El Centro, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MIKE YUROSEK & SONS , INC . , Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 81-CE-8-EC 81-CE-13-EC 81-CE-14-EC 8 ALRB No. 37

DECISION AND ORDER

On January 11, 1982, Administrative Law Officer (ALO) Matthew Goldberg issued the attached Decision in this proceeding. General Counsel and Respondent timely filed exceptions and supporting briefs. Respondent also filed an answering brief.

Pursuant to provisions of Labor Code section 1146, the Agricultural Labor Relations Board (ALRB or Board) has delegated 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 ALO's rulings, findings, and conclusions and to adopt his recommended Order.

ORDER

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

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1. Cease and desist from:

a. Preventing the distribution and/or wearing of UFW buttons by its employees.

b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of 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. Sign the Notice to Employees attached hereto, and after its translation by a Board agent into appropriate languages, reproduce sufficient copies of the Notice in each language for the purposes set forth hereinafter.

b. Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order, to all employees employed by Respondent during the 1981 broccoli harvest.

c. Post copies of the attached Notice in all appropriate languages in conspicuous places on its property, including places where notices to employees are usually posted, for 60 days, the times 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.

d. Arrange for a Board agent or a representative of Respondent to distribute and read the attached Notice in all appropriate languages to its employees assembled on company time and property, at times and places to be determined by the Regional

Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice of employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

e. Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him/her periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: May 21, 1982

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

JOHN P. McCARTHY, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After a hearing at which all parties were given an opportunity to present testimony and other evidence, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by interfering with UFW supporters in their efforts to pass out union buttons. The Board has ordered us to post this Notice and to take certain other actions. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives you and all farm workers 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 this is true, we promise you that:

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

WE WILL NOT prevent you from passing out or wearing union buttons.

Dated: MIKE YUROSEK & SONS, INC.

By: _____
(Representative) (Title)

If you have any questions 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 319 Waterman Avenue, El Centro, California. The telephone number is 714/353-2130.

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

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

Mike Yurosek & Sons, Inc. (UFW)

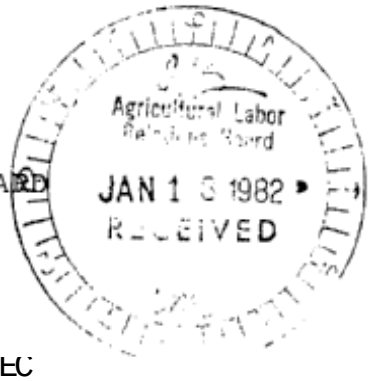
8 ALRB No. 37
Case Nos. 81-CE-8-EC
81-CE-13-EC 81-
CE-14-EC

ALO DECISION

The ALO, generally on the basis of credibility resolutions, found no evidentiary support for the allegations that Respondent lessened the broccoli piece rate without bargaining with the UFW; that Respondent changed its practice of providing cutting sacks during the 1981 broccoli harvest without bargaining with the UFW; that Respondent threatened and harassed members of the broccoli crew because of their involvement in union and concerted activity; and that Respondent discriminatorily discharged three broccoli harvesters for engaging in union and protected activity. He therefore recommended that these allegations be dismissed. The ALO found that Respondent violated Labor Code section 1153(a) by interfering with UFW supporters in their efforts to pass out union buttons at a bus pick-up point.

BOARD DECISION

The Board adopted the ALO's rulings, findings, conclusions, and recommended remedy in their entirety.



STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MIKE YUROSEK & SONS, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos: 81-CE-8-EC 81-CE-13-EC 81-CE-14-EC

MORGAN, LEWIS & BROKIUS by Mike Wolfram, Esq. for the Respondent

CHRIS SCHNEIDER, for the Charging Party

GLORIA BARRIOS, Esq., for the General Counsel

Before: MATTHEW GOLDBERG, Administrative Law Officer

DECISION OF THE ADMINISTRATIVE LAW OFFICER

I. STATEMENT OF THE CASE

Charges were filed by the United Farm Workers of America, AFL-CIO, hereinafter referred to as "the Union," and served on Mike Yurosek & Sons, Inc., hereinafter referred to as "Respondent," as follows: 81-CE-8-EC, January 16, 1981[1]; 81-CE-13-EC and 81-CE-14-EC, February 6; 81-CE-28-EC, February 20.[2] The charges alleged various violations of Section 1153(a), (c), (d) and (e) of the Act. The General Counsel of the Agricultural Labor Relations Board issued a consolidated complaint based on these charges dated February 26. The complaint and a notice of hearing were served on the Respondent on the same date. The Respondent subsequently filed an answer, essentially denying that it had committed the unfair

[1] All dates refer to 1981 unless otherwise noted.

[2] As the hearing opened, the parties mutually resolved the matters raised by charge #80-CE-103-EC. Accordingly, the charge was withdrawn and the paragraph in the complaint pertaining to it were deleted by the General Counsel prior to the commencement of the hearing.

labor practices alleged.[3/]

A hearing in the matter was noticed for and held commencing March 23 in El Centro, California. Respondent, General Counsel and the Charging Party appeared through their respective representatives. All parties at the hearing were afforded full opportunity to adduce evidence, examine and cross-examine the witnesses , and submit oral arguments and briefs.[4/]

Upon the entire record, including my observation of the demeanor of witnesses as they testified, and having read and considered the briefs submitted to me since the hearing, I make the following:

II. FINDINGS OF FACT

A. Jurisdiction of the Board

1. Respondent is, and was at all times material herein, an agricultural employer within the meaning of Section 1140.4 (c) of the Act.

2. The Union is, and was at all times material herein, a labor organization within the meaning of Section 1140.4 (f) of the Act.[5/]

B. The Unfair Labor Practices Alleged

1. Preliminary Statement: The acts which formed the subject matter of the complaint involved events occurring at those segments of Respondent's operations located in the Imperial Valley. In the Imperial Valley, Respondent harvests, packs and sells broccoli, carrots, parsnips, turnips and mixed lettuce. The violations alleged involved members of the broccoli and turnip crews.

The Union was certified as the exclusive bargaining representative of Respondent's employees on August 4, 1978. No evidence relative to the bargaining history was adduced, and it is therefore presumed that an agreement has yet to be reached between the parties.

[3/] On March 23, the General Counsel issued a further consolidated complaint containing certain changes in the matters previously alleged. It was this consolidated complaint that framed the issues for the instant hearing.

[4/] Following the presentation by General Counsel of its case in chief, the ALO dismissed the allegation based on charge 81-CE-28-EC as the General Counsel had not established a prima facie case in that instance „ Other allegations of the complaint were likewise dismissed, but as the charges pertaining to them contained additional alleged violations incorporated into the complaint, these charges remained operative.

[5/] The jurisdictional facts were admitted by Respondent in its answer.

On March 26, 1980, Respondent and the General Counsel executed a settlement agreement involving charges numbered 80-CE-21-EC, 79-CE-224-EC and 79-CE-225-EC. The settlement agreement contained a statement to the effect that the execution of the agreement should not "constitute an admission by respondent that it has engaged in any unfair labor practices. " However, as part and parcel of that agreement, the members of a particular broccoli crew were reinstated by Respondent and a certain sum was paid over to them, presumably as compensation for lost wages. All of the allegations remaining operative at the close of the General Counsel's case involved this broccoli crew and/or its individual members.

2. Decreasing the Broccoli Piece Rate

General Counsel alleged that on or about January 14, 1981, "Respondent discriminatorily decreased the piece rate by requiring the workers to overfill the broccoli bins without notice to or negotiations with the UFW." The theory underlying this allegation was that the broccoli workers became required to load more broccoli in the field containers than they had in previous years. As the compensation paid to these workers is determined by the number of bins that they fill per day, by requiring its employees to put more broccoli in these bins, General Counsel contends, Respondent was, in effect, paying its harvest workers less than they had previously received.

General Counsel witnesses Ferdinand Romero, Jesus Sanchez and Valentino Romero each testified that at various times they were told by the company supervisors or foremen to fill the broccoli bin higher in the center than the level of its sides so as to create a mound in the center of the bin. They contended that in prior years the bins merely had to be filled so that they were flat or level across, the top.

Respondent, principally through its witnesses David Yurosek and supervisor Jerry Gage, maintained that in January problems arose regarding the total "pack-out." The "pack-out" is defined as the ratio of the number of cartons of broccoli that are packed on a given day as compared with the number of bins which are filled with that broccoli, or, simply, as the number of cartons per bin. As crews are compensated according to the number of bins they fill, the "pack-out" is a means of determining per-unit cost. David Yurosek stated that he told his supervisor that the bins were being brought to the packing shed with less broccoli in them than should be expected, and instructed him to insure that the bins were being filled to the proper level. Gage relayed these instructions to both foremen and to the particular worker assigned to stand on top of the trailer containing the bins and direct the flow of the broccoli as it came off the chute from the broccoli harvesting machine. Gage noted that the broccoli from the machine would often pile up in the center of the bin, and that it was the function of the worker at the top to make sure that the broccoli was evenly distributed throughout the bin. At no time, according to Yurosek, Gage or foreman Xavier Romero, were workers told to fill the bins above the levels previously required.

I find the testimony supporting this allegation to be inherently illogical for a number of reasons, and hence, recommend that this allegation be dismissed. Although Yurosek testified that the bins had to be filled to the point where they would remain full notwithstanding the settling of the broccoli in the bin during transport, filling the bin above the level of its sides would perforce mean that brocolli would spill over in transport and be lost. In addition, the bins are double stacked on top of the trailer when they are transported from the broccoli fields to the packing shed. Overfilling the bins would mean that the broccoli in the lower bins would be crushed and rendered useless. Lastly, while the company generally uses a standard size bin, 54 inches in height, there are occasions when a large order and a shortage of equipment necessitate that bins of 48 inches in height are utilized. Workers are compensated at the same per-bin rate regardless of the height of the bin that is used. If, as General Counsel contends, workers were required to overfill the bins, thus lessening the piece rate that they could realize and the company had intended to effectuate a permanent change in their piece rate, it would be inconsistent to continue to utilize the smaller bins and thus compensate workers more for less broccoli harvested.

Notwithstanding any of the foregoing, perhaps the most significant factor leading to the conclusion that General Counsel has failed to meet its burden of proof in regard to this allegation is that the characterizations of the contents of the broccoli bins by General Counsel's witnesses were exceedingly subjective and conclusionary. Testimony merely reflected the witnesses' perception of the amount of broccoli that was being placed in the bins. No evidence was presented by General Counsel concerning objective quantification of the amounts of broccoli being harvested by the broccoli crews. No demonstration was made or documentary evidence adduced to the effect that the so-called "overfilled" bins contained more cartons of broccoli than had bins in the past. Accordingly, as General Counsel has failed to prove by a preponderance of the evidence that Respondent required workers to "overfill" the broccoli bins, this allegation is dismissed.

3. Failure to Provide Cutting Sacks

General Counsel alleged that Respondent "discriminatorily changed working conditions by not giving 'cutting sacks' to the broccoli crew without notice or negotiations with the UFW.[6/] Broccoli is harvested by a crew of approximately 20 individuals walking behind what is known as a "Ramsay" machine. The machine is essentially a moving conveyor belt with an elevator attached to one end. As the crew cuts the broccoli, it places the vegetable on the conveyor belt. The conveyor belt then transfers the broccoli to the elevator which unloads the broccoli into bins sitting atop a waiting trailer, The dimensions of the machine are such

[6/] The wording of several allegations in the complaint was often confused and misleading. General Counsel obviously sought to allege these particular actions as violations of both 1153(c) and 1153(e) of the Act, No evidence whatsoever was presented to the effect that there was any sort of "discrimination" being perpetrated by the Respondent in regard to the cutting sacks. One may speculate that by discrimination, General Counsel meant that this particular broccoli crew was not given sacks while other crews were, The record is devoid of any evidence on this matter.

that while one of its wheels may travel down a furrow and thus not damage the plants, the other must be positioned on top of a broccoli bed and would, theoretically, destroy the plants in its path were it not for the assignment given to two members of the broccoli crew to cut the broccoli which lies in front of the machine wheel. Since these individuals are a few steps ahead of the machine and thus the conveyor belt, they are supplied with cutting sacks into which they place the broccoli that they have harvested. The sacks are emptied on the conveyor belt
when they have the opportunity to do so. General Counsel contends that Respondent did not supply these sacks to this particular broccoli crew.

The testimony of witnesses concerning this aspect of General Counsel's case was diametrically opposed, depending upon who actually called the witnesses. While Respondent's witnesses uniformly attested that two sacks were available throughout the season, General Counsel's witnesses, with slight variation, stated that the sacks were not provided at various times of the season. Specifically, workers Valentine Romero and Georgina Hernandez testified that no sacks were made available by the company before February 1981, Marguerita Romero, another cutter, stated that there was only one sack made available during the season and that this sack was torn. Nevertheless, she did not use a sack because it became too heavy and unwieldy when it was filled* Her husband, Ferdinand Romero, said that cutting sacks were generally not available and that, at times, he had seen only one such sack and that this one was torn.

Similarly, Jesus Sanchez, another of General Counsel's witnesses, stated that no sacks were available in December 1980 and January 1981. Around February he asked another foreman, Chuy Vasquez[7/] if he might borrow a sack. Vasquez supplied him with one but this sack was torn. The company then made two sacks available: one of these got lost, the other was torn, and the company eventually used melon sacks to replace them. Sanchez personally did not use a melon sack because he believed it was harder to use than the broccoli sacks, given its smaller opening at the top and greater depth.

Insofar as Respondent's witnesses were concerned, Xavier Romero, foreman of the broccoli crew, stated that there were two sacks available throughout most of the season; that one got lost and the other one was torn; that after receiving complaints from Jesus Sanchez, he sought to obtain two additional sacks and asked Jerry Gage for them. Gage corroborated Romero's statements that one of the sacks disappeared at some point in February and that he directed the purchase of new sacks around that time. Rubin Perez, driver of the Ramsay machine, stated that he saw two sacks throughout the season. He ordinarily placed these sacks on top of the machine at the end of each work day. Since the people utilizing the sacks walked in front of the wheels of the machine he drove, Perez was in a position to constantly observe these workers. I found Perez to be an exceedingly credible witness, particularly in light of the fact that he had no perceivable axe to grind. Therefore,

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[7/] Vasquez was a foreman in the lettuce and a friend of Sanchez,

it is the version supplied by Respondent's witnesses that I credit, to the effect that two sacks were available throughout the season; that at some point, one of these got lost and another one got torn, and these were eventually replaced by melon sacks which were more difficult to use.

There was much testimony concerning the preference of workers not to use the sacks even when supplied, since the sack became heavy and slowed the workers down. While the workers might not wish to use them, that is not to say that they were not made available. Consequently, I find that by a preponderance of the evidence, that General Counsel has not proved that Respondent did not provide cutting sacks to its broccoli crew. The testimony supplied by Marguerita and Ferdinand Romero concerning these sacks, in light of its conflict with that of witnesses which I credited, is seriously undermined.

4. Threats and Harassment to the Broccoli Crew

General Counsel further alleged that the broccoli crew in question, which was reinstated pursuant to a settlement agreement as discussed above, was "threatened and harassed by various foremen and supervisors" during the course of the 1980-81 broccoli season. The unfortunate aspect of this allegation is its lack of specificity. Had a bill of particulars been filed regarding this allegation, discussion and analysis of it would have been more simple. However, since this was not done, one can only speculate as to what General Counsel meant by "threats and harassment." Notwithstanding the due process problems raised by the vague framing of issues in this matter, it is again concluded that General Counsel has failed to prove by a preponderance of the evidence that this broccoli crew was, in fact, "threatened and harassed by various foremen and supervisors."

Much testimony was provided by General Counsel's witnesses to the effect that they were reprimanded whenever they attempted to cut the broccoli "arriba del surco." Essentially, this involves a method of harvesting broccoli where the worker stands directly on top of the bed and cuts the broccoli. Other methods of harvesting broccoli include where the worker walks down the furrow, as opposed to the bed, and cuts the broccoli on the beds which are to the left or the right. General Counsel's witnesses Marguerita and Ferdinand Romero testified that they were never reprimanded for cutting the broccoli "arriba." Marguerita stated that she preferred this method because it was easier and denied that the plants were damaged when she walked down the middle of the bed. General Counsel's witness Georgina Hernandez said that, although the company did not ordinarily cut the broccoli arriba in previous years, it became stricter about this policy in the 1980-81 season. Valentine Romero also testified that he worked on top of the broccoli bed in the previous seas on„

The most telling testimony provided by General Counsel witnesses was supplied by Jesus Sanchez, the broccoli crew representative. Sanchez had the greatest amount of experience in broccoli among the witnesses who testified, having worked at least seven years with that crop, including a stint with the Maggio Company, Sanchez stated that which method the workers utilize to cut broccoli depends on the system that the company employs. As for him, he preferred to cut below the

bed: however, he would or could work in whatever manner the foreman requested him to. Sanchez testified that the foreman continually reprimanded workers who were on top of the bed. For example, Josefina Montejana had grave problems with working below the bed and was continually reprimanded by her foreman for doing so.[8/]

Respondent's witnesses uniformly testified that the company has never allowed workers to cut solely "arriba." When workers have done so it has only been under specific circimstances or when a foreman is not looking. For example, a worker may cut "ar`riba" if the crew is performing a "final cut" in a field.[9/] David Yurosek stated that by walking down the bed the worker can destroy the brittle broccoli plant. He has always instructed his foremen to tell the people not to walk on top of the bed. Supervisor Jerry Gage testified that he told the foremen to direct people not to walk on top of the bed. Similarly, foreman Xavier Romero told workers not to perform their work in that manner. Yurosek stated that the only system ever utilized by the company in all of its history was that in which the workers walked down the furrow. Therefore, it is concluded that the company did not harass workers by instructing them not to cut broccoli "arriba," or reprimanding them for doin so.

Another example of "harassment" by the company of the crew was the conclusion by General Counsel witnesses that Respondent's foreman, Xavier Romero, used obscenities and vulgar expressions at times when talking to women in the crew. Xavier, for his part, denied using any improper language. Josefina Montejana testified that Xavier was continually making suggestive remarks to her. However, I found her testimony as a whole to be unreliable and discount much of its impact. The one example used by Marguerita Romero to demonstrate that Xavier was using obscenities was her testimony that Xavier would tell the women workers: "cuidado al chiquito" Translated literally the expression means "watch out for the little one." However, in idiomatic Mexican Spanish, the phrase can mean "watch out for my ass." Obviously, Xavier was utilizing a double entendre although when he testified he insisted that he was exhorting the workers not to cut the small plants. Notably, during the course of the hearing, when discussion was had concerning the exact meaning of the phrase several Spanish speaking spectators in the room were noticed to be giggling or laughing when the phrase was uttered. Admittedly, certain cultural differences might make the expression more serious and more vulgar than

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[8] This reprimands figured essentially in events leading up to her discharge and will be discussed below.

[9/] Often, broccoli fields are cut two and three times. Obviously, on the final cut, it is permissible to walk on top of the beds since none of the broccoli that remains in the field will be harvested. When the field is very muddy it is also permissible to harvest broccoli "arriba." Since the furrows are below the beds, the furrow would be muddier than the bed and, hence, it would be easier for the worker to walk on top of the beds while cutting.

it appears. However, it is impossible to decide on the basis of this record that the foreman, by his employment of such an expression, was engaging in harassment of the workers as opposed to idle banter and word play.

A further example which arguably appears to be a threat centered around an incident wherein the foreman, Xavier Romero, backed the company bus into the portable toilet at the fields. At that time, unfortunately, Marguerita Romero and her mother-in-law were inside of the toilet and, after the impact of the bus, tumbled out of the bathroom and cursed out the foreman. The foreman, on his part, told the ladies that they should not be speaking to him like that and, if they persisted, they could be fired. Plainly, the incident was a regrettable accident and did not rise to the level of a campaign of threats, etc., perpetrated by Respondent's foreman and supervisors.

The last examples which could ostensibly provide any basis for this allegation are the written warnings that were received on a crew-wide basis as a result of certain actions that it took on February 2 and February 10. On February 2, the crew refused to complete the harvest order for the day and walked out of the fields at approximately 3:30 PM. As a result, the company issued written warning notices to every member of the crew. On February 11, warning notices were issued to every member of the crew as a result of their failure to work on the day previous. This day, organized by the Union, was a commemoration ceremony on the anniversary of the death of Rufino Contreras. While four or five workers had told the foreman that they might not be there on the 10th, the bulk of the crew did not.

I find the company issuance of warning notices was totally justified in both of these circumstances. Regarding the first instance, the company's policy has always been for the workers to work no matter how many hours it takes to complete the orders for that day. The workers, by stopping when they felt they should, subjected themselves to discipline on the part of the company. Regarding the total absence of the crew on February 10th, a workday, the day itself was not declared or bargained over by the Union as a holiday for the workers: rather, the workers took it upon themselves to take the day off. Company disciplinary actions as a result were wholly justified. It is clear that workers may not, absent other considerations, set their own hours of work. See generally, Sam Andrews' Sons, 5 ALRB No. 68 Q979); Phelps Dodge Copper Products. 31 LRRM 1072 (1952); NLRB v. Kohler Company, 220 F2d 3 (CA7 , 1955).[10/] Therefore, allegations concerning threats and harassment

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[10/] General Counsel, during the presentation of the case, alluded to its theory that the company had not had a warning system prior to this particular year and had not issued written warnings. No evidence was adduced on this specific point. Paragraph twenty-two of the complaint specifically alleged that "Respondent unilaterally and discriminatorily issued warning notices to members of the broccoli crew who participated in the commemoration of Rufino Contreras." This allegation was dismissed at the close of General Counsel's case due to the absence of a prima facie showing. On the last page of its brief General Counsel attempted to resurrect the issue by stating in broad conclusionary terms that "the warning notices served

by foremen and supervisors regarding the broccoli crew are dismissed for lack of evidence.

5. The Discharge of Josefina Montejana

Josefina Montejana was originally hired by the Respondent in December of 1979 to work as a broccoli cutter for that season. She was rehired in December 1980 to work in the current season. Despite her self-serving statement that she has been a "Union activist" for the last four years, the only evidence, according to Ms» Montejana, of her activities on behalf of the Union was that in the beginning of 1981 she, on occasion, wore a Union button. In this respect, she was not unlike the great bulk of other members of the crew who likewise wore such buttons.[11/]

Montejana admitted that she persistently refused to work cutting broccoli from the furrow, but rather, contrary to company policy, stood on top of the bed. Nearly every day she was told to get down from the bed by her foreman. Montejana was also reprimanded for the quality of her work in that she was cutting the broccoli too short or with too many leaves. She further admitted that she argued with the foreman by telling him that she could not cut the broccoli the way he wanted, that the broccoli machine was going too fast. The foreman, Xavier Romero, responded that it was an order and that if she wasn't able to do it, she would be fired.

On February 3rd, after being told repeatedly to get down off the broccoli bed, Montejana, according to Xavier Romero, told him that she had learned to work on the top and that no one would tell her to get off. After a brief argument, she walked out of the field and remained there for some time. Several workers in the crew exhorted Montejana to return to work. There are varying accounts as to how long she actually stayed outside the field, but it is clear that the machine made at least one pass through the field without Montejana. During this time, supervisor Jerry Gage noticed her standing outside the field and asked the foreman what she was doing out there. When Romero responded that she had argued with him and walked out of the field, Gage told the foreman that she should be fired.

Gage testified that it was company policy that when a worker left work in the middle of the day, he or she would be terminated. In Gage's view, Montejana could not be allowed to return to work because she had voluntarily quit, leaving her work station in the middle of the day.

[10/] (Con't) a punitive purpose and also violate Section 1153 (a) and (c). . . " The statement follows an extensive discussion of the nature of protected concerted activity, and whether work stoppages engaged in by the broccoli crew might be considered such. General Counsel's arguments in this regard are totally wide of the mark: the issue is not whether the activities engaged in were protected, but whether Respondent's disciplinary actions were justified or were undertaken with discriminatory motivation for the purpose of interfering with its workers' Section 1152 rights.

[11/] Interestingly, Montejana was hired to replace workers who were alleged to have been discharged for protected concerted activities„

It hardly bears reiterating that the General Counsel has the burden of proving that there was "some connection or causal relationship between (an employee's) Union activity and the discharge." Jackson and Perkins Rose Company, 5 AIRB 20 (1979) p.5; see also Nishi Greenhouse, 7 ALRB No. 18 (1981). There is not one shred of evidence that there can be any causal evidence whatsoever between Montejana's discharge and her Union activity. Montejana was not a crew representative and was not vocal in her sentiments regarding the Union. Rather, she had a deep-seated conflict with the foreman of the broccoli crew. The foreman repeatedly told her to perform her work in a certain manner and Montejana obstinately refused to do so. When, on the last day of her tenure with Respondent, Montejana was unable to emotionally cope with the foreman's repeated directions, she simply decided to leave her work. In none of this can there be found the suggestion that she was terminated "but for" her activities on behalf of the Union. Accordingly, the allegation that Josefina Montejana was discharged for discriminatory reasons must be dismissed.

6. The Discharges of Marguerita and Ferdinand Romero

As with Josefina Montejane, the General Counsel has similarly failed to prove that there was some causal connection between the Union activities of these particular individuals and their discharges which occurred on February 4th. Both Marguerita Romero and her husband, Ferdinand, were members of the broccoli crew. Marguerita was a member of the company negotiating committee. In this capacity, she attended two or three negotiating meetings in January of 1979. She admitted that she did not actively participate in the meetings themselves, but merely was present along with approximately 20 other workers. Despite her assertion that she "filed" unfair labor practice charges involving the Respondent, the evidence demonstrates that it was the Union, not she, that filed such charges, although, as alluded to earlier, Marguerita Romero was a member of the group of broccoli crew workers who was reinstated pursuant to the settlement agreement which resolved those charges.[12/]

Most of Marguerita Romero's "concerted activity" consisted of her participation with other members of the crew in protests of one sort or another. The broccoli crew engaged in several brief work stoppages during the 1980-81 season. One of these was prompted by a dispute involving their right to a "first pick."[13/] This protest, led by the broccoli crew representatives, contested the company's failure to assign the first cut to the crew in question. Another protest, or minor work stoppage, occurred in February and was prompted by the crew's refusal to "work" more than eight hours on a certain day. As crew workers characterized the situation, work had not begun "on time" that morning because there was ice in the

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[12/] Her husband, Ferdinand, was not working for the company at the time.

[13/] As part of the aforementioned settlement agreement, this particular broccoli crew was to have the right to first pick a field. A rumor in mid-January circulated through Respondent's operations that another crew was performing the first pick operation at a particular field.

fields: the crew had to wait until most of the ice melted before cutting commenced. As a result, the crew was required to stay later than the usual quitting time to complete the day's orders. They consequently walked out of the fields in protest.

Marguerita Romero also participated in a protest following the discharge of Josefina Montejana. On February 4th, the day after the discharge, the broccoli crew refused to commence working until Montejana was rehired. Crew representatives spoke with company supervisory personnel and, upon being told that Montejana would not be rehired, the crew was ordered to work. It did in fact go in to work approximately one-half hour afterward.

In none of these particular instances did Marguerita Romero do anything which would call attention to herself but merely participated as a member of the group. Although the Act protects all participants in protected, concerted activities, not just the most vocal or active, the record is insufficient to establish a justification for the Romeros being singled out for discharge and thus provide the requisite causal link to establish a violation. (Matsui Nursery Inc., 5 ALRB No. 60 (1979).

On the day of her termination, she and her husband, Ferdinand, had worked for approximately two or two and one-half hours. She testified that after this interval, she began to feel ill and told her husband to inform the foreman that she would not be able to continue working that day. After her husband did so, the two workers left the fields in their car. The workers then drove into El Centro to take care of a minor matter on the Department of Motor Vehicles. They discovered during the course of their trip to El Centro that Ferdinand's mother, who also was employed as a member of the broccoli crew, had left her lunch in their car. They returned to the harvest site, ostensibly to deliver the lunch to the worker.

What transpired next was a source of conflict in the testimony of the witnesses. While Marguerita and Ferdinand both stated that they remained at the field site after returning for only about half an hour or so, foreman Xavier Romero stated that, after their return, the Romeros remained at the field up until about 15 or 20 minutes before quitting time. Company supervisor, Jerry Gage, although not present throughout the entire day on February 4th, likewise said that on his visits to the fields during the course of the day, he saw the Romeros there when he arrived during the workers' break at 10:00 AM and also when he returned two hours later.

Apart from the obvious self-interest of the Romeros which might color their testimony, the inconsistencies between their testimony and that of several other witnesses leads to the conclusion that their testimony regarding the length of time that they remained at the field on the day in which Marguerita claims to have been ill was longer than one-half hour. For example Ferdinand Romero denied that he drank beer while outside the fields that day.[14/] Yet, Xavier Romero, the foreman, and

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[14/] At no time was the suggestion made that this constituted objectionable behavior.

Rubin Perez, the driver of the Ramsay machine, as well as a tractor driver, Hector Perez, all attested to the fact that Ferdinand was, in fact, drinking beer at the edge of the field. The Romeros both stated that they only stayed long enough to chat briefly with Josefina Montejana, who was also outside the fields that day seeking re-employment. Hector Perez, however, a disinterested observer, stated that he did see the Romeros for two to three hours outside the fields that day.

The company consistently proffered as the reason for discharging the Romeros that they had left work in the middle of the day, not unlike Josefina Montejana. It was quick to state that Marguerita Romero's illness would certainly have justified her inability to continue to work that day. However, supervisor Gage was exceedingly skeptical of Marguerita's condition when, rather than staying home for the rest of the day, she merely hung around outside of the fields for an extended period of time.

General Counsel sought to adduce evidence that other workers had left work early and had not been fired because of it. One such worker, Georgina Hernandez, testified that she left work 15 minutes before quitting time one day but had informed her foreman that she had some legal matters to attend to. The Romeros themselves attempted to show that on January 12th they did not work and did not tell their foreman that they were not going to be there. However, it appears that no one worked on that particular day as it rained. On January 15th, likewise, the Romeros did not work because they went to visit Valentine Romero, Ferdinand's father, in the hospital. Although they stated they were not reprimanded for not being there that day, Xavier Romero Testified, without contradiction, that Ferdinand had explained on the following day that they had gone to visit Valentine on the day that they were absent. Accordingly, General Counsel failed to demonstrate that the company regularly condoned worker absences without explanation or excuse, or that workers were permitted to leave work simply when they wanted to.

The evidence does not show that there was any causal connection between the Romeros[1] "Union" activities and their discharges. The Romeros were by no means the most vocal and visible participants in Union activity. Jesus Sanchez and Timothy Magallanes were the crew spokesmen and communicated worker protest or dissatisfaction on a regular basis to company foremen and supervisors. The Romeros merely were members of a group that engaged in particular protests. Nothing would indicate that the company had singled them out for particularized discriminatory treatment on the basis of their participation in the group activities. It is concluded that it has not been shown that "but for" this participation the Romeros would not have been discharged. (See Nishi Greenhouse, supra; Wrightline Inc., 251 NLRB No. 150 (1980).) Rather, the evidence points to the virtually inescapable conclusion that, while Marguerita may not have been feeling well on February 4th, and the foreman was so informed, the Romeros' reappearance at the fields and their presence there for an extended period made both the foreman and supervisor Gage skeptical as to Marguerite's condition. They had substantial business justification for terminating the Romeros since they had left work in the

middle of the day without a credible reason. Therefore, it is concluded that General Counsel has failed to prove by a preponderance of the evidence that Marguerita and Ferdinand Romero were discharged in violation of Section 1153 (e) of the Act.

7. Interference with Union Acitvity by Supervisor Guadalupe Torrez

General Counsel alleged that supervisor Guadalupe Torrez interfered with the organizing activities being carried on by proponents of the Union prior to working hours. Before discussing this particular issue, it is essential to determine whether or not Ms. Torrez was a supervisor within the meaning of the Act as Respondent denied same in its answer, Ms. Torrez has been employed by the Respondent for four years. She described herself as a "checker" with the turnip crew, stating that she gives out the workers' piece rate cards and keeps track of the number of sacks that each worker picks, determining in the process that sacks weigh the proper amount. The year previous, she worked in charge of the broccoli crew and, at that time, had authority to hire. In reference to her current position, Torrez stated that she has hired people but does not have the authority to fire. When these individuals are doing bad work, she can reprimand them as well as teach the workers when they initially begin to work how the job is performed. In the year previous, she was a foreman with the broccoli crew. As Torrez had the "authority. . . to hire (and) discipline. . .employees" and the responsibility to direct them, it is determined that Guadalupe Torrez is, in fact, a supervisor within the meaning of the Act, as she did possess the requisite indicia of supervisorial authority under Section 1140.4(j) of the Act. (Ohio Power Company v. NLRB. 176 F2d 385, 357 (CA 6 1949) cert, den. 388 US 899 (1950)1)

Torrez freely admitted that she was aware that the members of the broccoli crew that worked for Respondent were "Chavistas" and the people in this crew created "many problems." On one occasion, members of the broccoli crew appeared at the pickup point for the turnip workers and began to distribute Union buttons. Although Ms. Torrez denied that the following took place, two witnesses provided mutually corroborative testimony concerning it. Maria B, Sanchez, one of the workers engaged in the distributing of buttons to the turnip crew workers, said that on that occasion, Ms. Torrez stated "put away your little buttons, you don't need these little buttons to work with" Present at the time, Jesus Sanchez substantiated this version of the facts.

Torrez claimed that she had "problems" with people who engaged in this activity and on one such occasion, had the bus pick the turnip crew up at a location different than was customary.[15/] Torrez claimed that the individuals engaged in

[15/] General Counsel alleged that this change amounted to a unilateral change in working conditions implemented without negotiation with the Union. However, the testimony bore out the fact that although the bus did pick up workers at a different location on one morning, the bus proceeded on to the usual location where it remained for approximately 15 minutes, during which time organizing activities by broccoli crew members were allowed to proceed unimpeded.

the organizing activities used obscene language in reference to her and that, therefore, to avoid a possible confrontation, she decided to pick up workers at a different location on one particular morning. Given the mutually corroborative testimonies of Maria B. Sanchez and Jesus Sanchez, and the admitted aversion of Ms. Torrez for the Union, it is concluded that Ms. Torrez did, on the morning in question, attempt to impede the distribution of Union organizational buttons and also to restrain the legitimate organizing activities of the Union adherents in violation of Section 1153(a) of the Act. (Abatti Farms Inc., 5 ALRB No.30 (1979); see also Republic Aviation Corporation v. NLRB. 324 US 793 (1945); Pennco Inc., 232 NLRB No.29 (1977).)

ORDER

By authority of the Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Mike Yurosek & Sons, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

a. Preventing the distribution and/or wearing of UFW buttons by your employees,

b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of 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. Sign the Notice to Employees attached hereto, and after its translation by a Board agent into appropriate languages, reproduce sufficient copies of the Notice in each language for the purposes set forth hereinafter.

b. Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order, to all employees employed by Respondent during the 1981 broccoli harvest.

c. Post copies of the attached Notice in all appropriate languages in conspicuous places on its property, including places where notices to employees are usually posted, for 60 days, the times 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.

d. Arrange for a Board agent or a representative of Respondent to distribute and read the attached Notice in all appropriate languages to its employees assembled on company time and property, at times and places to be determined by the Regional Director. Following the reading, the Board agent

shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice of employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

e. Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, the Respondent shall notify him/her periodically thereafter in writing hat further steps have been taken in compliance with this Order.

DATED: January 11, 1981

MATTHEW GOLDBERG
Administrative Law

NOTICE TO EMPLOYEES

After a charge was filed against us by the United Farm Workers Union and after a hearing was held at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we 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 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.

WE WILL NOT prevent you from passing out or wearing union buttons.

DATED: _____

MIKE YUROSEK & SONS, INC.

By: _____
Representative Title

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

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

DO NOT REMOVE OR MUTILATE