Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GEORGE LUCAS AND SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, FLORA AGUILAR, RAMON HORTA PULIDO, AND OLGA HORTA PULIDO, Charging Parties.	)	Case Nos. 77-CE-138-D 77-CE-138-1-D 78-CE-35-D 78-CE-61-D 78-CE-42-D 78-CE-20-F 5 ALRB No. 62

DECISION AND ORDER

On or about March 1, 1979 , Administrative Law-officer. (ALO) Irwin Trester issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel each filed exceptions, a supporting brief, and a reply brief.

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

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

Failure to Rehire

Respondent excepts to the ALO's finding that its failure to offer reemployment to three employees, Maurelio Ponce, Sabeno

Mejia-Ortiz, and Santiago Ornelas, was discriminatory and was based on anti-union motivation, violating Labor Code Section 1153(c) and (a). General Counsel excepts to the ALO's failure to find that Respondent further violated Section 1153(c) and (a) by failing to offer reemployment to the other four members of a seven-man "group from Delano" laid off at the same time, Rogelio Romero-Avila, Sigifredo Gonzalez-Chavez, Francisco Lara, and Gonzalo Chavez. Crew foreman Isaac Chapa and the three employees found to have been discriminatorily denied reemployment each testified that at the time of the layoff Chapa assured the group he would contact them when work again became available. Chapa testified that when work became available he broke his promise to contact the men because his supervisors had told him not to rehire them on account of the group's enthusiastic and highly visible support for the United Farm Workers of America, AFL-CIO (UFW). The ALO credited Chapa's testimony and we find his determination as to Chapa's credibility is supported by the record as a whole.

To establish a discriminatory refusal to rehire, the General Counsel must ordinarily show that an alleged discriminatee made a proper application for rehire and was not rehired as a result of union-related considerations.

The record establishes that Ponce, Mejia-Ortiz and Ornelas contacted Chapa seeking work in the weeks following their layoff. In addition, in testimony apparently overlooked by the ALO, Chapa testified that Sigifredo Gonzalez-Chavez also telephoned him during that period to ask about being rehired.

In the circumstances of this case, the contacts with Chapa initiated by these four employees amply satisfied the requirement of proper application for rehire. As the record shows that other employees were being hired to do work for which Ponce, Mejia-Ortiz, Ornelas, and Gonzalez-Chavez were qualified, and that Chapa had been ordered not to hire these four workers because of their support for the UFW, we conclude that Respondent violated Labor Code Section 1153(c) and (a) by failing to offer reemployment to these four employees.

The requirement that an alleged discriminatee make application for rehire, which was satisfied by Ponce, Mejia-Ortiz, Ornelas, and Gonzalez-Chavez, does not have to be established in every case. In NLRB v. Shedd-Brown Mfg. Co., 213 F.2d 163 (7 CA 1954), 34 LRRM 2278, Capital City Candy Co., 71 NLRB 447, 19 LRRM 1006 (1946), and H. & H. Mfg. Co., Inc., 87 NLRB 1373, 25 LRRM 1264 (1949), discriminatory refusals to rehire were found as to employees who did not make application for rehire because their employers told them they would be sent for when work became available. The rule of these cases applies to employees Romero-Avila, Lara, and Chavez, as Chapa promised to contact the entire group and the members of the group shared an understanding that if any one of them heard from Chapa about rehire he would pass the word on to the others. We therefore reject the implied holding of the ALO that an application for rehire was required of these employees as a basis for finding a discriminatory refusal to rehire.

We also reject the ALO's implied holding that the fact

that these employees and Sigifredo Gonzalez-Chavez did not testify at the hearing precludes the finding of a violation as to them. There is no requirement in the Labor Code or in case law that testimony be received from a victim of every alleged unfair labor practice. Evidence from other sources can be sufficient, as it is here, to prove that violations occurred as alleged. We conclude that all seven employees were discriminatorily denied rehire in violation of Labor Code Section 1153(c) and (a).

Interrogation

Respondent excepts to the ALO's determination that Respondent violated Labor Code Section 1153(a) by the interrogation of Ramon and Olga Horta-Pulido by George Lucas, Jr. We find that the record supports the ALO. Although this violation was not alleged in the complaint, it was related to those which were alleged and was fully litigated. The testimony of the Horta-Pulidos and Almadelia Fuentes, who acted as translator in the interrogatory conversation, unequivocally established that Mr. Lucas asked the Pulidos why, if they supported the UFW, they were not working at a ranch under contract with the UFW. The question was clearly coercive. In no way was it the sort of query justified by the rule that an employer may question employees for the purpose of preparing a defense in a proceeding before the Board, provided that the questions are "relevant to an unfair labor practice charge and are of sufficient probative value to risk intimidation of employees which interrogation as to union matters naturally entails." Joy Silk Mills v. NLRB, 185 F.2d 732 (D.C. CA 1950) 27 LRRM 2012, 2020, cert. denied,

341 U.S. 914 (1951), 27 LRRM 2633; Anderson Farms Company, 3 ALRB No. 67 (1977). The attempt of Respondent's counsel to apply this rule to the facts here we regard as frivolous, since the Court in Joy Silk Mills itself stated the rule in the context of the following quote from May Department Stores Co., 70 NLRB 94, 18 LRRM 1338 (1946):

> [The questioning] may not go beyond the necessities of such preparation to pry into matters of union membership, to discuss the nature or extent of union activities, to dissuade employees from joining or remaining members of a union, or otherwise to interfere with the statutory right to self-organization.

Lucas' question fell far outside the scope of permissible questioning and conveyed unmistakable hostility toward union support by Respondent's employees, in clear violation of Labor Code Section 1153(a).

Delay in Rehiring

We find no merit in the General Counsel's exception to the ALO's failure to find that Respondent's delay in rehiring Flora Aguilar in 1978 violated Labor Code Section 1153(c) and (a). Although the record evidence shows that employees with less seniority than Sra. Aguilar were hired by foreman Veloria while she was not, the General Counsel did not establish by a preponderance of the evidence that anti-union animus provided the motive for this discrimination against Sra. Aguilar. In the absence of evidence establishing such impermissible motivation, we uphold the ALO's finding that personal animosity between the individuals involved was the reason Veloria did not rehire Sra. Aguilar.

Discharges

General Counsel excepts to the ALO's conclusion that the discharge of Flora Aguilar and Ramon and Olga Horta-Pulido by Pablo Veloria did not violate the Labor Code. We find no merit in the exception. The insubordinate refusal by Sra. Aguilar and Sr. Horta-Pulido to carry out foreman Veloria's instruction regarding identification of the grapes they picked justified Respondent in discharging them, notwithstanding the suspicious timing of the discharge. We agree with the ALO that Sra. Horta-Pulido left Respondent's employ voluntarily.

ORDER

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent George Lucas and Sons, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to rehire any employee, or otherwise discriminating against any employee in regard to his or her hire or tenure of employment or any term or condition of employment, because of such employee's membership in, or activities on behalf of the United Farm Workers of America, AFL-CIO, or any other labor organization.

(b) Interrogating employees concerning their union affiliation or sympathy or that of any other employee.

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

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

(a) Immediately offer Maurelio Ponce, Sabeno Mejia-Ortiz, Santiago Ornelas, Sigifredo Gonzalez-Chavez, Rogelio Romero-Avila, Francisco Lara, and Gonzalo Chavez reinstatment to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges and make each of them whole for any loss of pay or other economic losses, plus interest thereon at a rate of seven percent per annum, he has suffered as a result of Respondent's failure or refusal to rehire him.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due and the rights of reinstatement of the above-named employees under the terms of this Order.

(c) Sign the Notice to Employees attached hereto, and after its translation by a Board Agent into appropriate languages, reproduce sufficient copies of the Notice in each language for the purposes set forth hereinafter.

(d) Distribute copies of the attached Notice in appropriate languages to all present employees and to all employees hired by Respondent during the 90-day period following issuance of this Decision.

(e) Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order, to all employees employed by Respondent at any time

during the period from July 15, 1977, to August 19, 1978. In the event that addresses of former employees are not maintained by Respondent, Respondent shall arrange for the Notice to be broadcast in all appropriate languages on a radio station in the Kern County area, once a week for four weeks during Respondent's next peak hiring season. The station or stations and the times of the broadcasts shall be determined by the Regional Director.

(f) Post copies of the attached Notice in all appropriate languages in conspicuous places on its property, including places where notices to employees are usually posted, for a 90-day period to be determined by the Regional Director. Respondent shall exercise due care to replace any copy of copies of the Notice which may be altered, defaced, covered, or removed.

(g) Arrange for a Board Agent or a representative of Respondent 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 the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: October 23, 1979

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Board Member

JOHN P. McCARTHY, Board Member

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. 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 you to do or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT fail or refuse to rehire or otherwise discriminate against any employee because he or she exercised any of these rights.

WE WILL offer Maurelio Ponce, Sabeno Mejia-Ortiz, Santiago Ornelas, Sigifredo Gonzalez-Chavez, Rogelia Romero-Avila, Francisco Lara, and Gonzalo Chavez their old jobs back and will reimburse each of them any pay or other money they lost because we failed or refused to rehire them.

WE WILL NOT question you about whether you belong to or support the UFW or any other union.

Dated: GEORGE LUCAS AND SONS

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

George Lucas and Sons (UFW)

5 ALRB No. 62
Case Nos. 77-CE-138-D
77-CE-138-1-D
78-CE-35-D
78-CE-42-D
78-CE-61-D
78-CE-20-F

ALO DECISION

The ALO concluded that Respondent violated Section 1153(c) and (a) by failing to rehire three members of a seven-employee group, but committed no violation of the Act by failing to rehire four other members of the group. The ALO also concluded that Respondent violated Section 1153(a) by the interrogation of two employees by one of the owners of the operation, who asked them about their union support. The ALO dismissed alleged violations of Section 1153(c) and (a) based on 1) Respondent's delay in rehiring one employee who was a vocal union supporter, 2) the firing of this employee and another, 3) an alleged threat to terminate the wife of an employee who had testified against Respondent, and 4) the alleged harassment of a union-supporting employee by his crew foreman.

BOARD DECISION

The Board concluded that Respondent violated Section 1153(c) and (a) by its failure to rehire all seven members of the employee group, including those who had made no clear application for rehire, because at the time they were laid off the crew foreman promised to recall all seven employees and the employees shared an understanding that if any one of them were contacted when work became available he would inform the others.

On all other issues the Board upheld the conclusions of the ALO.

THE REMEDY

The Board ordered Respondent to cease and desist from its unlawful practices and to offer to reinstate each of the seven discriminatees to their former or substantially equivalent jobs and to make each of them whole for any loss of pay or other economic losses resulting from Respondent's unlawful acts and conduct. The Board also ordered Respondent to sign, mail, post, and arrange for the reading of a remedial Notice to Employees.

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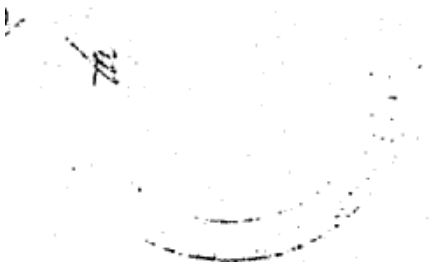
STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD



In the matter of:

GEORGE LUCAS AND SONS,

Respondent,

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO, FLORA AGUILAR, RAMON HORTA PULIDO, and OLGA HORTA PULIDO,

Charging Parties.

Case Nos. 77-CE-138-D
77-CE-138-1-D
78-CE-35-D
78-CE-61-D
78-CE-42-D
78-CE-20-F

DECISION

STATEMENT OF THE CASE

IRWIN TRESTER, Administrative Law Officer: This case was heard before me on September 6, 7, 18, 19, 20, and 28, and on October 16, 17, 1978, in Delano, California. Telephone conversations among all parties and the Administrative Law Officer occurred on September 9, and 25, 1978, and were transcribed and are part of the record. All parties were represented. The Third Amended Consolidated Complaint, incorporates all amendments to the two previous complaints. The Third Amended Consolidated Complaint alleges that the Respondent, George A. Lucas and Sons, violated sections 1153(a),1153(c), and 1153(d), of the Agricultural Labor Relations Act (hereafter called the "Act"). This third complaint is based on charges filed by the United Farm Workers of America, AFL-CIO (hereafter called "Union"), and several individuals, copies of which have been served on the Respondent.

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

FINDINGS OF FACT

I. Jurisdiction.

Respondent George A. Lucas and Sons, is a business engaged in agriculture in California, as was admitted to by the Respondent. Accordingly, I find that the Respondent is an Agricultural Employer in the meaning of Section 1140.4(c) of the Act.

Further, it was stipulated by the parties that the Union is a labor organization representing agricultural employees in the meaning of Section 1140.4 (f) of the Act, and I so find.

II. The Alleged Unfair Labor Practices.

The Third Amended Consolidated Complaint dated October 27, 1978, alleges that the Respondent violated Sections 1153 (a), 1153 (c), and 1153 (d) of the Act by: (1) its refusal to rehire seven-named employees because of their Union activity. It is further alleged that (2) the employer has interrogated its employees concerning their support for the Union. Moreover, it is alleged that (3) an employee was delayed in being rehired and when rehired subsequently discriminatorily discharged for giving testimony at the Board hearing. Furthermore, that (4) the Respondent threatened to terminate the spouse of an employee because her husband testified at the ALRB hearing and because of her support for the Union. Further allegations are that (5) Respondent threatened and coerced employees, and (6) changed working condition, (7) threatened termination, and did in fact terminate certain other employees because of their Union activity.

The Respondent denies any wrongful discharges. The Respondent denies that in any way he violated the Act.

III. The Facts.

A. Background:

George A. Lucas and Sons is a partnership organized under the laws of California. The employer is engaged in the growing and harvesting of grapes in Kern and Tulare counties.

Ray Majors is the employer superintendent. Majors hires crew supervisors and crew foreman. Field employees are hired by crew foremen.

The crew supervisors are Rolando DiRamos and Jose Becerra. The crew supervisors instruct crew foremen as to how many employees to hire but do not control who is hired. The crew foremen determines who to hire and hence has the power to hire as described in Respondent's brief. I find that the crew foremen of the Respondent are supervisors within the meaning of Section 1140.4(j) of the Act.

REFUSAL TO REHIRE MAURELIO PONCE, SABENO MEJIA ORTIZ, SANTIAGO ORNELAS, FRANCISCO LARA, GONZALO CHAVEZ, SIGIFREDO GONZALES CHAVEZ, AND ROGELIO AVILA.

The above named individuals began at Lucas and Sons in April and May of 1977 in the crew of Isaac Chapa. All seven of these men were from Delano.

REFUSAL TO REHIRE SIGIFREDO GONZALEZ CHAVEZ, GONZALO CHAVEZ, AND FRANCISCO LARA.

No where does the Complaint allege that the layoff of the seven employees from Delano was discriminatory. There was only evidence presented that the refusal to rehire the seven after the layoff was discriminatory. There was no evidence whatsoever presented by General Counsel showing that Chapa ever refused a request for reemployment by Sigifredo, Gonzalo, or Francisco. General Counsel contends that these three gentlemen were not called because they had participated in same incidents as the others. However, the issue is whether any of these three were refused reemployment. None of the three testified at the hearing. As there is no evidence of a discriminatory refusal to rehire these three, I am compelled to dismiss the Complaint to the extent that it pertains to them.

Rogelio Avila

Chapa laid off his crew on July 15, 1977. There was no record evidence that Avila attempted to obtain reemployment at Lucas during the remaining five months of 1977. It was not until the following year, 1978, that Avila returned to Lucas. Unlike Avila, Mejia, Ponce, and Ornelas all sought to be rehired within a week or two weeks after the layoff. I am of the mind that there is insufficient evidence to prove that there was any discriminatory motive in not rehiring Avila, especially in light of the fact that he waited five months while others only waited two weeks to obtain reemployment. Moreover, I cannot credit Avila's testimony concerning his impressions that Rolando, a company supervisor, in his presence hired other employees instead of Avila.

Maurelio Ponce

Ponce was a field worker in Chapa's crew during the period in question. Ponce testified that he had a UFW bumper sticker on his station wagon and it said, "Only One Union." I find that Ponce's crew foreman Isaac Chapa is a supervisor within the meaning of the Act. Ponce further testified that Chapa had commented about the bumper sticker. Ponce testified that Chapa's bosses had told Chapa to tell Ponce to remove the bumper sticker. Ponce went on to say that Chapa would tell him to take off the bumper sticker some four or five times. Ponce also said that Chapa said, "Please take it (the bumper sticker) off or they-re going to fire us." These facts were corroborated by the testimony of Mejia, Chapa, and Ornelas. I credit Chapa's testimony that supervisor Becerra asked Chapa why he had kept Ponce when he had had a chance to lay him off. Ponce also wore a UFW button all the time according to Chapa. I credit Chapa's testimony that his immediate supervisors Rolando and Jose told him (Chapa) to tell Ponce to remove the bumper sticker. Ponce was also one of seven employees on Chapa's crew, out of fourteen, who was from Delano.

I credit Chapa's testimony that after his crew was stopped in July that his immediate supervisors Jose arid Rolando told Chapa not to rehire the men from Delano and that if he (Chapa) were asked by them for work to tell them that there was none. Both of these crew supervisors categorically denied ever instructing Chapa not to rehire these individuals. However, I find that Chapa had every reason to disclose the full and complete truth at the public hearing under oath, despite the possibility of minor, slightly inconsistent statements made privately in the presence of Respondent's counsel. Moreover, Chapa's testimony seems the most logical and consistent with the occurrence of events.

Chapa's explanation seems the most logical reason why Ponce was not rehired despite numerous attempts by Ponce to be rehired after being laid off. Ponce phoned Chapa about 2 weeks after the layoff; one of two subsequent occasions he went to Chapa's home and later visited Chapa in the vineyards, all in a concerted effort to obtain reemployment. I am not persuaded that Ponce happened to be at the wrong place at the wrong time on each and every occasion that he sought reemployment. This especially true since work was available pulling out Johnson grass. Chapa stated that he had a crew of nine men at the time. The record is unclear as to exactly when Ponce's request for reemployment was made and the extent of Chapa's crew at a particular moment. I am convinced that there is sufficient evidence that Ponce could have easily been rehired. The Respondent in his brief quotes Chapa to explain why Ponce and other Delano workers were not rehired: "No, I had the ones from Earlimart, they're closer and they would go to visit me daily." However, this does not explain why Chapa requested the Delano workers to contact him after the layoff if Earlimart workers were closer and would visit him daily. Respondent said that Chapa's

crew composition was a function of the employees proximity to Chapa's home and, a more diligent effort by those in the subsequent crew of securing employment. Nevertheless, Ponce's diligence in seeking reemployment was continuous and Ponce was actually in Chapa's home seeking reemployment. Ponce's proximity to Chapa's couldn't be closer inasmuch as he visited Chapa at his home.

Santiago, Ornelas

Ornelas too was a field worker in Chapa's crew. He too had a Union bumper sticker on his car. Mejia testified that Ornelas passed out UFW leaflets to the two crews. Ornelas was also from Delano and carried the bumper sticker on his car until work ended in mid-July. Chapa said during his testimony that all seven men from Delano wore UFW buttons daily until the crew was laid off. This would then include Ornelas.

After the July layoff Ornelas efforts to seek reemployment included the following inquiries: Approximately one week following the layoff, when Chapa came to Mejia's home; Approximately one and half weeks later, when Ornelas went to Chapa's home; and about one week later, when he visited Chapa at the vineyards.

Sabeno Mejia

Mejia too was on the Chapa crew, wore the Union button, and had the bumper sticker on his car. Mejia testified that he, Ornelas, Ponce, and Avila passed out UFW leaflets to the crew.

Chapa testified that Mejia sought being rehired after the July layoff. Mejia testified that Chapa told him that, "If they allowed him a crew" he would contact Mejia. Chapa did get a crew but Mejia was not rehired despite repeated attempts to obtain reemployment. Mejia made at least four attempts to seek reemployment in Chapa's crew: Approximately one week following the layoff, when Chapa came to his home; two weeks following the layoff, when he telephoned Chapa; about the second weak in August, when Chapa again came to his home; and a short time later when Mejia telephoned him.

PAUL VELORIA'S CREW

Alleged Interrogation by Paul Veloria

I find insufficient evidence to establish that Paul Veloria in August of 1977 interrogated Respondent's employees about their support and activities on behalf of the UFW.

Flora Aguilar

First I find that Pablo Valeria is a supervisor within the meaning of the Act.

Flora Aguilar was a field worker on Veloria's crew during 1977. During this period Aguilar and crew members Petra Fuentes and Almadelia Fuentes testified that Mrs. Aguilar frequently wore a Union button at work. Aguilar testified that the majority of the employees in Veloria's crew favored the UFW. Members of the Perez family apparently also wore pro-Union buttons during 1977. Documentary evidence shows that Esequiel and Socorro Perez were rehired in 1978 to work on Veloria's crew notwithstanding the fact that they had worn pro-Union buttons in 1977. Mrs. Aguilar recalled about seven occasions in 1977 when Veloria criticized her work. Veloria testified that he also warned other employees in his crew about improper work and never asked Aguilar to do more than he asked of other employees. Veloria stated that he warned six or seven other picking crews during 1977 in the same manner that he warned Aguilar.

Aguilar was rehired to work on the Veloria crew notwithstanding Veloria's criticism of her work and the fact that she had worn a Union button. She had been recalled two times under these circumstances in 1977. Despite the fact that Aguilar wore the Union button, Veloria allegedly stated that he could "stop" her (Aguilar). I interpret this statement and similar statements by Veloria to Mrs. Aguilar essentially to mean that Veloria, as a supervisor, may still correct and criticize for good cause the work of an employee even though the employee is engaged in Union activity as long as there is no discriminatory motive for the criticism. General Counsel in her brief referred to Flora responding to Gloria, the second foreman on the Veloria crew, in her "outspoken manner." During the hearing I had occasion to study the demeanor of Mrs. Aguilar. I noted this same outspoken manner in her demeanor. I find insufficient evidence of animus in statements made by Paul Veloria to Mrs. Aguilar. I see their exchange more as personality clashes harmless in nature. While I find no illegal conduct by the Employer it seems that crew foremen could benefit from instruction on improving supervisory skills to deal courteously and effectively with crew members where an employee's work habits need be corrected.

Aguilar was laid off at the conclusion of the 1977 harvest and did not apparently seek reemployment until months later, specifically on April 12, 1978. At that time she requested work with Veloria's crew. Aguilar was not hired on to Veloria's crew until four months later in August, 1978. It is noted that Mrs. Aguilar was rehired notwithstanding her 1977 Union activity, her exchanges with Pablo Veloria, and the fact that in July, 1978 she had filed a charge with the Board based on Veloria's alleged discriminatory refusal to rehire her. The employer explains away the four month delay in rehiring Flora as follows: That Aguilar requested work on April 12, but Veloria's crew had been formed and was operating on April 5, 1978. Therefore, Aguilar

was told that she was tardy, in her request for employment at that time. I find that seniority was not a controlling factor for hiring decisions in the Veloria crew. However, the record reveals several justifiable reasons as to why Mrs. Aguilar was not rehired until August, and further that Veloria rehired crew member Socorro Perez who had worn a Union button in 1977. Also hired in May, 1978 to Valeria's crew were Olga and Ramon Pulido who had filed charges against the employer in 1977. The Pulido's had requested work prior to Mrs. Aguilar. Amelia Magana had also requested rehire prior to Aguilar.

I find from these facts and the record as a whole on this issue that there is insufficient evidence that Veloria refused to hire Mrs. Aguilar because of her Union activity in 1977, or for any other Union activity, I find that the employer had justifiable business reasons why it took approximately four months to reemploy her. I also note that Mrs. Aguilar was in fact reemployed notwithstanding her Union activity.

Flora Aguilar-Discharge

Mrs. Aguilar, after being rehired on August 17, 1978 worked on Veloria's crew until she was terminated on Wednesday, September 27, 1978. On September 19th and 20th, 1978 Mrs. Aguilar testified at an ALRB hearing about a charge she filed against Lucas and Sons in case number 78-CE-34-D. Less-than a week following her testimony Veloria fired Mrs. Aguilar.

On the day before Aguilar was terminated Veloria had called the pickers out of the field he testified, to tell them about "picking dirty." Veloria stated that his job was to monitor the quality of work amoung all the employees in his crew. On the day before Aguilar and Mr. Pulido were terminated, Veloria testified that he observed five or six rotten bunches which had been picked by Aguilar, Mr. Pulido, and Gomercindo Alonzo.

The next day, the day of the terminations, Veloria instituted a procedure he had used at the Company for three years. The purpose of the procedure was to assist the employer in becoming aware of which members of a picking crew are picking improperly and/or not cleaning the grapes properly.

The procedure is as follows: The foreman writes the names of the individuals in the picking crew on pieces of paper. The employees are instructed to place their names in the field boxes containing the grapes they pick. Thus, the problem of identification is solved and the foreman can ascertain the work product of each individual for the picking crew responsible for improper work. All of the employer's foremen use the procedure. Veloria testified that he has considerable success with eradicating improper work by employing the procedure. He stated that once the procedure is employed the affected employees work improves markably. The procedure would be used for only a short time, not

more than than two or three hours, and would have immediate effect Veloria testified. Veloria further testified that he employed the procedure on seven picking crews during the 1978 harvest, which at the time he testified was not completed. Veloria never had to employ this procedure on more than one occasion in any particular crew in any particular variety of grape.

Aguilar was familiar with this procedure and had been required to identify her work product before in the same manner as she was requested to do on September 27. Earlier in the harvest Aguilar and Mr. Pulido and the employer's superintendent's daughter were asked to identify their work product. At that time they obeyed Veloria's order. Furthermore, the purpose for the procedure had been explained to Aguilar by Veloria.

At about 8:30, on the morning in question, Veloria observed Alonzo bring a load of grapes to the packing table. Veloria examined the grapes in the presence of Mrs. Pulido, Mrs. Aguilar, and Alonzo. He showed them the bunches; they had scars and hardberries, as well as rot on them. Veloria then asked Alonzo who was responsible for picking improperly. Alonzo didn't know as the three pickers were working together. Veloria then gave the three pickers pieces of paper with their names on it and instructed them to place their names in the boxes of the grapes they picked. This occurred sometime prior to the 9:00 o'clock break. Veloria testified that he noticed the pickers were not placing their names in the boxes as they had been instructed. Veloria had his wife Gloria check to see if the pickers were following his orders. Gloria advised him that they were not. Veloria confronted Mrs. Aguilar at that time. Aguilar had left the pieces of paper with her name on it at Mrs. Pulido's packing stand. When asked why she was not putting her name in the boxes of grapes she picked as instructed, she replied that she did: not have to do it and suggested that if Veloria wanted to check her work, he should enter the field and check it. I find that checking Aguilar's work in the field to be a more time consuming procedure as suggested by Respondent. Veloria further testified that this was the first time that anyone had refused to follow his order to identify their work product. Veloria had used the same procedure on another picking crew on the same day. Aguilar was terminated, the employer states, for her refusal to participate in this name assignment procedure. It is true that Mrs. Aguilar gave testimony at the instant proceedings and was terminated within a week of giving her testimony. The timing of her discharge does raise some questions about the motive for her discharge. However, I find insufficient evidence that the discharge was motivated by her testimony in light of her insubordination by refusing to carry out Veloria's instructions. I cannot look behind her motive for refusing to participate in a procedure in which she had willingly participated before. This was not

a new or novel procedure, but one routinely used. I find no evidence that the procedure was used at this time, for the purpose of scrutinizing only the work of witnesses at the ALRB hearing. Therefore, I find that the procedure was, not discriminatory in nature or in its application. I conclude that Mrs. Aguilar's discharge for insubordination was justifiable and without discriminatory motivation. So I find that Respondent did not discriminatorily discharge Mrs. Aguilar for filing charges and giving testimony at an ALRB hearing.

Ramon Horta Pulido and Olga Horta Pulido

Ramon and Olga Pulido-Alleged Interference, Coercion, Changed Working Conditions and Threatened Termination

Mrs. Pulido did not want to pack when she began working during the 1978 harvest. Mrs. Ofelia Barajas was given the packing table which otherwise would have been assigned to Mrs. Pulido. Gloria Veloria stated that when additional packers were needed in her husband's crew, Mrs. Pulido was assigned to a wooden packing table. Mrs. Pulido did not complain about the assignment. Mrs. Pulido recalled two other individuals who were assigned wooden packing tables at the same time. She also stated that the time she was assigned to a wooden packing table, no iron or metal tables were available. Gloria Veloria stated that although the wooden tables were more difficult to move, they were easier to pack on. Further, the table did not have to be moved very often. General Counsel presented insufficient evidence that the Pulido's engaged in Union activity or protected concerted activity prior to the time Mrs. Pulido was assigned to the wooden packing table. I find that assigning Mrs. Pulido to a wooden packing table instead of a metal one was not an unlawful change in working conditions. I find the change was a business necessity and not motivated by the Pulido's Union activity nor protected concerted activity.

Prior to filing the charge, Ramon Pulido expressed his displeasure at Gloria's assignment of an experienced picker to his and Olga's crew. Gloria's response had been that if he did not like it. "There is the Road." I do not find this statement to be threatening or coercive, nor do I find it a threat to terminate within the meaning of the Act.

On August 23, 1978 Ramon Horta Pulido filed an unfair labor practice charge on behalf of himself and his wife against the Respondent. Shortly thereafter, one of the Company's owners George Lucas Jr. called together Ramon, Olga, Paul Veloria and Gloria Veloria. Almadelia Fuentes was present as translator. Apparently, Lucas speaks no Spanish and the Pulido's speak no English. Almadelia testified that during that conversation Lucas asked if Ramon and Olga were Union members. Almadelia testified that Ramon and Olga answered yes. I find that Almadelia could understand and translate English to Spanish and Spanish to English. When she was asked, "Do you understand slot of

English?" She answered, "Not alot, but I understand, more or less, what he (George Lucas, Jr.) told me." Ramon remembered in his testimony that Lucas used the word "Chavistas" during this conversation. Almadelia further testified that George Lucas, Jr. asked them, "Why 'if they belong to the Union, was it that they didn't go look for work where there was a Union or where the Union was at." While there may be some question about the reliability of Almadelia's translations of Lucas's statements and the issue of hearsay, I am convinced that the statements were made and translated to the Pulido's. There was little credible evidence to rebut the fact that these two statements were made. I find the employer's question about the Pulido's Union membership to be unlawful interrogation within the meaning of the Act.

I find George Lucas, Jr. second statement to also be interrogation and constitutes coercion. Of course these findings are based upon the fact" that I find George Lucas, Jr. as one of the owners of Respondent to be a supervisor within the meaning of the Act.

On the day following the meeting with George Lucas, Jr. Paul Veloria had a conversation with Ramon concerning inexperienced pickers. The two gentlemen had a heated exchange and exchanged insults. I find the entire incident to be a continuation of an ongoing interpersonal hostility between these two couples, the Veloria's and the Pulido's. I find there is insufficient evidence to establish that the conduct by the employer in this situation amounted to a threat to terminate illegal harassment, or any other violation of the Act.

Ramon and Olga Pulido-Termination

The facts surrounding the termination of Mr. & Mrs. Pulido are essentially the same as those facts discussed above concerning Flora Aguilar. Additional facts concerning this charge are as follows. The Pulido's filed charges against the Respondent on August 23, 1978. Mr. Pulido worked until September 27, over one month after the employer had knowledge of his filing of the charge.

Like Mrs. Aguilar, Veloria had instructed the Pulido's to have members of their crew identify their products with their names on pieces of paper. Thereafter, Veloria noticed that the pickers were not placing their names in the boxes as they and been instructed. He asked Mrs. Pulido why members of her picking crew were not following his directions. She said that there was no need to do so. Mr. Pulido testified that he told Veloria that he had thrown them away. Mr. Pulido further testified that, "I felt hurt they we were the only ones to whom he gave numbers." The record hsows however; that although Pulido did not know it, the procedure of giving numbers was being used in other crews at

the same time.

Veloria testified that he terminated Mr. Pulido at "9:30 or fifteen till 10:00, but it was before ten, it was after the break."

On September 27, the weekly UFW radio program came on at the usual hour of 10:00 a.m. The testimony of Esequiel Perez that the program started at 9:30 was refuted by Almadelia Fuentes and Antonio Banuelos, both of whom confirm that the broadcast started at 10:00. Almadelia Fuentes testified that many crew members had radios and listened while working and they all listen to station KXEM throughout the day. Alma Fuentes testified she heard the announcer say that the UFW program was sponsored by a worker at George Lucas. However, she went on to testify that she did not hear the name of the worker because the noise of her work (wrapping grapes in paper) drowned out that part. The announcer for the UFW program Antonio Banuelos testified that twice on the air he had announced that Ramon Horta Pulido of George Lucas was a sponsor of the show. Mr. Veloria testified that he did not hear the broadcast. Mrs. Pulido herself said that she did not hear the program as there was no radio close to her. The record also disclosed that Gomercindo, another employee was terminated with Ramon by Veloria at the same time when Veloria saw boxes from Gomercindo without name slips.

Mrs. Pulido continued packing after the other employees were terminated. Veloria estimated that she worked for approximately 45 minutes after he terminated her husband. However, Olga responded that she had to abide by the side of her husband and asked Veloria how she could stay if he was letting her husband go. Ramon told Veloria he could not have his wife remain there; that he was in charge of his wife and she had to go along with him.

It is my finding that Mr. Pulido was terminated for refusing to assign numbers and no other reason. Mr. Pulido had worked a whole month after filing charges and was not terminated. Also Gomercindo for whom no Union activity is alleged, like Ramon, was terminated for not assigning numbers as ordered.

I am not persuaded that the radio broadcast of that day provided the Respondent through Veloria with knowledge of Ramon’s Union activity and animus toward Ramon. As Ramon's discharge occurred before 10:00, as testified by Veloria who discharged him, and the program began after 10:00, there is no way that Veloria could have heard Ramon's name as the sponsor of the program at the time of the discharge. Even assuming that the discharge occurred during or after the program, Veloria denied ever hearing Ramon's name mentioned on the air. Even members of the crew including Ramon's own wife did not hear his name mentioned as the radio was not nearby. I am not prepared to infer that because Esequiel Perez alleges he heard Ramon's name mentioned

that Valeria heard the name as well and discharged Ramon for that reason. This evidence is of the weakest nature and insufficient to draw the inferences necessary to find an unlawful motive for Ramon's termination. Accordingly, I find that neither Ramon's Union activity nor alleged protected concerted activity were the motive for his termination.

I find that Olga Pulido voluntarily terminated her employment with the Respondent when she chose to remain at the side of her husband instead of continuing to work as she had not been terminated.

While I can empathize with the traditional husband and wife roles as seen through the eyes of Ramon and Olga, we are not legally bound to follow the dictates of those traditional roles. I am legally obligated to view Mrs. Pulido as an independent person capable of making her own decisions. As her husband's termination is not unlawful I find that she voluntarily terminated her services of her own free will. Legal imperatives here must prevail over cultural or moral imperatives. As a practical matter too, while Ramon and Olga drove together to work it seems clear that she could have gotten a ride home and arranged transportation to and from work with other employees as the record disclosed that other employees often carpool.

Manuela Chapa-Alleged Threat to Terminate

Manuela Chapa's husband, Isaac Chapa, testified extensively at the ALRB hearing on September 18th and 19th and 27th, 1978. He was called as a witness by both General Counsel and the Respondent. He was a key witness in this case. On September 25, 1978 Paul Veloria spoke to Mrs. Chapa about her work. Mrs. Chapa appeared to me as a mature, quiet mannered, soft spoken woman. She testified that she had worked as a packer for ten years, two of those years working for the Respondent.

Mrs. Chapa testified that before her husband gave testimony at the instant proceeding her crew foreman Veloria had never criticized her work. However, on Monday, September 27, Mrs. Chapa testified that she was packing in a manner she always used over the past ten years. Veloria came to her table and informed her that she was not packing the way the company wanted her to pack. She answered that supervisor DiRamos had been by that day, had seen her work and had said nothing about it. Veloria said she must use two hands with each bunch she lifted into the box. Then Veloria informed her that, "If you don't pack the way the company wants you to pack, go home." Mrs. Chapa further testified that no one else was present during this conversation between her and Pablo. Mrs. Chapa further testified that Veloria went on to say that, "I am telling you seriously, go home." However, Mrs. Chapa did not leave and was not terminated from her employment.

Veloria stated that he had told other packers the same thing when he observed them packing improperly.

A state-federal inspector testified that he required a Mexican female to repack an unusual number of boxes when Veloria's crew was picking Ribier grapes. He testified he had asked other packers to repack boxes of Ribier grapes too. However, he could not identify which packer ha had asked to repack the unusual quantity of grapes. There was not evidence that Mrs. Chapa was in fact the one asked to repack.

Having carefully observed the demeanor of the inspector, I must discredit his testimony as my impression was he was biased in favor of the Respondent.

There was no direct evidence whatsoever that Mrs. Chapa had been spoken to about her work because of her husband's testimony against the Respondent. Ther is only some circumstantial evidence of this allegation. I find that there is insufficient evidence from surrounding circumstances of this incident to infer that Veloria was motivated to criticize Mrs. Chapa because of Mr. Chapa's testimony. Ther is also insufficient evidence that Mrs. Chapa's own Union activity was the motive for Veloria's criticism.

While the timing of the incident supports an inference of wrongdoing, I find that the timing alone is insufficient evidence of the employer's motive in the case. The entire incident lasted only seconds and was not repeated. I also note that both Mr. & Mrs. Chapa continue to be employed by the Respondent, notwithstanding Mr. Chapa's testimony against the Respondent. This fact further subtracts from the allegation of unlawful motive in Veloria's criticism of Mrs. Chapa.

While Mrs. Chapa had not been previously criticized it is not unreasonable to believe that Veloria would never have occasion to comment on her work. .

Isaac Chapa-Alleged Discrimination

I have found no discrimination against Mrs. Chapa. Therefore, I find that Mr. Chapa has not been discriminated against because of his testimony at the ALRB hearing since his wife has not been discriminated against and there in no allegation that he himself has been personally harassed of discriminated against.

Esequiel Perez

Nowhere in the Third Consolidated Complaint is there any allegation of alleged discrimination against Mr. Perez. However, during the hearing certain facts were developed regarding Mr Perez. Counsel for General Counsel, in her brief argues that the facts support a conclusion that Pablo Veloria intimidated and coerced Perez and other workers.

The facts developed at the hearing are as follows: Petra Fuentes testified that Esequiel had conversations during work about the UFW among his co-workers. Esequiel often wore a Union button at work in 1977. Mrs. Fuentes testified that Perez requested a cart wheelbarrow for his picking group from Paul Veloria. Veloria said the Company did not provide carts and that if Perez didn't like it he could go elsewhere and look for work wherever they provided carts. Perez responded, "Take my shears away."

Almadelia Fuentes testified essentially that Veloria should admit the truth about the previous incident to Veloria's supervisor, DiRamos, and a pushing exchange began between Veloria and Perez.

I find that wheelbarrow incident and the subsequent fight between Veloria and Perez to be another example of Veloria's complete lack of training as a supervisor. Throughout these proceedings Veloria's ill temper and reputation for mishandling his crew members has become all too apparent. However, I find insufficient evidence that Veloria's conduct was motivated by Perez's Onion activity. Therefore, I find that Veloria's conduct, though reprehensible, does not constitute intimidation and coercion within the meaning of the Act.

CONCLUSIONS OF LAW

The Complaint is dismissed as to the alleged discriminatory refusal to rehire Gonzalo Chavez, Sigifredo Gonzales Chavez, and Francisco Lara. General Counsel failed to meet the burden of proving by a preponderance of the evidence that the violations alleged did in fact occur. Labor Code 1160.3, Bud Antle 3 ALRB 56 (1977). The issue is a discriminatory refusal to rehire and such refusal must be established by a preponderance of the evidence in all seven instances. There was no evidence that three men either requested or were refused reemployment by Chapa. Such broad assumptions as to the similarity of the seven individuals right to redress cannot be taken for granted.

There is likewise insufficient evidence of a discriminatory anti-union motive violative of 1153 (a) and (c) of the Act in Respondent's failure to rehire Avila, and delay in rehiring Flora Aguilar. Unlike Ponce, Mejia, and Ornelas (who sought employment within two weeks of the layoff), Avila waited five months. Similarly, although she was eventually rehired, notwithstanding her Union Activity, Flora Aguilar waited months before seeking to be rehired and did go at a time after Veloria's work crew had formed, rendering the subsequent delay ineritable. Respondent's business justifications for not rehiring Avila and delay in rehiring Aguilar are

persuasive in both instances and preclude a finding of a violation under the Act, adopting the test articulated in Great Dane Trailer, 388 U.S. 16 (1967).

Respondent's refusal to rehire Maurelio Ponce, Sabeno Mejia and Santiago Ornelas constitutes a violation of both 1153 (a) and (c) of the ALRA. The legal standards applicable to allegations of 1153 (a) and (c) violations are the same as those which apply to violations of the ALRA Sections 8 (a) (1) and 8 (a) (3) respectively.

The controlling formula in evaluation of Section 8 (a)(3) was pronounced by the Supreme Court of the United States in Great Dane Trailers, 388 U.S. 16 (1967). While I conclude that Respondent's conduct was not "inherently destructive" of important employee rights, the discriminatory conduct in refusing to rehire the three did adversely affect employee rights. Within this second prong of the Great Dane, test an anti-union motivation must be proved to sustain the charge if the employer has come forward with evidence of legitimate and substancial business justifications for the conduct. First of all, Respondent's justifications that Chapa and the three workers "lost contact" with each-other, and were not available when Chapa was ready to rehire are not persuasive, especially in light of Chapa's testimony regarding the advice he received from Rolando and Joe not to hire the men from Delano. This is direct evidence of the supervisors anti-union motivation, the second element necessary for establishing a violation. Other circumstancial evidence supports this finding of anti-union motivation. There had been no criticism by Rolando, Joe or Chapa about the work of these men and when it came time to rehire, Respondent, instead of offering work to these experienced employees who had continuously made known their availability, hired new employees who had no experience. Ponce, Mejia and Ornelas by visiting Chapa in his home, in the vineyards and making numerous telephone inquiries have sustained their burden of making themselves available for work and Respondent lacking credible business justifications for the discriminatory refusal to rehire has failed to overcome the very strong inference that such conduct resulted from anti-union motivation.

General Counsel's reliance on Ellenville Handle Works, 142 NLRB No. 92 (1963) as supporting the burden of Respondent to affirmatively act to rehire all seven employees is misplaced. Ellenville is distinguishable in that the court was speaking of the duties of Respondent to rehire employees who had been discriminatorily discharged. In those circumstances it is obvious that the rights to reinstatement would be much greater and hence the burden of the employer to exercise due diligence in offering reemployment is much greater. Thus, in the instant case the discriminatory conduct only affected those who sought reemployment and not those who went elsewhere after being legally laid off.

There is insufficient evidence tha either Flora Aguilar or Ramon Pulido were discharged for reasons other than their insubordination in refusing to carry out Veloria's instructions. An employee may be discharged by an employer for good cause so long as the terms of the statute are not violated. NLRB v. Condenser Corp of America, 128 F.2d 67, 75 (3rd Cir.1942). Respondent's motives in employing the checking procedure and subsequently discharging the two for defying his instructions were not found to be designed to "encourage of discourage membership in a labor organization" and thus does not constitute a violation of Section 1153 (c) of the Act.

An employee's Union activities do not insulate him from discharge where his conduct so warrants. NLRB v. Ace Comb Co., 342 F.2d 841 (8th Cir. 1965). Aguilar and Pulido's conduct provided ample justification for their discharge. Whether or not they were picking improperly or "dirty" is secondary to their refusal to follow a common procedure, uniformly used and not found to be discriminatorily applied in this instance. "Where a man has given his employer just cause for discharge, the Board cannot save him by showing he was pro-union and his employer anti-union" (Nix v. NLRB, 418 F.2d 1001, 5th Cir. 1969). Assuming that the employer knew of the two employees protected activity, their conduct still justified their discharge (even if it appears the employer welcomed the opportunity to discharge them). Klate Holt Co. 161 NLRB 1606, 1612 (1966). Illegal motive is established when the General Counsel shows that "but for" the employees Union activity they would not have suffered discrimination. John Van Wingerden, et al., d/b/a Dutch Brothers, 3 ALRB 80 (1977). Circumstances that merely raise a suspicion that an employer has acted with unlawful motives are not sufficiently substancial to support a finding to that effect. NLRB v. Ace Comb Co. 342 F.2d 841, 848 (8th Cir. 1965). The Board may not rely on scant evidence and repeated inferences to make a finding that places the Board in the position of substituting its own ideas as business management for those of the employer. Golden Nugget, Inc., 215 NLRB 50 (1974). There is no reasonable basis upon which to assume that the action taken by the employer was motivated by other than justifiable business considerations in terminating the employees for insubordination. The employees Union activity they were subject to termination for their insubordination.

There is insufficient evidence to infer that Veloria was motivated to criticize Mrs. Chapa because of her husband's testimony at the hearing. The timing alon of the incident is insufficient evidence of an employer's motive. Circumstances that merely raise a suspicion that an employer may be activated by unlawful motives are not sufficiently substancial to support such a finding. NLRB v. Ace Comb Co., 342 F.2d 841, 848 (8th Cir. 1965). The entire incident lasted only a few seconds and was not repeated. Veloria's statement that she could "go home" unless she performed as he directed was said to other employees as well and considering the context and circumstances of and surrounding the incident was not a threat within the meaning of the Act.

General Counsel's reliance on Loggins Meat Co. 199 NLRB 291 (1972) as holding that words such as "you can go home" constitute a threat under Section 1153 (a) of the ALRA is misplaced. In Loggins the employer's "threat" was preceded by the statement that he had "heard about the Union", that the business belonged to Robert Loggins and that Robert Loggins had always run the business and will continue to do so and that if they (the employees) didn't like it "there is the door." "There is the door" was held to be an implied threat in violation of 8 (a)(1) of the Act because the context of the statement clearly indicated an ultimatum that if you want to unionize you will have to leave. Veloria's statement was prompted by Mrs. Chapa's performance and the context of the vague statement "you can go home" was not designed to discourage protected activity but to insure proper packing techniques. Similarly, in Westmoreland Kitchen, Inc., 209 NLRB 153 (1974). Employees threats involved a clear reprisal against employees for engaging in Union protected activity. Veloria's statement "you can go home" was conditioned upon Mrs. Chapa's ability to "follow directions and not upon her engaging in protected activity.

George Lucas Jr.'s questioning of Ramon and Olga Horta Pulido was an unlawful interrogation in violation of Section 1153 (a) of the Act. "when a supervisor with express anti-union sentiments asks an employee about his Union affiliation and the Union sympathies of his fellow workers, there is going to be a most natural coercive effect on the questioned employee." NLRB v. Louisiana Mfg. Co. 374 F.2d p.696 (8th Cir. 1967). George Lucas Jr. as an owner and consequently a supervisor within the meaning of the Act initiated this conversation, used the word "Chavistas" and specifically asked why they didn't look for work elsewhere; where there was a Union." In finding that this questioning constituted unlawful interrogation within the meaning of the Act, it is not necessary to find actual intimidation or unlawful motivation by the employer. The test is whether the employer engaged in conduct which it may reasonably be said, tends to interfere with the free exercise of employee rights. Morris, The Developing Labor Law, (1971) p.66. Thus, interference restraint or coercion under Section 8 (a)(1) of the Act does not turn on the employer's motive or whether the coercion succeeded or failed. The language itself is evidence of such a violation.

THE REMEDY

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

As a result of these findings, reinstatement, with back pay and full seniority in other rights will be given to Sabeno Mejia, Santiago Ornelas, Maurelio Ponce, and Rogelio Avila, as of the dates of the Respondent's refusal to rehire.

Notice of the violations and remedies and of the rights of the employees protected by law will be posted, mailed, and read to the employees of the Respondent.

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 recommendations:

ORDER

Respondents, their officers, their agents, and representatives, shall:

1. Cease and desist from:

a. Discouraging membership of any of its employees in the United Farm Workers of America, AFL-CIO, or any other labor organization, by unlawfully refusing to rehire employees, or interrogating employees about their Union membership or support for the Union.

b. In any other manner interfering with, restraining and coercing employees in the exercise of their right of self-organization, to form, join, or assist labor organizations, and to engage in any 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 of 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 thereto and shall be signed by Respondent's representative. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered by any other material. Said notice shall be posted for a period of 60 days and shall be in English and Spanish.

b. Mail to each employee a copy of said notices in Spanish and in English.

c. Notify the Regional Director or the Executive Secretary of the Board's main office in Sacramento, within 20 days from receipt of a copy of this decision of steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

Irwin Trester, 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 cultural 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 commitments:

1. We will not refuse to rehire workers for engaging in Union activity.

2. We will not interrogate or question workers about their Union activity or Union membership.

3. We will rehire Sabeno Mejia, Santiago Ornelas, and Maurelio Ponce, with back pay and full seniority.

4. All our workers/employees are free to support, become or remain members of the United Farm Workers of America, AFL-CIO, or of any other Union. We will not in any manner interfere with the right of our employees to engage in these and other activities or to refrain from engaging in such activities, which are gauranteed to them by the Agricultural Labor Relations Act.