

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SANDRINI BROTHERS,)	
)	
Respondent,)	Case Nos. 80-CE-154-D
)	80-CE-166-D
and)	80-CE-167-D
)	80-CE-168-D
MARTHA FLORES, GONZALO GARIBAY,)	80-CE-169-D
MARIA GIRON, JESUS GUTIERREZ,)	80-CE-175-D
NAZARIO HERNANDEZ, LUCIA SANCHEZ,)	
BENJAMIN ZAMANO, and the UNITED FARM)	
WORKERS OF AMERICA, AFL-CIO,)	
)	8 ALRB No. 68
Charging Parties.)	
)	

DECISION AND ORDER

On October 19, 1981, Administrative Law Officer (ALO) Beverly Axelrod 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 provisions of Labor Code section 1156, 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^{1/} and briefs and has decided

^{1/} Respondent argues that the ALO committed prejudicial error by refusing to grant its motion to compel the United Farm Workers of America, AFL-CIO (UFW), to produce the authorization cards which three discriminatees testified to have signed. Although the ALO may have erroneously refused to order the production of the cards for credibility purposes, we find that Respondent failed to show was reasonably probable that the findings and conclusions would have been more favorable to Respondent had the ALO ordered the cards be produced. (People v. Watson (1956) 46 C.2d 818, 299 P.2d 243.)

to affirm the ALO's rulings, findings,^{2/} and conclusions as modified herein, and to adopt her recommended Order with modifications.

The ALO found evidence of Respondent's anti-union animus in the acts and conduct of its foremen and supervisor, which consisted of anti-union statements, and their practice of following union organizers who were lawfully taking access to Respondent's premises to contact employees. We find that foremen Antonio Aldaco, Zoila Rivera, and Roberto Lopez, joined by supervisor Ramon Mendez, engaged in unlawful surveillance by following the union organizers around Respondent's fields while they were attempting to talk to the employees. As that issue was fully litigated at the hearing and it is clearly related to the allegations of the complaint, we conclude that Respondent, by its agents' acts of surveillance, violated section 1153 (a) of the Agricultural Labor Relations Act (Act). (Prohoroff Poultry Farms (Nov. 23, 1977) 3 ALRB No. 87.)

ORDER

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

1. Cease and desist from:

^{2/} In comparing the ALO's findings to the record we have noted some ambiguity regarding the actual hire dates of some of the discriminatees and the number of less senior employees who continued working after September 23, 1980. As we are unable to resolve the ambiguities, and each of the potential changes would serve only to further support the ALO's conclusions, we adopt the dates and numbers in the ALO Decision.

(a) The surveillance of employees while they are being contacted by union agents or are otherwise engaged in union activities.

(b) Laying off 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 Act.

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

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

(a) Immediately offer to Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazario Hernandez, Leticia Martinez, Lucia Sanchez, and Benjamin Zamano full reinstatement to their former jobs or equivalent employment, without prejudice to their seniority or other employment rights or privileges.

(b) Make whole the employees named in paragraph 2(a) above for all losses of pay and other economic losses they have suffered as a result of their discriminatory layoff, the reimbursement amounts, plus interest, to be computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.

(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 and interest due under the terms of this Order to each discriminatee.

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

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period from September 22, 1980, until the date on which the said Notice is mailed.

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

(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 agricultural 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 and/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 with its terms and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: September 27, 1982

HERBERT A. PERRY, Acting Chairman

JEROME R. WALDIE, Member

MEMBER McCARTHY, Dissenting in Part:

Upon this record, I would find that the General Counsel has not established by a preponderance of evidence that Respondent either had knowledge of Gonzalo Garibay's minimal union activities or that it discharged him for that reason. According to Garibay, his union activity at the work site consisted solely of signing a union authorization card submitted to him by a UFW organizer while two supervisors stood 90 feet away, talking to each other, "facing my direction" (direct examination) and "looking at me" (cross-examination). There is no evidence that any other union activity in which he may have engaged had come, or could have come, to the attention of Respondent or its agents.

I would also reject the ALO's unwarranted inference of employer knowledge based on Garibay's purely subjective opinion that supervisor Aldaco exhibited a different attitude towards him after he had signed the card. The ALO interpreted Garibay's testimony on that point as establishing "a real indication of

Respondent's knowledge of the employee's union activity." Garibay, on the other hand, testified simply that although Aldaco spoke to him many times concerning work-related matters following his signing of the card, the supervisor had become "very serious," whereas, Garibay believed he had smiled more when speaking to Garibay on earlier occasions.

The record reveals that UFW organizers generally took access to Respondent's premises while employees were working under the close and constant supervision of supervisors charged with maintaining quality control. Garibay himself testified that he signed the authorization card at about 9 o'clock one morning in an area where the 40 to 50 members of his crew were engaged in grape-picking and packing operations. There is nothing in the record on which to base an inference that the supervisors' presence on that occasion was in any way out of the ordinary, or that they were surveilling Garibay rather than performing their customary work. (Two Wheel Corp., dba Honda of Mineola (1975) 218 NLRB 436 [89 LRRM 1405].) In circumstances such as this, I view with particular concern a finding of employer knowledge of union activity which is based on the mere fact that a union organizer made work-site contact with an employee pursuant to California Administrative Code, title 8, section 20900 et seq., the Board's access rule. Employer knowledge is still an essential element of proof in discrimination cases, which means that the General Counsel must prove it by a preponderance of the evidence.

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In this case, the General Counsel simply has not met that burden,

(Lawrence Scarrone (June 17, 1981) 7 ALRB No. 13.)

Dated: September 21, 1982

JOHN P. McCARTHY, Member

CASE SUMMARY

Sandrini Brothers
(Martha Flores, Gonzalo Garibay,
Maria Giron, Jesus Gutierrez,
Nazario Hernandez, Benjamin Zamano,
Lucia Sanchez, and the United Farm
Workers of America, AFL-CIO)

8 ALRB No. 68
Case Nos. 80-CE-154-D
80-CE-166-D
80-CE-167-D
80-CE-168-D
80-CE-169-D
80-CE-175-D

ALO DECISION

Sandrini Brothers grows 600 acres of table and wine grapes in Kern County. In August and September of 1980 the UFW engaged in an organizational campaign among its employees. Some employees attended meetings at the Union's office, signed authorization cards and/or distributed authorization cards in conjunction with the organizational drive. Union organizers took access to Sandrini's property to contact employees working in at least three of the four crews working in early September. The complaint alleged that ten workers were discriminated against by early layoffs that occurred in late September 1980.

The ALO found that the General Counsel proved a prima facie case in all ten instances. She recommended dismissal of three of the cases on the basis that Respondent showed that those employees quit and Respondent had a valid business reason for not rehiring them. The ALO recommended that the Board find violations as to the remaining seven discriminatees on the basis that the Company's proffered defenses were pretextual.

BOARD DECISION

Respondent, in its exceptions to the ALO Decision, argued that the failure of the ALO to order production of authorization cards was prejudicial error. Respondent had requested the order to test the credibility of witnesses who claimed they had signed the cards. The Board found that, while the ALO's ruling may have been in error, the Respondent failed to show that it was prejudiced thereby.

The Board affirmed the ALO's findings and conclusions as to all ten employees. The Board also found that Sandrini engaged in unlawful surveillance by its supervisors' following the Union organizers around the fields while they attempted to speak with the employees. As the issue was fully litigated and related to the other allegations the Board found an independent violation of section 1153 (a) of the Act.

DISSENT

Member McCarthy, dissenting in part, views the evidence in support of Respondent's knowledge of Gonzalo Garibay's union activities insufficient to support a finding that he was discharged for discriminatory reasons.

* * *

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

* * *

STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:)
)
 SANDRINI BROTHERS,)
)
 Respondent,)
)
 and)
)
 MARTHA FLORES, GONZALO GARIBAY,)
 MARIA GIRON, JESUS GUTIERREZ,)
 NAZARIO HERNANDEZ, LUCIA SANCHEZ,)
 BENJAMIN ZAMANO, and the UNITED)
 FARM WORKERS OF AMERICA, AFL-CIO,)
)
 Charging Parties.)
)
 _____)

CASE Nos. 80-CE-154-D
 80-CE-166-D
 80-CE-167-D
 80-CE-168-D
 80-CE-1S9-D
 80-CE-175-D

Manual Melgoza, Esq. and John Patrick Moore, Esq., of Fresno, California, for the General Counsel.

Seyfarth, Shaw, Fairweather & Geraldson, by Paul J. Coady, Esq., of Los Angeles, California, for the Respondent.

Juan Cervantes, of Delano, California, for the United Farm Workers of America, AFL-CIO.

DECISION

Statement of the Case

BEVERLY AXELROD, Administrative Law Officer: These cases were heard before me in Delano, California, on May 5, 6,7,8,11,12,13,14,18,19,20,21 and 22, 1981. The complaint was filed on April 1, 1981 and was amended April 7 and 16, 1981

and on May 22, 1981.^{1/} The complaint alleges violations of Section 1153 (a) and (c) of the Agricultural Labor Relations Act, herein called the Act, by Sandrini Brothers, herein called Respondent. The complaint is based on charges filed on August 26, 1980, and September 23 and 30, 1980. The charges were duly served on Respondent.

All parties were given full opportunity to participate in the hearing. References herein to exhibits introduced by the General Counsel will be "GCX"; references to exhibits introduced by Respondent will be "RX"; references to testimony will be "TR" followed by the transcript volume in Roman numerals and the page references. After the close of the hearings the General Counsel and Respondent each filed a brief in support of its respective position.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following findings of facts and conclusions of law.

Findings of Fact

I. Jurisdiction

Sandrini Brothers is a partnership engaged in agriculture in Kern County, California, and is an agricultural employer within the meaning of Section 1140.4 (c) of the Act. The principal general partner is Mr. Lester Sandrini.

1/ A First Amended Complaint, incorporating these amendments, was served on June 1, 1981.

Martha Flores, Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazario Hernandez, Lucia Sanchez, and Benjamin Zamano are, as described fully herein, agricultural employees within the meaning of Section 1140.4 (b) of the Act.

The United Farm Workers of America, AFL-CIO, (herein called the Union), is a labor organization representing agricultural employees within the meaning of Section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

The complaint alleges that Respondent violated Section 1153(a) and (c) of the Act by discriminatorily discharging or laying off ten named employees in August and September, 1980, for engaging in protected union activity. The ten named alleged discriminatees are: Jesus Flores, Manuel Flores, Martha Flores, Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazarios Hernandez, Leticia Martinez, Lucia Sanchez, and Benjamin Zamano.

Respondent denies that its actions violated the Act.

A. The Operation of the Farm

Respondent has operated its farm for approximately twenty years. Respondent's principal crops are table grapes. Respondent has approximately 500 acres devoted to table grapes. An additional 100 acres is devoted to growing juice grapes. Of the table-grape acreage, approximately

320 acres are devoted to the Thompson Seedless variety. The remaining 180 acres of grapes are planted with several other varieties, including Ribier, Calmaria, Emperor and Queen. Details of Respondent's grape harvest procedures are given in the Sections infra dealing with the layoffs of the alleged discriminatees.

B. Respondent's Supervisors

The overall operation of Respondent's business is conducted under the supervision of general partner Lester Sandrini. Respondent in its answers admits that Mr. Sandrini is a supervisor within the meaning of the Act, and I so find.

Under Lester Sandrini's supervision, Richard Sandrini (Lester Sandrini's nephew) is in charge of grape growing and grape production at Respondent's business. He is a partner in Respondent's business. Richard Sandrini's duties consist of: "Basically I run all of the production and the field for all of the various crops, the basic farming end of it." TR. VIII: 984. Richard Sandrini is responsible for hiring, firing, and quality control at Respondent's grape operations. TR. VIII: 985-986. During the harvest season, Richard Sandrini goes from crew to crew in the field, checking on the harvest operations as they take place. Richard Sandrini works "directly under" Lester Sandrini, TR. VII: 852; however, Lester Sandrini only goes out to the fields once or twice a week, and the harvest operations and supervision of employees are largely under the daily control of Richard Sandrini. TR. VII: 851-853; TR. VIII: 985-986. Respondent in its Answer admits that Mr. Richard Sandrini is a supervisor within the meaning of the Act, and I so find.

Working under the supervision of Richard Sandrini is Mr. Ramon Menendez. Mr. Menendez's title was given as "crew boss" by Lester Sandrini, TR. VII: 870; Mr. Menendez described his own

title as "supervisor", TR. XI: 1369. Mr. Menendez has been employed at Respondent's business for fifteen years. His duties are similar to those of Richard Sandrini. During the harvest season, Mr. Menendez goes around among the harvesting crews, checking on the work being done. Under Richard Sandrini 's supervision, Mr. Menendez has authority to hire and fire employees, and to assign them their duties. TR. VII: 870; TR. VIII: 986; TR. XI: 1369-1370. Respondent in its Answer admits that Mr. Menendez is a supervisor within the meaning of the Act, and I so find.

During the harvest of the seedless grapes there are four crews of employees working in the fields. Each crew has a crew foreman assigned to it. The crew foreman checks the overall quality of the work being done by the employees in the crew, and directs the employees in their work. Three crew foremen are involved in this case: Mr. Zoilo Rivera, Mr. Roberto Lopez, and Mr. Antonio Aldaco. Respondent in its Answer admits that Mr. Rivera, Mr. Lopez and Mr. Aldaco are supervisors within the meaning of the Act, and I so find.

C. The Union Drive at Respondent's Premises
and Respondent's Anti-Union Animus

On August 18, 1980, the Union filed a Notice of Access at Respondent's premises (GCX: 1G). In September 1980 Mr. Juan Cervantes and three other Union organizers went to Respondent's fields to speak with the employees about the Union and to get them to sign Union authorization cards. TR. VII: 801. The Union representatives came there for about a

week, and wore badges with the Union's eagle insignia on them. TR. VII: 785-788, 809. The organizers each went to one of the harvesting crews.^{2/}

The record is replete with instances during this organizing effort in which Ramon Menendez, the overall supervisor, and the individual crew foremen followed the organizers around, interrupted their conversations with workers, and made anti-union statements to the organizers and the workers. Mr. Menendez and two of the foremen, Mr. Antonio Aldaco and Mr. Ziolo Rivera, testified and made blanket denials that they did any of these acts. However, I do not credit these denials. Rather, from the evidence cited below, which I credit, I find that the following instances took place, indicating anti-union animus on the part of Respondent.

1. Antonio Aldaco's crew. I find that organizer Juan Cervantes went to Mr. Aldaco's crew every day for a week, and I credit Mr. Cervantes' testimony that Mr. Aldaco followed him around as he talked with the workers. TR. VII: 796-798. Mr. Cervantes also testified that Mr. Aldaco interrupted Mr. Cervantes while the latter was talking with workers, and stated that the Union was no good, that Mr. Aldaco had had problems with the Union at another place. TR. VII: 798, 341. Mr. Cervantes' testimony is also corroborated by the testimony of Mr. Gonzalo Garibay, a worker in that crew, who stated that Mr. Aldaco followed the organizer around, TR. I:

^{2/} The exact date of the Union drive was not specified, but Richard Sandrini testified the organizers appeared around September 6, 1980. TR. VIII: 1001.

103-106, and that Mr. Aldaco told the crew members not to sign the Union's authorization cards, TR. I: 106.

2. Zoilo Rivera's crew. I credit the testimony of Ms. Maria Giron, a worker in Mr. Rivera's crew, that when the Union organizers came to her crew Mr. Rivera stayed close to them and listened to what was said, TR. II: 139-140, 142-143; and that Mr. Rivera argued with the organizers, TR. II: 145-146. I also credit the testimony of Mr. Rigoberto Castillo that he went to Mr. Rivera's crew to get the workers to sign Union cards, and that Mr. Rivera followed him around. TR. XII: 1551-1553.

3. Roberto Lopez' crew. I credit the testimony of Mr. Benjamin Zamano, a worker in Mr. Lopez' crew, that when the organizers came around Mr. Lopez was close to them all the time, TR. V: 507, and that often Mr. Menendez came around as well, ibid. Mr. Zamano's testimony was corroborated by Ms. Leticia Martinez, another worker in the crew, who testified that Mr. Lopez told his workers when the organizers came around that if they signed Union cards the Union "would take dues away from us," and that the present, non-union status "was better this way, that the boss was very satisfied this way." TR. IV: 432.

4. Ramon Menendez. The testimony presented numerous instances of supervisor Menendez' conduct and statements to the organizers and employees concerning the Union's drive. I credit the following testimony concerning Mr. Menendez' anti-union animus:

(a) Union organizer Juan Cervantes testified that on one occasion when he spoke to workers in Mr. Aldaco's crew during a break, Mr. Menendez drove up in his pick-up truck and stopped the truck between Mr. Cervantes and the workers; Mr. Menendez stayed in the truck, with the motor running, until it was time for the workers to go back to work. TR. VII: 799-801.

(b) Maria Giron testified that when an organizer came to her crew, Mr. Menendez drove up in his truck and argued with the organizer, calling him a "dog" and a "son of a bitch." TR. II: 136-138, 186.

(c) Mr. Nazario Hernandez, a worker in Mr. Rivera's crew, testified that Mr. Menendez told the workers not to talk with the organizers, TR. III: 354. He also testified that Mr. Menendez argued with an organizer, TR. III: 382-383.

(d) Benjamin Zamano testified that Mr. Menendez frequently came around when the organizers were in the fields, TR. V: 506-507, and that Mr. Menendez told the workers that the Union would "upset the work," and that they "didn't need the Union." TR. V: 524-525.

(e) Gonzalo Garibay testified that Mr. Menendez told him that he did not like "Chavistas." TR. I: 88.

(f) Leticia Martinez testified that Mr. Menendez told her that he had heard there were a lot of problems with the Union in other places , and. that he did not want Union people at Respondent's business. TR. IV: 430-431, 441-442.

5. Richard Santini. Juan Cervantes testified that the first day he went to Respondent's premises he tried to talk to the workers at noon, not realizing that the workers did not have a lunch hour at that time. When he got to the fields, Mr. Cervantes testified that Mr. Sandrini came over and told him to leave, and that Mr. Sandrini said he would "kick my ass" if he did not leave. TR. VII: 787. Mr. Sandrini testified, and was asked: "Q. Did you tell him that you were going to kick [his] ass?" "A. It could have been that general gist of the conversation, yes." I find that the above incidents demonstrate anti-union animus on the part of Respondent.

D. The Alleged Discriminatees and Their Union

Activity

The gist of the General Counsel's allegations in this case is that Respondent tried to frustrate the Union's organizing drive at an early stage, by discriminatorily laying off workers who talked with Union organizers, signed Union authorization cards, attended Union meetings, or otherwise indicated early evidence of support for the Union. In this section of the Decision, the union activities of the alleged discriminatees are discussed; in the next section Respondent's knowledge of these activities is considered.

1. Maria Giron. Ms. Giron began working for Respondent in August 1930. TR. II: 130. Respondent's payroll records, GCX: 4, week beginning August 16, 1980, indicates a Maria Hiron [sic], with a correction of the last name to "Giron,"

on line 16 of the payroll sheets. The starting date for Ms. Giron is shown as August 18, 1980. (GCX: 4, period beginning 8/16/80). The payroll record for the period beginning 8/21/80, (GCX: 4, line 16), shows a social security number of 548-45-9323 for Maria Hiron [sic], Ms. Giron testified that she got her job by asking Ramon Menendez, for whom she had worked at another place, for work at Respondent's premises. Mr. Menendez gave her a job for the 1980 grape season. Her work consisted of regular crew work -- a group of three or four employees would work together in the fields. One employee would pick the grapes, another would take them in a wheelbarrow to the packing table, where a third employee would pack the grapes into boxes. She worked in a group with her sister-in-law, Lucia Sanchez , and Nazario Hernandez. They worked in Zoilo Rivera's crew. Ms. Giron did all the tasks of the group, the employees alternating at the tasks. TR. II: 130-134. I find that Ms. Giron is an agricultural employee, within the meaning of Section 1140.4 (b) of the Act.

Ms. Giron's union activities while working for Respondent consisted of the following: the first day the Union organizer came to the fields where her crew was working, she talked with him, TR. II: 135. She spoke with the organizer again at the fields, and gave him her address; he went to her house, where she signed an authorization card. He also gave her other cards, and she gave these to other workers to sign. She did this in her car riding to work, and also at the fields just before work began. TR. II: 143-144.

Later, she gave the signed cards to the organizers when they came out to the fields. TR. II: 144. Ms. Giron also went to two Union meetings during this time at the Union's office at "40-Acres." She went to these meetings with several people from work, and spoke to people at the meetings. TR. II: 152. She spoke to workers in her crew at the fields, trying to get them to support the Union and to sign authorization cards. TR. II: 144, 159.

2. Nazario Hernandez. Mr. Hernandez began working for Respondent in August 1980. TR. III: 353. Respondent's payroll records, (GCX:4, week beginning August 28, 1980, line 13), show a starting date of August 28, 1980. Mr. Hernandez got work when he went to Mr. Menendez' house with Maria Giron He picked grapes in Mr. Rivera's crew, working with Ms. Giron and two other people. He rode to work with Ms. Giron. TR. III: 353-361, 369, 372. I find that Mr. Hernandez is an agricultural employee within the meaning of Section 1140.4(b) of the Act.

Mr. Hernandez' union activities while working for Respondent consisted of attending two Union meetings at the Union's office at 40-Acres; he went to the meetings with Ms. Giron and with several other people who worked for Respondent He also signed a Union authorization card at his house. TR. III: 353-369.

3. Jesus Gutierrez. Mr. Gutierrez began working for Respondent in August 1980. TR IV: 455. Respondent's payroll records (GCX:4, week beginning August 21, 1980, line 25),

show a starting date of August 27, 1980. Mr. Gutierrez got work by calling Mr. Menendez. He was assigned work in Roberto Lopez' crew, where he worked de-leafing the vines, picking grapes, and occasionally packing the grapes. TR. IV: 455-457, 461, 472. I find that Mr. Gutierrez is an agricultural employee within the meaning of Section 1140.4 (b) of the Act.

Mr. Gutierrez' union activities while working for Respondent consisted of talking with Union organizers in the fields, and signing a Union authorization card in the field. TR. IV: 458, 488.

4. Benjamin Zamano. Mr. Zamano began working for Respondent in August 1980. TR. V: 502. Respondent's payroll records list a Benjamin Samano [sic], social security number 569-29-9497, with a starting date of August 27, 1980. (GCX: 4, week beginning August 21, 1980, line 26). Mr. Zamano got work through Jesus Gutierrez, who asked Mr. Menendez for work for Mr. Zamano at the same time that he asked for work for himself. Mr. Zamano worked at picking grapes, and was assigned to Roberto Lopez' crew. He rode to work with Jesus Gutierrez and Mr. Gutierrez' wife, Leticia Martinez. TR. V: 502-503. I find that Mr. Zamano is an agricultural employee within the meaning of Section 1140.4(b) of the Act.

Mr. Zamano's union activities consisted of talking with the Union organizer and signing a Union authorization card in the field. TR. IV: 432-433 (testimony of L. Martinez); TR. IV: 458 (testimony of J. Gutierrez).

5. Leticia Martinez. Ms. Martinez began working for Respondent in September 1980. TR. IV: 429. Respondent's payroll records indicate a starting date of September I, 1980 (GCX: 4, week beginning August 28, 1980, line 2). Ms. Martinez is married to Jesus Gutierrez. Ms. Martinez got work at Respondent's business by talking with Ramon Menendez. She was assigned to Roberto Lopez' crew, and worked at packing grapes and de-leafing the vines. TR. IV: 429-431, 435. I find that Ms. Martinez is an agricultural employee within the meaning of Section 1140.4 (b) of the Act.

Ms. Martinez' union activities while working for Respondent consisted of talking with Union organizers in the fields, and signing a Union authorization card in the fields. TR IV: 432-433; TR. IV: 458 (testimony of J. Gutierrez).

6. Gonzalo Garibay. Mr. Garibay began working for Respondent in September, 1980. TR. I: 87. Respondent's payroll records indicate a starting date of September 4, 1980. (GCX: 4, week beginning September 3, 1980, line 10). Mr. Garibay got work at Respondent's business by talking with Mr. Menendez. He was assigned to Antonio Aldaco's crew, and worked packing grapes. TR. I: 87-89. I find that Mr. Garibay is an agricultural employee within the meaning of Section 1140.4 (b) of the Act.

Mr. Garibay's union activities while working for Respondent consisted of speaking to the Union organizers in the fields and at his home, and signing a Union authorization card in the fields. TR. I: 90, 106.

7. Lucia Sanchez. Ms. Sanchez began working for Respondent in August 1980. TR. III: 276. Respondent's payroll records indicate a starting date of August 18, 1980. (GCX: 4, week beginning August 16, 1980, line 20). She is the sister-in-law of Maria Giron. She got work with Respondent when Ms. Giron spoke to Mr. Menendez and asked for work for both of them. She was assigned to Zoilo Rivera's crew, and worked picking grapes. She drove to work with Ms. Giron and Nazario Hernandez. TR. III: 276-279. I find that Ms. Sanchez is an agricultural employee within the meaning of Section 1140.4 (b) of the Act.

Ms. Sanchez' union activities while working for Respondent consisted of going to two Union meetings at the Union office at 40-Acres, and signing a Union authorization card in Ms. Giron's house. TR. III: 281, 296.

8. Martha Flores. Ms. Flores began working for Respondent in 1973. TR. V: 528. She has continued to work for Respondent seasonally since that time, doing a number of jobs connected with growing grapes. In the summer of 1980 she worked in Zoilo Rivera's crew. Her two sons, Jesus Flores and Manuel Flores, worked with her in Mr. Rivera's crew. She packed grapes during the 1980 season. TR. V: 528-530. I find that Ms. Flores is an agricultural employee within the meaning of Section 1140.4 (b) of the Act.

Ms. Flores' union activities while working for Respondent consisted of telling other employees in the fields to support the Union, and to go to union meetings. TR. V:531, 584-586.

9. Jesus Flores. Mr. Floras began working for Respondent in 1979. TR. VI: 697. His work that year was in cotton crops. Ibid. In 1980, he worked for Respondent during the grape harvest. He worked picking grapes in Zoilo Rivera's crew, with his mother, Martha Flores, doing the packing. TR. VI: 697-698. I find that Mr. Flores is an agricultural employee within the meaning of Section 1140.4(b) of the Act.

Mr. Flores did not testify to any union activities on his part. The General Counsel's allegation in this case is that Mr. Flores was discriminatorily discharged by Respondent because of his mother's Union activities. This issue is discussed infra.

10. Manual Flores. Mr. Flores began working for Respondent in 1980. TR. V: 530 (testimony of Mr. Flores); TR. VI: 697 (testimony of J. Flores). Mr. Flores worked picking grapes in Zoilo Rivera's crew, along with his brother Jesus Flores; his mother, Martha Flores, packed the grapes. Ibid. I find that Mr. Flores is an agricultural employee within the meaning of Section 1140.4(b) of the Act.

There was no testimony concerning union activities on the part of Mr. Flores. The General Counsel's allegation in this case is that Mr. Flores was discriminatorily discharged by Respondent because of his mother's union activities. This issue is discussed infra.

In sum, I find:

(1) All ten alleged discriminatees are agricultural employees within the meaning of Section 1140.4 (b) of the Act.

(2) Martha Flores, Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazario Hernandez, Leticia Martinez, Lucia Sanchez, and Benjamin Zamano engaged in union activities and support protected by the Act.

(3) There is no evidence that Jesus Flores and Manuel Flores engaged in union activities protected by the Act.

E. Respondent's Knowledge of the Union Activities of
the Alleged Discriminatees

Respondent's witnesses testified that they had no knowledge at all of any union activities on the part of any of the alleged discriminatees. I find this disclaimer of knowledge unconvincing and not credible.

First, as described supra, Respondent's supervisors engaged in a pattern of following the Union organizers around in the fields. These actions, plus the anti-union comments of some of the supervisors, evince Respondent's keen overall interest in the union activities of its workers. Second, with regard to six of the alleged discriminatees I find credible specific evidence that Respondent was aware of their union activities and support. The six individuals are: Gonzalo Garibay, Maria Giron, Martha Flores, Leticia Martinez, Jesus Gutierrez, and Benjamin Zamano. The evidence

upon which I base my findings concerning these six employees is as follows.

1. Gonzalo Garibay. Mr. Garibay testified that when the Union organizers came to his crew, they talked with him in the field and he signed a Union authorization card. TR. I: 90; TR. II: 243. He further testified that supervisor Antonio Aldaco and Mr. Richard Sandrini were present at the time and were looking at him when he signed the card. TR. I: 90; TR. II: 243.

I base my finding of Respondent's knowledge of Mr. Garibay's union activities on the fact that his supervisor saw him sign a Union card. I find additional support for Respondent's knowledge in Mr. Garibay's testimony that immediately after he signed the card, supervisor Aldaco's attitude towards him changed:

"When I first arrived there the foreman [Mr. Aldaco] used to talk to me real nice. After I signed the card, he would hardly talk to me. ... When I first got there he was very friendly and after I signed the card a very angry face." TR. I: 90-91.

Respondent argues that this latter evidence is insubstantial, but I disagree. I find that such a change in attitude is a real indication of Respondent's knowledge of the employee's union activity. The difference between being supervised at work by a friendly foreman, as opposed to an

angry one, is no chimera; in fact, it can be a real stress factor in employment. To argue that a worker would not notice such a change, or that such a change is meaningless, is to deny the actuality of a workplace where employees are sensitive to the angry look, the brusque tone of voice, the curt giving of orders instead of a friendly comment on how the job is going. These kinds of attitudes can make up a daily reality for workers who are supervised closely throughout the day, and I credit this testimony of Mr. Garibay as an indication that Respondent's attitude towards him changed when Respondent became aware of his union support.

2. Maria Giron. The evidence of Ms. Giron's union activities (Section D, supra) indicates that she was one of the most active supporters of the Union at Respondent's premises. She talked with the other employees at work, and took them to two meetings at the Union's offices at 40-Acres. Ms. Giron testified that following the second of these meetings she had a conversation with supervisor Ramon Menendez, and that Mr. Menendez "told me he found out that I had gone to the 40-Acres. He inquired why I had gone. ... I told him that I had gone because we had been invited by one of the organizers to find out if we would join the Union." TR. II: 155. "I answered him that they [the Union] had called us just to tell us the ones with the cards were getting ahead and we should take heart." TR. II: 172.

I find Respondent's knowledge of Ms. Giron's union activities primarily from the above conversations with supervisor Menendez. I also find additional indication of Respondent's knowledge from an incident which took place in the field shortly after Ms. Giron attended the Union meetings at 40-Acres. She testified that one of the group of workers who had gone to the meetings was a man in her crew who later in the fields stated, in the presence of supervisor Zoilo Rivera, that Ms. Giron and other workers had gone to the meetings, and who called Ms. Giron a "huelgista" [striker]. TR. II: 156-157, 173. Ms. Giron's testimony about this incident was corroborated by Nazario Hernandez and Lucia Sanchez. TR. III: 281-283, 292, 307-311. This incident would be hearsay if used to prove that Ms. Giron had gone to the meetings or was a striker, but is valid evidence when used to show knowledge on the part of Respondent.

3. Martha Flores. The evidence shows that Ms. Flores supported the Union actively, by talking with other employees in the fields and encouraging them to support the Union. "I used to tell them to go to the [Union] meetings. ... For them to defend themselves. ... I used to tell them this regularly." TR. V: 584. Ms. Flores further testified that supervisor Zoilo Rivera was present during some of the times she talked with other workers. TR. V: 531. In addition, although Respondent denied all knowledge of Ms. Flores' union activities, Mr. Lester Sandrini did admit that he had

knowledge of Ms. Floras' talking to other workers. "She talked a lot. ... Just unhappy with her job most of the time. ... It bothers the other workers." TR. VIII: 925.

I find Respondent's knowledge of Ms. Flores union support from the fact that some of her union conversations took place in the presence of her supervisor, and from the fact that her conversations were noted by Respondent's management to the point where General Partner Lester Sandrini, who left Respondent's daily operation of the fields to Richard Sandrini and Ramon Menendez, was aware of them.

4. Jesus Gutierrez, Leticia Martinez, and Benjamin Zamano.
Mr. Gutierrez, Ms. Martinez, and Mr. Zamano were working together in supervisor Roberto Lopez ' crew when the Union organizers came to the fields. The organizer talked with the three of them, and they signed Union authorization cards. Mr. Gutierrez testified: "The organizer gave us a card so that we would sign it and he was explaining about the Union, how good it was and then we signed the card and gave it back to him. And then he picked up my card and read my name out loud." TR. IV: 458. Ms. Martinez testified to the same effect: "The organizer approached us. He explained that the Union was good for us and for us to sign the card. I told him that we would sign it. ... My husband [Mr. Gutierrez] and I and Benjamin [Zamano]. ... We gave it to the organizer. Then the organizer read in a loud voice the name of Jesus Gutierrez."

When the organizer talked with the three employees and they signed the cards, a grape checker from another crew was present less than six feet away. She followed the organizer around and was standing next to him and the three workers when they signed the cards: "With [the organizer] a checker from crew number one had arrived with him. ... She remained about three feet away and the organizer approached us." TR. IV: 433 (testimony of L. Martinez). "There was a girl there from, I believe she was a checker from crew number one. ... [We signed the card] and then the girl, the checker that was there, started talking to the organizer. " TR. IV: 458 (testimony of J. Gutierrez).

The General Counsel asserts that the checker was an agent of Respondent and therefore certain alleged admissions made by her should be admitted by Respondent. I have not considered any such admissions, and I make no findings as to her agency. However, her subsequent actions, taken in the context of Respondent's overall pattern of surveillance of the Union organizers, makes clear that knowledge of the actions of Mr. Gutierrez, Ms. Martinez, and Mr. Zamaro in signing the Union cards was transmitted by her to supervisor Ramon Menendez. Ms. Martinez testified that "We started to work again [after signing the cards]. About ten minutes the checker was coming with Ramon Menendez. They stopped in front of my table. ... Ramon Menendez asked the checker who Jesus Gutierrez was. She showed him which table he was in." TR. IV: 434. Mr. Gutierrez testified that "Then the whistle

blew so that we could start working again and the checker started to walk away and she stopped with Don Ramon [Menendez]. ... She was talking to him and I was walking by they turned around and looked at me. They were making gestures towards me. ... Almost pointing with their fingers." TR. IV: 459-460.

I find that taken in the context of Respondent's pattern of following the organizers around, including the participation of Mr. Menendez in that pattern, it is a persuasive inference that the union activities of Mr. Gutierrez, Mr. Martinez and Mr. Zamano when they signed the Union card were made known to supervisor Menendez, and I so find.

In addition to this testimony, I find additional support for Respondent's knowledge from the changed attitude of crew supervisor Roberto Lopez towards Mr. Gutierrez and Mr. Zamano after they signed the Union cards. Mr. Gutierrez testified: "Before we signed with the Union, he [supervisor Lopez] would speak real good to us and treated us good. After we signed with the Union, he was acting more somber with us. ... He was different on the job, he would give us more orders. ... Like angry." TR. IV: 469. For the reasons discussed above in connection with similar testimony concerning Gonzalo Garibay, I find that the changed attitude of supervisor Lopez is additional evidence of Respondent's knowledge of the union activities of Mr. Gutierrez and Mr. Zamano.

With regard to two of the four remaining alleged discriminatees, I find that there is no evidence of Respondent's knowledge of any union activities on their part. Specifically,

I find that there is no evidence that Respondent knew of any union activities on the part of Jesus Flores and Manuel Flores.

With regard to the final two alleged discriminatees, Nazario Hernandez and Lucia Sanchez, the evidence of Respondent's knowledge of their union activities is weaker than is the case with the six individuals discussed above. The circumstantial knowledge indicating Respondent's knowledge is as follows:

1. Mr. Hernandez and Ms. Sanchez are related to Maria Giron, and travelled and sometimes worked with her. Supervisor Menendez knew this. See, e.g., TR. II: 130-132, 165-169, 176-178, 201, 233; TR. III: 303-308, 369-370. Ms. Giron, as described supra, was one of the most active Union supporters at Respondent's premises.

2. Mr. Hernandez and Ms. Sanchez went to the Union meetings at 40-Acres with Ms. Giron; they both saw the man at the meetings who later at the fields said, in front of a supervisor, that Ms. Giron was a striker and that the employees had gone to the Union meetings. TR. III: 281-283, 292, 307-311.

3. Ms. Sanchez talked with other workers in the fields and told them to sign Union cards. TR. III: 279.

4. Mr. Hernandez' foreman, supervisor Zoilo Rivera, became angry with him after he had gone to the Union meetings at 40-Acres. TR. III: 357-359. However, this testimony is undercut somewhat by the fact that Mr. Hernandez

had had disagreements with supervisor Rivera before that time.

TR. III: 381-382.

In considering my findings as to Respondent's knowledge concerning these two workers, I will note here, rather than in a separate section, the legal standards I am using in making my finding. An employee's union activities need not be prominent or major to support a finding of employer knowledge. See AS-H-NE Farms, 3 ALRB No. 53. A finding of knowledge can be based on an inference from the record as a whole. Jesus Martinez, 5 ALRB No. 51; AS-H-NE Farms, 3 ALRB No. 53; Abatti Farms, Inc., 5 ALRB No. 34.

Under these standards, I consider the above four factors, in connection with Respondent's overall interest in the union activities of its employees and surveillance of the Union organizers, as sufficient to support an inference from the record as a whole that Respondent had knowledge of the union activities and support of Mr. Hernandez and Ms. Sanchez, and I so find.

In sum, I find:

(1) There is specific evidence from which I find that Respondent had knowledge of the union activities and support of Martha Flores, Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Leticia Martinez, and Benjamin Zamano.

(2) There is circumstantial evidence from the record as a whole from which I infer and find that Respondent had knowledge of the union activities and support of Nazario Hernandez and Lucia Sanchez.

(3) There is no evidence that Respondent had knowledge of any union activities and support of Jesus Floras and Manuel Flores.

F. The Lay-off of Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazario Hernandez, Leticia Martinez, Lucia Sanchez, and Benjamin Zamano.

1. Respondent's General Grape-Harvest Procedures

Respondent begins to harvest its Thompson Seedless grapes (its largest crop) sometime in August. TR. VII: 858. There are usually four crews of workers who pick and pack the grapes, with approximately 35-50 workers in each crew. TR. VIII: 985; TR. IX: 1191.

When the Thompson Seedless grapes are harvested, the crews are then split, with two crews usually going to pick juice grapes and two crews picking Calmarias table grapes. TR. VIII: 1010. Since there are fewer acres of these grapes, there is usually a reduction in crew size and a layoff of some workers at this time. TR. VIII: 1010.

The Thompson Seedless harvest is usually finished by the end of September, and the remaining harvest is usually finished by the end of October or early November. TR. VII: 858; TR. VIII: 1008-1009.

2. Respondent's 1980 Grape Harvest. The 1980 grape harvest began approximately August 18th with the picking of the Thompson Seedless grapes. TR. VII: 858. The Thompson

Seedless harvest finished on September 17th or 18th. TR.

VIII: 1008-1009.

After the Thompson Seedless harvest was finished, the workers de-leafed the Calmarias grapes for four or five days. TR. VIII: 1008-1009. Following this, there were three layoffs of workers. The first layoff was of eight workers, four or five days after the Thompson Seedless harvest was over. Two days later, six more workers were laid off. Approximately six days later some seventy workers were laid off. TR. VII: 1008-1010. Richard Sandrini testified that this latter layoff was somewhat larger than usual because the juice market was slow and not as many grapes were picked as normally were harvested. TR. VII: 1011.

3. Respondent's Seniority System and Layoff Procedure.

Respondent follows a seniority system in laying off workers. TR. VII: 863-864; TR. VIII: 1012-1013; TR. XI: 1370. The system is not in writing. TR. VII: 863-864. Richard Sandrini makes the decision when to lay off workers, i.e., he decides when each part of the harvest is over and what the overall needs are for workers for the next stage. TR. VIII: 1008; TR. VII: 866-867. Supervisor Ramon Menendez decides which individual workers should be laid off once Mr. Sandrini determines the need for a layoff. TR. VII: 866-867; TR. VIII: 1008; TR. XI: 1370.

Lester Sandrini, Richard Sandrini, and Ramon Menendez all testified that workers were laid off according to seniority,

but that there was one exception to the seniority system: a low-seniority employee who is related to a high-seniority employee will be retained over another employee who has more seniority than the low-seniority relative. TR. VII: 863-864; TR. VIII: 1012-1013; TR. XI: 1370 et. seq.

I find, however, that this "relative" exception to the seniority system is somewhat vague and ambiguous. Lester Sandrini testified in a contradictory manner concerning the exception, at one point indicating in response to a question from the Hearing Officer that in fact a low-seniority relative would be laid off before someone who was hired a month prior to the low-seniority employee. TR. VII: 866. Mr. Sandrini also indicated considerable vagueness as to how it is determined who are relatives of high-seniority employees:

" [Mr. Sandrini] : As far as I know there are a lot of them that are related there.

Q. Have you ever done anything to check whether they are related?

A. No.

Q. Who told you they are related?

A. Go by the name.

Q. So you just look at the name and you can tell from their last name if they are related?

A. Not really. Most of them -- we have quite a few that are family, have large families that work together.

Q. But other than checking their names,
you don't have any way of knowing that;
is that correct? . . .

A. That is correct." TR. VII: 878-879. Richard Sandrini described the "relative" exception in qualified terms: "The people who started working for us last were the first laid off with the possible exception of family members." TR. VIII: 1012-1013. [Emphasis added.] "If a person had worked for us for some time and his son is now of age to work, he would have preference over someone else that started in roughly the same period of time." TR. VII: 1013 [emphasis added]. "Q: Does it matter ... how long the relative has been working for the company?" A: "Basically not." TR. VIII: 1014 [emphasis added].

4. The Layoffs of the Alleged Discriminatees.

The seven alleged discriminatees discussed in this section of the Decision^{3/} were all laid off in September 1980. The General Counsel offered testimony concerning alleged promises made to some of the individuals at the time they were hired that they would be employed for the duration of the grape harvest; also testimony was introduced concerning Respondent's attempts to get them to sign "Exit Interview" slips, and some alleged statements made by supervisors at

3/ The remaining three alleged discriminatees, Martha Flores, Jesus Flores and Manuel Flores, are discussed in the next section. Their cases involve a different situation from the one concerning the seven alleged discriminatees discussed here.

that time. I have not considered any of these alleged promises or statements, and I rely solely on the undisputed testimony and on the payroll records in making the following findings concerning the layoffs.

The payroll records (GCX: 4) reveal the following hire and layoff dates for the seven workers:

	<u>Hire</u>	<u>Layoff</u>
Gonzalo Garibay	Sept. 4, 1980	Sept. 22, 1980
Maria Giron	Aug. 18, 1980	Sept. 22, 1980
Jesus Gutierrez	Aug. 27, 1980	Sept. 22, 1980
Nazario Hernandez	Aug. 29, 1980	Sept. 22, 1980
Leticia Martinez	Sept. 1, 1980	Sept. 22, 1980
Lucia Sanchez	Aug. 18, 1980	Sept. 23, 1980
Benjamin Zamano	Aug. 27, 1980	Sept. 22, 1980

Richard Santini testified that the Thompson Seedless harvest ended "September 17th or 18th." TR. VIII: 1008. He testified that the workers then "pulled leaves in the Cal-marias ... [for] four or five days." TR. VIII: 1008. He was then asked when the first layoffs occurred:

"Q. And do you recall approximately how long it was after the Thompson Seedless harvest had been concluded that there was a reduction in force?

A. Approximately four or five days.

Q. And do you recall how many workers were laid off at that time?

A. Eight." TR. VIII: 1009.

Thus, according to Mr. Sandrini's testimony the first

layoff took place between September 21 and September 23, most probably on September 22nd.^{4/} Six of the alleged discriminatees were laid off on September 22nd, the seventh on September 23rd. Thus of the initial group of eight workers laid off by Respondent in the 1980 harvest, six were alleged discriminatees, with the seventh alleged discriminatee being laid off the next day.

The 1980 harvest of the remaining juice grapes and Calmarias table grapes continued until late October. TR. VII: 858; TR. VIII: 1010-1011.

The payroll records (GCX: 4, RX: 13) indicate that a number of workers continued to work after September 23rd (the day the last of the alleged discriminatees was laid off), who had been hired for the harvest on dates later than some or all of the alleged discriminatees. Inter alia, the records show that the following people were still working (hire dates in parenthesis);

Iraida Borralli (8/29)
 Juan Calderon (9/9)
 Maria Cruz (9/1)
 Oscar Cruz (9/1)
 San Juanita A. Gamboa (8/29)
 Rafael Garcia (8/28)
 Marcos Leon (9/1)
 Efrain Mendez (8/25)
 Genoviva Mendoza (9/4)
 Jesus Ochoa (9/9)

4/ Mr. Sandrini's testimony indicates the following possibilities:

	<u>LAYOFF:</u>	
	Four Days Later:	Five Days Later:
<u>DATE THOMPSON</u>	Sept. 17: Sept. 21	Sept. 22
<u>HARVEST FINISHED:</u>	Sept. 18: Sept. 22	Sept. 23

Teresa C. Ochoa (9/9)
Jose G. Ramirez (9/1)
Maria Ramirez (9/11)
Ervin Ramos (8/22)
Rosa Rendon (8/25)
Loila Rivera (9/4)
Carmen Rosettes (9/8)
Francis Santiago (8/27)
Juan M. Santiago (9/3)

Of these people, Respondent's witness Ramon Menendez testified that Marcos Leon, Rosa Rendon, Francis Santiago, Carmen Rosettes, Iraidi Borelli, and Juanita Gamboa were related to high-seniority workers. TR. XII: 1483-1497. Respondent introduced no evidence that any of the remaining people were related to high-seniority workers.

G. The Discharge of Martha Flores, Jesus Flores
and Manuel Flores.

It is undisputed that Martha Flores had worked for Respondent since 1973, and that in 1980 she brought her two sons, Jesus Flores and Manuel Flores, with her to work in the fields. They worked in Zoilo Rivera's crew, with Jesus and Manuel Flores picking grapes which Martha Flores then put into the packs.

1. The conflicting testimony. There is considerable dispute between the parties as to the events surrounding the discharge of Ms. Flores and her sons. Ms. Flores testified (TR. V: 528 at. seq.) to the following events:^{5/}

5/ Ms. Flores' testimony was supported by the testimony of: her son, Jesus Flores (TR. VI: 697 et. seq.) and her husband, Isabel Flores (TR VII: 757-767). The events described in text are taken from their combined testimony.

During her work for Respondent in the 1980 harvest, Ms. Flores spoke to other workers regularly to encourage them to join the Union and to go to meetings. She performed her job adequately, with no more poor-quality packing (dirty grapes and outsized grapes in the box) than she had occasionally done in the past, or that was normal for most workers. During the 1980 harvest the work was occasionally stopped for several days at a time to allow the grapes to mature. At these times she worked for another grower, Mid-State Horticultural Company. Several days before the date of her discharge, work was stopped at Respondent's harvest for three days. During these three days she worked for Mid-State. When she returned to Respondent's business on the fourth day, her crew foreman, Zoilo Rivera, called her out of the field. Ms. Flores testified that the date was Monday, August 26th; in fact, August 25th was a Monday, August 26th a Tuesday.

Ms. Flores further testified that Mr. Rivera told her to stop working (along with her sons), and to speak to supervisor Menendez. Mr. Menendez came by a little later and told her that she and her sons had to speak to Lester Sandrini about their job. Mr. Menendez said that they could not work until they spoke to Mr. Sandrini. Ms. Flores and her sons drove to the company office and to Mr. Sandrini's house, but could not find them. She then went to Mid-State and worked part of the day there. They returned that evening to Respondent's premises and spoke to Mr. Sandrini in the office.

Ms. Flores further testified that Mr. Sandrini told her that she talked a lot on the job, and that her work had been poor quality (the boxes contained dirty and poor quality fruit). Mr. Sandrini then stated that Ms. Flores was putting ideas into people's heads in the field, and she was a "pro-heulgista" (pro-striker). Ms. Flores further testified that Richard Sandrini then walked into the office and Lester Sandrini asked Richard if there was work for Ms. Flores and her two sons. Richard Sandrini said that they were full up and had no work for them. She and her sons were not given any work after that.

Respondent called Richard Sandrini, Lester Sandrini, Zoilo Rivera and Ramon Menendez to counter the testimony of Ms. Flores, and her son and husband. Their testimony, in sum, was to the following events:

During the 1980 grape harvest Ms. Flores' work was consistently poor, due to the inexperience of her sons who had not picked grapes before. Ms. Flores' pack contained dirty, unripe, and mis-sized grapes, and she was frequently criticized by the supervisors and Richard Sandrini for this. On Monday, August 25th, Mr. Sandrini and a checker from the marketing company inspected Ms. Flores' grapes and found them inadequate. They told her to perform better work. Ms. Flores and her sons did not return to work the next day, August 26th. Mr. Sandrini spoke to Ms. Flores' husband, who said that she was angry with the criticism of her work. Mr. Sandrini decided to replace Ms. Flores and her sons

because they did not come to work on the 26th, and because the conversation with her husband indicated to him that she did not intend to return.

Respondent's witnesses further testified that Ms. Flores and her sons returned to work on August 28th, and were told by their foreman to wait until Mr. Menendez returned. Mr. Menendez then instructed Ms. Flores to speak to Lester Sandrini. Ms. Flores met with Mr. Sandrini that afternoon, and he told her that she would not be re-employed because her work quality had been consistently poor, she had displayed a bad attitude when attempts were made to criticize her work, and she had quit her job by leaving on the 25th and not returning the next two days. There were no comments about her being a "huelgista". Mr. Sandrini did take into account the fact that she talked a lot to other workers, bothering them, in deciding to fire them; he denied knowledge that her conversations contained union references.

2. The Documentary Evidence. Respondent's payroll records, (GCX: 4) indicate the following information for Zoilo Rivera's crew for the seven-day period from Thursday, August 21st through Wednesday, August 27th:

August 21 (Thurs.): Crew worked, 7 hrs each person.
August 22 (Fri.): Crew off.
August 23 (Sat.): Crew off.
August 24 (Sun.): Crew off.
August 25 (Mon.): Crew worked, 5 hrs. each.
August 26 (Tue.): Crew off, except for eight people who worked.

August 27 (Wed.): Crew worked, eight hours each.

Respondent's payroll records, (GCX: 4) indicate for Ms. Flores and her two sons, the following information for those same days:

August 21 (Thurs.): Worked 7 hrs.

August 22 (Fri.): Off.

August 23 (Sat.): Off.

August 24 (Sun.): Off.

August 25 (Mon.): Worked 5 hrs.

August 26 (Tue.): Off.

August 27 (Wed.): Off.

The payroll records from Mid-State Horticultural Company (Exhibits 6A-D), indicate the following information concerning Ms. Flores for those seven days:

August 21 (Thurs.): Off.

August 22 (Fri.): Worked 9 hrs.

August 23 (Sat.): Worked 6 hrs.

August 24 (Sun.): Off.

August 25 (Mon.): Off.

August 26 (Tues.): Worked 9 hours.

August 27 (Wed.): Worked 9 hours.

3. Resolution of Conflicting Testimony

Based on the documentary evidence, my observation of the witnesses, and an examination of the record, I make the following findings as to the events surrounding Ms. Flores' discharge :

First, the dates from the payroll records reveal a story largely consistent with Respondent's version of the events. The records do reveal, in support of Ms. Flores, that Zoilo Rivera's crew was laid off for three days, from August 22-24. However, the records indicate that Ms. Flores and her sons worked the full day on Monday, August 25th. They also indicate that she was absent from work on August 26th and 27th. The records show that the entire crew (with a few exceptions) was off on August 26th, so I attach no weight to the fact that Ms. Flores did not work on the 26th. However, the records also indicate that she did not work on the 27th, while the crew did. Overall, this supports Respondent's witnesses' testimony that Ms. Flores worked on Monday, was criticized for her work, and then did not show up the next two days.

Concerning the dispute about whether Lester Sandrini stated that Ms. Flores' was a "huelgista", I find that no such statement was made. I credit the testimony of Respondent's witnesses on this point.

I find that in 1980 Ms. Flores' work was at times sub-standard, due to the inexperience of her sons. However, I also find that Respondent's supervisors, though they criticized her work, did not indicate that she would be fired because of it.

I do not credit Mr. Sandrini's testimony that Ms. Flores' husband indicated she would not return, and I credit Mr. Floras' denial. TR. XIII: 1674.

Finally, I note that I have found that Respondent had knowledge of Ms. Flores¹ union support and of her talking with other workers in the field about the Union. In this connection, I note that the Union filed a Notice of Access on August 18th, and that Ms. Flores¹ discharge took place ten days later. I also note that Ms. Flores' discharge took place before the Union organizers came to the fields in September, and before Respondent's pattern of surveillance of the organizers began.

Conclusions of Law

I. The Layoff of Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazario Hernandez, Leticia Martinez, Lucia Sanchez, and Benjamin Zamano

The General Counsel has alleged that Respondent violated Sections 1153 (c) and (a) of the Act by discriminatorily laying off these seven workers. Section 1153 (c) of the Act prohibits "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 Agricultural Labor Relations Board's cases have established the standards by which Section 1153 (c) of the Act is to be interpreted. The General Counsel must prove a prima facie case that the employees engaged in protected union activities, that the employer had knowledge of those activities, and that a motivation for the layoff was the employer's knowledge of the employees' union activities. S. Kuramura, Inc., 3 ALRB No. 49; AS-H-NE Farms, 3 ALRB No. 53; Akitomo Nursery, 3 ALRB No. 73; Abatti Farms, Inc., 5 ALRB No. 34. Once the General Counsel establishes such a prima facie case of discriminatory layoff, the burden shifts to the employer to establish that the layoffs were justified by a valid business justification. Harry Carian Sales, 6 ALRB No. 55; Nishi Greenhouse, 7 ALRB No. 18; Martori Bros, v. ALRB, __C3d__, L.A. 31310 (1981).

Applying these standards to the instant case, I find that Respondent clearly violated Section 1153 (c) and (a) of the Act when it laid off the seven alleged discriminatees.

I have found that the seven workers engaged in union activities. I have found that Respondent knew of the union activities of Gonzalo Garibay, Maria Giron, Jesus

Gutierrez, Leticia Martinez, and Benjamin Zamano. (Findings of Fact, Section II. E.) I have further inferred from the record as a whole that Respondent knew of the union activities of Nazario Hernandez and Lucia Sanchez. (Findings of Fact, Section II. E.)

There was detailed evidence of anti-union animus by Respondent's supervisors, including a pattern of following Union organizers around at the beginning of the Union's drive at Respondent's premises. (Findings of Fact, Section II. C.)

The Union organizers came to Respondent's premises in September 1980.^{6/} The organizers talked with and interacted with the alleged discriminatees, who, in varying degrees, openly supported the Union. Later in the month the Thompson Seedless harvest was completed, and the first occasion for laying off workers came four days afterwards. At this time Respondent laid off eight workers, and six of these were alleged discriminatees.^{7/} At the same time Respondent kept a number of workers who had less seniority than the alleged discriminatees.

6/ Although the exact date was not given, Richard Sandrini put it at about September 6th. See Findings of Fact, Section II. C., Note 2.

7/ The seventh was laid off one day later.

Given Respondent's knowledge of the alleged discriminatees' union activities, and Respondent's anti-union animus, I find and conclude that the General Counsel has proven a prima facie case that the layoffs were motivated by the union activities of the alleged discriminatees.

In Nishi Greenhouse, 7 ALRB No. 18, p. 3, The Board held that:

"If the General Counsel establishes that protected activity was a motivating factor in the employer's decision, the burden then shifts to the employer to prove that it would have reached the same decision absent the protected activity."

Respondent has offered three justifications for the layoff of the seven alleged discriminatees, and I find each to be without merit.

First, Respondent argues that there was a need for a larger number of layoffs than usual in 1980 because of the weak grapejuice market. This is not a justification at all. In the first place, the alleged discriminatees were laid off on the first layoff (of eight workers), while it was a subsequent layoff of seventy workers which Mr. Sandrini testified was caused by the weak grapejuice market. (Findings of Fact, Section II.F.) In any event, this simply shows a need to lay off some employees. It offers no justification at all for why the seven alleged discriminatees were selected out for layoff ahead of others with less seniority.

Second, Respondent makes a general assertion that the layoffs of the alleged discriminatees were non-discriminatory because of the "relatives" exception to its seniority policy. In describing this exception Respondent's witnesses indicated considerable vagueness in how it was determined who was a relative, and in how the system was administered. In any event, the payroll records show a number of people who continued working after the alleged discriminatees were laid off, despite less seniority, and Respondent only introduced testimony showing that a few of them were in fact relatives of high-seniority workers. Respondent introduced no proof that the rest of the retained low-seniority workers were relatives. In asserting a business justification as a response to a prima facie case of discrimination, Respondent has the burden of proof. Harry Carian Sales, 6 ALRB No. 55; Nishi Greenhouse, 7 ALRB No. 18. Respondent has only shown that some of the low-seniority people retained in place of the alleged discriminatees came within the "relative" exception to the seniority policy. Thus, Respondent has failed to meet its burden of proof on this issue.

Third, Respondent asserts that some employees who supported the union were not laid off. However, it is well-settled that not all Union supporters need be laid off to find discrimination against some. Desert Automated Farming, 4 ALRB No. 99.

Thus, I find and concluded that Respondent's asserted business justifications for laying off the alleged discriminatees are without factual or legal merit.

Accordingly, I find and conclude:

(1) Respondent discriminatorily laid off Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Leticia Martinez and Benjamin Zamano, on September 22, 1980, because of their union activities and support, known to Respondent, in violation of Sections 1153(c) and (a) of the Act.

(2) Respondent discriminatorily laid off Nazario Hernandez on September 22, 1980 and Lucia Sanchez on September 23, 1980, because of their union activities and support, Respondent's knowledge of which I infer and find from the record as a whole, in violation of Sections 1153(c) and (a.) of the Act.

II. The Discharge of Martha Flores, Jesus Flores,
and Manuel Floras

The General Counsel has charged that Respondent discriminatorily discharged Ms. Flores and her sons, because of Ms. Flores' union activities. Section 1153 (c) of the Act prohibits such discriminatory discharges.

The Board's cases hold that where a prima facie case of discriminatory discharge has been shown, the burden shifts to the employer to prove that there was a valid, non-discriminatory business justification for the discharge. Harry Carian Sales, 6 ALRB No. 55; Nishi Greenhouse, 7 ALRB No. 13; Martori Brothers v ALRB, ___ C3d ___, L.A. 31310 (1981)

The Board has recently stated the test to be as follows:

"If the General Counsel establishes that protected activity was a motivating factor in the employer's decision, the burden then shifts to the employer to prove that it would have reached the same decision absent the protected activity." Nishi Greenhouse,⁷ ALRB No. 18, p. 3 (Aug. 5, 1981).

Applying these standards, I find that the General Counsel has proven a prima facie case of discriminatory discharge of Ms. Flores, but that Respondent has met its burden of showing a valid business justification for the discharge.

I have found that Ms. Flores supported the Union, and that Respondent had knowledge of her support. I find from this, and from the fact that she was a long-term worker at Respondent's business and she was discharged shortly after the Union filed a Notice of Access, that the General Counsel has shown a prima facie case that her Union activities were a motivating factor in her discharge.

Respondent asserts three factors which, it claims, validate her discharge. I do not credit one of the factors -- that she was allegedly bothering other workers by talking to them. However, I find that the other two factors show valid business reasons for her discharge. First, her work was regularly not satisfactory during the 1980 harvest, due to her sons' inexperience and her part in packing some of the incorrect grapes they picked. Second, I find that Ms. Flores essentially quit her job on August 25th. I have

found that she left the job and did not return for the next two days, and I credit Respondent's version of the sequence of events during those days. The payroll records indicate that Ms. Floras, from mid August on, was in effect working at two jobs – for Respondent and for Mid-State. I conclude that Ms. Flores left Respondent's employ on August 25th, and later sought to be rehired. I believe the combination of incorrect work and leaving the job without explanation was a valid business reason for Ms. Flores' discharge, and I find and conclude that this combination of factors would have caused Respondent to discharge Ms. Flores and her sons in any event.

Ms. Flores' sons' claims are entirely dependent upon a finding in the first place that Ms. Flores was discriminatorily discharged, since the sons engaged in no union activities of their own.

Accordingly, I find and conclude that no violation of Section 1153 (c) and (a) of the Act has been proven in connection with the discharge in August 1980 of Martha Flores, Jesus Flores, and Manual Flores.

Remedy

The General Counsel's pleadings in the Complaint request compensation over and above the normal remedy for discriminatory discharge. However, no special reasons are advanced for applying an exceptional remedy in this case, and the General Counsel has not pressed this argument in its Post-Hearing Brief. I shall recommend the usual compensation

formula used in discriminatory layoff/discharge cases.

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

Upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended:

ORDER

Respondent, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Laying off 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 any union or concerted activity protected by Section 1152 of the Act.

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

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

(a) Make whole Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazario Hernandez, Leticia Martinez, Lucia

Sanchez and Benjamin Zamano for any loss of pay and other economic losses they have suffered as a result of their discharge, reimbursement to be made according to the formula stated in J & L Farms, 6 ALRB No. 43, plus interest thereon at a rate of seven percent per annum.

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

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

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

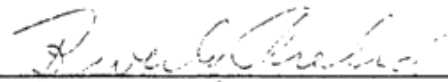
(e) Post copies of the attached Notice, in appropriate languages, for 60 days in conspicuous places on its property, the time(s) and place (s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered,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

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in appropriate languages, to 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 employees' rights under the Act. The Regional Director shall determine a reasonable rate of compension 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.

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

I further recommend that all allegations of the complaint not found to have been proven, be dismissed.

Dated: October , 1981



BEVERLY AXELROD
Administrative Law Officer

Appendix A

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint 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 laying off seven of our employees on September 22, 1980 because of their union activities. The Board has told us to post this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all farmworkers these rights:

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

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

SPECIFICALLY, the Board found it was unlawful for us to lay off Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazario Hernandez, Leticia Martinez, Lucia Sanchez and Benjamin Zamano. WE WILL NOT hereafter lay off any employee for engaging in union activities.

WE WILL reimburse Gonzalo Garibay, Maria Giron, Jesus Gutierrez, Nazario Hernandez, Leticia Martinez, Lucia Sanchez, and Benjamin Zamano' for any pay or other money they have lost because of their layoff.

SANDRINI BROTHERS

Dated:

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 farmworkers or about this Notice you may contact any office of the Agricultural Labor Relations Board. One office is located at [herein indicate nearest office to premises, listing address and telephone].