

Brawley, California
Avenal, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ROGERS FOODS , INC . ,)
)
 Respondent)
)
 and)
)
 UNITED FARM WORKERS OF)
 AMERICA, AFL-CIO,)
)
 Charging Party.)
)

Case No. 79-CE-27-F
79-CE-69-EC

8 ALRB No. 19

DECISION AND ORDER

On May 14, 1981, Administrative Law Officer (ALO) Michael Weiss issued the attached Decision and recommended Order in this proceeding. Thereafter, Respondent timely filed exceptions.

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

The Board has considered the record and 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 remedial Order, with modifications.

Respondent has submitted numerous exceptions, including various procedural exceptions which were disposed of by the ALO in his decision. We find those exceptions to be without merit. Also we find no merit in Respondent's other exceptions, relating to specific factual findings and credibility resolutions made by

the ALO, and to his conclusion that Respondent violated section 1153 (a) and (c) of the Act.

We affirm the ALO's conclusion that Respondent discriminatorily refused to rehire employees Pedro Duarte, Lena Duarte, Rosa Elisa Duarte and Javier Francisco [Frank] Duarte and thereby violated sections 1153 (a) and (c) of the Act. In reaching that conclusion, we have not relied on the ALO's finding that supervisor Larry O'Leary told Pedro Duarte and Frank Duarte that he had orders not to rehire the Duarte family, as Frank Duarte's testimony does not fully corroborate the testimony of Pedro Duarte concerning that alleged statement. Rather, we find that the General Counsel has not established by a preponderance of the evidence that O'Leary made that statement. However, the testimony of Frank Duarte and Pedro Duarte is otherwise corroborated and there is ample evidence in the record to support the ALO's conclusion that Respondent violated the Act by its failure and refusal to rehire the four members of the Duarte family.

Respondent excepts, on the grounds of untimeliness, to the amendment of the complaint at the close of the General Counsel's case-in-chief (in Case No. TS'-CE-SS-EC) involving the Duarte family.^{1/} This exception is without merit. As all incidents in the Duarte case have been fully litigated by the parties, we are

^{1/} Respondent also excepts to the failure of the General Counsel to comply with 8 Cal. Admin. Code section 20222 by failing to commit to writing its amendment to the complaint no later than 10 days after the close of the taking of testimony. As the amendment is set forth in the transcript of the hearing, and as Respondent has not demonstrated any prejudice resulting from the General Counsel's failure to fully comply with the Regulation, this exception is rejected.

not precluded from determining whether Respondent's acts and conduct violated the Act. Anderson Farms Company (Aug. 17, 1977) 3 ALRB No. 67, fn. 6; Pleasant Valley Vegetable Co-op (Mar. 16, 1978) 4 ALRB No. 11. Furthermore, before the presentation of its defense, Respondent had notice of the amendment, and has not established that it was prejudiced thereby in presenting its defense.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Rogers Food, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to rehire, or otherwise discriminating against any agricultural employees in regard to hire or tenure of employment or any other term or condition of employment because he or she has engaged in any concerted activity protected by section 1152 of the Act.

(b) Decreasing the work hours of any agricultural employee(s), imposing more onerous working conditions on them, or otherwise changing their employment, because of their concerted activities to improve their working conditions.

(c) In any like or related manner interfering with, restraining, or coercing any agricultural employee(s) in the exercise of the rights guaranteed them by Labor Code section 1152.

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

(a) Immediately offer Pedro Duarte, Lena Duarte, Rosa Elisa Duarte and Javier Francisco [Frank] Duarte full reinstatement to their former jobs or equivalent employment, without prejudice to their seniority or other employment rights and privileges.

(b) Make whole each of the above named employees for any loss of pay and other economic losses they have suffered as a result of Respondent's failure and refusal to rehire them, reimbursement to be made according to the formula stated in J & L Farms (Aug. 12, 1980) 6 ALRB No. 43, plus interest thereon computed at the rate of seven percent per annum.

(c) Make whole each of the below-named employees for any loss of pay and other economic losses they have suffered as a result of Respondent's decreasing their work hours, reimbursement to be made according to the formula stated in J S L Farms, (Aug. 12, 1980) 6 ALRB No. 43, plus interest thereon computed at the rate of seven percent per annum.

Julia Campos Blavina Banuelos
Modesta Ortiz Maria Esther Pisano
Dominga Ortiz

(d) 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 amount of backpay due under the terms of this Order.

(e) Sign the notice to Agricultural Employees

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

(f) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period from June 1, 1979 until the date on which the copies of said Notice are mailed.

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

(h) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and places(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nohourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(i) 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: March 5, 1982

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

JOHN P. MCCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by refusing to rehire four of our employees on or about June 6, 1979, because of their union support and protected concerted activities, and by shortening the work hours of, and imposing more onerous working conditions, on five employees because of their protected concerted activities. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all farmworkers these rights:

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

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

SPECIFICALLY, the Board found that it was unlawful for us to refuse to rehire, PEDRO DUARTE, LENA DUARTE, ROSA ELISA DUARTE and JAVIER FRANCISCO [Frank] DUARTE, and that it was unlawful for us to shorten the hours of JULIA CAMPOS, DOMINGA ORTIZ, MODESTA ORTIZ, MARIA ESTHER PISANO and BALVINA BANUELOS and to subject them to more onerous working conditions.

WE WILL NOT hereafter fail or refuse to hire or rehire any employee or shorten the work hours of, or impose more onerous working conditions on, any employee for engaging in union activity or any other concerted activity.

WE WILL reinstate PEDRO DUARTE, LENA DUARTE, ROSA ELISA DUARTE and JAVIER FRANCISCO DUARTE to their former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse them for any pay or other money they have lost because of our failure and refusal to rehire them, plus interest computed at seven percent per annum.

WE WILL FURTHER reimburse JULIA CAMPOS, DOMINGA ORTIZ, MODESTA ORTIZ, MARIA ESTHER PISANO and BALVINA BANUELOS for any pay or other money they have lost because of their shortened work hours, plus interest computed at seven percent per annum.

Dated:

ROGERS FOODS, INC.

By: _____

(Representative)

(Title)

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

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

CASE SUMMARY

Rogers Foods, Inc.

8 ALRB No. 19
Case No. 79-CE-27-F
79-CE-69-EC

ALO DECISION

The ALO concluded that Respondent violated section 1153 (a) and (c) of the Act by refusing to rehire four members of the Duarte family because of their UFW support and participation in protected concerted activities. The ALO also found that Respondent violated section 1153(a) of the Act by decreasing the work hours of, and imposing more onerous working conditions on, five employees because of their participation in protected concerted activities. Conventional remedies were imposed by the ALO.

BOARD DECISION

The Board affirmed the ALO's rulings, findings, conclusions and recommendations but did not rely on the ALO's finding that supervisor Larry O'Leary told Pedro and Frank Duarte that he had orders not to rehire the Duarte family. The Board found that the General Counsel did not establish by a preponderance of the evidence that O'Leary made that statement. However, there was ample evidence in the record to support the ALO's conclusion that Respondent violated the Act in its refusal to rehire the four members of the Duarte family.

The Board rejected Respondent's exception to the failure of the General Counsel to comply with 8 Cal. Admin. Code section 20222 by failing to commit to writing its amendment to the complaint no later than 10 days after the taking of testimony, and the amendment is set forth in the transcript of the hearing and as Respondent failed to demonstrate any prejudice resulting thereby.

* * *

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

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:

ROGERS FOODS , INC . ,

Respondent,

and

UNITED FARM WORKERS OF AMERICA,
AFL-CIO, JULIA L. CAMPOS,

Charging Parties.

Case Nos. 79-CE-27-F
79-CE-69-EC

DECISION

Appearances;

For the General Counsel:

RICARDO ORNELAS
Fresno, California

For the Respondent
ROGERS FOODS, INC.:

HOWARD A. SAGASER
THOMAS, SMELL, JAMISON, RUSSELL,
WILLIAMSON & ASPERGER
Fresno, California

MICHAEL H. WEISS, Administrative Law Officer: This case was heard before me on six hearing days, June 3-7, and 13, 1980, in Fresno, California. The initial Complaint and the order consolidating the cases was issued on April 4, 1980. The Complaint, as amended, ^{1/}alleges violations of

^{1/} The Complaint was amended by the General Counsel orally on June 2 and in writing on June 3, 1980 to revise an allegation in Paragraph 5(a) and add related allegations in Paragraphs 5(b) and 9 [regarding the "Campos Group" charge]. The "Duarte Family" allegation [Paragraph 6] was also amended to include three other family members as well. In addition, prior to the pre-hearing conference on June 2, one portion of the Complaint, the charge of Jose Luis Serna [No, 79-CE-83-D] was settled. Accordingly, it will not be considered or discussed in this decision.

1 Section 1153(a), (c) and (d) of the Agricultural Labor Relations Act
2 [hereinafter the Act] by Rogers Foods, Inc. [hereinafter Rogers or
3 Respondent]. The amended Complaint is based on two charges, one
4 prepared on or about June 3 and filed and served on or about July 9,
5 1979 [the "Duarte Family" charge] and one filed and served on or about
6 October 9, 1979 [the "Julia Campos Group" charge].^{2/}

7 All parties were given full opportunity to participate in the
8 hearing and after the close of the hearing the General Counsel and
9 Respondent each filed a brief in support of its respective position.^{3/}

10 Upon the entire record,^{4/} including my observation of
11 the demeanor of the witnesses, and after consideration of the briefs
12 filed by the parties, I make the following:

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17 ^{2/} Respondent admits in its Answer to receiving the Campos charge
18 on or about October 11, 1979 and the Duarte Family charge on or
19 about July 11, 1979. It was not clear, but it is entirely likely
20 that the Duarte charge preparation date of June 3, 1979 was a clerical
error. It was obvious from the evidence that the charge, which
was filed and served on July 9, 1979, involved re-employment efforts!
starting on or about June 6, 1979.

21 ^{3/} The parties jointly requested and were granted an extension of time
22 until July 23, 1980 to file their briefs.

23 ^{4/} Attached hereto as Appendix I is the list of 11 witnesses called by
24 the parties, as well as the Transcript Volume and page references to
25 their testimony; Appendix II is the list of the Exhibits identified
and/or admitted in evidence.

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2 FINDINGS OF FACT

3 I. Jurisdiction

4 Respondent admits that it is an agricultural
5 employer within the meaning of Section 1140.4(c) of the Act and on the
6 basis of the pleadings and undisputed evidence I so find. Respondent
7 denies in its Answer, based on lack of knowledge, that the United Farm
8 Workers of America, AFL-CIO [hereinafter UFW] is a labor organization.
9 However, the UFW is an organization in which agricultural employees
10 participate. It represents those employees concerning their working
11 conditions, wages, etc. Accordingly, I find the UFW to be a labor
12 organization as define in Section 1140.4(f) of the Act. See, e.g., Valley
13 Farms and Rose J. Farms, 2.ALRB No. 41, (1976).

14 II. The Unfair Labor Practices Allegations

15 The Amended Complaint alleges [in Paragraph 5]
16 that Respondent violated Sections 1153(a) and (c) of the Act by the
17 discriminatory refusal to rehire the Duarte Family [consisting 13 f of
18 father Pedro Duarte, mother Lina Duarte, daughters Rosa Duarte and Elvia
19 Duarte Orr and sons Francisco ("Frank") Javier Duarte and Manual Duarte]^{5/}
20 on or about June 6, 1979 because of their support for and activities on
21 behalf of the UFW.

22 The Complaint further alleges [in Paragraphs 5(a) and (b)]
23 violations of Sections 1153 (a), (c) and (d) of the Act by Respondent's
24 discriminatory changes in working conditions

25 ^{5/} Frank, Manual and Elvia Duarte were added by the General Counsel
26 pursuant to its Motion to Confor" the Complaint to the proof [III Tr p.
117, 125].

1 [including an approximate one week lay-off and more onerous working
2 conditions] for Julia Campos, Modesta Ortiz, Balvina Banuelos,
3 Maria Esther Pisano and Dominga Ortiz [the "Campos Group"] because
4 of their concerted activities and contact with the ALRB.

5 Respondent denies it violated the Act and denies
6 it committed any of the unlawful acts alleged. Respondent speci-
7 fically asserts, regarding the Duarte Family charge, that it
8 changed its recall notice procedure for the start of its 1979
9 onion harvest and the Duarte Family failed to timely seek re-
10 employment when there were job openings. Respondent further
11 asserts regarding the Campos Group charge that the Group were
12 subject to no different or onerous working conditions than the
13 other workers.

14 In addition, Respondent raised three affirmative
15 defenses in its Answer as well as in Motions which were previously
16 denied at the hearing. Each Motion is discussed and affirmed
17 seriatim:

18 1. Should the Duarte Family charge and Complaint
19 allegation based thereon be dismissed because
20 the charge purportedly fails to comply with
 Board regulations regarding specificity; and

21 2. Should the Duarte Family Complaint allegations
 be dismissed as time-barred.

22 Respondent's two affirmative defenses regarding
23 the Duarte Family assert that the charge timely served on it in

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1 July, 1979 was deficient in specificity concerning the alleged
2 discriminatory refusal to rehire in June, 1979. Thus, according
3 to Respondent, the charge failed to give adequate notice, contrary
4 to applicable regulations, thereby requiring dismissal. In addi-
5 tion, Respondent contends that the issuance of the Complaint
6 against it on April 4, 1980 was the first time that it had ade-
7 quate notice of the underlying charge against it. This Complaint
8 issuance occurred more than 6 months after the alleged charge and
9 incident, thereby requiring dismissal pursuant to Labor Code §
10 1160.2. Moreover, because of the lapse of time, Respondent
11 contends that it was prejudiced in the preparation of its defense
12 because it was unable to secure the testimony of individuals no
13 longer in its employ.

14 Respondent's contentions entirely lack substance.
15 Actions before the ALRB, like the federal NLRB, are not, of
16 course, subject to measurement by the same standards applicable
17 to complaints in a private lawsuit. The charge filed by a
18 charging party is, after all, merely the administrative step which
19 sets in motion the investigation to determine whether a complaint
20 will issue. North American Rockwell Corp. v. NLRB, 389 F. 2d 866,
21 870 (5th Cir., 1968). The charge need not be technically precise
22 so long as it informs the party charged of the general nature of
23 the alleged violations. NLRB v. Reliance Steel Products Co., 322
24 F. 2d 49 (5th Cir., 1963). In the instant case the Duarte Family
25 charge adequately complied with the five requirements set forth in
26 ///

1 the regulations.^{6/} More importantly, allegations in the
2 charge or original complaint may later be supplemented or
3 amplified by more specific allegations. These "relate back"
4 to the date the charge was filed. NLRB v. Louisiana Mfg.
5 Co., 374 F. 2d 696 (8th Cir., 1967); NLRB v. Reliance Steel
6 Products Co., supra; North American Rockwell Corp. v. NLRB,
7 supra. The Respondent does not contend that it wasn't
8 adequately apprised of the charge against it after the
9 issuance of the Complaint herein on April 4, 1980. Rather,
10 Respondent claims prejudice based on its inability to secure
11 the testimony of individuals who left its employ. The claim
12 is not supported by the record. First, there is no evidence
13 that the possible witnesses^{7/} were not otherwise subject to
14 subpoena. Second, Respondent's key percipient supervisor
15 witnesses regarding the Duarte Family charge, Larry O'Leary
16 (who also no longer worked for. the company, but was
17 subpoenaed from San Diego to testify), and Gary Serrato, did
18 testify. Finally, the six-month limitation period set forth
19 in § 1160.2 of the Act, by its own terms, applies to the
20 filing of a charge and not to the issuance of a complaint.

^{6/} 8 Cal. Admin. Code § 20202 requires (a) the name, address
16 and telephone number of the person or organization making
17 the charge; (b) the names, address, and telephone number of
18 the person, organization or company against whom the charge
19 is made; (c) a short statement of the facts that constitute
20 the charge; (d) the Labor Code Section alleged to have been
21 violated; and (e) proof of service on the charged party.

^{7/} Respondent at page 6 of its Brief sets forth the names
21 of Bill Gibson, Norman Partridge and Tino Villa, Jr. Yet
22 Gibson had by June, 1979 already given his termination
23 notice to Respondent. His primary responsibility that June
24 had been to train Gary Serrato who did testify. Partridge's
25 primary responsibility was at Respondent I processing plant
26 in Turlock. He did not have responsibility for harvesting
hiring. Villa, a tractor driver, had been utilized by
O'Leary as an interpreter in the past.

1
2 3. Has Respondent been denied due process and
3 equal protection under the law by the General
4 Counsel's purported failure to enforce the law in a
5 neutral fashion.

6 Respondent in its Answer and in its Motion for
7 discovery, asserts that it has been denied due process of law and equal
8 protection of law by the General Counsel's failure to enforce the
9 provisions of the Act in a neutral fashion.

10 In furtherance of its contention, Respondent had
11 requested in its Motion that the General Counsel produce prior to this
12 hearing data set forth in 63 separate discovery requests covering the
13 period from September, 1977 to January 1, 1980. These discovery requests
14 would require the General Counsel to obtain, assemble and produce data and
15 summaries of each of the Regional offices' handling and disposition of ULP
16 charges and election petitions filed and complaint issued for that period.

17 Respondent's broad discovery Motion was
18 denied at the pre-hearing conference as irrelevant to the factual issues to
19 be heard.

20 In addition to ruling that the data was not
21 relevant to the issues in this hearing, the ALO also ruled that the
22 burden should be on the Respondent to obtain, assemble and analyze the
23 data. The information sought by Respondent is a matter of public
24 record, located at the ALRB's office in Sacramento.^{8/} It
25 is Respondent's choice whether to allocate its resources and time to obtain
26 such data to sustain its then unsupported Motion as the

^{8/} Vol. I, page 4.

1 information was equally available to it. Finally, a hearing convened to
2 receive testimony and evidence concerning two specific factual disputes
3 involving Respondent's employment practices is not the appropriate forum
4 for litigating these unrelated issues.^{9/} See generally, North American
5 Rockwell Corp. v. NLRB, 389 F. 2d 866, 871-872 (5th Cir., 1968) regarding
6 the NLRB's similar limit to broad discovery requests upon the General
7 Counsel, and Brown Lumber Co., 143 NLRB 174, 53 LRRM 1283 (1963) in which
8 the NLRB held that testimonial or documentary evidence that a Regional
9 Office staff was generally biased against employers in favor of unions is
10 not relevant or admissible in a complaint proceeding.
11

12 III. Company Operations

13 Rogers Foods is a Delaware Corporation doing business in
14 California. Its principal office is located in Turlock, California, and
15 its processing plant in nearby Livingston. Its primary business in
16 California is the growing, harvesting and processing of onions and garlic.
17 Respondent contracts with farmers to grow onions and/or garlic, principally
18 in the Imperial Valley [onions only], southern San Joaquin Valley [both
19 onions and garlic]' and central San Joaquin Valley, commonly known as the
20 west side of Fresno, which covers both Fresno and Merced Counties [onions
21 and garlic]. In addition, Respondent engages in a late onion season in the
22 Tulare Lake area as well as growing garlic in the Santa Maria and Salinas
23 Valley area.

24 ^{9/} Litigation raising these issues is, in fact, pending in the federal
25 court in Western Growers Association v. Brown, et al., C-79-2031-GT
26 (Southern District of California).

1 Respondent's onion harvesting operation starts
2 in the Imperial Valley approximately the first week in June.
3 About 4 weeks later the harvesting moves to Kern County for July and most
4 of August. The harvest then moves north to the Huron-Mendota area until
5 early October, finishing in mid-October in the Tulare Lake area.
6

7 Garlic harvesting starts in July in the Bakersfield
8 area and continues there until mid-August. The operation then
9 moves to the Huron-Mendota area, concluding there in early
10 September when harvesting is moved to Salinas for the remainder
11 of September and sometimes into October.
12

13 Robert Andrews, the field manager, has overall
14 responsibility for the company's garlic-onion division operations
15 in California. Reporting to him are the field representatives ["Reps"] who
16 are responsible for the harvesting operation in each of the geographic
17 regions. In 1979, the field rep for the Imperial Valley during May and
18 early June was Bill Gibson who was then, training Gary Serrato as his
19 replacement in onions. Brian Zieman and Ray Martin were hired as field
20 reps in garlic. Bill Harris was the field rep for the central Joaquin
21 area.
22

23 Working under the field reps are seasonal labor
24 supervisors [foremen] who have primary responsibility for hiring and day-
25 to-day supervising of the garlic and onion machine crews. In 1979
26 Respondent's labor supervisors were Larry O' Leary, Martin Chavez, Connie
Pacheco and Carol Gunnerson. Usually a labor supervisor is assigned to
either the onion or garlic machines

1 since the two harvesting seasons do not usually occur at contiguous;
2 locations.

3 It is not disputed that the labor supervisors as well as
4 field reps and field manager are supervisors within the meaning of Section
5 1140.4(j) of the Act.

6 Respondent has 6 harvesting machines [all not
7 necessarily working at the same time], normally using one or two for the
8 garlic harvest and the remainder for the onion harvest. These machines are
9 essentially the same although the garlic machines are equipped with smaller
10 coated chains for sorting the smaller, more fragile garlic.
11

12 The number of sorters on a machine can vary from
13 9 to 14 depending on the field condition. The job of sorter [or grader] is
14 not difficult to learn or do. However, it does require long hours under a
15 hot sun [with some shade provided by the harvester] in windy and dusty
16 fields. Although both men and women do the job, it more typically is
17 performed by women. The other laborers job is that of "bucket boy". While
18 paying the same as grader the work requires walking in the open sun behind
19 the harvesters picking up the garlic or onions in plastic buckets missed by
20 the machines. Because of the sun, stooping and bucket carrying the work is
21 usually done by teenagers or young men^{10/} and occasionally by young women.
22 At times, older women voluntarily would take a turn also in order to get
23 off of the harvesting machines and

24 ^{10/} IV Tr p. 152, lines 1-10; V Tr p. 69, lines 10-15; VI Tr p. 28,
25 lines 12-14.

1 overcome the motion sickness that occurs while working on it.

2 The harvesting sequence of the onion fields is
3 determined by the field reps in consultation with Andrews two [or more]
4 weeks prior to the harvesting starting.^{11/} Tractor drivers are hired,
5 usually by the tractor mechanics who work throughout the year, to perform
6 the pre-harvesting operations to prepare the fields for harvesting. First,
7 field irrigation ends and the fields are permitted to dry. The onion tops
8 are then mowed down ["high topping"], followed by the removal of the onion
9 tops to ground level ["low topping"]. The third operation involves a
10 tractor pulling a rotovator which loosens up the ground and makes it easier
11 for the harvesting machines to dig up the onions.^{12/} Harvesting follows.
12 Harvesting machines driven by loader operators carry sorters, who stand on
13 two wings while grading or sorting the onions or garlic, which have been
14 carried up on conveyer belts.

15 Timing is important if not critical in harvesting onions.
16 Even one or two days exposure to moisture or sun can bacterial damage or
17 burning.^{13/} Thus Respondent's successful harvesting operation requires that
18 all the necessary crews be timely hired and ready to start.^{14/}

19 ///

20 ///

21 ^{11/} Andrews Testimony, VI Tr p. 118-121.

22 ^{12/} See Respondent's Exhibits C1-12 for pictures of these pre-harvesting
23 and harvesting operations.

24 ^{13/} O'Leary Testimony, IV Tr p. 21-22.

25 ^{14/} Serrato Testimony, IV Tr p. 198-199

1 IV. The Duarte Family Charge

2 1. Hiring History

3 The Duarte family have worked for Respondent during
4 its harvesting seasons from 1975 until 1979. Pedro Duarte, the father, was
5 first hired by Respondent as a machine operator prior to the start of the
6 1975 harvest.^{15/} His family [wife Lena, daughter Lupe and sons Manuel, Javier
7 and Pedro] were also hired and worked in 1975 until approximately August 25,
8 when the children returned to school and Pedro returned to work for another
9 grower in the Imperial Valley.

10 A similar hiring and working pattern occurred
11 during the following three years as well. A week or more before the harvest
12 was to start Pedro would receive a letter and/or call telling him that the
13 company's harvest would be starting soon and he should expect a visit from
14 the field rep Bill Gibson. In 1976 he started work around May 28. Prior to
15 that he had received a letter from Rogers Food, followed up by a home visit
16 by Gibson, Tino Villa, Jr., and a company labor supervisor. Gibson
17 ascertained from Pedro how many of his family could work and for how long.
18 Gibson was told by Pedro that he and his family could only work through the
19 Bakersfield harvest and then would have to return to the Imperial Valley.
20 This was agreed to by Gibson. Pedro's daughter Rosa also worked for
21 Respondent that harvest as well.

22 ///

23 ///

24 ^{15/} He was hired by Bill Gibson through his friend, Florentine Villa,
25 Sr.

1 In 1977 Pedro and his family were hired in
2 the same manner. He was visited in his home by Gibson, Villa, Jr.,
3 and Larry O'Leary. Gibson asked again how many of Pedro's family
4 could work. Pedro told him that his wife and daughter Rosa could
5 start and Manuel and Javier could work 2-3 weeks later after school)
6 was over. Gibson said that would be fine, that the harvest would start on
7 June 1, with the pre-harvest starting for Pedro on May 22. Gibson also asked
8 Pedro to see if he knew others who were interested in working. Pedro
9 obtained three others to work as well.

10 As agreed, Pedro's family worked through the
11 Bakersfield harvest and then returned to the Imperial Valley. Pedro,
12 however, agreed to stay on at Gibson's request and worked until the end of
13 the season to fill in for a machine operator who was ill. At the end of the
14 season a company party was held in which Pedro and the other workers were
15 thanked by Gibson, O'Leary and the others for their work. The company
16 supervisors told Pedro they hoped to see him [and the others] next year.^{16/}

18 About May 22, 1978, after receiving a call
19 several days earlier, Pedro and his family were again visited by Gibson,
20 Villa, Jr., and O' Leary. Gibson inquired who could work for the company.
21 Pedro told him that his wife Lena and daughter Rosa could start work when
22 the harvest was to begin on June 3 or 4; his son Manuel could start a few
23 days later and Javier and Elvia

24 ^{16/} Similar company parties occurred in 1976 and 1977 after the Bakersfield
25 and season-end harvests. If there were similar company parties in 1978,
26 neither Pedro nor Rosa were invited to them.

1 a little later. Gibson also agreed that Manuel would work as a tractor
2 driver, Javier ["Frank"] as a bucket boy and Elvia, Rosa and Lena as
3 sorters. Pedro also explained to Gibson that he would not be able to work
4 beyond August 20 because he worked under a union contract for another
5 employer in the Imperial Valley [Maggie's] and would lose his seniority
6 there if he failed to report by then. It was arranged with Gibson that
7 Pedro and the rest of his family except Rosa would leave around August 20.

8 In 1979 no one called or came to the Duarte
9 family home as in previous years. Respondent attributes this to a change
10 in its hiring procedure in which the company decided it would no longer
11 notify workers when the harvest was to start but would wait until the
12 workers contacted the company first.^{17/}

13 2. The Duartes' 1979 Reemployment Efforts at
14 Respondent

15 It is not disputed that sometime during the
16 first two weeks of June Pedro and Frank Duarte went one morning to
17 Respondent's fields during the onion harvest seeking re-employment from Larry
18 O'Leary. What is disputed is when this occurred and what was said.

19 According to O'Leary, the former onion labor
20 supervisor in 1979, the onion harvest started "sometime during the first week
21 in June" [i.e., June 1-7]. After further questioning

22 ^{17/} In 1980 Respondent returned to its practice of notifying workers in
23 writing of the company's harvesting dates. However, the written notice was
24 only sent to those who worked for the company through the end of the 1979
25 harvest. The Duarte family was not notified in 1980 because of this. [In
26 fact, Exhibit Z "indicates that at least 2 workers were contacted for
reemployment who had not completed the harvest in 1980].

1 about his activities that week, O'Leary recalled that harvesting
2 started closer to June 6 or 7.^{18/} He specifically recalled Pedro and
3 Frank coming out to the field about June 13, approximately 1 week after
4 harvesting had started.^{19/} After greeting one another Pedro spoke to
5 O'Leary in Spanish which was translated by Frank. According to O'Leary,
6 Pedro [through Frank] asked for work for himself [as a loader operator]
7 and his wife [as a sorter]. responded there were no openings. Pedro also
8 asked why he and his family had not been contacted at his home as in
9 previous years. O'Leary directed him to Bill Gibson if he wanted to make
10 further application.^{20/} O'Leary and Frank talked for a few more minutes
11 in English on non-job related topics and then Pedro and Frank left.^{21/} On
12 cross-examination O'Leary further elaborated that he treated the Duarte's
13 work application the same as others who applied. He took down their names
14 and phone number in order that he might contact them later should further
15 job openings develop.^{22/}

16 18/ IV Tr p. 16.

17 ^{19/} Respondent claimed that Exhs. D1 and D3 corroborated O'Leary's
18 testimony. Exh. D1 [field shipment forms] indicates June 6 was the first
19 day of the 1979 harvest starting in field No. 308. Exh. D3 indicates that
20 harvesting occurred at two fields, Nos. 306 and 311, on June 14. The
21 Duartes testified they saw harvesting machines at two fields the day they
22 talked to O'Leary. However, as will be discussed in more detail infra,
23 Exhs. D4 [on page 7] and D5 indicate that Respondent was harvesting from
24 two fields on June 3.

25 20/ III Tr p. 143; IV Tr p. 48, lines 17-13.

26 ^{21/} O'Leary further testified that Frank only asked for work for his
father and mother, not for himself or his sister Rosa. IV T: p. 43,
lines 19-23.

22/ IV Tr pp. 49-51. O'Leary testified he in fact used the list call for
additional workers as openings occurred. Ibid. p. 52. The Duartes were
not called however.

1
2 By contrast, Pedro Duarte testified that he went out to
3 Respondent's fields with his son on June 6 to ask for work for he and his
4 family. He went the day after a friend had mentioned seeing Rogers Foods
5 harvesting equipment in the field. Pedro and Frank found O'Leary working in
6 the second field they visited. After greeting each other Pedro asked
7 O'Leary, with Frank translating,^{23/} why they had not come to his home to
8 notify he and his family of the harvest as in previous years. O'Leary
9 responded he had orders not to hire the Duarte family. Pedro asked for
10 work for he and his family. O'Leary replied there were no openings.
11 O'Leary and Frank talked briefly about non-job related matters and then
12 Frank and Pedro departed.

13 3. The Duartes' Union and Concerted Activities

14 After working the first weeks of the 1978 onion harvest as a
15 sorter, Rosa Duarte was promoted by Robert Andrews to labor supervisor.
16 She trained under O'Leary during the remainder of the Imperial Valley
17 onion harvest and became the labor supervisor in charge of the garlic
18 machine starting in Bakersfield.

19
20 Rosa credibly testified that in July, during the Bakersfield garlic
21 harvesting, she was told by Bill Karris to keep an eye on two tractor
22 drivers assigned to her crew, Lupe Arisiaga and Maurillio Urias. Arisiaga
23 had been the subject of an

23 ^{23/} Respondent objected, as hearsay, to Pedro's testimony regarding
24 O'Leary's statements since Pedro was utilizing Frank's translation.
25 However, O' Leary was utilizing Frank as an interpreter as well and is
26 bound by his agency choice. See Hansen Farms, 2 ALRB No.161 (1976). In
addition, Frank's testimony corroborated his father's as well.

1
2 ALRB charge and complaint over his 1977 termination that had settled prior
3 to hearing. That October, prior to the settlement, Respondent has asked
4 Rosa if she would be willing to testify that she and her father were union
5 supporters and the company had treated them fairly. She had agreed. At the
6 time she had not known Arisiaga nor the reasons for his termination or
7 reinstate, ment.^{24/}
8

9
10 Approximately one week later, during the
11 garlic harvest, ALRB agents came to the field to talk to Respondent'
12 employees and explain to them their rights. Rosa wanted to hear the talk
13 but Harris told her she could not since she was a supervisor. Harris,
14 however, did ask her to keep an eye on Maurillio Urias who had recently been
15 hired by Harris as a tractor driver. Rosa, in fact, reported to Harris that
16 Urias, who was an intelligent, articulate and persuasive speaker, was a UFW
17 supporter.^{25/} Later in the harvest Harris again asked Rosa to keep an eye on
18 and report to him about the two tractor drivers. Rosa declined to do so any
19 further which disturbed Harris, according to Rosa.^{26/}
20

21 ///

22 ^{24/} Harris told Rosa to keep an eye on Arisiaga because he was
23 a UFW member. "You know what happened last year. He won his case
23 and now he thinks he's a big shot." I Tr p. 65. See Resp. Exh. C.

24 ^{25/} I Tr p. 84-86. See Respondent's Exhibit G.

25 ^{26/} Ibid, p. 88. Harris denies asking Rosa to report to him about
26 Urias and Arisiaga's activities. As discussed in more detail in 'the
Analysis section, I found Rosa, Pedro and Frank particularly credible and
convincing witnesses.

///
///

1 In fact, Rosa had become friendly with the tractor drivers, found them
2 intelligent and articulate and frequently talked to them about the union.
3

4 In mid-September, while visiting Salinas, Rosa stopped by one of
5 Respondent's garlic fields during an afternoon harvesting. The harvest crew,
6 many of whom according to Rosa were union supporters, were strongly objecting to
7 the lack of water at the machine. Galen Haste, Respondent's new Salinas area
8 field rep, told Rosa or the workers that he would fire them.^{27/} Rosa told Galen
9 that would be a mistake as the workers would justifiably file charges with the
10 ALRB against the company. When Rosa returned to the Mendota area the next day
11 she related to Harris what had occurred in Salinas and what she had told Galen.
12 ^{28/} Several days later during harvesting Harris told Rosa to work her crew
13 faster. Rosa responded it was going to get dark, there were no lights on the
14 machines and it was a poor field. Harris insisted/' Rosa refused saying it was
15 unsafe for the crew to work under such conditions. Harris instead was compelled
16 to tell the crew to work faster. Rosa went on to tell Harris that what the
17 workers needed was to be organized by the union because he pushed the people too
18 much. Harris appeared mad, made a face, looked disturbed and then walked
19 away. ^{29/}
20

21
22 ///

23 ^{27/} It was unclear from the testimony which was told.

24 ^{28/} Ibid, pp. 91-96.

25 ^{29/} Ibid, p. 97-98.
26

1
2 At the conclusion of the garlic harvest in
3 the Mendota area, and over her objection, Rosa was transferred to the onion
4 harvest as a labor supervisor.^{30/} By her own admission she did not do a very
5 good job. After the season concluded, a dispute arose between Rosa and
6 Respondent regarding her expense entitlements resulting in Rosa filing a
7 charge with the Labor Commissioner. After some correspondence, Respondent
8 agreed to pay the disputed amount.^{31/}

9
10 In December, Respondent sent Rosa a letter
11 stating her performance as a labor supervisor [particularly in onions]
12 onion harvest Respondent moved two crews, including Pedro Duarte, to
13 was inadequate and she would not be rehired as a labor supervisor. However,
14 she was informed that she could return in another capacity [i.e., as a
15 grader].^{32/}

16 After finishing the 1978 Imperial valley onion harvest Respondent
17 moved two crews, including Pedro Durate, to Needles for a week.^{33/} The crew
18 were then told to move the

19 ///

20 ^{30/} Responsibility increases considerably and the work is more difficult as
21 the onion labor supervisor is in charge of 4 machines, instead of one.

22 ^{31/} See General Counsel Exhibit

23 ^{32/} See General Counsel Exhibit

24 ^{33/} While in Needles Pedro's tractor engine suffered serious damage, Pedro was
25 given a written warning for it. Respondent does not contend, nor is there
26 any evidence, that the engine damage was a basis for refusing to rehire Pedro
in 1979 [Pedro continued to work for Respondent in 1978 after the incident
another 6-7 weeks. Moreover, the tractor mechanic, not its driver, had
primary responsibility for engine maintenance and oil pressure.].

1
2 Bakersfield area the following week to start the onion harvest there on July
3 17. However, when they arrived, O'Leary informed them that the fields were
4 not yet ready for harvesting for several more days. O'Leary agreed to pay the
5 workers two hours wages for reporting as requested. Many in the crew were
6 upset and asked Pedro if he would speak to O'Leary about this. Pedro spoke
7 to O'Leary and said since the company had scheduled everyone to work that day
8 and everyone had come considerable distances to be there; at 7 that morning,
9 the company should pay more wages. Pedro asked O'Leary if he could do
10 something about this. O'Leary said there was nothing he could do. Pedro
11 replied that "In order to get the company to do something I will bring in
12 Chavez' union. "^{34/}

13
14 V. The Julia Campos Group Charge

15 Julia Campos [as well as her husband and one of her-
16 sons] first worked for Rogers Foods in July, 1977. She started in late July
17 when the garlic season moved to the Huron-Mendota area, which is where she
18 and her family lives. In early September the garlic machine and harvest
19 moves to the Salinas Valley for several weeks. Campos and the other members
20 were given a choice of moving with the garlic harvest to the Salinas Valley
21 or switching

22 ///

23
24 ^{34/} II Tr pp. 25-27. Pedro, a quiet spoken older man, had been a UFW member
25 for a number of years. He even passed out authorization cards to some
26 Rogers Foods' crew members in 1975. However, there is no evidence that the
company was aware of this or anything more than his union membership until
1978. O'Leary denied that the crews were upset about the change or that
Pedro spoke to him about it. However, as discussed in more detail in the
Analysis Section, I do not credit O'Leary.

1 to the onion harvesting in the Avenal area [approximately an hour and half
2 drive south from the Mendota area], Julia, along with most of her crew
3 declined to go to Salinas [because her family and home were in Mendota] and
4 instead worked the remainder of the ' onion harvest until mid-October with
5 Respondent.
6

7 In 1978 a similar hiring and working pattern
8 occurred as well. Campos started in July and again chose to remain closer to
9 her home, switching to the onion harvest in Avenal at garlic harvest's end in
10 Mendota, finishing it without a lay-off.
11

12 In 1979, Campos was contacted by Harris and told
13 that the garlic harvest would be starting soon in July.^{35/} Harris told her to
14 bring 10 persons as well. Modesta and Dominga Ortiz, Maria Esther Pisano and
15 three of their teen-age children [Juan Ortiz, Antonio Ortiz and Sylvia
16 Banuelos] as well as Balvina Banuelos, who started several days later, were
17 recruited by Campos and worked on the same harvesting machine.
18

19 In August, Ray Martin and Bill Harris proposed to
20 replace Juan Ortiz as the bucket boy with someone else. The machine crew
21 stopped harvesting and Maurillio Urias, speaking on behalf of the crew, told
22 Harris they would all stop working and would also file a charge with the ALRB
23 if he did. Harris decided
24

22 ///

23 ///

23 ///

25 ^{35/} Each year, Julia had called the company's Turlock office and left word she
26 and members of her family. [and others] would be available for work.

1 not to replace Ortiz. This "work stoppage" lasted about an hour. All the
2 workers were paid.^{36/} In early September the garlic harvest ended in the Huron-
3 Mendota area. Once again Campos and her co-workers were given a choice whether
4 to continue harvesting garlic in the Salinas Valley or moving to onions in the
5 Avenal area.

6 The Campos group chose to move to the onion
7 harvest in Avenal, the school age children returned to school while the
8 tractor drivers [including Urias] stayed with the garlic machine that moved to
9 Salinas. Campos had called Harris and told him that she and the others
10 would work in onions. Harris, in turn had Campos call Gary Serrato, who was
11 reached in his pick up truck and briefly talked to her. The Campos group
12 reported the following day a few hours late because they had difficulty
13 locating the field. Serrato and Chavez had started up a machine with 12 or so
14 new workers who had also reported to the field that day.

15
16 When the Campos group reported they were directed by Serrato to Chavez who
17 assigned them a machine.^{37/} That afternoon, Campos credibly testified, Chavez
18 told her and the others that they would be laid off after four days work.
19 Julia asked why. Chavez said that their machine would be transferred to
20 garlic. Julia replied that there was the other machine. Chavez said he had
21 enough workers. Julia replied that they were new workers and she and her group
22 had more seniority and always worked the entire onion

23 ^{36/} The testimony went into more detail about this issue raising
23 factual disputes about favoritism to another group of workers hired and Juan
24 Ortiz' age. However, the essential and relevant facts are that this work-
24 related dispute and "stoppage" occurred involving Urias and the Campos Group.

25 ^{37/} Serrato thought the Campos Group started, the following day. IV Tr p.
26 224, lines 16-20.

1 harvest with Harris. Chavez responded, "I'm in charge here. We
2 have enough."

3 Campos attempted to find Harris to talk to him but
4 the other labor supervisors with cars available refused to help
5 her. On Friday, September 7, the Campos group, as well as the
6 others on the machine, were laid off. Julia tried for a week to
7 contact Harris at the company's Turlock office, leaving him
8 messages to call her at her home. Mo one called her back.
9 Finally on late Friday afternoon, September 14, she went down to
10 the ALRB office xvith the others to ask for assistance. ALPB
11 Agent Frank Pulido agreed to call Respondent's office on behalf of
12 the group and find out what was going on. Pulido testified that
13 there was no answer when he tried that evening so he didn't
14 attempt again until Monday, September 17 [that weekend was a
15 Mexican holiday and Pulido was not in the' office]. In the mean-
16 time, Chavez and/or Harris called Campos' home on Saturday,
17 September 15 and told her that work would resume again for her
18 and the group on Sunday. The Campos group reported to work on
19 Sunday and sorted onions.

20 On Monday, September 17, Pulido contacted Harris
21 and inquired on behalf of the Campos group about the lay-off.
22 Harris said he would check on it and called Pulido back on the
23 following day [September 18] and told Pulido the women had been
24 I recalled and were already working. Pulido closed the matter as a
25 result. However, Julia Campos credibly testified that working
26 conditions worsened for her and her women friends within a few

1 days of the recall. Starting approximately September 20th and continuing
2 for the next two and a half weeks, Campos and her group of women co-workers
3 were required to get down from the machine and do bucket boy work behind or
4 pull weeds in front of the machine Campos also felt that the machine was
5 speeded up so that it was more difficult to do this work.^{38/} This continued
6 for several weeks until October 2 when Chavez stopped the machine and made
7 everyone pick up onions in buckets for 6 hours. After several hours,
8 Balvina Banuelos told Chavez she wasn't able to continue doing this work.
9 Chavez replied that "this is the work to do". Banuelos responded, "Why not-
10 put us back on the machine?" Chavez answered, "This is the work, if you
11 don't want it, quit." Banuelos said, "We need the work." The women
12 observed that the other 3 machines harvesting had men pulling weeds as well
13 as bucket boy work.
14

15
16 The following day, October 3, the group was again
17 ordered to do bucket boy work. Campos, under a strong sun, became very
18 tired and could do no more She put her bucket down and walked to the
19 harvesting machine. Labor supervisor Connie Pacheco drove up to her in her
20 pick up and told Campos to get her bucket and return to her work. Campos
21 replied, "That's not my work, my work is sorting en the machine." Pacheco
22 responded,
23

23 ///

24 ^{38/} Usually bucket boy and weed pulling work is performed by young men or
25 teen-agers. As indicated previously, women would occasionally voluntarily
26 perform bucket boy work to overcome motion sickness. During the August
garlic harvest the Campos group voluntarily helped Juan Ortiz with his
bucket boy work for several weeks as well.

1 "If you do not want to work, quit." Harris drove into the field in his car.
2 He joined Campos, Pacheco and the mechanic, Miquel Flores. Campos asked if
3 some one [other than Pacheco] would interpret for her but no one did.
4 Finally, Pacheco did.^{39/} Campos asked Pacheco to tell Harris that she could
5 not do the bucket boy work because of the machine operator [who went too fast
6 and left too many onions on the ground]. Harris responded, "You don't want
7 to work?" Julia answered, "Yes, but on top [of the machine] sorting."
8 Harris said, "But this [filling the bucket] is work." Julia answered, "This
9 has never been my work." Harris replied, "If you don't want to work you can
10 quit." Later that afternoon Pacheco told Campos and the others that Harris
11 was putting the group back on the machine sorting; no one pulled weeds or
12 filled buckets.

13
14
15 Harris and Chavez both testified that the weed condition was
16 particularly bad at the Hillside and Peck Ranch fields.^{40/} The field's
17 condition was noticeable during the ore-harvesting, several days prior to
18 harvesting. Accordingly, Respondent hired extra men to pull the weeds and
19 grass and to help with the bucket boy work.^{41/} According to Campos, none of
20 these

21
22 ^{39/} According to Campos she and Pacheco did not get along well. Pacheco spoke
23 harshly to her and she replied in kind. Campos did not trust Pacheco's
24 translation.

25 ^{40/} IV Tr p. 152, 167; V Tr p. 74-75.

26 ^{41/} IV Tr p. 172-173 - Chavez' slip of the tongue [ibid., p. 174, line 3] was
particularly telling.

///

1
2 men worked with her machine. According to Chavez and Karris, the women on
3 Campos' machine were asked to volunteer; if they didn't they were told to
4 rotate, leading to the exchanges between Campos and the various company
5 representatives set forth above.

6 In addition to her complaints about the more
7 onerous working conditions pulling weeds and filling buckets, Campos
8 testified to other changes occurring shortly after returning from the lay-
9 off. Water, particularly critical to the workers| during the long, hot and
10 windy days, would be brought late [i.e., after lunch] or tasted peculiar;
11 the portable toilets were often dirty or foul smelling; and the other crews
12 were permitted to work longer hours [i.e., a half hour or so each day].

13 Chavez testified that the portable toilets were
14 serviced by an independent company, supposedly twice a week [the crews
15 generally worked seven days a week]. At some point after the complaints
16 started the service was increased to three times a week. In addition, all
17 the crews, including the supervisor, used the same toilets, which were
18 located at the sides of the fields. Chavez personally took care of the
19 water each day.^{42/} He attempted to have water at the machines each morning
20 when the crews started. If he occasionally was not prompt, according to
21 Chavez, it was because he was so busy and had to bring water to machines
22 that might be working in two separate fields.
23

24

^{42/} Rosa Duarte testified that it was one of the most important
25 responsibilities of the labor supervisor. She brought her crew their
26 water and gloves each morning before work started.

///
26

1 Chavez testified that it was true that one or more
2 machines would work longer than the others each day. Accordingly, he would
3 rotate the three or four harvesting machines to equalize the time each crew
4 worked. In order to evaluate the merit of this 5 complaint and testimony
5 I reviewed Respondent's Exhibit R which is a summary of hours worked by
6 various sorters from September 14 to October 12. I compared the number of
7 hours that Julia Campos worked each day with those of Rita Castro, Maria
8 Favella, Maria Molina and Ruth Meza for the same day. I limited the period
9 of comparison to September 16, the first day that Campos was recalled
10 machine
11 until October the ALRB: The summary indicates:

- 12 1. Rita Castro worked the same number of hours as
13 Campos for each of 19 days.^{43/}
- 14 2. Maria Favella worked the same number of hours 9
15 days; she worked more hours on 6 days totaling 5
16 hours; and did not work any days fewer hours.
- 17 3. Maria Molina worked the same number of hours on
18 10 days; she worked more hours on 6 days totaling
19 5 hours; on 3 days she worked a total of 2-1/2
20 hours less; for a net total of 2-1/2 more hours.
- 21 4. Ruth Meza worked the same number of hours on 12
22 days; on 5 days she worked a total of 3-1/2 hours
23 more; on one day a half hour less; for a net
23 total of 3 hours more.

23 ^{43/} No retained company record indicated which harvesting machine a greater
24 worked on. Since Chavez stated the hours varied between crews each day, I
25 assumed that the identical hours for the days indicated campos and castro
26 work on the same machine.

1
2 On the 7 campos called Pulido at the ALRB office and described to him
3 what she believed were the chanced and more onerous working conditions she
4 and the others were experiencing since their recall. Pulido advised her
5 that under the law she had a right to file a charge, if' she desired,
6 against the company. He suggested to her to talk it over with her co-
7 workers. The following day Campos discussed filing a charge against the
8 company with her co-workers. On Friday, October 9, the Campos group drove
9 to the ALRE office in Fresno after work and filed their charge against the
10 company. According to Julia, the group did not experience the difficulties
11 encountered earlier for the last few days of the harvest after filing the
12 charge^{44/}.

13 ANALYSIS & CONCLUSIONS

14
15 The General Counsel's contentions are divided into three basic
16 parts: (1) an allegation regarding the failure of Respondent to rehire
17 members of the Duarte family because of their concerted activities, violations
18 of Sections 1153(a) and (c); (2) an allegation relating to employer conduct
19 involving more onerous working in conditions imposed on the Campos group, also
20 violations of Sections 1153(a) and (c); and (3) an allegation regarding the
21 same employer conduct interfering with the Campos croup utilizing Board
22 processes, a Section 1153 (d) violation.

23 ^{44/} Both Campos and Chavez testified that the workers were not provided with
23 gloves during the first week in October. Chavez testified that a shipment did
24 not come in. "He told the workers to turn the cloves backwards so that the
25 holes were on top. The company went to a store and purchased a new supply of
26 cloves which were provided to the workers during the last week of harvesting.

1 I. Introduction

2
3 Section 1153(a) of the Act makes it an unfair labor practice for an employer to
4 interfere with, restrain or coerce an employee in the exercise of rights
5 guaranteed the employee under Section 1152 of the Act. Section 1153(c) also
6 makes it an unfair labor practice for an employer to discriminate in regard to
7 the hiring, tenure of employment or any term or condition of employment.
8

9
10 Generally, under Section 1153(a) concerted activity by employees is
11 protected regardless of the employer's motivation, NLRB v. Burnup & Sims, Inc.,
12 379 US 21, 57 LRRM 2385 (1964), while conduct under Section 1153(c) requires
13 evidence of anti-union animus as well as evidence of improper employer
14 motivation. See Resetar Farms, 3 ALRB No. 18 (1977). These sections are
15 substantially identical to Sections 8(a)(1) and (a)(3) of the National Labor
16 Relations Act. Since ALRA Section 1148 mandates following applicable decisions
17 under the National Labor Relations Act, such decisions are appropriately
18 examined to ascertain whether Respondent has violated Sections 1153(a) and (c).
19 Under well settled NLRB precedent, union or concerted activity have been broadly
20 defined. See, e.g., NLRB v. Washington Aluminum, 370 US 9, 50 LRRM 2235 (1962);
21 Shelly & Anderson Furniture Co., Inc. v. NLRB, 497 F. 2d 1200, 86 LRRM 2619 (9th
22 Cir., 1974); First National Sank of Omaha v. NLRB, 413 F. 2d 921, 71 LRRM
23 3019 (8th Cir., 1969); NLRB v. Morris Fishman & Sons, Inc., 278 F. 2d 792, 46
24 LRRM 2175 (3rd Cir., 1960); NLRB v. M fi M Bakeries, Inc., 271 F. 2d 602,
25
26

1 45 LRRM 2085 (1st Cir., 1959). The Agricultural Labor Relations Board has
2 followed this precedent. Tenneco West, Inc., 6 ALRB No. 53 (1980); Louis
3 Caric & Sons, 6 ALRB No. 2 (1980); Jesus Martinez, 5 ALRB Mo. 51 (1979);
4 Royal Packing, 5 ALRB No. 31 (1979) S & F Growers, 4 ALRB No. 58 (1978); and
5 Resetar Farms, 3 ALRB No. 18 (1977). As with all allegations of unfair labor
6 practices the General Counsel must support the charge by a preponderance of
7 the evidence pursuant to Section 1160.3 of the Act.

8
9 II. The Duarte Family Refusal to Rehire Charge

10 After six or more members of the Duarte Family had worked in
11 Respondent's harvesting Since 1975, Respondent did not contact or hire family
12 members for its 1979 [or 1980] harvest. Respondent's reason, and the basis of
13 its defense, is a purported change in its recruitment procedure in 1979.
14 Primary responsibility for the 1979 onion harvest hiring, and Respondent's
15 principal witness to testify regarding its defense, was the onion labor
16 supervisor in 1979, Larry O'Leary. Both O'Leary as a witness and his
17 testimony were incredulous. Throughout his testimony O'Leary was
18 increasingly nervous and uncomfortable; during critical examination his
19 testimony became either evasive, inconsistent or inadvertently subject to
20 slips of the tongue.^{45/}

21
22 O'Leary's lack of credibility as a witness sharply
23 contrasted with the forthright and credible testimony of Respondent's

24 ^{45/} See e.g., Iv Tr p. 13 for an example of O'Leary's evasiveness concerning
25 when the 1979 onion harvesting started. More significant was O'Leary's
26 critical slip of tongue regarding contacting employees prior to the 1979
harvest; ibid., lines 23-28.

1 field rep Gary Serrato, as well as General Counsel's principal witnesses,
2 Pedro and Rosa Duarte. Serrato's testimony, in two key areas undermined
3 O'Leary's and the purported defense. First, Serrato confirmed the
4 overriding importance of having a full complement of harvesting crews ready
5 in a timely manner to start the onion harvesting.^{46/} It would, be contrary
6 to normal [and Respondent's previous and current] practice or procedure to
7 leave such a critical matter to chance [i.e., whether a sufficient number
8 of experienced harvesters would show up at Respondent's field without
9 having advance notice or through haphazard word of mouth notice]. Second,
10 Serrato confirmed that O'Leary had notified workers when the 1979 harvest
11 was to start.^{47/}

12 Moreover, critical parts of O'Leary's own testimony
13 undermined Respondent's defense. For instance, Miguel Flores and Tino
14 Villa, Jr., two of Respondent's mechanics, would tell workers when the
15 onion harvest was to start. This occurred in 1978 and 1979. Neither had
16 harvesting hiring authority without prior permission.^{48/} One reason for
17 notifying workers in advance was the company's preference for experienced
18 workers.^{49/}

19 ///

20 ^{46/} IV Tr p. 198-199.

21 ^{47/} Ibid., p. 222. Respondent's counsel recalled O'Leary the following
22 week to "clarify" this testimony. Instead, it confirmed O'Leary's lack of
23 candor and discomfort testifying.

24 ^{48/} IV Tr pp. 23, 31, lines 26-28

25 ^{49/} Ibid., p. 37.

1
2 Finally, Respondent's own records do not support its
3 defense. O'Leary insisted that the Duartes did not seek re-employment
4 until approximately June 13 or 14, when Respondent no longer was hiring.
5 One basis for this position was the claim that date was the first time
6 Respondent has machines working in two fields. Yet O'Leary testified that
7 Respondent's normal practice is to harvest from two fields almost from the
8 start. Accordingly, harvesters would have been in two fields at least as
9 early as June 7.^{50/} On the basis of these records and Pedro Duarte's
10 credited testimony that he went out to the fields the day or so after he
11 was told that Respondent's machines were seen in the fields, I find that
12 Pedro sought employment for he and his family on June 7 or 8.

14 Additional company records show that between
15 June 7 and June 28 Respondent's harvesting work force increased [as
16 harvesting machines and drivers were added] from 67 to 92. O'Leary
17 testified that he took down the names and phone numbers of persons,
18 including the Duartes, who sought work in the field, yet O'Leary did not
19 call the Duarte family.^{51/}

20 ///

21 ^{50/} See IV Tr p. 41. Respondent's Exhibits D4 and D5 show shipments from
22 two separate fields on June 8. The machine preparation and set up work
23 apparently would have occurred on June 7 in order to commence harvesting
there on June 8.

24 ^{51/} IV Tr p. 49-50. See e.g., Respondent's Exhibit H[1-4]. For example,
25 Lucy Pacheco, #71005, Rosemary Pacheco, #71007, and Jlorma Pacheco, #71008,
26 were not hired until June 9. Miguel Alcanter, #63323, Jose Veramontes,
#64440, Barbara Mendoza, #67455, were also hired on June 9. Henry Salgado,
Juan vasquez, #63321, and Abel Alcanter, *638Q, were hired on June 8.
Raquel [Continued on Page 33].

1 The conclusion is inescapable that Respondent
2 intentionally did not notify and rehire the Duarte family in 1979 because of
3 Pedro's concerted activities in 1978 as well as Rosa's refusal to conduct
4 unlawful surveillance on two known union supporters in 1978.^{52/}

5 Frank Duarte credibly testified that when he and his
6 father went out to the field it was to seek work for his father Pedro,
7 mother Lena, sister Rosa and himself. Although his brother Manuel and
8 sister Elvia had worked for Respondent in past years, including 1978, Frank
9 did not know whether Manuel or Elvia had any intention to work for
10 Respondent during the 1979 harvest.^{53/}

11 ///

12 ///

13 ///

14 51/ [Continued] Flores, #65963, was not hired until June 11 and Angel
15 Contreras, #72038, not until June 25. Respondent hired Martin Chavez,
16 originally as a tractor driver, several weeks after the harvest started in
17 June. See IV Tr p. 154, lines 19-21. Trino Enricuez was not hired as a
18 tractor driver until July 30, 1979.

19 52/ Respondent argues that its treatment of these two known and active UFW
20 supporters, Lupe Arisiaga [promotion to tractor driver] and Maurillio Urias
21 [holding open his job for several days after he voluntarily quit] supports
22 the conclusion that Respondent had no discriminatory motive in its treatment
23 of the Duartes and the Campos Group. The argument is unpersuasive. First,
24 the evidence is overwhelming that Respondent unlawfully refused to rehire
25 the Duartes. Second, the treatment of the two men is also susceptible to
26 the inference that their open support of the UFW protected them. A failure
to promote or provide equal or fair treatment to them would more likely be
regarded as having an illicit motive.

27 53/ See III Tr p. 122-124. Manuel and Elvia both lived in San 26
Dieg'o, Manuel while attending school. Frank was not aware nor had
talked to his brother or sister about their plans for that summer.

1 To summarize, I conclude based upon the clear, convincing and
2 substantial evidence in the record that Respondent, through its agents,
3 violated Sections 1153(a) and (c) of the Act when it intentionally and
4 unlawfully refused to rehire Pedro Duarte, Lena Duarte, Rosa Duarte and
5 Frank Duarte because of the
6 concerted activities by Pedro and Rosa Duarte.^{54/}
7

8 III. The Campos Group Charges

- 9 1. Allegation that the September 1979 lay-off
10 was the result of concerted activities.

11 In 1977 and 1973 Julia Crops worked through the remaining onion
12 harvest after switching from a gararlic machine However, in 1979 she and her
13 co-workers were laid off for a week on September 7, after switching from the
14 garlic harvest. General Counsel contends that the lay-off occurred as a
15 result of a short work stoppage that Crops and her co-workers participated in
16 that August. Respondent, on the other hand, contends the lay-off occurred
17 solely because the machine the Campos group was working on was transferred
18 back to the Salinas garlic harvest.
19

20 After a careful review of the testimony and evidence, I am
21 not persuaded by a preponderance of the evidence that the September lay-off
22 resulted from the Campos group's work
23

23 54/Under ALRB precedent, it is a violation of the Act to discriminate against
24 an employee because of union or concerted activity of a relative. See e.g.,
25 J. P. Stevens s Co. v. NLRB, 441 F. 2d 514, 76 LLRM 2817 (5th Cir., 1971);
26 Dewey Brothers, Inc., 76 LRRM 1074 (1970), enf'd 00 L.L.R.M 2112 (4th Cir.,
1972); George J. Roberts & Sons, Inc., dba Roberts Press, 76 LRRM 1337 (1971);
B. G. Management & Co. , 82 LRRM 1444 (1973); Colonial Press, Inc., 33 LRRM
1648 (1973); and American Buslines, Inc., a Division of Continental
Trailways, Inc. , 37 LRRM 1444 (1974).

1 slowdown in August. While it is true that Campos in the past
2 years had worked through the onion harvest, it is 'also Respondent's
3 normal practice to frequently shift harvesting machines back and
4 forth between onion and garlic. General Counsel contends that the
5 12 or so new workers added the same day the Campos group trans-
6 ferred to onions were not laid off. However, these workers were
7 hired, apparently in part because the Campos group had arrived
8 several hours late to the field. While a plausible case can be
9 made that this group should have been laid off, rather than the
10 Campos Group, I do not find it discriminatory against the Campos
11 group that these new hires were not. I conclude the General Counsel
12 failed to prove this allegation; therefore I shall recommend dis-
13 missal of the allegation in Paragraph 5(a) of the First Amended
14 Complaint.

15 2. Did Respondent rehire the Campos Group
16 because of their contact with an ALRB Agent?

17 The testimony and Respondent and ALRB's
18 telephone records show that Julia Campos' unsuccessful efforts to
19 contact Bill Harris during the lay-off week resulted in the Campos
20 group visiting the ALRB office late Friday, September 14, to seek
21 assistance. ALRB Agent Frank Pulido, after reviewing his notes
22 made during this period, testified that he did not reach Bill
23 Karris and. inquire about the lay-off until Monday, September 17.
24 Harris, in turn, called back the following day to advise Pulido
25 that the Campos group had been recalled for work and started
26 Sunday-, September 16.

1 I find factually, therefore, that the Campos
2 group's recall was independent of and not the result of the Campos group
3 contacting and seeking assistance from the ALRB.^{55/}
4

- 5 3. The allegations the Campos Group was subject to
6 changed and more onerous working conditions because
7 of their concerted activities
-

8 Commencing about September 20, shortly after
9 their recall, the Campos Group was subjected to changed working
10 conditions: shorter hours, inadequate gloves, foul and smelly toilets,
11 late or peculiar tasting water and most notably, the more onerous weed
12 pulling and bucket boy work.

13 Two of these changed conditions, the more
14 onerous working conditions and shorter hours, could analytically be
15 considered under a constructive discharge doctrine and provide worker
16 justification for refusing to perform such work. See, e.g. Arnaudo Bros.,
17 3 ALRB No. 78 (1977); M. Caratan, Inc., 4 ALRB Mo. 83 (1978).

18 The essentially uncontroverted and credited
19 testimony establishes that only the Campos Group crew were required to do
20 bucket boy work or pull weeds during the 2-1/2 week period.

21 ///

22 ^{55/} Moreover as a legal proposition it is unclear whether retaliation for
23 seeking informal assistance from a Board Agent, without more, would
24 constitute a Section 1153(d) violation. Compare Virginia-Carolina Freight
25 Lines, 155 NLRB No. 52, 60 LRRM 1331 (1965) with Hoover Design Corp. v.
26 NLRB, 402 F. 2d 987, 69 LRRM 2649 (6th Cir., 1968); although the NLRB has
broadly interpreted the term "provide testimony" found in Section 8(a)(4)
[equivalent to Section 1153(d)]. See, e.g., Precision Fittings, Inc.,
141 NLRB 1034, 52 LRRM 1443, 1445"(1963).

1 The men hired by Chavez and Harris specifically for this work did it for the
2 other machine crews. Significantly, when the Campos Group women started to
3 falter at doing this more onerous work, each of Respondent's representatives,
4 Harris, Chavez and Pacheco, told the women they could quit if they didn't want
5 to do the work. These responses, coupled with the objectionable work changes,
6 reflect an intention to force the group to quit work. Respondent's motivation
7 can be gleaned from the accumulative reaction to the Campos Group's work
8 stoppage in August, resort to the ALRB for assistance in September and the
9 Group's repeated and vocal objections to Respondent's adverse working
10 conditions.
11
12

13 Moreover, a review of Respondent's pay
14 records reveals that the Campos Group was subject to disparate working hours
15 over this 19 day period. While the disparate treatment was not great [ranging
16 from 2-1/2 to 5 hours less work for the period], it nevertheless occurred
17 pursuant to Chavez' intentional conduct and reinforces the finding of unlawful
18 changed working conditions. See, e.g., Davis Food City, 198 NLRB 94, 80 LRRM
19 1636 (1972); Dodson Market dba IGA Foodliner, 194 I7LRB 192, 78 LRRM 1623
20 (1971); enf'd 83 LRRM 2987 (9th Cir., 1973).
21
22

23 I find that Respondent's changed working
23 conditions of reducing the Campos Group's working hours and imposing more
24 onerous working conditions because of their known concerted activities and
25 contact with the ALRB violated Sections
26

///

///

1 1153(a), (c) and (d) of the Act as alleged in Paragraphs 5(b) and 9 of
2 the Complaint.^{56/}

3 THE REMEDY

4 Having found that Respondent has engaged in certain unfair
5 labor practices within the meaning of Sections 1153(a), (c) and (d) of
6 the Act, I recommend that Respondent cease and desist therefrom and take
7 the following affirmative actions designed to effectuate the policies of
8 the Act:

9 1. Reinstatement to their former jobs with back pay and full
10 seniority and other rights to Pedro Duarte, Lena Duarte, Rosa Elisa Duarte
11 and Javier Francisco [Frank] Duarte for the period from June 3, 1979 to the
12 present;

13 2. Make whole by payment of three and one-half hours back pay
14 entitlements each to Julia Campos, Modesta Ortiz, Balvina Banuelos, Maris
15 Esther Pisano and Dominga Ortiz [calculated by averaging of 5 hours, 3 hours
16 and 2-1/2 hours; see page 27, supra]; and

17 3. Notice of the violations and remedies and of the
18 rights of the employees protected by law should be posted, mailed and read to
19 Respondent's employees.

20 ///

21 ///

22 _____
23 56/ There is not sufficient evidence in the record that the inadequate
24 gloves, late and peculiar tasting water and foul and I smelly toilets were
25 suffered exclusively by the Group or intended as retaliation for the
26 concerted activity. Accordingly, recommend dismissal of these portions of
the allegation.

///

1 ORDER

2 Upon the bases of the entire record, the findings of
3 fact, and conclusions of law, and pursuant to Section 1160.3 of
4 the Act, I hereby issue the following recommended Order:

5 Respondent, ROGERS FOODS, INC., its officers, agents,
6 successors and assigns, shall:

7 1. Cease and desist from

8 (a) failing or refusing to rehire or discharging
9 any employee, or otherwise discriminating against them
10 in regard to their hire or tenure of employment because
11 of such employee's membership in, or activities on behalf
12 or in support of the United Farm Workers of America,
13 AFL-CIO, or any other labor organization;

14 (b) changing the terms or conditions of employment
15 of any employee including working *fewer* hours or imposing
16 more onerous working conditions, because of such employee
17 concerted activities to improve their working conditions,
18 or because of their contact with the ALRB for assistance;

19 (c) in any other like or related manner inter-
20 fering with, restraining or coercing employees in the
21 exercise of rights guaranteed by Labor Code Section 1152.

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

24 (a) Immediately offer Pedro Duarte, Lena Duarte,
25 Rosa Elisa Duarte and Javier Francisco [Frank] Duarte
26 reinstatement to their former or substantially equivalent

1 jobs without prejudice to their seniority or other rights and
2 privileges.

3 (b) Make whole each of the above-named employees for
4 any loss of pay and other economic losses each has suffered as
5 a result of Respondent's discrimination against them, according
6 to the formula stated in J & L Farms, 6 ALRB No. 43 (August 12,
7 1980), plus interest thereon at a rate of seven percent per
8 annum.

9 (c) Make whole each of the below-named employees for
10 loss of pay [totaling an average of 3 hours of work at \$3.92 an
11 hour, plus interest thereon at a rate of seven percent per
12 annum] suffered as a result of Respondent's discrimination
13 against them:

14 Julia Campos

15 Modesta Ortiz

16 Ealvina Banuelos

17 Maria Esther Pisano

18 Dominga Ortiz

19 (d) Preserve and, upon request, make available to this
20 Board and its agents, for examination and copying, all payroll
21 records, social security payment records, time cards, personnel
22 records and reports, and all other records relevant and
23 necessary to a determination, by the Regional Director, of the
24 back pay period and the amount of back pay due under the terms
25 of this Order.

26 ///

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

5 (f) Mail copies of the attached Notice, in all
6 appropriate languages, within 30 days after the date of
7 issuance of this Order, to all employees employed by
8 Respondent at any time between June 6, 1979, and the
9 time such Notice is mailed.

10 (g) Post copies of the attached Notice, in all
11 appropriate languages, for 60 consecutive days in con-
12 spicuous places on its property, the period and place[s]
13 of posting to be determined by the Regional Director.
14 Respondent shall exercise due care to replace any
15 copy or copies of the Notice which may be altered,
16 defaced, covered, or removed.

17 (h) Arrange for a representative of Respondent
18 or a Board agent to distribute and read the attached
19 Notice, in all appropriate languages, to its employees
20 on company time and property, at times and places to be
21 determined by the Regional Director. Following the
22 reading, the Board agent shall be given the opportunity,
23 outside the presence of supervisors and management, to
24 answer any questions the employees may have concerning
25 the Notice or employees' rights under the Act. The
26 Regional Director shall determine a reasonable rate of

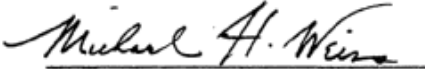
1 compensation to be paid by Respondent to all nonhourly
2 wage employees to compensate them for time lost at this
3 reading and the question-and-answer period.

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

10 AND, IT IS FURTHER ORDERED that all allegations contained
11 in the Complaint and not found herein to be violations of the
12 Act are dismissed.

13 DATED: October 8, 1980

14 AGRICULTURAL LABOR RELATIONS BOARD

15 
16

17 MICHAEL H. WEISS
18 Administrative Law Judge
19
20
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NOTICE TO EMPLOYEES

After a trial at which each side had a chance to represent its facts, the Agricultural Labor Relations Board has found that we violated the law and interfered with the rights of our workers. The Board has told us to send out and post this notice.

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

The Agricultural Labor Relations Board Act is a law that gives all Farm Workers these rights:

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

Because this is true we promise that:

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

Especially:

WE WILL NOT fail or refuse to rehire or discharge or otherwise discriminate against any employee because he or she exercised any of these rights.

WE WILL offer Pedro Duarte, Lena Duarte, Rosa Elisa Duarte and Javier Francisco [Frank] Duarte their jobs back and will reimburse each of them for any pay or other money they lost because we failed or refused to rehire them or discharged them.

WE WILL further pay Julis Campos, Modesta Ortiz, Balvina Banuelos, Maria Esther Pisano and Dominga Ortiz for loss of pay because of their concerted activities.

Dated:

ROGERS FOODS, INC.

BY _____
(Representative) (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the STATE OF CALIFORNIA.

APPENDIX I - WITNESSES

A. WITNESS CALLED BY GENERAL COUNSEL

	<u>NAME</u>	<u>IDENTIFICATION</u>	<u>DATES TESTIFIED</u>	<u>VOL. & PAGES</u>
1.	Rosa Elisa Duarte	Former Rogers Foods Worker & Supervisor	6/ 3/80	I, P. 21- 276
2.	Mauricio Urias	Former Rogers Foods Tractor Driver	6/ 3/80	I, P. 278-318
3.	Pedro Duarte	Former Rogers Foods Tractor Driver	6/ 4/80	II, P. 2-91
4.	Julia Campos	Current Rogers Foods Worker	6/ 4/80 6/ 5/80	II, P. 93-15 III P. 1-81
5.	Frank Pulido	ALRB Agent	6/ 5/80 6/13/80	III, P.85-98 VI, p. 126-143
6.	Javier Francisco "Frank" Duarte	Son of Pedro/Former Rogers Foods Worker	6/ 5/80	III, P. 98-113, 122-125

B. WITNESS CALLED BY RESPONDET

	<u>NAME</u>	<u>IDENTIFICATION</u>	<u>DATE TESTIFIED</u>	<u>VOL. & PAGES</u>
1.	Larry O'Leary	Former Labor Supervisor for Rogers Foods	6/ 5/80 6/ 6/80 6/13/80	III, P. 137 - 173 VI, p. 1-86 VI, P. 6-32
2.	Martin Chavez	Current Labor Supervisor for Rogers Foods	6/ 6/80	IV, P. 90-182
3.	Gary Serrato	Current Field Representative for Rogers Foods	6/ 6/80	IV, P. 183-230
4.	Bill Harris	Current Field Representative for Rogers Foods	6/ 7/80	V, p. 1-96
5.	Robert Andrews	Rogers Foods Field Manager	6/13/80	VI , P. 83-126

CASE NAME: ROGERS FOODS, INC.

CASE NO: 79-CE-27-F, et al.

.C.	RESP.	C.P.	OTHER	IDENT.	ADMIT or REJECT.	DESCRIPTION
1(A-E)				6/ 3/80	6/ 3/80	General Counsel's moving papers
2				6/ 3/80	6/ 3/80	Labor Comm'r letter to Rosa Duarte dated 11/15/78 w/ attachment
3				6/ 3/80	6/ 3/80	Rogers Foods letter to Rosa Duarte dated 12/7/78
4				6/ 5/80	6/ 5/80	Rogers Foods Disciplinary Action memo dated 5/78
	A			6/ 5/80	6/ 5/80	Maps - Brawley Area and each of the harvesting areas -7 pages
	B			6/ 7/80	6/ 7/80	1979 calendar - for computer print-outs
	C(1-12)			6/ 7/80	6/ 7/80	12 photos of Tractor Equipment
5 (A-D)				6/13/80	6/13/80	Field Labor Time Card -9/14 - 9/20/79
	D(1-3)			6/13/80	6/13/80	Shipping Invoices for 1979 Imperial Valley harvest Re when harvest started
	E			6/13/80	6/13/80	Disciplinary Action - Pedro Duarte 7/19/78 (limited)
	F			6/13/80	Not Rec.	Tractor repair bill
	G			6/13/80	6/13/80	Settlement Stipulation 10/21/77 Re Guadalupe Arisiaga - Re No Animus
	H(1-8)			6/13/80	6/13/80	June 1-28, 1979 Imperial Valley payrolls - people on payroll
	I			6/13/80	6/13/80	July - September 1979 Phone Calls from Harris Credit Card number
	J			6/13/80	6/13/80	Mendota Phone Directory Re 9/8/79 phone call to Mendota
	K(1-9)			6/13/80	6/13/80	Payroll Records - August 23, 1979 to Oct. 18, 1979 - all field emolovees
	L			6/13/80	6/13/80	Print-out to show last day (10/12/78) of onion harvest in Sal. Vallev

APPENDIX II
EXHIBIT WORKSHEET

CASE NAME: ROGERS FOODS. INC.

CASE NO: 79-CE-27-F, et al.

.C.	RESP.	C.P.	OTHER	IDENT.	ADMIT or REJECT.	DESCRIPTION
	M(1-6)			6/13/80	6/13/80	Payroll Records - Sept. -Oct. '78 Re periods Rosa Duarte and J. Gonzales worked
	N(1-4)			6/13/80	6/13/80	Sorter - Graders at Marks Grain Ranch (Fields 330-333 on Resp. 9/79
	0			6/13/80	6/13/80	1978 Calendar - circled dates Rosa Duarte not worked
	P(1-12)			6/13/80	6/13/80	Graders who quit (not moved) from company on 9/14 or 9/15/79
	Q			6/13/80	6/13/80	Summary of Payroll Records of Harvester & Tractor Drivers hired '79 Imperial Valley harvest.
						[To be supplemented through Imperial Valley harvest]
	R			6/13/80	6/13/80	Summary from Payroll Records of hours worked by some graders 9/16/79 - 10/79
	S			6/13/80	6/13/80	Weather Data 9/78 - Fresno, CA
	T			6/13/80	Not Rec.	Undated letter from E. Pacheco for employment in 1980
	U			6/13/80	Not Rec.	Letter of Notice of Harvest for 1975.
	V			6/13/80	6/13/80	Payroll Records for 1978 to show digger operator had worked Exh. Q
	w			6/13/80	6/13/80	Map - Avenal/Kettleman Area
	X(1-8)			6/13/80	X(1-5/7-8) X6 Not Rec. 6/13/80	Respondent moving papers . (Discovery)
	Y			6/13/80	Not Rec.	Letter to Mori 9/30/77
	Z			6/13/80	6/13/80	Names of persons sent Notice of Change of Policy (to be sent to ALO after close of hearing)
6				6/13/80	Not Rec.	Investigative notes of ALRB Agent Frank Pulido from 9/79 Campos matter.