

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

MERRILL FARMS,)	
)	
Respondent,)	Case Nos. 78-CE-85-M
)	78-CE-94-M
and)	
)	
UNITED FARM WORKERS OF)	5 ALRB No. 58
AMERICA, AFL-CIO,)	
)	
Charging Party.)	

DECISION AND ORDER

On February 19, 1979, Administrative Law Officer (ALO) Bernard S. Sandow issued the attached Decision and Order in this proceeding. Thereafter, Respondent filed exceptions with a supporting brief.

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

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

Harassment of Rodolfo Ocampo

The ALO concluded that Respondent violated Section 1153 (a) of the Act by the conduct of its supervisor Jose Luis Torres in harassing employee Rodolfo Ocampo, by helping Ocampo's work team less than others, by not promptly filling a vacancy

in Ocampo's team, and by having Ocampo's work checked, all because of Ocampo's support of the United Farm Workers of America, AFL-CIO (UFW). We disagree. We conclude that the evidence does not establish that any act or conduct of Torres violated Section 1153 of the Act or was based on, or related to, Ocampo's union activities.

Ocampo was a supporter of the UFW, and campaigned on its behalf during its organizing efforts at Respondent's operations. He was also chosen representative by the crew of supervisor Torres. The ALO found that, during the said organizing campaign, which commenced in June, 1978, supervisor Torres began helping the teams in his crew with their work, something he had not previously done. Ocampo's team did not receive as much help from Torres as did the others. This extra help did not affect wages as the piece-rate was worked out for the entire crew, but it allegedly made Ocampo work harder and under more pressure to keep up.

The ALO found that on June 26, 1978, Torres did not promptly fill an opening in Ocampo's team, although another team had an extra packer, despite Ocampo's protests. As a result, Ocampo and the other cutter in his crew were without a packer for a short period, from five to 30 minutes.

The ALO found that, on another occasion, Torres told employee Librado Barajas to check the rows worked by Ocampo to see whether lettuce was being left unpicked. Barajas testified that Torres had singled out Ocampo's work for inspection, but that he checked all the rows and informed

the crew only that lettuce was being left and should be picked.

On the basis of the record evidence, we find that the acts and conduct of Torres did not tend to interfere with, restrain, or coerce employees in the exercise of their Section 1152 rights. Accordingly those allegations of the complaint are hereby dismissed.

Threats by Supervisor

The ALO concluded that Respondent violated Section 1153(a) of the Act by the conduct of its supervisor Pablo Flores on June 15, 1978. During a discussion among the employees in his crew on the merits of unionization while the crew was eating lunch in a company bus, Flores said that if the union, i.e., the UFW, were to come in, Respondent would close the labor camp where the crew lived and change to planting alfalfa and grasses and raising cattle, operations which are less labor-intensive. Flores referred to the closing of a Posadas camp in 1970 as an example of what Respondent would do.

The ALO found that Flores made these statements, and concluded that they were threats which interfered with, restrained and coerced employees in their exercise of the rights guaranteed them in Section 1152 of the Act. We agree and hereby affirm the ALO's conclusion that such statements violated Section 1153(a) of the Act.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent,

Merrill Farms, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing agricultural employees in the exercise of rights guaranteed in Section 1152 of the Act by threatening employees with loss of employment or the closing of company housing because of their union activities or other protected concerted activities

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

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

(a) Sign 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.

(b) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places on its premises, the time(s) and place(s) of posting to be determined by the Regional Director. Respondent shall

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

(c) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from April 1, 1978, to October 1, 1978.

(d) Arrange for a representative of Respondent or a Board Agent to distribute and read the attached Notice in all appropriate languages to its assembled employees on company time at such times and places as are specified by the Regional Director. 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 regarding the Notice or their rights under the Agricultural Labor Relations Act.

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

(f) Notify the Regional Director in writing, within 30 days after the issuance of this Order, what steps have been taken to comply herewith, and continue to report

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

Dated: September 19, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

JOHN P. McCARTHY, 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 evidence, the Agricultural Labor Relations Board has found that we interfered with the right of our employees to freely decide whether they want a union to represent them. The Board has ordered us to post this Notice and to take other actions.

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

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

Because this is true, we promise that:

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

Especially:

WE WILL NOT threaten employees with loss of employment or the closing of company housing because of their union sympathies, union activities, or other protected concerted activities.

MERRILL 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

Merrill Farms (UFW)

5 ALRB No. 5 ALRB No. 58
Case Nos. 78-CE-85-M
78-CE-94-M

ALO DECISION

The ALO concluded that Respondent violated Section 1153(a) by the conduct of its supervisor, Jose Luis Torres, in harassing UFW supporter Rodolfo Ocampo, and by the conduct of its supervisor Pablo Flores in threatening employees with reprisals for supporting the UFW. The ALO recommended dismissal of two other Section 1153(a) allegations of the complaint.

BOARD DECISION

The Board concluded that the conduct of supervisor Torres did not violate Section 1153(a), that the evidence did not establish that any acts or conduct of Torres were based on, or related to, employee Ocampo's union activity, and dismissed this allegation of the complaint.

The Board concluded that Respondent did violate Section 1153(a) by the conduct of supervisor Flores on June 15, 1978. Flores told members of his crew that if they supported the UFW, Respondent would close the labor camp in which the crew resided and switch to less labor intensive operations.

REMEDY

The Board ordered Respondent to cease and desist from its unlawful acts and conduct and ordered the reading, posting, distribution and mailing of a remedial Notice to Employees.

* * *

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

* * *

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	CASE NOS.	78-CE-85-M
)		78-CE-94-M
MERRILL FARMS,)		78-CE- 114-M
)		78-CE- 116-M
Respondent,)		
)	DECISION	
and)		
)		
UNITED FARM WORKERS OF)		
AMERICA, AFL-CIO,)		
)		
Charging Party.)		

LUPE MARTINEZ, Esq., and ARNOLD SAVELLA, Esq., and CONSTANCE CAREY, Esq., appearances for the General Counsel.

ABRAMSON, CHURCH & STAVE, by ARNOLD B. MYERS, Esq., as appearance for the Respondent.

ANITA MORGAN, Legal Worker, for the Charging Party.

That a contested Hearing came on, after proper consolidation of these cases for Hearing, commencing October 23, 1978, before BERNARD S. SANDOW, Administrative Law Officer, and testimony and evidence was taken, both oral and documentary, October 23 and 24, 1978, and November 27 and 28, 1978, in Salinas, California, until conclusion. Witnesses were called, sworn and testified and

interpreters were present, sworn and used when and as needed.

That the following preliminary matters and stipulations were entertained and ruled upon accordingly:

1. Motion for exclusion of witnesses and supervisory employees, was made by counsels, and the ruling thereon excluded the same, excepting for the presence of Mr. Merrill at all stages and a Mr. Tappoh except for during the testimony of Rudolpho Ocampo, when he must be excluded.

2. Offer by General Counsel of the moving papers, pleadings, answers, charges, notices and related documents, and identified by General Counsel's identification thereon by tabs of 1-A through 1-D and 2-A through 2-F were admitted without objection to and, after objection to by Respondent counsel to their relevance to 3-A through 3-D and argument thereon and I overruling said objection and allowing said exhibits, for that degree of weight to be given; Exhibits 1 and 2 and 3 in their entirety, were admitted into evidence, as General Counsel I .

3. Stipulated between counsel that the Notice of Continuances and Notices of Consolidations of Cases, were to include in every instance cases 78-CE-85-M and 78-CE-94-M and 78-CE-114-M and 78-CE-116-M, whenever these cases are mentioned.

4. Further, stipulated between counsel that because of the effect upon the length of hearing and the availabilities of witnesses and the time involvement due to the consolidation of said four (4) cases, that there be a continuance after the Hearing of the first two (2) cases, to an agreed to date and time after proper notice and granting (which occurred and reconvened on November 27, 1978) and that arguments, briefs and ruling be reserv

ed to after the conclusion of all four (4) cases.

That General Counsel offered Exhibit II-1 a "dueto" and Exhibit II-2 a "trio" into evidence, which were received into evidence without objection as so marked, subject to cross-examination

All parties were given full opportunity to participate in the Hearing. After the close thereof, the General Counsel and Respondent filed their written briefs in support of its respective position timely, and which were read and considered by myself.

That based upon the testimony of the witnesses, exhibits, matters of record and moving papers, stipulations of counsels and the entire record, including pertinent code and the Act sections and regulations alluded to, and including my observations of the demeanor of witnesses, I make the following findings, conclusions and recommended decision:

PRELIMINARY

That each and every of the four (4) cases consolidated herein, alleges a violation of Section 1153 (a) of the Labor Code (Agricultural Labor Relations Act, herein called the Act) as charged by the United Farm Workers of America, AFL-CIO, herein called the Union, against Merrill Farms, herein called the Respondent.

PLEADINGS: ADMISSIONS

That Respondent through their answer to each and every of the four (4) cases consolidated herein, admit:

1. The filing of each charge and its timeliness and the service of each complaint and its timeliness, excepting as to the filing and notice and service pertaining to the amendment to case No. 78-CE-116-M;

2. That Respondent Merrill Farms is a corporation engaged as a agriculture employer in Monterey County, within the meaning of the Act;

3. That the UFW is now and was a labor organization within the meaning of the Act; and

4. That within all times mentioned herein JOSE LUIS TORRE PABLO FLORES, HERMAN MARQUEZ and GUADALUPE VILLALOBOS were supervisors and/or agents within the meaning of the Act.

SECTIONS OF THE ACT

LABOR CODE SECTION 1152 - RIGHTS OF AGRICULTURAL EMPLOYEES

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose or collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities - - - - -".

LABOR CODE SECTION 1153 - UNFAIR LABOR PRACTICES

"It shall be an unfair labor practice for an agricultural employer to do any of the following;

(a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152".

THE ALLEGED UNFAIR LABOR PRACTICES

I

CASE NO. 78-CE-85-M

It is complained and charged that on or about June 26, 1978, through June 29, 1978, the Respondent through its supervisor Jose Luis Torres harassed its employee Rodolfo Ocampo because of his support for, and activities on behalf of the UFW, which is a interference with, restrain and coercion of its employees in the exercise of rights guaranteed in Labor Code Section 1153 (a).

Respondent denies the allegations.

A. The Evidence

For the General Counsel;

1. Gretchen Luie - she is employed as a volunteer for the UFW and is a field organizer and helps in elections. She worked in the organization and election at the Respondent from the 2nd week in July, 1978, to the date of election August 25, 1978. She would build spirit and strength and to get rid of fear in the organizing campaign amongst the committees workers in the crews. Organizing started in June, 1978 and committees were formed in later part of June, 1978, for the August 25, 1978 election. The committee member duties were wearing buttons, sign cards, the giving of information to workers, to hold meetings and strategy at camps and worker homes and related activities. There were four (4) respondent labor camps for living facilities- (1) a family camp at Spreckel Ranch, (2) at Los Cochese a camp #1 for family and # 2 a camp for singles at Los Cochese (where Pablo Flores crew lives) (3) Reservation Road camp (4) Calahan camp, where irrigators live.

2. Rudolfo Ocampo - he works for the respondent as a piece rate lettuce packer and cutter. The work is most usually done in trios, 3 workers, with 2 cutting and 1 packing the lettuce and each cutter working 2 beds which is 4 rows in a trio (a total of 4 rows and 8 beds harvested by a trio), and the packer in the middle, packing the lettuce into the cardboard boxes. Sometimes there is a dueto, which is 2 persons working, one cuts and the other packs and when this happens they are working a total of 2 rows and 4 beds, and only harvesting on either side of the crew and not in the middle. This may happen when one of the crew of the trio is absent for some reason. Sometimes there occurs a 4 member crew called a quarteto, which is 2 cutting and 2 packing.

(At this point Exhibit II-1, a dueto is placed into evidence; and, Exhibit)
(II-2, a trio is placed into evidence and "C" depicts where a cutter would)
(be and "P" where a packer would be and "L" is where the cut lettuce is)
(placed and the horizontal arrows how cutting takes place as cutter)
(alternates between rows and the vertical arrow is the direction the)
(cutters cut.)

Jose Torres was his foreman, crew #1, and a foreman duties are examine the quality of the cut, to correct workers, to inspect the lettuce, to weigh it and to have quality control.

He is not a member of the UFW but has been on their side since 1970 He helped in organizing crew #1 for UFW since 1977 for a union contract and he participated in the August, 1978 election campaign at the respondent's for the UFW and in July of 1977, he took over as the representative for the crew and to speak in behalf of the workers for their problems. At the time he told Jose Torres that he couldn't be the foreman and represent the workers in their problems when the assistant forman suggested to the workers that they tell their problems to either the assistant or the foreman. Further, since June, 1978, he in the presence of Mr. Merrill and Jose Torres and the foreman of the 2nd crew, was organizing for the UFW there by passing out buttons and flyers and recommending to the workers a UFW contract. He also went to all of the organizing and campaign meetings, some 50 of them. There had been

There had been problems at the respondent's in 1977 and April, 1978 which he had discussed and concerning, weeds, long Saturday work and other matters about the bus.

After the campaign started, foremen were helping their crews more than ever, including Jose Torres. More than before the campaign, except for his trio. But, when he was packing, then the foreman would help the cutters in his trio. This made his work harder and he felt pressured and tired because his trio would be behind the others in the full crew and since payment was by piece work all the workers tried to keep up and equal in work. Since the campaign started the foreman would help the other trios to keep up, but would not help his trio to keep up, and this continued till the Friday ending that week, from the 26th through about the 29th. He is not the fastest but an average cutter. He felt pressured and told this to Jose Torres and assistant foreman Aballara and Torres did not respond or said that he helped everyone. He also discussed this pressure with his fellow workers and Anita Morgan of the UFW.

On June 26, 1978, around 6:30AM, the packer of their trio was absent, but he and his fellow worker had 4 rows and 8 beds to work, as a trio would have, so no one was packing and they needed another worker and he told this to foreman Jose Torres. There was one dueto working at that time, but they had 2 rows and 4 beds only. I saw a quarteto working in the middle of the field and they had 2 cutting and 2 packing, and so I told Jose Torres again that we needed another worker, and this occurred 10 minutes after I first had asked Jose Torres for another worker, and by this time we had around 20 boxes worth of cut lettuce just laying there unpacked. I told Jose Torres a 3rd time then that we needed help. He was about 2 feet from me and there were now around 50 to 60 boxes worth of cut lettuce unpacked on the ground. Jose Torres said this time that no one wanted to work with me. At this point, the rest of the crew workers stopped work and stood up and were yelling and protesting for 2 to 3 minutes to Jose Torres until Jose Torres sent over to me Trinidad Zabala, from the quarteto, to make a trio. I saw Jose Torres's face before he sent me help and he appeared to be enjoying. He also felt that Jose Torres had made it difficult for him to get rehired for the 1978 season, but he went into the field at the start of the season and since some workers were absent then he was put on. Under cross-examination- the entire crew is paid piece rate, therefore if one trio is slower, then all the crew gets less pay, and then a foreman would help out. He was not in the same trio every-day in 1978, the foreman would put the trio together unless a trio requested that they work together. When he became the crew representative in 1977, he didn't tell the workers that he was UFW, but he did tell them that unionization would be good. During July, 1978, he first started passing out leaflets to the crew and wearing buttons to work and crew members wore buttons. No one from the respondent told him to stop anything or no foreman told him to stop or said anything. He had worked with a Bert Castenada once and Jose Torres had helped them. He never received a warning.

3. Librado Barajas - he is a UFW member because he works part of the year with Vesse Company and they have a UFW contract.

In 1978 he worked for the respondent as a cutter and packer in crew #1 under foreman Jose Torres, through September, 1978. He participated in the campaign for the UFW from latter June, 1978, to the election on August 25, 1978. He talked with workers and passed out leaflets and buttons and did campaigning in front of a Abel Lara, a foreman. He was a member of an organizing committee and attended meetings, and met Rudolfo Ocampo in crew #1 in 1978. Lettuce harvesting is done by trios, unless 2 people are left over and then they work 2 rows only as a dueto. On June 26, 1978, was the first time he ever saw a quarteto and he was in it as a cutter and they had 2 packers. At around 6:30 or 7:00AM he saw a dueto with both cutting and one cutter was Ocampo. Then a unusual event happened as the workers stopped and were protesting to the foreman Jose Torres till a packer from their quarteto was sent over to make a trio with Ocampo. Since the campaign had started, the foremen were helping the cutters more, but not much the Ocampo trio. Rudolfo Ocampo was the representative for the crew and the spokes-man and a member of the organizing committee.

At the end of the day, Jose Torres instructed me to inspect the quality of the cut of lettuce by Ocampo and because he was leaving to much lettuce behind per Jose Torres, foreman. I never aid this before. During 1978, Ocampo has told me that he was getting out of work tired because of not being helped. A worker not being helped would be under pressure to keep up and would get out of work tired.

Under cross-examination - he wore buttons and passed out leaflets during the campaign and no one said anything about it. He worked in the same trio throughout 197& and they chose themselves. On June 26, 1978, one Zabala was packing in his crew making it a quarteto and Jose Torres sent him over to Ocampo to pack. He was not asked by Jose Torres to inspect anyone else's work quality although others were leaving the some amount of lettuce. I told Ocampo the next day that he had left some good lettuce behind; and I explained to the other workers that the reason I had stayed behind was to inspect the rows as the foreman asked me and I reminded them all to pick good lettuce. I had told Jose Torres that I was a UFW member, but Jose Torres had still helped his crew in 1978. Ocampo was a average worker, not a fast worker.

For the Respondent in Defense on direct:

1. Jose Luis Torres - he is a foreman and he directs the workers, checks their quality and can hire and fire. He knows Rudolfo Ocampo, a worker in his crew, who was hired by coming to the fields 1978 and filling in, while seniority people were hired first by telephone or telegram if they requested. The crew members would chose their group in the field and if one was absent he would fill in to help out. Usual is a trio, but if a dueto, they would take 2 rows. He remembers when Ocampo was a dueto and he would only have a quarteto until one member would be assigned out to a dueto.

He doesn't remember anything unusual between June 26 to 29, 1978; he remembers sending Zabala over to Ocampo to pack because he didn't have a trio and Ocampo had called over to him that he had one missing while Ocampo and a Jaquine were cutting. They were

working 4 rows and it was only 5 or 10 minutes that they didn't have a packer and I went over also with Zabala to help pack. I didn't expect them to cut and pack, until I could send over a packer to complete their trio. I do remember some workers yelling but I don't recall why. I do ask some workers to check others work when lettuce is left behind; I asked Librado Barajas to check because he is a representative of the crew and their problems and he told me that it was true that good lettuce was left behind and he would talk about it. I have nothing to do with unions and leaflets were brought into my bus but I don't know who passes them out and I never say anything.

Under cross-examination - he remembers that work started that day at 6:30 or 7:00AM and Ocampo was cutting 4 rows when he sent over Zabala to make a trio. He was asked only the once by Ocampo yells to him from a distance. Zabala was next in line to fill in. He doesn't recall the crew stopping work or yelling, but just they asked for the next in line to fill in.

(Particular notice is made of the attitude, recall and demeanor of this witness, as on cross examination he appears not to understand questions (or recall or remember and would not answer inquiries as to protests of workers about (1) the location of the bus (2) wet field conditions (3) long hours for Saturday work. His singular answer being that complaints would be made to their representatives and not to him.

He had asked Barajas and Marcus to check everyones work, all 32 row and not Just Ocampo's work.

2. Trinidad Zavala - he worked for the respondent in June, 1978, cutting and packing, and was in the same crew as Ocampo He remembers a problem one day when he was in a trio packing and Johnny arrived late and started to pack making it a quarteto.

Johnny didn't want to pack for Ocampo and the workers were yelling for the next in line and I went to Ocampo to pack. The workers didn't stop work. Jose Torres came over to help me as I was packing for Ocampo. Ocampo had 4 rows, a dueto has 2 rows. Jose Torres never talked to him about unions and workers wore buttons.

Under cross-examination - he wasn't ordered over to Ocampo, but went over voluntarily when workers yelled for the next in line. He didn't see Jose Torres or Ocampo talk that morning. In June, 1978, he didn't have a fixed trio and worked as a floater and placed by Jose Torres when one was missing.

3. Bert Castenada - it was first stipulated between counsel, that in accordance with the payroll records, that this witness was absent from work June 26 but was working June 27, 1978. He works in the crew with Jose Torres as foreman and he has never seen Jose Torres discuss unions.

Ocampo was the crew representative and it was his job to take worke problems to the office; Ocampo gave him and other workers union buttons to wear at work. Librado Barajas was assistant representative. In 1978, Barajas and another stayed in the fields after work checking and inspecting the work and the next day in the bus they said 2 to 3 lines were left with good lettuce and to be more careful. No ones name was mentioned.

Under cross-examination - this is the only occasion in his 5 years

of work with the Respondent that there has been work checking by fellow workers.

4. Elenar Licea - he worked as a cutter and packer for the respondent in June, 1978, under Jose Torres, foreman. Jose Torres would help a worker cut and pack when behind and sick or the group when a member absent and did the same for everybody. Jose Torres helped the same before and after the organizing started Organizing was taking place for the UFW and leaflets were passed out and buttons passed out and worn by Ocampo and Berajas. The respondent or Jose Torres never stopped them or said anything. He knows about the Ocampo problem in June, 1978, when there was a quarteto when a Johnny or Juan came to his trio late and Trinidad was already packing. People started yelling as to what was going on and to get into a different trio and Trinidad went over to Ocampo. Jose Torres went over to help pack also. Some people got up, but no work stoppage, and everyone went back to work. No cross-examination.

II

CASE NO. 78-CE-94-M

It is complained and charged that on or about June 15, 1978 the Respondent through its supervisor Pablo Flores threatened that if they (the workers) voted for the UFW, the Respondent was going to close the camp and if the UFW won the election the Respondent would change its crop to alfalfa and raise cattle, which is an Interference with, restrain and coercion of its employees in the exercise of rights guaranteed in Labor Code Section 1153 (a).

Respondent denies the allegations.

A. The Evidence

For the General Counsel:

1. Francisco Macias - he has worked for 2 years for the respondent and lives in the Soledad labor camp for singles, called Los Coches #2, with 10-11 Mexicans and 10-11 Filipinos:

The election campaign started the 1st week of June, 1978, for the August 25, 1978 election, and he was a committee member handing out leaflets. He attended 11 to 12 meetings and with 5 or 6 other 26 representatives of the crew at the 4 camps for living facilities of the respondent, namely (1) Spreckles (2) Los Coches #1 family camp and (3) Los Coches #2 singles camp (4) Reservation Road camp. No rent is paid at the camp, just for their food. His crew foremen is Pablo Flores with 40-50 in the crew and he gets to the field by

the respondent's bus from the camp, driven by Pablo Flores. On June 15, 1978, in the respondent bus at lunch time (12:15PM), I was eating my lunch with about 20 other workers mostly Filipino and 10 or 12 outside the bus, when Pablo Flores seated in the driver seat of the bus said that if the UFW came in, the camp would be closed, the same as they did with the Posadas camp in 1970. I was seated in the bus 10 to 15 feet from Pablo Flores when he said this. It was said in English and we all heard him. When the workers got back to camp that night, 5-00 or 6:00PM, everyone was talking about what Pablo Flores had said. The other crew members representative said they had heard this also and we agreed to make a complaint. After this bus conversation by Pablo Flores, the support for the union by fellow workers began to be less and they were scared what would happen to them if the camp closed. Union meant UFW to all. Under cross-examination - as an organizer for the UFW between June and August, 1978, he passed out leaflets and buttons to the crew in the presence of Pablo Flores and others from the respondent, and no one said anything or tried to stop him.

There were problems in the kitchen because of the cook and quality of the food in 1977 and again in 1978, so the cook left and the workers could cook their own food in the kitchen and use the kitchen whenever and were told this by Frank Dispo, a foreman.

About the Pablo conversation on June 15, 1978, I was not in the bus when it started, but I knew the Filipinos there and they could speak English. When I arrived Pablo Flores made his statement in English. The others then started to talk amongst themselves in Filipino, and then we all went back to the field to work. No one, before this incident, refused leaflets from me, but after the incident they wouldn't talk to me and wouldn't take leaflets from me. He doesn't know of a Posada camp.

2. Francisco Rasa - he lives in Los Coches #2 camp and works in the crew of Pablo Flores, foreman, and Pablo Flores tells us what work to do, and inspects the work and can give warnings and can fire crew members (he had fired a Bernard Gomez for kicking the bus).

On the day of the incident, he was in the bus at lunchtime eating and talking and nearly all the crew was in the bus. The union was organizing during this time and we were all talking for and against Pablo was in the driver seat, 2 seats from me. He joined the discussion and said that if the union would win then they would close the camp like Posada in 1970. I said, that then the respondent would be bankrupt, because what would they do with their fields. Pablo said that the respondent would then raise and bring in cows and plant and feed grasses. Before Pablo's statement, most of the workers talking were talking about joining the union, after they showed surprise and were taken aback. Pablo statement was in English and Spanish. I finished the 11th grade and speak English and I understood what Pablo said. When returning to camp that night I could not talk to my fellow workers. I had participated in organization in this camp. Also, there was a difference about the button after Pablo statement, before they accepted them and after then not.

Under cross-examination - I wore a button to work and I saw workers in my crew after the statement by Pablo and in July and August wear a button. I don't remember any union statements by Pablo, but this.

Francisco Macias was in the bus at the time, but further away, during the entire statement. We were all present during the conversation.

3. Bernard Gomez - he started as a worker for the respondent in April, 1978, hired by Frank Dispo, and lives in Los Coches #2 camp, Pablo Flores is his foreman. Pablo Flores assigns work to him and supervises the quality of his work. On June 15, 1978, I was in the bus eating during lunchtime, with my co-workers and we were discussing the advantages and disadvantages of unions. Pablo Flores was seated in the driver seat and joined the conversation in English and he said that they would close the company (respondent; if the union won. All of us understood the statement. I went through English school grade b and I understood Pablo Flores. Francisco Rasa asked Pablo why they would close and Pablo said because of the union. I didn't participate, but I was seated 4 1/2 yards away and could hear all the conversations Pablo also mentioned about a camp closing before, but I didn't remember its name. Pablo said they would plant grasses and bring in cattle. There were 30 workers living in camp at the time and when we return that night there was conversation about what was said in the bus and about the camp closure and that if closed there would be no place to sleep. After this workers didn't wear their buttons and when I asked why, they didn't answer.

Under cross-examination - I had been fired once by Pablo Flores for kicking the bus, and when I explained to another supervisor that it was an accident, he believed me and I was rehired. There was no discussion of the food in the camp kitchen that day. I was not afraid that they would close the camp and I wore my union button after the conversation by Pablo and some in the crew still wore their union button and weren't afraid. There was no other conversation by Pablo about unions.

For the Respondent in Defense on direct:

1. Pablo Flores - he is a foreman of the crew and drives the bus from the camp to the field, and tells the workers what to do and checks their work quality. In June, 1978, there were 25 workers in his crew. Lunchtime is 1 hour and sometimes taken in the bus and if in the bus, the crew would be near him. During lunch he doesn't talk with the crew. He knows Francisco Macias, a worker in his crew. He doesn't remember talking to him during lunch. He has never talked to him about unions, nor about closing the camp nor problems in camp. He knows Francisco Rasa, a worker in his crew. He never ate lunch with him and never talked to him about unions or the UFW or about closing the camp or planting alfalfa or grasses or raising cattle. Same general testimony concerning worker Bernard Gomez and he has never talked with any worker about unions or closing the camp or planting alfalfa and raising cattle. He never saw any union activity by any workers and he didn't know if any workers campaign for the UFW in 1978.

Under cross-examination - he knows Los Coches #2 camp because he

picks up his workers there in the bus, but he has never visited it but has been in the kitchen only and there lives Filipinos and Mexicans and his field crew is around 25. Some workers speak to him in English like Francisco Rasa and Bernard Gomez, but he doesn't know about the others, and he gives his orders to the workers in English. He doesn't speak Filipino or Ilicano. He eats lunch in the bus and sits in the driver seat and the worker eat in the bus when windy or raining, but he doesn't talk to the workers in the bus. He doesn't know of a Posada camp.

2. Juanito Tinio - he lives in Los Coches #2 and his foreman is Pablo Flores. There were organizers in the camp June, July and August of 1978 for the election that year and they would hold meetings in the living facility. No one told them to leave and they wore buttons and posted papers.

He never spoke to Pablo about unions or about the camp or types of crops planted and he never heard Pablo talk to the crew about union. He eats lunch in the bus when its windy and sometimes Pablo is in the bus for lunch. The workers talk among themselves in the bus; he never heard Pablo talk to workers in the bus.

Under cross-examination - he never wore a union button or passed out leaflets. Workers Rasa and Gomez speak English. The Filipinos speak Ilicano in the field when they talk amongst themselves. Pablo gives orders in English to the workers. Pablo visited in the camp 2 times and spoke to the workers asking about something he forgot in the kitchen.

3. Maximino Murillo - he worked for the respondent in June, 1978, and his foreman is Leopoldo (note: later identified a Pablo Flores, as noted infra) and has lived at Los Coches camp. He has eaten lunch inside and outside the bus and he has never spoken to Leopoldo during lunch and Leopoldo doesn't talk to the workers during lunch. Upon observing Pablo he identifies Leopoldo.

(At this point Pablo Flores was recalled by the General Counsel and he said)
(his name is Pablo and not Leopoldo and workers don't call him Leopoldo. At)
(this time the General Counsel moves to strike the testimony of this)
(witness, over objection. The motion to strike is overuled and the)
(testimony may stand (since the witness upon personally observing Pablo)
(stated this is Leopoldo); as to Pablo's name in fact being Pablo, the)
(motion is granted for, that limited purpose of identification.)

4. Cirilo Almanza - he worked for the respondent in June, 1978 his foreman was Pablo Flores and he lived in Los Coches #2 camp. He remembers the election and the representatives at his camp and meetings being held and he went and was not afraid and he asked questions, but he was not a union sympathizer. Workers at lunch only would talk union and pass out leaflets, not during work. I ate in the bus and only the foreman had his seat, the driver's seat. The workers at lunch would talk amongst themselves of things but not about company problems or union things. Pablo Flores never spoke to anyone in the bus and no worker in June asked Pablo anything in the bus, not unions or camp or crops to plant. Under cross-examination - he doesn't know Pablo intimately and he doesn't remember how often he ate in the bus in June, but only

when it was windy.

III

CASE NO. 78-CE-114-M

It is complained and charged that on or about August 8, 1978, respondent through its supervisor Herman Marquez threatened, intimidated and coerced an employee with physical harm because of the employees union activities, which is an interference with, restrain and coercion of its employees in the exercise of rights guaranteed in Labor Code Section 1153 (a).

Respondent denies the allegations.

A. The Evidence

For the General Counsel:

1. Jose L. Diaz - he has worked for the respondent for 4 years thinning celery and has lived in a labor camp and his foreman in August, 1978 was Herman Marquez.

Election campaign started in June, 1978, for the August, 1978 election. He was elected in June, 1978 to represent his fellow workers and he passed out flyers, buttons and answered workers questions about the UFW union and went to meetings. He discussed the union with Herman Marquez.

Around August 7, 1978, he discussed the union plan and the respondent's plan for medical at the Murillo family apartment in the same camp as he was in, and there was a woman union employee with him. The discussion was about 1 hour long: I felt that the respondent's plan was a unsure plan and the union plan was a sure plan. A Maria Espana, not a Murillo family member, was there also.

On August 8, 1978, I started work at 6:00AM in front of the Firestone plant in the field with co-worker Francisco Lopez. At about 9:00AM, in the field, foreman Herman Marquez came over to me and told me not to be throwing "dumb things" about him and not to be putting him into "dumb situations" or after work he would beat me up. I told him that it would remain to be seen if he threw the punches at me. He accused me of throwing him into union things. I told him that since he was a foreman, he shouldn't get involved in employee activities that wanted a union. He turned away angrily and went back to the bus. There was no further discussion.

Under cross-examination - it was a Sunday at the Murillo home meeting and the medical plan, not the dental plan, was discussed by me and that the respondent's plan was independent not a sure plan. Maria, not a foreman, was present and contradicted everything the union representative was saying about the plans and she was for the respondent's plan. Maria said she was recording everything and that I would be given a bad time by the respondent and

thrown out of the company. I did mention at the Murillo's, Herman Marquez, but not that he was spying on the workers, even though this is true. But afterwards I could tell that this Maria had told Herman that I said these things about him, which I didn't.

At the August 6, 1970 conversation, Francisco Lopez was present and Marcellino Pares was working further away in the field. He became a UFW committee man June, 1978, I passed out flyers, buttons and I talked to the workers during lunchtime about the UFW till the election around August 25, 1978. No one ever stopped him but Maria and a Bebe would be quarrelsome with him when he passed out leaflets and Marcellino Peres wouldn't let me talk to his daughter about unions.

After August 8, 1978, I still passed out leaflets and in front of Herman Marquez and in the bus and I didn't fear that he would fire me because this pertained to the worker and not to doing good work I don't remember when, but I heard Herman Marquez talk to the workers that they don't need a union when they don't know about it. I brought Herman Marquez's name up at the meeting at the Murillo's as an example of a foreman and foremen shouldn't be involved in worker union business.

2. Francisco Lopez-Rangel - on August 8, 1978, he worked in the field with Jose Diaz thinning celery, and has always worked with Jose Diaz. Their foreman is Herman Marquez.

On August 8, 1978, between 8:30 and 9:00AM, in the field, he heard Herman Marquez tell Jose Diaz not to be putting him into "dumb things", or he was going to beat him up after work. I was 3-4 feet away at the time and we were in the field around the Firestone factory. The conversation lasted 3-4 minutes and Herman was angry in the face and his voice loud. Jose said, go ahead beat me up, and Herman turned and went away angry. A worker Guermo Diaz was also 3-4 feet away, but no one else around.

Under cross-examination - he saw Jose Diaz and others passing out union papers and no one from the respondent ever stopped them.

After the Marquez conversation, Diaz told me he wasn't afraid of being fired. He didn't tell me that he was afraid Herman would beat him up, but he looked scared to me. I didn't hear "dumb things" in the conversation, just about the union.

For the Respondent in Defense on direct:

1. Maria Garcia - she lives in the Sreckles camp and has worked for the Respondent from 1971 through July, 1978, and foreman was Herman Marquez. She received a legal leave of absence in July, 1978, for a pregnancy. She was present at the Murillo's August 6, 1978, with the family and Jose Diaz and Maria Espana. There was a discussion by Jose Diaz about Herman Marquez, that when the union representatives would talk to the crews he would listen in. No one else said anything about Herman, but I said to Jose Diaz that he couldn't judge whether Herman listened in and that Herman was responsible to take care of the crew and the work and this wasn't spying.

He then talked about the UFW with the union employee Rebecca Flores present and the medical plan was discussed and Jose Diaz talked about the respondent's dental plan as not registered and could be

taken away by the respondent.

Under cross-examination - she knows Maria Espana and lives in the same camp. Maria Espana asked more questions at the meeting than anyone else and she said that union people had said different things about the plans and weren't together on the subject. Jose Diaz was trying to convince the Murillo family that the union plan was better than the respondent's plan., Maria Espana didn't say she was taping the meeting.

2. Maria Espana - she lives in the Spreckels camp and has worked 7 years for the respondent and Herman Marquez as her foreman. At the Murillo house on August 6, 1978, was the Murillo family, Maria Garcia, Jose Diaz, Rebecca Flores, and herself. Jose Diaz discussed Herman Marquez and said that he was always after the people and listening in about the union, I said Herman could be after the workers because it was his Job to look after the work. Diaz then said it was not to Herman's advantage to listen in because he was on the respondent's side; workers talked in the field about the union and I saw Herman listening because the people talked outloud, but Herman said nothing about unions. Then the talk was by Jose Diaz about the plans and that the respondent's plan was no good because they could take it away, because 11; was independant, and the dental plan was not registered with the government. Jose Diaz didn't talk about the union plan. I spoke to Herman Marquez the next day in the field while he was checking my row of work and I told him to go away or the Chavez union committee would think he was spying about union activities. We also talked about the conversation at the Murillo house.

Under cross-examination - Diaz tried to convince her of the union plan and I told Diaz and the organizer of the UFW that they didn't know what they were talking about. I did tell Jose Diaz that I recorded the meeting, but I did not, because he would say onething one time and another thing anovertime.

Herman Marquez is her friend and he has visited her home. She told Herman in the field just what was said about him only, at the meeting.

3. Maroelino Peres - he works in the same crew as Jose Diaz August, 1978, and Herman Marquez as foreman. He saw Jose Diaz and Herman Marquez talking in the field in early August, around 9 or 10:00AM, and no one else was around and they were talking, no pushing. Herman asked Jose why he was putting him through those hassel's and Diaz said that sometime Herman had treated him bad and Herman said he had never treated anyone bad. Under cross-examination - Nothing unusual for Herman to talk to the crew. He was ahead of them at the time and they were behind him. The conversation he remembers was at Riverside. Note: this is 10 miles away from Thompson, where the Firestone plant is and where the conversation in issue took place.

4. Herman Marquez - employed with the respondent 10 years and as a foreman and Jose Diaz and Maria Espana are in his crew.

On August 8, 1978, Maria Espana called me in the field between 9 and 10:00AM, at the Thompson Ranch and she said that Jose Diaz was involving me in political matters. She started the conversation with me while working. She had not talked to me before about Jose Diaz. She then said I should move away or else Diaz would say that I was involved in listening to their things. I then went to talk: to Diaz and no one was around except Marcelino Pares. I said to Diaz not to have my name involved in anything because I have a clean record as a foreman for 18 years. I felt offended for him having my name involved in these activities.

I never asked workers to report to me of union activities or to spy or to tape meetings and he never heard tapes.

When working he is close to the workers because he follows the crew around all day. He doesn't pay attention to their talking, he just follows them around.

On August 8, 1978, he did not threaten Jose Diaz with physical harm or coerce or intimidate Jose Diaz.

Under cross-examination - the August 8, 1978 conversation in the field with Maria Espana was the first time there was a discussion of union matters with her. She is a friend of 6-7 years.

He saw organizers come into the fields and distribute with Jose Diaz during the campaign flyers and buttons during lunchtime everyday. I thought Jose Diaz was the most active campaigner for the UFW and the most outspoken union supporter in my crew. I never talked to him about the union. He has worked in my crew 3 years. I was offended when Maria told me that I was being involved in political activities, meaning union activities. I was not angry when told this by Maria. I had had not problems with Jose before. Jose Diaz did not tell me that I shouldn't be involved in whether workers wanted a union or not; he did not say anything to me. I never said that I'd punch him after work if he didn't stop talking about me. I did say that if he didn't stop talking about me. I would do something about it, which meant talking to my supervisor about it. I said Diaz don't have my name involved in political movements, because if you don't stop I'll have to talk to my bosses about it. My supervisor was Julio Cerda. The conversation was about 2 minute

IV

CASE NO. 78-CE-116 M

It is complained and charged that on or about August 8, 1978, respondent through its supervisor or agent Guadalupe Villalobos intimidated and coerced its employees by surveillance or the employees protected union activities, which is an interference with, restrain and coercion of its employees in the exercise of rights guaranteed in Labor Code Section 1153 (a).

Respondent denies the allegations.

NOTE: That during the hearing of the complaints herein, and on November 27, 1978, the General Counsel by oral motion, moved to dismiss this complaint as to the "surveillance" charge. Said motion was granted. General Counsel then moved to amend this complaint, over strong objection by respondent counsel, to add the charge to a "interrogation of Jose Diaz". Finding that there would be no prejudice to respondent to their defense of this complaint if the amendment be granted; the matter proceeded and the evidence was presented thereon.

It is brought to my attention by Employers Brief After Hearing at page 15 at footnote 3, that counsel for respondent makes a point well taken, which must first be discussed and a decision made thereon.

That on November 27, 1978, at the hearing of this complaint, a motion was made by the General Counsel to amend its complaint (see Volume III of transcripts commencing on page 3, line 22 through page 5, line 13). That General Counsel also moved for a dismissal of its original count and with no objection from respondent, said motion was granted and the count was dismissed (see Volume III of transcripts commencing on page 7, line 25 through page 8, line 10). That for clarity and descriptive purposes, during the argument on the amendment issue, the original charge by interlineation was made to show how it would read.

That after argument and a recess where respondent was given as much time as he required to talk to his witness Mr. Villalobos and to ascertain whether any new testimony or witnesses or preparation in fact would be necessary or in fact anything to show me, that there would be any prejudice to respondent's case in defense; failing this in my opinion, I ruled that the General Counsel's motion to amend be granted as requested (see Volume III of transcripts commencing on page 5, line 25 through page 21, line 25).

That testimony on said complaint terminated November 28, 1978, and all cases were submitted to me for decision. To the present date, and noting that more than 10 days having passed, the General Counsel has not made service of said amendment to the complaint in writing as required by Section 20222 of the regulations.

That Section 20222, reads as follows: Amendment of Complaint: " - - - at the hearing, the complaint may be amended upon motion of the general counsel to the administrative law officer. An amendment to a complaint shall be in writing, except that a complaint may be amended orally at the hearing if the amendment I reduced to writing, filed with the executive secretary and served on the administrative law officer and on all parties no later than 10 days after the close of the taking of testimony".

That it is acknowledged that the favored posture, and it is this administrative law officer's position as well, that a matter should be determined on its merits, in preference to its determination on procedural or technicality grounds. But, it is also not meritorious for the administrative law officer to overrule or counteract an existing regulation of the Board, and the mandatory tone therein. Therefore, for the reasons and facts as setforth, I find no alternative than to dismiss this case, and it is so ordered dismissed, for noncompliance on the part of the General Counsel, with Section 20222 of the regulations.

FINDINGS OP FACT - CONCLUSIONS OF LAW

Preliminarily, in each and every case herein, we are cognizant that an active union organization campaign and active worker involvement therein, was underway and preparatory to the election being held August 25, 1978, during the time period of these complaints, namely from early June, 1978, through August 25, 1978.

CASE NO. 78-CE-85-M

That respondent is an agricultural employer within the terms of the Agricultural Labor Relations Act; that the UFW is now and was a labor organization within the meaning of the Act; that Jose Luis Torres, at all times relevant herein, was a supervisor and agent of the respondent within the meaning of the Act. That the acts of the employer's supervisor is binding upon the employer and the employer respondent is held responsible for said acts.

That employee Rudolfo Ocampo was a strong UFW union supporter and union organizer and the most active in union activities and in the election campaign in behalf of the UFW and while being the representative in the Jose Luis Torres crew, during the entire campaign period.

That the employer-respondent through his supervisor-agent

Jose Luis Torres harassed its employee Rudolfo Ocampo by not help his work "trio" as he did others in the field; and that this was the cause of Rudolfo Ocampo to have extra work in fact and to keep up as a piece rate worker with the, rest of the crew members.

That the employer-respondent through his supervisor-agent Jose Luis Torres harassed its employee Rudolfo Ocampo by permitting his "trio" to work as a "dueto" (2 persons), while still in the middle rows and assigned the same amount of cutting and packing as a "trio"; further, that Jose Luis Torres continued to harass Rudolfo Ocampo by not assigning an available extra packer to his group promptly, so as to make his "dueto" into the "trio".

That the acts of non-action on the part of the employer-respondent through his supervisor-agent Jose Luis Torres was the direct cause for Rudolfo Ocampo ending his work day, on a daily basis, in a "tired" state and having the feeling of "pressure".

That the employer-respondent through his supervisor-agent Jose Luis Torres caused a harassment of Rudolfo Ocampo by having fellow workers assigned to check the work of Rudolfo Ocampo.

That said actions of the employer-respondent through his supervisor-agent Jose Luis Torres were directed against Rudolfo Ocampo and intended to restrain, coerce and intimidate the employees in the exercise or their rights under Labor Code Section 1153(a) and respondent has accordingly engaged in an unfair labor practice.

CASE NO. 78-CE-94-M

That respondent is an agricultural employer within the terms of the Agricultural Labor Relations Act; that the UFW is now and was a labor organization within the meaning of the act; that Pablo Flores, at all times relevant herein, was a supervisor

and agent of the respondent within the meaning or the Act. That the acts of the employer's supervisor is binding upon the employer and the employer respondent is held responsible for said acts.

That crew workers of Pablo Flores lived in the Soledad labor camp living facilities for singles, called Los Coches #2, and which facilities were free to these workers for the respondent.

That on June 15, 1978, the crew workers of foreman Pablo Flores during lunchtime were eating their lunches in the respondent's bus and where foreman Pablo Flores was present and seated in its driver's seat that at such time and place and while the workers were talking for and against unions, Pablo Flores stated that if the union won in the election, then the respondent would close the camp and respondent would change to planting grasses and alfalfa and raising cattle.

That the employer-respondent through its supervisor-agent Paolo Flores threatened the employees with a closure or the Los Coches labor camp #2, which meant the loss of their place to live to the employees, if they voted for the union.

That the employer-respondent through its supervisor-agent Pablo Flores threatened the employees with the losing or their Jot because of the change or the crops to grasses and alfalfa and the raising of cattle, which would eliminate their Jobs, if they voted for the union.

That the employer-respondent through its supervisor-agent Pablo Flores threatening statements, put fear into these workers of this form of retaliation if they continued to be amenable to the union organizing being undertaken by the committees and representatives and adversely effecting the union efforts.

That said actions of the employer-respondent through his supervisor-agent Pablo Flores were intended as threats to the employees and intended to restrain, coerce and intimidate the employees in the exercise of their rights under Labor Code Section 1153 (a) and respondent has accordingly engaged in an unfair labor practice.

CASE NO. 78-CE-114-M

That respondent is an agricultural employer within the terms of the Agricultural Labor Relations Act; that the UFW is now and was a labor organization within the meaning of the Act; that Herman Marquez, at all times relevant herein, was a supervisor and agent of the respondent within the meaning of the Act. That the acts of the employer's supervisor is binding upon the employer and the employer-respondent is held responsible for said acts.

That Jose Diaz was a worker in the crew of Herman Marques his foreman; that Jose Diaz was most active in the election campaign, being the crew representative, passing out flyers and buttons for the UFW and discussing the union and answering workers questions about the union.

That on August 7, 1978, Jose Diaz discussed the union and health plans at a meeting at which time he referred to his supervisor Herman Marquez as being guilty of surveillance and spying and listening into union talk of his crew while in the field.

That on August 8, 1978, while in the field, one Maria Espano, an employee, told foreman Herman Marquez what was being said about him by Jose Diaz, in regards to accusations of surveillance, spying and listening into union talk; that in response

to the informed accusations, on August 8, 1978, while in the field, Herman Marquez told Jose Diaz not to say "dumb things" and not to get him involved in "political activities"; that "dumb things" meant that as a foreman, he was always following the workers work and that doing that was not a spying and to say that It was, was a "dumb thing" and involving him in a "political activity"- meaning union things.

That there was no threat made to Jose Diaz which was to restrain or intimidate or coerce Jose Diaz in any degree, of his exercising of union activities; that there was no evidence of any conduct, nor could there be any inference made from the evidence, of any conduct tending to or in fact Interfering with the organizational activities of the workers; that further, it is believed after a full examination of the evidence and the witnesses demeanor, that there was not a threat of physical harm.

That said actions of the employer-respondent through his supervisor-agent Herman Marquez were not threats, intimidating or coercive of Jose Diaz with physical harm,(as charged) because of the employees union activities and therefore the respondent has not interefered with, restrained or coerced its employees in the exercise of their rights guaranteed in Labor Code Section 1153 (a).

CASE NO. 78-CE-116-M

That it is incorporated by reference, as though fully setforth herein, my opinion and decision commencing on Page 16, line 21, through Page 18, line 6.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Labor Code Setcion

1153 (a), I shall recommend that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, in regards to case 78-CE-85-M and 78-CE-94-M.

The unfair labor practices committed by Respondent effect the rights guaranteed to employees by Section 1152 of the Labor Code. It will be accordingly recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 1152 of the Labor Code.

In regards to cases 7b-CE-114M and 7b-CE-116-M, while the Board has discretion to award attorney fees and costs in appropriate cases, it is not felt that these cases are of the nature to warrant the same and therefore respondent's prayer therefore is denied.

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

Under cases number 78-CE-114-M and 78-CE-116-M :

1. It is found for the Respondent and that; the cases and each of them be and are dismissed.

Under cases number 78-CE-85-M and 78-CE-94-M :

1. Cease and desist from :

(a) Harassing its employees because of their support for and activities on behalf of the UFW or any union.

(b) Threatening employees with layoff, termination or loss of employment because or union activities.

(c) Threatening employees to close their labor camp if they

voted for the UFW or any union, in an election.

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

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

(a) Post in conspicuous places, including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix". Copies of said notice shall be posted by respondent immediately upon receipt thereof and shall be signed by respondent's representative. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by any other material. Said notice shall be posted for a period of sixty (60) days and shall be in English and Spanish/^{and Ilicano} shall be approved by the Regional Director for the Salinas Regional Office, or other authorized representative of the Board. Responder is also required to mail to the last known home address of each peak season employee a copy of said notice in English and Spanish and Ilicano.

(b) Notify the Regional Director in the Salinas Regional Office within twenty (20) days from receipt of a copy of this

Decision of the steps respondent has taken to comply therewith, and to continue to report periodically thereafter until full compliance is achieved.

DATED: February 19, 1978.

A handwritten signature in cursive script, appearing to read "Bernard S. Sandow", written over a horizontal line.

BERNARD S. SANDOW
Administrative Law Officer

APPENDIX

NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we have engaged in violations of our employees rights and violations of the Agricultural Labor Relations Act. In order to remedy such conduct, we are required to post this Notice and to mail copies of this Notice to our employees. We intend to comply with this requirement, and to abide by the following and to remedy the violations and that employees' rights will be respected in the future, and we tell you this:

(1) We will not harass our employees because of their support for and activities on behalf of the United Farm Workers of America or of any other union.

(2) We will not tell our employees not to vote or how they should vote in any election which may be ordered and we will not threaten our employees with closure of our labor camps and/or threaten our employees with layoff, termination or loss of employment by the changing of our crops if they were to vote in an election for the United Farm Workers of America or any union.

(3) All of our employees are free to support, become or remain members of the United Farm Workers of America or of any union. We will not in any manner Interfere with the rights of our employees which are guaranteed them by the Agricultural Labor Relations Act.

MERRILL FARMS

DATED:

By _____

(Title)