

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

JACK BROTHERS & McBURNEY, INC.,)	
)	
Respondent,)	Case No. 78-CE-47-E
)	
and)	
)	
ARTURO LEDESMA, RAMON DOMINGUEZ,)	6 ALRB No. 12
CARLOS JACOME,)	
)	
Charging Parties.)	
)	

DECISION AND ORDER

On October 5, 1979, Administrative Law Officer (ALO) Ron Greenberg issued the attached Decision and Order in this proceeding. Thereafter Respondent timely filed exceptions ^{1/} with a supporting brief, and the General Counsel filed a brief in response to Respondent's exceptions.

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

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

^{1/} Respondent excepts to the ALO's credibility resolutions. To the extent that credibility resolutions are based upon demeanor, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1978); El Paso Natural Gas Co., 193 NLRB 333, 78 LRRM 1250 (1971); Standard Dry Wall Products, 9T NLRB 544, 26 LRRM 1531 (1950). We have reviewed the record and find the ALO's credibility resolutions to be supported by the record as a whole.

to adopt his recommended Order as modified herein.

ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Jack Brothers & McBurney, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees for engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 1152 of the Act.

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

(a) Offer Arturo Ledesma, Carlos Jacome, and Ramon Dominguez full and immediate reinstatement 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 and other economic losses he has incurred as the result of his discharge by Respondent, together with interest thereon computed at the rate of seven percent per annum. Back pay shall be computed in accordance with the formula established by the Board in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

(b) Preserve and, upon request, make available to this Board and its agent, for examination and copying, all payroll records, social security payment records, time cards, personnel

records, and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the back-pay period and the amount of back pay due under the terms of this Order.

(c) 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.

(d) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time between August 30, 1979, and the time such Notice is mailed, and thereafter distribute copies to all employees hired by Respondent during its next peak season.

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

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees assembled on company time and property, at times and places to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have

concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(g) Notify the Regional Director, in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: February 25, 1980

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

NOTICE TO EMPLOYEES

After a hearing in which each side had a chance to present evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act by discriminating against employees, and by interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 1152 of the Agricultural Labor Relations Act. We have been ordered to notify you that we will respect your rights in the future. We are advising each of you that we will do what the Board has ordered, and also tell you that:

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

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

Because this is true, we promise that:

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

WE WILL NOT discharge, lay off, or otherwise discriminate against employees with respect to their hire or tenure of employment because of their involvement in concerted activities for mutual aid or protection.

WE WILL OFFER Arturo Ledesma, Carlos Jacome, and Ramon Dominguez their old jobs back and we will pay each of them any money they lost because we discharged them.

Dated:

JACK BROTHERS & McBURNEY, INC.

By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Jack Brothers & McBurney

6 ALRB No. 12

Case No. 78-CE-47-E

ALO DECISION

The ALO concluded that Respondent violated Labor Code Section 1153(a) by discharging employees Arturo Ledesma, Ramon Dominguez, and Carlos Jacome. In so holding, the ALO rejected Respondent's defense that it had discharged the employees for insubordination. When discharged, the employees were attempting to register complaints concerning their working conditions and were thus involved in protected concerted activity.

BOARD DECISION

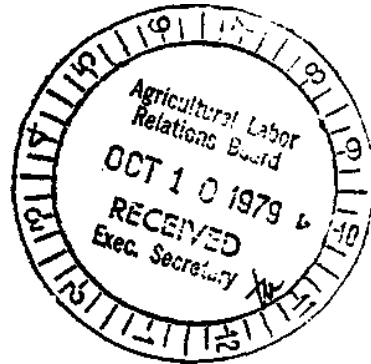
The Board affirmed the ALO's conclusion that Respondent's discharge of the employees constituted a violation of Section 1153(a) of the Act.

REMEDIAL ORDER

The Board issued a cease-and-desist order, and ordered the reading, posting, distributing and mailing of a remedial Notice to Employees. The Board also ordered Respondent to offer Arturo Ledesma, Ramon Dominguez, and Carlos Jacome full and immediate reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges, and to make them whole for any losses incurred as a result of Respondent's discriminatory discharge.

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 RELATION BOARD



JACK BROTHERS & MCBURNEY, INC.,)
)
Respondent,)
)
and)
)
ARTURO LEDESMA, RAMON)
DOMINGUEZ, CARLOS JACOME,)
)
Charging Parties.)
_____)

CASE NO. 78-CE-47-E

John Castello, El Centro,
for the General Counsel

Scott Wilson, of Byrd, Sturdevant,
Nassif & Pinney, El Centro,
for the Respondent

DECISION

STATEMENT OF THE CASE

RON GREENBERG, Administrative Law Officer: This case was heard before me in El Centro, California on March 19, 20, 1979. The Complaint issued January 19, 1979 Pursuant to Section 20222 of the Board's Regulations, General Counsel, on March 21, 1979, issued the Amended

Complaint to conform the pleadings to the proof.^{1/} The Amended Complaint encompasses one charge alleging violation of Section 1153(a) of the Act. The Charge, Complaint and Amended Complaint were each duly served upon Respondent.

All parties were given a full opportunity to participate in the hearing, and after the close of the hearing the General Counsel and Respondent filed post hearing briefs.

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

FINDINGS OF FACT

I. Jurisdiction

Jack Brothers & McBurney, Inc., herinafter called Jack Brothers or Respondent, is a corporation engaged in agriculture in Imperial County, California, and is an agricultural employer within the meaning of Labor Code Section 1140.4 (c).

^{1/} The name Jose Valenzuela was eliminated as an alleged discriminatee. Further, paragraphs 5(b) and 7 were deleted from the Complaint, thereby eliminating all references to violations of Section 1153(c) of the Act. Further, the named supervisor Tony Owens was changed to Ronnie Owens.

II. The Alleged Unfair Labor Practice

Respondent is alleged to have violated Section 1153(a) of the Act by discharging employees Arturo Ledesma, Carlos Jacome and Ramon Dominguez for their concerted activities regarding working conditions.

In its Answer, Respondent denied any violation of the Act.

III. Statement of Facts

A. Respondent's Operation

Respondent is engaged in farming wheat, alfalfa, sugar beets, cotton, lettuce and tomatoes in Brawley, California. The current owner, Neil Jack, has been running the farming operation since 1950.

B. Events Leading to the Discharges

Arturo Ledesma began working for Jack Brothers in 1969. His job duties from 1969 until his discharge on August 30, 1978, ^{2/} included thinning, shoveling, cleaning out ditches, loading and unloading sprinkler pipes, laying sprinkler pipes, picking and general field work.

Carlos Jacome was hired by Respondent in 1972, to do similar work as described for Mr. Ledesma. In addition

^{2/} Unless otherwise noted, all dates refer to 1978.

to those jobs, Carlos Jacome drove a tractor pulling a trailer with sprinkler pipes in July.

Ramon Dominguez was hired in 1970 to do similar general work. During his employment, like Mr. Ledesma, he never drove a tractor. The three individuals' employment was terminated on August 30. The material facts leading to the discharges, as presented by witnesses for both General Counsel and Respondent, are pretty much undisputed.

During the summer months, two crews of workers loaded, unloaded and laid sprinkler pipes. One crew was staffed by Arturo Ledesma, Carlos Jacome, Jose Valenzuela, Angel Sigala (all layers of pipe) and Jorge Gomez, tractor driver. The other crew's tractor driver was Victor Lopez and the remaining workers were Victor Lopez Jr., Victor Leyva, Ramon Dominguez and Alfredo Muniz.

In the pipe laying operation, loaded trailers of pipe were left on the perimeter of the field.^{3/} The crew tractor driver would bring in a loaded trailer of pipes often with the crew riding atop the trailer load of

^{3/} Resp. Exh. 1 represents the field worked by both crews on August 29, 30. Point (A) is the approximate work location. Point (B) represents the edge of the field where trailers were unloaded and loaded.

sprinkler pipes.^{4/} When the desired location was reached, the crew began pulling off the pipe and attaching it. The pipes were alternately loaded with male and female connecting parts exposed. When the last pipe was removed from the trailer a sweep was made to the edge of the field (Point B) by the tractor driver pulling the empty trailer to pick up another load. Because of the furrows in the field, the tractor driver made a circular trip (as depicted by the arrows in Resp. Exh. 1), returning in a position to have the next pipe connected.

This operation of taking the empty trailer out of the field unhitching it and then hooking up a loaded trailer traditionally had been done alone by the tractor driver. The other crew workers would rest during the interval. Arturo Ledesma testified that during the nine years that he laid sprinkler pipes, no crew worker ever was ordered to accompany the tractor driver to help him unhitch the empty trailer and hitch the loaded one. Ramon Dominguez similarly testified about his eight years with Respondent.

^{4/} The trailer (G.C. Exh. 2 diagram) carried 180-190 pipes, each pipe weighing 30-40 pounds. The trailer had four metal holding posts. After loading the trailer, the four crew workers sat at the corners of the trailer.

Those statements were confirmed by tractor driver Gomez. No witness testified that any employee had been ordered to do such an assignment prior to August 29. Witnesses for both General Counsel and Respondent testified that workers occasionally volunteered to help the tractor driver when standing close to the hitching operation.

On August 29, the two crews were working side by side for seven hours. Emilio Regalado, immediate foreman, spoke to both crews in groups at the end of the work day. He told them that each employee now would be required to alternately accompany the tractor driver to unhitch the empty trailers and hitch the loaded ones. Employee Ledesma told the foreman that "... even though we were not saying we wouldn't do that kind of work, . . . that that work did not correspond for us to do it, because it was the tractor driver's work." Ledesma told Regalado that they were going to put in a complaint with the union because he was demanding more work and a type of work that had never been done before. Arturo Ledesma then informed the foreman that he first wanted to talk with the boss, Neil Jack, to see if he had actually made that order. Ledesma further testified that he told Regalado that the new job was a risk and dangerous because the workers

could fall from the empty trailers.^{5/}

Both Ledesma and Dominguez testified that they each had fallen off an empty trailer in the past. Ledesma further testified that empty trailers jumped when they hit clods in the field. Ledesma and Jorge Gomez stated that tractor driver Victor Lopez often went fast when he drove over the clods. Further, tractor driver Jorge Gomez testified that several times Ledesma chose to walk rather than ride an empty trailer.

Carlos Jacome also questioned the foreman. He asked Regalado whether there would be a pay raise because of the new work assignment. Jacome asked whether it was a changed system of work. Regalado merely responded that the orders came from Ronnie Owens, the field foreman.

Both Ledesma and Jacome said they were not going to do it. Regalado testified that Jacome responded with a well-known Spanish expression, "How badly did I want the pineapple?" Regalado interpreted it to mean that by right they were not going to do it.

On August 29, crew worker Angel Sigala, Emilio

^{5/} Regalado denied that Ledesma mentioned either the risk or the fact that he wanted to talk with Mr. Jack. I found Ledesma to be a far more believable witness than Regalado, who had been employed by Respondent for 38 years I therefore credit Ledesma's version of this conversation.

Regalado's nephew, accompanied tractor driver Jorge Gomez to help unhitch the last trailer of the day. On that trip and the following one the next day, Sigala rode on the back of the tractor. Sigala testified that prior to August 29, he never had assisted the tractor driver.

At the conclusion of the work day, around 1:00 p.m., Emilio Regalado brought the workers from both crews back to the shop in his truck. The workers conversed about the new order and the fact that they never before had been required to do that work. The discussion involved workers Arturo Ledesma, Carlos Jacome, Jose Valenzuela, Ramon Dominguez, Alfred Muniz, Jorge Gomez and Victor Lopez. Ledesma testified that Jorge Gomez said that he could do the job himself.

On August 30, as usual, the crews assembled at the shop area at 5:00 a.m. Ledesma and Jacome testified that they did not see Neil Jack prior to going into the field that morning. Neil Jack testified that he did not remember seeing Ledesma before work on August 30. When the workers reached the field location, they emptied a remaining trailer from the previous day. During that morning, Emilio Regalado informed each crew member individually that he was required to accompany the tractor driver. Ledesma told Regalado that he wanted to talk with Neil Jack about the order.

Regalado responded that if they wanted to talk to the boss, they could go talk to him. The foreman told them the boss was waiting at the office.

Ledesma, Jacome and Valenzuela boarded Regalado's truck. When Alfred Muniz from the second crew mentioned to Ramon Dominguez, "There go your friends. They were fired for talking," Dominguez ran to catch up with them. He too joined them for the ride into the shop. On the truck, the four men talked about their upcoming conversation with the boss. Emilio then left, and Ronnie Owens arrived. Owens went to the shop and then returned with bookkeeper Larry Smith. Ronnie Owens extended his hand holding four checks. Owens said, "No more work, three fired and one quit." Ledesma told him that they did not come for their checks, telling Owens they had come to talk to Mr. Jack. The four workers refused their checks.^{6/} Ledesma told Owens they would file a charge with the Board. Owens responded, "Oh, go whatever you want to. Go."

^{6/} On the advice of a Board agent, they returned the following day for their checks.

C. Employer's Policy Regarding the Handling
of Employee Grievances

Neil Jack testified that just prior to the election in 1976, ^{7/} employees brought a grievance to his attention regarding an unsafe feature of the Company truck. An angle iron was not being held in place, and employees were being hit in their backs. Neil Jack told them, ". . .if you've got something like that that's bothering you, come in and tell me about it. That's easy to do." Mr. Jack testified that the employees came to see him another time, requesting that windows be put back into the truck for winter. On another occasion the tractor drivers talked to him about their insurance policy. Shortly thereafter, the irrigators did the same.

Mr. Jack emphasized that all of these discussions were either before or after work. Neil Jack further testified that the Company had no policy regarding an employee's refusal to perform a task if he had a complaint. Arturo Ledesma testified that Mr. Jack told employees to talk with him if they had any problems.

^{7/} The UFW received 40 votes, No-union received 30, and there were a determinative number of challenged ballots. Apparently, the Board has not yet reached a decision in that case.

D. Employer's Justification for the Change in
Working Conditions

Field foreman Ronnie Owens talked to Neil Jack on August 29 about speeding up the unhitching and hitching procedure. Owens told Jack that considerable time could be saved by having an additional crew member assist the tractor driver.^{8/} Mr. Jack agreed and told him to inform Regalado to tell the workers.

At the end of the work day on August 29, Owens told Jack that some members in Emilio's crew said they were not going to go with the tractor driver to help him unhook the trailer. Jack told Owens to tell Regalado to ask each man individually the next morning. Jack further stated that if anyone refused, "... tell them that we do not need them to work here anymore."

^{8/} The reasoning behind the new system was that two men could more easily hitch and unhitch on sloping terrain. Owens and Jack testified that the land was not level at Point B (Resp. Exh. 2). Under the new system, the tractor driver could remain on the tractor while the other worker released the pin and centered the hitch for the new load. Respondent witnesses testified that 8-10 minutes could be saved on each trip.

ANALYSIS AND CONCLUSIONS

Section 1152^{9/} of the Act is designed to guarantee employees the fundamental right to present grievances to their employer to secure better terms and conditions of employment. In short, the law recognizes that employees have a legitimate interest in acting concertedly to make their views known to management without being discharged for that interest. Hugh H. Wilson Corp. v. N.L.R.B., 414 F.2D 1345, 1347-50 (CA 3, 1969), cert. denied 397 U.S. 935 (1970). Mere "gripping" about a condition of employment is not protected, but when the "gripping" coalesces with expression inclined to produce group or representative action, the statute protects the activity. Mushroom Transportation Co. v. N.L.R.B., 330 F.2d 683, 685 (CA 3, 1964). Hugh M. Wilson, supra., 414 F.2d at 1348.

The only questions presented for resolution in the present case are: (1) Whether Arturo Ledesma, Carlos

^{9/} This section, in pertinent part, states:

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 of collective bargaining or other mutual aid or protection, . . . (Emphasis added.)

Jacome and Ramon Dominguez were involved in protected concerted activity; and (2) whether their discharges were motivated, at least in part, by their involvement in said activity.

It is necessary to first address the issue of what constitutes protected concerted activity. Anything directly involving the employment, wages, hours, and working conditions of the employees involved qualifies. Spinoza, Inc., 199 NLRB 525 (1972). The trier of fact need only reasonably infer that the men involved considered that they had a grievance and decided among themselves to take it up with management. N.L.R.B. v. Guernsey Muskingum Electric Co-operative, Inc., 285 F.2d 8, 12 (CA 6, 1960).

Furthermore, the manner in which the employees present their grievance is not controlling. It is enough if the matter at issue is of moment to the group of employees complaining and it is brought to the attention of management by a spokesman. Guernsey-Muskingum Electric Co-operative, Inc., 124 NLRB 618 (1959); Ohio

^{10/} In Chemvet Laboratories, Inc., 201 NLRB 734 (1973), the NLRB found that the time when employees started to clean a labeling machine was an appropriate subject for protected concerted activity, in that the employees were waging a protest over a sudden change in working conditions.

Oil Co., 92 NLRB 1597 (1950); Phoenix Mutual Life Insurance, 167 F.2d 983 (CA 7, 1948); Hearst Publishing Co., Inc., 113 NLRB 384, 386-388 (1955); Wood Parts, Inc., 101 NLRB 445, 451 (1952).

The protections accorded employees under the Act are not dependent upon the merit or lack of merit, of the concerted activity in which they engage, even though such activity embraces the disobedience of an order of management. Bob Henry Dodge, Inc., 203 NLRB 78 (1973); Eastern Illinois Gas & Securities Co., 175 NLRB 639, 640 (1969); Anaconda Aluminum Co., 160 NLRB 35, 40 (1966). Even if the action taken would be later judged unwise, such "unwisdom" after the fact does not defeat the basic right of employees to act concertedly regarding working conditions. Anaconda Aluminum Co., supra. at 41; Solo Cup Co., 237 F.2D 521, 526 (CA 8, 1956). Furthermore, even a "miniscule controversy" may give rise to protected concerted activity. St. Regis Paper Co., 192 NLRB 661 (1971).

After establishing that an employee is in fact involved in a protected concerted activity, the next inquiry concerns the employer's motivation for discharging the employee. Where the discharge of an employee is motivated in any part whatever by the purpose to discourage

legitimate concerted activity, the existence of contemporaneous, legitimate grounds for such discharge affords no defense to a finding of an unfair labor practice on the part of the employer. Oklahoma Allied Telephone Co., Inc. 210 NLRB 916, 920 (1974); Hugh H. Wilson Corp., 171 NLRB 1040, 1046 (1968).

In resolving the issue of the 1153(a) violation herein presented, it must be borne in mind that there was no contract providing for grievance machinery, nor were there any established work rules.^{11/} Grievances in the past had been handled in one way only: the grieved employee or employees would present their problem to the owner, Neil Jack. In fact Mr. Jack testified that he told employees, ". . .if you've got something like that that's bothering you, come in and tell me about it. That's easy to do."

These employees were presented with a sudden change in working conditions. During the long years they had been employed by Jack Brothers, they never

^{11/} Bob Henry Dodge, *supra.*, at p. 78. Compare Member Brown's dissent in *Anaconda Aluminum Co.*, *supra.* at p. 36, where he disavowed invoking the Board's remedial powers because of "agreed-upon grievance settlement procedures."

before had been ordered to accompany the tractor driver. The new procedures raised numerous problems for them. Their rest period between loads had been now partially eliminated. Ledesma expressed concern about the risk factor of riding on empty trailers. His concern was confirmed by tractor driver Gomez, who said Ledesma often chose to walk rather than ride an empty trailer. Ledesma wanted to talk to Neil Jack about the change. Carlos Jacome wanted to know whether they were to receive additional pay.

Foreman Regalado was unable to answer their questions. The workers in both crews discussed the problem at the end of the work day on August 29.

When Jacome, Ledesma, Valenzuela and Dominguez did not see Neil Jack in the shop area the following morning, they proceeded into the field. Early that morning, when again confronted by Regalado about accompanying the tractor driver, Ledesma said they wanted to see Neil Jack. The discontentment among the workers coalesced into a course of action. They had talked about it on August 29 and 30. The workers wanted an explanation from the boss. Ledesma, Jacome and Valenzuela boarded the Company truck for that purpose. Seeing them get into the truck, Dominguez ran after them and joined their

effort. These workers discussed their upcoming conversation with Mr. Jack as they were transported to the shop area.

Upon arrival, they were summarily fired by field foreman Ronnie Owens. ^{12/} To demonstrate that their only intention was to speak to Mr. Jack, they refused the checks Ronnie Owens held out to them.

Clearly these employees were fired because they chose to exercise their rights guaranteed by Section 1152 of the Act. They were not allowed their usual grievance channel, a conversation with Neil Jack. This was the only grievance procedure ever used during their employment at Jack Brothers.

The change in working conditions had occurred at the end of the previous work day. They did not see Neil Jack at 5:00 a.m. on August 30. This was their first opportunity to bring him their grievance, a procedure he had previously encouraged. Their engaging

^{12/} Owens testified that he fired Ledesma, Jacome and Valenzuela while telling Dominguez he had quit. I see no distinction between any of these workers regarding their involvement in this protected concerted activity. They all presented themselves to the boss in order to grieve the sudden change in working conditions.

in this protected concerted activity caused their termination. ^{13/}

I find that Respondent's termination of Arturo Ledesma, Carlos Jacome and Ramon Dominguez violated Section 1153(a) of the Act.

THE REMEDY

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

Having found that Respondent unlawfully discharged Arturo Ledesma, Carlos Jacome and Ramon Dominguez, I shall recommend that Respondent be ordered to reinstate them

^{13/} Based on legal principles previously discussed, the fact that they were also insubordinate is irrelevant. Further, I find it unnecessary to judge the merit of their grievance as opposed to the soundness of the new field procedure.

Most upsetting perhaps was the inconsiderate way these long-time employees were treated by their employer. Apparently they had been good workers for many years. Neil Jack's terminating them without as much as a face to face confrontation with them demonstrated a lack of common decency on his part.

and make each whole for any losses incurred as the result of Respondent's unlawful discriminatory action in the manner set forth in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

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

ORDER

Respondent, its officers, agents, supervisors and representatives shall:

(1) Cease and desist from:

(a) Discharging employees for engaging in concerted activities for mutual aid or protection.

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

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

(a) Offer Arturo Ledesma, Carlos Jacome, Ramon Dominguez full and immediate reinstatement to their former or substantially equivalent jobs without

prejudice to their seniority or other rights and privileges and to make each of them whole in the manner described above in the section called "Remedy" for any losses suffered as a result of the terminations.

(b) Preserve and make available to the Board or its agents, upon request, for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and other records necessary to analyze the back pay due to the foregoing named employees.

(c) Distribute the following NOTICE TO EMPLOYEES (to be printed in English and Spanish) to all present employees and all employees hired by Respondent within six months following initial compliance with this Decision and Order and mail a copy of said NOTICE to all employees employed by Respondent between August 30, 1978 and the time such NOTICE is mailed if they are not employed by Respondent. The NOTICES are to be mailed to the employees' last known address, or more current addresses if made known to Respondent.

(c) Post the attached NOTICE in prominent places at each of Respondent's Brawley ranches in an area frequented by employees and where other NOTICES are posted by Respondent for not less than a six-month period.

(e) Have the attached NOTICE read in English and Spanish on company time to all employees by a Company representative or by a Board agent and to accord said Board agent the opportunity to answer questions which employees may have regarding the NOTICE and their rights under Section 1152 of the Act.

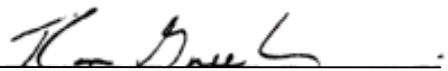
(f) Notify the Sub-Regional Director of the El Centro Sub-Regional Office within 20 days from receipt of a copy of this Decision and Order of steps the Respondent has taken to comply therewith, and to continue reporting periodically thereafter until full compliance is achieved.

Copies of the NOTICE attached hereto shall be furnished Respondent for distribution by the Sub-Regional Director for the El Centrol Sub-Regional Office.

Dated: October 5, 1979.

AGRICULTURAL LABOR RELATIONS BOARD

By


Ron Greenberg
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing in which each side presented evidence, the Agricultural Labor Relations Board has found that we violated the Agricultural Labor Relations Act by interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 1152 of the Agricultural Labor Relations Act. We have been ordered to notify you that we will respect your rights in the future. We are advising each of you that we will do what the Board has ordered, and also tell you that:

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

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

Because this is true, we promise that:

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

WE WILL NOT discharge, lay off, or otherwise discriminate against employees with respect to their hire or tenure of employment because of their involvement in activities of mutual aid or protection.

WE WILL OFFER Arturo Ledesma, Carlos Jacome and Ramon Dominguez their old jobs back and we will pay each of them any money they lost because we discharged them.

Dated:

JACK BROTHERS & MCBURNEY, INC.

By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.