El Centro, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

GOURMET HARVESTING AND PACKING COMPANY, INC., and GOURMET FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, et al., Charging Parties.	)	Case Nos. 79-CE-131-EC 80-CE-20-EC 80-CE-85-EC 80-CE-128-EC 80-CE-187-EC 80-CE-200-EC 8 ALRB No. 67

DECISION AND ORDER

On August 31, 1981, Administrative Law Officer (ALC) Stuart Wein issued the attached Decision in this proceeding. General Counsel, Respondent and the Charging Party each timely filed exceptions, a supporting brief, and a reply brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order, as modified herein.

ORDER

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

1. Cease and desist from:

(a) Failing or refusing to rehire, discharging, or otherwise discriminating against any agricultural employees in regard to hire or tenure of employment or any other term or condition of employment because of his or her membership in or activities on behalf of the United Farm Workers of America, AFL-CIO (UFW) or any other labor organization or because he or she has engaged in any concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

(b) Threatening any of its employees with reprisal if they join or support the UFW or any other labor organization or engage in any other protected concerted activity.

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

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

(a) Immediately offer Victoriano Ochoa, Estebar. Ramirez Garcia, Jose Jesus de Carmona, and Alfonso Avila full reinstatement to their former jobs or equivalent employment, without prejudice to their seniority or other employment rights or privileges .

(b) Make whole Victoriano Ochoa, Esteban Ramirez Garcia, Jose Jesus de Carmona, and Alfonso Avila for all economic losses they have suffered as a result of their discharge, the makewhole amounts to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 1932)

(c) Preserve and, upon request, make available to this Board or 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 necessary to analyze and compute the amount of backpay and interest due under the provisions 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) Post copies of the attached Notice for 60 days at conspicuous locations on its premises, the period (s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(f) Mail copies of the attached Notice in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time between January 1980 and the date of issuance of this Order. If Respondent does not maintain addresses of employees employed during the aforesaid period of time, the use of radio-spot broadcasts or other alternatives for an appropriate period of time may be directed by the Regional Director after consultation with Respondent and the UFW.

(g) Arrange for a representative of Respondent or a Board agent to read the attached Notice in all appropriate languages

to the assembled employees of Respondent on company time, at such time(s) and place (s) as are specified by the Regional Director. Following the reading (s), the Board agent shall be given an opportunity outside the presence of supervisors and management, to answer any questions 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 to compensate them for time lost at this reading and 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 with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing as to what further steps it has taken in compliance with this Order.

Dated: September 27, 1982

HERBERT A. PERRY, Acting Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the El Centro 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 threatening employees, and by refusing to rehire and discharging employees because of their support for the United Farm Workers of America, AFL-CIO (UFW), or because they exercised their rights under the Agricultural Labor Relations Act (Act) for the mutual benefit of employees. The Board has ordered us to post this Notice and to take certain other actions. 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 discharge, threaten, refuse to rehire, or otherwise interfere with or discriminate against any employee because he or she has joined or supported the UFW, or any other labor organization, or has exercised any other rights described above.

WE WILL reinstate Victoriano Ochoa, Esteban Ramirez Garcia, Jose Jesus de Carmona, and Alfonso Avila to their former jobs, or substantially equivalent jobs, and reimburse them for all losses of pay and other economic losses they have sustained as a result of our discriminatory acts, plus interest computed in accordance with the Board's Order in this matter.

Dated: GOURMET FARMS

By: _____
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 319 Waterman Avenue, El Centro, California 92243. The telephone number is (714) 353-2120.

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

Gourmet Harvesting and Packing, Inc.
and Gourmet Farms
(UFW)

8 ALRB No 67
Case Nos. 79-CE-131-EC
80-CE-20-EC
80-CE-35-EC
80-CE-128-EC
80-CE-187-EC
80-CE-2GO-EC

ALO DECISION

The ALO found that Respondent violated section 1153 (a) and (c) of the Act by its failure to rehire Victoriano Ochoa between January 9 and 17, 1980; by its failure to rehire Esteban Ramirez Garcia on February 5, 1980, and by the discharge of Jesus de Carmona and Alfonso Avila on March 24, 1980. The ALO found that Respondent further violated section 1153 (a) of the Act by the violent threats of supervisor Alfredo Medrano. The ALO dismissed the allegation of the complaint that Jose Luis Farias was discharged because of his participation in protected concerted activity. The ALO dismissed the allegation in the complaint alleging a violation of 1153 (e) respecting Respondent's failure to bargain over the utilization of asparagus-cutting machines during the 1980 harvest. Finally, the ALO dismissed the allegation in the complaint alleging Gourmet Farms as agent/alter ego/successor of Gourmet Harvesting and Packing Company since March of 1979.

BOARD DECISION

The Board adopted the ALO's Decision in its entirety.

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STATE OF CALIFORNIA

AGRICULTURAL RELATIONS BOARD

In the Matter of:	Case Nos. 79-CE-131-EC
	80-CE-20-EC
GOURMENT HARVESTING AND PACKING COMPANY, INC., AND GOURMET FARMS,	80-CE-85-EC
	80-CE-128-EC
	80-CE-187-EC
	80-CE-200-EC
Respondents,	
and	
UNITED FARM WORKER OF AMERICA, AFL-CIO,	
and	
JOSE LUIS FARIAS,	
Charging Parties.	

Deborah Escobedo, Esq.
Of El Centro, CA
For the General Counsel

Sarah A. Wolfe, Esq.
Dressler, Quesenbery, Laws
and Barsamian of El Centro, CA
For the Respondents

Alicia Sanchez, Esq.
of Keene, CA
for the Charging Party
UNITED FARM WORKERS OF AMERICA.
AFL-CIO

DECISION

SATATEMENT OF THE CASE

STUART A. WEIN, Administrative Law Officer:
This case was heard by me on April 27, 28, 29, 30, May 1, 4, 5, 6, and 7, 1981, in El Centro California.

Two consolidated complaints, amended 3 April 1981 and 15 May 1981, were based on six charges -- five filed by the UNITED FARM WORKERS OF AMERICA, AFL-CIO (hereafter the "UFW" or "union"), and one filed by irrigator JOSE LUIS FARIAS. The charges were duly served on the Respondents, GOURMET HARVESTING AND PACKING COMPANY, INC., and GOURMET FARMS on 13 November 1979, 10 January 1980, 29 January 1980, 3 March 1980, 24 March 1930, and 9 April 1980. The cases were consolidated pursuant to Section 20244 of the Regulations of the Agricultural Labor Relations Board by Order of the General Counsel dated 3 April 1981. (General Counsel Exhibit 1-6).

The second amended and consolidated complaint alleges that the Respondents committed various violations of the Agricultural Labor Relations Act (hereinafter referred to as the "Act"). The General Counsel, Respondents and Charging Party ("UFW") were represented at the hearing, and Mr. Farias was also present to testify. All were given a full opportunity to participate in the proceedings. The General Counsel and Respondents filed briefs after the close of the hearing.

Based on the entire record, including my observations of the demeanor of the witnesses, and after consideration of the arguments and briefs submitted by the parties, I make the following :

FINDINGS

I. Jurisdiction:

Respondent GOURMET HARVESTING AND PACKING COMPANY. INC. is

engaged in agriculture -- specifically the harvesting and shipping of asparagus, iceberg lettuce, cantaloupes, onions, cabbage and mixed (romaine, red leaf, Boston, endive, and escarole) lettuce in Imperial County, California, as was admitted by said Respondent. Respondent GOURMET FARMS -- as also was admitted by said Respondent -- is a farming company, doing all the "growing" associated with the above-referenced crops in Imperial County, California. Accordingly, I find that both Respondents are agricultural employers within the meaning of Section 1140.4(c) of the Act.

As further admitted by Respondents, the UFW is a labor organization within the meaning of §1140.4 (f) of the Act. was there issue of the status of the agricultural employees (alleged discriminatees) Esteban Ramirez Garcia, Victoriano Ochoa, Jose Luis Farias (a charging party), Jose Jesus Carmona, and Alfonso Avila within the meaning of Section 1140.4 (b) of the Act. As admitted by Respondents, employee (irrigator) Jose Luis Farias had worked solely for Respondent GOURMET FARMS, while the other four alleged discriminatees (harvesters) were formerly employed by either GOURMET HARVEST AND PACKING COMPANY, INC. or GOURMET FARMS, depending on their respective dates of hire as discussed infra.

II. The Alleged Unfair Labor Practices

Respondents have been charged with violation of Section. 1153 (a) of the Act by the threat of violence of supervisor Alfredo (Vaca) Medrano against striking employee Esteban.

Ramirez Garcia, on or about 6 November 1979, because of the latter's alleged support for and activity on behalf of the union, and by the discharge of Jose Luis Farias for allegedly protesting working conditions and for engaging in protected concerted activity. Respondents are charged with violation of Section 1153 (e) for unilaterally changing the terms and conditions of employment of their agricultural employees without notifying and negotiating such changes with the UFW. Said conduct (the utilization of asparagus' cutting machines during the 1980 asparagus harvest) is alleged to constitute a refusal to bargain in good faith contrary to the provisions of the Act. The remaining paragraphs of the second amended and consolidated complaint charge Respondents with violations of Sections 1153 (a) and (c) by 1) failing and refusing to rehire employees Esteban Ramirez Garcia and Victoriano Ochoa because of their participation in protected concerted activity and support of the union; 2) discharging Jose Jesus de Carmona and Alfonso Avila for engaging in protected concerted activity and for their real and/or suspected union sympathies. General Counsel has alleged that since March, 1979, Respondent GOURMET FARMS has been acting as agent and/or the alter ego and/or the "successor" of Respondent GOURMET HARVESTING AMD PACKING COMPANY, INC., with regard to the events mentioned in the complaint.

The Respondents deny that they violated the Act in any respect. Specifically, Respondents contend that the asparagus-

cutting machines had been utilized regularly during the end of the harvest season for cutting "processed" asparagus since 1975 that supervisor Medrano and employee Ramirez Garcia simply exchanged "insults" without the threat of violence; that Mr. Ramirez Garcia never reapplied for work, and even if he had, a prior finding of contempt by the Superior Court of Imperial County would have precluded his rehire; that Mr. Ochoa was rehired within seven (7) days from his initial request for work after company policy became clarified; that employees Carmona and Avila ceased working because their foreman Efrer. Alzaga had reprimanded them for poor work; and that irrigator Jose Luis Farias refused to work his entire shift and thereafter requested his final paycheck. Respondents further suggest that the issue of their duty to bargain, if any, was fully litigated in Admiral Packing Company, Case Nos. 79-CE-36-EC et al, presently before the Board.[1]

III. Background:

Respondent GOURMET FARMS is a farming company founded in October 1974. Its main function originally was the growing of asparagus, iceberg lettuce, cantaloupes, onions, cabbage, and mixed lettuce in the Imperial Valley. Thus, this entity has employed irrigators, tractor drivers, and planters to grow the various crops on its own and on leased lands. Respondent GOURMET HARVESTING AND PACKING COMPANY, INC. has supplied the 1

[1]Administrative Law Officer decision issued 4 March 1930. 26

labor force for harvesting and packing the GOURMET FARMS' crops, as well as for other farm companies. In March, 1979, GOURMET HARVESTING AND PACKING COMPANY, INC. was unable to supply , labor to GOURMET FARMS allegedly because of the strike in the Imperial Valley, and thereafter became dormant. Since that date, GOURMET FARMS has supplied its own labor force -- including harvesting and packing employees as well as the farming personnel.

Although alfalfa is Respondent GOURMET FARMS' main crop, asparagus utilizes the greater- acreage. Asparagus is first planted in a nursery and then transplanted six to eight months later, to be harvested following an additional two years. The typical Imperial Valley asparagus field lasts eight to fifteen years. After about the seventh year, production of the plants begins to decline. As the field gets older, it reaches a point where it cannot be cut by piece-rate or the employer must pay a very high rate to cut it because the production has declined. These fields are either dropped for the next year or are harvested by machines.

The asparagus plant has a large crown which puts up a spear. The latter becomes a fern if left to grow. During the month of October, the fern is cut off, and tractor work and fertilizing is accomplished for the upcoming harvest season. As the asparagus reproduces another spear, these are cut one inch below the surface for market at a minimum size of 9 inches in length.

The production of asparagus is controlled by the mean soil temperature. When this mean temperature exceeds 65 degrees, the fields can be cut on a daily basis. Anything less than that, the fields will be cut either on an every other day or every third day basis. Below freezing temperatures, there is zero growth. During March, when air temperature reaches 85 degrees to 90 degrees in the Imperial Valley, and the mean soil temperature is above 65 degrees, the asparagus spear will grow approximately six inches a day. The asparagus harvest usually comences sometime in January, hitting a peak in late February or March, and ending around the first of April. Harvesters are guaranteed a 4-hour minimum wage at $4.12 per hour, unless they can "make" piece-rate -- at $2.35/box which usually occurs during the peak seasons.

The product is hand picked, except that "Porter-Way" harvesting machines are utilized by Respondent GOURMET HARVESTING AND PACKING COMPANY, INC. when a product does not have to be a particular length or arrangement -- i.e., for dehydrated or "processed" asparagus. While more economical, the machines can only be used for this one product -- and not for "fresh pack" or frozen asparagus. Fresh-market asparagus must be a minimum of nine inches in length. Each crew of approximately thirty-six harvesters is divided into "burros" of five or six smaller groups. The cutters place the asparagus in rows for the burrerro who picks up the spears, places them into boxes, and takes them.

to the edge of the fields. Trucks pick up the product for packing and/or cooling.

Approximately 400 harvesters (twelve to sixteen crews daily) work during any particular asparagus season, for a total of some 6000 employees working during any one harvest season. Approximately 1100 acres of asparagus are harvested yearly – with the great percentage of the harvest packed and shipped for fresh market. During the first cutting (January), there is usually no asparagus on the market and thus the demand is high, However, a point is reached during the cutting season such that fresh market asparagus cannot be cut economically. Then (usually March), the canneries or processors will make their orders toward the end of the harvest season for asparagus which can be machine cut.

Although Respondent's employees communicate with the processors usually a year in advance to ascertain approximate future needs, usually no contract or work order is given until two weeks prior to delivery of the product.

The principals of GOURMET HARVESTING AND PACKING COMPANY INC. are Harold Rochester (Vice President and harvesting manager), Richard Enis (President), James Enis (Director), and Dr. David Beachamp (Director). GOURMET FARMS is owned by James Beachamp, Sr. and David Beachamp, with Mr. Rochester holding a similar position as manager of the harvesting and packing Operation of GOURMET FARMS since April, 1979. Supervisor Alfredo (Vaca) Medrano was responsible for the hiring of the

harvesting foremen for GOURMET HARVESTING AND PACKING COMPANY, INC. and continued to be so for GOURMET FARMS. James Enis was and is responsible for the hiring and firing of the irrigator foremen for GOURMET FARMS.

Following a petition for certification filed by the UFW on 16 March 1977, a representation election was conducted on 22 March 1977 among the agricultural employees of GOURMET HARVESTING AND PACKING COMPANY, INC. The Board affirmed the Investigative Hearing Examiner's finding that GOURMET HARVESTING AND PACKING COMPANY,INC. was an employer within the meaning of Section 1140.4(c) of the Act and the UFW was certified as the exclusive representative in Gourmet Harvesting and Packing (1978) 4 ALRB No. 14. A collective bargaining agreement was executed on 16 June 1978, but expired on 15 January 1979. In early Febuary 1979, harvesting employees throughout the Imperial Valley went out on strike, and an impasse in negotiations was declared by the representatives of various Imperial Valley employers, including Respondent GOURMET HARVESTING AND PACKING COMPANY, INC., on 28 February 1979. [2]

All of the alleged unfair labor practices in the instant case relate to activities following the 1979 strike, and through

[2]The propriety of the impasse declaration has been litigated in Admiral Packing Company, Case Nos . 79-CE-26-EC, supra. presently before the Board.

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the 1980 asparagus harvesting season when various striking employees reapplied for work. I will discuss each allegation in chronological order.

IV. Threat Against Striking Employee Esteban Ramirez Garcia

A. Facts:

In late October-early November, 1979, Mr. Ramirez was waiting on Imperial Avenue and Ninth Street in Calexico for his friend Juan Antonio Lopez to return from work. It was late in the afternoon, and Mr. Ramirez was speaking with Respondent foreman Jose Magana in anticipation of the return of Mr. Lopez who owed Ramirez money. Ramirez suddenly saw supervisor Alfredo (Vaca) Medrano arrive in his pickup from the direction of El Centro, back up, and begin speaking with Ramirez. Ramirez testified that "El Chasis" called him lazy -- a montonero – a groupie or trouble-maker, and invited Ramirez for a beer. When Mr. Ramirez declined, the supervisor threatened to make Ramirez "disappear", and pointed a gun at Ramirez on two occasions, threatening to kill him.

Supervisor Medrano denied threatening Mr. Ramirez with a gun. He recalled seeing Ramirez at Campillo's Service Station in Calexico (Ninth Street and Imperial Avenue) one afternoon when he had stopped to drink a few beers and talk with his friend Miguel Munoz. Ramirez started to threaten to "hurt" the company and "break the buses". The two started a verbal argument, exchanged insults, and departed approximately 45 minutes later.

Medrano averred that his 22-caliber pistol was at home during the incident, since he only carried it with him when he had a "good-sized" amount of money to pay the workers.

B. Analysis and Conclusions:

While Respondents' rights to free speech are protected under Section 1155 of the Act, Section 1153(a) prohibits threats of reprisal or force. The test is whether the statements of the foreman (supervisor) amount to threats of force or reprisals within the control of Respondent(s). Bonita Packing Company, 8 ALRB No. 27 (1977). It is an objective standard -- and not necessarily conditional upon the employee's subjective reaction. Jack Brothers and McBurney. Inc., 4 ALRB No. 18 (1978). Thus, an employer's threat to physically injure an employee because of the employee's union sympathies violates Section 1153 (a) of the Act. Sierra Citrus Association, 5 ALRB No. 12 (1979). The threat by gun on an employee's life is totally inimical to the purposes of the Act. Merzoian Brother Farm Management Co., Inc. (July 29, 1979) 8 ALRB No. 62, review den. by Ct.App.,5th Dist., Sept. 25, 1979.

General Counsel has contended that supervisor Medrano coercively threatened striking employee. Ramirez with a gun. of the Act. (General Counsel's Brief, pp. 57-58) Respondents counter the supervisor and striking employee "exchanged insults" which did not arise to threats of violence, and that the supervisor did not point his gun at Mr. Ranirez. The issue then is a factual one -- insofar as the employee's version of events is found to be the more accurate, Respondents' supervisor has engaged in conduct violence of Section 1153 (a) of the Act. If, on the ether hard.

mere insults were exchanged, the allegation would be properly dismissed.

In weighing the evidence and considering the testimony of all witnesses to this incident, I find that Mr. Ramirez' version of events is more likely true than not. I reach this decision after the following considerations:

(1) Mr. Ramirez testified in a reasonably precise, direct, and I believe candid manner, although subject to vigorous cross-exmination. While there were occasions when his testimony digressed from the questions asked, I felt that he was making a real attempt to accurately reconstruct the events in question.

(2) The candor of supervisor Medrano is highly questionable in light of his contradicted testimony with respect to the rehire of Mr. Ochoa (see discussion infra) Additionally, his recollection of the substance of the discussion with Mr. Ramirez was particularly poor. He could recall only that insults were exchanged, rather than the specifics of the conversation. I find his lack of clarity somewhat noteworthy in that a handful of witnesses did recollect that there was some form of "incident as described by employee Ramirez.

(3) Although no eyewitness could corroborate the actual threat of the gun, employee Juan Antonio Lopez recalled his conversation with Ramirez immediately following the events in question during which Ramirez described the incident about which he would later testify. Respondent witness Jose Magana recalled the incident also, although his recollection of the specific

exchange was less than clear. Since he left before the striking employee and supervisor dispersed, his testimony cannot exclude the version proffered by Mr. Ramirez.

(4) The Board has dismissed allegations of threats where the only sources of evidence on the matter were equally logical and in direct conflict. See Desert Harvest Company, 5 ALRB Mo. 25 (1979); O. P. Murphy & Sons (October 26, 1979) 5 ALRB No. 63, review den. by Ct. App., 1st Dist., Div.4, Nov. 10, 1980, hg. den. Dec. 10, 1980. The instant situation is distinguishable, however, in that (a) I credit Mr. Ramirez' testimony over that of supervisor Medrano for the aforementioned reasons; (b) the testimony of other witnesses -- e.g. Juan Antonio Lopez and Jose Magana -- tends to corroborate the Ramirez version of events.

(5) Respondent suggests that to find a violation of the Act in this instance is to presume that Ramirez was entirely "innocent", and that "El Chasis" (Medrano) alone was responsible for the bad deeds. (Respondent's Brief, p. 31). I reject this analysis, finding that insults were exchanged between the two. However, I also find that it was more likely than not that supervisor Medrano -- who often carried a gun with him, and who ha; concededly been drinking that afternoon -- committed the threats as described by Mr, Ramirez.

(6) The event described by worker Ramirez seemed to more closel proximate reality than the factual scenario suggested by Respondent – to wit, that Ramirez claimed that "Chasis" threatened him with a gun because he knew that "Chasis" carried a gun., and

would be subject to such claim. I find it more likely that the events as described by worker Ramirez occurred than that said worker contrived the factual situation because he knew that "Chasis" carried a gun.

Because of the serious nature of the threat, because of the clear nexus between the conduct of supervisor Medrano and the strike leadership role held by Mr. Ramirez during the preceding asparagus harvest (both Ramirez and Lopez testified that the supervisor referred to them as "groupie trouble-makers" during the incident), I find Respondent GOURMET FARMS to have violated Section 1153 (a) of the Act and shall recommend the appropriate remedy therefor.

V. Refusal to Rehire Victoriano Ochoa of 8 January 1980

A. Facts:

Victoriano Ochoa worked as a burrerro in the asparagus harvest for Respondent since 1977. A highly active union member, Mr. Ochoa served as a crew representative during the period of the collective bargaining agreement. He joined the strike in February 1979, and in the presence of management personnel asked workers in the fields to leave in support of the strike activity.

On 5 January 1980, Mr. Ochoa asked foreman AbeLardo Varela: if there was work available in the asparagus. The foreman indicated that he would speak with the company to see if there was work. On 3 January 1930, foreman Varela notified Mr. Ochoa that the whole crew -- minus Luis Valencia and Victoriano Ochoa--

could return to work on the following day. The foreman indicated that these were the orders from supervisor Alfredo (Vaca) Medrano, and that as far as he (Varela) was concerned, Mr. Ochoa could have work as soon as Varela was given permission to rehire him.

Although Mr. Ochoa presented himself for work on January 9, 10, and 11, the "orders" had not been changed. A few days later, foreman Varela sent word through a messenger that the orders had changed, and Ochoa reported for work on 17 January.

He worked both the 1980 and 1981 asparagus seasons with Respondent; GOURMET FARMS without incident.

Supervisor Medrano denied giving the foremen any orders regarding who to hire or not to hire -- stating that the formen were responsible for hiring and firing their own people. However, foreman Varela, called as an adverse witness, testified chat Mr. Ochoa did indeed ask for work, but that he (Varela) had orders from "El Chasis" not to give him work. (R.T., Vol. III, p. 15, 11. 13-17). The only apparent reason for the exclusion of Mssrs. Ochoa and Valencia was ". . . that business that they were having problems with the union, and they were the ones that were causing all the problems with the union." (R.T., Vol. III, p. 18, 11. 20-24). When Varela persisted in explaining to supervisor Medrano that Ochoa would go every day to look for work, and that he was a very good worker, the supervisor changed the "orders" approximate three-to-four days later, stating that the company did not want any problems and that Varela could rehire the two former strikers

B. Analysis and Conclusions:

Section 1153 (c) of the Act makes it an unlawful labor practice for an employer "[b]y discrimination in regard to the hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization", The General Counsel has the burden of establishing the elements which go to prove the discriminatory nature of the employer's conduct. Maggio-Tostado, 3 ALRB No. 33 (1977), citing NLRB v. Cir. 1958). In discriminatory refusal to rehire cases, the General Counsel has the burden of proving that (1) a proper application for employment was made; (2) the applicant was qualified; (3) work was available at the time of application; (4) the refusal to rehire was motivated by the applicant's union affiliation and/or other protected activity.

Victoriano Ochoa credibly testified that he asked foreman Varela for work on 5 January 1980, that work was available commencing on January, 1980, and that the foremen initially excluded Mr. Ochoa from his crew based on orders from supervisor Alfredo (Vaca) Medrano. Foreman Varela, called as an adverse witness, essentially corroborated the version of events narrated by worker Ochoa, stating that supervisor Medrano initially ordered him to "try and leave Mr. Ochoa out of the crew".

it was Mr. Varela 's understanding that the rationale for these orders was because Mr. Ochoa (and Mr. Valencia) caused a lot of (union) problems. It was not until a few days later that

supervisor Medrano recanted his order -- apparently so that the company could avoid any (future) problems. Mr. Ochoa commenced work on 17 January 1980.

Respondent has contended that the reason for the delay in the rehiring of Mr. Ochoa was attributable to "confusion" rather than to any discriminatory motivation. (Respondent's Brief, p. 62). I reject this proffered justification for the following reasons:

(1) Supervisor Medrano denied ever giving orders with respect to the rehire of Mr. Ochoa (or any other worker), testifying that the foremen were responsible for all hiring and firing of their respective crew members. This testimony was directly contradicted by the testimony of foreman Varela, who was a forthright and I believe sincere witness. Mr. Medrano, on the contrary, was sometimes evasive in his responses, and even seemed to be [perturbed by the entire proceeding. On one occasion, he denied the existence of the 1979 strike in stating that workers were

"taken out" of the fields with insults and threats. (R.T., Vol. II, p. 65, 11. 11-14).

(2) Supervisor Medrano recalled that Mr. Ochoa was a union representative during the strike, and the latter was observed or the picket line by foreman Varela as well as by harvesting manager Harold Rochester.

(3) The "confusion" concededly faced by supervisor Me crane Was limited only to the rehiring of union activists Valencia and Ochoa. Other former strikers were rehired without incident, as

were other crew members, all apparently without a comparable time lag, during a period when there was ample work available.[3]

(4) Mr. Ochoa was rehired only after the prodding of foreman Varela who suggested to his supervisor that Ochoa was a good worker, and would persistently seek rehire until the orders were recanted.

I conclude that Respondent GOURMET FARMS' failure to rehire Victoriano Ochoa from 9 January 1980 through 17 January 1980 was motivated by Mr. Ochoa's previous activities on behalf of the UFW and therefore violative of Section 1153 (a) and (c) of the Act I shall recommend the appropriate remedy therefor.

Because of this finding, I decline to consider General Counsel's contentions regarding the duty LO hire former strikers, the relationship between the two Respondents in this context as well as the nature[4] of the 1979 lettuce strike. Since Respondent has conceded the availability of work during the period in question, whether or not the strike can be characterized as an economic or unfair labor practice "strike" is irrelevant. And since no defense has been raised that GOURMET FARMS was not under a duty to rehire former GOURMET HARVESTING AND PACKING COMPANY, INC. employees, the issue

[3]General Counsel Exhibit No. 14 apparently refers to new employees in Mr. Varela's crew during the period February 10-16, 1980--one month subsequent to Mr. Ochoa ' s rehire difficulties. However, no evidence was presented nor did Respondent contend in its brief that there were no vacancies during the January 9-17 period in question.

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of successorship is irrelevant in this regard.[5]

VI. Refusal to Rehire Esteban Ramirez Garcia of 5 February 1980.

A. Facts:

Mr. Ramirez started working for Respondent's predecessor in 1963, and labored under various foremen. He was named strike coordinator in February 1979, and informed company vice-president Harold Rochester that an official strike had been called on or about 20 February 1979. During the 1979 strike, he asked workers to support the strike, and on various occasions asked people to leave the fields.

Mr. Ramirez testified that in February, 1930, he spoke to foreman Fernando Flores (El Bocinas) on Imperial Avenue in front of "La California" Supermarket in Calexico about obtaining work during the piece-rate portion of the asparagus season. Flores allegedly retorted that he would be fired if he gave work to (strike leader) Ramirez. Mr. Ramirez further testified that the next day he spoke with foreman Ramon Montejano regarding work, but was told that the latter would have to speak with supervisor Alfredo Medrano. He (Montejano) would glady

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[4]This issue has been previously litigated as discussed supra in Admiral Packing Company. Case Nos. 79-CE-25-EC, et al

[5]See discussion of successorship issue, infra.

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give Ramirez work if Medrano permitted it. The next day, although others were hired, Mr. Ramirez was not. Further efforts to obtain work at the fields were also fruitless as foreman Guadalupe Jaurregui explained that he had enough people, and that he did not have a place for Ramirez. Another foreman, nicknamed El Toronjo (or El Manzano) stated allegedly to Mr. Ramirez that "he did not give work to lazy people because they were strikers". (R. T., Vol. IV, p. 11, 11.24-25). For the Respondent, foreman Fernando Flores recalled that Ramirez had asked for work, but that since it was very cold, and he already had between 48 and 50 men, his crew was already complete. He denied any formal policy of hiring or recall, stating only that people were hired as needed if they showed up at the pick-up spot (in the California Supermarket parking Foreman Ramon Montejano denied seeing Mr. Ramirez after February 1979, when Ramirez allegedly did not want to work because he had other business to take care of, and because he was on strike. Vice President Rochester confirmed that he had no knowledge that Mr. Ramirez had ever asked for work during the February 1930 asparagus season.

B. Analysis and Conclusions:

Utilizing the same analysis applied to Mr. Ochoa's situation, the critical issues here, as well, with respect to Mr. Ramirez are factual ones--i.e. whether or not the former striker actually did apply for work in early February 1980, and whether or not work was available. I credit the testimony of

Mr. Ramirez in this regard for the following reasons:

(1) As discussed supra, Mr. Ramirez presented himself as a long-time farm worker who responded reasonably precisely and in a sincere manner to the questions propounded at the hearing.

(2) Foreman Fernando Flores, on the other hand, had great difficulty in recalling even the year in which Mr. Ramirez was supposed to have requested work. He first testified that he told Ramirez that his crew was complete in February 1980. He subsequently testified that the only application Ramirez made for work was in 1979.

(3) The foreman's denial of knowledge of Ramirez' strike activities belies credulity in the face of Ramirez' role as strike coordinator during the 1979 asparagus harvest. Other supervisory personnel -- notably supervisor Alfredo Medrano and vice president Harold Rochester readily admitted knowledge of the UFW activities of Mr. Ramirez.

(4) The foreman's initial reasons for failing to rehire Mr. Ramirez in February 1980, are contradicted by the documentary evidence reflecting some 42 new hirees during the first three weeks of February for Mr. Flores[1] crew alone (General Counsel Exhibit #12). Respondent's suggestion that these "lists" are not probative in that Ramirez could have shown up late so that the crew would have been completed for that particular date is not persuasive because (a) as a long-time farm worker who had been employed for many years with Respondent, it is illogical that he would not know when to timely report for work;

were a greater number of openings in the crew of Mr. Montejano[6] -- which work Ramirez credibly testified he sought in the days immediately following his discussion with foreman Flores. It is highly doubtful that Mr. Ramirez would arrive late on these occasions, as well, and that each of the crews would have already been completed for each of those work days. Indeed, foreman Montejano attributed the failure to rehire Mr. Ramirez to the latter's interest in pursuing the strike (1979), and could not recall even speaking with Mr. Ramirez during the 1980 season.

(5) Juan Antonio Lopez credibly corroborated Mr. Ramirez' conversation with foreman Montejano to the effect that he (Montejano) would not rehire Ramirez because "he would get involved". (R.T., Vol. IX, p. 7, 11. 17-20).

(6) Because foreman Varela testified that he had specific orders not to rehire UFW activist Victoriano Ochoa --at least for a few days -- Flores' denial of having received orders from, supervisor Medrano in this regard is somewhat less than convincing.

Because I find that Mr. Ramirez applied for work when work was available, and that the failure to rehire him in February 1980 was occasioned by discriminatory motivation, I shall recommend an appropriate remedy.

[6]General Counsel Exhibit No. 15 suggests that 155 new employees were e hired by foreman Montejano during the period February 3-20 20, 1980.

Respondent contends that reinstatement would be an inappropriate remedy because of Ramirez' picket line conduct during the 1979 asparagus harvest. In that regard, Respondent introduced a contempt order (Respondent Exhibit #4) in which Ramirez was found specifically to have engaged in blocking access to GOURMET HARVESTING AND PACKING COMPANY, INC. fields, and to have sanctioned other repeated instances of the same nature by the picketing workers for whom he bore responsibility. (Respondent's Exhibit #4, pp. 8-10). I find Respondents' reliance in this regard on the recent Board decision in California Coastal Farms, 6 ALRB No. 25 (1980) rev. den. by Ct. App. 1st Dist., Div. 4, Dec. 17, 1980, hg. den. January 14, 1931, to be inappropriate. There, the issue of alleged misconduct occurring after termination was reserved by the Board pending hearing in a subsequent case. The Administrative Law Officer, however, found that the violent act of throwing a rock at a bus was unprotected activity, but that said violent conduct was not the moving cause of the employee's discharge. Consequently, the ALO concluded that violation of §1153(a) and (c) occurred where the employee would not have been discharged but for his union activities. (Supra, ALO Decision, pp. 15-17). In the instant case, Respondents conceded that the decision not to rehire Mr. Garcia was riot occasioned by any belief whensoever regarding Mr. Ramirez' alleged misconduct. Rather, Respondent contended that Ramirez simply did not timely reapply, and that consequently no one was even aware of the rehire attempt. Thus

there is no causal nexus between the decision not to rehire Mr. Ramirez and any alleged "misconduct".

Nor do I find the type of conduct specified in the contempt order to be so flagrant as to warrant denial of reinstatement in this case:

> ". . . absent violence, the Board and the Courts have held that a picket is not disqualified from reinstatement despite participation in various incidents of misconduct which include using obscene language, making abusive threats against non-strikers, engaging in minor scuffles, and disorderly arguments, momentarily blocking cars by mass picketing and engaging in other minor incidents of misconduct." Coronet Casuals, Inc., 207 NLRB No. 24, 84 LRRM 1441 (197377

As pointed out by General Counsel, there is nothing in the contempt order itself which would make Ramirez unfit for reinstatement. The order restricts only his involvement in strike activities during a certain time period. The strike has been terminated; Mr. Ramirez is no longer a strike coordinator.[7]

Analogous to the Board's decision in O.P. Murphy Produce Co., Inc., supra (tomatoes thrown at persons who continued working), I conclude that the misconduct here was not so aggravated or coercive as to justify denying reinstatement to long-time employee Esteban Ramirez Garcia.

[7]Because the order has some bearing on the reinstatement issue I find it relevant. Although General Counsel raised no foundational objection at the hearing (R.T., Vol. VI, p. 49, 11. 2-10: P. 54. 11. 12-18) recrardiro- this document, I find that it is admissible (albeit doubtfully) under Evidence Code §1280 and/or §1300.

VII. Discharge of Jose Jesus de Carmona and Alfonso Avila of 24 March 1980.

A. Facts:

Jose Jesus de Carmona and Alfonso Avila worked in the 1980 asparagus harvest for Respondent GOURMTT FARMS under foreman Efren Alzaga. On Saturday, March 22, the workers harvested for approximately three hours. They did not earn enough under the piece-rate to meet the four-hour minimum. daily guarantee (S4.12 per hour), and received a little over $9.00 in pay. A small group, including Mssrs Carmona, Avila, Antonio Rubio, and others spoke to supervisor Medrano and foreman Alzaga about the guaranteed four-hour minimum wage. Receiving no satisfactory response from either, the small group stated to foreman Alzaga that they "were going to go to the union to file a charge". (R.T., Vol. IV, p. 69, 11. 2"-25) Worker Carmona testified that they went to the union that afternoon, and reported for work the following Monday (March 24) only to be told that there was no work for then, because they had created many problems. Mr. Carmona further testified that previously during the same harvest season, he passed around a petition on a company bus driven by foreman Alzaga protesting the Respondent's method of payment in cash rather than by check.

Worker Avila confirmed that foreman Alzaga told him that there was no more work because they (Avila and Carmona; were "trouble-makers and scandalous". (R.T., Vol. IV, p. 95, 11. 26-27).

For the Respondent, supervisor Medrano denied having any discussions regarding the rate of pay of the workers in March 1980. Foreman Alzaga conceded that there was an issue as to whether the workers would be paid piece-rate or hourly, but did not recall the petition regarding the cash payments. According to Alzaga, on Monday, March 24, Mr. Carmona arrived at work stating that he (Carmona) did not want any problems but that he wanted to find a better job where he would be paid more. Neither Carmona nor Avila returned to work for the Respondent thereafter. Further, the foreman suggested that he was compelled to check Mr. Carmona's work on two occasions -- because the latter's small group either cut the asparagus too long or too short. Following the second "warning", the workers did not return to work for the reasons stated by Mr. Carmona, although foreman Alzaga denied that his admonition constituted a discharge for poor performance.

B. Analysis and Conclusions:

As Respondent has stipulated that both Mssrs. Carmona and Avila were discharged on 24 March 1980 (see R.T., Vol. IV, pp. 63-64, 11. 24-28, 1-2), the issues for resolution are (1) the reason for the discharge; (2) whether or not this reason is related to protected concerted activity on the part of the employees. Respondent contends that the two employees were discharged following the foreman's criticism of their work in cutting asparagus during their last day of employment. I disagree.

Both Mssrs. Carmona and Avila had previous experience cutting asparagus --Mr. Carmona worked approximately three seasons in Stockton; Mr. Avila worked for Respondent since 1973, as well as harvested asparagus for various other companies. Carmona worked approximately four weeks prior to being criticized by his foreman; Avila approximately two weeks. According to the testimony of harvesting manager Harold Rochester, it becomes apparent whether asparagus cutters properly perform their work within one day. It is thus unlikely in light of their previous experience and work with Respondent in 1980 that these employees would start cutting asparagus either too large or too short.

The timing of the dispute regarding the paycheck suggests, rather, that the true purpose of the discharge was the protest: by the workers, rather than any justifiable business reason proffered by Respondent. This suggestion is strengthened by the fact that foreman Alzaga has conceded that the "poor performance" of the small crew did not occasion any firing. Respondent has alleged that the workers decided not to return because they were being disciplined. However, workers Avila and Carmona credibly testified that they showed up for work at 4:00 a.m. on the morning of 24 March, and that the foreman indicated there was no further work because he had orders from the company. Although denied by Mr. Alzaga, these orders parallel the orders giver, by supervisor "El Chasis" in January 1980, to not rehire Mr. Oacha as well as the orders given foreman Flores in February 1980.

with respect to worker Ramirez. In the face of this stipulation and the credible testimony of witnesses Avila and Carmona that they returned to work and were willing to work on the morning of 24 March, I do not credit Mr. Alzaga's version that he did not "stop the workers" on that date. While the amount of money in question was relatively insignificant, Respondents' supervisory personnel attempted to exclude alleged "trouble-makers" (union activists) on various occasions -- to wit, the cases of Mssrs. Ochoa, Ramirez, Carmona, and Avila.

Since I find that the preponderance of evidence suggests that the protest over the wages paid on 22 March triggered the termination of Carmona and Avila, whether or not such activity is protected concerted conduct under the Act becomes determinative of these charges.[8] Respondent apparently concedes that this type of protest is protected concerted activity, suggesting only that that activity was not the motivating factor for Respondents' termination of the two employees. (See Respondent's Brief, p. 54). There is ample ALRB and NLRB precedent for inclusion of this group conduct under the mantle of procected activity. See, e.g., Jack Brothers

[8]Because Respondents admitted that the poor work performance did not cause the termination and I have credited the Carmona Avila account of the last day of work, I do not view the issue as a dual motivation question as suggested in Respondent's Brief (p. 74), c it ins; Mt. Healthy City School District Board of Education v. Dovle. 429 U.S274, 97 S. Ct. 563 (1977)The reason for the discharge here was simply the view by Respondent that Carmona and Avila were "trouble-makers" who formally protested the pay of March 22. Had they net protested the pay on that date, they would not have been discharged on March 24. See Royal Packing' Co. (May 3, 1979) 5 ALRB Mo. 31, enf'd in part: Royal Banking Co. v. Agricultural Labor Relations Bd. (1930) 101 Cal. App. 3d 826.

& McBurney, Inc., (1980) 6 ALRB No. 12, rev. den. by Ct. App. 4th Disc., Div. 1, November 13, 1980, hg. den. December 24, 193; (workers registered complaints to foremen about a change in their working conditions); Mushroom Transportation Co. v. NLRB, 330 F. 2d 683, 56 LRRM 2034 (3rd Cir. 1964). In the instant case, a small group of workers protested their daily wage (in light of an employer - promised guaranteed minimum), and threatened to take their grievance to the union. That two employees were terminated for such a protest, I find to be conduct violative of §1153 (a) and (c) of the Act.

VIII. Discharge of Jose Luis Farias of 5 April 1980.

A. Facts:

Jose Luis Farias was hired as an irrigator for Respondent GOURMET FARMS in March 1980. On Friday, April 4, Mr. Farias commenced a 24-hour shift at 6:00 a.m., irrigating onions in very sandy terrain. Because it was very windy, irrigation borders broke, and Mr. Farias had a very difficult night. The irrigator testified that he was directed by foreman Tello to remain on the job shortly after 6:00 a.m., Saturday, because it was Easter weekend and many people were en vacation Farias continued irrigating until 10:00 a.m., when the foreman arrived, again without replacement. Farias commented that he was very tired and that he wanted to sleep. Tello warned that if he rested, he would lose his job. When Farias persisted that he "was in a very bad condition at this point", he was

told to return Monday for his final paycheck. (R.T., Vol. III, p. 71, 11. 19-23).

Foreman Jose Tello denied firing Mr. Farias, testifying that the latter chose not to work any longer. On the day in question, Tello testified that he spoke to Farias at 6:00 a.m., on the Saturday when his shift was scheduled to end, and that the worker did not wish to work any more. Although Tello requested the reasons for Farias' decision, the latter commented only that he did not want to work any longer. While the foreman admitted on subsequent examination that the replacement was somewhat late on that date (approximately 30-60 minutes), he testified that company policy permitted Mr. Farias to leave his assignment at 6:00 a.m., before the replacement arrived. The only reason Farias did not return to work, according to the foreman, was the worker's own decision to leave Respondent's employ.

B. Analysis and Conclusions:

(1) The Discharge of Jose Luis Farias.

I find that Jose Luis Farias was fired on April 5, 1980, rather than voluntarily quit as alleged by Respondent. In doing so, I have considered the following factors:

Mr. Farias testified that foreman Tello gave the following instruction after learning of his (Farias') request for rest: ". . . I'm sorry, but if you go, you will not have any more work." (R.T., Vol. III, pp. 70-71).

Whiile Tello denied this version of events, his account

was somewhat confusing at best. He recalled Farias saying that he (Farias) would not work any more, but refused to give a reason therefor. Further, Tello at first denied, and then conceded, that Farias did work at least some overtime on the morning in question, as the replacement was not immediately given a ride to Farias' work station.

The payroll records for the irrigators tend to corroborate Farias' version of working significant overtime on the day in question. (General Counsel Exhibit No. 10). Of the 21 irrigators listed on the document, only Farias' schedule reflected work for six consecutive days. Farias' work schedule for the week immediately preceding his last day of work, coupled with the unfortunate events he credibly chronicled at the hearing, tend to support his rationale for wishing to leave work on April 5. I find it unlikely that he would not explain to his foreman why he wanted to stop working at the time he requested to be replaced.

Further, the payroll records tend to corroborate that fewer employees worked on the Good Friday weekend in question -- only were listed for April 5 and 6, while some 15 to 19 irrigators worked the other days of the week. This documentation thus tends to support Mr. Farias' recollection of the "final" conversation. with his foreman and I find that the Farias version of events is more likely true than not. Whether this discharge violated Section 1153 (a) of the Act becomes central to the analysis.

(2) The Section 1153 (a) Charge:

Section 1152 of the Act provides in pertinent part that

"[E]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." (Emphasis added). It is designed to assure employees the fundamental right to present grievances to their employer to secure better terms and conditions of employment, recognizing that employees have a legitimate interest in acting concertedly to make their views known to management without being discharged for that interest. (See Jackson & Perkins Rose Co., 5 ALRB 20(1979), citing Hugh H. Wilson Corp. v. NLRB, 414 F. 2d 1345 (3d Cir. 1969), cert, denied 397 U.S. 935 (1976). The trier of fact need only reasonably infer that the alleged discriminatees involved considered that they had a grievance with management. NLRB v. Guernsey Mushinghum Electric Co. Operative, Inc.,285 F. 2d 8, 12 (6th Cir. 1960).

Under the NLRB, an individual's efforts to enforce the provisions of a collective bargaining agreement even in the absence of a similar interest by fellow employees may be, protected. Interboro Contractors. Inc., 157 NLRB 1255, 61 LRRM 1537 (1966) enforced, 388 F. 2d 495, 67 LRRM 2083 (2nd Cir. 1967) The same rule has been applied in the absence of a collective II bargaining agreement. Alleluia Cushion Company. 221 NLRB 999, 162, 91 LRRM 113 (1975). The test is whether the nature of the complaint has significance and relevance to the interests of the

Respondent's employees, regardless of the presence or absence of a collective bargaining agreement. Supra, at p. 1133. While the Ninth Circuit refused to extend the "Interboro Rule" beyond those circumstances in which there was a collective bargaining agreement (NLRB v. Bighorn Beverage. 614 F. 2d 123S, 103 LRRM 3008 (9th Cir. 1980), an NLRB rule is binding precedent in the absence of a United States Supreme Court decision to the contrary or a new Board decision. Ford Motor Co., 230 NLRB 716, 71S (1979); Roberts Electric Co., Inc., 227 NLRB 1312 (1977).

Thus, following Alleluia Cushion Co., supra, concerted activity has been found in the actions of one individual in two ALRB decisions. Foster Poultry Farms (1980) 6 ALRB No. 15; Miranda Mushroom Farm, Inc., 6 ALRB Mo. 22 (1980), rev. den. by Ct. App., 1st Dist., Div. 1, April 6, 1981. In Miranda Mushro a violation of §1153(a) was found where an individual discriminatee was terminated because he complained to the Agricultural Commission that he believed that the employer was using illegal chemicals in its operations. In Foster Poultry Farms, the Board in dicta opined that an individual employee's complaints to the employer and Cal/OSHA about various job safety conditions constitute protected concerted activity "if they relate to conditions of employment that are matters of mutual concern to all affected employees" (page 5, supra), citing Alleluia Cushion Co., 221 NLRB 999, 91 LRRM 1131 (1975) Air Surrey Corp. . 229 NLRB 1064, 95 LRRM 1212 (1977), rev'd on 26 I other grounds, 601 F. 2d 256, 102 LRRM 2599 (6th Cir. 1979).

General Counsel has suggested that the working hours of an employee is a condition of employment that would be a matter of concern to all irrigators at GOURMET FARMS. The record, however, is bereft of any evidence linking Mr. Farias ' one-time displeasure about working too many consecutive hours and the mutual concerns of other employees.

In Miranda Mishroom the employee testified that he made his complaint to the Agricultural Commission, after discussion with other workers, for the benefit of all Respondent's employees. In Foster Poultry Farms, the individual's complaints involved safety conditions which were possible violations of the California Occupational Safety and Health Act and about which other employees had expressed concern. No such discussions or concerns were expressed in the instant case.

In Alleluia Cushion Co., the NLRB concluded that an individual's Cal/OSKA complaint -- even in the total absence of evidence that the alleged discriminatee was acting in concern with other employees or that other employees even shared his concern for safety -- was protected since the absence of any outward manifestation of support was not sufficient in the Board's view to establish that other employees did not share in the complaining employee's interest in safety. However, "implied consent" legal fiction of Alleluia Cushion, in addition to being criticized by the Circuit Court of Appeals (see Bighorn. supra, citing City Aro, Inc. v. NLRB. 596 F. 2d 713 (6th Cir 1979) NLRB v. Dawson. Cabinet Co., Inc., 566 F. 2d 1079 (8th Cir

1977); NLRB v. Buddies Supermarkets, Inc., 481 F. 2d 714 (5th Cir 1973); NLRB v. Northern Metal Co., 440 F. 2d 881 (3rd Cir. 1971) has not generally been applied to other than safety-related protests. While inferentially all workers would be concerned about the number of hours they work, and the particular burden of Mr. Farias in working more than 24 hours consecutively -- the record evidence suggests this occurrence to have been isolated. Neither Farias nor any other employee had apparently complained of their overtime, and the problem seemed attributable to the peculiar difficulties faced by Mr. Farias during his shift that day. Here, unlike the situation in Alleluia, Mr. Farias' complaints resulted in no benefits (installation of eyewash stations) for other workers. There would be no potential "chilling" effect on employees who seek assistance from federal and/or state agencies to obtain statutorily guaranteed rights by a denial of protection. And were is no statutory or other legal obligation on the part of the Respondent to not request overtime under the circumstances.[9]

I view this factual context as more analogous to the "personal protests" of an individual employee grieving his

[9]The Alleluia decision is further distinguished by the fact that the grieving employee's own personal safety was but one motivation for his complaint. Most of the plant conditions he sought to remedy involved work areas and potential hazards hat he was unlikely to encounter, and in fact, his protests that accomplished direct benefits for his co-workers and only marginally affected him.

departmental transfer (Tabernacle Community Hospital and Health Center, 233 NLRB No. 208, 97 LRRM 1102 (1975), and therefore unprotected.

While General Counsel has analogized Mr. Farias' situation to that where a single concerted refusal to work overtime has been ruled presumptively protected activity (General Counsel's Brief, p. 80, citing Polytech, Incorporated (1972), 195 NLRB No. 126, 79 LRRM 1474; Schultz, Snyder & Steele Lumber Co., 198 NLRB No. 72, 81 LRRM 1079 (1972), a critical distinction exists because of the concerted nature of the activity That is, although protest be isolated, the activity in the cited cases involved more than one individual employee. In the instant case, Mr. Farias may well have been legitimately concerned about his wellbeing in the face of his foreman's mandate to keep working. However, he did not communicate his concern to other workers or to other supervisory personnel. No effort was made to 16 protest "safety" conditions, or the Respondent's overtime policies. He simply chose to discontinue work on the morning in question, and was terminated therefor. Absent legislative change or expansion of the NLRB (or ALRB) rule, I am reluctant to ignore the language of the Act and equate the conduct of an individual with the group actions of four. I recommended that this paragraph of the complaint be dismissed.

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IX. Utilization of Asparagus-Cutting Machines During The 1980 Harvest.

A. Facts:

UFW negotiator Anne Marie Smith described the March 1978 certification of the union as exclusive bargaining representative for all of the harvesting and packing work performed by Respondent GOURMET HARVESTING AND PACKING COMPANY. INC. During the negotiations of the first contract – signed on 10 June 1978 -- the issue of the asparagus machines was never raised. Nevertheless three articles of this contract dealt with the issue of mechanization (General Counsel Exhibit #2):

ARTICLE 15: Mechanization

"In the event the company anticipates mechanization of any operation of the company that will permanently displace workers, the company, before commencing such mechanical operations, shall meet with the union to discuss training of displaced workers to operate and maintain the new mechanical equipment, the placement of displaced workers in other jobs with the company, or the placing of such workers on a preferential hiring list which the company and union will use in con June tier, with ARTICLE 3, Hiring."

ARTICLE 16: Management Rights

"The company retains all rights of management including the following, unless they are limited by some other provision of this agreement: To decide the nature of equipment, machinery, methods or processes used; to introduce new equipment, machinery, methods or processes and to change or discontinue existing equipment, machinery or processes; to determine the products to be produced, or the conduct of its business, to direct and supervise all of the employees, include the right to assign and transfer employees; to determine when overtime shall be worked and whether to require overtime."

ARTICLE 18: New or Changed Operations

"In the event a new or changed operation or new or changed classification is installed by the company, the company shall set the wage or piece rate in relation to the classification and rates of pay in Appendix "A" and shall notify the union before such rate is put into effect. Whether or not the union has agreed to the proposed rate, the company may put the rate into effect after such notice. In the event such rate cannot be agreed upon mutually between the union and the company, the same shall be submitted to the grievance procedure, including arbitration, for determination, beginning at the Second Step. Any rate agreed upon or as determined by the arbitrator shall be effective from the installation of such new or changed operation."

After the contract expired in January, 1979, certain bargaining sessions were conducted on an individual basis between GOURMET HARVESTING AMD PACKING COMPANY, INC. and the union during January and February 1979. Respondent joined the employer group bargaining session of February 28, when the aforementioned impasse was declared among the Imperial Valley employers. Although more discussions occurred on 7 and 8 March 1979, and 8 August 1979, no new proposals were exchanged between Respondent GOURMET HARVESTING AND PACKING COMPANY, INC. and the union.

Negotiator Smith testified that she did not become aware of the utilization of the asparagus-cutting machines in Respondent's asparagus harvest until the 1980 harvesting Season In a conversation at that time with the union's staff representative assigned to Respondent, Ms. Smith was notified that the workers felt "threatened" by the presence of the

machines, and the facility with which the company could displace the workers from their hand harvesting work. Unfair labor practice charge number 80-CE-128-EC (General Counsel Exhibit #1-D) was subsequently filed on 4 March 1980. An oral request for information (although not specifically referring to the issue of mechanization) from the company was made by negotiator Smith on 30 October 1980 and memorialized by letter of 1 November 1980 to company negotiator Charley Stoll. No response has been forthcoming to this request as of the date of the hearing.

Harvesting manager Harold Rochester testified that Respondent GOURMET HARVESTING AND PACKING COMPANY, INC. first utilized six asparagus-cutting machines in March of 1975 which were "leased" from Jackson Farming Company. They were in use for approximately ten days to two weeks, harvesting I approximately five fields. The same machines were utilized I in March of 1976 for approximately 10 days; in March of 197"[1] for approximately 10 days; for a much shorter period (perhaps three days) in 1978. In 1979, Respondent GOURMET HARVESTING AND PACKING COMPANY, INC. purchased four machines, which were utilized in late-February, early-March because the six machines which were previously owned by Jackson Farming Company had been taken north to the Delta area. The cost of the four machines was approximately $26,000.00 -- $6500.00 apiece -- and they we re utilized for approximately 20 days. During the 1980 harvest. six machines were again utilized -- two of the four purchased

by Respondent, and four from Jackson Company for a period of about three weeks, starting in mid-March. The machines, called "Porterways", were described as "once-over" machines which would cut all the asparagus in a particular field. Thus, they were not functional for fresh-pack asparagus, all of which was required to be a minimum of 9 inches or for other processed asparagus when the contract or work order called for a particular size or packaging. The use of the machines was therefore directly related to the existence of a contract or work order for processed asparagus (e.g., dehydrated asparagus). Since no such contract was entered into during the 1981 season, no machines were utilized during that year.

B. Analysis and Conclusions:

General Counsel has alleged that during the 1980 asparagus harvest, Respondent GOURMET HARVESTING AND PACKING COMPANY, INC. began using for the first time new asparagus-cutting machines rather than its past practices of utilizing the conventional ground method of cutting without notifying or bargaining about such a change with the UFW. Such change resulted in alleged less work hours and less earnings for Respondent' s employees and thus is violative of Section 1153 (e) of the Act. Although there is no clear precedent in this regard, the Board in dicta has suggested the possibility of Section 1153 (e) violations involving a partial closure of operations in P & P Farms, 5 ALRB No. 59 (1979). A recent opinion involving the employer's decision to sell its operations is presently pending before

the California Supreme Court. Highland Ranch & San Clemente Ranch, Ltd. (1979) 5 ALRB No. 54, enf. den. in part, 107 Cal. App. 3d (1980), hearing granted August 28, 1980 (L.A. 31316).

It has long been established under the National Labor Relations Act that an employer violates Section 8 (a) (5) by effecting a change in wages, hours and other conditions of employment without notifying the bargaining representative of such proposed changes and affording the opportunity to bargain with respect to those changes. NLRB v. Katz, 369 U.S. 7 36 (1962). The NLRB has held that decisions to subcontract unit work, to transfer or partially close an operation, and to automate are mandatory subjects of bargaining. Town & Country Mfg. Co., 136 NLRB 1022, enf granted, 316 F. 2d 846 (5th Cir. 1963); Rochet dba Renton News Record, 136 NLRB 1294 (1962); Senco, Inc., 177 NLRB 882 (1969). In Fiberboard Paper II Products Corporation v. NLRB, 379 U.S. 203 (1964), the U.S. Supreme Court enforced a Board order holding that the employer was obligated to bargain about both the effects and decision to subcontract, even in the absence of anti-union animus. Absent ALRB authority, it is appropriate for the ALO to adopt the NLRB' s position in the instant case (see Labor Code §1148), and recognize the duty under Section 1153 (e) and Section 1155.2(a)

[10]Good faith bargaining is defined in Section 1155. 2 (a) as the "performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment..."

of Respondent to bargain with the UFW regarding its decision to at least partially mechanize its asparagus harvesting operation.

In order to establish a Section 1153(e) violation, however, General Counsel must prove an obligation to bargain existed at the time changes were decided on or made. This the General Counsel has been unable to do. The uncontroverted testimony established that utilization of the asparagus-cutting machines had been consistent as far back as 1975. Whenever commitments to dehydrated asparagus distributors permitted, the machines were utilized -- usually in late March or early April -- when the market was no longer suitable for fresh market asparagus. While a "decision" was made in 1979 to purchase the machinery previously leased, said decision had no impact on the potential displacement of the work force. The determinative factor for each year -- both before and after 1979 -- has been the availability of contracts for dehydrated asparagus. Thus, in 1980, only two of the purchased machines were utilized, and four' were again "leased" -- as part and parcel of that year's contractual arrangements with the dehydrated asparagus processors In 1981, no machines were utilized.

I find this factual context to be closely analogous to that of an NLRB decision in which the employer had contracted out certain work for many years. Westinghouse Electric Corp., 150 NLRB No. 136, 53 LRRM 1257 (1965). In Westinghouse, an employer was found to be under an obligation to bargain with the union

on request at appropriate times with respect to such restrictions as changes in current subcontracting practices as the union may wish to negotiate. Subcontracting of work was thus defined as a subject of mandatory bargaining. However, the failure to bargain was not necessarily a per se unfair labor practice in all situations where an employer subcontracted without prior consultation with the bargaining representatives. There, no breach of the duty of good faith bargaining was held when (1) the recurrent contracting out was motivated solely by economic considerations; (2) it comported with traditional methods by which the Respondent conducted its business operations (3) it did not during the period in question vary significantly in kind or degree from what had been customary under past established practice; (4) it had no demonstrable adverse impact on employees in the union; (5) and the union had the opportunity to bargain about changes in existing subcontracting practices at general meetings.

All five elements are present in the instant case. The utilization of the machines and decision to purchase same were related to concerns of economy in the latter part of the harvest season. The machines have been utilized without substantial variation over a period of many years. While a certain adverse impact by the simple utilization of the machines can be readily inferred, no adverse impact[11] from the decision to buy rather

[11]Harold Rochester testified that one machine could cover approximately one hundred acres in an eight-hour day, while one (thirty-five members) crew could harvest some eighty acres in a five-to-six hour period. (R.T., Vol. I, pp. 113-114,11. 21-27, 1-7).

than rent the machines has been suggested. Since the initial contract negotiations of 1978, the UFW has had the opportunity to bargain about the mechanization issue, and indeed the first contract included applicable -- albeit standard -- language with respect to the utilization of this machinery. Any failure to bargain regarding these issues following the expiration of the contract has been related to events previously litigated in Admiral Packing Company, Case No. 79-CE-36-EC, et al, a currently before the Board, and not to the issue of mechanization per se.[12] Indeed, no specific request to bargain re the machinery issue or inquiry for information concerning the machinery had been made by the union prior to the date of the hearing.

I therefore conclude that no violation of Section 1153 (e) has been committed by the Respondent GOURMET HARVESTING AND PACKING COMPANY, INC., in its reliance on asparagus-cutting machines in the 1980 season, and recommend that that portion of the I complaint be dismissed.[13]

[12]This is not to suggest that the employer is relieved of its duty to bargain with the union on request at an inappropriate time. As in Westinghouse, supra, there is no claim here that the Respondent has specifically refused to honor a request to bargain regarding the mechanization issue.

[13]Because of this ruling, I decline to consider the statute of limitations defense or the issue of notice raised in the parties' briefs. Suffice it to say that I view refusals to bargain as continuing violations of the Act, in which the statute of limitations defense has very restricted applicability (see Montebello Rose (October 29, 1979) 5 ALRS No'." 64, enf'd" Montebello Rose Company, Inc. v. Agricultural Labor Relations Board (19 S1) 119 Cal. App . Id); and that in any event, no notice of the purchase of the machinery -- as opposed to

X. Successorship

In the Second Amended Consolidated Complaint, General Counsel has alleged that "... since on or about March of 1979, GOURMET FARMS was acting as agent and/or the alter ego and/or the successor of GOURMET HARVESTING AND PACKING COMPANY, INC., with regard to the events mentioned in the complaint." I permitted this amendment during the hearing because of the newly discovered evidence that GOURMET HARVESTING AND PACKING COMPANY, INC. had become "dormant" since March 1979, and that GOURMET FAPMS -- the farming operation -- had hired its own harvesting personnel since that date. In its brief, General Counsel contends that a successorship relationship has been established under "the totality of circumstances" standard set forth in Borden Steel Rolling Mills. Inc., 204 NLRB 814, 83 LRRM 1606 (1973). (General Counsel's Brief, p. 83). Respondent denies this allegation -- pointing out that this Board has already found GOURMET HARVESTING AND PACKING COMPANY, INC. to be a separate agricultural employer under the Act. (Gourmet Harvesting and Packing, 4 ALRB No. 14 (1978) -- as a custom harvesting operation that supplied labor to GOURMET FARMS, and other companies. GOURMET FARMS commenced performing these functions when GOURMET HARVESTING AND PACKING COMPANY, INC. was forced to close operations following the 1979 strike. Although certain indicia of successorship are apparent--

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utilization of the rented machinery -- was given to any union representative prior to 1980.

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e.g. Harold Rochester, the former harvesting manager of GOURMET HARVESTING AND PACKING COMPANY, INC. was hired by GOURMET FARMS to handle the harvest and packing of GOURMET FARMS' crops supervisor Medrano was maintained, as were many foremen and employees[14] -- I decline to find such a relationship for the foregoing reasons:

(1) Resolution of the issue is irrelevant to the outcome of the charges litigated at the hearing. Clearly, Respondent GOURMET FARMS, if any entity, was responsible for the events surrounding the termination of irrigator Jose Luis Farias. At all times -- before and after 1979 -- GOURMET HARVESTING AND PACKING COMPANY, INC. did not maintain irrigators on its payroll. GOURMET HARVESTING AND PACKING COMPANY, INC. would be responsible for the refusal to bargain charge in that it is the certified collective bargaining representative of the harvesting labor force. Additionally, it was GOURMET HARVESTING AND PACKING COMPANY, INC. that purchased the asparagus "cutting machines in March 1979. GOURMET FARMS has been properly made accountable for the conduct regarding the charges of Mssrs. Ramirez, Ochoa, Carmona and Avila. Respondent has net contended that the "dormancy" of GOURMET HARVESTING AND PACKING COMPANY, INC. would somehow relieve Respondent GOURMET FARMS

[14]On the other hand, certain differences in the management structure remain apparent: GOURMET HARVESTING AND PACKING COMPANY, INC. is a'partnership owned by Harold Rochester. Richard Enis, James Enis and Dr. Beachamp, Sr.; James Enis and David Beachamp, Jr. own GOURMET FARMS.

of responsibility for any discriminatory practices. With this concession by Respondent, the issue of successorship becomes moot.

(2) Because of the above, I do not see this factual situation as a typical San Clemente, supra, or Rivcom Corporation and Riverbend Farms, Inc., 5 ALRB No. 55 (1979), where sales of the entities in question raised the issue of the duties under the Act attributable to the buyers. In the instant case, no defense has been raised that Respondent GOURMET FARMS was somehow not under a duty to not discriminatorily rehire or discharge employees because of their former relationship with the now dormant Respondent GOURMET HARVESTING AXD PACKING COMPANY.

(3) No unfair labor practice has been suggested by the mere fact of the dormancy of GOURMET HARVESTING AND PACKING COMPANY, INC. While the General Counsel has suggested that a ruling by the ALO regarding the successorship issue for the purposes or the acts alleged in this complaint will secure firmly the employees' rights for future remedy, I am reluctant to speculate upon any future conduct or relationship of the two named Respondents. I therefore make no finding of successorship, agency, or alter ego, as raised in paragraph 7 (a) of the Second Amended Consolidated Complaint.

SUMMARY

I find that Respondent GOURMET FARMS violated Sections 1153(a) and (c) of the Act by the failure to rehire Victoreino

Ochoa between January 9 and 17, 1980, by the failure to rehire Esteban Ramirez Garcia on 5 February 1980; and by the discharge of Jesus de Carmona and Alfonso Avila on March 24, 1930. Respondent GOURMET FARMS further violated Section 1153 (a) of the Ace by the violent threats of supervisor Alfredo Medrano in November 1979. I recommend dismissal of all other fully litigated allegations raised during the hearing. Because of the importance of preserving stability in California agriculture, and the significance of protecting employee rights, I recommend the following:

THE REMEDY

Having found that Respondent GOURMET FARMS has engaged in certain unfair labor practices within the meaning of Section 1153 (a) and (c) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

Having found that Respondent GOURMET FARMS unlawfully failed to rehire Esteban Ramirez Garcia, and 'wrongfully discharged Jesus de Carmona and Alfonso Avila, I shall recommend that Respondent GOURMET FARMS be ordered to offer them immediate and full reinstatement to their former jobs in the proximate asparagus harvest if it has already not done so without prejudice to their seniority, or other rights and privileges.

I shall further recommend that Respondent make Esteban Ramirez Garcia, Victoriano Ochoa, Jesus de Carmona, and Alfonso

Avila whole for any losses they may have suffered as a result of its unlawful discriminatory action by payment to them of a sum of money equal to the wages and other benefits they would have earned from the date of the unlawful conduct (January 9 through 17 for Victoriano Ochoa; from February 5, 1980 for Esteban Ramirez Garcia; from March 24, 1980 for Jesus de Carmona and Alfonso Avila[15]) to the date on which they are reinstated, or offered reinstatement less their respective earnings and benefits, together with interest at the rate of 7% per annum, for such back pay and benefits to be computed in accordance with the formula adopted by the Board in Sunnyside Nurseries. Inc., (May 20, 1977) 3 ALRB No. 42, enf. den. in part Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Board (1979) 93 Cal. App. 3d 322.

In order to further effectuate the purposes of the Act and to insure to the employees the enjoyment of the rights guarantee to them in §1152 of the Act, I shall also recommend that Respondent publish and make known to its employees that it has violated the Act, and that it has been ordered not to engage in future violations of the Act. See M. Caratan, Inc. (October 26, 1978) 4 ALRB No. 83; 6 ALRB No. 14 (March 12, 1950) review den. by Ct. App., 5th Dist., May 27, 1980.

Upon the basis of the entire record, the findings of fact

[15]Victoriano Ochoa was rehired on 17 January 1930, and has worked seasonally with Respondent thereafter.

and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended:

ORDER

Respondent GOURMET FARMS, its officers, agents, and representatives shall:

(1) Cease and desist from:

(a) Threatening employees because of their union activities or sympathies:

(b) Discouraging membership of employees in the UFW or any other labor organization by discharging or failing to rehire any of its agricultural employees for participating in concerted activities or supporting the UFW;

(c) In any other like manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 1152.

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

(a) Make whole each of the agricultural employees discriminatorily discharged, or failed to be rehired for any losses he or she suffered as a result of his or her discharge or failure to be rehired, by payment to each of them of a sum of money equal to the wages they lost, less their respective net earnings, together with interest thereon at the rate of seven percent per annum. Back pay shall be computed in accordance with the formula established by the Board in Sunnyside Nurseries, INC. supra.[17]

[17]Victoriano Ochoa, Esteban Ramirez Garcia, Jesus de Carmona, Alfonso Avila.

(b) Preserve, and upon request, make available to the Board or its agents, for examination and copying, all records relevant and necessary to a determination of the amounts due to the aforementioned employees under the terms of this order.

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

(d) Post copies of the attached Notice in conspicuous places at its El Centro property for a 90-day period, the times and places of posting to be determined by the Regional Director Respondent shall exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(e) Provide a copy of the attached Notice to each employee hired during the 12-month period following the date this decision.

(f) Mail copies or the attached Notice in all I appropriate languages within 30 days of the date of issuance of the order to all employees employed by Respondent from November 1979, to the present. If the Respondent does not maintain addresses of employees employed during the aforesaid period of time, the use of radio spots may serve as a substitute for the mailing of the Notice for an appropriate period of time as directed by the Regional Director.

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice in

Appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading(s), the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions 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 non-hourly wage employees to compensate them for time lost at this reading and 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 which have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing of further actions taken to comply with this Order.

(i) Offer to Esteban Ramirez Garcia, Jesus de Carmona, and Alfonso Avila, immediate and full reinstatement to his or her former job at Respondent's operations (asparagus harvest) without prejudice to his or her seniority or other rights and privileges.

In view of the seasonal nature of the employment, Respondent shall inform the discriminatees of the offer of reinstatement in writing, 30 to 45 days before the date on which the Respondent: expects co begin the work to which the discriminatees shall be reinstated. At the same time. Respondent shall notify the

discriminatees that their position will be held open for then for a reasonable period of time after such work begins. The offer of reinstatement shall be sent by certified mail, return receipt requested, and a copy of the offer shall be sent to the Regional Director.

It: is further recommended that the remaining allegations in the complaint as amended be dismissed.

DATED: August 31, 1981.

STUART A. WEIN
Administrative Law Officer

NOTICE TO EMPLOYEES

After a hearing at which each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act, and has ordered us to 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 any union;

3. To bargain as a group and to choose anyone they want to speak for them;

4. To act together with other workers to try to get a contract or to help or protect each other; and

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

Because this is true, we promise you that:

WE WILL NOT threaten any employee because hr or she has exercised any of these rights.

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

WE WILL offer Esteban Ramirez Garcia, Jesus de Carmona, and Alfonso Avila their old jobs back if they want then, and will pay them, as well as Victoriano Ochoa, any money they lost because we discharged them or failed to rehire them unlawfully.

DATED

Signed:
GOURMET FARMS

By: _____
(Representative) (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MULTILATE.