinez says that Guadalupe Ceballos asked him for work on February 24, 1977 (note: this date was a Thursday). There was no testimony about how he remembered the date. Guadalupe Ceballos was accompanied by Pascual Jimenez, and it was about 9-9:30 a.m., and raining, according to Respondent.

Jesus Martinez' daughter Sarah Valenzuela testified that Guadalupe Ceballos came on February 24, 1977, at about 10 a.m. and it was raining. She says she recognized him only because she had seen his photograph in a newspaper in January or February of 1976 depicting Guadalupe Ceballos and two other workers holding a check from her father. She "didn't bother" to read the accompanying story, nor did she mention it to anyone in her family. Sarah Valenzuela told her sister that Guadalupe Ceballos had come to the door, and then saw her sister write something on their mother's urinalysis calendar. She neither saw nor was told what was written. When, in preparation for this hearing, Respondent's lawyer sought to ascertain the date, the sister showed her the calendar, on which was written "February 24th". No name or any other information was written there except the date. Sarah Valenzuela has no independent recollection of the date and her sister did not testify.

Augustin Martinez testified that Guadalupe Ceballos applied for work about 9-9:30 a.m. on February 24, 1977, and it was raining. His recollection of the date is based on what his sister told him of the notation she made, together with payroll records which show that the workers worked only two hours that day, which indicates to him that they quit early because of the rain. He states that he gave Guadalupe Ceballos his W-2 slip on that same day.

Other than the single notation "February 24th" referred to, there are no records kept by Respondent of dates or names of anyone applying for work at the ranch.

2. The Conversations

Guadalupe Ceballos, Pascual Jimenez and Augustin Martinez all agree that when Guadalupe Ceballos arrived, some workers were playing cards in a hut about 50 feet from Respondent's house. Guadalupe Ceballos says that he asked Augustin Martinez for work, and Augustin Martinez replied, "I don't know anything. My father's over there if you want to talk to him." Pascual Jimenez said _" Augustin Martinez's reply was "For that you have to ask my dad."

Augustin Martinez says Guadalupe Ceballos first asked for his W-2 form, and Augustin Martinez went to the house and got it for him. Then he was asked, "Is there any work for me and this boy?" Augustin Martinez replied, "Not right now, it's very slow." Guadalupe Ceballos then asked "How about later on?" and Augustin Martinez replied, "I think so. But if you want to talk to my father, he's at the house."

All three agree that after the conversation between Guadalupe Ceballos and Augustin Martinez, Guadalupe Ceballos and Pascual Jimenez went to the back door of Respondent's house. They knocked at the door, which was opened by Sarah Valenzuela, and asked for her father, who then came to the door, and another conversation ensued.

According to Guadalupe Ceballos, he asked Jesus Martinez for work, and Respondent replied, "I'm not giving you any." Guadalupe Ceballos then asked, "How about further ahead?" and Respondent said no, and they left. Pascual Jimenez said that when Guadalupe Ceballos asked for work, Respondent said, "No, not now, not for you," and when asked about the future he replied, "No, I don't believe so."

Respondent testified that when Guadalupe Ceballos asked for work he told him that there was none now, and Guadalupe Ceballos did not ask about the future. Sarah Valenzuela, who was in the kitchen, and could overhear the conversation, corroborates this version.

Guadalupe Ceballos and Pascual Jimenez say that Jesus Martinez stepped outside of the house during this conversation; Sarah Valenzuela and Jesus Martinez say he remained inside the doorway.

D. Discussion and Conclusions

In order to determine whether Respondent failed to rehire Guadalupe Ceballos in violation of this section, it is necessary to resolve the conflicting testimony.

Respondent's position is that Guadalupe Ceballos's confusion as to the date of his application is indicative of his lack of credibility as to the content of the conversations. However, I find the testimony of Respondent and his witnesses no more persuasive on the matter of the date than that of Guadalupe Ceballos and Pascual Jimenez. Respondent and his witnesses all relied on an ambiguous notation by one of Respondent's daughters, and that daughter was not called as a witness. Even if the notation did refer to Guadalupe Ceballos's presence, it could have referred to a prior visit made by Guadalupe Ceballos to the ranch, which he says he made a week or two before for the purpose of getting his W-2 form. Although Augustin Martinez says that occurred on the same day, the testimony of Guadalupe Ceballos and Pascual Jimenez both contradict this. Furthermore, neither Respondent nor Sarah Valenzuela mention Augustin Martinez coming into the house shortly before Guadalupe Ceballos's arrival there, and since they say they remember the events of that morning, I find the weight of evidence supports the position that there were two visits. I further find that Guadalupe Ceballos's credibility is not impeached by the contradictions in testimony regarding the rain and the time of his visit.

As a substantive matter, whether Guadalupe Ceballos asked for work on February 24 or March 11 is not significant. Respondent's work force increased from eight employees on January 31, 1977 to 21 in June, 1977. Since Guadalupe Ceballos had seniority, I find that work was available for him during that period.

It remains to be resolved, therefore, whether he asked for work, and whether he was denied work under conditions proscribed by the Act.

There is no evidence to indicate whether or not work was available on the day Guadalupe Ceballos asked for it, and his claim rests in large part on his testimony and that of Pascual Jimenez that Respondent told him there would be no more work for him in the future. Jesus Martinez and his daughter Sarah Valenzuela deny that this was said, so it becomes necessary to weigh the credibility of the witnesses.

Sarah Valenzuela's testimony that she recognized Guadalupe Ceballos only from a picture seen in a paper many months earlier is difficult to accept. It is even more difficult to believe that she never discussed it with members of her family, particularly in view of Jesus Martinez's statement that it was Guadalupe Ceballos's charge against him that contributed to his wife's illness. Furthermore, unless there was animosity toward Guadalupe Ceballos, why was a special notation made by anyone in the family of his asking for work? This procedure was unique to Guadalupe Ceballos, and failure to explain it in any rational way reduces the value of Sarah Valenzuela's testimony.

Jesus Martinez's testimony is also subject to doubt. Both he and his son Augustin Martinez stated that Augustin Martinez has done all the hiring at the ranch since 1975. He also said that he never talked to his son about whom he should hire and fire, and that he never had a conversation with his son concerning Guadalupe Ceballos since January, 1976. Nevertheless, when Guadalupe Ceballos asked him about work, he was not referred to Augustin Martinez. On the contrary, it was Augustin Martinez who referred the application to his father. Again, no explanation was given for this unique treatment of a single employee, Guadalupe Ceballos. I find it to be inconsistent with Respondent's other testimony.

Respondent's brief submits that Pascual Jimenez's testimony should be given little evidentiary value because he is a "UFW advocate and longtime organizer" and "his sole purpose for being present....was so that he could testify at any subsequent unfair

labor practice hearing..." Although it is clear that Pascual Jimenez is a union sympathizer, he is not an organizer, and he states that he came to Respondent's ranch in order to provide transportation for Guadalupe Ceballos. Although he stated that he had intended to ask for work also, he said he did not actually do so, since it was obvious to him that he would not get work after Guadalupe Ceballos was refused. I find this to be a reasonable position and there is nothing in the record to impeach his testimony.

Based on all the testimony, and on the demeanor of the witnesses, I find that Respondent refused to employ Guadalupe Ceballos both on the day he applied for work and in the future.

Failure to rehire an employee in retaliation for union sympathy violates Section 1153 (a) and (c) because it both interferes with protected employee rights and constitutes discrimination in regard to tenure and conditions of employment to discourage union membership. If the failure to rehire is also in retaliation for having filed unfair labor practice charges, Section 1153 (d) is violated too. See Bacchus Farms 4 ALRB No. 26 pp 5-6 (1978).

Proof of violation of Section 1153 (a) is made upon a showing that employer action reasonably tends to interfere with employees in the exercise of rights guaranteed by the Act. Neither animus to the union nor effect of discouraging union membership is necessary. Jack Bros. & McBurney Inc., 4 ALRB No. 18 pp 2-3 (1978).

Under Section 8 (a) (3) [1153(c)], proof of discrimination to discourage union membership does not require specific evidence of employer intent or effect on employees. If discouragement of union membership is the natural consequence of an employer's action, intent is presumed. Radio Officers Union v. NLRB, 347 U.S. 17, 33 L.R.R.M. 2417, 2428 (1954). Where discriminatory conduct is "inherently destructive" of important employees rights, proof of anti-union motive is not required and an unfair labor practice can

be found. NLRB v Great Dane Trailers, Inc., 388 U.S. 26,65 L.R.R.M., 2465, 2468 (1967). In addition circumstantial evidence of employer motive will, as in other types of cases, suffice. S. Kuramura Inc., 3 ALRB No. 49, p. 12 (1977). See also NLRB v. Putman Tool Co., 290 F 2d 663,48 L.R.R.M. 2263, 2265 (6th Cir.1961).

Guadalupe Ceballos alleges a variety of discriminatory actions by Respondent during the period he was last employed by him.

His allegation that he and the two others rehired pursuant to the voluntary settlement agreement received new work rules two weeks prior to the time they were given to the remaining employees is uncontradicted. I find this to be discriminatory conduct by Respondent. With respect to Guadalupe Ceballos's allegation that he was given spraying work as a type of punishment, I find that this is not substantiated. I also find no discriminatory conduct attributable to Respondent because of the alleged change in his manner of socializing with Guadalupe Ceballos.

For employer discriminatory activity to be proscribed, it must be shown that the employer had some knowledge that the employee was engaged in protected, concerted activity. See e.g. NLRB v Whiting Machine Works, 204 F 2d 883, 32L.R.R.M. 2201, 2203 (1st Cir. 1953)

I find Respondent's denial of any knowledge of union activity on his ranch not credible. At the very least, he must have been aware of some union involvement in the course of responding to Guadalupe Ceballos's prior charges. The 1975 conversation to which Guadalupe Ceballos testifies was the subject of the prior charge is not a part of this case. I find it has probative value on the issue of employer knowledge of Guadalupe Ceballos's union sympathies. Additionally, Augustin Martinez admits he has seen Guadalupe Ceballos wearing union buttons, and a supervisor's knowledge of employee activity is routinely imputed to the employer. MacDonald Engineering Company, 202 N.L.R.B. No. 113, 28 L.R.R.M. 1646, fn. 7 at 1649 (1973). There is also authority to infer employer knowledge of an employee's union activity in a "small plant" because of the ample opportunity to observe him. S. Kuramura Inc. supra, at pp 13-14 citing N.L.R.B. v. Joseph Antell, 358 F. 2d 880, 62 L.R.R.M 2014 (1st Cir. 1966).

Respondent's failure to rehire Guadalupe Ceballos, where other workers with less seniority were hired by him, is a violation of Sec. 1153 (of the Act. Pleasant Valley Vegetable Co-op 4 ALRB No. 11., pp 3-4.

I further find that Respondent refused to rehire Guadalupe Ceballos because he had previously filed charges which were resolved in a previous voluntary settlement agreement. Such conduct violates Sec. 1153(d) of the Act, and is inherently destructive of important employee rights, M.B. Zaninovich, Inc., 4 ALRB No. 70 (1978).

There is no contradiction to the testimony that Guadalupe Ceballos's asking for work took place in front of several workers who were in the hut when he talked to Augustin Martinez. It can be inferred that when they heard Augustin Martinez send Guadalupe Ceballos to his father they knew that this was not the usual procedure. They could see he was wearing a union button, and they undoubtedly knew of his union sympathies. The fact of his having filed charges against Respondent had been printed in a newspaper. They could also see that he was never rehired. Thus the failure to rehire Guadalupe Ceballos interfered with his rights and the rights of others as guaranteed in Section 1152 and in violation of Section 1153(a) of the Act.

Once a prima Facie case is established that an employee was not re-hired because of his union activities, it is incumbent on Respondent to come forward with a valid explanation. Aritomo Nursery, 3 ALRB No. 73 (1977). See also NLRB v. Great Dane Trailers, Inc. supra 388 U.S. at 2468-69. No such explanation was made by Respondent in the instant case.

III. The Remedy

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

I recommend the Respondent be ordered to offer Guadalupe Ceballos immediate and full reinstatement to his former or substantially equivalent job. I further recommend that Respondent make Guadalupe Ceballos whole for any losses he may have incurred as a result of Respondent's unlawful discriminatory action towards him, together with interest thereon at the rate of 7% per annum.

In order to remedy the effects of Respondents unfair labor practices, the Board should require Respondent Jesus Martinez to cease and desist from continuing to violate the Act and give notice of the following order by mailing, posting and reading the attached NOTICE to his employees.

Upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to Section 1160, 3 of the Act, I hereby issue the following recommended:

ORDER

Respondent, his agents and representatives, shall

1. Cease and desist from
 - a) Refusing to hire or rehire employees because of their union activities or because they file charges against him pursuant to the Act.
 - b) In any other manner interfering with, restraining or coercing his employees in the exercise of their rights guaranteed by Sections 1152, 1153(a), 1153(c) and 1153(d) of the Act.
2. Take the following affirmative action which is necessary to effectuate the policies of the Act:
 - a) Make Guadalupe Ceballos whole for any loss of earnings suffered by reason of discrimination against him, including interest at the rate of 7% per annum.
 - b) Preserve, and upon request make available to this Board or its agents for examination and copying, all payroll records and reports, and all other records necessary to analyze the amount of back pay due under the terms of this Order.
 - c) Post copies of the attached NOTICE TO WORKERS, at times and places to be determined by the Regional Director in San Diego. The notices shall remain posted for a period of 60 consecutive days following the issuance of this Order. Copies of the notice shall be furnished by the Regional Director in Spanish and English. The Respondent shall exercise due care to replace any notice which has been altered, defaced or removed.

d) Mail copies of the attached notice in English and Spanish, within 20 days from the receipt of this Order, to all employees employed during payroll periods occurring during the time period of February and March, 1977.

e) A representative of Respondent or a Board agent shall read the attached notice in English and Spanish to the assembled employees of Respondent on company time, 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 might have concerning the Notice or their rights under the Act.

f) Notify the Regional Director of the San Diego region in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply with it.

It is further ORDERED that any allegations contained in the complaint and related actions not found herein are dismissed.

Dated: March 12, 1979



Beverly Axelrod
Administrative Law Officer

NOTICE TO WORKERS

After a trial where 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 refuse to hire or rehire anyone because of union affiliation.

WE WILL NOT refuse to hire or rehire anyone because they file charges which they have a right to do under the Act.

WE WILL pay Guadalupe Ceballos any money he lost because we refused to rehire him.

Dated: _____

JESUS MARTINEZ

By _____

Title

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