Salinas, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| UNITED FARM WORKERS OF AMERICA, AFL-CIO, . Respondent, and SEVERO PASILLAS, JUAN MARTINEZ, and ODIS SCARBROUGH, Individuals, Charging Parties. | Case Nos. 79-CE-59-SAL 80-CL-5-SAL 80-CL-4-SAL |
| MANN PACKING COMPANY, Respondent, and JUAN MARTINEZ , Individual, Charging Party. | Case No. 80-CE-108-SAL |
| SUN HARVEST, INC., Respondent, and SEVERO PASILLAS, Individual, Charging Party. | Case No. 80-CE-29-SAL<br>8 ALRB No. 103 |

AMENDMENT TO DECISION

On December 30, 1982, we issued a Decision and Order in the above-captioned matter. On our own motion, and pursuant to Labor Code section 1160.3, paragraph 2, we hereby amend that Decision as follows:

At the end of the second sentence in the first full

paragraph on page 9 of the said Decision, the following paragraph shall be referenced as footnote 9A:

[9A]/The Gay Law Students decision states that the monopolistic control by a certified union constitutes "state action," meaning that acts of the union which are alleged to interfere with the constitutional rights of a member are subject to the same close scrutiny as the acts of a governmental entity. We are aware that a "state action" analysis might subject the UFW's membership requirements to a more rigorous review under constitutional standards than the review which we provide pursuant to sections 1153(c) and 1160 of the ALRA. However, as this Board's function is limited to determining whether unfair labor practices have been committed, and to providing appropriate remedies, where warranted, pursuant to section 1160.3 of the ALRA, we decline to consider whether conduct not unlawful under the statute might be prohibited on purely constitutional grounds.

Dated: February 4, 1983

ALFRED H. SONG, Chairman

JOHN P. McCarthy, Member

JEROME R. WALDIE, Member

PATRICK W. HENNING, Member

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| SUN HARVEST , INC . ,<br><br>Respondent,<br><br>and<br><br>SEVERO PASILLAS, Individual,<br><br>Charging Party. | Case No. 80-CE-29-SAL<br><br>8 ALRB No. 103 |

DECISION AND ORDER

On October 9, 1981, Administrative Law Officer (ALO) William A. Rezneck issued the attached Decision in this proceeding. Thereafter, Respondent United Farm Workers of America, AFL-CIO (UFW) and Charging Parties Pasillas and Scarbrough each filed timely exceptions and a supporting brief. General Counsel, Respondent UFW,

and Charging Parties Pasillas and Scarbrough each filed a reply brief.

The Agricultural Labor Relations Board (ALRB or Board) has considered the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO as modified herein, and to adopt his recommended Order with modifications.

Introduction

The issue before us in this matter, as in one previous case,[1/] concerns the scope of a union's power to regulate the conduct of its members through membership requirements and the nature of the procedural protections which must attend any denial or termination of an employee's membership status by the union. This Board becomes involved in these internal union affairs by virtue of Labor Code sections 1153(c) and 1154(b). Section 1153(c) makes it an unfair labor practice for an employer:

> By discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization.
>
> Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such agreement whichever is later, if such labor organization is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such

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[1/] See, United Farm Workers of America, AFL-CIO (Jesus Conchola) (Mar. 19, 1980) 6 ALRB No. 17. (Hereafter cited as UFW (Conchola).)

agreement. No employee who has been required to pay dues to a labor organization by virtue of his employment as an agricultural worker during any calendar month, shall be required to pay dues to another labor organization by virtue of similar employment during such month. For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.[2/]

Labor Code section 1154 (b) makes it an unfair labor practice for a union:

> To cause or attempt to cause an agricultural employer to discriminate against an employee in violation of subdivision (c) of Section 1153, or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated for reasons other than failure to satisfy the member-ship requirements specified in subdivision (c) of Section 1153.

In the present case, we are called upon to determine in this matter whether the UFW's constitutional provision requiring all members to honor its strikes and picket lines is a reasonable term or condition of continued membership, and whether the UFW has afforded the Charging Parties due process before terminating their membership in the Union.

Charging Parties were employed as agricultural employees

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[2/] This provision is modeled after section 8(a)(3) of the National Labor Relations Act (NLRA) with one significant difference. Under NLRA section 8(a)(3), an employer may not discriminate against an employee for nonmembership in a union "if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

by agricultural employers Mann Packing and Sun Harvest when strikes and picketing began against a number of lettuce growers in January 1979 after strike votes by a majority of the employees at those companies. Although each Charging Party joined the strike initially, each subsequently returned to work while the strike and picketing were still in progress.[3]/ At the time the Charging Parties returned to work, they were members of the UFW. Also at that time, the UFW Constitution, article XVIII, section 4 required that all members honor duly-authorized strikes and refrain from crossing UFW picket lines.

On September 4, 1979, separate collective-bargaining agreements were reached between the UFW and each of the two employers. Each contract contained a union-security clause requiring, as a condition of continued employment, that all employees become and remain members in good standing of the UFW. After the striking employees returned to work, charges were brought by union members against the Charging Parties, alleging that they had violated the union constitution by failing to honor the UFW strikes and picket lines by working for struck employers during the strike. The Charging Parties were thereafter tried by their Ranch Communities, found guilty as charged, and ordered to be expelled from

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[3]/Scarbrough and Pasillas, who both worked for Sun Harvest, returned to their pre-strike jobs in March and June 1979, respectively. Martinez, who had been employed by Mann Packing at the time the strike began, crossed a UFW picket line at Grower's Exchange, another struck company, in September 1979.

the Union.[4/]

Charging Party Pasillas did not appeal his October 2 expulsion and on October 30, 1979, the UFW informed Sun Harvest that, as he was no longer a member in good standing, the Union was requesting his discharge. Accordingly, Sun Harvest discharged Pasillas on November 2, 1979.

Charging Party Martinez appealed his November 9 expulsion to the National Executive Board (NEB) of the UFW on November 13, which resulted in an automatic stay of the Ranch Community's order of expulsion.[5]/ On January 2, 1980, Martinez' penalty was reduced by the NEB to a one-year suspension. However, after the UFW gave notice to Mann Packing on January 10 that his membership had been suspended, and requested his discharge, Mann Packing discharged him on January 14, 1980.

On October 29, 1979, Charging Party Scarbrough also appealed to the NEB and obtained a reduction in his penalty to a two-year suspension on January 2, 1980. On January 8, the UFW notified Sun Harvest that Scarbrough's membership had been suspended and requested his discharge. Sun Harvest discharged him on the

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[4]/Pasillas was charged and served with notice of his trial on September 24, and tried on October 2, 1979. Martinez was charged on October 30, served with a trial notice on November 2 and tried on November 9, 1979. Scarbrough was charged and served with a trial notice October 3 and tried on October 11, 1979.

[5]/The UFW constitution article XX, section l(d) states as follows

> When the appellant has been convicted and reprimanded, censured, suspended or reprimanded or censured or sus-spended or expelled from membership, such penalty shall not be enforced pending final decision by the National Executive Board on any appeal filed as provided in this Section.

same day. Scarbrough then appealed to the UFW's Public Review Board (PRB) and on April 20, 1981, obtained a complete reversal of the trial decision on procedural grounds.[6/] Scarbrough was subsequently restored to membership in good standing and reinstated by Sun Harvest, although the date of his reinstatement does not appear in the record. As of the date the hearing herein was closed, Scarbrough had not been made whole by either the UFW or Sun Harvest for any losses suffered as a result of his January 1980 discharge.[7/]

The Constitutionality of Section 1153(c)

Charging Parties Pasillas and Scarbrough except to the ALO's failure to conclude that requiring membership in a labor organization, as a condition of continued employment, denies employees the right to work in the jobs of their choice and their First Amendment freedom to refrain from associating with the Union.[8/] Charging Parties argue that by sanctioning compulsory

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[6/]The PRB found that "... the Union failed to provide proof of membership in the ranch community of those voting at the time the vote (to expel) was taken" and also that an incomplete trial record was kept.

[7/]The decision of the PRB as to Scarbrough, the Union's request that he be reinstated, and his actual reinstatement by Sun Harvest all occurred after the hearing in this case was closed. The ALO found that these events occurred, apparently based on documents submitted in support of Respondent's motions for partial dismissal and to reopen the hearing, both of which were denied by the ALO. Although a formal motion to reopen the record to admit this new evidence would have been appropriate, the parties have not excepted to the ALO's reliance on these documents. We will therefore assume that these facts are not in dispute and adopt the ALO's findings.

[8/]Charging Parties argue that mandatory union membership under any circumstances is unconstitutional. They also argue that the

(fn. 8 cont. on p. 7)

union membership, section 1153 (c) also violates employees' constitutional rights.

Article III, section 3.5 of the California Constitution, added by referendum on June 6, 1978, forbids any administrative agency to declare a state statute unconstitutional. We therefore lack authority to rule on the Charging Parties' challenges to the constitutionality of the good standing provision in section 1153 (c). We believe, however, that section 1153 (c) comports with the constitutional standards articulated in numerous cases by the United States Supreme Court and the California Supreme Court. In Railway Employees' Dept. v. Hanson (1956) 351 U.S. 225, for example, the Court held that the right to work is not absolute and that it was reasonable for a legislature to regulate employment opportunities by allowing the negotiation of mandatory-union-membership clauses in collective bargaining agreements.

The Court's reasoning in Hanson appears applicable to the language of section 1153 (c) which permits union-security

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(fn.8 cont.)

particular membership requirement at issue here (i.e., honoring UFW strikes and picket lines) is unconstitutional because it violates the workers' right to not associate with a strike. Our response to each of these constitutional arguments is the same.

[9/]Article III, section 3.5 of the California Constitution, enacted by referendum on June 6, 1978, provides in pertinent part:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute enforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional; (b) To declare a statute unconstitutional.

agreements requiring union membership in good standing as a condition of continued employment. The policy stated in ALRA section 1140.2 of encouraging and protecting agricultural employees' rights to full freedom of association and to engage in collective bargaining with their employers is clearly'a rational purpose for the exercise of the Legislature's authority. Moreover, the "good standing" proviso to section 1153(c) of the Act, reasonably calculated to promote implementation of that policy, presents a reasonable limitation on the right to work and the right to freedom of association. Other authoritative rulings upholding legislatively imposed limitations on the right to work and the freedom of association, which need not be discussed at length here, similarly support the validity of section 1153(c). (See, e.g., NLRB v. Allis-Chalrners Manufacturing Co. (1967) 388 U.S. 175; Abood v. Detroit Bd. of Education (1977) 431 U.S. 209; Pinsker v. Pacific Coast Society of Orthodontists (1974) 12 Cal.3d 541.)

The Statutory Scheme of Section 1153(c)

As stated above, Labor Code section 1153(c) gives a labor organization representing agricultural employees the right, under a union security agreement, to require those employees to become and remain members of the union in good standing as a condition of continued employment. Section 1153(c) limits in two ways the power it thus vests in the union: first, all union membership requirements must be reasonable and uniformly applicable to all union members, and, second, union membership may not be terminated except pursuant to fair internal union procedures which protect basic rights. If these limits are exceeded, then this Board will find that the

union's actions in terminating an employee's membership and employment rights violate section 1154 (b) and (a) (1).

In our advisory opinion in UFW (Jesus Conchola) (Mar. 19, 1980) 6 ALRB No. 16, we noted that union security agreements permitted by section 1153(c) allow unions to exercise control over their member's employment opportunities, and we referred to the California Supreme Court's discussion of such control in Gay Law Students Association v. Pacific Telephone and Telegraph Co. (1979) 24 Cal.3d 458. The court there observed that a union afforded monopolistic control over employment by law "is not free to exercise its power arbitrarily." (24 Cal.3d at p. 476.) The court relied heavily on the earlier case James v. Marinship Corp. (1944) 25 Cal.2d 721, in which it had stated that "Where a union has ... attained a monopoly of the supply of labor ... such a union occupies a quasi public position similar to that of a public service business and it has certain corresponding obligations," 25 Cal. 2d at p. 731, and that by well-established common law principle,

> ... the holders of the monoply must not exercise their power in an arbitrary, unreasonable manner so as to bring injury to others. The nature of the monopoly determines the nature of the duty. (25 Cal.2d at p. 732.)

The principle that a union's control over the supply of labor implies a corresponding duty and must be exercised fairly was recognized and given effect in the drafting and enactment of section 1153 (c). As we pointed out in Conchola, supra, 6 ALRB No. 16, Assemblyman Howard Berman, an author of the Act, testifying on this section before the Assembly Ways and Means Committee on May 27, 1975, stated that the section gives the Agricultural Labor

Relations Board (Board) authority to determine whether the basis for expulsion of a member by a union was "reasonable."[10/] Another of the drafters of the Act, then Secretary of Agriculture and Services Rose Bird, testified before the Senate Industrial Relations Committee that the oversight authority given by section 1153 (c) to this Board to assure fair and reasonable internal union disciplinary procedures "is a tremendous power that labor organizations traditionally have never been willing to give to a board, and, in effect, this language is giving to the board that power, and ... this would allow the board, in extreme cases, to even go so far as to decertify a union if, in fact, they're carrying on practices that [are unacceptable]."[11/]

By authorizing this Board to review internal union disciplinary procedures for fairness and reasonableness, section 1153 (c) implements the balance at which the common law has traditionally aimed, i.e., the balance between enjoyment of monopolistic or quasi-monopolistic control over employment opportunities and the duty of restraint and even-handedness in the exercise of that control. We shall carry out our oversight role with close attention, on a case-by-case basis, to the facts presented and the circumstances from which each such case arises.

The Reasonableness of the UFW's Membership Requirements

We conclude from the legislative history of section

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[10/]Hearings on Senate Bill No. 1 before the Assembly Ways and Means Committee on May 27, 1975, p. 5.

[11/]Hearings on Senate Bill No. 1 before the Senate Industrial Relations Committee on May 21, 1975, pp. 71-72.

1153 (c) of the Act that the Legislature intended to give agricultural employee unions the power to require their members to honor union authorized strikes and picket lines as a condition of continued good standing and continued employment. In a public hearing before the Senate Industrial Relations Committee on May 21, 1975, Jordan Bloom, an attorney representing a number of agricultural employers, testified as follows regarding the good standing provision which had been amended into Senate Bill No. 1:

> JORDAN BLOOM: ... Section 1153 (c) and 1154 (b) have been amended to entitle a union ... to be the sole judge of the good standing of its membership and for any reason it deems appropriate under by-laws and constitutions drafted by it to tell their grower that that member is no longer a member in good standing and the employee should be discharged. Now, I am not speaking of scare stories here. This has happened time and time again from 1970 through April 15 of 1973 where union members refused to go to a demonstration or refused to carry out the orders of the leadership the collective bargaining agreements provided" that the union was the sole judge of the member's good-standing and the employer was told to fire those employees.
>
> Now, this bill as initially drafted, the drafters recognized that the premise provided for in the National Labor Relations Act, the objective premise, not subjective, that you can only cause an employer to discriminate against an employee for the employee's failure to tender dues and initiation fees uniformly required as a condition of membership. That's pure and simple' either he's paid his dues or he hasn't paid his dues. Not that he hasn't gone to a meeting or he hasn't taken an oath of allegiance or he hasn't gone to a demonstration. I think opening this up for this kind of subjective evaluation of an employee's duties and obligations to a union and allowing the union to tell the employer to fire the employee for whatever reason, especially when that grower does not have anything to say about the drafting of those by-laws or that constitution is inherently discriminatory, and I'm speaking, you understand, from the growers' standpoint.
> (Emphasis added.)
> (See, Transcript of Senate Hearing at p. 68-69.)

Following this explanation of the historical application of the good, standing clause by the UFW, then Secretary of Agriculture Rose Bird explained to the committee that ALRB review of union membership requirements would protect farm workers from "arbitrary" union requirements. (See, Transcript of Senate Hearing at p. 72.) Senator Stull then moved that section 1153(c) of S.B. 1 be amended to eliminate the good standing language and return to conformity with NLRA section 8 (a)(3). With Jordan Bloom's statements as to the likely effect of the good standing language in mind, the Senate committee then rejected the Stull amendment.

This history indicates that the Legislature understood and intended that, under section 1153 (c), agricultural unions would be able to require a good deal more of their members than simply the payment of dues, as under NLRA section 8(a)(3). The determination as to how much more could be required was left to the case-by-case review of this Board. Although the Board's discretion in this area is broad, we are instructed that only union membership requirements which are fair and reasonable may be enforced through expulsion from the union and termination of employment under a union security agreement.

In UFW (Conchola), supra, 6 ALRB No. 16, we held that the union could not require that its members contribute to a fund which was used for contributions to political candidates or for political or ideological purposes that are not germane to collective bargaining. In that case, we distinguished between union expenditures for medical or educational benefits which provide for the general welfare of the membership, and purely political

or ideological expenditures which have no direct relationship to the overall purposes that the union could serve through collective bargaining.[12/]

In this case, the question is whether the UFW's requirement regarding the honoring of picket lines and strikes is reasonably related to a legitimate union interest that is germane to its role as collective bargaining representative.[13]/ We are convinced that the ability to enforce disciplinary rules during a strike is necessary for a union to be able to carry out its duties as the as the employees representative.[14]/

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[12]/Member McCarthy in suggesting that any minimal union interest would be endorsed under the majority view, overlooks the Conchola case, where the Board limited the application of a UFW membership requirement. Although his dissent's call for "balance" is alluring, it is clear that the Legislature has struck a balance which the majority has acknowledged in this case and that the dissent, in reality, is merely lamenting the Legislature's failure to strike the balance as the dissent would find appropriate.

[13]/This standard of review, which we find in the express terms of section 1153 (c), is consistent with United Steel Workers of America v. Sadlowski (1982) ___U.S.___ [110 LRRM 2609] in which the U.S. Supreme Court held that federal court review of internal union rules under section 101(a) of the Labor Management Reporting and Disclosure Act (29 U.S.C. section 411 (a) is limited to determining whether the rules are reasonably related to a valid union interest. It is also consistent with the California cases which hold that an organization's membership requirement which is reasonably related to the legitimate goals of the organization will not be disturbed, unless the requirement is "contrary to established public policy" or is "patently arbitrary and unreasonable." (Pinsker v. Pacific Coast Society of Orthodontists, supra, 12 Cal.3d 541, 558.)

[14]/Although the issue is not raised by the facts of these cases, in order to make our position as clear as possible, we point out that we agree with the ALO that a union rule prohibiting members from filing charges or suits against the union would not be reasonable under section 1153 (c). A labor organization's interest in a united effort against the employer in a strike is different from a labor organization's desire for unchallenged loyalty and obedience

(fn. 14 cont. on p. 14)

The reasonableness and legitimacy of a union's interest in maintaining discipline among its members during a strike was recognized in NLRB v. Allis-Ghalmers Manufacturing Co., supra, 388 U.S. 175. The U.S. Supreme Court there stated, with regard to a union-imposed fine for crossing a picket line,

> Integral to this federal labor policy has been the power in the chosen union to protect against erosion of its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and "the power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent..." Provisions in union constitutions and bylaws for fines and expulsion of recalcitrants, including strikebreakers, are therefore commonplace and were commonplace at the time of the Taft-Hartley amendments. [Footnotes omitted,] (388 U.S. at 181.)

The conviction that "the power to ... expel strikebreakers is essential if the union is to be an effective bargaining agent" was, we believe, an active motivating consideration in the Legislature's enactment of section 1153(c).

Member McCarthy argues in dissent that since the right of an individual employee to refrain from participating in a strike is protected by section 1152 of the Act, this Board may not sanction the punitive loss of employment for exercising that right. Section 1152 reads as follows:

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(fn. 14 cont.)

in all matters. We would hold, consistent with federal authority, that the public policy favoring free and equal access to the administrative process outweighs a union's interest in total unanimity (See, NLRB v. Marine Workers (1978) 391 U.S. 418; NLRB v. Local 212, United Auto Workers (6th Cir. 1982) F.2d____[111 LRRM 2529].)

> Employees shall have the right to self-organization, to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of continued employment as authorized in subdivision (c) of Section 1153_. (Emphasis added.)

We are aware that two fundamental purposes of the Act -- encouragement of collective activity and protection of individual rights of association -- cannot always be neatly reconciled and are, in fact, in direct conflict in this case. However, we believe the underscored language in section 1152 and the legislative history of section 1153 (c) indicate the Legislature's intention that where the union has imposed a membership requirement that is reasonably related to its role in collective bargaining, including its role in exerting economic pressure on the employer, the collective interest of the union and all the striking employee-members supersedes the right of an individual employee to refrain from engaging in union or concerted activity. Moreover, since the Legislature contemplated that termination of employment under a union security agreement could result from loss of good standing, it is not for this Board to say that loss of employment is too harsh a penalty for crossing a picket line during a strike.

Procedural Due Process

Having concluded that the UFW[1]s picket line requirement is reasonable, we must now inquire whether the expulsion procedures of the Union provided adequate due process. As mentioned above, Labor Code section 1153 (c) states that a labor organization shall

not deny or terminate union membership "... except in compliance with a [union] constitution or bylaws which ... contain adequate procedures to assure due process to members and applicants for membership." We interpret that language as requiring unions to provide the basic elements of a fair hearing, i.e., prior notice and an opportunity to prepare and present evidence. This interpretation is supported by both state and federal precedent which states that standards of procedural fastidiousness which apply to criminal or civil litigation in the courts need not be met by internal union procedures. (See, Cason v. Glass Bottle Blowers Assn. (1951) 37 Cal.2d 134 and Tincher v. Piasecki (7th Cir. 1975) 520 F.2d 851.) We have reviewed the UFW's constitutional procedures for hearing and resolving charges against union members and find those procedures, on their face, to be adequately fair.[15]/

Charging Parties also except to the ALO's failure to find that it was unlawful for the UFW to apply its disciplinary procedures retroactively and his failure to find that the charges against Charging Parties were untimely, based on the UFW's own

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[15]/The UFW constitution (articles XVIII-XXI) describes an internal review procedure that provides as follows: a) any member may file written charges alleging a violation of another member's obligations with the Ranch Committee within 60 days of the violation; b) the accused member must receive notice of the charges at least seven days before the trial; c) the accused must be tried before the Ranch Committee in the presence of the ranch community; d) the trial must be impartial and fair with full opportunities to examine witnesses and present evidence; 3) a faithful and accurate record must be kept; f) a convicted member may appeal to the National Executive Board (NEB) within 15 days after the trial; g) the NEB must decide within 30 days after receipt of the appeal; h) the member may appeal the NEB decision to the Public Review Board (PRB) or National Convention within 15 days after receipt of the NEB decision; i) appeal to the NEB stays the enforcement of trial decision but appeal to the PRB does not.

60-day limitation. These exceptions are without merit. Charging Parties were voluntary members of the Union at the time they committed the violations and they were therefore subject to its rules at that time. A violation of the UFW constitution was committed by each Charging Party each working day from his return to work until the end of the strike. The internal union charges were clearly filed within 60 days after the last such violation by each Charging Party and were therefore timely.

Exhaustion of Internal Union Procedures

We must determine the extent to which union members who are found to have violated union rules, and are thereafter expelled from membership and discharged from their jobs for loss of "good standing," must exhaust their internal union appeals before this Board will proceed against the employer, under section 1153 (c), or against the union, under section 1154 (b).

Although our Act is, in many respects, similar to the National Labor Relations Act (NLRA), the NLRA contains no provision like section 1153 (c). We believe, however, that we will be giving effect to the spirit of ALRA section 1148, which requires that we follow NLRA precedent "where applicable," if we look to federal cases applying NLRA section 301 (which allows an employee to sue the union for breach of the duty of fair representation) and section 101 (a) (4) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), also known as the Landrum-Griffin Act

(29 U.S.C. section 411 (a) (4) ,[16/] when we decide cases arising under section 1153 (c).

In NLRB v. Marine Workers, supra, 391 U.S. 418, the Court held that, despite a general preference for private resolution of disputes, federal district courts have discretion to excuse exhaustion of internal union procedures in suits arising under the LMRDA.[17]/

In Clayton v. Automobile Workers (1981) 451 U.S. 679, a case arising under NLRA section 301, the Court stated three

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[16]/Section 101 (a) of the LMRDA provides:

> Protection of the Right To Sue. -No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: And provided further, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

[17]/The Marine Workers case involved an employee who filed charges with the NLRB alleging misconduct by a union official. After being disciplined by the union for filing those charges, the employee filed new charges alleging the illegality of the disciplinary action, without attempting to appeal the discipline through internal union procedures. The court held that the employee had no obligation to exhaust union procedures, since the union had no legitimate interest in denying the employee access to the NLRB. This rule, which we adopt, makes good sense. An employee who is expelled from the union pursuant to an unreasonable rule need not appeal that expulsion through internal union procedures. (See, NLRB v. Local 212, UAW, supra, ___F. 2d___.)

factors for courts to consider in exercising their discretion:

> ... first, whether union officials are so hostile to the employee that he could not hope to obtain a fair hearing on his claim; second, whether the internal union appeals procedures would be inadequate either to reactivate the employee's grievance or to award him the full relief he seeks under §301; and third, whether exhaustion of internal procedures would unreasonably delay the employee's opportunity to obtain a judicial hearing on the merits of his claim. If any of these factors are found to exist, the court may properly excuse the employee's failure to exhaust.

We find these factors appropriate for reviewing cases arising under Labor Code section 1153 (c) or 1154 (b) and we affirm the ALO's conclusion that exhaustion of internal union procedures is required, except where the Clayton factors apply.[18]/ We do not agree, however, that the four-month limit on exhaustion of internal union procedures found in section 104(a)(4) of the LMRDA, is strictly applicable. In most cases internal appeals should be exhausted within four months; in any event, the question of undue or unfair delay by the union is adequately addressed in the

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[18]/The general California practice regarding court review of the internal affairs of quasi-monopolistic associations is similar in its initial preference for internal solutions to internal problems, In Pinsker v. Pacific Coast Society of Orthodontists, supra, 12 Cal.3d 541, 557, a case in which a member of the society was expelled with no hearing, the court of appeal responded to an argument that no remand was necessary, since the member had had a court trial as follows:

> ... we believe as a matter of policy that the association itself should in the first instance pass on the merits of an individual's application rather than shift this burden to the courts. For courts to undertake the task "routinely in every such case constitutes both an intrusion into the internal affairs of [private associations] and an unwise burden on judicial administration of the courts." (Ferguson v. Thomas (5th Cir. 1970) 430 F.2d 852, 858.)

the Clayton factors.

In the instant case, Charging Parties Pasillas and Martinez failed to exhaust their internal union appeals before filing charges with the ALRB. Although Pasillas was expelled from the Union on October 2, 1979, he did not appeal that action to the NEB or the PRB, but elected to file a charge with the ALRB on November 7, 1979. Although Martinez appealed his November 9, 1979, expulsion to the NEB, and obtained a decision reducing his punishment on January 2, 1980, he did not thereafter appeal to the PRB, but chose to file a charge with the ALRB on March 14, 1980.

Charging Party Scarbrough, in contrast to Pasillas and Martinez, appealed his expulsion of October 11, 1979, to both the NEB and PRB. When the NEB reduced Scarbrough's expulsion to a two-year suspension on January 2, 1980, 'he appealed to the PRB, which ultimately reversed the trial decision completely on procedural grounds and restored Scarbrough to union membership in good standing. Scarbrough was thereafter reinstated by Sun Harvest, although as of the date the hearing in this case closed, he had not been made whole for lost wages. Since Scarbrough utilized all of the UFW appeal procedures, he has adequately exhausted internal union remedies.

We agree with the ALO that, based on the Clayton case,[19]/

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[19]/In Clayton, an employee sued his union for failing to take his grievance to arbitration and his employer for the relief he sought in his original grievance, including full reinstatement. The Court held that since the union had no power to give Clayton reinstatement (the employer having fired him for cause), requiring Clayton to

(fn, 19 cont. on p. 21)

Martinez' failure to appeal to the PRB was reasonable because, at the UFW's request, he was discharged by Mann Packing on January 14, 1980. Since the Union lacked legal means to require that Respondent Mann Packing Co. reinstate Martinez to his former job with his former seniority, only unfair labor practice charges against both the UFW and Mann Packing could result in the full relief sought by Martinez.[20]/ As to Pasillas, who neither attended his trial nor appealed to the NEB, we find an inexcusable failure to exhaust internal union procedures. Pasillas could have defended himself and might have avoided expulsion from the Union by using the internal union procedures. However, Pasillas simply declined to use those procedures without demonstrating that he had any reason to believe that a defense or an appeal would be futile. If this Board's remedial authority were available to an employee under these circumstances, then exhaustion of internal union procedures would be meaningless and our desire to encourage, to the greatest extent possible, the internal resolution of union disciplinary disputes would be thwarted. Since Pasillas failed to adequately

(fn. 19 cont.)

first exhaust the union procedures, where he could obtain only a partial remedy, would unfairly subject him to multiple litigation of his grievance. The court held that, under such circumstances, a federal district court could take immediate jurisdiction over Clayton's suit.

[20]/Although we find, as a matter of law, that an employee need not appeal to the PRB as a pre-condition to this agency proceeding with unfair labor practice charges, we note that employees who appealed to the PRB to date have obtained reversals of their expulsions in at least six of eight cases. Since these employees were subsequently returned to membership in good standing in the Union and, at the Union's request, reinstated by their employer, it appears that appeal to the PRB is effective and, perhaps, more expeditious than appeal to this agency.

exhaust internal union appeal procedures, the portion of the complaint which relates to him is dismissed.

The Case of Juan Martinez

We must determine whether the internal union disciplinary proceeding involving Martinez provided the basic elements of a fair hearing required by Labor Code section 1153 (c). The ALO found that Martinez was denied due process because (1) the charges against him were vague; (2) one of his trial judges prejudged his guilt; (3) he had no opportunity to cross-examine witnesses against him; and (4) the NEB conducted an insufficient appellate review. As we conclude that Martinez was denied a fair hearing because he had no opportunity to cross-examine witnesses against him, and generally did not understand the trial process, we need not, and do not, reach the other findings of the ALO.

When ranch committee member Rigoberto Perez served Martinez with charges alleging that he had violated the UFW Constitution by crossing the picket line, Perez told Martinez that he had the right to defend himself. Martinez testified that Perez told him he could have a representative at the trial and could present evidence, but Martinez did not recall Perez explaining his right to cross-examine witnesses. Perez explained that the ranch committee was there to serve Martinez and help him in any way it could.

Perez testified that Martinez told him he knew how to defend himself, and Martinez testified that he knew he could present evidence at the trial, but that he had none. However, the transcript of the trial itself, read in light of Martinez'

testimony, indicates that Martinez did not have a sufficient understanding of the trial procedure for us to conclude that he was fairly tried.

At the trial, the director of the UFW's field office and a member of the ranch committee read the section of the UFW Constitution covering trial procedures and asked if there were any questions about the procedure. Martinez did not remember hearing the Constitution read, and did not remember being told at the trial that he could present witnesses and ask his accusers questions. Although Perez testified that Martinez asked each witness questions, the trial transcript indicates that Martinez was not asked if he had any questions, and he did not cross-examine any of his accusers.

Martinez testified that he completed only two years of school and could not read or write English or Spanish. While he testified that he knew he could be represented at the trial, his testimony also indicates that he did not know what it meant to be "represented" and did not know the difference between a representative at the trial and a witness on his behalf. At the trial, Martinez asserted his innocence and, although his statements at the trial are somewhat unclear, attempted to assert that he crossed the picket line only once, and he was "helping out" rather than working. Martinez told Perez at the trial to go to Growers Exchange and see "if (his) name is there." This suggestion that some work records would support Martinez' version of the events is further supported by Martinez' attempt, after the trial, to give the Union a document from Growers Exchange which indicated that his social security number did not appear in Growers Exhange's payroll records in 1979.

Martinez testified that he did not produce this document earlier out of "ignorance". Since Perez told Martinez that the ranch committee was there to help him in any way it could, it is likely that Martinez believed that the ranch committee would check Growers Exhange's payroll records as he requested. Martinez also apparently believed that he could submit a document supporting his defense after the close of the trial.

Given Martinez' lack of understanding of the trial procedure, we cannot find that Martinez could fairly be deprived of his good standing in the Union, and discharged from his job, based on that trial procedure. The ranch committee and ranch community, which had the power to remove Martinez from good standing in the Union, had an obligation to insure that Martinez had a sufficient understanding of his own trial. This obligation it did not meet. Accordingly, we find that the UFW violated section 1154 (b) and (a)(1) by terminating Martinez' membership and requesting that Mann Packing Company discharge him, and that Respondent Mann Packing Company violated section 1153 (c) and (a) by discharging him.

The Case of Odis Scarbrough

As to Charging Party Scarbrough, we affirm the ALO's findings and his conclusion that the UFW violated section 1154 (b) by causing his September 1979 layoff.[21]/

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[21]/The UFW has excepted to the ALO's finding that Scarbrough's September 1979 layoff was caused by the Union's demand that all non-strikers be terminated after the new contract became effective. The ALO's findings are based on credibility resolutions, which we will reverse only if they are clearly in error, based on the logical consistency of the evidence. (See, Brock Research, Inc. (May 25, 1978) 4 ALRB No. 32.) We find that the ALO's findings herein are supported by the record.

As to Scarbrough's January 1980 discharge, at the UFW's request, for lack of good standing in the Union, we disagree with the ALO's conclusion that the Board should supervise the payment of back pay pursuant to the PRB decision of April 20, 1981. The PRB appears to have adequately considered the procedural fairness of Scarbrough's trial and decided to reverse his expulsion in its entirety. The UFW has returned Scarbrough to good standing and requested his reinstatement. Sun Harvest has complied with that request. Since the UFW concedes it is obligated to make Scarbrough whole for any losses he may have suffered as a result of his discharge, and since Scarbrough is free to seek judicial enforcement of that obligation, there is no need for this Board to maintain its jurisdiction over the matter. The allegations regarding Scarbrough's discharge in January 1980 for lack of good standing are therefore dismissed.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent United Farm Workers of America, AFL-CIO (UFW), its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Sun Harvest, Inc., Mann Packing Company, or any other agricultural employer to discriminate against any agricultural employee in violation of section 1153 (c) and (a) of the Agricultural Labor Relations Act (Act), or discriminating against any such employee with respect to whom membership in the UFW has been suspended, terminated, or denied

without affording such employee the due process rights guaranteed by section 1153 (c) of the Act.

(b) In any like or related manner restraining or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

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

(a) Immediately restore Juan Martinez to membership in good standing in the UFW retroactive to January 10, 1980, without prejudice to his membership rights or privileges as though they had not been suspended on that date.

(b) Immediately notify Mann Packing Co. that Juan Martinez is a member in good standing and is to be deemed as such retroactive to January 10, 1980, and that the UFW requests his reinstatement to his former job or substantially equivalent employment without prejudice to his seniority and other rights or privileges of employment as though he had not been terminated on January 14, 1980.

(c) Make whole Juan Martinez for all losses of pay and other economic losses he has suffered as a result of Respondent UFW's discrimination against him, and make whole Odis Scarbrough for all losses of pay and other economic losses he has suffered as a result of his layoff in September 1979, such amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.

(d) With the cooperation of Sun Harvest and

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

(e) Immediately notify Juan Martinez, by mail addressed to his last known addresses, of his retroactive restoration to UFW membership in good standing as provided in paragraph 2(a) above, and forward to him a copy of the UFW's letter request to Mann Packing Co. for his full reinstatement.

(f) Sign the Notices to Agricultural Employees attached hereto and, after their translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(g) Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Mann Packing Co. at any time during the period from January 14, 1980, until the date on which the said Notice is mailed, and to all agricultural employees employed by Sun Harvest at any time from September 1979, until the date on which said Notice is mailed. The UFW shall seek the cooperation of Sun Harvest and Mann Packing Company in obtaining the names and addresses of the employees to whom said Notice shall be mailed.

(h) Post copies of the attached Notices in all

appropriate languages, in conspicuous places at all its offices and union halls throughout the State of California for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(i) With the consent of Sun Harvest, Inc. and Mann Packing Co., arrange for a representative of the UFW or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all Sun Harvest and Mann Packing 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 to answer any questions the employees may have concerning the Notice and/or their rights under the Act. The UFW shall reimburse Cun Harvest, Inc., and Mann Packing Co. for the employees' wages during this reading and question-and-answer period. The Regional Director shall determine a reasonable rate of compensation to be paid by the UFW to Sun Harvest Inc. and Mann Packing Co. and relayed by them to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(j) 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 30, 1982

ALFRED H. SONG, Chairman

HERBERT A. PERRY, Member

## ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Mann Packing Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against, any agricultural employee with respect to whom membership in the United Farm Workers of America, AFL-CIO (UFW) has been suspended, terminated, or denied without the due process rights guaranteed by section 1153 (c) of the Agricultural Labor Relations Act (Act)

b. In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

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

(a) Offer to Juan Martinez immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights or privileges.

(b) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amounts of backpay due under the terms of our Order issued on this date against the UFW.

(c) Post copies of the attached Notice, in all

appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place (s) to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(d) 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 30, 1982

ALFRED H. SONG, Chairman

HERBERT A. PERRY, Member

MEMBER WALDIE, Concurring in part and Dissenting in part:

I disagree with the majority's conclusion that Juan Martinez was denied a fair hearing because he had no opportunity to cross-examine witnesses against him.

Martinez was informed of the substance of the charges against him and the nature of the trial procedures by Ranch Committee President Rigoberto Perez, seven days before his trial. Again at the trial, the trial procedure, as set forth in the UFW Constitution, was read to Martinez, who expressed no lack of understanding as to the procedure. Although the transcript of the trial does not indicate that the trial committee asked Martinez if he had questions for the accusing witnesses, it also does not indicate that he was prevented from asking questions. Martinez conceded that he offered no evidence on his behalf because he had none.

I agree that Martinez did not fully understand the legal meaning of many of the terms in the UFW Constitution, including his

right to cross-examine witnesses. However, in my opinion, the responsibility for this lack of understanding should be born by Martinez and not the trial committee. Martinez understood the seriousness and possible consequences of crossing the picket line at Grower's Exchange. When he received the charges, he was under some obligation to prepare his own defense and to inform himself about his rights. Martinez apparently declined to seek representation, advice, or clarification of these matters and made no effort, other than to appear at his trial, to defend himself. I cannot fault the trial committee, who were also unfamiliar with legal procedures, for Martinez' failure to confront his accusers.

I would also reject the other findings of procedural impropriety made by the ALO. The charges against Martinez clearly state that he was seen working at Grower's Exchange on September 10, 1979, and thereafter until he was recalled from layoff by Mann Packing Company. Martinez' belief that he was charged with crossing the line only on September 10 could not have reasonably been derived from the charges.

Although Rigoberto Perez, a member of the trial committee, testified that he believed, before the trial, that Martinez crossed the picket line at Grower's Exchange, I do not find that Martinez was prejudiced by that preconception. Martinez admitted being in the field at Grower's Exchange and offered the ambiguous explanation that he was merely "helping out." Since Martinez did not deny crossing the picket line and since Perez had not prejudged Martinez as to punishment, I would find Perez' preconception to be harmless and insufficient to invalidate the results of the trial.

Finally, as to the sufficiency of the appellate decision by the NEB, I would reject the ALO's finding that Martinez was denied due process by the NEB's failure to give reasons for reducing his expulsion to a suspension. Martinez had the right to appeal his suspension to the PRB on the same grounds that he raised before the NEB. It is not uncommon for courts and administrative agencies, including the ALRB, to issue summary decisions affirming trial judgments. The brevity of the decision does not undercut its authority and does not prevent the appellant from continuing to challenge the trial judgment.

Based on the foregoing, I would dismiss the allegation that Juan Martinez was expelled from the UFW without adequate procedural due process in violation of sections 1153 (c) and 1154(b) of the Act.

Dated: December 30, 1982

JEROME R. WALDIE, Member

MEMBER McCARTHY, Dissenting:

In validating a union rule which subjects nonstriking workers to expulsion from the union and termination of employment, the majority has sanctioned economic capital punishment for agricultural employees who attempt to exercise their Labor Code section 1152 "... right to refrain from any or all [union] activities ...," and has thereby abused the discretion vested in this Board by section 1153(c) of the Agricultural Labor Relations Act (Act). The majority has achieved this result by construing Labor Code section 1152 in such a manner that the exception contained therein swallows the rule. I am convinced that the Legislature intended that this Board exercise its discretion in a manner which, while allowing for meaningful good standing provisions, gives the fullest possible effect to the basic rights guaranteed to employees by the Act.

Section 1152 of the Act contains an exception which allows the worker's fundamental right to refrain from any or all

union activities to be "affected by an agreement requiring membership in a labor organization as a condition of continued employment ...." However, it is by no means an unbridled exception. "Membership" is defined in Labor Code section 1153(c) as "... the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing ...." (Emphasis added.) I submit that a union rule requiring a worker to participate in a strike and/or picketing against his or her employer, on pain of expulsion from the union, is clearly an unreasonable condition of membership that is not to be countenanced under Labor Code sections 1152 and 1153(c) insofar as it can result in termination of employment.[1]/

Where the contract between the union and the employer contains a "good standing" provision, the union may require the employer to discharge any employee who has failed to maintain his

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[1]/The majority claims that NLRB v. Allis-Chalmers Mfg. Co. (1967) 388 U.S. 175 [65 LRRM 2449] supports the reasonableness of having a worker fired for crossing a picket line. However, the majority fails to mention that the Supreme Court predicated its holding in that case on a very significant fact: the union discipline did not interfere with the employer-employee relationship. (See also NLRB v. Boeing Co. (1978) 412 U.S. 67 [82 LRRM 2183].) The opposite is true here; the union discipline includes loss of employment. Under the National Labor Relations Act (NLRA), a union cannot require an employer to discharge an employee because the employee engaged in, or refrained from, any union activity, or violated any union rule, bylaw, or constitution. Under the NLRA, a union may lawfully require the employer to discharge an employee only for failure to pay initiation fees and/or union dues, and may expel or discipline, but may not require the discharge of, a member for violation of union rules. Because the ALRA makes it possible to have an employee's continued employment contingent on compliance with union rules, the inhibition against review of union-imposed penalties that exists under the NLRA does not apply here, where the employee's livelihood, not merely his union membership, is in jeopardy.

or her union membership in good standing. Under the union rules at issue in this case, the union may expel from membership any member who fails to honor a union picket line or continues working for an employer during the union's strike against the employer. Imposition of this penalty of expulsion makes it possible for the union to require the employer to discharge the employee pursuant to the terms of the good standing provision in the contract. The employee may have worked many years for the struck employer and may have attained a level of seniority, income, security, and benefits that he or she cannot replicate elsewhere. Moreover, the expelled and discharged employee faces a situation akin to the pre-1935 blacklisting abuses which antiunion employers perpetrated against union activists. If an employee has been expelled from a union for conduct which the union deems to be contrary to its interests, he or she presumably will not be readmitted to the union simply by going to work for a different employer who has a contract with the union. All employers having a contract which contains a good standing provision would be off limits as a potential source of employment for the expelled employee. In any given geographical area, many or all of the agricultural employers who could otherwise utilize the skills of the expelled worker would be subject to such a contract, and therefore would be unable to retain that individual as an employee as long as he or she remained in a suspended or expelled status. As one union currently represents a large majority of the organized employees in California's agricultural industry, any expelled and discharged worker would be gravely disadvantaged in obtaining other employment. The consequent

economic disaster and disruption of the worker's life is an inordinately high price to pay for an act or conduct which may have been dictated by principles or dire economic necessity.

The majority would find any term or condition maintaining good standing union membership to be reasonable so long as it is "reasonably related to a union interest that is germane to its role as collective bargaining representative."[2]/ That

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[2]/The majority cites the recent Supreme Court case of United Steelworkers v. Sadlowski (1982) 102 Supreme Ct. 2339 in support of its contention that an internal union rule need only be reasonably related to a valid union interest in order for that rule to be considered reasonable. However, resolving the question of whether a union rule is reasonably related to a valid union interest is in no way dispositive of whether the rule is in fact reasonable. Sadlowski involved a rule that prohibits candidates for union office from accepting campaign contributions from individuals who are not members of the Union. The court's task was to determine whether the rule was "reasonable," as that term is used under section 101 (a) of the Labor Management Reporting and Disclosure Act. Its analysis rests heavily on the fact that, although the union's outsider rule does affect rights protected by the statute and may limit somewhat the ability of insurgent union members to wage an effective campaign against incumbent officers, "as a practical matter the impact may not be substantial." (Id. at p. 2346.) The court gave a number of substantive reasons why the impact of the rule would be mitigated and why alternative measures would not be as effective in curtailing undue influence of union affairs by nonmembers. This is in sharp contrast to the situation in the case at hand. Other than the mere possibility that a union member's conviction and expulsion might be reversed on appeal, there is nothing in the circumstances present here that make the impact of the rule anything less than devastating. Moreover, there are other effective means by which the union can discourage picket line crossings and attain strike solidarity. Finally, it should be noted that the interest to be protected in this case -- the right to either engage in union activity -- is even more fundamental than the union member's interest in being able to compete as effectively as possible when seeking to wrest a union office from an incumbent. The other case cited by the majority in support of its standard of review, James v. Marinship Corp. (1944) 24 Cal.2d 721, is inapposite on this point because the court was not called upon to construe a statutory requirement of reasonableness.

definition is so broad as to be useless. Virtually everything the union does has some rational connection with its desire to increase its strength as a collective bargaining representative. Moreover, the majority's definition totally ignores the degree to which the fundamental statutory rights of employees are involved. Any legitimate institutional interest of the union, no matter how minimal, will, under the approach taken by the majority, always outweigh the individual employee's fundamental statutory right "... to refrain from any or all of such [union activities or other concerted] activities." The failure to even balance employee rights against union interests produces a one-sided equation that can hardly be considered a reasonable or just construction or interpretation of a statute which we all agree was intended to be a bill of rights for agricultural employees, not for agricultural unions or agricultural employers.

The majority makes much of the fact that the Legislature included the exception to Labor Code section 1152 with the knowledge that a union could expel a worker for failure to abide by certain of the union's terms or conditions of membership and then require the employer to discharge the employee from his or her job under the terms of a union-security agreement. There are many acts of an employee that a union might choose to make punishable, and there are many forms of discipline a union might choose to impose, e.g., fines, suspension of certain privileges. The problem here is that the Union is attempting to impose the severest possible penalty (loss of employment) for an act that goes to the heart of an employee's rights under the ALRA. In this fashion,

the Union renders unreasonable its rule prohibiting members from crossing its picket lines or working for a struck employer. When, as in the instant case, the Board endorses the Union's imposition of the ultimate penalty for the exercise of a fundamental statutory right, that right is defeated and rendered meaningless. This cannot have been the result that the Legislature intended under the Labor Code section 1152 exception to the right to refrain from union activity.[3/] Indeed, to ensure that such pernicious results do not occur, the Legislature provided for a test of reasonableness to be applied to all union membership rules. Regardless of whether the Legislature intended that the Act should permit a union to require the discharge of an employee because of a violation of

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[3/]The literal interpretation which the majority gives to the Labor Code section 1152 exception does not comport with accepted principles of statutory construction.

> The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read so as to conform to the spirit of the act. "While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words. Thus words or clauses may be enlarged or restricted to harmonize with other provisions of an act. The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense were they intended to be understood or what understanding do they convey as used in the particular act. [Footnote omitted.]
> (Sutherland, Statutory Construction, § 46.07 (4th Ed.)

The particular rule in California is that an exception in a statute is to be strictly (narrowly) construed. (Coins v. Board of Pension Com'rs of Los Angeles (1979) 96 Cal.App.3d 1005, 158 Cal.Rptr. 470.)

union membership rules, it plainly intended for the Board to determine in such cases whether there is any reasonableness in allowing an employer to be discharged for exercising one of the two fundamental rights (to engage in and to refrain from engaging in, union activity) guaranteed to all employees by the Act. This is made clear in the following dialogue between a member of the Senate Industrial Relations Committee and the witness whose testimony before that committee was quoted in part in the majority opinion:

JORDAN BLOOM: Why should the board have the authority to sanction the discharging of an employee for some reason other than a failure to tender dues or initiation fees?

SENATOR GREENE: How do you know the board is going to do that?

JORDAN BLOOM: It has the authority to do that in this law.

SENATOR GREENE: But how do you know that it is going to make its determination in that direction rather than in some other?

It was thus expected that this Board would exercise its discretion in such matters and not simply endorse or ratify every attempt by a union to expel a member and cause him to be discharged from his job for daring to exercise his statutory rights, the very rights which the Board is charged with protecting and enforcing.

It is clear to me that a balancing process is essential to a test of the reasonableness of union rules and the exercise of the Board's discretion under Labor Code section 1153(c). The union’s institutional interest in strike solidarity must be balanced against the employee’s Labor Code section 1152 right to refrain from engaging in union activity. In balancing conflicting

interests we are guided by the principle that an accommodation must be achieved "with as little destruction of one as is consistent with the maintenance of the other." (NLRB v. Babcock & Wilcox Co. (1956) 351 U.S. 105, 112.) The proper result then would be to afford the union an adequate opportunity to fulfill its legitimate objective while diminishing as little as possible the employee's Labor Code section 1152 right to refrain from union activity. Such a result has been eschewed by the majority, although it can easily be achieved in this case. Strike solidarity need not depend on the economic ruination of any employee who crosses the union's picket line. For example, noncoercive peer pressure and union persuasion would tend to minimize picket line crossings, as would a system of fines or other intraunion penalties which do not destroy or affect the employment status. Such penalties might constitute an infringement on the worker's Labor Code section 1152 rights, but both strike solidarity and the worker's right to earn a livelihood would be preserved. The case for proper accommodation of the competing rights or interests was succinctly stated in a concurring opinion from a recent NLRB case, Machinists Local 1327, Internat'l Ass'n of Machinists & Aerospace Workers (1982) 263 NLRB No. 141:

> Surely a union is vested with sufficient lawful means of persuasion and peer pressure to preserve strike solidarity without requiring suspension of the Act's fundamental protections. In fact, if a union is unable to preserve strike solidarity through less restrictive means than sanctions that override the Act's protections, perhaps it should reconsider its decision to strike in the first place.
> (Concurrence by Members Van de Water and Hunter, id., at slip opn., p. 24, fn. 42.)

A body no less than the California State Supreme Court has recently stated in an agency shop case that, "Requiring dismissal of an employee is too drastic a measure for this court to endorse." (San Lorenzo Education Association v. Wilson (Dec. 6, 1982) ____Cal.3d____.) Clearly, where effective but less restrictive means can be employed by the union to promote strike solidarity, it is an improper exercise of this Board's discretion to permit the union to nullify employees' Labor Code section 1152 rights by using the harshest possible means of enforcing strike solidarity.[4/]

Dated: December 30, 1982

JOHN P. MCCARTHY, Member

[4/]Although I find that some discipline for acts in derogation of a strike may be justifiable, any proceeding against a member on account of such acts is invalid so long as the penalty could include expulsion and consequent loss of employment under a good standing provision. Since that is the case with respect to all the Charging Parties herein, I agree with the majority only insofar as they have ordered the Union to reinstate as members, make whole, and obtain reemployment for the Charging Parties.

NOTICE TO MEMBERS

After investigating charges that were filed in the Salinas Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, United Farm Workers of America, AFL-CIO (UFW), 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 suspending the union membership of Juan Martinez and causing his discharge by Mann Packing Co. in January 1980, and by causing the layoff of Odis Scarbrough in September 1979. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

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

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

WE WILL NOT do anything, in the future, which restrains or coerces you or any other farm worker to do, or to refrain from doing, any of the things listed above.

WE WILL NOT discriminate against, or suspend or terminate the UFW membership of any agricultural worker in violation of the Act and WE WILL NOT cause or attempt to cause any agricultural employer to discharge or otherwise discriminate against any farmworker with respect to his or her employment.

WE WILL, upon request, restore Juan Martinez to membership in good standing in the UFW retroactive to January 10, 1980, without prejudice to his member ship rights or privileges as though he had not been suspended on that date.

WE WILL notify Mann Packing Co. that Juan Martinez is a member in good standing retroactive to January 10, 1979, and we will request his reinstatement to his former or substantially equivalent job without prejudice to his seniority and other rights or privileges of employment as though he had not been terminated January 14, 1980.

WE WILL make whole Juan Martinez and Odis Scarbrough for all losses of pay and other economic losses they have suffered as a result of the UFW's discrimination against them, plus interest.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CIO

By: _____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board, One office is located at 112 Boronda Road, Salinas, CA 93907. The telephone number is (408) 443-3161. This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR

MUTILATE 8 ALRB No. 103

CASE SUMMARY

United Farm Workers of America, AFL-CIO (UFW)
Mann Packing Co., and Sun Harvest Inc.

8 ALRB No. 103
Case Nos. 79-CL-59-SAL
80-CE-5-SAL
80-CE-4-SAL
80-CE-108-SAL
80-CE-29-SAL

The Charging Parties in this case were three agricultural employees, Severo Pasillas, Juan Martinez, and Odis Scarbrough, who alleged that the UFW (and derivatively their employers) violated Labor Code sections 1153 (c) and 1154 (b) by terminating or suspending their memberships in the UFW and then requesting that they be discharged by their employers, Sun Harvest, Inc. and Mann Packing Company, under the union shop clauses in the collective bargaining agreements with those companies.

These employees were charged by fellow UFW members with violating the UFW Constitutional provision which requires all members, as a condition of continued membership in good standing, to honor all UFW picket lines and strikes, by working during the lettuce strike in 1979. The employees were tried by their ranch communities, found guilty, and expelled from membership in the UFW. Although Martinez and Scarbrough were successful in getting their expulsions reduced to suspensions through an internal union appeal, all three were ultimately discharged from their jobs at the UFW's request.

A complaint issued on unfair labor practice charges by these three employees. However, the General Counsel's theory of the case was that the three employees had not received all the procedural due process guaranteed by section 1153 (c). Charging Parties Pasillas and Scarbrough raised procedural objections, but also challenged the overall constitutionality of section 1153 (c) and the reasonableness of a UFW membership requirement which violates an employee's right to freedom of non-association with strike activity.

ALO DECISION

The ALO rejected the constitutional arguments of the Charging Parties and held that the UFW's membership requirement was reasonable.

On the question of exhaustion of internal union appeals, the ALO rejected the UFW's argument that the ALRB should not proceed until all internal union procedures have been exhausted. Instead, he relied on federal authority and suggested a general rule which would not require exhaustion where it would be futile or unfair and with an outside time limit of four months. On the facts of each case, the ALO found that the employees had adequately exhausted their internal appeals,

On the procedural issues, the ALO found that Pasillas was denied due process because of the inadequacy of the trial record in his case; that Martinez' trial was deficient in that the charges were unduly vague, he was prejudged by a member of the Ranch Committee, he did not have an opportunity to cross-examine the witnesses against him, and there was insufficient appellate review by the National Executive Board of the UFW; and that Odis Scarbrough had not yet been made

whole by the UFW for his losses (although he had been returned to good standing and reinstated, at the UFW's request, by Sun Harvest.)

On a separate allegation regarding Scarbrough, the ALO found that the UFW had illegally caused Scarbrough[1]s lay off in September 1979 by requesting that Sun Harvest discharge every employee who worked during the strike.

BOARD DECISION

The Board declined to rule on the constitutional issues raised by Pasillas and Scarbrough, since the California Constitution prohibits an agency from declaring its own enabling legislation unconstitutional.

The Board held that under Labor Code section 1153 (c), union membership requirements must be both reasonable and applied according to fair procedures, and that the Board would review allegations involving the "good standing" proviso to section 1153 (c) closely on a case-by-case basis. The Board then held that the UFW's picket line requirements were reasonable because strike discipline is germane to the legitimate interests of the union as collective bargaining representative.

As to exhaustion of internal union appeals, the Board generally adopted the approach used by the ALO but rejected the four month limit. On that basis, Pasillas was found to have failed to adequately exhaust his internal union appeals, since he never appeared at his trial or filed any appeal. Pasillas' case was dismissed on that basis. Martinez did reasonably exhaust his appeals by appealing to the NEB, since he obtained a stay of his expulsion until the NEB decision issued. After he was discharged, the Board held, he was not required to pursue further internal union appeals because the Union was unable to provide full reinstatement. Scarbrough did exhaust the union procedures by appealing to the UFW s Public Review Board (PRB).

As to procedurual fairness, Members Perry and Song find that Martinez was denied a fair hearing in that insufficient care was taken by the UFW officials conducting the trial to assure that Martinez understood and had an opportunity to exercise his right to cross-examine his accusers. As to Scarbrough, the Board noted that he had obtained a reversal of the trial judgment from the PRB. However, the Board ruled that Scarbrough's ability to enforce the PRB decision, as a contractual obligation of the UFW, made it unnecessary to proceed further with unfair labor practice allegations.

The Board adopted the ALO's findings and conclusions regarding Scarbrough's September 1979 lay off.

DISSENTS

Member Waldie disagreed with the majority conclusion that Martinez was denied a fair hearing because he was not given an opportunity to cross-examine witnesses. Member Waldie would find that Martinez was adequately informed of his rights and that Martinez simply failed to make adequate efforts in his own behalf. Member Waldie would also

reject the ALO's other findings of procedural unfairness, finding a lack of substantial prejudice to Martinez in each instance.

Member McCarthy would find that a union rule which subjects nonstriking workers to expulsion from the Union and termination of employment is an unreasonable term and condition of employment under Labor Code section 1153(c). He believes the majority has read the exception in section 1152 too broadly and has failed to balance the Union's institutional interest in strike solidarity against the agricultural employees' fundamental right to refrain from union activity. He views termination of employment as the harshest possible means of enforcing strike solidarity and as an inappropriate penalty for the exercise of a fundamental right, especially where effective but less restrictive measures could have been employed. He therefore concludes that the majority's action is an abuse of the discretion vested in the Board by section 1153(c).

* * *

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

* * *

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

| | |
|---|---|
| In the Matter of<br><br>UNITED FARM WORKERS of AMERICA, AFL-CIO<br>SUN HARVEST, and MANN PACKING COMPANY,<br><br>Respondents,<br><br>v.<br>SEVERO PASILLAS, ODIS SCARBROUGH and JUAN MARTINEZ,<br><br>Charging Parties. | Case Nos 79-CL-59-SAL<br>80-CL-4-SAL<br>80-CL-5-SAL<br>80-CE-29-SAL<br>80-CE-103-SAL |

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On Behalf of the General Counsel

## DECISION

WILLIAM A. RESNECK, Administrative Law Officer:

4

## STATEMENT OF THE CASE

This case was heard before me in Salinas, California on April 14, 15, 16, 21, 22, 28 and 29 involving five unfair labor practice charges consolidated for hearing. The charging parties here, Odis Scarbrough, Severe Pasillas and Juan Martinez, all allege they were discharged from their jobs in violation of rights guaranteed by the California Agricultural Labor Relations Act (hereinafter referred to as "the Act").

The ALRB issued a complaint on behalf of Mr. Pasillas on June 25, 1980 against Sun Harvest, his employer, and the United Farm Workers of America, AFL-CIO (hereinafter referred to as "UFW" or "the Union"). Similarly, a complaint was issued on behalf of Mr. Martinez on June 30, 1980 against Mann Packing Company, his employer, and the UFW. Finally, a complaint was issued on behalf of Odis Scarbrough on July 3, 1980 against the UFW only.

Essentially, each of the three individuals worked as strike-breakers during a UFW strike in 1979. The strike was settled and a collective bargaining agreement was reached between the growers and the UFW in September 1979. The agreement included a Union security provision providing that Union membership should be a condition of employment. After the ratification of the agreement, each of the three charging parties were tried by members of their Ranch Communities in trials conducted pursuant to the UFW Constitution, found

guilty of strike-breaking and either expelled or suspended from the Union. After receiving notice from the Union that the employees were no longer Union members in good standing, the employers discharged the workers.

Charging parties allege that their discharges were in violation of rights guaranteed by Sections 1153(a), 1153(c), 1154(a)(l) and 1154(b) of the Act, discussed infra. Charging parties Pasillas and Scarbrough contend that the Union security provision is constitutionally invalid, and thus, violates the above sections of the Act.
All charging parties contend that in any event they were not afforded due process by the Union.

The employers and Union filed answers to the charges denying any liability, and the Union accepted the employers' defense pursuant to a tender of defense.

All parties were given full opportunity to participate in the hearing, and the General Counsel, the UFW and the charging parties all were represented at the hearing. After the close of the hearing General Counsel, the employer and charging parties, Pasillas and Scarbrough filed briefs. In addition, due to the complexity of the issues raised all parties were given the opportunity to file reply briefs, and the Union and charging parties Pasillas and Scarbrough filed reply briefs.

Upon the entire record, and from my observation of the demeanor of the witness and after full consideration of the transcripts and all briefs filed by the parties, I make the following:
/ / /

## FINDINGS OF FACT

### I

### JURISDICTION

I

Employers have stipulated that they are agricultural employers within the meaning of Section 1140.4(c) of the Act, and the Union has admitted it is a labor organization within the meaning of Section 1140.4(f) of the Act, and I so find.

### II

### THE ALLEGED UNFAIR LABOR PRACTICES

A. BACKGROUND

On January 22, 1979 the Union and Sun Harvest were unable to agree on a new collective bargaining agreement and a strike was called by the UFW against Sun Harvest. On that date approximately 2,100 workers throughout the State went out on strike. Initially, the strike was 100% effective. As the strike continued, the company was finally able to recruit some strike-breakers to harvest the lettuce. Finally, on August 31, 1979 the UFW reached an agreement with Sun Harvest, and on September 4, 1979, a new collective bargaining agreement was signed.

Involved here is action taken by the Union against three strike-breakers who crossed Union picket lines during the strike. Two of the charging parties, Severo Pasillas and Odis Scarbrough, were Sun Harvest employees and crossed picket lines at Sun Harvest. The third charging party, Juan liartinez, a worker for Mann Packing Company, allegedly crossed a picket line to work at Grower's Exchange during the strike.

Each of the three individuals were charged by a fellow member of the Union with working during the strike in violation of the UFW Constitution. Article 18, § l(ee) of the Constitution specifically provides that a member may prefer charges against any other member for crossing an authorized Union picket line. Crossing a Union picket line is a specific violation of Article 17, § 4 which provides: "Every member shall respect Union picket lines, for there is nothing lower than a strike-breaker."

Charges must meet certain requirements:

(1) The charge must be in writing, signed by the accuser and must state the exact nature of the offense, and, if possible, the period of time (Article 18, § 3).

(2) Charges must be brought within 60 days (Article 18, § 4).

Resolution of the charges is by a trial before a Ranch Committee in the presence of the membership of the Ranch Community (Article 19, § 2). Notice of the time and place of the trial must be served upon the accused at least seven days before the date set for trial. (Article 18, §6). At the trial, the accused has the right to produce witnesses, present evidence and cross-examine witnesses. No lawyers are permitted (Article 19, § 5). Further, "a faithful and accurate record of the proceedings shall be made." (Article 19, § 6).

In our present case, each of the charging parties were tried by Ranch Committees in the presence of the membership of the Ranch Community. All charging parties allege they were denied due process

in the conduct of their trials. Those specific contentions will be individually discussed for each of the charging parties.

The UFW Constitution also provides for appellate review of the trial procedure. Thus, there is a National Executive Board (hereinafter referred to as "the NEB") to review the trial decision. In addition, there is a final review of the NEB decision by a Public Review Board (hereinafter referred to as "the PRB"). An appeal of a trial decision must be made to the NEB within 15 days (Article 20, § l(a)). The NEB must rule on the appeal within 30 days after it is received (Article 20, § l(c)). No penalty shall take effect until the NEB has ruled on the appeal (Article 20, § l(d)). Although an appeal from the NEB may be taken to the PRB, the appeal does not stay the imposition of any penalty (Article'20, § 2). The PRB must issue its decision within 45 days (Article 21, § 5).

The three charging parties here all present contrasting exercise of their procedural rights as guaranteed by the UFW Constitution. Pasillas neither attended his trial nor presented any appeal. Martinez attended his trial, and an appeal was filed on his behalf to the NEB. Scarbrough attended his trial, and appealed both to the NEB and PRB.

What follows is a summary of the evidence that was presented for each of three charging parties.

B. THE CASE OF SEVERO PASILLAS:

The essential facts of Mr. Pasillas' case is that he crossed the picket line at Sun Harvest in June of 1979 and continued working

throughout the strike. On September 24, 1979 he was served with charges, and on October 2 a trial was held in his absence where he was found guilty of strike-breaking with a recommendation of expulsion from the Union. On October 30, UFW informed Sun Harvest that Mr. Pasillas was no longer in good standing with the Union, and on November 2 he was discharged from employment.

Only two witnesses testified concerning the facts involving Mr. Pasillas: Mr. Pasillas and Teodomiro Ibarra, president of the Ranch Committee for Sun Harvest. Their testimony may be summarized as follows:

1. Severo Pasillas:

He had been a Sun Harvest celery worker since 1976 and went to work in June, 1979 during the strike. Manuel Silva told him when he started working that he could be punished by the Union. He then went to the Union Hall and saw Silva and showed him a letter from the United States Government demanding federal income tax money. He told Silva that his wife needed money for hospital bills for the delivery of her baby and he also needed money to pay taxes. Silva responded that he could get an extension from the U.S. Government to pay his taxes, and that if he stopped strike-breaking he would obtain a pardon for him. Pasillas continued to work during the strike.

When the strikers came back to work in September, Cleofas Guzman, the president of the Sun Harvest Ranch Committee, told Pasillas that "his time was coming". Pasillas responded that "just lay me off and I will be able to collect unemployment". Silva then

called Ruben Castillo, vice president in charge of labor relations for Sun Harvest, who told him that the Union had first to request his termination, and then he would be fired and not laid-off. Accordingly, Pasillas continued working through September at Sun Harvest.

Pasillas received notice of his trial on September 24 but did not attend because "he was tired of listening to those bad words they said against him" (V: 24) .*1

On October 4 Pasillas was served with a notice of the trial decision but did not appeal to the NEB. His only explanation is that he could not find Jose Renteria, the Union president, to discuss the matter with him. He was discharged from work on November 2.

2. Teodomiro Ibarra:

He was the president of the Ranch Committee for the Sun Harvest celery workers. Prior to Pasillas' trial he held a meeting to plan the trial and review the declarations of Pablo Garcia, Manuel Silva and Pedro Guerra. The trial was scheduled for October 2, and he I personally delivered the notice of the trial to Pasillas on September 25.

Pasillas did not attend the trial. Pedro Guerra was the only witness to testify against him. The Ranch Committee listened to

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Footnote *1: Reference to the Reporter's transcript will contain a Roman numeral, indicating the transcript volume, followed by the page number of that volume.

I

the evidence, went out, deliberated and then returned to announce their finding of guilty. The membership then voted Pasillas guilty of strike-breaking. The Ranch Committee then left the room to discuss punishment. They returned with the recommendation that Pasillas be expelled from the Union.

On October 30 Ibarra wrote a letter to Sun Harvest requesting the immediate discharge of Pasillas because he had been found a member in bad standing. Pasillas was discharged on November 2.

C. THE CASE OF JUAN MARTINEZ:

Mr. Martinez was served with a formal complaint and notice of trial on November 2, 1979 accusing him of crossing the Union picket line to work at Grower's Exchange from September 10, 1979 on and possibly prior to September 10. His trial was held on November 9, and he was found guilty of strike-breaking and expelled from the Union. An appeal was filed on his behalf to the NEB on November 13, and on January 2 the NEB reduced his penalty to a one-year suspension. On January 10, Mann Packing was notified that Martinez was no longer a Union member in good standing, and he was discharged from Mann Packing on January 14, 1980.

The witnesses who gave evidence concerning Juan Martinez are as follows:

1. Juan Martinez:

Martinez testified that he had only completed two years of school and could not read or write English or Spanish. He had worked at Mann Packing since 1973 as a broccoli cutter and had been

a member of the Union since 1976.

The UFW represented the workers at Mann Packing in 1979 but did not actually strike the company that year. Instead, the workers engaged in periodic work stoppages.

Rigoberto Perez, president of the Mann Packing Ranch Committee served him with the charges on November 2, 1979 and told him that he was going to face trial for working during the strike at Grower's Exchange. Perez told him that he had the right to be represented at the trial, but did not tell him that he could present evidence on his own behalf or that he had the right to cross examine witnesses.

Martinez attended the trial. Rafael Macias acted as the prosecutor and testified that he saw him working at Grower's Exchange during the strike. The other two witnesses against him were Ramiro Perez and Agustin del Real. Both of them testified that they saw
him working at Grower's Exchange during the strike. Martinez testified on his own behalf stating that he did not work during the strike.

The trial committee then retired to deliberate Martinez' guilt and returned with a recommendation of guilty. The people then present raised their hands and voted 43 to 0 in favor of guilty. Although some people present at the trial were not members of the Mann Packing Ranch Community, they were there during the trial and during the vote taking. The Ranch Committee then deliberated as to punishment and returned with the recommendation that he be expelled. The Ranch Community agreed with that recommendation. Throughout the

trial Martinez protested his innocence and contended he did not work at Grower's Exchange in 1979.

After the trial Martinez obtained a document from Grower's Exchange showing that he worked there in 1978 but not in 1979.

On November 13, 1979 a Notice of Appeal to the NEB was submitted on behalf of Mr. Martinez, but he had no knowledge of this form and denied either preparing it himself or having it prepared on his behalf. On January 2 the NEB informed him that his sentence had been reduced to a one-year suspension. On January 10 Rudolfo Ramirez informed Mann Packing that Martinez was no longer in good standing, and he was discharged on January 14, 1980.

After his discharge from Mann Packing, Martinez did work for General Vineyards in March or April of 1980 for about a month. General Vineyards had a Union contract, and Martinez was in bad standing at the time and was not supposed to be allowed to work. Martinez was restored to good standing after a one year of suspension and could return to Mann Packing when work resumed in 1981.

2. Rigoberto Perez:

He is president of the Mann Packing Ranch Committee. He stated that the workers at Mann Packing authorized the strike but did not go on strike. Martinez was served with a notice of his trial a week prior to the trial. The trial judges at the trial were Adalberto Margarito, Sergio Tamallo, Abdon Atrisco and Rodolfo Ramirez. Before the trial, Perez himself was convinced that Martinez had crossed a picket line at Grower's Exchange (111:73).

Although there were people other than members of the Ranch Community at the trial, Perez was convinced they did not vote. When the three witnesses against Martinez testified at the trial, Martinez would ask each of them if they had seen him. Martinez kept protesting he was innocent.

Perez testified that after Martinez was found guilty the trial committee left the room to deliberate on punishment and came back and presented two alternatives to the membership: to fine him or to expel him. The vote was for expulsion.

3. Sergio Tamayo:

He kept notes of the trial, acting as secretary. The trial lasted about one and one-half hours.

4. Jose Ruiz:

He ran the tape recorder during the trial. There is a one-minute gap on the tape recording while the committee went out to deliberate Martinez' guilt.

D. THE CASE OF ODIS SCARBROUGH

Scarbrough crossed the picket line and worked at Sun Harvest from March 1979. On September 4, 1979 he was laid-off but was reinstated after a meeting on September 27, 1979. He was tried by the Union on October 11, 1979, found guilty and expelled from the Union. He filed an appeal with the NEB on October 22, 1979 and the NEB advised Scarbrough, through his attorney Robin Rivett on January 2, 1980.

that his expulsion was modified to a two-year suspension. Rivett, however, testified that he never received notice of the NEB decision. The Union notified Sun Harvest on January 8, 1980 that Mr. Scarbrough was in bad standing, and he was laid-off on that same day.

Scarbrough filed an appeal to the PRB on May 13, 1980. How- ever, the appeal was apparently lost, since no further action was taken. Rivett then resubmitted the appeal on February 25, 1981 and on April 20, 1981 the PRB issued a decision reversing the trial committee and the NEB and restoring Scarbrough to full membership in the Union. The PRB decision relied on the Union's failure to prove membership of those persons voting at Scarbrough's trial and on the Union's lack of a complete trial record.

Although Scarbrough has been reinstated as a member in good standing, to date he has not yet been made whole for lost wages.

The testimony of the witnesses concerning Scarbrough's case may be summarized as follows:

1. Ruben C. Castillo:

He was vice president of harvesting and labor relations for Sun Harvest. He testified that the Union requested on September 4, 1979 that all people working during the strike, including Odis Scarbrough, be terminated immediately (1:29). Accordingly, Scarbrough was terminated on September 4, 1979. He then told the Union representatives that Scarbrough should be reinstated until a written notice was received from the Union. Accordingly, Odis Scarbrough

was reinstated on September 27 and went back to work until he was terminated on January 8, 1980 pursuant to written notice from the Union.

2. Odis Scarbrough:

He first worked for Sun Harvest in 1959 and worked continuously from 1972 until September 1979. During his period of employement he was a tractor driver, subforeman, and shop steward for the Union. During the strike he was a picket captain.

He testified that he was out on strike from January 24, 1979 until March when he went back to work to "feed my family, pay my bills and keep from going bankrupt".(11:15) He reiterated that his only reason for crossing the picket line was to pay his bills.

Before going back to work in March, two members of the Ranch Committee visited him at his house and told him not to go back to work for Sun Harvest or he would be hasseled. He suffered no incidences of violence as a strike breaker, although the UFW did picket his house one weekend and a rock was thrown at him once. He was laid-off on September 4, 1979.

He was notified of his trial October 11, 1979. Before his trial, he was told that the Union would furnish an interpreter, and he would not be allowed to bring his own. He attended this trial which was conducted in Spanish. Steve Matchett acted as an interpreter for him at the trial.

He was found guilty of strike-breaking. He stated at the trial that he was guilty of the charges but said he could not afford to feed his family and to pay his bills. After he was found

guilty the Ranch Committee retired to deliberate on his punishment. They returned with a recommendation of expulsion, and the Ranch Committee agreed with the recommendation.

3. Robin Rivett:

He is the attorney for Odis Scarbrough and introduced a letter from the UFW dated January 2, 1980 where the NEB modified the penalty of expulsion to a two-year suspension (G.C. Ex.lO-F). Rivett testified that this letter was not received until May 6, 1980 (G.C. Ex.lO-J). He then filed an appeal on May 13, 1980 to the PRB (G.C. Ex.lO-K). He received a letter from the UFW saying that the appeal had been forwarded to the PRB on June 6, 1980 (G.C. Ex.10-L). No further response was received so he followed up with a letter to the PRB on February 9, 1981 (G.C. Ex.10-M).

4. Juan Barcenas:

He has been a tractor driver for Sun Harvest since 1970 and was a picket line captain during the strike along with Odis Scarbrough.

5. Jesus Camacho:

He has been a Sun Harvest tractor driver since 1972 and was president of the Ranch Committee. He attended a meeting at the end of September with Cleofas Guzman, Ruben Castillo, Sabino Lopez, Odis Scarbrough and Alvin Watts concerning the discharge of Scarbrough earlier that month. At that meeting, Guzman, of the Union, said he

had no objection to Scarbrough's working. He only wanted the replacement workers laid-off, not those with seniority such as Scarbrough.

6. Ruben Arreola Fletes:

He has been an irrigator at Sun Harvest for ten years, and he attended picket meetings with Scarbrough.

7. Steve Matchett:

He has been a paralegal for the UFW since 1978. It was stipulated, that he was bilingual in both Spanish and English. He was interpreter for Scarbrough at his trial and read Articles 19 and 20 of the UFW Constitution at the trial. He did not translate every comment word for word but instead did some summarizing. Scarbrough never talked about any objections to violence during the trial.

D. UFW WITNESSES RE: UNION PROCEDURES:

In addition to the above witnesses, each of whom gave testimony as to the specific charging parties, there were two additional witnesses, Marco Lopez and Jose Renteria from the UFW, who spoke generally about procedures and interpretations of the UFW Constitution concerning trials of members. Their testimony may be sunmarized as follows:

1. Marco Lopez:

He is general counsel for the UFW. Any penalty imposed by the Ranch Committee takes effect after the NEB renders a decision even if an appeal to the PRB is pending. He stated that the minutes

of the trial ought to be a faithful and accurate record of the proceedings as specified in the UFW Constitution. He was shown the minutes of Severe Pasillas' trial and conluded that they were faithful and accurate record of the proceedings.

He also reviewed the documents in the Juan Martinez case and stated he could not tell how many days before September 10 Martinez had been accused of scabbing, nor could he tell when Martinez had stopped. He agreed that the duration of the offense is one of the variables considered by the NEB in handing down punishments for strike-breaking. He noted that only Martinez and Scarbrough appealed to the NEB.

He agreed that at the Pasillas trial it was read to the Ranch Committee and Community that Pasillas was accused of scabbing from June 19 until September 1. When asked about the 60 day statute of limitations, he stated that the claim was not stale since he considered scabbing a continuing offense. He also agreed the duration of scabbing would affect the punishment.

He also read Odis Scarbrough's trial notes and saw no indication that Scarbrough scabbed because of any opposition to strike violence.

He also compared the UFW Constitution and the Labor Management Reporting and Disclosure Act of 1959 and stated that the UFW Constitution contained more provisions and more protection.

He testified that the NEB consisted of nine members: Cesar Chavez, Dolores Huerta, Frank Ortiz, Richard Chavez, Marshal Ganz, Jessica Govea, David Martinez, Gilbert Padilla and Peter Velasco.

The PRB is composed of three members: Irwin De Shetler, Jacques Levy and the Reverend Eugene Boyle.

In cases where decisions of the lower trial committees had been reversed, the workers were reinstated with full seniority rights with negotiations continuing for back pay.

2. Jose Renteria:

Renteria is UFW director for the Watsonville and Salinas offices and has been present as a trial examiner at between 15 to 20 trials, including Odis Scarbrough's trial. Prior to the trial, he would discuss with Ranch Committees the procedure for trial including going over the UFW publication called "Steps for Trial" (G.C. Ex. 8) .

At the trials he would read Articles 18 and 19 of the UFW Constitution. If the Defendant had been found guilty and sentenced, he would then read the part dealing with the right of appeal.

## ANALYSIS OF ISSUES

## AND CONCLUSIONS OF LAW

The issues presented are the following:

1. Whether the Union security provision here is constitutionally invalid?

2. Whether the complaints must be dismissed for the failure of the charging parties first to exhaust all remedies under the UFW Constitution?

3. Whether charging parties were afforded due process by the UFW?

I conclude that the Union security provision here is permissible under the Act; that charging parties were excused from any further requirements of exhausting their Union remedies once they were discharged from their jobs; and that charging parties were not afforded due process by the UFW.

## I

## UNION SECURITY PROVISION

The Union security provision involved here is as follows:*[2]

### UNION SECURITY

> Union membership shall be a condition of employment. Each worker shall be required to become a member of the Union immediately following five (5) continual days after the beginning of employment, or five (I)) days from the date of the signing of this Agreement, whichever is later; and to remain a member of the Union in good standing. Union shall be the sole judge of good standing of its members. Any

Footnote *2: The Union security provision in the Sun Harvest agreement (G.C. Ex.5) and the Mann Packing Co. agreement (G.C.Ex.lie) are identical.

> worker who fails to become a member of the Union within the time limit set forth herein, or who fails to pay the required initiation fee, periodic dues or regularly authorized assessments as prescribed by Union or who has been determined to be in bad standing by the Union pursuant to the provisions of the Union constitution shall be immediately discharged or suspended upon written notice from the Union to the Company, and shall not be re-employed until written notice from the Union to the Company of the worker's good standing status.

Although general counsel does not contend that the provision is constitutionally infirm, counsel for charging parties Pasillas and Scarbrough do. Their contention is that Union membership may only be conditioned upon the payment of all financial obligations. To hold otherwise,they argue, is to violate § 1152 rights guaranteed by the Act to refrain from membership in a labor organization, and to violate First Amendment rights guaranteeing freedom of association. Finally, they point out that § 8(a)(3) of the NLRA has been limited to payment of financial obligations and submit that § 1153(c) of our Act must also be so limited. To rule otherwise, the argument goes, is a violation of § 1154(a)(l) of our Act. Section 1152 of our Act states:

CHAPTER 3. RIGHTS OF AGRICULTURAL EMPLOYEES

> 1152. 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 activites for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an. agreement requiring membership in a labor organiza'tion as a condition of continued employment as authorized in subdivision (c) of Section 1153.

Standing by itself this section does not give rise to charges of an unfair labor practice. Instead, § 1154(a)(l) of the Act provides that it shall be an unfair labor practice for a labor organization to restrain or coerce.

(1) Agricultural employees in the exercise of the rights guaranteed in Section 1152. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Similarly, the charges against the employees here arise out of § 1152 rights as guaranteed by § 1153(a), which makes it an unfair 10 labor practice for an agricultural employer "to interfere with restrain, or coerce agricultural employees in the exercise of rights guaranteed in Section 1152".

However, Section 1152 rights are not absolute but are subject, as specifically stated in that section, to Section 1153(c). Section 1153(c) provides, in part:

> Nothing in this part, or in any other statute of this state, shall preclude an agricultural employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment, membership therein on or after the fifth day following the beginning of such employment, or the effective date of such agreement whichever is later, if such labor organization is the representative of the agricultural employees as provided in Section 1156 in the appropriate collective-bargaining unit covered by such agreement. No employee who has been required to pay dues to a labor organisation by virtue of his employment as an agricultural worker during any calendar month, shall be required to nay dues to another labor organization by virtue of similar employment during such month. For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and
> equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to nembers and applicants for membership.

The issue then arises as to the interpretation to be accorded this section of 1153(c). If the Union security clause here meets the requirements of Section 1153(c), then neither the UFW nor the employer has committed any violation of § 1154 or § 1153 by the mere enforcement of the provision.

Charging parties submit that § 1153(c) must be interpreted to read as its counterpart § 8(a)(3) does under the NLRA:

> no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tend the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.
>
> 29 USC § 158(a)(3)

No contention here is made that membership has not been made available to all employees under proviso (A), so that proviso (B) is the relevant one. As the United States Supreme Court stated in NLRB v. General Motors (1963)373 U.S.734:

> Under the second provision to §8(a)(3), the burdens of membership upon which employment may be conditioned are expressly limited to the payment of nitiation fees and monthly dues. It is permissible to condition employment upon membership, but membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues. "Membership" as a condition of employment is whittled down to its financial core.
>
> 373 U.S. at 738

Thus, charging parties contend that Union membership may only 25! be conditioned upon payment of financial obligations. However this argument flies in the face of the difference in language

between § 1153(c) and § 8(a)(3). Section 1153(c) does not condition] membership on the payment of fees and dues. Instead, in pertinent part, it states :

> For purposes of this chapter, membership shall mean the satisfaction of all reasonable terms and conditions uniformly applicable to other members in good standing; provided, that such membership shall not be denied or terminated except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

Thus, unlike the narrow financial focus of § 8(a)(3), the emphasis under § 1153(c) is whether membership is terminated in accordance with a constitution providing adequate constitutional safeguards, and whether due process has been accorded. Accordingly, the difference in language between the two sections preliminarily would militate against the interpretation urged by charging parties.

Further, the interpretation urged by charging parties has recently been rejected by the California District Court of Appeal.

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In Montebello Rose v. ALRB (1931) 119 Cal.App.3d 1, the District Court of Appeal affirmed the decision of the ALRB (1979) 5 ALRB No. 64, and the administrative law officer finding that an employer had refused to bargain in good faith. One of the defenses the employer offered in refusing to agree to a Union security provision was that it would require it to discharge an employee for conduct other than failure to pay dues and initiation fees, and such a action would be illegal under the NLRA.

The ALRB noted that although § 8(a)(3) of the NLRA limited the definition of membership for purposes of Union security clauses to the tender of initiation fees and periodic dues, § 1153(c) of the ALRA was not so limited. 5 ALRB No. 64, p. 21, n.14. The ALRB agreed with the ALO's conclusion that the position adopted by the employer was not consistent with good faith bargaining. The District Court of Appeal affirmed this holding. 119 Cal. App. 3d at 20-21.

Accordingly, charging parties' assertion that the Union security provision at issue in our present case must be limited to the NLRA standard must be rejected.

However, charging parties allege that unless the interpretation urged by them is adopted, the Union security provision is constitutionally infirm through violation of First Amendment rights of freedom of association. However, charging parties overlook prior precedent. In Senn v. Tile Layers Protective Union (1936) 301 U.S.468, a State of Wisconsin statute allowed peaceful picketing of

non-union shops. Senn, who ran a tile-layer business, sued to enjoin picketing, claiming that it was depriving him from earning a living. Justice Brandeis, in upholding the Wisconsin statute allowing picketing, held that nothing in the Fourteenth Amendment or the United States Constitution prevented unions from competing with non-union concerns for customers. Instead, it was clearly proper for Wisconsin to exercise its police power in allowing unions this right, even if it prevented employers from obtaining jobs.

Accordingly, the same rationale would uphold California in : enacting its farm labor law to allow unions to obtain union security; clauses as expressed in § 1153(c).

Additionally, unions have long been accorded the power to discipline their members who cross picket lines. In NLRB v. Allis-Chalmers Manufacturing Co. (1967) 388 U.S. 175, the United States Supreme Court specifically upheld the Union's imposition of fines against its members who crossed picket lines. The Court noted that if the Union is to be an effective bargaining agent, it must have the power to fine or to expel strikebreakers. 388 U.S. at 181. The Court specifically rejected the contention that such discipline was an unfair labor practice restraining or coercing employees in violation of their right to refrain from concerted activities.

Finally, the constitutional arguments against § 1153(c) advanced by charging parties ignore prior cases under federal labor law implicitly approving the so-called "closed shop" or Union security provision. Prior to the passage of the 1947 Amendments to the National Labor Relations Act (the Taft-Hartley Act), §8(a)(3)

did not limit union membership to the satisfaction of financial obligations. Instead, union security provisions such as the one found here were prevalent. The cases arising prior to the 1947 Amendments then turned on whether the union truly represented the employees and was not dominated or unlawfully aided by the employer.

Thus, the cases in the period from 1935 to 1947 found union security agreements unlawful not because of any constitutional objections to the agreements per se, but because the company had unlawfully aided or assisted the union. In NLRB v. Electric Vacuum Cleaner Co. (1942) 315 U.S. 685, the employees were represented by an AFL union, which was being challenged by a CIO union. The employer entered into a closed shop provision with the CIO union. The provision was held invalid because it prevented employees from switching unions, instead forcing them to belong to a CIO union assisted by the employer.

Similarly, Wallace Corp. v. NLRB (1944) 323 U.S. 248 held that an employer may not enter into a closed shop contract as a subterfuge to discriminate against employees because of their prior union activities.

Instructive for our purposes here is the implicit holding of these pre-1947 cases that union security provisions are not unconstitutional on their face. No contention is made here that the UFW is an employer-dominated or assisted union. Accordingly, charging parties' contentions concerning the unconstitutionality of the union security provision here must be rejected.

One final argument raised by charging party Pasillas must also

by rejected. It is conceded that no union security provision was in effect from January 15, 1979 to September 4, 1979 while the UFW was on strike without a contract. Accordingly, Pasillas contends that to discipline him for strikebreaking during this period in effect retroactively applies the Union security agreement to affect his employment relationship.

What this argument overlooks is that although Pasillas was disciplined for activity during this January to September period, it was not through a retroactive application of the Union security : agreement. The UFW did not try to affect his employment relationship or collect dues during this period. Instead, the union security agreement became effective September 4; Pasillas was tried on October 2; his employer was notified on October 30; and he was discharged on November 2. Accordingly, all the applicable events concerning Pasillas' employment relationship occurred after September 4, and there was no retroactive application of a union security agreement affecting his employment relationship during the period when no agreement was in effect.

## II

## EXHAUSTION OF REMEDIES

Union contends here that all charges should be dismissed for failure of the charging parties to exhaust their internal Union remedies available to them under the UFW Constitution prior to filing their unfair labor practice charges. Exhaustion here simply means that the ALRB should refrain from entering, into a dispute

between a member and his union, until such time as the aggrieved member has utilized all avenues of appeal available to him through internal union procedures.

The three charging parties run the gamut in their utilization of the Union process. Pasillas neither attended his trial nor filed an appeal; Martinez attended his trial and appealed to the NEB; while, Scarbrough attended his trial and appealed both to the NEB and PRB.

A. UFW'S CONSTITUTION :

The exhaustion requirements is found in two places in the UFW Constitution:

(1) Article 17, Section 5 states:

> No member shall bring or cause to be brought in any court any action against the Union, its, officers, agents, or employees, in any matter arising out of or related to his membership, which is remediable within the framework of the Union, without having first exhausted all of the remedies available under the Constitution. Any member who violates this reasonable obligation may, if found guilty after notice and hearing in accordance with the provisions of the Constitution, be fined, suspended, and expelled. The National Executive Board shall have authority to assess such member in the amount which such litigation : caused to be expended by the Union.

(2) Article 18, Section l(w) states:

> Any member of the Union may prefer charges against any other member of the Union for (w) instituting or initiating, or urging or advocating that another member institute, any legal action or administrative proceedings against the Union or any of its officers or representatives without first exhausting the remedies and the rights of appeal provided by this Constitution.

B. THE SANCTIONS ARE UNENFORCEABLE:

Preliminarily, both sections provide for discipline against a Union member for failing to comply with the exhaustion requirement. Such sanctions are unenforceable as against public policy. In Local 138 International Union of Operating Engineers (1964) 148 NLRB 679, it was held unlawful for a union to impose a fine or. its member for filing an unfair labor practice charge without first exhausting union remedies.

Similarly, in NLRB v. Local 22 (1968) 391 U.S. 418, a union member (Holder) filed an unfair labor practice charge alleging that his union had caused his employer to discriminate against him because he had engaged in protected activity. Holder did not exhaust his union remedies prior to filing the unfair labor practice charge, and as a consequence the union filed a complaint against him in internal union procedures for failing to exhaust his union remedies as required by the union constitution. After an intra-union hearing, Holder was found guilty and expelled from the union Holder then filed a second unfair labor practice charge, alleging that his expulsion for filing the first charge was unlawful.

The Supreme Court assumed on the basis of the record that the first charge was proper and held that it was unlawful for the union to expel him for filing this charge. The Court noted that the first charge concerned more than internal union procedures, instead raising complex issues involving the employer as well. The Court also emphasized that courts have discretion to determine whether exhaustion is required.

C. EXHAUSTION OF REMEDIES APPLIES TO ADMINISTRATIVE HEARINGS:

A second preliminary issue raised by Pasillas is the contention that the UFW Constitution does not require exhaustion here. Article 17, § 5 states only that no action may be brought in any court, and does not refer to an administrative proceeding. Since Article 18, § 1 includes a "legal action" or an "administrative proceeding", the argument is that the exclusion of "administrative proceedings" must have been purposeful and thus exhaustion is not required.

Marco Lopez, general counsel of the UFW, testified that Article 17, § 5 is interpreted by the Union to include administrative proceedings, and I so find. Such an interpretation makes sense, and the language "any court" is broad enough to include this administrative proceeding.

D. APPROPRIATENESS OF ALRB INTERVENTION HERE:

Several alternatives arise as to the appropriate standard to be used in deciding when the ALRB may intervene through the prosecution of unfair labor practice charges. Union argues that intervention would only be appropriate after the full appellate process has been utilized through the PRB. Union uses the Scarbrough case as its example, noting that the initial expulsion was changed to suspension by the NEB and then a full reversal after the PRB decision However, Scarbrough has not yet been awarded back-pay, so that the Union procedure has not fully vindicated all his claims.

A second alternative would be to wait until the NEB has rendered

its decision, for only then does any penalty take effect. Article 20, Section 1 provides that an appeal must be filed within 15 days after the trial decision. Further, that section provides that the NEB must decide the appeal within 30 days. Although that cine period on its face appears reasonable, in the Scarbrough case the NEB appeal was not decided until 60 days, and he did not receive notice of that decision until five months after that.

A third alternative is to adopt the standard of Section 101 (a) (4) of the Labor Management Reporting and Disclosure Act, providing for up to a four month waiting period:

> "No labor organization shall limit the right of any member thereof to institute an action in any court or in a proceeding before any administrative agency... ; provided, that any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four month lapse of time) within such organization before instituting legal or administrative proceedings..."
>
> 29 U.S.C. § 411(a)(4)(1976)

However, in certain circumstances, this four month waiting period may prove to be futile, as here when the members have lost; their jobs. For even if a member was to pursue his avenues of appeal and ultimately be reinstated as a member in good standing, for example Scarbrough in this case, he still is not guaranteed reinstatement in his job, or back-pay for the period in which he was out of work.

The United States Supreme Court has recently reexamined the requirement of exhaustion of union remedies and has concluded that the four month waiting period is discretionary and not mandatory when the union appeal process could not grant all the relief requested

In Clayton v. Automobile Workers (1981)_____U.S._____ " 68 Led. 2d 538, a shop steward (Clayton) was dismissed for violating a plant rule prohibiting defined misbehavior. Clayton asked his union (UAW) to file a grievance on his behalf on the ground that he was not dismissed for just cause. The union pursued his grievance to arbitration, then withdrew the request for arbitration. Clayton then filed an action directly against the union and his employer in federal court under § 301(a) of the Labor-Management
Relations Act. Clayton did not pursue an appeal either to the UAW'S Executive Board or to the Public Review Board.

Both the union and employer pleaded as an affirmative defense Clayton's failure to exhaust internal union appeal procedures. The District Court sustained this defense and dismissed his suit both the union and the employer.

On appeal, the Ninth Circuit affirmed the dismissal of the suit against the union and reversed against the employer, holding that Clayton's failure to exhaust did not bar suit against the employer. The Court reasoned that the internal appeals procedure of the union could not result in either reinstatement of his job or in reactivation of his grievance.

The United States Supreme Court held that exhaustion did not bar Clayton[1]s suit against either the employer or the union, since the internal union appeals could not result in reactivation of his grievance or an award of the complete relief sought in his § 201 suit.

The Court held that courts have discretion whether to require

exhaustion of internal union procedures and should consider at least three factors:

> first, whether union officials are so hostile to the employee that he could not hope to obtain a fair hearingon his claim; second, whether the internal union appeals procedures would be inadequate either to reactivate the employee's grievance or to award him the full relief he seeks under § 301; and third, whether exhaustion of internal procedures would unreasonably delay the employee's opportunity to obtain a judicial hearing on the merits of his claim. If any of these factors are found to exist, the court may properly excuse the employee's failure to exhaust.
>
> 68 Led 2d at 549

The Supreme Court focused on the second requirement, noting that although the parties stipulated that the PRB could award backpay, it could not reinstate Clayton in his job.

Turning to the case at hand, I conclude that none of the charging parties were required to exhaust their union remedies, since the union appeals procedure would neither automatically result in their reinstatement in their jobs, nor provide them with back-pay for time lost. However, I adopt the suggestion of the General Counsel and recommend that exhaustion be required for up to four months as provided in § 101 (a)(4), or until the member is discharged, whichever comes first. Such a rule would strike the appropriate balance of deferring the ALRB intervention and allowing the union the opportunity to review the contentions of the various parties. However, once a member has lost his job, ALRB intervention is appropriate, since the internal union appeals procedure could not provide for reinstatement.

Moreover, it is not meant to suggest that the ALRB may not in

its discretion wait four months before proceeding on an unfair labor practice charge if it so desires. As the Supreme Court stated in NLRB v. Local 22, supra, in interpreting the four month proviso of the LMRDA:

> [T]he public tribunals whose aid is invoked may in their discretion stay their hands for four months while the aggrieved person seeks relief within the union.
>
> 391 U.S. at 418

Accordingly, the rule proposed is that the ALRB may choose not to intervene for a period up to four months, which should, if the timetables set forth in the UFW Constitution are followed, provide adequate time for an aggrieved member to exhaust all avenues of appeal. However, the ALRB is not precluded from acting sooner, particularly in situations as here where the member has been discharged. Exhaustion would not be required since the Union could not guarantee the member reinstatement in his job if the member ultimately prevails on his appeal.

## III

## DUE PROCESS

The final issue is whether due process was afforded the charging parties in the procedure resulting in their expulsion or suspension from the union. This inquiry is mandated by § 1153(c) of the Act which provides that membership shall not be denied or terminated

> except in compliance with a constitution or bylaws which afford full and fair rights to speech, assembly, and equal voting and membership privileges for all members, and which contain adequate procedures to assure due process to members and applicants for membership.

Prelimiarily, all parties stipulate the UFW Constitution contains adequate procedures to assure due process. In fact, I specifically find that the UFW Constitution (Resp.'s Ex. K) satisfies all due process requirements of § 1153(c) of the Act.

Instead, the contentions here is that the procedures followed themselves violated specifically the provisions of the UFW Constitution and general principles of due process. Each of the charging parties' claims will be examined separately.

A. SEVERO PASILLAS:

Three separate due process challenges are raised here:

(1) The 60 day statute of limitations in which charges must be filed was violated;

(2) One of the trial judges prejudged his guilt; and

(3) A faithful and accurate record of the proceedings was not kept.

I conclude that the statute of limitations was satisfied, and the trial judge did not prejudge his guilt. However, I do find the record of the trial was deficient.

1. The 60 Day Statute of Limitations:

Article 13, § 4 of the UFW Constitution (Resp.'s Ex. K) provides that charges against another member for violations must be brought within 60 days. The charge (G.C. Ex.l2A) alleges that Pasillas crossed the picket line from June 19 until September 1,1979. The complaint was filed by Pedro Guerra on September 24,1979, more than 60 days after June 19.

However, the Union contends, and I so find, that crossing the

picket line is a continuous offense, and as long as charges were filed within 60 days of September 1, they are not barred. In fact, the collective bargaining agreement was not signed until September 4, and only then did the union security clause become operative. As a practical matter then, suspension from the Union at an earlier time would have proved meaningless, since the strike was still in existence.

General counsel contends that if the charges had been brought sooner, the member may have realized that he stood to lose his job and might have been more likely to accept union solidarity by discontinuing his actions. Such a contention is not supported by the evidence.

In fact, Pasillas was requested' to discontinue his strikebreaking early on but refused to do so for pressing economic reasons. Such reasons are themselves sufficient independently of any beliefs about union solidarity:

> Similarly, we do not feel that strike-breaking necessarily demonstrates antipathy towards a union; the need r.o earn a living is too powerful a motive for us to believe that the existence of a strike is a separate inducement to work.

Bruce Church, Inc. (1981) 7 ALRB No. 20, P. 28 The ALRB has held that violation of the duty to bargain is a continuing offense that is not barred by the 6 months statute of limitations of § 1153 (e) of the Act. Ron Nunn (1980) 6 ALRB Ito. 41.The same rule should apply here under the 60 day statute of limitations for bringing charges for crossing a union picket line, under the UFW Constitution.

2. The Trial Judge Prejudged His Guilt:

Article 19, § 5 of the UFW Constitution provides for an impartial trial. Trial is before a Ranch Committee in the presence of the Ranch Community (Article 19, § 2). Here, the president of the Ranch Committee was Teodomiro Ibarra. The contention is that since Ibarra met with Jose Renteria of the UFW prior to the trial to discuss the forthcoming trial of the alleged strike-breakers (G.C. Ex. 12-L), he had prejudged their guilt. However, discussing the procedure to be followed in the trials of the strike-breakers is not tantamount to prejudging guilt.

General counsel contends that since Cleofas Gunman told Pasillas prior to the trial that "his time was coming" (V:22), that he had also prejudged his guilt. However, Guzman was not a judge for Pasillas' trial, and there is no showing that any of the trial judges adopted this statement. In fact, no evidence was offered that anyone else was present during this exchange.

3. The Trial Record:

Article 19, § 6 of the UFW Constitution provides that "a faithful and accurate record of the proceedings shall be made". The record of Pasillas' trial (G.C. Ex.l2-D) is deficient in several respects: it does not identify who the trial judges were; it does not summarize the testimony of Pedro Guerra, the sole witness against Pasillas; and it fails to state what "evidence" was considered by the Ranch Committee. In fact, the record is misleading in that it gives the impression that Pasillas was present, when he

did not even appear for his trial.

The purpose of a complete record is to make the appellate process of review meaningful. The PRB recognized in its decision of April 20, 1981[*3] overturning the conviction of Scarbrough that without a complete record the appeal process would be meaningless.

A comparison of the record of the trial of Scarbrough (G.C. Ex. 10-R; Resp.'s Ex. N & 0) with the record of the trial of Pasillas indicates that Scarbrough's record is much more complete than Pasillas'. Scarbrough chose to appeal to the PRB, which resulted in the overturning of his sentence. Pasillas did not appeal, but as previously discussed he is not precluded from pressing the same claim as Scarbrough in this proceeding.

Accordingly, I conclude that Pasillas was not afforded due process in that the UFW violated Article 19, § 6 of its Constitution, and his expulsion from the union and subsequent discharge was in violation of § 1154(a)(1) of the Act.

B. JUAN MARTINEZ:

Four due process challenges are raised here:

(1) The charges were overly vague;

(2) One CL the trial judges prejudged his guilt;

(3) He had no opportunity to cross-examine witnesses against him; and

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Footnote *3: The PRB Decision was added to the record by agreement of the parties after the close of the hearing, and is attached hereto as Exhibit 1.

(4) There was insufficient appellate review by the NEB.

I conclude that each of the contentions are valid, and Martinez was denied due process in all respects as contended by the General Counsel.

1. Overly Vague Charges:

The charges against Martinez accuses him of crossing the picket line "from September 10 until he was called up by Mann Packing". He is charged with committing this violation "possibly from before September 10 which was when he was seen and then each day following" (G.C. Ex. 11-A).

At his trial, the charges were read to the Ranch Committee and Ranch Community as follows:

> We are going to read the charges made here for the accused and the charges are these:
> The offenses committed were violaling Article 18 in Section I - part bb, dd, cc, of the Constitution the offenses were taken in the fields of the Toro Company at Blanco Road and Armstrong Road, these acts were in the days September 10, until he was called in the Mann crew, the time that more or less initiated the dates were possibly before September 10 which was when he was seen and that continued successively day after day. The accuser Rafael Macias come to the front to be sworn.
>
> Transcript of Martinez Trial (Resp.'s Ex.I).

Martinez testified that he thought he was accused of scabbing on just one day (111:11). Marco Lopez, general counsel of the UFW and adviser to the NEB which ruled en Martinez' appeal, stated that he could not determine whether Martinez was accused of scabbing on more than one day (IV:22-25). Moreover, after reading the Notice of Trial Decision (G.C. Ex. 11-E), he could not determine

exactly what Martinez "had been found guilty of". (IV:23-25) In fact, the Notice of Trial Decision simply stated that he had been found "guilty" and "Expelled from the Union".

Accordingly, Martinez' charges were vague in conception and even vaguer as the trial process continued. The number of times that Martinez had been charged with scabbing gains particular significance since the duration of the offense is a factor in considering punishment, according to Marco Lopez, general counsel of the UFW (IV:25).

Article 18, § 3 of the UFW Constitution requires the charges must state the exact nature of the offense, and, if possible, the period of time (Resp.'s Ex.K). The charges here do not meet the requisite specificity that due process requires. Although the accuser would not be required to state every date, if a member is accused of an offense, he is entitled to know at least the period of time over which he allegedly committed the offense. The charge "possibly before September 10" does not provide such specificity.

Moreover, since lawyers are not permitted to attend Union trials (Article 19, § 5), even greater care must be taken to insure that the accused understands fully the offenses with which he is charged. Rather than uestioning the number of times with which he had been charged of scabbing, Martinez protested his innocence and repeatedly stressed that he had not worked on September 10. His difficulty was compounded by the fact that he had completed only two years of school and could neither read nor write Spanish or English. Accordingly, I conclude that due process

was denied through the prosecution of overly vague charges.

2. The Trial Judge Prejudged his Guilt:

Rigoberto Perez served as president of the Ranch Committee, presided over Martinez' trial, and deliberated both as to guiltand as to recommended punishment. His testimony concerning his bias discloses that he had prejudged Martinez' case prior to the hearing.

Q. Before Mr. Martinez; trial, were you personally convinced that Mr.Martinez has crossed a picket line?
A. Yes.

(III:73, lines 11-13)

Clearly, Martinez was not tried before an impartial tribunal but one that had decided his guilt prior to the receipt of any evidence. This obvious violation of due process also requires that his conviction be overturned.

3. Opportunity to Cross-Examine Witnesses:

Article 19, § 5 of the UFW Constitution guarantees accused members the right to cross-examine witnesses. General counsel correctly points out that the transcript of Martinez' trial discloses that he was not asked if he had any questions to ask of his two accusers, Rafael Macias and Ramiro Rodriguez. Instead, the witnesses were simply excused after they gave their statement? (Resp.'s Ex. I, pp.2-3).

In contrast, Martinez is cross-examined when he protests his innocence by an unidentified speaker (Resp.'s Ex. 1 , p.3).

This denial of Martinez' right to cross-examine witnesses, and his apparent exposure to shouted questions from the floor underscores the violation of due process.

4. Appellate Review:

The NEB modified Martinez' expulsion from the union to a one-year suspension (G.C. 11-F). No reasons were given for that decision. The lack of reasons may be understandable in view of the fact that the record is unclear as to the offenses of which Martinez had been convicted (G.C., Ex. 11-E; see discussion supra at 39-41 ). However, due process at least requires that the appellate process clearly state the offenses of which an accused had been convicted, and its reasons for modification of any decision of a lower tribunal. The summary disposition modifying the sentence does not comport With that standard.

5. Conclusion:

Accordingly, I conclude that Martinez was not afforded due process for all of the above reasons, and his expulsion-suspension from the union and subsequent discharge was in violation of
§ 1154(a)(l) of the Act.

C. ODIS SCARBROUGH:

Subsequent to the close of testimony at the hearing, the PRB unanimously reversed the trial judgment and the NEB's conviction of Scarbrough of strike-breaking. The PRB based is decision on the failure of the Union to provide proof that only Ranch

Community members voted at his trial, and for failure to provide a complete trial record. A copy of the Decision is attached at Exhibit 1.

Union argues that Scarbrough's case is now moot, since following the PRB decision it notified Sun Harvest which has reinstated him. However, General Counsel properly contends that two issues remain unresolved: back-pay for lost wages after his discharge, and whether the Union caused his September 5 to September 27 layoff.

1. Back-Pay:

Scarbrough is entitled to back-pay, which apparently is not disputed by the Union. However, to date I have not been advised of any resolution of this issue. Accordingly, I deny Union's motion to dismiss and will recommend that the Union be ordered liable for back-pay.

2. The September Layoff:

Union does not dispute that it caused Scarbrough to be discharged on January 8, 1980. It does dispute that it caused his discharge on September 4. However, I find the Union did cause the September discharge.

Although the Union contends in its Reply Brief that the Complaint fails to allege it caused the September layoff, the facts are otherwise (UFW Reply Brief, p.4). Paragraphs 5, 6, 7, 13 and 14 of the Complaint allege the Union is responsible for

the September discharge (G.C. Ex. 1-B). An examination of the testimony on this issue supports these allegations.

Ruben Castillo, vice-president of Sun Harvest, testified that upon the execution of the collective bargaining agreement, the Union requested that all those who worked during the strike be laid-off, including Odis Scarbrough (I:29). Accordingly, Scarbrough was terminated on September 4.

The Union countered with the testimony of Jesus Camacho, president of the local Ranch Committee at Sun Harvest, who testified that the Union had requested only the discharge of the replacement workers, not those with seniority. After a meeting was held in Chular on September 27 with Sun Harvest and Union repre sentatives, Scarbrough was reinstated. The Union disciplinary proceeding against Scarbrough commenced on October 3.

Although Scarbrough's September discharge may have been due to a lack of communication between the UFW and Sun Harvest, the responsibility for causing the discharge must rest with the Union. Sun Harvest had no reason to discharge Scarbrough, since he had been a faithful worker during the strike. Moreover, Castillo was a credible witness who testified unequivocally that the Union had requested Scarbrough's discharge. Camacho did not dispute that contention; he merely explained why the earlier discharge was a mistake.

Accordingly, I find the Union liable for back-pay for Scarbrough from September 5 to September 27, and commencing_again on January 8, 1980.

## IV

## CONCLUSION

Although I have specifically found that the three charging parties were denied due process in the conduct of their union disciplinary hearings, I am also finding that the Union does have the power to insist on union security provisions in its contracts. Specifically, the Union may enforce these provisions by holding proper trials for strike-breakers, suspending their membership and ultimately causing their discharges. Accordingly, it is only on these particular set of facts that I find the suspensions 0improper.

## CONCLUSIONS OF LAW

Based on the foregoing, I make the following conclusions of law:

1. Sun Harvest and Mann Packing Company are California corporations engaged in agriculture and are agricultural employers within the meaning of Section 1140.4(c) of the Act.

2. United Farm Workers of America, AFL-CIO, is a labor organization within the meaning of Section 1140.4(f) of the Act.

3. The Employers and Union engaged in unfair labor practices within the meaning of Sections 1153(a), 1153(c), 1154(a)(l) and 1154(b) of the Act.

4. The unfair labor practices affected agriculture within the meaning of Section 1140.4(a) of the Act.

## ORDER

I

By Authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that the Respondent, United Farm Workers of America, AFL-CIO (UFW), its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Sun Harvest and Mann Packing Company, or any other employer to discriminate against any employees with respect to whom membership in the United Farm Workers has been terminated without affording them the due process rights guaranteed by Section 1153(c) of the Act.

(b) In any like or related manner restraining or coercing any agricultural employee in the exercise of the rights guaranteed by Labor Code Section 1152.

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

(a) Immediately restore Severo Pasillas, Juan Martinez and Odis Scarbrough to membership in good standing of the UFW retro-active to the dates of their suspension without prejudice to their membership rights or privileges as though they had not been suspended.

(b) Immediately notify Sun Harvest that Severo Pasillas and Odis Scarbrough and Mann Packing Company that Juan Martiner , are members in good standing and are to be deemed as such retroactive to the dates of their suspensions, and that the UFW seeks

their reinstatement to their former jobs or equivalent employment (where not already accomplished) without prejudice to their seniority and other rights or privileges of employment as though they had not been terminated.

(c) Make whole Severe Pasillas, Juan Martinez and Odis Scarbrough 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 (1980) 6 ALRB No. 43 plus interest thereun at a rate of seven percent per annum.

(d) Notify Severe Pasillas, Juan Martinez and Odis Scarbrough at the earliest possible time by mail at their last known address of their retroactive restoration to membership in good standing as provideS in paragraph 2(a) above, and of the UFW position on their full reinstatement as communicated to Sun Harvest and Mann Packing pursuant to paragraph 2(b) above.

(e) Sign the Notice to 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.

(f) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places at all its offices, union halls and headquarters which directly service Sun Harvest or Mann Packing employees or applicants for employment, the period 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) Mail copies of the attached Notice, in all appropriate languages within 30 days after the date of issuance of this Order, to Severe Pasillas, Juan Martinez and Odis Scarbrough, and provide sufficient copies of the Notice to Sun Harvest and Mann Packing for posting in accordance with paragraph II 2(d).

(h) Print the attached Notice, in all appropriate languages, in any and all newsletters and other publications which it publishes and which it circulates among Sun Harvest or Mann Packing employees or applicants for employment during the period from one month to six months following the date of issuance of this Order.

(i) Notify the Regional Director of the Salinas Region, in writing, within 30 days after the date of issuance of this Order, of the steps it has taken to comply, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

II

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Sun Harvest and Mann Packing, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging, or otherwise discriminating against any employee where that employee has been deprived of his membership

in good standing without being given the due process rights guaranteed by Section 1153(c).

(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) Sun Harvest and Mann Packing shall immediately offer to Juan Martinez, Severe Pasillas and Odis Scarbrough full resin-statement to their former jobs or equivalent employment (except where this has already been accomplished), without prejudice to their seniority or other rights or privileges.

(b) Make whole Severo Pasillas, Juan Martinet and Odis Scarbrough 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, (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, and also to the United Farm Workers in carrying out their obligations under paragraph I, 2(c), 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 of the backpay period and the amount of backpay due under the terms of this order.

(d) Post copies of the attached Notice, in all appropriate languages, for 60 days in conspicuous places on its property

the time(s) 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.

(e) Notify the Regional Director in writing, within 30 days after the issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: October 9. 1981

WILLIAM A. RESIIECK Administrative Law Officer

ted Farm Workers of America
Public Review Board

DECISION

In the case of ODIS W. SCARBROUGH

The Board finds invalid the claim that the appellant was denied a lawyer. The Board finds that the trial committee complied with Article XIX, Section 5 of the UFW Constitution.

However, the Union has failed to provide proof of membership in the ranch community of those voting at the time the vote was taken as specifically requested by the Board, and in the manner required by Rule number 4 in our permanent Rules and Practices adopted by the Board on November 8, 1980. Without such evidence, the sanctity of a valid vote is neither protected, nor proved, thus denying the appellant due process.

Appellant also raised other substantive issues of due process which can only be resolved with a complete and accurate record of the proceedings.

Article XIX, Section 6, of the UFW Constitution requires that all "records and minutes" must be preserved. Because of a lack of a complete trial record, these issues raised by the
appellant cannot be resolved.

The United Farm Workers Constitution makes quite clear its emphasis on protecting the civil rights of its members as a necessary foundation for the Union's strength. It recognizes that the threat to the civil rights of any member is a threat to the civil rights of all. Without due process, civil rights cannot be guaranteed. In recognition of this fact, the UFW Constitution provides for appeal procedures and requires that complete trial records be kept, since without such complete records, the appeal process would be meaningless.

The Board wants to reconfirm the Union's right to punish strike-breaking which is abhorrent and endangers the strength of the Union. However, pursuant to Article VI, Section q, in whicn the Union guarantees "to protect the civil rights and liberties of its members," the Board finds that in order to protect the civil rights of appellant, and thus the civil rights of all UFW members, the trial judgment and the National Executive Board ruling must be overturned.

The Board so rules that the trial judgment and the ruling of the National Executive Board is overturned.

Voted on and affirmed unanimously on April 20, 1981.

Irwin L. DeShetler

Rev. Eugene J. Boyle

Jacques E. Levy

EXHIBIT I

# NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged we had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we did violate the law by our conduct in suspending three of our members who were employed at Sun Harvest and Mann Packing. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is law that gives you and all other farm workers in California these rights:

1. To organize themselves;

2. To form, join or help unions;

3. To vote in a secret ballot election to decide whether you want a union to represent you:

4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;

5. To act together with other workers to help and protect one another; and

6. To decide not to do any of these things.

WE WILL NOT cause or attempt to cause any employer to discriminate against any employee with respect to whom membership in the United Farm Workers has been terminated without proper due process.

SPECIFICALLY, the Board found that we discriminated against, restrained and coerced Severo Pasillas and Odis Scarbrough, employees of Sun Harvest, and Juan Martinez, an employee of Mann Packing, by causing their discharges based on internal union disciplinary proceedings which failed to give them full and fair hearings.

WE WILL see to it that any member charged with violating the UFW Constitution gets a full and fair hearing.

WE WILL restore Severo Pasillas, Juan Martinez and Odis Scarbrough to membership in good standing without loss of membership rights and privileges.

WE WILL seek to have Sun Harvest and Mann Packing reinstate them to their former or substantially equivalent employment (where this has not already happened) in accordance with the Board's Order that Sun Harvest and Mann Packing do so without loss of seniority or other privileges, and they will be reimbursed for the pay and other money they have lost because of their discharges.

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board.

Dated: UNITED FARM WORKERS OF AMERICA, AFL-CL

By: _____
Representative Tit

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

DO NOT REMOVE OR MUTILATE.