

Salinas, California

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

CALIFORNIA COASTAL FARMS,)	
)	
Respondent,)	Case No. 79-CE-67-SAL
)	
and)	
)	
UNITED FARM WORKERS)	6 ALRB No. 25
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	

DECISION AND ORDER

On January 17, 1980, Administrative Law Officer (ALO) Arie Schoorl issued the attached Decision and recommended order in this proceeding. Thereafter Respondent and the General Counsel each timely filed exceptions with a supporting brief, and Respondent filed a brief in response to the General Counsel'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 ALO's Decision in light of the exceptions^{1/} and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order as modified herein.

^{1/} Respondent excepts to the remedy insofar as it requires reinstatement of Salvador Bustamante. Alleged misconduct by Bustamante occurring after his discharge is in issue in Case No. 79-CL-3-SAL, et al., heard in April and May of 1980. The matter of his reinstatement can be raised subsequent to disposition of that case.

ORDER

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

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee because of his or her union membership or union activities; or

(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 Porfirio Sandoval and Salvador Bustamante full and immediate reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights, 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.

(b) Preserve and, upon request, make available to this Board and its agents, 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 backpay period and the amount of backpay 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 April 12, 1979 and the time such Notice is mailed.

(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: May 29, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

RALPH FAUST, Member

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 discriminating against and interfering with 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 discharge any employee, or otherwise discriminate against any employee in regard to his or her employment because he or she has joined or supported the UFW or any other labor organization, or because of any other concerted activity by employees for their mutual aid or protection.

The Agricultural Labor Relations Board has found that we discriminated against Salvador Bustamante and Porfirio Sandoval by discharging them. We will reinstate them to their former jobs and give them back pay plus seven percent interest for any economic losses that they suffered as a result of their discharge.

CALIFORNIA COASTAL FARMS

Dated:

By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

California Coastal Farms

6 ALRB No. 25

Case No. 79-CE-67-SAL

ALO DECISION

The ALO concluded that Respondent violated Sections 1153(c) and (a) of the Act by discharging employees Porfirio Sandoval and Salvador Bustamante. Respondent claimed that it discharged these employees for engaging in acts of violence against the company (throwing rocks at a company bus). Respondent contended that it relied on police reports in making its decision to discharge Sandoval and Bustamante. The ALO found that the police report stated that Sandoval was arrested for trespass, not for throwing rocks, and that Respondent did not have an honest belief that Sandoval was guilty of violence. In addition, the ALO concluded that although Respondent had an honest belief that Bustamante was guilty of violence, Bustamante's union activity was the moving cause for his discharge.

BOARD DECISION

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

REMEDIAL ORDER

The Board issued a cease-and-desist order, and ordered the reading, posting, distribution, and mailing of a Notice to Employees. The Board also ordered Respondent to offer Porfirio Sandoval and Salvador Bustamante 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 RELATIONS BOARD

PROOF OF SERVICE BY MAIL
(1013a, 2015.5 C.C.P.)

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the within entitled action. My business address is: 915 Capitol Mall, 3rd Floor, Sacramento, CA 95814.

On May 29, 1980 I served the within _____

Decision, 6 ALRB No. 25, California Coastal Farms, 79-CE-67-SAL

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as follows:

CERTIFIED MAIL

Wayne Hersh
P.O. Box 828
Salinas, CA 93902

United Farm Workers
P.O. Box 30
Keene, CA 93531

REGULAR MAIL

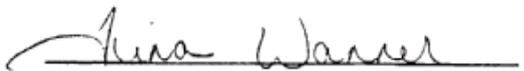
California Coastal Farms
1140 Abbott Street
Salinas, CA 93901

United Farm Workers
14- South Wood Street
Salinas, CA 93901

ALRB Regional
Office 112 Boronda
Road Salinas, CA
93907

2 copies hand delivered
to General Counsel

Executed on May 29, 1980 at Sacramento, California.
I certify (or declare), under penalty of perjury that the foregoing is true and correct.


Tina Wanner, Board Secretary

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD,



In the Matter of:)
)
CALIFORNIA COASTAL FARMS,)
)
Respondent,)
)
and) Case No. 79-CE-67-SAL
)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
Charging Party.)
_____)

Constance Carey, Esq. for
the General Counsel

Patrick Leathers, Esq. and
Wayne Hersh, Esq.
Dressier, Stoll, Hersh and Quesenberg
for the Respondent

Ned Dunphy
for the Charging Party

DECISION OF THE ADMINISTRATIVE LAW OFFICER

ARIE SCHOORL, Administrative Law Officer: This case was heard by me on October 10, 11, 12 and 15, 1979, in Salinas, California. The complaint herein, which issued on August 24, 1979, based on charges filed by the United Farm Workers of America, AFL-CIO, (hereinafter called UFW), and duly served on Respondent California Coastal Farms on April 18, 1979, alleges that Respondent committed various violations of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act). The General Counsel, Respondent and the Charging Party were represented at the hearing. The General Counsel and the

Respondent timely filed briefs after the close of the hearing. Upon the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs submitted by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

Respondent admitted in its answer, and I find, that it is an agricultural employer within the meaning of Section 1140.4(c) of the Act and that the United Farm Workers of America, AFL-CIO, is a labor organization within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleged that on or about April 12, 1979, Respondent discharged employee Salvador Bustamante because of his support for and activities on behalf of the UFW, and that on or about April 13, 1979, Respondent discharged employee Porfirio Sandoval because of his support for and activities on behalf of the UFW, in violation of Labor Code Section 1153(c) and 1153(a).

In its answer, Respondent denied having committed the alleged unfair labor practices contending, as a first affirmative defense, that Respondent discharged Bustamante and Sandoval for just cause because they had engaged in violence in connection with unprotected strike activity against Respondent. As a second affirmative defense Respondent contended that the Board cannot require the reinstatement or award backpay to any employee who has been suspended or discharged for cause.

III. Background Information

Respondent is a California corporation which raises vegetable crops in the Salinas and Imperial Valleys. In 1976 the UFW won an ALRB representation election and was certified as the exclusive bargaining representative of Respondent's agricultural employees. A collective bargaining contract was signed in 1976 and when it terminated by its terms at the end of 1978, Respondent and the UFW commenced negotiations with respect to a new contract. Unable to reach a satisfactory agreement with Respondent, the UFW went on strike against Respondent on January 19, 1979, at both the Salinas and Imperial Valley operations. At the time of the hearing no agreement had been reached between the parties and the strike continued. During the entire strike period, Respondent continued its agricultural operations with replacement employees.

IV. Respondent's discharge of Salvador Bustamante and Porfirio Sandoval.

A. Facts

Salvador Bustamante was the leading proponent of the UFW at Respondent's Salinas Valley ranches. He was president of the employees' Ranch Committee and was one of the UFW negotiators at prolonged bargaining sessions in 1979. He had been in Respondent's employ since 1976 and had been a UFW negotiator at the 1976 bargaining sessions which resulted in a three-year collective bargaining agreement. Respondent's president Walter Bryggman, controller Dean Decker, harvest superintendent Ken Lewis, ranch foreman Elmer Moran, and foreman Ken Bowers all admitted that they had knowledge of his various union activities.

During negotiations concerning the supplementary part of the collective bargaining contract in 1976, Bustamante requested Respondent to agree to a clause to limit the work day to 8 hours. When Respondent's negotiators refused, Respondent's employees concertedly refused to work no longer than 8 hours a day. Bustamante testified that in response Bryggman warned him that if he used such a tactic again he would be fired. Bryggman denied making that statement to Bustamante. However he could remember nothing about the subjects discussed at any of the bargaining sessions, the number and identity of the UFW negotiators, etc. All he could remember were the names of Respondent's negotiators and the fact that he consulted with them during the month the sessions took place. Bustamante remembered clearly about the work-stoppage episode and testified that the workers had signed a petition requesting a work day limited to 8 hours, that despite the petition, Respondent's negotiators refused to believe that the majority of the workers were in favor of such a limitation and that the employees engaged in the work stoppage to prove to management their wishes. On the basis of his superior recall, I credit Bustamante's testimony that Bryggman did make the threatening comment to him.

The other dischargee, Porfirio Sandoval, was a member of the UFW and participated in strike activities and picket-line duties during the strike. However he did not engage in union activities to any greater extent than dozens of his fellow workers who had joined in the January 19, 1979, strike against Respondent and had participated in picket-line activities.

At about 6:00 a.m. on March 24, 1979, approximately 65 strikers gathered in front of Respondent's labor camp to picket and to protest Respondent's use of replacement employees. At approximately 6:30 a.m., two of Respondent's buses, carrying replacement employees to the fields, pulled out of the labor camp and proceeded down to a road where they turned and crossed some railroad tracks to reach a public thoroughfare. As the buses left the camp, a group of approximately 15 strikers ran along the railroad tracks so as to be close to the buses as they passed over the tracks. Salvador Bustamante was in this group and, as one of the buses passed over the tracks, he reached down, picked up a rock about 1 1/2 inches in diameter, and threw it at the bus, hitting it just above one of the side windows.

Officer Robert Perez, a deputy sheriff, testified that he had been following the buses in his patrol car and that upon observing Bustamante throw a rock, he stopped his vehicle, got out, accosted Bustamante and placed him under arrest.

Two of Bustamante's fellow strikers, also employees of Respondent, testified that they were in a position to observe Bustamante during the rock-throwing incident and that they did not see him throw a rock or any other object at the bus. They testified that they observed a foreman drive his pick-up truck behind the buses, stop near the strikers who were throwing the rocks, get out of his vehicle, and call the deputy sheriff's attention to Bustamante by pointing at him, whereupon the deputies arrested Bustamante.

These two witnesses testified that two white-skinned "American" deputy sheriffs arrested Bustamante. One of the witnesses, Genaro Lizama, said he knew Perez and he was not one of the officers who arrested Bustamante. Perez, who has olive skin and brown hair, testified that he personally had seized Bustamante to arrest him. General Counsel did not examine Bustamante in general or in detail about the incident of his arrest. General Counsel asked him only whether he had thrown a rock at the bus. Bustamante replied in the negative.

Ken Bowers, a foreman who fitted the description given by the two witnesses, admitted driving his pick-up truck to where the rock-throwing incident took place but insisted that he arrived after Bustamante had been arrested. He added that he had gotten out of his vehicle and had taken some photographs.

It would appear from a composite of this testimony that the two witnesses arrived a moment after Perez arrested Bustamante and saw him in the custody of two white-skinned "American" deputy sheriffs and believed they saw Bowers pointing a finger at Bustamante when he was actually pointing his camera to take photographs.

More importantly, Officer Perez testified in a straightforward manner, exhibiting a good memory for details and impressed me as an impartial witness. Accordingly, I credit his version of the incident, where it is at variance with the account of the two employees and Bustamante.

On April 3, 1979, at 6:00 a.m. approximately 100 strikers congregated at Respondent's labor camp to picket and protest against Respondent's use of replacement employees during the strike. At about 6:30 two of Respondent's buses,

carrying replacement workers, exited out the back gate of the labor camp in the direction of Respondent's fields. Approximately 30 strikers ran around the labor camp and down a side road so they could be close to the buses at an intersection. Fifteen members of the group were able to reach the intersection as the buses drove through. Some of them picked up rocks and threw them at the buses.

Porfirio Sandoval testified that he was in the group of 30 when they began to run toward the intersection but that he lagged behind and he was not close to the buses when they went through the intersection and had not thrown any rocks or dirt clods at the buses.

Officer Jess Mason, a deputy sheriff, testified that he and another deputy ran after the group of 30, that he ran past 15 of the group that were lagging behind and observed some of the 15 ahead of him throw rocks at the bus. He seized an individual, whom he had seen throw a rock, Juan Manual Ruano Valderas, so as to take him into custody. The other deputy arrived at that moment and the two of them held Valderas while the rest of the group of 30 gathered around them. A moment later, additional law enforcement officers arrived and the group surrounding the three immediately dispersed. The deputy sheriffs then proceeded to arrest 7 additional strikers from the group of 30. Officer Mason observed his fellow deputies arrest three strikers before he boarded the bus and began to take down the names of the arrestees. One of the arrestees was Porfirio Sandoval. Officer Mason testified that he did not know whether he had seen Sandoval arrested because he did not remember what he looked like and did not remember whether

he was one of the three he saw arrested or not. Sandoval testified that he did not know the reason for his arrest.

Bryggman and Decker both testified that in accordance with a policy in effect for many years, Respondent would discharge any employee who engaged in violent activity against its employees or property. During the strike, according to Bryggman, Respondent gave effect to that policy by discharging any employee who participated in violence against any of its employees and/or property. Both Bryggman and Decker testified that whenever a supervisor or other employee reported a violent incident they would obtain a crime report and, based on the contents thereof and whatever other information they had received from supervisors and/or other employees, they would decide whether to discharge the employee(s) who had reportedly engaged in violent activity. They also testified that Respondent customarily sent a letter to the employee informing him that he had been discharged for violence and misconduct.

According to Decker, he received the two crime reports for the incidents of March 24 and April 3 at Respondent's Salinas office,

Decker testified that as to both Bustamante's and Sandoval's cases he reviewed the respective crime reports and discussed the information therein with Walter Bryggman, who then made the decision to discharge two employees. On April 12 Decker directed that a letter of discharge be sent to Bustamante and on April 13 he directed that a similar letter be sent to Sandoval. Decker testified that in both cases Respondent's decision to discharge was based on the information in the crime report that Bustamante and Sandoval had committed acts of violence against Respondent's property and on the confirming information

from its supervisors that the violent acts had taken place.

In the sheriff's crime report of the March 24th incident, it indicates that deputy sheriff(s) had observed "Salvador Martinez BUSTAMANTE" and "Genaro Lizama RIVERO" throw rocks at Respondent's buses and that they had been arrested for such acts.

Decker testified that since Bustamante was on the seniority list and was thus considered an employee, Respondent decided to discharge him. However, according to Decker, although Rivero might have been an employee no decision was made to discharge him because he was not on the seniority list.^{1/} Respondent stipulated that its seniority list included an employee named Genaro Lizama but none by the name of Genaro Lizama Rivero.^{2/}

In the sheriff's crime report of the April 3rd incident it clearly states that Sandoval was not arrested for throwing a rock at a bus. Page 4 of the report reads:

"The subjects were arrested for violation of a court order. A court order had been obtained, that court order being 74978. One of the stipulations in that court order is that the strikers do not enter Cal Coastal property and that they remained 20 feet away from entrances and exits to fields and

1/When Decker was asked whether Rivero had been a former employee he answered, "I believe he is has not been, at least does not have seniority.

2/Genaro Lizama testified at the hearing that he was the one who had been arrested along with Bustamante on March 23rd and that he had been an employee at Respondent's until the strike began. He explained that he signed his name Genaro Lizama at Respondent's and at the police station the officers never asked him for his name but he supposed they must have obtained the information from his wallet since they had taken it away from him.

camps. This particular section was violated. Valderas also violated the section which states they should not throw objects or threaten the workers, and Valderas violated this by throwing a rock at the bus."

However on page 1 of the report it reads:

Suspects violated court order by entering on private property and throwing objects at labor buses loaded with workers leaving to work in the morning.

On page 3 of the report it reads:

As I ran down the access road, the strikers reached the bus prior to me, and began throwing rocks at the bus. One subject, a Juan Valderas, was approximately fifteen to twenty feet in front of me and I observed him pick up a fist size object, possibly a rock or dirt clod and throw it at the Cal Coastal bus as it was leaving. (report made by Officer Jess Mason)

At the hearing, Decker's attention was drawn to the fact that the report never stated that Sandoval had committed an act of violence and that the only reason given for his arrest was a trespass. Decker explained that since it stated in the report that strikers (in the plural) had thrown rocks he had assumed from the fact that Sandoval had been arrested that he had been one of the strikers throwing rocks.

In the crime report of the April 3rd incident, Porfirio Sandoval was listed as "Porfirio Sandoval DIAZ".

B. Analysis and Conclusion

General Counsel contends that Respondent violated Section 1153 (c) and (a) of the Act by discharging employees Salvador Bustamante and Porfirio Sandoval. Respondent argues that it had just cause to discharge the two employees because both had engaged in violence against Respondent during the strike and, as violence is an activity unprotected by Section 1152,

Respondent did not violate the Act by these discharges. General Counsel counters that as neither of the employees was guilty of any violent activity, they must have been fired for protected union activity in violation of the Act.

It is well established under NLRB precedent that where an employer discharges an employee for engaging in picket-line activities during a strike such discharge violates Sections 3(a)(3) and 8(a)(1) (the ALRB counterparts are Sections 1153(c) and (a)) This may be defended by showing of an honest belief on the part of the employer that the employee was guilty of misconduct sufficient to render him unemployable. If the employer is able to meet this burden, then the General Counsel must come forward with evidence to deny that the employee did what he was claimed to have done and/or that the activity was not sufficiently serious to justify discharge. The burden would then return to the Respondent to rebut such denials.^{3/}

Clearly in respect to Porfirio Sandoval, Respondent discharged him for certain actions allegedly committed by him while he was engaged in picket-line activities on April 3, 1979. Respondent has attempted to show that it had an honest belief that the employee was guilty of the violent act of throwing a rock at one of the labor buses occupied by replacement employees. General Counsel has attempted to demonstrate that Sandoval did not do what he was claimed to have done and in addition that the rock throwing was not sufficient to justify his discharge.

First, I find that Respondent did not have an honest belief that Sandoval had engaged in a violent act against

3/Rubin Brothers Footwear, Inc., 99 NLRB 610 (1952) 30 LRRM 1109

Respondent's property, i.e. that he threw a rock at the labor bus. Both witnesses for Respondent, Walter Bryggman, president, and Dean Decker, controller, testified that during the strike their method of determining whether to discharge an employee for strike violence was to rely on the crime report plus any oral reports provided by a supervisor or other employee who had witnessed the incident. In Sandoval's case, there was no testimony or other proof that any supervisor or other employee informed Bryggman or Decker that Sandoval had thrown a rock. Dean Decker testified that they relied solely on the crime report to determine the discharge of Sandoval and that he believed, based on his reading of the report, that Sandoval had thrown a rock.

Under these circumstances in which an employer relied solely on a crime report to decide the maximum penalty for an employee, a discharge, I believe a careful and thorough reading of the crime report is a prime requisite before the employer can claim it had an "honest belief" that the employee was guilty of violence. A cursory scanning of the report might lead one to believe that Sandoval was guilty of violence. However any careful reading of the crime report would indicate that Sandoval had been arrested for trespass, a violation of a court order and not for rock throwing. On page four of the report, it reads:

"The subjects were arrested for violation of a court order.... One of the stipulations in the court order is that the strikers do not enter Cal Coastal property.... This particular section was violated. Valderas also violated the section which states that they should not throw objects or threaten the workers and Valderas violated this by throwing a rock at the bus."

There are two references in the report to "suspects" or "strikers" "throwing rocks" so this would indicate that some other strikers other than Valderas threw rocks at the bus but there is nothing in that report that indicates that one of these other strikers was Sandoval.

Even if it can be assumed that Respondent entertained an honest belief that Sandoval had engaged in rock throwing, General Counsel has successfully demonstrated that Sandoval did not do what he was claimed to have done. i.e. throw a rock at a labor bus.

Sandoval testified that he had not thrown a rock and also that he had dropped back toward the rear of the thirty strikers who were in pursuit of the bus. Deputy Scott testified that he had not seen anyone identified as Sandoval throw a rock and in fact the individuals whom he had observed throwing rocks were all in the forward segment of the group of thirty. There was no testimony or any other evidence that Sandoval had thrown a rock at the bus. The mere fact that other strikers in the group threw rocks does not impute culpability to Sandoval. Whether he lost protection of the Act depends on his specific conduct and not on the conduct of others.^{4/}

In view of the above, I find that Respondent did not have an honest belief that Sandoval had engaged in violence against the company and also that Sandoval did not commit the act of violence Respondent claimed he did. I conclude therefore that Sandoval engaged in protected concerted activity

^{4/}American Cyanamid Company, 239 NLRB No. 60, 100 LRRM 1082 (1978)

and that Respondent's discharge of Sandoval constituted a violation of Section 1153(c) and (a) of the Act.

In the case of Salvador Bustamante it is evident from the information contained in the crime report that the Respondent did have a basis for an honest belief that he was guilty of violence and in addition the preponderance of the evidence established that Respondent was correct in that belief. It is clear from credited testimony of Deputy Perez that Bustamante threw a rock at the labor bus on March 24, 1979.

General Counsel argues that Respondent still violated the Act because Bustamante's throwing of a rock at the bus does not constitute sufficient cause to justify a discharge. General Counsel contends that this particular action is not of a serious enough nature to warrant loss of employment under NLRB standards.

General Counsel cited NLRB cases which held that certain violent acts committed by employees on picket lines were not serious enough to call for a discharge. General Counsel quotes language from Hiss & Schlieper (1971) 194 NLRB 572, 577 quoting from Terry Coach Industries, Inc., 166 NLRB 560, 563:

(T)he applicable test in determining whether strikers accused of misconduct should be returned to work is whether the misconduct is so violent or of such a serious character as to render the employee unfit for further service or whether it merely constitutes "a trivial rough incident" occurring in "a moment of animal exuberance".

However, in all the cases cited by General Counsel the acts described are either of a benign character like temporarily blocking the passage of some replacement employees riding in a

car and then letting them through a moment later or an emotional reaction to a provocation either by a member of management or one of the replacement employees.

In Kayser-Roth Hosiery Co. v. NLRB, 447 F.2d 396, 78 LRRM 2130 (6th Cir. 1971) the court stated that it did not think that the NLRA protected strikers who engaged in planned concerted activities to deny an employer its right to transport non-striking employees across picket lines. The court went on to say that, "Employees wishing to work are entitled to unmolested ingress and egress from the Company property...". In this case the rock throwing by the strikers against the windows of Respondent's buses carrying non-striking employees from the labor camps to the fields interfered with Respondent's right to continue its farming operations during the strike and the non-striking employees right to ingress and egress from their employment. Bustamante's rock throwing definitely does not constitute an ordinary incident which is to be expected in the maintenance of a picket line.

Consequently, I find that Respondent did have just cause to discharge Bustamante, because he had engaged in a violent act, which act was serious enough to justify a discharge and was thus unprotected by Section 1152 of the Act. However I must now determine if Respondent had another motive in deciding to discharge Bustamante.

It is well established that even though an employer may have a valid reason to discharge an employee, such as a violent act, a violation occurs if the moving cause for the discharge is the employee's union activity.

As the Board stated the rule in S. Kuramura, Inc., 3 ALRB No. 49:

Even though there is evidence to support a justifiable ground for the discharge, a violation may nevertheless be found when the union activity is the moving cause behind the discharge or where the employee would not have been fired "but for" her union activities.

In this particular case Respondent had identical proof, a crime report, that Genaro Lizama, one of its employees, had engaged in the identical kind of behavior as had Bustamante and Respondent did not discharge him. The distinction in treatment can only be explained by the fact that Bustamante was known by the company officials to be the UFW's leading proponent, president of the ranch committee, and a negotiator in the collective bargaining sessions while Genaro Lizama was a Cal Coastal employee engaged in the strike and picket duty but was no more active than dozens of other California Coastal striking employees.

Respondent argued that Genaro Lizama's name was listed on the crime report as Genaro Lizama Rivero and that it had no employee by that name on its seniority list. Nevertheless Respondent stipulated there was an employee on its seniority list by the name of Genaro Lizama. Respondent would have us draw the conclusion that Decker, when he reviewed the crime report, would not have recognized Genaro Lizama Rivero as a Cal Coastal employee with seniority and thus in Decker's mind Rivero had no employment with Respondent from which he could be discharged.

Dean Decker in his answer to a question whether "Rivero" had been a former employee of Respondent testified, "I believe he is....had not been, at least does not have seniority". This answer certainly indicates that Decker did recognize

Genaro Lizama Rivero to be Genaro Lizama, an employee with Respondent. The fact that Decker recognized Genaro Lizama Rivero as a Cal Coastal employee is confirmed by the fact that later he recognized Porfirio Sandoval as an employee of Respondent's even though his name was listed in the crime report as "Porfirio Sandoval DIAZ" exactly the same way as Genaro Lizama Rivero had his name listed.

Respondent stipulated that Genaro Lizama was on Respondent's seniority list at the time of the Sandoval discharge so there is no plausible explanation why Decker would not have recognized Genaro Lizama's name in the crime report, found it on the seniority list and brought it to the attention of Walter Bryggman with the resulting discharge of Lizama. Respondent has offered no other explanation for the disparate treatment of Bustamante and Lizama. Hence the only logical explanation for the discriminatory treatment of Bustamante is that he was the leading UFW proponent at Respondent's Salinas operations, a fact which was well known to Respondent. This explanation is also bolstered by the fact that Bryggman, who decided to discharge Bustamante, had threatened him 2 1/2 years previous that he would fire him if he ever used a particular concerted tactic again.

In light of the above, I find that Respondent violated Sections 1153(c) and (a) of the Act in discharging Salvador Bustamante since its motive for discharge was his union activities.

ORDER

Accordingly, pursuant to Labor Code Section 1160.3 IT IS HEREBY ORDERED that the Respondent California Coastal Farms, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee because of his or her union membership or union activities, and:

(b) In any like or related manner interfering with, restraining or coercing any employees in the exercise of his or her 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 Porfirio Sandoval and Salvador Bustamante immediate and full reinstatement to their former positions, without prejudice to their seniority or rights or privileges.

(b) Make whole Porfirio Sandoval and Salvador Bustamante for any losses of pay or other economic losses they have incurred by reason for their discharges, plus interest thereon at a rate of seven percent per annum.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due under the provisions of

this Order.

(d) Sign the Notice to Employees attached hereto. After its translation by the Board Agent into Spanish and any other appropriate language(s), Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth thereafter.

(e) Post copies of the attached Notice at times and places to be determined by the Regional Director. The notices shall remain posted for 90 consecutive days thereafter. Respondent shall exercise due care to replace any Notice which has been altered, defaced, or removed.

(f) Mail copies of the attached Notice in Spanish and in any other appropriate language, within 20 days after the date of issuance of this Order, to all employees who were employed by Respondent and/or on Respondent's seniority list at any time during 1979.

(g) Arrange for a representative of Respondent or a Board Agent to read the attached Notice in Spanish and any other appropriate language to the assembled employees of. Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice and/or their 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, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with the Order.

DATED: January 17, 1980



ARIE SCHOORL
Administrative Law Officer

NOTICE TO WORKERS

After a trial in which each side had an opportunity 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.

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 discharge any employee, or otherwise discriminate against any employee in regard to his or her employment, because of his or her membership in or activities on behalf of the UFW or any other labor organization, or because of any other concerted activity by employees for their mutual aid or protection.

The Agricultural Labor Relations Board has found that we discriminated against Salvador Bustamante and Porfirio Sandoval by discharging them. We will reinstate them to their former jobs and give them back pay plus seven percent interest for any losses that they suffered as a result of their discharge.

Dated:

CALIFORNIA COASTAL FARMS

By: _____
(Representative) (Title)

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

DO NOT REMOVE OR MUTILATE.