

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

HANSEN FARMS)	
)	
Respondent,)	Case No. 79-CE-258-SAL
)	
and)	
)	
UNITED FARM WORKERS)	7 ALRB No. 2
OF AMERICA, AFL-CIO,)	
)	
Charging Party.)	

DECISION AND ORDER

On July 16, 1980, Administrative Law Officer (ALO) Kenneth Cloke issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions and a brief in support thereof. General Counsel and the Charging Party each filed a brief in response to Respondent's exceptions.

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 only to the extent that they are consistent herewith.

The consolidated complaint alleged that Respondent violated section 1153(c) and (a) of the Act by its discharge of Leticia Rangel because of her involvement in protected concerted activity, its discharge of Socorro Ruiz Ornelas because of his support for and activities on behalf of the United Farm Workers of America, AFL-CIO (UFW), and its refusal to rehire Roberto Mendez because of his UFW sympathies and his participation in protected concerted activities. The allegations regarding Roberto Mendez were withdrawn from the

complaint by the ALO at the hearing upon the motion of the General Counsel. In his Decision, the ALO concluded that Respondent did not violate the Act by its discharge of Socorro Ruiz Ornelas, or by its transfer of two employees, Frank and Juana Gonzalez, which issue was raised at the hearing by an amendment to the consolidated complaint. The ALO concluded, however, that Respondent did violate section 1153(a) of the Act by its discharge of Leticia Rangel. Neither the UFW nor the General Counsel excepted to any of these conclusions of the ALO. Respondent excepted to the ALO's conclusion that Respondent violated section 1153(a) of the Act by discharging Leticia Rangel. We find merit in this exception. The record does not establish a causal connection between Rangel's participation in the alleged protected concerted activity and her discharge more than a month and a half later. See Tenneco West, Inc. (Jan. 18, 1980) 6 ALRB No. 3.

Factual Background

Respondent employs a number of thinning and hoeing crews whose tasks are basically to remove weeds from among the various crops grown and to maintain the proper spacing between the growing plants. Lorenzo Solis is the foreman of one of these crews, and he reports to Bill Foletta, head of hoeing and thinning operations, and personnel director Tony Vasquez.

Respondent's employees were encouraged to bring their work-related problems to the attention of management. If the problem could not be resolved at the lowest level of management, the workers could take it to the next higher level, and so on until the matter was referred to the owner (Mr. Hansen) himself, if necessary. Mr. Hansen's open-door policy was well-known to his employees.

At the time of the incidents in question, Lorenzo Solis' crew consisted of about 30 employees, most of whom belonged to either of two large families in the crew: the Martinez family and the Solis family (not related to Lorenzo Solis). The remaining employees had no relatives in the crew or had a small number of relatives working with them. The alleged discriminatee, Leticia Rangel, and Juana Gonzalez, together with their supporters (Irma Godinez, Belinda Espinoza, and Maria Rangel) each had one or two relatives in the crew. Irma Godinez and Belinda Espinoza were sisters-in-law, and Maria Rangel was Leticia's mother. With the exception of Juana Gonzalez and her husband, Frank, this group lived together in one house, at which Mr. and Mrs. Gonzalez (or at least Juana Gonzalez) were frequent visitors. Most of the other crew members lived in a labor camp.

Prior to the discharge of Leticia Rangel, there had been considerable conflict and animosity between the Gonzalez-Rangel group on the one hand and the Martinez and Solis families on the other. Juana Gonzalez requested a transfer at the beginning of the 1979 season when she learned that she would be in the same crew as Maria Martinez. Mrs. Martinez testified that she and Mrs. Gonzalez had long-standing personal differences. At one point during the 1979 season, prior to the discharge of Leticia Rangel, Juana Gonzalez and Maria Martinez engaged in a fist fight. On another occasion, prior to the discharge and during working hours, the head of the Solis family openly made a derogatory reference to the women in the Gonzalez-Rangel group. This apparently further strained relations between the two groups.

A major contributing factor to the interfamily conflict in Lorenzo Solis' crew was the method by which the hoeing and thinning were carried out. Each crew member would begin work by taking a particular row in the field. Upon completing the row, he or she would then take the next unoccupied row in order and work back in the opposite direction. This pattern would continue until the work was completed. In order to be able to check more readily on the quality of the work being done, the foreman sought to keep the workers in a more or less unbroken line as they progressed up and down the rows. The method for achieving this goal was the use of "raiteros" or riders. Riders are individuals who are assigned to help those workers who have fallen behind other employees in the group. They are paid the same rate as other hoers and thinners.^{1/} With the additional help from the rider, a worker who was behind could catch up with the rest of the crew. A worker might fall behind because the row he or she was working was plagued by extra weeds or hard soil, or because he or she was a somewhat slower worker or had to take a break to use the bathroom. On the other hand, some employees would get ahead of the crew because they were especially fast workers. Some preferred to work fast so they could take a break at the end of their rows while waiting for the rest of the crew to catch up. The testimony of Juana Gonzalez, Leticia Rangel and Irma Godinez indicates that they were among the faster workers in the crew. Although the raitero system was adopted for the convenience of the

^{1/} The same number of hours of work was expected of each of the workers, and pay was received on an hourly, rather than piece-rate, basis.

employer, some workers came to regard it as a means whereby they could take a break either as they walked past the segment of a row that had been completed by the rider or as a means of getting or staying ahead of the crew and thereby being able to take a longer break at the end of their rows.^{2/}

At the time of the incidents involved herein, Heriberto Solis (no relation to the foreman) was serving as principal rider. About the middle of May, 1979, Juana Gonzalez and Leticia Rangel complained that Solis did not help the workers on an equal basis because he devoted more time to helping members of the Martinez family and his own family. They also complained that he was lazy and spent too much time talking to the foreman when he should have been working. Juana Gonzalez also complained that she did not like the way Solis drove the bus. These complaints led to recriminations between the Martinez-Solis majority and the Rangel-Gonzalez minority and appear to have sparked the aforementioned name calling incident.

On June 5, Juana Gonzalez again complained about the rider to Lorenzo Solis and said she wanted him removed. On the same day, an argument over the rider erupted in the field. Work stopped. Belinda, Irma, Leticia, Maria, and the Gonzalezes were on one side; the -rest of the crew on the other. Lorenzo told the workers to get back to work. The Gonzalez group replied that the problem was

^{2/} Those employees who were so inclined also had another method of obtaining more between-row break-time. As the rows were sometimes laid out in such a way that they got smaller toward the end of the field, a worker could, by slowing down in his row, cause other workers to get the longer of the remaining rows. When such a worker finished his row, the next available row would be further down the line of shortening rows and thus give him less work to do before he reached the end of a row and could again take a break.

Lorenzo's fault because he did not want to eliminate the rider and that they wanted to talk to somebody else with the company.

Later that morning, Tony Vasquez came to the field where the crew was working. He walked over to where the complaining individuals were and asked what the problem was. Leticia replied that she and some of the others were not happy with the rider. The rest of the crew gathered around and, in response to his inquiry, said that they did not want to get rid of the rider. Lorenzo Solis was nearby. Vasquez stated that the workers could not choose the rider and that he was not going to remove the rider.

On the afternoon of the same day, Bill Foletta arrived at the field after being summoned by Tony Vasquez. Lorenzo Solis referred him to Juana Gonzalez. She complained that rider Heriberto Solis was helping only certain people. Foletta polled various members of the crew, and all of them denied that the charge was true. Foletta told Juana Gonzalez that there appeared to be no substance to her charge and that if she was unhappy it would be best to transfer her as she had requested at the beginning of the season. Both she and her husband were transferred to another crew.^{3/}

After securing an appointment through Bill Foletta on June 6, Juana, Belinda, Irma, Maria, Frank and Leticia visited Mr. Hansen at his office on the 7th or 8th of June. During the meeting, which lasted approximately one hour, Hansen said he would

^{3/} The ALO found that the transfer was for the purpose of averting conflict between the Martinez and Gonzalez groups and did not involve discriminatory treatment. Accordingly, he concluded that the transfer did not constitute a violation of the Act. No exceptions were taken to this finding or conclusion.

talk to Lorenzo Soils about the rider, but it appeared to him that it was primarily a personal problem and not a work problem. He asked the employees to contact him again in two weeks if things did not work out. As the meeting was breaking up, one of Hansen's executives, Brice Barnard, entered the office and asked which members of the group were Leticia and Belinda. Leticia identified herself, and Barnard told her that she had a large number of tickets (for absences). Hansen gestured with a wave of his hand, apparently to indicate that he was not concerned about that matter, and Barnard left.

About a week after the meeting with Hansen, Lorenzo came over to Belinda and told her that he was assigning Heriberto to work his own rows. Heriberto apparently ceased being rider from that point in time. Shortly after Leticia's discharge at the end of July, and for the remainder of the season (approximately two months), the rider was eliminated altogether. The foreman kept the crew even by not allowing the faster workers to move ahead. Irma Godinez and Belinda Espinoza claimed that they were hassled more by Solis after their June 7 or 8 meeting with Hansen. Irma heard Solis yell at Leticia and Belinda once after the meeting with Hansen. Leticia claimed that Solis yelled at "us" all the time before the meeting with Hansen. She was unable to articulate any substantive way in which she was treated worse after the employees' meeting with Hansen.

Events Surrounding the Discharge

At this point, certain of Respondent's work rules become relevant. When requested, permission to be absent from work for any valid reason was readily given to employees. Leticia Rangel was

permitted to be absent on a number of occasions both before and after her participation in the alleged concerted activity. Where verification of the reason for absence could feasibly be obtained, it was required by the company. Excused absences and warnings for violation of work rules were documented on tickets. Warning tickets were not given to workers simply because they were not keeping up with the rest of the crew. A form signed by Leticia upon joining the Hansen work force was understood by her to make refusal to obey a work order an offense for which an employee could be discharged.

Insubordination and refusal to obey a work order were among five acts which were specified by Respondent as grounds for immediate discharge. Lesser infractions could result in a dismissal after four warning tickets.

The incidents which culminated in the discharge of Leticia Rangel occurred on two consecutive days at the end of July. On July 26, the crew was working in a field when Leticia and Belinda each finished a row near the end of the field. Leticia then went to the bus, and Belinda went to use the bathroom. Crew members then complained to Lorenzo that the two women did this to avoid having to take the next two rows in order, these being the longest of the remaining rows. Lorenzo told the workers who started to work on those rows to leave them vacant and take the following rows. When Leticia returned from the bus (where she testified she had gone to take some medication) and Belinda returned from the bathroom, Lorenzo ordered them to take the rows that he had reserved for them. Some of the crew members laughed. Assigning of specific rows to specific employees was unusual but not unheard of.

The two women slowed their pace in the assigned rows. Lorenzo told them that upon finishing those rows they were to go to the end of the field and start working back toward the rest of the crew. At that point there were only about 10 unoccupied rows left, all of them relatively short (40 feet to eight feet). The two women refused to comply with Lorenzo's directive and told him they would work where they wanted to. (They contend they thought that they alone were being required to do the 10 short rows.) He told them he was going to issue them a warning ticket, and Leticia told him where he could "shove it". They continued to work in the usual pattern in with the rest of the crew. The remaining rows were finished by the crew in about 15 minutes.

The next day the crew was working in a beet field that was particularly weedy. Because of the heavy weed situation, Lorenzo Solis had to show some of the workers how he wanted the weeding job done. The workers were all told to do the job well, even if it meant working more slowly. He explained the proper method to Irma Godinez and offered to provide her with a knife if she needed it in removing the bigger weeds. She did not demur to his work instructions.

At about 1:30 p.m. some seven hours into the work day, Lorenzo Solis told Leticia Rangel that she was weeding improperly as she was not removing as much of the weed as possible and was damaging the young plants in the process. As he was showing her how he wanted the weeding done, Rangel told him he was "bitching too much", that she could not do the work the way he wanted her to, and that she was sick and was not going to continue working. She had not previously told Solis that she was feeling ill. As she headed toward the bus,

Soils told her not to walk off the job, that it would jeopardize her employment. The testimony indicates that her reply was that she did not care. Solis then left to telephone Respondent's office. When he returned, Leticia was on the bus, where she says she had gone to lie down. She stated that she felt ill, and Solis offered to drive her home. She declined the offer and stayed on the bus while the crew worked for another hour. She was given a discharge ticket which specified that she had refused a work order and had voluntarily quit.

Early the following week, Leticia went to Respondent's offices, talked with Mr. Hansen, and was told she could meet with Lorenzo Solis and Tony Vasquez the next day. The meeting was apparently an opportunity for Leticia to convince Vasquez that she had quit working because she was sick, not simply because she refused to do the work the way Solis wanted it done. She claimed she had a medical excuse with her but did not show it to Vasquez. Her excuse did not seem credible to Vasquez because she had not mentioned being ill prior to her refusal to continue working and because she waited three or four days after the incident to bring in a purported medical excuse. Leticia reiterated her complaint that Solis bitched too much. After Vasquez indicated he was going to let Solis' decision stand, Leticia began crying, threatened to take the matter further, and directed a foul epithet at Vasquez.

Conclusion

We must initially determine whether the General Counsel has made a prima facie showing that Leticia Rangel's participation in the concerted efforts to oust Heriberto Solis as rider was a motivating factor in Respondent's decision to discharge her. See Albert C.

Hansen, dba Hansen Farms (Nov. 1, 1978) 4 ALRB No. 87. In making that determination, we view the discharge both in the context of the incidents on July 26 and 27 and against the overall background of employer-employee relations in Lorenzo Solis' crew. The length of time between the rider controversy at the beginning of June and the discharge at the end of July, Respondent's general receptivity to worker complaints, and the success of the employees' efforts to have the rider system discontinued make the existence of any link or nexus between the discharge and the concerted activity appear tenuous at best. The restraint which the foreman displayed on July 26 further leads us to doubt the existence of a connection between the two events. Under Respondent's work rules, Solis would have been justified in terminating Rangel's employment on the 26th when she refused to perform work as directed and defied him with an obscene remark. Instead, he issued her a warning ticket and took no further action. It is unlikely that Solis would have exercised such restraint had he desired to terminate Rangel's employment in reprisal for her participation in concerted activity. We find that it was Rangel's further act of insubordination on July 27, and not her concerted activity seven weeks earlier, which finally motivated Solis to terminate her employment.

In view of the above findings, we conclude that the discharge of Leticia Rangel was not a violation of the Act. Our findings regarding the basis for the discharge make it unnecessary to determine whether the concerted protest against the rider constituted a protected activity.

ORDER

Pursuant to Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that the complaint in this matter be, and it hereby is, dismissed in its entirety. Dated: February 4, 1981

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Hansen Farms (UFW)

7 ALRB No. 2

Case No. 79-CE-258-SAL

ALO DECISION

The complaint alleged, inter alia that Respondent discharged Leticia Rangel because she led a concerted protest against the crew's rider, a worker assigned to assist employees who fell behind in their work. Rangel and a few other employees complained to management that the rider showed favoritism as to which crew members he assisted. After a meeting between the Rangel group and the owner on June 8, the situation was resolved to the apparent satisfaction of the Rangel group. On July 26, Rangel and a member of her group refused to obey a work order which they felt was unfair and Rangel directed an obscenity at the foreman. On July 27, when the foreman was explaining to Rangel how he wanted the weeding done, she complained that he was "bitching too much," that she could not do the work the way he wanted, and that she was feeling ill and was going to the bus. She ignored the foreman's admonition against leaving and was thereupon discharged.

The ALO found that Rangel was engaged in protected, concerted activity when she led the protest against the rider, that her words and actions on July 26 and 27, although they may have been "provocative and insulting," were the result of her feeling that she was being unfairly treated and should have been ignored by a "reasonably uninvolved" supervisor. He therefore found that the preferred basis for the discharge, insubordination, was pretextual and concluded that the discharge was a violation of the Act.

BOARD DECISION

The Board rejected the ALO's conclusion, finding that the General Counsel had failed to make a prima facie showing that Rangel's participation in the protest at the beginning of June was a motivating factor in Respondent's decision to discharge her at the end of July. The Board noted certain factors which rendered improbable any causal connection between the concerted activity and the discharge: the length of time between the two events, Respondent's general receptivity to worker complaints, the success of the efforts by the Rangel group to have the rider removed, and the restraint displayed by the foreman on July 26. As a prima facie case had not been established, the Board found it unnecessary to determine whether the concerted protest constituted protected activity.

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

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:)
HANSEN FARMS,) Case Nos. 79-CE-258-SAL
) 79-CE-290-SAL
)
Respondent,)
)
and)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
Charging Party.)

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DECISION

STATEMENT OF THE CASE

KENNETH CLOKE, Administrative Law Officer:

This case was heard before me in Salinas and El Centro, California on November 13, 16, 19, 20, December 13, 1979, and January 16, 30, February 13, 14, 25, March 3, 4, 5, and 17, 1980.

The Notice of Hearing and Complaint were duly served, alleging violations of Sections 1153(a) and (c) of the Agricultural Labor Relations Act (hereinafter referred to as the Act) by Hansen Farms, (hereinafter referred to as Respondent). The complaint was originally based on two charges of discriminatory discharge, but expanded at hearing on motion by the General Counsel to include a charge of discriminatory transfer.

Respondent duly answered, admitting the allegations contained in paragraphs 1, 2, 3 and 4 of the Complaint, denying the rest, and raising as affirmative defenses, discharge for cause under an employment contract signed by the alleged discriminatees.

All parties were given full opportunity to participate in the hearing, to call and examine witnesses, examine and present documentary evidence, and argue their positions. Upon the entire record, including testimony, exhibits, observation of the demeanor of the witnesses, and careful consideration of the briefs filed by Respondent and General Counsel, I reach the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Jurisdiction;

Respondent, Hansen Farms, is a corporation engaged in growing agricultural commodities in California, and is an agricultural employer within the meaning of Section 1140.4 (c) of the Act. The United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW) as charging party, is a labor organization

within the meaning of Section 1140.4(f) of the Act. Lorenzo Solice, Tony Vasquez, and Bill Foletta are all supervisors within the meaning of Section 1140.4(j) of the Act. Leticia Rangel, Frank and Juana Gonzalez, and Socorro Ruiz Ornelas are all employees within the meaning of Section 1140.4(b) of the Act.

2. General Background:

Hansen Farms is a large agricultural corporation doing business at several locations in California, and growing, among other crops, lettuce, cabbage, beets, celery and cauliflower. It maintains several crews assigned to thinning and hoeing these crops, which involves weeding and clearing rows of varying lengths and difficulty. It is customary for the crew foreman to select a "rider" to assist those who have more difficult rows or lag behind others, permitting the foreman to inspect all the rows at once. The assistance of a rider permits workers to complete their rows earlier, take a short break, go to the bathroom or get a drink of water, and to work at a more comfortable pace. Workers are paid by the hour and do not earn more if the rider helps them. The rider might be assigned other tasks, such as clearance of weeds outside the field, was chosen from among the crew, and might vary from day to day or be selected repeatedly, at the will of the foreman.

3. Discharge of Leticia Rangel:

Leticia Rangel is in her twenties and has worked at Hansen Farms since 1975. She worked the entire season in 1975, 1976, 1977, and 1978 in the thinning and hoeing crew, and was discharged on July 27, 1979.

In the spring of 1979, the crew Foreman, Lorenzo Solice, consistently appointed Eriberto Solice (no relation) to act as rider for the thinning and hoeing crew. This was Lorenzo Solice's first year as foreman, and his first year on the thinning and hoeing crew. According to some members of the crew, particularly Leticia Rangel, her mother Maria Rangel, Juana Gonzalez, Belinda Espinosa and Irma Godinez, Eriberto Solice assisted only his own relatives, and was unequal in his favors. This was denied by the foreman, rider, and other crew members, but no one contested the existence of the disagreement.

Eriberto became a rider in March, 1979, and shortly thereafter some of the workers began to notice favoritism to his own relatives, who numbered nine or ten in a crew of over twenty. This was first called to the attention of the foreman in May, 1979, in a field near Watsonville, at about 7:30 or 8:00 in the morning. Juana Gonzalez testified she approached the foreman and asked to speak about the rider. She told him Eriberto did not help everyone equally, and spent considerable time talking to others.

On two other occasions in early June workers stated they spoke to Eriberto about improving and not discriminating, and Juana Gonzalez again spoke to Lorenzo about the problem. On June 5, 1979, an argument broke out in the crew over Eriberto's performance as a rider, and the crew stopped working. Lorenzo Solice, Tony Vasquez (Respondent's Personnel Manager), and Bill Foletta (Field Supervisor for thinning and hoeing crews), all became aware of Leticia Rangel's opposition to the rider. Two days later, Leticia, her mother Maria, Frank and Juana Gonzalez,

Irma Godinez and Belinda Espinosa met with Albert Hansen (owner of Hansen Farms) at their request, to complain about the rider. Toward the close of that meeting, Respondent's General Manager Brice Barnard at his own initiative entered the room and asked Leticia Rangel and Belinda Espinosa to identify themselves. They responded, he stated they had too many tickets for absences from work and the worst attendance record in the company, and "sounded mad". Leticia and Belinda stated they had excuses for their absences, and the meeting ended.

On several occasions thereafter Lorenzo Solice yelled at Leticia, Belinda and Irma to speed up or work faster, though they were already working fast. On July 26, 1979, in a field near King City, the crew was finishing a field with rows of diminishing length. Belinda and Leticia were working together, finished their rows and went to the bus and bathroom. On their return, Lorenzo Solice, who concluded they were stalling while other crew members took the longer rows, shouted that they were to work the two longest rows, and several crew members began laughing. When they finished the longer rows, Solice told them not to take the next rows in order of rotation, but proceed to the end of the field and take the shortest rows, of which ten were left. According to Maria Martinez, Solice stated "now you little girls come over here and take these rows." She heard him say that they should take the first rows and work back to the rest of the crew. Leticia and Belinda believed they were being assigned all ten rows, while Lorenzo stated they were only to work until the crew caught up with them. According to Leticia and Belinda some crew members had already quit, they refused to complete the last ten rows, and stated

they should not be required to do more than anyone else. Lorenzo said nothing, but gave them a warning ticket for failure to obey his instructions. Leticia refused to sign the ticket because she believed it was unfair, and told him either to use it for toilet paper or shove it up his ass, or words to that effect. All the workers then finished the last ten rows, including Leticia and Belinda.

The accounts of Leticia and Belinda are more credible here than that of Lorenzo, since it would make no sense to refuse a supervisors' work assignment, receive a warning notice, refuse to sign it, and risk discharge, if the two had not believed they were being assigned all ten rows. It is also illogical to think they were shirking their assignments in an effort to work shorter rows, and then refused the two shortest rows in preference for longer ones, particularly since the shortest row was only eight feet long, while the longest was about forty. Mr. Solice ought to have realized this as well, and if there was ambiguity in his instructions, the burden must lie with him. While he might permissibly assign ten rows to two workers, or discharge employees for refusing reasonable work assignments, he could not do either for discriminatory reasons. The warning notice is not alleged as an unfair labor practice, yet its issuance on the day prior to Ms. Rangel's discharge provides context for the following days' anger, hurt feelings, and miscommunication, and a credibility resolution affecting parties to a subsequent conversation.

The next day, the crew began working a difficult field with a heavy overgrowth of weeds and young plants which needed protection. The work was arduous, and Leticia testified her back hurt her. She had experienced recurrent back problems since 1976,

had been to a doctor in 1977 and had menstrual cramps on the day in question. She testified to the following sequence of events. At the end of a row she halted and asked Lorenzo if the next row was the last, and he replied it was not. She then stated she felt bad and was going to stop work to go lie down on the bus, which was customarily permitted if workers felt ill. He yelled "no", told her that if she went to the bus she would be fired and could go for her check that afternoon. She stated she was ill and proceeded to the bus. He followed her, yelled in a loud and angry tone that she was fired, and went to King City to call the office. She lay down in the bus, took some aspirin, and waited. Lorenzo returned in a half-hour and gave her a discharge ticket for refusing to obey him and leaving in the middle of work. She stated this was not true, and that he knew she was ill. He said maybe he would change the ticket for her, thought for a while, then asked her to sign the ticket unchanged. She refused, and he left.

According to Lorenzo, he had asked Leticia several times to do a better job weeding because she was not cutting the weeds and hitting the beet plants. She complained he was "fucking with her too much", and began to walk toward the bus. He told her she would lose her job if she went to the bus and she responded that she didn't care. He told her a second time not to go, and she didn't answer. He went to the office to tell them to get her check ready, and returned to ask her to sign the discharge ticket. She refused and said she did not want to be fired. He told her she should have thought of that before and she had been asked several times not to leave the field. For the first time she stated that she was not feeling well, and he asked why she

had not said so before or asked for permission to leave.

The factual question of whether Ms. Rangel stated she was ill before leaving the field is obviously critical in deciding whether her discharge was pretextual and based on her involvement in protected concerted activities, or was based on just cause. Of the several witnesses to this conversation, none confirmed either version in its entirety. Irma Godinez testified Lorenzo showed Leticia how to cut the weeds and told her she was not doing it right. Leticia then said she was not feeling well and was going to the bus, at which point Lorenzo yelled at her, asking if she was leaving work. She responded no, that she was not feeling well, and proceeded to the bus. Belinda Espinosa confirmed this version of the incident.

According to Maria Martinez, Lorenzo told Leticia to do a good job even if she was going to work slow, and to cut the weeds from the bottom, but not the beets. Leticia told him to "stop bitching" and started another row. Lorenzo again asked her to do a good job even if she worked slow, and Leticia responded "you bitch too much". She complained she could not do the job the way he asked, threw down the hoe and left. Lorenzo told her not to go to the bus or it would jeopardize her job, she said she didn't give a damn, and made no mention of being ill. Eriberto Solice confirmed this account. The only witness with no apparent position in the conflict between these factions was Pedro Valadez, called by Respondent. Mr. Valadez was not present the day before, confirmed Lorenzo's correction of Leticia's work, her response that she could not work that way, Lorenzo's warning that her job was in jeopardy, and Leticia's comment that she could not do the work because she was sick. He testified she was not mad, but

merely explained she could not do the work because she was ill. Since he was not present the day before, had no interest or position in the dispute concerning the rider, displayed a truthful demeanor, confirmed elements of each parties' testimony, and testified against the interest of the party who called him, I credit his version of the incident, and find the discharge of Leticia Rangel to have been without just cause and pretextual.

While Respondent may have had just cause to discharge Ms. Rangel for use of abusive language to a supervisor on July 25, 1979, and later in conversation with Tony Vasquez, these issues are not presented for decision as they were not specified as grounds for discharge. Moreover, it is obvious that tempers were heated on both sides. This was Lorenzo Solice's first year as foreman and his first experience on the thinning and hoeing crew. According to Belinda Espinosa there was a sexual element present, as Solice had commented on their figures, use of make-up, and tight-fitting pants.

Ms. Rangel's challenge to Solice's authority, her selective chastisement for having too many tickets during the meeting with Mr. Hansen, her allegation of discrimination in the assignment of work on July 26, and her discharge on July 27 after informing Mr. Solice of her illness, create a reasonable basis for her belief that she was subject to intimidation and discrimination, caused, in all likelihood, by her challenge to a new foreman's authority. While her behavior was at times provocative and insulting, there was no showing that a reasonably uninvolved supervisor could not handle her remarks without taking them personally or resorting to discharge out of personal anger. An admittedly competent worker who challenges management decisions

regarding conditions of employment may not be fired on pretext, or because her anger over discriminatory treatment resulted in an emotional outburst or a few derogatory remarks. It remains to be determined whether, as a matter of law, her activities were protected under Section 1152 of the Act.

4. Transfer of Juana and Frank Gonzalez;

Juana Gonzalez had on several occasions during the 1979 season protested the discriminatory behavior of Eriberto Solice. On June 5, 1979, a heated dispute arose between members of the crew regarding Eriberto's behavior as rider, in a field near Watsonville. Personnel Manager Tony Vasquez received a call from the foreman complaining that the argument could erupt into violence, and drove out to the field. Mr. Vasquez listened to the workers involved, and stated company policy was to permit foremen to choose their own riders. According to Juana Gonzalez, Vasquez stated the workers who opposed Eriberto were causing problems in the crew. Vasquez denied making this or any similar statements. He testified he called Mr. Bill Foletta, Field Supervisor for the thinning and hoeing crews, who came to the field and transferred Juana and her husband Frank Gonzalez to a different crew. According to Juana Gonzalez and Leticia Rangel, Foletta referred to her as a "leader".

While it is clear that Juana Gonzalez was transferred as a direct result of having engaged in protected concerted activities, Respondent urges there were legitimate and substantial business justifications for their transfer. Juana Gonzalez had become embroiled in a longstanding, bitter, and at times physical feud with Maria Martinez. The two had recently traded insults and blows, and Juana had requested that Foletta transfer her to a

different crew on several occasions, both the year before and earlier that season. Mr. Foletta testified he felt violence would be minimized by splitting these families up, and since there were six members of the Martinez family and only two in the Gonzalez family, he decided to transfer Juana and Frank Gonzalez.

If Respondent determined to transfer the Gonzalez family because they exercised a statutory right to engage in concerted activity, the transfer was discriminatory and an unfair labor practice. Yet several factors indicate Respondent's motive was permissible, and that its primary intention was to prevent future violence and disruption. Among these are its knowledge of the previous history of physical and mental combat between Juana Gonzalez and Maria Martinez, its unwillingness to intervene in resolving the rider problem, the relative size of the Gonzalez and Martinez families, and the previous requests for transfer made to Mr. Foletta by Juana Gonzalez.

Moreover, there was no evidence of discriminatory transfer, as to a crew receiving lower pay, facing harsher working conditions, or differing in any material way from the crew of Lorenzo Solice. For these reasons, I find that the transfer of Juana and Frank Gonzalez was not discriminatory or motivated solely by their participation in protected concerted activities, but was permissibly motivated by a desire to prevent future conflict between the Gonzalez and Martinez family. I therefore direct that paragraph seven of the Complaint be dismissed.

5. Discharge of Socorro Ruiz Ornelas;

Socorro Ruiz Ornelas was hired on March 20, 1979, after signing a "Conditions of Employment" form which contained a box

followed by the statement, in Spanish, "Tengo cierecho de trabajar en los Estados Unidos". On the english language form this phrase is rendered "I am legally entitled to work in the United States." The employee testified, however, that he understood the form to ask whether he had the "right" to work in the U.S. Since he believed everyone had the right to work, he answered in the affirmative.

Respondent had a long-standing policy of refusing employment to undocumented workers, and when, on August 16, 1979, Mr. Ornelas arrived late after shifting fields, and explained to the foreman that he was hiding from the Border Patrol, he was dismissed. General Counsel did not argue that undocumented workers may not be refused hire in agriculture, but attempted to prove discriminatory enforcement. Respondent satisfactorily demonstrated, however, that known offers of employment to undocumented workers were a rare occurrence, and not part of a pattern or practice sufficient to raise an inference of anti-union discrimination. While Mr. Ornelas had represented the union on an earlier occasion, and while the company may have had knowledge of his union affiliation, its long-standing policy of refusing employment to individuals without legal papers, when that fact was brought to its attention by an applicant's answer on the "Conditions of Employment" form or otherwise, was amply demonstrated.

While it had previously hired Mr. Ornelas on an earlier return from deportation, he had returned in the company

of the brother-in-law of one of Respondent's supervisors, who received a written reprimand for violating company policy.

I therefore find that the discharge of Socorro Ruiz Ornelas was based on cause, rather than pretext, was not a result of his support for or activities on behalf of the union, and direct that paragraph six of the Complaint be dismissed.

CONCLUSIONS OF LAW

The central legal question posed by Respondent's discharge of Leticia Rangel is whether her activities were protected concerted activity within the meaning of Section 1152 of the Act, which provides:

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, and shall also have the right to refrain from any or all of 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 subdivision (c) of Section 1153.

In addition, Sections 1153 (a) and (c) provide:

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

(c) By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.

The Supreme Court has held it an unlawful employment practice for an employer to discourage concerted activity:

Under Section 8(a)(3), it is unlawful for an employer by discrimination in terms of employment to discourage membership in any labor organization which includes discouraging participation in concerted activities... NLRB v. Erie Resistor Corp., 373 U.S. 221, 233 (1963) citing NLRB v. Wheeling Pipe Line, Inc., 229 F.2d 391, 395 (8th Cir. 1956); Republic Steel Corp. v. NLRB, 114 F.2d 820 (3d Cir. 1910).

Concerted activities are protected even in the absence of a union, or support from its leadership or membership. The broad language of Section 7 of the NLRA declares that employees shall have the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. Section 157 (1970).

Section 7 rights have been held to include, as forms of concerted activity, the right of self-organization, including the right to form, join or assist a labor organization; the right to bargain collectively through a representative freely chosen by the employees; the right to engage in other concerted activities for collective bargaining or for mutual aid or protection; and the right to refrain from concerted activity, to the extent that lawful union security agreements may be enforced within a given state.

The phrase "concerted activities" has been interpreted broadly, making it unnecessary to show that employees constituted a majority, see, e.g., R. Cortner, The Wagner Act Cases (1964); Olin Industries, Inc., 86 NLRB 203 (1949); Agar Packing and Provision Corp., 81 NLRB 1262 (1949), or that they were engaging in concerted activity on behalf of a labor union. See, e.g.,

NLRB v. Kennametal, Inc., 182 F.2d 817 (3d Cir. 1950); NLRB v. Phoenix Mutual Life Ins. Co., 167 F.2d 983 (7th Cir. 1948); NLRB v. Tovrea Packing Co., 111 F.2d 626 (9th Cir. 1940); Morristown Knitting Mills, 80 NLRB 731 (1948).

"Concerted activity" simply means acting together or collectively, and generally means that two or more employees must act in concert, and not individually. See, e.g., NLRB v. Office Towel Supply Co., 201 F.2d 838 (2d Cir. 1953); cf. NLRB v. Texas Natural Gasoline Corp., 253 F.2d 322 (5th Cir. 1958).

On the other hand, a conversation has been held sufficient to meet the definition of "concerted activity", if it has some relation to group action in the interests of employees, Mushroom Transportation Co. v. NLRB, 330 F.2d 683, 685 (3d Cir. 1964), and the phrase has been held to include expressions of solidarity or "common cause" with workers employed elsewhere, in the hope of some future reciprocation or support. NLRB v. Peter Cailler Swiss Chocolate Co., 130 F.2d 503 (2d Cir. 1942). Even a "miniscule controversy" may be protected as concerted activity. St. Regis Paper Co., 192 NLRB 661 (1971).

In NLRB v. Washington Aluminum Co., 370 U.S. 9 (1962), a group of employees, after some dissension, left work due to extremely cold weather and the failure of a company furnace, and were discharged. Justice Black held, for the Supreme Court, that employees do not lose their Section 7 right to engage in concerted activity merely because they fail to present a specific demand to their employer to remedy the condition. The employees in this case were not represented by a union, had to speak for themselves, and the employer was aware of the circumstances which gave rise to the work stoppage.

Perhaps more importantly, Section 2(9) of the NLRA defines a labor dispute as including "any controversy concerning terms, tenure or conditions of employment..." 29 U.S.C. Section 152(9) (1970) regardless of whether it is wise or reasonable on the part of either party. In NLRB v. Mackay Radio and Telegraph, 304 U.S. 333 (1938), the Supreme Court declared such considerations outside the scope of national labor policy:

The wisdom or unwisdom of men, their justification or lack of it, in attributing to respondent an unreasonable or arbitrary attitude in connection with the negotiation, cannot determine whether, when they struck, they did so as a consequence of or in connection with a current dispute. *Id.* at 344. See also, Bob Henry Dodge, Inc., 203 NLRB No. 78 (1973).

The definitional limits of concerted activity have been stretched broadly to include a wide variety of protests. Strikes and picketing to promote integrated employment, even by a minority of workers, have been held to be protected, since the conduct is aimed at altering a term or condition of employment. See also, United Packinghouse Workers Int'l. Union v. NLRB, 416 F.2d 1126 (D.C. Cir. 1969); Gould, "Black Power in the Unions: The Impact Upon Collective Bargaining Relationships", 79 *Yale L.J.* 46 (1969). The NLRB has held the filing of a complaint under the Occupational Safety and Health Act, even though by a single individual, to be concerted activity, and discharge on that ground an unfair labor practice. Alleluia Cushion Co., Inc., 221 NLRB 162 (1975). See also, Jim Causley Pontiac v. NLRB, 104 LRRM 2190 (1980).

In S & F Growers, 4 ALRB No. 58, an employee intervened on behalf of his brother in a dispute with his supervisor over the level of lemons that constituted a full bin, and was discharged. The ALRB held that because the subject matter had been an issue

between labor and management on prior occasions and concerned a "term or condition" of employment, the dischargee had acted in contemplation of group activity and was protected. See also, Sam Andrews' & Sons, 5 ALRB No. 68.

Respondent argues in its Brief, that "there must be a casual relationship between the alleged activity and the exercise of employee rights." Brief, at p. 46, citing Trimble & Sons, 3 ALRB No. 89 (1977). Trimble held there was "insufficient evidence" to conclude that Section 1152 rights were interfered with, while in the present case, such evidence exists in the pretextual decision to discharge Ms. Rangel.

Protest of discriminatory treatment, even though at the hands of a non-supervisory employee, concerned a "term or condition" of employment and was therefore protected concerted activity. Since Leticia Rangel's discharge was only pretextually grounded in cause and originated in an authority conflict with her supervisor which began with concerted activity, it is clear that her discharge was in violation of the Act. Under Mackay Radio, supra, she was not required to be wise or justified, either in the object or the methods of her protest. While the use of profanity and refusal to obey work orders are not protected activity under labor law, these were not proven to have been actual grounds for discharge, and were themselves a result of the employee's frustration at having been discriminatorily treated. Her actions, considered in light of the record as a whole, cannot be found so unreasonable as to deny her the protection of the Act.

Respondent is correct however, in its' assertion that General Counsel failed to make out a violation of Section 1153(c) of the Act, since the adverse impact on other employees was comparatively slight, and discriminatory animus was not shown.

I therefore issue the following Order and Notice.

ORDER

Pursuant to Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Hansen Farms, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee with regard to hire, tenure or any terms or conditions of employment because of that employee's involvement in concerted activities.

(b) In any like manner interfering with, restraining or coercing employees exercising their rights guaranteed under Labor Code Section 1152.

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

(a) Immediately offer Leticia Rangel reinstatement to her former position without prejudice to her seniority or other rights and privileges.

(b) Make Leticia Rangel whole for any loss of pay and other economic losses, plus interest thereon at a rate of seven percent per annum, she has suffered as a result of her discharge by Respondent.

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

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

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

(f) Mail copies of the attached Notice, in all appropriate languages, to all employees employed in hoeing and thinning crews in Salinas at any time during the payroll periods from March, 1979 to July, 1979.

(g) Arrange for a Board agent or a representative of Respondent to distribute and read the attached Notice in all appropriate languages to its Salinas hoeing and thinning crew 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, of the steps it has taken to comply herewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

DATED: July 16, 1980



KENNETH CLOKE
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing was held at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of workers to discuss and attempt to change their working conditions. The Board has told us to send out and post this Notice.

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

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

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

Because this is true we promise that:

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

Especially:

WE WILL NOT discharge or otherwise discriminate against any worker because of his or her union activity or union sympathy.

WE WILL offer Leticia Rangel her old job back and will reimburse any pay or other money she lost because we discharged her,

WE WILL NOT threaten employees with loss of employment benefits or with other changes in wages, hours, or working conditions because of their joining or supporting a union or exercising any of the rights set forth in this Notice.

Dated:

HANSEN FARMS

By: _____
Representative Title

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

DO NOT REMOVE OR MUTILATE.