Pixley, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MINI RANCH FARMS,	)	
Respondent,	)	Case No. 80-CE-101-D
and	)	
EFRAIN GONZALEZ VASQUEZ,	)	7 ALRB No. 48
Charging Party.	)	

DECISION AND ORDER

On December 29, 1980, Administrative Law Officer (ALO) Alex Reisman issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions and a supporting brief. The General Counsel filed a brief in reply to Respondent's exceptions. On July 20, 1981, Respondent submitted Supplemental Points and Authorities. The General Counsel submitted an answer to Respondent's Supplemental Points and Authorities on August 6, 1981.

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

The Board has considered the record and the attached Decision in light of the exceptions and supporting briefs and has decided to affirm the ALO's rulings, findings, conclusions and recommendations as modified herein.

Respondent excepted to the ALO's Decision on the basis of insufficiency of the evidence, no evidence of repeated past

violations of the ALRA to justify affirmative remedies ordered, untimeliness of the filing of the ALO decision and invalidity of the complaint. These exceptions are without merit. Furthermore, Respondent's exceptions are defective for failure to identify by page numbers the parts of the ALO's decision to which exception is taken and to cite to those portions of the record which support its exceptions. 8 Cal. Admin. Code section 20282. However, since the dissent provides Respondent with a legal argument it failed to present in its exceptions, we are compelled to discuss the ALO's findings of fact and conclusions of law with respect to the constructive discharges. Respondent also excepted to the remedy of reinstatement ordered in this case on the basis that the ALRB is without jurisdiction to compel Respondent to hire or reinstate any Mexican national who has no passport or visa, because federal law has preempted this area of law.[1/] This Board has ordered reinstatement of undocumented workers in past decisions but we have not yet fully addressed our policy and authority to do so.[2/] We will address this issue here.

Background Facts

Mini Ranch Farms is a farming operation owned and operated by Roger Chaney, located on a 60-acre piece of land in Pixley,

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[1/] It is undisputed that all the discriminatees in the instant case are undocumented workers.

[2/] In Associated Produce Distributors (Oct. 2, 1980) 6 ALRB No. 54, the Board affirmed the ALO's decision ordering reinstatement of undocumented workers. The ALO relied on NLRB v. Apollo_ Tire Co., Inc. (9th Cir. 1979) 604 F.2d 1180 [102 LRRM 2043] and Amay's Bakery & Noodle Co., Inc. (1976) 227 NLRB No. 38 [43 LRRM 1165]. See also Nishi Greenhouse (Aug. 5, 1981) 7 ALRB No. 18 where reinstatement of undocumented workers was ordered.

California. Chaney lives on this land and grows various fruits and vegetables, including lettuce, tomatoes, strawberries and squash. It is uncontradicted that prior to February 9, 1980, Chaney hired farmworkers to plant, tend and harvest his crops, acting as sole supervisor of these employees. Chaney had always paid these employees on a weekly basis. On February 4, 1980, after all the crops were planted, Chaney was denied a Farmer's Home Administration Loan, and stopped paying regular wages to the agricultural employees who were working at Mini Ranch as of that date, and did not resume regular payment of wages to anyone working at Mini Ranch until July 1980.

The events that occurred between February 4, 1980, and July 28, 1980, were disputed at the hearing. Roger Chaney's testimony significantly conflicted with the testimony of those who worked at Mini Ranch during that period. The ALO credited the testimony of the employees over that of Chaney due to the internal contradictions and inherently unbelievable assertions in Chaney's testimony and also because of apparent falsifications of evidence presented at the hearing.

We have reviewed the record and find the ALO's credibility resolutions to be supported by the record as a whole.

The discriminatees began work at Mini Ranch between February 27, 1980, and March 16, 1980. Upon their arrival at Mini Ranch, these employees were informed that Chaney would not pay them any wages until April 4, 1980, when his $80,000 check was due to arrive. The evidence shows that during the relevant time period Chaney provided the employees food and lodging.

The employees all testified that during the relevant time period, they worked seven days per week, eight to ten hours per day. On April 4, 1980, Chaney told the employees that he was still expecting his check from Los Angeles for $80,000. As of that date, the employees had received no money for work performed from Roger Chaney. Between April 4, 1980, and May 9, 1980, Chaney made four payments to the employees: $2400 on April 7, 1980, $2000 on May 1, 1980, $252 on May 7, 1980, and $240 on May 9, 1980. This money was divided among the 25 employees. Chaney also provided the employees with food, but the money for food was deducted from their pay.

It was not until May 1980 that Mini Ranch employees began protesting to Chaney about the lack of pay for the many hours of work they had performed. Mini Ranch employees staged two work stoppages in May 1980, and confronted Chaney directly, to protest these working conditions. At the end of May 1980, approximately 13 Mini Ranch employees filed wage claims with the Division of Labor Standards Enforcement. Ten of these thirteen were Amadeo Gomez Hernandez, Teodoro Cruz Hernandez, Jaime Hernandez Cruz, Jesus Cruz Lopez, Adolfo Jimenez Cruz, Gilberto Cruz Guzman, Amadeo Gonzales Olivera, Adolfo Guzman Ramos, Eleazar Gonzalez Vasquez, and Efrain Gonzalez Vasquez.

On June 5, 1980, at approximately 3:30 p.m., the employees talked among themselves and decided to stop work at 4:00 p.m. even though Chaney wanted them to work more hours. At 4:00 p.m. the employees had already worked nine hours and were unhappy with the fact that they were not being paid.

Discriminatees Efrain Gonzalez Vasquez, Jaime Hernandez Cruz, Gilberto Cruz Guzman, Caetano Velasco, Amadeo Gonzalez Olivera, Erminio Ortiz Carbajal, Leocadio Ortiz Carbajal, and Celerino Hernandez Cruz left the field and went back to the house. The others remained in the strawberry field and resumed work when Chaney arrived.

The morning of June 6, 1980, the employees reported to the packing shed as usual and awaited Chaney's orders. They testified that Chaney seemed nervous and that he was pacing up and down. Chaney took out a list of the names of Mini Ranch employees (Respondent's Exhibit C) that discriminatee Feliciano Cruz had previously prepared for Chaney so that Chaney would know the names of those who were working. Notations in black ink of "no good" and "ok" appear on that list next to some of the names. Feliciano Cruz testified that he did not make those notations.

Although it is not clear whether Chaney or discriminatee Marcolino Gomez read the list, the employees all testified that 19 names were read from the list and Chaney instructed those 19 to get in his pickup truck. The 11 whose names were not read were: Efrain Gonzalez Vasquez, Gilberto Cruz Guzman, Amadeo Gonzalez Olivera, Rodolfo Cruz Miranda, Celerino Hernandez Cruz, Leocadio Ortiz Carbajal, Jaime Hernandez Cruz, Adolfo Jimenez Cruz, Eriberto Cruz Miranda, Erminio Ortiz Carbajal, and Caetano Velasco, which included the eight employees who left the field in a concerted protest over nonpayment of wages the day before. These 11 were the same employees who had notations of "no good" appearing next to their name on the list. Chaney told these 11 employees to wait for

him for a half-hour, and took the 19 men in the pickup truck to a lumber lot and told them to hide because 'police' were in the area.

When Chaney returned, he told the 11 employees to wait a little longer. Chaney then went to the house where the employees lived and took six men who had just arrived from Mexico in his pickup truck and transported them off his property. Upon his return to the ranch, Chaney had a visible weapon in his truck and ordered the 11 employees to pack their belongings stating that he was going to take them to the bus in Delano because there were too many police in the area.

The 11 employees got their clothes and then told Chaney that they had no money to go anywhere and asked Chaney to give them the money he owed them. Chaney answered that when he got a check he would give money to Feliciano Cruz to send to them in Mexico. The 11 employees responded that they had no money, even for the bus.

Chaney then told the men to get in his truck and drove to his house. He went into his house and came out with $110 which he gave to Caetano Velasco to divide among the 11 for bus tickets. The 11 employees asked Chaney to let them walk because they had no money to go to Mexico, but Chaney said no, that there were too many police in the area.

Chaney drove the 11 to an almond grove near McFarland, told them to get off the truck, and drove away. These employees hid and moved through the fields. Approximately 20 minutes later, when they reached a nearby road, they saw Chaney drive by in his pickup truck, followed by two police cars. Feliciano Cruz testified that after an hour Chaney picked up the 19 men whom he had hid at

the lumber lot and drove them back to Mini Ranch.

A few days later, discriminatees Jesus Cruz Lopez and Amadeo Gomez Hernandez went to the packing shed to ask Chaney for the money he owed them. Jesus Cruz Lopez testified that Chaney told them not to bother him and that he would pay them in December. On June 10, 1980, discriminatee Jesus Cruz Lopez left Mini Ranch with discriminatees Amadeo Gomez Hernandez, Teodoro Cruz Hernandez, Eleazar Gonzalez Vasquez, and Adolfo Guzman Ramos. Jesus Cruz Lopez testified that he left Mini Ranch because he was afraid that if he stayed Chaney would do the same thing to him that he did to the 11 employees who disappeared on June 6, 1980.

About June 20, 1980, the employees again protested to Chaney about their unpaid wages. Discriminatee Pascual Vasquez spoke on behalf of the employees and testified that Chaney told them that he would not give them a check, just food.

Discriminatee Marcolino Gomez testified that he discussed the unpaid wages with Chaney at the end of June 1980. Gomez testified that Chaney told him, through an interpreter, that he was not going to pay them weekly, but would pay them for a third part of the crop. Chaney told Gomez that if the workers did not like it they could leave. Marcolino Gomez testified that this was the first time he had heard anything about payment in shares.

On July 15, 1980, Chaney gave the employees $730 out of the $2995.89 for which Marcolino Gomez signed a receipt. Chaney told the employees that the rest of the money they had earned had been paid to the Pixley Market for food. Discriminatees Marcolino Gomez and Daniel Velasco testified that the employees were upset

about the amount of their wages which Chaney had withheld for food, and the next day they went to talk to Chaney at the packing shed.

A woman named Irma Regalado, who worked at the packing shed and spoke English, interpreted for the workers. Through her, the employees told Chaney that they did not agree with the price he had set for food, and they told Chaney they could eat for $15 each per week. Chaney told the employees that the price of food was fixed and if they did not like it they could go back to Mexico.

On July 28, the employees were picking tomatoes. It was an extremely hot day and the plants did not have enough fruit to pick the thirty boxes that Chaney wanted. The employees protested to Chaney that they could not continue working due to the excessive heat, but Chaney told them to keep on working. Later that day Ray Vasquez came to Mini Ranch. The employees knew that Ray Vasquez could speak English so they asked him, and he agreed, to ask Chaney to give them a check since they had no shoes or clothes. Discriminatee Pascual Vasquez testified that all he understood of Chaney's reply was "No check. No check. Just food." Discriminatee Daniel Velasco testified that Ray Vasquez told them that Chaney said he had no money to pay them and that he was going to buy groceries from the $500 which the employees had coming to them. Ray Vasquez told the employees that Chaney said that the grapes had already started and to look for other work or leave the place, and that Chaney knew charges had been filed against him by those who already left, but they could not do anything to him because he had no money.

The employees did not work any more that day. That

evening nine more employees, Pascual Vasquez, Daniel Velasco, Marcolino Gomez, Paulino Miranda, Adolfo Gonzalez, Samuel Cruz, Donato Cruz, Francisco Olivera, and Amado Hernandez left Mini Ranch. Pascual Vasquez, Daniel Velasco and Marcolino Gomez all testified that they left because Chaney was not going to pay them and they did not want to work without pay. Marcolino Gomez testified that they left at night because they wanted to avoid detection by Chaney.

Section 1152 of the Act guarantees agricultural employees the fundamental right, inter alia, to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." Labor Code section 1153(a)[3/] makes it an unfair labor practice for an agricultural employer to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in section 1152.

The law recognizes that employees have a legitimate right to act concertedly to protest against unsatisfactory working conditions to management without being discharged for such action. Jack Brothers & McBurney, Inc. (Feb. 25, 1980) 6 ALRB No. 12, review denied by Ct.App., 4th Dist., Div. 1, Nov. 13, 1980; Hugh H. Wilson Corp. v. NLRB (3rd Cir. 1969) 414 F.2d 1345, 1347-50 [71 LRRM 2827], cert. den. (1970) 397 U.S. 935. Concerted action by employees which involves their employment, wages, and working conditions constitutes a protected concerted activity. Spinoza, Inc. (1972) 199 NLRB 525 [81 LRRM 1290].

[3/] All code citations will be to the California Labor Code unless otherwise specified.

In order to establish that an employer violated section 1153(a) of the Act by discharging or otherwise discriminating against one or more employees with respect to hire, tenure or working conditions, the General Counsel must prove by a preponderance of the evidence that the employer had knowledge that the employee(s) had engaged in protected concerted activity and discharged or otherwise discriminated against the employee(s) for that reason. Lawrence Scarrone (June 17, 1981) 7 ALRB No. 13.

The Five Employees Who Quit on June 10, 1980

Up until the June 6, 1980, discharge of the 11 employees who were left in the almond grove, Chaney continually promised the Mini Ranch employees that they would indeed be paid. Shortly thereafter, when Jesus Cruz Lopez and Amadeo Gomez asked Chaney to pay them the money he owed them, Chaney told them hot to bother him, and that he would pay them in December. Again, Chaney's representations to his employees at this point were still that they would be paid, it was only a matter of delay. The five Mini Ranch employees who left on June 10, 1980, were among the 13 employees who filed wage claims against Chaney with the Division of Labor Standards Enforcement in late May. It is well established that filing a wage claim with a state agency is protected concerted activity under the Act. A-1 Bus Lines, Inc. (1977) 232 NLRB 665, 777 n.3 [97 LRRM 1343]; Foster Poultry Farms (Mar. 19, 1980) 6 ALRB No. 15. These five also participated in the two May work stoppages and the June 5, 1980, work stoppage protesting working conditions prior to their departure from Mini Ranch. Chaney knew of these five employees' earlier participation in the May and June

work stoppages, and also knew of their filing of wage claims as evidenced by his statement to Mini Ranch employees on July 28, 1980, that he knew charges had been filed against him by those who had already left. We affirm the conclusion of the ALO that these five employees were constructively discharged. A constructive discharge exists when the employer creates or imposes such onerous conditions on the employee's continued employment because of his participation in protected activities, that the employee is forced to quit. Merzoian Bros. Farm Management Co., Inc. (July 29, 1977) 3 ALRB No. 62, review den. by Ct.App., 5th Dist., Sept. 28, 1979.

Our dissenting colleague argues that no significant change in working conditions occurred to justify finding a constructive discharge of the two groups who left after the 11 workers were discharged on June 6, 1980. Clearly a significant change in working conditions occurred that day. The Mini Ranch work force was comprised of undocumented workers. The Board has recently stated in Giumarra Vineyards (Aug. 31, 1981) 7 ALRB No. 24 that, "Undocumented workers are more susceptible to intimidation and coercion than other agricultural employees. Their peculiar vulnerability is easily exploitable...." Id. at 36. Chaney's retaliation against the 11 employees on June 6, 1980, dramatically increased the hardship of the conditions of employment. The evidence in the record supports the ALO's conclusion that these five men did not know what had happened to the 11 employees Chaney took off the Ranch, but that they did know that the 11 employees who disappeared were undocumented and that they were the only employees at Mini Ranch that Chaney did not hide from the border patrol on June 6,

1980. Given the susceptibility to intimidation and coercion that undocumented workers face, Chaney's retaliatory action taken against his undocumented work force for their participation in protected activity strengthens the inferences that can be drawn from the evidence. Chaney's action created an increase in the climate of fear and uncertainty which normally faces undocumented workers. This dramatic change in the working conditions created conditions so intolerable that they were forced to quit. The disappearance of the 11 employees on June 6, 1980, created the inference of their deportation. Here it is clear that Respondent's conduct would tend to put its undocumented workers in fear of similar treatment if they engaged in protected concerted activity. Respondent therefore has interfered with, coerced, and restrained all of its undocumented workers by its acts of discrimination of June 6, 1980.

We agree with the ALO that Chaney created a situation in which these five employees feared for their own safety because they had engaged in protected concerted activity, forcing them to choose between forfeiting their statutory right to join in protest against their working conditions or put themselves in an increasingly vulnerable and dangerous situation.

> [R]equiring employees to give up their statutory right to engage in protected concerted activity in exchange for continued employment constitutes the imposition of an unlawful condition to continued employment amounting to a constructive discharge. Suburban AMC/Jeep, Inc. (1947) 211 NLRB 454 [87 LRRM 1442]; American Enterprises, Inc. (1971) 191 NLRB 866 [77 LRRM 1586]; Royal Crown Bottling Company, Inc. (1971) 188 NLRB 252 [76 LRRM 1303].

We conclude that Roger Chaney constructively discharged

Jesus Cruz Lopez, Amadeo Gomez Hernandez, Teodoro Cruz Hernandez, Eleazar Gonzalez Vasquez, and Adolfo Guzman Ramos in violation of section 1153(a) of the Act.

The Nine Employees Who quit on July 28, 1980

The July 16, 1980, protest by Mini Ranch employees over the amount of money charged by Chaney for food, and the July 28, 1980, protest over the amount of work required of them in excessive heat and Chaney's failure to pay them their wages, clearly constitute protected concerted activity. Jack Brothers & Burney, Inc., supra, 6 ALRB No. 12. The fixed price for food set by Chaney on July 15, 1980, was a new change in the working conditions at Mini Ranch. Chaney had never before presented the employees with a fixed price for food. At the time of the July 16, 1980, protest Chaney told the employees that if they did not like it they could go back to Mexico. The facts in the instant case are analogous to the facts in Suburban AMC/Jeep, supra, 211 NLRB 454, 456 where the employer told its employees, who brought him complaints over a failure to refund accident money from their pay, to quit complaining or quit, that if they did not like the way he ran his business to leave. The National Board in Suburban AMC/Jeep found a violation of section 8(a)(1) of the National Labor Relations Act for requiring employees to give up their statutory right to engage in protected activity in exchange for continued employment, constituting the imposition of an unlawful condition to continued employement amounting to a constructive discharge. In the instant case, Chaney imposed that same condition on Mini Ranch employees: either accept fixed prices for food or quit.

The July 28, 1980, protest elicited the same response from Chaney. He told the workers he would provide them only with food, no money. For the first time, Chaney told the employees that he was not going to pay them and that they could go look for other work or leave the place. It is crucial to note the chain of events surrounding Chaney's nonpayment of wages. Up until May 9, 1980, Chaney had made irregular payments of wages to Mini Ranch employees. However, after Mini Ranch employees began protesting in May of. 1980, those payments stopped. It was not until July 15, 1980, that Chaney resumed some payment of wages, but then he deducted a fixed price for food. Throughout that period, Chaney repeatedly promised to pay his employees if they would continue working.

The evidence shows that Chaney's complete nonpayment of wages (having made irregular payments through May 9, 1980) began after the Mini Ranch employees began protesting about their working conditions in May, that those working conditions worsened, and that these events occurred in a context of fear and intimidation, with Chaney becoming increasingly angry with each work stoppage, conditioning payment of wages on continued work with no complaining.

It was not until July 28, 1980, that Chaney definitely told his employees that he was not going to pay them. Prior to July 28, Chaney intended to pay his employees. But that commitment began to lessen as his employees became increasingly persistent in their attempts to get paid. He began to set fixed prices for food, resulting in the charging of exorbitant prices for food.

When those employees protested about being forced to work in the excessive heat on July 28, 1980, Chaney retained four workers and paid them an hourly wage evidencing further that Chaney's prior payment of wages was motivated by his employees' participation in protected concerted activities. We conclude that Roger Chaney constructively discharged Amado Hernandez, Marcolino Gomez, Pascual Vasquez, Donato Cruz, Francisco Olivera, Samuel Cruz, Daniel Velasco, Adolfo Gonzalez, and Paulino Miranda in violation of section 1153(a) of the Act.

The Jurisdiction of the ALRB to Order Reinstatement of Undocumented Workers

It is provided by statute that this Board "... is empowered ... to prevent any person from engaging in any unfair labor practice, as set forth in Chapter 4 ...."of the Agricultural Labor Relations Act (see §1160). Section 1148 of the Act requires us to "... follow applicable precedents of the National Labor Relations Act, as amended." Moreover, section 1160.3 of the Act requires the Board, when it finds that a Respondent has engaged in any unfair labor practice, to issue and serve upon the Respondent an order designed to remedy the violation, including affirmative remedies much as reinstatement and backpay, "....and to provide such other relief as will effectuate the policies of [the Act]." The conventional remedies of reinstatement and backpay referred to in section 1160.3 have been ordered in the instant case.

Respondent argues that the ALRB has no authority or jurisdiction to compel an employer to hire or reinstate

undocumented Mexican nationals, on the ground that federal law has preempted this area. In its Supplemental Points and Authorities, Respondent also relies on section 2805 of the California Labor Code which reads as follows:

> (a) No employer shall knowingly employ an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers.
>
> (b) A person found guilty of violation of subdivision (a) is punishable by a fine of not less than two hundred dollars ($200) nor more than five hundred dollars ($500) for each offense.
>
> (c) The foregoing provisions shall not be a bar to civil action against the employer based upon a violation of subdivision (a).

The NLRB has addressed this issue and section 2805 in particular and has required employers to reinstate workers who do not have formal immigration documentation.[4/] Apollo Tire Co. (1978) 236 NLRB 1627, enfd. NLRB v. Apollo Tire Co., Inc. (9th Cir. 1979) 604 F.2d 1180 [102 LRRM 2043]. In that case, the employer raised the identical objections argued by the Respondent in the instant case, that is, that the Board policy conflicts with federal immigration law and also conflicts with section 2805(a) of the California Labor Code.

With respect to the contention that NLRB policy was in conflict with federal immigration law, specifically the Immigration and Naturalization Act of 1952 (INA), the Ninth Circuit Court of Appeals stated:

[4/] See: Robinson, Illegal Aliens are Employees Entitled to Protection Under the Labor Management Relations Act (1980) 10 Golden Gate L. Rev. 359, 440.

> Section 2(3) of the NLRA (29 U.S.C. §152(3) defines "employee" broadly, and provides specific exceptions to coverage of the Act. Illegal aliens are not among those exceptions.
>
> The Board has consistently interpreted the definition to include aliens. See Seidmon, Seidmon, Henkin & Seidmon, 102 NLRB 1492, 1493 (1953); Lawrence Rigging, Inc., 202 NLRB 1094, 1095, 82 LRRM 1784 (1973); Handbilling Equipment Corp., 209 NLRB 64, 65 n.5, 85 LRRM 1603 (1974); Amay's Bakery & Noodle Co., 227 NLRM 214, 94 LRRM 1165 (1976).
>
> When faced with a problem of statutory construction, this Court shows great deference to the interpretation given by the officers or "agency charged with its administration.
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> Udall v. Tallman, 380 U.S. 1, 16 (1965). Accord. Bayside Enterprises v. NLRB, 429 U.S. 298, 304, 94 LRRM 2199 (1977).Because the Board's interpretation and application of the statute is well established, and has not been disturbed by Congress, we defer to its understanding of the statute unless it is clearly in error. NLRB v. Pipefitters, 429 U.S. 507, 528, 94 LRRM 2628 (1977). NLRB v. Apollo Tire Company, supra, 102 LRRM 2043, at 2044.

The Ninth Circuit Court in Apollo Tire fully recognizes the power and responsibility of the NLRB to enforce the NLRA. This Board agrees. It is our duty to enforce the ALRA and to order effective remedies. The ALRA affords protections to all agricultural employees in California without reference to their citizenship or immigration status. The enforcement of other statutes lies with the appropriate state or federal agencies charged with the administration and enforcement of those statutes. Section 1140.4(b) of the ALRA, like section 2(3) of the NLRA, defines 'employee' broadly and likewise provides specific exceptions to coverage of the Act. Illegal aliens are not among those exceptions.

The Seventh, Circuit decision in <u>NLRB</u> v. <u>Sure-Tan, Inc.</u> (7th Cir. 1978) 583 F.2d 355 [99 LRRM 2252], which found that the federal immigration statutes neither prohibit employers from hiring aliens nor prohibit such aliens from working and exercising rights protected by the NLRA, stated:

> We agree with the Sure-Tan majority that the Board's interpretation best furthers the policies underlying the immigration laws. Were we to hold the NLRA inapplicable to illegal aliens, employers would be encouraged to hire such persons in hopes of circumventing the labor laws. The result would be more work for illegal aliens and violations of the immigration laws would be encouraged. NLRB v. Apollo <u>Tire Co., supra,</u> 102 LRRM 2043, 2045.

Certainly to hold otherwise would encourage the type of exploitation of undocumented workers which was exhibited by Respondent in the instant case, who subjected its undocumented work force to unlawful discrimination and deplorable abuse when those workers protested about their working conditions in a proper exercise of their rights protected under section 1152 of the Act.

As to Respondent's reliance on section 2805(a) of the California Labor Code, state law is clearly unsettled on the matter. The United States Supreme Court considered the question of the constitutionality of section 2805(a) in <u>De Canas</u> v. <u>Bica</u> (1976) 424 U.S. 350 [96 Sup.Ct. 933] and narrowly addressed the issue of whether section 2305 (a) was unconstitutional as an attempt to regulate immigration and naturalization or because it is preempted under the Supremacy Clause, article VI, clause 2, of the U.S. Constitution, by the Immigration and Nationality Act (INA) 8 U.S.C. section 1101 et seq. The Supreme Court held that section 2805(a) was not unconstitutional on its face. However, the Supreme Court did not

reach the constitutionality of the statute as applied, and remanded the case, noting its reservations about the statute:

> There are questions of construction of section 2805(a) to be settled by the California Courts before a determination is appropriate whether, as construed, section 2805(a) can be enforced without impairing the federal superintendence of the field covered by the INA. De Canas v. Bica, supra, 424 U.S. 351 at 364.

The Court in Apollo Tire, discussing De Canas v. Bica concluded:

> Among these questions is whether the statute prevents employment of aliens who are not entitled to lawful residence but are permitted to work in the United States. If it does, it unconstitutionally conflicts with the federal law.
>
> The California courts have not yet determined whether administrative regulations allow §2805(a) to be construed not to conflict with the INA. See California Administrative Code, Title 8, part 1, c. 8 art. I, §16209 (1972). Because state law is unsettled, the Board continues to order reinstatement with backpay, placing the employee in the position he would have been but for the illegal discharge. See Amay's Bakery & Noodle Co., Inc. (1976) 227 NLRB 214 [94 LRRM 1165]. The Board has reached the proper result. In the event that §2805(a) is found to be enforceable, and if the state authorities attempt to enforce the section based on a reinstatement order, the company may petition for modification of the order. NLRB v. Apollo Tire Co., Inc., supra, 102 LRRM 1043 at 1045.

Therefore, Respondent's reliance on section 2805 is not determinative on this issue, and our remedial order herein would not place the employer in clear violation of a valid state statute. The NLRB noted in Amay's Bakery & Noodle Co. (1976) 227 NLRB 214, 215 [43 LRRM 1165] that:

> A conventional reinstatement order thus would not place the Respondent in clear violation of a valid state statute. Rather, it would return Respondent to a position in which it had placed itself earlier, and, but for the illegal discharges, in which it would still be. If there is any risk in that position, it is a risk that the Respondent by its earlier wrongdoing

voluntarily assumed. Moreover, in the event that the California Supreme Court finally determines that section 2805 can be enforced, the Respondent may petition for modification of the Order at the compliance stage.

We therefore affirm the policy of ordering reinstatement with backpay as a remedy for the unlawful discharge of undocumented workers, the same remedy customarily provided for all other discriminatees. Clearly our statute does not allow the Board to differentiate between employees covered under the Act on the basis of citizenship or immigration status. We therefore see no valid reason for depriving undocumented workers of the protections guaranteed to all agricultural employees under the Agricultural Labor Relations Act. This policy is especially important in an agricultural context, where much of the work force is comprised of undocumented workers. We agree with the National Board's reasoning in Amay's Bakery & Noodle, supra, 227 NLRB 214, and find that reinstatement in the case of undocumented workers merely returns Respondent to the position in which it had placed itself earlier, and but for the illegal discharges, in which it would still be. Any risk in that position is the same risk that Respondent by its earlier conduct voluntarily assumed.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Mini Ranch Farm, 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 other 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) Offer the following employees full and immediate reinstatement to jobs comparable to those held by them at Respondent's operations prior to their discharges, without prejudice to their seniority or other employment rights and privileges:

Efrain Gonzales Vasquez
Amadeo Gonzalez Olivera
Celerino Hernandez Cruz
Jaime Hernandez Cruz
Eriberto Cruz Miranda
Caetano Velasco
Amadeo Gomez Hernandez
Eleazar Gonzalez Vasquez
Pascual Vasquez
Marcolino Gomez
Adolfo Gonzalez
Donato Cruz
Amado Hernandez
Gilberto Cruz Guzman
Rodolfo Cruz Miranda
Leocadio Ortiz Carbajal
Adolfo Jimenez Cruz
Erminio Ortiz Carbajal
Jesus Cruz Lopez
Teodoro Cruz Hernandez
Adolfo Guzman Ramos
Daniel Velasco
Paulino Miranda
Samuel Cruz
Francisco Olivera

(b) Make whole the 25 employees named in paragraph 2(a) above for any loss of pay and other economic losses they have suffered as a result of their 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 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 employees employed by Respondent at any time during the period from February 4, 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 place(s) 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 all of its agricultural 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 date of issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: December 22, 1981

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

MEMBER McCARTHY, dissenting:

I would find no constructive discharge either as to the workers who left Mini Ranch on June 10, 1980, or as to those who left on July 28, 1980. I agree that Respondent unlawfully discharged 11 employees on June 6, 1980, but the majority's attempt to extrapolate that incident into constructive discharges of the two other groups of employees cannot withstand scrutiny.[1/]

First it must be recognized that a constructive discharge requires a change in working conditions that is sufficiently arduous or intolerable that a reasonable worker could be expected to quit. See Arakelian Farms (Feb. 14, 1979) 5 ALRB No. 10, pp. 4-5. Beyond that, a constructive discharge arising from concerted activity requires the same elements of proof as does an ordinary section

[1/] When an ALO decision misstates the law or applies it in a manner that clearly does not comport with established court and NLRB precedent, and the case is properly before the Board for review, it is incumbent upon the Board to address such matters regardless of whether a party neglected to present that particular argument in its exceptions.

1153(a) discharge: the employees must be shown to have engaged in protected concerted activity, the employer must be shown to have had knowledge of such activity, and the discriminatory conduct (the change in working conditions) must be shown to have been inflicted by the employer because the employees were engaged in such activity. See Lawrence Scarrone (June 17, 1981) 7 ALRB No. 13, pp. 4-5.

In the instant case I find that no significant change in working conditions occurred and that there is no reasonable basis for believing that the two groups received any kind of ultimatum that forced them to choose between their jobs and concerted activity. See Suburban AMC/Jeep, Inc. (1974) 211 NLRB 487 [87 LRRM 1442].[2/]

The record reveals that Respondent removed 11 workers from Mini Ranch on June 6, 1980, for the ostensible purpose of concealing them from the immigration authorities, and that 8 of them had participated in a concerted work stoppage on the previous day. The five workers who voluntarily left Mini Ranch on June 10 had not been involved in that work stoppage, but were among those who filed wage claims at the end of May. They did not know whether those whom Respondent had taken away from the ranch had been subjected to any

[2/] There is an overwhelming difference between Suburban AMC/Jeep and this case. In Surburban AMC/Jeep, the employer instructed his employees to cease their complaints about pay (which is protected activity) or quit their jobs. In this case the majority presents not one shred of evidence or testimony that suggests Chaney ever told his employees they could not complain to him about pay or conditions. Chaney was simply taking a firm bargaining position when he told his employees they could leave if they did not like the pay. Surely the majority cannot believe that if an employer takes a firm stand on an issue, the employees may quit and then claim they were constructively discharged.

discrimination or whether they had successfully evaded the immigration authorities. Nevertheless, one of the five employees testified that his group left Mini Ranch because they were afraid that Respondent would "do the same thing" to them that he had done to the eleven workers. I find it to be much more likely that, when two of them approached Respondent on June 8 or 9 and were told that they would have to wait until December for accrued wages, the group decided that it was no longer worth working for Respondent.

In any event, the constructive discharge doctrine does not employ a subjective standard. It is not enough that the alleged discriminatees may believe that the employer has placed them in an untenable situation because of their concerted activity. It must appear from objective evidence in the record that the employer has retaliated, or attempted to retaliate, against a specific employee or group of employees because of their participation in concerted activity and that he has done so by making working conditions for the employee or group of employees sufficiently onerous or intolerable that a reasonable employee in those circumstances would choose to leave his employment. Here, the only change of any kind was the removal of the eleven workers on June 6, an act that had no direct consequences for the five who voluntarily left on June 10. Moreover, there is no showing that Respondent even wanted the five to quit.[3/] For all that appears in the record, he was happy to have them continue working despite their repeated complaints about the

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[3/] See Great Plains Beef (1979) 241 NLRB 50 at 962. A constructive discharge was not found because the evidence failed to show that the employer intended to force the employee to quit.

lack of pay. The concerted activity did not cause Respondent to worsen their working conditions, and at no time did he implicitly or explicitly tell any of the five workers either to cease the concerted activity in which they had been engaged, or face discharge. I can find no case under the NLRA or the ALRA which provides a basis for inferring a constructive discharge under the circumstances in the instant situation. If the law were as the majority apparently believes it to be, the discriminatory discharge of any one employee for his or her participation in concerted activity would entitle all other members of the work force to quit their jobs because of a subjective or claimed fear of similar treatment and thus make themselves constructive dischargees with a right to reinstatement and backpay. I cannot believe that the constructive discharge doctrine was ever intended to be applied in a manner that could produce such a preposterous result.

The finding of a constructive discharge as to the nine employees who left Mini Ranch on July 28, 1980, is even more implausible. These workers were certainly not in fear of losing their jobs on account of their concerted activity. They remained at Mini Ranch for some seven weeks after the June 6 incident and were in no way threatened or retaliated against for their concerted protests on July 16 and July 28. At the hearing, the only reason any of these workers gave for their departure was that Respondent failed to provide any pay beyond that which he applied toward their food bill. Contrary to the assertion in the majority opinion, pay in the form of cash had dwindled to nothing prior to any concerted activity at Mini Ranch. That the situation remained that way

afterward is no indication that Respondent was retaliating against the workers for their concerted activity.[4/] Rather than being a response to concerted activity, Respondent's failure to pay the employees their wages appears to have been the inevitable outcome of Respondent's not having obtained the loan for which it had applied.

It is clear from the record that Respondent's message to the workers was that he would continue to supply them with food[5/] but could not give them any additional pay, at least until December, and that he therefore could not satisfy their demands. His position was consistent throughout: if the workers were not happy with the conditions they were free to leave.[6/] The majority's attempts to read threats or ultimatums into what Respondent conveyed to the

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[4/]The majority seems to rely on a distinction without a difference when it finds that: (1) Chaney's wage payments were "irregular" prior to the protected activity; (2) the payments were "stopped" after the protected activity; and (3) Respondent "resumed" payments later. The fact of the matter is that payments were irregular both before and after the concerted activity, and try as the majority may, it cannot establish a correlation between the amount and timing of the payments on the one hand and the concerted activity on the other.

[5/]From the initial hiring of the workers, Chaney always deducted from the workers' wages a "fixed amount" for food. The majority seems to claim that just because the workers finally complained about the charge for food, the food bill evolves into a change of a working condition that forced them to leave Respondent's employ.

[6/]The change in working conditions the majority repeatedly emphasizes is the fact that the workers were not being paid sufficient wages. At the same time the majority identifies the protected activities engaged in by the workers as being the complaints concerning lack of wages. This adds up to a claim that the workers were denied wages because they complained that they were denied wages. This circular reasoning is at the heart of the majority's finding of a violation as to the workers who left on July 28.

workers is unsupported by the record.[7/] Moreover, the record does not support the majority's contention that Respondent's treatment of the workers in either or both of the two groups was influenced by their demands for pay and/or their complaints about poor working conditions. Thus, we have neither a change of conditions following the employees' concerted activities nor a causal connection between their concerted activities and any act or statement of Respondent which could be reasonably construed as constituting a constructive discharge of either group.

Based on the foregoing, I would dismiss the complaint as to the two groups of workers who voluntarily left Respondent's employ on June 10 and July 28, 1980.

Dated: December 22, 1981

JOHN P. McCARTHY, Member

[7/] For the most part, Respondent had to communicate with the workers by means of gestures and one-word statements. Under such circumstances, any inferences drawn by the majority would have to be even more tenuous than they already appear. In any event, I can find no evidence that Respondent ever explicitly or implicitly "condition[ed] payment of wages on continued work without complaining," as the majority finds.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano 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 25 employees and by interfering with the rights of our workers to act together to help one another as a group. The Board has ordered 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.

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

SPECIFICALLY, the Board found that it was unlawful for us to discharge:

Efrain Gonzalez Vasquez
Amadeo Gonzalez Olivera
Celerino Hernandez Cruz
Jaime Hernandez Cruz
Eriberto Cruz Miranda
Donato Cruz
Amado Hernandez
Jesus Cruz Lopez
Teodoro Cruz Hernandez
Adolfo Guzman Ramos
Daniel Velasco
Paulino Miranda
Samuel Cruz
Gilberto Cruz Guzman
Rodolfo Cruz Miranda
Leocadio Ortiz Carbajal
Adolfo Jimenez Cruz
Erminio Ortiz Carbajal
Francisco Olivera
Caetano Velasco
Amadeo Gomez Hernandez
Eleazar Gonzalez Vasquez
Pascual Vasquez
Marcolino Gomez
Adolfo Gonzalez

WE WILL NOT discharge or otherwise discriminate against any employee for acting with any other worker(s) to help or protect one another.

WE WILL reinstate the aforementioned 25 employees 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 of their discharge, plus interest on such sums computed at seven percent (7%) per annum.

DATED: MINI RANCH 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. One office is located at 627 Main Street, Delano, California 93215, the telephone number is (805) 725-5770.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Mini Ranch Farms

7 ALRB No. 48
Case No. 80-CE-101-D

ALO DECISION

The ALO concluded that Respondent violated section 1153(a) of the Act by discharging the 11 employees he drove off his property on June 6, 1980, because they engaged in protected concerted activity. The ALO concluded that five other workers, who left the job on June 10, 1980 were constructively discharged and that a group of nine employees, who left their jobs on July 28, 1980 were also constructively discharged by Respondent in violation of section 1153 (a) of the Act. The ALO recommended full and' immediate reinstatement and backpay for all 25 employees.

BOARD DECISION

The Board affirmed the ALO's rulings, findings, conclusions, and recommendations. In its exceptions, Respondent raised the issue of the jurisdiction of the ALRB to compel Respondent to reinstate undocumented workers, arguing that the ALRB was without such jurisdiction as federal law has preempted this area of law. Respondent further relied on section 2805(a) of the California Labor Code which makes it unlawful for an employer to knowingly hire aliens not entitled to lawful residence in the United States.

Relying on NLRB v. Apollo Tire (9th Cir. 1979) 604 F.2d 1180 [102 LRRM 2043], the Board followed NLRB precedent and policy of ordering reinstatement of undocumented workers. The Board further held section 2805(a) of the California Labor Code to be inapplicable at the present time, due to the unsettled state of California law as to the constitutionality of section 2805 (a). The Board concluded that ALRB policy will continue to be that of ordering reinstatement of undocumented workers who have been discharged in violation of the Act. Thus, ALRA affords protection to all employees covered under the Act without reference to their immigration status or citizenship.

REMEDIAL ORDER

The Board ordered reinstatement and backpay to all 25 discriminatees.

DISSENT

Member McCarthy agrees with the finding of a violation as to the 11 workers who were discharged on June 6, 1980, but would find no violation as to two groups of employees who voluntarily left Mini Ranch on June 10 and July 28, 1980. He does

not consider the latter two groups to have been subjected to either substantially changed working conditions or any ultimatum forcing them to choose between their jobs and continuing their protected concerted activity. He notes that the constructive discharge doctrine does not employ a subjective standard and that a finding of constructive discharge must be based upon objective evidence in the record that the employer has retaliated, or attempted to retaliate, against a specific employee or group of employees because of their concerted activity. The record in the instant matter does not in his view demonstrate a causal connection between the concerted activity of any employees in the two groups and any act or statement of Respondent which could be reasonably construed as constituting a constructive discharge of either group.

* * *

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

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the matter of MINI RANCH FARMS, Employer-Respondent, and EFRAIN GONZALEZ VASQUEZ, Petitioner-Charging Part	Case No. 80-CE-101-D ADMINISTRATIVE LAW OFFICER'S DECISION

Fred Spallina, Esq., of Porterville, California, for Employer-Respondent.

Ronald L. Jackson, Esq., California Rural Legal Assistance Migrant Farmworker Project, Fresno, California, for the Petitioner-Charging Party.

Carla Jo Dakin, Esq., Agricultural Labor Relations Board, Fresno, California, for the Petitioner-General Counsel.

STATEMENT OF THE CASE

ALEX REISMAN, Administrative Law Officer: This case was heard by me on October 7, 8 and 9, 1980 in Delano, California.

On July 9, 1980, Efrain Gonzalez Vasquez filed an unfair labor practice charge against Mini Ranch Farms (hereinafter respondent or employer) alleging that respondent had unlawfully discharged Efrain Gonzalez Vasquez, Amadeo Gonzalez, Gilberto Cruz, Jaime Hernandez Cruz, Jesus Cruz Lopez and others, on June 6, 1980, for engaging in protected concerted activities. A complaint was issued on July 18, 1980 alleging that respondent discharged Efrain Gonzalez Vasquez, Jesus Cruz Lopez, Teodoro Cruz Hernandez, Gilberto Cruz Guzman, Amadeo Gonzalez Olivera, Rodolfo Cruz Miranda, Celerino

Hernandez Cruz, Leocadio Ortiz Carbajal, Jaime Hernandez Cruz, Amadeo Gomez Hernandez, Eleazar Gonzalez Vasquez, Adolfo Guzman Ramos, Adolfo Jimenez Cruz, Eriberto Cruz Miranda and Erminio Ortiz Carbajal, on June 6, 1980, in violation of Section 1153(a) of the Agricultural Labor Relations Act (hereinafter ALRA). Respondent answered on July 29, 1980, denying all allegation of unfair labor practices.

The complaint was amended on August 11, 1980 to include an additional allegation that respondent dischared Amado Hernandez, Marcolino Gomez, Pascual Vasquez, Donate Cruz, Francisco Olivera, Samuel Cruz, Daniel Velasco, Adelfo Gonzalez and Paulino Miranda on July 28, 1980, in violation of Section 1153(a) of the ALRA. At the hearing in this case, on October 7, 1980, the complaint was further amended to include an allegation that respondent, on June 6, 1980, threatened the discriminatees listed in paragraph 4 of the complaint, with arrest and deportation in violation of Section 1153 (a) of the ALRA.

All parties were given a full opportunity to participate in the hearing. After the close of the hearing, the General Counsel filed a post-hearing brief. Respondent chose not to submit a brief.

Upon the entire record, including my observation of the demeanor of the witnesses, and after careful consideration of the arguments of the parties and the brief submitted, I find as follows:

FINDINGS OF FACT

I. JURISDICTION

Respondent, Mini Ranch Farms, is engaged in agriculture in Pixley, California and was at all times material herein, an agricultural employer within the meaning of Section 1140.4(c) of the ALRA.

The particular question of whether Mini Ranch Farms stood in an employer relationship to the alleged discriminatees at all times material herein will be discussed below.

At all times material herein, all of the alleged discriminatees listed in the complaint, were agricultural employees within the meaning of Section 1140.4(b) of the ALRA.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges :

A. That on June 6, 1980, respondent, through its agent Roger Chaney, discharged Efrain Gonzalez Vasquez, Jesus Cruz Lopez, Teodoro Cruz Hernandez, Gilberto Cruz Guzman, Amadeo Gonzalez Olivera, Rodolfo Cruz Miranda, Celerino Hernandez Cruz, Leocadio Ortiz Carbajal, Jaime Hernandez Cruz, Amadeo Gomez Hernandez, Eleazar Gonzalez Vasquez, Adolfo Guzman Ramos, Adolfo Jimenez Cruz, Eriberto Cruz Miranda and Erminio Ortiz Carbajal because of their concerted efforts to obtain wages for work performed for respondent;

B. That on June 6, 1980, respondent, through its agent Roger Chaney, threatened the above-listed workers with arrest and deportation because of their concerted efforts to obtain wages for work performed for respondent; and

C. That on July 28, 1980, respondent, through its agent Roger Chaney, discharged Amado Hernandez, Marcolino Gomez, Pascual Vasquez, Donato Cruz, Francisco Olivera, Samual Cruz, Daniel Velasco, Adelfo Gonzalez and Paulino Miranda because of their concerted efforts to obtain wages for work performed for respondent.

Respondent denies all the above-stated allegations, and contends

respondent did not employ the workers listed as discriminatees in the complaint, or in the alternative, did not discharge these workers.

III. BACKGROUND OF RESPONDENT'S OPERATIONS

Mini Ranch Farms is a farming operation owned and operated by Roger Chaney. It is located on a 60 acre piece of land in Pixley, California. Chaney lives on this land and grows various fruits and vegetables, including lettuce, tomatoes, strawberries and squash.

It is uncontradicted in the record that prior to February 4, 1980, Chaney hired farmworkers, at least some of whom were undocumented, to plant, tend and harvest his crops, and acted as the sole supervisor for these workers. Four of the workers who testified at the hearing, Marcolino Gomez, Feliciano Cruz, Daniel Velasco and Jesus Cruz Lopez, stated that they had worked for Chaney prior to February 4, 1980 and that at these times (which encompass the year 1977 through February 4, 1980), Chaney had always paid them on a weekly basis.

On February 4, 1980, after all the crops were planted at Mini Ranch, Chaney was denied a Farmer's Home Administration Loan. At this point, Chaney stopped paying regular wages to those working at Mini Ranch, and there is no evidence in the record that he resumed payment of regular wages to anyone working at Mini Ranch until July, 1980. However, there is significant conflict between Chaney's testimony regarding the events which occurred between February 4, 1980 and July 28, 1980, and the testimony of those who worked at Mini Ranch during this time period.

IV. THE EMPLOYMENT RELATIONSHIP BETWEEN ROGER CHANEY AND THE ALLEGED DISCRIMINATEES

A. Chaney's testimony

Roger Chaney, respondent's sole owner and agent, testified that after he was denied a loan on February 4, 1980, he "quit farming" and had no employees until July 7, 1980. Chaney testified that all of the alleged discriminatees were working at Mini Ranch pursuant to a lease agreement between himself and, Feliciano Cruz, Marcolino Gomez and Constantino Cruz. According to Chaney, the terms of this agreement were that these three men were entirely responsible for the tending and harvesting of all the crops at Mini Ranch, including the employment, payment and supervision of all workers necessary for the job. Once the crops were harvested, Chaney would market them and the profits would be split three ways: one third for Marcolino Gomez, Feliciano Cruz and Constantino Cruz, one third for Chaney, and one third for equipment. Chaney testified that his only involvement with the farming operation was to turn on and off the power plant for the irrigation pumps.

Chaney's testimony regarding the above-mentioned lease agreement and his relationship to the farming operation at Mini Ranch forms the basis of his defense to the charges herein. It is in direct contradiction to the testimony of all the witnesses who worked at Mini Ranch between February 4, 1980 and July 28, 1980. These workers all testified that they were hired by Roger Chaney, that they considered Roger Chaney to be their sole employer and supervisor, that their understanding was that Chaney would pay them on a weekly basis as he had in the past, and that they had no knowledge of any lease or profit sharing agreement. (The tes-

timony of these workers will be discussed in more detail below.)

I discredit the testimony of Roger Chaney with regard to the above-mentioned lease agreement and his relationship to the farming operation at Mini Ranch between February 4, 1980 and July 28, 1980. His testimony is frought with internal contradictions, inherently unbelievable assertions and apparent falsifications of evidence presented at the hearing. In addition, it is contradicted by credible testimony of other witnesses. While the record is replete with examples, the following will serve as a sampling of some of the more significant bases for the discrediting of Chaney's testimony:

1. Chaney's testimony regarding the formation of the alleged lease agreement

When questioned about the formation of this alleged agreement, Chaney first testified that a verbal agreement was made between himself, Marcolino Gomez and Feliciano Cruz during a telephone conversation with Feliciano Cruz while Cruz was still in Mexico. Chaney testified that Feliciano Cruz stated he would be in Pixley with ten men by March 1, 1980. However, when asked when this conversation took place, Chaney stated "I don't remember the date, but it was either the last of February or sometime the first of March, around in March."

Chaney later testified that he first discussed the lease agreement with Feliciano Cruz and Marcolino Gomez on March 18 or 19, 1980, after they arrived in Pixley from Mexico. Chaney stated that this discussion took place near his packing shed and that he explained the agreement to Marcolino Gomez and Feliciano Cruz through an interpreter, Ray Vasquez. According to Chaney, Feliciano Cruz and

Marcolino Gomez asked why they could not get a weekly check and Chaney explained that he had no money and they were not working for him. This testimony is in direct contradiction to Chaney's earlier testimony that the agreement was made before Marcolino Gomez and Feliciano Cruz came to Pixley.

Chaney's testimony is further contradicted by the testimony of respondent's own witness, Ray Vasquez. Vasquez testified that the only time he explained to the workers that Chaney would split the profits from the crops rather than pay on a weekly basis was during the summer when he came to store tarragon at Chaney's ranch.

All of the above factors lead me to credit the testimony of both Marcolino Gomez and Feliciano Cruz that they never discussed nor entered into any lease agreement with Chaney.

2. Chaney's testimony regarding the document entitled "Farm Lease"

Chaney' s testimony regarding the document entitled "Farm Lease'' (General Counsel's Exhibit #2), is equally unconvincing. Chaney stated that this document represented the written formalization of the above-mentioned lease agreement. According to Chaney, the document was signed by himself and Marcolino Gomez on some undetermined date later than March 1, 1980, the date which appears at the end of the document.

However, the alleged signature of Marcolino Gomez on this document bears absolutely no resemblance to Gomez's signatures which appear on two of the receipts which constitute Respondent's Exhibit B. Gomez and Chaney both testified that Gomez signed two of the receipts in Respondent's B. The obvious difference in

handwriting between the signatures acknowledged by both Chaney and Gomez to be authentic and the signature on the "Farm Lease" is apparent even to a lay person. This fact, coupled with Gomez's denial of ever having seen or signed the "Farm Lease", permits no other logical inference than that respondent falsified evidence in this case. This, in and of itself, significantly undermines Chaney's credibility as a witness.

3. Chaney's testimony regarding his relationship to the farming operation

Chaney testified that although he was strongly dissatisfied with the work methods and level of productivity at Mini Ranch, he exercised no control over how the farming was done, and never supervised the workers or told them what to do or when to do it. According to Chaney, all he did was operate the power plant for the irrigation pumps at Marcolino Gomez's or Feliciano Cruz's request.

Chaney also testified that he helped the workers out in various ways including: personally signing for $18,000 to $21,000 worth of groceries for the workers, getting advances from produce buyers for them, supplying the workers with all their equipment, including tractors, taking the workers wherever they wanted to go and buying them volleyballs for recreation.

Chaney was admittedly broke and was depending on two thirds of the profits from the crops for his survival and the maintainance of his farm equipment. It is highly unlikely that Chaney would stand idly by and watch the workers badly mismanage the farm operation, while at the same time bestowing many favors upon the very men who were, according to him, cutting into his livelihood due to their poor work habits. The inherent unbelievability of Chaney's own

account of his relationship to the workers further undercuts his credibility.

4. Chaney's testimony regarding the receipt for $6550 dated July 25, 1980, in Respondent's Exhibit B

This receipt for $6550, according to Chaney's testimony, was signed by Marcolino Gomez on July 25, 1980 when Chaney gave Gomez the above-stated amount of money for the sale of produce. However, the signature which appears on the receipt is clearly a carbon of another signature by Gomez which appears on a receipt, also in Respondent's B, dated July 15, 1980. Curiously enough, there is no carbon copy of the alleged receipt of July 25, 1980 in General Counsel's Exhibit #4.(There are carbon copies of all the other receipts in Respondent's B except for the one dated July 8, 1980 and signed by Constantino Cruz. It should be noted that the authenticity of this receipt was never established since Constantino Cruz did not testify at the hearing.) No one seemed to have any knowledge of where this missing carbon copy could be. In addition, the signature from which the July 25 carbon was made does not appear on the carbon copy of the July 15, 1980 receipt in General Counsel's #4.

Respondent offered no explanation for these strange circumstances. The only logical inference which can be drawn is that the signature of Marcolino Gomez which appears on the far right of the July 15, 1980 receipt was executed after a carbon had been placed between the July 15 original and another original, which then became the alleged July 25, 1980 receipt for $6550. This, coupled with Marcolino Gomez's testimony that he did not receive $6550 from Roger Chaney on July 25, 1980 or sign a receipt for $6550 on that

date, strongly infers another attempt on respondent's part to deliberately introduce false evidence in this case.

Further evidence which tends to impeach Chaney's credibility will appear below. Suffice it to say that the evidence points strongly to the conclusion that Roger Chaney never had a lease agreement with Marcolino Gomez and Feliciano Cruz, and that his testimony regarding his relationship to the farming operation between February 4 and July 28, 1980, is discredited.

B. The Testimony of the Workers

I credit the testimony of the workers cited immediately below because of their demeanors as witnesses and because this testimony is contradicted in part only by the discredited testimony of Roger Chaney.

Jesus Cruz Lopez testified that he began working for Roger Chaney at Mini Ranch in July, 1980. He stated that he noticed no difference between the presence of Roger Chaney before and after February 4, 1980. Both before and after February 4, 1980, only Chaney told the workers what to do and kept the workers time card. Jesus Cruz Lopez testified that he had no indication that he was working for anyone other than Chaney.

The difference that Jesus Cruz Lopez did notice was that before February 4, 1980 Chaney paid him $3.35 per hour, and between February 4, 1980 and June 10, 1980, Jesus Cruz Lopez only received $183.00. He testified that he continued to work after Chaney stopped paying because he trusted Chaney's word when Chaney told the workers that he was going to receive a check from Los Angeles for $80,000 on April 4, 1980, and at that time he would pay back

wages and resume payment by the week.

Gilberto Cruz Guzman testified that Chaney hired him on February 27, 1980. He stated that Rudolfo Cruz, Eriberto Cruz and Adolfo Guzman were also hired by Chaney on that date. When Gilberto Cruz Guzman arrived at Mini Ranch, he was told by the men who had been working there that Chaney was paying $3.35 per hour. He also testified that Chaney told the workers he would pay them on April 4, 1980 when his check arrived from Los Angeles.

Feliciano Cruz testified that he had worked for Chaney in the years 1977, 1978 and 1979. On the third or fourth of March, 1980, he phoned Chaney from Oaxaca, Mexico to inquire about work. He spoke with Chaney's wife through an interpreter. Cruz testified that she told Cruz that there was work and to come to Pixley with one or two others. On March 6, 1980, Cruz received a telegram from Chaney to bring four or five other workers.

Feliciano Cruz, Marcolino Gomez, Efrain Gonzalez Vasquez and Jaime Hernandez Cruz all testified that they arrived in Los Angeles on March 15, 1980. Efrain Gonzalez Vasquez testified that Adelfo Gonzalez, Amadeo Gonzales, Eleazar Gonzalez, Amadeo Hernandez, Erminio Ortiz, Leocadio Ortiz and a man named Salvador arrived with them. Four of the men went ahead to Pixley to ask for a loan from their countrymen who worked there. Roger Chaney then came to Los Angeles and took the remaining seven workers back to Mini Ranch in his pickup truck. Chaney hired them all and they began work on March 16, 1980.

When these men arrived at Mini Ranch, they were told by the workers there that Chaney was paying $3.35 per hour. They were

also told that Chaney would not pay anything until April 4, 1980 when his $80,000 check was due to arrive. Both Marcolino Gomez and Feliciano Cruz testified that they heard nothing about any lease or profit sharing arrangement when they arrived in March. On the contrary, they both stated that shortly after they arrived, Chaney told them he would pay $3.35 per hour.

Jesus Cruz Lopez testified that on April 4, 1980, Chaney told the workers that his check had not arrived and that it might come in another week. Feliciano Cruz testified that on April 7, 1980, he talked to Chaney about money. Chaney gave Feliciano Cruz $2400 to divide amongst the twenty-four workers and stated that he was going to pay them $3.35 per hour. Each worker received $100.

The next time the workers were paid was on May 1, 1980. Chaney gave Feliciano Cruz $2000 which Feliciano divided amongst the workers. Each man received $83.

On May 7, 1980 and May 9, 1980, Chaney gave Feliciano Cruz $252 and $240 respectively. Feliciano Cruz testified that each worker received approximately $13 total from these two payments.

Daniel Velasco testified that he arrived at Mini Ranch on May 14, 1980, along with Caetano Velasco, Donate Cruz Jiminez and Samuel Cruz Jiminez. Velasco testified that they were all hired by Chaney and began working the following day. They were told by Feliciano Cruz that Chaney had not been paying, but that the workers were to receive $3.35 per hour.

On June 6, 1980, eleven of the workers left Mini Ranch. (This incident will be discussed in detail below.) Pascual Vasquez testified that on that same date, Chaney hired him, Abel Vasquez,

Celevino Martinez, Teodoro Moreno, Domingo Moreno and Pauline Miranda. Pascual Vasquez stated that he believed he would receive $3.35 per hour.

Jesus Cruz Lopez testified that on June 10, 1980, he and four other workers left Mini Ranch. (This incident will also be discussed below.)

The remaining workers did not receive any more money until June 13, 1980. (Feliciano Cruz testified that the receipt in Respondent's B dated June 4, 1980 does not represent money given to him by Chaney. He testified that Chaney did not pay him on that date, but told him that the purpose of this receipt was to wipe out all back debts incurred by the workers when Chaney bought them food.) On June 13, 1980, Chaney gave Marcolino Gomez and Feliciano Cruz $550. Feliciano Cruz testified that out of this money, Chaney took $170 for food. The $380 was then divided amongst the workers at Mini Ranch.

On June 14, 1980, Feliciano Cruz left Mini Ranch alone because his wife in Mexico was dying.

The last payment Chaney made to the workers was on July 15, 1980, (The authenticity of the alleged July 25, 1980 receipt is discussed under Chaney's testimony, supra.) Marcolino Gomez testified that on this date, Chaney did not give him $2995.89. Marcolino Gomez Stated that he only received $730 and Chaney told him that the balance had been paid to the market in Pixley. The $730 was divided amongst the workers.

On July 28, 1980, the remaining workers who are material to this case, left Mini Ranch. (This incident will be discussed below.)

The testimony of all the workers regarding the time period February 4, 1980 through July 28, 1980 clearly demonstrates that Roger Chaney was the sole employer and supervisor at Mini Ranch. According to their testimony, the only special functions performed by Marcolino Gomez and Feliciano Cruz were the administration of time cards and the receipt of money from Chaney to divide amongst the workers. Feliciano Cruz and Marcolino Gomez testified that they could not read the English words on the receipts in Respondent's B and would sign them because the amount of money received corresponded with the numbers on the paper. All of the workers testified that they were hired by Roger Chaney at the rate of $3.35 per hour. Chaney provided them with places to live at Mini Ranch. Chaney alone would assign them work each morning and supervise them throughout the day. He would decide how many hours they worked each day and how much and when they would be paid. The workers all testified that Chaney had them working seven days per week, eight to ten hours per day.

For the reasons stated above, I credit the above-summarized testimony of the workers which in turn forms the basis for the discussion of the events constituting the alleged unfair labor practices charged herein.

V. HISTORY OF WORKER PROTESTS TO CHANEY ABOUT UNPAID WAGES, AND THE EVENTS WHICH CONSTITUTE THE BASIS OF THE CHARGES HEREIN

A. May, 1980

As stated above, the workers at Mini Ranch believed that Chaney was going to pay them $3.35 per hour. On April 4, 1980, Chaney told them that he was still expecting his check from Los Angeles

for $80,000. Between this date and May 9, 1980, Chaney made four payments to the workers: $2400 on April 7, 1980, $2000 on May 1, 1980, $252 on May 7, 1980, and $240 on May 9, 1980. This money was divided amongst twenty-four workers. Chaney also provided the workers with food, but the money for food was to be deducted from their pay. The workers testified credibly that they had no other money besides that which Chaney gave them, and that they had borrowed money in Mexico to come to Pixley to work.

In May, 1980, the workers protested to Chaney about the lack of pay for the many hours of work they had done. Efrain Gonzalez Vasquez and Jaime Hernandez Cruz both testified credibly that in May, 1980, the workers went to the packing shed to ask Chaney to pay them the money they needed to send to Mexico. Feliciano Cruz spoke for the workers through gestures. Efrain Gonzalez Vasquez stated that Chaney told them he could not give them any money because the check had not yet arrived.

Another time in May, 1980, the workers who were picking strawberries engaged in a work stoppage. According to the credible testimoney of Efrain Gonzalez Vasquez and Jaime Hernandez Cruz, Chaney told the workers to pick many boxes of strawberries and clean them at the same time. They testified that this was very difficult because rain had damaged the strawberry crop, and the workers were upset that Chaney expected them to do so much work for no money.

They communicated their dissatisfaction to Chaney through hand signals. They testified that they told Chaney they could not do what he asked and to pay them so they could go back to Mexico.

Chaney told the workers that if they did not work, they would not get paid and they could go back to Mexico if they did not want to work. The workers then left the field because they thought Chaney was firing them by telling them to leave if they would not do the work. Efrain Gonzalez Vasquez testified that then Chaney's attitude changed and he told the workers through gestures that if they waited they would get paid. Seeing no other alternative, the workers continued to work.

In addition to these two protests to Chaney about wages, Efrain Gonzalez Vasquez testified that at the end of May, 1980, thirteen workers at Mini Ranch filed wage claims, inferably with the Division of Labor Standard Enforcement. Ten of these thirteen were Amadeo Gomez Hernandez, Teodoro Cruz, Jaime Hernandez, Jesus Cruz Lopez, Adolfo Jiminez, Gilberto Cruz Guzman, Amadeo Gonzales, Adolfo Guzman, Eliazar Gonzalez and Efrain Gonzalez Vasquez. (See General Counsel's Exhibit #5)

B. <u>June 5 and 6, 1980</u>

Efrain Gonzalez Vasquez testified that on June 5, 1980, there were twelve to fifteen workers working in the field on the strawberry harvest. At approximately 3:30 p.m., they started to talk and decided to stop work at 4 p.m. even though Chaney wanted them to work more hours. By 4 p.m. the workers had worked nine hours that day and they were upset because they had not gotten paid, nor did they know whether they would be paid for the work they had done for Chaney. Some of the workers, including Efrain Gonzales Vasquez, Jaime Hernandez, Gilberto Cruz, Caetano Velasco, Amadeo Gonzalez, Erminio Ortiz, Leocadio Ortiz and Celerino Hernandez,

left the field and went back to the house where they lived. The others remained in the strawberry field and resumed work when Chaney arrived there.

The following morning, the workers arrived at the packing shed as usual to receive the day's work assignment from Chaney. There is significant conflict between Chaney's testimony and that of the workers regarding the events that followed. I discredit Chaney's testimony in this regard because of his demeanor as a witness, because he testified to two contradictory versions of the same events at the hearing, and because of all the reasons for discrediting his testimony summarized above. (See pp.5-10, supra.)

First Chaney testified that some time in June, on a date he could not remember, there was a scare from the border patrol and Marcolino Gomez and Feliciano Cruz asked him to take some men to the bus station in Delano. Chaney stated: "But I couldn't tell you whether they were employees of theirs (Marcolino Gomez and Feliciano Cruz) or not."

Later, Chaney testified that on June 5, 1980, Marcolino Gomez and Feliciano Cruz had come to him and told him, through Ray Vasquez, the interpreter, that there were too many workers at Mini Ranch and there were some trouble-makers they wanted to get rid of. He testified that on June 6, 1980, Marcolino Gomez and Feliciano Cruz gave him a list of the workers that were "no good". According to Chaney, he told Marcolino Gomez and Feliciano Cruz that the border patrol was in the area, and they asked him to hide everyone but the workers they wanted to get rid of. Chaney testified that they asked him to take these undesirable workers to the bus in

Delano.

These two versions of the same events are manifestly inconsistent and irreconcilable. In addition, Ray Vasquez, the interpreter, mentioned nothing in his testimony about interpreting for Chaney about Marcolino Gomez and Feliciano Cruz's troubles with "their workers". And lastly, Chaney's entire testimony in this regard is based on the previously discredited premise that he had no control over the work force at Mini Ranch.

I credit the testimony of the workers which follows, regarding the events of June 6, 1980 because of their demeanors as witnesses and because it stands uncontradicted by any other credible testimony.

Efrain Gonzalez Vasquez and Jaime Hernandez Cruz testified that on the morning of June 6, 1980, they and all the other workers reported to the packing shed as usual and were waiting for Chaney to tell them what to do. They testified that Chaney seemed nervous and was pacing up and down. Then Chaney took out a list of names of the workers at Mini Ranch which is Respondent's Exhibit C.

Feliciano Cruz testified that he had written up the list of the names of all the workers for Chaney so Chaney would know who was working, but denied having made the notations "no good" and "ok" which appear next to some of the names in black ink. Feliciano Cruz's testimony that he had written the list eight days after his arrival at Mini Ranch is clearly in error since some of the workers whose names appear on the list did not arrive at Mini Ranch until May. However, consideration of the entire record leads me to the conclusion that this was a mistake on the part of the witness rather than an attempt to fabricate testimony. It is

significant that while Feliciano Cruz wrote the list of the workers' names, the notations which label the workers as either "ok" or "no good" appear to have been written by another's hand.

The record is unclear as to who read the names off the list Chaney took out. Efrain Gonzalez Vasquez and Marcolino Gomez testified that Chaney read the list, while Feliciano Cruz testified that Marcolino Gomez read the list. Jaime Hernandez Cruz testified that Chaney took out the list and was having difficulty pronouncing the names of the workers so he gave it to Marcolino Gomez to read. Regardless of who read the list, the workers all testified that nineteen names were read from the list and that Chaney instructed these men to get on his pickup truck. The eleven whose names were not read were Efrain Gonzalez Vasquez, Gilberto Cruz Guzman, Amadeo Gonzalez Olivera, Rodolfo Cruz Miranda, Celerino Hernandez Cruz, Leocadio Ortiz Carbajal, Jaime Hernandez Cruz, Adolfo Jimenez Cruz, Eriberto Cruz Miranda, Erminio Ortiz Carbajal and Caetano Velasco. Chaney told these eleven workers to wait for him for a half hour. Chaney then took the nineteen men on the pickup truck to a lot with some lumber and told them to hide because the police were in the area.

Efrain Gonzalez Vasquez and Jaime Hernandez Cruz testified that when Chaney returned, he told the eleven workers to wait a little longer. Chaney then went to the house where the workers lived. Six men who had just arrived from Mexico were there, and Chaney took them off the ranch in his pickup truck.

Efrain Gonzalez Vasquez and Jaime Hernandez Cruz testified that when Chaney returned for the second time, he had a weapon in his truck. Chaney told the eleven workers to pack their belongings because there were too many police and he was going to take them to the bus in Delano.

The workers got their clothes and told Chaney that they had no money to go anywhere. They asked Chaney to give them the money he owed them, and Chaney replied that when he got a check he would give money to Feliciano Cruz to send to them in Mexico. The workers said they had no money, even for the bus.

Chaney then told the men to get in his truck and drove to his house. He went into his house and came out with $110 which he gave to Caetano Velaso to divide amongst the workers for bus tickets. The workers asked Chaney to let them walk because they had no money to go to Mexico, but Chaney said no, that there were too many police.

Chaney drove the workers to an almond grove near McFarland, told the workers to get off the truck, and drove away. The workers hid and moved through the fields. Approximately twenty minutes later, when they reached the next road, they saw Chaney drive by in his pickup truck, followed by two police cars.

Feliciano Cruz testified that after an hour Chaney picked up the men who were hiding at the lot and drove them back to Mini Ranch. These remaining men continued to work, and on that same day, June 6, 1980, Chaney hired the six men who had recently arrived from Mexico.

C. June 8-10, 1980

Jesus Cruz Lopez testified that on June 8 or 9, 1980, he and Amadeo Gomez went to the packing shed to ask Chaney for the money he owed them. He testified that Chaney told them not to bother him and that he would pay them in December.

Jesus Cruz Lopez left Mini Ranch with Amadeo Gomez, Teodoro Cruz, Eleazar Gonzalez and Adolfo Guzman on the night of June 10, 1980. Jesus Cruz Lopez testified that" he left Mini Ranch because he was afraid that if he stayed, Chaney would do the same thing to him that he did to the eleven workers who disappeared on June 6, 1980. He said that he was afraid that Chaney would fire him and not pay him.

D. Late June, 1980

Pascual Vasquez testified that around June 20, 1980, all the workers remaining at Mini Ranch asked Chaney for their wages. Pascual Vasquez, speaking for the workers, told Chaney that they had no clothes or shoes. Chaney replied that he would not give them a check, just food.

Marcolino Gomez testified that he discussed money with Chaney at the end of June, 1980. Gomez testified that Chaney told him, through an interpreter, that he was notgoing to pay them weekly but would pay them for a third part of the crop. Chaney told Gomez that if the workers did not like it they could leave. Marcolino Gomez testified that this was the first time he had heard anything about payment in shares.

E. July 16, 1980

On July 15, 1980, Chaney gave the workers $730 out of the $2995.89 for which Marcolino Gomez signed a receipt. Chaney told

the workers that the rest of the money went to the Pixley Market for food. Marcolino Gomez and Daniel Velasco testified that the workers were upset about the amount of money Chaney took out for food, and the next day they went to talk to Chaney at the packing shed. (Daniel Velasco testified that this discussion took place around July 18 or 19, 1980, but this minor discrepancy is of no relevance since Velasco and Gomez were clearly referring to the same incident.)

A woman named Irma Regalado who worked at the packing shed and spoke English, interpreted for the workers. Through her, the workers told Chaney that they did not agree with the price he had set for food. Daniel Velasco testified that they told Chaney they could each eat for $15 per week. Chaney told the workers that the price of food was fixed and if they did not like it they could go back to Mexico.

F. July 28, 1980

Daniel Velasco and Pasqual Vasquez testified that on July 28, 1980, the workers were picking tomatoes. They testified that it was extremely hot and the plants did not have enough fruit to pick the thirty boxes Chaney wanted. They told Chaney that they could not go on due to the heat but Chaney told them to keep working.

Later on, Ray Vasquez came to Mini Ranch. The workers knew that Ray Vasquez could speak English so they asked him, and he agreed, to ask Chaney to give them a check since they had no shoes or clothes.

Pascual Vasquez testified that all he understood of Chaney's reply was "No check. No check. Just food." Daniel Velasco testified that Ray Vasquez told them that Chaney said he had no money to pay them and that he was going to buy groceries from the $500

which the workers had coming to them. Ray Vasquez told the workers that Chaney said that the grapes had already started and to look for other work or leave the place, and that Chaney knew charges had been filed against him by those who already left, but they could not do anything to him because he had no money.

The workers did not work any more that day. That evening Pascual Vasquez, Daniel Velasco, Marcolino Gomez, Paulino Miranda, Adelfo Gonzalez, Samuel Cruz, Donate Cruz, Francisco Olivera, and Amado Hernandez left Mini Ranch. Pascual Vasquez, Daniel Velasco and Marcolino Gomez all testified that they left because Chaney was not going to pay them and they did not want to work for no money.

APPLICABLE PROVISIONS OF THE ALRA AND NATIONAL LABOR RELATIONS ACT AND GENERAL LEGAL PRINCIPLES

Section 1152 of the ALRA states:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The language of Section 1152 of the ALRA is identical to that of Section 7 of the National Labor Relations Act (hereinafter NLRA).

Section 1153 of the ALRA states in pertinent part:

> "It shall be an unfair labor practice for an agricultural employer to do any of the following:
> (a) To interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed in Section 1152 ..."

The language of Section 1153 (a) of the ALRA is essentially the

same as that of Section 8(a)(1) of the NLRA.

Section 1160.3 of the ALRA states as follows:

> "If, upon the preponderance of the testimony, the board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, to take affirmative action, including reinstatement of employees with or without back pay, and making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain, and to provide such other relief as will effectuate the policies of this part."

Section 1148 of the ALRA states that the Agricultural Labor Relations Board (hereinafter ALRB), shall follow applicable precedents of the NLRA.

The National Labor Relations Board (hereinafter NLRB) has long held that

> ""any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted without the intervention of the bargaining representative ..." Section 9(a) of the Act, 29 U.S.C.A. Section 159(a) . . . "concerted activities for the purpose of ... mutual aid and protection are not limited to union activities.""
>
> Salt River Valley Assn. v. N.L.R.B., 99 NLRB 849, 32 LRRM 2598 (CA 9, 1953); Carbet Corporation, 191 NLRB 892, 77 LRRM 1722 (1971).

In defining what constitutes concerted activity for the purpose of mutual aid or protection under Section 1152 of the ALRA, the ALRB has recently held:

> "Anything directly involving the employment, wages, hours, and working conditions of the employees qualifies. Spinoza, Inc., 199 NLRB 525 (1972). (footnote omitted.) The trier of fact need only reasonably infer that the men involved considered

> that they had a grievance and decided amongst themselves to take it up with management. N.R.L.B.v.Guersy Muskingum Electric Co-operative, Inc., 285 F.2d 8, 12 (CA 6, 1960)."
>
> Jack Brothers & McBurney, Inc. (Feb. 25,1980) 6 ALRB No.12, review den. by Ct.App., 4th Dist., Div. 1, Nov. 13, 1980.

The NLRB has also held that grievances expressed by workers to management about wages constitute protected concerted activity under Section 7 of the NLRA. Hintz Contracting Company, Inc., 236 NLRB 45, 98 LRRM 1223 (1978); Precision Tool & Die Mfg. Co., 205 NLRB 205, 84 LRRM 1097.

CONCLUSIONS OF LAW

I. ROGER CHANEY DISCHARGED THE ELEVEN WORKERS HE DROVE OFF HIS PROPERTY ON JUNE 6, 1980 BECAUSE THEY ENGAGED IN PROTECTED CONCERTED ACTIVITY AND THEREFORE THESE DISCHARGES CONSTITUTED VIOLATIONS OF SECTION 1153(a) OF THE ALRA.

While much of the applicable case law regarding discriminatory discharges involves discharges based on union activity, the legal principles applicable to discharges based on union activity and other protected concerted activity are identical. N.L.R.B. v. J.I. Case Co., Bettendorf Works, 198 F.2d 919 (8th Cir. 1952).

In order to prove that a discharge of an employee constituted an unfair labor practice under Section 1153 (a) of the ALRA, the General Counsel has the burden of showing by a preponderance of the evidence that the employer knew of the employee's protected concerted activity and there was a causal connection between the protected activity and the discharge. Jackson & Perkins Rose Co., 5 ALRB No. 20 (1979).

In the instant case, on June 5, 1980 at approximately 4 p.m., Efrain Gonzalez Vasquez, Jaime Hernandez Cruz, Gilberto Cruz, Caetano Velasco, Amadeo Gonzalez, Erminio Ortiz, Leocadio Ortiz and

Celerino Hernandez stopped work and left the field even though they knew Chaney wanted them to work more hours. They did this to protest the long hours Chaney made them work for no pay. Such a work stoppage is clearly protected concerted activity.

> "Even if the workers had engaged in a work stoppage after protesting the wages, such a work stoppage is protected activity. In NLRB v. Kennemetal, Inc. (3rd Cir. 1950) 182 F.2d 817, 26 LRRM 2203, the court was presented with this issue, whether a single spontaneous brief work stoppage inspired by wage grievances is an activity protected by the NLRA. This proposition is in accord with previous decisions of the NLRB and the courts, and has been well established in subsequent decisions. (NLRB v. Washington Aluminum Co., Inc. (1962) 370 U.S. 9, 50 LRRM 2235; Gullet Gin Co. v. NLRB, supra; American Homes Systems (1972) 200 NLRB 1151; Botany Industries (1968) 171 NLRB 1590; Gulf & Western Industries (1967) 166 NLRB 7.)"
>
> Tenneco West, Inc., 6 ALRB No. 53 (1980)

Chaney clearly knew of this work stoppage since he arrived in the field shortly after the workers decided to stop work and went back to the house in which they lived.

The following day, Chaney told these eight workers and three others, Adolfo Jiminez, Rudolfo Cruz and Eriberto Cruz, to pack their belongings. He drove them to an almond grove near McFarland where he abandoned them. These action on Chaney's part clearly amount to a discharge of these eleven men from their employment at Mini Ranch.

The fact that eight workers engaged in a work stoppage to protest Chaney's non-payment of wages on June 5, 1980 and were all fired by Chaney on June 6, 1980, points to only one logical inference: that Chaney discharged these eight men in retaliation for their involvement in this work stoppage which was protected concerted activity.

The evidence in the record does not establish that the other three workers fired by Chaney on June 6, 1980, Adolfo Jiminez, Rudolfo Cruz and Eriberto Cruz, participated in the June 5, 1980 work stoppage. However, the protest of June 5, 1980 was not the first of its kind at Mini Ranch that season. On one occasion during the month of May, the workers went to Chaney and asked him to pay them the wages he owed them. Also, during the month of May, the workers who were harvesting the strawberries engaged in a brief work stoppage to protest the amount of work Chaney was asking them to do without paying them. Both these protests in May were protected concerted activity. Tenneco West, Inc., supra; Jack Brothers & McBurney, Inc., supra; Hintz Contracting Co., Inc., supra.

While the causal connection between protected concerted activity and the discharges of Adolfo Jiminez, Rudolfo Cruz and Eriberto Cruz is not explicit in the record, the discharges of these three men must be seen in the context of the following circumstances: 1) the history of worker protests at Mini Ranch; 2) the fact that out of thirty workers, Chaney chose to discharge only eleven; 3) the fact that out of these eleven, eight were clearly discharged for protesting the working conditions at Mini Ranch; and 4) the fact that Chaney offered no credible reason for discharging these workers. An obviously weak or implausible reason for a discharge supports the inference that there was an illegal reason. N.L.R.B. v. Eastern Smelting and Refining Corp. 598 F.2d 666 (1st Cir. 1979); Loeb v. Textron, Inc., 600 F.2d 1003, (1st Cir. 1979).

When the discharges of Adolfo Jiminez, Rudolfo Cruz and Eriberto Cruz are viewed in this context, a strong inference is created that Roger Chaney discharged these men, along with the eight who had engaged in the work stoppage on June 5, 1980, in order to get rid of those at Mini Ranch who he believed presented a threat to the status quo of worker-management relations.

I find that the General Counsel has sustained its burden of showing by a preponderance of the evidence that there was a causal connection between the discharges on June 6, 1980 of all eleven of the workers and their participation in protected concerted activity.

This burden having been met, the employer then has the burden of presenting evidence of legitimate and substantial business justification for the discharge. N.L.R.B. v. Eastern Smelting and Refining Corp., supra; Lu-Ette Farms, Inc., 3 ALRB No. 38 (1977). Chaney put forth no evidence of any business justification for the discharges of the eleven workers on June 6, 1980. Any inference in the record that Chaney discharged these eleven workers on June 6, 1980 because his work force was too large is negated by the fact that he hired six new workers on that very same day.

For all of the above-stated reasons, I conclude that the discharges of Efrain Gonzalez Vasquez, Gilberto Cruz Guzman, Amadeo Gonzalez Olivera, Rudolfo Cruz Miranda, Celerino Hernandez Cruz, Leocadio Ortiz Carbajal, Jaime Hernandez Cruz, Adolfo Jiminez Cruz, Eriberto Cruz Miranda, Erminio Ortiz Carbajal and Caetano Velasco by Roger Chaney constituted unfair labor practices under Section 1153(a) of the ALRA.

It should be noted that the name of Caetano Velasco does not

appear in the complaint. However, I find that the issue of the legality of his discharge by Chaney was fully litigated at the hearing. "When an incident has been fully litigated by the parties we are notprecluded from determining whether the conduct violates the Act. Anderson Farms Company, 3 ALRB No. 67 (1977), fn. 6." Pleasant Valley Vegetable Co-op, 4 ALRB No. 11 (1978).

I also conclude that there is no evidence in the record that on June 6, 1980, Roger Chaney discharged any of the following men named in paragraph four of the complaint: Amadeo Gomez Hernandez, Eleazar Gonzalez Vasquez, Teodoro Cruz Hernandez, Adolfo Guzman Ramos or Jesus Cruz Lopez.

II. THE GENERAL COUNSEL HAS NOT MET ITS BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT ON JUNE 6, 1980, ROGER CHANEY THREATENED THE WORKERS LISTED IN PARAGRAPH 4 OF THE COMPLAINT WITH ARREST AND DEPORTATION IN VIOLATION OF SECTION 1153(a) OF THE ALRA.

There is evidence in the record that on June 6, 1980, after Roger Chaney abandoned the eleven workers in the almond grove, he returned to the area followed by two police cars. This evidence creates an inference that Chaney brought the police to the area to arrest the workers, all of whom were Mexican nationals in the United States without documents. However, there is no other evidence in the record that Chaney threatened these workers with arrest and deportation on June 6, 1980, and I conclude that the inference created by the above-referenced evidence fails to establish by a preponderance of the evidence that this alleged violation of Section 1153(a) of the ALRA occurred.

III. THE FIVE WORKERS WHO LEFT MINI RAND ON JUNE 10, 1980 WERE CONSTRUCTIVELY DISCHARGED BY ROGER CHANEY IN VIOLATION OF SECTION 1153(a) OF THE ALRA.

On the night of June 10, 1980, Amadeo Gomez Hernandez, Teodoro Cruz Hernandez, Eleazar Gonzalez Vasquez, Adolfo Guzman Ramos and Jesus Cruz Lopez left Mini Ranch. At the outset, it should be noted that this incident was not charged as a separate violation of Section 1153(a) of the ALRA in the complaint.

As stated above, the ALRB, in Pleasant Valley Vegetable Co-op, 4 ALRB No. 11 (1978), held that "[w]hen an incident not included in the complaint has been fully litigated" the Board is "not precluded from determining whether the conduct violates the Act. Anderson Farms Company, 3 ALRB No. 67 (1977) fn. 6."

In the instant case, the five men who left Mini Ranch on June 10, 1980 are listed as discriminatees in the complaint. The testimony of Jesus Cruz Lopez focused almost entirely on the fact that these five men left Mini Ranch in secret on June 10, 1980 and the events which led to their departure. Respondent had the opportunity to cross-examine this witness. In addition, the events of June 10, 1980 and the reasons therefor, are focused upon as a separate incident in General Counsel's Post Hearing Brief.

Therefore, I find that the issue of whether a violation of Section 1153(a) occurred in relation to the five workers who left Mini Ranch on June 10, 1980 has been fully litigated and I therefore make the following conclusions of law with respect to these five workers:

Jesus Cruz Lopez testified that he and Amadeo Gomez Hernandez, Teodoro Cruz Hernandez, Eleazar Gonzalez Vasquez and Adolfo Guzman

Ramos decided to leave Mini Ranch on the night of June 10, 1980 because they were afraid Chaney would do the same thing to them that he had done to the eleven workers who had disappeared from Mini Ranch on June 6, 1980. The evidence in the record indicates that these five men did not know what had happened to the eleven workers Chaney took off the ranch. They did know that all of the workers who disappeared were in the United States without documents, and that they were the only workers at Mini Ranch that Chaney did not hide from the border patrol on June 6, 1980.

On June 6, 1980, Chaney had effectively demonstrated to the workers that he was willing to take action against workers who asserted their right to protest the working conditions at Mini Ranch. The five workers who left Mini Ranch on June 10, 1980 had all recently engaged in protected concerted activity by filing wage claims against Chaney with the Division of Labor Standards Enforcement (see General Counsel's Exhibit #5). A-l Bus Lines, Inc., 232 NLRB 665, 96 LRRM 1343 (1977), p.666 fn.3; Foster Poultry Farms, 6 ALRB No. 15 (1980). Two of the five, Jesus Cruz Lopez and Amadeo Gomez, had gone to Chaney on June 8 or 9, 1980 and asserted their Section 1152 rights by asking Chaney for the money he owed them. Jack Brothers & McBurney, Inc.,(Feb. 25, 1980) 6 ALRB No. 12, review den. by Ct. App., 4th Dist., Div. 1, Nov. 13, 1980; Hintz Contracting Company, Inc. , 236 NLRB 45, 98 LRRM 1223 (1978). Chaney had responded by telling these two men not to bother him and that he would pay them in December.

The five workers who left Mini Ranch on June 10, 1980 clearly and justifiably felt themselves to be in an extremely vulnerable position.

They knew Chaney had no intention of paying them until December, if at all (There is a clear inference that Amadeo Gomez and Jesus Cruz Lopez told the three other workers with whom they left Mini Ranch of their recent conversation with Chaney.). They also had reason to believe that at any time Chaney might run them off the ranch or have them arrested or deported, particularly if they continued to protest their working conditions.

Chaney created a situation in which these five workers justifiably feared for their own safety because they had engaged in protected concerted activity. This situation amounted to a constructive discharge of these workers in violation of Section 1153(a) of the ALRA. Merzoian Bros. Farm Management Co., Inc. (July 29, 1977) 3 ALRB No. 62, review den. by Ct.App., 5th Dist., September 28, 1979. In addition, Chaney created a situation in which these five workers justifiably believed that they had to choose between forfeiting their statutory right to protest their working conditions or putting themselves in an increasingly vulnerable and dangerous situation. This too amounts to a constructive discharge in violation of Section 1153(a) of the ALRA. Suburban AMC/Jeep, Inc., 211 NLRB 454, 87 LRRM 1442 (1974); American Enterprises, Inc., 191 NLRB 866, 77 LRRM 1586 (1971); Royal Crown Bottling Company, Inc., 188 NLRB 352, 76 LRRM 1303 (1971).

IV. THE NINE WORKERS WHO LEFT MINI RANCH ON JULY 28, 1980 WERE CONSTRUCTIVELY DISCHARGED BY ROGER CHANEY IN VIOLATION OF SECTION 1153(a) OF THE ALRA.

On July 16, 1980, the workers who remained at Mini Ranch protested to Chaney about the amount of money he charged them for food.

This protest was clearly protected concerted activity on the part of the workers regardless of the merit of their complaint. Jack Brothers & McBurney, Inc., (Feb. 25, 1980) 6 ALRB No. 12, review den. by Ct. App., 4th Dist., Div.l, Nov. 13, 1980; Hintz Contracting Company, Inc., 236 NLRB 45, 98 LRRM 1223 (1978). In essence, Chaney told the workers that the price of food was fixed and they could go back to Mexico if they continued to complain.

On July 28, 1980 the workers protested to Chaney about the amount of work he was asking them to do in the extreme heat. They asked Chaney for the money he owed them. They told him they had no clothes or shoes. This too was protected concerted activity on the part of the workers. Jack Brothers & McBurney, Inc., supra; Hintz Contracting Co., Inc., supra. Chaney told them he would not give them money, only food, and to go look for work somewhere else or leave Mini Ranch. The clear inference was that if they were going to continue to ask for money they should get off the ranch.

The essence of Chaney's responses to the workers on both July 16 and July 28, 1980 is that the workers had two choices: they could either cease their protests and accept the working conditions imposed by Chaney at Mini Ranch, or they could quit.

On July 28, 1980, Amado Hernandez, Marcolino Gomez, Pascual Vasquez, Donate Cruz, Francisco Olivera, Samuel Cruz, Daniel Velasco, Adelfo Gonzalez and Paulino Miranda understood that if they stayed at Mini Ranch they would, in essence, be agreeing to work for no pay. At this point they decided to quit rather than continue to work under Chaney's unlawful condition that they forfeit their statutory right under Section 1152 of the ALRA to demand that Chaney pay them

the money he owed them.

The NLRB has long held:

> "[R]equiring employees to give up their statutory right to engage in protected concerted activity in exchange for continued employment constitutes the imposition of an unlawful condition to continued employment amounting to a constructive discharge. "
>
> Suburban AMC/Jeep, Inc., 211 NLRB 454, 87 LRRM 1442 (1974); American Enterprises, Inc., 191 NLRB 866, 77 LRRM 1586 (1971); Royal Crown Bottling Company, Inc., 188 NLRB 352, 76 LRRM 1303 (1971).

That is exactly the requirement Chaney imposed on the workers at Mini Ranch. Accordingly, I find that Roger Chaney constructively discharged Amado Hernandez, Marcolino Gomez, Pascual Vasquez, Donato Cruz, Francisco Olivera, Samuel Cruz, Daniel Velasco, Adelfo Gonzalez, and Paulino Miranda in violation of Section 1153 (a) of the ALRA.

REMEDY IN UNFAIR LABOR PRACTICE CASE

Having found that the employer violation Section 1153 (a) of the ALRA, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the ALRA as delineated by the following order.

ORDER

Respondent, Mini Ranch Farms, its owners, partners, officers, agents, successors, and assigns shall:

1. Cease and desist from interfering with, restraining and coercing employees in the exercise of their right to engage in concerted activities for the purpose of mutual aid or protection.

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

A. Offer Caetano Velasco and all the discriminatees listed

paragraphs 4 and 4A of the complaint full and immediate reinstatement to jobs comparable to those held by these workers at Mini Ranch prior to their discharges, without prejudice to their seniority or other rights and privileges.

B. Make whole Caetano Velasco and all the discriminatees listed in paragraphs 4 and 4A of the complaint for any loss of pay or economic losses suffered by reasons of their discharges, plus interest thereon.

C. Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and other records necessary to analyze the back pay and reinstatement rights due under the terms of this order.

D. Sign the Notice to Employees attached hereto. Upon its translation by a Board Agent into all appropriate languages, Respondent shall reproduce sufficient copies in each language for the purposes set forth herewith.

E. Within 30 days after issuance of the order, mail a copy of the attached Notice in appropriate languages to each of its employees employed between February 4, 1980 and the present.

F. Post copies of the attached Notice in all appropriate languages, for one year in conspicuous places on its properties, the time and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered or removed.

G. Arrange for a representative of Respondent in the company of a Board Agent to distribute and read the attached Notice

in English and all other appropriate languages, to its employees assembled on company property, at times and places to be determined by the Regional Director. Following the reading, the Board Agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to any non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

H. Notify the Regional Director within 30 days after the issuance of this order of the steps it has taken to comply herewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

DATED: December 29, 1980

ALEX REISMAN
Administrative Law Officer

NOTICE TO EMPLOYEES

After charges were made against us by Efrain Gonzalez Vasquez and a hearing was held where each side had a chance to present its side of the story, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers to act together to help one another as a group. The Board has ordered us to distribute and post this Notice.

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

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

Because this is true, we promise that:

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

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

DATED:______________________ MINI RANCH FARMS

By:______________________________
Representative Title

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

DO NOT REMOVE OF MUTILATE.

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the matter of: MINI RANCH FARMS, Respondent-Employer, and EFRAIN GONZALEZ VASQUEZ, Petitioner-Charging Party.	CASE NO. 80-CE-101-D

ORDER

It is hereby ordered that the following correction be made in Administrative Law Officer's Decision: at page 10, paragraph 3, line 2, the date July 1980 shall be amended to read July 1979.

Dated: September 8, 1981

ALEX REISMAN
Administrative Law Officer