Santa Maria, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BILL ADAM FARMS,	)	
	)	
Respondent,	)	Case No. 80-CE-47-OX(SM]
	)	
and	)	
	)	
RAMON VEGA,	)	7 ALRB No. 46
	)	
Charging Party,	)	
	)	

DECISION AND ORDER

On February 18, 1981, Administrative Law Officer (ALO) Joel Gomberg issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions with a supporting brief, and General Counsel timely filed a reply brief.

Pursuant to the provisions of Labor Code section 1146,[1/] the Agricultural Labor Relations Board (ALRB or 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 and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO, as modified herein, and to adopt his recommended Order, as modified herein.

Respondent grows and harvests broccoli, employing three harvest crews of five or six workers each. The broccoli season lasts about ten months, from February to mid-December. Ramon Vega,

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[1/] All Code citations herein will be to the Labor Code unless otherwise specified.

the Charging Party, worked for Respondent as a broccoli cutter from 1975 until September 24, 1980, the date of his discharge. He worked under the direction of foreman Rogelio Uvalle, who supervised all three broccoli crews. The pay for the broccoli crews is based on the total amount of broccoli cut, and the money is divided equally among the crew members. Some of the workers had complained to Uvalle that new workers were too slow and did not cut enough broccoli, thereby lowering the wages of other workers.

In mid-September of 1980, Uvalle instituted a written record to help him keep track of workers who were leaving broccoli behind. Uvalle testified that he decided to institute the new record so that he would not have to rely on his memory. He did not tell the crew members about the record immediately, but used it for a week and a half so that he would have something to show the workers when he notified them about his new system.

On September 24, 1980, Uvalle approached the crew in which Vega was working and explained the new written record to each worker individually, Uvalle first spoke with employee Salvador Mendoza and showed Mendoza where his name appeared in the record. Uvalle next approached Vega and told him that his name appeared twice in the new record. Vega said that he had never seen the record and asked several questions. He asked if the rancher made the rules, and Uvalle answered that the record was his idea and was just a record, not a law. Vega asked what was going to happen to the people whose names appeared in the record, and Uvalle answered that they would be given time to

improve their performance. When Vega questioned what would happen to the workers if they continually left broccoli behind, Uvalle responded that if the employees didn't teach themselves to work, it was because they didn't want to teach themselves, and they would be fired. Vega became upset and said that he had worked at other ranches and had never been told that his work wasn't good. He suggested that Uvalle ask Bonita Packing about his work. Uvalle said he didn't have to go to Bonita Packing, since it was Vega's work with Respondent that counted. Vega said that everything that happened was convenient for the rancher, and that the pay system utilized by Respondent was unfair.

While Vega was questioning Uvalle about the new record system, the other employees in the crew stopped working and listened to the conversation. Two of those employees testified at the hearing, each recalling a portion of the conversation. No other employee spoke to Uvalle about the written record on September 24, and none of the other workers participated in the discussion between Uvalle and Vega. Vega testified that he did not talk to the other employees about what he was going to say to Uvalle. The crew had no regular leader or representative.

After talking to Vega, Uvalle continued to tell the other workers about the new record. However, no further group activity occurred during these individual conversations. At the end of the day, Uvalle approached Vega, told him he would have no more work with Respondent, and handed him a note which read:

> Mr. Ramon Vega on September 24, 1980 is been fired for not excepting (sic) what I tell him about our working rules and arguing with me for no reason or cause.

On the back of the note, the following notations appear in Spanish:

1. Arguing that I cannot fire the ones that have seniority.
2. That they do not pay well.
3. That everything is for the rancher.
4. That he has worked in all places and he has not been told that his work is not good.
5. That if having a union I cannot put down laws.
6. That Bonita Packing Co, should be questioned, that they will say what kind of a worker I was.
7. He does not want to accept me as supervisor of the ranch.

Uvalle asked Vega whether the note was sufficient or whether he wanted a letter from Bill Adam himself, and Vega said that he wanted a letter. When Vega went to Respondent's office to pick up his last check, he received the following letter, signed by Bill Adam:

> Ramon Vega was terminated- from his employment as a broccoli cutter under the supervision of Rogelio Uvalle on September 25, 1980[2/] Mr. Uvalle recommended this termination because Mr. Vega would not comply and cooperate with his rules and regulations, and was involving other members of the broccoli crew which consists of 15 to 20 employees.[3/]

On September 25, the day after Vega was fired, Uvalle called a meeting of the broccoli crew and explained more about the new record. Uvalle testified that he called the meeting so that the workers, who all knew that Vega had been fired, would not think that Uvalle would use the record to fire them.

At the hearing, Respondent attempted to show that Vega was fired because he left broccoli behind and was insubordinate.

[2/]Vega was actually fired on September 24.

[3/]Edith Camp, who provides secretarial services to Bill Adam, testified that she drafted the letter based on information she received from Bill Adam and that the letter reflects the substance of what Adam told her.

The ALO, however, found that Vega would not have been discharged but for his September 24 complaints to Uvalle about the written record and other working conditions. The ALO based this finding on the timing of the discharge and the fact that Uvalle's own record indicated that other workers left broccoli behind more often than Vega but were not discharged. The ALO also found that Respondent failed to substantiate its claim that Vega had been insubordinate. Respondent did not file exceptions to the ALO's finding that Vega was discharged because of his work-related complaints to Uvalle on September 24, and not because of his work performance or insubordination. We therefore uphold the ALO's finding.

Respondent's exceptions address only the ALO's finding that Vega's actions on September 24 were "concerted activity" as that term is defined in section 1152 of the Act, and his conclusion that Respondent's discharge of Vega because of such concerted activity violated section 1153 (a) of the Act. The ALO based his conclusion on the NLRB's decision in Alleluia Cushion Co., Inc. (1975) 221 NLRB 999 [91 LRRM 1131] and our adoption of the Alleluia Cushion rationale and approach in Foster Poultry Farms (Mar. 19, 1980) 6 ALRB No. 15.[4/] In those cases, the NLRB and this Board held that an individual's actions may, under certain circumstances, be concerted in nature and therefore protected. Respondent excepts to the ALO's application of the Alleluia Cushion doctrine. As we find that the events of September 24 did not involve merely the

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[4/] For a further discussion of Alleluia Cushion and related cases, see B & B Farms (Nov. 3, 1981) 7 ALRB No. 38.

actions of one individual, but rather the concerted activity of Vega and the rest of the broccoli crew, we find it unnecessary to review the ALO's application of the Alleluia Cushion doctrine.

When Vega questioned Uvalle about the new record, the other employees in the crew stopped working in order to listen to the conversation. Vega spoke of concerns shared by all the workers: seniority, wages and reasons for discharge. When the employees stopped working to listen to Vega's questions, the entire crew was tacitly engaged in protected concerted activity. None of them made any statement to disassociate himself from Vega's complaints about working conditions. Respondent's awareness of the concerted nature of Vega's actions is apparent in the letter that Bill Adam wrote to Vega, in which Adam indicates that part of the reason for the discharge was that Vega "... was involving other members of the broccoli crew which consists of 15 to 20 employees." We find that all of the other members of the broccoli crew were involved in Vega's action, and that they were made aware of the consequences of engaging in such activity for they knew that Vega was fired the same day. The day after Vega's discharge, Uvalle called a meeting of the remaining crew members to further discuss the written record and to assure the workers that he would not use the record as a basis for firing them. Had Respondent believed, as it argued in its exceptions, that none of the other workers agreed with Vega or shared any of his expressed concerns about working conditions, there would have been no need to call the meeting.

In order to establish that an employer violated section

1153 (a) of the Act by discharging or otherwise discriminating against an employee, the General Counsel must prove by a preponderance of the evidence that the employer knew, or at least believed, that the employee had engaged in protected concerted activity, and discharged or otherwise discriminated against the employee for that reason. Lawrence Scarrone (June 17, 1981) 7 ALRB No. 13. On the basis of the record herein, we find that Vega and other members of the broccoli crew engaged in protected concerted activity on September 24 when Vega acted as a voluntary spokesperson and voiced his complaints to Uvalle about the new written record and other working conditions, while the other crew members stopped working and listened. Moreover, we find that Respondent was aware of Vega's activity and the concerted nature of that activity, and discharged him because of that activity, in violation of section 1153(a) of the Act.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Bill Adam Farms, its officers, agents, successors, and assigns shall":

1. Cease and desist from:

a. Discharging or otherwise discriminating against any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in any concerted activity protected by section 1152 of the Act.

b. In any like or related manner interfering with,

restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code section 1152.

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

a. Immediately offer to Ramon Vega full reinstatement to his former job or equivalent employment, without prejudice to his seniority or other rights or privileges.

b. Make whole Ramon Vega for any loss of pay and other economic losses he has suffered as a result of his discharge, reimbursement to be made according to the formula stated in J & L Farms (Aug. 12, 1980) 6 ALRB No. 43, plus interest thereon at a rate of seven percent per annum.

c. Preserve and, upon request, make available to this Board and its agents, for examination, photocopying and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the back-pay period and the amount of backpay due under the terms of this Order.

d. Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

e. 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 during the period from September 24, 1980, until the date on which

the said Notice is mailed.

f. Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its property, the period and places of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

g. Arrange for a representative of Respondent of a Board agent to distribute and read the attached Notice, in all appropriate languages, to its employees on company time and property at time(s) and place (s) 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 in order to compensate them for time lost at this reading and during the question-and-answer period.

h. Notify the Regional Director in writing, within 30 days after the issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically

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

Dated: December 21, 1981

JOHN P. McCARTHY, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Oxnard Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by discharging employee Ramon Vega on September 24, 1980, because he complained to his foreman, in the presence of other employees, about a new written record system and other working conditions. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that

The Agricultural Labor Relations Act is a law that gives you and all farmworkers these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer to obtain a contract covering your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help or protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT interfere with, or restrain or coerce you in the exercise of your right to act together with other workers to help and protect one another.

WE WILL NOT hereafter discharge, lay off, or in any way discriminate against any employee for acting together with any other worker(s) to help or protect one another or to protest about, or to seek to improve, their working conditions.

WE WILL reinstate Ramon Vega to his former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse him for any pay or other money he has lost because of his discharge on or about September 24, 1980.

Dated BILL ADAM FARMS

By: _____
Representative Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. If you have a question about your rights as farmworkers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. Our office is located at 528 South "A" Street, Oxnard, California. Our telephone number is (805) 486-4475.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Bill Adam Farms
(UFW)

7 ALRB No. 46
Case No. 80-CE-47-OX(SM)

ALO DECISION

The ALO concluded that the Employer violated section 1153 (a) of the Act by discharging an employee because he complained to his foreman about a new system for keeping track of the employees' work performance, and about other working conditions. The ALO rejected the Employer's defense that the employee was fired because of his insubordination and poor work performance, since there was insufficient evidence of insubordination, and other employees with worse work performance records were not discharged. In addition, the Employer, in a letter to the employee, indicated that part of the reason for his discharge was that he had involved other employees in his complaints. The ALO found that the employee's actions constituted concerted activity protected by section 1152 of the Act, citing Alleluia Cushion Co., Inc. (1975) 221 NLRB 999 [91 LRRM 1131] and ALRB cases involving concerted actions of individual employees, and recommended reinstatement with backpay.

BOARD DECISION

The Board adopted the ALO's findings, conclusions and recommendations, but did not rely on Alleluia Cushion and related cases. The Board found that the employee was engaged in protected concerted activity when the other members of the crew stepped working and listened when the employee complained to their foreman about the new performance records and other working conditions of concern to all the employees, i.e., seniority, wages and reasons for discharge. None of the other workers made any statement to disassociate himself from the employee's complaints about working conditions. The Employer's awareness of the concerted nature of the action was indicated in the discharge letter he gave the employee and in the fact that, the day after the discharge, the foreman called a meeting of the remaining crew members to assure them that they would not be fired because of the new work performance records. The Board ordered reinstatement, backpay, and dissemination of a remedial Notice to Employees.

* * *

STATE OF CALIFORNIA
BEFORE THE
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
BILL ADAM FAR-MS	)	
Respondent	)	Case No. 80-CE-47-OX(SM)
	)	
and	)	
	)	
RAMON VEGA	)	
	)	
Charging Party	)	
	)	

APPEARANCES:

Sylvia Lopez, Oxnard, for the
General Counsel

Richard S. Quandt, Guadalupe,
for the Respondent

DECISION OF
ADMINISTRATIVE LAW OFFICER

STATEMENT OF THE CASE

Joel Gomberg, Administrative Law Officer: This matter was heard by me on December 9 and 10, 1980,[1/] in Santa Maria, California, It arises cut of a charge filed by Ramon Vega on September 26, in which he claimed that he was discharged by Bill

1/ All dates refer to 1980, unless otherwise seated.

Adam Farms (hereafter "Respondent" or the "Company") because he questioned his foreman about the significance of certain changes in record-keeping. On November 7, a complaint was issued by the General Counsel alleging that the discharge resulted from Vega's protected concerted activity.

All parties were given a full opportunity to participate in the hearing. The Charging Party chose not to intervene. The General Counsel and Respondent waived oral argument, but filed post-hearing briefs pursuant to Section 20278 of the Board's Regulations.

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

FINDINGS OF FACT

I. Jurisdiction.

Respondent admitted in its answer that it is an agricultural employer within the meaning of §1140,4(c) of the Act, and I so find.

II. The Alleged Unfair Labor Practice

The Complaint alleges that Respondent discharged Ramon Vega for engaging in protected concerted activity, in violation of §1153(a) of the Agricultural Labor Relations Act (hereafter the "Act").[2/] Respondent admits that it discharged Vega, but contends that he was fired for cause. Respondent further argues that Vega

[2/] Cal. Labor Code §51140, et sec. All statutory references are to the Labor Code, unless otherwise stated.

did not engage in any concerted activity and that his conduct is therefore not protected by the Act,

Ramon Vega began working for Respondent as a broccoli cutter in 1975, He worked the full nine to 10-month season each year until his discharge in 1980, Throughout his employment Vega was supervised by foreman Rogelio Uvalle, Uvalle was responsible for Respondent's three broccoli crews, Each crew was made up of about six employees. The record is silent concerning the relationship between the two men before 1979. In November of that year, they exchanged some harsh words when Uvalle criticized Vega for working too slowly. No disciplinary action was taken by Uvalle,

In 1980, according to Uvalle, Vega failed on a significant number of occasions to cut all the ripe broccoli in his assigned row, Vega admitted that he occasionally left broccoli behind, primarily because the tractor which set the pace for the workers was moving too quickly. Two other members of the six-man crew in which Vega worked testified that they also left broccoli en occasion. They testified that Vega was a good, experienced worker, Uvalle judged Vega to be an average worker.

In mid-September, Uvalle instituted a written record to enable him to keep track of which, workers were leaving broccoli behind or committing other work infractions, Uvalle was concerned because the three broccoli crews had a large proportion of inexperienced workers who were not doing a good job. Me had received complaints from some of the more experienced workers because their earnings were tied to the total output of the crew, which was then

divided equally among its members.

Although Uvalle began using the new record on September 13, he did not inform the workers of its existence until September 24, because he wanted to be able to show them the record and explain how it would be used, Uvalle went to each broccoli cutter after lunch on September 24 and explained the new record-keeping system. Uvalle testified that he told the workers that he was keening a written record so that he would not have to rely on his memory and so that he would be able to help those workers who 'were having problems to teach themselves to do better. He emphasized that he was not keeping the record in order to fire workers.

When Uvalle began to explain the record to Vega, he asked a number of questions about its significance. Initially, Vega asked whether the new rules came from Uvalle or Bill Adam. Uvalle told Vega that the new system was his own idea. Vega wanted to know what would happen to people like himself who left broccoli behind, Uvalle said that if they did not improve they would be fired, Vega then asked if seniority would provide any protection. Uvalle replied that if a worker were continually leaving broccoli behind he would be fired, regardless of seniority. Vega asked what would happen if there were a union. Uvalle told him. that the union would then participate in determining the rules. Vega complained about the pay system, He asked again what would, happen to the people listed on the record as having left broccoli behind, Uvalle repeated that if they did not improve they would be fired.

During the conversation between Uvalle and Vega the other

five members of the crew stood up and listened. Two of the other workers testified as to what they heard. Each remembered only cart of the conversation. No other employees took part in the discussion between Uvalle and Vega, Vega had not discussed the issue with any workers before his argument with Uvalle, The crew had no designated spokesman and no history of presenting formal grievances to the foreman.

After talking to Vega, Uvalle continued going from, worker to worker to explain the new record, Vega went back to work. Later, Uvalle decided that he had a problem, with Vega and that Vega should be fired. After he tried unsuccessfully to reach Bill Adam to discuss the problem, Uvalle went home and asked his wife, who can read and write English, to write out a termination notice for Vega. She made two handwritten copies. Uvalle gave one copy to Vega and kept the other. He wrote down some of the factors in his decision to fire Vega on the reverse of the copy he kept (Resp, Exh. 2). Uvalle returned to the fields late in the afternoon and told Vega that he was firing him for arguing and leaving broccoli behind. Vega testified that Uvalle said nothing about his work performance when he was fired. Uvalle asked Vega if the written notice was sufficient, Vega said that he wanted a letter from Bill Adam. Uvalle said that Vega would get such a letter when he picked up his final check,

Uvalle called together the members of all three crews the next day to reassure them that they would, not be fired. He knew that the workers were aware of Vega's firing, so he wanted them to

know that the record was not merely a device to get rid of them. Two of the workers testified that Uvalle told the group that he had no power to fire. Uvalle denied making such a statement.

On October 2, Vega was given a letter by Edna Camp, Bill Adam's bookkeeper. She typed it en instructions from Adam. While the exact phrasing of the letter was her own, Camp testified that Adam told her what to write and that the letter accurately reflected his instructions. The letter, in its entirety, states:

> Ramon Vega was terminated from his employment as a broccoli cutter under the supervision of Rogalio Uvalle on September 25, 19 SO. Mr. Uvalle recommended this termination because Mr. Vega would not comply and cooperate with his rules and regulations, and was involving other members of the broccoli crew which consists of 15 to 20 employees, [G.C. Exh. 5.]

DISCUSSION, ANALYSIS, AND CONCLUSIONS

The General Counsel contends that Vega was fired for questioning Uvalle's new record-keeping system, and for complaining about the manner in which the record would be used, as well as registering dissatisfaction about the pay formula. The General Counsel further argues that these actions constituted "concerted activities for. . . mutual aid or protection" within the meaning of §1152 of the Act. A discharge for taking part in such protected activities ordinarily constitutes a violation of §1153(a) Of the Act.[3/] Respondent asserts that Vega was fired for

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[3/] Section 1153 of the Act provides that "it shall be an unfair labor practice for an agricultural employer . . . (a) to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152,"

insubordination and poor work. Even if Vega's discharge resulted from his work-related complaints, Respondent maintains that Vega acted alone, and that, as a matter of law, his actions were not "concerted" in nature.

I have little difficulty in determining that Vega would not have been discharged taut for his discussion with Uvalle en September 24. The timing of the discharge makes it apparent that Uvalle's reliance on Vega's work performance as a partial basis for the firing is pretextual. Uvalle repeatedly testified that the work record was not being instituted as a means to fire workers. He called a special meeting of the employees the day after he fired Vega to make the point again. If Uvalle had intended to fire Vega for poor work, there would have been no reason for him to explain the new record to Vega, Besides, Vega had been cited only ones for leaving broccoli behind during the period the record memorializes. Several other workers had more citations but were not discharged. At worst, Vega was an average worker. Even if Vega's work record played some part in his discharge, it is quite clear that his dispute with Uvalle was the precipitating and primary factor.

There is little in the record to support Respondent's characterization of Vega's activities as insubordination. There is no evidence that Vega was disrespectful of Uvalle, that he used profanity, that he manifested disloyalty to his employer, or that he acted in a disorderly manner. He asked certain work-related questions of his supervisor. While the discussion turned into an argument, it was not an especially contentious one. It lasted for

a few minutes and then the crew, including Vega, returned to work. It is true that Vega questioned Uvalle about the source of the idea for the new record. Despite Uvalle's firm insistence that he had authority to fire, I credit the two employee witnesses who testified that Uvalle told then that he had no such authority. The letter from Bill Adam to Vega notes that Vega had recommended his discharge. In this context I find that it was not insubordinate of Vega to question Uvalle about the source of the record. There is no suggestion that Vega disputed Uvalle's explanation. Nothing in Uvalle's account of his discussion with Vega supports his contention that Vega did not accept him as a supervisor. Two of the written reasons noted by Uvalle at the time on the discharge give a good indication of his state of mind. Uvalle's notes indicate that he fired Vega because he said that: "they [the Company] do not pay well" and that "if having a union I cannot put down laws" (Resp. Exh. 2 [translation]). I conclude that Vega was discharged for making work-related complaints to Uvalle.

Respondent's discharge of Vega constitutes an unfair labor practice only if Vega's actions fall within the definition of "concerted activity," Despite nearly a half century of NLRB case law on the issue of when a single employee's actions are considered to be concerted, the question is still subject to considerable dispute.

The phrase "concerted activities" in §1152 of the Act is taken from its analog in the NLRA, Section 7, which in turn was carried over from the purpose clause of the Norris-LaGuardia Act.

The Morris-LaGuardia Act is primarily an anti-injunction statute, designed to prevent employers from using common law and federal anti-trust conspiracy doctrines in order to have union activities enjoined. It is not at all clear that Congress, in enacting the NLRA, a much broader employee protection measure, intended to exclude the activity of employees acting alone from its protections, While some early decisions under the NLRA, eschewing analysis, held conduct engaged in by two employees always to be concerted and the same conduct, by a single employee always to be unprotected, such a highly mechanistic approach has been discarded, for the rest part, as being too simplistic.

More recently, the NLRB has held that a complaint made to an employer by a single employee is protected under Section 7 as long as the matters complained of affect ether employees as all. As the court put it in N.L.R.B. v. Sencore, Inc., 558 F.2d 432, 424 (8th Cir. 1977), "[t]he requirement of concerted-ness relates to the end, not the means,"

The current NLRB position on the issue of when action by one employee will be deemed to be concerted, and therefore protected, is set out in Alleluia Cushion Co., 221 NLRB 999, 91 LRRM 1131 (1975), where it was held that an employee who complained about alleged safety .violations to his employer and a state OSHA, was engaged in protected concerted activity, even though there as no evidence that the complaining employee represented other employees or even that other employees were concerned about the issue. The NLRB held that:

> [t]he absence of any outward manifestation of support for his efforts is not . . . sufficient to establish that Respondent's employees did not share [the charging party's] interest in safety or that they did not support his con-plaints regarding the safety violations. . . . [W]here an employee speaks up and seeks to enforce statutory provisions relating to occupational safety designed for the benefit of all employees, in the absence of any evidence that fellow employees disavow such representation, we will find an implied consent thereto, and deem such activity to be concerted, [221 NLRB at 1000.]

The NLRB has extended Alleluia's presumption of implied consent beyond the health and safety arena, despite its nixed reception in the federal courts. The doctrine will apply wherever it is established that the complaint encompassed the well-being of fellow employees. See, e.g. Dawson Cabnet Co., 223 NLRB 290, 96 LRRM 1373, enforcement denied, 566 F.2d 1079 (8th Cir. 1977) (a female employee's individual refusal to perform a certain job unless she was paid the same as male employees doing the same job); Air Surrey Corp., 229 NLRB 1064, 95 LRRM 1212, enforcement denied, 601 F.2d 256 (6th Cir, 1979) (employee's individual inquiry at employer's bank to determine whether employer had sufficient funds to cover payroll); Self Cycle & Marine Distributor Co., 237 NLRB 75, 98 LRRM 1517 (1978) (employee's pursuit of an unemployment compensation claim); Hansen Chevrolet, 237 NLRB 534, 99 LRRM 1066 (1978) (an individual request for a pay raise) ; Krispy Kreme Doughnut Crop., 248 NLRB No. 135, 102 LRRM 1492 (1979) (expressed intention of filing a workers compensation claim). The Board has stated that "receiving payment for one's labor . . . is on par with the concern for safe

working conditions," Air Surrey Corp., supra, 95 LRRM at 1212, The ALRB has adopted the Alleluia rationale and approach in making determinations about the concerted nature of the actions of individual employees. In Foster Poultry Farms_, 6 ALRB No, 15 (1980), the Board, citing Alleluia, stated that "[a]n individual's actions are protected, and concerted in nature, if they relate to conditions of employment that are matters of mutual concern to all affected employees." 6 ALRB No. 15, at p, 5. See also Miranda Mushroom Farm. Inc., 6 ALRB No. 22 (1980).

Turning to the facts of this case, it is clear that Vega was acting on his own in raising questions about the significance of the new record being kept by Uvalle, Because the existence of the new record had not previously been made known to the employees, there was obviously no opportunity for Vega to have discussed the issue with anybody else before questioning Uvalle. As the record indicates, much of Vega's discussion with Uvalle consisted of questions concerning the new record and its significance, rather than formalized complaints. Such an information gathering process is obviously a prerequisite to more organized concerted activities.

But, while Vega spoke on his own, the matters which he raised with Uvalle--grounds for discharge, the effect of unionization, the speed of the work, and the pay system—affected all of the other broccoli cutters. Most of his questions were general in scope, tone, and phrasing, and were not directed toward Vega's particular situation. The concerns that Vega brought to Uvalle's attention were far from the merely personal or selfish ones which

the NLRB has found not to be concerted in nature. In Hansen Chevrolet, supra, an employee fired for seeking a pay raise was found to be engaging in concerted activity, absent any evidence that other employees supported his action, because the only way his pay could be changed would be to chance the pay of all the other employees. Here, Vega was similarly questioning policies which applied equally to all the broccoli cutters. Because other members of his crew heard Vega's discussion with Uvalle, and there is no evidence that they disavowed his actions, Alleluia's doctrine of implied consent applies. All concerted activity must have its genesis in the mind of a single individual. An employer who nips more formalized concerted activity in the bud by discharging an employee seeking information about matters of mutual concern to a number of employees interferes with, restrains, and coerces employees in the exercise of their rights under §1152 of the Act just as much as an employer who fires the leaders of an organized walk-out.

That the Respondent understood the potential implications of Vega's activities is clearly expressed in Bill Adam's letter to Vega, 'The letter notes that Vega was fired because he "was involving other members of the broccoli crew. . ." (G.C, Exh, 5, emphasis supplied). Whether Vega had in fact involved other employees (beyond the fact that some employees overheard his discussion with Uvalle) or whether Respondent merely feared that he would is of no importance. What is clear is that such involvement was a motivating factor in Vega's discharge.[4/] I therefore conclude that Vega was

4/ In its brief, Respondent attempts to minimize—[cont.]

engaging in concerted activities within the meaning of 51132 of -he Act,

Respondent further argues that even if Vega were engaging in concerted activity his discharge was not unlawful because Vega had refused to accept Uvalle's authority and to conform to his rules and regulations. There is simply too little factual support in the record to support this contention, While Vega questioned Uvalle about the extent of his authority and expressed dissatisfaction with some of his policies, there is nothing to indicate that he ever said that he would, refuse to comply with them or that he denied Uvalle's status as his supervisor. As I have previously noted, Vega's argument with Uvalle did not constitute insubordination, I conclude that in discharging Vega for engaging in protected concerted activity Respondent has violated 51153(a) of the Act.

THE REMEDY

Having found that Respondent discharged Ramon Vega for engaging in protected concerted activities, in violation of §1153(a) of the Act, I shall recommend that it cease and desist from like

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4/[continued]--the significance of Bill Adam's letter. Respondent notes that Adam did not draft the letter. However, Edna Camp, admittedly authorized by Adam to write the letter, testified that it accurately reflected what Adam told her. She certainly could not have fabricated that portion of the letter emphasized in the accompanying text. Whether Adam formed his belief about the involvement of other employees from Uvalle or from his own interpretation of the events of September 24, is of no significance to the central issue of motivation. Of course, if Respondent really believed that the letter was inaccurate, it could have called Adam as a witness. Its failure to do so makes its attempted disavowal of the letter particularly suspect. There is no dispute that the letter was properly admitted as an authorized admission of Respondent pursuant to Evidence Code §1222.

violations and take certain affirmative action designed to effectuate the policies of the Act, Specifically, I recommend that Respondent be ordered to offer Ramon Vega reinstatement to his former job, without loss of seniority, and to make him whole for any loss of pay or other economic losses he has suffered as a result of Respondent's unfair labor practices.

Upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to Section 1160,3 of the Act, I hereby issue the following recommended:

ORDER

Respondent, Bill Adam Farms, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from discharging any employee for engaging in protected concerted activities , or 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. Immediately offer Ramon Vega reinstatement to his former position or a substantially equivalent position, without prejudice to seniority or other rights and privileges to which he is entitled, and make him whole for any loss of pay and other economic losses he has suffered as a result of respondent's discharge, plus interest thereon at a rate of 7% per annum.

b. Preserve and, upon request, make available to agents of this Board, for examination and copying, all payroll and

other records relevant and necessary to an analysis of the back pay and reinstatement rights due under the terms of this order,

c. Immediately sign the attached Notice to Employees and, upon its translation by a Board agent into all appropriate languages, reproduce sufficient copies in all languages for the purpose set forth hereinafter.

d. Post copies of the attached Notice, in all languages, for 60 consecutive days in conspicuous places on its premises, the time and places of posting to be determined by the Regional Director, and exercise due care to replace any Notice which is altered, defaced, covered, or removed.

e. Within 30 days of the date of issuance of this order, mail copies of the attached Notice, in all languages, to all employees employed, at any time during the 1980 broccoli season.

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 en Company time and property, at times and places to be determined by the Regional Director; following each reading a Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or employees' rights under the Act; the Regional Director shall determine a reasonable rats of compensation to be paid by Respondent, to all nonhourly wage employees to compensate them for time lost at this reading and question-and-answer period.

g. Notify the Regional Director in writing, within

30 days of the date of issuance of this Order, of the steps taken to comply with it, and continue to make periodic reports as requested by the Regional Director until full compliance is achieved.

Dated; February 13, 1981

AGRICULTURAL LABOR RELATIONS BOARD

By Joel Gomberg
Joel Gomberg
Administrative Law Officer

NOTICE TO EMPLOYEES

After charges were made against us by Ramon Vega and a hearing was held where each side had a chance to present evidence, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers by firing him. The Board has ordered us to distribute and post this Notice, and to do the things listed below.

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

1. To organize themselves;

2. To form., join, or help unions;

3. To bargain as a group and to choose a union or anyone they want to speak for then;

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 you have

these rights, we promise you that:

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

WE WILL NOT fire any worker because that person has done any of the things listed above,

WE WILL offer Ramon Vega his old job back if he wants it, and we will pay him any money he lost because we fired him, plus 7% interest.

Dated:

BILL ADAM FARMS

By _____
(Representative} (Title)

THIS IS AN OFFICIAL NOTICE OF THE AGRICULTURAL LABOR RELATIONS BOARD, AN AGENCY OF THE STATE OF CALIFORNIA, AND IS NOT TO BE REMOVED, DISFIGURED OR DEFACED IN ANY WAY.