

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

|                               |   |                       |
|-------------------------------|---|-----------------------|
| GEORGE A. LUCAS & SONS,       | ) |                       |
| Respondent,                   | ) | Case Nos. 79-CE-134-D |
|                               | ) | 79-CE-67-D            |
| and                           | ) | 80-CE-3-D             |
|                               | ) | 80-CE-2-D             |
| PETRA FUENTES, JUAN MORENO,   | ) |                       |
| PEDRO VIRAMONTES, SALVADOR    | ) |                       |
| SANCHEZ, AND MANUEL ALVARADO, | ) |                       |
|                               | ) | 7 ALRB No. 47         |
| Charging Parties.             | ) |                       |
| <hr/>                         |   |                       |

ERRATUM

The Decision in the above-captioned matter is hereby amended to add the attached Notice to Employees which was inadvertently omitted from the original Decision.

Dated: September 2, 1982

JOHN P. McCARTHY, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) issued a complaint which alleged that we, George A. Lucas & Sons, 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 refusing to rehire employees Petra Fuentes, Ricardo Fuentes, Alma Fuentes and Manuel Alvarado because of their protected concerted activities, and by discharging employees Pedro Viramontes and Juan Moreno because of their protected concerted activities. 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 (Act) is a law that gives you and all other farm workers in California 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 about 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 and 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 hereafter discharge, refuse to hire or rehire, or in any other way discriminate against, any agricultural employee because he or she has engaged in union activities or other protected concerted activities, or because he or she has filed charges with the ALRB or otherwise utilized his or her rights under the Act.

WE WILL reinstate Petra Fuentes, Ricardo Fuentes, Alma Fuentes, Manuel Alvarado, Pedro Viramontes and Juan Moreno to their former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse them for any pay or other money they have lost because we discharged or refused to rehire them, plus interest computed at seven percent per annum.

Dated:

GEORGE A. LUCAS & SONS

By:

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 93215. The telephone number is (805) 725-5770.

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

DO NOT REMOVE OR MUTILATE.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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|                               | ) | 7 ALRB No. 47         |
| Charging Parties.             | ) |                       |
| _____                         | ) |                       |

DECISION AND ORDER

On April 7, 1981, Administrative Law Officer (ALO) Morton P. Cohen issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions and a supporting brief, and General Counsel filed a reply brief.

Pursuant to the provisions of Labor Code section 1146, the Agricultural Labor Relations Board (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 remedial order, as modified herein.

In his Decision, the ALO concluded that Respondent had violated Labor Code section 1153 (c), (d) and (a) by refusing to recall Petra, Ricardo, and Alma Fuentes to work in 1979. We affirm his findings and conclusions regarding the section 1153 (d) and (a)

violations, and adopt his recommendation that Petra, Ricardo, and Alma Fuentes be reinstated with backpay. However, we overrule his finding of a section 1153(c) violation because there is no record evidence that any of these three employees engaged in union activity.

We affirm the ALO's finding that the Ramon Hernandez crew was not discriminatorily laid off.

We also affirm the ALO's conclusion that Respondent violated Labor Code section 1153(a) by failing to recall Manuel Alvarado to work because of his protected, concerted activity in speaking for the Hernandez crew concerning a wage increase and unclean restrooms. Although this violation was not alleged in General Counsel's complaint, it is well established under National Labor Relations Board precedent that when an issue related to matters alleged in the complaint has been fully litigated at the hearing, both sides having had the opportunity to present evidence, a finding on the issue will be upheld even though the violation has not been specifically alleged in the complaint, Rochester Cadet Cleaners, Inc. (1973) 205 NLRB 773 [84 LRRM 1177]. Cases decided by this Board are in accord. See, for example, Prohoroff Poultry Farms (Nov. 23, 1977) 3 ALRB No. 87, enf'd sub nom., Prohoroff Poultry Farms v. ALRB (1980) 107 Cal.App. 3d 622; Giannini & Del Chiaro Co. (July 17, 1980) 6 ALRB No. 38. In the case before us, both General Counsel's and Respondent's witnesses testified extensively on direct and cross examination about Alvarado's concerted activities, about Respondent's knowledge of such activities, and about whether Alvarado was recalled to work after

the Hernandez crew layoff. We find that the issue of Alvarado's recall was fully litigated, and clearly related to the subject-matter of the complaint, and we adopt the ALO's recommendation that Alvarado be reinstated with backpay.

The ALO found that Respondent had violated Labor Code section 1153 (d) by failing to recall Alvarado because he had filed an unfair labor practice charge with the Board. This also was a violation not alleged in the complaint. However, this issue was not fully litigated at the hearing, since none of Respondent's witnesses testified about it, and Alvarado's testimony on the issue was not fully developed. We therefore overrule the ALO's conclusion as to a section 1153(d) violation.

Finally, we affirm the ALO's conclusion that Respondent violated Labor Code section 1153(a) by discharging Pedro Viramontes and Juan Moreno because of their protected, concerted activities, and we adopt his recommendation that Viramontes be reinstated with backpay and that Moreno be reimbursed for any loss of pay resulting from his unlawful discharge.

#### ORDER

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

1. Cease and desist from:

a. Discharging, failing or refusing to recall or rehire, or otherwise discriminating against an agricultural employee because he or she has filed charges with or given

testimony before the ALRB, or has engaged in any concerted activity for the mutual aid or protection of agricultural employees.

b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or their right to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in section 1153 (c) of the Agricultural Labor Relations Act (Act).

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

a. Immediately offer to Petra Fuentes, Ricardo Fuentes, Alma Fuentes, Manuel Alvarado, and Pedro Viramontes full reinstatement to their former jobs or equivalent employment, without prejudice to their seniority or other rights or privileges.

b. Make whole Juan Moreno, Petra Fuentes, Ricardo Fuentes, Alma Fuentes, Manuel Alvarado, and Pedro Viramontes for any loss of pay and other economic losses they have suffered as a result of their discharge or Respondent's failure to rehire them, 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 and copying, all payroll records, social security payment records, time cards, personnel

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

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 agricultural employees employed by Respondent at any time during the period from August 1979 until the date on which said Notice is mailed.

f. Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on Respondent's premises, 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 or 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 thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: December 22, 1981

JOHN P. McCARTHY, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member



CASE SUMMARY

George A. Lucas & Sons  
(UFW)

7 ALRB No. 47  
Case Nos. 79-CE-134/67-D  
80-CE-3/2-D

ALO DECISION

The ALO found that the employer had committed violations of Labor Code section 1153 (c), (a) and (d) by failing to recall and discharging certain employees because of their protected, concerted activity and their filing of unfair labor-practice charges with the Board, Although two of the violations were not alleged in the General Counsel's pleadings, the ALO recommended that the violations be upheld because the issues had been fully litigated at the hearing.

BOARD DECISION

The Board affirmed the ALO's findings of Labor Code section 1153(a) violations and one of the 1153(d) violations. The Board overruled the ALO's finding of a section 1153 (c) violation, because there was no record evidence of union activity by any of the employees involved. The Board also overruled one of the ALO's findings of a section 1153(d) violation, because the violation was unalleged and had not been fully litigated at the hearing.

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD



|                               |   |                       |
|-------------------------------|---|-----------------------|
| In the Matter of:             | ) |                       |
| GEORGE LUCAS & SONS,          | ) |                       |
| Respondent                    | ) | Case Nos. 79-CE-134-D |
|                               | ) | 79-CE-67-D            |
| and                           | ) | 80-CE-2-D             |
|                               | ) | 80-CE-3-D             |
| PETRA FUENTES, JUAN MORENO,   | ) |                       |
| PEDRO VIRAMONTES, SALVADOR    | ) |                       |
| SANCHEZ, and MANUEL ALVARADO, | ) |                       |
|                               | ) |                       |
| Charging Parties.             | ) |                       |

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John Moore and Nick Reyes, for the  
General Counsel

Paul J. Coady for the Respondent

DECISION

I

MORTON P. COHEN, Administrative Law Office: These consolidated cases were heard before me in Delano, California on April 4, 8, 9, 10, 11, and 16, 1980. Case No. 79-CE-134-D resulted from a charge made by Petra Fuentes on October 23, 1979 and a complaint filed by the General Counsel on October 25, 1979 (See General Counsel Exhibit, hereafter G.C.Ex., 1(b)), alleging

that Respondent violated Section 1153 (a), (c) , and (d) of the Agricultural Labor Relations Act (hereafter ALRA) by refusing to rehire Petra, Ricardo, and Alma Fuentes for the reasons that Petra Fuentes had engaged in concerted activities and testified against Respondent Case No. 79-CE-67-D resulted from a charge made by Salvador Sanchez on June 18, 1979 and a complaint filed by the General Counsel on June 19, 1979 (See G.C.Ex. 1(d)) alleging that Respondent had violated Section 1153 (a) of the ALRA by discriminating against Manuel Alvarado (sic) and others because of their concerted activities. Case No. 80-CE-2-D resulted from a charge made by Juan Moreno on January 15, 1980 and a complaint filed by the General Counsel on January 15, 1980 (See G.C.Ex. 1(a)) alleging that Respondent violated Section 1153 (a) of the ALRA by discharging Juan Moreno because of concerted activities. Case No. 80-CE-3-D resulted from a charge made by Pedro Viramontes on January 15, 1980 and a complaint filed by the General Counsel on January 15, 1980 (See G.C.Ex. 1(c)) alleging that Respondent violated Section 1153 (a) by discharging Pedro Viramontes because of concerted activities.

On November 29, 1979 complaint was issued in Case No. 79-CE-134-D (Fuentes (See G.C.Ex. 1(e)), which was answered by Respondent on December 6, 1979 (See G.C.Ex. 1(f)) admitting the following allegations and denying all others: 1)service, 2) that Respondent is an agricultural employer, 3) that the United Farm Workers is a labor organization-, and 4) that Rolando Di Ramos and Paul Veloria were supervisors within ALRA Section 1140.4 (j). On March 18, 1980 an order was issued by the Regional Director of the Fresno Region of the Agricultural Labor Relations Board (hereafter ALRB) consolidating the four matters herein (See G.C.Ex. 1(j)) and a First Amended Consolidated Complaint was issued incorporating the allegations of the complaint previously issued as to Case No. 79-CE-134-D and making further allegations as to Cases Nos. 79-CE-67-D (Sanchez, Alvarado), 80-CE-2-D (Moreno), and 80-CE-3-D (Viramontes), claiming as to the last three violations of Sections 1152 and 1153(a) and (c) of the ALRA and, as to the first, violations of Sections 1152 and 1153(a), (c), and (d) of the ALRA.

Prior to prehearing and hearing in the instant matter, General Counsel's office served a Subpoena

Duces Tecum on Counsel for the Respondent on February 27, 1980 for prehearing discovery of documents, to which Counsel for the Respondent responded on February 29, 1980 by petitioning to revoke the Subpoena Duces Tecum. Further, on February 27, 1980, Respondent moved to dismiss the charges as to Cases Nos. 79-CE-134-D, 80-CE-2-D, and 80-CE-3-D, for the reason that investigating interviews had been held with employees of Respondent in the absence of and without the knowledge of counsel for Respondent although Respondent was then represented by counsel as was known to the investigating agent. Lastly, a motion was made by Respondent on March 28, 1980 for the disclosure of the Administrative Law Officer's (hereafter ALO) identity and for sufficient time to investigate the ALO for prejudice.

At the prehearing conference, held on April 4, 1980, each of the aforesaid motions was considered and decided after full argument (See Prehearing Conference Transcript (hereafter PCT), Pages 1-35). As to the motion to quash the Subpoena Duces Tecum, it was granted in that no prehearing discovery is permitted under the Regulations of the ALRB (PCT 8-21) but General Counsel was permitted to serve a Subpoena Duces Tecum requiring the production of documents by Respondent at the hearing

(PCT 21-24). As to the motion to dismiss the complaint, concerning which a Declaration by the investigator was put into evidence (See Pretrial G.C.Ex. #1), that motion was denied as being an inappropriate remedy and without precedent (See PCT 1-8). Finally, as to the motion regarding disclosure of the ALO's identity and sufficient time to investigate "the ALO for possible prejudice, that motion was denied (See PCT 24-31).

Prior to hearing, none of the four aforesaid cases involving the Fuentes family (79-CE-134-D); Sanchez, Alvarado, and others (79-CE-67-D); or Moreno and Viramontes (80-CE-2-D and 80-CE-3-D) was settled by counsel, thus requiring full hearing. At the hearing both sides called a number of witnesses as to each of the three sets of incidents (See Hearing transcripts (hereafter T) Volumes (hereafter Vol.) I-V). In addition, each side placed a series of documents into evidence (See G.C.Ex. 2-5, Respondent's (hereafter Res.) Ex. 1-6,9). Subsequent to the evidentiary hearing, both General Counsel and Respondent submitted post hearing statements. All documents, including trial transcripts, were thoroughly read and thoroughly considered by the ALO.

In light of the three-part nature of the cases, in that as will be seen the Fuentes matter (79-CE-134-D),

the Sanchez/Alvarado et al matter (79-CE-67-D), and the Moreno/Viramontes matters (80-CE-2-D, 80-CE-3-D) presented factual issues substantially unrelated to one another, this decision will be made essentially on a three-part basis. Upon the entire record, including testimony, the demeanor of the witnesses, the documents placed in evidence, the briefs submitted by both sides, and argument thereby, I make the following Findings of Fact, Conclusions of Law, and Recommended Remedy.

## II

### FINDINGS OF FACT

#### A. Jurisdiction

Respondent has admitted that it is an agricultural employer within the meaning of the Agricultural Labor Relations Act as set forth in Section 1140.4(c) of the California Labor Code and the United Farm Workers (hereafter Union) is a labor organization within the meaning of Section 1140.4(f) of the California Labor Code (See G.C.Ex. 1(F)). It is therefore found that the Respondent is such an agricultural employer and that the Union is such a labor organization.

#### B. Fuentes Matter

1- The theory of the General Counsel is that Petra, Ricardo, Alma, Ricardo Jr. and Annabel Fuentes - the

latter three being children of the first two - were refused rehiring by Respondent through its foreman, Pablo Veloria, in August of 1979 because Petra Fuentes had testified previously against the Respondent and against Pablo Veloria at an ALRB hearing, thus constituting discrimination in violation of Sections 1153(a), (c), and (d) of the ALRA (See Post Hearing Brief on Behalf of the General Counsel, PP. 5-17).

2- The theory of Respondent in defense of the complaint is that Petra and Ricardo Fuentes were denied rehiring in August, 1979 based on a valid, non-discriminatory hiring policy in that they had been offered jobs in July, 1979 which were rejected whereupon the Fuentes parents lost seniority and were not entitled to rehiring in August, 1979. As to Ricardo Jr. and Annabel Fuentes Respondent's theory is that no credible evidence exists that they applied for work when the Respondent was hiring, and, as to Alma Fuentes, Respondent's theory is that she had seniority based on her previous employment with Respondent and was offered subsequent work in August, 1979 which she refused (See Post Hearing Brief of Respondent, PP. 12-22, 48-50).

3- Respondent is engaged in the growing, cultivation, and harvesting of table grapes in Tulare County,



California (G.C.Ex. 1(j), Post Hearing Brief of Respondent, P. 8). The process includes pruning vines, which generally occurs between January and March, after which workers are laid off for a short period (T, Vol. III, P. 117).

Thereafter suckering processes occur as well as lateraling, thinning, hoeing, tipping, caning, and training of vines, all of which occur between April and mid-June when lay-offs again occur (T, Vol. I, 53-54; T, Vol. III, 119).

Harvest occurs in the summer.

4- In October, 1978, Petra Fuentes testified at an ALRB hearing concerning occurrences involving Respondent's practices and activities and particularly those of Pablo Veloria (G.C.Ex. 2 , T, Vol. I, PP. 55-56). Her testimony was given on behalf of the workers and against Respondent and Veloria. Petra and Ricardo Fuentes worked in pruning and suckering in 1979 for Respondent, and thereafter Petra, Ricardo, and Alma Fuentes worked in tipping in 1979 for Respondent (T, Vol. I, 54-74; T, Vol. III, PP. 119-124). Annabel Fuentes had never worked for Respondent (T, Vol. I, 54-55). Alma Fuentes was laid off from tipping before Petra and Ricardo Fuentes, and had not previously worked in pruning (T, Vol.1, P. 73; T, Vol III, P. 124).

During the suckering in April, 1979, Pablo Veloria brought the crew together, including Petra and Ricardo Fuentes, and told them that they should come to him if they had problems rather than take them to the ALRB. The purpose of the meeting was to remind the crew of this (T, Vol. I, PP. 58-60; Vol. III, PP. 154-156). In particular, he said to Petra Fuentes, "Like you, Petra, you who like to--who likes to takes a lot of reports to the labor law." (T, Vol. I, P. 60). Subsequently, Pablo Veloria was told by a superior employee of Respondent that he was not to make such statements to employees (T, Vol. I, P. 60; Vol. III, P. 156).

5- Prior to the 1979 harvest by Respondent, and after the mid-June lay-offs, Petra, Ricardo, Alma, Ricardo Jr., and Annabel Fuentes went to work at El Rancho Farms in Arvin as the Fuentes had done in 1978-1979 (T, Vol. I, PP. 75-76).

6- A critical and most difficult aspect of the Fuentes portion of the case concerns the making of several telephone calls allegedly made by Gloria and Pablo Veloria to the Fuentes home on July 6 and 7, 1979 According to the Valerias, the calls were made, while according to the Fuentes - Petra, Alma, and Ricardo -they were not made. Specifically, the testimony by

Pablo Veloria was that he telephoned Petra Fuentes on July 6, 1979 and offered to have her and her husband, Ricardo, work in weeding for Respondent (T, Vol III, P. 122). According to Mr. Veloria, Mrs. Fuentes declined since she wanted work for her whole family rather than just she and her husband, and, at that time, all were working at El Rancho Farms (T, Vol. III, P. 123). Mr. Veloria allegedly then told Mrs. Fuentes that the others didn't have seniority since they didn't work pruning and couldn't be hired (T, Vol. III, P. 124). According to Mrs. Veloria, she spoke with Mrs. Fuentes by phone the next day with the same result (T, Vol. IV, PP. 28-32). Further, both Mr. and Mrs. Veloria testified that they recorded the calls promptly on a company form used to record violations of company policy (See G.C.Ex. 4).

7- The testimony of Petra, Ricardo, and Alma Fuentes who are wife, husband, and daughter respectively, was dramatically opposite that of the Velorias. Mrs. Fuentes testified that although Mr. Veloria had called her every year in the past to bring her back from El Rancho Farms to work in Respondent's harvest there was no call this year (T, Vol. I, P. 77), either from Mr. or Mrs. Veloria (T, Vol. V, PP. 64-66). Alma and Ricardo Fuentes both testified that there was no call from either

of the Velorias on July 6 or July 7, 1979 (T, Vol. V, PP. 67-78).

8- After searching and re-searching the trial record extensively in an effort to reconcile the two versions, I find it impossible to make any such reconciliation. It is merely a matter of the credibility of the Velorias' version as against that of the Fuentes. I have decided to give credibility to the version stated by the Fuentes for the following reasons:

- A) The witness who had the most credibility as to the incidents was Alma Fuentes in that her demeanor was the least volatile and her appearance the least biased of all witnesses to these incidents (T, Vol. V, PP. 67-71). I believed Petra Fuentes when she said Veloria had called every year but this year.
- B) Only a few months previously, Veloria had chastized Petra Fuentes for complaining to the ALRB and testifying therein, with the result that he himself was chastized by his superior and told not to make such statements. Under such circumstances, I find it impossible

workers to start the suckering who had not previously worked in pruning for his crew, and did not at first hire Petra or Ricardo Fuentes although they had previously worked at pruning in his crew (T, Vol. III, PP. 152-155). Indeed, Veloria never called Petra Fuentes for suckering in 1979 although she had seniority. Instead the Fuentes went to the field, found the crew working, asked for work, and were told to report (T, Vol. I, PP. 62-63).

11- An additional theory of Respondent's seniority system was that crew workers who refused without good cause to return to work when contacted by the foreman lost seniority (T, Vol. III, P. 120). Determinations of good cause are made subjectively by the foreman and may result in jobs being held open for several weeks and in seniority's not being lost (T, Vol. III, PP. 149-151) if the foreman concludes that a worker has refused for good cause. If a worker has refused without good cause in the opinion of the foreman a warning notice is filled out, as occurred with the Fuentes on July 7, 1979 (See Res. Ex. 4); yet other workers who didn't return to work did not have such warnings filled out (T, Vol. III, PP. 185-187) since their refusal was with good cause. For Pablo Veloria, good cause included

illness, emergency, the inability of a family member to come to work, or other business (T, Vol. III, PP. 149-151, 185-187). No list is retained of those workers who have seniority, but Pablo Veloria mentally retains the names of those with seniority for purposes of recall (T, Vol. III, PP. 163-179).

12- A second reason given by Pablo Veloria for offering work only to Alma Fuentes on August 10, 1979 was that only one employee was needed at that time (T, Vol. III, P. 131); however, on that date nine people were hired (G.C.Ex. 5 ; T, Vol. III, PP. 175-176) into Pablo Veloria's crew. Further, more people were hired the following week and throughout August, 1979 (G.C.Ex. 5 ; T, Vol. III, PP. 181-184). Alma Fuentes was offered work on August 10, 1979 although she didn't have seniority (T, Vol. III, PP. 121-122).

13- Based on the above, I conclude that Pablo Veloria was antagonistic to Petra Fuentes and the others of the Fuentes family because of Petra Fuentes's activities in testifying before the ALRB and that he intentionally used the seniority system and his power to recall or not to recall employees to avoid hiring Petra Fuentes in August, 1979.

C. The Hernandez Matter

1- General Counsel's theory regarding the Hernandez matter is that the crew working for Respondent's foreman Ramon Hernandez was laid off on June 12, 1979 although crews with less seniority remained working, that there was no real justification for this action, and that the real reason was that the crew, led by Manuel Alvarado, had several weeks earlier stopped work to ask for a raise and had often acted to complain about poor toilet sanitation (See General Counsel's Brief).

2- Respondent's theory of the Hernandez matter is that, although the crew did act in concert to request a wage increase in late May, 1979 and was subsequently laid off on June 12, 1979, the lay-off was based on sound business reasons and was in no way motivated by the wage request or the complaints as to the toilet sanitation (Respondent's Brief at PP. 23-35).

3- A number of witnesses testified concerning the lay-off of the crew, essentially agreeing that:

a) Ramon Hernandez had been a foreman of one of Respondent's crews (T, Vol. II, P. 24; Vol. III, P.9; Vol. IV, P.2; Vol. IV, P. 103).

- b) Manual Alvarado, Conception  
Alvarado, Juan Lopez, Alberto  
Miramontes, Ramon Medel, Salvador  
Sanchez, Jose Luis Romero, Santos  
Romero, and Cruz Romero, as well as  
others, were members of the Hernandez  
crew (T, Vol. II, PP. 24-132).
- c) Members of the crew complained about a  
failure to keep the toilets clean (T,  
Vol. II, P. 25; Vol. II, P. 99; Vol.  
III, P. 102)
- d) On or about May 15, 1979, the crew,  
led, inter alia, by Alvarado, stopped  
work and went to speak with Rolando de  
Ramos, a supervisor for Respondent who  
was at the time Ramon Hernandez's  
supervisor (T, Vol. II, P. 29; Vol.  
III, P. 17).
- e) At that time de Ramos informed the  
crew that there would be raises and  
subsequently raises were given  
retroactively (T, Vol. II, P. 30; Vol.  
III, P. 18).



- f) On June 12, 1979 the crew was informed by Ramon Hernandez after work that Hernandez had quit and the crew was being disbanded as of that day (T, Vol. II, P. 41; Vol. III, P. 14; Vol. IV, P. 2).
- g) Thereafter some members of the crew were transferred to other crews (such as Jose Valadez, who was hired to do almond replanting), but most of the workers were not then transferred to other crews (T, Vol. II, P. 90; Vol. III, P. 229; Vol. IV, P. 108).
- h) Among the approximately seven regular crews at the time, the Hernandez crew had some seniority over several other crews (T, Vol. III, P. 9).
- i) When Hernandez quit on June 12, 1979, a number of the crew went to de Ramos and asked why the crew was not distributed into other crews so as not to lose work, but with a few exceptions as set forth in

sub-paragraph g. herein this was not done (T, Vol. II, P. 43; Vol. III, PP. 41-44).

- j) Some other crews continued to work after June 12, 1979, three of whom worked for six days and two into July, 1979 (T, Vol. II, PP. 79, 90; Vol. III, P. 222).
- k) After the June 12, 1979 lay-off, de Ramos told members of the Hernandez crew to give him their phone numbers and he would call them when there was work (T, Vol. II, P. 80; Vol. III, PP. 41-42).
- l) On or about August 8, 1979, when the harvest season commenced, a crew was formed with Amelio Rodriguez as foreman and a number of those previously in the Hernandez crew, such as Conception Alvarado and Ramon Medel went to work in that crew although Manuel Alvarado and others did not (T, Vol. II, PP. 95, 125, 132; Vol. III, P. 46; Vol. IV, P. 57)

4- A number of other facts were disputed. The remaining paragraphs of this sub-part C. are my resolutions of disputed facts or those facts to which only one side presented testimony but which are concluded as accurate, based on credibility of the testimony and other evidence.

5- At the time the crew complained as to the raises, de Ramos criticized Hernandez for failing to tell the crew about the impending pay raises (T, Vol. II, P. 30). Thereafter, Hernandez pressured the crew to work harder and faster (T, Vol. II, PP. 40, 79, 101),

6- Other crews, as well as the Hernandez crew, complained as to toilet sanitation (T, Vol. III, PP. 102-103).

7- At the time that Hernandez quit, he had given no previous notice and was asked by Jose Becerra to stay on for another week while Respondent found another foreman, but Hernandez refused because he then had two jobs (T, Vol. IV, PP. 2-12, 103). This occurred early in the morning of June 12, 1979 (T, Vol. IV, P. 103).

8- At 2:00 P.M. on June 12, 1979 Becerra and de Ramos met with Ray Majors, their boss, and informed him that Hernandez had quit, whereupon it was decided

that the Hernandez crew would be laid off since Respondent was not behind in its work, since they would not pull Calamerias leaves that year, since a new foreman would have to be used, and since most crews would be laid off in a week (T, Vol. IV, PP. 104-107, 132-137). Had Hernandez not quit, the crew would not have been laid off (T, Vol. IV, P. 155). The crews of foremen Cardenas, Estrada, and Popoy were laid off on the same day, June 12, 1979 (T, Vol. III, P. 37, Res. Ex. 1).

9- Leaves of Calamerias grapes are pulled only when they are thick enough that the grapes won't burn if the leaves are pulled (T, Vol. IV, PP. 104-106, 135-136).

10- No second existed within the Hernandez crew to take over the crew (T, Vol. IV, P. 11) and no other qualified foreman was immediately available (T, Vol. IV, PP. 110, 134, 137), although the crew thought otherwise (T, Vol. II, P. 44).

11- Although in the past when crew foremen quit or became incapacitated, crew members were dispersed into other crews (T, Vol. III, P. 100), this was not done with most of Hernandez's crew since other crews

were filled and since most would be laid off in a week (T, Vol. IV, PP. 132, 158-162).

12- When many of the Hernandez crew were recalled into Respondent's employ in the Amelio Rodriguez crew in August, 1979 (See C. 3. L. herein, supra), no attempt was made to contact members of the Alvarado family but instead, although they were told by Respondent that they would be called, members of the family went to Amelio Rodriguez for work and Elena Alvarado and Ramon Medel were given work in the crew (T, Vol. IV, PP. 55-59). Although de Ramos testified he had contacted the Alvarados, and had attempted to have the whole family rehired, including Manuel Alvarado who didn't show up, I find that de Ramos's testimony on this point is less credible than that of Elena Alvarado (Cf. T, Vol. III, PP. 46-48, with T, Vol. IV, PP. 55-59). D. Viramontes Matter

1- General Counsel's theory as to the Viramontes matter is that Pedro Viramontes was an employee in Respondent's crew whose foreman was Pablo Veloria, that he had been an employee of the Respondent for several years, that he complained to Pablo Veloria that he was paid too little in 1980, and that subsequently he was fired for absenteeism although the real reason was that he had complained as to the wages (See General Counsel's Brief) .

2- Respondent's theory of the Viramontes matter is to admit many of the alleged facts except that Viramontes was fired in fact for absenteeism and not because he had complained about wages (See Respondent's Brief, PP. 35-46)

3- As with the Hernandez matter, a number of facts were agreed to by the witnesses in their testimony. These were essentially as follows:

- a) As of January, 1980, Viramontes was an employee of Respondent and had been such for approximately two years (T, Vol. II, P. 137).
- b) In January, 1980, Viramontes was a member of the Veloria crew, as was Juan Moreno, a good friend of Viramontes (T, Vol. II, P. 137; Vol. III, P. 137; Vol. V, PP. 2-3).
- c) Parts of January, 1980 were rainy, and on January 9-11, 1980, the Veloria crew did not work due to rain (T, Vol. II, PP. 142-143; Vol. III, P. 140).
- d) January 13, 1980 was a Sunday and none of the Veloria crew worked (T, Vol. II, P. 144; Vol. III, PP. 139-140).

- e) Although the Veloria crew worked on January 8, 1980 (a Tuesday), including Juan Moreno, Viramontes did not work on January 8, 1980 (T, Vol. II, P. 142; Vol. III, P. 139; Vol. V, P. 10).
- f) Viramontes and Moreno showed up late for work on January 15, 1980, although how late was not agreed upon, and thereafter Veloria fired both of them allegedly for absenteeism (T, Vol. II, P. 154; Vol. III, P. 137).
- g) Thereafter, Veloria called Moreno to tell him that his firing had been a mistake, and to offer him his job back, which Moreno subsequently accepted (T, Vol. III, P. 143; Vol. V, P. 19).
- h) Respondent had a policy whereby three unexplained absences resulted in termination (T, Vol. IV, P. 143) and Respondent's manager had been told by Veloria that Viramontes

had been absent for a week (T Vol.

IV, P. 142).

4- A number of other facts were disputed. The remaining paragraphs of this sub-part D are my resolution of disputed facts or those facts to which only one side presented testimony and the other disputed, said resolutions being based on credibility of the testimony and other evidence.

5- Viramontes complained to Veloria twice in January 1980, once on January 5 and once on January 7, about the fact that the piece rate was too low, to which Veloria responded that Viramontes should look elsewhere (T, Vol. II, PP. 139-141; Vol. V, PP. 3-9).

6- Viramontes told Moreno to tell Veloria that Viramontes would not work on January 8, 1980 due to business Viramontes had in Bakersfield, and Moreno told this to Veloria (T, Vol. II, P. 142; Vol. V, P. 10).

7- Viramontes did not work in the field with Moreno on Saturday, January 12, 1980 but instead only Moreno worked therein.

8- On January 15, 1980, Viramontes and Moreno arrived for work at 7:45 A.M. or thereabouts, rather than a few minutes after 7:00 A.M. as they testified.



9- Viramontes had only one day of unexplained absence after he twice requested a pay increase, rather than three or more days as was company policy for termination, or one week as Veloria told Ray Major.

10- Veloria terminated both Viramontes and Moreno because of their requesting raises and not for absenteeism, although the absenteeism and tardiness provided an immediate excuse.

### III

#### CONCLUSIONS OF LAW

##### A. JURISDICTION

Having factually concluded that "...the Respondent is such an agricultural employer and that the Union is such a labor organization" (See P. 6 herein) under the Act, I conclude, as a matter of law, that there is jurisdiction herein.

##### B. FUENTES MATTER

1- The allegations of General Counsel claim a violation of Section 1153(a), (c), and (d) of the ALRA, the violation of subsection (a) being derivative. As to Section 1153(d), a violation would be found if there

were discrimination against Petra Fuentes "...because (s)he has filed charges or given testimony" under the ALRA. As to Section 1153(c) and (a), they would be violated if Petra Fuentes had not been rehired because of her union activity and anti-union motivation on the part of the employer.

2- Having earlier concluded that, as a matter of fact, Pablo Veloria was antagonistic to Petra Fuentes and her family due to her testimony before the ALRB and that this resulted in their not being rehired, I conclude as a matter of law that there was a violation of Section 1153(d) of the Act in August, 1979 when she and the others were not recalled. The facts hitherto set forth herein are entirely different from those present in the cases cited by Respondent (See Post Hearing Brief of Respondent, P. 49). Thus, in International Typographical Union, 183 NLRB 496 (1970), there had been innumerable problems of poor attitude, recurrent unsatisfactory work on the part of the employee who testified, and absenteeism, with no direct indicia of anyone's chastizing the employee for testifying. Such cases do not support a conclusion herein that there is no violation of 1153(d).

3- As to Section 1153 (c) , based upon the foregoing Findings of Fact, I conclude as a matter of law that it has been violated herein in that the reason for the failure to rehire Petra Fuentes and her family in August, 1979 was Pablo Veloria's strong feelings as to Mrs. Fuentes's previous testimony. The seniority loss explanation was undoubtedly pretextual (as Veloria had permitted other employees in the past to avoid loss of seniority), as was the fact of no work's being available. Thus, as was said by the ALRB in Pleasant Valley Vegetable Co-op, 4 ALRB 11, at P. 4, I "...find the various shifting reasons given by Respondent for its failure to recall (Fuentes) to be pretextual. The true reasons may be inferred from its conduct towards (her)."

4- For the foregoing reasons, I find that a violation of Section 1153(a) as well occurred.

#### C. HERNANDEZ MATTER

1- As was set forth earlier herein, General Counsel argues that the reason for the Hernandez crew's layoff was their asking for a raise and complaining regarding working conditions (P. 15, supra), thus resulting in a violation of the Act, while Respondent

argues that General Counsel has failed to make out a prima facie case and even if it has made out such case that case has been rebutted by a showing of valid business justification which has not been shown to be pretextual (Post Hearing Brief of Respondent at 56-57).

2- In support of its position, General Counsel cites to a number of cases to show a) that the entire crew was discriminated against based on the reasons for layoff being pretextual and b) the failure to rehire Manuel Alvarado was a violation of the Act.

3- General Counsel has the burden of proving:

1. That the Charging Party engaged in protected concerted activity;
2. That the Respondent knew of such activity;
3. That the Respondent acted in a discriminatory manner toward Charging Party; and
4. That there was causal connection between the Respondent's discriminatory act and Charging Party's concerted activity.

Albert C. Hansen, d b a Hansen Farms, 4 ALRB 87, cit P. 6 of A.L.O. Decision affirmed in full by A.L.R.B.

(See also Sterling Aluminum Co. v. N.L.R.B., 391 F.2d 713, at 716 (8th Cir., 1968))

4- While there is ample proof that Respondent knew of requests by the Hernandez crew for a raise and to improve toilet conditions, there is insufficient proof that the layoff of the employees occurred "...because of this activity". Sterling Aluminum Co. v. N.L.R.B., supra at 716 (See also N.L.R.B. v. Melrose Processing Co., 351 F.2d at 693, 697 (8th Cir. 1965)). Indeed, in Sterling Aluminum, supra, cited by General Counsel, the 8th Circuit reversed a finding of discrimination of the N.L.R.B., saying that "...while the Board is free to draw reasonable inferences from the evidence" (citations omitted) "such inferences must be adequately supported in the record. Otherwise, as Judge Sanborn indicated in Cupples Co. Manufacturers v. National Labor R. (sic) Board, 106 F.2d 100, 117 (8th Cir., 1939), the findings of the Board may represent nothing more than accurate guesses." 391 F.2d at 717.

5- I conclude therefore, based upon the earlier Findings of Fact, that the General Counsel has failed in its burden to show that the layoffs of the Hernandez crew were based on or connected to the request for a

raise or the complaints regarding toilet facilities. It is therefore unnecessary to reach the issue of whether a valid business reason supercedes the discriminating rationale since General Counsel has failed in its prima facie case herein. Had the prima facie case been made out, there is no question that the credibility of the testimony regarding the economic explanation would have been sufficient to grant it validity. The mere fact that there had been such a request for a raise and that there had been toilet complaints is insufficient to permit an inference that, at a later date, the entire crew would be laid off for that reason. This case is vastly different from Tex-Cal Land Management, Inc., 3 ALRB 14, cited by General Counsel, where the proofs included "...a totality of conduct including alleged interrogation of employees, threats regarding the consequences of union adherence, denial of access, assaults on organizers, and the company's expressed anti-union stand..." 3 ALRB 14, at P. 5.

6- On different footing stands the failure to rehire Manuel Alvarado. Alvarado was, and was known to be, a spokesman for the crew (See P. 16, supra). A charge was filed with the ALRB regarding the crew's

layoff on June 18, 1979 (See P. 2, supra). Although others of the crew were recalled to work (See P. 17, supra), Manuel Alvarado was not (See P. 18, supra), nor was he ever called, although others were called and returned to work. Based on this set of facts, there is more than enough evidence to conclude that Manuel Alvarado was discriminated against in the recall of employees and that it was because of his complaining to the A.L.R.B. and being a spokesman for the group and for no other reason (See Mario Saikhon, Inc., 4 ALRB 72), thus resulting in violations of Section 1153(a) and (d) of the Act.

D. VIRAMONTES MATTER

1- The same essential law applies to the Viramontes matter as to the Hernandez matter, i.e. was there knowledge on the part of the employer that the employee was engaged in protected activity and was the discharge because of this activity? (See Sterling Aluminum, supra).

2- There are two people allegedly discriminated against in these incidents--Viramontes and Moreno--and as to each General Counsel argues that it was their complaints concerning wages on January 5 and 7, 1980 that resulted in their being fired and not due to absenteeism.

3- I have already concluded as a matter of fact that both were "...terminated because of their requesting raises and not for absenteeism..." (See P. 25 herein).

4- Based on the above, I conclude as a matter of law that the employer knew they were engaged in protected activity under Section 1153(a) of the Act, and they were discharged because of this activity.

#### IV

#### THE REMEDY

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

As a result of these findings, reinstatement, with back pay and full seniority in other rights will be given to Petra, Ricardo, and Alma Fuentes and Manuel Alvarado, as of the dates of the Respondent's refusal to rehire, and reinstatement with back pay and full seniority in other rights will be given to Pedro Viramontes as of the date of his improper discharge, and back pay to Juan Moreno as of the date of his improper discharge.



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

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

ORDER

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

1. Cease and desist from:

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

b. Discharging or otherwise discriminating against an agricultural employee because he or she has filed charges or given testimony before the ALRB.

c. In any other manner interfering with, restraining, and coercing employees in the exercise of their right of self-organization, to form, join, or assist labor organizations, and to engage in any other

concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in Section 1153 (c) of the Act.

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

a. Post in conspicuous places, including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix", Copies of said notice shall be posted by Respondent immediately upon receipt thereto and shall be signed by Respondent's representative. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material. Said notice shall be posted for a period of 60 days and shall be in English and Spanish.

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

c. Notify the Regional Director or the Executive Secretary of the Board's main office in Sacramento, within 20 days from receipt of a copy of this decision,

of steps Respondent has taken to comply therewith, and continue to report periodically thereafter until full compliance is achieved.

d. Reinstatement, with back pay and full seniority, Petra, Ricardo, and Alma Fuentes and Manuel Alvarado, as of the date of the refusal to rehire.

e. Reinstatement Pedro Viramontes with back pay and full seniority as of the date of his improper discharge.

f. Grant back pay to Juan Moreno as of the date of his improper discharge.



MORTON P. COHEN

Administrative Law Officer

Dated: September 1981  
San Francisco/ California

## APPENDIX

### NOTICE TO EMPLOYEES

After a hearing in which all parties presented evidence, an Administrative Law Officer of the Agricultural Labor Relations Board has found that we have engaged in violations of the Agricultural Labor Relations Act. In order to remedy such conduct, we are required to post this notice and to mail copies of this notice to our employees. We intend to comply with this requirement, and to abide by the following commitments:

1. We will not refuse to rehire workers for engaging in concerted or Union activity.
2. We will not discharge workers for engaging in concerted activity.
3. We will not refuse to rehire workers for filing charges or giving testimony before the ALRB.
4. We will rehire Petra, Ricardo, and Alma Fuentes, Manuel Alvarado, and Pedro Viramontes with back pay and full seniority.
5. We will give back pay to Juan Moreno.

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