

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

MISSION PACKING COMPANY	)	Case Nos.	80-CE-44-SAL
	)		80-CE-54-SAL
Respondent,	)		80-CE-144-SAL
	)		80-CE-254-SAL
and)		
)		
UNITED FARM WORKERS OF	)	8 ALRB No.	47
AMERICA, AFL-CIO,)		
)		
Charging Party.)		
)		

DECISION AND ORDER

On January 22, 1982, Administrative Law Officer (ALO) Michael H. Weiss issued the attached Decision in this proceeding. Thereafter, Respondent timely filed exceptions and a supporting brief, and General Counsel filed a reply brief.

Pursuant to the provisions of Labor Code section 1146, the Agricultural Labor Relations Board 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,^{1/} and conclusions^{2/} of the ALO and

^{1/} We hereby correct the reference on page 35 of the ALO's Decision to foreman Covarrubias's testimony. The testimony described by the ALO is that of foreman Zambrano, not Covarrubias.

^{2/} Even if there were no positions available in Respondent's crews when Wenceslao Leyva and Ramon Santiago applied to foreman Murillo for work, Murillo's treatment of their applications in a discriminatory manner because of their union activities would constitute a violation of Labor Code section 1153 (c) and (a). (Abatti Farms, Inc.)

to adopt his recommended Order as modified herein.

In its exceptions, Respondent argues that the General Counsel is guilty of laches because of the delays, following the filing of the charges and the issuance of the complaint, and prior to the beginning of the hearing. The ALO properly rejected that argument at the hearing. The NLRB has consistently held that laches is not a defense in its proceedings, and that administrative delay is not sufficient reason to deprive employees of their statutory rights. (NLRB v. J. H. Rutter-Rex Manufacturing Co., Inc. (1969) 396 U.S. 258 [72 LRRM 2881]; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177]; Standard Oil Company of California (1945) 61 NLRB 1251 [16 LRRM 140].)

Respondent also takes exception to the ALO's granting General Counsel's motion at the hearing to amend the complaint to include an allegation that Respondent violated Labor Code section 1153(d) by refusing to rehire employee Samuel Rangel. We find no merit in Respondent's exception. The NLRB has allowed similar amendments to complaints at hearing and has overruled administrative law judges who have abused their discretion by refusing to allow such amendments. (The Lion Knitting Mills Company (1966) 160 NLRB 801 [63 LRRM 1041]; Citizens National Bank of Willmar (1979) 245 NLRB 389 [102 LRRM 1467]; Everbrite Electric Signs, Inc. (1976)

[fn. 2 cont.]

(May 9, 1979) 5 ALRB No. 34.) Both Leyva and Santiago gave Murillo their addresses and telephone numbers. Murillo told Leyva he would call him when there was an opening, and told Santiago that he would speak to Ramirez about hiring him. However, within the next two weeks, Respondent hired several other workers who had not traveled to Huron after the 1979 Salinas harvest, rather than hiring Leyva or Santiago.

222 NLRB 679 [91 LRRM 1314].) At the hearing, although Respondent was given an opportunity to offer further testimony after the General Counsel's motion to amend the complaint was granted, it declined to do so. There is no evidence that Respondent was in any manner prejudiced by the amendment.

The main thrust of Respondent's exceptions is an attack on the ALO's credibility resolutions. Respondent argues that the ALO's credibility resolutions are suspect because he resolved contradictions in the testimony in favor of General Counsel's witnesses rather than Respondent's witnesses. We will not disturb an ALO's credibility resolutions unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. (Adam Dairy dba Rancho Dos Rios (Apr. 26, 1978) 4 ALRB No. 24; El Paso Natural Gas Co. (1971) 193 NLRB 333 [78 LRRM 1250]; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1531].) Our review of the record in this matter indicates that the ALO's credibility resolutions are supported by the record as a whole and we therefore affirm them. The fact that a hearing officer credits one party's witnesses over another party's witnesses is not improper and does not by itself imply bias on the part of the hearing officer. (NLRB v. Tonkawa Refining Company (10th Cir. 1971) 452 F.2d 900 [79 LRRM 2103]; NLRB v. Federal Dairy Company (1st Cir. 1962) 297 F.2d 487 [49 LRRM 2214]; Andrews v. Agricultural Labor Relations Board (1981) 28 Cal.3d 781.)

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that

Respondent Mission Packing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to hire or rehire, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in union activity or other concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act), or has filed charges or otherwise utilized his or her rights under the Act.

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

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

(a) Offer to Samuel Rangel, Wenceslao Leyva, Ramon Santiago and Pedro Edeza immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges.

(b) Make whole Samuel Rangel, Wenceslao Leyva, Ramon Santiago and Pedro Edeza for all losses of pay and other economic losses they have suffered as a result of their discharges, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed at the rate of seven percent per annum.

(c) 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.

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from April 18, 1980, until the date on which the said Notice is mailed.

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

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall

determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

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

Dated: June 30, 1982

JOHN P. MCCARTHY, Member

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas 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 employees Samuel Rangel, Wenceslao Leyva, Ramon Santiago, and Pedro Edeza because of their union 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 other farm workers in California these rights:

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

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

WE WILL NOT hereafter refuse to hire or rehire, or in any other way discriminate against, any agricultural employee because he or she has engaged in union activities or other protected concerted activities, or because he or she has filed charges with the ALRB or otherwise utilized their rights under the Act.

WE WILL reinstate Samuel Rangel, Wenceslao Leyva, Ramon Santiago and Pedro Edeza to their former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse them for any pay or other money they have lost because we refused to rehire them, plus interest computed at seven percent per annum.

Dated:

MISSION PACKING COMPANY

By:

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Boronda Road, Salinas, California, 93907. The telephone number is (408) 443-3160.

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

Mission Packing Company
(UFW)

8 ALRB No. 47
Case Nos. 80-CE-44-SAL
80-CE-54-SAL
80-CE-144-SAL
80-CE-254-SAL

ALO DECISION

The ALO concluded that Respondent violated section 1153 (c) and (a) of the Act by refusing to rehire four employees because of their union activities. The ALO found that Respondent's asserted business justifications (that the employees did not make a timely application for reemployment, and lost their seniority by failing to follow the harvest circuit) were pretextual since the evidence indicated that the employees made timely applications for rehire, and that other employees who had failed to follow the harvest circuit were rehired instead of the discriminatees.

BOARD DECISION

The Board affirmed the ALO's rulings, findings, conclusions, and adopted his recommended remedial Order, with modifications. The Board rejected Respondent's argument that the General Counsel was guilty of laches, as administrative delay is not a defense in NLRB or ALRB proceedings. The Board also affirmed the ALO's ruling granting General Counsel's motion at hearing to amend the complaint by adding a section 1153(d) allegation, noting that there was no evidence that Respondent was in any manner prejudiced by the ruling.

* * *

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:)
)
MISSION PACKING CO.,)
)
Respondent,)
)
and)
)
UNITED FARM WORKERS)
OF AMERICA, AFL-CIO,)
)
)
Charging Party.)

Case Nos. 80-CE-44-SAL
80-CE-54-SAL
80-CE-144-SAL
80-CE-254-SAL

ADMINISTRATIVE LAW OFFICER'S
DECISION

APPEARANCES:

Terrance R. Duncan
Thomas J. Nagle (on the brief)
Salinas, California
For the General Counsel

Arnold B. Meyers
Abramson, Church & Stave
Salinas, California
For the Respondent

STATEMENT OF THE CASE

MICHAEL H. WEISS, Administrative Law Officer:

This case was heard before me on five hearing days,
August 25-31, 1981, in Salinas, California. The initial complaint was
issued on June 12, 1981, and amended at the hearing on August: 31, 1981
(regarding the "(d)" violation). The amended complaint alleges violations
of Section 1153 (a), (c) and (d) of the Agricultural Labor Relations Act
[hereinafter the Act] by MISSION PACKING COMPANY [hereinafter MISSION
PACKING or Respondent].

1 All parties were given full opportunity to participate
2 in the hearing and after the close of the hearing the General
3 Counsel and Respondent each filed a brief in support of its
4 respective position.^{1/}

5 Upon the entire record^{2/}, including my observation of the
6 demeanor of the witnesses, and after consideration of the briefs filed by
7 the parties, I make the following:

8 FINDINGS OF FACT

9 I. Jurisdiction

10 Respondent admits the jurisdictional allegations,
11 e.g., that it is an agricultural employer within the meaning of
12 Section 1140.4 (c) of the Act and that the United Farm Workers
13 of America, AFL-CIO [hereinafter UFW] is a labor organization
14 within the meaning of Section 1140.4 (f) of the Act. On the basis
15 of the pleadings and undisputed evidence I so find.

16 II. The Unfair Labor Practices

17 A. The Unfair Labor Practice Allegations The Complaint

18 alleges that Respondent violated
19 Sections 1153 (a) and (c) of the Act by discriminatorily refusing to
20 rehire four workers, Samuel Rangel, Wenceslao Leyva, Ramon Santiago and
21 Pedro Edeza for Respondent's spring 1980 Salinas lettuce harvest. In
22 addition, General Counsel orally amended

23 ^{1/} The parties requested and were granted until October 14 to file
24 their post-hearing briefs.

25 ^{2/} Attached hereto as Appendix I is the list of witnesses
26 called by the parties, as well as the Transcript Volume and Page
references to their testimony; Appendix II is the list of the exhibits
identified and/or admitted into evidence.

1 the Complaint on August 31, 1981, alleging a violation of Section
2 1153 (d) of the Act on behalf of Samuel Rangel.^{3/} The amendment
3 occurred after Respondent's foreman, Salvador Zambrano, had
4 testified the previous Friday, August 28.

5 Respondent in its answer denied all material
6 allegations of violations of the Act, and affirmatively raised a
7 defense of failure to comply with company seniority and three-day
8 absence rules. In addition, Respondent raised two procedural
9 defenses and motions, laches and statute of limitations, concerning
10 the initial four charges, and further raised a due process
11 deprivation concerning the amended charge filed on August 31.
12 Each of the procedural motions and defenses were denied at the
13 hearing. Each motion is discussed and affirmed seriatim.

14 1. Laches and Statute of Limitations Defenses

15 Respondent's two initial affirmative defenses
16 assert that because the charges were filed between May 7 and
17 September 24, 1980^{4/}, but no complaint issued until June 12, 1981
18 or hearing held until August 25, 1981, that the General Counsel

19 _____
20 3/ A written amendment was filed by the General Counsel on
21 September 8, 1981.

22 4/ Charge No. 80-CE-44-SAL was filed by the UFW on behalf of
23 Wenceslao Layva on May 7, 1980; Charge No. 80-CE-54-SAL was filed
24 by the UFW on behalf of Samuel Rangel on May 14, 1980; Charge No.
25 80-CE-144-SAL was filed by the UFW on behalf of Pedro Edza on
26 July 16, 1980; and Charge Mo. 80-CE-254-SAL was filed by the UFW
on behalf of Ramon Santiago on September 24, 1980. Each of the
charges alleged discriminatory refusals to rehire during April
and May, 1980.

1 is guilty of laches. In addition, Respondent contends that the
2 four alleged discriminatees knew or should have known that they
3 were not going to be hired for the Spring, 1980 harvest in the
4 Fall of 1979 and therefore the charges failed to comply with the
5 six month limitation period set forth in 51160.2 of the Act.
6 However, the six month limitation period set forth in §1160.2 of
7 the Act, by its own terms, applies to the filing of a charge and
8 not to the issuance of a complaint. Respondent does not contend
9 it was otherwise untimely and inadequately notified of the charges.
10

11 Respondent does further suggest that the four
12 charges could have and should have been consolidated with charges
13 79-CE-350-SAL, et. al., heard by Administrative Law Officer Matt
14 Goldberg in the hearing commencing on October 1, 1980. General
15 Counsel contends that the four charges herein had not been fully
16 investigated by the time the prior hearing commenced on October
17 1, 1980^{5/}. Instead, the General Counsel made an administrative
18 and discretionary decision not to consolidate the charges into
19 prejudiced by the complaint issuing eight months later and this
20 hearing commencing ten months later in August, 1981.^{6/} I also
21

22
23 5/ As indicated previously in Footnote 4, the last charge was
24 filed only six days before that hearing started.

25 6/ Moreover, much of the Respondent's defense in this case
26 rests on a consideration of its business records rather than
relying on purported dimming recollections of witnesses.

1 concur with the General Counsel's position that the operative fact
2 for determining when the statute of limitations starts and runs
3 in refusal to rehire charges is when the alleged discriminatees
4 were actually denied rehiring (or should have known) which did not
5 occur until April and May, 1980; not, as Respondent contends, when
6 the alleged discriminatees had notice the prior Fall, 1979 that
7 they wouldn't be rehired if they didn't also work the Huron
8 Harvest.^{7/}

9 2. Oral Amendment Objection

10 Respondent also objects to General Counsel orally
11 amending the complaint to allege an additional charge on the last
12 day of the hearing, August 31, 1981. Respondent does not dispute
13 that the testimony underlying the amendment first occurred on the
14 previous Friday, August 28. Nor is there dispute that the hearing
15 was in recess on that weekend. Rather, Respondent objects that
16 the General Counsel was obligated to make his decision to amend
17 the complaint on the Friday afternoon rather than Monday morning
18 following the testimony, and thereby was deprived of its due
19 process rights. Respondent cites no precedent or authority for
20 its rather novel position.

21 Amendments are, of course, freely granted in
22 labor cases, especially since no substantial pre-hearing discovery
23 is permitted. Thus, amendments are frequently necessary which
24 would seem tardy in a civil court case. It has frequently been
25 held by the NLRB to be error not to permit amendments to conform
26 to proof. Community Convalescent Hospital, et al., 206 NLRB

7. Respondent's purported Fall, 1979 notice to its crews,
including the four alleged discriminatees, of a change in the
operation of its seniority system is disputed by General Counsel.

1 No.124, 84 LRRM 1421 (1973); Sunrise Manor Nursing Home, 199
2 NLRB No. 154, 82 LRRM 1186 (1972); Lion Knitting Mills, 160 NLRB
3 801, 63 LRRM 1041 (1966). Courts have even permitted amendments
4 in some cases after submission of the entire case. Preiser
5 Scientific Inc., 387 F.2d 143, 67 LRRM 2077 (4th Cir., 1967).

6 Of course, where some undue advantage was taken
7 of Respondent, amendment will not be permitted. Great Scott
8 Supermarkets, Inc., 206 NLRB No. 111, 84 LRRM 1563 (1973) [General
9 Counsel was aware of facts upon which he premised his requested
10 amendments well before close of hearing, but did not file motion
11 until after hearing was closed].

12 But this is not such a case. The amendment
13 occurred on the Monday following the Friday when the testimony
14 by Respondent's foreman Salvador Zambrano, which provided the basis
15 for the amendment, was first given. Moreover, Respondent's counsel
16 was given an opportunity on Monday, August 31 to recall Zambrano
17 for further testimony if he so desired. Respondent's counsel
18 declined.^{8/} I accordingly find that each of Respondent's motions
19 lack merit.

20 B. Company Operations

21 The parties hereto stipulated^{8A/} that Respondent
22 is a California corporation which has been in existence since
23 1976. It does not own or cultivate any agricultural properties, but
24 rather supplies labor crews for the harvesting and packing of
25

26 ^{8/} See V R.T.35-7-21, V R.T.73:19-28/74:1-9.

^{8A/} A copy of the stipulation is attached hereto as Appendix
III.

1 one crop: iceberg lettuce. Respondent also invests in about
2 twenty percent of the lettuce crops which it harvests. The
3 company employs approximately 100 workers throughout the year as
4 it follows the lettuce harvest "around the horn" in such areas as
5 Yuma, Arizona, Huron, San Joaquin Valley, and Salinas, California.
6 Respondent also carries out some operations in Colorado.
7 Respondent's harvesting and packing operation of iceberg lettuce
8 occurs at the following locations and at approximately the
9 following times:

10 SALINAS April 15 to October 15.

11 HURON October 10 to November 15.

12 YUMA December 1 to May 1.

13 HURON April 10 to May 5.

14 COLORADO July 5 to September 1.^{9/}

15 Floyd Griffin, Respondent's president, formed
16 Mission Packing after leaving Bruce Church, Inc. in 1976. He
17 brought with him to Mission Packing from Bruce Church Jesse,
18 Ramirez, his supervisor, as well as his four foremen, Javier
19 Velasco, foreman of Crew #1, Salvadore Zambrano, foreman of Crew
20 #2, Mathias Murillo, foreman of Crew f3, and Rodimiro Covarrubias,
21 foreman of Crew #4. In addition, approximately 20-30 of Respon-
22 dent's most senior workers also came to work for Respondent from
23 Bruce Church.

24 _____
25 ^{9/} Respondent stopped harvesting in Colorado in 1981.

26 ^{10/} It was not disputed that Ramirez and each of the foreman
was a supervisor within the meaning of §1140.4 (j) of the Ace.

1
2 For the first time in 1979, Respondent started
3 harvesting in Huron and Colorado. Griffin testified that around
4 the time of the election on September 7, 1979 or shortly there
5 after, the company instituted a new seniority rule. The new rule
6 divided seniority into a "Northern" seniority, consisting of
7 Salinas and Huron, and a "Southern" seniority, consisting of Yuma
8 and Colorado. The need for the change (in previous years, workers
9 were not required to follow the harvests, but could do so volun-
10 tarily) was to ensure adequate numbers of workers for each harvest.^{11/}
11 According to Griffin, he and Ramirez had a meeting with all of the;
12 foremen to explain the change in the seniority rule. The foremen
13 were also advised at this meeting that work in Huron would be
14 mandatory for crews 1, 2 and 4, but not for crew 3, who instead
15 would be permitted to voluntarily work in Yuma instead^{13/}. It was

16 11/ Griffin's testimony was both confusing and inconsistent
17 regarding the new rule. Griffin initially testified that it was
18 not difficult to obtain workers for Huron (which is approximately
19 110 miles and two and one quarter hours southeast of Salinas).
20 III R.T.57:26-27; and then indicated he did have difficulty.
21 III R.T. 58:2. Apparently the change in the field workers' seniority
22 rule to have a "Northern" and "Southern" seniority was needed,
23 according to Griffin, because both Huron and Colorado appeared to
24 be permanent deals. Yet Respondent stopped harvesting in Colorado
25 in 1981. Moreover, the "Southern" seniority of Respondent's
26 driver-stitchers, pursuant to the Teamster contract, continued to
include Huron within it. (III R.T.57:7-15). Although I have
serious reservations about the nature or extent of the implementa-
tion of the new seniority rule, I have nevertheless assumed,
without deciding, that Respondent instituted a new seniority rule
in the fall of 1979.

12/ III R.T.67:1-3.

13/ This exception to the mandatory nature of the new rule was
completely inconsistent with Griffin's own admission that the Huron
grower wanted all four of his Salinas crews to start in Huron.
III R.T.64:5-10.

1 then left up to each foreman to convey the new seniority rule to
2 his respective crew. Although admittedly a significant departure
3 from his past practice, Griffin testified that nothing concerning
4 the new seniority rule was reduced to writing, "Because we're not
5 a paper company" and "[I]f you put it in writing, then you
6 definitely are in concrete."

7 C. Union Activities And The 1979 Election.

8 An election was held in Salinas at Respondent's
9 on September 7, 1979. Out of 104 voters, 67 voted no union,
10 32 voted UFW, 3 ballots were challenged and 2 void. Approximate
11 three-four weeks prior to the election, union organizers appeared
12 at the fields where Respondent's harvesting crews were working.

13 Crew representatives were selected for the three crews working in
14 Salinas. Antonio Lopez, who was the subject of a charge at the
15 prior hearing, was selected crew representative and Wenceslao
16 Leyva, the second or assistant crew representative for Rodimiro
17 covarrubias' Crew No. 4; Samuel Rangel was selected as crew
18 representative of Salvadore Zambrano's Crew No. 2, and Ranon Santiago was
19 selected as crew representative of Mathias Murillo's
20 Crew No. 3.
21

22 14/ III R.T.72:27-28/73:1:1

23 15/ Respondent's Exhibit "A".

24 16/ Crew No. 1 was in Colorado for July, August and the first
25 week of September, 1979. As indicated in the prior decision
26 by Administrative Law Officer Matt Goldberg in 79-Ci:-350-SAL,
page 3, and corroborated in this hearing, the crew representatives
volunteered for the position and received the approval of their
fellow crew members.

1 During the week prior to the election Ramirez
2 addressed each of Respondent's crews as part of Respondent's
3 no-union campaign. With Floyd Griffin present, Ramirez made a
4 series of statements about the union and the upcoming election
5 which were found coercive, intimidating and in violation of
6 Section 1153(a) of the Act by the Administrative Law Officer in
7 the prior hearing.^{17/} General Counsel presented similar evidence of
8 the speeches at this hearing as well for the purpose of establish-
9 ing as an element in its case Respondent's anti-union animus.^{18/}
10 among the statements made by Ramirez, which were testified to in
11 this hearing by Ramirez, Rangel and Leyva, were:

- 12 1) The crews were "blind", and they knew nothing
13 concerning what the election was about.
14 (III R.T.14 -.24-27).
- 15 2) There would be problems with illegal aliens;
16 the union would find a way to hold back the
17 illegal when he was needed and would find
18 ways to get the illegal out when he was not
19 needed.
20 (III R.T.16).
- 21 3) The workers should be prepared that the company

22 17/ See Administrative Law Officer's Decision, Mission Packing
23 Co., 79 CE-350 SAL, et al., pp. 16-19.

24 18/ Respondent's counsel objected to the admission of this
25 evidence apparently on the basis that the issue had been previously
26 litigated. Nevertheless, the evidence was received
 since Respondent did not dispute that anti-union animus was an
 element in the case and was not otherwise inclined to stipulate to
 displaying such animus.

1 would lose some ranches if they joined the
2 union because a majority of the ranchers
3 Respondent does business with do not like
4 Chavez' union.
(III R.T.16).

5 4) "There would be less work if the workers joined
6 the union."
(III R.T.16).

7 5) "The time for the union was not there because
8 there were so many problems in other companies
9 [who did have Chavez' s union]."
(III R.T.17).

10 6) "The union fined a worker for buying boycotted
11 goods . "
(III R.T.17).

12 7) "If they joined the union the workers would
13 have to participate in political, parades and
14 marches and 'God knows what more ."
(III R.T.17)

15 General Counsel offered further evidence of Respondent's anti-
16 union animus in the form of a stipulation by the parties that
17 Respondent raised wages on two separate occasions prior to the
18 election during the union's organizing campaign.^{19/}

19 D . Respondent's Defenses Generally

20 Respondent's factual defenses concerning the four
21 charges of discriminatory refusal to rehire consisted of one or
22 more of the following: (1) the alleged discriminatee was not
23 involved in union activities and/or if he was Respondent did not
24 know about it; (2) the alleged discriminatee failed to work

25 19/ The stipulation as to the amounts and date of the wage increases is
26 attached hereto as Appendix IV. The wage raises were also the subject of
a charge at the prior hearing and were found by the Administrative Law
Officer to have been violative of Section 1153 (a) of the Act. The
stipulation and evidence concerning the wage raises were received in this
hearing as further background to Respondent's animus.

1 Respondent's Fall 1979 Huron and/or Spring 1980 Huron harvests
2 contrary to Respondent's purported new seniority rule; (3) the
3 alleged discriminatee failed to timely report -back for work
4 within three days of the start of the 1980 Salinas harvest
5 contrary to Respondent's purported "three-day absence" rule; or
6 (4) the alleged discriminatee failed to report for work for the
7 1980 Salinas harvest at all.

8 Respondent's defense with respect to each of the
9 four alleged discriminatees was specifically as follows:

10 Samuel Rangel: Respondent stipulated that Rangel was
11 actively involved in the UFW's organizing activities, was a crew
12 representative and it was aware of these activities. Rangel did not
13 however work at either Huron harvest. Respondent concedes that
14 rangel made application for work in the 1980 Salinas harvest, but
15 did so untimely (three days after the harvest started) since he
16 had lost his seniority by failing to work in Huron.

17 Wenceslao Leyva: Respondent also stipulated that Leyva
18 was actively involved in union activities and it was aware of
19 these activities. Leyva also did not work in the Fall 1979 or
20 Spring 1980 Huron harvests. Respondent claims that Leyva also
21 did not timely present himself, if at all, for the 1980 Salinas
22 harvest and had lost his seniority by failing to work in Huron.

23 _____
24 20/ Respondent's stipulation was not the result of altruism.
25 There apparently was testimony and evidence at the prior hearing
26 that Respondent was aware of Rangel's and Wenceslao Leyva's union
activities. See III R.T.4-8.

1 Ramon Santiago: Respondent admits it knew Santiago was
2 a UFW election observer, but denies it knew Santiago was a crew
3 representative who was actively involved in the union organizing
4 campaign. Santiago was a member of Crew No. 3 and therefore was not
5 compelled, according to Respondent, to work in Huron. Respondent claims,
6 however, that Santiago failed to seek reemployment at all for the 1980 Salinas
7 harvest.
8

9 Pedro Edeza: Respondent's defense regarding Edeza is the,
10 most encompassing. According to Respondent, Edeza was not
11 involved in union activities and if he was Respondent was unaware
12 of it. Moreover, Edeza did not work in the Huron harvests and
13 furthermore did not seek re-employment for Respondent's 1980
14 Salinas harvest.
15

16 The evidence presented regarding each of these alleged
17 discriminatees and Respondent's defense follows seriatim.
18

19 E. Alleged Discriminatees

20 Samuel Rangel: Rangel was first hired by Respondent,
21 at the end of the 1977 Salinas harvest season. He was hired by
22 and worked in the crew of Salvadore Zambrano. He was rehired by
23 Zambrano to work in his crew for the 1978 and 1979 Salinas seasons
24 as well. In both 1978 and 1979, prior to the Salinas season
25 starting, Zambrano called Rangel to notify him when work was to
26 commence. At the conclusion of the 1978 Salinas harvest Rangel
was asked by Zambrano if he wanted to work in Yuma. Rangel declined.

 Rangel worked the entire 1979 Salinas season. In
August, during the UFW organizing, he was named representative for

1 his crew, attended meetings at the union office and passed out
2 union authorization cards to his crew members.^{21/} Acting as the crew
3 representative Rangel regularly spoke with UFW organizers. One
4 day prior to the election Zambrano, who drove the crew bus from
5 the field to Salinas, left Rangel standing in the field. Rangel
6 had been speaking with the organizers nearby the bus while the
7 workers were boarding it to leave that day.^{22/}

8 Rangel was present as a union representative along with.
9 Ramon Santiago and Juan Pulido at the pre-election conference
10 held on September 5, 1979. He as well as Leyva and Santiago were
11 observers for the union at the September 7 election.

12 At the end of the Salinas season in October, Rangel
13 picked up his final paycheck. Subsequently, Zambrano called
14 Rangel at home and inquired whether Rangel would be going to work
15 in Huron. Rangel responded that family commitments would prevent
16 him from going to Huron. According to Rangel, Zambrano then for
17 the first time stated to him Mission Packing's new seniority
18 policy which required Rangel to go to Huron or lose his seniority.^{23/}

20 ^{21/} As indicated earlier Respondent does not dispute Rangel's
21 union activities, crew representative status, or its knowledge of
22 those activities.

23 ^{22/} Zambrano testified he apparently left Rangel in the field
24 but did not realize it until the bus unloaded and Rangel did not
25 get off. Zambrano's explanation was particularly unpersuasive.
26 I found him an unconvincing witness, particularly compared to
Rangel, who comes across in a very straightforward, understated
and unembellishing manner. By contrast, Zambrano had a very
selective memory. See, e.g. IV R.T. 21:18-28.

1 Rangel did not work in either the Fall 1979 or Spring 1980 Huron
2 harvest. Zambrano did not call Rangel prior to the start of the 1980 Salinas
3 harvest. According to Rangel, prior to his union activities,
4 he had a good working relationship with Zambrano. By the time of
5 the election they noticeably changed. Accordingly, Rangel was
6 suspicious and started to check with Respondent's Salinas office 1
7 two weeks prior to the 1980 season starting. He was told by the
8 office that Zambrano had not started yet and was still in Huron.
9 On Sunday, May 11, Rangel went to the labor camp used by Respondent
10 in Salinas ("Mama Reyes" on Sun Street) and talked to foreman Den
11 Gilberto Garcia. Don Gil told Rangel that Zambrano would start
12 on Monday, May 12, 1980. However, when he was in town Rangel ran
13 into a co-worker in a drustore and was told by the worker that
14 Crew No. 2 had started that Saturday, May 10.

15 On Monday, May 12, Rangel showed up for work but was
16 told by Zambrano that he was filled up and had his crew. Zambrano
17 told Rangel that at the end of work that day he and Rangel could
18 go see Jessie Ramirez and Floyd Griffin about this. Rangel
19 asked, "What's the point, if you already agree". Zambrano
20 replied that "I would prefer you to".

21 Accordingly, after work that day Zambrano met Rangel
22

23/ From page 14.

24 According to Respondent "Loss of Seniority" meant the worker
25 could still be rehired if there were openings. See, e.g. IV R.T.
26 29:15-18. Zambrano claims that he advised Rangel and the rest of
his crew of the new seniority policy for Huron in September.
Rangel denies this. I have not attempted to resolve this dis
crepancy since Rangel admits to becoming aware of the new policy
at some point and a resolution is not otherwise needed to decide this charge.

1 at Respondent's office with Ramirez and Griffin there as well.
2 A short conversation ensued in which Ramirez and Floyd confirmed
3 he had lost his job because he did not follow the company to Yuma
4 or Huron. At that point Rangel took out of his pocket and served
5 on Griffin the charge herein. ^{24/} Significantly, Zambrano responded
6 to the Administrative Law Officer's questions concerning the
7 refusal to rehire Rangel as follows:

8 "Q. In your mind if a worker did not go to Huron
9 after the fall of 1979 could he work for the
10 company if there was an opening?

11 A. Yes.

12 Q. Why didn't you then hire Samuel Rangel on May
13 12th, 1980, when he applied for work?

14 A. Because, one, he had lost his seniority.

15 And, secondly, when we went to the office to
16 talk to Mr. Floyd and Mr. Jesse, when I went
17 with him there, all of a sudden he takes out a
18 paper out of his pocket and, zap! He lays it on
19 him. It's a complaint. And for me, from that
20 point on, I can't hire him because he is
21 challenging the company. And I'm showing that
22 person that it would be wrong for me to hire that
23 person after he has - has placed this paper right
24 under the nose of the company. ^{25/}"

25
26 ^{24/} Apparently between the two meetings Rangel had gone to the
UFW office and had a charge prepared.

^{25/} This constituted the basis for the §1153 (d) amendment.

1 Respondent does not dispute that the following day,
2 May 13, Zambrano hired Carlos Sanchez, a new worker without any
3 previous employment history with Mission Packing to do the same
4 work Rangel had applied for.^{26/}

5 Wenceslao Leyva: Leyva was first hired by foreman
6 Rodimiro Covarrubias in April at the start of Respondent's 1979
7 Salinas harvest. He had previously worked in the lettuce harvest
8 for several years including recently for D'Arrigo Bros. While
9 working for D'Arrigo he followed the lettuce harvest to Imperial
10 Valley and Yuma. During the UFW organizing campaign that summer
11 Leyva distributed union leaflets and authorization cards in
12 his capacity as assistant crew representative. According to Leyva
13 he was assisted in this activity by his co-worker Pedro Edeza and
14 their activity was carried out in Covarrubias' presence.^{27/} As
15 indicated earlier, Leyva worked the entire season in Salinas.
16 Accustomed to following the harvest to other areas of California
17 and Arizona, Leyva testified he spoke with Covarrubias shortly
18 before the end of the 1979 Salinas season in order to do the same
19 with Mission Packing. According to Leyva, he asked his foreman
20 if he could work in Huron or Yuma with the company. Covarrubias
21 responded his crew was already filled as he would use people from
22 the San Luis area. Accordingly, Leyva did not work for Respondent

23
24 26/ See, e.g., General Counsel's Exhibit 10 and IV R.T.18-20. I did not
25 understand Respondent to claim that Rangel also violated its purported three day
26 rule since work started for Zambrano's crew on Saturday, May 10 and Rangel
applied that following Monday morning, May 12.

27/ Covarrubias admits his knowledge of Leyva's union activities.
IV R.T. 131.

1 in the subsequent Huron and Yuma harvests.

2 By contrast, Covarrubias testified that he advised
3 his crew members individually, including Leyva, about a week
4 that they should get ready to go to Huron", and that it was
5 "required".

6 During 1979 Respondent instituted the quintetta
7 harvesting system for Crews 3 and 4. Apparently Respondent made
8 a decision during the following Yuma harvest to end the quintetta
9 harvesting system and return to the trio method only. When the
10 1980 Salinas season started on April 16, Crews 3 and 4 were
11 merged into one crew. According to Murillo, Crew 3's foreman,
12 there were more workers than openings. Consequently, he had to
13 tell some workers without company seniority that there were no
14 openings for them. However, if a worker had seniority, then
15 Murillo would make room for him even though his crew was "filled".

16 At five in the morning on April 18 Leyva went
17

18
19 28/ IV R.T. 93-94. Covarrubias testified that the workers
20 knew they would lose their seniority if they didn't go, but didn't
21 say how they knew. General Counsel's Exhibit 7(d), Leyva's 1979
22 Salinas layoff card, indicates on it the crew was going to Huron,
23 but it does not say or indicate the worker would lose his seniority
24 for not going. Leyva acknowledged receiving a copy of the layoff
25 card and knowing the crew was going to Huron and Yuma, see II
26 R.T.55, 63, but denies knowing he would lose his seniority for
not going. Zaragoza Ortiz, a loader and current employee who also
was in Covarrubias' crew was called to testify by Respondent.
Ortiz testified he also did not recall being told at the end of the
Salinas season by his foreman about going to Huron or losing
seniority. Curiously, Ortiz went on to testify that the seniority
rules, whatever they were, were in effect when he came to work
for Respondent in 1978-1979 in Yuma. IV R.T.108-109.

1 to Mama Reyes labor camp on Sun Street seeking work with Respondent
2 Because he had finished Respondent's Pall 1979 Salinas harvest,
3 Leyva expected he would be rehired. Leyva encountered Mathias
4 Murillo, sitting in his bus. According to Leyva he asked
5 Murillo for work. Murillo indicated he didn't have any work for
6 Leyva at that time. Instead, Murrillo gave Leyva a second
7 extension layoff card which, according to Leyva, was already filled o
8 out with his name on it even though Leyva had not asked for the
9 layoff card.^{29/} Leyva left his name, address and phone number with
10 Murillo before leaving. Murillo said he would be contacted
11 if any work was available. Leyva sought work from Murillo in
12 the same manner for each of the following Monday mornings and was
13 told the same thing by Murillo. Leyva was never contacted by Respondent to
14 work in 1980.

15
16 Leyva also testified to asking Covarrubias as well
17 for work in April. It was Leyva's recollection that he had asked
18 Covarrubias prior to asking Murillo. Respondent, however,
19 introduced evidence^{30/} which indicated that Covarrubias was on
20 vacation in Mexico between April 8 and 21 or 22 and returned of
21 Salinas on or about April 23. Covarrubias does not deny seeing

22 ^{29/} See, e.g. General Counsel's Exhibit 7(e). The card
23 states Leyva's name; Crew NO. 3; termination date: 4-13-80; layoff
24 box checked; "Reducion de trabajo" (reduction in work); Mathias's
25 Murillo's signature, and where Leyva's signature would be the
word "avsente" (absent). The card made it easier to obtain or
continue unemployment benefits.

26 ^{30/} See Respondent's Exhibits J and K, airlines tickets
and hotel room receipts.

1 and greeting Leyva at Jim's (or Gin's) Market within a day or two
2 of returning to Salinas. Leyva, on the other hand, testified that
3 after greeting Covarrubias he asked the foreman for work.
4 Covarrubias informed Leyva that he would be the foreman of a wrap
5 machine rather than a ground crew. He told Leyva to speak to
6 Mathias Murillo or Don Gil about work.^{31/}

7 Mathias Murillo's testimony and explanation
8 regarding providing Leyva with a layoff card is baffling, confusing,
9 inconsistent and ultimately not believable. Some examples will
10 suffice.

11 With respect to Leyva's layoff card, personally
12 handed to Leyva, Murillo testified:

13
14 Q. (By Mr. Duncan). Mr. Murillo, I would like
15 to ask you to look at the card that we've identified
16 as 7-E. There is a word written on here down near
17 the bottom. Can you read that word?

18 A. Yes.

19 Q. What does it say?

20 A. (In Spanish) "Avsente." Absent.

21 Q. What does that mean?

22 A. Well, as I said before, perhaps it was my mistake.

23 Q. "Avsente" means that you made a mistake?

24 A. In writing the word, perhaps I did.

25 Q. Well, what does that word mean?

26 A. Absent means that the persons is not present
when the act takes place, or when the document is written.

21 31/ II R.T.53. Covarrubias denies having any conversation with
22 Leyva the time he saw him at Jim's Market. Respondent in its
23 argument and brief claims that Leyva's apparent error regarding
24 the date he ran into Covarrubias undermined, or damaged, Leyva 's
25 credibility. I do not concur. Leyva was a particularly credible,
26 candid, and forthright witness and his apparent error regarding
this date did not otherwise undermine his credibility. Leyva's
candor as a witness was in marked contrast to Covarrubias, who had
a very selective and evasive memory. I find it further implausible
that Leyva after greeting his foreman would not ask him for work
since he was then looking for work.

1 Q. But in this case the person was present
when you wrote that; is that correct?

2 A. Yes.

3 Q. Now, let me show you Respondent's F, G and H,
if I might. Now, you have the same word written on
each one of those; is that true?

4 A. Yes.

5 Q. And let me show you Respondent's E. On that
one you don't have "Avsente" written in; is that
correct?

6 A. It's not written.

7 Q. Now, does that mean that the person was
there or that he wasn't there; or do you know?

8 A. I think again, that was a mistake that I
made, perhaps because of overwork and also because of
the pressure because there were so many people there.
I think when you have to deal with so many people a
lot of times you don't do your job the way you should. ^{32/}

10 With respect to when the cards Murillo was filling out
11 were prepared, he testified:

12 Q. I know, but when were these cards that
13 Have your handwriting on it, when did you do these cards?
The cards that we're talking about?

14 A. I assure you that it was done at the very
moment when it was needed.

15 Q. Okay. Can you recall doing all of them at the
same time?

16 A. I think so, as I needed them. ^{33/}

17 Murillo further stated he waited until the end of the
18 day on April 18 to fill out the "3 day absence" cards while parked
19 in the bus in the yard near the company' s office where he leaves
20 his own car. ^{34/} His explanation for why some cards say April 18
21 and some say April 19 is:

22 Q. But you do recall preparing these cards after
23 work on the 18th; is that correct?

24 ^{32/} IV R.T.75-76.

25 ^{33/} IV R.T. 77:1-4.

26 ^{34/} IV R.T.77-78.

1 A. Some of them.

2 Q. And the others?

3 A. When they were needed.

4 Q. Well, some of them are dated April 18th
5 and some of them are dated April 19th.'

6 A. Yes. As I said before, that was my
7 mistake and negligence. ^{35/}

8 Concerning Leyva's card, Murrillo testified as follows

9 Q. Well, I understand. I'm trying to find out
10 from you, as best as you can recall, when you did
11 the card for Mr. Leyva and when you did the cards for
12 the others.

13 A. The one for Mr. Leyva must have been in the
14 morning.

15 Q. And why is that?

16 A. Because he was present, but I can't remember
17 very well the features of his face.

18 Q. Did you know him at all?

19 A. No.

20 Q. Had he worked for you before?

21 A. No.

22 Q. Did you ask him who he had worked for?

23 A. He told me that he worked for Rodaniro.

24 Q. How did the conversation come up about
25 unemployment?

26 A. Well, maybe just a word; that's all.

27 Q. Was it your understanding that Mr. Leyva
28 was looking for work, though?

29 A. Maybe Mr. Leyva was looking for both things.

30 Q. Do you recall whether or not he was looking
31 for work first?

32 A. No.

33 Q. Who wrote down on the card "Crew Three", that's
34 before you? Yes.

35 A. " I did.

36 Q. Can you recall why that -- why you did that?

37 A. Yes, because he asked me.

38 Q. To write down "Crew Three"?

39 A. Oh. Oh, well, that was the crew that belonged
40 to me that was my responsibility.

41 Q. But you were giving him a card that he was being
42 laid off. Isn't that right?

43 A. Yes.

44 Q. But he wasn't being laid off from your crew,
45 was he?

46 A. No.

^{35/} IV R.T.79.

1 Q. So why did you put your crew down there?

2 A. Well, I was thinking of myself and my crew
number; maybe that's why I did it.

3 Q. Are foremen supposed to write layoff slips
for crew members that are not from their crew?

4 A. Could you repeat it, please?

5 Q. Well, as a foreman are you permitted to write
layoff slips for crew members from other crews?

6 A. Well, Mr. Leyva could have assured me that he
worked in Rodamiro's crew, in Number Four, and I could
7 have heard his name before. And, as I said before, through courtesy and
because I am -- for humanitarian
8 reasons I probably did it for him.

9 Q. Would it be accurate to say that generally the foremen only writes
layoff slips for his own crew?

10 A. Yes, probably; but the problem was at that
time there was confusion because three -- Crews Three and Four were
going to be joined together and there
11 was going to be just one crew.

12 Q. Did you know whether or not Leyva was even
entitled to layoff slip at that point?

13 A. I really wasn't sure.

14 Q. Did you write the words at the bottom, in
Spanish, at a different time than you filled out
the date?

15 A. No.

16 Q. Everything was written at the same time?

17 A. Yes. 36/

18 In short, Murillo's explanation for why he prepared a
19 layoff card for someone he didn't know, who was not in his ere
and who Murillo did not even know was entitled to the layoff card
20 is incredulous.

21 Ramon Santiago: Santiago initially worked for Respondent
for part of the 1977 Salinas season. He returned to work at Bruce
22 Church where he worked year round, traveling with its harvesting
23 crews in California and Arizona. He was hired by Mathias Murillo
24 in July, 1979, to work in Crew 3. Murillo had previously known
25

26 36/ IV R.T.81-81.

1 Santiago from Bruce Church. During the UFW organizational campaign
2 Santiago was chosen crew representative for his crew. According
3 to Santiago this was done in Murillo's presence. As the crew
4 representative Santiago was very active in support of the UFW's
5 organizing campaign. Santiago also attended the pre-election
6 conference on September 5 on behalf of the UFW and served as a UFW
7 observer at the election.^{38/}

8 Following the election Santiago felt the company's
9 exhibited an unhappy attitude toward him. Shortly after the
10 election Santiago arrived at the fields with the crew's loaders
11 approximately 5 minutes late. Santiago was not permitted to work
12 that day by Murillo and Ramirez although the loaders were.^{39/}

14 37/ The UFW was on strike at Bruce Church during this period,
15 Murillo testified he was not aware whether Santiago was a union
16 supporter when they were both at Bruce Church.

17 38/ As indicated previously Respondent conceded it knew Santiago
18 was a UFW observer at the election on September 7. However,
19 Floyd Griffin testified that no one was aware that Santiago was
20 a UFW representative or participated on behalf of the UFW at the
21 pre-election conference on September 5. On September 5 Griffin
22 and the other company representatives were present, at the
23 Agricultural Labor Relations Board offices until approximately
24 7 p.m. and then left. Apparently the UFW representatives did not
25 appear until shortly thereafter. However, Griffin also testified
26 that he was present on election day morning when the "ALRB arrived
with a van with the booths, and I think the same people that were
at the meeting, at the pre-election conference were there." III
R.T.50:13-16. The implication is that Santiago, who was an
observer, would be present for the setting up of the election site
and booths, was also known by Griffin to have previously partici-
pated in the pre-election conference. In any event it is not
plausible that Respondent would be aware of the crew representatives
and union activities in two of its crews and not for the third crew.

39/ Respondent claims that Santiago was closer to 30 minutes
late and that the loaders were permitted more leeway about when
they arrived for work.

1 Approximately two weeks prior to the end of the 1979 Salinas
2 season, Santiago told Murillo he would like to continue
3 with the crew in Huron and Yuma. Murillo told him that only
4 crew members with seniority went to Yuma and Santiago did not
5 have seniority. October 29 was the end of the Salinas season
6 and all members of Murillo's crew were laid off. Santiago
7 requested and received a "termination notice" from the Salinas
8 area and advised Murillo he would be returning the next year
9 with Murillo.^{40/}

10 On April 16, 1980 work began in Salinas. The workers
11 were notified in various ways.^{41/} According to Murillo and the
12 company, Santiago did not appear by the end of the day, April
13 18, and Murillo then prepared the voluntary quit notice to
14 Santiago for his failure to show up for work within three days.
15 Murillo and the company deny Santiago ever asked for his job back.

16 Santiago testified that just before the start of the
17 1980 Salinas season he reported to Mama Reyes labor camp and
18 found Murillo there. Santiago asked Murillo for work. According
19 to Santiago, Murillo would not respond, but instead changed the
20

21 40/ Murillo testified that he told Santiago only seniority crew
22 members worked in Yuma. IV R.T.45:19-22. However, he denies
23 Santiago asking him to go to Yuma. Murillo's statement that only
24 seniority crew members were permitted to work in Yuma was flatly
25 contradicted by two current employees called by Respondent to
testify. Both Zaregoza Ortiz and Jose Retiz testified that
Respondent's policy was to permit anyone who wanted to go to Yuma
could do so. See IV R.T. 109:11-12 and V R.T. 11:21-28/12:1-2.

26 41/ Murillo was unclear about the methods by which the workers
learned of the Salinas starting date, see IV R..T.47, although he
was sure he did not call to notify anyone. IV R.T.72. However,
Jose Retiz testified that Murillo called him to start work in
Salinas. V R.T.8:10-15.

1 subject. Santiago returned again the following day and asked
2 for work again. Murillo told him he could not hire Santiago but
3 that Murillo would speak to Jessie Ramirez. Santiago left his
4 name, address and phone number with Murillo and told him, "I'll
5 be waiting for your call." Murillo never contacted him.^{42/} Santiago
6 testified that there were several other Mission Packing workers
7 at the labor camp who were nearby when he asked Murillo for work.
8 Two workers, Simon Gomez and Andres Gamez were subpoenaed by
9 the Administrative Law Officer and testified. Murillo acknowledged
10 knowing the two as crew members who were at the labor camp prior
11 to the 1980 Salinas season starting. Both Gomez and Gamez credibly
12 testified that Santiago appeared at the labor camp prior to the
13 work starting, spoke to them about his intentions to report for and
14 obtain work with Murillo and saw Santiago speaking to Murillo.^{43/}

15 _____
16 42/ Murillo concedes that others asked him for work at the labor
17 camp during this period. IV R. T. 831 : 20-27. Santiago in his charge
18 filed and declaration prepared on September 24, 1980, stated that
19 he believed the refusal to rehire occurred on May 18 rather than
20 April 18, 1980. Respondent asserts that this declaration and
21 charge, prepared under penalty of perjury, amounts to a prior
22 inconsistent statement and undermines the credibility of Santiago's
23 entire testimony. I do not concur. Santiago's testimony was
24 fully corroborated by both the testimony of two co-workers, Simon
25 Gomez and Andres Gamez, as well as by his own declaration.
26 Santiago was otherwise a very credible witness in his own right
and this one discrepancy regarding the date is understandable since
the declaration and charge were prepared more than five months
after the incident occurred.

43/ See V R.T. 64-46, 70. Respondent suggests that Santiago's
driving Gomez and Gamez to the hearing after work on August 31,
1981 (all three were then working at Bruce Church, Gomez and
Santiago in the same crew) enabled Santiago to "plant" the basis
for their testimony in their minds. I do not concur. Both
witnesses were very credible concerning whether Santiago ever
appeared at the labor camp prior to the 1980 Salinas season
starting. (fn. 43 cont'd on p. 27)

1 Pedro Edeza; Edeza was first hired by Covarrubias
2 as a waterboy in April, 1979. By the summer Covarrubias was
3 training him to be a cutter and packer. After Antonio Lopez and
4 Leyva were chosen as crew representatives for Covarrubias' crew
5 during the UFW' s organizing campaign, Edeza assisted them in
6 distribution of authorization cards and leaflets. He also
7 testified to making his union support known to his co-workers
8 and encouraged them to support the union as well. According to
9 both Leyva and Edeza, some of this activity was done openly in
10 the presence of Covarrubias.^{44/} After finishing voting on election
11 day, Edeza returned to work in the nearby field. Edeza credibly
12 testified that Covarrubias approached him and said, "Is this the
13 way you pay me for the favor I gave you by hiring you?"^{45/} Edeza
14 worked the remaining Salinas harvest and was laid off at the end
15 of the season with the crew. Although many of his co-workers
16 told him that they were invited to go to Huron by Covarrubias,
17 Edeza testified that Covarrubias did not 'invite him. Nor did
18 Covarrubias tell him that he would lose his seniority for not
19 going to Huron.

20
21 When the 1980 Salinas season started Edeza went to

22 Fn. 43 cont'd from p. 26

23 Both witnesses' testimony remained credible despite a
24 vigorous cross-examination by Respondent. Indeed, Gomez and Gamez 24
25 entire testimony was closely scrutinized by me because, needless
26 to say, it was very damaging to not only Respondent's defense to
Santiago's claim, but to their entire defense.

^{44/} Covarrubias denied knowledge of Edeza's union activities.

^{45/} II R.T. 109-110. Covarrubias denies saying anything to Edeza,

1 Respondent's office on Market Street in Salinas seeking work.
2 The first time he went he encountered the foreman of Crew No.
3 3 (Murillo) whom he recognized. Murillo told 'him to wait for
4 Rodemiro. Approximately two weeks later Edeza returned to the
5 office and met Covarrubias there. According to Edeza, Covarrubias
6 informed him that he no longer had a ground crew and instead
7 was going to be foreman of a wrap machine. Edeza asked for work
8 on the machine crew and Covarrubias said "Keep checking". Edeza
9 testified he returned three or four times over the next week and
10 was told by Covarrubias each time that he didn't need any people,
11 but to keep checking. Edeza returned one more time and then
12 stopped going. Covarrubias denied that he ever saw Edeza in 1980
13 or that Edeza asked him for work in 1980. Covarrubias does admit
14 however that he was hiring persons during this period, including
15 Edeza's brother Raol, who had never worked for Respondent before.
16 In addition, many of these persons sought work from him at the
17 same place, Respondent's office/ that Edeza did. Finally,
18 Covarrubias admitted that he hired men workers for his crew
19 without regard to whether they had worked for Respondent during
20 the Huron harvest, had seniority with Respondent or had ever worked
21 for Respondent before.

22 CONCLUSIONS OF LAW

23 1. The Section 1153(c) and (a) Allegations.^{47/}

24
25 ^{46/} See, e.g., IV R.T.129; General Counsel's Exhs. 12 and 13.

26 ^{47/} Section 1153 (a) of the Act makes it an unfair labor practice for an employer to interfere with, restrain or coerce an employee in the exercise of rights guaranteed the employee under Section 1152 of the Act. Section 1153 (c) also makes it an unfair labor practice for an employer to discriminate in regard to the hiring, tenure of employment or any term or conditions of employment

1 In its recent decision in Verde Produce Co., 7 ALRB No
2 27 (Sept. 10, 1981) the Board summarized the necessary elements
3 in order to establish a discriminatory refusal to rehire:

4 To establish a prima facie case of discriminatory
5 discharge or discriminatory refusal or failure to rehire, the
6 General Counsel must show by a preponderance of the evidence that
7 the employee was engaged in protected activity, that Respondent
8 had knowledge of such activity, and that there was some connection
9 or causal relationship between the protected activity and the
10 discharge or failure to rehire. Jackson and Parkins Rose Company
11 (Mar. 19, 1979) 5 ALRB No. 20.

12 Where the alleged discrimination consists of a refusal
13 to rehire, the General Counsel must ordinarily show that the
14 discriminatee applied for work at a time when work was available,
15 and that the employer's policy was to rehire former employees.
16 Prohoroff Poultry Farms (Feb. 7, 1979) 5 ALRB No. 9, review den.
17 by Ct.App., 4th Dist., Div. 1, Nov. 21, 1979, hg. den. Dec. 20,
18 1979; Golden Valley Farming (Feb. 4, 1980) 6 ALRB No. 8, ALOD
19 at 14, but see p. 2, fn. 1.

20 If the General Counsel establishes a prima facie case
21 that protected activity was a motivating factor in the employer's
22 decision, the burden then shifts to the employer to prove that it
23 would have reached the same decision in the absence of the
24 protected activity.^{48/}

25
26

48/ Martori Brothers Distributors v. A.L.R.3. (1981) 29 C.2d
721; Wright Line, Inc. (1980) 251 NLRB No. 150 [105 LRR.M 1152;;
Nishi Greenhouse (Aug. 5, 1981) 7 ALRB No. 18.

1 Respondent concedes that Rangel and Leyva openly engaged
2 in union activities and that Respondent's supervisors had been
3 aware of their union support. Respondent's knowledge of Santiago's
4 election observer status coupled with Santiago's credited testimony
5 regarding his union activities is sufficient to satisfy General Coun-
6 sel's burden concerning Santiago's union activities. Both Leyva and
7 Edeza credibly testified to Edeza's union activities in conjunction
8 with Leyva's. Covarrubias selective memory and evasiveness as a
9 witness while testifying effectively undermined his credibility
10 concerning both Edeza and Leyva. I accordingly conclude that
11 General Counsel has equally met its burden concerning Edeza's union
12 activities and Respondent's knowledge thereof.

13 The evidence is more than ample to sustain General
14 Counsel's burden of proof that Respondent exhibited and maintained
15 an anti-union animus. Respondent's conduct throughout the UFW's
16 organizing campaign and thereafter indicated a strong antipathy
17 to the union's presence as well as to union sympathizers' presence.

18 When all the evidence and credited testimony presented
19 in this case is considered the conclusion is inescapable that
20 Respondent denied re-employment to the four workers here because
21 of their past union activities, particularly during the UFW's
22 organizing campaign prior to the September 7, 1979 election.
23 Each of the four had been active in that unsuccessful campaign.
24 Each of the four had worked the entire 1979 Salinas season and
25 would have otherwise been entitled to re-employment with Respondent
26 the following Spring, 1980 Salinas harvest.^{49/}

^{49/} There was no evidence presented nor any claim by Respondent that each of the four workers was other than a capable worker.

1 Respondent sought to meet its burden required under
2 the Wright Line, Inc. and Nishi Greenhouse tests (that each of the
3 four workers would not have been rehired even in the absence of
4 their protected activities) by claiming each of the four was
5 disqualified under its purported new seniority rule or three-day
6 absence rule or both.

7 As indicated earlier, I have assumed, without deciding,
8 that Respondent had a "new", implemented Northern/Southern seniority
9 rule. There was significant testimony that seriously undermined
10 whether there was, in fact, a "new" or implemented seniority
11 system. For instance, foreman Mathias Murillo testified that he
12 did not attend any foremen's meeting during the Fall, 1979, where
13 a new seniority system was explained.^{50/} Nor did Murillo have any
14 knowledge that Crew 4 has to go to Huron after the 1979 Salinas
15 season.^{51/} Another of Respondent's witnesses, Jose Retiz, contradicted
16 both Griffin and Murillo whether only seniority workers were
17 permitted to go to Yuma.^{52/} Zaragoza Ortiz testified that the same
18 seniority rules were in effect as far as he knew from the time he
19 started with the company in the Yuma 1978-79 season.^{53/}
20

21 Nevertheless, I have assumed, without deciding, that
22 Respondent had implemented a new Northern/Southern seniority rule in

23 _____
24 50/ IV R.T.62; this is, of course, contrary to Floyd Griffin's testimony.

25 51/ Ibid.

26 52/ V R.T.11:23-27.

53/ IV R.T.108-109.

1 the Fall of 1979. Notwithstanding this, the evidence presented
2 indicated that the new rule had sufficient exceptions as to
3 render it a subjective, discretionary, and ultimate pretextually
4 utilized rule.

5 Respondent indicates that the new seniority rule's
6 effect was to cause a loss of seniority to those crew members who
7 did not work the Fall, 1979 and Spring, 1980 Huron harvests. Thus,
8 workers such as Rangel who did not work in the Huron harvests,
9 would still be entitled to rehire if there was an opening. In
10 fact, there was an opening at the time Rangel sought re-employment
11 on May 12, 1980; nevertheless, Respondent hired a new worker on
12 May 13. The conclusion is inescapable that the reason Rangel
13 was not re-employed was because of his past union activities.^{54/}

14 Steve Griffin, Floyd's son and Respondent's office
15 manager, testified that after reviewing Respondent's records,
16 there appeared to be eight individuals who were rehired for
17 Respondent's Salinas harvest who had not worked Respondent's prior
18 Huron harvests, contrary to the seniority rule. Most of these
19 were persons that Griffin referred to as "temporary", i.e. they
20 did not work a full season but only several months or so at a time^{56/}

22 54/ Zambrano's testimony, IV R.T.30:22-28, regarding his
23 additional reason for not hiring Rangel on May 13, 1980 is a
separate basis for finding discriminatory treatment.

24 55/ V R.T.59:24-27.

25 56/ V R.T. 53: Examples of this were Alfonso Pulido, V R.T.92;
26 General Counsel's Exhs. 25-27, Basilio Picazo, Estaban Martinez
and Francisco Cisneros.

1 There is nothing on Respondent's employment cards that indicate
2 these individuals were hired as "temporaries". Even if they were,
3 there is no reason the work could not have been offered to the
4 four alleged discriminatees herein, assuming they made timely
5 offers of re-employment.

6 Respondent asserts that the other three claimants not:
7 only did not make timely re-employment offers, they made none.
8 With regard to Leyva and Santiago the evidence is overwhelming that
9 they made timely efforts to seek re-employment with Respondent.
10 Santiago's credited testimony that he sought employment with
11 Murillo at Respondent's labor camp was fully corroborated by two
12 credible witnesses, Gomes and Gamez , who have no interest in the
13 outcome of this hearing. Respondent's foreman Murillo reluctantly
14 conceded that Leyva timely sought re-employment from him on April
15 18.^{57/}

16 In Pedro Edeza's case, Edeza ' s credited version of
17 timely asking Covarrubias for work on a wrap machine, coupled with
18 the record as a whole leads me to the inescapable conclusion that
19 Respondent discriminatorily refused to rehire Edeza because of
20 his union activities.^{58/}

21 To summarize, I conclude that General Counsel has
22

23 57/ IV R.T. 80:12-14.

24 58/ Edeza's foreman Covarrubias acknowledged that there were
25 In" fact openings during the period Edeza sought re-employment
26 and those positions were filled without regard to whether the
individual had worked for Respondent previously or had worked
the prior Huron harvest. IV R.T. 129.

1 presented clear, convincing and persuasive evidence that each of
2 the four workers at issue herein had engaged in protected activity
3 known by Respondent, who manifested a strong anti-union animus
4 towards the UFW and those workers who supported its presence at
5 Respondent's.

6 I further conclude that Respondent's failure to rehire
7 the four was directly related to their protected activity. I
8 further conclude that each of the four workers made timely
9 application (s) for re-employment and that at the time they sought
10 re-employment there were openings available that each of the four
11 were otherwise qualified for.

12 Finally, I conclude that Respondent's defense and
13 justification for refusing to hire the four workers, its seniority
14 rule and 3-day absence rule, were mere pretexts used to avoid
15 hiring the four. I conclude that Respondent did not present a
16 legitimate business justification for rehiring the four and has
17 not shown that absent the union activity Respondent would not have
18 rehired the four.

19 I find that Respondent, in failing and refusing to
20 rehire Samuel Rangel, Wenceslao Leyva, Ramon Santiago and Pedro
21 Edeza violated Labor Code Section 1153 (c) and (a).

22 2. The Section 1153 (d) Allegation.

23 Section 1153 (d) makes it an unfair labor practice for
24 an agricultural employer to "discharge or otherwise discriminate
25 against an agricultural employee because he has filed charges or
26 given testimony" under the Act. The quoted language is identical
to that in Section 8(a)(4) of the National Labor Relations Act

1 except for the inclusion of the word "agricultural" in the
2 Agricultural Labor Relations Act. The National Labor Relations
3 Board has consistently used a broad and liberal interpretation of
4 Section 8(a) (4) which has been affirmed by the United States
5 Supreme Court. N.L.R.B. v. Scrivener (A.A.Electric Co.), 405 U.S.
6 117 (1972).

7
8 It's rare that one is presented with direct proof of
9 a "(d)" violation, but this is one of those occasions. Foreman
10 Covarrubias clearly and unmistakably testified that one of the
11 Reasons^{59/} he refused to rehire Rangel resulted from Rangel's filing
12 and serving an unfair labor practice complaint on Respondent on
13 May 12, 1980. Moreover, it is difficult to imagine a case where
14 the timing of the filing and service of the complaint, coupled with
15 was hired, could be more clear or graphic. I accordingly conclude
16 that Respondent violated Section 1153(d) of the Act when it refused
17 to rehire Samuel Rangel on May 12 and 13, 1980.

18 THE REMEDY

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

24
25

59/ Covarrubias' other reason, the purported seniority rule,
26 as indicated was a pretextual and unconvincing one.

1 tenure of employment or any term or condition of employment because
2 he or she has engaged in any union activity or other concerted
3 activity protected by Section 1152 of the Act.

4 (b) Refusing to hire or rehire or otherwise discrimi-
5 nating against, any agricultural employee in regard to hire or
6 tenure of employment or any term or condition of employment because
7 he or she filed a charge or otherwise utilized their rights under
8 the Act.

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

11 (a) Immediately offer to Samuel Rangel, Wenceslao leyva
12 Ramon Santiago and Pedro Edeza full reinstatement to their former
13 jobs or equivalent employment, without prejudice to their seniority
14 or other rights or privileges.

15 (b) Make whole Samuel Rangel, Wenceslao Leyva, Ramon
16 Santiago and Pedro Edeza for any loss of pay and other economic
17 losses they have suffered as a result of their discharge, re-
18 imbursement to be made according to the formula stated in J& L
19 Farms (Aug. 12, 1980) 6 ALRB No. 43, plus interest thereon at a
20 20 rate of 7% per annum.

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

1 order.

2 (d) Sign t he Notice to Agricultural Employees
3 attached hereto and, after its translation by a Board agent into
4 appropriate languages, reproduce sufficient copies in each language
5 for the purposes set forth hereinafter.

6 (e) Mail copies of the attached Notice, in all
7 appropriate languages, within 30 days after the date of issuance
8 of this Order, to all employees employed by Respondent at any
9 time during the period from April, 1980 until the date on which
10 the said Notice is mailed.

11 (f) Post copies of the attached Notice, in all
12 appropriate languages, for 60 days in conspicuous places on its
13 premises, the time(s) and place (s) of posting to be determined by
14 the Regional Director, and exercise due care to replace any copy
15 or copies of the Notice which may be altered, defaced, covered or
16 removed.

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

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Salinas Office, the General Counsel of the Agriculture Labor Relations Board issued a complaint that 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 during April-May, 1980 because of their union 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 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 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 Samuel Rangel, Wenceslao Leyva, Ramon Santiago and Pedro Edeza. WE WILL NOT hereafter discharge or refuse to rehire any employee for engaging in union activities.

WE WILL reinstate Samuel Rangel, Wenceslao Leyva, Ramon Santiago and Pedro Edeza to their former or substantially equivalent employment, without loss of seniority or other privileges, and we will reimburse them for any pay or other money they have lost because of their discharge.

Dated:

MISSION PACKING CO., INC.

By _____

Representative

Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. If you have a question about your rights as farm workers or about this Notice/ you may contact any office of the Agricultural Labor Relations Board. One office is located at 112 Borinda Road, Salinas, California; the telephone number is (408) 443-3145

DO NOT REMOVE OR MUTILATE

APPENDIX I

WITNESSES CALLED BY THE PARTIES

A. By the General Counsel :

<u>Date</u>	<u>Name</u>	<u>Identification</u>	<u>Vol. & Page</u>
8/25/81 p.m.	Samuel Rangel	Alleged discrimi-	II:31-65
8/26/81 a.m.		minatee	
8/26/81 a.m.	Wenceslao Leyva	Alleged discrimi-	I:34-75
		minatee	II:1-30
8/26/81 p.m.	Ramon Santiago	Alleged discrimi-	II:66-106
		minatee	
8/26/81 p.m.	Pedro Edeza	Alleged discrimi-	II:106-135
		minatee	
8/27/81 a.m.	Jesse Ramirez	Supervisor	III:10-32

B. By Respondent :

8/27/71 a.m.	Floyd Griffin	President	III:33-80
8/27/81 p.m.	Steve Griffin	Office Manager	III:80-127
8/28/81 a.m.	Salvatore Zambrano	Foreman	IV:2-40
8/28/81 a.m.	Mathias Murillo	Foreman	IV:41-91
8/28/81 p.m.	Rodimero Covarrubias	Foreman	IV:92-106 122-143
8/28/81 p.m.	Zaragoza Ortiz	Loader-Current Employee	IV:107-113
8/28/81 p.m.	Alfredo Correal	Loader-Current Employee	IV:114-119
8/28/81 p.m.	Manuel Quintero	Loader-Current Employee	IV:119-122
8/31/81 p.m.	Francisco Garcia	Current Employee (Covarrubias is his foreman)	V:3-7

APPENDIX II
EXHIBIT WORKSHEET

CASE NAME: MISSION PACKING CO.CASE NO: 80 CE-44 SAL et al.

G.C	RESP	C.P.	OTHER	IDENT.	DESCRIPTION
1A-G				8/18/81	General Counsel's Moving Papers
2				8/18/81	8/15/79 UFW Notice of Intent to Take Access
3				8/18/81	9/5/79 Attendance Roster Pre-Election
4				8/18/81	9/7/79 Certif.of Conduct of Election Conference
5(a)-(b)				8/25/81	Co. Employment Records of Samuel Rangel
6				8/26/81	Rangel Decl. 5/12/80 Part of 5/12/80 charge v. Co.
7(a)-(e)				8/26/81	Co .Employment Records of Wenceslao Leyva
8(a)-(f)				8/26/81	Co. Employment Records of Ramon Santigao
9 (a)&(b)				8/26/81	Co. Employment Records of Pedro Edesa
	A			8/27/81	Election Tally Sheet 9/7/79
	B			8/27/81	Certification of Election Results 10/7/80
	C			8/27/81	Respondent's Summary of Bus. Records-Steve Griffin's Notes.
	D			8/27/81	Respondent's Summary of Bus. Records-Daily time sheet & Personnel
10				8/28/81	Carlos Sanchez personnel file care
11				8/28/81	Gonsolo Gomez personnel file card 4/19/80
	E			8/28/81	Garcia Esquivel personnel file card 4/19/80
	F			8/28/81	Manuel Golicia personnel file car: 4/18/80

APPENDIX II, page 2

EXHIBIT WORKSHEETCASE NAME: MISSION PACKING CO.CASE NO: 80 CE-44-SAL et al.

G.C.	RFSP.	C.P.	OTHER	IDENT.	ADMIT or REJECT.	DESCRIPTION
	G			8/28/81	8/28/81	Sergio M. Del Campo personnel card 4/18/80
	H			8/28/81	8/28/81	Lorenzo Muro personnel card 4/19/
	I			8/28/81	8/28/81	Covarrubias Bus ticket 4/8/80
	J.			8/28/81	8/28/81	Covarrubias airline ticket 4/8/80
	K			8/28/81	8/28/81	Covarrubias Hotel Bill 4/21/80
12				8/28/81	8/31/81	Pers.File Card - Angel Quintero-5/16/80 zama Cano
13				8/28/81	8/31/81	Pers.File Card - Lucio Rios 5/17/80
14				8/31/81	8/31/81	Pars. file/of workers who did not go to Huron crew #2 Card Jesus :
15				8/31/81	8/31/81	Pers. file card of Luis Saenz,
16				8/31/81	8/31/81	(Crew #2) Pers.file card of David Barajas
17				8/31/81	8/31/81	card Pars. file/of Juan Pulido
18				8/31/81	8/31/81	card Pers. file/of Ruben Gomez
19				8/31/81	8/31/81	card Pers. file/of Miguel Almanza
20				8/31/81	8/31/81	card Pers. file /of Gerardo Espinoza (crew #3)
21				8/31/81	8/31/81	card Pers. file /of Rigoberto Gomez
22				8/31/81	8/31/81	Card Pers. file /of Leonardo Gomez
23				8/31/81	8/31/81	card

APPENDIX III

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)		
)		
MISSION APCKING COMPANY,	)	Case Nos.	
	)		80-CE-44-SAL
	)		80-CE-54-SAL
Respondent,	)		80-CE-144-SAL
and	)		80-CE-254-SAL
)		
UNITED FARM WORKERS OF)		
AMERICA, AFL-CIO,	)	<u>STIPULATION</u>	
)		
Charging Party.)		

THE PARTIES HEREBY STIPULATE AS FOLLOWS:

The Respondent, Mission Packing Company, is a California corporation which has been in existence since 1976. I does not own or cultivate any agricultural properties, but rather supplies labor crews for the harvesting and packing of one crop: iceberg lettuce. Respondent also invests in about twenty percent of the lettuce crops which it harvests. The company employs approximately 100 workers throughout the year as it follows the lettuce harvest "around the horn" in such areas as Yuma, Arizona, Huron, San Joaquin Valley, and Salinas, California. Respondent also carries out some operations in Colorado.

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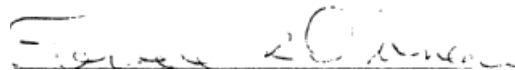
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The company has engaged in the harvesting and packing of iceberg lettuce at the following locations and at approximately the following times:

Salinas	4/15	10/15
Huron	10/10	11/15
Yuma	12/1	5/1
Huron	4/10	5/5
Colorado	7/5	9/1

Dated: August 25, 1981



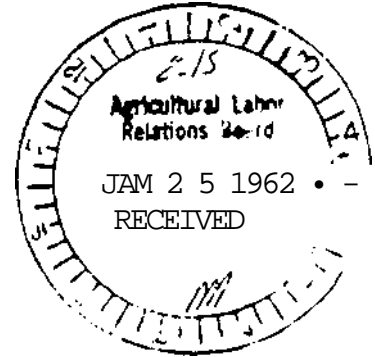
TERRANCE R. DUNCAN , Legal Counsel
AGRICULTURAL LABOR RELATION BOARD



ARNOLD MYERS
Attorney for Respondent

APPENDIX IV

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:)
MISSION PACKING CO.,)
Respondent,)
and)
UNITED FARM WORKERS OF)
AMERICA, AFL-CIO,)
Charging Party.)

Case No. 80-CE-44-SAL
80-CE-54-SAL
80-CE-144-SAL
80-CE-254-SAL

STIPULATION

The parties hereby stipulate that Mission Packing Company employee raises through September 2, 1979, were as follows:

	<u>DATE</u>	<u>RATE</u>
Trios	5/76	\$.50
	8/76	.525
	9/76	.535
	7/77	.5475
	6/78	.5675
	10/78	.58
	3/79	.6245
	8/15/79	.67
Quintettos	8/29/79	.77
	3/79	.73
	8/15/79	.85

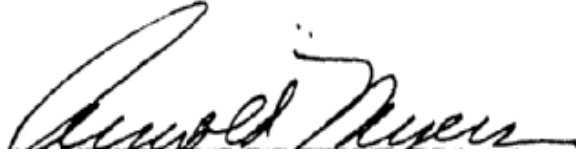
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/

The Respondent does not waive its objections as to the
relevance of this information.

Dated: August 31, 1981



ARNOLD MYERS
Attorney for Mission Packing Co.



TERRANCE R. DUNCAN
Legal Counsel
AGRICULTURAL LABOR RELATIONS BOARD

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
	)	Case Nos. 80-CE-44-SAL
MISSION PACKING,	)	80-CE-54-SAL
	)	80-CE-144-SAL
Respondent,	)	80-CE-254-SAL
)	
and)	
)	
UNITED FARM WORKS	)	CORRECTIONS TO ADMINISTRATIVE
OF AMERICA, AFL-CIO	)	<u>LAW OFFICER'S DECISION</u>
)	
Charging Party.)	
)	

The following corrections should be made to the Administrative Law Officer's Decision dated January 22, 1982:

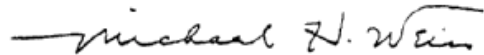
1) Page 17, footnote 26 should read:

"It was not clear to me that respondent continued to claim as part of its defense that Rangel violated its three day absence rule. The undisputed evidence presented in the case was work started for Zambrano's crew on Saturday, May 10 and Rangel applied for work that following Monday morning, May 12."

2) Page 23, footnote 36 should read:

"IV R.T. 80-81."

DATED: January 29, 1982.



Michael H. Weiss
Administrative Law Officer